

24 November 2015

General Manager
Rockdale City Council
PO Box 21
ROCKDALE NSW 2216

Dear Sir,

**108 Princes Highway, Arncliffe
Development Application No. DA-2016/26
Mixed-Use Retail/Commercial/Apartment Complex**

Development Application No. DA-2016/26 was submitted to Council on 17 July 2015 seeking approval to demolish the existing structures on this land and to construct a mixed-use development comprising 234 residential units, six (6) commercial units, basement car parking and associated landscaping.

The assessment of the application has revealed that:

- part of the complex, with a building height of up to 31.8m, will exceed the building height standard of 29.5m imposed by Clause 4.3(2) of *Rockdale Local Environmental Plan 2011 (RLEP 2011)*; and
- the gross floor area of the complex will exceed the floor space ratio standard of 2.5:1 imposed by Clause 4.4(2) of the *Plan* by some 291.7m².

This submission recasts the submission dated 4 November 2015 relating to the proposed variations from these standards in terms of the judgments made by Land and Environment Court of NSW and the Court of Appeal in the matter of *Four2Five Pty Ltd v Ashfield Council* concerning variations from development standards under the terms of Clause 4.6 of the *Standard Instrument*.

1.0 Variations to Standards

Clause 4.6(2) of *RLEP 2011* provides that development consent may be granted for development even though the development would contravene a development standard imposed by the *Plan* or any other environmental planning instrument.

The objectives of Clause 4.6 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development; and
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.



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2.0 Building Height Standard

The maximum building height for development on this land under the terms of Clause 4.3(2) of *RLEP 2011* is 29.5m.

The complex is to have a building height ranging from 17.1m to 29.1m, excluding parts of the roof form of Buildings B and C which front the Princes Highway.

Parts of the roof of Buildings B and C include pop-up roof forms and are to have a maximum height of up to 31.8m.

Under the terms of Clause 4.6 of *RLEP 2011*, consent is not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the standard by demonstrating the following.

Clause 4.6(3)(a) – Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The site:

- represents the consolidation of 16 lots to create a major development site;
- has frontages of some 107.9m to the Princes Highway, 72.49m to Kyle Street and 61.51m to Charles Street;
- has a depth varying from 60.27m to 74.3m in relation to its Princes Highway frontage;
- has an area of 7,492m²;
- experiences a fall of some 4.5m from its south-western corner adjacent to the Highway to its north-eastern corner adjacent to the Kyle Street/Charles Street intersection; and
- is located in close proximity to the Arncliffe Railway Station and Town Centre.

These dimensional, topographical and locational attributes justify:

- a site-specific approach to the development standards to be applied to its redevelopment; and
- variations from standards, which are, more appropriately, applied to the redevelopment of much smaller sites.

Such an approach is consistent with contemporary town planning practice adopted by other local government authorities which require site-specific development control plans to be prepared for sites with an area in excess of 5,000m² and apply development bonuses for the redevelopment of such sites.

Clause 5.6(2) of *RLEP 2011* provides that architectural roof features may exceed the building height standard, with Council's consent.

The proposed height variation will, for all intents and purposes, appear to be architectural roof features and it is understood that similar roof designs have been considered by Council to be architectural roof features.

The complex has been designed to maximise its height and development density adjacent to the Princes Highway and to step down to well below the height standard where it interfaces with lower density residential development to the east of the site.

The maximum variation from the height standard is 2.3m over a relatively small portion of the complex and represents a variation of some 7.8% from the standard.

A variation of this nature and extent is minor and inconsequential and will not have any effect on the amenity enjoyed on adjoining and surrounding properties.

In these circumstances, the building height standard is unreasonable and unnecessary in terms of:

- the unique dimensional characteristics of the land resulting from the consolidation of 16 lots to create this major development site;
- the topographical and locational characteristics of the site and its setting;
- the nature, extent and location of the section of the complex that exceeds the standard;
- the variation from the standard not being readily discernible in the context of the height, bulk and scale of the development proposed;
- the variation from the standard providing modulation to the complex's roof form in a manner not dissimilar to variations permitted from the standard for architectural roof features under Clause 5.6(2) of *RLEP 2011*; and
- the minor and inconsequential nature and extent of the variation from the standard.

Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard.

The development in the form proposed will:

- achieve a desirable and high quality urban design outcome for the redevelopment of the land;
- facilitate the redevelopment of the land for a vibrant mixed-use development providing for higher-density retail/commercial/residential development;
- eliminate the obsolete and unsightly industrial/warehouse development on the land;
- revitalise and rejuvenate development in this locality and realise Council's vision for growing Arncliffe as a residential precinct and as a centre;
- provide a catalyst for future redevelopment of land in this locality in a manner consistent with Council's vision and adopted *Princes Highway Strategy*; and
- facilitate the redevelopment of the land in a manner consistent with contemporary town planning principles and practice relating to the integration of transport and land use and transit-oriented development.

Consequently, there are sufficient environmental grounds to justify the variation from the building height standard.

Clause 4.6(4)(a)(i) – The consent authority is satisfied that a written request has adequately addressed the matters outlined above.

See above.

Clause 4.6(4)(a)(ii) – The consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the following objectives of the building height standard contained in Clause 4.3(1) of *RLEP 2011*:

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

The building height is to be consistent with the building height standard in terms of its numerical value and variations permitted for architectural roof features.

- (b) To permit building heights that encourage high quality urban form.**

The proposal will result in a development which achieves a desirable and high quality urban design outcome for the redevelopment of the land.

- (c) To provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain.**

The height of the complex will maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain in the vicinity of the site.

- (d) To nominate heights that will provide an appropriate transition in built form and land use intensity.**

The complex has been designed to provide an appropriate transition in built form and land use intensity by providing for a gradation in the complex's height, bulk and scale from its Princes Highway frontage to the lower density residential development located to the east of the site.

Clause 4.6(4)(a)(ii) – The proposed development will be in the public interest because it is consistent with the following objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out:

- (a) To provide a mixture of compatible land uses.**

The complex is to provide an appropriate and satisfactory mixture of compatible land uses.

- (b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.**

The complex is to integrate suitable retail/commercial space and residential development in this highly accessible location so as to maximise public transport patronage and encourage walking and cycling.

Clause 4.6(4)(b) – The concurrence of the Secretary of the Department of Planning & Environment is obtained.

The Director-General's concurrence may be assumed by Council in accordance with the NSW Department of Planning & Infrastructure's Planning Circular PS 08-003, issued on 9 May 2008.

Clause 4.6(5)(a) – Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The variation from the standard will not raise any matter of significance for State or regional environmental planning.

The proposal will be consistent with *A Plan for Growing Sydney* published by the NSW Department of Planning & Environment in December 2014 and, more particularly:

- Direction 2.1: To accelerate housing supply across Sydney by accelerating housing supply and local housing choices and new housing in designated infill areas (established urban areas) through the Priority Precinct program;
- Direction 2.2: To accelerate urban renewal across Sydney to provide homes closer to jobs by supporting Council-led urban infill projects and undertaking urban renewal in transport corridors;
- Direction 2.3: To improve housing choice to suit different needs and lifestyles by delivering more opportunities for affordable housing; and
- Direction 3.1: To revitalise existing suburbs.

Clause 4.6(5)(b) – The public benefit of maintaining the development standard.

There is no significant public benefit in maintaining the standard in the overall context of the development proposed in the circumstances of this case.

Clause 4.6(5)(c) – Any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no other matters required to be taken into consideration relating to the required concurrence.

3.0 Conclusion:

The building height standard is considered to be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify variations from the standard for the reasons outlined above.

The variation from the standard is consistent with the objectives of the standard expressed in Clause 4.3(1) of *RLEP 2011* and the proposal is consistent with the objectives for development in the B4 Mixed Use zone.

The development with the variation from the standard as proposed:

- will be consistent with the height, bulk and scale of the character of development in this locality fostered and promoted by *RLEP 2011*;
- will not result in any adverse environmental impacts in terms of the complex's height, bulk and scale;
- will not have any impact on the amenity of enjoyed by residents of surrounding properties in terms of its height, bulk, scale, overshadowing, loss of privacy, view loss or visual impact;
- will facilitate the optimisation of development on this land in terms of its proximity to the Arncliffe Railway Station and Town Centre; and
- will result in a desirable and high quality urban design outcome for the development of this major development site.

The proposal is, therefore, suitable for approval under the terms of Clause 4.6(2) of *RLEP 2011*, despite its variation from the numerical value of the building height standard contained in Clause 4.3(2) of the *Plan*.

4.0 Floor Space Ratio Standard

Applying the floor space ratio of 2.5:1 permissible under Clause 4.4(2) of *RLEP 2011* to the site area of 7,492m² enables a maximum gross floor area for development on this land of 18,730m².

According to Council's assessment the complex is to have a gross floor area of some 19,021.7m², exceeding the floor space ratio standard by some 291.7m².

The gross floor area in excess of the standard comprises:

- a garbage room, with an area of 96.9m², located at the ground floor level under Building D, which is accessed from Kyle Street;
- a basement car parking space, which exceeds Council's requirements, with an area of 13m²;
- garbage storage facilities, with an area of 64.8m², located in the lift/service core on each of the floors in Building C; and
- partly open horizontal circulation areas outside the lift lobbies in Building C, with an area of 117m².

The garbage room under Building D is to be located adjacent to the loading area to be provided for the complex and is, consequently, the most appropriate location for such a facility from an operational perspective.

Had this facility been located in the basement car parking area, it would have been excluded from consideration as gross floor area.

However, such a location:

- would be extremely costly to establish;
- would be operationally impractical; and
- would increase truck movements in Charles Street that would be likely to have an adverse effect on surrounding residential properties.

The basement car space which is in excess of Council's requirements will not be visible from the public domain and does not add to the height, bulk and scale of the complex.

If this space was to be used for storage or vehicular access, it would not be considered to be gross floor area.

The garbage storage facilities located on each floor of Building C are not dissimilar to other elements of building infrastructure that are normally excluded from gross floor area, such as plant rooms, ducting and space used for the loading and unloading of goods.

The horizontal circulation areas outside the lift lobbies in Building C should not be included in gross floor area because they are not within the internal face of the external wall of the building when measured at a height of 1.4m above the floor level.

Excluding these open circulation spaces, the extent of the variation from the floor space ratio standard is 174.7m², or 0.9%.

Under the terms of Clause 4.6 of *RLEP 2011*, consent is not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the standard by demonstrating the following.

Clause 4.6(3)(a) – Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The site:

- represents the consolidation of 16 lots to create a major development site;
- has frontages of some 107.9m to the Princes Highway, 72.49m to Kyle Street and 61.51m to Charles Street;
- has a depth varying from 60.27m to 74.3m in relation to its Princes Highway frontage;
- has an area of 7,492m²;
- experiences a fall of some 4.5m from its south-western corner adjacent to the Highway to its north-eastern corner adjacent to the Kyle Street/Charles Street intersection; and
- is located in close proximity to the Arncliffe Railway Station and Town Centre.

These dimensional, topographical and locational attributes justify:

- a site-specific approach to the development standards to be applied to its redevelopment; and
- variations from standards, which are, more appropriately, applied to the redevelopment of much smaller sites.

Such an approach is consistent with contemporary town planning practice adopted by other local government authorities which require site-specific development control plans to be prepared for sites with an area in excess of 5,000m² and apply development bonuses for the redevelopment of such sites.

The variation from the floor space ratio standard of 291.7m² represents a variation of some 1.6% from the standard.

A variation of this nature and extent is minor and inconsequential and will not have any effect on the amenity enjoyed on adjoining and surrounding properties.

In these circumstances, the floor space ratio standard is unreasonable and unnecessary in terms of:

- the unique dimensional characteristics of the land resulting from the consolidation of 16 lots to create this major development site;
- the topographical and locational characteristics of the site and its setting;
- the nature, extent and location of the section of the complex that exceeds the standard;
- the variation from the standard not being readily discernible in the context of the height, bulk and scale of the development proposed; and
- the minor and inconsequential nature and extent of the variation from the standard.

Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard.

The development in the form proposed will:

- achieve a desirable and high quality urban design outcome for the redevelopment of the land;
- facilitate the redevelopment of the land for a vibrant mixed-use development providing for higher-density retail/commercial/residential development;
- eliminate the obsolete and unsightly industrial/warehouse development on the land;
- revitalise and rejuvenate development in this locality and realise Council's vision for growing Arncliffe as a residential precinct and as a centre;
- provide a catalyst for future redevelopment of land in this locality in a manner consistent with Council's vision and adopted *Princes Highway Strategy*; and
- facilitate the redevelopment of the land in a manner consistent with contemporary town planning principles and practice relating to the integration of transport and land use and transit-oriented development.

Consequently, there are sufficient environmental grounds to justify the variation from the building floor space ratio standard.

Clause 4.6(4)(a)(i) – The consent authority is satisfied that a written request has adequately addressed the matters outlined above.

See above.

Clause 4.6(4)(a)(ii) – The consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the following objectives of the floor space ratio standard contained in Clause 4.4(1) of *RLEP 2011*:

- (a) To establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale.**

The proposal does not materially affect the density or intensity of the development and will not require the provision of any additional infrastructure or generate additional traffic to the area as a result of the proposed variation from the floor space ratio standard.

The proposal will result in a development that is consistent with the desired future character of development in this section of the Rockdale LGA.

- (b) To minimise adverse environmental effects on the use or enjoyment of adjoining properties.**

The proposal will not have any adverse environmental effects on the use or enjoyment of adjoining properties.

- (c) To maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.**

The height, bulk and scale of the proposal will maintain an appropriate visual relationship between the development and the existing character of development in this area, which is to undergo a substantial transformation.

Clause 4.6(4)(a)(ii) – The proposed development will be in the public interest because it is consistent with the following objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out:

- (a) To provide a mixture of compatible land uses.**

The complex is to provide an appropriate and satisfactory mixture of compatible land uses.

(b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The complex is to integrate suitable retail/commercial space and residential development in this highly accessible location so as to maximise public transport patronage and encourage walking and cycling.

Clause 4.6(4)(b) – The concurrence of the Secretary of the Department of Planning & Environment.

The Director-General's concurrence may be assumed by Council in accordance with the NSW Department of Planning & Infrastructure's Planning Circular PS 08-003, issued on 9 May 2008.

Clause 4.6(5)(a) – Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The variation from the standard will not raise any matter of significance for State or regional environmental planning.

The proposal will be consistent with *A Plan for Growing Sydney* published by the NSW Department of Planning & Environment in December 2014 and, more particularly:

- Direction 2.1: To accelerate housing supply across Sydney by accelerating housing supply and local housing choices and new housing in designated infill areas (established urban areas) through the Priority Precinct program;
- Direction 2.2: To accelerate urban renewal across Sydney to provide homes closer to jobs by supporting Council-led urban infill projects and undertaking urban renewal in transport corridors;
- Direction 2.3: To improve housing choice to suit different needs and lifestyles by delivering more opportunities for affordable housing; and
- Direction 3.1: To revitalise existing suburbs.

Clause 4.6(5)(b) – The public benefit of maintaining the development standard.

There is no significant public benefit in maintaining the standard in the overall context of the development proposed in the circumstances of this case.

Clause 4.6(5)(c) – Any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no other matters required to be taken into consideration relating to the required concurrence.

5.0 Conclusion:

The floor space ratio standard is considered to be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify variations from the standard for the reasons outlined above.

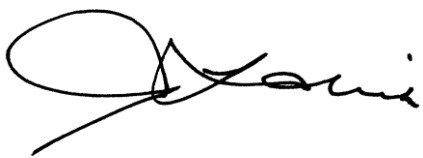
The variation from the standard is consistent with the objectives of the standard expressed in Clause 4.4(1) of *RLEP 2011* and the proposal is consistent with the objectives for development in the B4 Mixed Use zone.

The development with the variation from the standard as proposed:

- will be consistent with the height, bulk and scale of the character of development in this locality fostered and promoted by *RLEP 2011*;
- will not result in any adverse environmental impacts in terms of the complex's height, bulk and scale;
- will not have any impact on the amenity of enjoyed by residents of surrounding properties in terms of its height, bulk, scale, overshadowing, loss of privacy, view loss or visual impact;
- will facilitate the optimisation of development on this land in terms of its proximity to the Arncliffe Railway Station and Town Centre; and
- will result in a desirable and high quality urban design outcome for the development of this major development site.

The proposal is, therefore, suitable for approval under the terms of Clause 4.6(2) of *RLEP 2011*, despite its variation from the numerical value of the floor space ratio standard contained in Clause 4.4(2) of the *Plan*.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andy Ludvik', with a stylized, flowing script.

Andy Ludvik
Ludvik & Associates Pty Ltd