



ASSESSMENT OF S4.56 MODIFICATION

DA-2014/319/A - Bayside Council

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Assessment of s4.56 modification

DA-2014/319/A - Bayside Council

213 Princes Highway and 4 Wardell Street, Arncliffe

Prepared for

Bayside Council

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Executive Summary

This report provides an assessment of the proposed modifications to Development Consent DA-2014/319/A.

The original development application (**DA**) for DA-2014/319 was lodged with Rockdale Council (now Bayside Council) on 17 April 2014. This DA was subsequently refused on 7 October 2014 by the Joint Regional Planning Panel. A 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 and construction has commenced. A S96AA (now S4.56) application has since been approved by the Sydney Eastern City Planning Panel on 21 February 2018 (DA-2014/319/A).

The applicant lodged a further modification application under S4.55(1A) of the Act with Bayside Council on 19 March 2018 (DA-2014/319/B) for amendments to ceiling height, road widening and the acoustic rating of floors. Despite the applicant's reference to S4.55(1A) of the Act, as the original consent was issued by the Land and Environment Court, the application was assessed in accordance with S4.56 of the Act.

The S4.56 Application, as submitted, was notified in accordance with the EP&A Act and Regulation and the Council's Development Control Plan (DCP) No. 24 and one submission was received. After notification, the S4.56 Application was amended on a number of occasions concluding on 27 June 2018. These further amendments related to flexibility to seek approval for the staging of the development contribution payments, substitution of building materials, if required for fire safety reasons, and timing for the registration of restrictions on title. Council informed GLN that they sought and obtained verbal legal advice that as these further amendments are of a minor nature and do not change significantly the intent of the consent, renotification was not required.

As the modification proposes a reduction in the road widening of Townsend Place that has potential impacts to the connection of the Princes Highway, the advice of Roads and Maritime Services (**RMS**) was sought, and no objection was raised. Condition 119 requires compliance with all conditions imposed by RMS prior to the issue of a Construction Certificate.

The development, as proposed to be modified, is substantially the same development as originally approved (Development Consent No DA-2014/319) and having regard to relevant considerations under S4.15 of the EP&A Act and the reasons for the grant of the consent, is considered acceptable.

The modification application, being partly Council related development, is considered regionally significant development under Clause 3 of Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011* and is therefore required to be referred to the Sydney Eastern City Planning Panel pursuant to Schedule 2 of the EP&A Act.

Recommendation

- a. It is recommended that the Sydney East Planning Panel, resolve that Development Consent No DA-2014/319 be modified as detailed in this report with a list of modified conditions as outlined within the following table:



Description	Amendment								
Development Specific Conditions									
Condition 12A	Should the approved cladding material be determined to be unsafe by the certifying authority based on current BCA and associated standards, alternate materials with an equivalent appearance and longevity should be submitted to Council for approval prior to the issue of a construction certificate incorporating their use.								
Condition 13A	A minimum 600mm building setback shall be maintained from the face of the kerb along Townsend Place with the exception of Building G which can be setback a minimum of 425mm from the face of the kerb along Townsend place.								
Condition 18	<p>Amend condition as follows:</p> <p>A by-law shall be registered and maintained for the life of the development, which requires that:</p> <p>a) Balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;</p> <p>b) The studies within the residential units as shown on the approved plans shall not be used, or modified and used, as bedrooms;</p> <p>c) An owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent.</p> <p>d) Notwithstanding subclause (b) (c), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardised impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2. A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.</p> <p>e) Where exposed ceilings are required to meet the minimum floor to ceiling height specified in the table below for individual commercial tenancies, the owner and/or occupier is required to maintain the exposed ceilings and may not further lower the minimum ceiling height beyond that specified.</p> <p>However, within commercial units that achieve a minimum floor to ceiling height of 3.3m, a maximum of 20% of the individual tenancy ceiling area may be lowered up to a maximum depth of 200mm to encase services (or similar).</p> <table border="1"> <thead> <tr> <th>Commercial Unit No.</th><th>Minimum Floor to Ceiling Height (metres)</th></tr> </thead> <tbody> <tr> <td>1 – 7</td><td>3.3</td></tr> <tr> <td>8 – 9</td><td>2.8</td></tr> <tr> <td>10 – 13</td><td>3.3</td></tr> </tbody> </table>	Commercial Unit No.	Minimum Floor to Ceiling Height (metres)	1 – 7	3.3	8 – 9	2.8	10 – 13	3.3
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36	2.8																
Condition 25	<p>Amend condition as follows:</p> <p>The report by Koikas Acoustics dated 4 August 2014 shall be reviewed amended to incorporate the following:</p> <ul style="list-style-type: none"> a) Approved architectural plans and any resulting changes in the design. b) Demonstrate compliance with Rockdale DCP 2011 in that floors and walls separating tenancies, satisfy the AAAC 5 Star attribute for the floors and walls and provide an D'nT, w + Ctr 50 and the walls are discontinuous construction, c) Demonstrate compliance with Rockdale DCP 2011 in that floors and walls separating a lobby/corridor and bedroom satisfy the AAAC 5 Star attribute for the floors and walls and provide an D'nT, w + Ctr 45. d) Demonstrating compliance with Rockdale DCP 2011 in that floors and walls separating a lobby/corridor and living area satisfy the AAAC 5 Star attribute for floors and walls and provide an D'nT, w + Ctr 40. e) Demonstrate compliance with Rockdale DCP 2011 in that floors/ceilings separating tenancies satisfy the AAAC 5 Star attribute for floors and provide an L'nTw 45. f) Demonstrate compliance with Rockdale DCP 2011 in that floors/ceilings separating all other spaces and tenancies satisfy the AAAC 5 Star attribute for floors and provide an L'nTw 45. 																



Description	Amendment
	<p>g) Demonstrate compliance with Rockdale DCP 2011 for walls between tenancies and walls between common area and tenancies and satisfy the AAAC 5 Star attribute for impact isolation.</p> <p>If carpet is provided and removed from the floor and replaced with a hard floor surface, the floor/ceiling construction shall be upgraded to satisfy the AAAC 5 Star attribute for floors and provide an L'nT 45.</p> <p>The amended report shall be submitted to the Principal Certifying authority for approval prior to the issue of the Construction Certificate. The report is to include a statement referenced to compliance with BCA requirements.</p> <p>Apartment designed with carpet covered floors shall be identified in the report.</p> <p>The development must be carried out in accordance with the recommendations of the revised acoustic report. These requirements shall be reflected in the approved construction certificate plans and shall not be varied at construction certificate stage.</p>
Condition 30	<p>Amend condition as follows:</p> <p>In addition to complying with the requirements of the BCA walls/floors and ceilings separating tenancies shall be constructed to satisfy the AAAC 5 Star attribute for walls/floors and ceilings as per the acoustic report prepared by Koikas Acoustics dated 4 August 2014.</p> <p>In addition to complying with the requirements of the BCA and satisfying the AAAC 5 Star attribute for walls/floors and ceiling:</p> <p>a) floors and walls separating tenancies shall provide an DnT, w + Ctr 50;</p> <p>b) walls separating tenancies shall be discontinuous construction,</p> <p>c) floors and walls separating a lobby/corridor and bedroom shall provide an DnT, w + Ctr 45.</p> <p>d) floors and walls separating a lobby/corridor and living area shall provide an DnT, w + Ctr 40.</p> <p>e) floors/ceilings separating tenancies shall provide an LnTw 5 45.</p> <p>f) floors/ceilings separating all other spaces and tenancies shall provide an LnTw 45.</p> <p>g) walls between tenancies and walls between common area and tenancies shall incorporate impact isolation as per the acoustic report prepared by Koikas Acoustics dated 4 August 2014.</p> <p>A report shall be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate for each of the building stages. The report is to include BCA requirements and details of floor/ceilings and common walls between residential apartments and between residential apartments and non residential uses.</p> <p>Apartment designed with carpet covered floors shall be identified in the report. A suitably qualified acoustic engineer with MI E Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate for each building stage.</p>
Condition 30A	<p>(A) Flooring within the development shall achieve the following minimum equivalent Association of Australian Acoustical Consultants (AAAC) Star Rating within the below specified areas of the development:</p> <ul style="list-style-type: none"> 3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted.



Description	Amendment																								
	<ul style="list-style-type: none"> • 4 Star for timber flooring in any area. • 5 Star for carpet in any area. <p>(B) Walls within the development shall be constructed to satisfy the requirements of the Building Code of Australia.</p> <p>(i) A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the report required by (c) above satisfies the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of the relevant Construction Certificate.</p> <p>Further, a by-law shall be registered and maintained for the life of the development which requires that:</p> <p>An owner of a lot must ensure that all floors within the lot comply with condition 30A.</p> <p>Notwithstanding the above, in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2. A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.</p>																								
Condition 36	<p>Amend condition as follows:</p> <p>Ceiling heights for residential apartments shall be a minimum of 2.7 metres and ceiling heights for commercial units shall be a minimum of 3.3 metres as measured vertically from finished floor level to the underside of the ceiling shall be as outlined in the table below:</p> <table> <tr> <th>Commercial Unit No.</th><th>Minimum Floor to Ceiling Height (metres)</th></tr> <tr> <td>1 – 7</td><td>3.3*</td></tr> <tr> <td>8 – 9</td><td>2.8</td></tr> <tr> <td>10 – 13</td><td>3.3*</td></tr> <tr> <td>14 - 15</td><td>2.8</td></tr> <tr> <td>16 - 19</td><td>3.3*</td></tr> <tr> <td>20 - 22</td><td>2.8</td></tr> <tr> <td>23 - 24</td><td>3.0</td></tr> <tr> <td>25 - 26</td><td>2.9</td></tr> <tr> <td>27 - 29</td><td>2.8</td></tr> <tr> <td>30 - 35</td><td>2.8</td></tr> <tr> <td>36</td><td>2.8</td></tr> </table>	Commercial Unit No.	Minimum Floor to Ceiling Height (metres)	1 – 7	3.3*	8 – 9	2.8	10 – 13	3.3*	14 - 15	2.8	16 - 19	3.3*	20 - 22	2.8	23 - 24	3.0	25 - 26	2.9	27 - 29	2.8	30 - 35	2.8	36	2.8
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	<p>Exposed ceilings may be required to meet the minimum floor to ceiling heights outlined above. If these are required, a by-law shall be registered and maintained in perpetuity requiring exposed ceilings be provided which shall not be lowered beyond the minimum floor to ceiling heights specified in the table above.</p> <p>* Within commercial units that achieve a minimum floor to ceiling height of 3.3m, a maximum of 20% of the individual tenancy ceiling area may be lowered up to a maximum of 200mm to encase services (or similar).</p> <p>Details demonstrating compliance with this requirement shall be included in the Construction Certificate documentation prior to the issue of the Construction Certificate.</p> <p>Proof of registration of the By Law, if required, shall be submitted in accordance with Condition 18.</p>										
Prior to issue of the construction certificate											
Condition 40A	<p>Amend:</p> <p>A Section 94 contribution of \$5,297,419.74 be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of the first payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the above the floor level of the ground floor. Fifty Percent (50%) of the contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. Fifty Percent (50%) of the contribution is to be paid prior to the issue of any Occupation Certificate plus interest at 4.8% per annum. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:</p> <table> <tr> <td>Open Space</td><td>\$4,699,402.86</td></tr> <tr> <td>Community Services & Facilities</td><td>\$159,220.72</td></tr> <tr> <td>Town Centre & Streetscape Improvements</td><td>\$84,566.78</td></tr> <tr> <td>Pollution Control</td><td>\$236,125.38</td></tr> <tr> <td>Plan Administration & Management</td><td>\$18,104. 00</td></tr> </table> <p>Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.</p>	Open Space	\$4,699,402.86	Community Services & Facilities	\$159,220.72	Town Centre & Streetscape Improvements	\$84,566.78	Pollution Control	\$236,125.38	Plan Administration & Management	\$18,104. 00
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Town Centre & Streetscape Improvements	\$84,566.78										
Pollution Control	\$236,125.38										
Plan Administration & Management	\$18,104. 00										
Prior to the issue of the subdivision certificate											
Condition 102	<p>Amend:</p> <p>The final plan of subdivision must be amended to include the proposed dedication of land to Council with a variable width and approximate area of 548.3m2 of a 4.5 metre strip of land along Townsend Place for road widening purposes.</p>										
Condition 108	<p>Condition relocated to 'Prior to occupation certificate'</p> <p>All existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City</p>										

Description	Amendment
	Council. These provisions are to be put into effect prior to the release of the Subdivision Certificate.
Condition 109	Condition relocated to 'Prior to occupation certificate' A positive covenant shall be provided over the on-site detention and retention systems. A Section 88B Instrument and four copies shall be lodged with and approved by Council prior to the issue of any Occupation Certificate.
Condition 110	Condition relocated to 'Prior to occupation certificate' An easement is to be created over the awning along the northern façade of the Youth Centre and any other encroachments identified in the subdivision plan.
Condition 112	Condition relocated to 'Prior to occupation certificate' The on-site residential car parking spaces are not to be used other than by an occupant or tenant of the residential buildings within the development site. An occupant, tenant, lessee or registered proprietor of the development site or part thereof shall not enter into an agreement to lease, license or transfer ownership of any car parking spaces to those other than an occupant, tenant or lessee of the building. These requirements are to be enforced through the following: i) restrictive covenant placed on title pursuant to Section 88B of the Conveyancing Act, 1919, ii) restriction on use under Section 68 of the Strata Schemes (Leasehold Development) Act, 1986 to all lots comprising in part or whole car parking spaces, and iii) sign visible at exits (excluding fire stairs and individual unit entries) from car parking areas. These requirements are to be made to the satisfaction of Council. All costs associated with the above requirements are to be borne solely by the applicant.
Condition 114	Condition relocated to 'Prior to occupation certificate' Documentary easements for services, drainage, support and shelter, use of plant, equipment, loading areas and service rooms, repairs, maintenance or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created pursuant to Section 88B of the Conveyancing Act 1919.
Condition 115	Condition relocated to 'Prior to occupation certificate' The children playground next to the Youth Centre along the lineal park frontage shall be maintained in perpetuity by the body corporate and should be available to the public and the residents of the development. Prior to the issue of the subdivision certificate for the Youth Centre, a positive covenant shall be created pursuant to Section 88E of the Conveyancing Act 1919, which may only be varied or extinguished with the consent of Rockdale City Council.
Prior to issue of the occupation certificate or commencement of use	
Condition 101B	Prior to the issue of any Occupation Certificate, all existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City



Description	Amendment
	Council. These provisions are to be put into effect prior to the release of any Occupation Certificate.
Condition 101C	Any easement not already identified and registered shall be shown on a plan to be submitted with a Subdivision Certificate prior to the issue of any Occupation Certificate. This includes easements for electricity, gas, water, sewer, stormwater, public access and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council. These provisions are to be put into effect prior to the release of any Occupation Certificate.
Condition 101D	A positive covenant shall be provided over the on-site detention and retention systems. A Section 88B Instrument and four copies shall be lodged with and approved by Council prior to the issue of any Occupation Certificate.
Condition 101E	<p>The on-site residential car parking spaces are not to be used other than by an occupant or tenant of the residential buildings within the development site. An occupant, tenant, lessee or registered proprietor of the development site or part thereof shall not enter into an agreement to lease, license or transfer ownership of any car parking spaces to those other than an occupant, tenant or lessee of the building.</p> <p>These requirements are to be enforced through the following:</p> <ul style="list-style-type: none"> i) restrictive covenant placed on title pursuant to Section 88B of the Conveyancing Act, 1919, ii) restriction on use under Section 68 of the Strata Schemes (Leasehold Development) Act, 1986 to all lots comprising in part or whole car parking spaces, and iii) sign visible at exits (excluding fire stairs and individual unit entries) from car parking areas. <p>These requirements are to be made to the satisfaction of Council and shall be in place prior to the issue of any Strata Certificate. All costs associated with the above requirements are to be borne solely by the applicant.</p>
Condition 101F	Prior to the issue of any Occupation Certificate, documentary easements for services, drainage, support and shelter, use of plant, equipment, loading areas and service rooms, repairs, maintenance or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created pursuant to Section 88B of the Conveyancing Act 1919.
Condition 101G	The children playground next to the Youth Centre along the lineal park frontage shall be maintained in perpetuity by the body corporate and should be available to the public and the residents of the development. Prior to the issue of the Occupation Certificate for the Youth Centre, a positive covenant shall be created pursuant to Section 88E of the Conveyancing Act 1919, which may only be varied or extinguished with the consent of Rockdale City Council.



1 Introduction

A modification application was lodged by Ralan Arncliffe Pty Ltd (**the applicant**) on 19 March 2018 for modifications to the existing consent (DA-2014/319), as modified.

This report has been prepared to assess the proposed modifications to the development consent proposed under DA-2014/319/B. It has been independently prepared by GLN Planning primarily due to Council having an interest in the development. As the original development application was considered by the (then) Joint Regional Planning Panel and Council has an interest in the development, the application is referred to the Sydney Eastern City Planning Panel for determination. The previous modification application was also determined by the Panel.

1.1 Background

On the 17 April 2014, Ralan Arncliffe Pty Ltd 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 and construction has commenced.

A previous S96AA (now Section 4.56) application was lodged with Bayside Council (**Council**) on 4 August 2017 (DA-2014/319/A) seeking to amend the number of commercial suites, types of residential apartments and several design elements. GLN Planning (**GLN**) along with GMU were engaged to assess that modification application on behalf of Council before further consideration and determination by the Sydney Planning Panel. That S96AA application was approved on 21 February 2018 by the Sydney Eastern City Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act).

1.2 Amendments to the Application

On 19 March 2018 a S4.55(1A) application was lodged by the applicant for modifications to conditions of consent 25, 30, 36 and 102. The modifications related to variations to ceiling height, acoustic rating of floors and reduction in road widening of Townsend Place. The assessment is based on S4.56 of the Act as the original consent was issued by the Land and Environment Court.

Following the initial assessment of the modification application, a request for additional information (**RFI**) was issued on 10 May 2018. The applicant provided comments and additional documentation on 16 May 2018 and attended a telephone discussion on 17 May 2018 to provide clarification on topics discussed in the RFI.



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

- Traffic
- Ingress and egress into Townsend Place
- Additional justification for amendments to Conditions 25, 30 and 36
- Ceiling height decreases to proposed units.

Additional details were submitted during April to May 2018 addressing the matters raised. The subsequent amendments were referred to RMS for consideration of the reduction in road widening and connectivity to the Princes Highway. RMS have confirmed support of the modification. The proposed changes to road widening along Townsend Place require a modification of Condition 102 of the Development Consent.

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 were raised to the modification of the development consent as proposed subject to a condition ensuring certain clearances between buildings and the kerb along Townsend Place are maintained. Such a condition is included in the recommendations.

Later in the assessment process the applicant sought further amendments to the S4.56 application. These additional modifications sought by the applicant related to the following:

- A request to stage payment of \$94 (now \$7.11) contributions.
- The introduction of flexibility to change the façade material if approved materials are determined unsafe for BCA or related fire regulation reasons.
- Changes to conditions to provide for the registration of restrictions on title that relate to works requiring completion to be prior to issue of the occupation certificate, as opposed to the issue of the subdivision certificate for the initial plan of subdivision.

A condition allowing for the staged payment of \$7.11 contributions was authorised by Council's Director - City Futures, in accordance with clause 3.6 of Rockdale Section 94 Contributions Plan 2004.

Façade material safety issues related to a specific expertise. Due to the timing of this request, there was insufficient time for Council to obtain expert advice on fire safety issues. However, the relevant condition is proposed to be modified to provide an appropriate degree of flexibility to be resolved between the Council and the certifier.

Changes to the timing for registration of restriction on title arise because of a contractual obligation for the applicant to deliver the lots for the future youth centre and park early in the process, prior to completion of construction. These changes do not affect the final development and were formulated in consultation between the applicant and Council engineers.



1.3 Referrals

External

A number of referral bodies were involved in the original DA; however, following consultation with Council and relevant agencies it was determined that only an external referral to RMS was required based on the nature of the proposed modifications.

Internal

The S4.56 modification application was referred internally to Council's traffic, engineering, s7.11 planner and assets sections as discussed later.

Consent Authority

The development is considered regionally significant under Clause 3 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 and for the reasons outlined above is referred to the Sydney Eastern City Planning Panel for determination pursuant to Schedule 2 of the EP&A Act.



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.

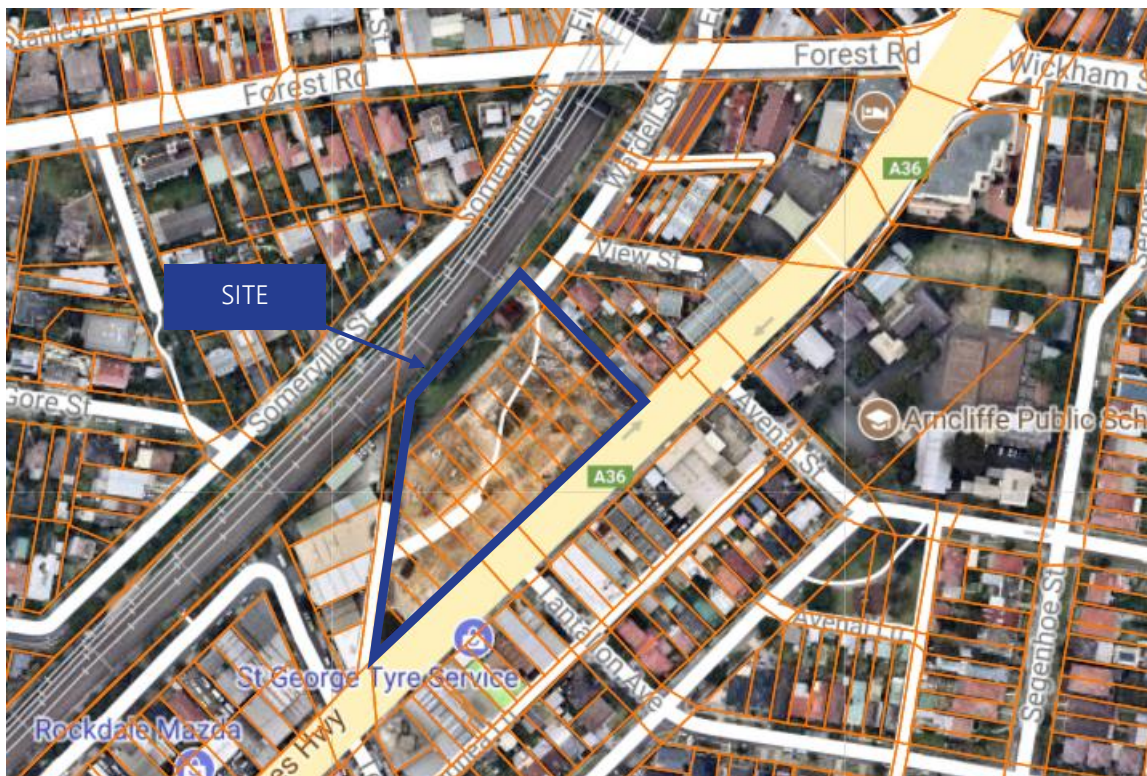
The site comprises all of the land contained in Lots 1 to 14 in DP 124275, Lots 25 to 33 in DP1646, and Lot 1 in DP 652922.

The land is irregular in shape and has:

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

The single storey brick community building adjacent to Wardell Street and the single storey brick toilet block within the south-western corner of the site adjacent to the Highway have been demolished and preliminary site works have commenced.

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



Source Nearthmaps

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 north 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 west of the site is the Illawarra Railway Line, to the south west are a mix of office and residential buildings and to the south, on the opposite side of the Princes Highway, are a mix of retail, commercial and industrial buildings.



3 Proposed modifications

This Section of the Report details the modifications proposed by the applicant to Notice of Determination 2014/319 under DA2014/3019/B.

3.1 Details of the proposed modifications

The modification application, as lodged, sought the following amendments:

- Changes to the ceiling height of 21 commercial units
- Amendments to the acoustic rating of the floors
- Reduction in road width to Townsend Place

Subsequent amendments were then requested by the applicant during the assessment of the modification. These amendments included:

- Changes to the timing of payment for development contributions
- Substitution of building materials
- Changes to the timing for registration of restrictions on title.

The proposed amendments to Notice of Determination No DA-2014/319 are outlined in more detail 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.

The modifications, as originally submitted by the applicant, were not considered acceptable. A number of matters were raised requiring the submission of additional information. The issues raised included:

- Detailed design issues raised by Council engineers regarding Townsend Place
- Clarification of the extent of amendments relating to ceiling heights
- Additional justification for amendments to conditions relating to acoustic ratings

After extensive discussions and iteration to the modifications, an outcome that is considered acceptable having regard to the assessment provided later in this report, was reached.

Table 1 provides an outline of the proposed amendments to conditions, as finally submitted by the applicant, and additional conditions arising.

Note: Conditions shown with ~~strikethrough~~ represent deleted words, and **bold** words represent words added.



Table 1 Outline of proposed amendments to conditions

Description	Amendment										
Development Specific Conditions											
Condition 12A	Should the approved cladding material be determined to be unsafe by the certifying authority based on current BCA and associated standards, alternate materials with an equivalent appearance and longevity should be submitted to Council for approval prior to the issue of a construction certificate incorporating their use.										
Condition 13A	A minimum 600mm building setback shall be maintained from the face of the kerb along Townsend Place with the exception of Building G which can be setback a minimum of 425mm from the face of the kerb along Townsend place.										
Condition 18	<p>Amend condition as follows:</p> <p>A by-law shall be registered and maintained for the life of the development, which requires that:</p> <ul style="list-style-type: none"> a) Balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain; b) The studies within the residential units as shown on the approved plans shall not be used, or modified and used, as bedrooms; c) An owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent. d) Notwithstanding subclause (b) (c), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardised impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2. A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation. e) Where exposed ceilings are required to meet the minimum floor to ceiling height specified in the table below for individual commercial tenancies, the owner and/or occupier is required to maintain the exposed ceilings and may not further lower the minimum ceiling height beyond that specified. <p>However, within commercial units that achieve a minimum floor to ceiling height of 3.3m, a maximum of 20% of the individual tenancy ceiling area may be lowered up to a maximum depth of 200mm to encase services (or similar).</p> <table border="1"> <thead> <tr> <th>Commercial Unit No.</th><th>Minimum Floor to Ceiling Height (metres)</th></tr> </thead> <tbody> <tr> <td>1 – 7</td><td>3.3</td></tr> <tr> <td>8 – 9</td><td>2.8</td></tr> <tr> <td>10 – 13</td><td>3.3</td></tr> <tr> <td>14 - 15</td><td>2.8</td></tr> </tbody> </table>	Commercial Unit No.	Minimum Floor to Ceiling Height (metres)	1 – 7	3.3	8 – 9	2.8	10 – 13	3.3	14 - 15	2.8
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Description	Amendment														
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30 - 35	2.8														
36	2.8														
Condition 25	<p>Amend condition as follows:</p> <p>The report by Koikas Acoustics dated 4 August 2014 shall be reviewed amended to incorporate the following:</p> <ul style="list-style-type: none"> a) Approved architectural plans and any resulting changes in the design. b) Demonstrate compliance with Rockdale DCP 2011 in that floors and walls separating tenancies, satisfy the AAAC 5 Star attribute for the floors and walls and provide an D'nT, w + Ctr 50 and the walls are discontinuous construction, c) Demonstrate compliance with Rockdale DCP 2011 in that floors and walls separating a lobby/corridor and bedroom satisfy the AAAC 5 Star attribute for the floors and walls and provide an D'nT, w + Ctr 45. d) Demonstrating compliance with Rockdale DCP 2011 in that floors and walls separating a lobby/corridor and living area satisfy the AAAC 5 Star attribute for floors and walls and provide an D'nT, w + Ctr 40. e) Demonstrate compliance with Rockdale DCP 2011 in that floors/ceilings separating tenancies satisfy the AAAC 5 Star attribute for floors and provide an L'nTw 45. f) Demonstrate compliance with Rockdale DCP 2011 in that floors/ceilings separating all other spaces and tenancies satisfy the AAAC 5 Star attribute for floors and provide an L'nTw 45. g) Demonstrate compliance with Rockdale DCP 2011 for walls between tenancies and walls between common area and tenancies and satisfy the AAAC 5 Star attribute for impact isolation. <p>If carpet is provided and removed from the floor and replaced with a hard floor surface, the floor/ceiling construction shall be upgraded to satisfy the AAAC 5 Star attribute for floors and provide an L'nT 45.</p> <p>The amended report shall be submitted to the Principal Certifying authority for approval prior to the issue of the Construction Certificate. The report is to include a statement referenced to compliance with BCA requirements.</p> <p>Apartments designed with carpet covered floors shall be identified in the report.</p>														



Description	Amendment
	<p>The development must be carried out in accordance with the recommendations of the revised acoustic report. These requirements shall be reflected in the approved construction certificate plans and shall not be varied at construction certificate stage.</p>
Condition 30	<p>Amend condition as follows:</p> <p>In addition to complying with the requirements of the BCA walls/floors/and ceilings separating tenancies shall be constructed to satisfy the AAAC 5 Star attribute for walls/floors/and ceilings as per the acoustic report prepared by Koikas Acoustics dated 4 August 2014.</p> <p>In addition to complying with the requirements of the BCA and satisfying the AAAC 5 Star attribute for walls/floors/and ceiling:</p> <ul style="list-style-type: none"> a) floors and walls separating tenancies shall provide an DnT, w + Ctr 50; b) walls separating tenancies shall be discontinuous construction, c) floors and walls separating a lobby/corridor and bedroom shall provide an DnT, w + Ctr 45. d) floors and walls separating a lobby/corridor and living area shall provide an DnT, w + Ctr 40. e) floors/ceilings separating tenancies shall provide an LnTw 5 45. f) floors/ceilings separating all other spaces and tenancies shall provide an LnTw 45. g) walls between tenancies and walls between common area and tenancies shall incorporate impact isolation as per the acoustic report prepared by Koikas Acoustics dated 4 August 2014. <p>A report shall be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate for each of the building stages. The report is to include BCA requirements and details of floor/ceilings and common walls between residential apartments and between residential apartments and non residential uses.</p> <p>Apartments designed with carpet covered floors shall be identified in the report. A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate for each building stage.</p>
Condition 30A	<p>(A) Flooring within the development shall achieve the following minimum equivalent Association of Australian Acoustical Consultants (AAAC) Star Rating within the below specified areas of the development:</p> <ul style="list-style-type: none"> • 3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted. • 4 Star for timber flooring in any area. • 5 Star for carpet in any area. <p>(B) Walls within the development shall be constructed to satisfy the requirements of the Building Code of Australia.</p> <p>(i) A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the report required by (c) above satisfies the requirements of this condition, with the</p>



Description	Amendment																								
	<p>certification to be submitted to the Principal Certifying Authority for approval prior to the issue of the relevant Construction Certificate.</p> <p>Further, a by-law shall be registered and maintained for the life of the development which requires that:</p> <p>An owner of a lot must ensure that all floors within the lot comply with condition 30A.</p> <p>Notwithstanding the above, in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2. A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.</p>																								
Condition 36	<p>Amend condition as follows:</p> <p>Ceiling heights for residential apartments shall be a minimum of 2.7 metres and ceiling heights for commercial units shall be a minimum of 3.3 metres as measured vertically from finished floor level to the underside of the ceiling shall be as outlined in the table below:</p> <table border="1"> <thead> <tr> <th>Commercial Unit No.</th><th>Minimum Floor to Ceiling Height (metres)</th></tr> </thead> <tbody> <tr> <td>1 – 7</td><td>3.3*</td></tr> <tr> <td>8 – 9</td><td>2.8</td></tr> <tr> <td>10 – 13</td><td>3.3*</td></tr> <tr> <td>14 - 15</td><td>2.8</td></tr> <tr> <td>16 - 19</td><td>3.3*</td></tr> <tr> <td>20 - 22</td><td>2.8</td></tr> <tr> <td>23 - 24</td><td>3.0</td></tr> <tr> <td>25 - 26</td><td>2.9</td></tr> <tr> <td>27 - 29</td><td>2.8</td></tr> <tr> <td>30 - 35</td><td>2.8</td></tr> <tr> <td>36</td><td>2.8</td></tr> </tbody> </table> <p>Exposed ceilings may be required to meet the minimum floor to ceiling heights outlined above. If these are required, a by-law shall be registered and maintained in perpetuity requiring exposed ceilings be provided which shall not be lowered beyond the minimum floor to ceiling heights specified in the table above.</p> <p>* Within commercial units that achieve a minimum floor to ceiling height of 3.3m, a maximum of 20% of the individual tenancy ceiling area may be lowered up to a maximum of 200mm to encase services (or similar).</p>	Commercial Unit No.	Minimum Floor to Ceiling Height (metres)	1 – 7	3.3*	8 – 9	2.8	10 – 13	3.3*	14 - 15	2.8	16 - 19	3.3*	20 - 22	2.8	23 - 24	3.0	25 - 26	2.9	27 - 29	2.8	30 - 35	2.8	36	2.8
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Description	Amendment										
	<p>Details demonstrating compliance with this requirement shall be included in the Construction Certificate documentation prior to the issue of the Construction Certificate.</p> <p>Proof of registration of the By Law, if required, shall be submitted in accordance with Condition 18.</p>										
Prior to issue of the construction certificate											
Condition 40A	<p>Amend:</p> <p>A Section 94 contribution of \$5,297,419.74 be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of the first payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the above the floor level of the ground floor. Fifty Percent (50%) of the contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. Fifty Percent (50%) of the contribution is to be paid prior to the issue of any Occupation Certificate plus interest at 4.8% per annum. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:</p> <table> <tr> <td>Open Space</td><td>\$4,699,402.86</td></tr> <tr> <td>Community Services & Facilities</td><td>\$159,220.72</td></tr> <tr> <td>Town Centre & Streetscape Improvements</td><td>\$84,566.78</td></tr> <tr> <td>Pollution Control</td><td>\$236,125.38</td></tr> <tr> <td>Plan Administration & Management</td><td>\$18,104. 00</td></tr> </table> <p>Copies of Council's Section 94 Contribution Plans may be inspected .at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.</p>	Open Space	\$4,699,402.86	Community Services & Facilities	\$159,220.72	Town Centre & Streetscape Improvements	\$84,566.78	Pollution Control	\$236,125.38	Plan Administration & Management	\$18,104. 00
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Pollution Control	\$236,125.38										
Plan Administration & Management	\$18,104. 00										
Prior to the issue of the subdivision certificate											
Condition 102	<p>Amend:</p> <p>The final plan of subdivision must be amended to include the proposed dedication of land to Council with a variable width and approximate area of 548.3m2 of a 4.5 metre strip of land along Townsend Place for road widening purposes.</p>										
Condition 108	<p>Condition relocated to 'Prior to occupation certificate'</p> <p>All existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council. These provisions are to be put into effect prior to the release of the Subdivision Certificate.</p>										
Condition 109	<p>Condition relocated to 'Prior to occupation certificate'</p> <p>A positive covenant shall be provided over the on-site detention and retention systems. A Section 88B Instrument and four copies shall be lodged with and approved by Council prior to the issue of any Occupation Certificate.</p>										
Condition 110	<p>Condition relocated to 'Prior to occupation certificate'</p>										



Description	Amendment
	An easement is to be created over the awning along the northern façade of the Youth Centre and any other encroachments identified in the subdivision plan.
Condition 112	<p>Condition relocated to 'Prior to occupation certificate'</p> <p>The on-site residential car parking spaces are not to be used other than by an occupant or tenant of the residential buildings within the development site. An occupant, tenant, lessee or registered proprietor of the development site or part thereof shall not enter into an agreement to lease, license or transfer ownership of any car parking spaces to those other than an occupant, tenant or lessee of the building.</p> <p>These requirements are to be enforced through the following:</p> <ul style="list-style-type: none"> i) restrictive covenant placed on title pursuant to Section 88B of the Conveyancing Act, 1919, ii) restriction on use under Section 68 of the Strata Schemes (Leasehold Development) Act, 1986 to all lots comprising in part or whole car parking spaces, and iii) sign visible at exits (excluding fire stairs and individual unit entries) from car parking areas. <p>These requirements are to be made to the satisfaction of Council. All costs associated with the above requirements are to be borne solely by the applicant.</p>
Condition 114	<p>Condition relocated to 'Prior to occupation certificate'</p> <p>Documentary easements for services, drainage, support and shelter, use of plant, equipment, loading areas and service rooms, repairs, maintenance or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created pursuant to Section 88B of the Conveyancing Act 1919.</p>
Condition 115	<p>Condition relocated to 'Prior to occupation certificate'</p> <p>The children playground next to the Youth Centre along the lineal park frontage shall be maintained in perpetuity by the body corporate and should be available to the public and the residents of the development. Prior to the issue of the subdivision certificate for the Youth Centre, a positive covenant shall be created pursuant to Section 88E of the Conveyancing Act 1919, which may only be varied or extinguished with the consent of Rockdale City Council.</p>
Prior to issue of the occupation certificate or commencement of use	
Condition 101B	Prior to the issue of any Occupation Certificate, all existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council. These provisions are to be put into effect prior to the release of any Occupation Certificate.
Condition 101C	Any easement not already identified and registered shall be shown on a plan to be submitted with a Subdivision Certificate prior to the issue of any Occupation Certificate. This includes easements for electricity, gas, water, sewer, stormwater, public access and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council. These provisions are to be put into effect prior to the release of any Occupation Certificate.



Description	Amendment
Condition 101D	A positive covenant shall be provided over the on-site detention and retention systems. A Section 88B Instrument and four copies shall be lodged with and approved by Council prior to the issue of any Occupation Certificate.
Condition 101E	<p>The on-site residential car parking spaces are not to be used other than by an occupant or tenant of the residential buildings within the development site. An occupant, tenant, lessee or registered proprietor of the development site or part thereof shall not enter into an agreement to lease, license or transfer ownership of any car parking spaces to those other than an occupant, tenant or lessee of the building.</p> <p>These requirements are to be enforced through the following:</p> <ul style="list-style-type: none"> i) restrictive covenant placed on title pursuant to Section 88B of the Conveyancing Act, 1919, ii) restriction on use under Section 68 of the Strata Schemes (Leasehold Development) Act, 1986 to all lots comprising in part or whole car parking spaces, and iii) sign visible at exits (excluding fire stairs and individual unit entries) from car parking areas. <p>These requirements are to be made to the satisfaction of Council and shall be in place prior to the issue of any Strata Certificate. All costs associated with the above requirements are to be borne solely by the applicant.</p>
Condition 101F	Prior to the issue of any Occupation Certificate, documentary easements for services, drainage, support and shelter, use of plant, equipment, loading areas and service rooms, repairs, maintenance or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created pursuant to Section 88B of the Conveyancing Act 1919.
Condition 101G	The children playground next to the Youth Centre along the lineal park frontage shall be maintained in perpetuity by the body corporate and should be available to the public and the residents of the development. Prior to the issue of the Occupation Certificate for the Youth Centre, a positive covenant shall be created pursuant to Section 88E of the Conveyancing Act 1919, which may only be varied or extinguished with the consent of Rockdale City Council.



4 Statutory Planning Framework

4.1 Section 4.56

Section 4.56 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 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

(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)

4.2 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 2 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	Yes



Application for modification of development consent	
application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),	
(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.	Addressed in RFI.
(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 from a qualified designer under clause 50 (1A), the application must be accompanied by a statement by a qualified designer.	No architectural plan changes proposed.
<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
(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.	See (3)
<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>	No building plan changes proposed
(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.	N/A
(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.	N/A



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(7) The appropriate BASIX certificate for the purposes of subclause (6) is: <ul style="list-style-type: none"> (a) if the current BASIX certificate remains consistent with the proposed development, the current BASIX certificate, and (b) if the current BASIX certificate is no longer consistent with the proposed development, a new BASIX certificate to replace the current BASIX certificate. 	Yes
(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.	N/A

Table 3 Application provisions in line with Clause 117

Modification of consent involving minimal environmental impact	
(1) This clause applies to an application under section 4.55 (1A) of the Act or under section 4.56 of the Act in respect of a modification which, in the opinion of the consent authority, is of minimal environmental impact.	Yes
(2) If an application to which this clause applies is required by a development control plan to be notified or advertised and the development consent was granted by the Court on appeal, the application must be so notified or advertised by the consent authority to which the original development application was made.	Yes
(3) A consent authority referred to in subclause (2) must, in the case of an application under section 4.56 of the Act, notify the Court of: <ul style="list-style-type: none"> (a) the manner in which the application was notified or advertised, and (b) any submission period required by the development control plan, and (c) the date (or dates) on which the application was notified or advertised. 	Yes
(3A) If an application to which this clause applies relates to a development consent that was originally granted or deemed to have been refused by a regional panel, the council or councils of the area in which the development concerned is to be carried out are to notify or advertise the application, and are to notify the Court (if applicable), in accordance with this clause instead of the regional panel.	N/A
(3B) Subclauses (2)–(3A) do not apply if the application to which this clause applies is in respect of State significant development.	N/A
(4) If a development control plan provides for a period for notification or advertising of an application, any person during that period may inspect the application and any accompanying information and make extracts from or copies of them.	Yes



4.3 Section 4.56 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). There are no changes to the plans other than a minor modification to the subdivision plan. The modification to ceiling heights required by condition will not be discernible externally and have been adjusted in detail to ensure that the functionality of the commercial tenancies is not compromised. Other changes and additions to conditions substantially relate to construction detail and administrative matters.

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

4.4 Notification and Section 4.56 1(b) - (d)

Council have notified the application as lodged in accordance with their policy. Eighty-nine (89) adjoining properties were notified of the proposal. One submission was received. The submission and matters raised are discussed later in this report.

Council informed to GLN that they sought and obtained verbal legal advice and advised that as these further amendments are of a minor nature which do not significantly change the intent of the consent, renotification was not required.

4.5 S4.56 – Assessment under Section 4.15(1A)

The consent authority must consider the proposed modification against the matters referred to in section 4.15(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.

4.6 Section 4.15 of the EP&A Act

4.6.1 Environmental Planning Instruments (Section 4.15(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* (LEP) and Rockdale Development Control Plan (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		



LEP Consideration	Comment	Modification Acceptable
4.1 Minimum subdivision lot size	No reduction in lot sizes are proposed.	Yes.
4.3 Height of buildings	No changes are proposed to the approved height of buildings.	Yes
4.4 Floor space ratio	No changes are proposed to the approved floor space ratio.	Yes

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

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

The original DA-2014/319 was designed against the requirements of the Residential Flat Design Code (RFDC). The RFDC is relevant to the proposed changes to the internal ceiling heights of the commercial buildings.

The amendment to condition 36 which specified a minimum ceiling height was partially inconsistent with the approved plans. The proponent advised that due to this and the need to satisfy other detail considerations when preparing construction certificate plans, condition 36 could not be met.

Various iterations of condition 36 were discussed with the proponent until the current version was determined as acceptable based on the following criteria which ensure the intent of the minimum floor to ceiling height controls would be met:

- Each individual tenancy should have adequate floor to ceiling heights to suit its likely future use, dependent on its level in the building and position on the site.
- The ground floor tenancies should meet the original 3.3m standard as far as possible, given these might be required for restaurants/cafes/ retail outlets.
- Where tenancies are split over multiple levels, the upper level could have reduced ceiling heights.
- Above ground levels tenancies and those at the rear of the site could have reduced ceiling heights given that they are likely to be used for office purposes.
- In addition to the above, a small proportion (20%) of the area of a tenancy could have reduced ceiling heights, which could be used for 'back of house' uses.
- The ceiling heights should not be lower than 2.8m in any situation.
- Where minimum ceiling heights are achieved by use of exposed ceilings, then this should be maintained in perpetuity through the imposition of by-laws and/or restrictions on title.

The proposed modified conditions reflect the above criteria.



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

4.6.3 Section 4.15(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	No change to the proposed development.
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	No change to the proposed development
4.1.4	Soil Management	No change to the proposed development
4.1.5	Contaminated Land	N/A
4.1.6	Development on sloping sites	No change to the proposed 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	The streetscape will remain substantially the same as the approved development.
	Pedestrian Environment	The proposed changes to the road widening of Townsend Place are considered acceptable based on comments from Bayside Council's traffic and engineering team. Further design detail will be considered by Council in the assessment and determination of the upgrade works within Townsend Place, as required under the <i>Roads Act 1993</i> .
	Fencing	No change to the proposed development.
Part 4.3 Landscape and planning design		
4.3.1-3	Open space & landscape	No change to the proposed development.



Control	Matter	Comment
Part 4.4 Sustainable building design		
4.4.1	Energy Efficiency	There are no proposed changes to the plans for which a BASIX certificate was issued satisfy the BASIX certificate requirements.
4.4.2	Solar access	Solar access in the proposed amended commercial units is will be marginally changed but will remain acceptable for the likely use for each tenancy. There is no change to the residential apartments.
4.4.3	Natural light & ventilation	There will be no expected perceptible changes to ventilation and only a marginal change to natural light for commercial tenancies but this will remain acceptable for the likely use for each tenancy. There is no change to the residential apartments.
4.4.4	Glazing	No change to the approved development.
4.4.5	Visual and acoustic privacy	Conditions 25 and 30 require acoustic ratings. The proposed amendments to the acoustic floor ratings are considered acceptable based on updated acoustic reports and examples of deviation from the standard.
4.4.6	Noise impact	The proposed changes to the acoustic floor ratings are considered appropriate for this development.
4.4.7	Wind impact	No change to the approved development.
Part 4.5 Social Equity		
4.5.1	Housing diversity & choice	No change to the approved development.
4.5.2	Equitable access	No change to the approved development.
Part 4.6 Car parking, access & movement		
	Carparking and access	No change to the approved development.
Part 4.7 Site facilities		
	Waste storage	No change to the approved development.
	Storage areas	No change to the approved development.

4.6.4 Impacts of the Development (Section 4.15(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.



No modified plans are proposed and the application relates to proposed changes to conditions of consent. Approximately half of the conditions to be modified are in respect of relatively minor administrative matters. The tangible changes proposed to the development are:

- Commercial suites - Reduction in 21 of the approved commercial suite ceiling heights from 3.3m down to 2.8m-3.3m
- Townsend Place - decrease in approved road widening
- The architectural design elements that are proposed to be changed as part of this modification application include:
 - Change to the acoustic measures of floors
 - Decrease in ceiling height.

These matters were considered in the assessment of the application and various iterations of the amended conditions were discussed with the applicant until. The final set of proposed conditions are considered to ensure the development would remain within acceptable standards and maintain the intent of the original conditions.

The lowered minimum ceiling heights maintain the approved building size and have been adjusted to ensure that each individual tenancy will have adequate floor to ceiling heights to suit its likely future use, dependent on its level in the building and position on the site.

The deletion of the requirement to widen Townsend Lane by 4.5m has no implications in regard to the required road engineering design. A separate requirement of the development consent provides for a public pathway to be incorporated along the edge of the road within the development, being the purpose that the lane widening might otherwise have served. Acceptable setbacks from the kerb to the approved buildings will be maintained subject to an additional condition as proposed.

The changes in the acoustic measures required to be achieved at the construction stage have been adjusted based on technical advice provided by the applicant's acoustic consultant and Council. Further, Council has provided advice based on a recent Court case (*Rockdale Hotel Pty Ltd v Rockdale City Council [2014] NSWLEC 1111*) which involved similar modifications to the acoustic requirements outlined within the DCP that were approved.

The majority of the conditions of the original consent will be unchanged and will continue to provide appropriate protections to ensure the development of the site is undertaken in the manner anticipated.

4.6.5 Suitability of the Site (Section 4.15(1)(c))

It is considered that the development as proposed to be modified will remain suitable for the site.

4.6.6 Submissions (Section 4.15(1)(d))

Notification of the application was carried out by Council in accordance with Council's Notification Development Control Plan No.24 from 3 April 2018 to 19 April 2018.

One public submission was received. The submission is summarised and addressed as follows:



- Objection to changes to ceiling height due to potential fire hazard.

Comment: The development will need to comply with the requirements of the BCA that include fire protection. Those conditions of consent will remain within the amended consent.

- Concern that changes are proposed so late in the development process.

Comment: The applicant is entitled to submit a modification application under the *Environmental Planning and Assessment Act 1979*.

4.6.7 The Public Interest (Section 4.15(1)(e))

The Application will not substantially change the approved development which was originally considered to be in the public interest.

4.7 Other Matters

4.7.1 External Referrals

Roads and Maritime Services (RMS) have advised that the existing conditions of consent remain appropriate to the modified proposal and no issues arise from the proposed modification.

4.7.2 Internal Referrals

The proposed modification application was referred to Council's Engineers, Traffic, Section 7.11 planner and Assets Officers.

We are advised that the conditions as proposed to be amended are acceptable to Council's Assets, traffic, s7.11 planning officer and engineering officers, as discussed below.

Council's engineering officers were not fully satisfied that the matters relating to stormwater management and parking in Townsend Place are yet resolved but have no objection to the modification application on the basis that the future plans for Townsend Place required under the *Roads Act 1993* will provide for:

- The realignment of the 450mm stormwater pipeline located along the western side of the Princes Highway
- Requirement of a kerb inlet pit (KIP) to be included in the island on the Highway together with new KIP's at Chainages 36m and 88m.
- Removal of reference to "turf" on the roundabout. In lieu of turf infill the island with coloured faux brick pattern concrete or lay 80mm thick coloured concrete pavers.

We are also advised that the condition relating to deferral of S94 payments as proposed to be amended are acceptable to Council's Section 7.11 officer and authorised by Council's Director - City Futures.



5 Conclusion

In accordance with Part 3 of Schedule 2 of the EP&A Act, the Application is referred to the Sydney East Planning Panel for determination.

The S4.56 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 one objection and the matters raised have been addressed in the body of this report

The proposal has been assessed in accordance with Section 4.15 of the EP&A Act, and the LEP. The proposed modifications are either minor, administrative in nature, or will otherwise maintain the intent of the original conditions. It is therefore recommended that the Panel grant approval to the S4.56 application, subject to the modified conditions in **Table 1** of this Report.