

Council Meeting

Meeting Date 19/02/2014

Public

Report Header

Item Number:	ORD09
Subject:	ASSESSMENT OF 152-206 ROCKY POINT ROAD, KOGARAH (DARRELL LEA SITE) PLANNING PROPOSAL
File Number:	F13/274
Report by:	Coordinator Urban Strategy (Jacky Wilkes)
Contributors:	Manager Urban & Environmental Strategy (Erika Roka)
Community Engagement:	Yes
Financial Implications:	No

Precis

This planning proposal seeks to rezone the former Darrell Lea site from IN2 Light Industrial to a mix of B6 Enterprise Business Corridor and R4 High Density Residential.

The purpose of this report is to determine whether the planning proposal has sufficient merit to be recommended to the Department of Planning & Infrastructure to be placed on public exhibition.

The first matter to consider is whether in fact the Light Industrial Zone should be retained. The owners have demonstrated, with supporting evidence, that redevelopment of the site is not viable given the cost of redevelopment and the rents that are achieved for light industrial premises in the region. To retain employment on the site the owner proposes to zone 0.84 ha (8,400 sqm) of land along the Rocky Point Road frontage B6 Enterprise Corridor. The B6 Zone permits a variety of uses but most notably bulky goods retail and business and office premises. The balance of the site, approximately 2.5 ha (25,088 sqm), is proposed to be zoned R4 High Density Residential.

The site is capable of accommodating high density residential development without unreasonably impacting on the neighbouring low density residential neighbourhood, specifically the residential properties at Margate Street.

The draft Sydney Metropolitan Strategy forecasts that 273,000 additional homes will be required in the Sydney Region by 2021 and 545,000 by 2031. As a matter of policy the draft Strategy requires that new housing is encouraged in areas close to existing and planned infrastructure. Similarly, Rockdale City Council's approach to planning for high density residential development has been to locate it near transport nodes and major centres.

The site, however, is not located near to (i.e. within 800m) of a transport node (the site is 1.6 km from the Carlton Station) nor is it near a major centre (Kogarah Town Centre is 1.9km away). As such there is no strategic imperative to maximise residential density on the site. The objective therefore is to ensure the heights and densities proposed are sufficient to ensure the orderly and economic use and development of the land, while also ensuring new development does not unreasonably impact on the amenity of the surrounding locality and the Margate Street properties in particular.

The applicant has sought to use low density development to screen the higher density development until the distance from the southern (Margate Street) boundary is sufficient for the high rise development to

have limited or no impact. The height limits proposed by the applicant do not achieve this. Instead, it is recommended that the height limits be reduced as described within the report.

The appropriate FSR is then a function of the area of each height limit. Based on the revised height limits, a maximum floor space ratio of 1.4:1 is recommended.

Council Resolution

NOTE:

The Mayor, Councillor O'Brien, vacated the Chair. The Deputy Mayor, Councillor Barlow, assumed the Chair.

Ms Jenine Harris, Mr Ed Lippmann, Mr James Harrison and Mr Michael Lea objecting to the recommendation, addressed the Council.

Mr Michael Pebbles, Mr Christopher Garner and Mr Barry Melville, supporting the recommendation, addressed the Council.

MOTION moved by Councillors O'Brien and Macdonald

1 That Council supports the planning proposal subject to the following amendments being made prior to the planning proposal's exhibition:

a for the land proposed to be zoned B6 Enterprise Corridor:

- i) that the height be reduced to 14.5 metres (4 storeys); and
- ii) the FSR be reduced to 1.5:1.

b for the land proposed to be zoned R4 High Density:

- i) it is noted that the site is not located within a major centre nor is it close to a transport node;
- ii) it is also noted that there are no plans to improve transport infrastructure within the vicinity of the site;
- iii) therefore the planning proposal should respect the low rise character of the locality and the height limits should be restricted to 2 storeys on the southern boundary and 4 storeys elsewhere;
- iv) the instrument should contain provisions that mandate a Stage 1 Development Application for the entire residential site. The Stage 1 Development Application is to establish, as a minimum, building envelopes, traffic and access arrangements, and the arrangement of communal open space.
- v) the FSR be set at 1:1.

c technical amendments as itemised in Attachment 4 to this report.

2 A Planning Agreement be exhibited with the Planning Proposal. The Planning Agreement is to provide for a contribution into an internally restricted reserve to be used solely for the purpose of protecting and enhancing the natural environment in the Rockdale Local Government Area. The amount of the contribution is to be negotiated with the applicant and brought back to Council for adoption prior to exhibition.

3 Council write to the Minister for Planning and the Premier requesting that this proposal, being a local planning matter, is returned to the control of the local community.

AMENDMENT moved by Councillors Poulos and Nagi

1 That the Council officers report dated 20 November 2013 concerning the planning proposal for 152-206 Rocky Point Road, Kogarah be received and noted.

2 That Council support the Planning Proposal submitted by JBA Urban Planning Consultants on behalf of Land & Portfolio Pty Ltd, for 152-206 Rocky Point Road, Kogarah, as amended December 2013 and submitted to Council on 15 January 2014, and directs that it be submitted to the Department of Planning & Infrastructure for Gateway approval on the basis that:

a it will be developed as an exemplary precinct exhibiting design excellence in both its residential and non-residential buildings;

b given the site's unique size, special features and location, the proposal would not cause an undesirable precedent for the area;

c the indicative master plan contained on pages 12-16 of the Planning Proposal is generally acceptable as it successfully minimises any impacts on neighbouring sites (noting that 70% of the proposed buildings do not exceed 7 levels and most of the site is at a lower level than Rocky Point Road and Margate Street) and provides substantial public benefits including open space and new access routes through the site.

3 That, prior to exhibition, Council's planning officers, modify the terms of the planning proposal so as to incentivise the proponent to achieve design excellence by including appropriate provision in the proposal LEP amendment for the site that give effect to the following requirements:

a That any development application(s) lodged for the site demonstrate strong adherence to the Design Principles contained in SEPP 65 – Design Quality of Residential Development and the related Residential Flat Design Code, and that a special design review panel be appointed by Council (in accordance with SEPP 65) specifically for the site to oversee the design of all buildings on the site;

b That, the Floor Space Ratios (FSR) controls be set as follows:

- At a ratio of 1.7:1 for the proposed R4 High Density Residential Zone, with a additional 0.3 :1 being achievable provided the consent authority considers the relevant DA(s) exhibit design excellence;

- At 1.8:1 for the B6 Enterprise Corridor Zone.

c That, height limits be set in accordance with the maximum heights contained in the LEP map on page 63 of the Planning Proposal.

d That, prior to or in conjunction with the lodgement of the first development application for the site a draft DCP and subdivision plan be submitted, and the proponent be invited to negotiate with Council a possible Voluntary Planning Agreement (VPA) as would deliver community benefits such as traffic improvements, and other improvements of a civic nature.

e That, at a minimum buildings exceeding 7 levels in height be the subject of a contestable design process involving at least three independent architecture firms and in accordance with a competition process agreed with Council.

4 That the Department of Planning & Infrastructure be advised of Council's decision and its requirements and that, subject to gateway approval, the exhibition and processing of the planning proposal be expedited.

FORESHADOWED AMENDMENT moved by Councillors Awada and Ibrahim

1 That Council supports the planning proposal subject to the following amendments being made prior to the planning proposal's exhibition:

- a for the land proposed to be zoned B6 Enterprise Corridor:
 - i) that the height be reduced to 14.5 metres (4 storeys); and
 - ii) the FSR be reduced to 1.5:1.

- b for the land proposed to be zoned R4 High Density:

- i) that the building heights be reduced as follows:
 - the 38 metre height be reduced to 31 metres;
 - the 34 metre height be reduced to 24 metres;
 - the 28 metre height be reduced to 26.5 metres;
 - the 24 metre height be reduced to 17.5 metres; and
 - the 15 metre height be reduced to 12 metres;

as per Figure J in this Council report.

- ii) the instrument contain provisions that mandate a Stage 1 Development Application for the entire residential site. The Stage 1 Development Application is to establish, as a minimum, building envelopes, traffic and access arrangements, and the arrangement of communal open space.

- iii) the base FSR be set at 1:1 with an additional FSR of 0.4:1 permitted if the Stage 1 Development Application is the product of a Design Competition.

- c technical amendments as itemised in Attachment 4 to this report.

3 A Planning Agreement be exhibited with the Planning Proposal. The Planning Agreement is to provide for a contribution into an internally restricted reserve to be used solely for the purpose of protecting and enhancing the natural environment in the Rockdale Local Government Area. The amount of the contribution is to be negotiated with the applicant and brought back to Council for adoption prior to exhibition.

4 Council write to the Minister for Planning and the Premier requesting that this proposal, being a local planning matter, is returned to the control of the local community.

DIVISION

DIVISION on the AMENDMENT called for by Councillors Poulos and Nagi

FOR THE AMENDMENT Councillors Bezic, P Sedrak, L Sedrak, Kalligas, Nagi, Mickovski and Poulos

AGAINST THE AMENDMENT Councillors O'Brien, Macdonald, Awada, Barlow (abstention), Saravinovski, Ibrahim, Hanna and Tsounis

The AMENDMENT was LOST 8 votes to 7.

The FORESHADOWED AMENDMENT then became the AMENDMENT.

DIVISION

DIVISION on the AMENDMENT called for by Councillors Awada and Ibrahim

FOR THE AMENDMENT Councillors Bezic, P Sedrak, Awada, L Sedrak, Nagi, Mickovski, Ibrahim and Poulos

AGAINST THE AMENDMENT Councillors O'Brien, Macdonald, Barlow (abstention), Saravinovski,

Kalligas (abstention), Hanna and Tsounis

The AMENDMENT was CARRIED 8 votes to 7.

The AMENDMENT then became the MOTION.

DIVISION

DIVISION on the MOTION called for by Councillors Awada and Ibrahim

FOR THE MOTION Councillors Bezic, P Sedrak, Awada, L Sedrak, Nagi, Mickovski, Ibrahim and Poulos

AGAINST THE MOTION Councillors O'Brien, Macdonald, Barlow, Saravinovski, Kalligas (abstention), Hanna and Tsounis

The MOTION was ADOPTED 8 votes to 7.

NOTE:

The Deputy Mayor, Councillor Barlow, vacated the Chair at the conclusion of this item and the Mayor, Councillor O'Brien, resumed the Chair.

Officer Recommendation

That:

1. Voting on this matter be by way of a Division.
2. Council supports the planning proposal subject to the following amendments being made prior to the planning proposal's exhibition:
 - (a) for the land proposed to be zoned B6 Enterprise Corridor:
 - i) that the height be reduced to 14.5 metres (4 storeys); and
 - ii) the FSR be reduced to 1.5:1.
 - (b) for the land proposed to be zoned R4 High Density:
 - i) that the building heights be reduced as follows:
 - the 38 metre height be reduced to 31 metres;
 - the 34 metre height be reduced to 24 metres;
 - the 28 metre height be reduced to 26.5 metres;
 - the 24 metre height be reduced to 17.5 metres; and
 - the 15 metre height be reduced to 12 metres,as per Figure J in this Council report.
 - ii) the instrument contain provisions that mandate a Stage 1 Development Application for the entire residential site. The Stage 1 Development Application is to establish, as a minimum, building envelopes, traffic and access arrangements, and the arrangement of communal open space.
 - iii) the base FSR be set at 1:1 with an additional FSR of 0.4:1 permitted if the Stage 1 Development Application is the product of a Design Competition.
 - (c) technical amendments as itemised in Attachment 4 to this report.
3. A Planning Agreement be exhibited with the Planning Proposal. The Planning Agreement is to provide for a contribution into an internally restricted reserve to be used solely for the purpose of protecting and enhancing the natural environment in the Rockdale Local Government Area. The amount of the contribution is to be negotiated with the applicant and brought back to Council for adoption prior to exhibition.
4. Council write to the Minister for Planning and the Premier requesting that this proposal, being a local planning matter, is returned to the control of the local community.

Report Background

THE PROCESS TO DATE

On 30 August 2013, Council received a planning proposal (dated August 2013) from JBA Planning ("the applicant") representing the owners of Darrell Lea site at 152-206 Rocky Point Road, Kogarah to rezone this land (refer to Attachment 1). The planning proposal seeks to permit a mix of high density and medium density residential development and commercial employment development.

An initial review of the planning proposal saw that it was largely inconsistent with the Department of Planning and Infrastructure's *Guidelines on preparing local environmental plans* (April 2013) and *Guidelines on preparing planning proposals* (October 2012) as well as Council's requirements. On 27 September 2013, Council officers (via email) articulated many of the inconsistencies and sought a revised planning proposal from the applicant. This correspondence also noted that a second request for additional information and/or changes was also forthcoming.

A Councillor Information Session was held on 23 October 2013 to inform Councillors of the proposal. Following this, a preliminary assessment of the planning proposal was undertaken. A Councillor Briefing session was held on 12 November 2013 and reported to Council on 20 November 2013 (See Attachment 3 to this report, Item No. ORD13). The report recommended the applicant revisit aspects of the planning proposal to ensure consistency with the Department of Planning and Infrastructure's guidelines and Council's requirements. The report also recommended the applicant reduce the proposed height and FSR controls over both proposed zones. At the meeting, Council resolved to defer the matter in order to hold an on-site meeting.

The on-site meeting took place on 14 December 2013. Those present included the applicant and their representatives, eight (8) residents who were invited to attend, Councillors and select Council staff.

On 14 January 2014, Council receive formal notification from the Department of Planning and Infrastructure (DP&I) that the applicant is seeking a pre-gateway review. However, the pre-gateway application is in relation to a revised planning proposal (dated December 2013). The revised planning proposal addresses some of the concerns raised in the council report and correspondence of 27 September 2013. However, some matters that have been raised by Council are yet to be addressed. Having consulted the DP&I's 'LEP Tracking webpage', it is noted that the applicant lodged their application for the pre-gateway process on 18 December 2013, some 4 days after the on-site meeting.

On 15 January 2014, the applicant forwarded a courtesy copy of the revised proposal to Council for its information.

Despite the request for pre-gateway review, Council has sought to progress the assessment of the planning proposal even though the 90 day assessment period has still not yet commenced (because the planning proposal is still not consistent with the DP&I's planning proposal guidelines (October 2012, p.19). To this end and in good faith, council has progressed this application by undertaking its detailed assessment of the planning proposal and makes recommendations about its progression.

SITE DESCRIPTION

The site occupies the most southern portion of the Production Avenue Industrial Precinct which is zoned IN2 Light Industry. The site equates to approximately one third of the Industrial Precinct and interfaces with R2 Low Density Residential zoned land to the south.

The site comprises the following lots:

- 152 Rocky Point Road - Lot 2 on DP 405531
- 160 Rocky Point Road - Lot 2 on DP 838198
- 168 Rocky Point Road - Lot 1 on DP 1144981
- 200 Rocky Point Road - Lot 1 on DP 599502 and Lot 22 on DP 620329
- 206 Rocky Point Road - Lot 1 on DP 666138

The total site area is 33,488 square metres and has a frontage of approximately 210 metres to Rocky

Point Road and a 140 metres to Production Avenue.

The site houses:

- the former Darrell Lea factory which is now occupied by VIP Petfoods which are relocating to a purpose built facility in Western Sydney;
- a number of one to three storey warehouses,
- a relatively new development incorporating, *office and business premises* and warehouse development approved under the previous LEP (RLEP 2000) and enjoys existing use rights; and
- two residential dwellings.

The site is flanked by predominantly single storey development to the south, Leo Smith Reserve to the east, industrial warehouse development to the north and Rocky Point Road on the western boundary. Land on the western side of Rocky Point Road is predominantly single storey detached dwellings and but has some 4 storey residential flat building development in the vicinity of the site.

Refer to the aerial photo as Figure 2 in the attached planning proposal.

CURRENT CONTROLS

The current controls for the site as per *Rockdale Local Environmental Plan 2011* ("*RLEP 2011*") are as follows:

1. Zone: IN2 Light Industrial,
2. Building height: 14.5 metres
3. Floor space ratio: 1:1
1. Minimum lot size: 840sqm (for subdivision)

The land immediately to the south is zoned R2 Low Density to the south which has a maximum building height of height of 8.5 metres and a FSR of 0.5:1. The land to the east encompassing Leo Smith Reserve is zoned RE1 Public Open Space with no development standards. The industrial land immediately north of the site is zoned IN2 Light Industrial which has a maximum building height of 14.5 metres and a FSR of 1:1.

Land on the western side of Rocky Point Road which lies within the Kogarah local government area is zoned R2 Low Density, as per *Kogarah LEP 2012*, which houses the predominant low density development and the small portion of 4 storey residential flat building development. It is noted that the applicant's planning proposal incorrectly refers to *Kogarah LEP 1998* .

Refer to the figure below showing an extract of the RLEP 2011 zoning map.



Figure A - Zoning map extract from RLEP 2011

THE PROPONENT'S REVISED PLANNING PROPOSAL

The revised planning proposal (dated December 2013) which was submitted to the DP&I for a Pre-Gateway review can be found at Attachment 1.

The revised proposal has been amended as follows:

- the re-arranging of Sections 4.0 'Explanation of Provisions' and 5.0 'Indicative Masterplan' in accordance with Council's request of September 2013.
- the inclusion of an explanation (and supporting map) about how the proposed Minimum Lot Size Map is amended, in accordance with Council's request of September 2013 and Council's report of 20 November 2013.
- the proposal provides more detail regarding the proposed development's densities (heights and FSRs) - refer to pages 14 and 15 of the attached planning proposal. This ensures consistency with the DP&I's guidelines and as per Council's request of September 2013.
- the inclusion of greater detail against the SEPPs to ensure consistency with the DP&I's guidelines - refer to pages 34-35 in the attached planning proposal - as request by Council in September 2013 and in Council's report of 20 November 2013.
- the inclusion of more information regarding environmental impact - refer to pages 45-49 of the attached planning proposal - as per request by Council in September 2013 and in Council's report of 20 November 2013.
- the inclusion a mapping section (Section 8) to ensure consistency with the DP&I's guidelines on mapping, as requested by Council in September 2013 and in Council's report of 20 November 2013.

Some of Council's requested changes - as per September and November 2013 requests - have not been included within the revised planning proposal:

- 3-dimensional drawings within Section 5.0 'Indicative Masterplan' of the planning proposal: these are considered critical as they enable the community to visualise the massing and heights of the proposed development in order to appropriately comment on the proposal should it proceed to exhibition.
- in terms of land proposed to be rezoned to the B6 Business Enterprise zone:
- the reduction in the building heights from 15 metres and 22 metres to 14.5 metres ensure consistency with the current B6 zone's height.
- the reduction in the FSR from 1.8:1 to 1.5:1 to ensure consistency with the current B6 zone's FSR.
- in terms of land proposed to be rezoned to the R4 High Density zone:
- the reduction in the building heights from the maximums of 38, 34 and 28 metres to 24 metres (8 storeys).

- the reduction the FSR from 2:1 to 1:1 with an additional bonus FSR of 0.2:1 if the residential development proposal exhibits design excellence, including excellence in sustainability, to be achieved through a design competition.
- redrafting of the consultation section to describe the proposed community consultation to be undertaken, so as to ensure consistency with the DP&I's guidelines in consultation with Council's Strategic Planners.
- inclusion of a timeline so as to ensure consistency with the DP&I's guidelines in consultation with Council's Strategic Planners.

Proposed Policy Changes

The revised planning proposal seeks to amend the zoning, building heights, floor space ratio and minimum lot size controls, as detailed in the sections below.

Zoning:

- Rezone approximately one third of the site (0.84ha) with frontage to Rocky Point Road to the B6 Business Enterprise zone.
- Rezone the remaining portion of the site (2.5ha) to the R4 High Density Residential zone.

Figure B below is an extract from the applicant's planning proposal.



Figure B - Proposed zoning changes to RLEP 2011

Building Height:

The proposed building heights are discussed below in relation to each proposed zone.

Land Proposed to be rezoned to B6 Enterprise Corridor zone

- 15 metres (4 storeys) over an area of approximately 6,160 sqm,
- 22 metres (5 storeys) over an area of approximately 1,640 sqm, and
- 8.5 metres (2 storeys) over an area of approximately 600 sqm - proposed for private open space.

Figure 15 in the revised planning proposal illustrates the proposed height changes to the Building Heights Map. However, there is inconsistency with the descriptions at Table 2 (p.14) in the planning proposal. These heights in the Table 2 state:

- a 23.1 metres height over the area proposing 22 metres,
- a 18.4 metres height over the area proposing 15 metres,
- a 19.25 metres height over three sites proposing 15 metres.

Therefore, it is not clear what the proposed heights are being sought across the B6 zone. Regardless, the building heights that the applicant is seeking are higher than the standard height currently applying to the B6 zone (at the Princes Highway Corridor) which is 14.5 metres.

Land Proposed to be rezoned to R4 High Density zone

- 38 metres in the north-western corner,
- 34 metres immediately south west of the 38 metre height,
- 28 metres in the northern part of the site,
- 24 metres immediately south west of the 34 metre height,
- 15 metres fronting a portion of Production Avenue,
- 8.5 metres fronting the remaining portion of Production Avenue and the southern boundary of the site proposed to be zoned R4.

An extract from the revised planning proposal (Figure C below) shows the proposed building heights across the site.

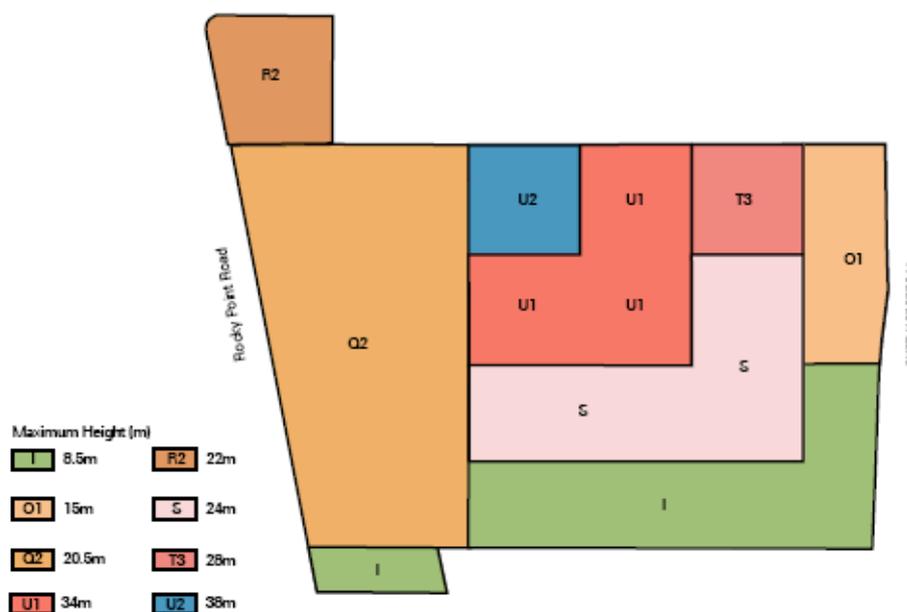


Figure C - Proposed height changes to RLEP 2011 (revised planning proposal)

As stated, these heights vary from the heights proposed in the planning proposal submitted to Council on 30 August 2013, which is provided in Figure D, below.



Figure D - Proposed height changes to RLEP 2011 (August planning proposal)

The differences in height between the two proposals are:

- the maximum height over the proposed R4 High Density zone land has been reduced from 46 metres to 38 metres.
- the largest portion that was proposing heights between 15 and 34 metres is now proposing heights between 24 and 34 metres.

Despite these changes, the applicant's Urban Design Statement and supporting elevation drawings (refer to Attachment 2A to this report) have not been amended to reflect these changes. It means the urban design material submitted to the DP&I is identical to the material submitted earlier to Council on 30 August 2013. The accuracy of the plan drawings and elevations over the portion of the site that was coloured purple and dark brown (in the August proposal - as per figure immediately above) is in doubt.

Should the planning proposal progress through gateway determination to public exhibition, all urban design work (including drawings) would need to be revised and updated in accordance with the recommendations within this report.

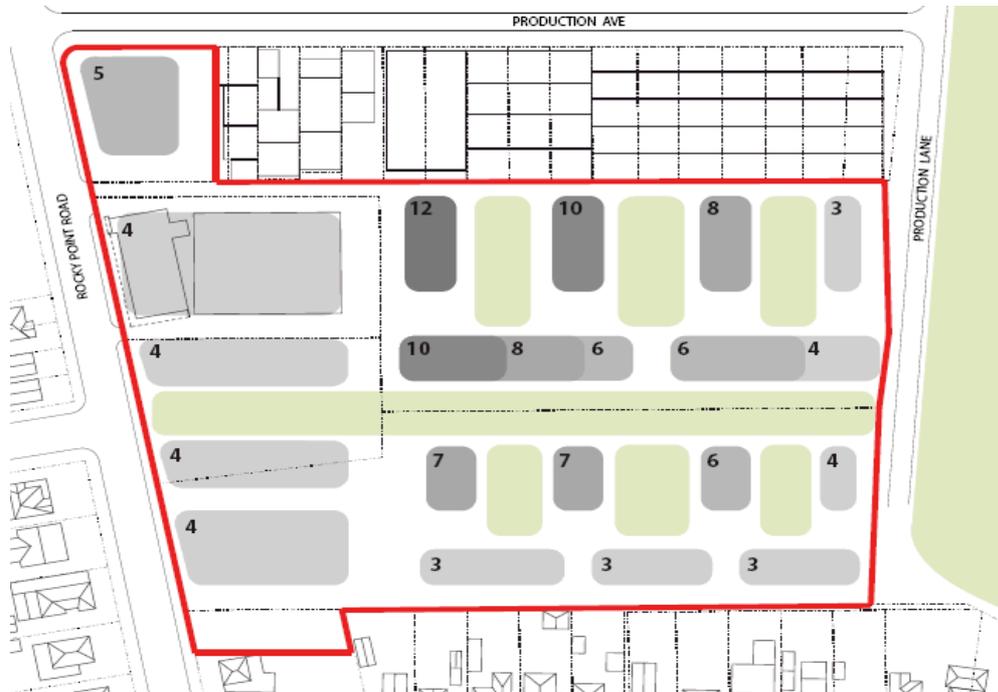


Figure E - Proposed number of storeys

Furthermore, Drawings 7 and 9 in Appendix B within the planning proposal, show heights stepping down (refer to Figure E above).

The predominant range of building heights proposed - from 38 metres, 34 metres, 28 metres, 24 metres, and 15 metres - are significantly higher than the standard height in Council's out-of-centre areas zoned R4 High Density, which is 14.5 metres.

The height map also includes a notation "Final heights to be determined". However, an applicant must be clear on the proposed heights before lodgement of the planning proposal to Council for consideration.

Floor Space Ratio:

The proposed building heights are discussed below in relation to each proposed zone.

- FSR of 1.8:1 over the land proposed to be zoned B6 Business Enterprise.
- FSR of 2:1 over the land proposed to be zoned R4 High Density.

The figure below (Figure F) is an extract from the revised planning proposal (Figure 13) showing the proposed FSRs across the site.

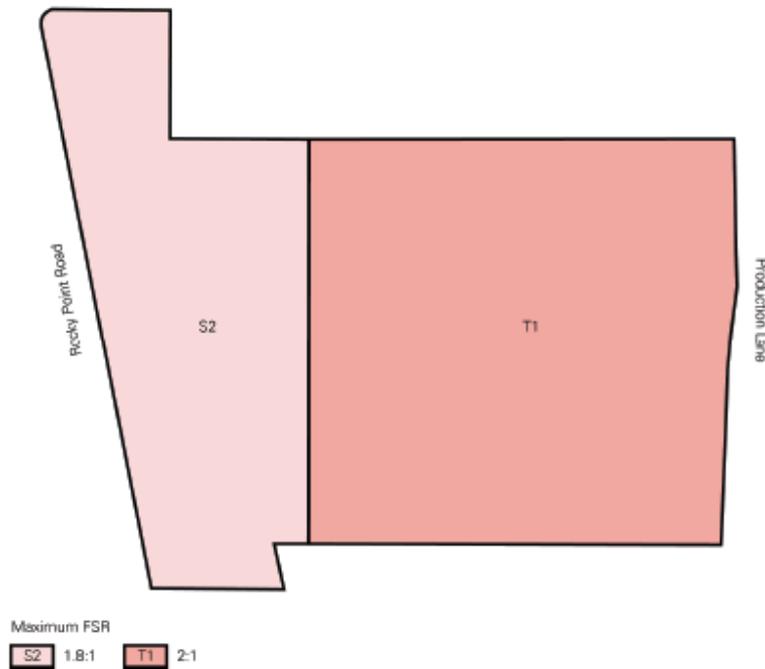


Figure F - Proposed floor space ratios controls for RLEP 2011

Land proposed to be rezoned to B6 Enterprise Corridor

The proposed FSR of 1.8:1 is higher than that of the standard FSR for the B6 zone which is 1.5:1. The applicant's proposal does not justify the need for the increase. Refer to the detailed assessment of the proposed FSR in the section entitled "Assessment of the Proposal".

Land proposed to be rezoned to R4 High Density

The proposed 2:1 FSR over land proposed to be zoned R4 is not illustrated in the applicant's Urban Design Statement (refer to Attachment 2A to this report) nor is it justified in the applicant's supporting elevation drawings (refer to Attachment 2B). The Urban Design analysis which support the planning proposal only tests a FSR of 1.83:1. This is evidenced by Drawing No. 8 Indicative Ground Plan (see Figure G below) the and confirmed by the applicant's architect. However, a 2:1 FSR is being sought by the applicant.

SITE AREA:	33,488 m ²
<hr/>	
EXISTING	
NON RESIDENTIAL:	3,750 m ²
<hr/>	
PROPOSED	
NON RESIDENTIAL:	17,365 m ²
RESIDENTIAL:	40,005 m ²
<hr/>	
TOTAL:	61,120 m ²
<hr/>	
FSR:	1.83 :1 m ²

Figure G - Calculations of current development proposal over the land proposed to be zoned R4 High Density

The documentation and urban design analysis submitted with the planning proposal illustrates a residential development scheme that achieves a FSR of 1.83:1. There is no explanation in the planning proposal of the rationale for a 2:1 FSR. It is noted, however, that the FSR in the nearby Ramsgate Small Village is 2:1 and this has been mentioned as the basis for the planning proposal.

It needs to be appreciated that the distribution of gross floor area (the basis for FSR controls) is markedly

different in commercial and even mixed commercial development than compared to straight residential development. Typically, the majority of the ground floor plane of mixed commercial development counts towards the allowable gross floor area and almost the first 1:1 of the permitted FSR is consumed by the ground floor. The result is a more squat form of development that is appropriate in a village context. In a residential context, the same FSR would require much taller buildings in order to be accommodated.



Figure H - Concept diagrams provided by the applicant in October 2013



Figure I - Concept diagrams provided by the applicant in October 2013

The proposed FSR of 2:1 is double the standard height in Council's out-of-centre areas zoned R4 High Density (which is 1:1). Refer to the detailed assessment of the proposed FSR in the section entitled "Assessment of the Proposal".

Minimum Lot Size Map

The planning proposal proposes to amend the minimum lot size map to remove the minimum lot size for subdivision. This is consistent with Council's policy elsewhere in the B6 Business Enterprise and R4 High Density zones.

Proposed development concept

The planning proposal seeks amendments to *RLEP 2011* to enable a combined commercial and high and medium density residential development scheme, as detailed below.

Commercial component:

The commercial component (over the land proposed to be zoned B6 Enterprise Corridor) comprises one 5 storey and three 4 storey commercial buildings. The current design concept equates to an increase from 3,750 sqm of non-residential gross floor area (GFA) to 17,365 sqm of non-residential GFA.

Residential component:

The residential component (over the land proposed to be zoned R4 High Density Residential) comprises a number of residential blocks:

- six towers of 12, 10, 8, 7 (x 2) and 6 storeys,
- 2 wider tower blocks (ranging from 10 storeys, stepping down to as low as 4 storeys),
- 5 townhouses blocks.

The planning proposal quotes varying figures with regard to the total number of dwellings that will be yielded by the design concept. For instance, page 9 of the planning proposal provides a dwelling range of 350 - 450 dwellings whilst page 15 provides two figures: one at 422 dwellings and one which is calculated at 445 dwellings. However, as the planning proposal progresses, the number and types of dwellings will be further refined as part of the preparation process for the site-specific DCP.

It should also be noted that the dwelling estimates are calculated under the 1.83:1 FSR rather than the proposed 2:1 FSR. This additional FSR of 0.17:1 equates to 3,492 sqm for floor area. This can be subsequently calculated to 27 additional generous sized units (based on 100 sqm units with 0.8 for circulation).

Private Open Space

The proposal includes areas of private open space at No. 206 Rocky Point Road (600 sqm) and in six (6) other small areas throughout the development site. These areas are not sought to be zoned RE1 Public Open Space as they are likely to be part of a comprehensive community title or strata title subdivision scheme.

SUPPORTING DOCUMENTATION AND ANALYSIS

The planning proposal is supported by eight (8) appendices that would be available for public scrutiny and comment during public exhibition.

Appendix A - Site Survey

This is sufficient for the purposes of the planning proposal.

Appendix B - Proposed LEP Maps

Appendix B comprises the proposed Zoning, Height and Floor Space Ratio maps but it is unclear why the Minimum Lot Size Map has been excluded. Regardless, these maps are not required as an appendix to the planning proposal and are inconsistent with the DP&I's guidelines. Prior to the exhibition of the planning proposal, Appendix B will need to be removed from the planning proposal, and all appendices subsequently be re-alphabetised along with corresponding references in the planning proposal.

Appendix C - Urban Design Report and Indicative Masterplan

Appendix C comprises an Urban Design Statement (Attachment 2A) and 18 supporting drawings including plans, elevations and artist's impressions (Attachment 2B). However, the Urban Design Statement does not justify or explain the rationale for the urban design outcome.

The design work should establish clear urban design principles from which a proposed design emerges. Design principles would help inform the urban form (eg, the proportion of buildings to open space, building envelope, building densities (ie. heights and FSRs), building articulation, sustainable design, etc). It would also include principles around the relationship with the R2 zoned land to the south, and the IN2 zoned land to the north, open space land to the east, etc. However, the Urban Design Statement describes the proposal, but gives little insight into the rationale for the current schemes affecting both zones.

Also, as discussed in the 'Proposed Policy Changes' section of this report, the Urban Design Statement and Indicative Masterplan drawings do not reflect the 2:1 FSR.

Appendix D - Land Economics and Demographic Assessment

Appendix D comprises a Land Economics and Demographic Assessment which argues that most of the residential unit development - which is a substantial proportion of the proposal - will be targeted at first home buyers. However, since August last year, market trends have been increasingly squeezing out the first home buyer market. In the last quarter, the monthly trends have shown a steady decrease in the proportion of first home buyers in the Sydney market as this is being reiterated in weekly investment and real estate reports in Sydney and National newspapers. Should the market continue this way, the rezoning proposal will most likely be delivering housing stock to a strong investment market.

Appendix E - Industrial Options Study

This appendix provides a detailed economic analysis that demonstrates that redeveloping the purpose-built factory under the current industrial zoning is not economically feasible.

Appendix F - Assessment of Traffic and Transport Implications

This appendix comprises a traffic report which includes traffic count forecasts and partial SIDRA analysis. It identifies that "the access intersection [the proposed new local road into the development site] will be entirely unsatisfactory [sic] without the provision of traffic signals" (p.14).

However, the traffic report does embellish the frequency and quality of the existing bus service (Route 476/477). In reality, the site is not located near a transport node, nor does the site enjoy quality public transport system as at least two modes of transport are required for travellers between the site and larger, regional centres (Sydney CBD, Sydney Airport, Parramatta, north shore, western and south western Sydney, etc).

Appendix G - Phase 1 Contamination Study

This appendix comprises a Phase 1 Contamination Report which assesses the potential for contamination of the site from current and historical uses from a desktop. It recognises the need for a "targeted soil and groundwater assessment be made regarding the presence and extent of actual subsurface contamination".

The report says the potential presence of subsurface contamination "is unlikely to affect the suitability of the site for use in its current configuration", that is, its industrial use. It identifies numerous contaminants in the soil from historic uses and states there is "insufficient information currently available to assess the suitability of the site for the proposed rezoning" (p.17).

Section 6 of State Environmental Planning Policy 55 - Remediation of Land requires contamination and remediation to be considered in rezoning proposals and specifically whether the land is contaminated and whether the land is suitable in its contaminated state (or will be suitable after remediation) for all the purposes for which land in the proposed zone can be used. In this respect, a more detailed contamination report is required.

Appendix H - Flood Advice

Appendix H comprises a flood advice letter from Council for the property at 160 Rocky Point Road. This property is the only parcel of the six parcels is affected by the flood planning area in the *RLEP 2011 Flood Planning Map*. The Flood Advice letter provides flood levels, flood risk exposure and overland flows and is sufficient for the purpose of the planning proposal.

ASSESSMENT OF THE REVISED PLANNING PROPOSAL

A preliminary assessment of the planning proposal was reported to Council on 20 November 2013 (Item ORD13 - refer to attachment 3) covered the following issues:

- Precedent of rezoning industrial land
- Housing and job targets under the Metropolitan Strategy (7,000 homes, 13,000 jobs)
- Housing choice
- Local Context
- Floor Space Ratio, Building Height and Design Excellence
- Public Benefit

Additional planning analysis is provided in the section below.

Land use analysis

Land proposed to be zoned B6 Enterprise Corridor

The Darrell Lea site is a purpose built confectionary factory which sets it apart from the neighbouring industrial land and also limits its likely future uses. Unless it was used by another food manufacturer, which is unlikely, the site would need to be redeveloped for it to be used for an economic purpose permitted by the zone.

The applicant has demonstrated, with supporting evidence, that redevelopment of the site is not viable given the cost of redevelopment and the rents that are achieved for light industrial premises in the region. Given these circumstances, it is apparent that the current Light Industrial Zone will no longer promote the orderly and economic use and development of land and is therefore inconsistent with the objectives of the *Environmental Planning & Assessment Act 1979*.

To retain employment on the site the owner proposes to zone 0.84 ha (8,400 sqm) of land along the Rocky Point Road frontage B6 Enterprise Corridor. The B6 Zone permits a variety of uses but most notably bulky goods retail and business and office premises. It has been assumed that the B6 Zone would be viable in this location given it permits a variety of modern employment uses that are more suited to the demographic characteristics of the region. However, the proposed 22 and 15 metre building heights and proposed 1.8:1 FSR are inconsistent with the *Rockdale LEP 2011* density controls for the B6 Enterprise Corridor zone. The revised planning proposal does not include any economic justification or planning argument for increasing the density controls from the standard B6 zone controls.

It is recommended that for the land proposed to be zoned B6 Business Enterprise, that the FSR be reduced to 1.5:1 (and that this be reflected in the proposed Floor Space Ratio Map) and height reduced to 14.5m (4 storeys) to ensure consistency with current policy. The portion of land with a proposed height of 8.5 metres can remain unchanged. Therefore, the planning proposal should be amended in accordingly (refer also to Figure L - Proposed building heights in the urban design analysis section, below).

Land proposed to be zoned R4 High Density Residential

The proposed high density residential land enjoys good access to local facilities and services including Scarborough Park and Ramsgate Small Village centre and dwellings above 3 storeys high would enjoy sweeping views of Botany Bay and the bayside suburbs. The site is capable of accommodating high density residential development without unreasonably impacting on the neighbouring low density residential neighbourhood, specifically the residential properties at Margate Street.

The draft Sydney Metropolitan Strategy forecasts that 273,000 additional homes will be required in the Sydney Region by 2021 and 545,000 by 2031. As a matter of policy the draft Strategy requires that new housing is encouraged in areas close to existing and planned infrastructure. Similarly, Rockdale City Council's approach to planning for high density residential development has been to locate it near transport nodes and major centres.

Being located more than 800 metres from the nearest transport node (the site is 1.6 km from the Carlton

Station) and 1.9km from the nearest major centre (being Kogarah Town Centre), there is no strategic imperative to maximise residential density on the site. The objective therefore is to ensure the heights and densities proposed are sufficient to ensure the orderly and economic use and development of the land, while also ensuring new development does not unreasonably impact on the amenity of the surrounding locality and the Margate Street properties in particular.

Given the unique size and shape of the land, the proposed R4 High Density Residential zone is supported. However, the proposed height and density (FSR) controls should be reduced as explained below.

Height and Density

The applicant has sought to minimise the impact on surrounding residential properties by proposing a 6 metre landscaped buffer and a low density residential height limit of 8.5 metres along the southern (Margate Street) boundary. The proposed height limits then increases in 3 storey 'layers' (24m, 34m and 38m) travelling north. The height limits are also reduced toward Scarborough Park to the East. Refer to Figure J, below.

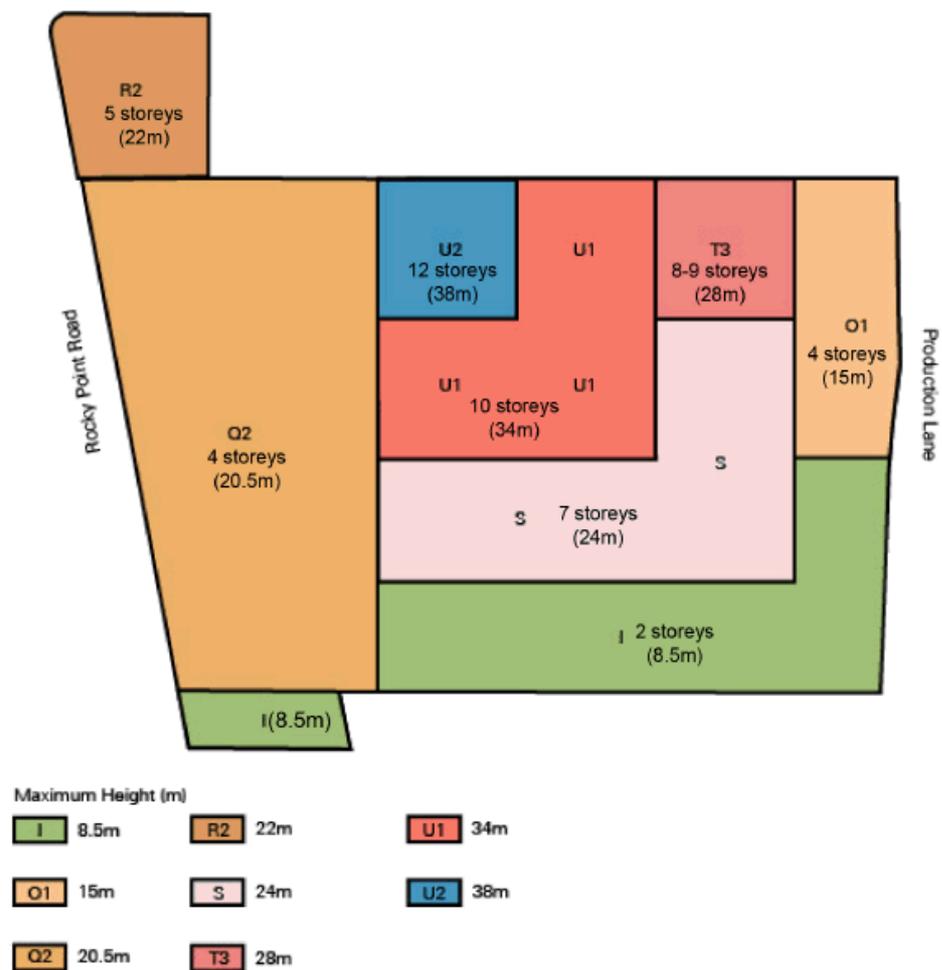


Figure J - The applicant's proposed heights incorporating the number of storeys consistent with Rockdale DCP 2011

The applicant's aim is to enable the low density development to screen the higher density development until the distance from the southern (Margate Street) boundary is sufficient for the high rise development to have limited or no impact. When preparing the scheme the applicant has made note of the blank wall of the existing factory building although it is also worth noting that the existing factory building only extends two thirds of the way down the site and does not contain either windows or balconies.

The height limits proposed by the applicant do not achieve this aim as illustrated by the (black) sight line in Figure K. The resulting development would be overbearing and would impact on the privacy of the neighbouring low density residential properties. Instead, it is recommended that the height limits be reduced as indicated by the (red) sight line in Figure K.

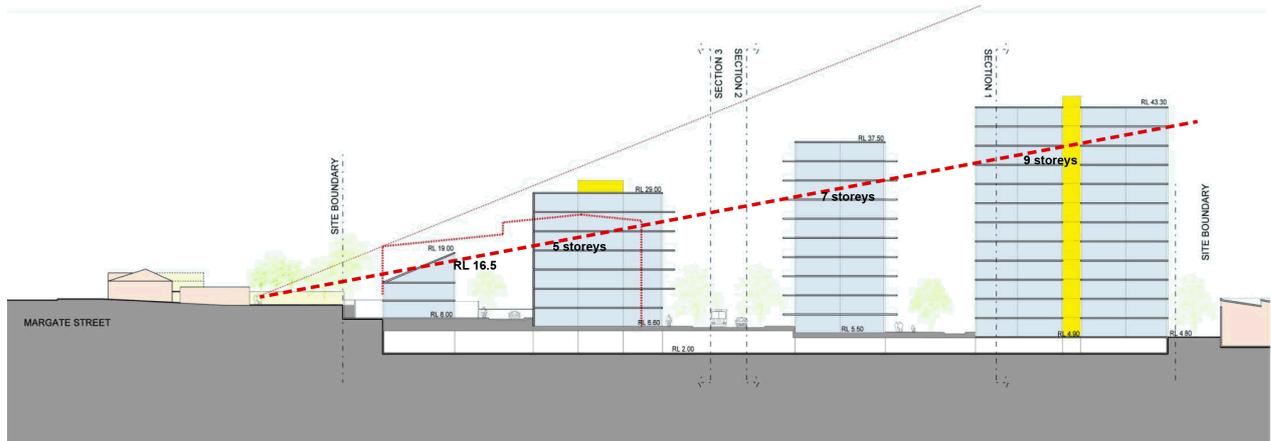


Figure K - Elevations showing sight lines

As a result of this analysis, it is recommended that the proposed Building Height Map be amended to reflect the height limits illustrated in Figure L, below.

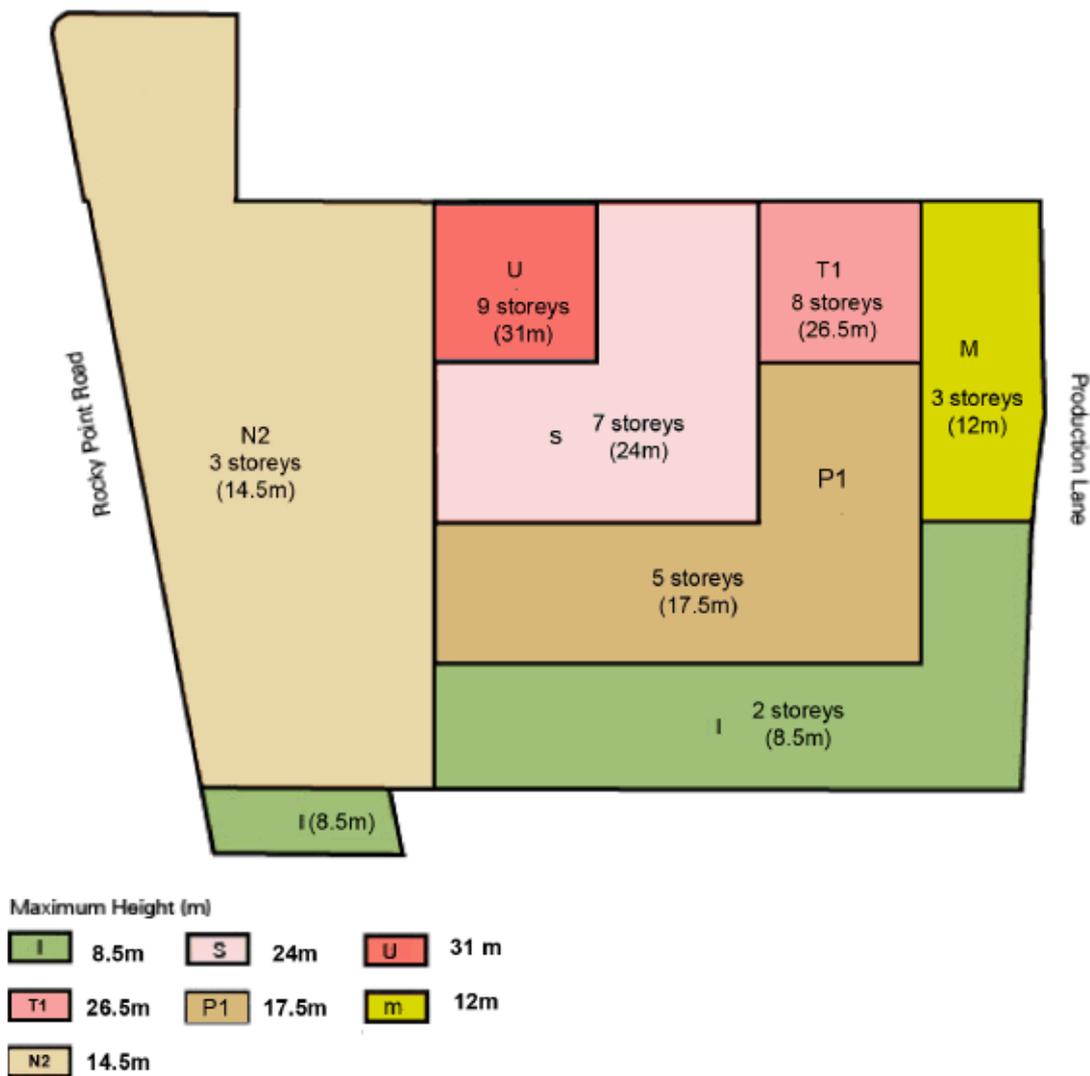


Figure L - Recommended Building Heights Map

The appropriate FSR is then a function of the area of each height limit, the maximum building footprints permitted by the Rockdale DCP 2011 (35%), and an allowance to ensure the resulting building envelopes are at least 20-25% greater than the achievable floor area to allow for building articulation (as recommended by the Residential Flat Design Code that accompanies SEPP 65 – Design Quality of Residential Flat Buildings). On this basis the recommended overall FSR is 1.4:1 which would yield approximately 350 dwellings.

It is further recommended that the base FSR be 1:1, with the additional 0.4:1 only available if the development application exhibits design excellence, including excellence in sustainability achieved via a design competition. Irrespective of whether there is a design competition, a mandatory Stage 1 Development Application is recommended for the entire residential component of the site. A Stage 1 DA would determine the building envelopes and distribution of building mass across the site, the traffic and access arrangements and the arrangement of communal open and ensure the site is master-planned as a whole, rather than being subdivided into smaller parcels and developed in a piecemeal fashion.

Community Consultation

Section 9.0 entitled 'Community Consultation' of the planning proposal needs to be amended to include details of the community consultation that will undertaken should the Proposal proceed beyond the Gateway. It is recommended that there be a 4 week public exhibition period and that certified photo montage images be prepared by the applicant (in accordance with the specifications issued by the Land

& Environment Court) that illustrate the wider visual impact of the Proposal. In this respect it is noted that even the revised heights will be prominent in the landscape and it is important that the public is given the opportunity to make informed comment on its impact.

Project Timeline

A Project Timeline will be required to satisfy the Department of Planning & Infrastructure.

Public Benefit

The proposal will benefit the wider public interest by preserving employment opportunities on the land and increasing housing diversity to meet local and metropolitan demand.

Additionally, however, it is recommended that a Planning Agreement be negotiated with the applicant to secure off-site planning benefits for the wider community so that it delivers a net community benefit. It is suggested that the Planning Agreement provide for a contribution by the landowner to an internally restricted reserve that will be held by Council for the purpose of protecting and enhancing the natural environment in the Rockdale Local Government Area. The principal in the reserve would be preserved with the interest earned on the reserve used for works identified in Rockdale's City Plan.

The draft Planning Agreement, including the quantum of the contribution, would be referred to Council for approval before it was placed on exhibition.

Precedent

Even though there are unique circumstances that apply to the Darrell Lea site, it will create pressure to convert other nearby industrial land for residential purposes. The greater the windfall gain on the Darrell Lea site, the greater that pressure will be. Other industrial lands will need to overcome the same planning hurdles as the Darrell Lea site - in particular the Minister's Planning Direction regarding the preservation of industrial land should they also pursue rezoning. At present the neighbouring industrial land is serving a useful economic purpose as demonstrated by the low vacancy rates and economic rents.

WHERE TO FROM HERE?

The revised planning proposal submitted by the applicant to the DP&I for a Pre-Gateway determination will see the planning proposal reviewed by the Joint Regional Planning Panel (JRPP). The planning proposal will not be returned to Council for a decision prior to the JRPP review and Gateway determination.

Regardless, Council's resolution on this report will form Council's formal position on the planning proposal. As the Pre-Gateway Review process progresses, Council will be given an opportunity to provide its position on the proposal prior to the JRPP making its recommendation and the Minister issuing a gateway determination.

The Council should, however, argue for control of this site to be returned to the local community.

Community Engagement

Should the planning proposal progress through the Gateway, the DP&I's gateway determination will articulate the timeframe for the exhibition period. Exhibition of the planning proposal will be undertaken in accordance with Council's procedures.

Rockdale City Plan

Outcome: Outcome 2 - Rockdale is a City with a high quality natural and built environment and valued heritage in liveable neighbourhoods . A City that is easy to get around and has good links and connections to other parts of Sydney and beyond.

Objective: Objective 2.2 - Our City has a well managed and sustainable built environment, quality and diverse development with effective housing choice in liveable neighbourhoods

Strategy: 2.2.2 - Promote high quality, well designed and sustainable development and places that enhances the City

Delivery Program: 2.2.2.A - Demonstrate leadership and commitment in the management of development that enhances the City (DCPD)

Operational Plan: 1

Additional Comments:

Financial Implications

Additional Comments

There are no financial implications applicable to this report.

Supporting Information

Action From Resolution
File Attachments

[Action raised by Heather Davis on 21/02/2014](#)



Attachment 1 December Planning Proposal.pdf



Attachment 2A - Design Statement.pdf Attachment 2B - Indicative Drawings.pdf



Attachment 3 -20-11-13 Council Business Paper.pdf  - Attachment 4 - Detailed list of amendments.pdf