

# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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| <b>Application Number:</b> | DA-2020/12                                                                                                                                                                                                                                                                                                                                       |
| <b>Date of Receipt:</b>    | 16 January 2020                                                                                                                                                                                                                                                                                                                                  |
| <b>Property:</b>           | 21 - 25 King Street, ROCKDALE (Lot 331 DP 623227)<br>29 King Street, ROCKDALE (Lot 311 DP 601249)<br>31 King Street, ROCKDALE (Lot 1 DP 1093152)<br>33 King Street, ROCKDALE (Lot 29 Sec1 DP 1547)<br>35 King Street, ROCKDALE (Lot 28 Sec1 DP 1547)<br>17 King Street, ROCKDALE (Lot A DP 444006)<br>19 King Street, ROCKDALE (Lot B DP 444006) |
| <b>Owner(s):</b>           | Baia Lara Pty Ltd<br>Bayrock Pty Ltd<br>Brigantine Pty Ltd<br>Mr Juneyt Adem Cihan<br>Mr Memduh Cihan<br>Ms Catherine Margaret Cross<br>Madlen Pty Ltd<br>Niagra View Pty Ltd<br>Mr Stephen Grant Sharpe<br>Dr Peter Man Leung Tam<br>Ms Virginia Anne Thompson                                                                                  |
| <b>Applicant:</b>          | Zhinar Architects Pty Ltd                                                                                                                                                                                                                                                                                                                        |
| <b>Proposal:</b>           | 17, 19, 21-25, 29, 31, 33 & 35 King Street, ROCKDALE NSW 2216 -<br>Integrated Development - Demolition of existing buildings and<br>construction of an eleven (11) storey mixed use development consisting<br>of 133 apartments, six (6) commercial tenancies and basement car<br>parking with access via Crofts Lane                            |
| <b>Recommendation:</b>     | Refused                                                                                                                                                                                                                                                                                                                                          |
| <b>No. of submissions:</b> | Four (4)                                                                                                                                                                                                                                                                                                                                         |
| <b>Author:</b>             | Patrick Nash                                                                                                                                                                                                                                                                                                                                     |
| <b>Date of Report:</b>     | 26 November 2020                                                                                                                                                                                                                                                                                                                                 |

### Key Issues

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The key issues identified in the assessment of this application are summarised as follows:

Design Excellence: The development is subject to the requirements of the design excellence clause in Rockdale LEP 2011. Accordingly, the proposal is required to deliver the highest standard of architectural, urban and landscape design. The application has been reviewed by the Design Review

Panel on two (2) separate occasions. On both occasions, the DRP have raised significant concerns with the design of the proposed development and given the issues identified do not consider it to satisfy clause 6.16 of the LEP.

Height/Staging: The proposed development seeks to utilise the bonus height provisions in accordance with clause 4.3(2A) which takes the allowable height from 28m up to 40m on the basis of a total overall site area that is greater than 1500m<sup>2</sup>. The proposal incorporates a staging strategy (Block A and Block B) to develop two buildings. There are potential planning issues should Block B (stage 2) not occur, given that the separate site areas of block A and B are both below 1500m<sup>2</sup> required by the LEP.

Solar Access/overshadowing: There are two (2) existing residential flat buildings directly south of the subject site (on the opposite side of Crofts Lane) which will experience significant additional overshadowing impacts.

Setbacks and building separation: The proposed development does not comply with the ADG separation requirements as well as the site specific setback/massing requirements set out within the DCP. It is considered that the proposed development has not been scaled to support the desired future character with appropriate massing and spaces between buildings. The site does not have a maximum allowable FSR. As a result, the planning controls relating to setbacks and building depth are all the more important in this instance because they effectively create an envelope/footprint.

Tree removal: The proposed development involves removal of a large existing Eucalyptus tree on the edge of the site at George Street. The removal is not supported given the condition of the tree and its contribution to the public domain. Retention of the tree would provide opportunity for better transition to the R2 zone on the opposite side of George Street.

## Recommendation

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A. That the Sydney Eastern City Planning Panel, exercising the functions of the Council as the consent authority REFUSE development application DA-2020/12 for demolition of the existing buildings and construction of an eleven (11) storey mixed use development consisting of 133 apartments, six (6) commercial tenancies and basement car parking with access via Crofts Lane at 17-35 King Street, Rockdale, pursuant to s4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not exhibit design excellence and does not satisfy clause 6.16 of Rockdale Local Environmental Plan 2011.
2. Pursuant to the provisions of Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy clause 6.12 - design excellence of the Draft Bayside Local Environmental Plan 2020.
3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application does not articulate a clear strategy as to how the development will be undertaken on a single lot as required by clause 4.3(2A)(a) of Rockdale Local Environmental Plan 2011.
4. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development does not demonstrate that adequate regard has been given to the Design Quality Principles and the objectives specified in the Apartment Design

Guide contrary to clause 30(2) of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. The proposed development is inconsistent with Parts 2F, 3B, 3E, 3F, 4D and 4O of the Apartment Design Guide and does not accord with the following Design Quality Principles: Context and neighbourhood character, Built form and scale, Density, Sustainability, Landscape, Amenity and Aesthetics.

5. The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment. The proposal provides a built form response that will result in unreasonable amenity impacts upon neighbouring properties. In particular, the adjacent residential apartments to the south.
6. The proposed removal of the Eucalyptus tree is inconsistent with the requirements of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and Part 4.1.7 of Rockdale Development Control Plan 2011 which requires existing significant trees to be incorporated into proposed landscape treatments.
7. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the requirements of the Rockdale Development Control Plan 2011, including: Part 4.1.1 (Views and Vistas), Part 4.1.7 (Tree Preservation), Part 4.2 (Streetscape and Site Context), Part 5.2 (Residential Flat Buildings- Building Design) and Part 7.5 (Rockdale Town Centre).
8. Pursuant to the provisions of Section 4.15(1)(c) the site is not considered to be suitable for the development as proposed.
9. Pursuant to the provisions of Section 4.15(1)(e) and having regard to the non-conformity to the planning controls and issues raised in the submissions, the proposed development is not in the public interest.

B. That the submitters be notified of the Panel's decision.

## Background

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### History

A summary of the history of the subject DA is provided below:

16 January 2020 - DA-2020/12 was submitted to Council.

30 January 2020 to 2 March 2020 - The application was notified in accordance with the requirements of Rockdale DCP 2011.

2 March 2020 - The application was reviewed by the Design Review Panel who raised significant concerns with the proposed development.

25 May 2020 - The applicant provided a response to the Design Review Panel report/minutes.

26 June 2020 - Referral response (request for information) from Council's Engineer was sent to the applicant.

29 June 2020 - Council requested the applicant to provide further information in order to assess the overshadowing impacts of the development.

16 July 2020 - Council issued a letter to the applicant raising various concerns with respect to: Comments made by the DRP, non-compliant building setbacks, building separation, Apartment design guide variations, proposed staging, relationship to 11-15 King Street, various engineering and landscaping/trees.

5 August 2020 - A meeting was held with the applicant and Council to discuss the issues raised.

3 November 2020 - The applicant provided a comprehensive amended plan and further information submission. These plans are relied upon for assessment in this report. The key changes made to the proposal are summarised as follows:

- Modifications to basement layout and design, including provision of a single vehicular access point on the rear lane
- Commercial tenancy included at the rear of ground floor Block B (Stage 2)
- Pedestrian through link at the western end of Block B (Stage 2)
- Landscaping strip (2m) to George Street frontage
- Modifications to apartment layouts
- Stepped building form in the south eastern corner facing the rear lane
- Changes to the rear setbacks/separation in portions of the building
- Deletion of five (5) dwellings within Block B (Stage 2) resulting in a lower built form
- Externally, there are changes to the podium forms and building expression

19 November 2020 - The amended proposal was reviewed by Council's Design Review Panel.

## Proposal

The proposed development, in its amended form, is for demolition of the existing buildings and construction of an eleven (11) storey mixed use development consisting of 133 apartments, 6 commercial tenancies and basement car parking with access via Crofts Lane. The proposed development is comprised of 16x1 bed, 102x2 bed and 15x3 bed apartments.

A public through site link is proposed on the ground floor (western end) of the Stage 2 (Block B) development. This facilitates pedestrian access from King Street to Crofts Lane, and vice versa.

There are a total of six (6) commercial tenancies proposed. Four (4) of those face King Street, one (1) faces George Street and one (1) faces Croft Lane at the rear. There are three (3) separate roof top communal open space areas provided on Block B:L9, Block B:Rooftop and Block A:Rooftop. The proposed development includes the removal of a large existing tree adjacent to the George Street frontage.

## Staging

The information provided with the application states that *It is anticipated that the development will be constructed in two stages, with Stage 1 (Block A) comprising a building on 27-35 King Street and Stage 2 (Block B) comprising a building on 17-25 King Street.*

Block A and Block B are separated by a solid wall on all levels with the exception of Basement Level 1, where an indicative connection is identified. The information provided with the amended plan submission states that *Right of Way to 17-25 King Street to be provided if project staged*, suggestive that Stage 2 is intended to be on its own lot, hence the Right of Way. The total site area of the lots comprising Stage 1 (Block A) is approximately 1393m<sup>2</sup>. The total site area of the lots comprising Stage 2 (Block B) is approximately 1112m<sup>2</sup>.

The perspectives of the proposed development are re-produced below for reference:



**Figure 1: King Street perspective**



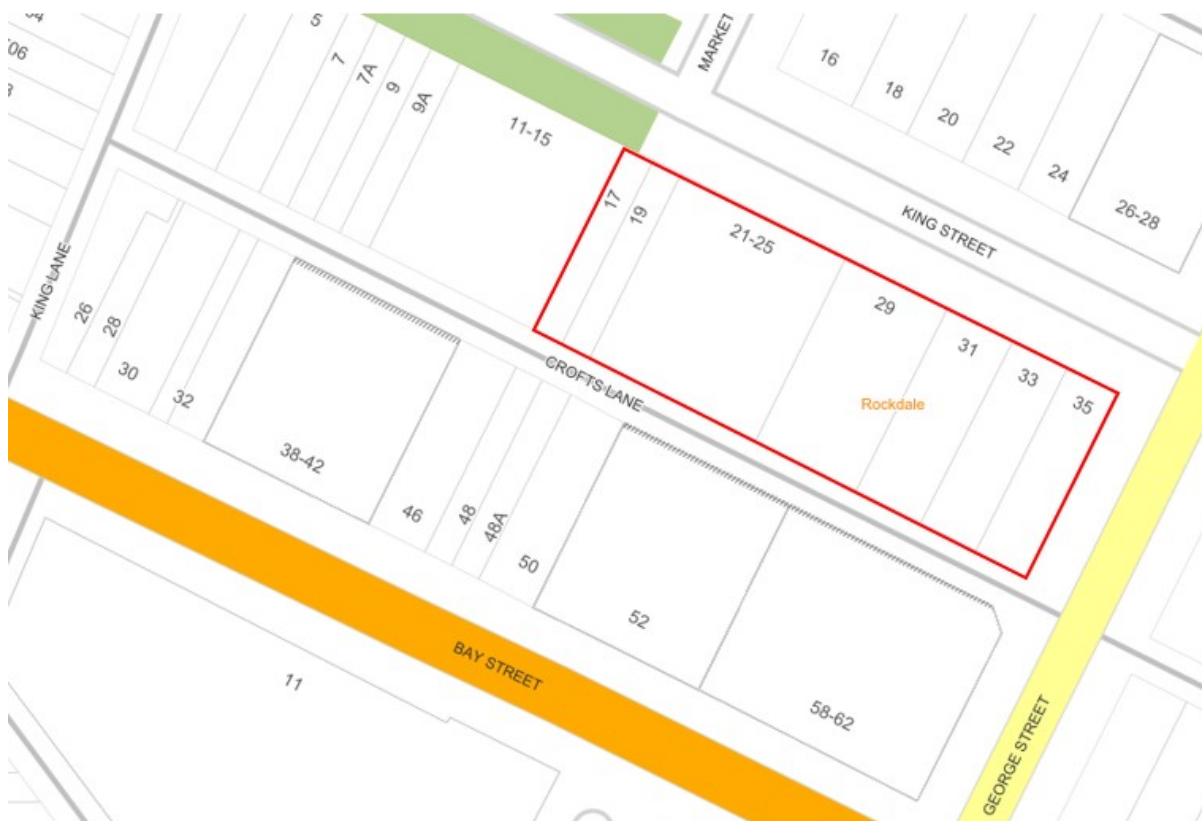
**Figure 2: George Street perspective**

### **Site location and context**

The subject site is located on the southern side of the Kings Street and also has street frontages to George Street and Crofts Lane. The site is known as Nos. 17-35 King Street, Rockdale and comprise seven (7) separate allotments. The subject site is rectangular in shape with boundary lengths of

approximately 82.335m (combined lengths) to the King Street (north), 30.48m to the George Street (east) side boundary, a combined rear boundary length of 82.3m to Crofts Lane (south) and 30.48m to the western side boundary. The site has a total area of 2,509.2sqm. The site falls approximately 4.12m from the southeast to northwest corner. A large Eucalyptus tree is located in the rear yard of No. 35 King Street, in the south-eastern corner of the site. The existing improvements on the subject contain a varying number of uses. There is an existing four level building at 21-25 King Street which contains a range of different tenants. A number of street trees are located along the King Street frontage of the site.

The subject site is located within Rockdale town centre. The immediate surrounding area varies significantly in terms of character. To the east are a number of low density residential dwellings, characteristic of their R2 low density zoning. Along King Street to the west and north are a mixture of building typologies, including a single storey dwelling, various commercial uses, mixed use developments and residential flat buildings of varying scales. To the south, on the opposite side of Crofts Lane are a number of high density residential flat buildings.



**Figure 3: Cadastral of the subject site**



**Figure 4: Subject site (King St western end)**



**Figure 5: Subject site (King St)**



**Figure 6: Subject site looking at the corner of King/George St**

## Statutory Considerations

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

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

#### **S4.46 - Development that is Integrated Development**

The proposed development constitutes Integrated Development and requires approval by the following government Agencies:

- NSW Office of Water - Permit under the *Water Management Act 2000*

The proposal includes excavation works for the basement car parking that will transect the water-table and require temporary dewatering during the construction phase. The proposal is therefore Integrated Development pursuant to Section 91 of the Environmental Planning and Assessment Act 1979, and requires approval from the NSW Office of Water. The NSW Office of Water have issued General Terms of Approval (GTA's) appropriate to this activity. No further concerns are raised in this respect.

#### **S4.15 (1) - Matters for Consideration - General**

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

The following Environmental Planning Instruments are relevant to this application:

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

The applicant has submitted compliant BASIX Certificates for the proposed development. There are

separate Certificates provided for Block A and Block B.

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

### **Clause 104 - Traffic Generating Development**

The proposal is classified as 'traffic generating development' under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007. In accordance with clause 104(3) of the SEPP, Transport for NSW (TfNSW) is required to be notified of the proposed development and any submissions provided by TfNSW are to be considered. In this regard, the proposed development was referred to TfNSW who provided the following comments:

TfNSW has reviewed the development application and provides the following advisory comments for Council's consideration in determining the application:

- TfNSW supports the minimum car parking provision to be provided due to the site's close accessibility to existing high frequency public transport services.
- The intersection of George Street and Crofts Lane is very close to the signalised intersection of Bay Street and George Street. TfNSW recommends that the site undertake a queueing assessment to ensure that the additional trip generation will not impact the surrounding classified and local road networks.
- Parking for building maintenance and removalists is to be provided on site.
- The swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
- The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2018 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway.
- Bicycle Parking should be provided in accordance with AS2890.3.
- All vehicles are to enter and leave the site in a forward direction.
- All vehicles are to be wholly contained on site before being required to stop.
- The proposed development will generate additional pedestrian movements in the area. Pedestrian safety is to be considered in the vicinity.
- All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.
- A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.
- A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre (TMC) for any works that may impact on traffic flows on Bay Street and Princes Highway during construction activities.

Comment: No further concerns are identified in respect of the above.

## **State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) applies to the proposal. The site contains trees that are subject to approval by Council under clause 4.1.7 of

Rockdale Development Control Plan 2011, conferred by:

- (a) development consent, or
- (b) a permit granted by Council.

The proposed development includes the removal of an existing Eucalyptus tree that is immediately adjacent to the property boundary along George Street (see image below).

An Arboricultural Impact Assessment report prepared by a qualified Arborist has been submitted with the application in support of the removal of this tree.



Council's Tree Management Officer and the Design Review Panel do not support the removal of this tree for the following reasons:

- The tree is within a deep soil area identified in the DCP controls for the site.
- The arborist report does not even consider the possibility of retention of the mature tree. All other avenues of the tree being retained must be exhausted before removal of the tree can be considered.
- The amenity value, ecological significance and visual significance of the tree is high.
- The tree is a remanent species of the area and is significantly old.
- The tree is healthy and very visually prominent in the locality. The image below demonstrates its visibility heading west up Bay Street.



In view of the above, the proposal is unsatisfactory in relation to SEPP (Vegetation in Non-Rural Areas) 2017 and Clause 4.1.7 of the Rockdale DCP 2011.

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

In accordance with the requirements of SEPP 55, a Preliminary Environmental Site Investigation Report has been submitted. The report concludes that the site is suitable for the proposed land use and Council's Environmental Scientist has accepted the recommendations contained within the report as being satisfactory. Therefore, in accordance with Clause 7 (1)(b) of SEPP 55, Council is satisfied that the land is suitable for the purpose for which the development is proposed to be carried out.

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

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

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

The proposal has been referred to the Design Review Panel on two (2) separate occasions. On each occasion, the Panel has raised significant concerns with the design of the development and has not supported the proposal.

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

The proposed development is considered to be inconsistent with the following Design Quality Principles for reasons identified by the Design Review Panel. A summary of the issues identified is provided below:

## Principle 1 – Context and Neighborhood Character

The Panel has raised the following concerns with:

- Retention of the existing large and significant tree on George Street.
- Concerns with the loss of amenity to the existing apartments to the south.
- Concerns that due to its amalgamated size, the site receives a significant height bonus. However any subdivision of the site for phasing purposes removes a number of benefits that this bonus was intended to reward.

The Panel considers the transfer of the deep soil zone from the boundary of George street could be transferred to the area around the existing substantial tree, which should be retained.

The proponent contextualizes the site as a 'gateway site' when in the Panel's view it should be treated as a transition site to the lower R2 zoning to the east, in accordance with the DCP 7.5.2 building form and character – local edge requirement. This would require any built form to be set back above the four storey podium in accordance with the DCP setback controls.

## Principle 2 – Built Form and Scale

The Panel notes that the development constitutes a significant over development of the site, notwithstanding the amendments in the latest submission.

The Panel notes there are no FSR controls applicable to the site and in this circumstance the building envelope controls are the key design criteria which will ensure acceptable amenity and built form are achieved. Where any non compliances are proposed they would have to be on the basis of merit and would have to deliver better impacts to the amenities and public domain. For example the Panel would strongly support some modifications of the built form envelopes along King and George street if the existing significant tree was able to be retained.

The Panel accepts that the street wall along King Street is generally in accordance with the outcome sought by the DCP for Local Core frontages. However there should be a stricter compliance with the 3 metres setback in levels above the fourth storey.

At the corner of King and George Streets the building above the fourth level should be setback in accordance with the DCP above the fourth storey.

The built form on the George Street and Crofts Lane must comply fully with the DCP controls and setbacks and the ADG separation with the building to the south.

## Principle 3 – Density

The Panel considers the floor area of this development to be excessive due to significant impacts on the adjoining residential apartment buildings.

## Principle 4 - Sustainability

The Proponent did not offer any sustainability initiatives and it was pointed out that in the context design excellence provisions of the LEP, sustainability initiatives should be commitments beyond mere

compliance. The Panel recommends commitments for water energy and thermal comfort deliver a high performance than the minimum requirements.

#### Principle 5 – Landscape

The Panel notes the improvements made to the rooftop terraces in the amended plans.

The deep soil area to George Street has a degree of built form that overhangs that area, thus prejudicing the intent of the deep soil area to provide a landscape volume commensurate with the scale and bulk of the proposal. The vertical green walls inserted into the facade are aligned with private open space with a northerly aspect creating maintenance and sustainability problems.

The removal of the significant tree is not supported due to its good health as noted by the arborist and its visual prominence.

#### Principle 6 – Amenity

The Panel considered that the lift and staircase of the eastern most building should be reversed, so that on exiting the lift, one is able to see out - otherwise the window is hidden from view.

Apartment depths should not exceed ADG guidelines. In addition, there are certain apartments which have been extended but have rooms with no identified use.

#### Principle 7 - Safety

The Panel has noted that there have been improvements made including the ground floor tenancy to Crofts Lane.

#### Principle 8 - Housing Diversity and Social Interaction

The proposed mix is acceptable.

#### Principle 9 – Aesthetics

The Panel has raised concerns with the external wall finishes and recommends the removal of the vertical gardens. The Panel also recommends finishes that are natural such as face brick, concrete etc or other finishes that do not require ongoing and regular maintenance.

In view of the above, it is considered that the proposed development does not satisfy the SEPP 65 Design Quality Principles.

#### *c. the Apartment Design Guide*

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

| SEPP 65 – ADG              |                                                                                                                                                                                                         |                                                                                                                                                  |          |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Control                    | Requirement                                                                                                                                                                                             | Proposed                                                                                                                                         | Complies |
| <b>Dwelling Size</b>       | Minimum internal areas as follows:<br>1 bed unit: 50sqm<br>2 bed unit: 70sqm<br>2 bed unit with 2 <sup>nd</sup> bathroom: 75sqm<br>3 bed unit: 90sqm<br>3 bed unit with 2 <sup>nd</sup> bathroom: 95sqm | All apartment sizes achieve the minimum internal area requirements set out within the ADG.                                                       | Yes      |
| <b>Ceiling Height</b>      | Habitable Rooms: 2.7m<br>Non-habitable: 2.4m<br>Mixed Use: 3.3m for ground and first floor                                                                                                              | Floor to floor height for residential levels: 3.05 metres which enables a compliant floor to ceiling height to be achieved.                      | Yes      |
|                            |                                                                                                                                                                                                         | The floor to ceiling heights on the ground floor would exceed the 3.3m guideline.                                                                | Yes      |
| <b>Deep Soil</b>           | Objective 3E-1 requires 7% of the site as deep soil area with minimum dimensions of 6m. This is equivalent to a total of 175sqm                                                                         | A 2m deep soil area is identified adjacent to the George St frontage. However, it is encroached upon (in part) by a building over the top of it. | No       |
| <b>Communal Open Space</b> | 25% of site (627.3sqm)                                                                                                                                                                                  | 696sqm (27.8%)                                                                                                                                   | Yes      |
| <b>Solar Access</b>        | 50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours during mid-winter                                                                                                  | More than 50% of COS on the roof level receives greater than 2 hours of sun due to its location.                                                 | Yes      |
|                            | Living rooms and POS for at least 70% of apartments (and in neighbouring development) to achieve 2 hours between 9am and 3pm                                                                            | 77% (102/133)(applicants figures) of apartments will receive at least two hours of sunlight during June 21 <sup>st</sup> .                       | Yes      |

|                          |                                                                                                                                                             |                                                                                                                    |     |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----|
|                          | A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter. This is equivalent to 20 apartments in this case | 9.7% (13/133) of apartments are south facing and do not receive direct sunlight between 9am and 3pm in mid-winter. | Yes |
| <b>Balcony Sizes</b>     | 1 bed: 8sqm<br>2 bed: 10sqm<br>3 bed: 12sqm                                                                                                                 | All balcony sizes comply with the area requirements.                                                               | Yes |
| <b>Cross Ventilation</b> | At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building.                                                           | 65% of apartments are naturally cross ventilated                                                                   | Yes |
| <b>Storage</b>           | 1 bed: 6m3<br>2 bed: 8m3<br>3 bed: 10m3                                                                                                                     | Storage spaces within the units and rear of the ground floor plan have been identified on the plans.               | Yes |

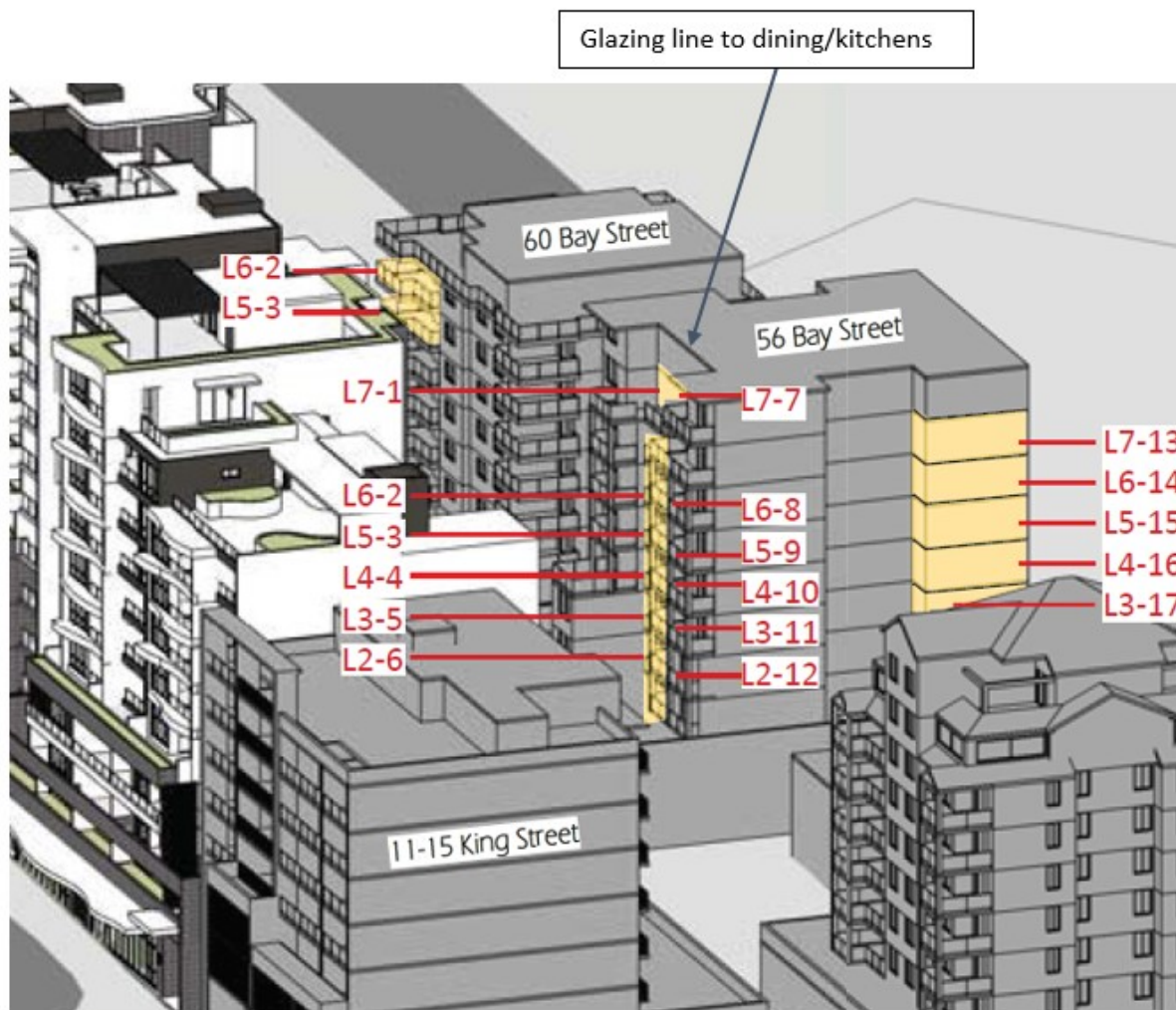
The following matters have been identified as areas of concern/non-conformity:

### **Solar Access/Orientation (Part 3B)**

Part 3B of the ADG states that:

*Living areas, private open space and communal open space and communal open space should receive solar access in accordance with section 3D Communal and public open space and 4A Solar and daylight access. Part 4A specifies that living rooms and private open space of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid winter.*

Comment: The apartment building at No.56 Bay Street currently receives 75% solar access (i.e - 21 out of 28 apartments get the required 2 hours). The applicant's solar analysis identifies that this will be reduced to 19/28 or 67%. However, it appears as though the solar access shown at 3pm is on such an oblique angle that it would not reach the main internal living areas within many of the apartments. Consequently, the number of apartments receiving solar access would be reduced. It is acknowledged that the proposal is not causing a high degree of overshadowing to No.56 Bay Street at 3pm. It is therefore more a question of how the solar access loss for that building could be better minimised at other times of the day.

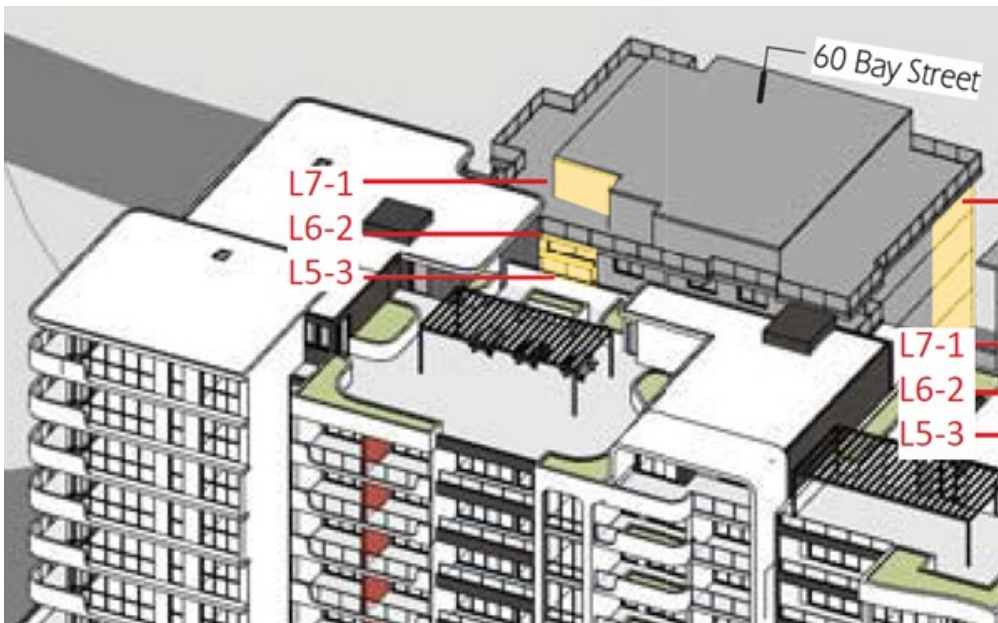


### 3pm solar access diagram

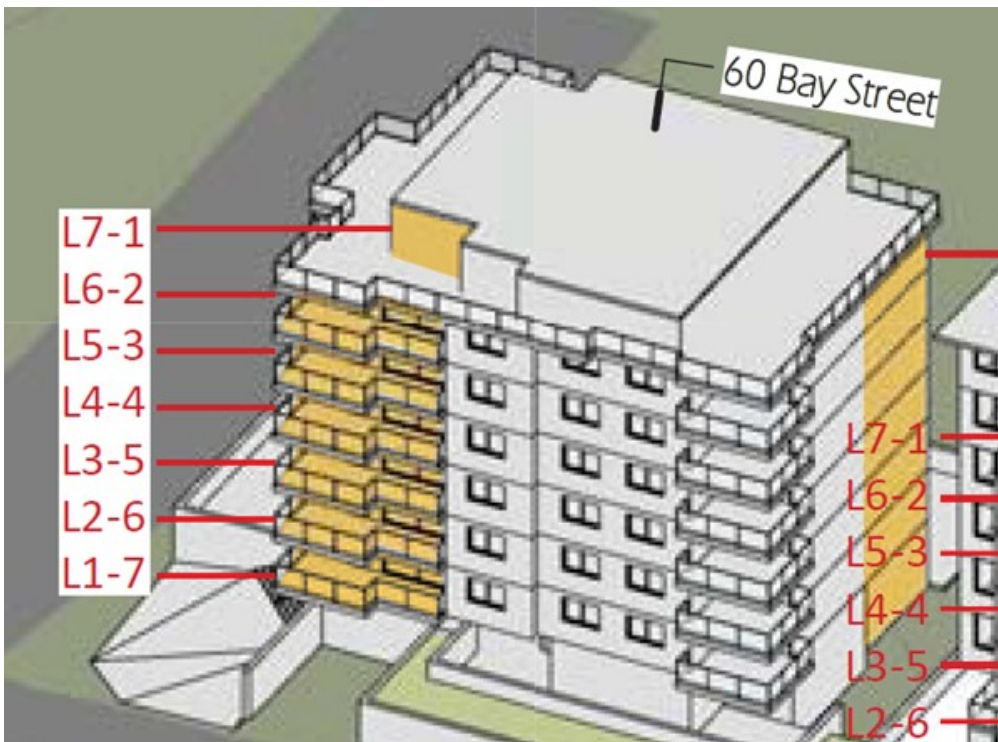
*Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.*

Comment: The apartment building at No.60 Bay Street currently receives 42% solar access (i.e. - 8 out of 19 apartments get the required 2 hours). This would be reduced to 15% (i.e. - 3 out of 19 apartments). The loss of solar access is greater than 20% and therefore does not satisfy the ADG guidelines. There would be some apartments which go from 6 hours solar access to no solar access in mid-winter. The ADG requirements anticipate increased building separation (i.e. - beyond minimums) where the proposal will significantly reduce the solar access of neighbours. For the most part, the proposal does not provide this.

It is noted that the solar access diagrams count the L5 - 3 apartment as receiving solar access. However, it is evident that the balcony and windows to main internal living areas of this apartment would not receive the required sunlight and therefore are unable to be counted.



**Extract of 12pm solar access - proposed. L5-3 is on the 3rd level from the top and does not receive solar access**



**Extract of existing 12pm solar access identifying location of apartment L5 -3**

### **Apartment size and layout (Part 4E)**

The design of the development includes open plan layouts where the maximum habitable room depth is greater than 8m from a window. Greater than minimum ceiling heights can allow for proportional increases in room depth up to the permitted maximum depths, however, the ceiling heights proposed are on minimums.

There are residual areas within some apartments with no identified uses. For example- B2.13, B2.23 etc and A2.12, A2.22 etc.

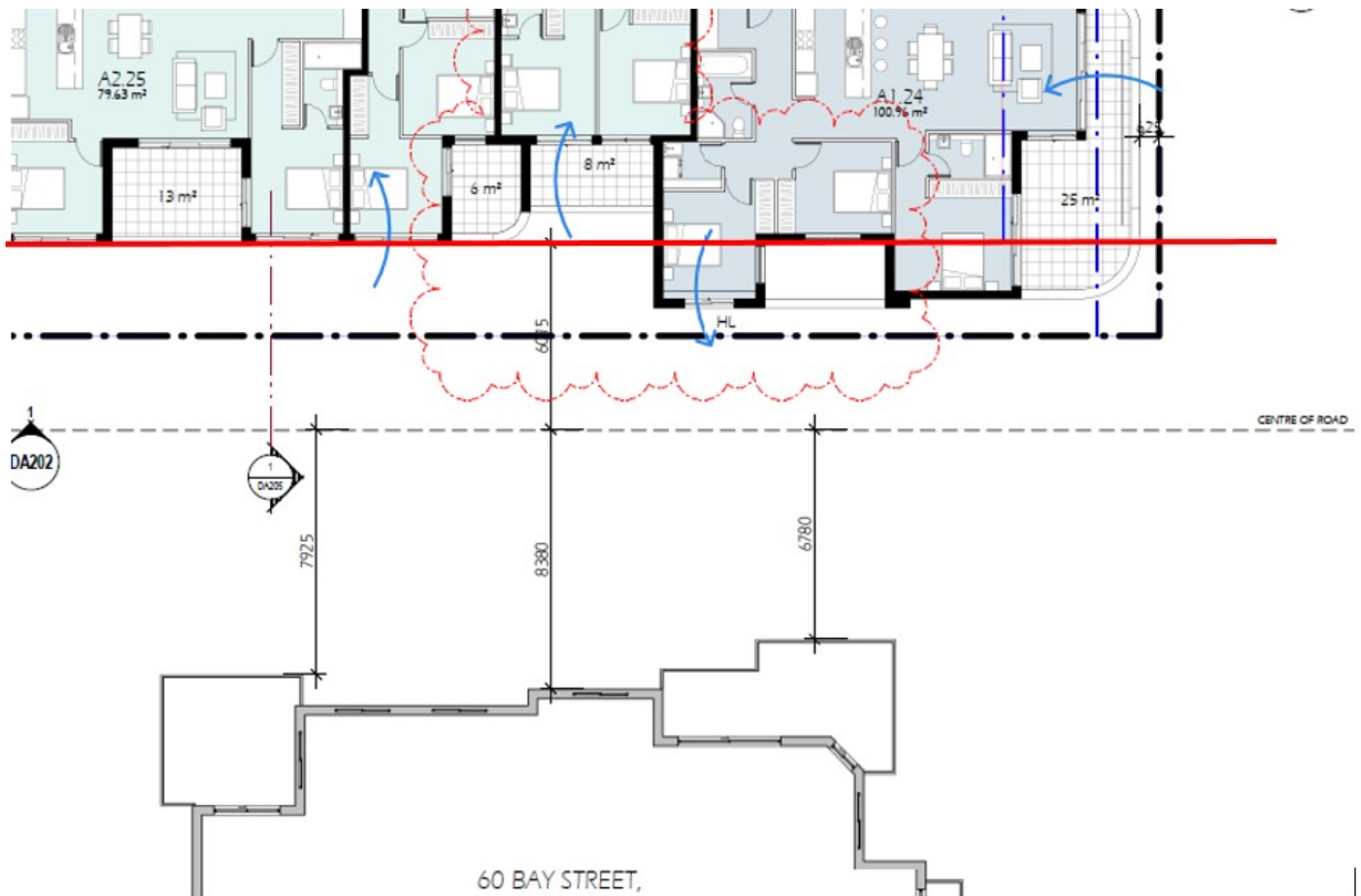
## Building Separation/Visual Privacy (Part 2F and 3F)

There are two (2) existing residential flat buildings at the rear of the site, on the opposite side of the lane. Both buildings have a number of balconies and windows facing north (ie. towards the subject site). The ADG separation distance requirements in Part 2F and 3F therefore apply.

Minimum separation distances for buildings are as follows:

### Up to the 4th storey

The proposed development is generally compliant from ground level to the 4th storey, with the exception of the south eastern corner. The extent of the non-compliance is shown below:



A 1200mm setback to the southern boundary is proposed for 10 storeys which is considered to be insufficient to reasonably regulate the bulk and scale of the development and provide an acceptable interface with the adjacent existing development.

As can be seen from the above, the non-compliance is directly proximate to private open space areas/balconies at 60 Bay Street. Whilst a highlight window is proposed, this does not deal with the visual bulk impacts and results in a compromised outlook as a result of the non-compliant elements.

## Storeys 5 to 8

The proposed development seeks consent for various non-compliances, the extent of which are identified below:



There are some portions of the building where the deficient rear separation is caused by a direct non-compliance with the ADG apartment depth requirements. This is suggestive of an excessive density/overdevelopment. The yield sought and inadequate setbacks is at the expense of residential amenity and appropriate spacing between existing and proposed buildings.

The proposal results in compromised amenity for the proposed bedrooms which have the south facing highlight windows. Part 4A of the ADG states that high level windows are used only as a secondary light source in habitable rooms. There is a different light source proposed on the eastern elevation of these bedrooms, however the bedroom outlook is through a narrow slot due to the blank wall on the balcony, resulting in an outcome that does not achieve design excellence.

## Storeys 9+

It is noted that the RFB's adjoining at the rear extend up to 8 storeys. As such, there is not a direct habitable to habitable interface created. Nevertheless, the rear setbacks on this level are still relevant to the extent that they relate to overshadowing impacts, built form, scale and the like, noting that the Aims of 2F Building Separation in the ADG are:

- Ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings
- Assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook
- Provide suitable areas for communal open spaces, deep soil zones and landscaping.

## Concluding remarks

Given that the proposed development is subject to the LEP design excellence provisions, it is considered that it should at least achieve the minimum ADG compliance expectations, if not exceed

those.

## Rockdale Local Environmental Plan 2011

| Relevant clauses                | Compliance with objectives | Compliance with standard/provision |
|---------------------------------|----------------------------|------------------------------------|
| 2.3 Zone B2 Local Centre        | Yes - see discussion       | Yes - see discussion               |
| 4.3 Height of buildings         | Yes - see discussion       | Yes - see discussion               |
| 6.1 Acid Sulfate Soil - Class 5 | Yes - see discussion       | Yes - see discussion               |
| 6.2 Earthworks                  | Yes - see discussion       | Yes - see discussion               |
| 6.4 Airspace operations         | Yes - see discussion       | No - see discussion                |
| 6.7 Stormwater                  | Yes                        | Yes                                |
| 6.12 Essential services         | Yes - see discussion       | Yes - see discussion               |
| 6.14 Design excellence          | No - see discussion        | No - see discussion                |

### 2.3 Zone B2 Local Centre

The subject site is zoned B2 - Local Centre under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as shop top housing which constitutes a permissible development only with development consent. The objectives of the zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To accommodate population growth through high density mixed use development that complements the role of retail, commercial, civic and cultural premises in the Rockdale town centre.*
- *To create a lively Rockdale town centre with an amenable and pedestrian focused public domain activated by building uses that engage with the street.*

The proposed development is consistent with the objectives of the zone.

### 4.3 Height of buildings

The base LEP height limit for the site is 28m as identified on the Height of Buildings Map.

The site is identified in Area A on the Height of Buildings Map. Clause 4.3(2A)(a) of RLEP 2011 states the following:

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

***(a) 12 metres - if the building is in Area A identified on the Height of Buildings Map and on a lot having an area of at least 1,500 square metres***

The consolidation of all allotments on the subject site yields a total area of 2509m<sup>2</sup>, therefore complying with the 1500m<sup>2</sup> minimum which enables an additional 12m of building height. This brings the maximum allowable height to 40m. The proposed development complies with the 40m height limit.

The design of the development seeks to utilise the additional bonus height.

The information provided with the application states that *It is anticipated that the development will be constructed in two stages, with Stage 1 (Block A) comprising a building on 27-35 King Street and Stage 2 (Block B) comprising a building on 17-25 King Street.*

Block A and Block B are separated by a solid wall on all levels with the exception of Basement Level 1, where an indicative connection is identified. The information provided with the amended plan submission states that *Right of Way to 17-25 King Street to be provided if project staged*, suggestive that Stage 2 is intended to be on its own lot, hence the Right of Way. The total site area of the lots comprising Stage 1 (Block A) is approximately 1393m<sup>2</sup>. The total site area of the lots comprising Stage 2 (Block B) is approximately 1112m<sup>2</sup>.

The wording of clause 4.3(2A)(a) refers to "a lot". To achieve this, the development site would need to be amalgamated and developed on a single lot.

#### 6.1 Acid Sulfate Soil - Class 5

The site is identified as being affected by class 5 acid sulfate soils. Works in a class 5 area that are likely to lower the water table below 1m AHD on adjacent class 1, 2, 3 or 4 land will trigger the requirement for assessment and may require management. Given the proposed basement level is at 6m AHD, potential dewatering at the site would not result in lowering of the water table below 1m AHD on the adjacent Class 3 land located 360m to the southeast of the site. Therefore, no further consideration is required for acid sulfate soil management.

#### 6.2 Earthworks

Earthworks including excavation are required on site for the basement car parking levels. The objectives and requirements of Clause 6.2 of RLEP 2011 have been considered in the assessment of this application. It is considered that the proposed earthworks and excavation will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

#### 6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51m AHD. The building height is at RL58.2 and therefore will penetrate the OLS. The applicant has engaged an airspace consultant and sought their own approval directly off Sydney Airport/Commonwealth body to satisfy this clause. At the time of writing this report, this approval is yet to be received.

#### 6.12 Essential services

Services will generally be available on the site. This clause is satisfied.

#### 6.14 Design excellence

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

It is noted that the design excellence provisions only apply because the bonus 12m height is sought to be utilised.

The design excellence clause applies to the proposal and requires that the development to exhibit design excellence. Pursuant to subclause 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 initial proposal was reviewed by the Design Review Panel on 2 March 2020. The amended proposal was reviewed again by the Design Review Panel on 19 November 2020. On each occasion, the Panel considered that the proposal requires substantial amendment to its built form and proposed density to achieve Design Excellence in accordance with clause 6.14 of RLEP 2011. See Panel comments below from both reviews:

#### **Design Excellence – Clause 6.14(4)**

In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

##### **(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved**

March - No

November - No. The Panel remains concerned that the architectural design, as well as the proposed materials and detailing, have not yet reached a high standard. Therefore the panel does not believe that this Design Excellence criteria has been satisfied.

##### **(b) whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain**

March - No

November - No. In its current (amended) form, arrangement and external appearance, the panel believe that the development will have significant adverse impacts on the amenity and quality of the public domain. Therefore, it is of the view that this Design Excellence criteria has not been satisfied.

##### **(c) whether the development detrimentally impacts on view corridors**

March - Yes. The building is too long and will significantly impact on properties to the south.

November - Yes. The development will have a detrimental impact on view corridors, especially to and from the south-east.

##### **(d) the requirements of any development control plan made by the Council and as in force at the commencement of this clause**

March - Four storey podium not provided; no counter strategy expressed

November - The panel notes that the development is generally in accordance with the DCP. It also accepts that the “street wall” built form along King Street is made in response to the DCP. However there should be a stricter compliance with the 3 metre setback in levels above the fourth storey.

##### **(e) how the development addresses the following matters:**

### **(i) the suitability of the land for development**

March - Good suitability; poor proposal.

November - The panel's previous comments remain unchanged. The land has good suitability. The proposal is poor.

### **(ii) existing and proposed uses and use mix**

March - Good mix of uses

November - There would appear to be a good mix of uses.

### **(iii) heritage issues and streetscape constraints**

March - Poor relationship with existing built form and streetscape; removal of large and significant existing tree not supported

November - The relationship between built form and streetscape remains poor. The removal of the large and significant existing tree is NOT supported. The proponent needs to amend the development so that this tree can be retained (and flourish) and to provide a better relationship between the eastern edge and the adjacent low-density R2 zone.

### **(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**

March - Significant impacts on adjoining properties need to be clearly identified; proposal needs to be modified to significantly reduce these impacts and comply with the ADG. Justification for height bonus appear to be thwarted by the site's division into two components; this should be reviewed as described above.

November - The panel acknowledges that the proponent has made a series of changes to ameliorate the impact of the development on neighbouring residences (especially to the south-west). However it remains concerned about the impacts to surrounding existing buildings (especially in terms of overshadowing, building separation setbacks and urban form). Full compliance with the ADG is expected.

The height bonus can only be justified if the development satisfies the the DCP and is treated as one site.

### **(v) bulk, massing and modulation of buildings**

March - Four storey podium not provided; no counter strategy expressed; little reference to neighbouring built form; hit and miss horizontal alignments, fins and voids are similarly expressed from level 1 – 11; this treatment extends right across the façade; this homogenizes the façade and exacerbates building length

November - The setbacks along King Street need to be fully in accordance with the DCP. The eastern edge needs to acknowledge the adjacent low-density housing zone. Full ADG compliance needs to be demonstrated along the south-western boundary (Crofts Lane).

#### **(vi) street frontage heights**

March - See comments re height bonus and excessive bulk

November - see comments above

#### **(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity**

March - See comments above regarding overshadowing and removal of one existing tree.

November - See comments above regarding over-shadowing and removal of one existing tree.

#### **(viii) the achievement of principles of ecologically sustainable development**

March - Insufficient: no deep soil, questionable depth for natural ventilation, no ESD measures, green walls not sustainable.

November - In the context Design Excellence provisions of the LEP, sustainability initiatives should be commitments beyond mere compliance. The Panel recommends commitments for water energy and thermal comfort deliver a high performance than the minimum requirements. The Panel would also recommend as a minimum the provision of photovoltaic panels to all the roofs to provide energy to the common areas of the building, EV Charging to 5% of the car spaces, and central heat pump hot water systems to replace the use of the gas.

#### **(ix) pedestrian, cycle, vehicular and service access, circulation and requirements**

March - Doubling up on service requirements may question justification for Height Bonus.

November - No additional comment.

#### **(x) the impact on, and any proposed improvements to, the public domain**

March - Positive activation of street, poor entries, poor response to lane, excessively long block impedes pedestrian movement.

November - See previous comments above.

#### **(xi) achieving appropriate interfaces at ground level between the building and the public domain**

March - Acceptable

November - Generally acceptable

#### **(xii) excellence and integration of landscape design**

March - Not a sustainable outcome, poor resolution of terraces, green walls and planters to podium and tower in private owners, green walls face north.

November - Improvements to the design of the rooftop terrace areas are noted. However the deep soil area to George Street is overhung, thus prejudicing the intent of the deep soil area to provide a landscape volume. The vertical green walls inserted into the façade present maintenance and sustainability problems. The removal of the significant tree as noted above is NOT supported due to its good health.

## **RECOMMENDATION**

March - The Panel considers that the current proposal requires substantial amendment to its built form and proposed density to achieve Design Excellence in accordance with Clause 6.14 of the RLEP 2011.

November - The Panel considers that the current proposal requires substantial amendment to its built form and proposed density to achieve Design Excellence in accordance with Clause 6.14 of the RLEP 2011.

## **S4.15(1)(a)(ii) - Provisions of any Draft EPI's**

### **Bayside Draft LEP 2020**

The Bayside draft LEP 2020 was publicly exhibited from 8 April to 1 June 2020 and applies to the subject site. The draft LEP reviews the current planning controls under three existing LEPs into one consolidated LEP. The draft LEP generally harmonises and updates planning controls for the Bayside Local Government Area. The proposed development would be inconsistent with the requirements of clause 6.12 - Design Excellence within the draft LEP.

## **S4.15 (1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

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

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

| <b>Relevant clauses</b>                                                 | <b>Compliance with objectives</b> | <b>Compliance with standard/provision</b> |
|-------------------------------------------------------------------------|-----------------------------------|-------------------------------------------|
| 4.1.1 Views and Vista                                                   | No - see discussion               | No - see discussion                       |
| 4.1.3 Water Management                                                  | Yes                               | Yes                                       |
| 4.1.4 Soil Management                                                   | Yes                               | Yes                                       |
| 4.1.6 Development on Sloping Sites                                      | Yes                               | Yes                                       |
| 4.1.7 Tree Preservation                                                 | No - see discussion               | No - see discussion                       |
| 4.1.9 Lot size and Site Consolidation - isolated sites                  | Yes - see discussion              | Yes - see discussion                      |
| 4.2 Streetscape and Site Context - General                              | No - see discussion               | No - see discussion                       |
| 4.4.1 Energy Efficiency - Retail, Commercial and Industrial Development | Yes                               | Yes                                       |
| 4.4.3 Natural Lighting and Ventilation - Residential                    | Yes                               | Yes                                       |
| 4.4.4 Glazing - Commerical                                              | Yes                               | Yes                                       |
| 4.4.5 Acoustic privacy                                                  | Yes                               | Yes                                       |

| <b>Relevant clauses</b>                                  | <b>Compliance with objectives</b> | <b>Compliance with standard/provision</b> |
|----------------------------------------------------------|-----------------------------------|-------------------------------------------|
| 4.4.6 Noise Impact                                       | Yes                               | Yes                                       |
| 4.4.6 Noise Impact - Non-residential                     | Yes                               | Yes                                       |
| 4.4.7 Wind Impact                                        | Yes                               | Yes                                       |
| 4.5.1 Social Equity - Housing Diversity and Choice       | Yes - see discussion              | Yes - see discussion                      |
| 4.5.2 Social Equity - Equitable Access                   | Yes - see discussion              | Yes - see discussion                      |
| 4.6 Parking Rates - Shop-top Housing                     | Yes - see discussion              | Yes - see discussion                      |
| 4.6 Basement Parking - General                           | Yes                               | Yes                                       |
| 4.6 Design of Loading Facilities                         | Yes                               | Yes                                       |
| 4.6 Car Wash Facilities                                  | Yes                               | Yes                                       |
| 4.7 Air Conditioning and Communication Structures        | Yes                               | Yes                                       |
| 4.7 Waste Storage and Recycling Facilities               | Yes                               | Yes                                       |
| 4.7 Service Lines/Cables                                 | Yes                               | Yes                                       |
| 4.7 Laundry Facilities and Drying Areas                  | Yes                               | Yes                                       |
| 4.7 Letterboxes                                          | Yes                               | Yes                                       |
| 4.7 Storage Areas                                        | Yes                               | Yes                                       |
| 4.7 Hot Water Systems                                    | Yes                               | Yes                                       |
| 5.2 RFB - Building Design                                | No - see discussion               | No - see discussion                       |
| 5.2 RFB - Building Entry                                 | Yes                               | Yes                                       |
| 5.2 RFB - Lift Size and Access                           | Yes - see discussion              | Yes - see discussion                      |
| 5.3 Mixed Use - Ground Level Uses                        | Yes - see discussion              | Yes - see discussion                      |
| 5.3 Mixed Use - Retail                                   | Yes - see discussion              | No - see discussion                       |
| 5.3 Mixed Use - Commercial                               | Yes - see discussion              | No - see discussion                       |
| 5.3 Mixed Use - Building Design                          | Yes - see discussion              | Yes - see discussion                      |
| 5.3 Mixed Use - Ground Floor Articulation                | Yes                               | Yes                                       |
| 5.3 Mixed Use - Access to Premises                       | Yes                               | Yes                                       |
| 5.3 Mixed Use - Visual Connections                       | Yes                               | Yes                                       |
| 5.3 Mixed Use - Arcades, Laneways and Through Site Links | Yes - see discussion              | No - see discussion                       |
| 5.3 Mixed Use - Awnings                                  | Yes                               | Yes                                       |
| 5.3 Mixed Use - Secured Access to Parking                | Yes                               | Yes                                       |
| 7.5.1 Street Role - Contributory Retail                  | Yes - see discussion              | Yes - see discussion                      |
| 7.5.1 Street Role - Service Laneway                      | Yes - see discussion              | Yes - see discussion                      |
| 7.5.1 Street Role - Centre Edge Commercial               | Yes - see discussion              | Yes - see discussion                      |
| 7.5.2 Local Core                                         | No - see discussion               | No - see discussion                       |
| 7.5.2 Local Edge                                         | No - see discussion               | No - see discussion                       |
| 7.5.2 Laneway                                            | No - see discussion               | Yes - see discussion                      |

#### 4.1.1 Views and Vista

The proposal will result in some unreasonable impacts upon views and vistas from the adjoining southern RFB's. This is addressed in more detail in the submissions section of this report.

#### 4.1.7 Tree Preservation

Refer to previous discussion under SEPP (Vegetation in Non-Rural Areas) 2017.

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

The proposed development would not cause any site isolation. It is noted that the development site would need to be consolidated into a single allotment. The development achieves the minimum frontage width of mixed use buildings which is a minimum of 18m, if the site is consolidated.

#### 4.2 Streetscape and Site Context - General

The design of the development is not considered to sensitively relate to the pattern of development within the immediate area and therefore does not satisfy control (1) in Part 4.2 of RDCP 2011.

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

Residential flat buildings and shop top housing are required to comply with the following dwelling mix:

| Dwelling type           | Of total dwellings |
|-------------------------|--------------------|
| 3 bedroom and/or more   | 10%-20%            |
| 2 bedroom               | 50%-75%            |
| 1 bedroom and/or studio | 10%-30%            |

The proposed development provides 16x 1 bed (12%), 102x 2 bed (76.6%) and 15x 3 bed (11.2%). There is a minor surplus of 2 bedroom units, however this is negligible and the dwelling mix as proposed is acceptable.

#### 4.5.2 Social Equity - Equitable Access

The application was accompanied by an Access Report which demonstrates that the proposal is capable of complying with the relevant accessibility requirements. No further issues are identified in this respect.

#### 4.6 Parking Rates - Shop-top Housing

##### Commercial/retail component

The DCP specifies a car parking rate of 1 space/40sqm for retail and commercial. Further, the site is within the Rockdale Town Centre so there is a 20% reduction applied in accordance with the DCP controls. There are a total of 28 commercial car parking spaces provided which is compliant with the DCP.

##### Residential component

The site is within 800m of Rockdale Railway Station and therefore adopts the RMS Parking Requirements in accordance with Part 3J of the ADG. These car parking rates are 0.6 spaces per 1 bedroom dwelling, 0.9 spaces per 2 bedroom dwelling, 1.4 spaces per 3 bedroom dwelling and 1 space per 5 dwellings for visitor parking.

Application of these rates to the development for Stage 1 requires the provision of 88 car parking spaces. These spaces have been provided. Stage 2 of the development requires 60 car parking spaces which have been provided.

It is also noted that the DCP requires the provision of car wash bays which have been provided (1 space for each building/stage).

## 5.2 RFB - Building Design

Control (13) in this part of the DCP states *express important corners by giving visual prominence to parts of the facade through a change in building articulation, material, colour, roof expression or increased height*. The proposed expression on the sites corners is considered to be overstated given that the site is on the very eastern edge of the town centre, adjacent to the R2 low density zone and will be significantly larger than established buildings in the immediate surroundings. Refer to previous comments made by the Design Review Panel in this regard.

## 5.2 RFB - Lift Size and Access

The Design Review Panel considers that the lift and staircase of the eastern most building should be reversed, so that on exiting the lift, one is able to see out - otherwise the window is hidden from view.

## 5.3 Mixed Use - Ground Level Uses

The building uses fronting the public domain at ground level are active uses where possible and thus satisfy this part of the DCP.

## 5.3 Mixed Use - Retail

A minimum of 10% of the gross floor area of a mixed use development is required to be for retail and/or commercial areas. The extent of retail/commercial is approximately 9% (including mezzanine levels) which is slightly below the 10% but still achieves the intent of the control.

## 5.3 Mixed Use - Commercial

Whilst the proposal does not provide upper level commercial uses, there are two (2) commercial tenancies with mezzanine levels which contribute to flexibility of use and are considered to be satisfactory.

## 5.3 Mixed Use - Building Design

The guidelines in this part of the DCP state that:

- *Where buildings are situated on a corner site they have greater visual prominence and are to be designed to respond to street geometry, topography and sightlines. the facade treatment at the corner is to be designed to differentiate it from the street facades*
- *The massing of a building on a corner site is to be distributed to enhance the street corner.*

The above are generic guidelines which apply to any mixed use development in the LGA (former Rockdale areas).

The subject site has two corners. One being the corner of George Street/King Street and the other being George Street/Crofts Lane. The DRP and council have raised concerns with the proposed setbacks at the George Street end of the site as addressed in this report.

## 5.3 Mixed Use - Arcades, Laneways and Through Site Links

The proposed development incorporates a new through site link at the western end of the ground floor. The through site link generally aligns with the DCP controls with the exception of it not having access to natural light. Control 49(d) states that *where practicable, have access to natural light for at least 50% of their length*.

## 7.5.1 Street Role - Contributory Retail

The street role of the King Street frontage is identified as being Contributory Retail. The DCP

requirements are as follows:

| Street role         | Description                                    | Standard                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Contributory Retail | High activity with continuous active frontages | <ul style="list-style-type: none"><li>Ground floor frontage to be activated by retail and business premises</li><li>Residential lobbies permitted off Street frontage</li><li>No ground floor residential permitted (Except for properties under Schedule 1 in the RLEP 2011)</li><li>No vehicle access permitted unless the development has no other street frontage</li><li>No service access permitted unless the development has no other street frontage</li></ul> |

The design of the development is consistent with the above.

#### 7.5.1 Street Role - Service Laneway

The street role of the Crofts Lane (rear) frontage is identified as being Service Laneway. The DCP requirements are as follows:

| Street role     | Description                                                   | Standard                                                                                                                                                                                                                                                                                                                                                 |
|-----------------|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Service Laneway | Primarily serves service function and provides vehicle access | <ul style="list-style-type: none"><li>Active retail and business premises encouraged along the ground floor frontage</li><li>Residential lobbies may be accessed off service lane</li><li>No ground floor residential</li><li>Vehicle access should be provided from service lane</li><li>Service access should be provided from service lanes</li></ul> |

The proposed development is consistent with the above.

#### 7.5.1 Street Role - Centre Edge Commercial

The street role of the Crofts Lane (rear) frontage is identified as being Service Laneway. The DCP requirements are as follows:

| Street role            | Description                                                                       | Standard                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Centre Edge Commercial | Provides additional retail and commercial opportunities at the edge of the Centre | <ul style="list-style-type: none"><li>Ground floor frontage to be activated by retail and business premises</li><li>Access to residential lobbies permitted and encouraged</li><li>No ground floor residential (Except for properties under Schedule 1 in the RLEP 2011)</li><li>Vehicle access permitted where the development does not front a Service Laneway or Centre Edge Residential street</li><li>Service access permitted where the development does not front a Service Laneway or Centre Edge Residential street</li></ul> |

The proposed development is consistent with the above.

#### 7.5.2 Local Core King Street

The King Street frontage is identified as 'Local Core' in Part 7.5 of Rockdale Development Control Plan 2011. The DCP controls specify the following requirements:

*For Local Core frontages of any development as designated by the Street Character diagram, the building envelop is:*

- a. Lower 4 storeys are to be built to the property boundary.*
- b. Levels above the 4th storey are to be setback at least 3m.*
- c. A minimum 9m rear setback is to be provided where development shares a boundary with a residential property.*
- d. The design of the street wall buildings should complement the proportion/scale of the neighbouring street wall buildings.*

e. Continuous weather protection (ie awning) should be applied to all development

Comment: The amended design generally accords with the above DCP controls with the exception of the proposed massing on the corner of King St/George St (north east corner).

### 7.5.2 Local Edge George Street

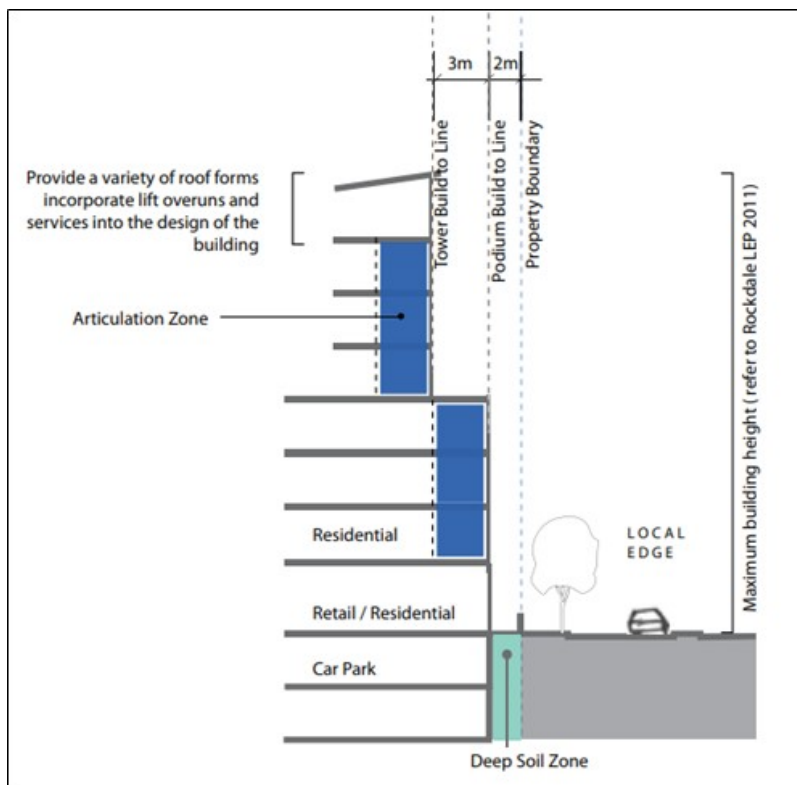
The George Street frontage to the east is identified as "Local Edge". The DCP controls specify the following requirements:

2. For Local Edge frontages of any development as designated by the Street Character diagram, the building envelop is to be:

a. Lower 4 storeys are to be setback 2m from the property boundary

b. Levels above the 4th storey are to be setback at least 3m from the lower build to line.

3. A minimum 9m rear setback is to be provided where development shares a boundary with a residential property.



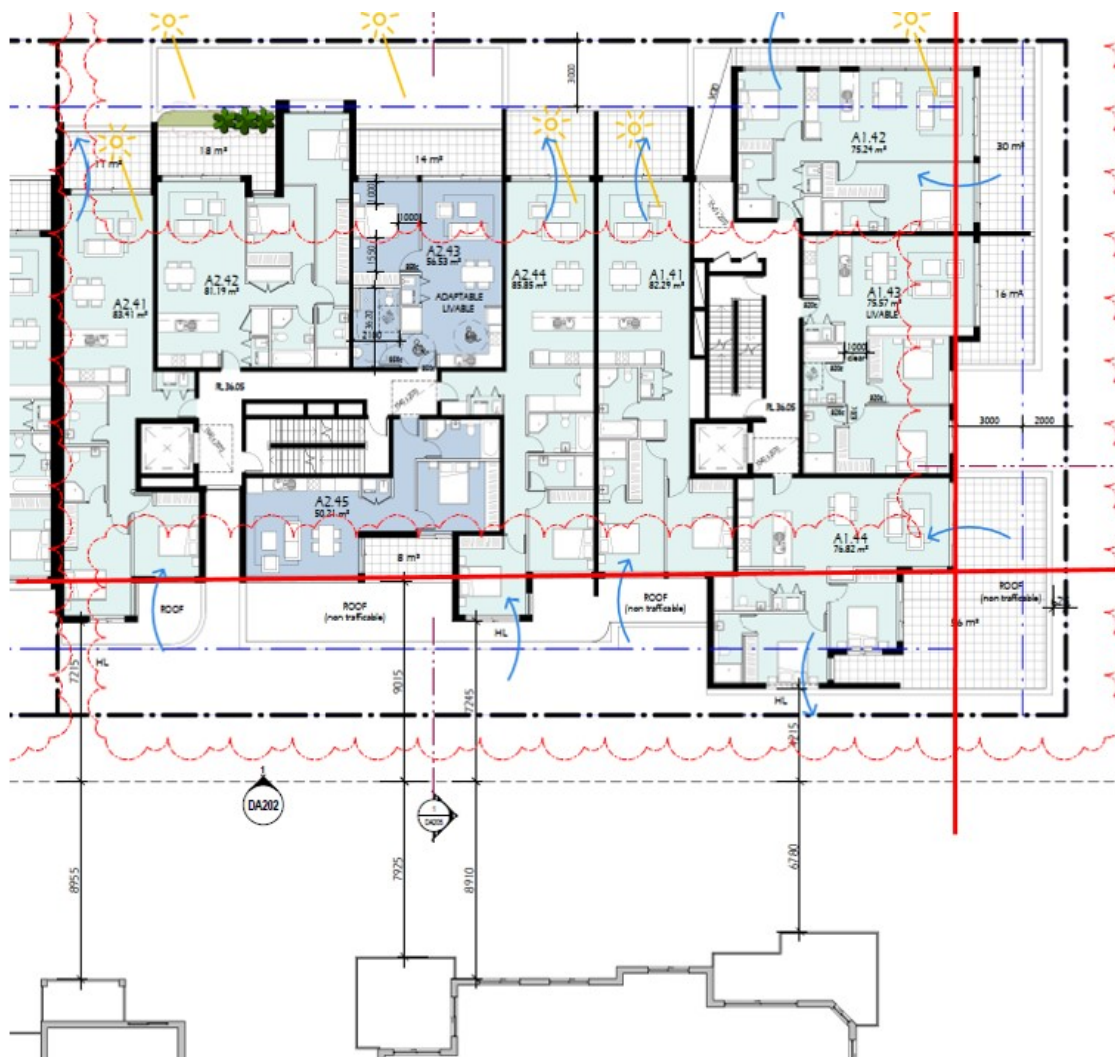
Comment: The design of the development is inconsistent with the setback requirements identified above. The design of the building does not align with the stated DCP outcome to *transition from the strong urban character in the Centre core to the more spacious and open character of the surrounding residential area*, noting that the opposite (eastern) side of George Street is the R2 Low density residential area.

The specified setback distances to George Street have not been provided. Given that there is no applicable FSR on the site, the site specific setback requirements assist in establishing a building envelope to create the desired future character. The DCP states:

- The appropriate street setbacks, building separation, and facade modelling and articulation are products of the intended character of the various streets and spaces in the Centre.
- The street character diagram designates the character type of all streets in the Centre. Developments are to comply with the building envelopes and desired future character of the corresponding street type for all street frontages.

It is noted that the amended plans show the required 2m deep soil zone to George Street. However, it is overhung by the building above (part of which is 625mm off the eastern George Street boundary) which is inconsistent with the DCP setback and massing requirements.

The diagram below is an extract of the proposed 5th storey and shows lines which identify the rear 9m separation (ADG) and required DCP setbacks (5m to George Street - including balconies).



### 7.5.2 Laneway

The DCP controls state the following in this regard:

*For Laneway frontage of any development as designated by the Street Character diagram, the building envelope is to be:*

- Lower 3 storeys are to be built to the property boundary or setback as required in by Street Setback Table
- Levels above the 3rd storey are to be setback at least 3.

At the rear of the site, there is an interface with two (2) existing residential flat buildings. There are various windows and balconies which face the subject site. As a result, the ADG building separation provisions have work to do here. As previously identified in the ADG discussion, the proposed development does not provide compliant ADG separation distances to these buildings.

## **Clause 92 EP&A Regulation 2000 – Additional Matters**

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of AS 2601:1991 - *Demolition of Structures* when demolition of a building is involved. All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

### **4.15(1)(b) - Likely Impacts of Development**

As outlined in the assessment within this report, the proposed development is likely to cause unreasonable impacts upon the streetscape and adjoining properties. In the absence of a clearly articulated strategy as to how the development will be undertaken on a single lot, it is considered that the proposal does not promote the orderly and economic use of land.

### **S4.15(1)(c) - Suitability of the site**

The site is not considered to be suitable for the development as currently proposed.

### **S4.15(1)(d) - Public submissions**

The development has been notified in accordance with the provisions of Rockdale DCP 2011 and four (4) submissions have been received. The issues raised in the submission are discussed below:

Issue: The proposed development is to be constructed over 6 separate lots. It is proposed to be built in two stages. The additional allowance of 12m height is allowed for a single lot having an area of at least 1500m<sup>2</sup>. Each stage of the new construction consists of land of combined lots that are less than 1500m<sup>2</sup>. The additional height bonus is therefore not applicable.

Comment: This matter has been discussed in the main body of the report.

Issue: Insufficient shadow diagrams are provided

Comment: This matter was raised during the assessment and the applicant has provided an updated and more detailed overshadowing assessment.

Issue: There is no drawing to show whether the proposed development satisfies the Crofts Lane setback requirements. A 12m setback is required.

Comment: The drawings provided do identify the proposed building setbacks. Some of the building setbacks proposed to Crofts Lane are insufficient and form reasons for refusal.

Issue: Traffic impacts. The traffic study provided does not properly assess the likely traffic impacts of the proposed development.

Comment: The applicant has provided an updated traffic impact study. This has been reviewed by Council's Engineer and considered to be satisfactory.

Issue: The proposed development height of 40m will be completely out of character creating a very large bulky and environmentally unsound structure which not only obstructs views from existing building and will create substantial overshadowing.

Comment: Various concerns have been raised/addressed in the main body of the report with respect to the scale of the development and its overshadowing impacts.

Issue: Impacts of waste management/disposal on Crofts Lane

Comment: The proposed development makes an allowance for loading/unloading within the site itself. This would ensure that bins do not need to be presented to Croft Lane on collection days.

Issue: Noise impacts from construction, air conditioning units and communal areas.

Comments: These matters are generally addressed through conditions of consent. However, the application is not supported for other reasons.

Issue: Privacy and amenity impacts due to the proposed interface with neighbouring buildings at the rear

Comments: The non-compliant built form at the rear is considered to contribute to an unsatisfactory interface at the rear of the site.

Issue: Removal of Eucalyptus tree on George Street

Comments: The tree does contribute to the amenity/outlook from the submitters apartment, as well as a number of other apartments. The photo below was taken from the submitters rear balcony.



**Standing view from apartment (balcony) within 56 Bay Street looking east**

Issue: Loss of distant city views

Comment: These views are attained in a northerly direction from the existing apartment buildings at the rear (see below) Having regard to the relevant planning controls, it is considered to be unrealistic for these partial distant views to be retained. However, it is considered that the outlook in the image above, would be unduly altered by virtue of the non-compliant envelope in the south eastern corner of the site.



**Standing view from apartment (balcony) within 56 Bay Street looking north**

#### **S4.15(1)(e) - Public interest**

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal presents various non-compliances, creates unreasonable impacts on surrounding properties and the streetscape and does not achieve design excellence. As such it is considered that the development application is not in the public interest.

#### **S7.11 Contribution towards provision or improvement of amenities or services**

A Section 7.11 Contribution Payment would be payable in accordance with Council's Policy. However, the application is not supported for other reasons.