

# 588-592 Princes Highway

ROCKDALE

Shop Top Housing

## Clause 4.6 Application for Exception to Development Standards

April 2016

Prepared by:

**ae** design partnership  
architecture urban design planning

Prepared for:

**AVA Architects**

:

t: 02 9519 4994 f: 02 9519 4995  
<http://www.aedesignstudio.com.au>  
23 Barr St Camperdown NSW 2050  
Nom Architect N. R. Dickson 7061

Project:	588-592 Princes Highway, Rockdale		
Document:	Clause 4.6 Application for Exception to Development Standards		
Revision:	Date:	Authored By:	Approved By:
[A]	07/04/2016	Lucy Donnelly Tristan Kell	

# Contents

1.0 Introduction.....	4
1.1 Brief Overview of the Proposal .....	5
2.0 Clause 4.6 'Exceptions to development standards' .....	7
3.0 Consistent with the objectives of the development standard and the zones .....	9
3.1 Height control objectives.....	9
3.2 B4 Mixed use zone objectives .....	12
4.0 Compliance unreasonable or unnecessary .....	13
4.1 Height control objectives.....	13
4.2 Aims of Plan.....	13
4.3 Burden of compliance disproportionate to consequences .....	14
5.0 Environmental planning grounds.....	15
5.1 The Statutory Planning Controls.....	15
5.2 A Plan for Growing Sydney (2015) .....	15
6.0 Concurrence of the 'Director-General' .....	17

## 1.0 Introduction

This Clause 4.6 Request for Exception to Development Standards has been prepared as part of a Development Application seeking approval for the development of shop top housing at 588-592 Princes Highway, Rockdale in the Rockdale Local Government Area.

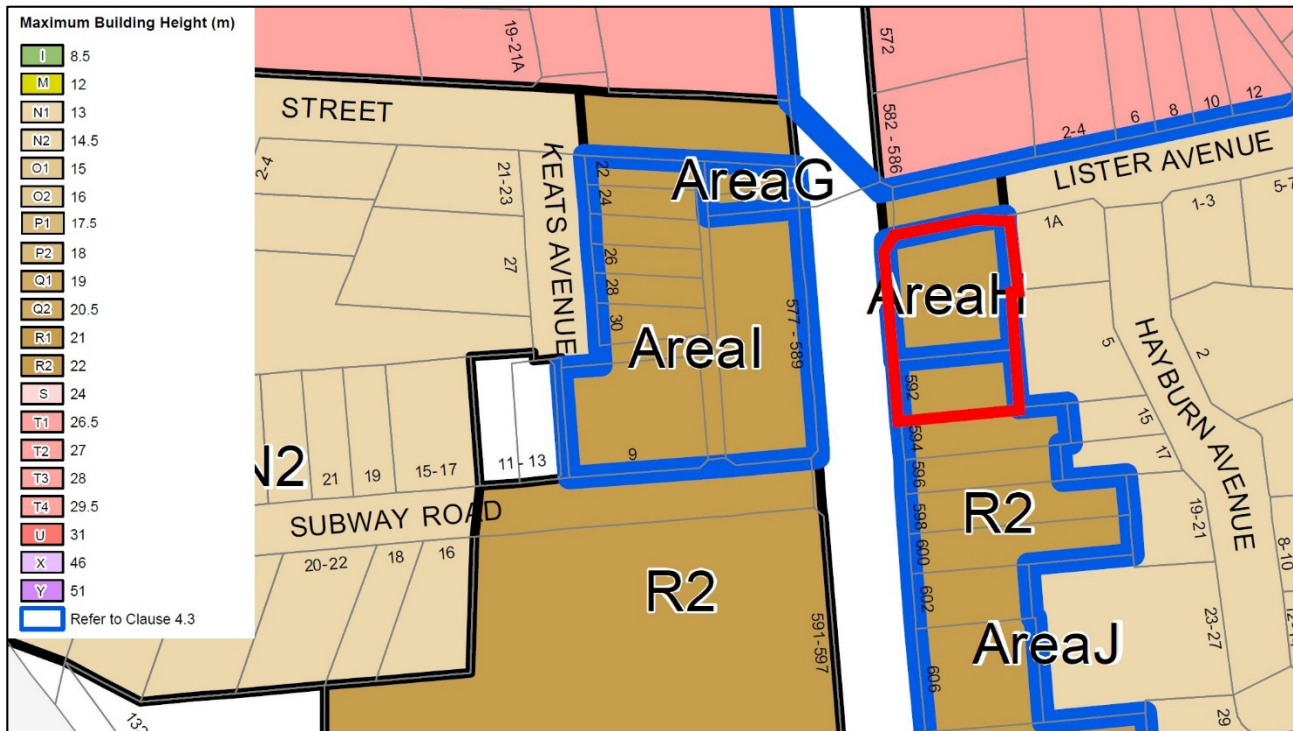


Figure 1: Rockdale LEP 2011 Maximum Height of Buildings Map.

Under **Clause 4.3 'Height of buildings'** of the applicable Environmental Planning Instrument, the Rockdale Local Environmental Plan 2011 (see Figure 1):

- The maximum permissible height across the subject site is 22 metres;
- An additional 12 metres is permissible within the northern allotment (Allotment I in DP840863) provided the proposed building is constructed within a lot of at least 2000m<sup>2</sup> (Clause 4.3(2A)(g) Rockdale LEP 2011) and
- An additional 9 metres is permissible within the southern allotment (Allotment II in DP 590046) provided the proposed building is constructed within a lot of at least 2000m<sup>2</sup>(Clause 4.3(2A)(i) Rockdale LEP 2011).

On the grounds that the proposal involves the construction of the building within an amalgamated northern and southern allotment, generating a combined site area exceeding 2,000m<sup>2</sup> (2087.69m<sup>2</sup> before dedication to Council of the northern portion of the northern allotment for the purposes of road widening as required by the Land Reservation Acquisition provisions set out within the Rockdale LEP), **the maximum permissible height applicable to the subject site is as follows:**

- Northern allotment: 34 metres
- Southern allotment: 31 metres

The proposed development has following maximum heights:

- Northern allotment: 44.6 metres (RL 56.35).
- Southern allotment: 40.51 metres (RL 49.95).

## I.I Brief Overview of the Proposal



Figure 2: Section of proposed development. Prepared by AVA Architects.

Within the 44.66 metre built form envelope is proposed:

- 4 levels of basement parking and service bay accessible from the north-eastern corner of the site via the secondary street frontage, Lister Avenue;
- 3 retail premises at Lower Ground and Ground Floor with active street frontage to the primary street frontage Princes Highway and secondary street frontage Lister Avenue;
- 140 residential apartments within the remaining 13 storeys;
- Rooftop communal open space; and
- Landscaped deep soil zones within setback to both street setbacks.

Greater detail is provided within Statement of Environmental Effects, to which this Application is attached. This request should be read in conjunction with that statement.

## 2.0 Clause 4.6 'Exceptions to development standards'

The Application for Exception to Development Standards is formalised through consideration of the proposed development against Clause 4.6 'Exceptions to development standards'. This clause is reproduced below:

- (1) The objectives of this clause are as follows:*
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) the consent authority is satisfied that:*
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) the concurrence of the Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General must consider:*
  - (a) whether contravention of the development standard raises any matter of significance for State environmental planning, and*
  - (b) the public benefit of maintaining the development standard, and*
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) [Omitted as not relevant]*

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *[Omitted as not relevant]*



## 3.0 Consistent with the objectives of the development standard and the zones

The proposed development will be in the public interest because it is consistent with the objectives of height control and the relevant zone objectives.

### 3.1 Height control objectives

The objectives of the height control are set out in clause 4.3(1):

*(1) The objectives of the clause are as follows:*

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

**Response:** on the grounds that the site has area in excess of 2,000m<sup>2</sup> (2087.69m<sup>2</sup>) the maximum permissible heights are:

- Northern Allotment: 34 metres.
- Southern Allotment: 31 metres.

No maximum floor space ratio controls apply to the subject site.

- (b) to permit building heights that encourage high quality urban form,*

**Response:** The proposed development achieves a high quality urban form in accordance with the principles and criteria identified in Rockdale Design Excellence Guidelines:

- Streetscape:
  - 3 retail tenancies located on Lower Ground and Ground Floors, providing an active street frontage.
  - Deep soil zones incorporated into Princes Highway and Lister Avenue setbacks will:
    - Enhance amenity of streetscape.
    - Reduce 'Wind Tunnel' effects adjacent to Princes Highway.
    - Reduce stormwater runoff.
- Built Form:
  - Proposal is in harmony with the desired future character of Rockdale Town Centre:
    - Increased density with preference for mixed use buildings.
    - Active street frontages.
    - Greatest height and density along Princes Highway, framing the road.
    - A transition in height which steps down towards the south.
  - Building massed towards northern boundary and steps down towards the south in response to sloping topography.
  - Proposal responds to site as a prominent street corner:
    - Corner enhanced through Titanium Dioxide coated urban marker and added sustainability features.
  - Proposal forms a skyline profile that is consistent with existing and approved development along Prince Highway.
- Accessibility:

- Lower Ground and Ground Floor retail uses are active, well-lit and accessible by pedestrians.
- Vehicular entrance to basement car parking located off secondary frontage (Lister Avenue).
- Pedestrian and vehicular entrances to the building are separated to minimise conflicts.

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

Response:

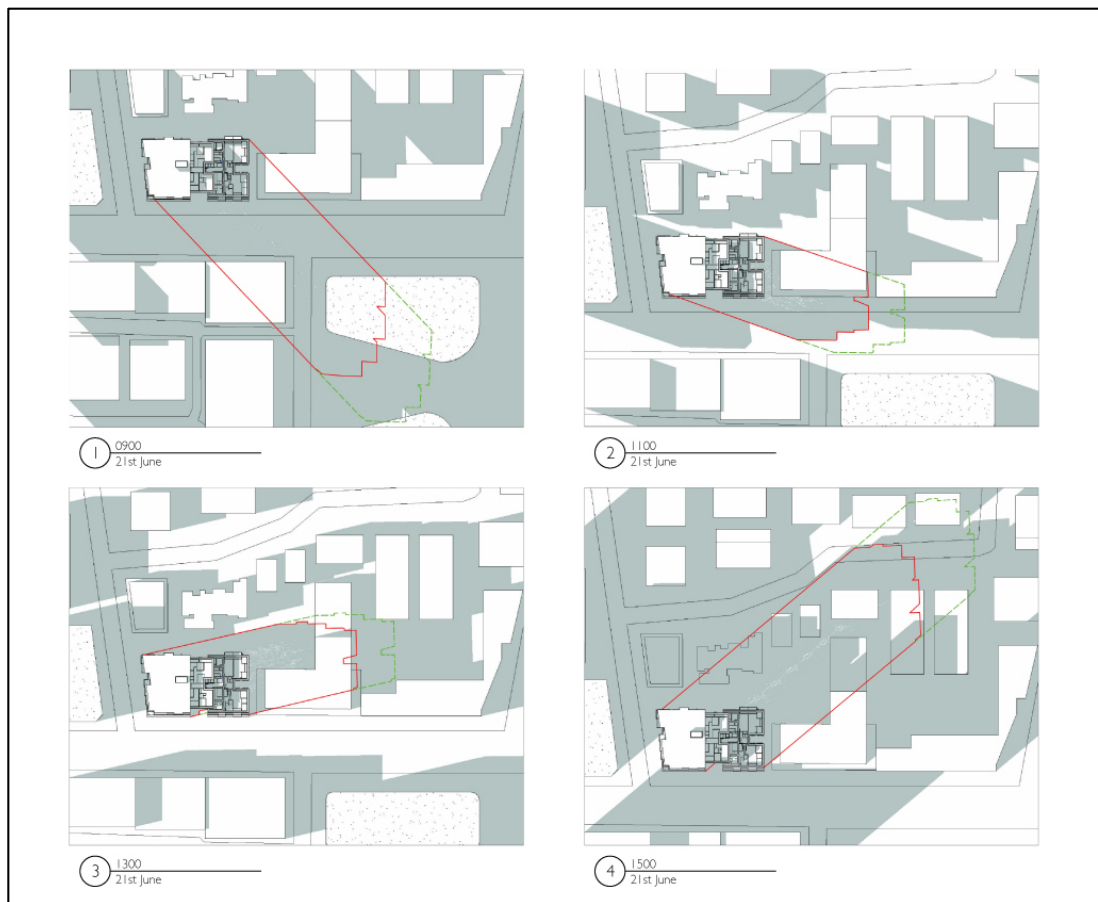


Figure 3: Overshadowing Impacts of proposal. Diagrams prepared by AVA Architects.

As shown in Figure 3, the additional height of the proposed development will have increased overshadowing impacts. However, we are of the opinion that these impacts are acceptable on the following grounds:

- Does not preclude solar access to any habitable rooms or private or communal open spaces associated with dwellings in the locality to less than 2 hours in mid-winter, consistent with the Apartment Design Guide; and
- Does not impact any valuable elements of public domain, i.e. public open spaces.
- Areas affected by additional overshadowing caused by height exceedance are already overshadowed by existing buildings.

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

Response:



Figure 4: Rockdale LEP 2011 – Permissible Heights.

Rockdale LEP 2011 Height controls illustrate a desired height transition from the north to the south (see Figure 4). Rockdale LEP 2011 planning controls also identify the site as a prominent street corner.

Proposed development has maximum height of 44.66 metres (lift overrun) on the northern allotment and 40.51 metres on the southern allotment. There is a fall of 9.15 metres from the northern boundary to the southern boundary of the building. This is a transition in height of three storeys along Princess Highway frontage.

- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Response:

Proposal exceeds maximum height controls identified by Rockdale LEP 2011:

- Northern allotment: exceedance of 10.6 metres.
- Southern allotment: exceedance of 9.51 metres.

Height exceedance is supportable for the following reasons:

- Proposal steps down a total of 9.15 metres from northern boundary to southern boundary (3 storeys). This creates a transition in height that steps down to the south.
- Does not preclude solar access to any habitable rooms or private or communal open spaces associated with dwellings in the locality to less than 2 hours in mid-winter, consistent with the Apartment Design Guide.
- Site is located on a prominent street corner and the additional height will allow the building to act as an urban marker with appropriate character and scale.

**(2A)** *Despite subclause (2), the height of a building may exceed the maximum height shown for the land on the Height of Buildings Map by an additional:*

- (g) 12 metres—if the building is in Area H identified on the Height of Buildings Map and on a lot having an area of at least 2,000 square metres,*

**Response:**

- Proposal exceeds permissible height by 10.6 metres on northern allotment.

- (i) 9 metres—if the building is in Area J identified on the Height of Buildings Map and on a lot having an area of at least 2,000 square metres*

**Response:**

- Proposal exceeds permissible height by 9.51 metres on southern allotment.

## 3.2 B4 Mixed use zone objectives

While the proposed development is not in contravention of the applicable land use zoning (B4 Mixed Use), the zone objectives are relevant to the broader planning context. The Objectives of the zone are addressed below:

The zone objectives are individually addressed below:

*To provide a mixture of compatible land uses.*

**Response:** The proposed development incorporates compatible land uses including ground floor retail and an upper level residential component.

*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.*

**Response:** The shop top housing development incorporating ground floor retail premises and upper level residential uses is suitable to its location, being within the centre of Leppington Strategic Centre and no more than 250 metres from the newly constructed Leppington Station on the South West Rail Link.

## 4.0 Compliance unreasonable or unnecessary

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Why this is the case is explained below.

### 4.1 Height control objectives

A key objective of the height control would be thwarted or undermined if the variation is not approved.

*(1) The objectives of the clause are as follows: ...*

*(b) to permit building heights that encourage high quality urban form,*

**Response:**

The proposed development achieves a high quality urban form in accordance with the principles and criteria identified in Rockdale Design Excellence Guidelines:

- Streetscape:
  - o Three retail tenancies located on Lower Ground and Ground Floors, providing an active street frontage.
  - o Deep soil zones incorporated into Princes Highway and Lister Avenue setbacks will:
    - Enhance amenity of streetscape.
    - Reduce 'Wind Tunnel' effects adjacent to Princes Highway.
    - Reduce stormwater runoff.
- Built Form:
  - o Proposal reflects desired future character of Rockdale Town Centre:
    - Increased density with preference for mixed use buildings.
    - Active street frontages.
    - Greatest height and density along Princes Highway, framing the road.
    - A transition in height which steps down towards the south.
  - o Building massing towards northern boundary and steps down towards the south in response to sloping topography.
  - o Proposal responds to site as a prominent street corner:
    - Corner enhanced through Titanium Dioxide coated ceramic tile cladding on north western corner.
  - o Proposal forms a skyline profile that is consistent with existing and approved development along Prince Highway.
- Accessibility:
  - o Lower Ground and Ground Floor retail uses are active, well-lit and accessible by pedestrians.

### 4.2 Aims of Plan

The aims of the Rockdale Local Environmental Plan 2011 are set out in Clause 1.2 Aims of Plan.

Key aims of the Rockdale LEP 2011 would be undermined if the variation is not approved.

*(2) The aims of this Plan are as follows:*

(c) *to maintain and improve residential amenity and encourage a diversity of housing to meet the needs of Rockdale residents,*

**Response:**

This objective is satisfied as:

- A high degree of residential amenity is achieved:
  - 92% of all apartments receive a minimum of 2 hours of direct sunlight between 9 am and 3 pm at mid-winter June 21st.
  - Cross ventilation is achieved in 103 of the 140 apartment units. (73.5%).
- A variety of apartment sizes are provided to suit varying needs of residents:
  - 3 bedroom: 11.4%
  - 2 bedroom: 52.1%
  - 1 bedroom: 36.4%

(g) *to encourage residential and employment densities around transport nodes in order to provide sustainable transport options,*

**Response:**

The site is located 400 metres from Rockdale Train Station and a variety of bus stops located along Princes Highway. The proposal offers both residential accommodation and employment opportunities within walking distance of public transport.

## 4.3 Burden of compliance disproportionate to consequences

The burden placed on the landowner, future occupiers of the development, future home buyers in the area and the wider community (by requiring strict height compliance) would be disproportionate to the consequences attributable to the proposed non-compliant development (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 (at paragraph 15)).

It should be understood that the consequences attributable to the proposed non-compliant development are either nil or not-significant. **This means that any burden of substance that is imposed as a result of requiring strict compliance is unreasonable.**

The burden would flow from reduced dwelling yield as a consequence of strict compliance with the development standard.

In this regard, the following burdens would flow from strict compliance:

- In terms of housing affordability:
  - Lost opportunity to improve housing affordability through increased housing stock and choice;
  - Higher build cost per dwelling;
  - Higher strata fees per dwelling for upkeep of same equipment and facilities.
  - An economic loss to the developer of the site.
  - The reduced sustainability of high quality architectural apartment living.
- Lost opportunity to maximise orderly and economic use of the land.
- Lost opportunity to achieve design excellence through enhancing the street corner. Compliance with height controls would result in a building with reduced definition of the street corner.



## 5.0 Environmental planning grounds

There are sufficient environmental planning grounds to justify contravening the development standard.

### 5.1 The Statutory Planning Controls

Section 4 outlines how allowing the variation would allow the objectives and aims of the statutory planning controls to be achieved (when they might otherwise be thwarted) or at least achieved more fulsomely.

Given that:

- the variation better achieves the planning controls than a complying development; and
- there are no significant adverse impacts arising from the variation,

it should be accepted that there are sufficient environment planning grounds to justify contravening the development standard.

### 5.2 A Plan for Growing Sydney (2015)

A Plan for Growing Sydney also set out 'the planning principles that will guide our Sydney grows' (on page 11). These principles include the following:

***PRINCIPLE 1: INCREASING HOUSING CHOICE AROUND ALL CENTRES THROUGH URBAN RENEWAL IN ESTABLISHED AREAS***

*Increasing housing close to centres and stations makes it easier to walk or cycle to shops or services; travel to work or other centres; reduces traffic congestion; and makes our neighbourhoods more community oriented.*

*Increasing the variety of housing available makes it easier for people to find a home that suits their lifestyle, household size and their budget.*

*Locating new housing in centres delivers a range of economic, environmental and social benefits to the community. Research by the Organisation for Economic Cooperation and Development (OECD) has similarly found that productivity benefits arise from a more compact city.*

***PRINCIPLE 2: STRONGER ECONOMIC DEVELOPMENT IN STRATEGIC CENTRES AND TRANSPORT GATEWAYS***

*Locating jobs in around 30 to 40 large centres across Sydney provides the greatest benefits to the city's overall productivity.*

*Sydney's largest and most important hubs for business and employment are 'strategic centres' and Sydney's 'transport gateways'. Together, these locations account for 43 per cent of all jobs across Sydney.*

*These locations will be an important focus for future growth because of their size, diversity of activities, their connections (mainly to the rail network), and the presence of major institutional activities such as health and*

The site is also located within the South Subregion as identified within A Plan for Growing Sydney. Priorities for South Subregion include:

*Accelerate housing supply, choice and affordability and build great places to live:*

*Work with councils to identify suitable locations for housing intensification and urban renewal, including employment agglomerations, particularly around Priority Precincts, established and new centres, and along key public transport corridors including the Illawarra Line, the South Line and Sydney Rapid Transit (along the Bankstown Line).*

**Response:** The Site is located within an Urban Renewal Corridor that runs along the Eastern Suburbs and Illawarra Train Line.

The site is suitable for increased density as:

- It is within walking distance (4 metres) of Rockdale Train Station, in accordance with the principles of Transit Oriented Development.
- Projected increase in traffic will have no adverse impact on the intersection of Lister Avenue and Princess Highway nor the surrounding road network (Traffic and Parking Impact Study, NK Traffic).

In addition to (and independently of) the reasons in section 5.1.1 above, we submit that:

- The variation better achieves key environmental planning goals articulated by the state government; and
- There are no significant adverse impacts arising from the variation.

Accordingly, it should be accepted that there are sufficient environment planning grounds to justify contravening the development standard.



## 6.0 Concurrence of the 'Director-General'

The 'Director-General' (now Secretary, Department of Planning and Environment) can be assumed to have concurred to the variation. This is because of the Department of Planning Circular PS 08-003 'Variations to development standards', dated 9 May 2008. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.