

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-302 / DA-2023/361 / PAN – 396865
PROPOSAL	Integrated Development – Retention and modification to existing facade at 83-85 Railway Street, demolition of all other structures, construction of a 7-9 storey mixed-use development comprising of ground floor commercial, 129 residential units, basement parking and associated landscaping, widening of Heston Lane to rear and provision of footpath to a portion of Heston Lane at rear of site.
ADDRESS	75 - 85 Railway Street, ROCKDALE 2216 <i>Lot 101 DP 771165 / Lot 3 DP 82942 / Lot 1 DP 455421 Lot 1 DP 912313 / Lot 1 DP 3560</i>
APPLICANT	Eloura Developments Rockdale Pty Ltd
OWNER	Zoe Holdings Rockdale Pty Ltd
DA LODGEMENT DATE	09/01/2024
APPLICATION TYPE	General Development
REGIONALLY SIGNIFICANT CRITERIA	CIV >\$30 million
CIV	\$63,077,053.77
CLAUSE 4.6 REQUESTS	Clause 4.3 – Height of Building
LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&A ACT)	<ul style="list-style-type: none"> - State Environmental Planning Policy (Planning Systems) 2021 - State Environmental Planning Policy (Sustainable Buildings) 2022 - State Environmental Planning Policy (Housing) 2021 - State Environmental Planning Policy (Transport and Infrastructure) 2021 - State Environmental Planning Policy (Resilience & Hazards) 2021 - State Environmental Planning Policy (Biodiversity and Conservation) 2021

	<ul style="list-style-type: none"> - Bayside LEP 2021 - Bayside DCP 2022
TOTAL & UNIQUE SUBMISSIONS	Twenty Two (22)
DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural & Landscape Plans Statement of Environmental Effects Clause 4.6 – Exception to Development Standards Request (Height of Building)
HOUSING PRODUCTIVITY CONTRIBUTION (\$7.24)	Applicable – conditioned.
RECOMMENDATION	Approval subject to Conditions.
DRAFT CONDITIONS TO APPLICANT	Yes
PLAN VERSION	Revision 10 dated 10/01/2025
SCHEDULED MEETING DATE	20 February 2025
PREPARED BY	Fiona Prodromou – Senior Assessment Planner
DATE OF REPORT	March 2025

Summary of s4.15 matters Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Yes
Conditions Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	Yes

EXECUTIVE SUMMARY

In accordance with Schedule 6 subclause 2 of State Environmental Planning Policy (Planning Systems) 2021, as the proposed development has a capital investment value of greater than \$30 million, it is referred to the Regional Planning Panel for determination.

A service station was found to historically have previously occupied the northern portion of the site at 75 Railway Street, Rockdale, prior to the erection of the current building as existing. The application was accompanied by a Detailed Site Investigation which confirms that the site can be made suitable for the proposed development and therefore the requirements of State Environmental Planning Policy (Resilience & Hazards) 2021 have been satisfied.

An executed Planning Agreement applies to the northern portion of the subject site known as 75-81 Railway Street Rockdale. Details of the executed Planning Agreement are clarified further in this report. The aforementioned planning agreement does not apply to the portion of the site known as 83-85 Railway Street Rockdale.

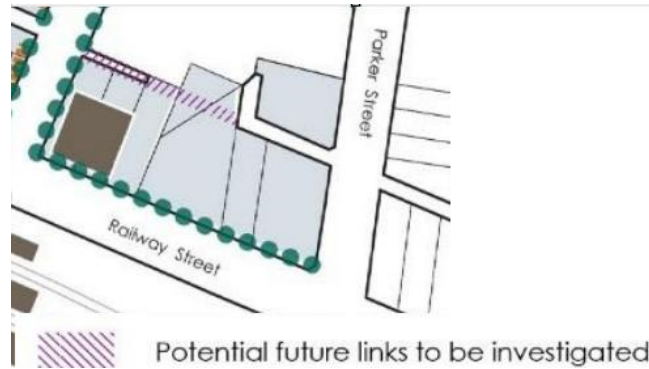
The application is subject to the Design Excellence requirements of Clause 6.10 – Design Excellence of Bayside LEP 2021. The proposal was peer reviewed by the Design Excellence Panel on two occasions being 7 March and 5 September 2024. The Panel confirmed in December 2024 that subject to amendments and the review of such by the assessing officer, the revised scheme satisfies the Design Excellence requirements of BLEP 2021.

The site benefits from a dual height of building standard, the proposal seeks to breach the relevant height standards on site as follows.

<i>Height Standard</i>	<i>Proposed Height</i>
83-85 Railway Street 22m Maximum Height	Up to 22.85m (measured to highest point, rooftop) Maximum 0.850m (3.86%) variation
75 – 81 Railway Street 28m Maximum Height	Up to 33.1m (measured to highest point, top of screen for services) Maximum 5.1m (18.2%) variation

The applicant has submitted a 4.6 – Exception to Development Standards with respect to the proposed variation. The non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards of this report and supported for the justification provided in this assessment.

The proposal seeks to widen Hesten Lane to the rear of the site enabling two way vehicular access, dedicate a strip of land 1.72m – 1.89m in width along the rear of the site to allow the construction of a new pedestrian walkway adjoining the rear alignment of the development and additionally dedicate a portion of land to the rear of 83-85 Railway Street to Council, in order to facilitate a future vehicular / pedestrian connection from Parker to Walz Streets. The aforementioned is discussed further in this report. The connection between Parker and Walz Streets, in envisaged by Bayside DCP 2022 and depicted below in purple hatching by such an excerpt of the DCP.



State Environmental Planning Policy Amendment (Housing) 2023 (Housing Amendment SEPP) came into effect on 14 December 2023, consequently repealing State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development. Relevant provisions relating to the design of residential flat development, and the application of the Apartment Design Guide are now integrated into Chapter 4 – Design of Residential Apartment Development of State Environmental Planning Policy (Housing) 2021.

The proposal deviates from the following design guidance nominated within the Apartment Design Guide. The below is discussed further in the report, with conditions imposed where deemed necessary.

- 3E - Deep Soil Zone.
- 3F - Visual Privacy.
- 4D – Apartment Size and Layout.
- 4F – Common Circulation Spaces.

Twenty two (22) submissions were received following the public notification of the proposal. Issues raised have been addressed in this report below.

The development application (“DA”) has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* (“the Act”) and is recommended for approval, subject to conditions of consent.

The officers involved in writing and authorising this report declare, to the best of their knowledge, that they have no interest, pecuniary or otherwise, in this application or persons associated with it and have provided an impartial assessment.

1. THE SITE AND LOCALITY

The subject site is irregular in shape and comprises three properties, 75-79, 81 and 83-84 Railway Street. The site has a frontage of 82.26m to Railway Street to the east and 36.955m frontage to Parker Street to the north. The site in part adjoins Hesten lane to the rear / west for a length of 37.57m and shares a partial common boundary with St Josephs Primary School to the west, for a combined distance of up to 34.1m. The site has an overall area of 3,504.73q/m.

The site directly adjoins the Rockdale School of Arts (Guild Theatre) to the south, being a single storey building, sharing a common side boundary of 43.29m with this property which is listed as a local heritage item as per Bayside LEP 2021.



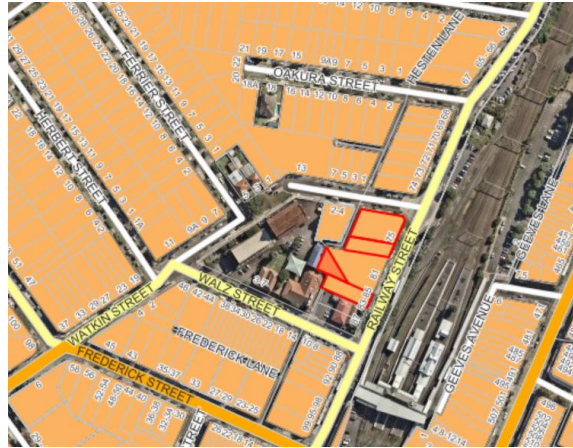
Rockdale School of Arts (Guild Theatre)

The site is located within the Rockdale Town Centre and occupied by existing commercial buildings up to three storeys in height. The site is zoned E1 – Local Centre, yet is located at a zone transition in part with the R2 – Low Density Residential zone on the northern side of Parker Street and beyond 2 Parker Street. The R2 low density zone incorporates the existing St Josephs Primary School to the west.



Aerial View of Site Context

Whilst the surrounding R2 low density zone would generally be restricted in height and FSR as per Bayside LEP 2021, the recently implemented Transport Oriented Development requirements of SEPP Housing 2021 permit a 24m height & 2.5:1 FSR for shop top housing development in the immediately surrounding R2 zoned area in context of the site as shaded in orange below.



Orange – TOD affected sites

The topography of the site is such that the site rises from the eastern frontage at Railway Street to the west (rear) by 3m – 5m. Parker Street to the north is also on an incline akin to the aforementioned. The site incorporates five (5) trees located on the Railway Street frontage, sixteen (16) trees located at the rear of the site and one (1) tree located on the adjacent site to the south, the Guild Theatre site. As existing, sewer lines extend into the site, these are depicted in green lines below.



Sewer lines in green



View of site from corner of Railway & Parker Streets



Rockdale Railway station to the east



Existing Street tree opposite southern end of site



Northern side Parker St single storey dwelling houses



Existing substation Parker Street to be relocated into development



View of site from Parker Street

To the west, 2-4 Parker Street Rockdale is an existing four (4) storey mixed use development with 12 residential units and ground level commercial tenancy.



Rear of northern end of site, adjoining mixed use development at 2 Parker Street and adjoining Church / School building within St Josephs Primary School



Rear of site looking north, 2-4 Parker Street to the west.



Looking west from rooftop of 81 Railway Parade (2-4 Parker Street & school building identifiable)



Looking south west from rooftop of existing building at 81 Railway Parade (School Buildings, shops along Walz Street and rear of Guild Theatre site and its car parking area are identifiable)



View South East from rooftop of existing building at 81 Railway Parade



View to East from rooftop of existing building at 81 Railway Parade



View North from rooftop of existing building at 81 Railway Parade

To the south west the site is within close proximity to Walz Street, of which the southern side of this street is characterised as existing by single and two storey older style commercial buildings, some with first floor dwellings. The northern side of Walz Street incorporates the St Josephs Primary School buildings, being two storeys in height and the rear car parking area of the Rockdale School of Arts site. Three (3) heritage items are located in close proximity of the site, these are identified below.

- **I357:** Rockdale Railway Station Yard Group - State heritage item opposite the subject site to the east. Brick buildings on platforms, signal box and overhead booking office.
- **I221:** Rockdale School of Arts (Guild Theatre) at No. 87 Railway Street, is a local heritage item adjoining the subject site to the south at 87 Railway Street.
- **I222:** St Joseph's Convent, which is a local heritage item, located to the west of the subject site at 3-11 Walz Street.



Nearby heritage items



Looking west up Walz Street

The subject site is affected by;

- Design Excellence
- Class 5 Acid Sulfate Soils
- Adjoins three heritage items, being Guild Theatre to the south, St Josephs Primary School to the west and Rockdale Railway Station to the east.
- 15.24m Building Height Civil Aviation Regulations / 51 Obstacle Limitation Surface
- 20-25 ANEF with minor north western portion of site in 25-30 ANEF.

2. BACKGROUND

<u>9 January 2024</u> DA submitted to Council.	<u>18 January - 19 February 2024</u> Public notification of proposal.	<u>6 February 2024</u> Preliminary briefing with Regional Panel.
<u>7 March 2024</u> DRP Meeting	<u>22 April 2024</u> Request for further information and amended plans.	<u>2 May 2024</u> Regional Panel Briefing
<u>1 August 2024</u> Amended plans / additional information submitted.	<u>5 September 2024</u> 2 nd DRP meeting	<u>10 October 2024</u> Second Regional Panel Briefing
<u>5 November 2024</u> Third Regional Panel Briefing	<u>2 December 2024</u> Amended plans and information submitted.	<u>13 December 2024</u> Final DRP meeting.
<u>13 January 2025</u> Final amended plans and information submitted. <i>Note – Reduction from 140 units as originally submitted to 129 in final scheme.</i>		

3. THE PROPOSAL

The proposal seeks to undertake retention and modification to existing facade at 83-85 Railway Street, demolition of all other structures, construction of a 7-9 storey mixed-use development comprising of ground floor commercial, 129 residential units (1 x studio / 41 x 1 bed / 76 x 2 bed / 11 x 3 bed), basement parking and associated landscaping, widening of Heston Lane to rear and provision of footpath to a portion of Heston Lane at rear of site.

The proposed development is summarized as follows:

Demolition / Excavation

Demolition of all existing structures on site. Bulk excavation on site, to a depth of up to 13m in order to accommodate the three proposed basement car parking levels.

Tree Removal

Removal of twenty one trees as follows:

- Five (5) trees located on the Railway Street frontage.
- Sixteen (16) trees located at the rear of the site.

One (1) existing tree located on the adjacent site to the south, the Guild Theatre site, is to be retained and protected. This is an existing 6m high *Elaeocarpus reticulatus* (Blueberry Ash).

Vehicular & Pedestrian Access / Car Parking

- Heston lane proposed to be widened along the rear of the site, to facilitate two way traffic.
- Construction of new footpath along the rear of the development and land dedication of footpath area to Council.
- Vehicular access to ground level loading dock and basement levels of the development via Heston Lane.
- Carparking within the development is comprised of the following.

<u>Component</u>	<u>Provided</u>
Residential Total (129 Units)	133
Visitors	26
Commercial/ Retail	46
Service Bay Residential	1 MRV
Bicycle Parking	132 (residential) 14 (visitor) 14 (commercial) Total 160 spaces
Motorcycle Parking	13 spaces (9 residential and 4 commercial)
Car Share Bay	4
Car Wash Bay	2

83-85 Railway Street

The proposal seeks to retain the existing two storey masonry façade and a portion of the northern and southern existing boundary walls at 83-85 Railway Street. This property / building is not a listed heritage item.

Works involved in the partial demolition of this building and retention of its façade include;

1. Demolition of electrical cables, conduits and pvc pipes attached to façade.
2. Repair of existing awning and 'make good' or replacement.
3. Replacement of timber framed windows with new aluminum framed windows.
4. Replacement of old rainwater heads and downpipes with new color bond rainwater heads and downpipes.
5. Replacement of existing shop fronts with new shop fronts as per architectural elevation below.



6. Pressure wash existing Brickwork and remove rendered walls at ground level to maintain existing brickwork as shown on architectural elevations.
7. Restore & maintain the Kadwell Chambers Sign and the 1921 Sign.
8. Patch & paint all rendered bands.

Basement 3

78 car spaces (3 x adaptable / 2 x accessible), bicycle spaces, motorcycle spaces, oil separator and stormwater pump tank below ground, vehicular and pedestrian circulation, 2 x plant rooms, 2 x dual lift core and fire stairs with adjoining residential lobby, garden and bulk waste store rooms and bin lift to loading dock at ground level.

Basement 2

74 car spaces (4 x adaptable / 5 x accessible), bicycle spaces, motorcycle spaces, fire pump room, vehicular and pedestrian circulation, plant room, 2 x dual lift core and fire stairs with adjoining residential lobby, 2 x bin store rooms and bin lift to loading dock at ground level.

Basement 1

50 car spaces (4 x accessible / 8 x car share) (*commercial and residential car parking areas are separately delineated*), bicycle spaces, motorcycle spaces, 2 x storage tank rooms, main switch room, vehicular and pedestrian circulation, plant room, 2 x dual lift core and fire stairs with adjoining residential lobby, 1 x commercial lobby and lift to ground floor level, toilets / showers for commercial uses, commercial waste room and bin lift to loading dock at ground level.

Ground Level

Loading dock accommodating Heavy Rigid Vehicle (HRV) and turntable, waste storage holding area, dual loading hoist, 4 x shops fronting Railway Street and designated retail lift, integrated substation to Railway Street, two x residential lobbies to Railway Street, back of house / services corridor and rooms, services (water meter cupboard / hydrant) enclosed fronting Parker Street, landscaped planter to Railway Street, 2 x dual lift core and fire stairs. Deep soil planter to Railway Street incorporating a range of groundcovers, shrubs and 1 x Spotted Gum with a mature height of 30m.

Street tree planting 8 x Railway Street and 4 x Parker Street, (Corymbia Maculata with a mature height of 30m) are proposed along both Railway and Parker Streets along the frontage of the site along with new pedestrian footpaths. New pedestrian footpath along rear of the site and road extension works.

Level 1

Pedestrian access to communal open space via Hesten Lane. 4 x two storey terrace style units fronting Hesten Lane with independent pedestrian access. Studio unit 113 also provided with independent pedestrian access to lane. Vertical slat aluminum fencing to communal open space and terraces to a maximum height of 1.5m.

Communal open space courtyard incorporating 6 x bicycle racks, central lawn area, pedestrian pathways, fixed seating, mass landscaping planting (soil depth 0.6m / 1m and deep soil) incorporating ground covers, shrubs and trees. Trellis style planting incorporating vines is proposed along the northern side wall of Unit 108 and southern side wall of unit 13 to the underside of level 2.

Landscaped mass planters with grasses and shrubs are proposed at the Railway Street façade of the development facing east. Access for maintenance is provided to these planters from communal corridors.

Direct access to communal courtyard from private open space of four units. 2 x 2 bedroom dual level units within 83-85 Railway Street portion of site. 17 units with adjoining private open space areas are provided on this level, ranging from studio to 2 bedroom, communal corridors, 2 x dual lift cores / fire stairs, service cupboards, waste chutes.

Level 2

Upper level of 4 x two storey terrace dwellings and 2 x 2 bedroom dual level units within 83-85 Railway Street portion of site. 14 x units with adjoining private open space areas are provided on this level, communal corridors, 2 x dual lift cores / fire stairs, service cupboards, waste chutes.

Level 3

19 x units with adjoining private open space areas are provided on this level, communal corridors, 2 x dual lift cores / fire stairs, service cupboards, waste chutes. Landscaped planter with ground covers and shrubs adjoining units 304/305, being the roof of the loading dock below. Access for maintenance only to this area.

Level 4

15 x units with adjoining private open space areas are provided on this level, communal corridors, 2 x dual lift cores / fire stairs, service cupboards, waste chutes.

Level 5

16 x units with adjoining private open space areas are provided on this level, communal corridors, 2 x dual lift cores / fire stairs, service cupboards, waste chutes.

Level 5

16 x units with adjoining private open space areas are provided on this level, communal

length of the northern side of Walz Street.

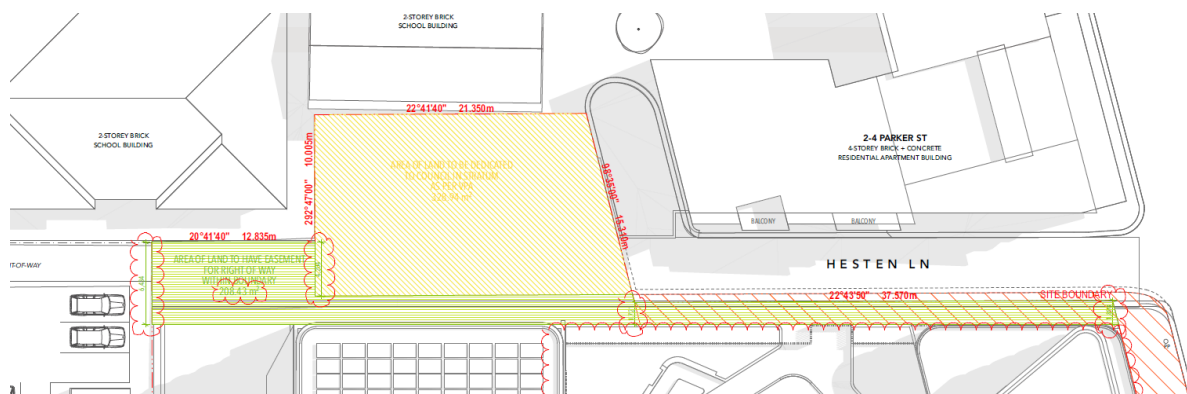


Excerpt from Planning Agreement

Additional Land Dedication / Widening of Hesten Lane

The proposal seeks to widen Hesten Lane to the rear of the site enabling two way vehicular access, dedicate a strip of land 1.72m – 1.89m in width along the rear of the site to allow the construction of a new pedestrian walkway adjoining the rear alignment of the development and additionally dedicate a portion of land to the rear of 83-85 Railway Street to Council, in order to facilitate a future vehicular / pedestrian connection from Parker to Walz Streets.

The additional land to be dedicated to facilitate a pedestrian footpath and future connection between Parker and Walz Streets comprises a total area of 208.43sq/m.



The dedication of land identified in green will facilitate the establishment of a pedestrian footpath along the length of the entire rear alignment of the site, in order to physically link Parker and Walz Streets for pedestrians and potentially vehicles at a future time.



Photomontage of proposal

4. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

S4.46 – Development that is Integrated Development

The development application has been lodged as Integrated Development, as an approval under the *Water Management Act 2000* is required, and specifically the development involves a temporary construction dewatering activity.

The proposal involves excavation of three basement car parking levels at a depth of 13m on site. Testing on site has been undertaken and the geotechnical report prepared by EIAustralia dated 29 November 2023 demonstrates that groundwater was encountered at a depth of 3.6m – 5.9m on site.

The application was referred to Water NSW for concurrence. In a letter dated 5 September 2024, Water NSW provided their General Terms of Approval (GTA) for the proposal. These have been incorporated within the recommended conditions of consent.

4.1 S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application.

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Resilience & Hazards) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *Bayside LEP 2021*

State Environmental Planning Policy (Planning Systems) 2021

In accordance with Schedule 6 subclause 2 of the SEPP, as the proposed development has a capital investment value of greater than \$30 million i.e. \$63,077,052.77 it is thus referred to the Regional Planning Panel for determination.

State Environmental Planning Policy (Resilience & Hazards) 2021

Chapter 4 – Remediation of Land / 4.6 - Contamination and remediation to be considered in determining development application

The provisions of Chapter 4 of the SEPP have been considered in the assessment of the development application. Section 4.6 of the SEPP requires the consent authority to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application.

A service station was found to historically have previously occupied the northern portion of the site at 75 Railway Street, Rockdale, prior to the erection of the current building as existing. As such, the applicant provided the following reports associated with the application:

1. Preliminary Site Investigation prepared by Douglas Partners, dated February 2015.
2. Detailed Site Investigation prepared by EI Australia dated 2 August 2024.

The aforementioned reports confirm that the site can be made suitable for the proposed development subject to the implementation of the recommendations in the report. i.e. Preparation of a hazardous materials survey prior to demolition, further intrusive sampling post demolition, off site disposal of excavated soil etc

Subject to the implementation of the report recommendations, it was confirmed that the site can be made suitable for the proposed residential and commercial uses sought by the current application.

The application was referred to Councils Environmental Scientist who raised no objections to the findings of the aforementioned report and the proposal subject to conditions within the draft consent. The proposal satisfies the requirements of the SEPP.

State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy Amendment (Housing) 2023 (Housing Amendment SEPP) came into effect on 14 December 2023, consequently repealing State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development.

Relevant provisions relating to the design of residential flat development, and the application of the Apartment Design Guide are now integrated into Chapter 4 – Design of Residential Apartment Development of State Environmental Planning Policy (Housing)

2021.

Chapter 4 – Design of Residential Apartment Development

145 Referral to Design Review Panel (DRP)

The proposal was considered by Councils Design Excellence Panel on three occasions, with the final review in December 2024. At its final review the Panel deemed, subject to minor modifications to the scheme that the proposal satisfied the design excellence provisions of BLEP 2021, that the scheme was an appropriate contextual response, consistent with the intended future desired character of the locality and demonstrated design excellence subject to the recommended modifications.

147 Determination of development applications and modification applications for residential apartment development

The provisions of this section state that development consent must not be granted unless the consent authority has considered the following -

- a. *the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
- b. *the Apartment Design Guide,*
- c. *any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*

An assessment has been undertaken below.

Principle 1 – Context and Neighborhood Character

The Panel at its final meeting on 13 December 2024 confirmed that ‘a number of revisions to the scheme have been made to address the outstanding issues, the scheme has increased compliance with the LEP and DCP controls, the northern facade upper level balcony setback has a minor non-compliance. As Council has had separate discussions with the proponent regarding this item the Panel defers to Council for determining acceptance and that there are some non-compliances with the projecting roof elements’.

Comment

The site is located within the Rockdale Town Centre and is positioned opposite the Rockdale rail and bus interchange. A number of constructed, approved and emerging high rise residential, co-living and mixed use developments to a height of up to 12 storeys within the Rockdale Town Centre.

In the design of the proposed development, consideration has been given to the constraints and opportunities of the site, the context of existing and emerging development in the locality and the future desired character of the area.

It is noted that the DCP envisages a continuous through site link from Parker to Walz Streets along the rear of the site, with the intention that the rear of the Guild Theatre be redeveloped into a public space at a future time by Council. The aforementioned has been considered and incorporated into the design to ensure this vision can be delivered in future to the community.

Whilst the proposed building form differs from existing directly adjoining built forms, the property is not as yet developed to its full potential under the current planning requirements and is of substantial overall site area.

In addition to the aforementioned, whilst surrounding properties to the north and north west are zoned R2 - Low Density Residential, such properties benefit from the transport oriented development provisions of State Environmental Planning Policy (Housing) 2021 and thus are afforded a 2.5:1 FSR and 24m height standard, which is equivalent to 8 storeys overall, thus future development potential of surrounding lots within R2 land, is not likely to be dissimilar.

The proposal as designed responds to and provides an appropriate transition in building form and typology upon the subject site, taking into account the existing educational establishment to the rear, providing sufficient separation to this use and due consideration and appropriate transition in height and form been given to the adjoining heritage item directly to the south. i.e. Guild Theatre.

The proposed built form presents a street wall development with upper levels stepped and recessed in order to reduce the length, visual prominence and bulk of the development, provides well designed communal landscaped areas on site and is of an appropriate height, bulk, scale and form.

The development provides a step down in height to the southern adjoining heritage item, reducing the impact onto this property and has been designed with façade indentations to provide visual interest and depth, with vertical and horizontal elements, balcony articulation and fenestration to provide a contemporary building form which is consistent with the desired future character of the locality.

With regards to the panel comment *“the northern facade upper level balcony setback has a minor non-compliance”* it is noted that the DCP requires levels 5 and above fronting Parker Street to be setback 3m from the Parker Street boundary. Whilst the building form adheres to this 3m setback balconies protrude 1.5m into this setback. The assessing officer was of the view that the proposed minor variation is not unreasonable given the location of the site at the junction of Parker and Railway Streets. The design as proposed allows the development to address its corner location.

Given the above the proposal as designed is satisfactory with respect of this principle.

Principle 2 – Built Form and Scale

The Panel at its final meeting on 13 December 2024 stated that *“the scheme is now essentially compliant with the LEP and DCP controls:*

- *Further articulation has been introduced along the railway parade façade by widening the ‘notches’ along this side to 4m. This results in a greater roof line articulation along this façade, allowing the central portion of the building to read more strongly as a separate ‘building’.*
- *The minor height non-compliances for projecting elements providing amenity and access to the rooftop COS are not considered significant as they do not appear to cause shadow impacts and the applicant has indicated they will not be visible from the immediate surroundings.*
- *The Panel supports a reconsideration of the residential Floor to Floor heights to 3.15 to 3.20 in order to ensure that approved building envelope is generous enough to accommodate the outcomes of current multi-unit residential development practices. While this may result in an additional minor height breach, this is not considered consequential.”*

Comment

The proposed retention of the façade known as ‘Kadwell Chambers’ is intended to assist in providing a sympathetic transition and design response between the proposed development and the existing southern heritage item known as the ‘Guild Theatre’. In addition to a step

down in building height and reduction in building depth along the common boundary with the heritage listed site, the proposal is considered to provide an appropriate interface with respect of bulk, height, form and scale with the adjoining heritage item to the south.

The proposal provides a built form with an appropriate and well resolved design response to both Railway Street to the east and Parker Street to the north.

The building form fronting Railway Street has been separated through indents and steps back and forward along the 85m Railway Street frontage to break down the length of the building to be perceived as a collection of buildings.

The building addresses its corner location at Parker and Railway Streets, is appropriately modulated and articulated to break the mass and length of its facades, presents a street wall development for a height of 4 storeys with levels above recessed and stepped, to reduce the visual prominence and bulk of the development. This ensures an appropriate scale.

The design of the proposal adheres to the intended future desired character of the Rockdale Town Centre as envisaged by the current planning controls. The height of the proposal has been discussed in detail in 4.6 – Exception to Development Standards section of this report and is deemed acceptable for the justification provided. The proposed building form as designed is satisfactory with respect of this principle.

Principle 3 – Density

The Panel stated that *“the revised scheme has increased compliance with the LEP and DCP controls. Although the density is still significant, it has been reduced since what was previously proposed and could be considered generally in line with the intentions of the DCP.”*

Comment

The proposed density for the site is supported by the Design Review Panel and can be accommodated on the subject site. It is reiterated that nil FSR standard applies to the site. Notwithstanding, it is noted that the proposal has an FSR of 3.68:1.

Principle 4 – Sustainability

The Panel deferred to Council to review sustainability initiatives included in the scheme for compliance with Design Excellence requirements.

Comment

The proposal includes deep soil landscaped areas which can be complicated to achieve in a town centre context. The proposal incorporates substantial tree planting and stormwater systems as designed will appropriately manage water use and rainwater on site.

The development is oriented and designed to maximise the number of units which benefit from direct sunlight and cross ventilation and incorporates solar panels at rooftop level. The proposed development achieves 7.6 stars NatHERS rating. The proposal adheres to BASIX requirements.

The proposal incorporates a 19kL litre rainwater tank which is conditioned to be connected to all ground floor toilets, ground floor clothes washers and external taps/landscape irrigation for non-potable stormwater re-use.

Recommended conditions of consent will require sensor controlled and zoned internal lighting within the building's car park and common areas, use of admixtures in concrete to

minimise cement and reduce embodied carbon, separate circuiting for temporary power to minimal stair and corridor lighting and use of LEDs and other low energy flicker free lighting resources.

Accordingly, the proposal satisfies the requirements of this principle and is satisfactory in this regard.

Principle 5 – Landscape

The Panel stated that *“the revised landscape architectural outcome of the proposal addresses the majority of the previous comments made by the Panel however two items have not been addressed:*

- *As an independent body, the Panel still maintain that the removal the two large mature trees along Railway Street rather than adjusting the built form, is a poor public outcome and is not supported. The Panel note that a more creative built form response could have been developed allowing the trees to be retained and leveraged as a key asset of the new development*
- *No deep soil is provided on the site. With such a large footprint the Panel are unsure as to why the built form cannot accommodate true deep soil that is not impeded by basements below. Instead the development footprint of the site has been maximized with the basement footprint excessive.*

Noting that the Applicant has addressed all other comments made by the Panel, the Panel are willing to close the above two items as ‘closed, subject to Council’s acceptance of the scheme meeting Design Excellence’”

Comment

The panels comment above in relation to nil deep soil on site is not concurred with by the assessing officer. A calculation of deep soil inclusive of a ‘vault’ has been undertaken below in 3E - Deep Soil Zone of this report. Refer to the aforementioned section for further discussion.

In response to the Panels comment above regarding the two existing street trees at the Railway Street frontage, refer to discussion in State Environmental Planning Policy (Biodiversity & Conservation) 2021.

Overall, proposed landscaped areas on site comprise acceptable deep soil areas and volumes capable of accommodating a range of landscaping and canopy trees as depicted on landscape plans which have been conditioned as part of the draft Notice of Determination.

The proposal provides 320.5sq/m of deep soil provision across the site, which is equivalent to 9.1% of the site overall. The aforementioned can be complicated to achieve in a town centre context.

Landscaping on site has been designed to be attractive, functional and provide for a direct visual connection from internal communal building corridors. A range of planting is proposed within the development from ground covers to shrubs and canopy trees capable of growing to a height of up to 30m.

Private open space areas to terrace style dwellings adjoining the public domain at ground level to Heston Lane are provided with small trees, hedges, shrubs and ground covers which provide an appropriate residential interface.

Councils Landscape Architect has conditioned the proposal to require the installation of built in planters, minimum 0.7m width, incorporating cascading shrubs, to balconies of units 401, 415, 414, 413, and 412 at level 4 of the development fronting Parker and Railway Streets. The aforementioned will ensure the provision of additional greenery on the façade of the development.

Street tree planting 8 x Railway Street and 4 x Parker Street, (Corymbia Maculata with a mature height of 30m) is proposed along both Railway and Parker Streets along the frontage of the site.

Landscaping as proposed will complement the proposed development and satisfy the objectives of Council's DCP in relation to the provision of landscape elements on site.

The proposal is satisfactory with respect of this principle.

Principle 6 – Amenity

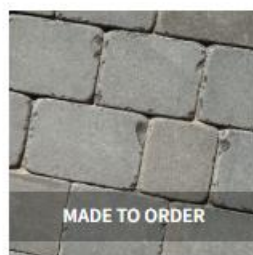
The Panel generally supported the amenity of units within the development, with the following comments made by the Panel at its final meeting on 13 December 2024.

- i. *Detailed design of the driveway and its landscape treatments needs to be undertaken to demonstrate how the impacts of the exposed driveway, including light spill, are managed and do not adversely impact the amenity of the potential public plaza to the west of the Guild Theatre.*
- ii. *Given the number of units in the scheme, The Panel feels that more welcoming lobbies are required. The lobby spaces should be more generously sized and allow for seating, natural light and more visible street 'address points' This is largely an interior layout issue, however improvements to the external legibility of entrances will also reinforce the idea of the project as a series of buildings.*

Council Comment

In response to the above comments by the panel, the following is noted.

- i. Landscape plans indicate the provision of reinforced concrete to the driveway. In order to provide aesthetic relief to the exposed driveway, the proposal has been conditioned to require a different material be provided to the driveway from the rear boundary to the shutter of the loading dock entry. i.e. Granite tumbled cobblestone as depicted below.



Huron Bluestone
Tumbled Cobble



Honey Jasper
Tumbled Cobble

With respect of light spill, the proposal has been conditioned to ensure all external lighting adheres to relevant Australian Standards.

- ii. Lobbies have been increased in width, to be more generously sized and allow for seating.

Overall, the proposal satisfies the solar access and ventilation requirements of the Apartment Design Guide (ADG). Natural light and ventilation are also provided to communal corridors within the development, ensuring a high quality space for future occupants.

In general, unit layouts are well designed, with appropriately dimensioned living areas and private open spaces. The configuration, layout and design of units, their overall size, spaces and rooms are practical and will allow future users to furnish their homes in a variety of ways. Appropriate storage is also provided within units, with supplementary at basement level. Security parking is provided at basement level with direct lift access.

Sufficient and well designed communal open space is provided on site, which will encourage social interaction and maximise amenity for future occupants. The proposal is satisfactory with respect of amenity and satisfies this principle.

Principle 7 – Safety

The Panel did not raise any concerns with respect of this principle.

Comment

The proposal has been designed to minimise concealment opportunities, ensure legibility to the Railway and Parker Streets as well as the Heston Laneway extension, given the integration of terrace style housing. Communal residential lobbies maximise direct passive surveillance of the surrounding public domain, as do upper level balconies.

Car parking and communal areas on site are accessed via secure access points and suitable lighting and CCTV will be required by conditions of consent. The proposed design is satisfactory in this regard.

Principle 8 - Housing Diversity and Social Interaction

The Panel did not raise any concerns with respect of this principle.

Comment

The development provides well landscaped areas on site, with communal amenities including bbq, kitchenette and toilet facilities, which will encourage social interaction for future residents.

A varied range and size of units is provided within the development which will accommodate a varied demographic and different household types, specifically catering for larger families and family types given the unit mix provided.

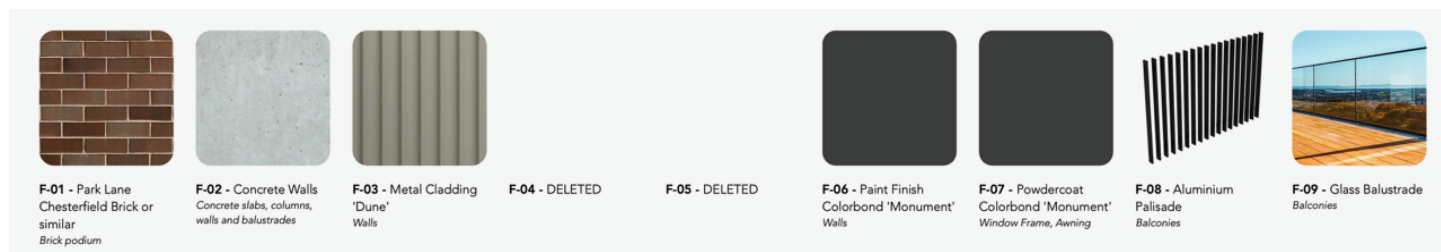
The proposal provides communal facilities on site which are designed to encourage social interaction and resident well being. The assessing officer is supportive of the proposal in regards to this principle.

Principle 9 – Aesthetics

The Panel stated that *“improvements to massing and articulation now provide a improved rationale for the distribution of materials and finishes across the scheme. Other than that, no revisions have been proposed to building aesthetics. As the lobbies are revised to improve their amenity, consideration should be given to how these are expressed along the street wall to enhance building aesthetics.”*

Comment

Plans have been revised to widen both residential lobbies to Railway Street, which enhances amenity and ensure access points are clearly identifiable. The proposal integrates contemporary materials including face brick for podium levels, a 'lighter' tower that has a contemporary palette of concrete, metal cladding, Colorbond 'Monument', and aluminium palisades.



Selected materials are strategically located so as to differentiate the various elements of the development. Materials as proposed are satisfactory, and the aesthetic design of the proposal is well resolved. Materials will provide a modern, contemporary, high quality and visually appealing development on site. The proposal is satisfactory in regard to this principle.

148 Non-discretionary development standards for residential apartment development—the Act, s 4.15

The object of this section is to identify development standards for particular matters, if complied with, prevent the consent authority from requiring more onerous standards for the matters. The following are non-discretionary development standards.

- the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,*
- the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

Council Comment

- The proposal adheres to the required car parking provisions for the site.
- The proposal adheres to the minimum internal area requirements of the ADG.
- The proposal adheres to the minimum ceiling height requirements of the ADG.

149 Apartment Design Guide prevails over development control plans

The proposal has been assessed against the Apartment Design Guide (ADG). The proposed development is considered to have performed adequately in respect to the objectives and design criteria contained within the ADG. The relevant issues are discussed below:

CLAUSE	DESIGN GUIDANCE	COMMENTS	COMPLIES
3C – Public Domain Interface	Max 1m level change from footpath to ground floor level of building. Landscaping to soften building edge and improve interface.	Ground floor level with adjoining public domain	Yes

	Courtyard units to have direct street entry, where appropriate.	Direct street access to units at ground level fronting Heston Lane	Yes
	Solid element of front fences / walls along street frontage to be limited to 1m	Nil front fencing proposed, street wall development	Yes
	Mailboxes located in lobbies or integrated into front fence	Mailboxes integrated into lobby	Yes
	On sloping sites protrusion of car parking above ground level to be minimised by using split levels to step underground car parking	Basement not visible from public domain	Yes
3D - Communal Open Space	25% (876.18sq/m) of Site Area	Level 1 – 429.8sq/m Rooftop – 533.7sq/m Total – 963.5sq/m	Yes
	50% (438sq/m) of principle useable area to receive 2 hours solar access in midwinter 9am - 3pm	Rooftop with a total area of 533.7sq/m receives full sun in midwinter.	Yes
3E - Deep Soil Zone	15% (525.7sq/m) of site area Minimum Dimensions 3m	320.5sq/m, equivalent to 9.1% of the site.	No – Refer to discussion below.
3F - Visual Privacy	<u>Up to 12m (4 storeys)</u> Hab. Rooms / Balconies – 6m	>6m with exception of units as follows which have potential adverse privacy impacts to units within 2-4 Parker Street Rockdale. 208 – Level 2 313 – Level 3 412 – Level 4	Partial – Refer to discussion below. Conditioned accordingly.
	<u>Up to 25m (5-8 Storeys)</u> Hab. Rooms / Balconies – 9m	Nil adjoining buildings greater than 5 storeys in height.	
3G – Pedestrian Access and Entries	Multiple entries provided to activate street edge	Wide and clearly identifiable communal residential entries via Railway Street	Yes
	Building access clearly visible from public domain / communal spaces	Clear and recognisable building access points	Yes
	Steps / ramps integrated into building and landscape design	Ramped accessible entry provided	Yes

	Electronic access to manage access	Secure electronic access to be provided.	Yes
3H – Vehicular Access	Car park access integrated with building façade	Car park access behind building line and integrated into facade	Yes
	Car park entries behind building line		
	Car park entry / access located on secondary street / lane where available	Car park access via Heston Lane to rear	Yes
	Garbage collection, loading and servicing areas screened	Waste storage and loading areas internalised	Yes
	Pedestrian / vehicle access separated and distinguishable.	Clearly identifiable and delineated pedestrian / vehicular access.	Yes
3J - Bicycle and Car Parking	Refer to 3.5 <i>Transport, Parking and Access</i> Section of this Report. <i>The site is opposite Rockdale Railway Station. Car parking rates of the RMS Guide to Traffic Generating Developments is applicable as a minimum.</i>		Yes
4A – Solar and Daylight Access	Living rooms + POS of at least 70% (90 of 129) of apartments receive min 2hrs direct sunlight b/w 9am and 3 pm mid-winter	72% (93 of 129)	Yes
	Max 15% (19 of 129) apartments receive no direct sunlight b/w 9am and 3pm mid-winter	8.5% (11 of 129)	Yes
4B – Natural Ventilation	Min 60% (77 of 129) of apartments are naturally cross ventilated in the first nine storeys of the building.	65% (84 of 129)	Yes
	Depth of cross-over / cross-through 18m max. measured glass line to glass line.	<18m	Yes
4C – Ceiling Heights	Habitable – 2.7m	2.4m non habitable	Yes
	Non Habitable - 2.4m	2.7m habitable	
4D – Apartment Size and Layout	1 bed – 50sq/m	50.23sq/m – 63.3sq/m	Yes
	2 bed / 1 bath – 70sq/m	72.15sq/m	Yes
	2 bed / 2 bath – 75sq/m	75.35sq/m - 93.8sq/m	
	3 bed / 2 bath – 95sq/m	98.46sq/m – 122.99sq/m	Yes
4E – Private Open Space and Balconies	1 bed – 8sq/m 2m min depth	10.35sq/m – 31.38sq/m	Yes
	2 bed – 10sq/m / 2m min depth	10.12sq/m – 68.33sq/m	Yes
	3 bed – 12sq/m / 2.4m min depth	13.3sq/m – 50.1sq/m	Yes

	Ground level /Podium - min 15m ² / min depth 3m.	Units 110 / 111 – 10sq/m Unit 113 – 13.55sq/m Unit 109 – 29sq/m Unit 112 – 31.3sq/m	Partial – conditioned to comply.
4F – Common Circulation Spaces	Max apartments off a circulation core on a single level is eight.	Maximum 9-10 off core to some levels i.e. level 3	Partial – refer to discussion below.
4G – Storage <i>50% is located within apartment</i>	1 bed - 6 cubic metres 2 bed - 8 cubic metres 3 bed - 10 cubic metres	Sufficient storage internally with supplementary at basement level.	Yes
4H – Acoustic Privacy	Noise sources i.e. driveways, service areas, plant rooms, communal open spaces located at least 3m away from bedrooms	Service areas / rooms located away from residential / habitable areas	Yes
4K – Apartment Mix	Variety of apartment types provided	Variety of unit sizes and layouts provided	Yes
	Flexible apartment configurations to support diverse household types and stages of life	Range of flexible apartment options provided	Yes
	Larger apartment types located on ground / roof level where there is potential for more open space and corners where more building frontage is available	Larger units located at corner locations with generous private outdoor spaces	Yes
4L – Ground Floor Apartments	Direct street access to ground floor apartments	Direct street access provided to units fronting Heston lane to the rear.	Yes

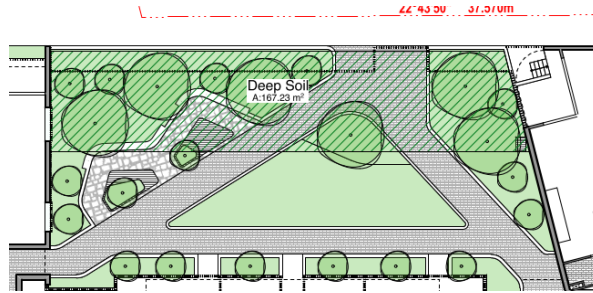
3E - Deep Soil Zone

As noted in the above table a minimum of 15% (525.7sq/m) of the site area with minimum dimensions of 3m is required to be provided for the purposes of deep soil, depending on the site area and context of the site as noted in the ADG. The proposal incorporates four areas of deep soil at ground level on site as follows;

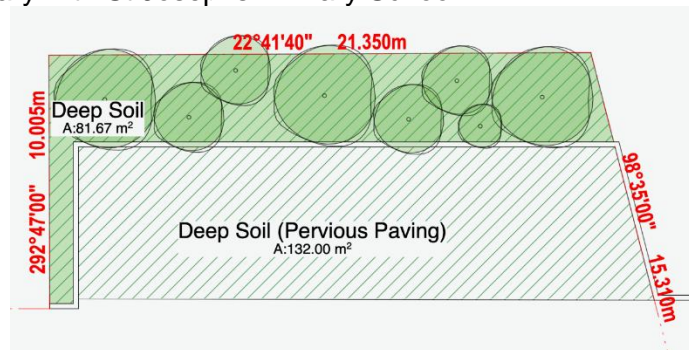
- 16.7sq/m and 4.8sq/m planters with minimum soil depth of 3m at the Railway Street frontage



- 86sq/m deep soil vault with minimum soil depth of 3m, below the level 1 communal open space area, adjoining Heston lane to the rear of the site. (*excluding paved areas*)



- c. 213sq/m periphery planter and car spaces with pervious paving adjoining common western boundary with St Josephs Primary School



Given the above, a total deep soil provision of 320.5sq/m across the site, which is equivalent to 9.1%. The aforementioned is a deficiency of 205.2sq/m of deep soil, equivalent to a variation of 5.85% on site.

It is reiterated that the subject site is located within a town centre context and difficulty can often be faced in achieving deep soil requirements in such a context given the requirement for a street wall development and provision of commercial uses at ground level which require activation of the adjoining public domain.

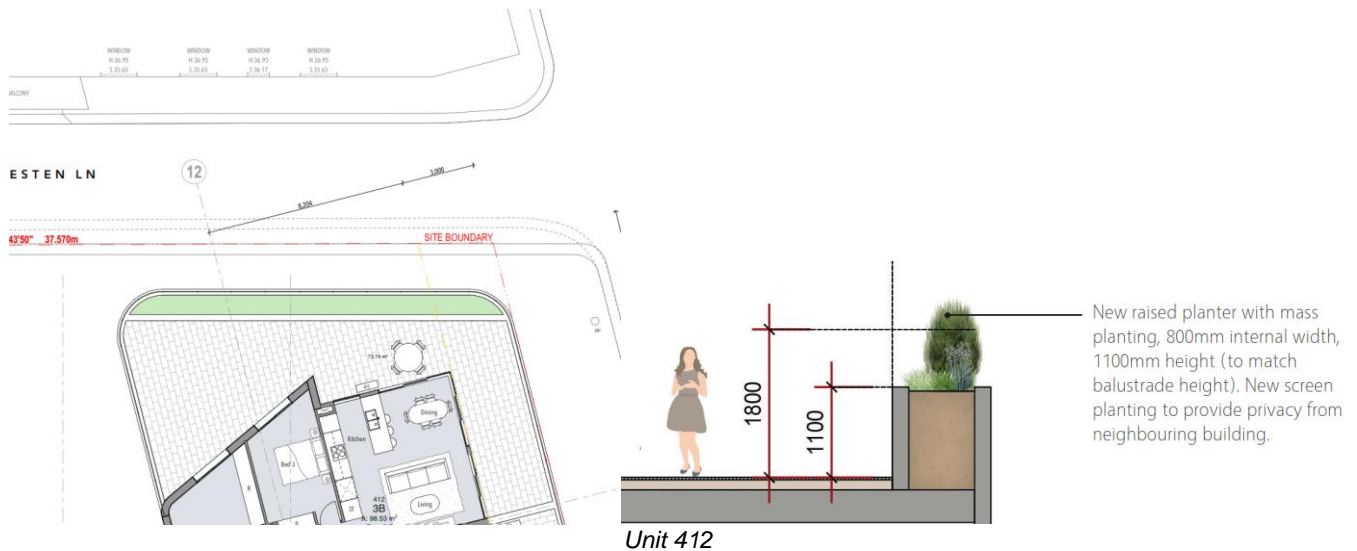
The proposed deep soil provision on site is located and designed so as to maximise stormwater infiltration, provide amenity to future occupants and facilitate the growth of proposed landscaping which incorporates groundcovers, shrubs and large trees including but not limited to 1 x Spotted Gum (mature height 30m) at the Railway Street frontage, minimum 8 x Quandong (mature height 8m) and minimum 8 x Smooth Barked Apple (mature height 15m) across the site.

Given the above, it can be confidently stated that the proposal notwithstanding a numerical variation, achieves the objectives of Part 3E of the ADG, facilitating deep soil zones on site which support healthy plant and tree growth, improve residential amenity and promote management of water and air quality.

3F – Visual Privacy

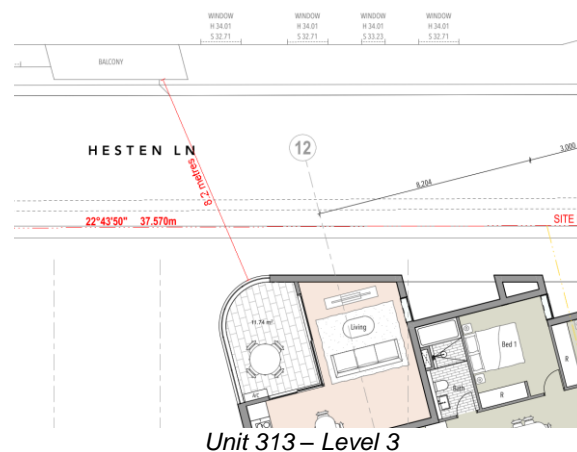
Following an assessment of the final revised scheme, the proposal is generally acceptable with respect of building separation and visual privacy with respect of the adjoining residential flat building at 2-4 Parker Street, with the following exceptions.

1. Unit 412 (level 4) incorporates a very large balcony oriented to the north and west of this unit. This balcony is within 8m – 8.8m of windows and the east facing balcony of the top floor unit at 2-4 Parker Street. The separation distance of 8m – 8.8m is below the nominated 12m criteria in the Apartment Design Guide.
- 2.



The proposal has been revised by the applicant to incorporate a 0.8m width planter along the entire western edge of this balcony, incorporating shrub planting which is capable of growing to a mature height of 2m in height. The addition of the planter facilitates a screen buffer and ensures users cannot access the western edge of the building in this location, thus minimizing adverse privacy impacts between neighbors. The proposal is satisfactory in this regard.

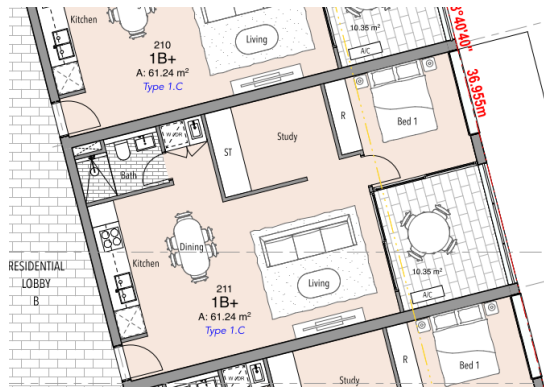
- Two units located directly below unit 412, specifically unit 313 at level 3 and unit 208 at level 2 are provided with balconies which are within 8.2m of balconies to units in levels 2 and 3 of 2-4 Parker Street. It is reiterated this does not adhere to the nominated building separation criteria of the Apartment Design Guide. Accordingly, the proposal has been conditioned to require the addition of privacy screening be provided to these two balconies to avoid adverse privacy impacts between neighbouring properties.



4D – Apartment Size and Layout

The proposal generally complies with the minimum internal and external unit size guidance nominated in the Apartment Design Guide. Notwithstanding it is important to identify that a total of 10 units within the development as specified below, incorporate 'studies'.

Level 1 – 115 / 116 / 117	Level 3 – 315 / 316 / 317
Level 2 – 210 / 211 / 212	Level 4 – 415



Unit 211 floor layout depicting 'study'

Such '*studies*' are internalised within the unit with nil natural light or ventilation available and are primarily enclosed with a nib wall.

In order to avoid the '*studies*' potentially being converted at a later date into additional bedrooms and consequently resulting in undersized units with poor amenity, the proposal has been conditioned to ensure that nib walls be deleted, that studies remain entirely open at all times with no enclosing wall or structure permitted to enclose the study into a separately enclosed room. This condition ensures that unit sizes adhere to the ADG and suitable amenity is provided.

4F – Common Circulation Spaces

The design criteria of this section of the ADG seeks to limit the number of units off a circulation core to maximum of 8 per level in order to ensure good amenity, promote safety and maximise servicing to units.

The proposal generally adheres to the aforementioned with the exception of several levels of the development i.e. level 2 – 9 units per core, level 3 - 9-10 units per core etc are proposed.

Common corridors to affected levels, as designed are of sufficient width i.e. 1.5m – 2.7m and provides with natural light and ventilation to maximise amenity.

Given the aforementioned, as designed it is not considered that common circulation spaces are unreasonable in this instance and the objectives of Part 4F are achieved.

State Environmental Planning Policy (Sustainable Buildings) 2022

The applicant submitted a revised BASIX Certificate for the proposed development being certificate number 1378884M_02. Commitments made within the BASIX certificate results in reductions in energy and water consumption on site post construction. A condition has been recommended to ensure that the stipulated requirements are adhered to. The proposal is satisfactory in this regard with respect of Chapter 2 of the SEPP.

State Environmental Planning Policy (Transport & Infrastructure) 2021

2.48 – Development likely to affect an electricity transmission or distribution network

The application is subject to 2.48 of the SEPP as the proposed works are within the vicinity of electricity infrastructure and therefore, in accordance with 2.48(2), the consent authority must give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice that is received within 21 days after the notice is given.

The application was referred to Ausgrid for comment. No objections were raised to the

proposed development subject to the imposition of conditions of consent. The application is consistent with the provisions of the SEPP and is acceptable in this regard.

2.98 - Development adjacent to rail corridors

The site is positioned opposite the Illawarra Railway Line. The application was referred to Sydney Trains for comment and in this regard satisfies the provisions of this requirement.

2.99 - Excavation in, above, below or adjacent to rail corridors

The proposal involves excavation within the zone of influence of the Illawarra Rail Line. The depth of excavation proposed is 13m below existing ground level. The application was referred to Sydney Trains for comment.

Sydney Trains responded on 6 February 2024, granting concurrence to the proposal subject to the imposition of operational conditions with respect of the submission of additional information to Sydney Trains prior to the issue of any construction certificate for the site.

The aforementioned includes but is not limited to an Electrolysis Risk report, cross sectional drawings showing the ground surface nearest rail tracks and infrastructure, property boundary and/or easement, sub soil profile, proposed excavation and/or structural design of sub ground support (i.e., footings/piles etc) adjacent to the rail corridor, details of all craneage and other aerial operations etc. The proposal satisfies 2.99 of the SEPP.

2.100 - Impact of rail noise or vibration on non-rail development

As the site is located directly adjoining the Illawarra Rail Line, the consent authority must not grant consent to the development for residential use unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) *in any bedroom in the building-35 dB(A) at any time between 10.00 pm and 7.00 am,*
- (b) *anywhere else in the building (other than a garage, kitchen, bathroom or hallway)-40 dB(A) at any time.*

The application was accompanied by an acoustic report prepared by Pulse White Noise Acoustics dated 26 October 2023 which considered the impact of rail noise on the proposed development.

The report concluded that subject to the implementation of the recommended minimum acoustic performance measures and construction methods, the proposed development will be acoustically ameliorated from aircraft, traffic and rail noise and vibration, as required to ensure compliance with relevant legislative requirements.

As conditioned, the proposal satisfies the requirements of 2.100 of the SEPP and is satisfactory in this regard.

State Environmental Planning Policy (Biodiversity & Conservation) 2021

Chapter 2 Vegetation in non-rural areas

This Chapter applies to non-rural areas of the State, including the Bayside local government area and aims to (a) *protect the biodiversity values of trees and other vegetation in non-rural areas of the State,* and (b) *preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

This Chapter is triggered due to the need for approval to remove existing mature trees on site and along the frontage of the site within the public domain. The proposal was accompanied

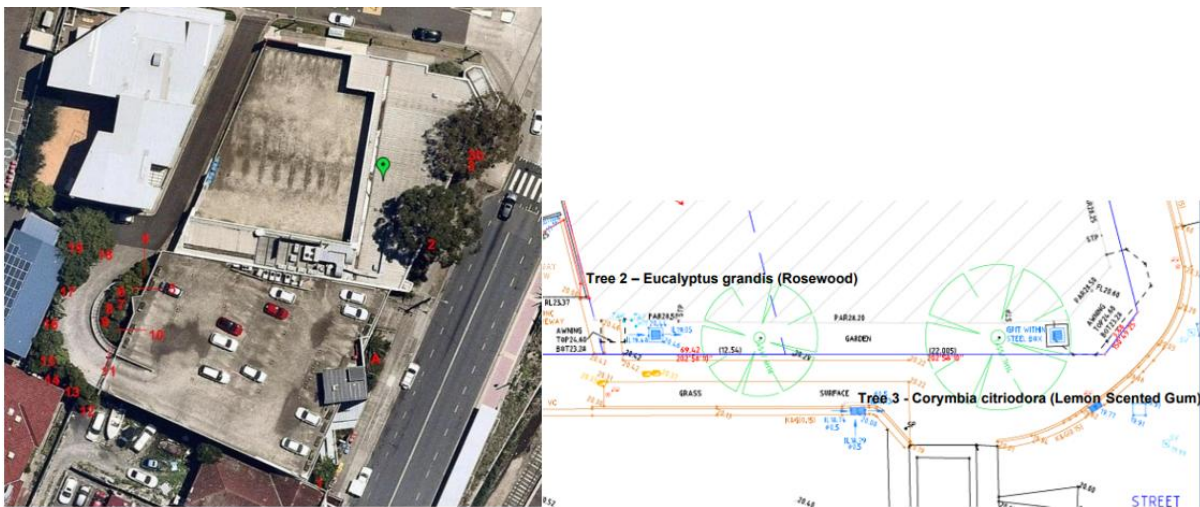
by an Arborist Report prepared by Green Spaces Consultancy dated 23 November 2023, with subsequent correspondence dated 11/05/2024.

The proposal seeks to undertake the removal of twenty one trees as follows:

- Five (5) trees located on the Railway Street frontage.
- Sixteen (16) trees located at the rear of the site.

One (1) existing tree located on the adjacent site to the south, the Guild Theatre site, is to be retained and protected. This is an existing 6m high *Elaeocarpus reticulatus* (Blueberry Ash).

Of the trees specified above, two (2) x existing mature trees (1 x lemon scented gum (14m height) / 1 x Rosewood (17m height)) with high ecological and scenic value are positioned along the frontage of the site to Railway Street. Such trees are proposed for removal to accommodate the proposed development.



Existing tree locations



Trees along Railway Street frontage

During the assessment of the application, the Design Review Panel sought the retention of the two trees previously referred to above. The assessing officer and Councils Tree Officer however noted that such trees are unable to be retained for the following reasons.

- The requirements of Bayside DCP 2022 seek the provision of a street wall development.
- The proposed basement footprint extends to the Railway Street boundary of the site in the location of the existing trees.
- Whilst setting the basement back is possible, this would require a minimum basement setback of 5.9m – 7.2m from the Railway Street boundary adjacent to the tree canopy and consequentially require significant pruning of these trees. i.e. 30% - 50% of the canopy.
- The pruning of the canopy to such an extent would likely result in the failure of remaining branches over time due to altered wind loads.

Councils Tree Officer undertook a site visit, reviewed submitted plans and the accompanying Arborist Report. Councils Tree officer was of the position that it was acceptable to permit the removal of the requested trees on site, subject to the imposition of conditions of consent to offset the loss of canopy loss on site.

Accordingly a total of 48 replacement trees will be required to be planted on site. It is reiterated that street tree planting 8 x Railway Street and 4 x Parker Street, (*Corymbia Maculata* with a mature height of 30m) is also proposed along both Railway and Parker Streets along the frontage of the site. As conditioned the proposal is satisfactory with respect of the SEPP.

Bayside Local Environmental Plan 2021

The following table outlines the relevant sections of Bayside Local Environmental Plan 2021 ("the LEP") applicable to the proposal.

Section	Requirement	Proposal	Compliance
2.3 Zone and Objectives	E1 – Local Centre	Commercial Premises and shop top housing permissible with consent	Yes
2.7 Demolition	Consent Required	Consent requested	Yes
4.3 Height of Buildings	83-85 Railway Street - 22m	Up to 22.85m (measured to the highest point, being the rooftop) Maximum 0.850m (3.86%) variation	No (1) – refer to discussion below
	75 – 81 Railway Street - 28m	Up to 33.1m (measured to the highest point, top of life overrun) Maximum 5.1m (18.2%) variation	No (1) – refer to discussion below
4.6 Exceptions to development standards	To provide an appropriate degree of flexibility in applying certain development standards to particular development. To achieve better outcomes for and from development by allowing flexibility in particular circumstances.	4.6 – Exception to Development Standards requested.	Yes – refer to discussion below.

Section	Requirement	Proposal	Compliance
5.10 – Heritage Conservation	To conserve the environmental heritage of Bayside	Refer to discussion below	Yes
6.1 Acid Sulfate Soil Class 5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	Detailed Site Investigation confirms potential for ASS is very low and further investigation not warranted.	Yes
6.2 Earthworks	Ensure earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of surrounding land.	The proposal involves excavation within the site to accommodate basement levels. Conditions imposed ensure minimal impacts on amenity of surrounding properties, drainage patterns and soil stability.	Yes
6.3 Stormwater and Water Sensitive Urban Design	Minimise impacts of urban stormwater to adjoining properties, native bushland and receiving waters.	WSUD incorporated i.e. rainwater to be used for car washing, toilet flushing, irrigation etc	Yes
6.7 Airspace Operations	The site is within an area defined in the schedules of the Civil Aviation (Building Control) Regulations that limit the height of structures to 50 feet (15.24 metres)	Approval to maximum height of 54.34RL AHD.	Yes <i>(proposal maximum 54.29RL)</i>
6.8 Development in Areas subject to Aircraft Noise	Between 25 - 30 ANEF (2039) contours	Acoustic amelioration measures proposed in construction as per Acoustic Report prepared by Pulse White Noise Acoustics dated 26 October 2023.	Yes
6.10 Design Excellence	Deliver the highest standard of sustainable architectural and urban design.	Refer to discussion below.	Yes
6.11 Essential Services	Essential services are or will be available	Existing sewer, water, electricity and gas connections are available.	Yes
Schedule 1 – Section 22 - Use of certain land at 75–81 Railway Street, Rockdale	Ground level uses to be commercial fronting Railway and Parker Streets	Refer to Discussion below	Yes

2.3 - Zone

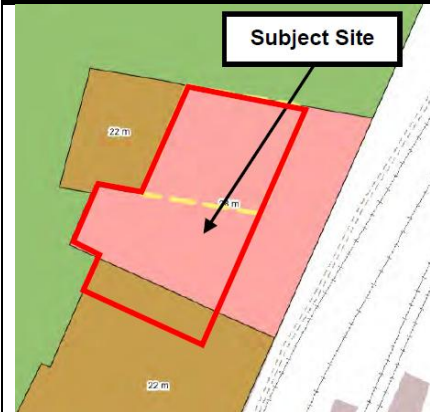
The subject site is zoned E1 – Local Centre. The proposal is defined as "Commercial Premises" and 'shop top housing' which is permissible within the zone with consent. The objectives of the zone are as follows.

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To ensure development within the zone does not detract from the economic viability of commercial centres.
- To ensure the scale of development is compatible with the existing streetscape and does not adversely impact on residential amenity.
- To ensure built form and land uses are commensurate with the level of accessibility, to and from the centre, by public transport, walking and cycling.
- To create lively town centres with pedestrian focused public domain activated by adjacent building uses and landscape elements.
- To accommodate population growth in the Rockdale town centre through high density residential uses that complement retail, commercial and cultural premises in the town centre.

The proposed development satisfies the objectives of the zone given the nature of uses proposed and is satisfactory in this regard.

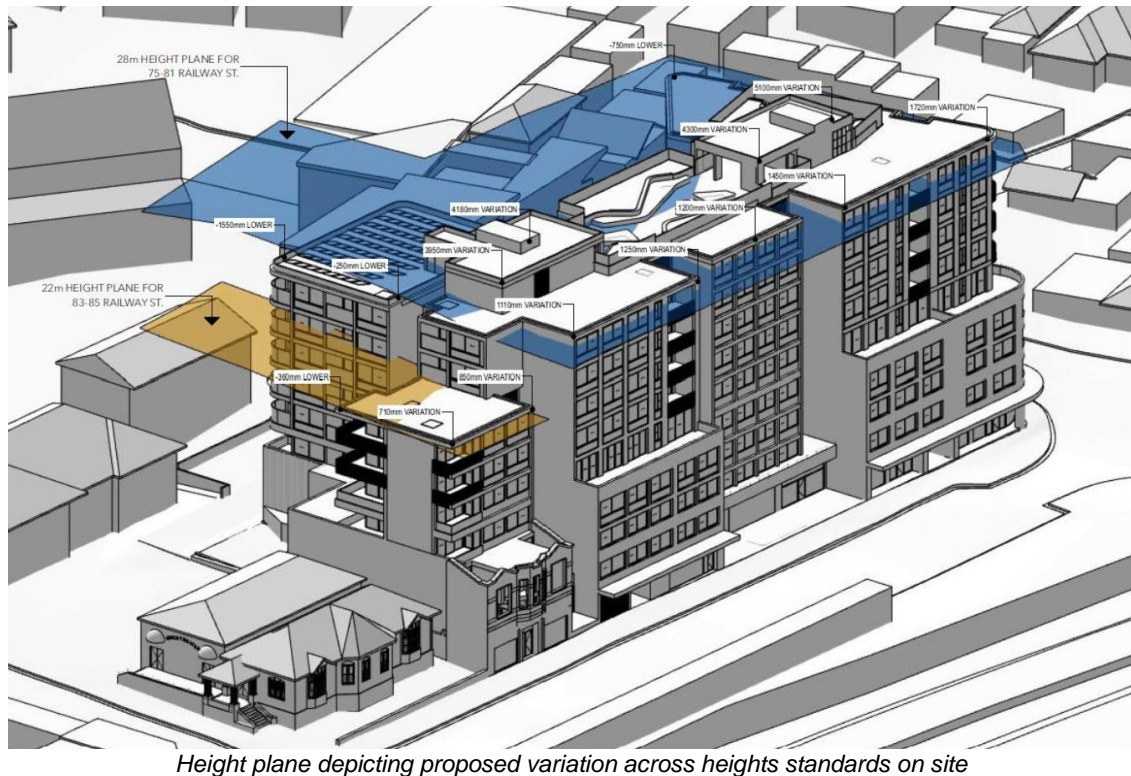
4.3 - Height of Buildings

A dual height standard applies to the subject site as follows.

Height Map Excerpt	Height Standard	Proposed Height	Variation
	28m 75 – 81 Railway Street (northern lots)	Up to 33.1m	Maximum 5.1m (18.2%) variation. Offending elements include; <ul style="list-style-type: none"> - A portion of the top floor of the building (1.1m – 1.72m) - Top of 2 x dual lift overrun (4.18m - 5.1m) - Top of residential lobbies / awning structures (3.95m – 4.3m), - Glazed wind amelioration screens, (2.2m) - Screens to services (1m) - Landscaped planters, seating and the like (various).
	22m 83-85 Railway Street (southern lot)	Up to 22.85m	Maximum 0.850m (3.86%) variation to a portion of the top floor of the building upon 83-85 Railway Street.

The proposal seeks to vary both applicable height standards on site and accordingly a Clause 4.6 - Exception to Development Standards accompanies this application.

The image below depicts the degree of proposed height variation sought across the two height standards on site. The degree of proposed variation is identified in the table above and the extent of such a variation is identifiable below in the applicants height blanket diagram.



As can be seen above, there are certain elements of the proposal which do not adhere to the nominated height of building standards for the site. The applicant has submitted a 4.6 – Exception to Development Standards with respect to proposed variations. Non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards below.

4.6 - Exceptions to Development Standards

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

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

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

In considering the applicant's submission, the consent authority must be satisfied that the applicants written request has satisfactorily addressed the aforementioned requirements.

Amendments to Clause 4.6 made on 1 November 2023, no longer require the applicant to demonstrate that the proposal is in the 'public interest', nor that the secretary's concurrence is provided. (*i.e. consistent with the objectives of the standard and the zone*)

In this assessment, consideration has been given to *Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe)* where the Court held that there are five (5) different ways, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)*
2. *The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)*

3. *The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary; (Fourth Test) and*
5. *The zoning of the land is unreasonable or inappropriate. (Fifth Test)*

It is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a).

Further to the above, consideration has been given to the principles established by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* where it was observed that:

- *in order for there to be 'sufficient' environmental planning grounds to justify a written request under section 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*
- *there is no basis in Section 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.*

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, Plain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The applicant's Clause 4.6 contravention request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case there and are sufficient environmental planning grounds to support the non-compliant FSR.

The applicants arguments are summarised below, with the assessing officer's response provided.

Section 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Applicant Arguments (summarised):

1. *Proposed building height and bulk are of an appropriate form and scale and are compatible with the desired future character for the locality and the transitional nature of the area.*
2. *The variations are minor and isolated components and in line with the intended number of storeys for the site.*
3. *Elements over the height standard are either indiscernible (being the upper level of the northern corner or part of the roof slab) or substantially recessed from the perimeter of the built form to ensure that such elements are not readily visible from nearby vantage points along Railway Street. Such vantage points are from in front (opposite) and from the adjacent intersections to the north and south. The additional height beyond the standard is also a minor element as viewed from Walz Street to the south. The built form thereby presents as consistent with the desired future character.*
4. *The height variation is associated with the sloping nature of the site from the west down to the east. The western side of the built form is well below the height limit, which is attributable to the sloping nature of the site. Sections confirm the retention of solar access to the plaza to the south to a greater extent than if built to the height standard.*
5. *Minor non-compliances to the upper levels of the units are imperceptible to the casual observer, thereby avoiding any adverse streetscape impacts. It is reiterated that the height (in a number of*

storeys) is consistent with that contemplated by the LEP and DCP provisions whilst also having regard to the compliant floor-to-floor heights under the ADG.

6. *External facades are articulated and indented to minimise the perceived bulk and scale of the building height non-compliance. The proposal provides an effective landscaped recess along Railway Street, in association with 4-metre-wide fragmentations, combined with contrasting colours, materials and finishes, achieves legible articulation, which breaks down the massing of the building.*
7. *The proposed development provides a substantial setback from the western boundary to the main built form. The building could have been designed to extend further to the western boundary, noting that there is no FSR control for the site, offsetting the building's non-compliance. However, this large western setback provides a better planning outcome by providing communal open space in the western part of Level 1, solar access to the proposed units and communal open space, building articulation and increased privacy to the neighbouring mixed-use building at 2-4 Parker Street.*
8. *The height of the rear western portion is now 1.55m below the height limit, which reduces the visual impact of the proposal as viewed from the east-facing apartments addressed to 2-4 Parker Street. Furthermore, the modest height at the rear western portion reduces shadowing to the rear of 87 Railway Street to the south of the site as well as to the intended public plaza. The distribution of height and built form on the site thereby has a public benefit to the future plaza area.*
9. *The lift shafts/overruns, fire stair access, services, pergola and balustrading on the roof level, which are responsible for the greatest extent of height breach, contribute to the provision of a high level of amenity for the rooftop communal area.*

Providing communal open space on the rooftop allows for an active communal space in an area isolated from neighbouring properties and the subject units within the development, thereby minimising potential visual and acoustic privacy impacts. Rooftop location of communal open space represents a positive benefit.

10. *The proposed extended communal area on the roof facilitates the outperformance of the communal space requirements while also allowing for a substantial tree canopy area on the rooftop. The accompanying landscape plan by Paddock Studio includes 19 canopy trees across the rooftop, which will provide an aesthetically pleasing outlook for users of the rooftop areas while also providing shading and reducing the urban heat island effect.*
11. *Exceedance of the height control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity, and a reduction in this height would not create additional benefit for adjoining properties or the locality.*
12. *There are numerous instances whereby Council or the Land and Environment Court have approved height variations where they are primarily associated with lift shaft/overrun, rooftop pergolas and fire stairs, which is similar to the circumstances of this application.*
13. *The provision of a 4m floor-to-floor height for the ground level retail and 3.15m for the next eight floors generates a height of 29.6m excluding lift overrun, etc.*

It is noted that the floor-to-floor heights for the residential components are 3.15m, which is 50mm beyond that technically required by the Apartment Design Guide, with an extra 300mm on Level 4 for the thicker slab for the podium. Such additional height allows for construction methodology which can better achieve construction requirements and acoustic ratings. The satisfaction of compliant and outperforming ceiling heights for the retail and residential levels thereby results in a height variation. Such height increase was supported by the design excellence panel in its last review in December 2024.

Such circumstances have been considered by the court as reasonable justification for variation to a height standard. This includes the recent decision which has been accepted by the Court and

Officer Comment

The applicant has satisfied the first test outlined within *Wehbe v Pittwater Council* in that the non-compliance as proposed satisfies the objectives of the standard. The objectives of the height standard are as follows.

- a. to ensure that building height is consistent with the desired future character of an area,*
- b. to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,*
- c. to nominate heights that will provide an appropriate transition in built form and land use intensity.*

The proposal is designed to ensure consistency with the desired future character of the area, elements which breach the height standard are recessed and their visual impact is obscured and minimized, adverse amenity impacts to existing development are negligible and the proposal provides an appropriate transition in built form and intensity as previously discussed within the SEPP Housing 2021 section of this report.

The proposal achieves the objectives of the standard therefore compliance is unnecessary in this instance.

Section 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

Applicant Arguments (summarised):

- 1) The sloping topography of the site is considered to constitute a sufficient environmental ground, noting that the height variation towards the front of the built form addressed to Railway Street is due to the sloping nature of the site. Such a factor is an established environmental planning ground with regard to height variations.*
- 2) The reasons outlined above, including the absence of impact, consistency with the desired future character, promotion of accessibility and amenity for the communal area, facilitation of tree canopies at the roof level and absence of streetscape impacts, each constitute sufficient environmental grounds.*
- 3) The absence of additional shadow impact from the additional height constitutes sufficient environmental grounds.*
- 4) The provision of access to the roof terrace (lift and stair access) enhances the amenity of the building and constitutes sufficient environmental grounds.*
- 5) The communal area at the rooftop level provides a greater degree of amenity than if at ground or lower levels and promotes views and solar access to the rooftop areas (which are associated with the height variation). Such a factor constitutes sufficient environmental grounds.*
- 6) The proposal is consistent with the E1 Local Centre zone objectives and the building height objectives.*
- 7) The lack of visual impact of the components that breach the height standard, as viewed from private and public vantage points, constitutes sufficient environmental grounds. The recessed nature of the rooftop elements ensures that the components that breach the height are not readily evident from the surrounding streets nor the intended public plaza to the south. Such a factor constitutes sufficient environmental grounds.*

Such height variation has been accepted by the Court and Council on numerous occasions, most recently in the judgement of Vanis Holdings Pty Ltd v Bayside Council 2024.

The proposal will provide a suitable design and be of suitable amenity in terms of the built

environment and represent the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

Officer Comment:

The proposal as designed is generally consistent with the future desired and emerging character of the area as intended by the relevant DCP controls. The proposed development is representative of site opportunities and future development in the Rockdale Town Centre.

The offending elements of the development which breach the height standard are located and designed in a manner whereby no adverse material impact will arise to neighbouring properties beyond that anticipated from a compliant scheme. The additional height proposed by the offending elements is considered to be imperceptible from the public domain.

The applicant has demonstrated that there are sufficient environmental grounds to support varying the standard, specifically with respect of the sloping topography of the site. The proposal provides a considered built form response and will deliver a positive urban design outcome.

Given the above, strict compliance with the height standard in this instance is unreasonable and unnecessary and the applicants objection is considered to be well founded.

In conclusion the assessing officer is of the view that reducing the number of storeys of the proposal to enforce strict compliance with the standard will not result in an improved planning outcome for the site.

The development as designed responds to the topography of the site and local area, does not result in adverse shadow, privacy or view loss impacts and is consistent with the future desired character of the town centre as stipulated within the DCP. Accordingly, there is not considered to be any discernible public benefit by maintaining the height standard in this instance and the variation as proposed is supported.

5.10 – Heritage Conservation

The subject site is located within close proximity to the following local and state listed heritage items.

- I357: Brick buildings on platforms, signal box and overhead booking office, Rockdale Railway Station Yard Group, which is a State heritage item located opposite the subject site to the east
- I221: Rockdale School of Arts (Guild Theatre) at No. 87 Railway Street, which is a local heritage item adjoining the subject site to the south at 87 Railway Street
- I222: St Joseph's Convent, which is a local heritage item, located to the west of the subject site at 3-11 Walz Street.

The proposal was referred to Councils Heritage Advisor who stated "*The proposed development will have no direct or material impact on the heritage items in proximity to the subject site. The proposed development does not adversely impact the heritage significance of heritage items within the vicinity.*"

Having regard to the above, the proposal is considered acceptable in terms of heritage impacts, subject to the imposition of conditions as recommended in order to ensure the structural integrity of the Guild Theatre is protected during construction and works on site.

6.1 – Acid Sulfate Soils

Acid Sulfate Soils (ASS) – Class 5 affects the property as per BLEP 2021 mapping. It is noted that works are not proposed within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m Australian Height Datum nor is the water table likely to be lowered below 1m Australian Height Datum on adjacent Class 1, 2, 3 or 4 land as surrounding land is classified as Class 5.

Given the above, an Acid Sulfate Soils Management Plan is not warranted in this instance and the proposal is consistent with the objectives and requirements of 6.1. The proposal is consistent with the objectives and requirements this part.

6.3 – Stormwater and WSUD

The development proposes an on-site detention system (OSD) and 19,000L rainwater tank 19,000 litre rainwater tank to be connected to all toilets, clothes washers and external taps/landscape irrigation for non-potable stormwater re-use. Only non-trafficable roof areas are to drain into the rainwater tank.

Stormwater plans were submitted with the application and reviewed by Councils Development Engineer who had no objections to the proposal subject to conditions which have been included in the recommended conditions.

6.7 – Airspace Operations

The objective of this clause is to protect airspace around airports. The proposal was referred Sydney Airport Corporation, Civil Aviation Safety Authority and Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Fly Safe).

On 3 April 2025, concurrence was granted from relevant authorities for the proposed development to a maximum overall height of 54.34RL AHD. The proposal indicates a maximum height of 54.29RL to the top of the lift overrun and is thus satisfactory in this regard. The proposal satisfies the requirements of this part.

6.8 – Development in Areas subject to Aircraft Noise

The subject site is located within the 25-30 ANEF Contour, thus subject to potential adverse aircraft noise. Additionally, the site is opposite a railway line. Given the aforementioned, noise attenuation measures are required for the proposed development.

The proposal was accompanied by an Acoustic Report prepared by Pulse White Noise Acoustics, dated 26 October 2023, which recommended acoustic amelioration measures be incorporated into the construction of the development in order to ensure acceptable sound insulation performance and thus ensuring maximum acoustic amenity is achieved for future occupants.

A range of mitigation measures are outlined within the aforementioned document, such measures include but are not limited to the following;

- *Laminated glazing of varied thickness to facades.*
- *Masonry external wall and roof construction.*
- *All openings and penetrations to be acoustically treated.*
- *An alternative outside air source to all residential dwellings is required. i.e. Provision of outside air via a dedicated supply air fan which can be operated at the discretion of future occupants.*

The proposal is satisfactory with respect of the requirements and objectives of this clause, subject to the recommended conditions of consent.

6.10 – Design Excellence

As per the provisions of this section, development consent must not be granted to development to which this section applies unless the consent authority considers that the development exhibits design excellence.

The Design Excellence section applies to the proposal and requires that the development deliver the highest standard of architectural, urban and landscape design. Pursuant to subsection 5(a), development consent must not be granted unless a design excellence panel reviews the development and the consent authority takes into account the findings of the panel.

The proposed development was considered on three occasions by Councils Design Excellence Panel, firstly in March, then secondly in September and finally in December 2024. At its final meeting, the Design Excellence Panel made the following recommendation:

“The Panel recommends that the recommended changes/refinements be made and that the amended proposal be referred to the Council for further consideration to demonstrate that Design Excellence has been achieved in accordance with Clause 6.10 of Bayside LEP 2021.”

Amendments as noted by the panel were incorporated in the final rendition of plans where possible and the revised final scheme has been considered against the design excellence provisions below.

- a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- b) *whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,*

Comment

The design review panel was generally supportive of the changes made to the proposed built form on site, specifically in relation to its bulk, massing, form, design, materiality and streetscape response. The final design of the development is responsive to its orientation and locational context.

The form and appearance of the development are consistent with the intended future desired character as per the relevant planning requirements for the site and context.

Whilst a variation to the height standard is sought, this has been discussed in 4.6 – Exception to Development Standards of this report and deemed to be acceptable in the circumstances of this application.

- c) *whether the development detrimentally impacts on view corridors,*

Comment

There are no significant identified views or vistas which are detrimentally impacted by the proposed development.

- d) *The requirements of any development control plan made by the Council and as in force at the commencement of this section*

Comment

An assessment of the proposal with the relevant requirements of Bayside DCP 2022 has been undertaken further in this report. The proposal is satisfactory in this regard.

e) How the development addresses the following matters:

- i. The suitability of the land for development,*
- ii. Existing and proposed uses and use mix,*
- iii. Heritage issues and streetscape constraints,*
- iv. The relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
- v. Bulk, massing and modulation of buildings,*
- vi. Street frontage heights,*
- vii. Environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
- viii. The achievement of the principles of ecologically sustainable development,*
- ix. Pedestrian, cycle, vehicular and service access, circulation and requirements,*
- x. The impact on and any proposed improvements to, the public domain,*
- xi. The achieving appropriate interfaces at ground level between the building and the public domain,*
- xii. Excellence and integration of landscape design.*

Comment

- i. The suitability of the site has been discussed and previously demonstrated within this assessment report.
- ii. The proposal seeks to remove existing commercial buildings from the site in order to accommodate the proposed development. The proposed development is permissible and satisfies the objectives of the zone as previously stated.
- iii. Councils Heritage Advisor reviewed the proposal and raised no objections as previously discussed within 5.10 – Heritage Conservation. It is reiterated the proposal retains an existing façade and steps the bulk of the development down to provide an appropriate transition and interface with the adjoining Guild Theatre to the south.
- iv. The proposal provides an appropriate and sympathetic response and building form to neighbouring developments and sites, proposing appropriate physical separation or conditioned to provide screening where required. The proposed built form is satisfactory with respect of setbacks proposed, amenity has been addressed previously within this report and it is reiterated that the proposal is consistent with the future urban form as envisaged by relevant planning controls for the site.

The proposal was peer reviewed by Councils Design Review Panel and supported.

- v. The revised bulk, massing and modulation of the proposal was supported by the Design Review Panel.
- vi. The proposal provides an appropriate street wall height i.e. 4 storeys to Railway Street, sufficient to provide human scale to the development and complies with the street wall height required by Bayside DCP 2022.
- vii. Due consideration has been given to potential environmental impacts. The proposal

does not generate adverse overshadowing impacts onto neighbouring properties, nor considered to generate adverse privacy issues to the school to the west, this is discussed further in the submissions section of this report.

Potential privacy concerns with respect of the development to 2-4 Parker Street were addressed previously in this report and conditioned accordingly. Wind amelioration measures have been discussed further in this report and such measures are depicted upon architectural plans.

Conditions have been imposed to minimise the reflectivity of materials and sustainability measures have been considered.

- viii. Sustainability measures have been discussed previously within this report. The proposal is satisfactory with respect of the achievement of the principles of ecologically sustainable development.
- ix. Consideration has been given within the design of the development to pedestrian, bicycle and vehicular access points, circulation requirements and visibility to and from these areas. The proposal is satisfactory in this regard.
- x. The proposal has been conditioned to require relevant public domain work improvements along the frontage of the site to Railway and Parker Streets and Hesten Lane. A frontage works application is required post determination, the proposal has been conditioned accordingly.

The aforementioned application can require but not be limited to, civil, drainage, landscaping, undergrounding of services, lighting, traffic signage, line marking, parking, and traffic devices.

- xi. The proposal provides for an appropriate interface at ground level to both street frontages at the public domain.
- xii. Refer to landscape discussion in '*Principle 5 – Landscape*' section of this report.

The provisions of this section are deemed to be satisfied given the aforementioned and it has been demonstrated that design excellence has been achieved. The proposal is satisfactory in this regard.

6.11 – Essential Services

Services are generally available on site to facilitate to the proposed development. Appropriate conditions have been recommended requiring approval or consultation with relevant utility providers with regard to any specific requirements for the provision of services on the site.

Schedule 1 – Section 22 - Use of certain land at 75–81 Railway Street, Rockdale

The provisions of this part stipulate as follows.

“Development for the purpose of residential flat buildings at ground floor is permitted with development consent if the ground floor of the building facing Railway Street or Parker Street is used for commercial premises.”

The proposal has been designed in accordance with the requirements of this part. Plans indicate proposed future commercial uses at ground level of the development fronting both Railway and Parker Street. The proposal is satisfactory in this regard.

4.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no draft environmental planning instruments of direct relevance to the proposal.

4.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application.

Bayside Development Control Plan 2022

The following table outlines the relevant clauses of the DCP applicable to the proposal.

Section	Requirement	Proposal	Complies
PART 3 – GENERAL DEVELOPMENT PROVISIONS			
3.1.3 - Crime Prevention through Environmental Design	Minimize potential risk and improve safety within and around the development.	Appropriately safety and security measures proposed to be implemented on site. i.e. CCTV, lockable doors / windows, electronic keycards / fobs for internal access, signage, clear sightlines, external lighting, low level shrubs, ongoing maintenance etc.	Yes
3.4 Heritage	Ensure that development in the vicinity of a heritage item or heritage conservation area is designed and located such that the significance and setting of the heritage item or HCA is conserved.	Heritage has been addressed previously in this report. It is reiterated that the proposal provides a sympathetic response and locates building mass away from the southern boundary of the site with the adjoining heritage item.	Yes
3.5 Transport, Parking and Access	The site is opposite Rockdale Railway Station. Car parking rates of the RMS Guide to Traffic Generating Developments is applicable as a minimum.	Refer to discussion below.	Yes

Section	Requirement	Proposal	Complies
3.6 Social Amenity, Accessibility and Adaptable Design	<p>C1 - The siting, design, and construction of premises available to the public are to ensure an appropriate level of accessibility, so that all people can enter and use the premises.</p> <p>C2. All development must comply with the following:</p> <ul style="list-style-type: none"> - all Australian Standards relevant to accessibility. - the BCA access requirements; and Disability Discrimination Act 1992. 	<p>Proposal was accompanied by an Access Compliance Assessment Report prepared by AED Group dated 25/07/2024. It was concluded that;</p> <ul style="list-style-type: none"> - <i>The current design contains some non-compliances with the Deemed to Satisfy provisions of the BCA, however, such can be readily resolved by minor design changes, provision of additional information, or by developing alternative BCA performance Solution(s), as nominated in this report.</i> - <i>The design is capable of complying with the accessibility provisions of the BCA and AS4299 subject to the resolutions contained in this report.</i> 	Yes – proposal conditioned to adhere to recommendations of report.
	C3 - Ensure all publicly accessible buildings provide a safe and continuous path of travel for people with impaired mobility.	Safe, unimpeded and clear continuous path of travel provided within proposed development	Yes
	C4 - A high standard of women's facilities, amenities for parents in both women's and men's toilets and amenities for people with disability (i.e. lift and change facilities) in buildings available to the public	Lift and change facilities provided in basement level 1, accessible via commercial lift lobby.	Yes
	C7 - Access for pedestrians and vehicles are to be separated.	Clearly defined and separated access for pedestrians and vehicles	Yes
3.7 Landscaping, Private Open Space and Biodiversity	C2 - For all development the layout & design of driveways, pedestrian entries & services maximizes deep soil &	Refer to discussion in 'Principle 5 – Landscape' previously in this report.	

Section	Requirement	Proposal	Complies
	retention of existing trees & planting of new trees.		
3.9 - Stormwater Management and WSUD	C1 - Development to be consistent with Bayside Technical Specification Stormwater Management relating to stormwater management and WSUD	Refer to discussion in 6.3 – Stormwater and WSUD of this report.	Yes
3.12 – Waste Minimization and Management	C1 - Consistent with Council's Waste Management DCP Technical Specification 2022 and all development applications are required to submit Waste Management Plan consistent with this Technical Specification 3.5.7(C1) – Waste collection on site via loading bay with appropriately sized waste collection areas.	Waste Management Plan prepared by Elephants Foot, dated 20/09/2024 is compliant with Council requirements.	Yes
3.13 – Areas subject to Aircraft Noise and Airport Airspace	C3 - Development on land within an ANEF affected area (ANEF 20+) is to be supported by a Noise Impact Assessment demonstrating indoor design sound levels in AS 2021—2000 can be achieved.	Acoustic report prepared by Pulse White Noise Acoustics dated 26 October 2023 was submitted which nominates required mitigation measures for the development with respect to aircraft noise.	Yes
3.14 – Noise, Wind, Vibration and Air Quality	C2. Where development is in a location that is exposed to high levels of external noise, an acoustic report that demonstrates compliance with these objectives and controls, must be prepared by a suitably qualified and experienced professional and be submitted as part of a development application	Acoustic report prepared by Pulse White Noise Acoustics dated 26 October 2023 was submitted which nominates required mitigation measures for the development with respect to aircraft noise.	Yes
3.18 - Utilities and Mechanical Plant	To ensure site facilities are incorporated as part of the overall development.	Services generally available.	Yes
PART 7.2 – ROCKDALE TOWN CENTRE			
7.2 Rockdale Town Centre	Various.	Refer to discussion below.	Partial – refer to discussion below.

PART 3 – GENERAL DEVELOPMENT CONTROLS

Part 3.1.3 – Crime Prevention through Environmental Design

The provisions of this section seek to minimize potential risk and improve safety within and around the development and during the operation of the proposed use.

The proposal provides for passive and active surveillance to street frontages via the incorporation of private and communal access to the development and ground level dwellings and communal open spaces. Hesten lane is to be upgraded with new pedestrian pathways, street lighting as per Council requirements and fencing along Hesten Lane is limited to 1.5m in height and in the form of vertical slats to maximise transparency.

The proposal seeks to install CCTV cameras, signage, lockable doors and windows, within the development. Pedestrian and vehicular access and egress is via secure electronic access to the building.

Landscaping as proposed has been selected to maximize passive surveillance within publicly accessible areas externally of the development. Pedestrian entry to the development is via a prominently identifiable and secure entry point, with clear lines of sight internally to the public domain.

Noting the above and via the imposition of conditions of consent, it is anticipated that safety and security in and around the development has been maximized. The proposal is satisfactory with respect of this section.

Part 3.3 - Energy and Environmental Sustainability

Consideration of sustainability has been undertaken previously in this report. The proposal is satisfactory in this regard.

Part 3.5 – Transport, Parking and Access

A review of the car parking, traffic, maneuverability and access requirements of the proposed development was undertaken by Councils Development Engineer, an assessment is provided below.

<u>Component</u>	<u>Required</u>	<u>Provided</u>	<u>Compliance</u>
1 bedroom unit (42)	0.6 spaces/unit = 26	133	Yes <i>(surplus 22 spaces)</i>
2 bedroom unit (76)	0.9 spaces/unit = 69		
3 or more bedrooms unit (11)	1.4 spaces/unit = 16		
Residential Total (129 Units)	111 spaces		
Visitor Parking	1 space/5 units = 26	26	Yes
Commercial/ Retail	1 space per 40m ² = 31	46	Yes <i>(surplus 15 spaces)</i>
Bicycle Parking	129-residential 13- Visitor Total 142 spaces (residential)	132 (residential) 14 (residential Visitor)	Yes <i>(Surplus 5 spaces)</i>

	Commercial 13 spaces Total 155 spaces	14 (commercial) Total 160 spaces	
Motorcycle Parking	8 spaces (residential) 4 spaces (commercial)	9 spaces (residential) 4 spaces (commercial)	Yes
Car Share Bay	4 spaces	4	Yes
Car Wash Bay	1 space per 60 dwellings (minimum dimensions 3.5m wide x 5.4mlong) = 2 spaces	2 spaces	Yes

As demonstrated above, the proposal complies with the car parking requirements for the site and nominated uses within the development.

Further to the above, the development proposes a combined 7.9m wide entry and exit vehicular access point from Heston Lane, which narrows to 5.5m at the basement ramp. This is able to accommodate a Medium Rigid Vehicle & waste collection vehicles to service the development.

The design of the proposed driveway adheres to the relevant technical specifications of Council and is of sufficient width to service the proposed development.

The proposal accommodates a loading / unloading bay for a standard Medium Rigid Vehicle at ground level with direct access to the common lobby and lift core to facilitate loading, unloading for future occupants of the development. The dedicated loading / unloading bay is designed to facilitate forward entry and exit on site and incorporates suitable minimum headroom clearance as required.

Basement car parking areas and lift arrangements as proposed, facilitate and ensure vehicles can enter, utilize car parking spaces and exit the site in a forward direction. Access and maneuverability to parking areas on site as proposed is considered to be satisfactory in this regard. As designed the proposal is consistent with the objectives and requirements of this part.

Part 3.6 – Accessibility and Adaptable Design

The objectives of this section seek to ensure a development which is inclusive and accessible for everyone. Plans indicate level, safe, unimpeded and equitable access is provided to, within and throughout the development from ground to the highest level of the development.

Equitable access for persons with a disability / mobility impairment is achieved to pedestrian and vehicular entry / exit points to the development, via the incorporation of graded ramps and lift access. Accessible car parking spaces in close proximity to lifts and accessible amenities are also provided within the development to accommodate future users.

The proposal has been conditioned to ensure compliance with the relevant requirements of the Access to Premises Standards and the Building Code of Australia, in order to ensure compliance with the Disability Discrimination Act. The proposal is satisfactory with respect of this part.

Part 3.12 – Waste Minimization and Management

Residential Waste

An operational waste management plan prepared by Elephants Foot, dated 20/09/2024 and submitted with the application confirms the following bin quantities and collection frequencies for the residential component of the proposed development.

- General Waste: 7 x 660L MGBs collected 2 x weekly
- Recycling: 16 x 1100L MGBs collected 1 x weekly
- Garden Organic: 28 x 240L MGBs collected fortnightly
- Service Bins: 3 x 660L MGB & 3 x 1100L MGB

A garbage chute system is incorporated into the building design for the reception of waste and recycling material. Bins and equipment at the base of each chute allow for a minimum of 2 days worth of waste and recycling generation. Accordingly, the following equipment is to be installed:

Core A

- Waste Chute: 1x 3-Bin 660L MGB Linear Track System
- Recycling Chute: 1x 3-Bin 1100L MGB Linear track System

Core B

- Waste Chute: 1x 2-Bin 660L MGB Linear Track System
- Recycling Chute: 1x 2-Bin 1100L MGB Linear track System

In addition to the above, service bins are to be stored in chute discharge rooms.

A garden organic waste room is provided within basement 3 containing 28 x 240L bins for garden organic waste. Residents will be responsible for transferring their own garden organic waste to the basement via the lifts.

Council will be engaged to collect residential waste and recycling in accordance with Council's collection schedule. Waste will be collected 2 x weekly, recycling weekly and Garden Organic fortnightly.

On the nominated waste collection day, the building caretaker will be responsible for transporting the 660L MGBs and 1100L MGBs to the bin holding area/waste collection area located on Ground Floor through the bin lift provided. Additional 660L and 1100L service bins are to be placed under chutes to collect discharge while bins are being serviced.

To service the bins, a Council collection vehicle will enter the site from Hesten Lane and pull up onto the turntable on the Ground Floor, where the vehicle will turn so the rear part will face the loading dock. The bins will be serviced from the bin collection area. Once the bins are serviced, the collection vehicle will exit the site in a forward direction.

Commercial Waste

An operational waste management plan prepared by Elephants Foot, dated 20/09/2024 and submitted with the application confirms the following bin quantities and collection frequencies for

the commercial component of the proposed development.

- General Waste: 2 x 1100L MGBs collected 2 x weekly
- Cardboard/Paper Recyclables: 2 x 1100L MGBs collected 2 x weekly
- Commingled Recyclables: 2 x 1100L MGBs collected 1 x weekly

A private waste collection contractor will be engaged to service the retail waste and recycling bins per an agreed schedule as the occupancy of commercial / retail uses within the development is subject to future applications.

Proposed waste management measures were reviewed by Councils Waste Management Officer and considered satisfactory. The proposal has been conditioned accordingly.

Part 3.13 – Areas subject to Aircraft Noise and Airport Airspace

The matter of airspace has been addressed in 6.7 – Airspace Operations of this report. The matter of aircraft noise has been addressed in 6.8 – Development in Areas subject to Aircraft Noise of this report. The proposal is satisfactory with part 3.13 in this regard.

Part 3.14 – Noise, Wind, Vibration and Air Quality

Noise considerations related to road and rail noise have been addressed previously in response to SEPP (Transport and Infrastructure) 2021. Acoustic considerations to and from the proposed use are acceptable in the context of the objectives and provisions of the DCP.

The proposal was accompanied by a Wind Report prepared by Windtech dated December 1 2023. The report recommended the following amelioration measures for the development.

Ground Level

- *Inclusion of portable screens installed by retail operator along Railway Street if the shop has a designated sitting area. (e.g. restaurant, café, etc.)*

Level 1

- *Inclusion of 1.5m high densely foliating evergreen vegetation. Retain proposed vegetation, ensuring they are densely foliating evergreen trees.*
- *Inclusion of additional densely foliating evergreen trees around the 1st storey open area.*
- *Retain proposed porous gate along Hesten Lane.*

Level 4

- *Inclusion of 1.5m high impermeable balustrades around the private balconies located at the south-west corner of the development.*

Rooftop

Option A

- *Inclusion of 2m high impermeable balustrades around the rooftop communal open space.*
- *Inclusion of 1.5m high impermeable balustrades around the private balconies located at the south-west corner of the development.*

Option B

- *Inclusion of 2m high impermeable balustrades around the northern end of the rooftop communal open space.*
- *Inclusion of 1.5m high impermeable balustrades around the rest of the rooftop communal open space.*

The report concludes that the recommended measures above will have an ameliorating impact

on local wind conditions. The proposal has been conditioned to ensure that proposed amelioration measures within the aforementioned report are illustrated upon construction certificate drawings prior to the issue of any Construction Certificate and implemented on site. The proposal as conditioned satisfies the requirements and objectives of this section.

Part 3.18 - Utilities and Mechanical Plant

Appropriate site facilities are provided. A substation, car park exhaust, fire hydrant, water meter cupboard and the like are integrated into the building form. Services are located at level 9 rooftop and appropriately screened.

Part 7.2 – Rockdale Town Centre

The site is located within the Rockdale Town Centre which is identified as a '*local centre*' within the Eastern City District Plan 2018, yet identified by Council within its adopted 2020 Local Strategic Planning Statement as a proposed strategic centre, in recognition of its role as a civic and community hub.

The relevant planning controls applying to the subject site have been identified and assessed below.

1. *Primary Retail Frontage to Railway & Parker Streets*
 - *Minimum 80% of the ground floor frontage to be activated by retail and business premises*
 - *Residential lobbies can occupy no more than 20% of the total ground floor frontage*
 - *No ground floor residential permitted*
 - *No vehicle access permitted*
 - *No service access permitted*

Comment

The proposal adheres to the above requirements of the DCP.

2. *Applicants are to deliver through site links in accordance with Figure 33 (below) and engage with Council in investigating potential future links.*



Comment

The proposal has been designed in accordance with the future intended link between Parker and Walz Streets. It is reiterated that the proposal incorporates the construction of a new pedestrian footpath along the rear of the site and dedicates additional land within the rear of 83-85 Railway Street, beyond that nominated in the executed planning agreement to facilitate this link. New lighting, kerb and guttering and stormwater works are conditioned as part of this application.

Council's vision for the rear of the southern adjoining property the 'Guild Theatre' to be redeveloped into a public space at a future time by Council remains in its infancy, however the proposal ensures that this vision can be delivered. The proposal is satisfactory in this regard.

3. *Provide a range of appropriately sized and configured tenancies that meet commercial, or market needs to avoid large (>100m²) floorplates that may remain vacant.*

Comment

A total of four (4) commercial tenancies are proposed within the development. i.e. 71.68sq/m, 686.3sq/m, 304.8sq/m and 165.1sq/m. Whilst the DCP indicates large floor plates should be avoided, it is reiterated that the site is capable of accommodating large heavy rigid vehicles and is well located to public transport thus is potentially capable of accommodating a small scale supermarket or other uses which require a larger floor plate.

4. *Access to parking, servicing and loading should be provided at the rear of the building, or via laneways. On corner sites, access should be provided from secondary streets provided the entrance facilities are well integrated into the rest of the frontage.*

Comment

All vehicular access for the development is provided from the laneway to the rear of the site.

5. *Servicing, loading and waste collection must be accommodated internally within the building.*

Comment

Servicing, loading, unloading and waste collection are capable of and proposed to be accommodated internally within the development. Forward entry and exit for vehicles is achieved.

6. *Ensure that residential flat buildings and mixed use buildings have a communal Garbage and Recycling Room located in the basement of the building. This area should:*

- a. *be capable of accommodating Council's required number of standard waste containers and should be designed in accordance with Council's Technical Specification – Waste Minimisation and Management*
- b. *provide additional space for the storage of bulky waste, such as clean up materials awaiting placement at the kerb, or recycling.*

Comment

Waste and recycling chutes are provided within the development. Sufficient waste storage areas and appropriately designed waste collection spaces are provided within the development. Further discussion is provided in Part 3.12 – Waste Minimisation and Management of this report.

7. *Provide a system for the transportation of garbage from each floor level to the Garbage and Recycling Room(s) such as a garbage chute system.*

Comment

Waste and recycling chutes are provided within the development. Sufficient waste

storage areas and appropriately designed waste collection spaces are provided within the development. Further discussion is provided in Part 3.12 – Waste Minimisation and Management of this report.

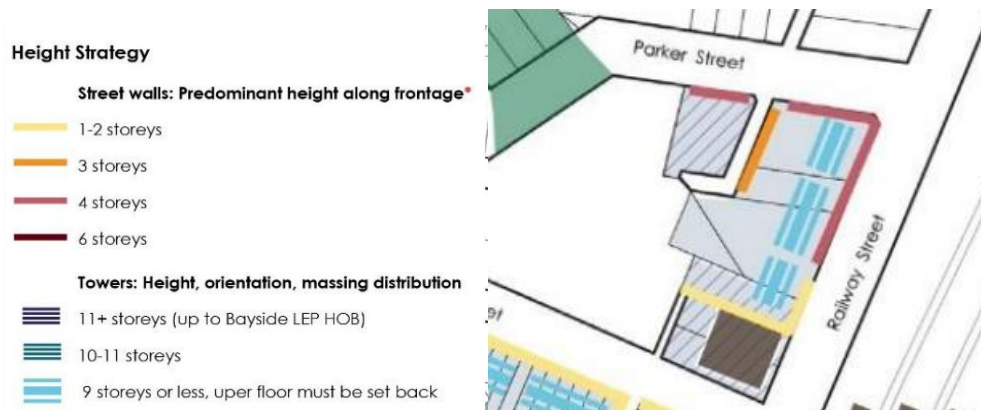
8. *Developments are required to have all overhead cables on all frontages of the development site relocated underground (this includes all electricity cables, telecommunication cables etc.). Redundant poles should be removed, and underground street lighting columns should be installed. The under grounding and installation of street lighting is to be at no cost to Bayside Council.*

Comment

Conditions of consent have been imposed to require the undergrounding of existing overhead power lines along the Railway and Parker Street frontages of the site.

9. *Built Form (9 storey)*

- a. *4 Storey Street Wall to Railway and Parker Streets*
- b. *3 Storey Street Wall to rear laneway*
- c. *1-2 Storey Street Wall for southern portion of frontage to 83-85 Railway Street portion of site.*
- d. *Upper tower levels to be setback minimum 3m above street wall*



Excerpt from BDCP 2022

Comment

- a. A four (4) storey street wall is provided to Railway and Parker Streets. The proposal complies with this requirement.
- b. The proposal provides two storey terrace style housing fronting Heston Lane for a small portion of the site, with a tower form above.

Whilst the tower form above is not setback beyond the front alignment of the terrace style housing, the differentiation of materials proposed i.e. use of face brick for the lower portion of the development and concrete walls for tower form above provide appropriate architectural relief and expression.

The limited width and extent of this portion of the development further minimizes its bulk and scale to Heston Lane. In this regard the proposal is not unreasonable

as designed.

- c. The proposal seeks to retain the existing two storey façade of 'Kadwell Chambers' at 83-85 Railway Street and construct a tower form above, recessed 4.7m from the Railway Street frontage.

It is reiterated that the aforementioned aids in providing a sympathetic transition and design response between the proposed development and the existing southern heritage item known as the '*Guild Theatre*'. The proposal complies with this street wall requirement of the DCP.

- d. With regards to the panel comment "*the northern facade upper level balcony setback has a minor non-compliance*" it is noted that the DCP requires levels 5 and above fronting Parker Street to be setback 3m from the Parker Street boundary. Whilst the building form adheres to this 3m setback balconies protrude 1.5m into this setback. The assessing officer was of the view that the proposed minor variation is not unreasonable given the location of the site at the junction of Parker and Railway Streets. The design as proposed allows the development to address its corner location.

Section 4.15(1)(a)(iiia) – Planning Agreements under Section 7.4 of the EP&A Act

Regional Panel Operational Procedures require Council to detail any Planning Agreement (PA) and its relationship to the application under assessment.

In accordance with the provisions of Part 7 – Infrastructure Contributions and Finance, Subdivision 2 – Planning Agreements, of the EPA Act 1979 (as amended), an executed planning agreement applies to subject site and incorporates the following community benefits.

On 26 November 2018 a Planning Agreement was executed between Bayside Council and the owner/developer relating 75 – 81 Railway Street, Rockdale (*Lot 101 DP771165, Lot 3 DP 82942, Lot 1 DP455421, Lot 1 0P912313*). The Planning Agreement does not include land related to the portion of the site known as 83-85 Railway Street, Rockdale, shaded in red below.



Site Boundaries

The Planning Agreement states.

- i. Not less than 9,394sq/m GFA.
- ii. Where GFA >9,394sqm - Extension of Hesten Lane southwards including related infrastructure (retaining walls, lighting, landscaping, signage) and 8 x car parking spaces on approximately 342sq/m of land, to facilitate a proposed future pedestrian

connection from Parker to Walz Street. Dedication of car parking land to Council in stratum. (*outlined in pink below*)

- iii. Where GFA >10,300sqm - Streetscape improvement works (*outlined in Green below*)
- iv. If the Development is between 9,393sq/m and 10,299sq/m of Gross Floor Area, the estimated value of the Works and other contributions as per the agreement are \$900,000. If the Development is 10,300sq/m or above of Gross Floor Area, the estimated value of the Works and other contributions under the proposed Planning Agreement is \$1,799,000.
- v. S7.11 and 7312 contributions are not payable for development upon 79-81 Railway Street, given the above works agreed to.

The proposed development incorporates a gross floor area of 12,907.85sq/m, thus land dedication, public works, streetscape improvements and additional contributions are necessitated by the planning agreement.



Excerpt from Planning Agreement

4.4 Section 4.15(1)(a)(iv) - Provisions of Regulations

The provisions of the Regulations have been considered in the assessment of this application. The DA has included sufficient information to enable an accurate and complete assessment of the application. Requirements relating to demolition have been considered and the proposal has been conditioned accordingly.

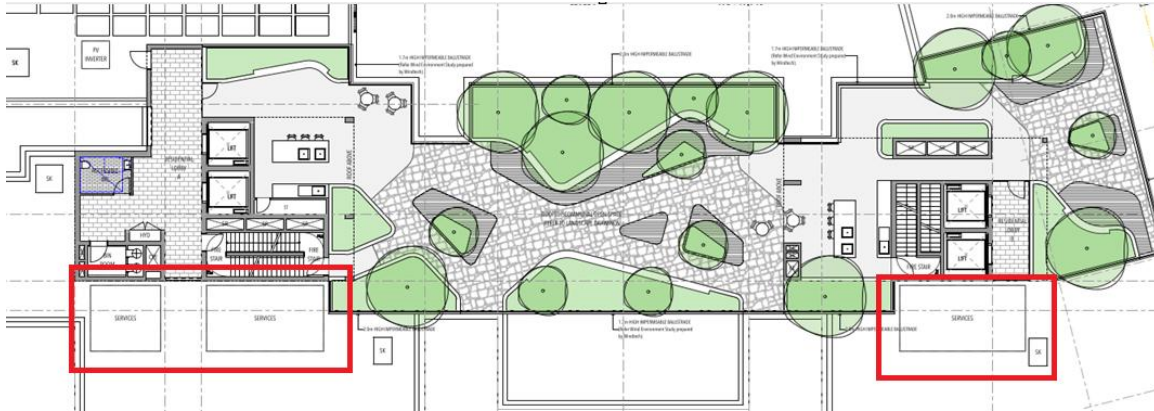
Council has liaised with relevant authorities as required. i.e. Sydney Airport Corporation, Sydney Trains etc. The application was accompanied by a '*design verification statement*' from a registered architect confirming that the design was directed by a registered architect and that it achieves the design quality principles set out in Chapter 4 of SEPP Housing 2021.

Pursuant to clause 69 of the Regulations building works must be carried out in accordance with the requirements of the Building Code of Australia. The proposal has been conditioned accordingly to ensure compliance with the requirements of the BCA. Based on the above, the proposal is consistent with the requirements of the Regulations and is acceptable in this regard.

4.5 Section 4.15(1)(b) - Likely Impacts of Development

Roof Plant

Plans indicate the provision of three designated service areas circled in red below, at level 9 adjoining the eastern periphery of the communal open space area. Communal services proposed in this location are carpark exhaust, stair press, lobby relief, kitchen exhaust, garbage exhaust etc. Louvred aluminum screens to 52RL are proposed to visually obscure such services.



Services at Level 9

Services are recessed a minimum of 8m from the Railway Street property boundary of the site and as such will not be visually discernible from the public domain.

Construction

Temporary construction-related impacts do affect amenity and this is partially inevitable from demolition, excavation and constructing new works. However, these are not anticipated to unduly affect surrounding businesses or residents, with some localized impacts of relatively likely short duration. These construction-related impacts are able to be addressed by standard conditions of consent, as recommended, to reasonably manage and mitigate impacts, while allowing rational and orderly construction.

4.6 Section 4.15(1)(c) - Suitability of the Site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal, throughout this report. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. Appropriate conditions of consent are proposed to further manage and mitigate impacts on neighbouring properties and the environment. Subject to the recommended conditions, the proposal is suitable for the site.

4.7 Section 4.15(1)(d) - Public Submissions

The proposal was notified in accordance with Bayside DCP 2022. A total of 22 submissions were received. The following issues were raised.

Adverse traffic impacts on Railway Street, Parker Street and Hesten Lane / Development do not take appear to into consideration the impact to transportation for those currently using and moving around in the community.

Comment

A traffic report prepared by a suitably qualified traffic engineer was submitted with the application. This provided a detailed assessment on the traffic generation likely to arise given the proposed development.

The proposed development incorporates surplus car parking spaces for the commercial and residential components of the development, this will assist in reducing car parking demand

off street. Additionally as part of the application a minimum of 8 public car parking will be provided to the rear of the site along Heston Lane for community use.

Pedestrian safety / Significant and detrimental impact on St Josephs Primary School and Church / Pedestrian Safety Concerns, as Parker Street is main access for students and pickup/drop off to the school / During development there will be disruption in Railway and Parker Streets impacting on safety of students to school/ The anticipated increase in vehicular traffic in Parker St during school drop-off and pick-up hours, as well as during church services and major church events, compounded by the already busy roundabout at the corner of Parker St / Railway St, and the bus turning area, poses a substantial risk of accidents / This situation presents a grave danger, particularly considering the presence of numerous children from the school, as well as the general population of school children, university students, and working people from Rockdale, Banksia, and surrounding areas. Rockdale Station serves as a transfer point for commuters, including the elderly / Following construction increase in cars / congestion will cause danger to pedestrians / Adverse impact upon pedestrian safety especially school children to St Josephs Primary School

Comment

A construction site management plan has been conditioned to be required prior to the issue of the Construction Certificate. This document will be assessed by the certifier to ensure disturbance to the local surrounding road network is minimised.

A traffic management plan is also to be provided as a part of the construction management plan. This is required to incorporate methods of managing traffic flows during the construction process.

Council Engineers have reviewed the submitted traffic report and confirmed that traffic generation for the site is acceptable and results in an overall net reduction of traffic generation during the peak morning and peak evening.

Adverse traffic and pedestrian impacts at current roundabout (Corner Parker St & Railway St) / No-one looks before crossing in this location / Roundabout is used as a Bus turning area and very frequently buses do not get around the roundabout in one attempt

Comment

The development will not impact the current roundabout at the intersection of Parker Street and Railway Street. No changes are proposed to the existing pedestrian crossing facilities at this intersection.

Parker Street is the access point for emergency vehicles for the school grounds which will be compromised during and after construction

Comment

The proposal is conditioned to require the preparation and submission of a Construction Site Management Plan prior to the issue of the Construction Certificate. The management plan will ensure construction traffic is managed at all times and measures are in place to ensure public safety is not compromised.

Adverse car parking impacts on street as existing / Adverse car parking impacts in Walz Street as existing / Insufficient car parking in Walz Street / Adverse car parking impacts on Oakura Street which is non timed

Comment

The proposal has been designed to accommodate the required carparking for the development on site and is within close proximity of a bus and rail interchange with a range of regular and frequent bus and train services.

The proposal further incorporates an additional 8 public car parking spaces within the expanded and improved Heston Lane, which will be available for use by the general public. The proposal is not considered likely to result in adverse on street car parking impacts.

Insufficient car parking provision on site / If car parking for units is not adequately provided, this will add to congestion and parking issues which will be problematic during school pick-up and drop-off times.

Comment

The proposal complies with the car parking requirements applicable to the development.

Noise from construction will be a hindrance to children learning and the dust and debris will be a health concern / Dust and debris from the construction of this development will pose a significant health concern such as increased development of and/or exacerbation of respiratory illnesses.

Comment

Conditions of consent require the preparation of a construction site management plan prior to the issue of any construction certificate on site. Such a plan is to clarify waste, dust and noise control measures proposed during construction.

Additional conditions have been imposed which ensure that construction noise activities comply with the NSW Environmental Protection Authority's Interim Construction Noise Guidelines and the Protection of the Environment Operations Act 1997 and that all possible steps are taken to silence construction site equipment.

Conditions further require that any potential windblown dust from stockpile and construction activities be minimised by either spraying water in dry windy weather, covering of stockpiles, and/or fabric fences.

Proposed building height will overshadow the children's playground / Overshadowing impacts existing buildings and church

Comment

St Josephs Primary School and church buildings referred to by the objector are located to the north west of the site and are not unreasonably overshadowed by the proposed development.

Site should be used for more public amenities/shops not residential units

Comment

The site is privately owned and the proposal is permissible within the zone.

Adverse privacy and overlooking impacts to 2-4 Parker Street

Comment

The matter of building separation, privacy and overlooking impacts have been addressed previously in this report.

Overshadowing to 2-4 Parker Street / Development should be setback to Parker Street and Heston Lane to allow sun and air to existing buildings

Comment

The matter of building separation has been addressed previously in this report. Solar access and access to natural ventilation to 2-4 Parker Street units is not adversely affected beyond the minimum levels required to be retained by the Apartment Design Guide.

Residents object to overshadow diagrams to 2 Parker Street and consider them inaccurate

Comment

Shadow diagrams provided have been examined and revised given modifications made to the height of the proposal. Shadow diagrams are not deemed to be inaccurate. 2-4 Parker Street is to the north west of the site.

Excessive bulk, scale, height and massing on site / Overdevelopment of site / >10 storeys is too high / Not desirable for future character of area / Dwarfs other existing buildings / Excessive height / Proposal is too high and would impact on flight path for aircraft above / Object to height of development and number of storeys

Comment

An assessment of height, bulk, scale, future desired character, number of storeys and potential impact on flight path has been considered previously in this report. The proposal is satisfactory in this regard.

Sustainability of development is queried

Comment

Sustainability has been addressed previously in this report. The proposal is satisfactory with respect of sustainability measures to be implemented on site.

Object to removal of existing trees and native vegetation on site

Comment

The matter of tree / vegetation removal has been addressed previously within this report.

Devaluation of 2 Parker Street

Comment

There has been no evidence submitted to substantiate this claim.

Reputation of developer is in question given residents cannot identify previous developments by developer

Comment

This objection is beyond the scope of this assessment.

Proposal states this is a 'transient area' residents challenge this statement

Comment

This objection bears no relevance to the assessment of this application against relevant legislative criteria.

Insufficient local infrastructure and amenities ie. Supermarkets, GP's, schools to accommodate the proposed development.

Comment

The proposal is located within the Rockdale Town Centre and opposite the Rockdale Train and Bus interchange. Numerous existing facilities are located within close proximity of the subject site, including but not limited to good public transport connections, banks, medical services, grocery stores, food and drink premises, chemists, schools i.e. St Josephs Primary, Rockdale Primary and the like. The assessing officer does not concur with the objectors statement.

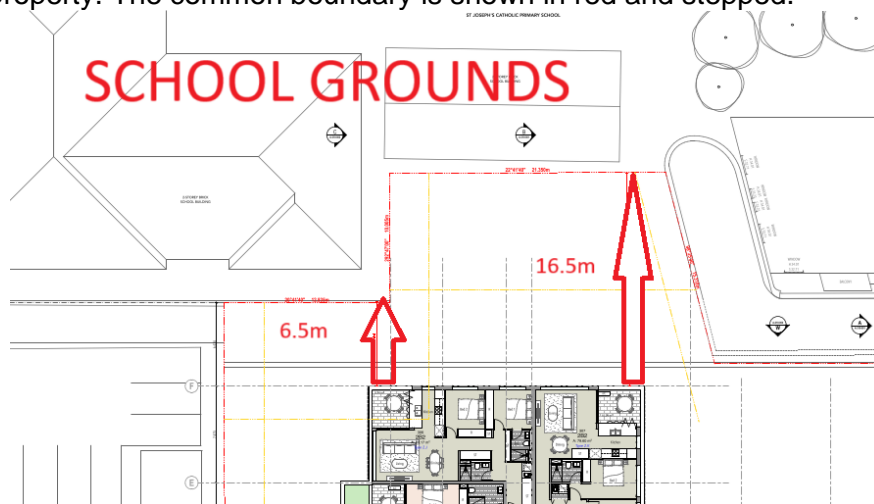
Overlooking into St Joseph School playground / Privacy of students / Proposal gives future residents a clear view of children / Potential residents watching them through their balconies and windows / Residents will be able to make contact with children (such as waving to them, holding up signs, and in extreme circumstances exposing themselves etc.), all of which is unacceptable

Comment

An aerial outline of the grounds of St Joseph School is depicted below. The external play area of the school is clearly identifiable. The site is located to the east of the school at 75-85 Railway Street.



The proposed building form is depicted below. A portion of the proposed development is positioned within 6.5m – 16.5m at the closest point, to the shared common boundary with the school property. The common boundary is shown in red and stepped.



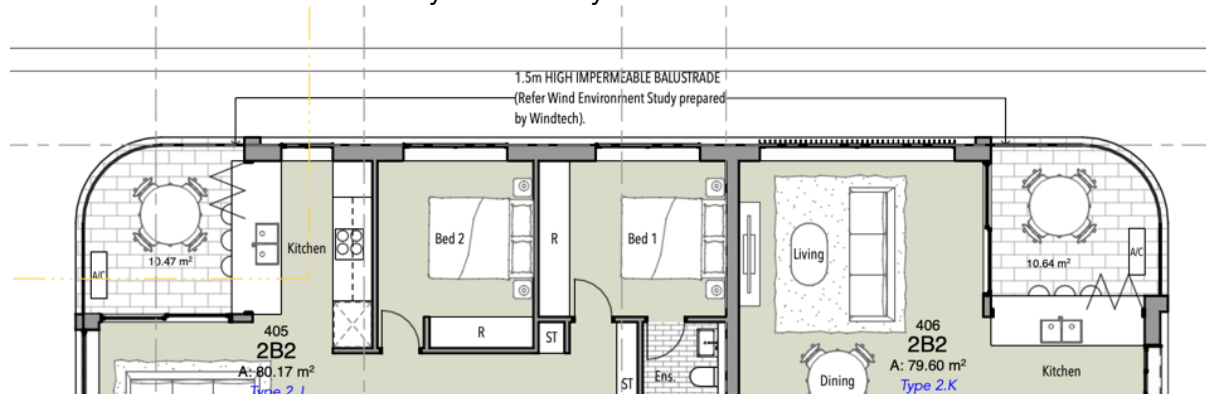
A total of 6 units are positioned within 6.5m of the common boundary with the school, adjoining an existing two storey school building which incorporates elevated mechanical structures at rooftop. Such units at level 3 - 8, incorporate west facing bedroom windows and balconies oriented south west.

The existing external school playground is positioned a further 20m west from the common boundary with the site, beyond the two storey school building. Accordingly there is a distance of 26.5m from the building/balcony edge to the existing playground.

A total of 6 units are also located within 16.5m of the common boundary also adjoin an existing two storey school building. Such units at level 3 and above incorporate west facing living room windows and balconies which are oriented to the north west.

As noted above, the existing external school playground is positioned a further 10m west from the common boundary with the site, beyond the two storey school building. Accordingly there is a distance of 26.5m from the building/balcony edge to the existing playground.

Further to the above, all subject units from level 4 and above, are provided with 1.5m high impermeable balustrading for wind amelioration, this will obscure any outlook westward and orient users outlook in a northerly or southerly direction.



Given the above, it is not considered that the proposal is unreasonable, nor likely to result in adverse privacy or overlooking impacts onto the existing school playground, specifically given the height and distance of balconies and windows from the ground level playground.

4.8 Section 4.15(1)(e) - Public Interest

The proposal has been assessed against the relevant planning instruments and controls applying to the site, also having regard to the applicable objectives of the controls. As demonstrated in this assessment of the development application, the proposal is suitable for the site and has acceptable environmental impacts, subject to recommended conditions.

Impacts on adjoining properties have been considered and addressed. As such, granting approval to the proposed development will be in the public interest, subject to the recommended conditions which help manage and mitigate environmental or potential environmental impacts.

5. Section 7.11 – Development Contributions

The redevelopment of the site will increase demand for public amenities within the area, and in accordance with Council's Section 7.11 Contributions Plan. Accordingly, development applications which increase the residential density of the site are subject to conditions of consent which require the payment of contributions.

The planning agreement executed for on 26 November 2018 for 75 – 81 Railway Street, Rockdale (Lot 101 DP771165, Lot 3 DP 82942, Lot 1 DP455421, Lot 1 0P912313) provides for public domain upgrades in lieu of s7.11 contributions.

It is noted however that the executed planning agreement does not apply to the 83-85 Railway Street portion of the site and thus s7.11 contributions for this portion of the site have been levied. Contributions have been levied for 8 x 2 bedroom units of which occupy this portion of the site. The proposal has been conditioned accordingly to ensure contributions reflect the increase in density on site.

6. Housing and Productivity Contributions

The Housing and Productivity Contribution was introduced on 1 October 2023. Contributions will go towards the provision of state and regional infrastructure needed to unlock development and support forecast growth, such as roads, parks, hospitals and schools.

Given the executed planning agreement excludes the applicant from the payment of the HPC on 75-81 Railway Street, the proposal has been conditioned to require payment of the

HPC on 83-85 Railway Street which does not form part of the executed Planning Agreement.

7. REFERRALS AND SUBMISSIONS

7.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in the Table below.

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Sydney Airport Corporation Limited	<i>Bayside LEP 2021</i> Obstacle Limitation Surface	Nil objection subject to imposition of conditions.	Yes
Sydney Trains	<i>SEPP (Transport and Infrastructure) 2021</i> s2.99 - Excavation in, above, below or adjacent to rail corridors	Nil objection subject to imposition of conditions.	Yes
Ausgrid	<i>SEPP (Transport and Infrastructure) 2021</i> s2.48 - Determination of development applications - other development	Nil objection subject to imposition of conditions.	Yes
Sydney Water	<i>Sydney Water Act 1994</i> S78 - Consent authority to notify Corporation of development and building applications	Nil objection subject to imposition of conditions.	Yes
Integrated Development (S 4.46 of the EP&A Act)			
Water NSW	<i>Water Management Act 2000</i> s90(2) water management work approval	Nil objection subject to imposition of General Terms of Approval	Yes

7.2 Council Referrals

The development application has been referred to various Council officers for technical review as outlined below.

Officer	Comments	Resolved
Environmental Scientist	Nil objection subject to imposition of conditions.	Yes (conditions)

Development Engineer	No objections subject to recommended conditions	Yes (conditions)
Landscape	No objections subject to recommended conditions	Yes (conditions)
Waste	No objections subject to recommended conditions	Yes (conditions)
Heritage	No objections subject to recommended conditions	Yes

8. CONCLUSION

The proposed development has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* including relevant environmental planning instruments and Bayside Development Control Plan 2022.

The proposed development is a permissible land use within the zone with development consent. In response to the public notification, 22 submissions were received, with issues raised considered in detail within this assessment report. Matters raised in submissions have been discussed and addressed in this report and do not warrant refusal of the proposal.

The proposal is supported for the following main reasons:

- The proposal is permissible within the zone subject to development consent and satisfies the zone objectives.
- The proposal demonstrates design excellence as required by the provisions of 6.10 – Design Excellence of Bayside LEP 2021 and the proposal was supported by the Design Excellence Panel.
- The proposed development generally complies with relevant planning instruments, albeit with a variation to the Height of Building standard which is deemed acceptable in this instance, having regard to the justification provided within this report.
- The proposal is of an appropriate height, bulk, scale and form for the site and is consistent with the emerging desired future character of the area as envisaged by Bayside DCP 2022.
- The proposal is an appropriate response to the streetscape and topography of the site and will not result in any significant adverse impact on the environment or the amenity of nearby residents or properties.
- The proposed development is a suitable use for the subject site within the context of the Rockdale Town Centre and its approval is in the public interest.

9. RECOMMENDATION

- a) That the Sydney Eastern City Regional Planning Panel, exercising the functions of Council as the consent authority pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* agrees with the applicant's written request justifying the contravention to clause 4.3 – Height of Building development standard of the Bayside Local Environmental Plan 2021. The Panel is satisfied that the applicant's written request has addressed the matters required to be demonstrated by clause 4.6 of the Bayside Local Environmental Plan 2021 and has established that compliance with the development standard would be unreasonable or unnecessary in the circumstances and that sufficient

environmental planning grounds have been provided to justify the contravention of the development standard.

- b) That the Sydney Eastern City Regional Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, determine Development Application DA-2023/361 for Integrated Development – Retention and modification to existing facade at 83-85 Railway Street, demolition of all other structures, construction of a 7-9 storey mixed-use development comprising of ground floor commercial, 129 residential units, basement parking and associated landscaping, widening of Heston Lane to rear and provision of footpath to a portion of Heston Lane at rear of site at 75-85 Railway Street Rockdale by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Architectural Plans
- Attachment C: Landscape Plans
- Attachment D: Clause 4.6 Request