

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2010SYE109
DA Number	DA-2011/232
Local Government Area	Rockdale Council
Proposed Development	Demolition of existing structures and erection of a mixed use development comprising two separate buildings being nine and seven storeys both with roof terrace, including ground floor retail, 59 residential units (including 9 work/live units), and basement car parking for 107 vehicles
Street Address	564 Princes Highway Rockdale
Applicant/Owner	Michael Gheorghiu
Number of Submissions	1
Recommendation	Approval with Conditions
Report by	Michael Maloof, Senior Assessment Officer

Précis

As the capital investment value of the proposed development exceeds \$10 million, the proposal is to be determined by the Joint Regional Planning Panel (JRPP).

Council is in receipt of a development application seeking consent to demolish the existing structures and construct a multi storey mixed use development comprising two buildings being, Building A (9 storeys) fronting Princes Highway and Building B (7 storeys) fronting Chapel Lane. The proposal as amended comprises a total of 59 residential units, being 17 x 1 bedroom, 33 x 2 bedroom, 9 x 3 bedroom, including 8 work/live units. Block A has a total of 41 units + 5 live/work units and Block B has 18 units + 3 live/work units).

The development also includes one large commercial tenancy fronting the Princes Highway, two and a half basement levels containing a car park for 107 vehicles, and associated landscaping and communal open space at podium level between the two buildings.

The site is located within the Rockdale Town Centre and is currently zoned 3(a) General Business. The site is proposed to be zoned B2 Local Centre under the Draft

Rockdale LEP 2011. The maximum FSR currently permitted for this site is 3:1 in accordance with Rockdale LEP 2000. There is currently no height restriction applicable to the subject site. The Draft Rockdale LEP 2011 proposes an FSR of 4:1 and 40 metre height limit on the site.

The original application has been publicly notified from 30 December 2010 to 20 January 2011. The amended plans were not required to be re-notified as they were a reduction and improvement in the scheme and there were no objections received during the notification period.

The site is located on the eastern side of Princes Highway with a secondary frontage to Chapel Lane at the rear. The site adjoins commercial properties in the town centre which contain mixed use developments. An single storey commercial development adjoins the southern boundary, however a recent approval granted by Council has shown this site can be redeveloped of its own volition. Opposite the site to the west on the other side of the Princes Highway is the Arena Development which is a large mixed use development which overlooks the site.

Officer Recommendation

1. That DA-2011/232 for the demolition of existing structures and construction of multi storey mixed use development comprising two buildings with a total of 59 residential units (17 x 1 bedroom, 33 x 2 bedroom & 9 x 3 bedroom units) (including 5 work/live units) 1 commercial tenancies (1,260 m2 retail space) and 107 car parking spaces at 564 Princes Highway Rockdale be approved as a Deferred Commencement subject to written approval obtained from CASA with respect to required construction methods and its relationship to the Obstacle Limitation Surface (OLS) pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

Report Background

BACKGROUND

The existing building originally contained the offices of the Sydney Water Corporation. On 27 September 1984 Council issued development consent (DA-1116/84) to convert the third floor of the building from car parking to office space for use by Sydney Water Corporation. Condition (b) of the consent required the payment of a car parking contribution of \$185,000 in lieu of the dedication of land for this purpose comprising 37 car parking spaces. This contribution was paid and the upper floor of the building was converted.

On 20 May 1999 Council issued development consent (DA 568/1999) to permit alterations to the existing commercial building including a fit out and brickwork within the front elevation.

On 21 December 2005 Council issued development consent (DA 136/2006) to permit a change of use on level of the building for the purposes of a gymnasium (Fernwood) including refurbishment of the front facade and erection of signage.

On 5 May 2006 Council issued development consent (DA 376/2006) to permit a change of use on the first floor of the building for the purposes of a Business Centre, including office space and associated signage.

On 24 March 2011 the applicant amended the original scheme submitted as it was an overdevelopment of the site. The applicant made the following changes to the proposal:

- 1) Reduced density from 72 to 59 residential units
- 2) Improve the housing mix to include 3 bedroom units
- 3) Reduce the number of storeys from ten to nine (9) for building A and nine to seven (7) for building B to the rear
- 4) Reduce the floor space ratio from 4.5:1 to 3.9:1 under the Draft LEP 2011
- 5) Increase the building separation from 4m to 9-12m
- 6) Submit additional information including landscaping, traffic and parking details

PROPOSAL

Council is in receipt of a development application (DA-2011/232) at 564 Princes Highway, Rockdale NSW 2216, which seeks consent to demolish the existing structures and the construction of a multi storey mixed use development comprising two buildings being, Building A (9 storeys) fronting Princes Highway and Building B (7 storeys) fronting Chapel Lane over two and a half basement car parking levels. The minimum building separation on site between Building A and Building B is approximately 9m.

The proposal comprises a total of 59 residential units (17 x 1 bedroom, 33 x 2 bedroom & 9 x 3 bedroom units), including 5 units on the first floor which can be work/live units and 2 adaptable units.

The development comprises one (1) large commercial tenancy fronting the Princes Highway (1,260 m² retail space), ground level loading dock and basement car parking with two and a half levels totalling a car parking capacity for 107 vehicles. Associated landscaping and communal open space is provided at podium level between the two buildings and along the northern side boundary at the rear of the site.

A total of 107 car parking spaces are proposed within the two and a half basement parking levels comprising 68 residential parking spaces, 26 retail spaces, 12 visitor spaces, 1 car wash bay and 12 motorcycle spaces with storage areas. The ground floor at the rear will include Chapel Lane access to the loading dock for 1 large rigid vehicle. The proposal will include a lobby to each street frontage along with fire exits on the site.

Excavation to a maximum depth of 8.5m is proposed, in order to provide for basement car parking on site. The proposed basement will comprise parking areas, stacked car parking, residential storage cages, plant rooms, lift access and fire stairs, along with bicycle storage, motorcycle parking and a garbage room for the development.

EXISTING AND SURROUNDING DEVELOPMENT

The subject site contains a four storey commercial building occupying the entire site with ground floor retail, a first floor car parking level and three storeys of commercial uses above. The existing building contains a pedestrian arcade with access from Princes Highway and vehicular access from Chapel Lane via the rear driveway ramp and loading dock.

The subject site is located within the Rockdale Town Centre and is bound by the Princes Highway to the west and Chapel Lane to the east. The adjoining properties to the north include a mixed use development at Nos. 558-560 Princes Highway and other one and two storey commercial buildings further to the north. The adjoining property to the south includes a two storey commercial building at No. 570 Princes Highway and an eight storey mixed use development at No. 572 Princes Highway. The property at No. 570 contains a development consent (DA-2006/119) granted by Council on 23 February 2007 to erect a nine storey mixed used development with basement car parking.

The subject site is generally surrounded by various mixed use developments within the town centre (for example the Arena development opposite to the west) and a range of smaller commercial businesses with a public car parking area to the east on the opposite side of Chapel Lane.

PLANNING CONSIDERATION

The proposed development has been assessed under the provisions of the Environmental and Planning Assessment Act, 1979. The matters below are those requiring the consideration of the Joint Regional Planning Panel.

Section 79C (1) Matters for Consideration - General

Provisions of Environmental Planning Instruments (S.79C(1)(a)(i))

State Environmental Planning Policy No.1 - Development Standards

This SEPP provides flexibility in the application of development standards when in the circumstances of a case, the strict compliance with the standard is considered unreasonable or unnecessary. The proposal does not numerically comply with Clauses 37(3) Diagram 6 in relation to maximum floor space ratio (FSR) under the Rockdale LEP 2000. The proposal will involve an FSR of 4.25:1 under the Rockdale LEP 2000 which does not comply with the maximum of 3:1 for a mixed use development. However, it will have an FSR of 3.9:1 under the provisions of the Draft Rockdale LEP 2011 which will comply with the maximum FSR of 4:1 under the Draft LEP 2011. This is due to a proposed variation to the definition of Gross Floor Area under Draft LEP 2011.

The applicant has provided a SEPP 1 Objection stating that the control is unreasonable or unnecessary in the following circumstances:

1. *The proposal is consistent with the existing built form context which generally exceeds the development standard. Therefore, the development standard is unreasonable and therefore compliance with the standard in this case would also be unreasonable.*
2. *The proposal will be fully compliant with the proposed floor space ratio controls applying to the site under the Draft Rockdale LEP 2011. The proposal will have an FSR of 3.9:1 which will comply with the future FSR control of 4:1 under the Draft plan.*
3. *An investigation of the Town Centre revealed that there are at least six other properties in the vicinity of the site that exceed the FSR of 3:1 namely:*

a. 582 Princes Highway	4.98:1	10 storeys
b. 555-573 Princes Highway	4.95:1	10 storeys
c. 19-21A Keats Avenue	3.85:1	8
d. 573 Keats Avenue	4.7:1	12
e. 36-42 Bay Street	5.66:1	10
f. 52-66 Bay	6.23	10
4. *The proposal is considered acceptable as it meets all relevant SEPP 65 requirements ensuring appropriate amenity for the residents and the community. It provides more than the required solar access and cross ventilation. It also provides a more efficient use of land as demonstrated in the Statement of Environmental Effects.*
5. *It meets all BASIX requirements ensuring that the development will be efficient in the use of water and energy.*
6. *The proposal is close to public transport therefore encouraging more sustainable travel behaviour.*
7. *The application demonstrates that the proposal will not limit development on adjoining properties, specifically at 570 Princes Highway Rockdale.*
8. *The proposal encourages greater activation of Princes Highway and Chapel Lane street frontages;*
9. *The proposal will not generate significant traffic movements that will impact on local streets or on the function of Princes Highway.*

An application under SEPP 1 is subject to the following tests:

1. Is the planning control in question a development standard?

The maximum floor space ratio standard in question is a development standard as defined in the EPA Act Clause 4(1).

2. What is the underlying purpose of the standard?

The underlying purpose of the maximum permitted floor space ratio standard is to control the intensity and scale of development of land zoned business so that development will be in accordance with the land's environmental capacity and zone objectives.

3. Is compliance with the development standard consistent with the aims of the policy and in particular, does the development standard tend to hinder the attainment of the objectives specified in s.5 (a)(i) and (ii) of the EPA Act?

The specified objectives of the EPA Act are;

5(a)(i) ... the proper management, development and conservation of natural and artificial resources... for the purpose of promoting the social and economic welfare of the community and a better environment.

5(a)(ii) the promotion and coordination of the orderly and economic use and development of land

The proposal seeks to construct a building which is sympathetic with the height, bulk and scale of development on the adjoining properties. In this regard, strict adherence to the development standard would reduce the orderly and economic use of the land given the scale of development adjoining the site. The proposal will involve compliance with the future floor space ratio control under the Draft Rockdale LEP 2011 which is limited to 4:1 for the site. The proposal represents a variation of 0.9:1 under the current LEP 2000.

Given the established scale of development in proximity to the site while the subject site contains a four storey commercial building and the reasons outlined above by the applicant are considered satisfactory and should be supported. The proposed departure from the development standard is considered minor when considered in conjunction with the development in the area, the future controls that will apply to the site and that the proposal will not preclude any development from occurring on the adjoining property at No. 570 Princes Highway.

The proposed development represents a high quality orderly and economic use and development of the subject land that will achieve an ecologically sustainable and appropriate development of the site, without compromising the potential to provide residential floor space on the site. The proposal is not likely to create a precedent due to the nature of the site, history of approvals on the adjoining site and the future development controls that will apply to the site and surrounding neighborhood. As such, the proposed development is considered to be consistent with the aims and objectives of SEPP 1.

Having regard to the above, it is considered that the SEPP 1 objection is well founded and it is recommended that the variation to the FSR requirement for the site be supported in the circumstances of the case.

4. Is compliance with the standards unreasonable or unnecessary in the circumstances of the case?

For the reasons outlined above, it is considered that the strict application of the floor space ratio control is unreasonable and unnecessary. The proposal is also considered to satisfy the objectives of the 3(a) General Business zone and the underlying purpose of the standard. Therefore compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

5. Is the objection well founded?

It is considered that the variation in this instance is well founded due to the above arguments. As such the proposed SEPP 1 objection is supported.

State Environmental Planning Policy No. 55 - Contaminated Land (SEPP 55)

The subject site is zoned commercial, contains a commercial building and has a history of development approvals for commercial office use. Council's records indicate that the site has no history of contamination and given the previous uses carried out on the site, the proposal is considered to be acceptable in respect to the requirements of SEPP 55. In this regard, should any new information be discovered during construction the applicant is to notify Council as the regulatory authority for the management of contaminated land. This has been addressed through the imposition of a condition of development consent.

State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65)

In accordance with clause 30(2) of SEPP 65, the consent authority must take into consideration the following:

30(2)(a). The advice of the Design Review Panel (DRP)

The proposal was referred to the Design Review Panel on 3 March 2011. The following are extracts of comments made by the panel and their stated recommendation in respect to the scheme:

General

This is a very carefully and skilfully thought out and presented proposal and one which serves as a model for which other applications should aspire. The Urban Design Study which underlines the built form of the proposal is exceptional and well considered and leaves little to be assumed...

The applicant has made attempts to buy the site to the south. Having failed in this regard the applicants have attempted to design a proposal that will allow for good outcome in the future for that site, by creating an open space between the two buildings on this site that will allow northern light to that site. The collaboration between the Applicant and the Council Planner in this regard is to be commended...

Built Form

The built form of the proposal has been well considered in the development of a secondary building form to the rear of the site allowing an L-shaped open space area which preserves the idea of 'central' open space for access to light and ventilation to this site, and to that of the adjacent site at No. 570. The benefit of this approach is also reflected in the reduction in building mass into two more manageable elements. This is good planning and design with a sense of how the centre operates as a whole. Whilst there is an interesting dynamic space created between the two buildings through the interesting play of angled façade planes, there remains a problem as to whether the separation distance between the two buildings (on the southern boundary) is adequate at the proposed 4.50 metres. This distance needs to be increased to overcome amenity issues between the two buildings including overshadowing and lack of light to units that look out on the space.

Density

The issues raised over scale and built form may suggest that the density of the proposal is excessive at the level of 4.5:1 as outlined in Council's briefing notes. It is noted that RLEP 2000 states a maximum floor space ratio FSR of 3:1, as do the Development Control Plans and Policies, the Draft RLEP 2011, if adopted, will permit an FSR of 4:1. Considering the issues of height, bulk, separation distance, open space, and setback to rear laneway, the FSR of the proposal should be reduced to 4:1.

Amenity

The proposal is well considered in terms of access from the street and access to apartments. There is some concern regarding the lack of cross-ventilation to the smaller units, however in this dense urban situation it may be acceptable at the ratio proposed. It would appear that most units demonstrate adequate access to sunlight penetration; however, issues of privacy (both aural and visual) will arise across the narrow space between the two buildings.

Social Dimensions

The proposal contains a good unit mix which will encourage residents of different age groups and lifestyles. The design of the open space area at first floor level would benefit from the incorporation of some communal outdoor facilities which will provide for social interaction between residents in friendly and relaxing environment.

Aesthetics

The proposal offers a contemporary design treatment which is well considered and an appropriate expression of the building use within an urban town centre context. The interactive façade articulation to the Princes Highway results in a dynamic effect which should be further developed as the project proceeds.

Recommendation:

It is recommended that the applicant resubmit a revised design, having regard to the issues of bulk, scale, density and landscape as raised in this report, for further consideration by the Panel. The Panel considers that the proposal has the potential to become a very good proposal if the changes as suggested are made.

After the meeting with the DRP the applicant amended the proposal increasing the distance between the two buildings and reducing the height, bulk and scale, and floor space ratio of the development. In this regard, the proposal was amended having regard to the issues raised by the DRP and accordingly, the scheme has in their words “become a very good proposal”. As stated in their comments, the DRP supports the proposal as amended.

In their comments dated 28 April 2011, Council's Urban Strategy team have confirmed that the amendments to the proposal have responded to the previous advice and the scheme has improved the function of the ground level and addressed some of the residential amenity issues. As such, the comments from the DRP have been satisfactorily addressed.

Residential Flat Design Code

The proposal complies with all of the requirements of the Residential Flat Design Code apart from the deep soil zone (minimum 25% of site area), storage area and maximum building depth (18m). Although the proposal does not comply with the deep soil zone it contains ample communal landscaped area on the podium with areas containing deep soil and therefore is considered acceptable in respect to this criterion. Storage areas have been provided within the basement parking level. Although the front building has a maximum width of 20m and exceeds the maximum of 18m, it is only at one point and contains a 2m wide passageway which is considered suitable for the site. As such, the proposal is considered acceptable in respect to the controls in the Residential Flat Design Code.

State Environmental Planning Policy - Building Sustainability Index (BASIX) 2004

The applicant has submitted a BASIX Certificate for the amended development. The Certificate number is 317678M_02. The commitments made result in the reduction in energy and water consumption shown below.

Reduction in Energy Consumption	20
Reduction in Water Consumption	41
Thermal Comfort	Pass

A condition is proposed on the consent to ensure that the BASIX requirements are adhered to.

State Environmental Planning Policy (Infrastructure) 2007

The subject site fronts onto the Princes Highway which is a State Road. As such the following clauses from SEPP Infrastructure apply;

Clause 101 - Development with Frontage to Classified Road / Clause 102 - Impact of Road Noise or Vibration on Non Road Development

The above mentioned clauses require that the consent authority not grant consent to development on land that has a frontage to a classified road unless it is satisfied that, vehicular access to the land is provided by a road other than the classified road and that the development is appropriately acoustically mitigated in respect to potential traffic noise, vibration & emissions.

The subject site comprises a west facing frontage to Princes Highway and eastern frontage to Chapel Lane to the rear. The proposal seeks to provide vehicular access from Chapel Lane to the rear, in order to ensure the uninterrupted operation of the Princes Highway, which is a classified road, is not affected by the development.

The proposal has been accompanied by an Acoustic Report, prepared by Acoustic Logic Consultancy, dated 3 December 2010. The report considered the impact of external noise intrusion into the development, including traffic and aircraft noise and any noise emission from the proposed development to any affected neighbours.

The report concluded that the proposed development is acceptable provided that noise control measures as outlined in the Acoustic Report are incorporated into the construction of the development. The proposal will be conditioned to ensure the acoustic treatments are incorporated into construction. The proposal is considered to satisfy the requirements of both clause 101 and 102 of the SEPP.

On 9 March 2011 the application was referred to the Rockdale Traffic Development Advisory Committee who resolved to support the application subject to the following:

- 1 Notwithstanding previous contributions paid to Council in respect to this site the proposal should comply with the requirements of the Council's Loading & Parking Code (with reference to the draft DCP 2011), such as the retail parking demand cannot safely be accommodated by use of Council's existing car park and the residential parking demand cannot be satisfied given the 3 hour limit in the Council car park.
- 2 The reversing of trucks in Chapel Lane to or from the loading dock is not supported as the proposed movement is not safe for both pedestrians and vehicular movement and is inconvenient to other users of the Lane.

- 3 Servicing the site, such a waste disposal and removal vans, needs to be further considered in respect to Chapel Lane by the Council's Assessment Officers.

Under the Section 94 Contributions Plan 2004 the proposed development benefits from 37 additional on site car parking spaces that Council received a contribution in lieu of and provided the spaces within the surrounding precinct. Notwithstanding this, the proposal contains 104 spaces in connection with the entire use and Council's Parking and Load Code would ordinarily require a minimum total of 122 on site car parking spaces. Given the contributions paid previously for 37 spaces, the proposal is considered acceptable and generally complies with Council's Parking requirements. With the exception of the spaces paid for by way of the contribution the proposal would be deficient by 15 spaces. This is not considered unreasonable given the Draft LEP 2011 would only require 107 spaces and therefore the proposal would not be deficient by any spaces in real terms.

In respect to item 2 above, the proposal will involve trucks driving down the lane in a forward direction and then stopping to reverse into the loading dock at one point adjacent to the rear of the site within Chapel Lane. The proposal in general was supported by the RTDAC, (barring the reversing element this is no different to the existing commercial uses on the adjoining properties within Chapel Lane). The lane currently has available capacity to accommodate the reversing of vehicles into the site without resulting in any unreasonable impacts in respect to road safety or the free flow of traffic within the lane. Accordingly, the proposal is not considered unreasonable in respect to truck reversing and loading.

Council's Development Engineer has considered access provided to the site for waste disposal and removal vans and raises no objection to the proposal in respect to this vehicular access being conducted from Chapel Lane.

Rockdale Local Environmental Plan 2000 (RLEP 2000)

The subject site is zoned 3(a) General Business under the provisions of Rockdale LEP 2000. Development for the purpose of a mixed use premises is permissible within the General Business zone with Council's consent. The relevant clauses that apply to the proposal are set out below.

Clause 12 – Zone Objectives and Controls

The subject site is zoned 3(a) General Business. The proposed mixed use development is permissible upon the site subject to development consent. The proposed mixed use development is considered to generally satisfy the requirements and objectives of the zone.

Clause 14 – Subdivision

The applicant does not seek to strata subdivide the proposed development at this time.

Clause 18 - Noise and Vibration

The site is located between the 20 and 25 ANEF – 2023-2024 contour lines. As such in accordance with clause 18(2) in RLEP 2000 consideration has been given to the impact of aircraft noise on the development. An acoustic report prepared by Acoustic Logic Consultancy and dated 3 December 2010, has been submitted with the application.

In addition, the Princes Highway is classified as a State Road and Clause 18(4) in RLEP 2000 requires the development to incorporate noise mitigation measures, which meet the Environmental Protection Authority requirements.

The applicants Acoustic Report is considered to have taken associated noise sources into consideration, including aircraft, traffic and rail related noise. The recommendations of the report have been incorporated in the development consent. The proposed residential dwellings will be appropriately acoustically treated during construction, to ensure noise impact from noise sources is minimal.

Clause 21 - Land filling and excavation

Excavation is required for the construction of the two and half basement car parking levels on the site. The natural contours of the site moderately fall from east to west, by approximately 2m. The maximum depth of excavation proposed on the site is in the order of 9m and is located directly beneath the proposed building envelope and adjoins the boundaries of the site.

The objectives and requirements of Clause 21 of RLEP 2000 have been considered in the assessment of this application. The proposed excavation is located upon the boundaries, and as such relevant conditions will be imposed to ensure that the environmental amenity of adjoining properties is maintained, and soil erosion, sedimentation, and drainage impacts are minimised. The proposal will be further conditioned to require a dilapidation survey of adjoining properties and public areas in the vicinity of the site.

Clause 23 - Ecologically Sustainable Development

Ecological sustainability has been considered as part of this application and is consistent with the requirements contained in RLEP 2000.

Clause 37(3) - Floor Space Ratio

The proposed development site is identified as comprising a maximum 3:1 floor space ratio, in accordance with the subject clause. The proposed development comprises a total gross floor area of 7,683m² and a site area of 1,807m². The proposed development will result in a floor space ratio of 3.9:1 and does not comply with the development standard. This has been addressed previously in this report (refer to the earlier section on SEPP1).

Environmental Planning and Assessment Model Provisions 1980 (as adopted by clause 10 of Rockdale Local Environmental Plan 2000)

Clause 5(1) - Probable Aesthetic Appearance from Main Road

The proposed development has been appropriately setback, designed and articulated to front the Princes Highway. The facade of Building A fronting onto the Princes Highway is proposed to be provided with suitable finishes and materials that include aluminium, glazing, rendered and painted masonry and retractable louvres on the balconies that overlook the highway. These finishes are considered to be suitable and provide the massing of the building with appropriate articulation.

The external finishes and colours chosen have been designed to complement the existing surrounding built environment and are contemporary in nature. The proposed development is considered to provide a satisfactory aesthetic appearance from the Princes Highway.

Clause 5(2) - Vehicular Access / Parking / Loading / Unloading

Councils Engineer considered the provision for vehicular access, parking, loading and unloading on the subject site, which was considered to be satisfactory and in compliance with Council requirements.

Clause 13 - Off street loading

The proposal incorporates a loading dock to the rear of the site with access from Chapel Lane. This dock can be used by both the residential and commercial occupants of the building and satisfies the requirements of clause 13 of the Model Provisions.

Accordingly, the proposal satisfies the requirements of the Model Provisions.

Provisions of any Draft Environmental Planning Instruments (S.79C(1)(a)(ii))

Rockdale Draft Local Environmental Plan (LEP) 2011

Rockdale Draft LEP 2011 is applicable to the subject site. Under this plan the site is proposed to be zoned B2 Local Centre. Development for the purpose of a mixed use development is termed "Shop Top Housing" under the Draft Plan and is permissible within the proposed zone, subject to Council consent. The proposed development is considered to be consistent with the objectives of the proposed future zone for the site.

Draft LEP 2011 proposes a floor space ratio (FSR) of 3:1 FSR on the FSR map for the site, which is also the existing FSR applicable under Rockdale LEP 2000. However, clause 4.4 of the Draft LEP allows an increase of 1:1 for the site resulting in a maximum of 4:1 for the site. In addition, a height restriction of 28m overall building height is introduced and applicable to the site. Clause 4.3 of the Draft LEP allows an increase in height up to 40m when the site has an area greater than 1,500m². In this instance, the subject site comprises an area of 1,807m² and accordingly, the maximum permitted height under the Draft LEP 2011 is limited to 40m.

The proposed development comprises an overall building height at the highest point being the lift overrun for Block B fronting Keats Avenue of 28m and an overall building height of 22.5m for Building A fronting the Princess Highway. The proposal will have a maximum FSR of 3.9:1 and generally complies with the maximum permitted FSR and height standards to be applied to the site.

The application was referred to the Sydney Airport Corporation Limited (SACL) who also referred it to the Civil Aviation Authority (CASA). The proposal does not intersect with the obstacle limitation surface (OLS) however, the cranes to be used on the site most likely will. As such, SACL have advised they raise no objections to the proposal subject to CASA issuing approval for the construction method used so that it does not intersect with the OLS. A Deferred Commencement item shall restrict activation of the consent until such time as CASA approval has been obtained.

The proposal will contain a housing mix that is generally acceptable, apart from a small variation of 9% to the number of 3 bedroom dwellings being greater than the number encouraged under the Draft plan. Notwithstanding this, the proposal is not considered to be unreasonable as it represents only 5 additional dwellings within the 3 bedroom type. Given the nature of the site and that larger dwellings are encouraged within the precinct the proposal is considered acceptable in this regard.

Accordingly, the proposal is consistent with the objectives of and generally satisfies the controls under the Draft LEP 2011.

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

Interim Mixed Use Policy

The proposed development is located within land zoned 3(a) General Business and consideration has been given to Council's Interim Policy for Mixed Use Development. The application satisfies all requirements of the policy with the exception of the car parking spaces and private open space requirements for the residential units.

The applicant has amended the design to provide useable balconies for all units which provide a direct extension to the living areas of the unit. The area of these balconies exceeds the requirements for Council's newly adopted DCP 72, and most other units provide well in advance of the minimum 20m² required by the Interim Policy. The proposed private open space areas are considered to satisfy the objectives of the requirement and are supported in this instance.

Council's Development Engineer has advised that the proposal is consistent with Council's Parking and Loading Code and is acceptable in respect to the provision of on site car parking, access and loading. Accordingly, the proposal is considered acceptable in this regard.

The proposed development is considered to satisfactorily address the requirements of Council's Interim Mixed Use Development Policy.

Residential Amenity Improvement Strategy (RAIS)

The proposal has been considered in respect to Council's Residential Improvement Strategy as outlined in the table below:

<i>Control</i>	<i>RAIS Requirement</i>	<i>Compliance</i>
Noise criteria	5 star rating - AS 2021	Yes
Number and size of bathrooms	Main bathroom and second toilet, ensuite, or bathroom required for 2 or more bedroom units	Yes
Minimum Size of units	Small 75m ² Medium 100m ² Large 115m ²	No – but acceptable (see below)
Open space / balcony size	Minimum 12sq/m being 3m x 3m Accessed from living area	All 12m² in area but 15 units of 59 do not comply with min dimension
Balustrades	Solid/opaque material	Yes

	Min height 0.8m Min overall height 1.2m (top)	
Lift size an access	Lift required min 2.1m x 1.5m	Yes
Storage areas	2m x 2m x 3m	No - but acceptable given the sum total of area provided complies
Ceiling heights	Minimum 2.7m floor to ceiling	Yes
Letter boxes	Weather protection	Yes
Entry foyer and corridor width	Provide level access from public areas to the building Minimum 2m width	Yes

As shown in the above table, the proposal does not comply with the minimum dwelling sizes under Council's Residential Improvement Strategy; however the plans have been amended to substantially comply with the minimum dwelling sizes in the Residential Flat Design Code. Given the Residential Flat Design Code is consistent with the requirements outlined in Council's Draft DCP 2011 which applies to mixed use developments the proposal is not considered to be unreasonable in respect to the minimum dwelling sizes.

Development Control Plan No. 28 – Requirement for Access (DCP 28)

DCP 28 requires the provision of 2 adaptable units, along with associated parking for the development. The proposal provides for 2 adaptable units, being 107 and 109 within building B fronting Chapel Lane. Accessible parking to accompany these units has been provided. The proposal complies with the requirements of this DCP. Conditions of consent are proposed to ensure compliance with DCP 28 and Disability Discrimination Act requirements.

Development Control Plan No. 67 – Crime Prevention Through Environmental Design (DCP 67)

The proposed development has been assessed in accordance with Council's DCP 67. The proposed development was referred to the Crime Prevention Officer of the St George Local Area Command as the number of units exceeds 20. In this regard, most of the requirements recommended by the Police have been implemented. The proposal also provides the following design response to assist with crime prevention:

- The existing arcade has not been replaced to increase security between the highway and Chapel Lane and reduce pedestrians loitering on the site;
- Entry points are easily distinguishable, and secured, and not concealed by structures or landscaping;
The basement car park has been amended to include a security gate to the lower residential levels and contain improve sight lines to doors, stairwells and exits; and
- Residential units have been designed to provide windows and balconies overlooking the communal open space area at the rear of the building to allow natural surveillance.

The commercial component is provided on the ground floor in accordance with Clause 32 of DCP 67. The proposal is considered to satisfactorily address the requirements of DCP 67.

Development Control Plan No. 53 – Construction Site and Waste Management Plan (DCP 53)

The applicant has submitted a Waste Management Plan. The recommendations of the waste management plan shall be implemented during demolition and construction. Additional measures must be in place to ensure compliance with the aims and objectives of DCP 53 and will be incorporated as conditions of consent.

Development Control Plan No. 78 - Stormwater Management (DCP 78)

The application includes a stormwater concept plan. Conditions of consent are proposed to ensure that the final stormwater plans are in accordance with the requirements of DCP 78. The application was referred to Council's Development Engineer who raised no objections to the proposal in respect to stormwater subject to the imposition of the recommended conditions of development consent.

Parking and Loading Code

The development provides two and a half levels of basement car parking for 107 vehicles as follows:

Description	Amount	Rates required by Code	Provided	Complies
Small (1 bedroom) units	17	1 space per unit = 17	17 spaces	Yes
Medium (2 bedroom) units	33	1 space per unit = 33	33 spaces	Yes
Large (3 bedroom) units	9	2 spaces per unit = 18	18 spaces	Yes
Commercial/Retail	1,308m ²	1 space per 35m ² + loading bay = 37 spaces	26 spaces + loading bays	No*
Visitors	59 units	1 space per 4 units = 15 spaces	12 spaces	No*
Car Wash	2	1 per 60 dwellings or part thereof = 2	1 + visitor space equipped	Yes
Sub Total	-	122 spaces	107 spaces	No
Contributions	-	Previously paid contribution for spaces	37 spaces	
Grand Total	-	122	151 spaces	Yes

*The number of commercial car parking spaces is considered acceptable as there may be a sharing arrangement with some of the visitor car parking spaces during business hours. Furthermore, the proposal complies with the required number of parking spaces for the retail component and the visitor car parking under the Draft LEP 2011 (i.e. 26 & 12 spaces respectively).

The proposed parking satisfies the requirements of Council's Parking and Loading Code as demonstrated above. Council's Development Engineer raises no objections to the proposed car parking layout generally complies with the Australian Standards.

The access ramp satisfies the maximum gradients permitted and the internal layout permits vehicles to manoeuvre in accordance with the 85th percentile turning requirements.

An appropriate condition has been imposed on the consent to ensure parking is provided as proposed and that appropriate access to and from the site is provided before, during and after construction of the development.

The proposed development therefore satisfies Council's Parking and Loading Code.

Draft Rockdale Development Control Plan 2011

The proposed development is consistent with the objectives of and generally complies with the development controls in the Draft Development Control Plan (DCP) 2011 that apply to mixed use development apart from the rear setback, building separation, soft landscaping and solar access requirements. However, the proposal is not considered unreasonable as it has been designed to be consistent with the requirements of SEPP 65 and the Residential Flat Code. In this regard, the variations are discussed further below:

Rear setback

The proposal will contain a 0.9m wide right of footway along the rear boundary of the site and have the rear building hard up against the rear south eastern corner of the site. This is not considered unreasonable given it provides substantial building separation, legibility to the rear, appropriate pedestrian and vehicular access to Chapel Lane and a similar building on the adjoining property has been previously approved to contain a nil setback along the side and rear boundaries. As such, the proposed variation to the rear setback is considered acceptable in this instance.

Building Separation

The proposal will include a suitable building separation having a minimum of 9m to allow adequate light penetration into the rear of the front building and allow solar access to the common open space areas on the podium level.

Soft Landscaping and Communal Open Space

The proposal contains nil soft landscaping however it will contain generous landscaped area and ample common open space area on the podium level which is capable of accommodating large shrubs and sufficient landscaping to soften the development and provide an appropriate level of amenity for the future occupants of the building. In this regard, the amended scheme complies with the communal open space requirement and is acceptable.

Solar Access

The amendments to the scheme have increased the solar penetration to the proposed units and allowed the majority of units to benefit from more than 3 hours of solar access and comply with Council's requirements under the Draft DCP. This is largely a result of the orientation of the site. Notwithstanding, over 66% of the proposed units will contain sufficient solar access with the remainder containing more than 2 hours of direct sunlight. As such, the proposal is considered acceptable in respect to solar access.

Overall, the proposal is considered acceptable in respect to the relevant provisions of the Draft Rockdale DCP 2011.

Any Planning Agreement that has been entered into under section 93F, or any draft planning agreement that the developer has offered to enter into under section 93F (S.79C(1)(a)(iia))

The proposal is not subject to a Voluntary Planning Agreement (VPA) under the provisions of the Environmental Planning and Assessment Act, 1979.

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

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of AS 2601:1991 - *Demolition of Structures* when demolition of a building is involved. In this regard a condition of consent is proposed to ensure compliance with the standard.

The provisions of the Regulations have been considered in the assessment of this development proposal.

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

Context and Setting

The proposal has been designed in response to the desired future character of the locality as anticipated by Draft DCP 69 for the town centre and is generally commensurate with the nature of mixed use development on the surrounding lands. Although the proposal contains a detached building to the rear, the site and adjoining lands lend themselves to the design submitted. Similarly the proposal achieves a satisfactory relationship with existing adjoining mixed use development in that it continues the scale and bulk of buildings along the eastern side of the Princes Highway. This is reflected in the approval for the adjoining land to the south which contains a similar detached building form to the rear. Overall the proposal is considered to set a good quality standard for the future mixed use developments in the Rockdale Town Centre precinct.

Views and Vistas

The existing multi storey building on the site benefits from views to the east out over the surrounding undulating lands with distant interrupted views out over Botany Bay

and the horizon. It also contains views to the west over the balconies and common areas of the Arena development. The proposed development will retain these existing views from the balconies facing the rear lane and front of the site respectively. In addition, the increased building height will intrude somewhat into the existing views to the east from the development to the west on the opposite side of the Princes Highway which includes the Arena development. While the view intrusion is limited to the upper most five storeys, the extent of the view intrusion is not unreasonable as any redevelopment would occupy the full width of the site and result in the same affectation and the proposal is consistent with the height of buildings in the surrounding precinct. Small view corridors to the east will remain over some of the adjacent properties which have not yet been redeveloped while existing views from the buildings to the west in other directions will remain unaffected.

It is considered that the proposal will make a positive contribution to the existing vista along the Princes Highway whilst adding to the diversity of styles along the main road frontage. Given the above, the proposal is considered acceptable in respect to views and vistas.

Land Isolation

Council must be satisfied that adjoining parcels not included in their development site will be capable of being economically developed. The adjoining property located to the south of the subject site at No. 570 Princes Highway is zoned 3(a) General Business and has not yet been developed. The adjoining property currently contains a single storey commercial building at the front of the site with an open yard area at the rear. Although the width of this adjacent property is only 14.5 m, Council granted a previous consent (DA-2006/119) on 23 February 2007 which permits the redevelopment of the property for the purposes of a mixed use development containing commercial units on the ground floor and 14 residential units above and to the rear with vehicular access from the rear lane. The applicant has submitted information confirming this and as such, sufficient information has been given to demonstrate the adjoining property can be redeveloped on its own.

In addition, the applicant has submitted correspondence which demonstrates that the adjacent owner is not willing to include their property in the development scheme at this time. The applicant has submitted sketches of the approved redevelopment for the adjoining property. The plans demonstrate that the adjacent property is capable of being economically developed.

Privacy

The site is surrounded by buildings of similar height, scale and mixed use within the Rockdale Town Centre. The only exception to this is the building on the adjoining property to the south. However, a recent approval has been granted by Council which includes a similar mixed use development with two detached built forms which is commensurate with the proposed development. As such, the proposal is considered to have adequate privacy measures and be of a design which is not considered unreasonable in respect to the resulting internal amenity and external privacy conditions for the site. The proposal is not likely to result in any significant

privacy impacts on the proposed dwellings or the existing dwellings on the adjoining properties in the vicinity of the site. Similarly the proposal benefits from its relationship with the existing neighbours to the west on the opposite side of the Princes Highway. The proposal is consistent with the nature of developments in the area. As such the proposal is considered satisfactory in relation to amenity and privacy.

Overshadowing

Although the proposal contains a significant number of single aspect apartments the proposed dwellings contain an east/west orientation for the front building and a northern orientation for the rear building. The proposal generally complies with the minimum solar access requirements for each unit. Although this attribute of the development could be improved, the layout of the buildings is in response to the established building forms within the street block and the nature of the previous approval on the adjoining property to the south. In this regard, the proposal is consistent with the remaining building forms and complies with the height controls.

An inspection of the shadow diagrams submitted with the application indicates that the proposal is likely to result in a minor increase in overshadowing when compared with the existing shadows cast by the buildings on adjoining properties. The shadows to be cast by the development are not considered to be excessive and will be over the Princes Highway in the morning and properties to the south later in the day during mid winter.

The proposal meets the general overshadowing controls under Draft DCP 69 and the minor impact on the adjacent residential properties is considered to be acceptable being limited only to mid winter. As such it is considered that the proposal is satisfactory having regard to solar access and overshadowing.

Parking and Traffic

Parking has been addressed previously in this report and is considered to be acceptable in respect to the requirements of Councils' Parking and Loading Code.

A Traffic Report was prepared by a Traffic Consultant and submitted with the development application. The report was considered by Council's Development Engineer and concluded that the development will not unsatisfactorily affect traffic efficiency in the surrounding road network. Council undertook its own assessment of traffic generation and concluded that the traffic generated by the development would be lower than the levels predicted by the Traffic Report. Accordingly, the proposal is considered acceptable in respect to traffic matters.

Noise

A detailed noise report has been submitted with the application being prepared by Acoustic Logic Consultancy dated 3 December 2010. The report recommends measures to minimise noise impacts. The recommendations of the noise report are proposed as conditions of consent. Subject to compliance with the recommendations

of the report, the proposal is considered to have minimal affectation from the noise sources surrounding the site.

Wind Impact

A Wind Assessment report prepared by WindTech dated 30 November 2010 was submitted with the application. The report concludes that “wind conditions for all areas within and around the development will be suitable for their intended uses and within the respective recommended criterion” when the principle recommendations detailed in the conclusion of the report are undertaken. In this regard, a condition will be imposed recommending the adoption of the recommendations and that the development complies with AS/NZS 1170.2:2011 (Wind Actions) in respect to wind.

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

The commercial zoning of the site, its prominent location and proximity to public transport make the site ideal for the high rise mixed use development as proposed. Surrounding development on Princes Highway and Chapel Lane indicate that the locality is currently undergoing transition from lower scale to higher density development. The proposed development is considered to be consistent in bulk, scale and form with existing and emerging approved high rise developments surrounding the site.

There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. The subject site is considered to be suitable for the development proposed.

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

Adjoining owners were notified of the proposed development application in accordance with Council's Development Control Plan No. 50 - Community Engagement in Development Decisions. There were no submissions received by Council regarding the application during the public notification period.

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

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the development of the site in accordance with its environmental capacity. The proposed building is a high quality building that will add architectural value to the existing streetscape. Furthermore, the proposal is not considered to result in unreasonable amenity impacts on surrounding properties, other than what could reasonably be expected within a higher density living environment. As such it is considered that the development application is in the public interest.

CONCLUSION

The proposed development has been considered under S79C(1) of the Environmental Planning and Assessment Act, 1979. The application seeks to demolish the existing structures on site and construct a mixed use development comprising two buildings over two and a half basement car parking levels.

Consideration has been given to the applicable planning instruments as part of this assessment. The proposal is acceptable given its general consistency with the objectives and requirements of the relevant planning instruments and impacts on neighbouring properties are not considered unreasonable.

It is recommended that the proposed mixed use development application (DA-2011/232) at 564 Princes Highway Rockdale be approved by the JRPP subject to the imposition of recommended conditions of development consent.