

21 April 2016

Mr John Roseth  
Chairperson and Members of the JRPP  
23-33 Bridge Street  
SYDNEY NSW 2000

Dear Mr Roseth and Members of the JRPP,

### **1-5 KENT ROAD MASCOT (2015SYE170) - AMENDMENTS TO DRAFT CONDITIONS**

We have reviewed the draft conditions of the above application and request a number of amendments as the proposed development complies with the relevant requirement of SEPP 65/Apartment Guidelines. There also some conditions that require approval from Council that otherwise come under the SEPP for Exempt and Complying Developments that should otherwise be deleted. Conditions to be amended or deleted are as follows:

**Condition 28** – This is an invalid condition. Council cannot force a third Party action, nor relate to a separate DA in a Notice of Determination. We have not agreed with the adjoining land owner of 689-669 Gardeners Road to extinguish the easement, and cannot be forced into such an arrangement before a construction certificate is issued. The condition as currently worded will not allow construction to commence on a matter that has no effect on construction. The adjoining owner could very well decide not to be involved and then we cannot start any construction, which will result in the loss of jobs and loss of financing, which is unacceptable and unreasonable.

The attached Council report refers to Condition 86 of the adjoining owner (Court approved) Consent which requires the adjoining owner to ***“Extinguish the Right of Way and infill the temporary vehicular access from Gardeners Road with a commercial land use together with all the necessary building work to allow the space to be adapted for that purpose or other such arrangement as agreed to by Council or determined by legal jurisdiction prior to any occupation certificate”***.

Like 19-33 Kent Road Mascot, Council is repeating an attempt to force a third party arrangement with regard to easements between private landholders that will result in the condition having to be removed at a later date. This condition must be deleted, or at very least be deferred to the final occupation certificate, which is consistent with the consent for the adjoining owner.

**Condition 29** lists the relevant fees. Fees have already been paid for the site relating to the Excavation DA (DA2015/15). A sentence at the end of the condition must be inserted that states **“The above fees are to be subtracted from those paid as required by Condition 35 of Development Consent 2015/15”** Both consents list the same amount of money yet are for the same development. We assume this is an error of “double-dipping”.

**Condition 62(c)** requires studies not be enclosed by a wall or door. The studies have been designed to comply with the Apartment Design Guidelines (ADG). Studies are below the minimum bedroom sizes listed in the ADG and have windows that also required by the ADG. Enclosing the study allows for an office, TV room, rumpus or entertainment area that is separate from the other habitable rooms for privacy and noise separation. **This condition must be deleted.** The market is seeking the closed study area.

**Condition 62(d)** requires a study/nook or re-configure the units to provide a desk in the open plan living area. We have provided a separate study room for a desk in accordance with the ADGs to provide a separate area rather than in the living room. This is a market decision and importantly we lodged this Development Application well before Council decided to amend the DCP. **We request that this condition be deleted** as a study in addition to a study nook is doubling up the same requirement, which is unrealistic.

**Condition 62(e)** – A storage schedule was provided with the plans demonstrating compliance with the requirements of the ADG. In addition to this, we will add a cloak closet near the entry if requested by purchasers. The condition is merely seeking to increase the size of the unit, which is not permitted under SEPP65. **This condition is to be deleted.**

**Condition 62(i)** requires a hose tap and gas outlet on all balconies. We do not provide these facilities unless requested by a purchaser and is not a specific requirement of the ADG for balconies. Notwithstanding this, we are providing barbeques at podium level within the common open space area. Furthermore this has been a last minute request not raised in any correspondence of the Council's letter of design matters, and such all services contracts for construction have been ordered that do not include these fittings. More importantly, we are getting lots of feedback from existing unit occupants about complaints of barbeques on balconies with smells flowing into adjoining units. **This condition must be deleted.**

**Condition 62(j)** of the consent requires louvres to all balconies despite complying with the required setback and privacy requirements of the ADG. This matter was not raised in correspondence and has no justification. The condition has appeared without any consultation and will change the BASIX requirements and will completely change the aesthetic of the building and have negative impacts sunlight to living rooms. **This condition must be deleted.**

**Condition 62(k)** requires mailboxes to be located in lobbies. We have an ongoing agreement with Australia Post to have mailboxes located in the basement for any developments, because Australia Post will not deliver in the lobbies due to poor access. That is, the doors are locked for security and postmen/women do not want to carry security cards for every building in the local government area. Where post deliveries cannot access the lobbies, mail is left outside in the open which is not acceptable. **The condition is to be deleted.**

**Condition 63** seeks perforated roof/ceiling for storage cages in car parking areas. This is an unnecessary requirement and has no reasoning? The requirement of a false ceiling of a particular material is not suitable for storage areas in the basement. There are a lot of complications to the type of materials to be used in the basement where combined in storage areas, particularly with fire, mould and rust. The Private Certifier will sign-off any BCA compliance with regard to sprinklers and storage in the basements. **The condition must be deleted.**

**Condition 65** requires Council to approve driveways, ramps, car parking spaces and the like within the site. Council can only approve this if they are the Certifier. The condition is to be reworded to replace the word Council with **“Principal Certifying Authority”**.

**Condition 66** same as above. Replace wording of Council with **“Principal Certifying Authority”**.

**Condition 67** same as above. Replace wording of Council with **“Principal Certifying Authority”**.

**Condition 68** – The condition is ambiguous. The wording of the condition must be made clearer as the table stipulates an exact rate of parking per unit, and the wording under the table states that excess parking is to be allocated to an apartment or the retail tenancy. Can you please amend the condition by adding the word **“minimum”** car parking requirements in the first sentence of the condition to clear up any confusion.

**Condition 74** relates to public domain, and Council are seeking many amendments and new inclusions. The required information requested does not relate to the building structure and therefore we request the condition be amended in the first paragraph by changing the timing to **“prior to occupation”** and not prior to above ground works. Alternatively this can be **prior to the public domain construction certificate**.

**Condition 74** also requires landscape documentation to be prepared by Context Landscape Architects. This needs to change to **“suitably qualified Landscape Architect”** to allow sufficient flexibility to change consultants if required for any reason. Otherwise we have to prepare and lodge unnecessary Section 96 applications.

**Condition 74(n)** requires a detailed public art proposal. This is considered to be very excessive for such a small development with very little public domain area. We understand that where we are developing large open space areas such as 19-33 Kent St where a major open space area is being dedicated to Council or like at Pagewood where a 8000sqm park is be design that some form of public art is suitable. But for an infill site, there is no reasonable justification. We therefore request this condition to be deleted.

**Condition 76** requires automated irrigation system for public areas connected to a recycled water source. This condition is not acceptable. A BASIX Certificate for the private domain is all that is required and this condition goes above and beyond the relevant SEPP for BASIX. The private sector does not get involved with a water system for the public domain. The future body corporate is never responsible for irrigation works and associated maintenance costs in the public domain. Never have we come across a condition for this purpose. **This condition must not be imposed and is to be deleted.**

**Condition 80** – As with Conditions 65-67, location and treatment of fire boosters and electrical kiosks are governed by the NSW Fire Brigade and Ausgrid. The condition requires rewording by replacing **“Council’s Landscape Architect”** with **“Relevant approval authority”**.

**Condition 94** requires the incorrect peak particle velocity (PPV) figure and makes no reference of a compliant standard. For structural damage vibration, German Standard DIN 4150-3 Structural Vibration: Effects of Vibration on Structures; and German Standard DIN 4150-3 (1999-02) applies in Australia. **The condition must be reworded to require compliance with this standard.**

**Conditions 102 and 103** requires works and approvals for public roadworks before the occupation certificate. We will be constructing the public roads at the later stages of the development as the land will be required for construction activity for loading and unloading of material etc. Also, Council would not want the new roads and public areas earlier as they will be damaged by construction vehicles. The conditions must be reworded by inserting the timing to **“final occupation certificate”**.

**Condition 105(a) & (b)** – No objection to the requirements other than timing. The development does not get completed in one go and we stage occupation. We therefore require that the condition be amended to the **final Occupation Certificate**. We don’t want public access through a construction site whilst we complete buildings in a stage manner.

**Condition 106(a)** – Delete reference to Strata Subdivision – this is done under the SEPP for Exempt and Complying Development by a Private Certifier.

**Condition 106(b)** – In accordance with the SEPP for Exempt and Complying Development, the Certifier is governed with approving the By Laws in accordance with the consent conditions. Once the certifier has approved the By Laws being in accordance with the consent, this is then registered with the Land and Property Information Department (LPI). **The condition is to be reworded that the By Laws be submitted to Council following**

**registration with the LPI.** No objection is raised to the items being included in the By Laws under this condition.

**Condition 112** – Because construction is staged, the total gross floor area will not be known until the development is complete. Otherwise the correct figure is not known. The timing of the approval should therefore be changed to “**prior to the final occupation certificate**”.

**Condition 117** requires all landscaping to be completed prior to the issues of an occupation certificate. This is not possible for large multi-unit developments. The wording needs to change to **final occupation certificate**. The condition also requires maintenance in accordance with the development consent with no time frame. Timing of **12 months** should be included to be consistent with other amended conditions in the consent.

**Condition 118** requires a bond to maintain public domain works for a period of 5 years. The development will be built and sold within 2 years at a maximum. The public domain works will be completed quickly after that. It is our experience with all other Councils that only a 12 month period applies for bonds. The 12 month period after the public domain works is completed is to ensure landscaped areas will survive which is considered reasonable. However over 5 years, the landscaping in the public domain can be effected by weather or other third party damage, which we should not be liable for. As such the condition should be amended by replacing 5 years to **12 months**.

**Condition 119** – Similar to the timing of other conditions. The condition needs to be amended to have the works done and signed off by Council prior to the **Final Occupation Certificate**. The areas of landscaped works will be used for construction works before landscaping is started, which is always at the end of the entire project and not before the first occupation certificate.

**Condition 120** states that the use of the retail tenancy is subject to a separate approval. SEPP for Exempt and Complying Development covers this condition. The condition **should be deleted**.

**Condition 121** – We understand the intent of the condition as discussed in meetings. However, the condition cannot be legally imposed as it relates to land owned by another party. We do not settle until February next year. Under our contract agreement of sale with the adjoining owner, we can lodge applications, which we will be doing shortly as discussed with Council. Council cannot impose a condition about how adjoining land will comply with planning controls if we are not the owner. **The condition has to be deleted**. We will continue pre DA meetings with the Council on the adjoining site and have a Design review Panel meeting set for the 12 May 2016.

**Condition 123** requires new street trees to be maintained for a period of 24 months, which is inconsistent with Condition 118. The condition is to be amended to **12 months** for reasons outlined above.

**Condition 134** states that the Body corporate be responsible for future maintenance of Kent road nature strips, road verges and footpaths at all times. Body corporates are never responsible for maintaining Council footpaths, and road verges. **The condition must be deleted**. Similarly it is up to the body corporate or any other landowner to maintain the frontages. This goes against basic property rights.

**Condition 126(a)** is not possible in every occasion. At some angle from the street, “someone” will find a way to suggest the plant can be seen. We seek the condition to be reworded as follows. Air conditioning units “**where possible**” are not to be visible from the street.



**Condition 127** states loading to be within the Basement of Building C. There is no basement loading area. Loading occurs within the ground level of Building C. The condition needs amending to state **loading and unloading be within the ground floor of Building C.**

**Condition 130(a)** is not agreed with. The condition is seeking that only occupation by a single family is permissible. Council cannot control who will occupy a unit. A unit may be accommodation for friends or different family structures. I think what Council is alluding to is that there cannot be a boarding use situation, where more than 4 people occupy a bedroom. If this is the case, then the condition should be worded as such. Council has the power to intervene if a situation arises. The second part of the condition states that Council approval is required for changes to internal works. This part of the condition must be deleted, as the SEPP for Exempt and Complying Development allows for certain internal works to be undertaken. The third sentence of the condition starting with No plumbing... **be deleted.**

**Condition 130(b)** is poorly worded and will not allow any alterations to a completed adaptable unit. The condition should be reworded to state *"The adaptable apartments approved under this development consent are to **remain as adaptable units at all times**".*

**Condition 132** currently removes the rights to lodge a Section 96 or Complying Development Certificate in the future. The condition must be varied as such.....***"that any alteration, variation or extension to the development for which approval has been given, would require further approval under Section 96 of the Environmental Planning and Assessment Act or Complying Development Certificate from relevant planning authority and in accordance with the prevailing legislation applicable at the time"***.

The above changes are made to be consistent with industry standard, timing of when work can be done and correction of errors.

Yours faithfully  
MERITON GROUP



Walter Gordon  
Director, Planning and Development

CC: Botany Bay City Council