

COUNCIL ASSESSMENT REPORT

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|--|---|
| Panel Reference | 2017SCL052 |
| DA Number | DA2014/319/A |
| LGA | Bayside Council |
| Proposed Development | S96AA Modification to approved mixed use development comprising of changes to front facade/built form; increase in gross floor area; rationalisation of the number of commercial units by amalgamating units to reduce the number from 41 to 36; changing the composition of residential units without increasing the total number of residential units (318); internal changes to residential units; and changes to comply with the building code(BCA) |
| Street Address | 13 Princes Highway and 4 Wardell Street Arncliffe |
| Applicant/Owner | Ralan Arncliffe Pty Ltd |
| Date of DA lodgement | 04 August 2017 |
| Number of Submissions | Two (2) |
| Recommendation | Approval |
| Regional Development Criteria (Schedule 4A of the EP&A Act) | Clause 3 Capital Investment Value of the initial proposal exceeds \$20 million. |
| List of all relevant s79C(1)(a) matters | i.e. any: <ul style="list-style-type: none"> • Section 96AA Environmental Planning and Assessment Act, 1979, • Rockdale Local Environmental Plan 2011 • SEPP 65 • Rockdale DCP 2011 • Residential Flat Design Code/Apartment Design • No changes to planning agreement that has been entered into under section 93F, • Environmental Planning and Assessment Regulation 115 |
| List all documents submitted with this report for the Panel's consideration | Attachment 1 – GLN Report s. 96AA Assessment dated December 2017 |
| Report prepared by | GLN Planning |
| Report date | December 2017 |

Summary of s79C matters

YES

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

Legislative clauses requiring consent authority satisfaction

YES

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?

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?

Not Applicable

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?

Not Applicable to Section 96AA Mod



S96AA ASSESSMENT

DA-2014/319/A

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S96AA Modification Assessment

RALAN Arncliffe Proposed modification DA-2014/319/A
213 Princes Highway & 4 Wardell Street Arncliffe

Prepared for

Bayside City Council

By



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Document History and Status

| Version | Issue To | Qty | Date | Prepared by | Reviewed by |
|---------|-----------------------|-----|------------|-------------------------|-------------|
| 1 | Marta Gonzales-Valdes | 1-e | 11/12/2017 | H Hutchinson J Sneyd | P Grech |

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Executive Summary

This report provides an assessment of the proposed modifications to Development Consent **DA:2014/319**. The original application for DA:2014/319 was lodged with Rockdale Council (now **Bayside Council**) on 17 April 2014 and subsequently refused on 7 October 2014 by the Joint Regional Planning Panel. Deferred commencement consent for DA:2014/319 was then granted through the Land and Environment Court (**LEC**) on 27 August 2015 after substantial changes. All deferred commencement conditions were met on 8 April 2016.

The proposed modification **DA:2014/319A** is lodged under Section 96AA of the Environmental Planning and Assessment (**EP&A**) Act 1979 and seeks to amend the number of commercial suites, types of residential apartments and several design elements. As the development includes a youth centre to be dedicated to Bayside Council (**Council**), GLN Planning (**GLN**) along with GMU have been engaged to assess the modification on behalf of Council before further consideration and determination by the Sydney Planning Panel.

The Section 96AA application is required to be referred to the Sydney Eastern City Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the initial proposal exceeds \$20 million.

GMU have been engaged to assess the impact of the proposed modifications upon the design quality of the proposed development. Several versions of the modification application were reviewed by GMU, and GMU advised that the final version is acceptable.

As the development adjoined the railway line it required approval from the Sydney Trains. Advice was obtained and included in Condition 117 of the original Development Consent. Further advice has been provided indicating that the existing conditions of consent remain appropriate to the modified proposal.

As the modification proposes additional height of up to 350mm, the advice of Sydney Airport Corporation Limited (**SACL**) was sought. In a letter dated November 2016, SACL did not raise any objection to additional height up to 56.8m AHD, which the amended proposal is consistent with. Condition 118 requires compliance with all conditions imposed by SACL prior to the issue of the Occupation Certificate.

The original application was submitted prior to the 2015 amendments to SEPP 65. Therefore, the provisions of the Apartment Design Guide (**ADG**) have not been given predominant weight in the assessment as the original application was assessed under the Residential Flat Design Code (**RFDC**).

It is recommended that the Sydney East Planning Panel, resolve:

- a. That pursuant to Section 96AA of the Environmental Planning and Assessment Act, 1979, Council is satisfied that the development as proposed to be modified is substantially the same development originally approved (Development Consent No DA-2014/319); and
- b. That the Section 96AA Application was notified in accordance with the Environmental Planning and Assessment Regulations 2000 and the Council's Development Control Plan (DCP) No. 24; and
- c. That Development Consent No DA-2014/319 be modified as detailed in Tables 1 and 2 of this report.

1 Introduction

A Deferred Commencement Consent was granted by the Land and Environment Court. This assessment of the proposed section 96AA modification application to Notice of Determination No. **DA-2014/319** has been prepared on behalf of Bayside Council. That DA approved the demolition of existing structures and construction of a mixed-use development including 41 commercial suites, 318 residential units, Youth Centre and associated ball courts, basement parking, public reserve, landscaping, road works and Torrens title subdivision creating 3 lots, including public park.

This Section 96AA Application, when submitted, sought approval for the following modifications:

- changes to the built form with amendments to the front façade
- increase in gross floor area
- reducing the number of commercial units by amalgamating units from 41 to 36
- changing the composition of the residential units to remove all studios with no increase to the total number of residential units
- internal changes to the residential units
- changes to comply with the Building Code of Australia (BCA)

As a result of the initial assessment a number of matters were raised requiring the submission of additional information. The matters raised are summarised as:

- Justification for GFA increase;
- Inclusion of colonnades
- Car Parking ingress and egress
- Traffic
- Impacts to “off the plan purchasers”
- Pedestrian Access
- Solar Access
- Landscaping
- Additional justification for amendments to Condition 12xii of DA 2014/319
- Design matters and finishes
- Height increases to proposed buildings.

Additional details were submitted during November to December 2017 addressing the matters raised. The subsequent amendments were referred to GMU for consideration of the architectural expression of the building. GMU supported the final set of modification plans submitted on 6

December 2017, together with proposed modified conditions. The modification application seeks to substitute the amended plans for the approved plans in condition 2 of the development consent and to amend certain conditions.

Council engineers have reviewed the amended plans, all conditions of the development consent relating to the submission of civil details prior to the construction certificate being issued remain operable on the consent. No objections are raised to the modification of the development consent as proposed.

1.1 Amendments to the Application and Background

On the 17 April 2014, Ralan Arncliffe Pty Ltd (**the applicant**) lodged an application with Rockdale Council (now **Bayside City Council**) for a mixed-use development including 41 commercial suites, 318 residential units, youth centre and associated ball courts and basement parking with capacity for 487 vehicles located at 213 Princes Highway and 4 Wardell Street Arncliffe.

Referrals were made to Sydney Water, Sydney Airport Corporation, Ausgrid, NSW Railcorp and NSW police. The DA was refused by the JRPP and a refusal notice was issued under Section 80(1)(b) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

An appeal was subsequently lodged with the Land and Environment Court. After extensive negotiations, receipt of additional information and plan amendments, the appeal was upheld with deferred commencement conditions. The deferred commencement conditions have now been satisfied.

A Section 96AA Modification Application was submitted to Council on the 4 August 2017 to amend the Land and Environment Court issued development consent. As the modification application includes Council property, Council required an independent assessment of the application. GLN Planning and GMU have undertaken the assessment on behalf of Council.

Following the initial assessment of the modification application, a request for additional information was issued on 31 October 2017. A process of on-going discussions with the applicant and receipt and review of additional information and plans followed, culminating with the receipt of final modification plans on 6 December 2017.

1.2 Referrals

A number of referral bodies were involved in the original DA; however, following consultation with Council and relevant agencies it was determined that referral to Police NSW and Service NSW was unnecessary.

The s.96AA Modification Application has been referred (externally) to Sydney Trains and (internally) to traffic, engineering and assets. Due to an increase in the height of the overall development, advice and endorsement from Sydney Airport Corporation Limited has been obtained.

The application is being referred to the Sydney Eastern City Planning Panel for determination, pursuant to Clause 3 of Schedule 4A of the EP&A Act as the Capital Investment Value of the initial proposal exceeds \$20 million.

2 Site Description

The site, known as 213 Princes Highway and 4 Wardell Street, Arncliffe, is situated on the western side of the Princes Highway between, Hattersley Street and Wigram Road, and has a frontage to Wardell Street.

The site comprises all of the land contained in Lots 1 to 14, DP 124275, Lots 25 to 33 DP1646, and Lot 1 DP 652922.

The land is irregular in shape and has:

- a frontage of some 183.9m to the Princes Highway, 20.25m to Wardell Street and 131.26m to Townsend Lane; and
- an area of some 10,990m².

The single storey brick community building adjacent to the site's Wardell Street frontage and a single storey brick toilet block adjacent to its south-western corner adjacent to the Highway that formerly occupied the land have been demolished and preliminary site works have commenced.

Vehicular access to the off-street car parking and loading facilities associated with the development is to be from Townsend Lane. Ingress to ground level facilities is provided from the Princes Highway with a one way circulation road existing to Townsend Place.



Source Nearmaps

Figure 1 Location of the site

The land is situated in a precinct that includes a wide range of development. The land immediately to the east of the site, comprises the properties known as 211 Princes Highway with a recently constructed workshop and 2 Wardell Street which contains a detached dwelling house. To the north of the site is the Illawarra Railway Line, to the west are a mix of office and residential buildings and to the south are a mix of retail, commercial and industrial buildings.

2.1 Development Consent History

The Land and Environment Court of NSW, on 12 June 2015, issued a “deferred commencement” development consent, under the terms of Section 80(3) of the EP&A Act, to demolish the existing structures on the land and to construct a mixed-use development that included:

- 41 commercial suites;
- 318 residential units;
- a Youth Centre and associated ball courts;
- basement parking;
- a public reserve;
- landscaping;
- road works; and
- a Torrens title subdivision creating 3 lots, including the public park.

The consent was issued following the agreement reached between Ralan Arncliffe Pty Ltd and Council after a conciliation conference held pursuant to Section 34 of the Land and Environment Court Act 1979. This was a part of the negotiation process that involved amendments to the proposal.

On 8 April 2016, Council advised that the “deferred commencement” conditions had been satisfied and the consent became effective from that date.

3 Proposed modifications

This Section of the Report details the modifications proposed by the applicant to Notice of Determination 2014/319.

3.1 Details of the proposed modifications

The modification application was lodged under Section 96AA. The modification application as lodged sought the following amendments:

- changes to the built form with amendments to the front façade
- increase in gross floor area of the residential component
- increase in height of the proposed buildings
- reducing the number of commercial units by amalgamating units from 41 to 36
- amendments to the composition of the residential units with no increase to the total number of residential units
- internal changes to the residential units
- amendments to comply with the BCA.

As a result of the initial assessment a number of matters were raised requiring the submission of additional information. The matters raised were:

- Justification for GFA increase;
- Inclusion of colonnades
- Car Parking ingress and egress
- Traffic
- Impacts to "off the plan purchasers"
- Pedestrian Access
- Solar Access
- Landscaping
- Additional justification for amendments to Condition 12xii to clarify where clearances for overhanging above footpaths applies
- Design matters and finishes
- Height increases to proposed buildings.

The proposed amendments to Notice of Determination No DA:2014/319 are outlined below. The applicant has advised these amendments are essential for various reasons including , constructability, compliance with the requirements of the BCA and changes to market demand.

Table 1 provides an outline of the proposed amendments to conditions as finally submitted by the applicant. Note that conditions are identified in *italics* with ~~strikethrough~~ representing deleted words and **bold** words represent words added.

Table 1 Outline of proposed amendments to conditions

| Description | Amendment/deletion |
|-------------------------------------|--|
| Description of proposed development | Amend: Demolition of existing structures and construction of a mixed use development including 41-36 commercial suites, 318 residential units, Youth Centre and associated ball courts, basement parking, public reserve, landscaping, road works and torrens title subdivision creating 3 lots, including public park. |
| General Conditions | |
| Condition 2 - Approved Plans | Changes to the description of the approved plans are proposed. See Table 2 below for a detailed list of the amended plans |
| Condition 5 - BASIX requirements | Amend to reflect amended BASIX Certificate for amended plans. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 540937M_07 540937M_08 . |
| Condition 12v - Building design | Amend: The balconies to apartments within the inset portions of the building link Building G and E and E and D are to have frameless clear glass balustrades individually fixed at the base of each the glass panels with polished u-channel strip capping . The slab edges and solid façade elements of these balconies are to be rendered and painted and finished in Dulux colour "Peplum". |
| Condition 12vi - Building design | Amend: The solid angled panels to the protruding windows for units in the southern façade of Building F and the northern façade of Building C are to be finished in Alucobond metallic panels aluminium high-quality durable cladding materials to match the colour of the leafstream privacy screens for each building. |
| Condition 12vii - Building design | Delete: The solid panels between level 3 and the roof of the northern façade of Building F is to be finished in Alucobond metallic panels in the colours indicated on the elevation Section G DA 210 Rev F. |
| Condition 12xiv - Building design | Amend: The curved balconies to Building G are to be galvanised powdercoated metal glazed balustrades with vertical steel balusters and a base and top rail. The design is to be contemporary and minimise the visual impact of the balustrade. The glass panels , handrail and base rail are to be curved where they occur around the curved portion of the balcony to match the curvature of the façade. No facetted railings or pool fencing product is to be used. |

| Description | Amendment/deletion |
|----------------------------------|---|
| Condition 12ic- Building design | <p>Insert:</p> <p>The leaf-stream privacy screens are to be reinstated to Elevation A and F as per the following approved plans under DA-2014/319:</p> <p>Drawing number DA203, Revision H, Dated Dec 2015, Elevation A</p> <p>Drawing number DA208, Revision H, Dated Dec 2015, Elevation F</p> <p>The amended elevations are to be approved by Director City Futures at Bayside Council prior to the issue of the Construction Certificate.</p> |
| Condition 13iv - Building design | <p>Delete:</p> <p>The portion of the long balcony to Unit 29, 37, 45, 52 and 59 in Building A which protrudes beyond the main alignment of the façade and the line of glazing to Bed 1 and the dining area is to be reduced in width to a maximum of 400mm sufficient to provide an elevational feature only. The balconies to this unit are to be reduced in width to align with this width. This is to reduce the extension of the building at upper levels over the remainder of the building below.</p> |
| Condition 13viii | <p>Amend:</p> <p>All ceilings for habitable areas within the units are to be suspended plasterboard ceilings with recessed downlights and other feature lighting at a height of 2.7m above the finished floor level of the unit.</p> |
| | |

Table 2 Table of amendments to approved plans

| Name of Plan | Drawing No. | Revision | Dated |
|--|-------------|----------|------------|
| Architectural Plans | | | |
| Site Plan | DA-000 | c | 20/11/2017 |
| Basement 2 Plan | DA-100 | E | 20/11/2017 |
| Basement 1 Plan | DA-101 | E | 20/11/2017 |
| Ground Level 1 Plan | DA-102 | E | 20/11/2017 |
| Ground Level 2 Plan | DA-103 | E | 20/11/2017 |
| Ground Level 3 Plan | DA-104 | F | 30/11/2017 |
| Ground Level 4 Plan | DA-105 | C | 30/11/2017 |
| Level 1 Floor Plan | DA-106 | C | 20/11/2017 |
| Level 2 Floor Plan | DA-107 | C | 20/11/2017 |
| Level 3 Floor Plan | DA-108 | C | 20/11/2017 |
| Level 4 Floor Plan | DA-109 | C | 20/11/2017 |
| Level 5 Floor Plan | DA-110 | C | 20/11/2017 |
| Level 6 Floor Plan | DA-111 | C | 20/11/2017 |
| Level 7 Floor Plan | DA-112 | C | 20/11/2017 |
| Level 8 Floor Plan | DA-113 | C | 20/11/2017 |
| Level 9 Floor Plan | DA-114 | C | 20/11/2017 |
| Roof Plan | DA-115 | C | 20/11/2017 |
| Ground Level 1 Floor Plan Bin Strategy | DA-116 | A | 20/11/2017 |

| | | | |
|---|--------|---|------------|
| Elevation A Street Elevation Princes Highway | DA-200 | G | 6/12/2017 |
| Elevation B | DA-201 | G | 6/12/2017 |
| Elevation C | DA-202 | J | 6/12/2017 |
| Elevation D | DA-203 | F | 6/12/2017 |
| Elevation E | DA-204 | F | 6/12/2017 |
| Elevation F | DA-205 | G | 6/12/2017 |
| Elevation G | DA-206 | F | 6/12/2017 |
| Elevation H | DA-207 | C | 6/12/2017 |
| Elevation I | DA-208 | E | 6/12/2017 |
| Elevation J | DA-209 | D | 6/12/2017 |
| Elevation K | DA-210 | D | 20/11/2017 |
| Building G – Proposed Detailed Façade Treatment, Colour & Materials for Ground Level Façade | DA-212 | C | 20/11/2017 |
| Building E – Proposed Detailed Façade Treatment, Colour & Materials for Ground level façade | DA-213 | C | 20/11/2017 |
| Building D – Proposed Detailed Façade Treatment, Colour & Materials for Ground level façade | DA-214 | B | 20/11/2017 |
| Building C – Proposed Detailed Façade Treatment, Colour & Materials for Ground Level Façade | DA-215 | B | 20/11/2017 |
| Building A, B & C – Proposed Detailed Façade treatment colour & materials for ground level façade | DA-216 | C | 20/11/2017 |
| Building F & G – Proposed Detailed Façade treatment, colour & materials for ground level façade | DA-217 | C | 20/11/2017 |
| Typical Unit Plans (01) | DA-300 | B | 20/11/2017 |

| | | | |
|--|----------------|---|------------|
| Typical Unit Plans (02) | DA-301 | B | 20/11/2017 |
| Typical Unit Plans (03) | DA-302 | B | 20/11/2017 |
| Indicative Wall Section & floor to ceiling height and Privacy Screen | DA-400 | B | 26/07/2017 |
| SB00 Sample board materials and finishes | DA-401 | C | 30/11/2017 |
| SB01 Sample board finishes residential and commercial | DA-402 | A | 26/07/2015 |
| Sample board materials and finishes | DA-403 | A | 26/07/2015 |
| Townsend Place Footpath Plan | DA-404 | A | 26/07/2015 |
| Typical wall section of boundary | DA-405 | A | 26/07/2015 |
| Townsend Place Footpath elevation Typical RCP for undercroft | DA-406 | B | 28/07/2015 |
| Typical winter garden details | DA-407 | A | 26/07/2015 |
| North east boundary fence Elevation and Section | DA-408 | A | 26/07/2015 |
| Typical Privacy Screen Details | DA-409 | A | 26/07/2015 |
| Section from Townsend Place | DA-410 | B | 26/07/2015 |
| General Notes and Wall types | DA-411 | A | 26/07/2015 |
| Window privacy screen & glass louvres details schedule | DA-412 | B | 26/07/2015 |
| Overhead Clearance Elevation Building G, E & D | DA-413 | A | 26/07/2015 |
| Overhead Clearance Elevation Building C | DA-414 | A | 26/07/2015 |
| Overhead Clearance Elevation Building A, B & C | DA-415 | A | 26/07/2015 |
| Overhead Clearance Elevation Building F | DA-416 | A | 26/07/2015 |
| Princes Highway | DA-500 | C | 26/07/2015 |
| Landscape Plans by Iscape | | | |
| Cover Sheet | 165.15(12)/488 | B | Nov 17 |
| Overall Plan | 165.15(12)/489 | B | Dec 2017 |

| | | | |
|---|-----------------------|---|----------|
| Park/Building C Plan | 165.15(12)/490 | B | Nov 17 |
| Buildings A and B Plans | 165.15(12)/491 | B | Nov 17 |
| Central Pathway Plan | 165.15(12)/492 | B | Nov 17 |
| Communal Open Space Plan | 165.15(12)/493 | B | Dec 2017 |
| Youth Centre Plan | 165.15(12)/494 | B | Nov 17 |
| Sections 1 | 8/13 | B | Apr-15 |
| Sections 2 | 9/13 | B | Apr-15 |
| Sections 3 | 10/13 | B | Apr-15 |
| Materials 1 | 11/13 | B | Apr-15 |
| Materials 2 | 12/13 | B | Apr-15 |
| Materials 3 | 13/13 | B | Apr-15 |
| Detailed Floor Plans | DA Appendix 001 - 010 | A | Nov 2017 |
| Hydraulic Design Plans by Jones Nicholson Consulting Engineers | | | |
| Stormwater Notes and Legend | D01 | 4 | Oct-15 |
| Basement 2 – Stormwater Plan | D02 | 3 | Oct-15 |
| Basement 1 – Stormwater Plan | D03 | 5 | Oct-15 |
| Ground Level 1 – Stormwater Plan | D04 | 5 | Oct-15 |
| Ground Level 2 – Stormwater Plan | D05 | 4 | Oct-15 |
| Ground Level 3-4 – Stormwater Plan – Sheet 1 | D06 | 5 | Oct-15 |
| Ground Level 3-4 – Stormwater Plan – Sheet 2 | D07 | 5 | Oct-15 |
| Stormwater Details | D10 | 4 | Oct-15 |
| Typical Stormwater details – Sheet 1 | D11 | 4 | Oct-15 |
| Typical Stormwater details – Sheet 2 | D12 | 4 | Oct-15 |
| Typical Stormwater details – Sheet 3 | D13 | 1 | Oct-15 |
| Railway Site Plan | SK100 | 5 | Nov-15 |

| | | | |
|-------------------------------------|-------|---|----------|
| Railway Sections – Sheet 1 | SK101 | 5 | Nov-15 |
| Railway Sections – Sheet 2 | SK102 | 2 | Nov-15 |
| Subdivision Plan | | | |
| Plan of Subdivision by Gary Edwards | | F | 9/6/2015 |

4 Statutory Planning Framework

Section 96AA of the EP&A Act provides:

(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, and

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

(1B) (Repealed)

(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.

(3) The regulations may make provision for or with respect to the following:

(a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,

(b) the effect of any such deemed determination on the power of a consent authority to determine any such application,

(c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.

(4) (Repealed)

4.1 EP&A Regulation

Clause 115 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) contains the information that must be submitted with an application to modify a consent and clause 118 of the EP&A Regulation contains information on notification of the application. The requirements under the and EP&A Regulation are detailed below.

Table 3 Application provisions in line with Clause 115

| Application for modification of development consent | |
|---|-----------------------------------|
| Clause | Provided |
| 1 (a) the name and address of the applicant | Yes |
| (b) a description of the development to be carried out under the consent (as previously modified), | Yes |
| (c) the address, and formal particulars of title, of the land on which the development is to be carried out, | Yes |
| (d) a description of the proposed modification to the development consent, | Yes |
| (e) a statement that indicates either: (i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or (ii) that the modification is intended to have some other effect, as specified in the statement, | SEE details proposed modification |
| (f) a description of the expected impacts of the modification, | SEE |
| (g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved, | Yes. SEE provides assessment |
| (g1) in the case of an application that is accompanied by a biodiversity development assessment report, the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under the report to offset the residual impacts on biodiversity values if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the Biodiversity Conservation Act 2016, | N/A |
| (h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner), | Yes |
| (i) a statement as to whether the application is being made to the Court (under section 96) or to the consent authority (under section 96AA), and, if the consent authority so requires, must be in the form approved by that authority. | Application made under s. 96AA |
| (3) In addition, if an application for the modification of a development consent under section 96 (2) or section 96AA (1) of the Act relates to residential apartment development and the development application was required to be accompanied by a design verification | Yes |

| Application for modification of development consent | |
|---|--|
| from a qualified designer under clause 50 (1A), the application must be accompanied by a statement by a qualified designer. | |
| <p>(3A) The statement by the qualified designer must:</p> <p>(a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and</p> <p>(b) provide an explanation of how:</p> <p>(i) the design quality principles are addressed in the development, and</p> <p>(ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and</p> <p>(c) verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.</p> | Yes - note application was approved under RFDC |
| (3B) If the qualified designer who gives the design verification under subclause (3) for an application for the modification of development consent (other than in relation to State significant development) does not verify that he or she also designed, or directed the design of, the development for which the consent was granted, the consent authority must refer the application to the relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted. | Yes |
| <p>(4) If an application referred to in subclause (3) is also accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in that subclause need not be verified to the extent to which they aim:</p> <p>(a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or</p> <p>(b) to improve the thermal performance of the building.</p> | Yes |
| (5) The consent authority may refer the proposed modification to the relevant design review panel but not if the application is for modification of a development consent for State significant development. | Urban Design Review undertaken by GMU |
| (6) An application for the modification of a development consent under section 96 (1A) or (2) of the Act, if it relates to development for which the development application was required to be accompanied by a BASIX certificate or BASIX certificates, or if it relates to BASIX optional development in relation to which a person has made a development application that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied), must also be accompanied by the appropriate BASIX certificate or BASIX certificates. | Yes |
| <p>(7) The appropriate BASIX certificate for the purposes of subclause (6) is:</p> <p>(a) if the current BASIX certificate remains consistent with the proposed development, the current BASIX certificate, and</p> <p>(b) if the current BASIX certificate is no longer consistent with the proposed development, a new BASIX certificate to replace the current BASIX certificate.</p> | Yes |

| Application for modification of development consent | |
|---|-----|
| (8) An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act relating to land owned by a Local Aboriginal Land Council may be made only with the consent of the New South Wales Aboriginal Land Council. | N/A |
| (9) The application must be accompanied by the relevant fee prescribed under Part 15. | Yes |
| (10) A development consent may not be modified by the Land and Environment Court under section 96 of the Act if an application for modification of the consent has been made to the consent authority under section 96AA of the Act and has not been withdrawn. | NA |

4.2 Section 96AA 1(a) – Substantially the same development

The proposed modification will result in a development that is substantially the same as that previously approved by the Land and Environment Court (DA-2014/319) generally and in terms of:

- Number of residential units and residential GFA
- Ground floor commercial uses
- Overall building form, including footprint and configuration.
- Setbacks
- Facilitation of public access through the site
- Access arrangements
- Stormwater management infrastructure
- Waste management procedures

Consequently, it is concluded that the development as proposed to be modified will remain substantially the same as that approved.

4.3 Notification and Section 96AA 1(b)

Council's DCP and Clause 118 of the EP&A Regulation specify the notification procedures of the application as a s. 96AA modification. Council have notified the development in accordance with their policy. Once determined, Council must notify each person that made a submission of the determination.

Ninety three (93) adjoining properties were notified of the proposal. Two (2) submissions were received. The submissions and matters raised are discussed later in this report.

4.4 S96AA (1A) – Assessment under Section 79C (1)

The consent authority must consider the proposed modification against the matters referred to in section 79C (1) as are of relevance to the development the subject of the application. An assessment of the modification is provided at Section 4.5 of this report.

4.5 Section 79C of the EP&A Act

The following sections summarise the key findings in the context of Section 79C of the Act, under which must be considered by Council.

4.5.1 Environmental Planning Instruments (Section 79C(1)(a))

This Application has been assessed against the relevant provisions of the EP&A Act, the EP&A Regulations, the provisions of and the provisions of Rockdale Local Environmental Plan (LEP) 2011 (**the LEP**) and Rockdale Development Control Plan (**the DCP**) 2011.

Table 4 provides an assessment of the final proposal against key LEP provisions.

Table 4 Rockdale LEP 2011

| LEP Consideration | Comment | Modification Acceptable |
|---|--|-------------------------|
| PART 2 – Permitted or prohibited development | | |
| 2.3(2) Zone Objectives and Land Use Table | The site of the proposed modifications is zoned B6 Enterprise Corridor. The proposed use of the site remains as approved and is permissible with development consent. | Yes |
| PART 4 – Principal development standards | | |
| 4.1 Minimum subdivision lot size | No changes to the approved subdivision are proposed. | Yes |
| 4.3 Height of buildings | Minor variations to the height of the buildings are proposed. The variations range from reductions of 250mm to a maximum increase of 350mm. The form of the building remains consistent with that of the approved built form and no unacceptable impacts arise. Clause 4.6 is not relevant to modification applications. | Yes |
| 4.4 Floor space ratio | An increase in the residential floor area was anticipated in the original submission. Clause 4.4(2A) of RLEP 2011 operates as a maximum residential FSR. Specifically, Clause 4.4(2B)(b) provides that the ratio of the gross floor area of all buildings (or parts of buildings) that are residential accommodation to the site area is not to exceed 2.25:1. The final amended plans have reduced the residential FSR to not exceed 2:25:1. Condition 48 of the consent is to remain unchanged and requires the approved GFA of the building to be confirmed prior to the issue of the construction certificate. | Yes |

Our overall assessment is that the proposal is acceptable having regard to relevant provisions of RLEP 2011.

4.5.2 State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development

A number of modifications are proposed that impact the design of apartments. The approved development under DA:2014/319 was designed against the requirements of the Residential Flat Design Code (RFDC). However, assessment by GMU considered the controls of the Apartment Design Guide (ADG) which superseded the RFDC to achieve a better design outcome where possible.

An amended SEPP 65 Design Verification and SEPP 65/RFDC compliance table has been submitted with the Application. It is noted that the Applicant has sought the application of the lesser requirement for 2 hours of solar access as contained in the ADG as opposed to the 3 hours identified in the RFDC. We also note that the RFDC Rule of Thumb indicates that in *"in dense urban areas a minimum of two hours may be acceptable"*. The proposed development is considered acceptable as the site constitutes a dense urban area, and compliance with the ADG requirements is achieved.

The proposal will remain substantially the same and compliant with the overall provisions of SEPP 65.

4.5.3 Section 79C(1)(a)(iii) –Development Control Plans

Table 5 below provides an assessment of the proposed modifications against the pertinent provisions of the DCP.

Table 5 Rockdale DCP 2011

| Control | Matter | Comment |
|---|-------------------------------|---|
| Part 3 Site Analysis | | |
| | Site Analysis Plan | The proposed modification would remain substantially the same as the approved plans and therefore acceptable in regard to the site context. |
| Part 4 General Principles for development | | |
| 4.1.1 | Views & Vistas | No change to the approved development. |
| 4.1.2 | Heritage Conservation | N/A |
| 4.1.3 | Water Management | The existing conditions of development consent will be maintained and provide sufficient consideration of water management and ongoing protection during and beyond construction |
| 4.1.4 | Soil Management | The existing conditions of development consent will be maintained and provide sufficient consideration of water management and ongoing protection during and beyond construction |
| 4.1.5 | Contaminated Land | N/A |
| 4.1.6 | Development on sloping sites | The building footprint is substantially the same as the approved development. |
| 4.1.7 | Tree preservation | No change to approved development. |
| 4.1.8 | Biodiversity | No change to the approved development. |
| 4.1.9 | Lot size & Site consolidation | N/A |
| Part 4.2 Streetscape and site context | | |
| | Streetscape | Having considered the comments from GMU, the final plans are considered acceptable. |
| | Pedestrian Environment | Several the proposed modifications had potential to impact pedestrian access. This includes the staircase on building B adjacent to commercial space C23 and the inclusion of the columns along Princes Highway and Townsend Place. These changes were identified in the GMU assessment and the Application was amended and further information was submitted to satisfactorily address these issues. |
| | Fencing | No change to the proposed development. |
| Part 4.3 Landscape and planning design | | |

| Control | Matter | Comment |
|---|-----------------------------|--|
| 4.3.1-3 | Open space & landscape | Proposed modifications are substantially the same as approved development. |
| Part 4.4 Sustainable building design | | |
| 4.4.1 | Energy Efficiency | The proposed modifications satisfy the BASIX certificate requirements. |
| 4.4.2 | Solar access | 70% of apartments in the revised Section 96 design achieve a minimum of 2 hours of sunlight in mid winter |
| 4.4.3 | Natural light & ventilation | The proposed changes provide the same outcome as the approved development. |
| 4.4.4 | Glazing | No change to the approved development. |
| 4.4.5 | Visual and acoustic privacy | The amended plans provide blade/fin to bedrooms on building F and nib to building A. This is provided to counter any impacts to potential privacy issues. |
| 4.4.6 | Noise impact | No change to the approved development. |
| 4.4.7 | Wind impact | No change to the approved development. |
| Part 4.5 Social Equity | | |
| 4.5.1 | Housing diversity & choice | The proposed modifications provides a mix comprising 32% of 1-bedroom 60% of 2-bedroom and 8% of 3-bedroom. This provides an excess of about 2% of 1-bedroom apartments and a deficit of 2% of 3-bedroom apartments. The variations are considered minimal and the housing choice and diversity is in keeping with the intent of the RDCP 2011. |
| 4.5.2 | Equitable access | A number of disabled parking spaces have been removed. However, the approved development contained an excess of disabled spaces and the proposal would remain compliant. |
| Part 4.6 Car parking, access & movement | | |
| | Carparking and access | <p>An amended Traffic Report has been submitted in support of the proposed modifications to driveways and setdown areas.</p> <p>The number of car parking spaces on the modified plans complies with the DCP and condition 8 of the existing development consent. with a total of 492 spaces not including loading bays and waiting bays. Condition 8 of the development consent will remain applicable to ensure the allocation of spaces on the construction certificate plans accords with the original assessment.</p> |
| Part 4.7 Site facilities | | |
| | Waste storage | Condition 52 requires the issue of a Waste Management Plan in accordance with Council's Specification for Waste Minimisation and Management. |

| Control | Matter | Comment |
|---------|---------------|---|
| | Storage areas | Condition 13 requires provision of storage in accordance with SEPP 65 requirements: |

4.5.4 Impacts of the Development (Section 79C(1)(b))

The various environmental impacts of the proposed modifications have been addressed in the previous sections of this report.

Further consideration of the potential impacts of the Application is provided by a reference to the numerical differences that would arise as a consequence of the modification of the development

The numerical changes to the key aspects of the development are outlined in Table 6 below:

Table 6 Numerical changes to the development

| Aspect of Development | Increase/ Decrease | Approved | Proposed | change |
|---------------------------|--------------------|---------------------|---------------------|---|
| Studio dwellings | Decrease | 9 | 0 | 100% decrease in studio dwellings proposed with the development. The original SEE advised that studio dwellings were important based on statistics related to the growing proportion of single household dwellings. The change still provides for 32% as 1-bedroom dwellings. The floor space provided in the approved studio dwellings is transferred to the remaining residential units. Comments provided by GMU advise the minimum area for bedrooms is not met for a number of 1, 2 & 3-bedroom dwellings based on the ADG. The approved development was not assessed under the ADG. The mix of unit sizes remains substantially compliant with the RFDC and compliance with the BCA will in all cases be necessary. Therefore, it is concluded that the change proposed as part of this modification Application is acceptable. |
| Commercial Suites | Decrease | 41 | 36 | Reduction in approved commercial suites by 12.19% (removal of 5 suites). The change relates to a rationalisation of the commercial tenancies. |
| Accessible Parking Spaces | Decrease | 61 | 45 | 26.22% reduction in accessible parking spaces (16 accessible spaces removed). The original consent provided an excess of accessible spaces. The proposal would remain compliant with the RDCP. All conditions in relation to parking are maintained. |
| Ingress/Egress | Decrease | 2 | 1 | Reduction in entry & exit point. The youth centre will not have a separate vehicular access point. Instead residential, commercial and youth centre components of the development will all use the same access. An addendum to the Traffic Report has been prepared and this indicates that there is no impact upon the road network or safety within the site. |
| 1&2-bedroom dwellings | Increase | 291 | 292 | For the same reason as discussed for Studio dwellings, this change is acceptable. |
| 3-bedroom dwellings | Increase | 18 | 26 | For the same reason as discussed for Studio and 1 and 2 bedroom dwellings, this change is acceptable. |
| Commercial floor area | Increase | 2,142m ² | 2,176m ² | 34m ² increase in commercial floor area. This minor adjustment to the floor areas will not compromise their usability or the design outcome. |

| Aspect of Development | Increase/Decrease | Approved | Proposed | change |
|---------------------------|-------------------|----------------------|---------------------|--|
| Youth centre floor area | Increase | 2,563m ² | 2,577m ² | 14m ² increase in youth centre floor area. Council's Assets department have raised no objections to the minor increase in floor space. |
| Overall total floor area | Minor increase | 29,422m ² | 29470m ² | The amended plans as originally submitted provided for an increase in the residential component of the development. The application has been amended to maintain the approved residential floor area consistent with the terms of Clause 4.4(2B) (b) of RLEP 2011. |
| Overall total car parking | Increase | 487 | 494 | <p>About a 1.5 % increase in overall parking spaces (7 additional spaces), and the allocation of spaces has also changed. Based on RDCP requirements, the proposal remains compliant.</p> <ul style="list-style-type: none"> • 1-2 bedroom: 292 • 3 + bedroom: 52 • Residential Visitor: 63.6 • Commercial: 54.4 • Youth centre: 60 of which 30 are shared with commercial units • Bicycle: 145 • Motorcycle: 23 <p>This is consistent with Condition 8 of the original Development Consent</p> |

The architectural design elements originally proposed to the development are outlined below:

- Structural change to cantilevers
- Impacts of changes to ingress/egress
- Changes to leaf screens
- Changes to balconies
- Changes to shape of building
- Increase in building footprint

All matters were considered in the assessment of the application undertaken by GLN and GMU. The assessment revealed the matters that required amendments to the submitted plans and further modifications to the conditions proposed to be amended. In response to the issues raised in the initial assessment, the applicant provided additional information and amended plans. The amended proposal when considered against the previous assessment is substantially the same development and will not give rise to any amenity impacts. The conditions of the original consent will continue to provide appropriate protections to ensure the development of the site is undertaken in the manner anticipated.

GMU provided final comments on 7 December 2017, confirming that the architectural aspects of the final plans and an additional condition to reinstate the leaf stream privacy screens, as amended, were acceptable.

4.5.5 Suitability of the Site (Section 79C(1)(c))

These matters have been considered in the assessment of the s.96AA Application. It is considered that the proposed amendment is suitable in the context of the site and the locality.

4.5.6 Submissions (Section 79C(1)(d))

These matters have been considered in the assessment of the s.96AA Application. Notification of the application was carried out by Council in accordance with Council's Notification Development Control Plan No.24 from 18 August 2017 to 4 September 2017.

Two public submissions have received.

The submissions are summarised and addressed as follows:

- Setbacks should be checked and confirmed.

Comment: The setbacks have been checked and remain the same as originally proposed.

- Lack of communication of the application by building developer.

Comment: Notification, as required, has been undertaken by Council. Any other communications are not relevant to this Application.

- Impacts of building works and compliance with conditions of consent

Comment: These concerns do not arise as consequence of the proposed modification application.

- Potential traffic impacts

Comment: Council's Engineers have advised that there are no unacceptable implications with the proposed changes. The overall scale and use of the development remains similar to that approved.

- Potential flooding impacts

Comment: No changes are proposed in this Application that have flooding implications.

- Prior sale of residential units which may be amended prior to construction

Comment: Not relevant to the consideration of this Application.

4.5.7 The Public Interest (Section 79C(1)(e))

The Application will not substantially change the approved development which was originally considered to be in the public interest. In particular, the development will deliver additional housing choice, commercial floor space and consequential employment opportunities, and a community facility and public domain areas.

4.6 Other Matters

4.6.1 External Referrals

Sydney Trains

Sydney Trains have advised that the existing conditions of consent remain appropriate to the modified proposal.

Sydney Airports Corporation Limited (SACL)

The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. A letter dated 10 November 2016 was received by Council from Fly Safe (copied to the SACL) confirming the approved maximum height for the proposed development was 56.8m AHD. The proposed modified development remains within the maximum height. GLN communicated with SACL during September 2017, and they advised they referral of the Modification Application was unnecessary on the basis that the proposal remained within the approved height limit.

The Development Consent conditions have the effect of imposing the conditions provided by SACL. No modification of the conditions is proposed, or required to address the SACL requirements.

4.6.2 Internal Referrals

The proposed modification application was referred to Council's Engineers, Landscape and Assets Officers.

No concerns are raised by Council's Assets Officers.

Comments from Council's landscape officers have been incorporated into the amended communal open space plan.

Council's engineering officers are not fully satisfied that the matters relating to stormwater management and parking but have no objection to the modification application on the basis that:

- Carparking – conditions 8, 27, 47 and 86 are to remain and will address remaining issues prior to the issue of the construction certificate.
- Stormwater – a stormwater concept plan was approved under Deferred Commencement condition 5 and operational conditions 54 to 56 are to remain which will address remaining issues prior to the issue of the construction certificate.

4.7 Conclusion

In accordance with Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act, the Application is referred to the Sydney East Planning Panel for determination.

The Section 96AA Application before the Panel seeks to modify Development Consent No. 2014/319 as described in this report.

The proposed modifications have been determined to be substantially the same development as that originally approved and does not contribute to any adverse amenity impacts upon nearby and adjoining development.

The application was the subject of two (2) objections and the matters have been addressed in the body of this report

The proposal has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979, and the Rockdale Local Environmental Plan 2011. The proposal is permissible development with consent and is considered to satisfy all requirements and the relevant objectives of RLEP 2011 and is considered to result in a development which is suitable in the site context. It is therefore recommended that the Panel grant approval to the Section 96AA application, subject to the modified conditions in the Recommendation of this report.

5 Recommendation

It is recommended that the Sydney East Planning Panel, as the determining Authority in this instance, resolve:

- a. That pursuant to Section 96AA of the Environmental Planning and Assessment Act, 1979, Council is satisfied that the development of which Development Consent No DA-2014/319 is proposed to be modified is substantially the same development as was originally approved; and
- b. That the Section 96AA Application was notified in accordance with the Environmental Planning and Assessment Regulations 2000 and the Council's Development Control Plan (DCP) No. 24; and
- c. That Development Consent No DA-2014/319 be modified as detailed in Tables 1 and 2 of this report.