

18 July 2014

The General Manager
Attention: Ms Lara Huckstepp
Executive Planner
North Sydney Council
200 Miller Street
NORTH SYDNEY NSW 2059

Dear Lara,

18-20 Atchison Street, St Leonards – Stage 2 DA

I refer to Council's correspondence received via email on 10 July 2014, which outlined some additional information and amendments and our subsequent phone conversation with respect to the Stage 2 DA for the above site.

Our response to the items raised is provided below.

Roof top Facilities

We contend that the Stage 1 DA did not seek nor did the JRPP grant consent for the use of the rooftop as a communal common space. Therefore the proposal before Council is not inconsistent with the Stage 1 DA in this respect.

The penthouse apartment and associated rooftop space is planned to be used by the land owner as a residence. The landowner will also occupy and run her business within the commercial office floors below. Because the residential apartments are not sought to be strata titled, the use of the rooftop space will be controlled by the owner.

In the absence of any Council policy control requiring roof tops to be available for "active use" and in the absence of any requirement for such a use to be "only for communal purposes", in our opinion the landowner is within her rights to seek approval for the roof top for exclusive use as sought in the proposal.

We remind Council that the proposal does make a contribution to other facilities in the development through the provision of a gymnasium on ground and level 1 and the creation of a ground level open plaza which provides opportunities for residents and the broader community to socialise.

Clause 4.6 Variation

Our Statement of Environmental Effects Report accompanying the Stage 2 DA noted that the proposed application exceeds the building height control. However as the building height does not exceed the maximum height of that Stage 1 building envelope which was approved having regard to a Clause 4.6 height variation, then in our opinion there is no requirement to submit another clause 4.6 variation request.

To do so, would mean that the Stage 1 DA approval was in effect meaningless in establishing an approved building height which is contrary to the intent of a staged development application process.

While a small part of the proposed roof top faculty structure sits outside of the Stage 1 approved envelope, this addition is minor and importantly does not contribute to increasing the height of the building beyond the maximum height approved. Because of the provisions of s83D(2) of the Environmental Planning and Assessment Act which provides that “*While any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent.*” in our opinion its intention is to ensure that once a matter has been authorised by a Stage 1 DA, it need not be revisited in the Stage 2 DA.

Car Parking

The traffic report states that the proposal is exceeding the DCP car parking requirements by 18 spaces, not 20 as identified in Council’s letter. Nevertheless, in our opinion the additional car parking is justified for the following reasons:

- **Delivering significant commercial floorspace** – The proposal is seeking approval for some 3,613sqm of commercial floorspace. This equates an FSR of 5.24:1 which constitutes a 42% increase from the minimum non-residential floorspace requirement on the site. In light of the consistent trend of the loss of commercial floorspace in the Centre and redevelopment to residentially dominated developments with the minimum non-residential floorspace, the proposal is a positive step to preserving the important commercial function and Council should encourage this.
- **Additional Commercial floorspace has a car parking penalty** – despite the desire for Council to retain a commercial function for the centre, residential development is becoming the predominant land use. Commercial office space have very restrictive parking controls so quantum of commercial space proposed has reduced the number of car parks allowed in a compliant scheme. In our opinion, Council should considering measures to encourage developments such as this to retain higher commercial ratios and for this project the provision of additional car parking is critical to maintain its attractiveness of the site for a commercial development to the business owner and staff.
- **Overall parking quantum not excessive** – If the proposal sought to provide the minimum non-residential space, the quantum of car parking proposed would be complaint. Thus without any more FSR, and in the absence of Council applying flexibility to its DCP controls, the applicant is in effect being penalised by having a higher ratio of commercial space which in our view is unreasonable as the proposal is highly consistent with the state and local planning policies for land use in the Centre.
- **No additional traffic impacts** - The provision of the additional parking spaces will have no impact on the traffic generation to that assessed.
- **Basement level is consistent with No. 22-24** – the basement level proposed is consistent with adjoining approved development. The intention is that both projects will be developed concurrently and therefore differencing basement levels would add complexity to the construction process.
- **The EP&A Act calls for “flexibility in applying DCP provisions”** - The *Environmental Planning and Assessment Amendment Act 2012*, which commenced on 1 March 2013, clarified the purpose and status of development control plans, being to “**provide guidance**” to proponents and Councils in achieving land use zone objectives and facilitating permissible development under an environmental planning instrument. Furthermore, to assist in the assessment of DAs, the amended legislation states that where a proposal does not comply with DCP controls, the consent authority is to be “**flexible in applying those provisions**” and allow for “**reasonable alternative solutions**” that achieve the objectives of those standards for dealing with that aspect of the development.

- It is important to recall these revisions to the status and application of DCPs in development assessment. Overall the proposal achieves high level of compliance with the North Sydney DCP 2002. However in this instance of a departure from a car parking control, for the reasons outlined above, in our opinion they are justified. We believe Council should be encouraging further commercial office space and seeking to incentivise that occurring. The failure to support the proposed additional car spaces could trigger a future modification to reduce the quantum of commercial space and add more residential apartments to meet the high demand for residential within the Centre.

Child Care Facilities

We note Council's comments on this aspect of the proposal. We accept that further design and operational information is required to allow Council to assess this use, and hence accept that a condition of consent is imposed stating that the child care centre would be subject to a future development application.

Engineering Stormwater Details

As per our discussion, we have asked the project architect and engineer to consider these items and speak with Council's engineer Vesna Ristic if required to address these issues. This may result in a separate correspondence being issued to Council if required.

We have attached two updated plans from Crone Architects drawings 2003_revB & 3001_revB as response to Council's comments.

Design Excellence Panel Comments

At the time of lodgement the proposed design has sought to create a contiguous plaza space off the Atchison Street frontage to maximise its utility in accordance with the Panels' suggestion.

In addition, we note the design excellence recommendation and as such our intention is to maximise level connection were possible and work to adjusted levels to create a cohesive open plaza to Atchison and adjoin boundary to the south.

Summary

I trust that this information assists Council in the finalisation of its assessment of this application. I would be happy to discuss this information outlined in this letter if you wish, my direct phone number is 8233 9955.

Yours sincerely,



Stephen White
Director