

## JOINT REGIONAL PLANNING PANEL (Sydney East Region)

<b>JRPP No</b>	2014SYE094
<b>DA Number</b>	DA-2013/60/E
<b>Local Government Area</b>	ROCKDALE
<b>Proposed Development</b>	Modification to mixed use development comprising internal layout changes resulting in an increase in the number of units from 328 to 333 and a resultant increase in 7 car spaces, increase in height of Building C & changes to landscaping and facade treatment.
<b>Street Address</b>	20 Levey Street & 34-36 Marsh Street, WOLLI CREEK NSW 2205
<b>Applicant/Owner</b>	Rockdale Hotels Pty Ltd
<b>Number of Submissions</b>	Nil
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	Development that has a capital investment value of more than \$20 million.
<b>List of All Relevant s79C(1)(a) Matters</b>	<p>List all of the relevant environmental planning instruments s79C(1)(a)(i);</p> <ul style="list-style-type: none"> <li>• SEPP 65 – Design Quality of Residential Flat Development</li> <li>• Residential Flat Design Code</li> <li>• SEPP – Infrastructure 2007</li> <li>• SEPP - BASIX</li> <li>• SEPP 55 – Remediation of Contaminated Land</li> <li>• Rockdale Local Environmental Plan 2011</li> </ul> <p>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii);</p> <ul style="list-style-type: none"> <li>• Draft SEPP 65 - Apartment Design Guide</li> </ul> <p>List any relevant development control plan: s79C(1)(a)(iii)</p> <ul style="list-style-type: none"> <li>• Rockdale Development Control Plan 2011</li> </ul> <p>List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s79C(1)(a)(iv);</p>

	<ul style="list-style-type: none"> <li>• N/A</li> </ul> <p>List any coastal zone management plan: s79C(1)(a)(v);</p> <ul style="list-style-type: none"> <li>• N/A</li> </ul> <p>List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288</p> <ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Regulations 2000</li> </ul>
<b>List all documents submitted with this report for the panel's consideration</b>	<ul style="list-style-type: none"> <li>• Planning report</li> <li>• Draft conditions of consent.</li> </ul>
<b>Recommendation</b>	Approval
<b>Report by</b>	Fiona Prodromou – Senior Development Assessment Planner

### Assessment Report and Recommendation Cover Sheet

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## Precis

On 8<sup>th</sup> 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 17<sup>th</sup> 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.

DA-2013/60/A - modification to mixed use development of 3 buildings 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 was approved by the JRPP on 15 April 2014.

DA-2013/60/B relates to the modification of acoustic conditions, modifications were approved by the Land & Environment Court on 17 June 2014.

DA-2013/60/C relates to the modification of a condition which referenced the now superseded accessible parking space dimension. This was approved under delegation by Council on 11 July 2014.

DA-2013/60/D seeks to modify the previously approved hours of construction upon the subject site, this application is currently under assessment.

DA-2013/60/E, the current proposal comprises internal layout changes within Building C on site, resulting in an increase in the number of units from 328 to 333, provision of an additional 7 car spaces on site, increase in height of Building C by 1320mm, decrease in height of Building B by 60mm, changes to landscaping and facade treatments.

The proposed modification provides additional car parking within the development for the newly proposed units, it is however noted that the overall available number of resident and visitor spaces is not compliant with the rates as adopted within Councils DCP 2011. This is however an existing approved variation.

The proposed S96 seeks to further vary the maximum RLEP 2011 height standard for the site for Building C and does not provide additional communal open space for the 5 additional units on site. These variations have been supported in this instance, for the reasons as noted in this report.

The proposal has a Capital Investment Value greater than \$20 million (i.e. 32 million) and as such the development application is referred to the Joint Regional Planning Panel (JRPP) for determination. The recommendation is for approval.

## Officer Recommendation

That the S96(2) application to modify development consent DA-2013/60/E 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 description of the development to read as follows:

**Proposal:** *Demolition of existing dwelling house, tennis court and pool of hotel and construction of mixed use development of 3 buildings with heights of 11, 13 & 16 storeys in 8 stages, comprising ground floor retail and commercial areas, 333 residential units, parking for 501 vehicles with retention of existing Mercure Hotel building*

Amend the following conditions to read;

2.

<b>Plan</b>	<b>Drawn By</b>	<b>Dated</b>	<b>Received by Council</b>
<i>Architectural Plans</i>			
<i>DA 00 (Site Plan) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 01 (Basement Plan) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 02 (Ground Floor) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 03 (Level 1) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 04 (Level 2) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 05 (Level 3) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 06 (Level 4) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 07 (Level 5) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 08 (Level 6) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 8.1 (Level 7) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>

<i>DA 8.2 (Level 8) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 8.3 (Level 9) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 09 (Level 10) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 10 (Level 11) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 10.1 (Level 12) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 11 (Level 13) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 12 (Level 14) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 13 (Level 15) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 14 (Sections 1 &amp; 2) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 15 (Sections 3 &amp; 4) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 15.1 (Detail Sections 1) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 16 (Sections 5 &amp; 6) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 17 (NE Elevation) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 18 (NW Elevation) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 19 (S Elevation) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 20 (SW Elevation) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 21 (Building C, SE Elevation) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 22 (Building A, SW Elevation) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>
<i>DA 23 (Building B, SW Elevation &amp; Building A NE Elevation) P11</i>	<i>Spence Pearson Architects</i>	<i>08/01/2015</i>	<i>February 2015</i>

DA 23.1 (Detail Sections 2) P11	Spence Pearson Architects	08/01/2015	February 2015
DA 24 (Adaptable Unit Plans) P11	Spence Pearson Architects	08/01/2015	February 2015
DA 25 (Adaptable Unit Plans) P11	Spence Pearson Architects	08/01/2015	February 2015
DA 29 (Materials and Finishes) P7	Spence Pearson Architects	20/12/2012	23 January 2013
Stormwater Plans			
3778 – DA – 001, Issue C, Sheets 1 of 5	EWWF	03/12/14	13/02/2014.
3778 – DA – 001, Issue B, Sheets 2 to 5	EWWF	05/12/2012	23/01/ 2013

6. *The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number (440470M\_04) other than superseded by any further amended consent and BASIX certificate.*

**Note:** Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

- (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

**Note:** For further information please see <http://www.basix.nsw.gov.au>.

13. *Parking spaces shall be allocated to residential apartments and non-residential uses within the development in the following manner:*

- 306 residential parking spaces.
- 135 hotel parking spaces.
- 60 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 the Principal Certifying Authority in accordance with the requirements of clause 4.6 of Council's DCP 2011. Details are to be submitted to and approved by the PCA 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.

- 26A. The development shall comprise a maximum of 333 dwellings, being 27 x studio, 103 x 1 bedroom, 195 x 2 bedroom, 19 x 3 bedroom.
- 26C. The maximum height of buildings on site shall be as follows;  
Building A – 42.23RL  
Building B – 47.4RL  
Building C – 53.35RL.
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 2.882:1.  
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 6,626sq/m (Building A), 10958sq/m (Building B) and 10,130sq/m (Building C), respectively.
59. A Section 94 contribution of \$4,606,315.15 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of the construction certificate for the respective stage of development for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan and applies to only three of the eight stages of development in the following manner:

**Stage 4 (Building A):**

Open Space	\$551,689.35
Town Centre & Streetscape Improvements	\$83,022.24
Roads Traffic Management & Public Parking	\$261,025.65
Flood Mitigation and Stormwater	\$128,800.26
Pedestrian and Cyclist	\$43,138.55
Plan Administration & Management	\$23,458.59
Community Services & Facilities	\$35,965.82
Total for Stage 4	\$1,127,100.46

**Stage 5 (Building B):**

Open Space	\$905,212.74
Town Centre & Streetscape Improvements	\$135,956.82
Roads Traffic Management & Public Parking	\$385,346.52



<i>Flood Mitigation and Stormwater</i>	<i>\$209,891.88</i>
<i>Pedestrian and Cyclist</i>	<i>\$70,299.66</i>
<i>Plan Administration &amp; Management</i>	<i>\$37,632.00</i>
<i>Community Services &amp; Facilities</i>	<i>\$60,819.42</i>
<i>Total for Stage 5</i>	<i>\$1,805,159.04</i>

**Stage 7 (Building C):**

<i>Open Space</i>	<i>\$836,288.99</i>
<i>Town Centre &amp; Streetscape Improvements</i>	<i>\$125,643.30</i>
<i>Roads Traffic Management &amp; Public Parking</i>	<i>\$363,1630.67</i>
<i>Flood Mitigation and Stormwater</i>	<i>\$194,117.35</i>
<i>Pedestrian and Cyclist</i>	<i>\$65,015.77</i>
<i>Plan Administration &amp; Management</i>	<i>\$34,889.81</i>
<i>Community Services &amp; Facilities</i>	<i>\$55,936.76</i>
<i>Total for Stage 7</i>	<i>\$1,674,055.65</i>

*Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.*

67. *Compliance with Council's Development Control Plan (DCP) 2011. Compliance with this condition requires a minimum of thirty four (34) accessible car parking spaces to be provided. The car spaces shall be identified and reserved at all times and be in the vicinity to lifts or as close as possible to public areas and facilities.*

*The car spaces shall have minimum dimensions in accordance with AS 2890.6 and all spaces shall have an uninterrupted minimum headroom clearance of 2.5 metres free of all obstructions, such as service pipes, fittings etc for use by vehicles fitted with roof mounted wheelchair racks.*

145. *A minimum total of 501 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*

173. *The maximum height of the proposed building at 53.35 metres relative to Australian Height Datum (AHD). This height is inclusive of all vents, chimneys, aerials, TV antennae and construction cranes etc. No permanent or temporary structure is to exceed this height without further approval from Sydney Airport Corporation Limited.*

**Note:** *Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units.*

*For further information on Height Restrictions please contact SACL on 9667 9246.*

**Bird and Obstacle Hazard Management**

*To minimise the potential for bird habitation and roosting, the Proponent must ensure the following plans are prepared prior to construction commencing:*

- *Landscape Plan which only includes non-bird attracting plant species;*
- *Site Management Plan which minimises the attractiveness for foraging birds, i.e. site is kept clean regularly, refuse bins are covered, and detention ponds are netted.*



- The proposed development incorporates ant-bird roosting measures to discourage bird habitation.

The Proponent must consult with Sydney Airport Corporation Limited on the preparation of each plan.

All trees to be planted shall not be capable of intruding into the Obstacle Limitation Surface when mature.

175. All traffic entering and exiting the site over the driveway at the eastern end of the site fronting Marsh Street should be left-in and left-out only.

All vehicles must enter and exit the subject site in a forward direction.

All construction vehicles must be accommodated on site during construction.

## Report Background

### PROPOSAL

The proposal seeks to undertake a range of modifications to the approved development, comprising as follows;

1. Increase the number of apartments from 328 to 333, being 5 additional units, as a result of the conversion of a plant room at level 14 (building C) to a 3 bedroom unit and the reconfiguration of unit layouts within Building C, as follows;

Approved Unit	Approved Bedroom / Area	Proposed	Proposed Bedroom / Area
C001	3 bed two storey 133sq/m	C001 C002	2 bed 76sq/m 2 bed 76sq/m
C002	2 bed two storey 104sq/m	C002 C102	1 bed 55sq/m 1 bed 55sq/m
C003	2 bed two storey 104sq/m	C003 C103	1 bed 55sq/m 1 bed 55sq/m
C004	3 bed two storey 133sq/m	C004 C104	2 bed 76sq/m 2 bed 76sq/m
C501	3 bed two storey 105sq/m	Parking & storage C501	- 2 bed 74sq/m
C502	3 bed two storey 115sq/m	Parking & storage C502	- 2 bed 74sq/m
C503	Studio 40sq/m	C503	1 bed 54sq/m
C504	3 bed two storey 115sq/m	Parking & storage C504	- 2 bed 74sq/m
C505	3 bed two storey 102sq/m	Parking & storage C505	- 2 bed 74sq/m
C506	1 bed single storey 56sq/m	C506	1 bed adaptable 59sq/m
C507	1 bed + study 58sq/m	C507	2 bed single storey 73sq/m
C604	Studio 40sq/m	C603	1 bed 54sq/m
C607	1 bed 56sq/m	C606	1 bed adaptable 59sq/m
C608	1 bed + study 58sq/m	C607	2 bed 74sq/m
C704	studio 40sq/m	C703	1 bedroom 54sq/m
C708	1 bed + study 58sq/m	C707	2 bedroom 74sq/m
C804	Studio 40sq/m	C803	1 bed 54sq/m

C808	1 bed +study 58sq/m	C807	2 bed 74sq/m
C904	Studio 40sq/m	C903	1 bed 54sq/m
C908	2 bed + study 58sq/m	C907	2 bed 74sq/m
C1004	Studio 40sq/m	C1003	1 bed 54sq/m
C1008	1 bed + study 58sq/m	C1007	2 bed 74sq/m
C1104	Studio 40sq/m	C1103	1 bed 54sq/m
C1108	1 bed +study 58sq/m	C1107	2 bed 74sq/m
C1204	Studio 40sq/m	C1203	1 bed 54sq/m
C1208	1 bed +study 58sq/m	C1207	2 bed 74sq/m
C1304	Studio 40sq/m	C1303	1 bed 54sq/m
C1308	1 bed +study 58sq/m	C1307	2 bed 74sq/m
C1404	Studio 40sq/m	C1403	1 bed 54sq/m
C1408	1 bed + study 56sq/m	C1407	2 bed 74sq/m
L14 Plant	Plant Room	C1408	3 bed 98sq/m
C1504	Studio 40sq/m	C1503	1 bed 54sq/m

2. Modifications to external building walls of Building C, with the building line of habitable areas at ground level (i.e. units C001-C004) extended further out to the NE.
3. Modifications to NE & SW external building wall articulation to Building C.
4. Modifications to FSR from 2.84:1 (40 870sq/m) to 2.882:1 (41 557sq/m)
5. Modification in the unit mix on site as follows;

Units	Approved	Proposed	Difference
Studio	27	16	- 11
1 bedroom	99	103	+ 4
2 bedroom	178	195	+ 17
3 bedroom	24	19	- 5
Total	328	333	+ 5

6. Increase in the number of car spaces from 494 to 501, being 7 additional parking spaces on site. Reallocation of car spaces within the development as follows:

Parking Allocation	Approved	Proposed	Difference
Residential	305	308	+ 3
Visitor / Commercial	54	58	+ 4
Hotel	135	135	Nil
Total	494	501	+ 7

7. Introduction of ground level stairwell to allow direct access to the ground level north facing corner cafe of the development, fronting Levey Street.
8. Re-introduction of balcony edge planters to facades of all 3 buildings on site ground to L5.
9. Addition of a substation at ground level along the SE Marsh Street boundary of the site.
10. Introduction of additional storage cages at level 4 Building C.
11. Relocation of basement to ground level lift from Building A to adjoining hotel entry.

12. Increase in ground level commercial areas on site from 403sq/m to 474sq/m.
13. Additional screening proposed to open air A/C plant room to rooftop of Building A.
14. Reconfiguration of fire stairs from basement to ground level adjoining waste handling and plant room to NE of Building C.
15. Addition of 2 visitor car parking spaces to southern corner of site and 1 visitor space adjoining northern side of hotel conference room.
16. Balconies increased in size to units B1207 / C1306.
17. Modification to Condition 15 to allow dedication of land to Council prior to the issue of the Occupation Certificate for Stage 8, as opposed to the Construction Certificate.
18. Modification to Condition 175 to correct an error in the street name.

## 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 and are the subject of a mixed use development currently under assessment by Council.

The site has a total area of 14,442m<sup>2</sup> which comprises 12,835.3m<sup>2</sup> of land and 1,606.7m<sup>2</sup> 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.



Figure 1 –Aerial photograph of the subject site and its context.

## 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 height, façade modifications & changes 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 basement on site has been constructed and the proposal as modified does not seek to modify the basement or previously approved and imposed General Terms of Approval upon the original consent.

*(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 no submissions were 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:* N/A.

### **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 for the proposed development. The Certificate number is 440470M\_04. Condition 6 is proposed to be modified to reflect the revised BASIX certificate.

##### ***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)**

### *Principle 4 – Density*

A maximum 3:1 FSR applies to the site. The modifications as proposed result in an FSR of 2.88:1 on the subject site, complying with the density requirement. The proposal satisfies the provisions of this principle.

### *Principle 7 – Amenity*

Unit revisions as proposed will retain appropriate natural ventilation and solar access to habitable areas. Units and habitable rooms within are of appropriate and functional dimensions and layout for future occupants. The proposal is acceptable in this regard.

### *Principle 9 – Social Dimensions*

Despite a change in unit mix on site, the proposal retains a reasonable mix of 1, 2 and 3 bedroom units on site, in order to accommodate current market demands and projected future demographic trends. The proposal is appropriate in regards to this principle.

### **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 proposal has been assessed against the Residential Flat Building Code.

<b>Development Standard</b>	<b>YES/NO</b>	<b>Compliance</b>
Apartment building depth 10-18m, with wider buildings need to demonstrate satisfactory daylight and natural ventilation	<b>Partial</b>	18.6m - 22.5m ( <i>as previously approved</i> ) No further variation as a result of proposed modifications.
Single-aspect apartments should be limited in depth to 8 metres from a window	<b>Partial</b>	8.6m - 9.6m depth to units C503 – C1403. Minor variation is satisfactory and unlikely to result in adverse amenity particularly given living & habitable areas are located close to or adjoin the glass line of the development.
The back of a kitchen should be no more than 8 metres from a window	<b>Partial</b>	8.6m to units C503 – C1403. Minor variation is satisfactory and unlikely to result in adverse amenity.
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:</i> Building B Ground = 3m First = 3.04m Building C Ground & first floors = 3m	<b>No</b>	Buildings B & C Ground & First Floors = 3.04m  Minor variation is an improvement to ground floor of building B and both ground and first floor of building C.
Habitable rooms to be a minimum 2.7metres ceiling height	<b>Partial</b>	2.4m floor to ceiling height in kitchens, 2.7m remainder of unit. As previously approved.
Accessible storage to apartments: One bed = 6m <sup>3</sup> Two bed = 8m <sup>3</sup> Three bed = 10m <sup>3</sup> Minimum 50% in apartment	Partial	As previously approved.
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 2 hours may be acceptable <i>As approved</i> 68% (104 of 328) dwellings receive sufficient solar access in midwinter	Yes	78% (261 of 333) will receive 2 hours solar access in midwinter.  Building C achieves 84% solar access.
Limit single-aspect apartments with southerly aspect to 10% <i>As approved</i> 45 of 316 (14.25%)	<b>No</b>	48 of 328 (14.63%) as proposed (minor increase is negligible)
60% of residential units should be naturally cross ventilated.	Yes	60% (199/333) are cross ventilated.  91% units within building C are cross ventilated.
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 residential accommodation, commercial premises and Hotels 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 to the highest point of the building as part of DA-2013/60/A;



Building A – 42.23RL  
Building B – 47.4RL  
Building C – 50.85RL (2.85m over the permissible height).

The proposal seeks to further increase the height of Building C on site as follows, whilst Buildings A & B are retained at the heights previously approved.

Building A – 42.23RL (as approved)  
Building B – 47.4RL (as approved)  
Building C – 53.35RL (2.5m increase)

The proposal thus results in an overall height of 47.9m for Building C. The proposed height of Building C further exceeds the maximum permissible height limit on site by a further 2.5m.

It is noted that Section 96 of the EPA Act 1979 (as amended) is a free-standing provision. A modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application.

Case law confirms that an application for a modification could be approved by the consent authority for a development in breach of an applicable development standard, and that a Clause 4.6 variation is not necessary.

In this regard, a merit assessment of the additional height has been undertaken.

It is noted that the, bulk and scale of the development with the proposed additional height is satisfactory in that it will reflect and complement the existing and future high density residential character of the Wolli Creek locality.

The additional height as proposed does not result in adverse amenity impacts to adjoining neighbours or contextually, and is thus not deemed to be unreasonable.

It is further noted that no objection to the additional height has been made by Sydney Airports Corporation in regards to aviation safety.

The additional height in this regard is deemed satisfactory and worthy of support.

#### *Clause 4.4 – Floor Space Ratio (FSR)*

A maximum FSR of 3:1 is permitted on the site. The most recent S96 approval on the site comprised an FSR of 2.834:1 (40 870sq/m GFA) as per the GFA Validation prepared by Norton Survey Partners.

The proposed development as modified was accompanied by a GFA report prepared by Norton Survey Partners, dated 24 July 2014, which confirms the FSR of the development is now 2.888:1 (41 557sq/m). This represents an increase in GFA across the site of 687sq/m.

As submitted, the surveyors verification of the GFA of the development was inconsistent with that approved as part of the earlier S96 for the subject site.

Gross Floor Area	Approval DA-2013/60/A	Proposal	Difference
Building A	6,468sq/m	6,626sq/m	+ 158sq/m
Building B	10,904sq/m	10,958sq/m	+ 54sq/m
Building C	9,655sq/m	10,130sq/m	+ 475sq/m

Hotel	13,843sq/m	13,843sq/m	Nil
Total	40,870sq/m	41,555sq/m	+687sq/m
FSR	2.84:1	2.882:1	+ 0.042:1

As seen from the table above, the GFA of the development has increased as a result of additional GFA to commercial areas on site, conversion of plant room within Building C to a residential dwelling & modifications to external building walls within Building C.

The applicants surveyor submitted the following statement in order to clarify the above.

*“a slightly different methodology for area calculation was undertaken. Both calculation sets were done using the GFA definition within Rockdale LEP 2011, however increases occurred as a result of the following:*

- 1. The GFA definition allows for the exclusion of areas for, amongst other things, vertical circulation (paragraph d) and plant rooms/mechanical services etc (paragraph f).*
- 2. The earlier calculations generally included in the areas to be excluded from the GFA the floor areas occupied by the bounding walls which enclose the lifts, stairs, ducts etc and which are permissible exclusions as described in paragraphs d & f of the definition.*
- 3. During the current calculations we had cause to reconsider our earlier treatment of paragraphs d & f and concluded it would be appropriate to exclude from the GFA only the void areas of the permissible exclusions, and not the areas occupied by the bounding walls. This resulted in an increase in GFA at each level.”*

The proposal complies with the FSR requirement for the site and is satisfactory in this regard.

#### *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 to the NE of Building C, to enable the reconfiguration of the basement fire stairs and installation of the substation on site. 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 modification now seeks to exceed this height restriction at 53.35RL, the applicant has submitted to Council correspondence dated 16 July 2014, from the Department of Infrastructure and Regional Development that confirms that a maximum height of 53.35AHD is permitted upon the subject site.

The proposal complies with this restriction and is therefore acceptable in this regard. SACL conditions within the determination have been modified to reflect the 53.35AHD height.

#### *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*

Stormwater plans previously approved for the subject site are not proposed to be modified. The proposal is therefore 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 State Environmental Planning Policy (SEPP) 65 was publicly exhibited from 27 September 2014 until 27 October 2014 by the NSW Department of Planning.

The current application was lodged on 06/08/2014 and there were no draft instruments applicable at that time. Notwithstanding consideration has been given to the draft SEPP in the assessment of this application.

The draft SEPP include performance criteria in relation to minimum unit sizes in order to ensure the spatial arrangement and layout of units is functional and provides a high standard of amenity. The proposal is considered to be consistent with the provisions of the draft and acceptable with respect to the 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
<b>General principles for development</b>				
4.2	Streetscape and site context	Refer to Part 7.1 – Wolli Creek. No specific setback applies to site fronting future Cahill park extension.	Bedrooms to ground level unit C001 – C004 protrude 2.1m further forward of original approved ground floor resulting in a front setback at ground level to the future Cahill Park extension 1.7m	Yes – modification to external building line is consistent with approved changes to Building B as part of previous S96. Modifications retain consistency in the building line on site at upper levels.
4.3	Landscape Planning & Design	<p>Comply with tech spec-landscaping &amp; 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 = 1665sq.m req. – With good amenity for 333 units</p>	<p>As approved</p> <p>9.6% landscaped area</p> <p>2m</p> <p>Communal areas as previously approved with a total of 1074sq/m. (566sq/m deficiency on site)</p> <p>Proposal results in an additional 25sq/m deficiency equating to 591sq/m shortfall of COS on site overall</p>	<p>-</p> <p><b>No</b> – as previously approved no change.</p> <p>Yes</p> <p><b>No</b> – given context of site adjoining extensive parklands a minor additional shortfall of communal open space is negligible.</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</p>	<p>Revised BASIX submitted</p> <p>78% (261 of 333) will receive 2 hours solar access in midwinter.</p> <p>Building C achieves 84% solar access</p>	<p>Yes</p> <p>Yes</p>

		winter. 2 hours is acceptable in dense urban areas.		
		Ceiling height ground and first floor 3.3m <i>Building B (approved) Ground = 3m First = 3.04m</i>	Building B Ground = 3.04m First = 3.04m	<b>No</b> – minor variation an improvement to ground floor. First floor as previously approved
		<i>Building C (approved) Ground &amp; First floors = 3m</i>	Building C Ground = 3.04m First = 3.04m	<b>No</b> – minor variation is an improvement to previous, thus satisfactory.
		Cross flow ventilation to be maximised.	Satisfactory	Yes
		Visual Privacy	Satisfactory	Yes
4.5	Housing diversity and choice  <i>Previous S96 Studio / 1 Bed = 126 (38%) 2 Bed = 178 (54%) 3 Bed = 24 (7%)</i>	1 bed= 10% (34) -30% (100)  2 bed=50% (167) -75% (250)  3 bed=10% (34) -20% (67)	Studio / 1 Bed = 119 (35%)  2 Bed = 195 (58.5%)  3 Bed = 19 (5.7%)	<b>No</b> – minor reduction from 38% deemed satisfactory  Yes  <b>No</b> – minor reduction from 7% deemed satisfactory
	Adaptable housing	10% (33 required)	34 provided <i>Building A = 8 Building B = 14 Building C = 12</i>	Yes
	Equitable Access	In accordance with cl. 4.5.2	Access provided throughout development	Yes
4.6	Car Parking, Access & Movement  <i>As Approved 289 residential 135 hotel 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	As originally approved.	

		Storage (10sq.m)		
<b>Section 5.3 - Mixed Use Buildings</b>				
5.3.14-16	Retail Commercial within development  Original DA - 840sq/m / 3.1%  S96 - 403sq/m 1.5%	10% (2771.4sq/m) of GFA is for retail /commercial	1.7% 474sq/m	<b>No</b> – proposed increase of 0.2% from previous S96. Proposal is satisfactory given proposed increase and previously approved variation.
<b>Section 5.2 – Residential Flat buildings</b>				
5.2.4	Apartment size & room dimensions	As per DCP 2011 table.	Minor reduction & increase to unit sizes within development.	<b>No</b> - Unit revisions retain similar unit sizes to those previously approved & comply with RFDC rule of thumb apartment sizes. Layout of unit and habitable areas are functional and practical, thus variation is satisfactory.
<b>Part 7.1 – Wolli Creek</b>				
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	No identified setback to future Cahill Park extension	Bedrooms to ground level unit C001 – C004 protrude 2.1m further forward of original approved ground floor resulting in a front setback at ground level to the future Cahill Park extension 1.7m	Yes – modification is consistent with changes to Building B approved as part of previous S96. Modifications will retain consistency in the design on site given upper level protrusions.

**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)(iiia))**

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 as modified.

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

#### *Character / Streetscape / Density / Bulk / Scale*

The proposal retains a similar bulk, scale and visual appearance to the previously approved scheme for the site. Minor changes are sought in order to accommodate unit revisions and improve the functionality of units and overall amenity to future occupants.

Minor modifications to building articulation, glass line & height are consistent with the high density vision for the Wolli Creek vicinity. The proposed modifications to the buildings do not result in additional unreasonable privacy or overshadowing impacts on site or to neighbouring properties.

The proposal as modified is acceptable in regards to bulk, height, scale and overall streetscape character.

#### *Car Parking*

Car parking as part of the original application was assessed and approved under the rates shown in the table below. Accordingly these rates were also utilised in the assessment of previous & the current S96 application.

<b>Proposal</b>	<b>Rate as per Original Assessment</b>	<b>Required</b>	<b>Proposed</b>	<b>Complies</b>
119 x studio - 1 bdrm	0.7 per dwelling	84	306	Yes
195 x two bdrm	1 per dwelling	195		
19 x 3 bdrm	1.4 per dwelling	27		
<b>Total Residential Required</b>		<b>306</b>		
Visitor	1 per 7 dwellings	48	60	<b>No – 2 deficient.</b> <i>Deficiency can be accommodated within a Shared Car Parking Register thus satisfactory.</i>
Commercial (474sq/m)	1 per 35sq/m	14		
Hotel	-	135 as approved	135	
<b>Total</b>			<b>501</b>	

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



### *Proposed Modification to Condition 175*

Condition 175 states as follows;

*175. All traffic entering and exiting the site over the driveway at the eastern end of the site fronting Levey Street should be left-in and left-out only.*

*All vehicles must enter and exit the subject site in a forward direction.*

*All construction vehicles must be accommodated on site during construction.*

The applicant proposes to modify this condition and replace the word “Levey” with “Marsh” as the eastern side of the development backs onto Marsh St, not Levey Street.

The requested modification will correct an error in the conditions and is supported.

### **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 proposed 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 no submissions were received.

### **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 application, the proposed modifications will allow the development of the site in accordance with its environmental capacity and in line with Council's vision for the Wolli Creek area.

As such it is considered that the development application is in the public interest.

### **CONCLUSION**

The proposed modifications are deemed satisfactory in that they are not likely to create additional unreasonable impacts to the neighbourhood or the environment. These components include the additional height to building C, provision of additional units & car parking on site, reintroduction of balcony edge planters to all buildings, modifications to building articulation & modification to unit mix.

The proposed development as amended has been considered under S96(2) & S79C(1) of the Environmental Planning and Assessment Act, 1979 and is considered to be consistent with the objectives of the relevant controls as detailed within this report.

As such, the application DA-2013/60/E is recommended for approval.