

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2015SYE042
DA Number	DA-2014/346/A
Local Government Area	ROCKDALE CITY COUNCIL
Proposed Development	Section 96(2) Modification to development consent No.DA-2014/346 including the addition of five (5) units totalling 83 units and changes to the building height
Street Address	2-8 Loftus Street & 1- 3 Edward Street, TURRELLA NSW 2205 Lots 24-27 and Lots 31-34 in DP 4274
Applicant/Owner	Benson McCormack Pty Ltd
Number of Submissions	Four (4) submissions from four (4) property addresses
Regional Development Criteria (Schedule 4A of the Act)	The proposal is a Section 96(2) Modification to a development application that has a capital investment value of more than \$20 million.
List of All Relevant s79C(1)(a) Matters	• List all of the relevant environmental planning instruments: s79C(1)(a)(i) - <i>State Environmental Planning Policy Building Sustainability Index (BASIX)</i> - <i>State Environmental Planning Policy No.55 - Contaminated Land (SEPP 55)</i> - <i>State Environmental Planning Policy (Infrastructure) 2007</i> - <i>State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development (SEPP 65)</i> - <i>Rockdale Local Environmental Plan 2011 (RLEP 2011)</i> • List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii) - <i>Draft SEPP 65 - Apartment Design Guide</i> • List any relevant development control plan: s79C(1)(a)(iii) - <i>Rockdale Development Control Plan 2011(DCP 2011)</i> • List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s79C(1)(a)(iv)

	- Nil • List any coastal zone management plan: s79C(1)(a)(v) - N/A • List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288 - <i>Environmental Planning and Assessment Regulations 2000</i>
List all documents submitted with this report for the panel's consideration	• Section 79C Planning Report • Notice of Determination DA-2014/346
Recommendation	Refusal
Report by	Shaylin Moodliar – Senior Development Assessment Planner
Report date	25 May 2015

Assessment Report and Recommendation Cover Sheet

Precis

On 17 December 2014, the NSW Joint Regional Planning Panel (JRPP) granted approval for the demolition of existing structures and construction of a part five (5) & part six (6) storey residential flat building containing 78 residential units with 2 basement car parking levels and ground floor level car parking with capacity for 97 vehicles.

The approval was subject to specific general conditions of consent to delete seven (7) units and thus the entire seventh storey along the Loftus Street frontage; to relocate the electricity kiosk from the Hirst Street frontage into the building envelope and outside of deep soil landscaping areas; and to incorporate three x 3-bedroom units within the building envelope.

The proposed modification seeks to reinstate 5 of the 7 units which were recommended to be deleted and add a seventh storey along Loftus Street. The proposed modification increases the total number of units from 78 to 83 units and seeks to modify conditions relating to the relocation of the electricity kiosk, car parking spaces and deletion of the requirement to provide any three-bedroom units. The proposed modification does not seek any changes to the approved streetscape schemes along Hirst and Edward Streets.

The approved scheme granted consent to a building height of approximately 19.38-19.77 metres along Loftus Street, which exceeded the maximum 18 metre building height by 1.38-1.77 metres. The proposed modification seeks a building height (top of concrete roof) of approximately 22.38-22.77 metres along Loftus Street, which exceeds the maximum 18 metre building height by 4.38-4.77 metres. The additional building height will set an undesirable precedent for similar developments within the emerging character of an area as it undergoes redevelopment. The proposed modification to add a seventh storey will not contextually fit into a future amalgamated and redeveloped residential site to the north nor would the proposal facilitate adequate built form transition along Loftus Street.

The approved scheme granted consent to an overall gross floor area to 6232 square metres which exceeded the maximum gross floor area by approximately 135.4 square metres. The minor breach to the 1.8:1 FSR of 2% over the maximum GFA (FSR of 1.84:1) was considered appropriate. The proposed modification seeks an overall gross floor area of 6604.6 square metres (FSR of 1.95:1), which exceeds the maximum gross floor area by approximately 508 square metres (8.3% over the maximum gross floor area). The proposed gross floor area cannot be supported and will establish an undesirable precedent.

The application has been notified in accordance with Council's DCP 2011. Four (4) submissions have been received from four (4) residential properties during the notification period. The issues raised have been addressed elsewhere in this report.

The Section 96(2) application is required to be determined by the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal exceeds \$20 million.

Officer Recommendation

- i. That Section 96(2) modification to development consent No.DA-2014/346 including the addition of five (5) units totalling 83 units and changes to the building height be refused by the Joint Regional Planning Panel for the following reasons:
 1. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the development as modified is contrary to the following principles of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development:
 - i. Principle 1 – Context
 - ii. Principle 2 – Scale
 - iii. Principle 3 – Built Form
 - iv. Principle 4 – Density
 - v. Principle 9 – Social dimensions
 2. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development as modified does not satisfy the objectives or requirements of Clause 4.3 – Height of Buildings of Rockdale LEP 2011.
 3. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development as modified does not satisfy the objectives or requirements of Clause 4.4 – Floor Space Ratio of Rockdale LEP 2011.
 4. Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the development does not satisfy Part 4.4.7 of the Rockdale DCP 2011.
 5. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, providing an undesirable and unacceptable impact on the streetscape and does not respond to the future desired scale and character of the local area.
 6. Having regard to the previous reasons noted above and the objections received, pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed modification is not in the public interest and is likely to set an undesirable precedent.
- ii. That the objectors be advised of the Joint Regional Planning Panel's decision.

Report Background

Proposal

The proposed modification seeks to incorporate the following changes:

- Addition of a seventh storey along Loftus Street
- Increase the building height by 3 metres, from 19.38-19.77 metres to 22.38-22.77 metres, across the eastern portion of the subject site (towards Loftus Street)
- Addition of 5 units on the site, from 78 units to 83 units, with an apartment unit mix modified as follows:

Bedroom	Approved under DA-2014/346	Proposed under DA-2014/346/A	Unit Changes
Studio	5	5	No change
1 bedroom	38	43	Additional 5 units
2 bedroom	32	35	Additional 3 units
3 bedroom	3	0	Remove 3 units – delete condition 3c
Total	78	83	Additional 5 units

- Basement Level 4 (RL 8.10)
 - A total of 21 car parking spaces, 2 lift cores, fire stairwell 2 and basement plant room.
- Basement Level 3 (RL 9.70) / Basement Level 2 (RL 10.80)
 - A total of 20 car parking spaces including 2 accessible spaces, 2 lift cores, 53 storage cages and fire stairwell 3 within basement level 3
 - A total of 28 car parking spaces including 7 accessible spaces, 2 lift cores, 8 bicycle spaces, 17 storage cages and fire stairwells 1 & 2 within basement level 2.
- Addition of Level 5 (at RL 31.50) – new seventh storey along Loftus Street
 - 5 residential units from the Loftus Street Lobby B at RL 31.50 comprising of 4 x one-bedroom & 1 x two-bedroom apartments.
 - Construct a new screened rooftop plant enclosure at RL 31.50, with no balustrading, with access from the Loftus Street fire stairs and enclosed with a single stage aluminium louvre and a powder coated finish. The double door from this plant enclosure is proposed to provide access to the rooftop of the development for the purpose of maintenance only.
- Modify condition 3a of DA-2014/346 to delete reference to B50, B51, B52, B53 and B54 units.
- Delete condition 3b of DA-2014/346 by removing the requirement to relocate the electricity kiosk from the Hirst Street frontage and incorporating into the building envelope and outside of deep soil landscaping areas.
- Deletion of the requirement to provide three-bedroom units by deleting condition 3c of DA-2014/346 by proposing an apartment mix of 5 x studio units, 43 x one-bedroom units & 35 x two-bedroom units.
- Delete condition 42 of DA-2014/346 and the need to remove surplus car parking spaces within the basement levels and setback the external wall to delete 9 car parking spaces.
- Amend condition 93 of DA-2014/346 to reflect that 100 car parking spaces are to be provided by reduction of 2 car parking spaces to basement level 4 and the addition of a basement level plant room.

PREVIOUS APPROVALS/ RELEVANT HISTORY

On 17 November 2013 Council held a Preliminary Development Application (PDA-2014/7) meeting for the redevelopment of lands at No.2-8 Loftus Street and No.3 Edward Street. This application involved the demolition of the existing structures and construction of a six-

storey residential flat building consisting of 78 residential apartment units with basement and ground floor level car parking for 91 vehicles.

The exclusion of the adjoining property at 1 Edward Street from the scheme created site isolation and the applicant was advised to incorporate this site into the development to achieve an appropriate planning outcome.

On 17 December 2014, the NSW Joint Regional Planning Panel (JRPP) granted approval for the demolition of existing structures and construction of a part five (5) & part six (6) storey residential flat building containing 78 residential units with 2 basement car parking levels and ground floor level car parking with capacity for 97 vehicles. The JRPP approval was consistent with Council's recommendation.

EXISTING AND SURROUNDING DEVELOPMENTS

The subject site (amalgamation of 8 lots) is known as 2-8 Loftus Street and 1-3 Edward Street, Turrella. The development site consists of Lots 24-27 and Lots 31-34 in DP 4274. The subject site has three street frontages to Loftus Street (east), Hirst Street (south) and Edward Street (west). The subject site comprises of a 66.234 metre northern boundary, a 54.483 metre eastern Loftus Street boundary, a 66.234 metre southern Hirst Street boundary and a western boundary of 48.778 metres to Edward Street. The development site area is approximately 3387 m².



Figure 1. Subject site (shown highlighted in red).

Two-storey light industrial buildings currently occupy the site across nearly the entire site area with No.3 Edward Street property being used as an open storage site of industrial/building materials, however, these light industrial buildings are currently under demolition as part of development consent no.DA-2014/346. The site is relatively flat along the Edward Street frontage with ground levels varying from RL 15.20 in the south-west corner (at Edward and Hirst Streets) to RL 15.08 at the north-western corner. The site does have a fall along Hirst Street, between RL 15.20 (south-west corner) to RL 13.06 in the south-east corner (at Loftus and Hirst Street) which comprises of a slight fall of

approximately 2.14 metres along the existing southern boundary. There is a slight cross fall from the south-western corner to the north-eastern corner (at the proposed location of the driveway access from Loftus Street) of approximately 3 metres.

To the north lies No.9 Edward Street and No.10 Loftus Street which are currently occupied by industrial buildings and are yet to be redeveloped as per structure plan diagram under the Bonar Street special precinct of the RDCP 2011.

To the east of the subject site is No.12-40 Bonar Street known as the 'Meriton development' approved under Part 3A of the EP&A Act which is currently occupied by four (4) part-six and part seven-storey residential flat buildings comprising of 307 apartment units with pedestrian access from Loftus Street (opposite the proposed vehicular access to the subject site).

To the south of the subject site are one-and-two storey dwelling houses along Hirst Street and Kelsey Street.

To the west are one-and-two storey dwelling houses along Edward Street. To the south-west at No.2 Edward Street, Turrella is the Old St David's Church heritage item.

The subject site is potentially contaminated land due to the previous industrial land uses and No.3 Edward Street being used as an industrial storage area. The subject site is affected by acid sulphate soils - Class 5.

The site is affected by land intended to be acquired for public purposes (road widening along Hirst Street).

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 96 Modification of consents – generally

Section 96 (2) of the Environmental Planning and Assessment Act 1979 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 consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: The proposal seeks modifications including the increase of gross floor area, additional building height along Loftus Street and changes to the approved conditions.

The proposal, as modified, is substantially the same development for which consent was originally granted under DA-2014/346.

- 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

Comment: The original proposal sought concurrence from the NSW Office of Water. The proposed modification does not seek additional excavation or greater depths than what was approved under DA-2014/346. The NSW Office of Water was electronically notified of the revised basement level plans and the NSW Office of Water commented that the amended proposal did not significantly alter the original general terms of approval, therefore, no further assessment was required. The proposed amendments are substantially the same as the development for which consent (and NSW Office of Water general terms of approval) was originally granted.

- 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 that requires the notification or advertising of applications for modification of a development consent, and*

Comment: The modification to the approved DA-2014/346 was required to be notified in accordance with the provisions of RDCP 2011. Four (4) submissions were 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.*

Comment: Four (4) submissions were received and the issues raised are addressed in this report.

Section 96 (3) of the Environmental Planning and Assessment Act 1979 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.”

Comment: A Section 96 modification is accepted as a “freestanding provision” that allows consideration of what would otherwise be a breach of a development standard (see *Gann v Sutherland Shire Council [2008] NSWLEC 157*). As the proposed modification seeks further variations to the building height and floor space ratio controls, a Clause 4.6 is not applicable, given that the proposed modification is substantially the same as the development as what has been granted, these variations are discussed under the ‘*Rockdale Local Environmental Plan 2011 (RLEP 2011)*’ heading of this report.

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 a BASIX Certificate for the proposed modification. The Certificate number is 544220M_03.

The commitments made result in the modified proposal for 83 units would result in the reduction in energy and water consumption shown below.

Reduction in Energy Consumption	30 (target 30%)
Reduction in Water Consumption	40 (target 40%)
Thermal Comfort	Pass (target pass)

The proposed amendments, therefore, complies with the requirements under the SEPP.

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

Given the previous industrial uses on the subject site a 'Remediation Action Plan' Report No.E22130AB, prepared by Environmental Investigations dated 9 September 2014 has been submitted. The report states that *"...after the implementation of this RAP, it is considered the site will be made suitable for the proposed residential land use."*

Council's Environmental Health Officer is satisfied that the land is suitable after the implementation of the remediation action plan for the purpose for which the development is proposed to be carried out. There is no proposed changes to the basement floor levels, therefore, the JRPP can be satisfied that the application does not require further consideration under clause 7(1) (a), (b) and (3) of SEPP 55.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The original application was not considered a traffic generating development and the subject land is not on land adjacent to a rail corridor. Accordingly, the proposed modification is consistent with the provisions of clauses 101 & 102 of the ISEPP and is acceptable in this regard.

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

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

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

The proposal was initially considered by the Design Review Panel on 5 June 2014. The DRP recommended changes to the proposal to address issues such as the interface of the building with the northern boundary and the low density streets (Edward and Hirst Streets). The DRP suggested that the corner of Loftus Street and Hirst Street was more capable of accommodating additional bulk given the existing high density development on the opposite side of Loftus Street. 'This would involve no increase in floor space ratio, simply reallocation of floor space'.

The applicant amended the plans and the DRP reconsidered the proposal on 30 September 2014. The DRP took into consideration comments from the previous panel in regard to reallocating the bulk of the building to the corner of Loftus and Hirst Streets. However the DRP found the proposed increase to the building height by one storey along the Loftus Street frontage unacceptable. The DRP was also concerned about the non compliance with the FSR control.

In addition, the DRP raised issues such as inadequate landscape species within the deep soil zones and the impact of the substation/electricity kiosk along Hirst Street on the balcony of unit A09 and deep soil areas.

As the proposed modification seeks to add a seventh floor along Loftus Street and given the DRP have articulated their concerns to the applicant on two separate occasions as stated above, the proposed modification was not re-referred to the DRP. The comments from the DRP are conveyed under the ten design quality principles below.

b. The design quality of the residential flat building when evaluated in accordance with the ten design quality principles

The proposal as modified is unsatisfactory and inconsistent with the design quality principles of the SEPP. The 10 design quality principles have been considered below.

Principle 1: Context

The surrounding context consists of predominately residential land uses, with a growing trend of residential flat building development similar to that of the proposal (to the east No.7 Hirst Street, Arncliffe and to the north-east at No.3-5 Loftus Street, Arncliffe). The approved building height of up to six-storeys was considered to be contextually appropriate in relation to the existing six-storey building to the east at No.7 Hirst Street, Arncliffe, the existing seven-storey building to the north-east at No.3-5 Loftus Street, Arncliffe and in regard to the future amalgamated and redeveloped residential site to the north of the subject site.

The Meriton development, located opposite the subject site, consists of a six storey building to the east with a seven-storey element to the north-east of the site along the Loftus Street streetscape. The Meriton development site was subject to higher density and building height controls than the subject site.

The approved DA-2014/346 will provide a built form that is contextually envisioned along Loftus Street, creating an appropriate setting for the site. An additional seventh storey along Loftus Street is not appropriate given the site, as originally approved, had regard to a future amalgamated and redeveloped residential site to the north.

As part of the original assessment, a future amalgamated and redeveloped residential site to the north had to be considered, where a partial zero building setback to the lower levels with recessed building setbacks to the upper levels will be encouraged to 'mirror' the subject site's building footprint and communal open space. The Bonar Street special precinct envisions the site to the north to be amalgamated and redeveloped into a high-density residential site, which would potentially relate to the subject development.

It is unlikely that a future amalgamated and redeveloped residential site to the north can 'mirror' a seven-storey residential flat building, as proposed under this application, whilst achieving compliance with the development controls and contextually fitting into the existing six-storey built form along Loftus Street. Further, the future amalgamated and redeveloped residential site to the north adjoins a low density residential zone with a maximum 8.5 metre building height to its northern boundary which will, in turn, need to provide adequate transition across the zone boundaries. The proposed modification to add a seventh storey will not contextually fit into a future amalgamated and redeveloped residential site to the north nor would the proposal facilitate adequate built form transition along Loftus Street.

Given the above, the proposed additional seventh storey along Loftus Street is not appropriate.

Principle 2: Scale

The scale of the proposal is unacceptable along Loftus Street. The height and scale of the proposed modification, is inconsistent with the built form envisaged for the subject site under RLEP 2011 and RDCP 2011. Upon receiving amended plans, the DRP considered that an additional floor on the Loftus Street frontage above the height plane was not acceptable.

The applicant states that the seventh storey is considered to be best design response for the site and is opposite the existing seven-storey building at No.3-5 Loftus Street, Arncliffe. The existing seven-storey building is part of the 'Meriton development' site and is not opposite the site as it is located to the north-east of the subject site.

The proposed modification does not provide an appropriate scale identified for the future character of the area. The proposal will not contextually fit into a future amalgamated and redeveloped residential site to the north nor would the proposal facilitate adequate built form transition along Loftus Street.

Principle 3: Built Form

The built form of the proposed modification is unacceptable along Loftus Street. Upon receiving amended plans, the DRP raised concerns with the additional storey in Loftus Street.

The applicant states that the seventh storey is an expression of the built form to Loftus Street that will reflect the high density built environment to the east. The applicant also states that the additional height has been relocated to the Loftus Street frontage. Provided the proposal comply with the floor space ratio control, the DRP stated that the top floor along Edward/Hirst Street maybe better accommodated on the corner of Loftus/Hirst Street, and not along the Loftus Street frontage. Instead of reallocating the top floor to the Loftus/Hirst Street corner, as suggested by the DRP, the proposed modification seeks to add an additional seventh storey along Loftus Street, without reducing the gross floor area within the subject site.

Without reducing the gross floor area within the subject site, the applicant have not provided a built form with a pronounced Loftus/Hirst Street corner, but have sought approval of an additional seventh floor along Loftus Street, of which, was not the objective of Council or the DRP.

Having regard to a future amalgamated and redeveloped residential site to the north, the proposed modification is not considered to have an overall built form compatible with similar developments and the emerging character of the area as it undergoes redevelopment.

Principle 4: Density

The proposed modification will result in a maximum gross floor area of approximately 6604.6 m², and result with a FSR of 1.95:1 which is not supported by Council or the DRP. The applicant has not reduced the gross floor area; in fact, the proposed modification seeks to increase the approved variation to the floor space ratio.

Principle 5: Resource, energy and water efficiency.

The location, orientation and design of the proposed modification maintains direct or diffused solar access and cross ventilation to all residential units. The Residential Flat Design Code (RFDC) recommends that at least 60% of the proposed units shall achieve natural flow through ventilation. All units and their habitable spaces are able to achieve adequate cross flow ventilation. The proposed modification does not seek additional south-facing units.

It is noted that all units within the development are designed with open layouts and private balconies and/or courtyards. A BASIX Certificate has been submitted with the application demonstrating the development is capable of meeting thermal, energy, and water efficiency targets.

Principle 6: Landscape

A large communal area is provided towards the northern portion of the site. This space is located on the podium above the basement car parking levels and cannot provide provisions for deep soil planting; however, sufficient depth is proposed to ensure landscaping within the non-deep soil areas.

The DRP raised concern with regard to inadequate deep soil areas within the site and the absence of large trees greater than 10 metres in height within the deep soil zones. In addition, the DRP commented that the electricity kiosk should be relocated to within the envelope and clear of the deep soil zones. Inadequate information and correspondence between the energy providers has been provided to adequately assess the applicant's request to delete conditions 3b & 4c from DA-2014/346 under this application which relate to the relocation of the electricity kiosk.

Principle 7: Amenity

All units within the building achieve a very good standard of amenity with regards to privacy, ventilation, and direct/diffused solar access. The proposed design provides high levels of internal amenity to future residents, with the units ranging in size and type (but not the unit mix). The room dimensions and layouts are appropriate for residential use and the maximum separation distance possible for the site has been achieved for visual outlook and privacy.

Private recreational areas are provided in the form of balconies/courtyards off the living areas and are further complemented by communal landscaped areas to ensure an overall quality of living for future occupants.

The proposed modification complies with disability access requirements and incorporates sufficient service areas as required. It is considered that the development satisfies the provisions with respect to layout and amenity, and therefore the proposed modification is consistent with this principle.

Principle 8: Safety and Security

The proposal as amended maintains a safe direct pedestrian access from Loftus Street and Edward Street. Casual surveillance to the communal open space area within the central courtyard is achieved with apartments overlooking the courtyard. Pedestrian and vehicular entries are clearly separated. Safe internal access is available from the basement car parking levels directly into the building and the public/private domain is clearly distinguished from Hirst Street. Security roller door access to the basement car park along with intercom entry to the lobby areas ensures the internal security of the residents.

Principle 9: Social Dimensions

The development provides a range of apartment style accommodation that is located within close proximity to public transport, recreation facilities, and shopping facilities. The subject site is located in an area identified for high-density residential and is approximately 640m walking distance to Turrella Railway Station and approximately 650m walking distance from Arncliffe Railway Station.

The proposed modification seeks to delete condition 3c, which requires amended plans to incorporate three (3) x three-bedroom units. The applicant has stated that there is no demand for three-bedroom units within Turrella, Bardwell Park and Arncliffe and that an analysis of these suburbs demonstrated a lower proportion of households with 2 bedrooms or less and a higher proportion of households with 4 or more bedrooms. It must be noted that all new residential flat buildings within Turrella, Bardwell Park and Arncliffe provide three-bedroom units. On this basis, the proposed modification to provide no three-bedroom units cannot be supported and it is recommended that condition 3c of DA-2014/346 be retained to incorporate three (3) x three-bedroom apartment units within the development site.

Principle 10: Aesthetics

Particular emphasis has been placed on the external appearance to enhance the streetscape, and to create a visual interest in the architecture of the building along all elevations, with a selection of appropriate finishes. The proposed modification is considered satisfactory in maintaining the contemporary design of the building.

c. The Residential Flat Design Code (RFDC)

The RFDC is a publication by the State Government which further expands on the 10 design quality principles by providing some detailed practical guidance for the design of residential flat buildings.

The proposal has been assessed against the provisions in the RFDC and the relevant provisions for the proposed modification, of note, are as follows:

Requirement	Comments	Compliance with the requirement and objectives
Development responds to the desired scale and character of the street and local area	The proposed modification seeks a building height of seven storeys along Loftus Street which together with the breach of the floor space ratio does not positively respond to the desired scale and character of the local area. Further, as building envelopes are not being used, and given the site is flood-affected, the modification will exceed the ideal maximum number of storeys (i.e. six-storeys) within the subject site. The proposed building height will adversely impact on the physical and visual amenity of the area and will set an undesirable precedent.	No
Allow reasonable daylight access to all developments and the public domain	Revised shadow diagrams were not provided by the applicant for the proposed modification, however, with regard to the proposed modification, a reasonable level of solar access can be achieved from 1pm mid-winter to the southern adjoining properties along Hirst Street. Despite a minor loss of direct sunlight during the morning hours to the communal open space, adequate direct sunlight is afforded to the communal open space. The proposal, as modified, maintains 75% of apartments with minimum 2 hours sunlight during winter.	Considered satisfactory, considering adequate daylight and ventilation is achieved
Variety of unit types and appropriate mix dependant on population trends and location	No 3-bedroom units are provided. See discussion under SEPP 65 above.	No, revert back to condition 3c of the original consent
Max. 10% single aspect units with southerly aspect (SW-SE)	There are no proposed, as modified, additional apartment units with a southerly aspect. The originally approved single-aspect units provide adequate diffused sunlight to the living rooms and balconies	Existing and unchanged under this modification

Rockdale Local Environmental Plan 2011 (RLEP 2011)

The proposal, as amended, has been assessed against the objectives and relevant controls under the RLEP 2011. The site is zoned R4 High Density Residential zone. It is considered that the proposal as modified is consistent with the objectives of the zone.

The proposal as modified is still consistent with the controls and objectives in RLEP 2011, except for the following:

Clause 4.3 – Height of Buildings

The original proposal relied on a Clause 4.6 written variation to the 18 metre maximum height of building controls under Clause 4.3 of the RLEP 2011, which supported a six-storey built form along Loftus Street.

The approved scheme granted consent to a building height of approximately 19.38-19.77 metres along Loftus Street, which exceeded the maximum 18 metre building height by 1.38-1.77 metres. The proposed modification seeks a building height (top of concrete roof) of approximately 22.38-22.77 metres along Loftus Street, which exceeds the maximum 18 metre building height by 4.38-4.77 metres.

The applicant states that the additional height in Loftus Street is consistent with the comments and advice provided by the DRP, responds to the flood affectation of the site and

the variation will not compromise the amenity of adjoining properties.

The applicant's justification is not supported as the additional building height sought seeks a building height of 4.38-4.77 metres above the maximum 18m building height control, which is inconsistent with the advice from DRP, is not considered to be compatible with the existing and future streetscape and will not assist in a transitional built form from a high density residential area to a low density residential area to the north. In addition the proposed additional height will set an undesirable precedent for similar developments.

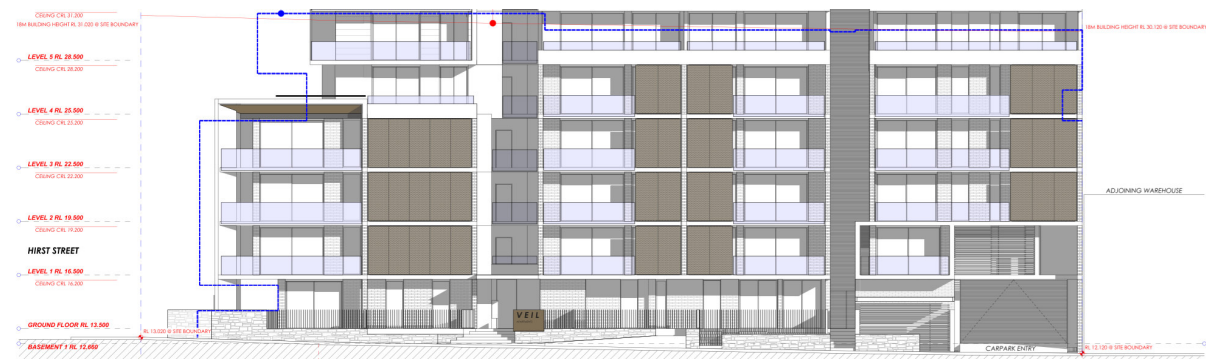


Figure 2. Approved east elevation along Loftus Street, with a six-storey built form along Loftus Street.
Source: Benson McCormack Architects

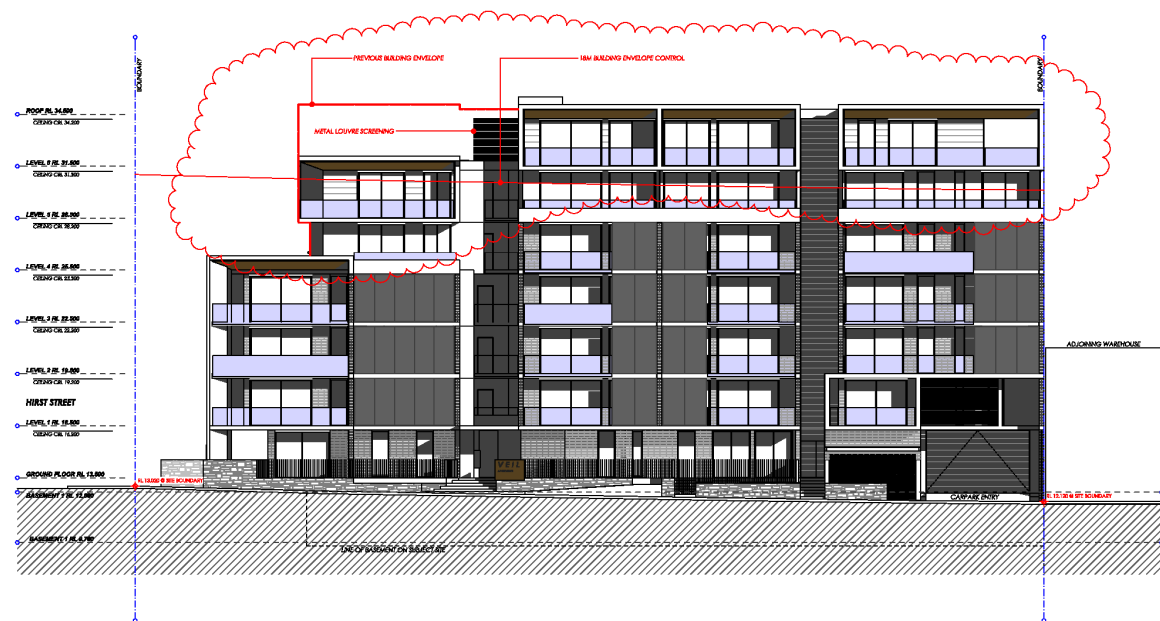


Figure 3. Proposed east elevation along Loftus Street. The proposed modification is the floor level shown above the 18m building height line and within the 'red bubble cloud'.
Source: Benson McCormack Architects

Clause 4.4 – Floor Space Ratio (FSR)

The permissible gross floor area of the subject site is 6096.6 m² (FSR of 1.8:1). The approved gross floor area is 6232 m², resulted in a FSR of 1.84:1, and also relied on a Clause 4.6 written variation to the floor space ratio control under Clause 4.4 of the RLEP 2011.

The proposed modification will result in a maximum gross floor area of approximately 6604.6 m², and result in a FSR of 1.95:1. The proposal, as modified, will exceed the maximum gross floor by approximately 508 m² (or 8.3%) over the maximum GFA and does not comply with the maximum FSR of 1.8:1.

The applicant has not provided a revised justification for the additional variation to the floor space ratio control, however, the applicant has stated that the revised Clause 4.6 variations to the building height and floor space ratio submitted with the original application will function for this modification. It must be noted that the revised Clause 4.6 variation to the original floor space ratio was not supported and conditions were proposed to reduce the gross floor area to achieve a FSR closer to compliant, resulting in a favourable planning outcome within the R4 zone in the Bonar Street Special Precinct. The proposed modification is also not worthy of support for the reasons stated in the original planning assessment report.

The proposed gross floor area cannot be supported and will establish an undesirable precedent without providing a public benefit.

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 State Environmental Planning Policy (SEPP) 65 was publicly exhibited from 27 September 2014 until 27 October 2014 by the NSW Department of Planning. This document makes wholesale changes and amendments to the current Residential Flat Design Code (RFDC). The Draft SEPP 65 is yet to be adopted and is anticipated to be renamed as the 'Draft Apartment Design Guide'.

The proposed modification is considered to be inconsistent with the objectives outlined within the 'Draft Apartment Design Guide' in relation to building height and floor space ratio and the performance criteria outlined in the 'Draft Apartment Design Guide' in relation to deep soil zones and apartment mix.

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

Rockdale Development Control Plan 2011(RDCP 2011)

The original development was assessed in accordance with the relevant provisions of the RDCP 2011. The original development was approved with variations to the building separation and setbacks, open space and landscape design, deep soil zones, housing (apartment mix) diversity and choice, one-bedroom unit size and bathroom size.

The proposed modification has been assessed against the objectives and controls of the RDCP 2011 and associated documents being the Wolli Creek and Bonar Street Public Domain Plan, Technical Specifications for Parking, Technical Specifications for Stormwater, Waste Minimisation and Management and Landscaping.

The following issues are relevant to determine compliance of the proposed modification with the objectives of RDCP 2011:

Part 4.1.1 Views and Vistas

The approved scheme had an overall 'negligible to minor impact' on the existing view corridors as viewed from the residential properties surrounding the site. A view loss assessment has been undertaken with regard to the original objecting property (i.e. sixth-

storey 2-bedroom unit at 3-5 Loftus Street, Turrella) and from the fourth storey 2-bedroom unit at 7 Hirst Street, Turrella in accordance with *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140* in relation to possible view loss from the proposed additional storey along Loftus Street.

To decide whether or not view sharing is reasonable, a four-step assessment was conducted from the objecting sixth-storey 2-bedroom unit of the 'Meriton development' at 3-5 Loftus Street, Turrella and from the fourth storey 2-bedroom unit at 7 Hirst Street, Turrella.

There are 180-degree elevated standing district views but no water views from the objecting properties over the subject site from the buildings at 3-5 Loftus Street & 7 Hirst Street.

The approved scheme had an overall 'negligible to minor impact' on the existing view corridors as viewed from the residential properties surrounding the site.

As a whole, the proposal modification, will slightly increase the view loss impact to a 'minor impact' of the existing view corridors as viewed from the residential properties surrounding the site.

Part 4.4.2 Solar Access

The proposed modification to add a seventh storey along Loftus Street was not accompanied by revised solar access diagrams depicting the shadows cast between 9am and 3pm in June.

The proposed modification generally complies with the minimum solar access requirements for each proposed unit but will have some affectation over the property at 10 Hirst Street. An inspection of the shadow diagrams submitted with the previous 85 unit scheme application indicates that the proposal is likely to result in minor overshadowing to the property at 10 Hirst Street during the day only in the winter months from 9am to 1pm. In this regard, the shadows likely to be cast by the development are not considered to be excessive as it will only affect this property up to 1pm thereby allowing them to receive 2 hours of direct sunlight from 1pm.

The minor impact on the adjacent properties is considered to be acceptable being limited only to mid winter. As such, it is considered that the proposed modification is satisfactory having regard to solar access and overshadowing.

Notwithstanding, reasonable and varying levels of direct and diffused solar access are provided throughout the day to the surrounding properties along the southern side of Hirst Street.

Given the above, the proposal is considered to perform adequately in terms of solar access.

Part 4.4.7 Wind Impacts

Refer to 'Impacts of the Development' section of this report.

Part 4.5.1 Housing Diversity and Choice

The following apartment mix applies: 1-bedroom/studio (10%-30% of total unit mix), 2-bedroom (50%-75% of total unit mix) and 3-bedroom or more (10%-20% of total unit mix).

The proposed 83 apartments scheme, as modified, comprising of 48 x studio/one-bedroom units (57.8%) and 35 x two-bedroom units (42.2%) is not considered a similar unit mix to that

of recent residential flat building approvals within Wolli Creek/Turrella/Arncliffe. All recent residential flat building approvals within Wolli Creek/Turrella/Arncliffe have accommodated three-bedroom units.

The proposal is not supported in regard to this clause.

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).

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

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

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

Planning precedent

It is acknowledged that the subject site and the future amalgamated and redeveloped site to the north is undergoing significant redevelopment from industrial land uses into an emerging character of residential flat buildings. The proposal seeks further variations to the building height along Loftus Street.

The approved scheme does not entirely ensure that future redevelopments of surrounding sites have no justifiable reason or other precedents to request a building height and FSR variation. The approved six-storey building scheme along Loftus Street is consistent with the envisaged future amalgamated and redeveloped site to the north (i.e. 9-11 Edward Street & 10-12 Loftus Street, Turrella). This precedent is considered contextually reasonable given the established bulk, scale and height of six and seven storey residential flat buildings within the 'Meriton development', across the site to the east. The proposed modification will contravene this notion and create an undesirable precedent of seeking additional floor levels and excessive gross floor areas.

Wind Impacts

A wind assessment report Ref No.2014-055 Revision 1, as amended, prepared by ANA Civil Pty Ltd, dated 10 October 2014 concludes that the proposed development will have a minor influence in the local wind environment and complies with the AS 1170.2. It is noted that this report does not include any specific recommendations and states the proposed wind conditions for pedestrians surrounding the development and the users of the communal areas are considered to be acceptable in accordance with the AS 1170.2 for a five-storey building.

The proposed modification does not alter the building footprint but increases the approved building height by adding a seventh storey along Loftus Street. The recommendations in the wind assessment report, submitted with the original application, requires an amendment as the recommendations of the original report are now out-of-date and inconsistent with the proposed scheme.

The proposed modification was not accompanied by an amended wind assessment report and the revised statement of environmental effects was silent on the 'wind impact' section of the RDCP 2011. The proposed amendment to the approved scheme adds a seventh storey,

and given the above, insufficient information has been provided to ascertain whether the amended proposal adequately satisfies Part 4.4.7 of the RDCP 2011.

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. The proposal is not considered suitable given the non-compliance with the FSR and Building Height controls. The subject site, in its context, is not suitable for the proposed modification.

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

The original development has been notified in accordance with Council's Development Control Plan 2011 and applicable legislation for a period of thirty (30) days from 15 May 2014 until 23 June 2014 and seven (7) letters of objections were received.

The proposed modification has been notified in accordance with Council's Development Control Plan 2011 and applicable legislation for a period of fourteen (14) days (excluding public holidays) from 24 March 2015 until 14 April 2015 and four (4) letters of objections were received.

The issues raised in the submissions are discussed below:

Issue: Apartment mix

Concern has been raised that the apartment mix is not in accordance with the Bonar Street Special Precinct and the objector states that "...the deletion of the condition to include three x three-bedroom units in the development..." should be retained as the "...proposed amendments are not in the spirit of the Development Consent issues by the JRPP in December 2014".

Comment: The proposed amendments seek to delete the condition to improve the apartment mix and there has been no evidence or reports that can verify the claim by the applicant that there is no need for 3-bedroom units within the Arncliffe/Turrella area. The objection raised is upheld.

Issue: Height of Building

Concern has been raised that the amendments will breach the maximum building height within the subject site and that the "...reinstatement of units from the Level 5 Plan along Loftus Street, to the extent that it significantly exceeds the required height limits."

Comment: It is noted that the original DA-2014/346 approved a variation to the Height of Building. This matter has been addressed in detail in this report under the Clause 4.3 of the RLEP 2011. The objection raised is upheld.

Issue: Floor Space Ratio

Concern has been raised that the amendments will breach the maximum floor space ratio within the subject site and that the "...development should not exceed the 1.8:1 FSR...and it appears that the proposed submission significantly exceeds this and the revised FSR calculation in this modified proposal has a number of exclusions."

Comment: The proposed modification seeks to exceed the maximum permissible gross floor by approximately 508 square metres, which is approximately 372.6 square metres over the approved variation to the FSR. The objection raised is upheld as the request for additional floor space is not supported and will set an undesirable precedent.

Issue: Noise

Concern has been raised regarding general road noise.

Comment: The objection raises issues which are existing with regard to Loftus Street being a thoroughfare. This issue has been addressed in the original traffic and parking report and by Council's Development Engineer. The proposed modification does not result in any change to the traffic conditions approved under DA-2014/346.

Issue: Access to Sunlight

Concerns have been raised that the amendments will *"...result in a significant reduction in natural sunlight"*

Comment: The solar access and overshadowing impacts are detailed on the architectural plans drawn by Benson McCormack Architects. The plans are generally in accordance with the solar access requirements under the RDCP 2011 and SEPP 65 for 21 June between 9am and 3pm. Concerns regarding this issue does not warrant the refusal of the application. Refer to comments regarding overshadowing under 'Rockdale Development Control Plan 2011' section in this report.

Issue: Visual appearance

Concern has been raised that the amendments will *contribute "...to the uninspiring design of recent residential development designs around the Arncliffe/Turrella area..."*

Comment: The concern regarding the visual appearance of the building has been addressed in the original DA-2014/346 and does not warrant the refusal of the application.

Issue: Absence of car parking

Concern has been raised that the amendments and original application *"...had no provision for car parking...and to introduce, at a conservative estimate, a further 60 to 70 additional motor vehicles requiring street parking...would be reprehensible..."*

Comment: The original development application DA-2014/346, as amended by the conditions, provided 3 car parking levels for 97 vehicles. The proposal, as amended, seeks to delete condition 42 and amend condition 93 which would add 3 car parking spaces to the approved DA-2014/346. The original application and the amended scheme comply with Council's car parking requirements.

Devaluation of property

Concern was raised that the proposed development will *"...decrease the value of my property and neighbouring properties..."*

Comment: This claim has not been substantiated. There are many socio-economic factors that determine the value of real estate and the proposal cannot be held solely responsible for changes to the value of adjacent and surrounding properties. Further, property devaluation is not identified as a 'head of consideration' and therefore is not a consideration under Section 79C 'Evaluation' of *Environmental Planning and Assessment Act 1979* and does not warrant refusal or further amendment of the application.

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

proposed modification, the proposal does not allow the development of the site in accordance with its environmental capacity and future vision for the area.

The proposed modification results in a development that further exceeds Council's approved and anticipated future planning controls for the area. As such, the proposal is therefore not in the public interest.

CONCLUSION

The proposal has been assessed in accordance with Section 79C(1) & 96 of the Environmental Planning and Assessment Act 1979. The proposal modification to add 5 units totalling 83 units and changes to building height is inconsistent with the requirements of State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development (SEPP 65), the Residential Flat Design Code and the Rockdale Local Environmental Plan 2011 is considered to set an undesirable precedent and would act to undermine the controls. As such, it is recommended that the JRPP refuse the application for the reasons stated in this report.