

15 December 2016

Eltin Miletic
Cumberland Council
PO Box 42
MERRYLANDS NSW 2160

Dear Eltin

[Development Application 2016/127/1](#)

We refer to the Council report recommending approval of development application 2016/127/1 for the proposed a mixed use retail and residential development at 233 and 249-259 Merrylands Road and 52-54 McFarlane Street, Merrylands.

We have reviewed the draft conditions of consent and raise concerns and requests in relation to the following conditions:

Draft Condition	Concern and Request
<p>Deferred Condition No. 1.</p> <p>Splay corners</p> <p>The development shall make provisions for a 4 metre by 4 metre splay corner (curved or straight) within the site. The splay shall be provided for the new roads and where the new road intersections McFarlane Street and Merrylands Road and at the corner of Treves Street and McFarlane Street. In this regard, the applicant shall address the following:</p> <p>a. Ensure that no structures at grade or above (excluding the awning) encroach over the splay corners.</p> <p>b. The designer shall also ensure that the awning proposed is 600mm setback from the kerb return.</p>	<p>A 4 metre by 4 metres splay has been provided at all intersections to a significant height as follows:</p> <ul style="list-style-type: none"> • Building B NE - 6.2m above street level • Building C SE - 5.5m above street level • Building D SW - 5.4m above street level • Building D NW - 5.0m above street level <p>However, above these heights, there is some encroachment over the splay area with balconies or landscaped podium for the development above. Accordingly, compliance with this condition would result in a significant adverse impact to the development as it would result in a substantial change to the architecture of the development, would diminish the achievement of a robust resolution of each corner, and would reduce the amenity of a significant number of apartments with reduced private open space.</p> <p>The objectives for the splay requirement under Part A Section 2.4 of the Holroyd DCP are as follows:</p> <p><i>O1. To enable a person using the road to have access to the land on the other side of the footpath or channel.</i></p> <p><i>O2. To provide road reserves consistent with their function within the road and pedestrian network,</i></p>
<p>Condition No. 186</p> <p>Dedication and construction of a 4 metres by 4 metres splay corner in favour of Council. Documents relative to the creation of the splay corner shall be lodged with the Land and Property Information NSW with Registration being effected prior to issue of the Occupation Certificate. All costs associated with the construction, creation and dedication of the splay corner are to be borne by the applicant.</p>	

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	<p><i>having regard to their safety, visual impact and amenity of local areas.</i></p> <p>The Council assessment report does not explain how the proposed approach, with the splay at ground level and minor encroachment above, fails these objectives.</p> <p>This issue has arisen recently with another development application that Sutherland & Associates Planning has dealt with on a corner site at 52 Dunmore Avenue, Wentworthville (D/2015/401), where Council accepted a splay at ground floor but did not require this for the levels above.</p> <p>Whilst Council had initially requested 4 metre x 4 metre splay this was not ultimately pursued for the levels above ground floor because the 4 metre by 4 metre area referred to is not:</p> <ul style="list-style-type: none"> • identified as SP2 zoning on the HELP zone map; • identified on the HLEP Land Reservation Acquisition Map; • specifically identified in the Section 94 Contribution Map; and • discussions with Council regarding the origin of the 4 metre by 4 metres request clarified that it is to ensure adequate site distances at the intersection and therefore it is only the ground level splay which is relevant. <p>In relation to the subject proposal, a 4 metre by 4 metre splay has been provided at the ground floor level with a minimum clearance height of 5 metres above street level. The objective of the splay to provide sufficient site lines has been achieved and Council is not entitled to require an involuntary dedication of land for the levels above.</p> <p>Accordingly, there was no reasonable or lawful basis for Council to require dedication of part of the Stockland site to Council which requires to removal of components of the development above the ground floor level which encroach into the 4 metre by 4 metre splay at the ground level.</p> <p>It is therefore requested that condition No. 186 be deleted and deferred commencement condition No. 1 be amended to read as follows:</p> <p><i>The ground floor of the development shall make provisions for a 4 metre by 4 metre splay setback (curved or straight) within the site. The ground floor setback shall be provided for the new roads and where the new roads intersect. McFarlane St and Merrylands Road and at the corner of Treves St</i></p>

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	<p><i>and McFarlane St. In this regard, the applicant shall address the following</i></p> <p><i>a) Ensure no structure at ground level (excluding the awning) encroach over the splay setback</i></p> <p><i>b) The designer shall also ensure that no awning proposed is 600mm setback from the kerb return</i></p>
<p>Condition No. 40</p> <p>Details and specifications for the mechanical ventilation system complying with the Australian Standard are to be submitted and approved by Council.</p>	<p>It is requested that Condition No. 40 is amended to add "or the Principle Certifying Authority" to the end of the condition as this matter does not need to be referred back to Council for approval and can be adequately dealt with by the PCA.</p>
<p>Condition No. 14</p> <p>Prior to the issue of a Construction Certificate, a monetary contribution imposed under section 94 of the Environmental Planning and Assessment Act 1979 and Holroyd Section 94 Development Contributions Plan 2013, for 562 units made up of, 192 x 1 bedroom units, 354 x 2 bedroom units and 16 x 3 bedroom units, 7,876m² of GFA and 43 car parking spaces, is to be paid to Council. At the time of this development consent, the current rate of the contribution is \$9,115,756. The amount of the contribution will be determined at the time of payment in accordance with the relevant s94 Contributions Plan in force at that time. A copy of the Holroyd Section 94 Development Contributions Plan 2013 can be viewed on Council's website at www.holroyd.nsw.gov.au or inspected at Council's Civic Centre located at 16 Memorial Avenue, Merrylands between the hours of 8am and 4.30pm Monday to Friday.</p>	<p>It is requested that the payment of the Section 94 contribution is staged to reflect the staged construction of the project as per the staging plans in the DA as follows:</p> <p><i>Prior to the issue of a Construction Certificate for the 5 separate stages as defined below, a monetary contribution imposed under section 94 of the Environmental Planning and Assessment Act 1979 and Holroyd Section 94 Development Contributions Plan 2013, for 562 units made up of, 192 x 1 bedroom units, 354 x 2 bedroom units and 16 x 3 bedroom units, 7,876m² of GFA and 43 car parking spaces, is to be paid to Council. At the time of this development consent, the current rate of the contribution is \$9,115,756.</i></p> <p><i>This contribution is to be paid on the following basis:</i></p> <ul style="list-style-type: none"> <i>Payment 1 (Stage 2B and 2C in staging plan - construction of ground floor retail and Building A) totalling \$1,502,251 for 28 x 1 bedroom units, 86 x 2 bedroom units, 4 x 3 Bedroom units, 5,217m² of retail and the credit for Lot 5 as per condition 15.</i> <i>Payment 2 (Stage 2D in staging plan- Construction of building B) totalling \$1,052,046 for 30 x 1 bedroom units, 49 x 2 bedroom units and 2 x 3 Bedroom units</i> <i>Payment 3 (Stage 2E in staging plan- Construction of building C) totalling \$1,306,359 for 29 x 1 bedroom units and 69 x 2 bedroom units</i> <i>Payment 4 (Stage 3A, 3B and 3C in staging plan- Construction of basement, retail and building D) totalling \$3,590,811 for 54 x 1 bedroom units, 77 x 2 bedroom units, 5 x 3</i>

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	<p><i>Bedroom units, 2,659m² of retail and 43 car parking spaces.</i></p> <ul style="list-style-type: none"> <i>Payment 5 (Stage 3D in staging plan- Construction of building E) totalling \$1,664,289 for 51 x 1 bedroom units, 73 x 2 bedroom units and 5 x 3 Bedroom units</i> <p><i>The amount of the contribution will be determined at the time of payment in accordance with the relevant s94 Contributions Plan in force at that time. A copy of the Holroyd Section 94 Development Contributions Plan 2013 can be viewed on Council's website at www.holroyd.nsw.gov.au or inspected at Council's Civic Centre located at 16 Memorial Avenue, Merrylands between the hours of 8am and 4.30pm Monday to Friday.</i></p>
<p>Condition No. 39</p> <p>Details of all proposed awnings shall be shown on plan and in elevation/section and shall be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate. Awnings shall be 2.5m deep along Merrylands Road and 3m deep along other frontage and designed in accordance with Part C of the Holroyd Development Control Plan 2013</p>	<p>The proposed awnings has been designed with a depth of 2.3 metres to all external frontages and 3.2 metres to "Eat Street". The 2.3 metres is to ensure consistency in the depth of the awning and also to ensure compliance with the required 600mm setback from the kerb at all points. The 3.2 metre awning from "Eat Street" provides a more generous awning suitable for the outdoor dining anticipated to occur in "Eat Street".</p> <p>Accordingly, strict compliance with Condition No. 39 would result in an inconsistent awning depth and also a non-compliance with the 600mm awning setback requirement from the kerb in some locations and also reduced amenity for "Eat Street". Accordingly, it is requested that this condition is deleted.</p>
<p>Condition No. 189</p> <p>Prior to the issue of the Occupation Certificate, the following works shall be completed –</p> <ul style="list-style-type: none"> • The Main Lane extension (within the site) shall be completed connecting McFarlane Street and Merrylands Road. • All costs associated with the land transfer to Council shall be borne by the applicant. • Public Domain works along the full frontage of the site including McFarlane Street, Treves Street and Merrylands Road shall be provided generally in accordance with Council's Merrylands Public Domain Strategy and design palette. <p>Advisory Note: The public road may be dedicated to Council upon completion of the remaining development stages within the CBD, or at another time as may be agreed by Council and the applicant through Voluntary Planning Agreement.</p>	<p>It is considered that the advisory note does not sufficiently reflect the intention of both Stockland and Council to use best endeavours to promptly achieve dedication of the Main Lane extension. Accordingly, it is requested that Condition No. 189 be amended as follows:</p> <p><i>Prior to the issue of the Occupation Certificate, the following works shall be completed –</i></p> <ul style="list-style-type: none"> <i>• The Main Lane extension (within the site) shall be completed connecting McFarlane Street and Merrylands Road.</i> <i>• All costs associated with the land transfer to Council shall be borne by the applicant.</i> <i>• Public Domain works along the full frontage of the site including McFarlane Street, Treves Street and Merrylands Road shall be provided generally in accordance with Council's</i>

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	<p><i>Merrylands Public Domain Strategy and design palette.</i></p> <p><i>Advisory Note: The public road must be dedicated to Council within 12 months after the completion of the development stages, or at another time as may be agreed by Council and the applicant through Voluntary Planning Agreement.</i></p>
<p>Condition No. 205</p> <p>A storage area (i.e 3m x 4m garage/storage room with a secured roller door) shall be provided onsite adjacent to the ground floor residential garbage room in Building A or E to enable a Council Street Sweeper to be kept onsite and secured at all times.</p>	<p>This condition is unlawful as Council cannot require the dedication of a part of the Stockland site to Council without this being volunteered and secured via a Voluntary Planning Agreement. If Council would like to negotiate the dedication of a storage room for their own use, this can be negotiated as part of the Voluntary Planning Agreement.</p> <p>This condition must be deleted.</p>
<p>Condition No. 208</p> <p>Proposed Lots 3 and 4 are not to be dedicated to Council under this Linen Plan unless agreed by Council and the applicant through a Voluntary Planning Agreement. A temporary public positive covenant and right of way to the benefit of Council pursuant to Section 88B of the Conveyancing Act shall be created over the whole of proposed Lots 3 and 4 to facilitate temporary Council and public access until dedicated public road access is provided</p>	<p>It is inappropriate for Council to attempt to secure full and free public access over Lots 3 and 4 without actually taking ownership of this road. If Council believes that full and free public access over Lots 3 and 4 is necessary (as inherently implied by the suggested wording of the condition), it should secure ownership of Lots 3 and 4 via a Voluntary Planning Agreement. Accordingly, Condition No. 208 is proposed to be amended as follows:</p> <p><i>Proposed Lots 3 and 4 are to be dedicated to Council within 12 months of the completion of the development or otherwise agreed by Council and the applicant through a Voluntary Planning Agreement.</i></p>

We trust that the above discussion has provided satisfactory justification for the requested amendments to the draft conditions of consent. Should you have any questions concerning the above, please contact Aaron Sutherland on either (02) 9894 2474 or 0410 452 371, or alternatively at aaron@sutherlandplanning.com.au

Yours faithfully



Aaron Sutherland
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