

5 December 2016

Our Ref: P-16051 (SK)

The General Manager

Bayside Council
2 Bryant Street
ROCKDALE NSW 2216

Att: Luis Melim

Dear Luis

RE: RESPONSE TO ASSESSMENT REPORT FOR DEVELOPMENT APPLICATION DA-2016/241 (JRPP-2016SYE005) FOR DEVELOPMENT AT 1-11 CHAPEL STREET, 1-3 CHAPEL LANE AND 6A-12 LISTER AVE AND PORTIONS OF CHAPEL STREET AND CHAPEL LANE

We refer to the Assessment Report for the abovementioned development application that has been referred to the Sydney Central Planning Panel (SCPP) for determination on 8 December 2016. The report currently recommends refusal of the application because of various concerns identified in the assessment report.

In our opinion, the reasons for refusal are not justified and the DA can be approved in its current form provided an updated BASIX certificate is obtained and a deferred commencement condition is included pending concurrence from Sydney Airport Corporation Limited.

Specifically, we believe that the only technical ground for refusing the application (Reason 1) relies on an incorrect interpretation of the operation of clauses 4.3 and 6.14 of the *Rockdale Local Environmental Plan 2011* (LEP) and the remaining reasons for refusal were either responded to during the assessment process by the submission of amended plans and information or have been given excessive weight.

To reiterate our position, we provide the following response to each of the major issues that are identified in the assessment report.

HEIGHT LIMIT

The report states that *"The proposal exceeds the base 28m height limit under the Rockdale Local Environmental Plan 2011 (RLEP 2011) and it is not considered to exhibit design excellence pursuant to clause 6.14 and as such it is not recommended that the 12m height bonus be applied to the development. Without the bonus the proposal would require a clause 4.6 variation request to the height control and one has not been provided."* This is then given as the first reason for refusal of the application and the only reason of a purely technical nature.

The report, however, relies on an **incorrect** application of clauses 4.3 and 6.14 of the LEP.

Clause 4.3(2) of the LEP states *"The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map"*. The height shown for the subject site is 28m. The Height of Buildings Map also indicates the subject site is within "Area A".

Clause 4.3(2A) then states *"Despite subclause (2), the height of a building may exceed the maximum height limit shown for the land on the Height of Buildings Map by an additional: (a) 12 metres-if the building is in Area A identified on the Height of Buildings Map and on a lot having an area of at least 1,500 square metres."*

In this respect the only pre-requisite conditions for the additional 12 metre height limit are that the building is located within Area A on the Height of Building Map and the building is on a lot having an area of at least 1,500 square metres. The proposed buildings meet both conditions and therefore the maximum building height for the subject sites is 40 metres. As the proposed buildings are well below the 40-metre height limit, a clause 4.6 variation request is not required.

Clause 6.14 of the LEP deals with design excellence and applies to the proposal by virtue of the fact that the development application relies on clause 4.3(2A)(a). Clause 6.14(3) then states *"Development consent must not be granted to development to which this clause applies unless: (a) an architectural design competition that is consistent with the Design Excellence Guidelines has been held in relation to the development, and (b) the design of the development is the winner of the architectural design competition; and (c) the consent authority considers that the development exhibits design excellence."* As can be seen, clause 6.14 has no effect on the maximum building height permitted by clause 4.3.

Regarding the matters in clause 6.14(3), it is noted that: (a) an architectural design competition that was consistent with the Design Excellence Guidelines was held in relation to the development; and (b) the design of the development is the winner of that architectural design competition; and (c) it is a matter for the consent authority to determine whether it considers the proposed development exhibits design excellence.

REMEDIATION ACTION PLAN

A remediation action plan (RAP) was prepared on 24 November 2015 and provided by email to Council on 10 October 2016 (a further email with a link to the RAP was forwarded on 11 October 2016). The absence of a RAP, however, is **erroneously** cited as reason 18 in the reasons for refusal.

SIDRA MODELLING

The report states that the impact of the development on the operation of the Lister Ave/Princes Highway signalised intersection has not been assessed in the SIDRA modelling. This is **incorrect** as this intersection was modelled by Barker Ryan Stewart and included in the SIDRA files provided to Council.

The report also states that the incorrect cycle time was used to model Princes Highway/Bay Street intersection and this is given as reason 9 in the grounds for refusal. This modelling was undertaken in February 2016 using an observed cycle time that was measured at 120 seconds. Concerns regarding the cycle times have not been raised previously. Barker Ryan Stewart believe the correct cycle time has been used although they are easily adjusted to enable further modelling if required.

DESIGN EXCELLENCE

The consent authority is required to be satisfied that the proposal exhibits design excellence according to 6.14(3)(c) of the LEP. The meaning of the term 'design excellence' is not given in the LEP, however, the Design Excellence Guidelines referred to in clause 6.14 describe the following criteria to be used when assessing design excellence:

- Capacity to transform existing character and activity within and beyond its context;
- Creative integration of design and technical requirements;
- Communication of lateral responses to current planning controls and guidelines;
- Contribution to amenity and place making through the development of a proposal that is presented as a cohesive place, contributing to civic quality, public realm, systems and paths of movement and activity;
- Comprehensive appreciation of environmental features;
- New public spaces, frontages to public and communal areas that generate high levels of activation and encourage social interaction;
- Scale, character, form and siting complement surrounding urban qualities and likely future development;
- An appropriate balance between resilient materials, embodied energy and resource consumption and dependence; and
- Land uses, activity, building configuration and occupancies that may be adapted in future.

As can be seen, the criteria require a holistic view of the proposal and the contribution it makes to the public realm and in this regard the proposal makes a unique and substantial contribution including the creation of a significant new public realm that exceeds the concept envisaged in the DCP.

The DCP seeks complex urban outcomes in the Chapel Street Precinct including the creation of a public plaza and the provision of a new road, road widening and public car parking - in addition to the car parking required for any development. The proposal includes these public benefits over and above the ordinary development contributions payable in the Rockdale Town Centre, despite there being no specific incentive in the form of additional yield, for example, to

do so. It is appropriate, therefore, that considering the design excellence criteria above, that the consent authority gives substantial weight to the contribution the proposal makes to the improvement of the public domain when assessing design excellence.

As noted already, the design of the proposal is the winner of an architectural design competition that concluded in July 2015. In declaring the proposal the winner of the architectural design competition, the competition Jury made eight recommendations regarding matters to be given further consideration during the design development. These matters and a short description of the proposal's response is set out in the following table.

Table 1 - Design competition jury recommendations

Jury Recommendation	Response
1. Further consideration should be given to the design of the public domain, in particular it is considered that the design should be refined and simplified in consultation with Council, to ensure the design elements, finishes, and plantings are appropriate in the context of the site.	The design of the public domain has been substantially refined and simplified in consultation with Council. We would expect a condition to be included in any consent regarding final approval of the detailed including specification species.
2. Further consideration should be given to the provision of on-street parking within Chapel Street and Chapel Lane, with particular emphasis on the activation of the public domain and retail spaces.	Chapel Lane is proposed to be widened to provide room for a single lane of parallel parking spaces. A proposal to provide on-street parking on Chapel Street was deleted at the suggestion of the Design Integrity Panel in favour of incorporating this sunny space within the public domain.
3. Further consideration should be given to the public interface of the landscape connection between Building A1, Building A2, and Chapel Lane, with regard for the safety and security of future occupants.	A podium now connects the two tower elements of Building A to reinforce the street.
4. Further consideration should be given to the design of the lobby spaces within Building B and Building C, with retail and residential uses separated.	Retail and residential lobby spaces have been re-planned and separated.
5. Further consideration should be given to the public private interface between ground floor residential units and the public domain, with a height differential and landscaped buffer to ensure a satisfactory level of privacy is provided.	A landscaped buffer and been provided and the glassline of habitable rooms has been moved a further 1m to 2.3m to protect privacy.
6. Further consideration should be given to the apartments above the driveway entrance on the south-eastern corner of the Building C, with particular regard for resident amenity and passive surveillance of the public domain.	Apartments have been re-planned in this location and a landscaped deck provided over the driveway entrance to create amenity for the nearby apartments.
7. Further consideration should be given to the provision of private open space, with balconies provided in accordance with the minimum size and dimensions specified in the Apartment Design Guide.	Balcony sizes have been increased to comply with the ADG requirements although we understand there are some minor discrepancies that can be resolved by a condition of consent and minor (<250mm) adjustments to apartment dimensions.
8. Further consideration should be given to the separation distances between the northern end of Building A2 and Building B, with particular regard to solar access and visual and acoustic privacy.	Building separation has been increased from 12m to 15m in this constrained location. The floorplans have been arranged to maximise solar access and minimise visual and acoustic privacy impacts.

DESIGN QUALITY

The report states that the proposal fails to achieve the numeric solar and daylight access requirements in the ADG but does not properly consider the related Design guidance which is particularly relevant to this site because of its unique geometry and orientation and high density town centre location. Please refer to the **attached** comments by Steve King regarding this issue and the concerns raised in the assessment report regarding the quality of the solar analysis provided with the application.

The report also says that various side boundary setbacks are inadequate to comply with the ADG and makes this assessment on the basis that the rooms adjoining those side boundaries are habitable rooms with openings on the boundary. The report fails to acknowledge that the openings on those boundaries are generally high level secondary windows that have been designed to ensure privacy to the adjoining properties and that the proposal achieves the minimum setbacks for non-habitable rooms. The report also fails to acknowledge that the minimum side boundary setback in the Rockdale Town Centre given DCP is 4.5 metres and the proposal either achieves or exceeds this setback in all instances.

WITHOUT PREJUDICE CONDITIONS OF CONSENT

Finally, we request that the Planning Panel be provided with without prejudice conditions of consent pending their determination of the application as is the normal practice.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Kerr', followed by a long horizontal flourish.

Stephen Kerr
Executive Director

COMMENTS

SEPP65 AMENITY COMPLIANCE:

SOLAR ACCESS

MIXED USE DEVELOPMENT

Chapel Street Precinct, Rockdale

1.0 PRELIMINARIES

1.1 I comment on the relevant sections of the documents supplied to me by the Applicant:

- 2016SYE005_Reasons_for_Refusal_Chapel_Street_Rockdale.pdf unheaded, undated and unsigned;
- 2016SYE005_Final_Planning_Report_Chapel_Street .pdf being the Council Assessment Report dated 23 November by Kerry Gordon, Town Planning Consultant

1.2 I am the author of the report EXPERT OPINION | VERIFICATION: SEPP 65 AMENITY SOLAR ACCESS AND NATURAL VENTILATION dated 2 November submitted by the Applicant in response to a then current RFI by Council.

2.0 REASONS FOR REFUSAL

The reasons include:

8. The design of the proposed development does not provide for an appropriate level of solar access to the apartments, failing to provide sufficient number of apartments that achieve two hours of solar access and providing an excessive number of apartments that will receive no solar access in midwinter and fails when assessed against Part 4A – Solar and Daylight Access of the *Apartment Design Guide*.

Comment:

Numerical compliance with the two referenced Design criteria under Part 4A – Solar and Daylight Access of the Apartment Design Guide is not achieved.

In Section 5.4 Projected solar access of my report, I make the point that while the ADG *Design criteria* nominate as a minimum 70%, of dwellings to receive prescribed hours of sun, the Design guidance under the same objective offers relief, primarily for limitations imposed by site orientation and other site related factors.

I refer to my experience based on analysis of achievable solar access on a large number of former brownfields sites – particularly in the Mascot, Meadowbank and Canterbury areas. That experience suggests that even a regularly shaped site with suitable dimensions – but with height controls similar to the subject development – is likely to have a ‘natural limit’ of winter solar access, that may be expected to be in the order of 55% to 65% of dwellings. As I discuss in 4. *GENERAL MASSING, PLANNING AND DESIGN RESPONSE*, the subject site is more than usually constrained by its orientation, shape and dimension., and consequently can be expected to yield percentages at the lower end of that range.

Council has available to it the discretion to take those constraints into account.

3.0 COUNCIL ASSESSMENT REPORT

See pp.29-30. ADG compliance table,
4A – Solar and Daylight Access

The applicant was asked to provide view from the sun diagrams but these were not provided.

Comment:

Views from the sun at half hourly intervals are included as Appendix B of my report of 2 November, commissioned by the Applicant in response to the RFI.

The applicant has provided two differing calculations for solar access. The following calculation was provided by Stephen King, however given the above difficulties with the plans could not be verified. It also is unclear whether the figures apply to living rooms and private open space (POS) and to what extent the solar access is provided (ie 50% of POS).

Comment:

- My report of 2 November was commissioned as a third party verification and probity check of the Applicant's analysis. It identifies and explains a small number of discrepancies. The Applicant and Ms Gordon both rely on my quantification, which is slightly 'better' overall than that included by the Applicant in the DA.
- Appendix A of my report enumerates the individual apartments, for each identifying direct sun to Living area glazing, POS and (only to aid in identifying further amenity) additional sun to bedrooms. The Apartment identifiers match those on the Architectural plans and should pose no difficulties of interpretation.
- I explicitly reference the relevant *L+EC Planning Principle (The Benevolent Society v Waverley Council [2010] NSWLEC 1082)*, and explain how I interpret the requirement for a sunpatch 'of reasonable size'. The *Planning Principle* goes on to give guidance for sun to POS concluding that 'regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.'

Ms Gordon goes on to quote figures attributed to my report, but in several instances unrelated to my summary table.

I make clear in my report that in my view, the site planning and building massing responds logically to the site opportunities and constraints. There may be opportunities in detailed consideration of apartment layouts and consequent façade articulation, to *marginally* further improve the solar access figures, but in my considered opinion, not to significantly alter the degree of compliance.

I consider it unjustified to characterize the architects' design trade-offs as 'poor design'. It is a truism that if you considerably reduce the site realization, you can most likely improve solar access and overshadowing impacts – and therefore not an especially useful critique of the design.

I conclude that '***in my view, the determining authority may reasonably exercise the discretion available in the controls with respect to the solar access achieved by this proposed development***'.



1 December 2016