

11 September 2015

Mr Pascal van de Walle
Senior Development Assessment Planner
Major Assessment Team
Rockdale City Council

By Email - pvandewalle@rockdale.nsw.gov.au

Dear Mr van de Walle

15-21 WILLIS STREET WOLLI CREEK - DEVELOPMENT APPLICATION DA-2015/279

We refer to the abovementioned development application to be determined by the Sydney East Joint Regional Planning Panel on 16 September 2015. As discussed by phone, it is our preference that Council focus on the additional information submitted yesterday and only consider this submission if time permits.

This submission outlines proposed changes to the draft conditions of consent as we discussed yesterday.

1) Construction Staging

It is proposed that construction will be carried out in 4 stages. It is requested that below schedule 1 you add the words:

Construction may be carried out in the following stages:

- Stage 1 – Site clearing and preparation (including demolition)
- Stage 2- Excavation, shoring and piling works
- Stage 3- Construction of the basement to podium (structure only)
- Stage 4- Construction of structure above podium, fitout and services works all levels and landscape works

It is requested that each of the conditions below, relating to additional information or the payment of fees, be amended to reflect the nominated staging.

| PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE FOR STAGE 1 | PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE FOR STAGE 2 | PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE FOR STAGE 3 | PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE FOR STAGE 4 |
|---|---|---|---|
| 39, 58 | 43, 45, 59 | 41, 42, 51,52,53, 54, 56, 57, | 28(c), 28(d),29, 30, 38, 44 (refer below), 48, 49, 55, |

2) Additional words for clarification purposes

Condition 12 B. heading – add the words **of public domain works** after construction

Condition 13 A. heading – add the word **public** after the word Before

Condition 56- add the words "by the Certifying Authority" after the word approved

3) Other modifications

Condition 11- Amend visitor parking requirement rate to 1 per 6.7 as per our submission.

Condition 28(b) - Replace the words "shall achieve a minimum equivalent AAAC star rating" with the words "shall be constructed to satisfy the requirements of the Building Code of Australia".

We have obtained advice from acoustic experts in relation to condition 28. The condition requires additional treatment to inter-tenancy walls over and above building code requirements and Rockdale Council DCP requirements (and for that matter any Sydney Council). Achievement of the 5 star rating (which is in fact a rating system for hotels, given the transient nature of that use) requires additional plasterboard works at considerable expense (thereby reducing the affordability of the apartments) or a large cavity between the Hebel and plasterboard which will unnecessarily occupy usable apartment space.

We are advised that Council has waived this requirement on numerous projects including a development at 294 Forest Road, where a modification application was approved on or around 1 June 2015 and subsequent to the court case mentioned in your report to JRPP.

We enclose a copy of the Council assessment report for the section 96 which clearly confirms (page 5) that the modified development "will ensure appropriate acoustic amenity is retained within the development, between intertenancy floors and will ensure the objectives of clause 4.4.5.7 of Council's DCP are achieved.

A letter from Acoustic Logic, acoustic experts, will be forwarded under separate cover.

Condition 44 – Delete parts (a) and (b) as per our submission

Should you wish to discuss any of the above please feel free to call me on 8570-8888 or 0417259619.

LATERAL ESTATE PTY LIMITED



Benjy Levy
Development Manager

c.c Sydney East JRPP panel members
C/o Ms Lisa Foley- lisa.foley@planning.nsw.gov.au

ROCKDALE CITY COUNCIL

Section 96(1A) – Delegated Report



1. APPLICATION DETAILS

Application Number: DA-2014/283/B
Date of Receipt: 02-May-2015
Property: 286A, 294-298 Forest Road & 159 Frederick Street, BEXLEY NSW 2207
Lot 3 DP 1114882, Lot 4 DP 1114882, Lot C DP 327795, Lot B DP 327795, Lot A DP 380056, Lot B DP 380056, Lot X DP 33367, Lot Y DP 33367, Lot A DP 327795, Lot 31 DP 1353
Owner: Barua Pty Ltd and Mr E A Hulak and Mr L E Sanhueza
Applicant: Mr E Sanhueza
Proposal: Modification to amend Condition 39, 102 & 120
Recommendation: Approval
No. of submissions: N/A
Author: Fiona Prodromou – Senior Development Assessment Planner
Date of Report: 01-Jun-2015

2. SUMMARY OF ISSUES

N/A

3. RECOMMENDATION

That the Section 96(1A) Application DA-2014/283/B for modifications to the approved development to Modification to amend Condition 39 at 286A, 294-298 Forest Road & 159 Frederick Street, BEXLEY NSW 2207 be **APPROVED** pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979 and subject to the modifications to conditions of consent attached to this report.

4. BACKGROUND

DA-2014/283 – Approved by JRPP 28/10/2014

Demolition of existing structures and construction of a part 7, part 6 and part 5 storey mixed use development, including 4 retail shops, 87 residential units, two basement levels comprising 120 parking spaces, front fencing, lap pool and strata subdivision creating 93 lots.

DA-2014/283/A – Approved 29/05/2014

Modification to Condition 49 and 105

DA-2014/283/B – Submitted to Council 2 May 2015

Modification to amend condition 39, 102 & 120

DA-2014/283/C – Submitted to Council 5 May 2015 (Under Assessment)

Modification to mixed use development including conversion of ground floor plant room to commercial tenancy, increase in height of parapet and lift overruns, relocation of substation, addition of windows, increase to balcony sizes, addition of plant room to roof level, provision of shelter over lap pool and changes to materials.

5. PROPOSAL

The proposal seeks to modify conditions of consent 39, 102 & 120 relating to the acoustic treatment of floors and walls within the development.

It is proposed to modify Condition 39 which refers to the acoustic treatment of walls. It is proposed to refer to the BCA which requires an air borne rating of $R_w + C$ tr 50 which is equivalent to 5 stars as confirmed by the applicants acoustic expert. The 5 star rating also applies to the impact rating to walls which is over and above the BCA (which includes discontinuous construction in some areas).

Additionally the applicant seeks to modify the acoustic rating of tiled and timber floors within the development in order to avoid construction & access difficulties. The acoustic rating of floors within the development is thus to be dependent upon finishes chosen by the purchaser.

Accordingly, flooring within the development is proposed to incorporate a AAAC star rating from 3 – 5, depending on the nature of flooring finish chosen by the purchaser.

The proposed amendments require the modification of conditions 39 & 102 & 120 of the development consent as follows:

39. *Flooring within the development shall achieve the following minimum equivalent AAAC Star Rating within the below specified areas of the development.*

- *3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted.*
- *4 Star for timber flooring in any area.*
- *5 Star for carpet in any area.*

Walls within the development shall be constructed to satisfy the requirements of the Building Code of Australia.

A report shall be submitted to the Principal Certifying authority for approval prior to the issue of any Construction Certificate for each of the building stages. The report is to include BCA requirements and details of floor/ceilings between residential apartments. Floor coverings within apartments shall be identified within the report.

A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate for each of the building stages.

102. *Testing and evaluation of the wall insulation system and floor system is to be carried out at post construction stage by a suitably qualified acoustical engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership to confirm compliance with condition 39 of this consent. A report is to be submitted to the PCA and Council, prior to the issue of the Occupation Certificate. The report is to include details & finishes of the walls and floors separating apartments.*

Acoustic recommendations in relation to traffic, aircraft and plant emissions contained in the Noise Impact Assessment report 286A & 294-298 Forest Road & 159 Frederick Street, Bexley prepared by Acoustic Logic dated 27 February 2014 Ref: 20140210. 1/2702A/R0/BW shall be validated by a Certificate of Compliance prepared by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.

120. *A by-law shall be registered and maintained for the life of the development, which requires that:*

- a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
- b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent.
- c) Notwithstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall comply with the conditions of this consent. A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with the conditions of this consent. In the event that the conditions are not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to the conditions and in accordance with any directions given by the Owners Corporation.

Proof of registration of the By Law shall be submitted to Council prior to the issue of a Strata Certificate.

6. REFERRALS

N/A

7. PLANNING CONSIDERATION

7.1 S96(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

Section 96(1A) of the Environmental Planning & Assessment Act 1979 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 a development consent if:

- a) It is satisfied that the proposed modification is of minimal environmental impact, and

Comment: The proposal as amended is of minimal environmental impact.

- b) 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 development as modified is substantially the same development to that which consent was originally granted.

- 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 as modified did not require public notification as per the requirements of DCP 2011.

- d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

e) Comment: N/A.

7.2 S96(3) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

S96(3) of the Environmental Planning and Assessment Act 1979 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.

An assessment of the application has been carried out under the provisions of Section 79(C) of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered. The following is an assessment of the proposed development under the provisions of Section 79C (1) of the Environmental and Planning Assessment Act.

7.2.1 Provisions of Environmental Planning Instruments (S79C(1)(a)(i))

Rockdale Local Environmental Plan 2011 (RLEP 2011)

The proposal is considered to be consistent with the following aim of RLEP 2011:

2(c) *to maintain and improve residential amenity and encourage a diversity of housing to meet the needs of Rockdale's residents.*

7.2.2 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))

There are no proposed instruments affecting this proposal.

7.2.3 Provisions of Development Control Plans (S.79C(1)(a)(iii))

Development Control Plan No. 2011

Clause 4.4.5.7 – Acoustic Privacy

Councils DCP requires all residential development except dwelling houses to be insulated with an Impact Isolation between floors to achieve an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC).

The original consent was conditioned to ensure floors and walls between inter tenancy units achieved the 5 star rating.

The 5 star sound insulation of flooring is to ensure residents within unit developments are insulated from the noise generating activities of neighbours whether they are in units above or below their own, given the proximity of residential flat building living.

The sound insulation of common walls between inter tenancy units is also an important consideration in the design of residential developments as future occupants do not have the ability to control the noise generating activities of neighbours.

The proposal seeks to reduce the acoustic rating of floors within the development. The applicant has advised that a AAAC 5 Star rating is not realistically achievable and results in construction issues i.e. difficulty in treating wet areas, requirement for a step up into tiled / timber areas thus resulting in access issues, and reduction in floor to ceiling heights.

Reference is made to recent Land and Environment Court proceedings "*Rockdale Hotel Pty Ltd v Rockdale City Council*" where "Rockdale Hotel Pty Ltd" sought to modify acoustic conditions applicable to the Mercure Hotel site & reduce these from a 5 star to 4.5 star rating.

The L&E Court determined it acceptable to amend conditions as the 4.5 star rating was acceptable and achieved the objectives of ensuring acoustic privacy for occupants and neighbours. Notwithstanding the recent court case, concern is raised that the 4.5 star rating is not achievable for the reasons outlined above, where timber and tiled flooring is proposed.

Following consideration of the above & discussions with acoustic experts it is proposed to modify acoustic conditions to require as follows:

39. *Flooring within the development shall achieve the following minimum equivalent AAAC Star Rating within the below specified areas of the development.*
- *3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted.*
 - *4 Star for timber flooring in any area.*
 - *5 Star for carpet in any area.*

Walls within the development shall be constructed to satisfy the requirements of the Building Code of Australia.

A report shall be submitted to the Principal Certifying authority for approval prior to the issue of any Construction Certificate for each of the building stages. The report is to include BCA requirements and details of floor/ceilings between residential apartments. Floor coverings within apartments shall be identified within the report.

A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate for each of the building stages.

The above will ensure appropriate acoustic amenity is retained within the development between inter tenancy floors & will ensure the objectives of Clause 4.4.5.7 are achieved.

7.2.4 Provisions of Regulations (S.79C(1)(iv))

The provisions of the regulations had been considered in the assessment of this development proposal where relevant to this S96 application.

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

Given the internalised nature of the proposed modification, the proposal is unlikely to generate any adverse amenity impacts upon neighbouring properties.

7.2.6 Suitability of the Site (S.79C(1)(c))

The suitability of the site for the proposed development was considered as part of the assessment of the initial application. There are no other major physical constraints or exceptional circumstances that would hinder the suitability of the site for the proposed development as modified.

7.2.7 Public Submissions (S.79C(1)(d))

The development application did not require notification in accordance with the provisions of Council's DCP 2011.

7.2.8 Public Interest (S.79C(1)(e))

The proposed development as modified is considered satisfactory once conditioned, having regard to the objectives and requirements of Rockdale Local Environmental Plan 2011 and Development Control Plan 2011. Impacts on adjoining properties have been considered and addressed. As such it is considered that the proposed development is in the public interest.

8. CONCLUSION

The proposed modification is considered to satisfy the requirements of Section 96(1A) of the *EP&A Act 1979*, and it is recommended that the application be **approved** subject to the modifications to conditions of consent attached.

Fiona Prodromou
Senior Development Assessment Planner