

# Joint Regional Planning Panel

(Sydney East Region)

17 October 2012

<b>JRPP Number:</b>	2012SYE074
<b>DA Number:</b>	DA-2012/180/A
<b>Local Government Area:</b>	ROCKDALE
<b>Proposed Development:</b>	S96 Application – Integrated Development - Modification to approved development to include twelve (12) additional residential units to create a total of 162 residential units and 200 carparking spaces
<b>Street Address:</b>	52 Arncliffe Street, WOLLI CREEK NSW 2205
<b>Applicant/Owner:</b>	Urban Link Pty Ltd
<b>Number of Submissions:</b>	Nil
<b>Recommendation:</b>	Refusal
<b>Report by:</b>	Fiona Prodromou

## Precis

The original Development Application was approved as a Deferred Commencement Consent by the JRPP on 20 June 2012. Approved plans indicate a total of 150 units and 192 parking spaces on site within two (2) basement levels.

Reference is made to the JRPP meeting on 20 June 2012, whereby the JRPP sought to retain the 12 x 3 bedroom units as designed, despite some of these units not meeting the minimum size recommended in the residential flat design code under SEPP 65.

The proposal seeks to provide a total of 162 units on site, being an increase of 12 additional units from the previously approved plans, and to provide for an additional 8 parking spaces, increasing parking on site to a total of 200 spaces.

The following table indicates the DA approved unit mix and the proposed S96 unit mix;

Unit	DA Approved	S96 - Proposed
Studio	4	5
One bedroom	46	45
Two bedroom	88	108
Three bedroom	12	4
Total	150	162

The apartment sizes vary from 46sq.m. to 130 sq/m & the typology of apartments provided are a mixture of corner, single aspect, maisonette and cross through apartments.

As indicated in the table above, the proposal is seeking to reduce the number of three bedroom units previously approved on site by eight (8). The number of one (1) bedroom units is also reduced by one (1). The overall number of studio and two (2) bedroom units has increased.

Additional modifications are also proposed, e.g. removal of lift core, these are described within the report background.

The proposal does not comply with the height of buildings requirement for the site, as specified by RLEP 2011.

The proposal further indicates non compliances with the provisions and objectives of DCP 2011, with respect to mix of units, minimum internal storage areas within units, apartment size and accessibility throughout the building.

The proposal also lacks documentation supporting the modifications, including amended shadow diagrams, amended acoustic report, amended traffic report and amended stormwater plans, in order to enable an accurate assessment of these issues.

The development involves modification to an application under S96(2) of the Act, with a Capital Investment Value greater than \$20 million (i.e. 32 million) and as such the development application is referred to the Joint Regional Planning Panel (JRPP) for determination. The recommendation is for refusal.

## **Officer Recommendation**

1. That development application DA-2012/180/A for modification to approved development to include twelve (12) additional residential units to create a total of 162 residential units and 200 carparking spaces be REFUSED.
  - i. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.3 of Rockdale Local Environmental Plan 2011 (as amended) relating to '*Height of buildings*'. The variation is not supported as it will set an undesirable precedent.
  - ii. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the following specific objective of Clause 4.3 Height of Buildings under Rockdale LEP 2011;
    - (a) *To establish the maximum limit within which buildings can be designed and floor space can be achieved.*
  - iii. The proposed development, pursuant to the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, is unsatisfactory and is likely to adversely impact on the amenity of units within the south eastern building on site.

- iv. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the provisions of the Rockdale DCP 2011, including;
  - a. 4.5.1(1) - Housing Diversity & Choice
  - b. 4.7(18) – Storage Areas
  - c. 5.2 (4) – Apartment Size
- v. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives of the Rockdale DCP 2011, including;
  - 4.4.2 (A) *To ensure that sunlight access is provided to private open space and habitable rooms within the development.*
  - 4.4.2 (B) *To ensure that development does not unreasonably diminish sunlight to neighbouring properties and within the development.*
  - 4.5.1(A) *To maximise housing choice to meet the needs of diverse household types.*
  - 4.7(A) *To ensure that adequate provision is made for site facilities in the development.*
  - 5.2(E) *To improve the range and quality of housing and residential environments that meet the diversity of peoples needs and community expectations about health, safety and amenity.*
  - 5.2(H) *To ensure residential flat buildings are accessible to all occupants and visitors and that goods and furniture can be readily moved throughout the building.*
- vi. Pursuant to the provisions of Section 79C(1)(b) and Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development.

## Report Background

### PROPOSAL

The proposal seeks to provide a total of 162 units on site, an increase of 12 additional units from the previously approved plans, and to provide for an additional 8 parking spaces, increasing parking on site to a total of 200 spaces.

Additional proposed modifications include the following;

- A height ranging from 29.2m – 30.8m is proposed across the site.
- Basement plans indicate 199 car spaces, not 200 as specified.
- Deletion of one (1) lift core from NE side of the basement. Lift is subsequently deleted to levels basement 1, basement 2, ground, one and two.

- As a result of the deletion of this lift, there is no direct lift access to six (6) units within the development which were previously accessible via lift.
  - Level 1 – units 1.11 & 1.12
  - Level 2 - units 2.11 & 2.12
  - Level 3 – units 3.11 & 3.12
- The previously approved deep soil zone to level basement 1 is deleted and parking is reconfigured, in order to accommodate an additional 8 car parking spaces. This results in the deletion of 1 motorbike space previously located between parking spaces G08 and 117.
- Deletion of lift to Level 4 rooftop terrace.
- The four (4) units on levels 5 -7 as approved (6.14 / 6.18 / 6.04 / 6.08) have been internally reconfigured and proposed to be converted to six (6) individual units (5.17 / 5.18 / 6.04 / 6.08 / 6.14 / 6.18). This is an increase of 2 units from that previously approved.
  - 1) Level 5 & 6 - Unit 6.14 was approved as a 126.1sq/m three bedroom maisonette unit. This unit is proposed to be converted into two independent one bedroom single level units. Level 5, unit 5.18 (56.5sq/m) & level 6, unit 6.14 (56.5sq/m).
  - 2) Level 5 & 6 - Unit 6.18 was approved as a 126.3sq/m three bedroom maisonette unit. This unit is proposed to be converted into two independent one bedroom single level units. Level 5, unit 5.17 (50.9sq/m) & level 6 unit 6.18 (51.2sq/m).
  - 3) Level 6 -8 - Unit 6.04 was approved as a 96.1sq/m two bedroom maisonette unit. This unit is proposed to be changed into two independent single level units. Level 6, unit 6.04 a 49.6sq/m studio with a larger balcony than previously approved by the removal of an articulated break in the building wall & level 7-8 unit 7.05 a 81.2sq/m two bedroom maisonette unit with level 8 terrace area.
  - 4) Level 6 -8 - Unit 6.08 was approved as a 91.3sq/m two bedroom maisonette unit. This unit is proposed to be changed into two independent single level units. Level 6, unit 6.08 a 49.7sq/m studio with a smaller balcony than previously approved and level 7-8, unit 7.12 a 82.3sq/m two bedroom maisonette unit with level 8 terrace area.
- As approved, Level 7 of the development comprised a total of 14 units. The proposal seeks to provide a total of 24 units on level 7 and new level 8. This is an increase of 10 units.
- The proposal introduces level 8 to the development, which comprises bedrooms, ensuites, terraces and planters connected to units below in level 7. Level 8 also proposes communal open space on the rooftop.
- The footprint of level 7 has been increased in size; units have been internally reconfigured with building and balcony setbacks to all sides of level 7 having been reduced.

- Level 7 units were previously approved as follows;

Unit Level 7	Bedrooms	Area	Style
7.01	1	58.8sq/m	Corner
7.02	1	70.6sq/m	Single aspect
7.03	2	80.5sq/m	Cross through
7.04	1	67.1sq/m	Corner
7.05	2	80.5sq/m	Cross through
7.06	1	70.2sq/m	Single aspect
7.07	3	135.6sq/m	Corner
7.08	3	135.3sq/m	Corner
7.09	3	98.5sq/m	Single aspect
7.10	3	114.1sq/m	Single aspect
7.11	3	102.2sq/m	Single aspect
7.12	3	114.1sq/m	Single aspect
7.13	1	75.2sq/m	Corner
7.14	Studio	56.2sq/m	Corner

- Level 7 units are now proposed to comprise bedrooms with ensuites and terraces on level 8 and comprise as follows.

Unit Level 7-8	Bedrooms	Area	Style
7.01	2	77.9sq/m	Corner maisonette
7.02	2	80.5sq/m	Single aspect maisonette
7.03	2	79.8sq/m	Single aspect maisonette
7.04	2	79.9sq/m	Cross through maisonette
7.05	2	81.2sq/m	Single aspect maisonette
7.06	2	81.2sq/m	Corner maisonette
7.07	2	79.5sq/m	Cross through maisonette
7.08	2	79.3sq/m	Single aspect maisonette
7.09	2	76.6sq/m	Single aspect maisonette
7.10	2	78.5sq/m	Corner maisonette
7.11	2	79.5sq/m	Corner maisonette
7.12	2	82.3sq/m	Single aspect maisonette
7.13	2	79.4sq/m	Cross through maisonette
7.14	2	79.2sq/m	Single aspect maisonette
7.15	2	79.5sq/m	Corner maisonette
7.16	2	80.9sq/m	Corner maisonette
7.17	2	81.9sq/m	Single aspect maisonette
7.18	2	77.6sq/m	Single aspect maisonette
7.19	2	79.4sq/m	Cross through maisonette
7.20	2	87.6sq/m	Single aspect maisonette
7.21	2	81.1sq/m	Single aspect maisonette
7.22	2	79.7sq/m	Corner maisonette
7.23	2	80.9sq/m	Corner maisonette
7.24	2	79.3sq/m	Single aspect maisonette

## EXISTING AND SURROUNDING DEVELOPMENT

The site is described as Lot 4 in DP 538220 and is known as 52 Arncliffe Street, Wollri Creek. The total site area is 4730 sq.m. The site is located on the southern side of Arncliffe Street, opposite the intersection with Guess Avenue.



The site is a regular shape having a frontage to Arncliffe Street of 65.53m and approximately 72m side boundaries. The topography of the site is almost flat. There are no trees of significance on the site. Most of the site area is covered by an existing industrial building.

The site is affected by a road dedication in Arncliffe Street and along the south-eastern boundary parallel to the Bonnie Doon Channel. Adjacent to the site on the north-eastern boundary is the proposed Gertrude Street extension, a future road, which will extend from the Princes Highway to Arncliffe Street. As such, the proposal will have frontages to three streets, two of which have not been constructed.

Surrounding development is of an industrial/commercial nature. Adjacent to the site at 40-50 Arncliffe Street is an indoor recreational facility (Go Kart and Laser Skirmish). Adjacent to the site on the north-eastern and south-eastern boundaries are car sales/maintenance related businesses with frontage to Princes Highway. At present there is a 6.2m high wall along the north-eastern boundary, setback approximately 700mm with no openings, situated within the Suttons Motors site at 55-93 Princes Highway.

The land surrounding the site, including the opposite side of Arncliffe Street has been recently zoned B4 – Mixed Use under RLEP 2011, except for the land on the northern corner of Arncliffe Street and Guess Avenue, which is zoned RE1 – Public Recreation.

## 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 91A – Development that is Integrated Development

The proposed development constitutes Integrated Development and requires approval by the NSW Office of Water under the Water Act 1912. The original proposal had previously been referred to the Office of Water and general terms of approval (GTA) had been granted.

## **S96(2) of the Environmental Planning and Assessment Act**

S96(2) states:

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to an in accordance with the regulations, modify the consent if:*

- a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comments: The application is for modifications to the original development consent. The proposal remains a residential flat building development'. As such it is considered substantially the same development.

- b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

Comments: Consultation with the Sydney Water Corporation and Roads and Maritime Services was undertaken as part of the original application. Given the recommendation of refusal, re-referral to these agencies was not considered to be necessary.

- c) *it has notified the application in accordance with:*
  - (i) *the regulations, if the regulations so require, or*
  - (ii) *a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and*

Comments: The application has been notified in accordance with the provisions of Council's DCP 2011. No objections have been received.

- d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comments: No objections have been received.

## **S96(3) of the Environmental Planning and Assessment Act**

S96(3) states:

*In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.*

An assessment of the application has been carried out under the provisions of Section 79(c) of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered. The following is an assessment of the proposed development under the provisions of Section 79C (1) of the Environmental and Planning Assessment Act.

## **Section 79C (1) Matters for Consideration - General**

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

#### ***State Environmental Planning Policy Building Sustainability Index (BASIX)***

The applicant has submitted an amended BASIX Certificate for the proposed development. The Certificate number is 397909\_M03. The commitments made result in the reduction in energy and water consumption shown below.

Reduction in Energy Consumption	28
Reduction in Water Consumption	41
Thermal Comfort	Pass

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

The property was originally identified in Council's records as being potentially contaminated as a result of landfill. The original DA was accompanied by a preliminary environmental site assessment report, phase 2 Environmental site assessment report and Remediation Action Plan. The original application was approved on this basis as the site was considered to be suitable for the proposed use.

#### ***State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)***

Clause 45 of the ISEPP requires consultation with electricity supply authorities. Energy Australia was notified of the original application, and conditions of consent were imposed to ensure that the applicant consults with utility providers to determine any additional requirements.

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

As required by the Regulations, the applicant has submitted a design verification statement from a registered architect confirming that the proposal as modified is satisfactory in regards to the design quality principles.

#### ***Rockdale Local Environmental Plan 2011 (RLEP 2011)***

The site is zoned B4 Mixed Use under the provisions of RLEP 2011. Development for the purpose of a residential flat building is permissible with consent. The proposal is consistent with the objectives of the zone. The relevant clauses that apply to the proposal are below.

##### ***Clause 4.3 - Height of Buildings***

The maximum permitted height under this clause is 28 metres. The proposal does not comply with requirements in Rockdale Local Environmental Plan 2011 (RLEP 2011) with respect to height, and proposes a height ranging from 29.2m – 30.8m. This represents a variation of 1.2m – 2.8m over the maximum permissible 28m height limit.



The proposal is not considered to satisfy the following objective of the clause;

- (a) *To establish the maximum limit within which buildings can be designed and floor space can be achieved.*

A variation would set an undesirable precedent, contrary to this objective, and with no existing context in place to justify such a variation to the development standard, the proposal is not considered to have met this objective.

#### *Clause 4.6 – Exception to Development Standards*

The applicants Town Planning Report, did not provide justification for the additional height, arguing that this was unnecessary in line with the Court of Appeals judgement in “*North Sydney Council v Michael Standley & Associates Pty Ltd*” where it was determined a SEPP 1 objection is not necessary for a S96 application.

Additional information provided by the applicant on 1 October, did however provide the following justification for the additional height, these have been summarised below;

- *The proposed modification should be supported as it allows for the FSR as contemplated by the LEP to be achieved. Given the promotion of the Wolli Creek locality as a regeneration centre adjacent to a railway station, it is considered sound planning to fulfil the FSR as contemplated by the controls / A proposal below the maximum FSR is not considered to be an efficient use of this site and would not be an orderly and economic outcome.*

Comment: The proposed FSR complies with council requirements this is acknowledged. It is considered possible however to achieve this FSR on site and maintain compliance with the maximum height requirement for the site.

- *Given the dedication of substantial land components for road widening, increased footpath width and new road, the proposal is an important contributor and catalyst to achievement of the vision for Wolli Creek. The strategic importance of the site and the benefits of the proposal to achievement of the strategy for Wolli Creek is considered to provide justification for this site to achieve additional height. The individual nature of the site benefits are considered to distinguish this site from others to demonstrate that the proposal would not set a precedent.*

Comment: As stated above, it is considered that the maximum FSR for this site can be achieved within the height limit.

Concessions have already been supported with respect to the original approval; these include an approved variation to the required 3m front setback along the new property boundary along the Boonie Doon Channel. The development was approved with a building setback of 1.5m to the new property boundary and nil setback at some points on the upper levels.

It is not considered that there are any further exceptional circumstances relating to this site which would warrant the additional height as proposed.

- *The achievement of a maximum FSR within a greater height is consistent with the Residential Flat Design Code which has a specific example which demonstrates that a building performance is improved by providing the same FSR in a greater height. The greater height allows for improved solar access, daylight and natural ventilation*

*by utilising the permissible FSR in a greater height.*

Comment: The RFDC example refers to achieving a better outcome on sites by providing a narrower building depth and subsequently a higher building, which improves residential amenity and open space on sites.

In this instance the applicant has not modified the building depth, rather has retained the approved footprint and increased the FSR and height of the proposal. In addition, information allowing an assessment of solar access with respect to the proposed additional height has not been submitted.

It is reiterated that the FSR can be achieved within the height limit for the site.

- *The shadow diagrams which accompany the Section 96(2) demonstrate a marginal and indiscernible increase from the approved development. The additional height would not compromise the ability of the neighbouring site to be developed in accordance with the LEP and DCP provisions.*

Comment: The shadow diagrams referred to above were not submitted to Council for assessment. Elevational shadow diagrams, indicating the impact of the additional height proposed, onto the northern elevation of the south eastern building on the development site are also considered vital in the assessment of this application; these have not been provided to Council.

- *The internal amenity of the amended units remains of high quality in terms of conformity with the RFDC in relation to solar access and cross ventilation aspects. The new units also enjoy expansive terraces which will take advantage of the outstanding views from the site.*

Comment: Amenity in respect of solar access cannot be determined due to insufficient information provided with the application for assessment. Cross ventilation to the proposed units is considered satisfactory, however concern is raised with respect to the proposed unit sizes, which are below the minimum 90sq/m required as per the RFDC for “two bedroom cross over” units. None of the 24 units on levels 7-8 comply with the minimum unit size.

- *The recessed nature of the additional level ensures that the extra height is not responsible for any adverse streetscape impacts. The additional level does not dominate the streetscape (existing and likely future) and is designed to provide an interesting roofscape.*

Comment: It is considered that the amendments to the elevations of the buildings provide a satisfactory response to the streetscape, however it is possible to provide a unique roof form on site, whilst maintaining compliance with the height requirement.

- *The additional height is not responsible for any view impacts to any surrounding development.*

Comment: Noted. It is reiterated that this immediate precinct is not yet developed to its full potential.

- *The additional level provides for an increase in the number of 2-level apartments which provides increased housing choice and larger private open space accessibility.*

Comment: The approved level 7 provided for a mix of studio, one, two and three bedroom apartments. The proposal seeks to delete the majority of three bedroom apartments and provide the above stated 2-level apartments which are also two bedroom. The provision of these 2 bedroom, 2 level units is at the consequence of three bedroom units within the development.

- *The additional height and associated increased unit numbers are provided with a compliant degree of parking without reduction to the approved landscaped area. / The provision of additional parking will not alter the visible landscaped outcome when compared with the approved design*

Comment: It is agreed that the additional parking does not alter the visible landscaped outcome, however a significant portion of deep soil zone previously approved within basement level 1 is deleted as a consequence.

The amended proposal complies in respect of car spaces however is deficient in 1 bicycle and 2 motorbike spaces.

- *The increase from 8 to 9 storeys would not be discernible due to the attractive and articulated design of the respective elevations. In particular, the area is characterised by a mix of building heights whereby the proposed height would not appear out of character nor would it dominate the existing or future locality.*

Comment: DCP 2011 identifies Councils strategic intent in respect of this immediate area. It is noted that the vision is to create a “heart” and hub around brodie sparks drive and Wolli Creek Station at the northern end of the precinct. The DCP requirements therefore seek to locate taller building heights at key gateway locations and retail activity nodes.

The subject site is located further south of the station, brodie sparks drive and the retail activity nodes, and thus a lower height limit is applied to the site. The proposed additional height is not considered to be in line with the strategic intent of the vision for Wolli Creek.

The immediate adjoining sites will also be subject to the height limit as specified in RLEP 2011.

#### *Clause 4.4 – Floor Space Ratio (FSR)*

A maximum FSR of 2.85:1 is permitted on the site. The total gross floor area of the proposed development is 13460sq.m. The proposed FSR is 2.84:1, which complies with clause 4.4.

#### *Clause 5.1A – Development on land intended to be acquired for public purposes*

Clause 5.1A requires consideration of restrictions applying to the land identified in the Land Reservation Acquisition map. The site is subject to land dedications along Arncliffe Street and the Bonnie Doon Channel. This matter was addressed as part of the original application and the original consent was conditioned accordingly.

#### *Clause 6.1 – Acid Sulfate Soils*

The site is within an area classified as Class 3 and Class 5 in the acid sulfate soils map. This matter was addressed as part of the original development application.

#### *Clause 6.2 – Earthworks*

This matter was addressed as part of the original application.

#### Clause 6.3 – Development in areas affected by aircraft noise

The site is near the 20 ANEF contour for 2023/24. An Acoustic Report was submitted with the original application, however given the proposed amendments it is considered an amended Acoustic Report was required. An amended acoustic report was not submitted; as such an accurate acoustic assessment of the proposal was unable to be undertaken. The proposal is not considered to satisfy the objectives of this clause.

#### Clause 6.4 – Airspace operations

The site is affected by the 15.24m building height Civil Aviation regulation and required a referral to SACL given the proposed additional height. However given the proposed changes are not supported, this was not considered necessary.

#### *Clause 6.6 – Flood Planning*

The site is affected by flooding and as such a minimum floor level of 3.21m is required. The ground floor of the development was approved at this level; the S96 does not propose to modify this level.

#### *Clause 6.7 – Stormwater*

Given the proposed changes to the roof design and deletion of the deep soil zone in basement level 1, amended drainage plans indicating how the discharge of all roof and surface runoff will be managed are required to have been submitted. This information was not provided for assessment. The proposal is not considered to satisfy the objectives of this clause.

#### *Clause 6.12 – Essential Services*

Services are generally available on the site. The proposal satisfies the objectives of this clause.

#### **Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (S.79C(1)(a)(ii))**

Draft Rockdale Local Environmental Plan 2011 (Amendment No. 1) - Housekeeping was on public exhibition from 28 June 2012 until 27 July 2012 and applies to the entire LGA. However none of the proposed changes affects the proposal. There are no other Draft Environmental Planning Instruments applying to this proposal.

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

##### *Development Control Plan 2011 (DCP 2011)*

The proposal has been assessed against the objectives and controls under DCP 2011 and associated documents being the Wolli Creek Public Domain Plan and Manual (PDP), Technical Specifications for Parking, Technical Specifications for Stormwater, Waste Minimisation and Management and Landscaping. The following issues are relevant to determine compliance of the proposal with the objectives of DCP 2011.

#### 4.3.3 – Communal Open Space / 4.4.2 – Solar Access

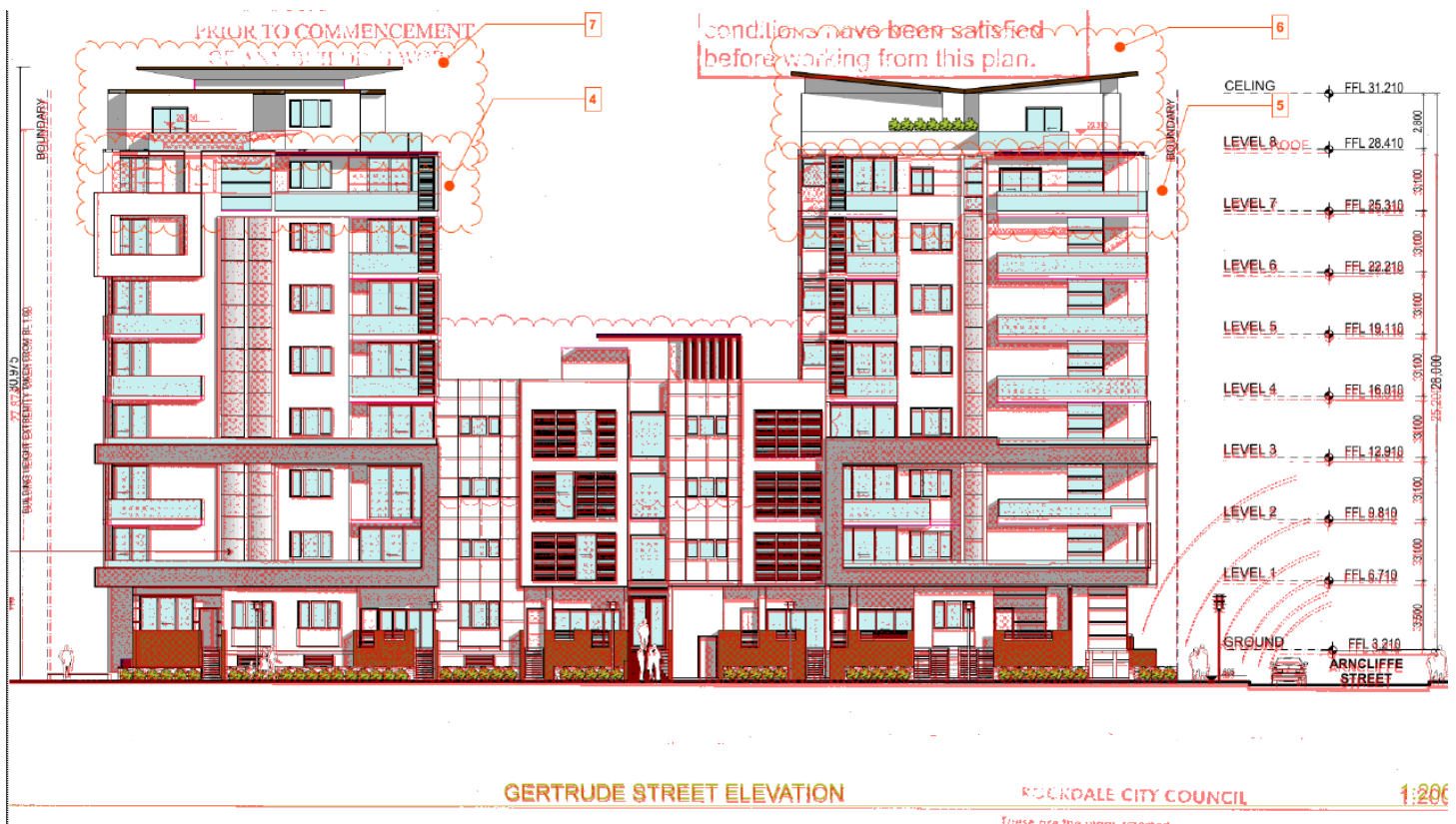
The applicant has not submitted additional shadow diagrams, indicating the potential overshadowing likely to be generated on site to ground level communal open space and its own buildings, as a result of the proposed increase in height. The extent of additional overshadowing likely to be generated from the proposed modifications is therefore unknown.

It is considered that the proposed additional height and the increased width of level 7, has the potential to provide additional overshadowing to the ground level communal open space areas as well as the northern elevation, being primary living areas, balconies, bedrooms and kitchens, of units within the south east building on the site.

The majority of units within the south eastern building on site have their only balconies and primary living areas facing into the site in a northerly direction. Concern is raised regarding the potential additional loss of solar access to these units, as a result of the proposed development, which will subsequently impact on the overall amenity of these units. The proposal is not considered to satisfy the following objectives of Clause 4.4.2 – Solar Access.

- A. *To ensure that sunlight access is provided to private open space and habitable rooms within the development.*
- B. *To ensure that development does not unreasonably diminish sunlight to neighbouring properties and within the development.*

The images below provide a comparison between the approved and proposed elevations. The red overlay reflects the approved development, overlaid onto the proposed modifications. The additional height proposed, changes to the articulation and increase in width of the level 7 floor plate can be seen.





#### 4.5.1 - Housing Diversity & Choice

Clause 4.5 of DCP 2011 requires the following dwelling mix within developments.

Dwelling Type	Of total dwellings	Approved	Proposal
3+ bedrooms	10% – 20%	8%	2%
2 bedroom	50% - 75%	58%	66%
1 bedroom / studio	10% - 30%	33%	31%

As indicated in the table above, the overall percentage of 3 bedroom units has significantly decreased within the proposed development.

The S96 seeks to reduce the number of 3 bedroom units within the development to four (4). The proposed number of three bedroom units within the development therefore represents 2% of the total number of dwellings. This is considered to be an excessive reduction and contrary to the requirements of the DCP.

The subject clause further requires the provision of 10% of the total number of dwellings within the development to be provided as adaptable units. A total of 16 units would be required to be provided as adaptable, under the current S96. A total of 12 units are proposed as adaptable units, this indicates a shortfall of 4 adaptable units. The total percentage of adaptable units provided within the development is 7%.

The proposal is not considered to comply with the requirements and following objective of this clause.

- A. *To maximise housing choice to meet the needs of diverse household types.*

#### 4.6 -Car Parking Access and Movement

Councils Engineer considered the proposed modifications and noted that the proposal has a deficiency of 1 bicycle and 2 motorcycle parking spaces.

In addition, as the basement layout has been modified, a validation from a traffic consultant is required in order to undertake an assessment of compliance with the relevant standards. The proposed development does not comply with the requirements of the DCP.

#### 4.7(18) – Storage Areas

DCP 2011 requires a minimum of 10m<sup>3</sup> of storage area per apartment. The layout of units from ground – level 4 remains as approved.

The four (4) units on levels 5 -7 as approved (6.18 / 6.14 / 6.04 / 6.08) have been internally reconfigured and proposed to be converted to six (6) individual units. (5.17 / 5.18 / 6.04 / 6.08 / 6.14 / 6.18). Of these, five (5) do not comprise sufficient storage.

With respect to the twenty four (24) units on level 7-8, only 7 of these comprise sufficient internal storage. As such the proposed modifications are not considered to satisfy the requirements and following objective of this clause.

- A. *To ensure that adequate provision is made for site facilities in the development.*

#### 5.2(4) – Apartment Size

DCP 2011 specifies a minimum internal area of 90sq.m for two bedroom cross over apartments. This is derived from the RFDC. The twenty four (24) reconfigured and proposed apartments on levels 7-8 do not satisfy this minimum internal area. A variation of 13.4sq/m – 2.4sq/m is apparent.

In addition, the following reconfigured apartments are provided as follows;

Unit	Type	Proposed Area	Required Area	Complies
5.17	1 bed single aspect	50.9sq/m	63.4sq/m	No
5.18	1 bed single aspect	56.5sq/m	63.4sq/m	No
6.04	Studio single aspect	49.6sq/m	38.5sq/m	Yes
6.08	Studio single aspect	49.7sq/m	38.5sq/m	Yes
6.14	1 bed single aspect	56.5sq/m	63.4sq/m	No
6.18	1 bed single aspect	51.2sq/m	63.4sq/m	No

As can be seen above, units which have been reconfigured into one (1) bedroom apartments do not comply with the minimum apartment sizes of DCP 2011 or the RFDC.

The proposal does not comply with the requirement of this clause or the following objective;

- E. *To improve the range and quality of housing and residential environments that meet the diversity of peoples needs and community expectations about health, safety and amenity.*

### Lift size and access

Although not a specific DCP requirement, concern is raised with respect to the deletion of the lift core from north eastern side of the basement. This lift services levels basement 1, basement 2, ground, one and two. As a result of the deletion of this lift, there is no direct lift access to six (6) units (1.11, 1.12, 2.11, 2.12, 3.11, 3.12) within the development which were previously accessible via lift. This is considered to be inappropriate and future residents of these units will be adversely affected. The proposal is not considered to satisfy the following DCP objective 5.2(H),

- H. *To ensure residential flat buildings are accessible to all occupants and visitors and that goods and furniture can be readily moved throughout the building.*

### **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)(iii))**

The proposal is not subject to a Voluntary Planning Agreement (VPA).

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

All relevant provisions of the Regulations have been considered in the assessment of this proposal.

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

#### Height

The proposal is the first development approved within the B4 mixed use zone in Arncliffe Street, under the Rockdale LEP 2011. As such the site is currently surrounded by industrial/commercial uses.

As previously discussed, the proposal does not comply with the 28m height requirement, with an additional height of 1.2m - 2.8m proposed.

In addition to the potential overshadowing impacts the proposal is likely to generate to the SE building on site, the proposed height is considered to be excessive and may set in an undesirable precedent for the immediate area which is yet to be redeveloped.

#### Overshadowing

The matter of overshadowing has previously been discussed.

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

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. 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.

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



The development application has been notified in accordance with Council's Development Control Plan 2011 and no letters of objection were received.

### **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 application, the proposal is considered contrary to the above specified requirements and objectives of RLEP 2011 and DCP 2011.

The proposed changes to the development are considered to result in unreasonable amenity impacts on site and the proposal has the potential to create an undesirable precedent for the area. As such it is considered that the S96 application is not in the public interest.

### **CONCLUSION**

The proposed development has been considered under S79C(1) of the Environmental Planning and Assessment Act, 1979. The application involves modifications to approved development to include twelve (12) additional residential units to create a total of 162 residential units and 200 carparking spaces. The proposal is inconsistent with the objectives & requirements of DCP 2011. As such, the application DA-2012/180/A is recommended for refusal.