

COUNCIL ASSESSMENT REPORT

Panel Reference	2016SYE005
DA Number	DA-2016/241
LGA	BAYSIDE
Proposed Development	Demolition of existing structures and construction of 1 x 11 storey apartment building and 2 x 10 storey mixed use buildings over 3-6 levels of basement parking (580 parking spaces), with rooftop communal space, public domain/landscape works in Chapel Street and Chapel Lane, reconstruction and widening of Chapel Lane and stratum subdivision.
Street Address	Nos. 1-11 Chapel Street, Nos. 1-3 Chapel Lane and Nos. 6A-12 Lister Avenue, and portions of Chapel Street and Chapel Lane ROCKDALE NSW 2216
Applicant/Owner	Applicant: Combined Projects (Rockdale) Pty Ltd Owner: Combined Projects (Kogarah) Pty Ltd, Combined Projects (Rockdale) Pty Ltd, Rockdale Council
Number of Submissions	Twelve(12)
Regional Development Criteria (Schedule 4A of the Act)	Cost of proposal \$129,928,125
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • SEPP (Infrastructure) • SEPP (BASIX) • SEPP 55 • SEPP 65 • Apartment Design Guide • SREP No. 2 • Rockdale LEP 2011 • Rockdale DCP 2011
Is a Clause 4.6 variation request required?	No – subject to the development being determined to exhibit design excellence
Does the DA require Special Infrastructure Contributions conditions (S94EF)?	No
Have draft conditions been provided to the applicant for comment? Have any comments been considered by council in the assessment report?	No – the application is recommended for refusal
List all documents submitted with this report for the Panel's consideration	Reasons for refusal
Recommendation	Refusal
Report prepared by	Kerry Gordon, Town Planning Consultant
Report date	23 November 2016

Precis

The proposal is for demolition of existing structures and construction of 1 x 11 storey apartment building and 2 x 10 storey mixed use buildings over 3-6 levels of basement parking (580 parking spaces), with rooftop communal space, public domain/landscape works in Chapel Street and Chapel Lane, reconstruction and widening of Chapel Lane and stratum subdivision.

The site is zoned part B4 Mixed Use and part SP2 Infrastructure under Rockdale Local Environmental Plan 2011 (RLEP 2011) and the proposed residential flat buildings and commercial premises are permissible uses with consent.

The proposal exceeds the base 28m height limit under Rockdale Local Environmental Plan 2011 (RLEP 2011) and is not considered to exhibit design excellence pursuant to clause 6.14 and as such it is not recommended that the 12m height bonus be applied to the development. Without the bonus the proposal would require a clause 4.6 variation request to the height control and one has not been provided.

The proposed design contains significant variations from the controls contained within the Apartment Design Guide, most notably the separation distances and as a result has unacceptable impacts upon adjoining properties and their development potential and provides unacceptable amenity within the site. The proposal also contains substantial variations to the controls within Rockdale Development Control Plan 2011, most notably the setback and podium controls applicable to the Chapel Street Precinct which are site specific controls. It is therefore considered that the development is inconsistent with the desired future character of the area.

The proposal has a Capital Investment Value greater than \$20 million (i.e. \$129,928,125) and as such the development application is referred to the Sydney Planning Panel for determination. The recommendation is for refusal for the attached reasons.

Officer Recommendation

1. That development application DA-2016/241 for demolition of existing structures and construction of 1 x 11 storey apartment building and 2 x 10 storey mixed use buildings over 3-6 levels of basement parking (580 parking spaces), with rooftop communal space, public domain/landscape works in Chapel Street and Chapel Lane, reconstruction and widening of Chapel Lane and stratum subdivision be REFUSED for the attached reasons.

Report Background

HISTORY

In April 2015 a Design Excellence Competition was held for the subject site which was previously partially owned by Rockdale Council and was largely used as public car parks. The site had been subject to a massing study which was completed in July 2014 to inform the future built form and yield of the sites. The competition was run as an invited single-stage process with 3 architectural firms invited to submit.

The jury outcome of the design competition was that whilst none of the submissions exhibited Design Excellence, the scheme by Architecture and Building Works was selected to proceed as being capable of achieving Design Excellence, subject to significant amendment. The developer proceeded to then submit an amended scheme to Council in the form of a development application.

Significant concerns were raised with the initial proposal and the applicant was advised of the concerns, as were the JRPP in its briefing. In response to the concerns, the applicant lodged amended plans which were again assessed. The amended plans included some significant improvements, such as providing two tower elements on Site C instead of a single tower, and improvements in setback above podium and separation from adjoining sites, but still retained substantial problems.

Rather than return the amended plans to the St George Design Review Panel for further comment, Rockdale Council decided to have the amended plans reviewed for Design Excellence by the Design Integrity Panel (comprised of Olivia Hyde – Office of the Government Architect, Adam Russell – RAW Architects and Libby Gallagher – Gallagher Studio). The Panel prepared a report which did not award the proposal Design Excellence, with concerns about the built form, scale and height, building separation, public domain, interface with adjoining sites, lack of deep soil and clarity and coherence of the public domain. The Panel made recommendations for changes to the design and additional information that should be provided.

The applicant forwarded an amended set of plans to the Panel which again did not award Design Excellence to the proposal, indicating that improvements were made in relation to some concerns but not others.

The applicant prepared a final set of amended plans that are subject of this report. These plans were not reconsidered by either Panel.

PROPOSAL

The proposal is for demolition of existing structures and construction of 1 x 11 storey apartment building and 2 x 10 storey mixed use buildings over 3-6 levels of basement parking (580 parking spaces), with rooftop communal space, public domain/landscape works in Chapel Street and Chapel Lane, reconstruction and widening of Chapel Lane and stratum subdivision. The proposal is described in detail following.

Demolition

It is proposed to demolish all structures on the site, including the car parks, dwelling houses and outbuildings on Nos. 6A-12 Lister Avenue, the building fronting Chapel Lane and the dwelling at No. 11 Chapel Street. It is proposed to remove all trees existing within the site (other than some street trees).

Site A

Site A is to contain an eleven storey residential flat building designed with a single podium and two tower elements above Level 3 (separated by approximately 8m) and proposes a communal open space area on the roof of each tower element.

The podium is provided with a nil setback from Chapel Lane and the unnamed lane and the same setbacks for the northern tower element. The southern tower element has a 3m setback above the podium.

The Lister Avenue frontage of the southern tower element has a 2m deep soil setback to the podium level, increasing to 5m in proximity to Nos. 2-4 Lister Avenue at first floor level. Above podium (above Level 3) the entire tower element setback is increased to 5m. The southern tower element reduces in height by 2 storeys in proximity to Nos. 2-4 Lister Avenue.



Building on Site A viewed from Lister Avenue diagonally across Chapel Lane

This building is separated from the adjoining apartment building at Nos. 2-4 Lister Avenue by approximately 8.5m – 18m at podium level and approximately 8.5m – 16m at tower level. This building is separated from the adjoining apartment building at the rear of No. 562 Princes Highway by 7.1m to podium and tower.

Site A and Site B are proposed to share a single basement car park which is attached by a portion of car park which is to span the width of Chapel Lane. This car park is also designed to avoid the location of the underground sewerage culvert. The combined car park has five levels, with only the topmost level traversing the culvert. The car park contains the following:

Level L5	72 parking spaces for Site A (including 2 accessible spaces), 8 motor cycle spaces, residential storage and lift lobbies for Site A.
Level L4	45 parking spaces for Site A (including 5 accessible spaces), 25 parking spaces for Site B (including 1 accessible space), 2 motor cycle spaces, residential storage and lift lobbies for Sites A and B.
Level L3	39 parking spaces for Site A (including 6 accessible spaces), 31 parking spaces for Site B (including 2 accessible space), 2 motor cycle spaces, residential storage and lift lobbies for Sites A and B.

Level L2	38 parking spaces for Site A (including 8 accessible spaces), 31 parking spaces for Site B (including 2 accessible space), 2 motor cycle spaces, residential storage and lift lobbies for Sites A and B.
Level L1	4 parking spaces for Site A (including 1 accessible space), 20 parking spaces for Site B (including 1 accessible space), 32 visitor spaces for Site A, 16 visitor spaces for Site B, 5 commercial parking spaces (including 1 accessible space), 4 motor cycle spaces, 24 bicycle spaces, residential storage, residential waste storage and compactor rooms, plant, commercial waste room and lift lobbies for Sites A and B.

In total the combined parking basement provides 358 parking spaces, including 305 residential parking spaces, 48 visitor spaces and 5 commercial parking spaces, 18 motor cycle spaces and 24 bicycle spaces. The car park is accessed via a single ramp system with one double vehicular crossing from Lister Avenue adjoining Nos. 2-4 Lister Avenue.

The building on Site A is proposed to contain 159 apartments, with 75 x 1 bedroom, 70 x 2 bedroom and 14 x 3 bedroom apartments.

Site B

Site B is to contain a ten storey mixed use building designed with a single podium and tower elements above Level 3 and proposes a communal open space area on the roof of the tower element. The podium is provided with a 2.1m setback from Chapel Lane and nil setback from Chapel Street. The podium has a nil setback from the boundary with No. 15 Chapel Street (which contains a two storey apartment building). The tower element (above Level 2) has a variable setback from Chapel Lane of 2.5m-7.4m, a nil setback from Chapel Street and a setback from the common boundary with No. 15 Chapel Street of 4.5m-6.6m until Level 8 where the setback increases to 6m-6.6m.



Buildings on Site C and B viewed diagonally across Chapel Street from Bay Street – note montage does not accurately depict the existing building on No. 13 Bay Street

The building on Site B is proposed to contain 4 commercial suites totalling 262m² and 77 apartments, with 40 x 1 bedroom, 35 x 2 bedroom and 2 x 3 bedroom apartments.

Site C

Site C has a 6 level basement that is proposed for the bottom 4 levels on one side and then both sides of the underground sewerage culvert and has 2 levels above and straddling the culvert. The basement contains 129 residential parking spaces (including 8 accessible space), 19 visitor spaces (including 1 accessible space), 32 commercial parking spaces (including 1 accessible space) and 42 public parking spaces (including 1 accessible space), a total of 222 parking spaces. It is noted that the public parking spaces are spread over two levels (being Basement levels L1 and L2) and are segregated from the remaining parking by roller shutters. Basement Level L1 also contains a loading dock, waste room and plant. Given the need to straddle the sewerage culvert, the basement is serviced by two ramp systems, but is accessed from Chapel Street via one double driveway located at the southern end of the site.



Building on Site C viewed from Bay Street

Site C is to contain a ten storey mixed use building designed with a single podium with tower above and proposes a communal open space area on the roof. The podium is provided with a 3m setback from Bay Street and a 2m setback from Chapel Street. The podium has a nil setback from the common boundary with No. 13 Bay Street (which contains a single storey commercial building) and a nil setback from the common boundary with No. 41 Bay Street (which contains the old fire station which is used for commercial purposes), other than where the access driveway is located. The tower element, above Level 3, has a setback that varies from 6m to approximately 7.5m from the Bay Street frontage. The tower element has a variable setback from Chapel Street, above Level 1 of approximately 2m-10m. The tower element has no setback from the common boundary with No. 13 Bay Street.

The tower element has a variable setback above ground level from the common boundary with No. 41 Bay Street of 4.5m (at the Bay Street frontage) to 6.6m, then providing an increased setback at the Bay Street frontage portion of the building at Level 9 where it increases to 6m.

The building on Site C is proposed to contain 2 commercial suites (1 large and 1 medium sized) totalling 1,719m² and 126 apartments, with 30 x 1 bedroom, 94 x 2 bedroom and 2 x 3 bedroom apartments.

Whole Site

As such the whole site is proposed to contain 6 commercial suites (1 large and 1 medium and 4 small sized) totalling 1,985m² and 362 apartments, with 145 x 1 bedroom, 199 x 2 bedroom and 18 x 3 bedroom apartments and a total of 580 off-street parking spaces in basements (434 residential, 37 commercial, 67 visitor and 42 public parking spaces). In addition 14 on-street parking spaces are proposed in the widened Chapel Lane, providing a total of 56 public parking spaces.

Public Domain Works

The following public domain works are also proposed:

Chapel Street	Between Site C and Site B it is proposed to carryout landscape works including a treed space for casual seating "Chapel Grove" Between "Chapel Grove" and Bay Street it is proposed to create a paved and tree lined space "Chapel Square" intended to provide a pedestrian environment, but also allowing "shared access" to the Church compound from Chapel Lane. Street trees and paving are to be provided along the remainder of the Chapel Street block.
Chapel Lane	Is to be widened with on-street parking provided on the western side and street trees planted.
Lister Avenue	Is to have the kerb realigned and street trees planted.
Bay Street	Is to be widened and paving/street trees provided.

Stratum Subdivision

Stratum subdivision plans were lodged with the original plan set showing how the car parks would be stratum subdivided to provide separate stratoms within the basements for residential parking for Sites A, B and C, commercial parking for Sites B and C and public parking for Site C.

It is noted that no updated stratum plans were received with any of the amended plans and as such the stratum subdivision component of this application will not be assessed within this report and cannot be granted consent.

EXISTING AND SURROUNDING DEVELOPMENT

The site is known as Nos 15-21A Bay Street, Nos. 1-11 Chapel Street, Nos. 1-3 Chapel Lane and Nos. 6A-12 Lister Avenue, Rockdale and is legally described as Lot 3-5, DP 13570, Lot D, DP 420619, Lot 61, DP 703624, Lot 2, DP 1027204, Lots 1-2, DP 551369, Lot 1, DP 309448, Lots 1-2, DP 450104, Lot 4, DP 9591, Lot 1, DP 79509, Lots 1-2, DP 522410, Lot 19, DP 59816 and Lot 1, DP 84102.

The site also includes an “L” shaped portion of Chapel Street from Bay Street to the end of No. 21 Bay Street, Chapel Lane from Lister Avenue to the northern edge of No. 1 Chapel Lane and the unnamed lane that adjoins the western side of Nos. 1-3 Chapel Lane.

The site forms a number of discrete development parcels as follows:

1. The portion located between Chapel Street and Chapel Lane is referred to throughout this report as Site A. Site A is an irregular shaped allotment which is wider at its southern end (52.095m frontage to Lister Avenue) than at its northern end (7.345m frontage to the corner of Chapel Lane and unnamed lane)) and has a frontage of 103.27m to Chapel Lane and 115.0m to the unnamed lane and adjoining Nos. 2-4 Lister Avenue. Site A has an area of 3,315m². This parcel is occupied by a council car park, part of the unnamed lane, a single storey commercial building at 1-3 Chapel Lane and four detached, single storey dwellings at Nos. 6A-12 Lister Avenue.

Site A is constrained by an existing large, underground, sewer culvert which runs from the Lister Avenue frontage of No. 6A Lister Avenue diagonally through Nos 6A-12 Lister Avenue and under Chapel Lane. The culvert continues under Nos. 1 Chapel Street, thence under Chapel Street and thence under the centre of Site C. The culvert runs between approximately RL 4.6 – RL 6.9.

It is also noted that Site A includes part of the unmade lane (approximately 6.2m x 18.6m) and this portion of the site provides vehicular access to sites fronting the Princes Highway.



Nos. 2-4 Lister Avenue (apartment building to left) and Site A



Site A viewed from the unnamed lane

Site A is adjoined to the south-west by a three storey apartment building at Nos. 2-4 Lister Avenue. Opposite the site on the other side of the unnamed lane are a series of commercial and mixed use developments of varying height fronting the Princes Highway. Opposite the site on the other side of Lister Avenue are two apartment buildings, two semi-detached dwellings and a park.



Rear of Princes Highway properties on opposite side of unnamed lane



Park, semi-detached dwellings and apartment buildings opposite Site A in Lister Avenue

2. The Chapel Lane and unnamed lane public domain. The portion of Chapel Lane that is included in development Sites A and B and under which the basement carpark is to extend has an area of approximately 324m².
3. The portion located between Chapel Street and Chapel Lane is referred to throughout this report as Site B. Site B is an irregular shaped allotment which is wider at its southern end (29.5m) than at its northern end (23.0m) and has a frontage of 61.785m to Chapel Street and 55.495m to Chapel Lane. Site B has an area of 1.496m². This parcel is occupied by a council car park and contains a single storey dwelling at No. 11 Chapel Street.



Site B viewed from Chapel Street, including No. 11 Chapel Street dwelling and car park

Site B is adjoined to the north by the church compound, including a hall, dwelling and stone churches which are heritage listed. Opposite the site on the other side of Chapel Lane is Site A. Adjoining the site to the south are a series of 1-3 storey buildings including dwellings and apartment buildings at Nos. 15-21 Chapel Street. Opposite the site on the other side of Chapel Street is Site C.



Church compound viewed from Site B



Nos. 15-21 Chapel Street viewed from Chapel Street

4. The Chapel Street public domain is comprised of the existing Chapel Street road reserve that runs from the southern edge of No. 21A Bay Street and bends around No. 13 Bay Street to Bay Street. Currently, Nos. 15-21 Chapel Street do not have vehicular access via Chapel Street. No. 13 Bay Street currently does not have vehicular access. Vehicular access to a garage within the Church compound is currently provided from Chapel Street.



Part of Chapel Street public domain adjoining Bay Street and part of Church compound

5. The portion located between Bay Street and Chapel Street, is referred to throughout this report as Site C, and known as Nos 15-21A Bay Street. Site C is an irregular shaped allotment which is wider at its southern end (24.0m) than at its northern end (49.1m) and has a frontage of 73.24m to Bay Street and 77.91m to Chapel Street. Site C has an area of 2,960m². This parcel is currently occupied by a council car park.

Site C is adjoined to the north by No. 13 Bay Street, a single storey commercial building (see blue building in above and below photographs). Opposite the site in Bay Street to the north are multi storey residential flat buildings and to the north-east are detached dwellings. Adjoining Site C to the south-east are one and two storey commercial buildings. Opposite the site on the other side of Chapel Street is Site B and a series of 1-3 storey dwelling houses and residential flat buildings at Nos. 15-21 Chapel Street.



Site C looking towards Bay Street and George Street opposite



Adjoining Site C to the south-east are commercial buildings of one and two storey scale

6. The Bay Street public domain which comprises the existing footpath area and the proposed 5.5m wide portion of the frontage of Nos. 15 and 21-21A Bay Street (note Nos. 17-19 Bay Street have previously has a road widening area along the frontage excised from the allotment).



Site looking towards Site C from opposite side of Bay 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 79C (1) Matters for Consideration – General

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

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

The subject site has a history of use as a car park and for commercial/retail and residential uses. A Detailed Site Investigation was prepared by Environmental Investigations, dated 7 December 2015. The report indicates that previous investigation of the site has identified TRH and PAH soil impacts in the northern part of the site, with anecdotal information indicating the site may have previously contained underground storage tanks. Additional soil sampling has been carried out and groundwater wells have been installed and monitored. The results of the sampling and monitoring determined that the site contains elevated levels of PAH and TRH that require remediation in a localised “hot spot”. The site also contained areas of elevated Benzo(a)pyrene and Zinc and elevated Copper and Zinc in the groundwater.

The report concluded that the contamination required remediation and that given the proposed development, the site can be suitably remediated for the proposed residential/commercial use. In order to render the site suitable for the proposed development the following works are required to be carried out:

- Preparation of a Hazardous Materials Survey on existing structures prior to commencement of demolition;
- Preparation of a Remedial Action Plan (RAP) to include:
 - Outline supplementary investigations required, including additional site history survey, delineation assessment in the northern area and soil investigation to close data gaps identified in the report;
 - Outline remediation requirements for contaminated soils identified;
 - Provide the requirements and procedures for waste treatment and assessment, to manage soil in the northern area and classify other site soils for off-site disposal during the proposed basement excavation, in accordance with the *Waste Classification Guidelines (EPA 2014)*; and
 - Provide a SAQP for the validation of remediation activities performed onsite;
- Undertake additional investigations and subsequent remediation and validation as outlined in the RAP;
- Classification of material to be removed from the site;
- Importation of new material to be assessed for suitability for proposed use or classified as VENM; and
- Preparation of a final site validation report by a suitably qualified environmental consultant, certifying site suitability of soils and groundwater for the proposed land use.

Council’s Environmental Health Supervisor has advised that no consent should be issued for the site until a RAP has been prepared for the site.

Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment

The Greater Metropolitan Regional Environmental Plan No. 2 applies to all land within Rockdale City local government area and requires consideration of the impact of development upon water quality in the catchment.

The proposal includes WSUD however a final assessment by Council's engineer has not been provided to determine whether the proposal has an acceptable impact upon water quality. Notwithstanding this, it is considered that subject to conditions, the proposal will be consistent with the requirements of the Greater Metropolitan Regional Environmental Plan No.2.

State Environmental Planning Policy (Infrastructure) (SEPP Infrastructure)

The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application. The application is subject to clause 104 and Schedule 3 of the SEPP as the development is identified as traffic generating development. Accordingly, the application was referred to the Roads and Maritime Service (RMS) and Local Traffic Committee for consideration.

The proposal has been considered by the RMS and Local Traffic Committee twice, given its history of amendment, at the initial meeting additional information in relation to Sidra modelling was requested. The following recommendations were received from the final consideration of the Committee on 2 November 2016.

- 1. That the applicant justify the provision of the 40 public car spaces in two basement levels in lieu of at grade as required by Part 7.5 Rockdale Town Centre DCP 2011. The current design does not demonstrate adequate at grade connectivity from proposed public car parking spaces given their location in two basement levels. The efficiency of future use, visibility and accessibility of proposed car parking is undesirable.*
- 2. That more information be provided in terms of management of public car parking spaces within the private basement car park. Written documentation including circulation design, signage plans and access information is to be provided for review.*
- 3. That the garbage collection, loading and unloading be carried out on site and design includes provision for Council's garbage vehicles to be able to enter and leave the site in a forward direction (in compliance with Council's Waste Management Technical Specification).*
- 4. Access and circulation of vehicles including garbage collection vehicles in the Chapel Street dead end near the proposed pedestrian promenade needs to be addressed and submitted to Council to allow vehicles to enter and leave in a forward direction in Chapel Street.*

In response to the request for more information the applicant provided additional information which was forwarded to Council's engineer and the RMS for comment. No response has been received from Council's engineers in terms of the suitability of garbage collection or the operation of the public car park.

In response to the additional information in relation to Sidra modelling the RMS provided the following comments, it being noted that information in relation to the 4 points above has not been received.

In regards to the Sidra modelling submitted, the cycle time used to model the Princes Highway/Bay Street intersection is incorrect and should be modelled at 140 seconds cycle time. Therefore, the modelling provided does not reflect the actual operation of the signals and therefore the modelling is not supported. This is crucial given the modelling submitted for this intersection in the Barker Ryan Stewart report dated 27 October 2016 shows certain approaches are failing and are heavily congested. Therefore, this intersection will need to be re-modelled at 140 seconds cycle time for Roads and Maritime to the review Sidra analysis.

Furthermore, the impact of the development on the Lister Avenue/Princes Highway signalised intersection has not been taken into account. The report by Barker Ryan Stewart page 4 states that Roads and Maritime requested Lister Avenue/Princes Highway be modelled and has been included in Appendix B. After reviewing Appendix B it seems that only Bay Street/Cairo Street intersection has been modelled. Therefore, as previously stated Lister Avenue/Princes Highway traffic signals will need to be modelled at 140 seconds cycle time.

*The modelling should take into account right turn movements from Princes Highway onto Lister Avenue as there are no turning restrictions into the proposed development site. Page 4 of the Barker Ryan Stewart report states **“Comparing the existing traffic generation to the post development generated traffic, there is a marginal change in the operation of the intersection. In the AM peak period the right turn from Lister Avenue decreases in level of service by one level. The PM peak does not demonstrate any adverse impact. In both peak periods, arterial road does not experience any notable adverse impact.”***

This should not be assumed as Princes Highway carries very high volumes of traffic and based on the proposed traffic generation there will be a demand for vehicles wanting to turn right from Princes Highway onto Lister Avenue which will have some impact on the operation of the signals during PM peak. During AM peak there will be demand for vehicles exiting the proposed site to enter Princes Highway.

Roads and Maritime advises the SIDRA modelling submitted does not address previous Roads and Maritime requirements and does not accurately show the impacts of the development on the road network.

State Environmental Planning Policy (BASIX) (SEPP BASIX)

A BASIX Certificate was lodged with the application however a BASIX certificate was not provided with the amended plans. The BASIX Certificate was not requested from the applicant as the application is being recommended for refusal for a number of other reasons that the applicant was made aware of but chose not to appropriately address. Should the Panel be of a mind to approve the application it would need to defer the application to seek a BASIX Certificate.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)

As the proposal is for buildings containing three or more storeys and four or more residential apartments, the provisions of SEPP 65 and the *Apartment Design Guide* are relevant to the assessment as the application. The Plan sets aims and design principles as well as standards that cannot be used as grounds for refusal. These design principles are detailed and discussed following, together with consideration of the requirements of the *Apartment Design Guide*.

The standards which cannot be used for refusal are complied with in relation to parking, internal area for apartments (other than a small number which is addressed in the following table) and ceiling heights.

The application, in its original form, was considered by the St George Design Review Panel (DRP) on 27 January 2016 where significant concerns (summarised) were raised with the proposal as follows:

- The submission does not contain any information as to the potential building forms on the two larger adjoining sites (adjoining to the south on Bay Street and Chapel Street), despite the fact that the buildings as proposed in the subject application would have major impact on these sites; it is critical to understand the future relationship between all these sites involved.
- To the south of the site the existing lower scale residential buildings facing both Lister Avenue and Bay Street will be significantly impacted by buildings of the height and form proposed in the application. The public reserve bounded by Lister Avenue and Chapel Street is also a precious asset and would be seriously impacted.
- The existing low scale residential building at Nos. 2-4 Lister Avenue appears likely to remain unchanged because of the site area and its scale should be respected.
- To the west across a narrow lane, a new residential development at No.564 Princes Highway, is currently under construction, and the interface with this development is also important.
- It is not clear how No. 572 Princes Highway will retain vehicle access given that the boundaries to the subject site extend across the lane.
- The relationship between the buildings and public domain is unclear with significant differences between finished floor levels and footpath level.
- Access needs to be retained to the Church compound buildings and garage from Chapel Street.
- There are insufficient deep soil areas provided on each site, which could be addressed in part by providing the deep soil setbacks required by the DCP.
- The amenity of "Chapel Green" is compromised by significant overshadowing from the buildings and the substation location.
- Serious concern is raised with the relationship between the buildings on Sites A and B with buildings in excess of 40m facing each other across a narrow lane. This would result in development that was excessively dominant in scale and create a bleak and overshadowed space at street level. Two separate towers on each site with adequate separation should be explored which might result in an acceptable outcome.
- The proposed density is excessive for the site.
- The WSUD initiatives are supported.
- Deep soil should meet the ADG requirements.
- Sun eye view diagrams should be provided to demonstrate solar access compliance and a more detailed ventilation assessment should be provided. Solar access to each building should be compliant with the ADG.
- Landscaping of the sites is not well planned and seems to be only the "left over" bits after the buildings have been located.
- The design of the communal open space on the roof tops is commended.
- Privacy separation concerns between the southern end of Site C and the future development on the adjoining sites, between the northern ends of Sites A and B and at the internal corner at the southern end of Block A.
- The Chapel Lane frontage to Building B is poorly activated and an unattractive streetscape.
- The dwelling mix provides inadequate number of 3 bedroom apartments.
- Non-compliance with ADG requirements for communal open space.

- Generally the architectural character and details of materials, finishes and articulation are satisfactory however the overall building form will require substantial modification which will assist in reducing the present excessive length of the parallel building forms.
- Concerns with the building on Site A
 - In the competition Building A was two separate buildings forms with an 8 storey form facing Lister Avenue and 12 storey facing Chapel Lane. The amalgamation of the two elements in a single building results in an inappropriate building in relation to bulk, scale, permeability, context and open space and would have had a more appropriate scale in proximity to Nos 2-4 Lister Avenue;
 - The DCP controls have not been complied with and the setback of podium and above podium should be complied with;
 - The present 600mm of “screen planting” would be ineffective in achieving amenity for ground level apartments; and
 - Setbacks to Lister Avenue should be increased to meet the DCP controls and provide a better transition in scale and character to the residential zone across the road.
- Concerns with the building on Site B
 - A building of the height proposed would have major adverse impacts on the character of Chapel Lane and in relation to the amenity of apartments in the building on Site A and as a blank wall is proposed on the boundary the potential future continuation of this form on adjoining sites would exacerbate the problem;
 - Whilst the narrow nature of the site make compliance with the DCP setback controls difficult, the proposed ground floor interface in Chapel Lane would be unpleasant and options such as street setbacks to all street frontages should be considered; and
 - The Chapel Lane frontage is dominated by vehicle access and services and provides a poor and unsafe interface with the lane way.
- Concerns with the building on Site C
 - The L shaped form at the southern end is setback only 6m from the boundary and would not comply with the ADG setback requirements with the redevelopment of the adjoining site;
 - The setback above podium is well below the 3m required by the DCP. The setback is necessary to achieve a transitioning of scale with the properties to the east and across Bay Street; and
 - The design of the northern end is highly problematic given the adjacent small site which is not part of the development. As proposed the northern end of the building has no window openings. The acquisition of No. 13 Bay Street should be further explored.

The concerns of the Panel were forwarded to the applicant, along with other concerns, and amended plans were received. An initial assessment of the amended plans revealed that whilst some concerns had been appropriately addressed, such as splitting the form of Building C into two towers and increased setbacks from the south, other concerns had not been addressed appropriately.

The isolation issue of No. 13 Bay Street has been considered and some information has been provided about attempts to purchase the site. A valuation report has been prepared which identifies the highest and best use as providing 8 apartments on the site given constraints for setbacks/podiums. Evidence of an offer 20% over the valuation price was provided. Evidence that the offer was refused was provided. No further evidence of any further offers was provided. Plans were provided showing how the site could be developed in isolation using access from the subject site to the basement parking levels.

Rather than return the proposal to the Panel, Council determined that it would be appropriate to have the amended proposal considered by a Design Integrity Panel, given the proposal is relying upon the Design Excellence provisions of the LEP to achieve the proposed height, and hence density. The report of the Design Integrity Panel raised the following concerns with the proposal and made series of recommendations.

REVIEW

The jury note that as the presentation focused on proposed amendments to the DA scheme, there was a general lack of detail resolution. The jury commend the intention of the proponent and design team to seek guidance prior to finalising an amended DA design, however the lack of resolution has in some instances influenced the advice below.

Built form, scale and height

- There appears to be only one massing option tested to reduce the massing of the buildings. The revised massing proposal does not provide sufficient detail to determine the merit of this approach (relative to views, ground level solar access, interface and overshadowing to neighbouring sites) nor have additional studies been undertaken to assess alternative solutions.*
- Alternative massing solutions should test opportunities for improved views into and out of the site, improved solar access to ground floor and street spaces and reduced impacts on neighbouring sites.*
- Reduced massing provided by the introduction of 'cuts' is supported in principle, subject to more detailed testing.*

Building separations

- The proposal slightly increases Chapel Lane building separation by reducing building separation on Chapel Street. Even with this modification, the height and bulk of buildings are considered excessive and do not provide appropriate amenity to Church Lane which is largely overshadowed, has limited landscape zones and appears to be compromised by servicing access.*
- Building B in particular presents significant issues including overshadowing of Building A, and its height and mass should be reviewed. The resolution of ground floor apartment's to street/lane is of particular concern and requires further review. Reductions in building width should be explored.*

Public Domain Structure

- The built form, scale, height and ground floor uses largely determine the amenity of the public domain. The irregular alignment of the Building C South-West façade, level change, potential lack of activation on the southern ground level frontage, and servicing will all detract from the amenity of Chapel Street, the primary public space in the development.*

Interface to Adjoining Sites

- *Heights and setbacks to Lister Avenue need to be reconsidered, to respond to the lower built form scale to the south.*
- *Residual neighbouring property to the North of Building C remains an unresolved issue. Given the density proposed, it is the Panels view that any future land purchase should be retained as a contribution to the public domain, not built upon.*

Lack of Deep Soil

- *Deep soil is critical to achieving adequate tree planting of an appropriate scale particularly to respond to the scale and heights of the buildings proposed. Current deep soil planting extents are a product of the proposed density and could be improved if density was reduced.*
- *Deep soil should be located within Chapel Street, Chapel Lane, Bay Street and in building setbacks adjacent to Lister Avenue.*

Clarity and Coherence of the Public Domain

- *The proposal creates three spaces on Church Street. This segmented approach is considered overly complicated, creating a visually cluttered space that does not adequately frame key views to the church from surrounding streets.*
- *The proposed lawn at the eastern boundary of the lot will have poor solar access and is compromised by address to driveway and building overhangs.*
- *Vehicle access along the southern side of Church Street is limiting public use and accessibility of north facing Building B tenancies and reducing usable, high amenity public space.*

RECOMMENDATIONS FOR ACHIEVING DESIGN EXCELLENCE

General

- *The current yield is noted as significantly in excess of the expected yield indicated in the massing studies commissioned by Council for the site. The Yield as it currently stands is leading to significant negative impacts both within and externally to the site, It is therefore the Panels view that further reductions in yield are both acceptable and required in order to meet Design Excellence.*
- *Ensure, and provide evidence through the documentation, that all building setbacks are compliant with SEPP 65 and that they will not preclude development on adjacent sites.*
- *Notwithstanding the urban nature of the site and its complex geometry, it is the Panels view that SEPP 65 compliance is a requirement for this site given the lack of an FSR limit, If full compliance with solar access proves impossible (provide evidence through solar study documentation) to achieve Boiling A, then clear counter-benefit must be articulated by the proponent. No other non-compliances should be accepted.*

Public Domain, Traffic Flow and Landscaping

- *Review landscape strategy and surrounding building footprints to create a simplified landscape of a civic scale – reduce ‘nook and crannies’ and provide more clear, civic places (see Central Park Chippendale as a good example).*

- *Proposed Church Street southern lawn to be removed and replaced with a simplified street/plaza treatment, with medium to large scale trees. Design to emphasis maintaining of views in and along the street.*
- *Restrict vehicle movement on Chapel Street to the southern end of Building C and optimise outdoor dining on the sunny northern end of Chapel Street (Building B).*
- *Tree planting to be provided to both sides of Chapel Lane.*
- *Combine parking entrance & exit and garbage for Buildings A and B at Lister Ave.*
- *Nominate the potential for a shared zone on the north Chapel Lane for church and other neighbours use only, (subject to future consideration/confirmation from Rockdale Council traffic Committee and RMS that this will be acceptable).*
- *Resolve residual neighbour as public open space.*
- *Review extents of basement parking to ensure adequate, appropriately located deep soil planting zones.*

Building A

- *Reduce the bulk of Building A south facade against 1&2 storey homes opposite.*
- *Simplify the form.*
- *Consider redistricting floor space (within current height limits) to the North and reduce height to the South to Lister Avenue to provide better height variation between the blocks.*
- *8 metre "notch", if retained, must be 8m clear, with no intrusion from balconies or pop-outs.*

Building B

- *Combine parking entrance & exit and garbage for Buildings A and B at Lister Ave.*
- *Simplify form and reduce mass, consider reducing building width.*
- *Consider reducing height to improve solar access to Building A.*

Building C

- *Adjust building heights to improve morning sun access to Building B. Consider greater height (within allowable envelope) to the north end and reduced height to the south to provide height variation, Provide sun shadow diagrams to allow assessment of improvements. SEPP 65 compliance for Building B is required as a minimum.*
- *Simplify the design of the lower level podium to ensure ground levels align with external street and to provide activation to the length of this frontage.*
- *Relocate the through-site connection from Church Street to Bay Street to align with the George Street footpath opposite.*
- *8metre "notch" should centre on George Street as a visual extension of this street. "Notch must be 8m clear, with no intrusion from balconies or pop-outs.*

Additional documents requested to give due consideration to the new massing:

- *A live SketchUp model with solar analysis capacity and ground-level viewpoints.*
- *A comprehensive ground plan that shows internal and external spaces together, and clarifies extents of deep soil planting.*
- *Plan organisation diagrams showing apartment footprints, circulation and lobby, lift and stair locations.*
- *Urban sections that cut through the full site and neighbouring context (existing and proposed context).*
- *Eye-level views at street level in key spaces.*

- *Provide evidence of alternate massing options to enable assessment of proposed amended scheme.*

The applicant forwarded an amended set of plans which were considered by the Panel. Whilst the Panel considered the amendments provided some improvements, including the separation of the tower element on Site C into two towers and some increased above podium setbacks, it did not award Design Excellence to the design.

The applicant submitted a final set of amended plans which are the subject of this report and are addressed in the following tables. It is noted that the final plans reverted to the single tower element on Site C, rather than the two towers supported by the Panel.

Context and neighbourhood character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

The proposal fails to have due regard to its context and as such results in an unacceptable bulk and scale which is inconsistent with the desired future character for the precinct.

Site A appropriately contains a podium and two tower design, however the portion of the building fronting Lister Avenue has poor regard to its relationship with adjoining development to the south-west (which has a setback of 8-9m and a height of 9.6m to the gutter which is the visually dominant element and is unlikely to be redeveloped) and the opposite side of Lister Avenue which has a height control of 14.5m.

The development provides inadequate deep soil setback in proximity to No. 2-4 Lister Avenue at the street frontage which could be resolved with the relocation of part of the basement and setting back of the balcony on Apartment A.014 along with relocation of the entrance to the basement to the lane rather than Lister Avenue as required by the DCP. The development also has a height adjoining that development of 31.4m, stepping up to 37.3m which provides for a poor transition.

This could be addressed by changing the design of the south-western portion of the development to provide a podium design to 4 levels (ie ending at Level 3 – height approximately 16m) adjoining the building at No. 2-4 Lister Avenue on the proposed 6m side setback and then stepping back to a 10-12m setback for a further two storeys – height approximately 22m, before the full height of 37m for the remainder of this frontage setback in the order of 17m. This would effectively involve the loss of half the area of Apartment A.413 and A.513 (to be amalgamated with another) and the complete loss of Apartments A.613, 713 and 813.

The building on Site A also fails to have due regard to the context of development under construction fronting the Princes Highway, with the development at No. 564 Princes Highway setback only 7.1m from the 33.7m high wall of the building on this site. The building at No. 564 Princes Highway will have an approximate height of 29.7m and will have two bedroom and one kitchen window at each level facing Site A, with the top level having two bedrooms and a living area with balcony off it facing Site A. With no setback above podium, this portion (northern) of the building also has proximity concerns with the building on Site B, with a separation of only 16m between the walls and with the wall height of that building being 35.6m. The proximity issues with the building on Site B improve as the development moves southward due to the angling of the building, but at no point does the separation satisfy the 24m requirement under the Apartment Design Guide (ADG), with the greatest separation being 19.5m. Whilst this is to some extent a product of the width of Chapel Lane, it is also a direct result of the lack of setback above podium of the building on Site A, which is required to have a 3m setback under the DCP.

The northernmost tower is also located in too close proximity to the development at No. 2-4 Lister Avenue, with a setback of only 8.5m from the 35.4m high wall of the building.

This could be addressed by the setback of the tower element 3m from Chapel Lane in accordance with the DCP and the removal of the tower element on Site A in proximity to the northern corner where it adjoins the development at No. 564 Princes Highway. This would result in the loss of the northernmost apartment at all levels and require a redesign of the northernmost of the two towers of the building. This would allow an appropriate setback between the development at No. 564 Princes Highway and the development on Site B of 29m.

Finally, the western edge of the south-western apartment of the northernmost tower (Apartments A.408 and above) should be setback to achieve a minimum 12m separation from the building at Nos. 2-4 Lister Avenue.

Site B

The building on Site B, other than as discussed above, has appropriate height and setback relationships with adjoining proposed development notwithstanding it fails to provide a setback above podium to Chapel Street.

The proposed building provides a nil setback to the podium from the common boundary with No. 15 Chapel Street (other than a 4.5m deep central lightwell), which currently contains a two storey apartment building setback approximately 1.8m from the common boundary. The building appears to have two bedroom windows at each level (and other windows that appear to be to non-habitable rooms) facing the boundary, with the living rooms appearing to face Chapel Street. Given the up-zoning of the properties, it is considered likely that this site will redevelop in the future. The proposed tower element is to be setback 4.5m - 6.6m from the common boundary, increasing to 6m - 6.6m at Level 8, providing inadequate setback to comply with the ADG requirements.

This could be addressed by increasing the setback of the tower element from the southern boundary to 9m for Levels 4-7, increasing to 12m for the upper 2 levels. This separation is critical given the potential for 40m high development adjoining the site with consolidation of the adjoining land parcels.

Site C

The building on Site C, provides adequate separation to development on Site B and future development on the adjoining site fronting Chapel Street. Adequate separation is also provided from development on the opposite side of Bay Street. The development appropriately provides a nil setback from No. 13 Bay Street.

The separation from the adjoining development sites to the south in Bay Street, however is not compliant with the ADG. The nil setback to the podium is supported for the portion of the building fronting Bay Street and whilst inconsistent with the DCP, the 6.6m setback of the podium fronting Chapel Street is reasonable. Above podium a setback of 4.5m is proposed for the Bay Street fronting portion of the tower and 6.6m for the Chapel Street fronting portion, with a 9m setback in the central portion, which breaches the ADG setbacks which require a 9m setback above podium up to Level 7. Above Level 7 the setbacks are increased to 6m for the Bay Street portion, with no change to the Chapel Street portion, again breaching the 12m separation requirement, it being noted that habitable rooms face the side boundary.

The separation issues could be resolved by an increase in setback of the southern façade of the building (front and rear portions) such that compliance with the ADG separation distances are provided, which can be achieved by increased setbacks or relocation of habitable rooms such that they do not face the boundary, however it is considered that a minimum 6m setback should be provided to the Bay Street frontage element of the façade.

Built form and scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

The general height of the development is consistent with the LEP provisions and the separation from surrounding development has been addressed in relation to context above.

The articulation and height relationships of the building on Site A, have in part been previously addressed, however the lack of articulation of podium/tower elements to the northern portion of the building fronting Chapel Lane results in an unsatisfactory articulation of a tall building on a relatively narrow street, and also reduces separation compliance under ADG.

This could appropriately be addressed by providing the required 3m setback above podium to the northern portion of the building on Site A.

The articulation and height relationship of the building on Site B has previously been discussed, and whilst the podium/tower articulation is not provided to the Chapel Street frontage, the change in architectural form combined with the wider street result in an acceptable level of articulation for the space the building addresses.

The articulation and height relationship of the building on Site C has previously been discussed, and whilst the podium/tower articulation provided to the Chapel Street and Bay Street frontages, is acceptable, the length of the facades to those streets is unacceptable.

The provision of an additional indent in the single tower element facing Bay Street of 1.4m is inadequate to provide an appropriate level of articulation of the facades which extend for a length of 69m and is contrary to the DCP provision which requires facades to have a length of no longer than 40m. The previous version of the plans provided a separation of Building C into two tower elements opposite the intersection of Bay Street and George Street, which provided appropriate articulation of the large building in an appropriate location opposite George Street where the length of the façade was particularly evident. This broke the tower elements into 29m and 32m wide elements which is commensurate with the width of the tower elements on the opposite side of Bay Street.

This could be appropriately addressed by the removal of Apartments C.406 and 407 and those above, as previously proposed.

Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

It is considered that the development has a density that is incompatible with the provision of a high level of amenity for residents within the development and those in existing and future developments on adjoining sites. In this regard the density proposed results in significant breaches of the separation distances and solar access requirements of the ADG.

Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

As noted in the abovementioned Density section, the design of the development provides for poor solar access to apartments as a result of excessive density. Cross ventilation provision is generally compliant, however the deep soil provision within the site is significantly deficient.

Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

An assessment of the landscape design proposed for the site and public domain resulted in the following concerns being raised by Council's landscape architect:

- Negligible deep soil planting is proposed on the three lots with the bulk being provided in the public domain. The provision of deep soil is critical to achieving adequate tree planting of an appropriate scale particularly to respond to the scale and heights of the buildings proposed. Current deep soil planting proposed is a product of the proposed density and could be improved if the density was reduced.
- Deep soil should be located within Chapel Street, Chapel Lane and Bay Street, along with building setbacks adjacent to Lister Street. The provision in Chapel Lane and in the setback to Lister Street is still inadequate.
- The basements are likely to impact trees on adjoining properties and no assessment has been made by the applicant.
- The design for Chapel Street remains cluttered and opportunities for views to the heritage buildings are lost.
- The provision of a steep planter adjoining Chapel Street does nothing to resolve the activation problems of the development due to the desire to provide a single large, level commercial tenancy rather than step tenancies with the slope of the street.
- The proposal does not provide a suitable interface between public areas in Chapel Lane and the private areas within Building A – minimal landscaping and small separation distance inadequate.
- Concerns with species selection of trees.

Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

As has been discussed the apartments within the development have a poor level of solar access and separation is in some instances well below the ADG criteria. Other concerns with apartment design in some instances is the non-compliance with ADG criteria for apartment size, balcony size and balcony width. Further, a number of apartments within the building on Site C contain bedroom sized rooms that are marked as "store" which have no means of natural light or ventilation which is inappropriate and represents a poor level of amenity and poor design. Recessed windows to bedrooms in Apartments A.008, A.009, A.010, A.110, C.106, C.107, C.206, C.207, C.306, C.307, C.406, C.407, C.506 and C.507 result in a lower level of amenity to those apartments.

Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

The design makes adequate provision for casual surveillance, however does not appropriately delineate public and private spaces, with the separation of the ground level dwellings in the building on Site B from the public domain being poor (landscape strip of approximately 600mm depth and minimal level change), resulting in poor privacy to those apartments.

The built form, scale, height and ground floor uses largely determine the amenity of the public domain. The level change and lack of activation of the non-residential ground level uses fronting Bay Street and Chapel Street resultant from this, provide a poor public domain interaction and appear to be largely driven by the desire to provide a large single space rather than spaces that step with the slope of the street. This also provides for poor levels of accessibility into the spaces from the public domain, with the interface dominated by an elevated podium and stairs.

Housing diversity and social interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

The proposed development makes some provision for dwelling mix, providing 145 x 1 bedroom, 199 x 2 bedroom and 18 x 3 bedroom apartments. It is considered that the provision of three bedroom apartments is somewhat substandard and should be increased in any redesign of the proposal.

A good variety of well-designed communal open space is provided on the roofs of the proposed tower elements of the development.

The proposal includes 36 adaptable apartment, equating to 10% of apartments.

Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Generally the colour and materials palette proposed is acceptable, however they do not overcome the concerns with the bulk and scale and inadequate articulation.

Apartment Design Guide

Design Criteria	Required	Proposed	Compliance
2E - Building Depth	12m – 18m	<p>Site A 4.5m - 35.5m (podium) 4.5m - 35.5m (above podium)</p> <p>Site B 17m - 22m (podium) 15.5m – 17.5m (above podium)</p> <p>Site C 14.5m - 35m (podium) 11.5m – 30.5m (above podium)</p>	<p>No</p> <p>No</p> <p>No</p> <p>The variations are not supported due to the inadequate setbacks above podium and separation distances discussed in relation to the design principles of SEPP 65.</p>
3B – Orientation	<p>Responsive to streetscape and site. Designed to optimise solar access and minimise overlooking.</p> <p>4 hours solar access retained to neighbouring buildings or does not further reduce solar access by more than 20%</p>	<p>The orientation of the sites are challenging and make impacts upon adjoining properties inevitable. However, the impacts are made worse by non-compliant separation distances under the ADG.</p> <p>The shadow diagrams show that the living rooms of the apartment building at No. 15 Chapel Street will be in shadow until approximately 11.30am in mid-winter (when the southern windows in the eastern façade may receive solar access until approximately 12pm, the northernmost windows do not appear to be likely to receive any sunlight).</p> <p>The shadow diagrams show that the front living areas and balconies of the building on No. 17 Chapel Street will be impacted until approximately 10.30-11am in mid-winter and will retain sun until approximately 12.45pm.</p> <p>The shadow diagrams show that Nos. 19 and 21 Chapel Street are likely to result in a loss of morning solar access, retaining 2-2.5 hours solar access to the front facades.</p> <p>The shadow diagrams show that the apartment building at No. 2-4 Lister Avenue will be shadowed by the proposal in the morning in midwinter and by developments fronting the</p>	<p>No</p> <p>This impact is from the compliant height of the proposed building on Sites B and C but is exacerbated by the lack of setback above podium of the building fronting Chapel Street on Site B and separation from that site.</p> <p>This impact is from the compliant height of the proposed building on Site C, but is exacerbated by the lack of separation from that site, particularly at other times of the year.</p> <p>This impact is from the compliant height of the proposed building on Site C.</p> <p>This impact is from the compliant height of the proposed building on Sites A and B but is exacerbated by the lack of separation from that</p>

Design Criteria	Required	Proposed	Compliance
		<p>Princes Highway in the afternoon. Inadequate information has been provided to allow a more detailed assessment of impact upon individual apartments within this building.</p> <p>The shadow diagrams show that the proposal will overshadow properties on the opposite side of Lister Avenue from 9am to 3pm in midwinter, and in the afternoon by buildings fronting the Princes Highway. The shadows travel across these properties rather than being constant, and each building will retain some degree of solar access between 2 and 4 hours.</p>	<p>site, particularly at other times of the year.</p> <p>This impact is from the compliant height of the proposed building on Site A and is a function of the up-zoning of the sites.</p>
3C – Public Domain Interface	<p>Direct street entry to ground floor apartments</p> <p>Balconies/windows orientated to overlook the public domain</p> <p>Front fence design is permeable</p> <p>Opportunities for concealment minimised</p> <p>Services concealed</p> <p>Access ramps minimised</p>	<p>Ground floor apartments B.001 and B.002 have direct ground floor access whilst B.003 does not.</p> <p>Apartments A.002, A.008, A.009, A.011 and A.012 have direct ground floor access whilst the other apartments at ground level in the Building on Site A do not.</p> <p>Balconies and windows are oriented to the street.</p> <p>No front fences proposed.</p> <p>No unacceptable opportunities for concealment.</p> <p>Access ramps are not minimised for the building on Site C, with a poor level of accessibility between the ground floor commercial suites and the adjoining footpath.</p>	<p>In part</p> <p>Yes</p> <p>N/A</p> <p>Yes</p> <p>No</p>
3D – Communal Open Space	<p>Min. 25% required</p> <p>Site A/B 1,284m²</p> <p>Site C 740m²</p> <p>Min 2h to 50% communal open space at mid-winter</p> <p>Note: Sites A and B</p>	<p>Site A/B 25.1% (1,290m²)</p> <p>Site C 30.4% (901m²)</p> <p>Communal open space is on the roof and receives appropriate solar access.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

Design Criteria	Required	Proposed	Compliance
	are considered as a single site as they include the portion of Chapel Lane between them, both relying upon this land for parking and as such it forms part of the site.		
3E – Deep Soil Zones	Min. 7% required Site A/B 359.5m ² Site C 207.2m ² 6m min. dimension	The applicant has provided a single calculation for deep soil, including that provided within the streets, which are not part of the site, and some located over basement areas. The calculations provided are not divided into the three sites and includes areas with dimensions of less than 6m. Notwithstanding there is no calculation, it is clear that the proposal does not provide complaint deep soil area.	No No
3F – Visual Privacy	Up to 4 storeys: <ul style="list-style-type: none"> 12m between habitable rooms/balconies 9m between habitable and non-habitable rooms 6m between non-habitable rooms Up to 8 storeys: 9–18m <ul style="list-style-type: none"> 18m between habitable rooms/balconies 12m between habitable and non-habitable rooms 9m between non-habitable rooms 	As has been discussed in detail in relation to SEPP 65, the proposal has several non-compliances with the separation requirements of the ADG which have unacceptable impacts in relation to privacy, visual bulk and shadowing.	No
3G – Pedestrian Access and Entries	Entry addresses public domain Clearly identifiable Steps and ramps integrated into building design	The entrances to the buildings are clearly identifiable and address the public domain.	Yes
3H – Vehicle Access	Integrated into façade Visual impact minimised Entry behind the	The location of the vehicular access points is acceptable having regard to integration into the façade (not later	Unknown

Design Criteria	Required	Proposed	Compliance
	<p>building line or from secondary frontage Clear sight lines Garbage collection screened</p> <p>Pedestrian and vehicle access separated</p>	<p>comments in relation to non-compliant location on Lister Avenue), however they are located adjacent to substations and inadequate information is provided in the landscape plans to determine whether suitable landscaping will be provided to integrate the driveway/substations into a landscaped setting. Garbage collection is required to be from the basements, however it has not been verified whether the design adequately provides for this. Pedestrian and vehicular access is appropriately separated.</p>	<p>Unknown</p> <p>Yes</p>
3J – Bicycle and Car Parking	<p>Within 800m of a railway station: Min RMS Rate Applies: <u>20 or more units:</u> 1 bedroom: 0.6 spaces (145 x 0.6 87 spaces) 2 bedroom: 0.9 spaces (199 x 0.9 = 179.1 spaces) 3 bedroom: 1.4 spaces (18 x 1.4 = 25.2 spaces) Visitor 1 per 5 units (362 / 5 = 72.4 Spaces)</p> <p>Total requirement = (291.3) resident spaces and (72.4) visitor spaces</p>	<p>Within 800m of railway station</p> <p>(434) resident spaces and (67) visitor spaces</p>	<p>Yes residential No visitor (could be conditioned to comply given excess provision for residents)</p>
4A – Solar and Daylight Access	<p>Min. 70% receive 2 hours solar access to both the living rooms and balconies</p>	<p>The shadow diagrams submitted with the application are too difficult to assess due to a lack of clarity of the areas in sun and shade, and the fact each building is divided into a number of “pieces” in different shadow diagrams, with some portions of buildings not being addressed. The applicant was asked to provide view from the sun diagrams but these were not provided. The applicant has provided two differing calculations for solar access. The following calculation was provided by Stephen King, however given the above difficulties with the</p>	<p>No</p> <p>Given the poor quality of the information provided, it is difficult to determine whether the lack of solar access provided is a result of poor design, excessive density or site constraints. It is noted that modelling was provided of solar access comparing a “compliant development” with the proposal which showed the proposal to perform better. The compliant development was</p>

Design Criteria	Required	Proposed	Compliance
	Max. 15% units have no solar access	<p>plans could not be verified. It also is unclear whether the figures apply to living rooms and private open space (POS) and to what extent the solar access is provided (ie 50% of POS).</p> <p>Site A 41.5% (66/159 units) Site B 55.8% (43/77 units) Site C 57.1% (72/126 units) of units received 2 hours or more of solar access Whole development 181/362 50%.</p> <p>Site A 19.5% (31/159 units) Site B 13% (10/77 units) Site C 22.2% (28/126 units) of units receive no solar access. Whole development 69/362 19.1%.</p>	<p>simply one achieving the DCP required setbacks above podium as compared with the proposal. A more appropriate modelling would have looked at ways to improve solar access by modulating the heights of buildings rather than simply looking at the base building envelope controls. This was not done.</p> <p>No. Given the significant variation with the control for apartments achieving 2 hours solar access and the variation of apartments achieving no solar access it is considered likely that the density of the development and poor design are contributing factors to the non-compliance.</p>
4B – Natural Ventilation	<p>Min. 60% are cross ventilated in first 9 storeys</p> <p>Cross-over/Cross-through Max 18m depth Light wells are not the primary source of ventilation for habitable rooms</p> <p>Single aspect units have limited depth to maximise ventilation</p>	<p>Site A 61.6% (98 /159 units) Site B 61.0% (47/77 units) Site C 57.1% (72/126 units) – could be 75 (59.5%) with skylights to top floor.</p> <p>Maximum depth of 23m</p> <p>A light-well is proposed on Site B adjoining the southern boundary. The light-well will provide the sole source of light for a bedroom within 3 apartments.</p> <p>All single aspect units feature a reduced depth.</p>	<p>Yes Yes No, but subject to conditions could be satisfactory.</p> <p>No</p> <p>No</p> <p>Yes</p>
4C – Ceiling Heights	<p>Habitable: 2.7m Non-habitable: 2.4m 2 storey apartments: 2.7m main living area, 2.4m mezzanine Mixed Use: 3.3m ground floor</p>	<p>Minimum 2.7m ceiling height to habitable rooms.</p> <p>Ground floor 3.6-4m</p>	<p>Yes</p> <p>Yes</p>
4D – Apartment Size and Layout	<p>Studio: 35m² 1 bed: 50m² 2 bed: 70m²</p>	<p>The proposal provides for unit sizes as follows: 1 bedroom: minimum 50-</p>	<p>Yes</p>

Design Criteria	Required	Proposed	Compliance
	<p>3 bed: 90m²</p> <p>Additional bathrooms +5m²</p> <p>Each habitable room must have a window > 10% floor area of the room.</p> <p>Habitable room depths =max 2.5 x ceiling height</p> <p>Or if open plan layout =max 8m from a window</p> <p>Master bed: min 10m²</p> <p>Other bedroom: min 9m²</p> <p>Living room min. width: Studio and 1 bed: 3.6m</p> <p>2 and 3 bed: 4m</p> <p>Crossover/through: min 4m</p>	<p>76m²</p> <p>2 bedroom: minimum 69-105m²</p> <p>3 bedroom: minimum 98 - 107m²</p> <p>A significant number of apartments have kitchens up to 9.8m from a window.</p> <p>Bedrooms are generally compliant and acceptable.</p> <p>Living rooms are generally compliant and acceptable.</p>	<p>No – Apartments C.309 has an area of 69m² and C.310 has an area of 74m² (and corresponding apartments above) and both are two bedroom with two bathrooms.</p> <p>Apartment B.808 indicates it is 1 bedroom and study but has 2 bedrooms and is only 68m² and is unacceptable.</p> <p>Yes</p> <p>No.</p> <p>Yes</p> <p>Yes</p>
4E – Private Open Space and Balconies	<p>1 bed: 8m², min depth 2m</p> <p>2 bed: 10m², min depth 2m</p> <p>3 bed: 12m², min depth 2.4m</p>	<p>A significant number of balconies have either a substandard size or width or the usability of the balcony is impacted by decorative blades.</p> <p>A number of balconies also have poor connectivity with the living space with access via a narrow walkway rather than direct access.</p> <p>Finally, a number of apartments have step access which impacts the usability of the balcony.</p>	<p>No</p> <p>Unacceptable balconies Connectivity – A.002, A.005, A.006, A.406, A.407, , C.102, C.111</p> <p>Unacceptable balconies connectivity and width – A.003, A.402, A.403</p> <p>Unacceptable balconies impacted by stairs – A.010</p> <p>Unacceptable balconies impacted by architectural blades – A.102, A.103, A.105, A.109, A.110, A.203, A.205, A.206, A.209, A.210, A.302, A.303, A.305, A.309, A.310, B.101, B.102, B.103, B.105, B.108, B.109, B.201, B.202, B.203, B.205, B.208, B.209</p> <p>Unacceptable balconies inadequate width and/or size – A.404, A.405, A.504, A.505, A.509, A.514, A.604, A.605,</p>

Design Criteria	Required	Proposed	Compliance
			A.609, A.614, A.704, A.705, A.709, A.714, A.804, A.805, A.809, A.814, A.904, A.905, A.909, A.913, A.1004, A.1005, A.1009, A.1013, b.408, B.508, B.608, B.708, C.404, C.406, C.407, C.408, C.409, C.504, C.506, C.507, C.508, C.509, C.604, C.606, C.607, C.608, C.609, C.704, C.706, C.707, C.708, C.709, C.804, C.806, C.807, C.808, C.809, C.904, C.906, C.907
4F – Common Circulation and Spaces	Max 8 apartments off a single core > 10 storeys: max 40 units/lift	Maximum units off a single core Building A 7 units of a core Building B 5 units of a core Building C 5 units of a core Building A > 10 storeys max 67 units/lift	Yes Yes Yes No
4G – Storage	Studio: 4m ³ 1 bed: 6m ³ 2 bed: 8m ³ 3 bed: 10m ³ At least 50% within the basement	Inadequate information to allow assessment	Unknown, could be conditioned.
4H – Acoustic Privacy	Orientate building away from noise sources Party walls limited or insulated, like rooms together Noise sources (e.g. garage doors, driveways) located at least 3m from	Noise source Bay Street and from aircraft (within ANEF contour 20), not possible to orient away from street or aircraft. An acoustic report prepared by Koikas Acoustics provides recommendations for ceiling/roof, external walls, windows/doors to achieve compliant internal noise levels having regard to road and aircraft noise. Generally satisfactory however the provision of the communal terrace on Level 4 of the building on Site A will result in acoustic and visual privacy impacts upon Apartments A.407, A.408, A.409 and A.414. Privacy of Apartment C.112 is impacted by access to communal space in proximity to living room.	Yes No. Any approval should change the communal terrace to a series of private terraces for adjoining apartments. No. This access arrangement and/or apartment layout should be changed.

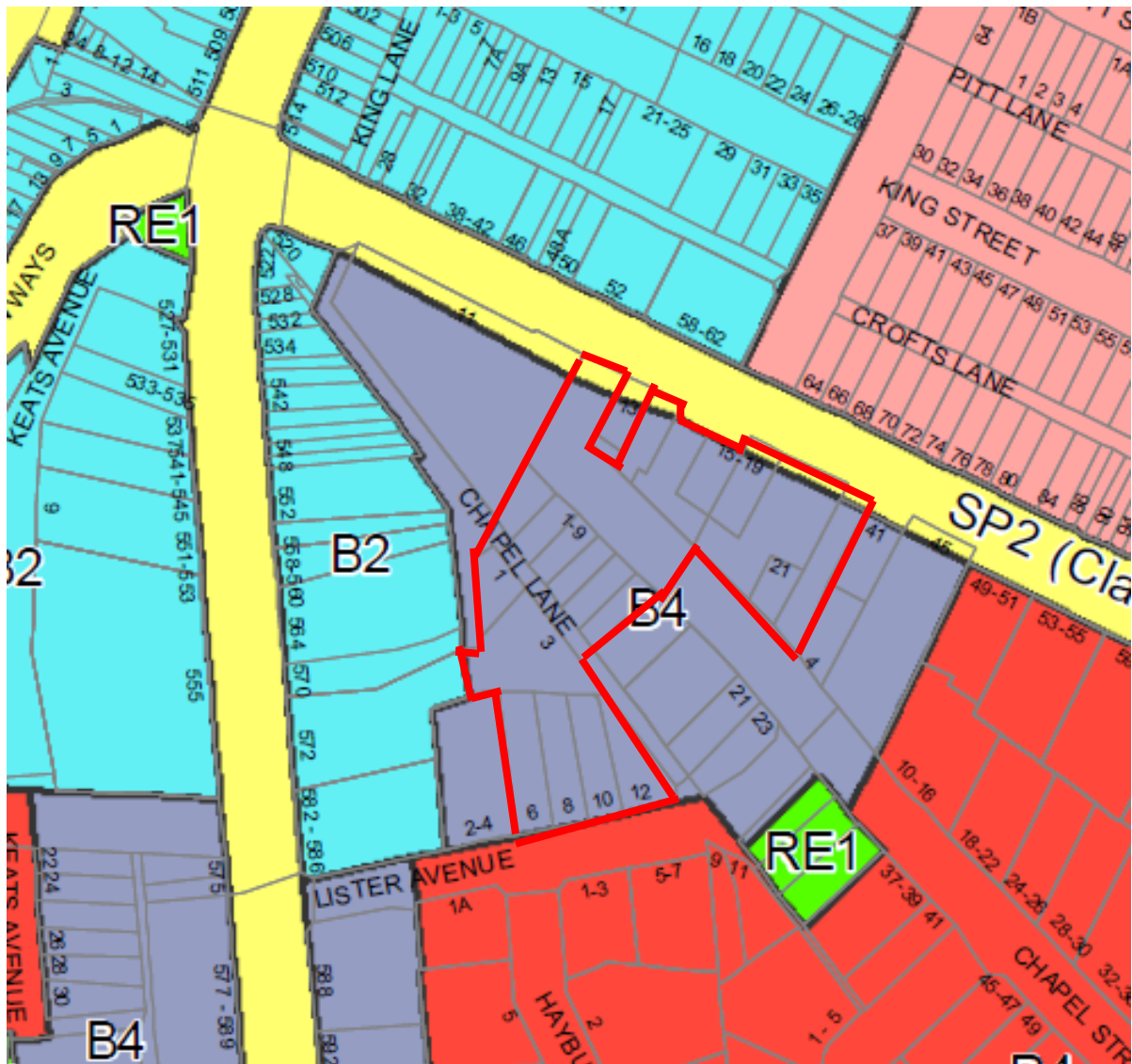
Design Criteria	Required	Proposed	Compliance
	bedrooms.	Apartment A.001 has an at grade bedroom window 1.7m from the street with only 600mm of planting to provide privacy. Apartments C.113, C.114, C.115, C.214, C.214 have bedrooms adjoining the balcony and living space of adjoining apartment.	No. Layout of apartment requires review. No. Layout of apartment requires review. There also appears to be a drafting error as there are no privacy screens separating the balconies.
4J – Noise and Pollution	Site building to maximise noise insulation Noise attenuation utilised where necessary	See above comments in relation to acoustic report.	Yes
4K – Apartment Mix	Variety of apartment types Appropriate apartment mix Different apartments distributed throughout the building	The proposal provides for the following unit mix: 145 x 1 bed: units - 40% 199 x 2 bed: units – 55% 18 x 3 bed: units – 5%	No. The mix should be changed to increase the provision of 3 bedroom apartments and reduce the provision of 1 bedroom apartments.
4L – Ground Floor Apartments	Direct street access Casual surveillance whilst providing privacy.	Direct street access is provided to the majority of ground floor units with opportunities for casual surveillance.	In part
4M – Facades	Composition of building elements Defined base, middle and top Building services integrated into the façade	Definition is provided of the podium and the tower elements to a generally satisfactory degree with a change of materials other than as follows: - The western end of the podium of the Lister Avenue façade of the building on Site A. - The podium of the northern façade of the building on Site A.	In part
4N – Roof Design	Roof design integrated into the building Incorporates sustainability features May include common open space	Roof design is appropriate on all buildings.	Yes
4O – Landscape Design	Responsive to streetscape Viable and sustainable	Inadequate provision is made for deep soil landscaping within the development and inadequate provision is made for street tree planting. An	No

Design Criteria	Required	Proposed	Compliance
		inadequate landscape setting is provided in the front setback area of the Lister Avenue frontage in proximity to Nos. 2-4 Lister Avenue.	
4P – Planting on Structures	Appropriate soil profiles and structural design Irrigation and drainage systems	Inadequate information is provided to assess this.	Unknown.
4Q – Universal Design	Variety of adaptable apartments	10% adaptable apartments	Yes
4U – Energy Efficiency	Adequate natural light to habitable areas Adequate natural ventilation Screened areas for clothes drying Shading on northern and western elevations	Updated BASIX Certificate not provided with amended plans.	No
4V – Water Management and Conservation	Efficient fixtures/fittings WSUD integrated Rainwater storage and reuse	Advice has not been received from Councils' engineer as to whether the proposal incorporates appropriate stormwater treatment and WSUD.	Unknown
4W – Waste Management	Minimise impact on streetscape, building entry and amenity	Basement collection is required and it has not been confirmed whether this has been adequately provided for.	Unknown
4X – Building Maintenance	Material selection reduces ongoing maintenance costs	Appropriate material selection.	Yes

Rockdale Local Environmental Plan 2011 (RLEP 2011)

The site is zoned part B4 Mixed Use and part SP2 (Classified Road) under Rockdale Local Environmental Plan 2011 (RLEP 2011). It is noted that the portion zoned SP2 coincides with the road widening required along Bay Street. The proposal is defined as a commercial premises and residential flat buildings and are permissible uses with consent in the B4 zone. The work proposed in the SP2 zone are limited to roads and works normally ancillary to roads and is permissible with consent.

Opposite the site in Bay Street sites to the west of George Street are zoned B2 Local Centre and sites to the east of George Street are zoned R2 Low Density Residential. Properties on the opposite side of Lister Avenue (other than those fronting the Princes Highway) are zoned R4 High Density Residential.



Zoning map of subject site outlined in red

The objectives of the B4 Mix Use zone are satisfied by the proposal as is discussed following:

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

The proposal contains a mix of residential and non-residential uses which would be compatible.

- *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 proposal is proximate to Rockdale Station and as such is an appropriate location for the provision of mixed use development.

The objectives of the SP2 (Infrastructure) zone are satisfied by the proposal as is discussed following:

- *To provide for infrastructure and related uses.*

The proposed works in this zone are roads and works normally related to roads.

- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

No works are proposed that would detrimentally impact the provision of infrastructure.

The relevant clauses of RLEP 2011 that apply to the proposal are below.

Clause 4.3 - Height of buildings

Clause 4.3 sets maximum permitted heights for buildings and the following map shows the site has a maximum height control of 28m. However, the site is located within Area A and is subject to Clause 4.3(2A) if the proposed building in Area A is located on a lot having an area of at least 1,500m². In such a case, the building may exceed the maximum height by and additional 12m, giving a maximum height control of 40m. It is noted that this is dependent upon compliance with clause 6.14 Design Excellence (discussed later in this report).

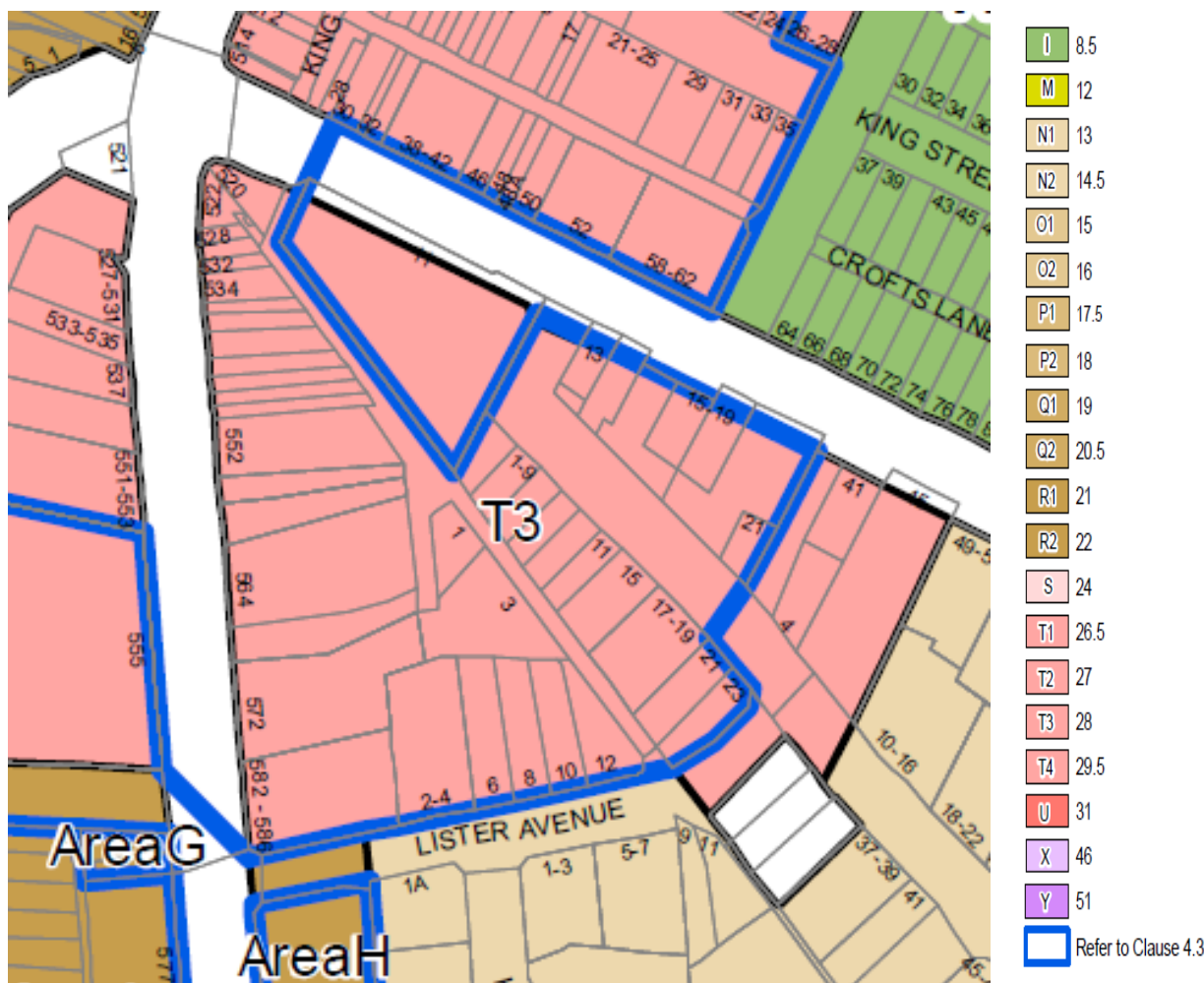
The 28m height limit also applies to the adjoining Church compound site, Nos. 13, 41 - 45 Bay Street, properties opposite the site in Bay Street to the west of George Street, properties fronting the Princes Highway to the north of Lister Avenue and properties to the south of the subject site that are north of Lister Avenue. Of these properties only those opposite the site in Bay Street to the west of George Street, fronting the Princes Highway to the north of Lister Avenue and properties fronting Chapel Street to the south of the subject site that are north of Lister Avenue are within Area A and as such have the potential for a 40m height.

However, given existing and approved development in the Princes Highway, the site at Nos. 2-4 Lister Avenue is unlikely to be able to consolidate a sufficiently large site and No. 13 Bay Street would be isolated by this development and is well under size. As such, whilst there is some possibility of the properties at Nos. 15-21 Chapel Street being developed under the 40m height control, those adjoining the site at Nos. 41-45 Bay Street would have a maximum height control with redevelopment of 28m.

Properties opposite the site in Bay Street to the east of George Street have a maximum height control of 8.5m and those opposite the site in Lister Avenue have a maximum height control of 14.5m.

The proposed development has the following maximum heights.

Building Site	Height to main parapet	Height to overrun/plant lift	Height to balustrade
Site A	Existing ground RL 17.52 Proposed building RL 50.90 Height 33.38m	Existing ground RL 17.72 Proposed building RL 52.7 Height 34.98m	Existing ground RL 17.40 Proposed building RL 51.50 Height 34.10m
Site B	Existing ground RL 16.1 Proposed building RL 49.90 Height 33.20m	Existing ground RL 16.47 Proposed building RL 52.50 Height 36.03m	Existing ground RL 16.50 Proposed building RL 50.90 Height 34.40m
Site C	Existing ground RL 14.00 Proposed building RL 50.10 Height 36.1m	Existing ground RL 14.00 Proposed building RL 52.70 Height 38.60m	Existing ground RL 14.0 Proposed building RL 51.50 Height 37.50m



Height map of subject site

Sites A and C have a site areas of 3,315m² and 2,960m², and as such, subject to compliance with clause 6.14, a 40m height control applies. Site B has a site area of 1,496m² and as such fails to satisfy the 1,500m² site area criteria to permit a 40m height limit. In this regard the applicant relies upon the proposed stratum of land below ground level under Chapel Lane (site area approximately 324m²), to increase the size of Site B to be compliant with the minimum 1,500m² site area criteria for clause 4.3(2A).

However, the works within that area provide for parking for both Sites A and B and as such if this area were to be included for the purpose of this provision, a combined area for Sites A, B and the portion of Chapel Lane would need to be considered, the combined of which would be approximately 5,135m².

In order for the Chapel Lane land to be included for the purpose of clause 4.3(2A) it would be required to satisfy the requirement that it was part of the "lot" of land having the required area. The portion of Chapel Lane involved in the building on Sites A and B is the portion extending from the northern side to the southern side of Site B, but only the portion that is below ground level, with the at grade portion of this land being proposed as a public road. The basement carpark under this portion of road provides parking for, and access to, both the buildings on Site A and B.

There is no definition within the LEP for “lot” and the Macquarie Dictionary definition is “a *distinct portion or piece of land: plot*”. As this portion of Chapel Lane provides for construction of part of the building on Site B, albeit underground, it could be considered to be a distinct portion of land on which the building is to be constructed. However, it is unclear whether the fact it also accommodates a building on another site or a different use (ie public road) above ground or the fact it is to be stratum subdivided affects this interpretation. It could be that Sites A and B and the portion of Chapel Lane form a lot and as such the combined area of all three would form the lot and satisfy the requirement for the purpose of the height control. I note that no definitive legal advice has been received in terms of this interpretation.

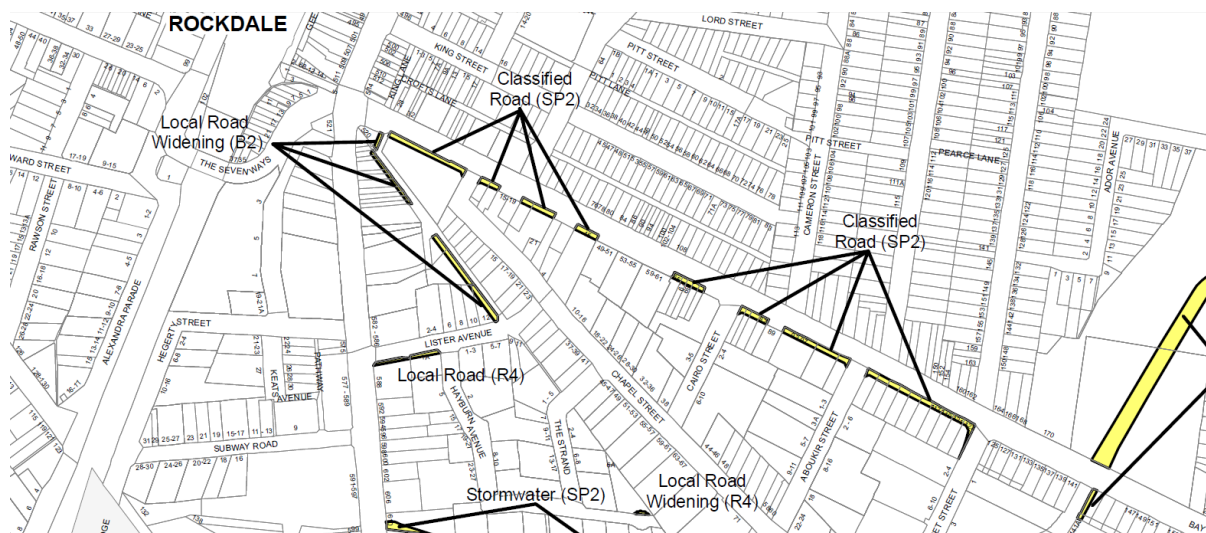
All proposed buildings exceed the 28m maximum base building height and are reliant upon satisfying clause 6.14 Design Excellence in order to comply with the maximum 40m height control. As is detailed later in this report, it is not considered that the proposal displays design excellence and as such the proposal significantly breaches the 28m height control. No clause 4.6 variation request to the control has been submitted with the application.

Clause 4.4 – Floor Space Ratio (FSR)

Clause 4.4 sets no maximum FSR for the subject site.

Clause 5.1 – Relevant Acquisition Authority

The site contains a number of parcels of land identified for acquisition (see following plan), including properties fronting Chapel Lane that are required for local road widening and properties fronting Bay Street that are required for widening of that classified road and identifies the acquisition authorities. Clause 5.1A indicates that consent cannot be granted for development on this land other than for the purpose specified, and in this case the purpose is roads. The proposal incorporates the proposed widenings, with the buildings proposed to be suitably setback to accommodate the widenings.



Land acquisition map

Clause 5.9 – Preservation of Trees or Vegetation

Clause 5.9 requires that consent be sought for the removal of trees or vegetation and the proposal involves the removal of a number of trees within the car parks.

It is also noted that the proposed basement car parks may have a detrimental impact upon trees located on No. 41 Bay Street and Nos. 2-4 Lister Avenue, however no assessment has been provided of the impact upon these trees. It is noted that if the basement car park results in the need to remove these trees the owner's consent of the impacted property owners would be required and has not been provided.

Clause 5.10 – Heritage Conservation

Clause 5.10 indicates that development impacting items of heritage require consent and that the consent authority must consider the impact of the proposal upon the heritage item prior to granting consent. The adjoining property at No. 11 Bay Street (church) is an item of heritage and as such consideration must be given to the impact of the proposal upon the item.

In order to assess the impact Council's Heritage Advisor has requested additional information in the form of a streetscape elevation illustrating the comparative scale of the proposed development and its setback from the significant buildings. This information has not been provided.

Clause 6.1 – Acid Sulfate Soils

The site is within an area classified as Class 5 in the acid sulfate soils map and is within 500m of Class 4 land. The proposal involves works for excavation for basements that is below 5m AHD within 500m of a Class 4 area. A *Detailed Site Investigation* prepared by Environmental Investigations Australia has been prepared which concludes that the site has a low likelihood that acid sulfate soils or PASS is present on the site and that no further investigations are necessary in relation to acid sulphate soils.

Clause 6.2 – Earthworks

The proposal involves excavation for the basement car parks and clause 6.2 requires consideration of the following matters prior to granting consent for earthworks.

- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*

A geotechnical report has been prepared by Environmental Investigations Australia to address soil stability and has identified that there are potential risks of ground loss as a result of the excavations which could detrimentally impact the sewerage culvert and adjoining roads/buildings and that this will need to be monitored during works. Any consent should include the recommendations of this report as conditions of consent.

The proposal will intercept the ground water and the Department of Primary Industries Office of Water has provided authorization under the Water Management Act 2000 to intercept the ground water with the proposal deemed to be an aquifer interference activity and GTAs have been provided.

- (b) *the effect of the proposed development on the likely future use or redevelopment of the land,*

The excavation proposed is intended to facilitate the proposed future use of the site and as such the effect will be positive.

- (c) *the quality of the fill or the soil to be excavated, or both,*

The Detailed Site Investigation report prepared by Environmental Investigations Australia for the site identifies onsite contamination exists and recommends works to remediate the site which would include classification of the soil for removal. A condition should be placed upon any consent requiring any fill to be brought to the site to be certified as VENM.

(d) *the effect of the proposed development on the existing and likely amenity of adjoining properties,*

The proposed excavation work is likely to impact the amenity of adjoining properties during the works and standard conditions of consent and noise and vibration mitigation measures would minimize such impact. The requirement for a structural engineer's design, informed by a geotechnical assessment of the site, for the basement should prevent damage to adjoining properties during the works.

(e) *the source of any fill material and the destination of any excavated material,*

The RAP and waste management plan will need to identify offsite disposal sites for any contaminated material. See above comments in relation to VENM.

(f) *the likelihood of disturbing relics,*

The site has previously been used for commercial, residential and car parking uses and as such is unlikely to contain any relics.

(g) *the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Soil and sedimentation devices will be required to be installed and maintained throughout the excavation and construction works to ensure no unacceptable impacts upon watercourses.

Clause 6.3 – Development in Areas Subject to Aircraft Noise

The provisions of this clause require consideration of the impact of aircraft noise from Sydney Airport upon the development and applies to land in an ANEF contour of 20 or greater, and as such applies to the subject site which is located in an ANEF contour of 20.

An acoustic report prepared by Koikas Acoustics provides recommendations for ceiling/roof, external walls, windows/doors to achieve compliant internal noise levels having regard to aircraft noise.

Clause 6.4 – Airspace Operations

This clause requires that consent not be granted to an application unless the consent authority is satisfied that the development will not penetrate the Limitation or Operations Surface (LOS) for Sydney Airport or if it does penetrate the LOS that consultation has occurred with the relevant Commonwealth body and the Commonwealth body advises that the development will not penetrate the LOS or that no objection is raised to the penetration.

Consultation has occurred with Sydney Airport, however at this stage no concurrence has been given or confirmation that the amended design does not penetrate the LOS.

Clause 6.7 – Stormwater

The proposed stormwater system has not been assessed by Council's engineer as being acceptable at this stage.

Clause 6.12 – Essential Services

Services are generally available on the site. Conditions should be placed on any consent requiring consultation with relevant utility providers to ensure appropriate provision of services on the site.

Clause 6.14 – Design Excellence

This clause applies to development that relies upon clause 4.3(2A)(a) and as such applies to the subject site. Under this clause development consent must not be granted to development in excess of the base height control of 28m unless an architectural design competition that is consistent with the Design Excellence Guidelines has been held and the design of the development is the winner of the architectural design competition and the consent authority considers that the development exhibits design excellence.

The proposed development underwent a design competition which identified the current architects as being the winner, however, the competition concluded that whilst the architect was the winner, the design did not exhibit design excellence, rather it had potential to exhibit design excellence.

The application as lodged was not the same as that provided in the competition. Given the subsequent amendments to the plans Council decided to refer the development to the Design Integrity Panel for consideration of design excellence. Whilst the plans considered (two sets) by the Panel were not those considered in this report, there are a number of similarities.

It is noted that the Panel did not determine that the final amended set of plans it reviewed exhibited design excellence, however it did find that it was an improvement on the previous set, in particular with the separation of the tower of the building on Site C into two elements. It is noted that this element has now been removed from the set of plans considered within this report.

Given the failure of the design to provide appropriate articulation of the building on Site C through provision of two, rather than a single, tower element, and on Site C through provision of setback of the tower above the podium the development will have a bulky streetscape presentation that will detract from the visual amenity of the area. The design fails to provide adequate separation for the height of buildings proposed both within the site and to adjoining properties, resulting in unacceptable visual bulk, privacy and shadow impacts. Further, failure to provide adequate deep soil landscaping, appropriate solar access to proposed apartments and adequate private open space is indicative of the development having an excessive density for the site. For these reasons, it is considered that the development does not exhibit Design Excellence and as such the provisions of clause 6.14 mean that the bonus 12m of height on the site should not be awarded. In the absence of the design exhibiting Design Excellence the height control reverts to 28m and the proposal breaches this control significantly, without a supporting clause 4.6 variation request.

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))

There are no Draft Environmental Planning Instruments that affect the assessment of this proposal.

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

Development Control Plan 2011(DCP 2011)

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below. It is noted that clause 6A of SEPP 65 indicates that the following provisions of the Apartment Design Guide override this DCP and as such the related provisions under the DCP will not be addressed following.

- Visual privacy
- Solar access and daylight access
- Common circulation and spaces
- Apartment size and layout
- Ceiling heights
- Private open space and balconies
- Natural ventilation
- Storage

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vistas	Yes	Yes - see discussion
4.1.2 Heritage Conservation	Inadequate information provided – see discussion LEP	Unknown
4.1.3 Water Management	Assessment not complete	Unknown
4.1.4 Soil Management	Yes	Yes
4.1.5 Contaminated Land	No	No - see discussion
4.1.7 Tree Preservation	Inadequate information	Unknown –see LEP discussion
4.1.9 Lot Size and Site Consolidation	Yes	Yes - see discussion
4.2 Streetscape and Site Context	No	No - see discussion
4.3.1 Open Space and Landscape Design	No	No - see discussion
4.3.2 Private Open Space – Shop Top Housing	Overridden by ARHSEPP	N/A
4.3.3 Communal Open Space	Yes	Yes - see discussion
4.4.2 Solar Access	Overridden by ARHSEPP	N/A
4.4.5 Visual and Acoustic privacy	Overridden by ARHSEPP	N/A
4.4.6 Noise Impact	Yes	Yes - see discussion
4.4.7 Wind Impact	Inadequate information provided	Unknown – see discussion
4.5.1 Housing Diversity and Choice	No	No – see discussion
4.5.2 Equitable Access	No	No – see discussion
4.6 Parking, Access and Movement	No	No – see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.7 Air Conditioning and Communication Structures	Yes	Yes – see discussion
4.7 Waste Storage and Recycling Facilities	Assessment not complete	Unknown
4.7 Letterboxes	Yes	Yes – see discussion
5.2 Residential Flat Buildings	Yes	Yes – see discussion
5.3 Mixed Use	In part	In part – see discussion
7.5 Rockdale Town Centre	No	No – see discussion

4.1.1 Views and Vistas

The site has a 40m height control and development to this height will remove views from all surrounding properties regardless of whether the design is a skilful design. As such, notwithstanding the impact upon views may be categorised as devastating, the view impact is acceptable given the site's zoning and controls.

4.1.5 Contaminated Land

As discussed previously in relation to SEPP 55, the site contains soil contamination that is required to be remediated, however the application does not include a RAP and as such cannot be supported.

4.1.9 Lot Size and Site Consolidation

The controls for mixed use development require developments of 4 storeys or greater to have a minimum 18m frontage and for residential flat buildings require a minimum 24m frontage. The subject sites has frontages well in excess of the controls.

4.2 Streetscape and Site Context

The design does not appropriately responds to the context of the area. The design failures to provide appropriate articulation of the building on Site C through provision of two, rather than a single, tower element, and on Site C through provision of setback of the tower above the podium. The result is that the development will have a bulky streetscape presentation that will detract from the visual amenity of the area. The design also fails to provide a suitable transition to the adjoining development at Nos. 2-4 Lister Avenue.

4.3.1 Open Space and Landscape Design

Concerns are raised with the landscape design for the public domain and the lack of provision for deep soil landscaping that will allow for tree planting commensurate with the scale of the proposed development. The design of the roof top communal open space areas is considered to be appropriate.

The proposal does not provide the required 10% landscaping on the site.

4.3 Communal Open Space

A minimum communal open space area of 5m² per dwelling is required. With Site A having 159 dwellings proposed a minimum 795m² of communal open space is to be provided. With Site B having 77 dwellings proposed a minimum 385m² of communal open space is to be provided. With Site C having 126 dwellings proposed a minimum 630m² of communal open space is to be provided. The proposal provides 1,010m² of communal open space on the roof tops of Sites A and B and approximately 280m² (no calculation provided by application) of common area within the grounds of the building on Site A, a total of 1,290m².

The proposal provides 681m² of communal open space on the roof top of Site C and a 3m setback area to Bay Street having an area of approximately 220m², giving a total communal open space area of 901m².

4.4.6 Noise Impact

An acoustic report has been prepared for the application containing recommendations on glazing thicknesses and treatments for walls and ceilings to address noise.

4.4.7 Wind Impact

A wind impact assessment has been prepared by Windtech which indicates that whilst most balconies will not suffer unacceptably from wind impact and several trafficable outdoor areas are potentially exposed to adverse wind conditions. A series of recommendations are made to address these impacts. However, the report addresses the original design and no updated report has been prepared for the current design. It is therefore considered that inadequate information is available to determine whether appropriate wind protection will be afforded to all outdoor trafficable areas.

4.5.1 Housing Diversity and Choice

The control requires shop top housing and residential flat buildings to have a dwelling mix of 10-30% studio/1 bedroom apartments, 50-75% 2 bedroom apartments and 10-20% 3 bedroom apartments, with 10% of apartments to be adaptable apartments. The proposal provides for a mix of 145 x 1 bedroom (40.1%), 199 x 2 (55%) and 18 x 3 bedroom (5%) apartments, of which 10% are adaptable. As such the development provides an oversupply of one bedroom apartments and an under supply of three bedroom apartment.

4.5.2 Equitable Access

The design provides for accessible paths to the entries of buildings and to common facilities, however the entries to the commercial space (large) of the building on Site C are not considered to be equitable, with significant travel distances required for the accessible entry due to the provision of a large single level commercial suite.

4.6 Parking, Access and Movement

The ADG provisions apply to the residential component of the development and has been addressed previously. 1 space per 40m² is required to be provided for retail premises. The proposal provides 1,985m² of retail space and as such requires the provision of 49.6 retail parking spaces. The proposal provides only 37 retail spaces and as such is deficient, however there is an oversupply of residential spaces and the deficiency could be corrected by a condition of consent.

4.7 Air Conditioning and Communication Structures

Details on the location of TV antennas/air conditioning units etc have not been provided. A condition of consent would be required to ensure the proposal achieves compliance with this clause.

4.7 Letterboxes

Letterboxes are required to be provided and a condition of consent to this effect should be included in any consent.

5.2 Residential Flat Buildings

Site Coverage: The building footprint is established by setback requirements, however these are different to those identified in Part 7.5 Rockdale Town Centre. As the Town Centre controls are site specific whilst those in Part 5.2 are generic, it is appropriate to apply the site specific controls.

Apartment Size: These controls are overridden by the ADG.

Building Design: The design criteria require responsive design, with connections to the street, solid balustrading, definition of base, middle and top of building, avoiding blank walls, building lines which are parallel to the street, expression of important corners and appropriate use of materials and articulation. Provision of communal open space on the roof is supported as is appropriate articulation of the roof form. The proposal is generally satisfactory in relation to these provisions subject to the concerns raised in the previous assessment of design throughout this report. The communal open space provided on the roof is appropriate as is the articulation of the roof form.

Building Entry: Entries are required to be clearly visible, with multiple entries for street activation, with 50% of ground floor apartments to have direct street entry, barrier free entry is to be provided, separate entries are required for parking and pedestrians and the pedestrian entry should be on the primary frontage. The proposal is generally compliant with these provisions.

Lift Size and Access: Lifts are to be provided with a minimum internal car dimension of 2.1m x 1.5m and are to be accessible from all levels. Dwellings above the sixth storey are to have access to two lifts and common lobbies are to be a minimum of 2m wide, with natural light and ventilation. The proposal is generally compliant with these provisions, however it is not clear if the lifts are compliant. A condition of any consent could address this concern.

5.3 Mixed Use

Setbacks: The mixed use development controls are different to those identified in Part 7.5 Rockdale Town Centre. As the Town Centre controls are site specific whilst those in Part 5.2 are generic, it is appropriate to apply the site specific controls.

Building Use: Ground floor uses are to be active uses and residential is prohibited at ground level other than for entries. Sloping street frontages are to be designed so the development steps with the grade of the street. A minimum of 10% of the gross floor area is to be for retail or commercial. The proposal is to provide active uses at ground level to the Bay Street and Chapel Street frontages but not to Chapel Lane. This accords with the Part 7.5 Rockdale Town Centre controls and as such is acceptable. The proposal provides retail spaces at ground level on Site B with an area of 266m², equating to 3.8% of the total floor space, and on Site C with an area of 1,719m², equating to 13.2% of the total floor space. As such non-residential provision is satisfied for Site C but not Site B, however when considered together the two sites provide for 10% and as such it is considered that the provision is acceptable.

Building Design: The façade design and design of the roof is appropriate, subject to the concerns raised in the previous assessment of design throughout this report. The communal open space provided on the roof is appropriate as is the articulation of the roof form.

Public Domain Interface: The public domain interface controls require sloping sites to provide access to the commercial/retail suites at footpath level with differences in levels of the ground floor suite and the footpath to be no greater than 600mm elsewhere. This is achieved for the building on Site B and for the Bay Street frontage of the building on Site C, other than the medium size suite where the ground level is elevated more than 900mm. This can be addressed by dropping the level of this suite to match the average of the footpath level. However, it is not achieved from the Chapel Street frontage of the site other than at the northern end due to the provision of a large, single level suite. This response is inappropriate from a public domain interface and accessibility viewpoint. At the southern end the ground level of the suite is approximately 1.6m above the pavement level of the street which is completely unacceptable.

7.5 Rockdale Town Centre

Building Use and Function: The Rockdale Town Centre controls provides for different building uses and functions for different areas according to the desired future character of that area. For the subject site the characters and their uses and functions are as follows:

Bay/Chapel Street & Lister Avenue frontages Centre Edge Residential – provides for high density residential at the edge of the centre with opportunities for retail or commercial uses. These areas are to have

- | | |
|------------------------------------------------------------------------------------|------------------|
| • active retail uses at ground level permitted | Complies |
| • access to residential lobbies from these frontages | Complies in part |
| • ground floor residential with direct street access permitted | Not provided |
| • vehicular access permitted where the development doesn't front a service laneway | Complies in part |
| • service access permitted where the development doesn't front a service laneway | Complies in part |

The proposal is consistent with these controls except for the provision of vehicular and services access to the building on Site A from Lister Avenue rather than from Chapel Lane and the provision of residential lobbies from Chapel Lane rather than Lister Avenue. It is considered that the location of the vehicular access is a poor choice and results in a loss of opportunity to provide appropriate landscaping to the frontage of Lister Avenue that would be more consistent with the character of the street. The provision of lobby entries off Chapel Lane is acceptable for the northern part of the building, however it is considered that the lobby for the southern part of the building should have been provided off Lister Avenue. The design is such that this could have been achieved by a condition of consent.

Chapel and unnamed Lane frontages Service Laneway – primarily serves service function and provides vehicle access. These areas are to have:

- | | |
|-------------------------------------------------------------|----------------|
| • active retail and business uses at ground level encourage | Not provided |
| • residential lobbies may be accessed from service lane | Complies |
| • no ground floor residential | Doesn't comply |
| • vehicular access should be provided from service laneway | Doesn't comply |
| • service access should be provided from service laneway | Doesn't comply |

The provision of ground level residential results in poor amenity for some of the apartments which have minimal setbacks from the laneway footpath and are afforded a poor level of acoustic and visual privacy. Refer to previous comments about access location for the building on Site C.

Communal Open Space and Landscape Design: The controls require a minimum of 25% of the site to be dedicated for communal open space and at least 50% of the communal open space to be soft landscaping in order to address the density and intensity of the development proposed for the area.

The proposal fails significantly in providing soft landscaped area.

Given the site area of 5,135m², Sites A/B require the provision of 1,284m² of communal open space, 642m² of which is to be soft landscaping. The proposal provides 1,010m² of communal open space on the roof tops of Sites A and B and approximately 280m² (no calculation provided by application) of common area within the grounds of the building on Site A, a total of 1,290m². It is unknown what the total soft landscaped area is, however it is appears to be below the required 50%.

Given the site area of 2,960m², Site C requires the provision of 740m² of communal open space, 370m² of which is to be soft landscaping. The proposal provides 681m² of communal open space on the roof top of Site C and a 3m setback area to Bay Street having an area of approximately 220m², giving a total communal open space area of 901m². It is unknown what the total soft landscaped area is.

Building Form and Character: All development is to be built to the street edge unless specified otherwise in the street character applying to the site. The Rockdale Town Centre controls provide setback and podium controls throughout the Rockdale Town Centre with different controls applying to different areas according to the desired future character set by the street character. For the subject site the controls applicable are as follows:

Bay Street Arterial Edge – Buildings will have regard to the high speeds of observers and be clearly read as a strong podium upon which sits a lighter, modulated building allowing vistas between buildings to the skyline beyond.

- | | |
|---------------------------------------------------------------------------------------------------------------------------------|--------------------|
| • 3m setback deep soil zone | Partial compliance |
| • 3 storey podium | Complies |
| • 3m setback above podium | Complies |
| • Above podium setback of at least 4.5m from side, separation between buildings of at least 9m and maximum façade length of 40m | Doesn't comply |

The partial compliance relates to the provision of a deep soil setback only to the second basement level (ie deep soil 1 storey deep). The 3m deep soil setback is to support the provision of a Green Gateway and the related style sheet shows the provision of a footpath adjoining the building and a minimum 1.2m deep soil zone to allow for the planting of smaller trees to supplement the tall street trees. This variation is considered acceptable as it will still allow for such planting on the subject site.

The intention of the controls is to provide for tower elements above a continuous street podium which have a width no greater than 40m and a separation of at least 9m. The proposal fails to achieve this, with one building above podium having a length of 69m. Previous versions of the proposal included two buildings with a separation opposite the George Street intersection which would have achieved the intention of this control (though the separation was not 9m). The variation of this control results in a significantly bulky development that is uncharacteristic of the existing character of high density apartment buildings opposite the site in Bay Street and the desired future character of the area.

Chapel Street & Lister Avenue Local Edge – Street edge defined by modulated built form transitioning from the strong urban character in the Centre core to the more spacious and open character of the surrounding residential area.

- | | |
|-----------------------------|--------------------|
| • 2m setback deep soil zone | Partial compliance |
| • 4 storey podium | Partial compliance |
| • 3m setback above podium | Partial compliance |

The proposal complies with the 2m setback requirement for deep soil to the Lister Avenue frontage. To the Chapel Street frontage the building on Site B fails to provide any setback to podium and a 2m setback to podium of the building on Site C is provided, but not as a deep soil area as the basement extends under this area. The failure to provide the deep soil landscaped setbacks results in a failure to comply with the soft landscaping requirements of the DCP and the deep soil requirements of the ADG.

The building on Site C provides a 2m - 5m setback to the podium, which is appropriate as the increased setback adjoining Nos. 2-4 Lister Avenue provides for a degree of continuity to the streetscape. The podium height of 4 storeys is compliant, as is the additional 3m setback above podium.

The building on Site B provides a nil setback to the upper levels of the building (3.8m at ground level) with no discernible podium.

The proposal provides only a one storey podium to Chapel Street for the building on Site C, with an irregular setback of the building above podium varying from 0m-2.2m, with a larger setback to the central portion. As such the design to the Chapel Street frontage fails to provide the strong podium and tower above character sought by the controls for Local Edge development.

Chapel and unnamed Lane Laneway – Strong street edge definition on lower levels creating a human scale to the narrow laneways with upper level units providing passive surveillance of the space. The whole podium will have a direct relationship with the lane and be composed to create interest and engage with laneway users.

- | | |
|---------------------------|--------------------|
| • nil setback | Complies |
| • 3 storey podium | Doesn't comply |
| • 3m setback above podium | Partial compliance |

The building on Site A provides a 4 storey podium and only the southern tower of the building provides a setback above podium of 3m, with the northern tower having a nil setback and as such effectively no podium.

Chapel Street Precinct: The site is located within the Chapel Street Precinct of the Rockdale Town Centre and within this precinct it is required that public roads and pedestrian links are to be included in the redevelopment and then dedicated to Council. At least 40 public car parking spaces are to be provided at-grade in a single location, either on or off street and are to be dedicated to Council. This parking is to be located either adjoining the side boundary of Chapel St or opposite the termination of George Street. A new public open space is to be provided fronting Bay Street which is accessible by pedestrians from Chapel Street.

The proposal provides for new public road and pedestrian link and it is proposed that they be dedicated to Council at the completion of the works. It is proposed to provide 42 public parking spaces which are to be located within Basement Levels L1 and L2 within the building on Site C and 14 on-street parking spaces in the widened Chapel Lane. Therefore, whilst the proposal is compliant with the number of public parking spaces required to be provided, the spaces are not located as required. Further, no information has been provided to show how the spaces would be managed. Pedestrian access from the spaces is via a public lift adjoining Bay Street. It is considered more appropriate that the lift provide access directly to Chapel Street in proximity to the public open space and the retail strip along Chapel Street.

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 applicant has submitted a Voluntary Planning Agreement with the application which provides for the following public benefits:

- Provision of 40 car parking spaces within Basement Levels L1 and L2;
- Within 3 months of consent being granted, entering into a planning agreement to facilitate the transfer to Council of a stratum containing the 40 parking spaces;
- The stratum lot containing the car parking spaces will be transferred to Council prior to the issue of the Occupation Certificate.

Should consent be granted to the development application, the inclusion of the Voluntary Planning Agreement as part of the consent documentation is recommended.

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

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

The Regulations requires notification to relevant authorities that may have an interest in the application. The proposal has been notified to Sydney Water as the site has a significant Sydney Water underground sewerage culvert traversing the site. Sydney Water's response to the notification raised no objection to the proposal.

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

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

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. Further issues have been discussed in response to resident's submissions later in this report. It is considered that the likely impacts of the development are unacceptable and the application is considered to be an overdevelopment of the site.

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. It is not considered that the design of the proposal appropriately responds to the context of the site in terms of streetscape presentation and impacts upon adjoining properties. It is considered that the application is an overdevelopment of the site.

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

The development has been notified in accordance with the provisions of Rockdale DCP 2011 twice, with twelve (12) parties making submissions (multiple submissions for some properties and single submissions for a number of properties) being received to the notification of the amended plans the subject of this report. The issues raised in the submissions are discussed below:

Issue 1: Loss of public parking, with the removal of 150 public spaces

Comment: It is noted that the proposal complies with the numerical public parking provision (if not the location) required by the DCP. The Local Area Traffic Committee raised concerns with the location of the parking, its connectivity to the public domain and how it would be managed. These concerns are yet to be addressed.

Issue 2: Impact on Heritage Significance of church – no update of Heritage Impact Assessment with amended application

Comment: No amended Heritage Impact Assessment has been provided and no comprehensive assessment of the impact of the application upon the heritage item has been provided by Council's Heritage Advisor.

Issue 3: Potential structural impacts due to excavation works

Comment: A geotechnical report has been prepared which includes recommendations for further work and dilapidation reports for adjoining properties. Subject to conditions related to these recommendations it is considered that sufficient information has been provided to ensure that if work is appropriately carried out that the proposal will not result in structural impacts upon adjoining properties and infrastructure.

Issue 4: Isolation of No. 15 Chapel Street which has inadequate width for development in isolation given DCP controls and ADG separation requirements

Comment: No. 15 Chapel Street is adjoined to the south by other properties which are underdeveloped having regard to the recent up-zoning of the sites to have a height control of 28m (Nos. 17, 19 and 21 Chapel Street). Whilst No. 17 Chapel Street contains a 3 storey apartment building, the significant additional development potential afforded by the up-zoning would provide sufficient incentive for the redevelopment of this site, though it is noted that such redevelopment may not occur in the near future. As such, it is not considered that No. 15 Chapel Street is an isolated site.

Issue 5: Inadequate setback to common boundary with No. 15 Chapel Street for compliance with ADG

Comment: The proposal provides nil setbacks from the common boundary for the podium, which is required by the DCP controls and the proposed tower element is to be setback 4.5m - 6.6m from the common boundary, increasing to 6m - 6.6m at Level 8, providing inadequate setback to comply with the ADG requirements

Issue 6: Inadequate setback to common boundary with No. 41 Bay Street for compliance with ADG

Comment: The proposal provides nil setbacks from the common boundary for the podium, which is required by the DCP controls. Above the podium a setback of 4.5m is proposed for the Bay Street fronting portion of the tower and 6.6m for the Chapel Street fronting portion, with a 9m setback in the central portion, which breaches the ADG setbacks which require a 9m setback above podium up to Level 7. Above Level 7 the setbacks are increased to 6m for the Bay Street portion, with no change to the Chapel Street portion, again breaching the 12m separation requirement, it being noted that habitable rooms face the side boundary.

Issue 7: Overshadowing of No. 15 Chapel Street

Comment: The shadow diagrams show that the living rooms of the apartment building at No. 15 Chapel Street will be in shadow until approximately 11.30am in mid-winter (when the southern windows in the eastern façade may receive solar access until approximately 12pm, the northernmost windows do not appear to be likely to receive any sunlight). This impact is from the compliant height of the proposed building on Sites B and C but is exacerbated by

the lack of setback above podium of the building fronting Chapel Street on Site B and separation from that site.

Issue 8: Loss of solar access and privacy to Nos. 41 & 45 Bay Street and No. 4 Chapel Street

Comment: The shadow impact upon the adjoining properties is resultant from the development on Site C which is compliant with the height controls, but as discussed above is not compliant with the separation controls under the ADG and additional shadow impact will result from the non-compliance. The proposed building provides habitable windows facing the abovementioned properties that have inadequate setbacks as required by the ADG and as such have an unacceptable privacy impact upon the potential future redevelopment of those sites.

Issue 9: Unoccupied dwellings are being occupied by squatters – request fencing

Comment: Whilst this is a concern for the neighbours and should be addressed it is not a matter for consideration in the assessment of the application.

Issue 10: Increased traffic in Bay Street and Lister Avenue

Comment: An assessment of the impact of the proposal upon the surrounding road network by the RMS is still outstanding.

Issue 11: Is road widening for additional parking in Bay Street? – will cause traffic problems

Comment: The proposal does not include works within the road widening area on Bay Street.

Issue 12: Why is this development higher than other buildings?

Comment: The development site has a potential greater height control than adjoining properties subject to minimum lot area and Design Excellence criteria being met.

Issue 13: The scale of the development is inconsistent with the area – breach of height control

Comment: The amended plans provide compliance with the height control if the development is considered to exhibit Design Excellence, however it is not considered that the design exhibits Design Excellence.

Issue 14: Loss of trees

Comment: The proposal results in the loss of all trees on the site (other than some street trees). It is considered that additional planting of trees is required given the scale of the development.

Issue 15: Construction impacts for extended times

Comment: It is acknowledged that a development of this size will take years to construct and that surrounding residents will be impacted during the works. Conditions of any consent will limit the impacts, but not remove them totally.

Issue 16: Loss of views (including water) from apartments in Nos. 58-62 Bay Street

Comment: The proposed buildings have heights up to RL 51 for the building and RL 52.7 for the lift overruns, which are well within the height control (subject to Design Excellence). The apartment building at Nos. 58-62 Bay Street has a height of RL 47 to the roof. As such, even a skilful design of the three buildings would result in a loss of any water views enjoyed by this property.

Issue 17: Noise impact upon apartments in Nos. 58-62 Bay Street due to roof top communal open space

Comment: The separation distance of in the order of 36m between the developments will provide sufficient separation to suitably ameliorate any noise from the use of the roof top.

Issue 18: Loss of privacy to apartments in Nos. 58-62 Bay Street

Comment: The separation distance of in the order of 36m between the developments will provide sufficient separation to ensure a suitable level of privacy, exceeding the ADG separation requirements.

Issue 19: Noise impact from roof top outdoor cinema

Comment: A roof top outdoor cinema would not be supported in the common open space of the development.

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

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal is considered to inappropriately respond to the context of the site, provides for an inadequate level of amenity for future residents and constitutes an overdevelopment of the site. As such it is considered that approval of the development application is not in the public interest.

S94 Contribution towards provision or improvement of amenities or services

The proposal is subject to Council's Development Contributions Plan 2004 and should the application be approved a condition of consent should be included requiring the payment of the relevant contributions.

CONCLUSION

The proposed development has been considered under S79C(1) of the Environmental Planning and Assessment Act, 1979. The application involves demolition of existing structures and construction of 1 x 11 storey apartment building and 2 x 10 storey mixed use buildings over 3-6 levels of basement parking (580 parking spaces), with rooftop communal space, public domain/landscape works in Chapel Street and Chapel Lane, reconstruction and widening of Chapel Lane and stratum subdivision. The proposal is inconsistent with a significant number of objectives and controls under SEPP 65, the ADG, RLEP 2011 and DCP 2011 and is not considered to exhibit Design Excellence. As the proposal does not exhibit Design Excellence and it breaches the 28m base height limit, without a clause 4.6 variation request, the application is recommended for refusal.