

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2016SYE052
<b>DA Number</b>	DA-2016/352
<b>LGA</b>	Bayside Council
<b>Proposed Development</b>	Construction of a fourteen (14) storey mixed use development comprising 140 residential units, 3 commercial units, roof top communal open space, basement car parking and demolition of existing buildings.
<b>Street Address</b>	588-592 Princes Highway Rockdale
<b>Applicant/Owner</b>	Moweno Pty Ltd
<b>Date of DA lodgement</b>	11 April 2016
<b>Number of Submissions</b>	Two (2)
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	Capital Investment Value (CIV) in excess of \$20 Million
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• SEPP 55</li> <li>• SEPP 65</li> <li>• SEPP (Infrastructure) 2007</li> <li>• SEPP (BASIX) 2005</li> <li>• SEPP (Major Developments) 2005</li> <li>• Rockdale LEP 2011</li> <li>• Rockdale DCP 2011</li> <li>• EPA Regulations.</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans Perspectives Schedule of Colours and Finishes Landscape Plans Letter of Offer VPA Clause 4.6 Variation Statement of Environmental Effects Design Verification Statement Urban Design Report Traffic Report Geotechnical Report
<b>Report prepared by</b>	Fiona Prodromou – Senior Assessment Planner Marta Gonzalez-Valdes – Co-ordinator Major Developments Luis Melim – Manager Development Services
<b>Report date</b>	14 November 2017

### Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarized in the Executive Summary of the assessment report?

**Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Yes**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

**Not Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

**Conditions**

Have draft conditions been provided to the applicant for comment?

**No**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2016/352
<b>Date of Receipt:</b>	11 April 2016
<b>Property:</b>	588 Princes Highway, ROCKDALE 592 Princes Highway, ROCKDALE 588 - 592 Princes Highway, ROCKDALE (Lot 21 DP 1220749)
<b>Owner(s):</b>	Moweno Pty Ltd Perfomina Pty Ltd
<b>Applicant:</b>	Moweno Pty Ltd
<b>Proposal:</b>	588-592 Princes Highway, Rockdale NSW 2216 - Integrated Development - Construction of a fourteen (14) storey mixed use development comprising 140 residential units, 3 commercial units, roof top communal open space, basement car parking and demolition of existing buildings
<b>Recommendation:</b>	Refused
<b>No. of submissions:</b>	Two (2)
<b>Author:</b>	Fiona Prodromou
<b>Date of Report:</b>	10 November 2017

### Key Issues

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The proposed development seeks to undertake the construction of a fourteen (14) storey mixed use development comprising 140 residential units, 3 commercial units (818.2 sq.m. retail gross floor area (GFA) , roof top communal open space, 4 levels of basement car parking comprising 191 car spaces and demolition of existing buildings.

The subject site is located on the eastern side of Princes Highway on the corner with Lister Avenue. The site is zoned B4 under Rockdale Local Environmental Plan 2011 (RLEP2011) and the proposal is permissible subject to consent.

The documentation submitted to Council by the applicant has not adequately addressed the provisions of State Environmental Planning Policy No. 55 - Remediation of Land. As such the consent authority cannot be satisfied that the site is suitable for the proposed development.

The proposal fails to satisfy the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development and the Apartment Design Guide as detailed within this report. The proposal is unsatisfactory in this regard.

The proposal is relying on the incentives provisions of the RLEP2011 in regard to height (cl 4.3), which

allows an additional 12metres for lots in Area H and an additional 9 metres for lots in Area J if the lot has a minimum site area of 2000sq.m. The proposal is for a building which exceeds both the height control and the bonus height control. For development relying on the bonus height, the provisions of clause 6.14 in the RLEP2011 apply. Cl 6.14(3) requires a design excellence competition to be undertaken. This is a fundamental provision of RLEP 2011. The design excellence competition has not been carried out.

The applicant was advised prior to lodgement of the development application that the proposal was required to go through the design excellence competition process. As an alternative, the applicant has provided an assessment against the Rockdale Design Excellence Guidelines. The applicant argues that the design competition is unreasonable as the proposal displays design excellence as demonstrated in the assessment against the Guidelines. This is not considered acceptable and does not demonstrate compliance with the requirements and objectives of clause 6.14.

Council has consistently applied this clause for proposed developments in the Rockdale Town Centre. A report to Council dated 15 June 2016 was prepared, seeking Council's endorsement to require the applicant to undertake a Design Excellence Competition as required by Clause 6.14. Council resolved that a Design Competition was required. A Design Competition is to be held in February 2018. An exception in this case is not warranted.

The maximum permissible height under Clause 4.3 in RLEP 2011 is 22 metres. As stated above, the proposed development relies on the building height incentive in clause 4.3 (2A) of RLEP2011. Clause 4.3(2A) allows an additional 12 metres for lots in Area H (as noted in the LEP) if the lot has a minimum site area of 2000sq.m. and an additional 9 metres for lots in Area J with a minimum areas of 2000sq.m. The proposed development relates to two lots. The lot known as 588 Princes Highway (northern lot) is located in Area H and the lot known as 592 Princes Highway (southern lot) is located in Area J.

The combined amalgamated site area, as proposed under this development application is 2077sq.m. The permissible height applicable to the site, taking into account the bonus height is 34 metres for the northern lot and 31 metres for the southern lot. The proposed development is for a building on the northern lot with a height of 44.6m (10.6m above permissible bonus height) and on the southern lot with a height of 40.51m (9.51m above permissible bonus height).

The applicant has submitted a Cl4.6 justification to the building height standard. However, Cl 4.6(8)(ca) excludes varying cl 4.3(2A) unless the proposed variation is for a demonstrable public interest such as pedestrian links. The applicant has not addressed this clause. There is no apparent specific public interest or public benefit to allow a variation to this development standard.

The site is subject to a road dedication along Lister Avenue. The land to be dedicated has an area of 124sq.m. The total site area without the land dedication is 1953sq.m. The applicant has provided a letter and argues that this land dedication is a '*substantial public benefit*' and '*will improve vehicular circulation within the locality and assist in accommodating the estimated traffic generation of the proposal*'. The applicant is proposing to enter into a Voluntary Planning Agreement (VPA) or works in kind agreement with Council. This has been discussed with Council's Strategic Planning team and no agreement to a VPA or works in kind has been reached.

The development application has been notified in accordance with Council's Development Control Plan 2011 and two letters of objection have been received. Issues raised by objectors include but are not limited to, excessive height, over development, excessive bulk and scale, overshadowing and non

compliance with relevant planning controls for the site.

Given the proposal fails to satisfy relevant planning controls as discussed within this report, the proposal is recommended for Refusal.

## Recommendation

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That this Development Application be **REFUSED** pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

- (1) Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the provisions or objectives of Clause 6.14 - Design Excellence of Rockdale Local Environmental Plan 2011 (as amended).
- (2) Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the provisions or objectives of Clause 4.3 - Height of Buildings of Rockdale Local Environmental Plan 2011 (as amended).
- (3) Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the provisions or objectives of Clause 4.6 - Exceptions to Development Standards of Rockdale Local Environmental Plan 2011 (as amended).
- (4) Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of State Environmental Planning Policy No.65 - Design Quality of Residential Apartment Development and the Apartment Design Guide.
- (5) Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of height, bulk and scale and would adversely impact upon the amenity of the locality.
- (6) The proposed development, pursuant to the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, is unsatisfactory and is likely to adversely impact on the privacy and amenity of adjoining residential development.
- (7) Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the applicant has not adequately demonstrated that the site is suitable for the proposed development, as required by the provisions of State Environmental Planning Policy No.55 - Remediation of Land.
- (8) Having regard to the reasons noted above, pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

## Background

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### History

11 April 2016

DA-2016/352 for the construction of a fourteen (14) storey mixed use development comprising 140 residential units, 3 commercial units, roof top communal open space, basement car parking and

demolition of existing buildings was submitted to Council. Applicant sought to exempt the site and DA from the Design Competition process required by Clause 6.14 - Design Excellence of Rockdale LEP 2011, citing clause 6.14(4) and stating that the proposal exhibited '*design excellence*' in its current form and a design competition was '*unreasonable and unnecessary*'.

19 April - 30 May 2016

Public Notification of proposal.

9 June 2016

First briefing of JRPP. JRPP advised of Council's concern in relation to the applicant seeking to bypass the provisions of Clause 6.14 - Design Excellence of Rockdale LEP 2011.

10 June 2016

Council received an offer from the applicant seeking to enter into a Voluntary Planning Agreement in conjunction with a proposal to bypass the Design Excellence requirement and a proposed LEP clause 4.6 variation.

15 June 2016

Report to Council seeking confirmation from Council as to whether the applicants '*exemption*' which sought to not proceed with a Design Competition would be agreed to. Council resolved to defer the matter to an Information Session and then be referred back to the next Council meeting on 6th July for a decision to be made.

22 June 2016

Information session with Councillors to advise of proposal and circumstances of case.

6 July 2016

Council resolved as follows:

*"That this item be deferred until the Voluntary Planning Agreement (VPA) arrangement is finalised. Council is to enter into a meaningful negotiation in order to establish an appropriate VPA that relates to the community benefits resulting from the dedication as part of the applicant's land to Council for improved pedestrian access."*

18 July 2016

Council officers met with the applicant to begin negotiations on a Voluntary Planning Agreement (VPA). Whilst the Assessing Officer was not privy to this meeting, nor discussions, it is understood that at this meeting, it was agreed that the scope of the VPA would include the road widening on Lister Ave and the probable construction of the subsequent public domain works. To determine the lost gross floor area (GFA) from the road widening, it was agreed that Council would engage an architect to undertake a massing study of the site. The results of the massing study showed that there is significant difference between the base height control, the design excellence control and the proposed height submitted with the development application.

To proceed further with the VPA, a resolution was sought from Council as to whether the development application met the design excellence requirements.

12 October 2016

Report to Council (Administrator) advising of the circumstances of the case and seeking confirmation in

relation to whether the DA met the design excellence requirements in order to enable Council Officers to proceed appropriately with VPA negotiations.

Council resolved as follows:

*1. That the justification provided by the applicant for development application DA- 2016/352 at 588-592 Princes Highway Rockdale seeking an exemption to clause 6.14(3) - Design Excellence in RLEP 2011 based on clause 6.14(4) not be accepted and the applicant be requested to undertake a design excellence competition as required by clause 6.14(3) in RLEP 2011. The requirement under clause 6.14(3) of RLEP2011 to undertake a design excellence competition in this case is considered to be reasonable and necessary for the following reasons:*

- a. Council has consistently applied the design excellence competition to other sites in the Rockdale Town Centre. Not applying the clause in this case would set an undesirable precedent.*
- b. There was no formal Pre DA submitted for this proposal. However, the applicant was advised, prior to lodgement of the DA, that the proposal was subject to the requirements and objectives of Clause 6.14 and that the design excellence competition had to be carried out.*
- c. As a design competition has not been carried out for this site, Council cannot be satisfied that the proposal is of the highest standard of architectural, urban and landscape design as required by Clause 6.14.*

*2. That the Joint Regional Planning Panel (JRPP), being the determining authority in this case, be advised of Council's resolution.*

*3 That to assist in dealing with future similar matters officers investigate the removal of clause 6.14(4) and report back to Council.*

*The Administrator emphasised the importance of a further report by Council officers investigating the possibility of the removal of Clause 6.14(4).*

17 October 2016

Assessing Officer sends letter to applicant seeking that they withdraw the DA. No response was received from the applicant.

July 2016 - Present

It is understood that the applicant has undertaken several meetings with Councils Assets and Strategic Planning teams to discuss their proposed Voluntary Planning Agreement. This Assessing Officer was not privy to these meetings or discussions. The Assessing Officer has been advised that there was no progress on discussions as the applicant insisted on a Voluntary Planning Agreement that would fetter Council's ability to assess the development application.

Council has consistently conveyed to the applicant that the development proposal must stand on its own planning merits and that a Planning Agreement cannot circumvent this process. Council last met with the applicant on 3 May 2017 reiterating this position and no further correspondence has been received regarding the proposed Voluntary Planning Agreement.

25 September 2017

Council Officers advised that the applicant was proceeding with the Design Excellence Competition

process, with a presentation date set for 15 December 2017.

## Proposal

The proposed development seeks to demolish existing buildings on site and undertake the construction of a fourteen (14) storey mixed use development comprising 140 residential units (1 x studio / 50 x 1 bed / 73 x 2 bed) including 18 accessible units, 3 commercial units (818.2 sq.m. retail gross floor area (GFA) , roof top communal open space and 4 levels of basement car parking comprising 191 car spaces.

Associated stormwater and landscaping works are proposed on site. The proposal involves the dedication of 124sq/m of the site along Lister Avenue as a local road.



View from the Princes Highway (west)

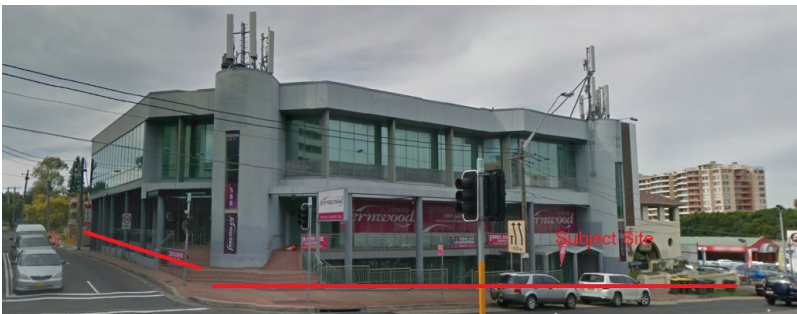




View from the rear (south east)

## Site location and context

The subject site is generally a rectangular shaped allotment at the junction of Princes Highway and Lister Avenue, within the Rockdale Town Centre. The subject site is legally identified as Lot 21 DP 1220749 and comprises a surveyed site area of 2087.69sq/m.



The site comprises a 50.7 western frontage to the Princes Highway and irregular frontage to the north to Lister Avenue, being a 4.5m splay at the junction of Lister Ave / Princes Highway, 26.6m direct frontage to Lister Avenue and 8.2m splay at the north eastern corner adjoining 1A Lister Avenue. The site is zoned B4 Mixed Use. A total of 124sq/m of the site adjoining the northern boundary to Lister Avenue is subject to acquisition by Council and is reserved for local road widening under the provisions of RLEP 2011.

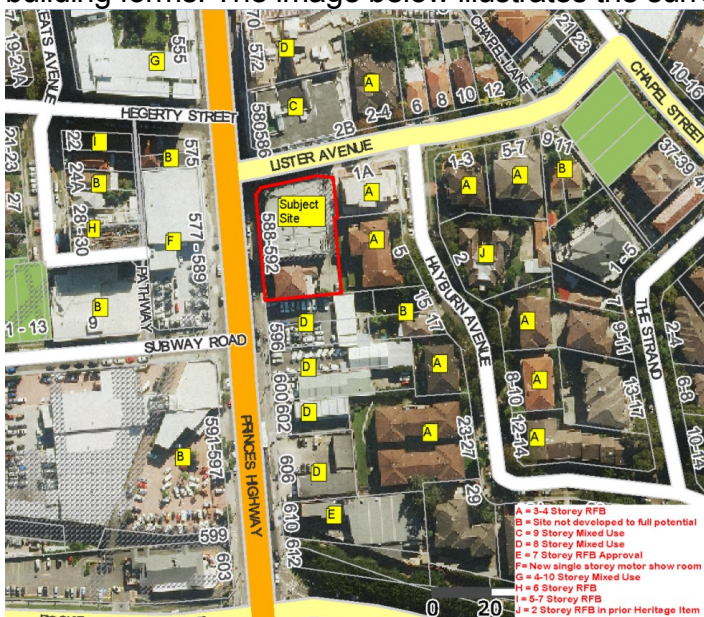
The site is affected by potential contamination given its past use as a service station, comprises a frontage to a state road, class 5 acid sulphate soils and is subject to the 51 obstacle limitation surface and 15.24m Building Height Civil Aviation Regulations.

588 Princes Highway is currently occupied by a 2 - 3 storey commercial development currently utilised

for the purposes of a gymnasium and function centre. Telecommunications facilities are erected at rooftop level upon this building. Vehicular access to this part of the site as existing is via Lister Avenue to a basement car parking area on site. It is understood that at and prior to 1979 this part of the site was used for the purposes of a service station, with DA approval for redevelopment of the site to house the current commercial building being granted in 1993 (DA-1992/409).

592 Princes Highway is currently occupied by a two storey detached building form with a pitched tiled roof. The original use of this building prior to 1960 is understood to have been for six residential units. The residential use appears to have been abandoned in 1979 where approval was granted to convert the building to 6 professional suites with 6 car spaces to the rear, with access via a right of way from Lister Avenue. The most recent approval for this site is a change of use for video production in June of 1996. The present use of the building on site at this address is unknown.

The subject site is surrounded by a diverse eclectic mix of commercial and residential land uses and building forms. The image below illustrates the surrounding context of the site at the present time.



With respect to the above it is noted that the site, colloquially known as the 'Toyota Site' at 591-597 Princes Highway Rockdale comprises a site area in excess of 9500sq/m and is currently the subject of a Planning Proposal which has been publicly exhibited. Key changes sought as part of the PP include;

- a) Zone change from B2 - Local Centre to B4 - Mixed Use.
- b) FSR - 2:1 to nil FSR
- c) Height - 22m to 47.15m for sites >9000sq/m

The PP for the above site has not been finalised.

## Statutory Considerations

### *Environmental Planning and Assessment Act, 1979*

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

## **S.91A - Development that is Integrated Development**

The proposed development constitutes Integrated Development and requires approval by the NSW Office of Water (Permit under the *Water Management Act 2000*) as the temporary de watering of the site is required during the construction phase. The NSW Office of Water have reviewed the proposed excavation and granted their general terms of approval. In this regard the proposal is satisfactory with respect of the provisions of Section 91A.

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

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

The following Environmental Planning Instruments are relevant to this application:

#### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 701044M\_02 and the proposed development incorporates measures with respect to reductions in energy and water consumption and thermal comfort. The proposed development is satisfactory with regards to the provisions of the SEPP.

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

##### **Clause 101 - Development with frontage to classified road**

The proposed development is located on land with a frontage to a classified road i.e. Princes Highway. In this regard, clause 101- Development with frontage to a classified road, of the SEPP must be considered before consent can be granted.

The proposed development involves access to and from the site via a secondary side street being Lister Avenue. Vehicular access is proposed in a similar location to the existing vehicular entries to the subject site.

The proposal was referred to the Roads & Maritime Service (RMS) for comment. The RMS requested additional information, being a detailed driveway plan which illustrates the location and design of the proposed cross over from Lister Avenue.

As the proposal was not supported on planning grounds, the additional information was not sought of the applicant at this stage.

Given the above, further information is required of the applicant to ensure the provisions of this clause are satisfied.

##### **Clause 102 - Impact of road noise or vibration on non-road development,**

The proposed development incorporates residential uses that are on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RMS) and that the consent authority considers is likely to be adversely affected by road noise or vibration. Accordingly, Clause 102 - Impact of road noise or vibration on non-road development, of SEPP Infrastructure is required to be considered as part of this assessment.

for residential use:

The consent authority must not grant consent to the development for residential use unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the building-35 dB(A) at any time between 10 pm and 7 am,*
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)-40 dB(A) at any time.*

The proposal was accompanied by an Acoustic Report, prepared by Rodney Stevens Acoustics, dated 7 April 2016, which considered the potential impact of traffic noise upon the proposed residential use.

The report concludes that the development will satisfy the noise level requirements as outlined in the SEPP, should the recommendations in the report be incorporated into construction. The proposal is satisfactory in this regard.

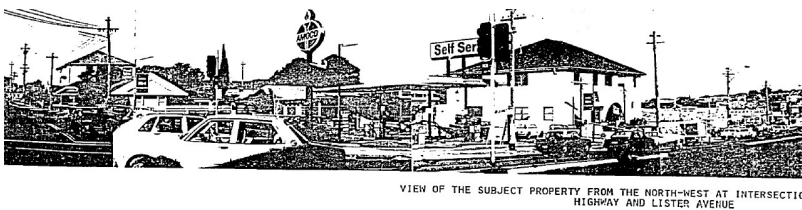
#### **Clause 45 - Works within the vicinity of electricity infrastructure**

The application is subject to clause 45 of the SEPP as the development proposes works within the vicinity of electricity infrastructure and therefore in accordance with clause 45(2) the consent authority must give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice that is received within 21 days after the notice is given.

Accordingly, the proposal has been sent to Ausgrid. The authority has responded and does not object to the proposed development. The application is consistent with the provisions of the SEPP and is acceptable in this regard.

#### **State Environmental Planning Policy No 55—Remediation of Land**

The property is not identified in Council's records as being potentially contaminated. A search of Council records however establish that at and prior to 1979, 588 Princes Highway was used for the purposes of a service station. DA approval for the redevelopment of the site to house the current commercial building was granted in 1993 (DA-1992/409).



*1979 photograph of site from Council records illustrating service station upon 588 Princes Highway*

Given the aforementioned historical use of the site and the proposal which seeks to excavate four basement levels into the subject property, it is prudent to ensure that the requirements of SEPP 55 are taken into consideration and the site is suitable for the proposed use.

In accordance with the requirements of SEPP 55, the consent authority must be satisfied prior to the determination of the application that the site is suitable for the proposed use. In this regard the application was accompanied by a 'Geotechnical Assessment' prepared by JK Geotechnics dated 4 December 2015 which states as follows:

*“If contamination is encountered, then substantial further testing (and associated delays) should be expected. We strongly recommend that this issue is addressed prior to the commencement of excavation on site”*

The above is unsatisfactory and does not firmly establish that the site is suitable for the proposed development.

The applicant is required to undertake a Preliminary Site Investigation in accordance with NSW EPA Guidelines for consultant reporting on contaminated sites. Should the preliminary site investigation identify potential contamination a Remediation Action Plan for the site may be required. It is reiterated that as per the provisions of SEPP 55 this information is required prior to determination by the consent authority.

The proposal in its current form does not satisfy the provisions of the SEPP and the site is not demonstrated to be suitable for the proposed use.

### **State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

In accordance with clause 28(2) of this policy, the consent authority must take into consideration the following:

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

In the absence of a Design Competition having been undertaken by the applicant and given the substantial additional height sought, the proposal was not referred to the Design Review Panel for comment. Council was of the view that a Design Competition process was required to be followed.

Following a significant period of time and much debate, it is understood that the applicant is at this time pursuing the Design Competition process. As such it is likely that this process would result in substantially amended plans and modifications to the current scheme.

Given the above, and the reasons for Refusal as outlined in this report, an assessment of the 10 design quality principles of the SEPP were undertaken by the assessing officer below.

#### *b. The design quality of the development when evaluated in accordance with the design quality principles.*

The design quality principles have been considered in the assessment of the proposal and the proposal is found to be unsatisfactory as indicated below.

#### Principle 1 – Context and Neighborhood Character

The proposal is inconsistent with the future desired context and neighbourhood character as sought to be implemented by the requirements of Rockdale LEP and DCP 2011. The proposal is not considered to respond, contribute or enhance the character or context envisaged by the applicable planning controls and requirements. The proposal is unsatisfactory in regards to this principle.

#### Principle 2 – Built Form and Scale

The proposal demonstrates excessive height, bulk and scale in the building form proposed. This is evidenced by the excessive height and non compliant setbacks of the proposed scheme. The proposed built form is an overdevelopment of the property and will not contribute to the future desired streetscape character within the Rockdale Town Centre. The proposal is unsatisfactory in relation to this principle.

#### Principle 3 – Density

Nil density requirements apply to the subject site. Notwithstanding the proposal seeks to accommodate a significant yield, which would otherwise not be achievable should the height standard of RLEP 2011 and setback requirements of Councils DCP 2011 be adhered to. The proposal lacks sufficient communal open space provision for the yield proposed. As such it is considered that the density proposed on site is excessive and should not be supported.

#### Principle 4 - Sustainability

The proposed development complies with the ADG in relation to the provision of solar access and cross ventilation to units and was accompanied by a BASIX certificate which confirms energy efficiency measures proposed to be implemented on site. The proposal is satisfactory in this regard.

#### Principle 5 – Landscape

The proposal provides a minor deficiency of deep soil provision on site. Notwithstanding it appears as though an appropriate range of landscaping has been provided at ground level, which includes groundcovers, shrubs and trees in order to maximise visual amenity and provide an attractive environment when viewed from the public domain. The proposal is satisfactory with this principle.

#### Principle 6 – Amenity

The proposed development comprises a deficiency in communal open space on site. It is further noted that communal open spaces are largely hard paved and would benefit from expanded areas of turf and defined areas for specific use i.e. herb garden, children's play area etc given the size of the proposed development and number of units. This would encourage social interaction and provide for a positive living environment.

Residential units are provided with appropriate levels of internal storage, solar access and cross ventilation and comprise efficient layouts. Several units require revision to ensure their private open space areas satisfy the minimum requirements of the Apartment Design Guide.

It cannot be stated that the proposal satisfies this Principle.

#### Principle 7 - Safety

Concern is raised in relation to the convoluted design of the residential entry lobby to Block B. This residential entry does not comprise a clear nor direct line of sight from the public domain and is obscured by proposed planting including ground covers, shrubs (0.6m / 0.8m / 1.5m) to trees 3m - 8m in height. The aforementioned has the potential to result in safety and security issues for future residents.

It cannot be stated that the proposal satisfies this Principle.

## Principle 8 - Housing Diversity and Social Interaction

The proposed development provides for a range of unit types and designs, which are suited to accommodate different household types.

It is considered as discussed in Principle 6 that communal open space areas on site can be improved in order to encourage positive social interaction of future occupants.

It cannot be stated that the proposal satisfies this Principle.

## Principle 9 – Aesthetics

As previously stated, the proposal was not referred to the DRP for comments. Whilst a detailed assessment of the aesthetics has not been carried out, it is considered that the current scheme relies on repetitive elements and lacks articulation and design finesse. A better choice of materials and colours will improve the relationship of the building with the streetscape. The corner treatment could be improved to achieve better exposure of the commercial tenancy and amenity of the upper floor residential units. The proposal is not supported in regard to this principle.

### *c. the Apartment Design Guide*

The proposal has been assessed against the Apartment Design Guide (ADG) as detailed below.

CLAUSE	DESIGN CRITERIA	COMMENTS	COMPLIES
3D - Communal Open Space	25% (521.9sq/m) site area 50% (260.9sq/m) direct sunlight to principal useable part of COS for 2 hours in midwinter	L11 = 207sq/m L12 = 35.5sq/m L13 = 181.7sq/m Total = 424.2sq/m	<b>No</b> - 97.7sq/m deficient. Insufficient overall communal open space provision. Poor design with lack of
3E - Deep Soil Zone	7% (146.1sq/m) site area minimum dimensions of 6m	6.1% (127.4sq/m) (Areas <6m dimensions not included in deep soil calculations)	<b>No</b> - 0.9% 18.7sq/m deficient.



3J - Bicycle and car parking	<p>Minimum 147 spaces as per RMS Guide to Traffic Generating Developments.</p> <p><i>0.6 space per 1 bedroom = 30 spaces</i> <i>0.9 space per 2 bedroom = 66 spaces</i> <i>1.4 space per 3 bedroom = 23 spaces</i> <i>1 space per 5 units (visitor parking) = 28 visitor</i></p> <p>Maximum 184 spaces as per Rockdale DCP 2011</p> <p>1 space per studio / 1 and 2 bedroom = 124 spaces 2 spaces per 3 bedroom = 32 spaces 1 space per 5 units (visitor parking) = 28 visitor</p>		145 residential + 21 visitor	<b>No</b> - Insufficient visitor spaces (7)										
4D – Apartment size and layout	<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50M<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50M <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p>Studio - 50.3sq/m 1 bed - 50sq/m - 61.2sq/m 2 bed - 70.3sq/m - 81.7sq/m 3 bed - 95.5sq/m - 103.5sq/m</p>	Yes	
Apartment type	Minimum internal area													
Studio	35m <sup>2</sup>													
1 bedroom	50M <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													
3 bedroom	90m <sup>2</sup>													
4C – Ceiling heights	<table><tr><th colspan="2">Minimum ceiling heights:</th></tr><tr><td>Habitable</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>Mixed use area</td><td>3.3m for ground and first floor</td></tr></table>	Minimum ceiling heights:		Habitable	2.7m	Non-habitable	2.4m	Mixed use area	3.3m for ground and first floor	<p>2.7m floor to ceiling L1 and above</p> <p>Lower ground level = 3m floor to floor</p>	<p>Yes - L2 and above</p> <p><b>No</b> - 3.3m at level 1 not proposed to be provided. Lower ground level commercial space further comprises 3m floor to floor, this is insufficient floor to ceiling height for commercial uses as intended by this part.</p>			
Minimum ceiling heights:														
Habitable	2.7m													
Non-habitable	2.4m													
Mixed use area	3.3m for ground and first floor													



3F Visual Privacy	<table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 Storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+storeys)</td><td>12m</td><td>6m</td></tr></table>	Building height	Habitable rooms and balconies	Non habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 Storeys)	9m	4.5m	Over 25m (9+storeys)	12m	6m	See Discussion Below	No
	Building height	Habitable rooms and balconies	Non habitable rooms												
	Up to 12m (4 storeys)	6m	3m												
	Up to 25m (5-8 Storeys)	9m	4.5m												
	Over 25m (9+storeys)	12m	6m												
Buildings on the same site combine required building separations. Gallery treated as habitable space															
4A – Solar and daylight access	<p>Living rooms + POS of at least 70% (98 of 140) of apartments receive min 2hrs direct sunlight b/w 9am &amp; 3 pm mid-winter</p> <p>Max 15% (21 of 140) apartments receive no direct sunlight b/w 9am &amp; 3pm mid-winter</p>	<p>129 of 140 units (92%) receive 2 hours solar access in midwinter</p> <p>11 of 140 units (7.8%) receive nil direct sunlight in midwinter.</p>	<p>Yes</p> <p>Yes</p>												
4F – Common circulation and spaces	<p>Max apartments off a circulation core on a single level is eight.</p> <p>10 storeys and over, max apartments sharing a single lift is 40.</p>	Max 6 units off a circulation core	Yes												

4E – Private open space and balconies	<b>Dwelling type</b>	<b>Minimum area</b>	<b>Minimum depth</b>	POS areas of 28 of 140 (20%) units are deficient 0.1sq/m - 0.5sq/m.  Primary balcony of unit A13.02 is deficient 1.6sq/m. Whilst this unit is provided with a secondary POS area of 5.8sq/m it adjoins a bedroom, is south facing and enclosed by 1.8m high fencing given its location adjoining a communal open space area. This is not considered to be satisfactory.	Partial
	Studio	4m²	-		
	1 bed	8m²	2m		
	2 bed	10m²	2m		
	3+ bed	12m²	2.4m		
	Min balcony depth contributing to the balcony area is 1m.  Ground level, podium or similar -POS provided instead of a balcony: min area 15m² and min depth of 3m.				
4B – Natural ventilation	Min 60% (84 of 140) of apartments are naturally cross ventilated in the first nine storeys of the building.  Ten storeys or > are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.  Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.			103 of 140 units (73.5%)  16m glass line to glass line maximum unit depth i.e. A3.01	Yes  Yes
4G – Storage				Appropriate inter unit storage provisions	Yes
	<b>Dwelling type</b>	<b>Storage size volume</b>			
	Studio	4m²			
	1 bed	6M²			
	2 bed	8m²			
	3 bed	10m²			

### Non Compliances

### 3F Visual Privacy

The following is noted with respect of visual privacy and building separation:

#### Building Separation with 1A Lister Avenue

- a) 10.3m to level 3.
- b) >12m to level 4.

#### Building Separation with 5 Hayburn Avenue

- a) Level 1 - Proposed terraces to units of A1.01 / B1.06 / B1.01 at level 1 of proposed development are positioned 1.9m from the common eastern boundary with building line of the eastern neighbour. This results in a building separation of 7.6m.
- b) 11.6m – 15.7m L3 and above

As can be seen above, whilst the 12m building separation is not achieved between the proposed development and existing 4 storey flat buildings upon two eastern adjoining sites, it is the assessing officers view that reasonable building separation is generally proposed, with the exception of the following:

- 1) Units A1.05 / A 2.05 / A3.05 comprise full size east facing bedroom windows which are located 10.3m from a full size west facing bedroom window within units at 1A Lister Avenue.
- 2) Proposed terraces to units of A1.01 / B1.06 / B1.01 at level 1 of proposed development are positioned 7.6m from the building line of the eastern neighbour.

The above two matters are unsatisfactory and have the potential to result in adverse acoustic and privacy impacts to eastern neighbours. Further resolution of the aforementioned is required.

### Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone B4 Mixed Use	Yes	Yes - see discussion
4.3 Height of buildings	No - see discussion	No - see discussion
4.6 Exceptions to development standards	No - see discussion	No - see discussion
5.1A Development on land intended to be acquired for a public purpose	Yes	Yes - see discussion
5.9 Preservation of trees or vegetation	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion
6.14 Design excellence	No - see discussion	No - see discussion

#### 2.3 Zone B4 Mixed Use

The subject site is zoned B4 - Mixed Use under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as 'commercial premises' and a 'residential flat building' which constitutes permissible development only with development consent. The proposed development is consistent with the objectives of the zone.

#### 4.3 Height of buildings

As per the provisions of this clause, the general height standard applicable to the subject site is 22m. The subject site however is located within what is identified as 'Area H' and 'Area J' on the RLEP Height of Buildings Map and subsequently the provisions of subclause 2A(g) and 2A(i) apply.

These subclauses stipulate that where a site comprises a minimum site area of 2000sq.m, a further 12m height bonus shall apply to land within Area H and a further 9m height bonus shall apply to land within Area J. As such the maximum height limit permissible on site, inclusive of the 'bonus height' is 34m for 588 Princes Highway (Lot 1 DP 840863) and 31m for 592 Princes Highway (Lot 11 DP 590046). As detailed below, the proposal seeks to vary the 'bonus height' as permitted by the provisions of this clause. The below figure illustrates the degree of variation sought by the applicant.



The proposal seeks to provide the following

- Area H - northern lot (34m maximum) - Proposed maximum height of 44.6m, this is an exceedance of the standard by 10.6m or 31.1%.
- Area J - southern lot (31m maximum) - Proposed maximum height of 40.51m, this is an exceedance of the standard by 9.51m or 30.6%.

As demonstrated above, the proposal incorporates a significant breach of the bonus height standard and is deemed unsatisfactory with respect of the provisions of this clause.

The applicant has submitted a clause 4.6 variation to development standard in relation to the proposed above exceedance. The above has been addressed within Clause 4.6 of this report.

#### 4.6 Exceptions to development standards

Clause 4.6(8)(ca) prohibits the use of cl4.6 to justify a contravention to a development standard 'unless it is for a demonstrable public benefit, such as the provision of pedestrian links'. It is the officer's view that there is no public benefit identified in this case and as such cl4.6 should not be applied.

Nevertheless an assessment against the objectives and requirements of the clause has been carried out as below.

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

*(3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and*

*(3)(b) that there are sufficient environmental planning grounds to justify the variation.*

In considering the applicant's submission, the consent authority must be satisfied that:

*(i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, 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 of the relevant zone.*

*5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and*

*5(b) the public benefit of maintaining the development standard.*

#### Variation Sought - Height

As noted in Clause 4.3 - Height of Buildings, the proposal seeks to vary the maximum height limit on site as follows:

- Area H (34m maximum) - Proposed maximum height of 44.6m, this is an exceedance of the standard by 10.6m or 31.1%.
- Area J (31m maximum) - Proposed maximum height of 40.51m, this is an exceedance of the standard by 9.51m or 30.6%.

#### Applicants Height Justification

A summary of the key arguments of the applicant's clause 4.6 justification in respect of the height development standard are summarized as follows;

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

*a) Streetscape:*

- o 3 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.*

*b) Built Form:*

- o 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.*
- o Building massed 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 urban marker and added sustainability features.*
- o Proposal forms a skyline profile that is consistent with existing and approved development along Prince Highway.*

*c) Accessibility:*

*Lower Ground and Ground Floor retail uses are active, well-lit and accessible by pedestrians.*

- o Vehicular entrance to basement car parking located off secondary frontage (Lister Avenue).*
- o Pedestrian and vehicular entrances to the building are separated to minimise conflicts.*

*2. 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.*

*3. 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.*

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

*5. 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..*

*6. A high degree of residential amenity is achieved:*

- o 92% of all apartments receive a minimum of 2 hours of direct sunlight between 9 am and 3 pm at midwinter June 21st.*
- o Cross ventilation is achieved in 103 of the 140 apartment units. (73.5%).*

*7. A variety of apartment sizes are provided to suit varying needs of residents:*

- o 3 bedroom: 11.4%*
- o 2 bedroom: 52.1%*
- o 1 bedroom: 36.4%*

*8. 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.*

*9. 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:*

- o Lost opportunity to improve housing affordability through increased housing stock and choice;*
- o Higher build cost per dwelling;*
- o Higher strata fees per dwelling for upkeep of same equipment and facilities.*

*o An economic loss to the developer of the site.*

*o 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.*

*10. There are sufficient environment planning grounds to justify contravening the development standard, given:*

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

*11. The variation better achieves key environmental planning goals articulated by the state government.*

*12. There are no significant adverse impacts arising from the variation*

### *Height Discussion*

The applicants written request is satisfactory in regard to addressing clause 4.6(3). Following a review of the application, it is however considered that the height variation as proposed is inappropriate for the

following reasons:

a) The proposed 9.51m - 10.6m additional building height represents a 30.6% - 31.1% variation in excess of the maximum height permitted upon the subject site. The subject site is not the only property zoned B4 - Mixed Use, fronting the Princes Highway between Lister Street and Rockdale Plaza Drive that is capable of being amalgamated, comprising a site area of greater than 2000sq.m and thus being able to benefit from the bonus height provisions of RLEP 2011.

Properties at 594, 596, 598, 600, 602 and 606 Princes Highway are not as yet developed to their full potential or subject of a DA approval for redevelopment. These sites, whilst individually owned, comprise a combined site area in excess of 4400sq/m and have the potential to be amalgamated to also benefit from the bonus height provisions. It is noted that 610 Princes Highway was recently granted a Deferred Commencement approval for the construction of a seven (7) storey residential flat building development.

Should the applicant obtain the benefit of the bonus provisions and more, without delivering design excellence as intended and required by the provisions of Rockdale LEP 2011, this would set a significant undesirable precedent and potential abandonment of the design excellence clause recently introduced into RLEP 2011 not only for the Rockdale Town Centre but other specified locations within the Local Government Area.

b) The proposal is subject to the provisions of '*Part 7.5 - Rockdale Town Centre*' of Rockdale DCP 2011. The development controls in this part specify building envelopes for future development in the Rockdale Town Centre. The property is subject to a range of controls being "*Arterial Edge*" along the Princes Highway frontage and '*Local Edge*' to the Lister Avenue frontage. The site adjoins a zone interface with the R4 High Density Residential zone to the common eastern boundary, where the site adjoins two established 4 storey residential flat buildings at 1A Lister and 5 Hayburn Avenues. The proposed development is inconsistent with the building envelope controls for the site, particularly with respect to setbacks and podium heights as specified within Part 7.5 - Rockdale Town Centre.

Given building envelope controls apply to the site in lieu of FSR provisions, the height standard is the principal control which sets the overall bulk and scale for development upon this site. Given the aforementioned, the proposal is deemed to be inconsistent with the intent and provisions of Part 7.5 - Rockdale Town Centre of RDCP 2011.

c) Development adjoining land use zone boundaries should provide a transition in form, considering elements such as height, scale, appearance and setbacks. The proposal does not provide an appropriate transition to the R4 zone to the east of the site.

d) That part of the site fronting the Princes Highway is located within what is known as the '*Arterial Edge*' street character as per the provisions of Part 7.5 of DCP 2011. Accordingly, the street edge is to be defined by modulated built forms transitioning from the strong urban character in the town centre core further to the south, to provide a more spacious and open character, which allows vistas between buildings to the skyline beyond. The additional height as proposed does not provide these opportunities and the proposal is inconsistent with the intent of the Arterial Edge controls of Part 7.5 - Rockdale Town Centre of Rockdale DCP 2011.

e) The bonus height facilitated by the provisions of clause 4.3(2A(g)) and 4.3(2A(l)) was such that it was subject to the proviso that the Design Competition process be undertaken and completed by the



applicant prior to the lodgement of the Development Application. The aforementioned has not occurred and the proposal is therefore unsatisfactory with respect to the provisions and objectives of Clause 6.14 - Design Excellence.

f) The applicants written request has not provided sufficient environmental planning grounds particular to this development and /or site, of which to demonstrate that the applicable maximum height standard is unreasonable or unnecessary in the circumstances of the case. The applicants written request is inconsistent with the objectives of Clause 4.6 - Exceptions to Development Standards.

g) The proposed additional non compliant building height generates substantial additional bulk and scale. As a consequence, this results in additional unnecessary and unreasonable overshadowing to adjoining and nearby properties which at the present time are not developed to their full potential. Additional overshadowing has the potential to adversely impact upon the future redevelopment of these sites. The proposal represents an over development of the site in this regard.

h) The objectives of Clause 4.3 - Height of Buildings seek to ensure that new developments achieve a high quality urban form, maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain and to nominate heights that will provide an appropriate transition in built form and land use intensity. Given the arguments provided above, it cannot be stated that the proposal satisfies the objectives and requirements of Clause 4.3 - Height of Buildings.

j) The proposed development results in adverse visual privacy impacts as discussed further in this report.

k) The proposal in its current form is not in the public interest given the above.

It is reiterated that given the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90, the applicant has been unable to establish valid site and / or development specific circumstances which could otherwise warrant the proposed additional height on the subject site.

It is important to note that prior to the establishment of the judgement for the aforementioned court case, variations to development standards could have been supported on the basis of compliance with objectives and nil environmental planning impacts. Given the establishment of this judgement the requirement for justifying a variation to a development standard such as Height is challenging and must be correlated to the particular circumstances of the site or development. This has been unable to be demonstrated in this instance by the applicant.

Given the above, it is not considered that the proposed height variation should be supported and that the height standard for the site and development is reasonable and necessary in this instance. It is reiterated that there are insufficient environmental planning grounds particular to the site and development presented by the applicant of which to justify the contravention of the height standard for the site.

#### 5.1A Development on land intended to be acquired for a public purpose

As per the provisions of this clause, a portion of the site (124sq/m) along the frontage of the property of Lister Avenue, identified in yellow below, is to be dedicated for the purpose of local road widening.



The proposed development is clear of the land reserved for acquisition and thus complies with the provisions of this clause.

#### 5.9 Preservation of trees or vegetation

The site comprises an existing Frangipani Tree within the rear of 592 Princes Highway, adjoining the common boundary with 594 Princes Highway. Councils Tree Preservation Officer (TPO) has advised that the tree is located within the proposed building footprint may be removed. No objection was raised in relation to its removal as Councils TPO noted that adequate provision of replacement trees and shrubs was proposed elsewhere on site within the submitted landscape plan. The proposal is satisfactory with regards to this clause.

#### 6.1 Acid Sulfate Soil - Class 5

Acid Sulfate Soils (ASS) – Class 5 affects the property. However, development consent is not required as the site is not within 500 metres of adjacent Class 1, 2, 3 or 4 that is below 5 AHD.

#### 6.2 Earthworks

The proposal involves extensive excavation within the site to accommodate the basement levels. The impacts of the proposed earthworks have been considered in the assessment of this proposal and should the proposal have been supported, conditions of consent could have been imposed to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal meets the objectives of this clause.

#### 6.4 Airspace operations

The proposed development is affected by the 51AHD Obstacle Limitation Surface (OLS). The proposed development has a maximum height of 44.6m which is at 56.35RL and therefore will penetrate the OLS. The proposal was referred to Sydney Airports as approval under the Airports (Protection of Airspace) Regulations 1996, was required for the intrusion into the prescribed airspace.

Sydney Airports approved the proposal subject to conditions. The proposal is satisfactory with regards to the provisions of this clause.

#### 6.12 Essential services

Services will generally be available on the site. Should the proposal have been supported, conditions of consent could be imposed requiring consultation with relevant utility providers in regards to any specific requirements for the provision of services on the site.

#### 6.14 Design excellence

The objective of this clause is to deliver the highest standard of architectural, urban and landscape design. This clause applies to the proposal as the site seeks to benefit from a height bonus of 12m and 9m, as per the provisions of Clause 4.3 (2A)(g) - Height of Building, which permit the bonus in the event

the site area is greater than 2000sq/m. The subject site has a total site area of 2088sq/m and is eligible for the height bonus.

In accordance with the provisions of this clause, development consent must not be granted unless:

- (a) an architectural design competition that is consistent with the Design Excellence Guidelines has been held in relation to the development, and*
- (b) the design of the development is the winner of the architectural design competition, and*
- (c) the consent authority considers that the development exhibits design excellence.*

Clause 6.14(4) states:

*(4) An architectural design competition is not required under subclause (3) if the consent authority is satisfied that:*

- (a) such a process would be unreasonable or unnecessary in the circumstances, and*
- (b) the development exhibits design excellence.*

The submitted DA did not undertake the Design Competition as required by the provisions of this clause. The applicants submitted Statement of Environmental Effects states "A design competition is unreasonable and unnecessary as the development in its current form displays design excellence and satisfies the criteria of the 'Rockdale Design Excellence Guidelines'". The applicant sought to utilise the provisions of clause 6.14(4) to avoid the Design Competition process.

As noted in the 'History' section of this report, Council at its meeting on 12 October 2016, considered the applicants request for an exemption to Clause 6.14 – Design Excellence in RLEP2011. At this meeting, Council resolved as follows:

- (1) That the justification provided by the applicant for development application DA-2016/352 at 588-592 Princes Highway Rockdale seeking an exemption to clause 6.14(3) - Design Excellence in RLEP 2011 based on clause 6.14(4) not be accepted and the applicant be requested to undertake a design excellence competition as required by clause 6.14(3) in RLEP 2011. The requirement under clause 6.14(3) of RLEP2011 to undertake a design excellence competition in this case is considered to be reasonable and necessary for the following reasons:*
  - (a) Council has consistently applied the design excellence competition to other sites in the Rockdale Town Centre. Not applying the clause in this case would set an undesirable precedent.*
  - (b) There was no formal Pre-DA submitted for this proposal. However, the applicant was advised, prior to lodgement of the DA, that the proposal was subject to the requirements and objectives of Clause 6.14 and that the design excellence competition had to be carried out.*
  - (c) As a design competition has not been carried out for this site, Council cannot be satisfied that the proposal is of the highest standard of architectural, urban and landscape design as required by Clause 6.14.*
- (2) That the Joint Regional Planning Panel (JRPP), being the determining authority in this case, be advised of Council's resolution.*

- (3) *That to assist in dealing with future similar matters officers investigate the removal of clause 6.14(4) and report back to Council.*

Given the above, the submitted application fails to satisfy the provisions of Clause 6.14 – Design Excellence of RLEP 2011. Accordingly, this warrants refusal of the application.

### **S.79C(1)(a)(ii) - Provisions of any Draft EPI's**

The following are proposed instruments that are or have been the subject of public consultation under this Act:

#### *Draft Infrastructure State Environmental Planning Policy 2007*

The amendments to the Infrastructure SEPP propose to simplify the delivery and maintenance of social infrastructure including health facilities, correctional centres, emergency and police services, and council services. They will simplify the approval process while still ensuring appropriate levels of environmental assessment and consultation are undertaken for these activities.

None of the proposed changes affects the proposal and no other Draft Environmental Planning Instruments apply to this proposal.

### **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

#### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.6 Development on Sloping Sites	Yes	Yes - see discussion
4.1.9 Lot size and Site Consolidation - Mixed use	Yes	Yes - see discussion
4.1.9 Lot size and Site Consolidation - isolated sites	Yes	Yes - see discussion
4.4.5 Acoustic privacy	Yes	Yes - see discussion
4.4.7 Wind Impact	No - see discussion	No - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	No - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes
4.6 Parking Rates - Shops	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes
4.6 Car Wash Facilities	Yes	Yes - see discussion
4.7 Air Conditioning and Communication Structures	No - see discussion	No - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.7 Service Lines/Cables	Yes	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes - see discussion
4.7 Letterboxes	Yes	Yes
4.7 Hot Water Systems	No - see discussion	No - see discussion
5.3 Mixed Use - Retail	No - see discussion	No - see discussion
5.3 Mixed Use - Flexible Space for First Floor Level	Yes - see discussion	No - see discussion
7.5.1 Street Role - Centre Edge Residential	Yes	Yes - see discussion
7.5.2 Arterial Edge	No - see discussion	No - see discussion
7.5.2 Local Edge	No - see discussion	No - see discussion

#### 4.1.6 Development on Sloping Sites

The proposed building footprint has been designed to minimise cut and fill by allowing the proposed building to step in accordance with the slope of the land. The proposal is satisfactory in this regard.

#### 4.1.9 Lot size and Site Consolidation - Mixed use

As per the provisions of this clause, all proposed mixed use development of 4 storeys or greater requires a minimum frontage width of 18m. The proposed development site comprises a frontage of 32.4m to Princes Highway and 27m to Lister Avenue and complies with this requirement.

#### 4.1.9 Lot size and Site Consolidation - isolated sites

The subject development site as proposed does not result in the isolation of adjoining parcels of land. The proposal is satisfactory in this regard.

#### 4.4.5 Acoustic privacy

The application was accompanied by an Acoustic Report prepared by 'Rodney Stevens Acoustics' dated 7th April 2016. Page 37 of the report states *'based upon our current understanding, tiled areas within apartments are proposed to be installed in areas such as, laundry, kitchen, bathroom and ensuite. All ground floor lobby areas are also to be tiled. The remaining areas such as bedrooms and lounge rooms are to be carpeted. Where carpet is not present on the flooring over habitable spaces, allowances are to be made to meet relevant requirements'*

Given the above, the proposal is capable of satisfying the inter tenancy acoustic requirements of this clause and the Building Code of Australia, to ensure that acoustic amenity between neighbouring properties is maximized.

#### 4.4.7 Wind Impact

As per the provisions of this clause, developments are to be designed to ensure appropriate wind amelioration measures have been incorporated, in order to maximise amenity for future occupants and passing pedestrians. The proposal was accompanied by a Wind Report prepared by Wind Tech, dated 8 April 2016.

The results of the study illustrated that the following specific treatments are necessary in certain locations in order to achieve appropriate wind amelioration.

### Ground Level

1. *The proposed densely foliating evergreen tree along the Princes Highway frontage is recommended to be retained.*
2. *The inclusion of densely foliating evergreen trees along the Lister Avenue and Princes Highway frontage is recommended and capable of growing to a height of 4m with a 4m wide canopy.*

### Private Balconies

1. *Inclusion of a 1.5m high impermeable balustrade along the balcony perimeter for the north-eastern corner apartments of Levels 3 to 13.*

With respect to the above, concern is raised in relation to the following.

1. Submitted landscape plans are inconsistent with the level of suggested wind amelioration treatment for the ground level. i.e. The Wind Report illustrates a requirement for 7 trees along the frontage of the site within property boundaries to the Princes Highway, whilst the landscape plan only illustrates 4 proposed trees. It is inconclusive as to whether the reduced number of trees, will provide the same level of wind amelioration.
2. Detailed consideration has not been given to wind amelioration measures that may be required for the three proposed communal outdoor rooftop terraces at levels 11, 12 and 13. The report states on page 27 *"the south-western corner of the site along the Princes Highway is currently exposed to the westerly and southerly winds which side-stream around this corner of the subject development. It is noted that the current adjacent site to the south consists of an open car yard property, with a small building located at the eastern aspect. The proposed masterplan notes for the inclusion of an apartment building structure along the Princes Highway street frontage which would mitigate this noted effect and also remove the need for the recommended tree planting in this location."* Given there is no approved development upon this adjoining site (594 Princes Highway) it is likely that temporary wind amelioration measures will be required for the proposed development.

Given the above, the proposal cannot be stated to satisfy the requirements and objectives of this clause.

#### 4.5.1 Social Equity - Housing Diversity and Choice

The proposal is required to provide the following unit mix as per the provisions of this clause.

Control	Requirement	Proposed	Complies
10% - 30% Studio / 1 bed	1 x studio 50 x 1 bed	36.4%	No
50% - 75% 2 bed	73 x 2 bed	52.1%	Yes
10% - 20% 3 bed	16 x 3 bed	11.4%	Yes
10% (14) Accessible Units	18 accessible units (mix of 1 and 2 bedroom)	12.8%	Yes

As can be seen above the proposal does not comply with the required unit mix on site. Notwithstanding,

the proposal provides a range of housing options within the proposed development which will enable changing lifestyle needs and cater to different household types and income groups. The proposal is considered to be consistent with the objectives of this clause. A variation in this instance is deemed to be satisfactory.

#### 4.6 Parking Rates - Shops

A total of 191 car spaces are proposed to be created on site, in addition to a HRV service, loading and unloading bay. The proposal allocates 145 of these spaces as residential, 21 as visitor and 25 as commercial spaces.

A total of 21 commercial spaces are required on site, the proposal illustrates 25 provided, this is a surplus of 4 spaces. The proposal provides for sufficient commercial on site car parking.

#### 4.6 Car Wash Facilities

One dedicated car wash bay is provided at the proposed lower ground level, nil tap facilities are indicated, yet this can be conditioned should the proposal have been supported for approval.

#### 4.7 Air Conditioning and Communication Structures

The submitted BASIX certificate confirms a requirement for 1-phase 4 star air conditioning units to proposed residential dwellings. Details in relation to air conditioning units have not been illustrated upon architectural plans submitted. Notwithstanding this matter can be conditioned to ensure compliance in the event the proposal was supported for approval.

#### 4.7 Waste Storage and Recycling Facilities

Plans illustrate the provision of appropriately sized and located on site waste storage facilities at the lower ground level for both commercial and residential uses. The proposal further incorporates waste chutes for ease of disposal for future occupants. The proposal is satisfactory in this regard.

#### 4.7 Service Lines/Cables

Plans illustrate the provision of a substation integrated into the building envelope along the Lister Avenue frontage of the site at ground level. The proposal is thus satisfactory with regards to the provisions of this clause.

#### 4.7 Laundry Facilities and Drying Areas

Proposed residential dwellings incorporate private internal laundries for future occupants. The proposal is satisfactory in this regard.

#### 4.7 Hot Water Systems

The submitted BASIX certificate identifies a requirement for gas instantaneous 6 star hot water systems to residential units. Details in relation to proposed hot water systems have not been illustrated on plans. Notwithstanding this matter can be conditioned to ensure compliance in the event the proposal was supported for approval.

#### 5.3 Mixed Use - Retail

As per the provisions of this clause a minimum of 10% (1222.7sq/m) of the gross floor area of the development is required to be provided as commercial floor space. The proposed development incorporates a total of 808.4sq/m of retail / commercial floor space over 2 levels within the development. This equates to 6.6% and does not comply with the provisions of this clause.

### 5.3 Mixed Use - Flexible Space for First Floor Level

As per the provisions of this clause, where upper level commercial is not provided within a development, the first floor must be designed as flexible space to allow future adaptation. It must have a minimum floor to ceiling height of 3.3m. The proposed development does not comply with this requirement, proposing 2.7m floor to ceiling heights at level 1.

### 7.5.1 Street Role - Centre Edge Residential

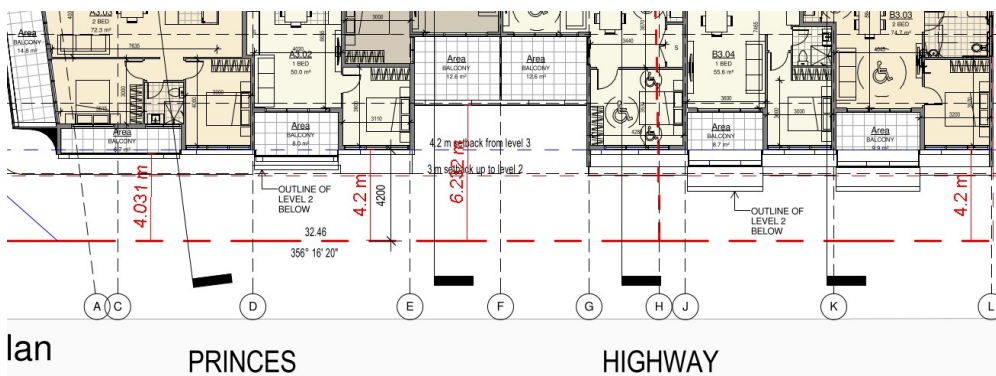
The proposed development is consistent with the provisions of this clause as it seeks to provide for high density residential development at the edge of the Rockdale Town Centre, with opportunities for retail / commercial uses.

### 7.5.2 Arterial Edge

The provisions of this clause apply to the Princes Highway frontage. A three storey podium is required to be setback 3m from the front property boundary to the Princes Highway in order to accommodate a deep soil zone and facilitate tree planting i.e. 'Green Gateway'. Levels above the third storey are to be setback a further 3m, thus the tower element is to be a minimum 6m from the front property boundary to the Princes Highway.

Plans illustrate the provision of a 3 storey podium setback 3m from the Princes Highway front boundary, thus providing the required 'green gateway' setback.

Levels 3 and above are required to be setback 6m from the front property boundary. Plans illustrate a varying setback of 4m - 6.2m as a result of the articulated façade proposed to the Princes Highway for levels 3 - 11. Level 12 is setback 4m - 7m from the Princes Highway, with level 13 setback 4m - 4.2m.



### *Levels 3 - 10 front setback to Princes Highway*

As can be seen above, the proposal seeks to vary the setback requirements of this clause. Whilst the proposal seeks to articulate the front façade of the development, the component of the façade comprising reduced setbacks exceeds that where increased setbacks are provided.

Given the lack of FSR controls applying to the site, the setback controls are considered to be essential in order to appropriately manage bulk and scale upon the site. The proposal does not comply with the front setback requirements to the Princes Highway as per the provisions of this clause.

Further to the above, the portion of the building above the 3rd floor is to have a side setback of at least 4.5m and a separation between buildings of at least 9m. Plans illustrate the provision of a party wall development at lower and ground level, with a 3m southern side setback proposed from levels 1 to 10.



This is a shortfall of 1.5m. Southern side setbacks to levels 11, 12 and 13 increase and exceed the 4.5m requirement aforementioned.

The reduced southern side setback to levels 1 to 10 is of concern given the southern adjoining site has not as yet been redeveloped to its full potential and a 9m building separation would be required between this and any future potential development upon the adjoining southern allotment. There is no identifiable circumstance of which would warrant the proposed variation to the side setback requirement. It is reiterated that given the lack of FSR controls, the setbacks are essential in order to control building mass and separation.

Finally, a minimum 9m rear setback is to be provided where development shares a boundary with a residential property. The subject site shares a common rear eastern boundary with a four storey residential flat building at 1A Lister Avenue and a 3-4 storey residential flat building upon 5 Hayburn Avenue within the R4 High Density zone.

As previously discussed within this report, it is imperative that where development adjoins a land use zone boundary, due consideration be given to the provision of appropriate height, scale and setbacks. Existing setbacks of buildings upon 1A Lister and 5 Hayburn Avenues from the common boundary with the subject site are as follows:

- 1A Lister Avenue, 3m to level 3 / 6.8m to level 4 (setback of building from common boundary with subject site).
- 5 Hayburn Avenue, 5.7m - 11m.(setback of building from common boundary with subject site).

The proposal illustrates a rear setback to the common eastern boundary of the site with the above properties as follows:

- Level 1 - 1.9m (terrace edge) - 7.3m
- Levels 2 - 10 - 4.8m (balcony edge) - 7.3m
- Level 11 - 6.1m (building wall) - 6.8m (balcony edge)

The proposal does not provide the required 9m rear setback as established by the provisions of this clause.

Consideration has thus been given to the proposed building separation with the adjoining eastern buildings. The following is noted:

#### *Building Separation with 1A Lister Avenue*

- a) 10.3m to level 3.
- b) >12m to level 4.

#### *Building Separation with 5 Hayburn Avenue*

- a) Level 1 - Proposed terraces to units of A1.01 / B1.06 / B1.01 at level 1 of proposed development are positioned 1.9m from the common eastern boundary with building line of the eastern neighbour. This results in a building separation of 7.6m.
- b) 11.6m – 15.7m L3 and above

As can be seen above, whilst the 9m rear setback as required by this clause is not provided, it is the assessing officers view that reasonable building separation is generally proposed, with the exception of the following:

- 1) Units A1.05 / A 2.05 / A3.05 comprise full size east facing bedroom windows which are located 10.3m from a full size west facing bedroom window within units at 1A Lister Avenue.
- 2) Proposed terraces to units of A1.01 / B1.06 / B1.01 at level 1 of proposed development are positioned 7.6m from the building line of the eastern neighbour.

The above two matters are unsatisfactory and have the potential to result in adverse acoustic and privacy impacts to eastern neighbours.

Given the above matters, the proposal is unsatisfactory with respect of the provisions of this clause.

#### 7.5.2 Local Edge

Local edge provisions apply to the Lister Avenue frontage. As per the provisions of this clause, the lower 4 storeys of the development along the Lister Avenue frontage of the site are to be setback 2m from the property boundary, with levels above the 4th storey setback a minimum of 3m from the lower build to line.

Plans illustrate the provision of a 3 storey podium, setback 1.3m from the new site boundary to Lister Avenue, following the required land dedication, with upper levels setback a total of 2.1m from the new property boundary to Lister Avenue for the entire building height.

The proposed setbacks are unsatisfactory and the proposal does not satisfy the provisions of this clause.

### **S.79C(1)(b) - Likely Impacts of Development**

#### Roads and Maritime Service

The proposal was referred to the RMS given the location of the site fronting the Princess Highway, a classified Road. The RMS responded on 19 October 2017 noting that they are not in a position to provide an informed comment on the development application based on the information provided by the applicant. The following issues were raised:

1. *It is noted that the traffic study has adopted a traffic generation rate of 0.19 vehicle trips per hour per dwelling for the morning and afternoon peak periods, based on the Sydney average rates in Roads and Maritime Services Technical Direction TDT2013/04a Updated Traffic Surveys. However, the average traffic generation rates for high density residential flat buildings are not considered appropriate for the subject site as these rates have been derived from the results of surveys undertaken at sites such as St Leonards and Chatswood where higher levels of public transport service and accessibility exists. Journey to Work data for the St Leonards Travel Zone 1844, for example, shows as little as 27% private vehicle journey to work mode share, and around 70% public and active transport mode share. Roads and Maritime requests that the applicant adopts a traffic generation rate based on the traffic surveys undertaken at the Rockdale site from the TDT2013/04a for AM and PM peaks respectively, or from a comparable site/s with consideration to Journey to Work mode share data and other accessibility characteristics.*

2. *The traffic generation assumption for the retail component is not adequately justified in the report. In this regard, the traffic generation for the retail component has been based on the commercial office block rates given in the RMS Guide to Traffic Generating Developments. This is likely to significantly understate the traffic generation potential of the retail component of the development.*  
*The trip generation rates for the retail component should be derived from the retail rates given in the Shopping Centres category of the TDT2013/04a. Appropriate trip containment and mode share discounts can then be applied to the retail traffic generation with justification based on empirical evidence.*
3. *The Sidra intersection analysis for the intersection of Lister Avenue and Princes Highway should be revised to reflect the amended traffic generation of the site as needed. Traffic distributions should be justified based on Journey to Work data for the subject travel zone. Electronic copies of the Sidra intersection analysis undertaken should be provided to Roads and Maritime and Council for review and verification. The traffic signal setting inputs should reflect SCATS and be linked with any nearby intersections in a Sidra Network model if needed.*
4. *The modelling of the traffic impacts at Lister Avenue and Princes Highway should take into consideration the cumulative traffic impacts of known developments in the subject locality (including Chapel Street Precinct etc) and consider ten years background traffic growth.*
5. *The applicant should identify any road and transport infrastructure improvements required to mitigate any traffic and safety impacts of the subject development.*
6. *Consideration should be given to the provision of an additional setback of the development from the Princes Highway boundary to facilitate any potential need for a future northbound right turn bay into Lister Avenue.*

Given the above, concern is raised that submitted documentation does not provide an accurate reflection of potential traffic and car parking impacts associated with the proposed development, nor potential impacts upon the surrounding road network. RMS concurrence was not obtained and the proposal is unsatisfactory in this regard.

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

The proposal in its current form is not suitable upon the subject site for the reasons previously detailed within this report.

### **S.79C(1)(d) - Public submissions**

The development has been notified in accordance with the provisions of Rockdale DCP 2011 and two (2) submissions opposing the proposed development were receipted. Issues raised in submissions are discussed below:

*Exceeds height limit / Additional height is not in the public interest / Extra height will set an undesirable precedent / Proposal is excessive and not worthy of approval / Non compliant height creates substantial bulk which impacts on nearby properties*

Comment: The matter of additional building height, bulk and scale has been previously discussed in this report.

*Not architecturally significant or contributory to Rockdale Area or 'Green Gateway' / Not a landmark building / Examples of similar developments provided by the applicant are terrible examples*

Comment: The proposal has not undertaken the 'Design Competition' process which is required by the provisions of RLEP Clause 6.14 - Design Excellence. As such it cannot be stated that the proposal demonstrates design excellence within the Rockdale Town Centre.

The proposal adheres to the green gateway requirements of RDCP 2011, providing the required 3m deep soil zone along the frontage of the site to the Princes Highway.

*Movable aluminium shutters is not a sustainable building element nor aesthetically pleasing*

Comment: The proposed shutters are sought to be provided in order to maximize amenity, weather protection and privacy for future occupants. Shutters are not deemed to be unsatisfactory.

*Photo-montage is misleading it lacks real elements i.e. power lines, traffic lights*

Comment: The above is noted. The photo montage is merely an indicative illustration.

*Condition should be imposed to ensure windows to commercial tenancies are not obscured by advertising / Condition should be imposed to ensure public domain surrounding the site especially footpath are paved to match Rockdale Town centre*

Comment: Should the proposal have been supported, the above can be incorporated into a condition of consent.

*Concerns with Access Report*

Comment: Should the proposal have been supported, conditions of consent can be imposed with respect to access for persons with a disability/ mobility impairment to ensure compliance with relevant legislative requirements.

*Privacy impacts to 34/555 Princes Highway Rockdale*

Comment: Privacy to the objectors unit is not considered to be detrimentally affected by the development given the separation distance in excess of 50m.

*View loss impacts to 34/555 Princes Highway Rockdale are unreasonable given the excessive height*

Comment: Unit 34/555 Princes Highway is a two storey 1 bedroom dwelling located at the top two floors of 555 Princes Highway at the junction of Princes Highway and Hegerty Street. The proposal has the potential to obscure distant south easterly district and Botany Bay views from the objectors habitable living room and bedroom. View loss impacts to neighbouring properties were not addressed by the applicant.

*Excessive site coverage is proposed*

Comment: The applicable deep soil requirements of the Apartment Design Guide supersede the site coverage provisions of DCP 2011. The proposal however lacks sufficient deep soil provision and this is required to be increased.

### *Non compliant street setbacks*

Comment: The matter of street setbacks has been discussed within this report. Setbacks as proposed are inconsistent with the provisions of Part 7.5 - Rockdale Town Centre of DCP 2011 and are not supported.

### *Insufficient retail space*

Comment: The matter of retail space has been discussed within this report. The proposal does not provide sufficient retail space as required by the provisions of DCP 2011.

### *Insufficient communal open space provision*

Comment: The matter of communal open space has been discussed within this report. The proposal does not comply with the requirements of the Apartment Design Guide, illustrating a 97.7sq/m deficiency.

### *Unacceptable overshadowing impacts*

Comment: The matter of overshadowing has been previously addressed in this report. Additional overshadowing as a result of the surplus height proposed is not considered to be appropriate.

### **S.79C(1)(e) - Public interest**

The proposal in its current form is not in the public interest for the reasons previously detailed within this report.

## **Schedule 1 - Draft Conditions of consent**

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