

MEETING NOTICE

A meeting of the
Bayside Planning Panel
will be held in the Committee Room, Botany Town Hall
Corner of Edward Street and Botany Road, Botany
on **Tuesday 26 June 2018 at 6.00 pm**

ON-SITE INSPECTIONS

On-site inspections will precede the meeting.

AGENDA

1 ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

Bayside Council respects the traditional custodians of the land, elders past and present and future leaders, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

2 APOLOGIES

3 DISCLOSURES OF INTEREST

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Members of the public, who have requested to speak at the meeting, will be invited to address the Panel by the Chairperson.

The meeting will be video recorded and live streamed to the community via Council's Facebook page.

Meredith Wallace
General Manager

Bayside Planning Panel

26/06/2018

Item No	4.1
Subject	Minutes of the Bayside Planning Panel Meeting - 12 June 2018
Report by	Manager Governance & Risk
File	SC17/782

Recommendation

That the Minutes of the Bayside Planning Panel meeting held on 12 June 2018 be confirmed as a true record of proceedings.

Present

Jan Murrell, Chairperson and Independent Specialist Member
Robert Montgomery, Independent Specialist Member
Ross Bonthorne, Independent Specialist Member
Dustin Moore, Community Representative

Also present

Michael McCabe, Director City Futures
Luis Melim, Manager Development Assessment
Bruce Cooke, Coordinator Governance
Pascal Van De Walle, Coordinator Development Assessment
Michael Maloof, Senior Development Assessment Planner
Fiona Prodromou, Senior Development Assessment Planner
Alexandra Hafner, Senior Development Assessment Planner
Angela Lazaridis, Senior Development Assessment Officer
Lincoln Lawler, Senior Development Assessment Planner
Wolfgang Gill, IT Technical Support Officer
Anne Suann, Governance Officer

The Chairperson opened the meeting in the Committee Room, Botany Town Hall, corner of Edward Street and Botany Road, Botany at 6.10 pm.

1 Acknowledgement of Traditional Owners

The Chairperson affirmed that Bayside Council respects the traditional custodians of the land, elders past and present and future leaders, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

2 Apologies

There were no apologies received.

3 Disclosures of Interest

There were no disclosures of interest.

4 Minutes of Previous Meetings

4.1 Minutes of the Bayside Planning Panel Meeting - 22 May 2018

Decision

That the Minutes of the Bayside Planning Panel meeting held on 22 May 2018 be confirmed as a true record of proceedings.

Note

DA-2013/56/03 – 13A Church Avenue, Mascot (Meeting 8 May 2018 – Item 6.1)

With reference to the confirmed amended Minutes of 8 May 2018, the applicant for the abovementioned development application is invited to make a submission to the Council so that a report can be prepared for the Panel's consideration at the next convenient meeting, at which the applicant may address the Panel.

5 Reports – Planning Proposals

Nil

6 Reports – Development Applications

6.1 DA-2016/310/B - 1 Bowood Avenue, Bexley

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Mr Jorn Jacobsen, affected neighbour, spoke against the officer's recommendation.
- Ms Jan Alewood, affected neighbour, spoke against the officer's recommendation.
- Ms Cathy Jackson, affected neighbour, spoke against the officer's recommendation.
- Mr Mark Hanna, affected neighbour, spoke against the officer's recommendation.
- Mr Nicholas Nikolovski, town planner, spoke for the officer's recommendation and responded to the Panel's questions.
- Mr Danny Salevski, owner, responded to the Panel's questions.

Determination

- 1 That Development Application No. DA-2016/310/B, being a Section 4.55(1A) application to amend Development Consent Number DA-2016/310 (as modified) to delete ground floor doors and replace with small windows in west elevation resulting from minor internal reconfiguration works; delete external cladding and replace with brick; delete ground floor bathroom; change roof material to tiles and rear single storey flat roof to pitched roof; render all elevations and modify windows in west elevation and retain double garage at 1 Bowood Avenue Bexley is **APPROVED** subject to the Conditions outlined below, except where further amended by the conditions in Schedule B .

(i) By amending condition no. 2 to read

2. *The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.*

Plan/Dwg No.	Drawn by	Dated	Received by Council
<i>Schedule of External Colours and Finishes</i>	MCAD Design	11 May 2018	14 May 2018
<i>First Floor Plan/Ground Floor Plan/Site Plan, Drawing No. 1655-01, Rev F</i>	MCAD Design	10 May 2018	14 May 2018
<i>Elevations/Section AA, Drawing No. 1655-02, Rev F</i>	MCAD Design	10 May 2018	14 May 2018
<i>Roof Plan / Site Plan, Drawing No. 1655-09, Rev D</i>	MCAD Design	10 May 2018	14 May 2018
Soil and Water MGMT Plan/Demolition Plan, Drawing No. 1655-03	MCAD Design	5 February 2016	7 March 2016
Concept Subdivision Plan, Drawing 1655-04	MCAD Design	5 February 2016	7 March 2016

(ii) Amending Condition no. 5 to read:

The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 707384M_02 other than superseded by any further amended consent and BASIX certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters:

(a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied

that each of the commitments whose fulfilment it is required to monitor has been fulfilled.

Note: For further information please see <http://www.basix.nsw.gov.au>.

(iii) By amending condition no. 10 to read:

10. *The materials and finishes of the dual occupancy development shall comprise a pitched tile roof, rendered brick walls and be sympathetic with the surrounding dwellings. In this regard, the development is subject to the approved Schedule of External Colours and Finishes as submitted with the amendment application.*

(iv) Additional condition no. 6A to read:

6A. *The first floor balcony at the rear of each dwelling shall not be enclosed at any future time without prior development consent.*

(v) Additional condition no. 20B to read:

20B. *A Building Certificate is to be obtained from Council prior to the release of any Occupation Certificate for the unapproved building works carried out on the site.*

2 Schedule B - That this approval is also subject to further conditions, which are to give effect to the following requirements:

Note: Where there is a conflict with the above conditions the conditions in this Schedule prevail.

- ensuring that the colour of the external rendered paintwork is of a medium colour as indicated on the plans and not a light grey;
- the roof tiles are to be of a terracotta tone;
- the side elevations are to be punctuated with cladding;
- the built arches are to be deleted;
- a toilet may be provided in the ground floor area under the stairs for Unit 2.

The General Manager (or nominee) is delegated the authority to establish the conditions that give effect to the above and modify the final set of Conditions of Consent issued to ensure there are no inconsistencies.

3 That the objectors be notified of the Bayside Planning Panel's decision.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Ross Bonthorne ☒ ☐

Dustin Moore ☒ ☐

Reason for Determination

The Panel considers that a rendered dwelling will not be out of character in the streetscape subject to an appropriate mid tone colour and the other changes required above to allow the dwellings to blend more into the streetscape and when viewed from adjoining properties.

6.2 DA-2016/215/A - 17-19 Belmore Street, Arncliffe

An on-site inspection took place at the property earlier in the day.

Determination

- 1 That Development Application No DA-2016/215/A, being a Section 4.55(1A) application to amend Development Consent Number DA-2016/215, to amend the approved ground floor level resulting in an increase in overall building height; change external materials and finishes; relocate booster assembly and minor amendment to conditions of consent at 17-19 Belmore Street Arncliffe is **APPROVED** and the consent amended in the following manner:

- a. By amending condition no. 2 to read:
2. *The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.*

Dwg No. / Issue	Plan title	Drawn by	Dated	Received by Council
A012 / 3	Site Plan	Architecture and Building Works	6.4.16	11/4/16
A013 / 5	Lower Basement Plan	Architecture and Building Works	30/01/18	30/01/18
A014 / 5	Upper Basement Plan	Architecture and Building Works	30/01/18	30/01/18
A015 / 5	Ground Floor Plan	Architecture and Building Works	30/01/18	30/01/18
A016 / 5	Level 1 Plan	Architecture and Building Works	30/01/18	30/01/18
A017 / 5	Level 2 Plan	Architecture and Building Works	30/01/18	30/01/18
A018 / 5	Level 3 Plan	Architecture and Building Works	30/01/18	30/01/18
A019 / 5	Level 4 Plan	Architecture and Building Works	30/01/18	30/01/18
A020 / 5	Roof Plan	Architecture and Building Works	30/01/18	30/01/18
A021 / 6	East Elevation	Architecture and Building Works	30/01/18	30/01/18
A022 / 6	North Elevation	Architecture and Building Works	30/01/18	30/01/18
A023 / 6	South Elevation	Architecture and Building Works	30/01/18	30/01/18
A024 / 6	West Elevation	Architecture and Building Works	30/01/18	30/01/18
A025 / 7	Section A-A	Architecture and Building Works	30/01/18	30/01/18
A026A / 4	Section C-C	Architecture and Building Works	30/01/18	30/01/18
A0000	Material Sample	Architecture and Building Works	April 2016	11/4/16
A033 / 3	Adaptability details	Architecture and Building Works	6/4/16	11/4/16
A033/A / 2	Adaptable Unit	Architecture and Building Works	6/4/16	11/4/16

- b. By amending condition no. 124 to read:

124. *In addition to the works in the road reserve listed above, the following modification and/or improvement works to the road and drainage in Belmore Street will be required to be undertaken at the applicant's expense:*

- (i) *Construction of stormwater pits and pipes in Belmore Street;*
- (ii) *Construction of streetscape works in Belmore Street.*

Note: Detailed plans, including plans and longsections of the pipes, are required to be submitted to Council for assessment and approval pursuant to Section 138 of the Roads Act 1993, prior to the issue of the Construction Certificate. In addition to engineering plans, detailed traffic management plans and erosion and sediment control plans are required. Traffic management plans are required to be prepared in accordance with AS1742 and RTA guidelines. Erosion and sediment control plans shall be prepared in accordance with the Department of Housing "Blue Book".

c. By deleting the following conditions:

43(e) *The rear 1.6m section of the patio areas for Units G.01 and G.02 which protrude beyond the upper level building must, for those sections provided at grade, be amended to be porous paving to ensure that natural water penetration within this rear area is maximised.*

115 *The underground garage shall be floodproofed to a minimum of 500mm above the 1% Annual Exceedance Probability flood level. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.*

119 *The outside finished ground level shall be constructed a minimum of 200mm below the habitable floor level for the whole building perimeter.*

2 That the objectors be advised of the Bayside Planning Panel's decision.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination:

The Panel is satisfied the modification application warrants approval subject to the recommended conditions of consent and will be consistent with the desired future character as reflected in the planning guidelines and controls for the site.

6.3 DA-2016/66/A - 4 Magdalene Terrace, Wolli Creek

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Mr Stephen Kerr from City Plan Services, Planning Consultant for the applicant, City Plan Services responded to the Panel's questions.
- Mr Robert Gizzi from Design Workshop Australia, architect, responded to the Panel's questions.

Determination

- 1 That the Bayside Planning Panel is satisfied that the applicant's amended plans have addressed the matters required to be demonstrated as per the determination of the Bayside Planning Panel on 10 May 2018.
- 2 That the Bayside Planning Panel approve the Section 4.55(2) application to modify DA-2016/66 for the addition of 1 storey to the previously approved development, including 7 additional residential units, to create a total of 107 units, new communal area on level 9 and reconfiguration of basement 2 level to include additional parking spaces.
- 3 That the revised conditions of consent in the updated draft Notice of Determination be endorsed by the Bayside Planning Panel.
- 4 That the objectors be notified of the determination made by the Bayside Planning Panel.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

The Panel is satisfied the amended plans incorporate the necessary changes required by the panel when the matter was presented to the meeting of 10 May 2018 and it is now warrants approval. The development has now appropriately addressed impacts and will sit comfortably in its context.

6.4 DA-2016/205/A - 78-80 Ramsgate Road, Ramsgate

An on-site inspection took place at the property earlier in the day.

Determination

That Development Application No. DA-2016/205/A, being a Section 4.55(1) application to amend Development Consent Number DA-2016/205 by modifying Conditions 11 and 114 relating to the required easements for overhang at 78-80 Ramsgate Road, Ramsgate is **APPROVED** and the consent amended in the following manner:

- (i) By amending Condition 11 to read as follows:

11. Subdivision/Boundary Adjustment – Lodgement with LPI

Prior to the issue of any Construction Certificate, the linen plan and any required Section 88B Instrument for the proposed boundary adjustment must be prepared and lodged with the Land and Properties (LPI).

The boundary adjustment is to occur in accordance with all relevant conditions contained in this Development Consent No. 2016/205 (and any subsequent section 4.55 modifications).

The Section 88B Instrument shall include any required easements.

- (ii) By amending Condition 114 to read as follows:

114. Positive Covenants / Easements

Prior to the issue of any Occupation Certificate, a positive covenant to the Conveyancing Act 1919 shall be created for the lots that contain the following:

- (a) *the stormwater detention facility to provide for the maintenance of the facility; and*
- (b) *the building elements, such as the ground level awning and awnings to bedrooms, which overhang proposed Lot 1 (i.e. the Council owned land).*

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

The Panel is satisfied the modification to conditions are minor and will not change the built form as originally approved.

6.5 DA-2017/54/B - 27-31 Bryant Street, Rockdale

An on-site inspection took place at the property earlier in the day.

The following person spoke:

- Ms Holly Duan, planner from Ghazi Al Ali Architecture Pty Ltd, applicants, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

- 1 That Development Application No DA-2017/54/B, being a Section 4.55(2) application to amend Development Consent Number DA-2017/54, for the modifications to the approved development including the addition of two units to create a total of 62 units, new basement level and changes to parking layout with internal and external alterations at No. 27-31 Bryant Street, Rockdale, is **APPROVED** and the consent amended in the following manner:
 - a amend the approved description of development;
 - b amend Condition No. 2 to include updated plan references;
 - c increase S7.11 Contributions payable to account for the net addition of two (2) residential units (Condition No. 32);
 - d amend Condition No. 5 to refer to amended BASIX Certificate details;
 - e amend Condition No. 9; 15; 26; and 80 to refer to amended plan details.
- 2 That the objector be advised of the Bayside Planning Panel's decision.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

The modification application on a merits assessment warrants approval.

6.6 SF18/709 - DA-2017/1118 - 1368 Botany Road, Botany

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Mr Derek Raithby, architect, spoke for the officer's recommendation and responded to the Panel's questions.
- Mr Nikolaos Tsekas, applicant, spoke for the officer's recommendation and responded to the Panel's questions.
- Mr John Higgins, owner, responded to the Panel's questions.

Determination

- 1 That the Bayside Planning Panel supports the variation to clause 4.3 in accordance with the Clause 4.6 justification provided by the applicant;
- 2 That the Development Application No. 2017/1118 for the demolition of the existing structures and construction of four (4) storey shop top housing development comprising of 8 residential units and one (1) ground floor commercial unit and car parking level at 1368 Botany Road, Botany, be issued a deferred commencement subject to the conditions attached to this report; and

DC1 The developer is required to engage an Ausgrid Accredited Service Provider Level 3 (ASP3) to either:

- a) Demonstrate that the current building proposal does not encroach the statutory clearances to the powerlines by engaging an Accredited Service Provider Level 3 (ASP3);
- b) Redesign the proposed building to ensure that there is no encroachment of the powerline statutory clearances with the revised powerline clearances being confirmed by an ASP3; or
- c) Make suitable arrangements for the existing powerlines to be relocated prior to building construction commencing.

Evidence of the proposed solution is to be submitted to Council for review. Should the solution involve design changes to the development, amended plans are to be submitted for assessment and approval by Council.

DC2 The period of the "Deferred Commencement" consent is to be limited to 6 months.

DC3 A condition that has the effect of setting back the first level master bedroom to align with the ensuite setback and consequential changes with the upper floors. The General Manager (or nominee) is delegated the authority to give effect to this condition.

- 3 That any objectors be advised of the Bayside Planning Panel's decision.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

The Panel expressed concern that the elevation to Hanna Street is important because it provides the main entry for the residential units and the increased setback will allow the development to address the street. On balance the Panel considers the development satisfactory in its context of the future character of the area that is emerging.

6.7 F18/404 - DA-2017/1188 - 72-74 High Street, Mascot

An on-site inspection took place at the property earlier in the day.

The following person spoke:

- Fernando Banales, Director at Arkhaus, architect, responded to the Panel's questions.

Determination

- 1 That the Bayside Planning Panel supports the variation to FSR development standard, as it pertains to the dwelling houses/semi-detached on the subject sites, as contained in Clause 4.4A(3)(d) of Botany Bay Local Environmental Plan 2013, in accordance with the written request under Clause 4.6 of BLEP 2013 submitted by the applicant.
- 2 That development application DA-2017/1188 for the demolition of existing structures and construction of two, two (2) storey semi-detached dwellings with secondary dwellings on each lot is **APPROVED** subject to:
 - the deletion of the secondary dwellings in the rear yard of the front dwellings; and
 - the planting of canopy trees in the front courtyard of the main dwellings and, to this end, an amended landscape plan is required for the front and the rear yards.

The General Manager (or nominee) is delegated the authority to establish the conditions to give effect to the above.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

- The Panel is of the view that the inclusion of secondary dwellings on these relatively small allotments that are below 450 sq m represents an overdevelopment of the site.
- It is noted that approximately a potential for 14 bedrooms would result if the secondary dwellings were constructed whereas the car parking provision is for two vehicles.
- The Panel is of the opinion that the open space provision for the main dwellings should be commensurate with the size of the dwellings, that is, the number of bedrooms.
- The access to the rear dwellings for non-related persons to the main dwelling house is not appropriate in terms of visibility of entrances.
- The Panel notes that the construction of the secondary dwellings may impact on the eucalypts adjacent to the rear boundary and that no arborist's report has been submitted.

6.8 F18/404 - DA-2017/1253 - 40 Ricketty Street, Mascot

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Mr Aaron Sutherland from Sutherland & Associates Planning Pty Ltd, applicant, spoke for the officer's recommendation and responded to the Panel's questions.
- Mr Rido Pin from Plus Architecture, representing the applicant, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

- 1 That the Bayside Planning Panel supports the variation to FSR development standard as contained in Clause 4.4 of Botany Bay Local Environmental Plan 2013, in accordance with the written request under Clause 4.6 of BLEP 2013 submitted by the applicant.
- 2 That Development Application DA-2017/1253 for alterations and additions to the existing building and change of use to an office at 40 Ricketty Street, Mascot, is **APPROVED**.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Determination

The Panel is satisfied the Clause 4.6 variation is justified in the circumstances and the proposal for commercial floorspace, in this area of increasing higher densities, warrants approval.

By way of comment, the Panel notes that the proposed NABERS energy rating at this point in time is only 4.5 and the applicant is encouraged to look at mechanisms to increase this.

The Chairperson closed the meeting at 8.55 pm.

Jan Murrell
Chairperson

Bayside Planning Panel

26/06/2018

Item No	5.1
Subject	Planning Proposal - 8 Princess Street, Brighton-Le-Sands
Report by	Project Officer - Planning Proposals
File	F18/395

Summary

Council has received a draft Planning Proposal in relation to land at 8 Princess Street, Brighton-Le-Sands (subject site). The site is currently zoned SP3 – Tourist and is located immediately to the north-west of the Novotel Hotel and was formerly part of the Novotel landholdings. The properties to the north west and south of the site are zoned B4 Mixed Use.

The draft Planning Proposal seeks to rezone the land from SP3 Tourist to B4 Mixed Use.

Subsequent to the development of the hotel the site was developed for residential apartments, however, the zoning of the subject site was not amended to B4 Mixed Use. In order for the apartment building to accommodate residential apartments on the ground floor and be consistent with the adjacent residential flat buildings a change in zone to B4 Mixed Use is sought. No other changes to the development standards in the Rockdale Local Environmental Plan 2011 are sought.

The intended outcome of the draft Planning Proposal is to enable three inactive commercial tenancies located at the ground floor of an existing 9-storey shop top housing development to be used for the purposes of residential apartments. A review of why the tenancies have remained vacant indicates that it has relatively poor locational attributes, in summary:

- Competition from existing food-based retailing;
- Minimal levels of pedestrian traffic and no direct sight lines to highly trafficked areas;
- Visibility to passing traffic given the low levels of vehicle traffic in Princess Street;
- There are no other significant attractors to the subject site; and
- The site is located a block north of Bay Street and derives no benefit from the activity levels and visitation generated from the Brighton-Le-Sands activity centre.

Officer Recommendation

- 1 That pursuant to section 3.34 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) the draft Planning Proposal for land known as 8 Princess Street, Brighton-Le-Sands be submitted to the Department of Planning & Environment (DPE) for a Gateway determination; and
 - 2 That should a Gateway determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway determination and to provide details of any submissions received throughout that process.
-

Background

Applicant:

Lumex Property Group.

Site description:

Lots subject to the draft Planning Proposal are shown in table 1, below:

Table 1: Lots subject to draft Planning Proposal

Lot	SP	Address	Current zoning
4	92060	8 Princess Street, Brighton-Le-Sands	SP3 Tourist
5	92060	8 Princess Street, Brighton-Le-Sands	SP3 Tourist
70	92060	8 Princess Street, Brighton-Le-Sands	SP3 Tourist

The subject site has a total area of approximately 1505sqm and is bounded by Princess Street to the north; and a service laneway to the south; residential development to the west and by a hotel development (Novotel) to the east. The site currently contains a 9-storey shop top housing development (refer to aerial photograph at **Figure 1** (subject site outlined in red); and google street view image at **Figure 2**).

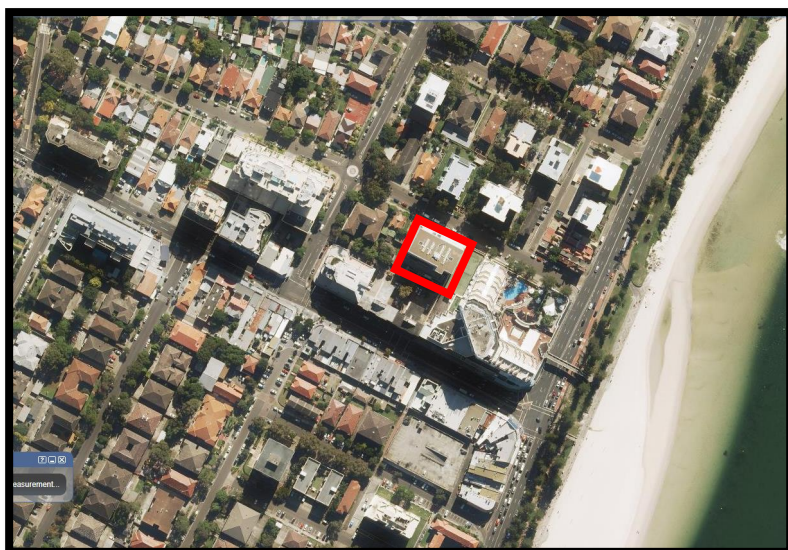


Figure 1 – Aerial photograph
(Source: www.maps.six.nsw.gov.au)

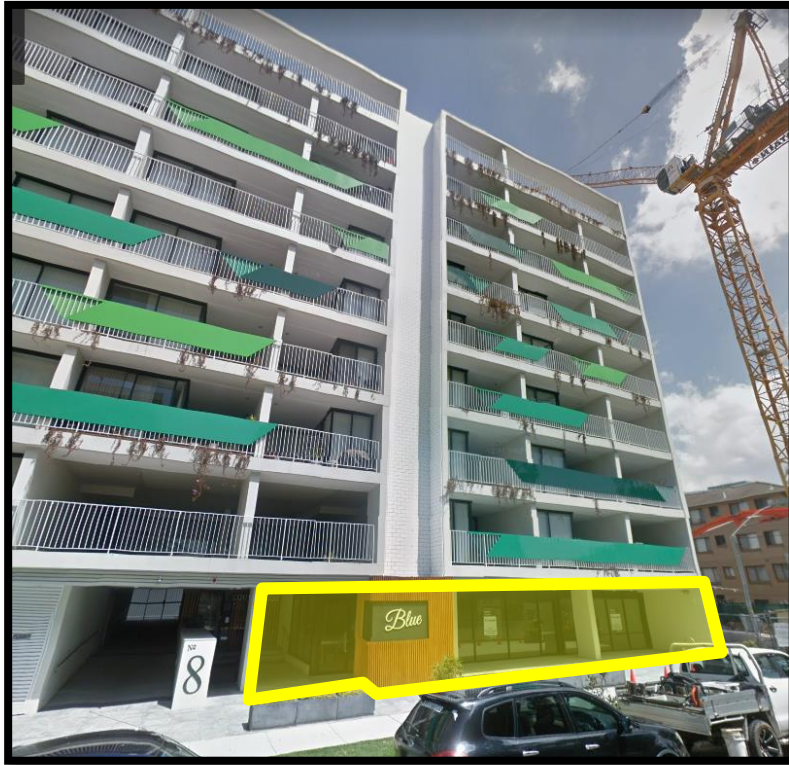


Figure 2: Subject site with ground floor commercial tenancies outlined in yellow
(Source: www.google/maps - Street view - image capture October 2017)

Site Context:

The site is located on the southern side of Princess Street and forms part of the Brighton-Le-Sands local centre.

A context map for the site is provided in **Figure 3**, below:



Figure 3: Site context map
(Source: Land & Property Information www.maps.six.nsw.gov.au)

Surrounding land use zones:

Land use zones surrounding the site comprise SP3 Tourist zoned land to the east; B4 Mixed Use zoned land to the south and west, and R4 High Density Residential zoned land to the north (Refer to **Figure 4**, overleaf).

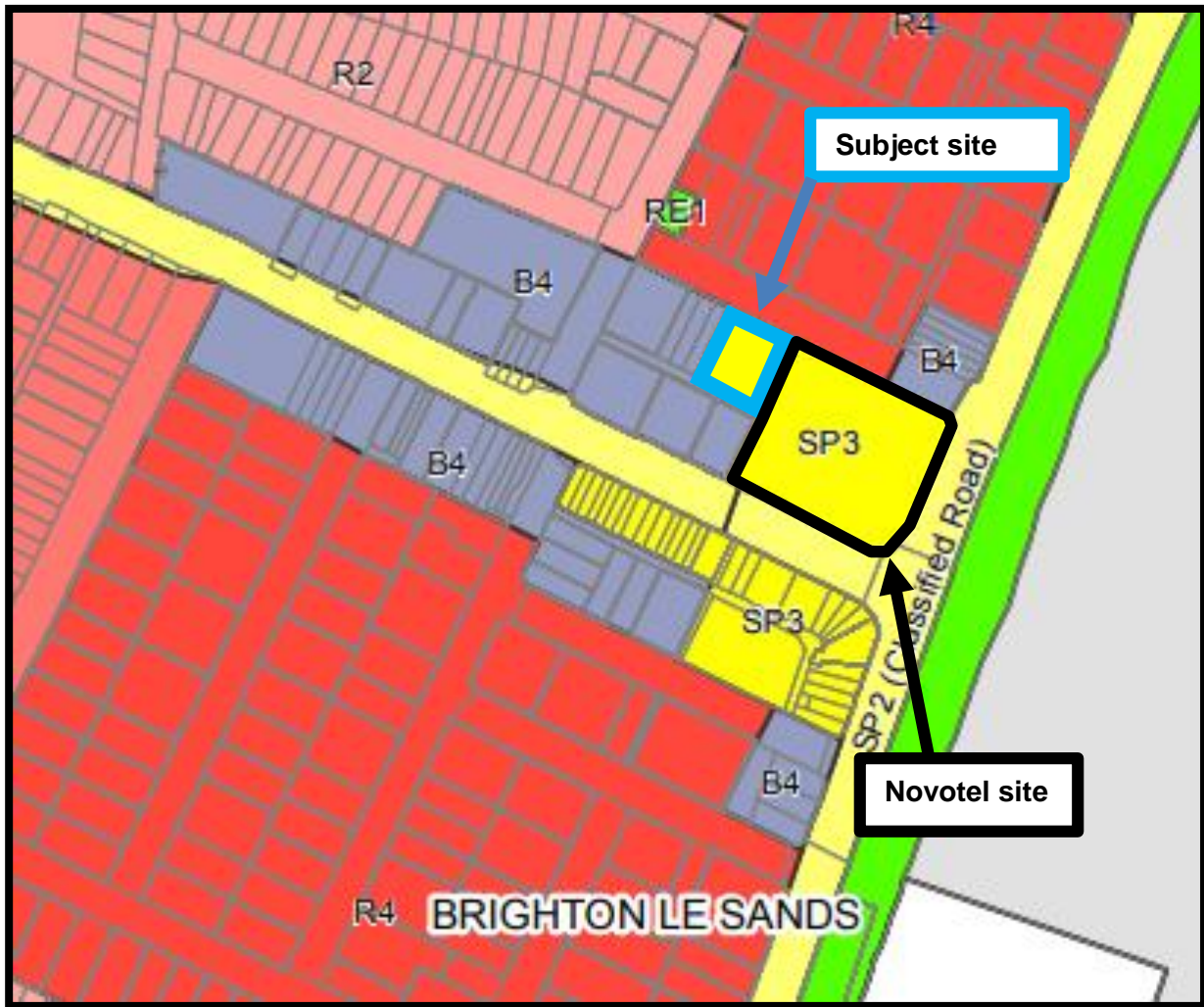


Figure 4 – Rockdale LEP 2011 Land Zoning Map LZN_004 (Subject site – SP3 - Tourist)
 (Source: www.legislation.nsw.gov.au)

Planning History

A major development application (MP08_0239 – Tourism (Hotel) Development) under the former Part 3A of the *Environmental Planning Assessment Act 1979* (EP&A Act) was lodged with the then Department of Planning for refurbishment works and hotel extension to the Novotel Hotel (Novotel site), and included the subject site as part of the major application. A concept plan for the site was authorised by the then Minister for Planning, however, the proposed hotel expansion did not proceed and the Part 3A declaration for the project revoked.

As part of the major application consultation and assessment process; and in the preparation of the Rockdale LEP 2011, the site was rezoned from Residential 2(c) to SP3 Tourist so as to be consistent with the concept plan.

The subject site has since been redeveloped for the purposes of a 9-storey shop top housing development under DA2012/325 and includes the 3 non-residential tenancies at ground floor.

Despite extensive marketing campaigns conducted over a period of several years, the owner was unable to lease the commercial tenancies for a variety of reasons, as detailed in the

supporting Sales and Marketing Overview Letter (refer **Attachment 2**) and Shop Tenancy Assessment (refer **Attachment 3**) submitted with the Planning Proposal.

DRAFT PLANNING PROPOSAL ASSESSMENT

Summary of draft Planning Proposal

The draft Planning Proposal seeks to:

1. Rezone the land from SP3 Tourist to B4 Mixed Use.

The intended outcome of the draft Planning Proposal is to enable three inactive commercial tenancies located at the ground floor of an existing shop top housing development to be used for the purposes residential dwellings.

The proposed zoning will allow for residential uses at ground floor and provide a land use zone compatible with the Brighton-Le-Sands local centre.

A copy of the draft Planning Proposal is included at **Attachment 1**.

Assessment of draft provisions

Proposed Zoning

The proposed B4 Mixed Use zoning permits residential flat buildings with consent and will enable the conversion of the ground floor tenancies to residential. The proposed B4 Mixed use zoning will be consistent with the functioning of the existing local centre and form a logical extension to the existing B4 Mixed Use zone. The site is not subject to *Rockdale Local Environmental Plan 2011* clause 6.11 Active Street Frontage and Residential Flat Buildings are permitted with consent in the B4 Zone.

Urban Context & Evaluation

The Planning Proposal indicates that the retail tenancies at ground floor are not able to be leased despite several leasing campaigns as summarised in the supporting Sales and Marketing Overview Letter (refer **Attachment 2**). As identified in the submitted Shop Tenancy Assessment prepared by Essential Economics (refer **Attachment 3**), the site has relatively poor overall locational attributes, in summary:

- i) Competition from existing food-based retailing;
- ii) Minimal levels of pedestrian traffic and no direct sight lines to highly trafficked areas;
- iii) Visibility to passing traffic given the low levels of vehicle traffic in Princess Street;
- iv) There are no other significant attractors to the subject site; and
- v) The site is located a block north of Bay Street and derives no benefit from the activity levels and visitation generated from the Brighton-Le-Sands activity centre.

Council staff have reviewed the Planning Proposal and supporting Design Report (refer **Attachment 4**) and the following comments are provided:

- *The Eastern City District Plan, Planning Priority E6 – Creating and renewing Great Places and Local Centres* refers to streets as places that function in response to street typology and

local conditions. The vacant tenancies at ground floor are not desirable for the performance or the safety of the local street, and do not contribute to the vitality or life of the street. Without any activation or passive surveillance at ground floor an inactive frontage has arisen from the above listed contributing factors, generating concerns around how the development is responding to *Crime Prevention Through Environmental Design* (CPTED) principles.

- The rezoning of the site to allow for ground floor residential tenancies will provide the passive surveillance required. The public and private interface will also allow for casual interaction and contribute to the vitality and life of the street.
- To improve the existing urban condition the Planning Proposal for 8 Princess Street, Brighton-Le-Sands, to be rezoned from SP3 Tourist to B4 Mixed Use, is supported on the grounds of addressing *Planning Priority E6* of the *Eastern City District Plan*, *CPTED* principles and universal urban design principles in relation to street activation.

Justification

Environmental Planning & Assessment Act 1979 (EP&A Act)

The NSW Department of Planning & Environment's *A Guide to Preparing Planning Proposals* - issued under s3.33 (3) of the EP&A Act - provides guidance and information on the process for preparing Planning Proposals. The assessment of the submitted Planning Proposal by Council staff has been undertaken in accordance with the latest version of this *Guide* (dated August 2016).

Section 9.1 Ministerial Directions (formerly known as 'section 117 directions')

Section 9.1 Ministerial directions (s9.1 directions) set out what a RPA must do if a s9.1 direction applies to a Planning Proposal, and provides details on how inconsistencies with the terms of a direction *may* be justified.

An assessment of the Planning Proposal against the applicable s9.1 directions is provided in **Table 2** below:

Table 2: Planning Proposal consistency with s9.1 directions.

Direction	Planning Proposal consistency with terms of direction	Consistent: Yes/ No (If No, is the inconsistency adequately justified?)
1.1 Business and Industrial Zones	<p>What a RPA must do: A RPA must ensure that a Planning Proposal:</p> <ul style="list-style-type: none"> (a) Give effect to the objectives of this direction, (i.e. encourage employment growth in suitable locations, protect employment land in business and industrial zones, and support the viability of identified centres), (b) Retain the areas and locations of existing business and industrial zones, (c) Not reduce the total potential floor space area for employment uses and related public services in business zones, (d) Not reduce the total potential floor space area for industrial uses in industrial zones, and (e) n/ a. 	YES

	<p><u>Comment:</u> The Planning Proposal provides additional B4 mixed use zoned land in close proximity to an existing business zone, supporting the viability of the Brighton-Le-Sands local centre.</p>	
2.3 Heritage Conservation	<p>What a RPA must do: A RPA must ensure that a Planning Proposal contains provisions that facilitate the conservation of heritage items, places, building works or precincts of environmental heritage significance to an area.</p> <p><u>Comment:</u> The site is not within a conservation area, does not contain a heritage item and is not in the vicinity of a heritage item.</p> <p>No inconsistencies with the terms of the direction were identified.</p>	YES
3.3 Home Occupations	<p>What a RPA must do: A Planning Proposal must permit home occupations to be carried out in dwelling houses without the need for development consent.</p> <p><u>Comment:</u> The B4 Mixed Use zone in the Rockdale LEP 2011 includes home occupations as development that may be carried out in dwelling houses without the need for development consent.</p> <p>No inconsistencies with the terms of the direction were identified.</p>	YES
3.4 Integrating Land Use and Transport	<p>What a RPA must do: A Planning Proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development (DUAP 2001)</i> (guidelines).</p> <p><u>Comment:</u> The Planning Proposal is considered consistent with the guidelines as the Planning Proposal enables residential development in close proximity to frequent public transport and a mix of uses including shops and services.</p> <p>No inconsistencies with the terms of the direction were identified.</p>	YES
3.5 Development Near Licensed Aerodromes	<p>No alteration to controls in relation to building height are proposed and the site is not affected by the Australian Noise Exposure Forecast. Therefore, no inconsistencies with the terms of the direction were identified.</p>	YES
4.1 Acid Sulfate Soils	<p>What a RPA must do: The direction requires that a RPA must consider an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.</p> <p><u>Comment:</u> The Rockdale LEP 2011 Acid Sulfate Soils Map identifies the site as having Class 4 acid sulfate soils.</p> <p>Consistency <i>A Planning Proposal may be inconsistent with the terms of the direction if the inconsistency is justified by a study prepared in support of the Planning Proposal.</i></p> <p><u>Comment:</u></p>	NO - Inconsistency justified.

	<p>Clause 6.1 of the Rockdale LEP 2011 requires an acid sulfate soils management plan at DA stage, before carrying out any development on the land. The inconsistency with this direction is therefore considered minor and justifiable.</p>	
<p>5.10 Implementation of Regional Plans</p>	<p>What a RPA must do: Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.</p> <p><u>Comment:</u> <i>A Metropolis of Three Cities</i> is the Region Plan that applies to the five districts that make up the Greater Sydney Region.</p> <p>The Planning Proposal is consistent with the following objectives in the Region Plan:</p> <ul style="list-style-type: none"> • Objective 10: Greater housing supply The Planning Proposal increases the supply of housing. • Objective 14: integrated land use and transport creates walkable and 30-minute cities. The Planning Proposal increases housing within a walkable catchment of Brighton-Le-Sands local centre and transport links that support this objective. 	<p>YES</p>
<p>7.1 Implementation of A Plan for Growing Sydney</p>	<p>What a RPA must do: A RPA must ensure that a Planning Proposal is consistent with A Plan for Growing Sydney.</p> <p><u>Comment:</u> The draft Planning Proposal is consistent with the following directions and priorities contained in <i>A Plan for Growing Sydney</i>:</p> <ul style="list-style-type: none"> • Direction 2.1: Accelerate housing supply across Sydney. The delivery of new housing must be accelerated to meet the need for a bigger population and to satisfy a growing demand of different types of housing. • Direction 2.2: Accelerate urban renewal across Sydney – providing homes closer to jobs. New urban renewal locations will be selected in or near centres on the public transport network. Locating new housing here will make it easier for people to get to jobs and services and take pressure off congested roads. • Direction 2.3: Improve housing choice to suit different needs and lifestyles. • Direction 3.1: Revitalise existing suburbs. Provision of new housing within Sydney's established suburbs bring real benefits to communities and make good social and economic sense. Directing new housing to the existing urban areas will reduce the impact of development on the environment and protect productive rural land on the urban fringe. <p>No inconsistencies with the terms of the direction were identified.</p>	<p>YES</p>

- **State Environmental Planning Policies (SEPPs)**

An assessment of the Planning Proposal against the relevant SEPPs is provided in **Table 3**, below.

Table 3: Relevant SEPPs

Name of SEPP	Compliance of Planning Proposal with SEPP	Complies Y/ N
SEPP No 65—Design Quality of Residential Apartment Development (SEPP 65)	The Planning Proposal was referred to Council's Urban Designer, who raised no objection to the proposal in terms of its consistency with SEPP 65, noting that any future DA, should the Planning Proposal be supported, would be required to comply with SEPP 65 and accompanying Apartment Design Guide.	YES

There are no other SEPPs applicable to the Planning Proposal.

- **Sydney Regional Environmental Plans (SREPs)**

There are no SREPs applicable to the Planning Proposal.

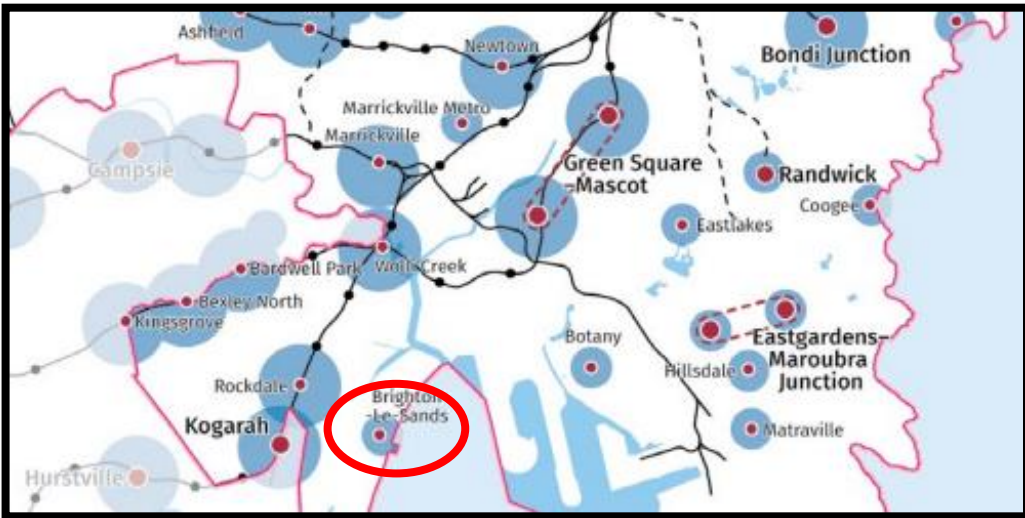
- **Strategic Planning Framework**

Regional, sub-regional and district plans and strategies include outcomes and specific actions for a range of different matters including housing and employment targets, and identify regionally important natural resources, transport networks and social infrastructure.

An assessment of the Planning Proposals consistency with the strategic planning framework is provided in **Table 4**, below.

Table 4: Strategic Planning Framework

Name of Strategic Plan	Directions, priorities, objectives and actions	Planning Proposal consistency with Strategic Plan	Consistency Y/ N
Regional Plans			
Greater Sydney Region Plan	<p>Objective 10 – Greater housing supply, which encourages the supply of housing in the right locations with access to shops, services and public transport.</p> <p>Objective 14 – A Metropolis of Three Cities – integrated land use and transport creates walkable and 30-minute cities. <i>“One of the principal elements in achieving the productivity outcomes is:</i></p> <p><i>Co-locate activities in metropolitan, strategic and local centres and attract housing in and around centres</i></p>	<p><u>Comment:</u> The draft Planning Proposal is consistent with objective 10 as additional housing supply is facilitated within walking distance of shops, services and public transport.</p> <p><u>Comment:</u> The Planning Proposal is located in the Brighton-Le-Sands local centre and potentiates additional housing within walking distance of shops and public transport links that support the objective.</p>	YES

	to create walkable, cycle-friendly neighbourhoods.”		
District Plans			
Eastern City District Plan (ECDP)	<ul style="list-style-type: none"> Planning Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport. Planning Priority E6: Creating and renewing great places and local centres. The Planning Priority establishes ‘Principles for local centres’ and states that: <i>“additional residential development within a five-minute walk of a centre focused on local transport, will help to create walkable local centres.”</i> 	<p>Comment: The Planning Proposal supports the role of the Brighton-Le-Sands local centre by increasing housing provision within walking distance of services and public transport.</p> <p>Comment: Brighton-Le-Sands is identified as a local centre in the ECDP (refer to the extract from the ECDP at Figure 5, below).</p> <p>The Planning Proposal is consistent with the ‘Principles for local centres’ (p49 of the ECDP) through the increased provision of residential development in, or within walkable distance of, the centre.</p>	YES
 <p>— District Boundary ● 400m walking catchment - - - Light Rail</p> <p>● Metropolitan Centre ● 800m walking catchment</p> <p>● Strategic Centre ● Waterways</p> <p>● Local Centre — Railway</p> <p>The map illustrates the approximate five-minute walking catchment around local centres serviced by local transport and the approximate 10-minute walking catchment around a centre focused on a mass transit stop. Actual walking catchments of 5-10 minutes will depend on local connections and conditions and should be determined using a place-based approach within which housing, retail and commercial growth opportunities need to be balanced and planned for by councils.</p> <p>Figure 5: Eastern City District – centres (Source: Eastern City District Plan)</p>			

Local plans			
Rockdale Community Strategic Plan (adopted 15 June 2011)	<p><u>Villages and Local Centres</u></p> <p><i>Redevelopment within these centres is encouraged as a means of increasing residential densities in close proximity to public transport and services. Redevelopment proposals would need to recognise the desired local character of the centre.</i></p> <p><u>Rockdale Tomorrow:</u></p> <p><i>Future growth is likely to occur in the centres of Rockdale, Wolli Creek, Brighton Le Sands, Bexley and Bexley North, which have the most significant opportunities for redevelopment through the presence of larger sites which are more readily able to be developed.</i></p>	<p><u>Comment:</u></p> <p>The Planning Proposal is generally consistent with the Plan to increase residential densities in close proximity to public transport.</p>	YES

Other considerations

Car parking:

The Rockdale Development Control Plan 2011 (Rockdale DCP) requires car parking at the rate of 1 space per 1 and 2 bed apartments. The indicative floor plan submitted with the Planning Proposal indicates that the ground floor of the development could potentially accommodate 1 x 1 bedroom apartment and 1 x 2 bedroom apartment, which equates to a car parking requirement of 2 spaces.

The existing approved retail ground floor component has a GFA of 160m². The Rockdale DCP requires car parking at the rate of 1 space per 40m² GFA, equating to a car parking requirement of 4 spaces.

Accordingly, the Planning Proposal is acceptable in terms of car parking provision given the resultant decrease in car parking required.

Conclusion

The current SP3 Tourist zoning for the site was informed by a major development application under the former Part 3A of the *Environmental Planning and Assessment Act 1979* to expand the adjoining Novotel hotel.

The expansion of the existing Novotel did not proceed, and the site was subsequently developed for the purposes of a 9-storey shop top housing development in accordance with

the permissible land uses in the SP3 Tourist zone. The existing development on the site has three commercial tenancies at ground floor.

Despite extensive marketing campaigns conducted over a period of several years, the owner was unable to lease the commercial tenancies for a variety of reasons, as detailed in the Planning Proposal and supporting reports submitted with the Planning Proposal.

The vacant tenancies have resulted in an inactive streetscape and the Planning Proposal seeks to rectify this unintended outcome by rezoning the site to B4 Mixed Use. It is anticipated that this will enable residential development at ground floor, which will provide casual surveillance and activation of the streetscape whilst retaining a zoning consistent with the primary function of the Brighton-Le-Sands local centre.

Community Engagement

Should the Planning Proposal proceed through Gateway, community consultation will be undertaken in accordance with section 3.34 of the EP&A Act. The specific requirements for community consultation will be listed in the Gateway determination, including any government agencies that are to be consulted.

Attachments

- 1 Attachment 1 - Planning Proposal
- 2 Attachment 2 - Sales and Marketing Overview Letter
- 3 Attachment 3 - Shop Tenancy Assessment
- 4 Attachment 4 - Design Report [↓↓↓↓](#)

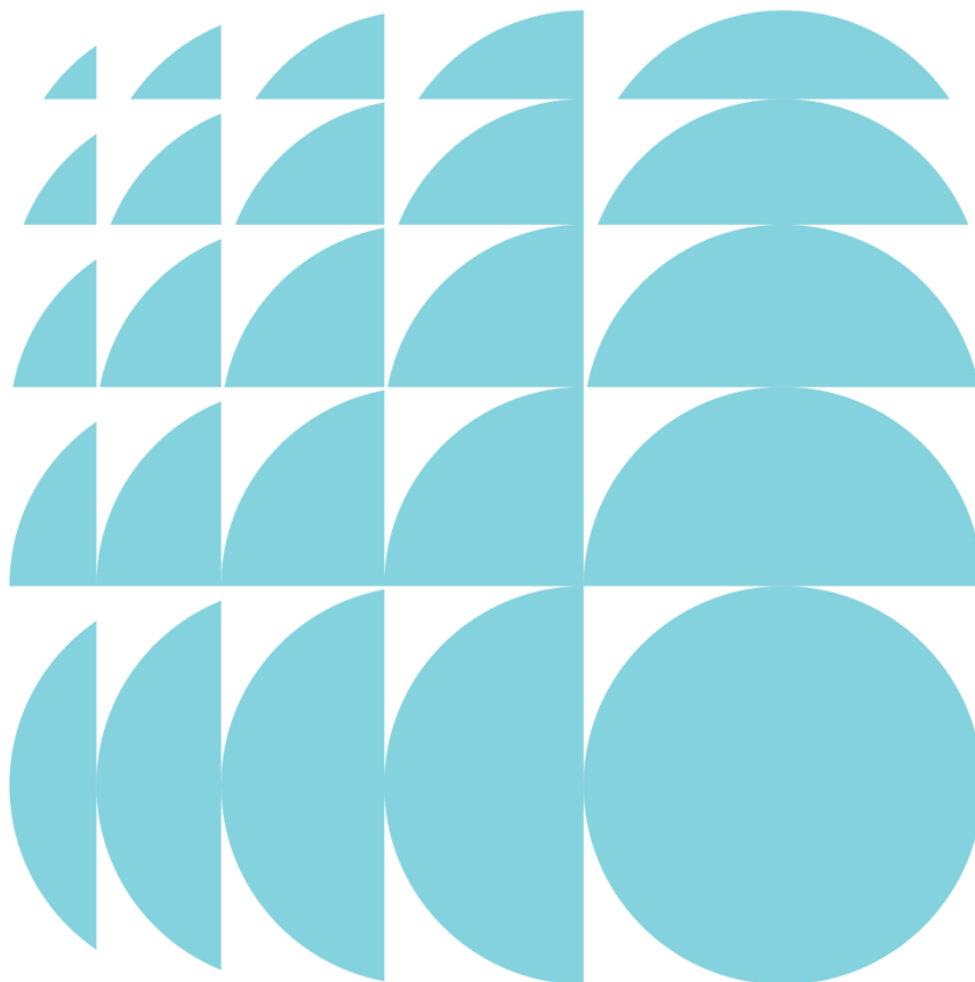
ETHOS URBAN

Planning Proposal

8 Princess Street, Brighton-Le-Sands
Rezoning from SP3 Tourist to B4 Mixed Use

Submitted to Bayside Council
On behalf of Lumex Property Group Pty Ltd

09 April 2018 | 17060



CONTACT

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26/03/2018

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8 Princess Street, Brighton-Le-Sands | Planning Proposal | 09 April 2018

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- A. Indicative Architectural Drawings
SJB
- B. Sales and Marketing Overview Letter
Colliers
- C. Traffic Impact Assessment
GTA
- D. Retail Tenancy Economic Assessment
Essential Economics

1.0 Introduction

This Planning Proposal explains the intended effect of, and justification for, the proposed amendment to the *Rockdale Local Environmental Plan 2011* ('Rockdale LEP 2011'). It has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* and the relevant Department of Planning and Environment guidelines, including 'A Guide to Preparing Local Environment Plans' and 'A Guide to Preparing Planning Proposals'.

1.1 The Site

The site to which this planning proposal relates is located at 8 Princess Street, Brighton-Le-Sands and is legally described as SP92060. The subject strata units located on the ground floor are Lot 70, Lot 4 and Lot 5 within SP92060. **Figure 1** illustrates the subject site.



The Site

Figure 1 Site Location

Source: Nearmap

1.2 Background

In 1988, development consent (DA175/87) was granted by Council for the construction of a 15-storey hotel – the Novotel Hotel Brighton Le Sands – at the Grand Parade, Brighton Le Sands. Thakral Holdings Limited is the current owner of the Novotel Hotel.

Recently in 2007, Thakral Holdings Limited purchased the vacant site (8-14 Princess Street, Brighton Le Sands) to the immediate west adjoining the Novotel.

Between early 2008 and early 2011, a series of meetings were held at Rockdale City Council to discuss a possible extension of the existing Novotel hotel onto the subject site. During this time, discussions were also held with the Department of Planning & Infrastructure (the Department) and Council regarding the proposed lodgement of a Part 3A Concept Plan for the refurbishment of the existing hotel and its extension onto the subject site. In January 2009, the proposed hotel expansion project was declared to be a project to which Part 3A of the EP&A Act applies, and the then Minister for Planning authorised the preparation of a Concept Plan.

As part of the comprehensive LEP process, the site was re-zoned from Residential 2(c) under the preceding Rockdale LEP 2000 to SP3 Tourist under the Rockdale LEP 2011, which would appear to be in response to the declaration of the Part 3A Concept Plan.

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In June 2011, Thakral advised the Council that a hotel expansion onto the subject site would not be pursued for a range of commercial and strategic reasons outside the control of Thakral Holdings. Accordingly, Thakral Holdings pursued a 'shop top housing' development of the site and lodged a Development Application on 20 April 2012. During the course of the DA assessment, the current landowner, Lumex Property Group acquired the site.

The existing development at the site, being a shop top housing building, was approved by (the former) Rockdale City Council on 12 December 2012 as part of DA-2012/325. A shop top housing building was proposed under DA-2012/325 as a result of the prohibition of residential flat buildings within the SP3 Tourist zone which applies to the site.

DA-2012/325 provided consent for the construction and use of a 9-storey mixed-use development comprising three (3) non-residential tenancies, 67 residential units and basement parking for 71 vehicles. The building was completed and occupied in September 2015.

1.3 Description of the Planning Proposal

This planning proposal seeks to amend the zoning of land at 8 Princess Street, Brighton-Le-Sands (legally known as SP 92060) from SP3 Tourist to B4 Mixed Use in the Land Zoning Map of the Rockdale LEP 2011.

No amendment to the existing building height or floor space ratio development standards is proposed.

1.4 Rationale for the Proposal

The rationale for this planning proposal is that the site is currently being underutilised and is not contributing to the amenity of Brighton-Le-Sands. The landowner has actively marketed the three ground level tenancies for either leasing or sale through a national specialist commercial real estate agent, Cushman and Wakefield and thereafter engaging Colliers and LJ Hooker to extend the campaign. During the past 2.5 years since its completion, no reasonable offers were received for the purchase or leasing of the space. A letter providing an overview of the sales and marketing campaign is provided at **Appendix B**.

Shortly after construction of the exiting building in September 2015, the non-residential tenancies were advertised for lease or sale through a comprehensive marketing campaign involving:

- online listings on Real Commercial;
- listings within the Sydney Morning Herald and the St George and Sutherland Shire Leader newspapers;
- notifications of an e-flyer within a national database for commercial real estate agents; and
- onsite sign boards.

The three tenancies are subdivided into separate titles, each with a regular and highly usable shape. The tenancies were marketed as 'empty shells' (i.e. no fit out), allowing for flexibility in their final use. Furthermore, the design of each tenancy was maximised for retail exposure, with floor to ceiling glazing towards Princess Street. Building upgrades were also completed for a 1,000 Litre Grease arrestor and mechanical exhaust, allowing for reduced fit out costs for food and beverage operators utilising the spaces.

Despite the above and an asking rent reduction, interest in the tenancies was still limited, as outlined in the letter provided at **Appendix B**. Colliers note the following key factors contributing to the lack of commercial interest:

- a lack of foot traffic along Princess Street;
- reduced critical mass of other retail operations immediately surrounding the site;
- potential conflict of non-residential and residential uses, particularly in regard to noise and hours of operation; and
- a shortage of customer parking (particularly on weekends) in the surrounding street network.

Given the long term vacancy status of the site, Essential Economics were engaged to undertake an independent market appraisal of the ground floor retail/commercial space to determine its future financial viability (attached in **Appendix D**). The report finds that the subject site has below-average attributes for the operation of successful ground-floor retailing based on 12 commonly applied locational assessment criteria. The assessment result also confirms that the poor locational attributes of the site is one of the key reasons for a lack of interest.

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In light of the above, this planning proposal is necessary to facilitate the conversion of the non-residential tenancies to residential apartments. All reasonable efforts have been exhausted to secure the occupation of these tenancies for commercial purposes, therefore it is considered necessary to allow for an alternative use which is in demand and will allow for the ground level to contribute to the streetscape and activity in the locality.

It is noted that the conversion of the ground floor commercial tenancies to residential apartments will be subject to a subsequent Development Application.

2.0 Objectives or Intended Outcomes

The key objective and intended outcome of the planning proposal is to amend the *Rockdale LEP 2011* to enable the infill redevelopment of three vacant non-residential tenancies at the subject site. The infill of these three non-residential tenancies will allow for the delivery of two residential apartments.

The broader objectives of this planning proposal are to:

- Amend the zoning of the land from SP3 Tourist to B4 Mixed Use to in order to permit residential uses on the ground floor;
- Enhance the degree to which the existing building integrates with the immediate surrounds, which predominantly consists of residential uses;
- Provide a comparatively enhanced level of street front activation and urban design outcome through the occupation of the lower levels of the building; and
- Establish additional opportunities for housing within the Brighton-Le-Sands centre, in turn offering residents the opportunity to live within immediate access to key services, amenities, and infrastructure within walking distance.

3.0 Explanation of Changes

The proposed outcome, as outlined at **Section 2.0**, will be achieved by amending Sheet LZN_004 Land Zoning Map of Rockdale LEP 2011 as follows:

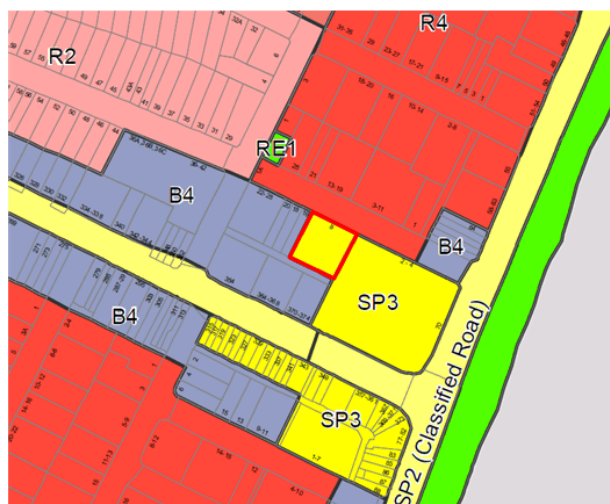


Figure 2 Existing Zoning Map

Source: Rockdale LEP 2011

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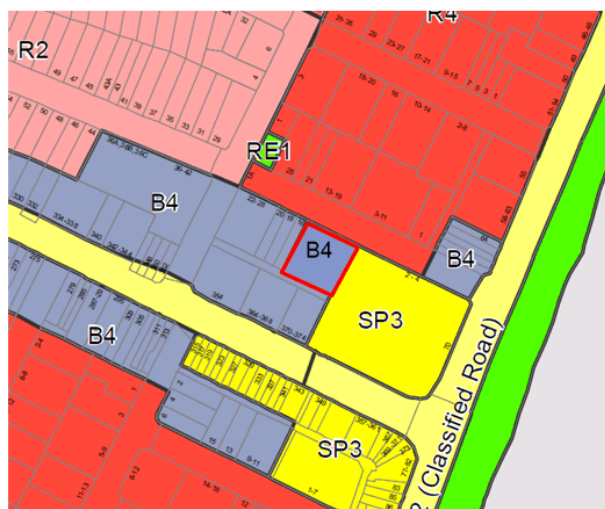


Figure 3 Proposed Zoning Map

Source: Ethos Urban

4.0 Justification

4.1 Need for the planning proposal

4.1.1 Is the planning proposal a result of any strategic study or report?

This planning proposal is not in direct response to any strategic study or report, but more broadly implements the goals and aspirations of the adopted metropolitan and district strategic plans. The relationship of the proposal with the relevant strategic planning documents is addressed in Section 4.2 below.

The need for the planning proposal has mainly arisen from a lack of interest in the non-residential tenancies and the long-term vacancies (2.5 years), given a number of constraints. As such, it is more appropriate to rezone the site to B4 Mixed Use to allow for residential flat buildings given the prolonged vacancy of the ground floor commercial tenancies.

The future provision of residential uses on the ground level in lieu of the non-residential tenancies will also result in an improvement to the contribution of the building in the streetscape, particularly given the vacant nature of the current tenancies. Currently, the vacant tenancies present a blank response to the street, being empty shells with no visual interest or activity provided. The future envisaged residential apartments will enable a level of activation to the ground level and will ensure that the presentation of the building is purposeful rather than vacant tenancies.

4.1.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal is the most appropriate means of achieving the objectives and intended outcomes outlined at Section 2.0. Currently, the zoning of the site does not permit residential flat buildings, meaning that ground level tenancies within the existing building are required to be utilised for non-residential uses. As such, there is a clear need for an amendment to the current permissible uses on the site to permit the conversion of the ground level non-residential tenancies to residential apartments.

The planning proposal will amend the zoning of the site from SP3 Tourist zone to a B4 Mixed Use zoning in order to permit 'residential flat buildings' on the site. The proposed rezoning will respond to the underlying commercial zone of the Brighton-Le-Sands Town Centre and will be commensurate with uses foreshadowed in the zone.

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An alternative to the amendment sought with the planning proposal would be to amend Schedule 1 'Additional permitted uses' to insert "residential flat buildings" as a permissible use on the land without amending the existing SP3 Tourist zone. This alternative would not provide a desirable outcome for the site as it will create an unnecessary provision in the LEP and is not reflective of the underlying objective of the SP3 zone which is to promote tourist related uses. It is noted that given the recent re-development of the site, it is considered that the SP3 Tourist zoning of the site is effectively redundant.

Overall, the amendment to the zoning of the site pursuant to the Rockdale LEP 2011 is the most efficient and time effective approach to meet the intended outcomes of the planning proposal.

4.2 Relationship to Strategic Planning Framework

4.2.1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal is consistent with the objectives and actions of the relevant regional, sub-regional or district strategic plans as set out below.

A Plan for Growing Sydney

The proposed amendment to the Rockdale LEP 2011 is consistent with the goals outlined under *A Plan for Growing Sydney* as discussed in **Table 1** below.

Table 1 Table Caption Proposal's consistency with the goals of A Plan for Growing Sydney

Goal	Comment
GOAL 1: A competitive economy with world-class services and transport	The planning proposal will not affect the achievement of a competitive economy with world-class services and transport. The subject tenancies have been marketed for over 2.5 years for leasing or sale without any success. As such, it is evident that the commercial/retail tenancies do not contribute to a competitive economy in their current form. These tenancies are expected to contribute to the economy when converted to residential apartments.
GOAL 2: A city of housing choice, with homes that meet our needs and lifestyles	The proposed amendment of the Rockdale LEP 2011 will facilitate additional housing within the locality.
GOAL 3: A great place to live with communities that are strong, healthy and well connected	The planning proposal will facilitate the improvement of the current building, allowing for the replacement of vacant non-residential tenancies with residential apartments. These new apartments will enhance the streetscape and increase community members, offering opportunities for a strengthened sense of community.
GOAL 4: A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources	The proposal will facilitate the conversion of vacant non-residential tenancies to residential apartments, ensuring that the land is utilised to its full potential and housing is consolidated in a location with close proximity to existing services, facilities and infrastructure.

Greater Sydney Region Plan - Vision to 2056

The Greater Sydney Commission (GSC) has published a finalised new Greater Sydney Region Plan titled *Our Greater Sydney 2056 A metropolis of three cities*, aligns the metropolitan plan for the Greater Sydney with the more targeted district plans. The planning proposal is consistent with the Directions of *Our Greater Sydney 2056* as set out in **Table 2** below.

Table 2 Table Caption Proposal's consistency with Our Greater Sydney 2056

Priority	Comment
A city for people Celebrating diversity and putting people at the heart of planning	The planning proposal will accommodate the growing population of Sydney and contribute to a healthy resilient community.
Housing the city Giving people housing choices	The additional residential apartments facilitated through the planning proposal will accommodate new residents, contributing to the housing target of the Eastern City.

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Priority	Comment
A city of great places Designing places for people	The planning proposal will increase capacity for residential development and will improve viability and sustainability of the place, while enhancing the street interface.
A well-connected city Developing a more accessible and walkable city	The site is located in an identified local centre with close proximity to Kogarah Health and Education Precinct and Bayside West Precincts urban renewal area. The proposal will allow for additional housing in a well located area to support the local centre and contribute to a more accessible and walkable city.

Eastern City District Plan

The proposed amendment to the Rockdale LEP 2011 is consistent with the priorities and actions for the eastern city outlined within the adopted Eastern City District Plan. The proposal's consistency with the relevant priorities is set out in **Table 3** below.

Table 3 Proposal's consistency with the relevant priorities and actions of the Eastern City District Plan

Priority	Comment
Planning Priority E5: Providing housing supply, choice and affordability with access to jobs and services	The planning proposal will allow for future residential apartments in an accessible location with access to jobs and services. These apartments will contribute to housing target, choice and diversity in the locality.
Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage	The additional residential apartments facilitated through the planning proposal will provide a unique housing proposition, being courtyard apartments accessed directly from the street in a local centre. These apartments will provide diversity to the building and more broadly contributing to greater choice in the housing market.
Planning Priority E10: Delivering integrated land use and transport planning and a 30-minute city	The planning proposal will support the principle of integrating land use and transport by facilitating the provision of residential apartments in close proximity to existing facilities and services, allowing residents to live within 30 minutes of existing infrastructure, facilities, services and employment.

4.2.2 Is the planning proposal consistent with the local council's Community Strategic Plan or other local strategic plan?

The planning proposal is consistent with the Rockdale City Community Strategic Plan. The Community Strategic Plan sets out the vision for the local area until 2025, establishing four key outcomes. **Table 4** sets out the consistency of the proposal with these outcomes and the relevant objective.

Table 4 Proposal's consistency with the outcomes of the Rockdale City Community Strategic Plan

Outcome	Comment
Outcome 1 – Rockdale is a welcoming and creative City with active, healthy and safe communities	The planning proposal will contribute to this outcome by facilitating residential apartments which will allow people to live in the Brighton-Le-Sands centre. The integration of new housing in this centre will allow people to live a healthy and active lifestyle.
Outcome 2 – Rockdale is a City with a high quality natural and built environment and valued heritage in liveable neighbourhoods. A City that is easy to get around and has good links and connections to other parts of Sydney and beyond.	The proposal will facilitate improvements to the existing building, being the enhancement and activation of the ground floor plate. This will ultimately contribute to the quality of the built environment.
Objective 2.2 Our City has a well managed and sustainable built environment, quality and diverse development with effective housing choice	The planning proposal will facilitate the conversion of non-residential tenancies into residential apartments, contributing to greater housing choice in the locality.
Outcome 3 – Rockdale is a City with a thriving economy that provides jobs for local people and opportunities for lifelong learning	The planning proposal seeks to permit the use of vacant non-residential tenancies for use as residential apartments. Ultimately, this will allow for a greater population in the locality, in turn enhancing the local economy.
Outcome 4 – Rockdale is a City with engaged communities, effective leadership and access to decision making.	The planning proposal will not affect the ability for effective leadership and access to decision making.

4.2.3 Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The consistency of the planning proposal to applicable SEPPs is discussed in **Table 5** below.

Table 5 Table Caption Consistency with SEPPs

No.	Title	Consistency with planning proposal
1	Development Standards	Not applicable as per Clause 1.9 of the Rockdale LEP 2011.
14	Coastal Wetlands	Not applicable
19	Bushland in Urban Areas	Not applicable
21	Caravan Parks	Not applicable
26	Littoral Rainforests	Not applicable
30	Intensive Aquaculture	Not applicable
33	Hazardous and Offensive Development	Not applicable
36	Manufactured Home Estates	Not applicable
44	Koala Habitat Protection	Not applicable
47	Moore Park Showground	Not applicable
50	Canal Estate Development	Not applicable
52	Farm Dams and Other Works in Land and Water Management Plan Areas	Not applicable
55	Remediation of Land	The site was deemed suitable for residential uses under DA-2012/325. The findings of this original assessment are considered to remain valid.
62	Sustainable Aquaculture	Not applicable
64	Advertising and Signage	Not applicable
65	Design Quality of Residential Apartment Development	Consistency with the principles of SEPP 65 and accompanying Apartment Design Guide will be further demonstrated in a future development application for the change of use. A high level overview of the proposals consistency with these matters and residential amenity more generally is set out in Section 4.3.2 below.
70	Affordable Housing (Revised Schemes)	Not applicable
71	Coastal Protection	Not applicable
-	(Affordable Rental Housing) 2009	Not applicable
-	(Building Sustainability Index: BASIX) 2004	Detailed compliance with SEPP (BASIX) will be demonstrated in a future separate development application for the change of use facilitated by this planning proposal.
-	(Exempt and Complying Development Codes) 2008	SEPP (Exempt and Complying Development Codes) 2008 may apply to the future development, however is not relevant to this planning proposal.
-	(Housing for Seniors or People with a Disability) 2004	Not applicable
-	(Infrastructure) 2007	Not applicable
-	(Kosciuszko National Park Alpine Resorts) 2007	Not applicable
-	(Kurnell Peninsula) 1989	Not applicable
-	(Mining, Petroleum Production and Extractive Industries) 2007	Not applicable
-	(Miscellaneous Consent Provisions) 2007	Not applicable
-	(Penrith Lakes Scheme) 1989	Not applicable
-	(Rural Lands) 2008	Not applicable
-	(State and Regional Development) 2011	Not applicable

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No.	Title	Consistency with planning proposal
-	(State Significant Precincts) 2005	Not applicable
-	(Sydney Drinking Water Catchment) 2011	Not applicable
-	(Sydney Region Growth Centres) 2006	Not applicable
-	(Three Ports) 2013	Not applicable
-	(Urban Renewal) 2010	Not applicable
-	(Western Sydney Employment Area) 2009	Not applicable
-	(Western Sydney Parklands) 2009	Not applicable

4.2.4 Is the planning proposal consistent with applicable Ministerial Directions (s. 9.1 directions)?

The consistency of the planning proposal to the relevant Ministerial Directions for Local Environmental Plans under Section 9.1 of the *Environmental Planning and Assessment Act 1979* is discussed in **Table 6** below.

Table 6 Consistency with applicable Ministerial Directions

No.	Title	Consistency with planning proposal
1. Employment and Resources		
1.1	Business and Industrial Zones	The planning proposal seeks to amend the zoning of the site from SP3 Tourist zone to B4 Mixed use under the Rockdale LEP 2011. This amendment will permit residential flat buildings on the site and will encourage greater variety and choice of housing types close to facilities and services.
1.2	Rural Zones	Not applicable
1.3	Mining, Petroleum Production & Extractive Industries	Not applicable
1.4	Oyster Aquaculture	Not applicable
1.5	Rural Lands	Not applicable
2. Environment and Heritage		
2.1	Environmental Protection Zones	Not applicable
2.2	Coastal Protection	Not applicable
2.3	Heritage Conservation	Not applicable
2.4	Recreation Vehicle Areas	Not applicable
3. Housing, Infrastructure and Urban Development		
3.1	Residential Zones	The planning proposal seeks to amend the zoning of the site from SP3 Tourist zone to B4 Mixed use under the Rockdale LEP 2011. This amendment will permit residential flat buildings on the site and will encourage greater variety and choice of housing types close to facilities and services.
3.2	Caravan Parks and Manufactured Home Estates	Not applicable
3.3	Home Occupations	Not applicable
3.4	Integrating land use and Transport	The planning proposal will support the principle of integrating land use and transport by facilitating the provision of residential apartments in close proximity to existing facilities and services.
3.5	Development near Licensed Aerodromes	Not applicable
3.6	Shooting ranges	Not applicable
4. Hazard and Risk		
4.1	Acid Sulfate Soils	Not applicable
4.2	Mine Subsidence and Unstable Land	Not applicable
4.3	Flood Prone Land	Not applicable

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No.	Title	Consistency with planning proposal
4.4	Planning for Bushfire Protection	Not applicable
5. Regional Planning		
5.1	Implementation of Regional Strategies	The planning proposal is of minor significance in terms of regional planning and is consistent with the objectives of the adopted Greater Sydney Region Plan and Sydney Eastern District Plan.
5.2	Sydney Drinking Water Catchments	Not applicable
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable
5.5	Development on the vicinity of Ellalong	(Revoked)
5.6	Sydney to Canberra Corridor	(Revoked)
5.7	Central Coast	(Revoked)
5.8	Second Sydney Airport: Badgerys Creek	Not applicable
5.9	North West Rail Link Corridor Strategy	Not applicable
6. Local Plan Making		
6.1	Approval and Referral Requirements	The planning proposal does not relate to matters which are likely to require the referral or approval from a public authority.
6.2	Reserving land for Public Purposes	Not applicable
6.3	Site Specific Provisions	The planning proposal seeks to amend the site zoning on the zoning map and will not involve amendments to any site-specific clause. Further, no amendments are proposed to the existing development standards for the site.
7. Metropolitan Planning		
7.1	Implementation of A Plan for Growing Sydney	The planning proposal is of minor significance in terms of metropolitan planning and supports the goals of A Metropolis of Three Cities.
7.2	Implementation of Greater Macarthur Land Release Investigation	Not applicable
7.3	Parramatta Road Corridor Urban Transformation Strategy	Not applicable
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not applicable
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not applicable

4.3 Environmental, social and economic impact**4.3.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

The planning proposal will not result in any impact on critical habitat or threatened species, populations or ecological communities, or their habitats, given the site's urban location.

4.3.2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

It is not anticipated that there will be any significant environmental effects as a result of the planning proposal. Potential environmental effects requiring further consideration are addressed below.

Residential Amenity

The planning proposal will facilitate the future conversion of three commercial tenancies to potentially two residential apartments subject to a separate Development Application. The residential amenity of these apartments in accordance with SEPP 65 and the Apartment Design Guide has been considered.

Figure 2 illustrates the potential layout of two apartments prepared by SJB Architects. The configuration will allow for 1 x one bedroom unit and 1 x two bedroom unit. The indicative layout demonstrates that each unit will achieve natural light and will be afforded a functional floor layout with direct access to a private courtyard.



Figure 4 Anticipated Apartment Layout
Source: SJB Architects

SJB has designed the anticipated layouts in reference to the nine principles of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65) and the accompanying Apartment Design Guide ('the ADG'). Table 7 outlines the consistency of the proposal with the design criteria of the ADG.

Table 7 Assessment of the proposal's consistency with the objective of the ADG

Design Criteria	Proposal
Part 3 Siting the Development	
3D Communal and Public Open Space	
<i>Objective</i> An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping	✓
<i>Design Criteria</i> Communal open space has a minimum area equal to 25% of the site	✓
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	✓ (Refer to Shadow Diagrams at Attachment A)

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Design Criteria		Proposal												
3E Deep Soil Zones														
<u>Objective</u> Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.		✓												
<u>Design Criteria</u> Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site Area</th><th>Min. Dimensions</th><th>Deep Soil Zone*</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table> * % of site area		Site Area	Min. Dimensions	Deep Soil Zone*	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	✓
Site Area	Min. Dimensions	Deep Soil Zone*												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
3F Visual Privacy														
<u>Objective</u> Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.		✓												
<u>Design Criteria</u> Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building Height</th><th>Habitable Rooms & Balconies</th><th>Non-habitable Rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table>		Building Height	Habitable Rooms & Balconies	Non-habitable Rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	✓
Building Height	Habitable Rooms & Balconies	Non-habitable Rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
3K Bicycle and Car Parking														
<u>Objective</u> Car Parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas		✓												
<u>Design Criteria</u> For development in the following locations: on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street.		✓												
Part 4 Designing the Buildings														
4A Solar and Daylight access														
<u>Objective</u> To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		✓												
<u>Design Criteria</u>		✓ (76% overall)												

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3F Visual Privacy

Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.

A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.

✓

4B Natural VentilationObjective

The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents

✓

Design Criteria

At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.

✓
(76%)

Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.

N/A

4C Ceiling HeightObjective

Ceiling height achieves sufficient natural ventilation and daylight access

✓

Design Criteria

Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

✓

Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope

These minimums do not preclude higher ceilings if desired.

4D Apartment Size and LayoutObjective

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity

✓

Design Criteria

Apartments are required to have the following minimum internal areas:

✓

Apartment Type	Minimum internal area
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.

Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.

✓

Objective

Environmental performance of the apartment is maximised

✓

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4C Ceiling HeightDesign Criteria

Habitable room depths are limited to a maximum of 2.5 x the ceiling height.

Further discussion provided below.

In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.

Further discussion provided below.

Objective

Apartment layouts are designed to accommodate a variety of household activities and needs

✓

Design CriteriaMaster bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).

✓

Bedrooms have a minimum dimension of 3m (excluding wardrobe space).

✓

Living rooms or combined living/dining rooms have a minimum width of:
3.6m for studio and 1 bedroom apartments
4m for 2 and 3 bedroom apartments

✓

The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.

✓

4E Private Open Space and BalconiesObjectives

Apartments provide appropriately sized private open space and balconies to enhance residential amenity

✓

Design Criteria

All apartments are required to have primary balconies as follows:

✓

Dwelling Type	Minimum Area	Minimum Internal area
Studio apartment	4m ²	-
1 bedroom apartment	8m ²	2m
2 bedroom apartment	10m ²	2m
3+ bedroom apartment	12m ²	2.4m

The minimum balcony depth to be counted as contributing to the balcony area is 1m.

For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.

✓

4F Common Circulation and SpacesObjective

Common circulation spaces achieve good amenity and properly service the number of apartments

N/A

Design Criteria

The maximum number of apartments off a circulation core on a single level is eight.

N/A

For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.

N/A

4G StorageObjective

Adequate, well designed storage is provided in each apartment

✓

Design Criteria

In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

✓

Dwelling Type	Minimum Area
Studio apartment	4m ²
1 bedroom apartment	6m ²
2 bedroom apartment	8m ²
3+ bedroom apartment	10m ²

At least 50% of the required storage is to be located within the apartment.

Apartment Depth

The two future residential apartments would be provided with a combined habitable living, dining and kitchen depth of 8.4m, marginally exceeding the 8m maximum depth recommended under Objective 4D-2 of the ADG.

Notwithstanding this minor variation, the future room depth is acceptable given the subject apartments will overall achieve a suitable level of residential amenity. The exceedance of 0.4m over the recommended depth is marginal and compliance would not result in a significant level of added amenity.

The internal area of each apartment has been designed to exceed minimum requirements, ensuring that a satisfactory degree of solar access and ventilation is achieved. Both apartments will also have access to a large private outdoor space which will promote surveillance of the street given its location on the ground plane.

It is also noted that the primary habitable areas within each apartment, including the living, dining and bedroom areas, have been located closest to the external face of the building to ensure a high level of solar access and daylight.

Traffic and Parking

A Traffic and Parking Assessment has been prepared by GTA Consultants ('GTA') and is provided at **Appendix C**.

With respect to the supply of car parking, GTA has determined that:

'...the proposed development changes [facilitated by this Planning Proposal] will not affect the overall parking provision of the approved DA when assessed against [Rockdale Development Control Plan] 2011 requirements'.

The Rockdale DCP 2011 stipulates that one parking space per one or two-bedroom apartment is required within a residential flat building. As the five (5) retail parking spaces approved under DA-2012/325 will no longer be required for retail use, these would be proposed to be converted for residential uses. Overall, no additional parking will be provided to the site. The planning proposal will also remain consistent with the current arrangements for visitor parking.

Furthermore, GTA has determined that any impact on the surrounding road network as a result of this planning proposal would be negligible. Within the *Guide to Traffic Generating Developments*, the Roads and Maritime Service recognises that residential apartments generate less traffic than retail premises, therefore the traffic generation of the site would likely decrease.

4.3.3 How has the planning proposal adequately addressed any social and economic effects?

The proposed development will result in positive social and economic effects for the local area through the generation of local employment opportunities during construction and post-construction and through provision of additional housing stock.

The site currently accommodates three commercial tenancies on the ground level which have remained vacant since the completion of the development in September 2015. These ground floor retail/commercial tenancies have failed to attract market interest. In particular, Cushman and Wakefield, Colliers International and LJ Hooker Commercial are well-regarded and capable commercial agencies who have been unable to lease the tenancies over a period of 2.5 years, even after a reduced asking rent in response to the lack of interest.

In order to achieve a positive and sustainable outcome and in response to an unsuccessful market campaign, the landowner engaged Essential Economics to undertake an independent market appraisal of the ground floor retail/commercial space to assess the viability and likelihood of securing long term sustainable tenancies (refer to **Appendix D**).

The report finds that despite the design of the ground floor space is suitable to a range of potential tenants, the poor locational attributes of the site is the key reason for a lack of tenant interest based on the feedback. It analysed the site's location context, local provision of retail shops and services, local population and demographic characteristics, and its leasing program history. Essential Economics concludes that the subject site has *below-average attributes* for the operation of successful ground-floor retailing, which is confirmed by the following indications of the assessment result:

- A low desirability for potential tenants

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- *Poor locational attributes which may undermine the long-term trading success of any tenants which are attracted to the site*
- *A high 'vacancy risk' for the shop tenancies.*

In particular, the subject site has very low ratings of 1.9 out of 5 to a set of 12 criteria commonly applied in locational advice for factors including:

- *Competition (extensive competition already exists for food-based retailing on Bay Street)*
- *Pedestrian Traffic (the subject site has minimal levels of pedestrian traffic and no direct sight lines to highly trafficked areas)*
- *Visibility to Passing Traffic (low levels of vehicle traffic in Princess Street and complex access arrangements from The Grand Parade)*
- *Adjacencies (the adjacent Novotel provides very limited activity to the subject site, no other significant attractors are in the immediate vicinity with the exception of Coles which has no interface or sight line to the Blue Apartments)*
- *Critical mass/destinational appeal (the subject site is located a block north of Bay Street and derives no benefit from the activity levels and visitation generated from the Brighton-Le-Sands activity centre).*

The conclusion is further supported by the demographics data of the suburb which is characterised by a slightly older than average population, with a high percentage of lone person households and below average medium individual income. Following the two and half years vacancy, it is evident that the long term financial viability of the ground floor retail/commercial tenancies is highly at risk

The planning proposal responds to the undesirable traits of the site with respect to facilitating commercial ground floor uses and will facilitate the conversion of these tenancies into residential apartments.

4.4 State and Commonwealth interests

4.4.1 Is there adequate public infrastructure for the planning proposal?

The proposal is intended to facilitate the delivery of two additional residential apartments within the existing building. This minimal increase in residential density is not expected to result in any significant strain on existing infrastructure such as local roads, public transport schools or the existing mixed use centre of Brighton-Le-Sands.

Any potential required amplification/upgrade of existing services will be further investigated in the separate planning application for the construction and use of the residential apartments.

4.4.2 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation has not yet occurred with any State and Commonwealth public authorities given the stage of the planning proposal. Any feedback provided with the Gateway determination will be taken into consideration and addressed in the final planning proposal.

5.0 Community Consultation

Community consultation will be undertaken in accordance with section 57 of the EP&A Act. This planning proposal will be publicly exhibited for at least 28 days following the LEP Gateway determination. It is expected that all exhibition material will be available on Council's website. Public notice of the public exhibition is expected to be given in local papers and on Council's website.

All submissions received during the exhibition period will be considered in the finalisation of the planning proposal.

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6.0 Project Timeline

Table 8 **Table Caption Approximate project timeline**

Task	Timing
Date of Gateway determination	August 2018
Anticipated timeframe for the completion of required technical information	September 2018
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	November 2018
Commencement and completion dates for public exhibition period	September – October 2018
Dates for public hearing (if required)	N/A
Timeframe for consideration of submissions	November 2018 – January 2019
Timeframe for the consideration of a PP following exhibition	November 2018 – January 2019
Consideration of PP by Council (Council Meeting)	February 2019
Date of submission to the department to finalise the LEP	February 2019
Anticipated date RPA will make the plan (if delegated) or Anticipated date RPA will forward to the department for notification	March 2019
Anticipated publication date	March 2019

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16 May 2017

Mau Huynh
Director
Lumex Property Group Pty Ltd
PO BOX 20
Homebush West NSW 2140

Dear Mau Huynh,

We write to you regarding the sales and leasing campaign we conducted for the three retail tenancies at 8 Princess Street, Brighton-Le-Sands. We have been engaged by Lumex to assist in the sale or lease of the three tenancies for a period of 6 months, and have received minimal interest in the properties and recommended that the campaign be suspended. A brief summary of the campaign and an overview of the enquiries received is provided below.

As is standard practice for sales and leasing campaigns, a suite of mediums were adopted to market the tenancies. These mediums included:

- Online advertising (Real commercial, Commercial Real estate listing, company websites)
- Advertising in print media (the St George and Sutherland Shire Leader and the Sydney Morning Herald)
- E-flyer distribution
- Signboard at the site

In addition to the promotion of the tenancies through these mediums, I utilised the existing database available at Cushman and Wakefield and Colliers to distribute information regarding the tenancies. Through this database, a total of 6234 individuals were contacted by private email.

As a result of this campaign, sum 90 enquiries were received. These enquiries related to a number of potential uses, including offices, massage businesses and gymnasiums. These uses were not considered appropriate or desirable on the site for a number of reasons, including the lack of activation they would deliver and as such, these uses were discounted and the discussions with the respective tenants were not progressed to formal offers.

Overall, the sales and leasing campaign was conducted for a period of 6 months as set out above, limited interest was received in the tenancies and no suitable formal offers were provided. In light of the length of time dedicated to the campaign, and the lack of interest resulting from our efforts, it was my recommendation that the active campaign be ceased.

In my opinion, the tenancies are not located in a desirable position for non-residential uses which we believe are ordinarily suitable for such a site, such as a café or retail premise. The tenancies are removed from the core retail/commercial strip of Bay Street and Grand Parade, resulting in substantially less foot traffic which is unattractive to potential tenants. Furthermore, the context of the tenancies on Princess Street is largely residential, with limited attraction for non-residential uses due to concerns about noise impacts and potential complaints limiting or affecting operations.

I trust the above information is sufficient to demonstrate the campaign undertaken and lack of interest shown in the sale and lease of the tenancies.

Regards,


Peter Seeto
Director
Sales and Investments – Retail
Phone 0400 222 666

Land Economists, Property & Hotel Consultants, Valuers, Property Managers, Real Estate Agents, Auctioneers
Colliers International (NSW) Pty Limited | ABN 65 001 401 681





ESSENTIAL ECONOMICS

6-14 Princess St, Brighton-Le-Sands

Shop Tenancy Assessment

Prepared for

Lumex Property Group

c/o Ethos Urban

by

Essential Economics Pty Ltd

April 2018

Authorship

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INTRODUCTION

Background

Lumex Property Group Pty Ltd (Lumex) completed construction of a mixed use building at 6-14 Princess Street in 2015. The property comprises below ground parking, ground floor retail/commercial space and apartments on above ground levels 1-8.

While the apartments have been sold and are fully occupied, the ground floor retail/commercial tenancies have failed to attract market interest. Several real estate agents have been engaged at various times to lease the tenancies, without success.

In view of the difficulty in securing tenants for the ground floor space, Lumex has approached Bayside Council to seek approval to convert the retail/commercial space to a residential use. This conversion will require a change to the planning permit that currently applies to the property.

Council requires evidence to be supplied with a planning proposal. In email correspondence, Council have specified supporting evidence to include:

- *Land use analysis – analysis of existing uses within the centre and the demand (or otherwise) for tourist related uses and subsequently the zoning;*
- *Evidence of tenant interest – documentation showing that the owner has exhausted all reasonable efforts to secure tenants for the shop fronts;*
- *Impact analysis – details on the proposed future uses of the ground floor space and the impact it may have in regards to the surrounding context;*
- *Traffic and parking analysis – this could be coupled with the ‘impact analysis’ and should include a look at whether the proposed future use of the ground floor space will have a significant impact on traffic movement in and out of the site as well as the surrounding area. This should also include information on whether there is sufficient space for parking (depending on the use).*

As additional evidence Ethos Urban, on behalf of Lumex, are seeking an independent market appraisal of the ground floor retail/commercial space to assess the likelihood of securing long term sustainable tenancies. Essential Economics is engaged to undertake this independent appraisal.

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Objectives

The objective of this report is to broadly assess the potential for retail or commercial tenants to occupy the ground floor tenancies at 6-14 Princess St, taking into account:

- General location and retail market characteristics
- Site specific features.

This Report

This report contains the following chapters:

- 1 **Brighton-Le-Sands** discusses the suburb, its location, provision of retail shops and services, and population and demographic characteristics.
- 2 **Site Analysis** describes the ground floor tenancies at 6-14 Princess Street, key adjacencies, vehicle and pedestrian access, and improvements undertaken by the owner.
- 3 **Leasing History** provides evidence of leasing campaigns and interest in the tenancies.
- 4 **Location Assessment** measures broad retail potential of the site using a scorecard methodology.

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EXECUTIVE SUMMARY

- 1 The Blue Apartments (or the 'subject site') were developed in 2015 and are located at 6-14 Princess Street Brighton-Le-Sands approximately 13km south-west of the Sydney CBD. Centred on Bay Street, the Brighton-Le-Sands activity centre is one of three main activity centres located in the City of Bayside. The centre is a well-known dining destination, particularly on weekends. In contrast to other large street-based centres, Brighton-Le-Sands has a relatively low share of shops in non-food categories.
- 2 The population of Brighton-Le-Sands has experienced some moderate growth over the past decade associated with infill residential development opportunities, including at the subject site. The rate of population growth is expected to slow over the next decade.
- 3 Overall retail spending per capita by residents of Brighton-Le-Sands is approximately 3% below the Greater Sydney average, although spending is slightly above average for cafes and restaurants and takeaway food. The demographics of the suburb are slightly older than average, with a high share of lone person households. The median individual income is slightly below average.
- 4 The location of the Blue Apartments is on the southern side of Princess Street, one block north of Bay Street and the high activity areas of the Brighton-Le-Sands centre. Located in the SP3 Tourist Zone, the development of the apartments was required to incorporate ground floor shops. It is understood the application of the SP3 Tourist Zone to the subject site reflects the historical potential for expansion to the adjacent Novotel Brighton Beach. That potential no longer exists.
- 5 Princess Street is primarily residential in nature at this location, with low levels of vehicle and pedestrian traffic. The Novotel Brighton Beach immediately to the east, at best, provides only very limited levels of activity which would benefit tenants at the subject site. Similarly, the nearby Coles and Bay Street shopping strip do not generate activity in Princess Street which would create sales and visitation for potential tenants at the subject site.
- 6 The ground floor shops at the Blue Apartments have been designed in a manner which meets contemporary tenant expectations. This includes commercial grade paving in the outdoor areas, exhaust fans and grease traps installed to accommodate a commercial kitchen, and a flexible layout to maximise attractiveness to possible operators. From a tenancy design perspective only, the shops are suitable to a range of potential users.
- 7 A leasing program for the ground floor shops has been underway since mid-2015, without success. Cushman and Wakefield, Colliers International and LJ Hooker Commercial are well-regarded commercial agencies who have been unable to lease the tenancies over a period of 2.5 years. This is despite reductions in the asking rent, and improvements (exhaust system and grease trap) designed to attract tenants. Feedback from the leasing agents has identified the poor locational attributes of the site as the key reason for a lack of tenant interest.

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- 8 Applying a scorecard methodology to a set of 12 criteria commonly applied in locational advice, identifies that the subject site has relatively poor overall locational attributes. In particular, the subject site has very low ratings for factors including:
- Competition (extensive competition already exists for food-based retailing on Bay Street)
 - Pedestrian Traffic (the subject site has minimal levels of pedestrian traffic and no direct sight lines to highly trafficked areas)
 - Visibility to Passing Traffic (low levels of vehicle traffic in Princess Street and complex access arrangements from The Grand Parade)
 - Adjacencies (the adjacent Novotel provides very limited activity to the subject site, no other significant attractors are in the immediate vicinity with the exception of Coles which has no interface or sight line to the Blue Apartments)
 - Critical mass/destinational appeal (the subject site is located a block north of Bay Street and derives no benefit from the activity levels and visitation generated from the Brighton-Le-Sands activity centre).
- 9 Overall, it is our view that the subject site has below-average attributes for the operation of successful ground-floor retailing, which indicates:
- A low desirability for potential tenants
 - Poor locational attributes which may undermine the long-term trading success of any tenants which are attracted to the site
 - A high 'vacancy risk' for the shop tenancies.

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1 BRIGHTON-LE-SANDS DESCRIPTION AND CONTEXT

This Chapter of the report describes the broad locational context for the subject site at 6-14 Princess Street, Brighton-Le-Sands.

1.1 Location and Accessibility

Brighton-Le-Sands is located 13km south-west of the Sydney CBD, on the western shore of Botany Bay within the City of Bayside.

As shown in Map 1.1, the suburb is bordered by: Bestic Street in the north; Botany Bay in the east; President Avenue in the south; and an irregular boundary in the west, including part of Memorial Fields, West Botany Street and Muddy Creek.

Map 1.1 Brighton-Le-Sands Suburb Outline



Source: BingMaps with MapInfo

The Grand Parade, runs north-south along the eastern border of the suburb, adjacent to the beach. The Grand Parade is 2 or 3 lanes in either direction through Brighton-Le-Sands, depending on the prevailing parking restrictions. Along with the Princess Highway further west, the Grand Parade is the main north south arterial route connecting the suburb with other parts of Sydney.

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Bay Street runs east-west through Brighton-Le-Sands, connecting with Rockdale in the west.

The suburb is not served by rail, although a bus operates to Rockdale Station. Otherwise, State Transit provides a limited bus service linking Brighton-Le-Sands to Sydney CBD and Miranda.

1.2 Brighton-Le-Sands Town Centre

The Brighton-Le-Sands town centre is one of the three main activity centres located in the City of Bayside (the other being Rockdale and Wolli Creek).

Bay Street and The Grand Parade comprise the main commercial and retail areas of the town centre. Both sides of Bay Street between The Grand Parade and Crawford Road feature ground floor shops facing onto relatively wide footpaths. The southern side of Bay Street mainly comprises two level buildings, while the northern side has a number of multi-storey apartment and commercial buildings.

The western side of The Grand Parade between The Boulevard and Princess Street also has ground floor shop uses.

Novotel Brighton Beach is located on the northern side of The Grand Parade and Bay Street intersection. The 296 room 4.5 star hotel benefits from water views, frontage to The Grand Parade and Brighton-Le-Sands beach, and proximity to Sydney Airport.

The Brighton-Le-Sands town centre is well known as a multi-cultural food destination, particularly for numerous Greek cafes, restaurants and businesses. Accordingly, the retail mix on Bay Street and The Grand Parade has a high share of cafes, restaurants, food and convenience stores.

In contrast, the share of shops in non-food categories (such as apparel, homewares, general merchandise) is well-below that for similar sized street-based activity centres in Sydney.

A small Coles supermarket, located on the corner of Princess Street and Moate Avenue, is the only significant national brand store in the centre.

1.3 Population, Demographics and Retail Spending

Population Trends and Forecasts

The population of Brighton-Le-Sands has experienced consistent growth in recent years, increasing from 7,950 residents in 2006 to 9,100 residents in 2017. Over the period to 2031, the population of the suburb is forecast to increase further to approximately 10,350 residents.

A summary of historic and forecast population trends for Brighton-Le-Sands is shown in Table 1.1.

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Table 1.1 Brighton-Le-Sands Population Trends and Forecasts

	2006	2011	2017	2021	2026	2031
Population (No.)						
Brighton-Le-Sands	7,800	8,480	9,100	9,600	10,000	10,350
Average Annual Growth (%)						
Brighton-Le-Sands		1.7%	1.2%	1.3%	0.8%	0.7%
Average Annual Growth (No.)						
Brighton-Le-Sands		+140	+100	+130	+80	+70

Source: Essential Economics and published sources

Retail Spending

Estimates of per capita retail spending by residents of Brighton-Le-Sands have been prepared with reference to the *MarketInfo* retail spending model. *MarketInfo* is a micro-simulation model which uses data from the ABS Household Expenditure Survey, the ABS Census of Population and Housing, ABS Australian National Accounts, and other relevant sources.

Average per capita retail spending in 2017 for residents of Brighton-Le-Sands is summarised in Table 1.2 and compared with the metropolitan Sydney average. The retail spending data is presented in four major spending category groupings.

- **Food, Liquor and Groceries** – includes spending on fresh food, groceries and take home liquor. This main category is relevant to supermarket based shopping.
- **Food catering** – includes cafes, restaurants and take-away food.
- **Non-Food** - includes apparel, homewares, bulky merchandise and general merchandise
- **Services** – such as hairdressers, beauty salons etc.

Table 1.2 Per Capita Retail Spending by Brighton-Le-Sands Residents, 2017 (\$2017)

	Food, Liquor and Groceries	Food Catering	Non Food	Services	Total Retail
Per Capita Spending (\$2017)					
Brighton-Le-Sands	\$5,560	\$2,160	\$5,100	\$510	\$13,330
Greater Sydney Average	\$5,470	\$2,110	\$5,620	\$510	\$13,710
Variation from Greater Sydney Average (%)					
Brighton-Le-Sands	+1.6%	+2.4%	-9.3%	+0.0%	-2.8%

Source: MarketInfo, Essential Economics

Total spending per capita by residents of Brighton-Le-Sands on retail goods and services in 2017 was \$13,330 per capita, or 2.8% lower than the Greater Sydney average of \$13,710.

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However, for food catering spending, which includes cafes, restaurants and takeaway food outlets, per capita spending by residents of Brighton-Le-Sands is +2.4% above the Greater Sydney average. This indicates an above average propensity of residents living in the area to dine out.

Socio-Economic Characteristics

According to the 2016 ABS Census of Population and Housing, the suburb of Brighton-Le-Sands is characterised by:

- Personal income levels (\$36,850) marginally below the Greater Sydney average (\$37,460)
- An older age profile with a median age of 40.1 years in the suburb relative to the Greater Sydney average of 36.4 years
- A lower than average share of family households, and a higher proportion of lone person households
- An above average share of dwellings rented (45.9%) relative to the Greater Sydney benchmark (35.1%).

Table 1.3 Brighton-Le-Sands Socio-Economic Characteristics, 2016

	Brighton-Le-Sands	Greater Sydney
<u>Income</u>		
Median individual income (annual)	\$36,850	\$37,460
Variation from Greater Sydney median	-1.6%	na
% of persons (15 years or older) earning \$1,000pw or more	35.1%	37.3%
<u>Age Structure</u>		
Median Age (years)	40.1	36.4
<u>Household Composition</u>		
<i>Couple family with no children</i>	23.0%	23.8%
<i>Couple family with children</i>	26.3%	37.5%
Couple family - Total	49.4%	61.3%
One parent family	12.5%	11.1%
Other families	1.3%	1.3%
Family Households - Total	63.2%	73.7%
Lone person household	32.2%	21.7%
Group Household	4.6%	4.6%
Average household size	2.3	2.8
<u>Tenure Type (Occupied Private Dwellings)</u>		
Owned outright	30.8%	30.0%
Owned with a mortgage	22.5%	34.2%
Rented	45.9%	35.1%

Source: 2016 ABS Census of Population and Housing

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1.4 Implications for Subject Site

A review of the locational context for the subject site indicates the suburb of Brighton-Le-Sands which is experiencing moderate rates of population growth, although this is expected to slow over coming years. Overall levels of per capita retail spending are 3% below the Greater Sydney average, with income levels of local residents also marginally below the Greater Sydney average.

The Brighton-Le-Sands town centre, centred on Bay Street, is one the three main activity centres located in the City of Bayside. On weekends, the town centre has high volumes of people visiting the numerous cafes and restaurants, while during the week the centre has much lower levels of activity. A significant range of food-related shops are already located in the Brighton-Le-Sands town centre, indicating any such tenants for the subject site would be operating in a highly competitive environment.

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2 SUBJECT SITE ANALYSIS

This Chapter of the report considers the locational context and features of the ground floor tenancies at the subject site of 6-14 Princess Street, Brighton-Le-Sands.

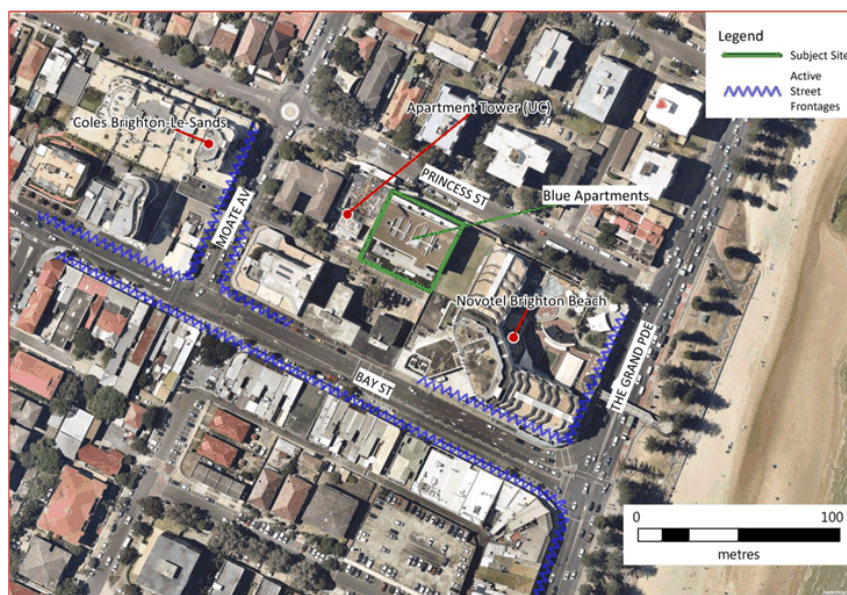
2.1 Location

The subject site, called the 'Blue' apartment building, is located on the southern side of Princess Street between The Grand Parade in the east and Moate Avenue in the west. Immediately east is the Novotel Brighton Beach, while to the west is a residential apartment building currently under-construction.

Immediately opposite the site on the northern side of Princess Street are residential uses, primarily apartments.

The subject site is located one block north of the main commercial area in Bay Street.

Map 2.1 Blue Apartments Location and Site Context



Source: Essential Economics with Nearmap and MapInfo
UC – under construction

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2.2 Site Description

The three tenancies considered in this report are located on the ground floor of the 8-level Blue apartment tower.

Construction of the Blue Apartments was completed in September 2015. The building comprises a total of 67 1-bed, 2-bed and 3-bed apartments. All dwellings have been sold to owner-occupiers or investors.

Below ground parking is provided for residents with an entry point at the eastern end of the building. Pedestrian entry is provided centrally to the site, while the three ground floor tenancies are located at the western end of the site, farthest from the Novotel Brighton Beach.

Parking has been reserved for prospective tenants of the ground floor shops.

2.3 Surrounding Land Uses

Novotel

The Blue Apartments are immediately adjacent to the Novotel Brighton Beach, a 296 room hotel. The hotel serves business travellers and tourists, and offers facilities for meetings and events, including weddings. In 2015, the hotel was sold to new owners and indications from the sale campaign at that time are the facility has relatively strong occupancy levels.

In common with the four and five star hotel market, the Novotel Brighton Beach includes dining and bar facilities which aim to maximise guest spending within the building. Furthermore, although an entrance to the hotel is provided from Princess Street, this provides only limited exposure to the Blue apartment building. An internalised retail mall links the hotel foyer to Bay Street.

Active uses fronting The Grand Parade are located at the ground-level of the Novotel building, including a large restaurant and a number of cafes/takeaway outlets. These businesses have direct sightlines to Botany Bay and the Brighton-Le-Sands beach.

In contrast, the shop tenancies in the Blue Apartment building front what is primarily a quiet residential street.

For this reason, we do not believe that it is reasonable to expect that guests and visitors to the Novotel Brighton Beach can be considered to be a strong and consistent source of sales and patronage to potential shop tenants at the subject site.

Apartment Tower (Under Construction)

A new apartment block is currently under construction immediately west of the Blue Apartments at 16-20 Princess Street. This development will be comparable in height and scale to the Blue Apartments, although it will not include ground floor shop tenancies.

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The apartment tower at 16-20 Princess Street is located in the R4 High Density Residential Zone which does not require active ground floor shops. In contrast, the immediately adjacent subject site is located within the SP3 Tourist Zone which does encourage ground floor active uses.

This difference in the planning zone applying to each site is inconsistent with the relatively similar locational and development context for both sites.

Coles Brighton-Le-Sands

Further to the west at the south-west corner of Princess Street and Moate Street, a Coles supermarket is located on the ground floor of an apartment building. The Coles generates substantial customer traffic, by virtue of it being the only major supermarket in the neighbourhood, although the overall size of the store (2,200m²) is well-below the typical size of a full range Coles supermarket (3,000m²-plus).

Supermarket shopping is largely based on convenience. A key convenience is the ability to park near the supermarket, shop at the supermarket and other complementary nearby shops (often with a trolley), then take bought items back to the car.

This convenience would not be facilitated by the relative locations of Coles and shops in the Blue apartment building, even if Blue shops could offer complementary goods or services.

Accordingly, it is not reasonable to expect that Coles would be a significant driver of customer traffic to shops on the ground floor of the Blue Apartments.

Bay Street

Bay Street is the primary 'spine' of the Brighton-Le-Sands activity centre and is comprised of shops located on both sides of the street extending approximately 400 metres from The Grande Parade in the east to Francis Avenue in the west.

As previously noted, the centre has a higher than average share of food-based tenancies including cafes, restaurants and takeaway stores. In this sense, any similar outlets located at the Blue Apartment building would be operating in a highly competitive environment, with an extensive range of alternative operators located in the nearby, and much higher profile, Bay Street.

As shown in Map 2.1, the subject site has a northern aspect to Princess Street and is effectively one block removed from Bay Street. No mid-block pedestrian through-links are available, and no continuous active frontage links the subject site to the shops in Bay Street. A site visit confirms that the level of pedestrian activity in Princess Street and in front of the subject site is very low, compared with the level of activity and vibrancy in Bay Street.

The Bay Street strip includes numerous food-based tenants including cafes and restaurants. Importantly, despite the relative success of the centre as a dining and entertainment destination, some tenancies in the street are vacant (see Photo 2.1 as an example). This indicates that:

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- The vacant tenancies on Bay Street are likely to be preferred by operators seeking to locate at Brighton-Le-Sands, and
- The current leasing conditions in the area do not support full occupancy in the prime commercial Bay Street strip, let alone the more secondary location of the Blue Apartments in Princess Street.

Despite the relative proximity of the Blue Apartments to the Bay Street centre, the synergies between both locations are limited. That is, the subject site is relatively isolated from the visitation generated by the wider Brighton-Le-Sands activity centre, and thus any tenants at the Blue Apartments site will not benefit from customer traffic generated by traders in Bay Street.

Photo 2.1 Vacant Shop Tenancies in Bay Street



2.4 Accessibility

Vehicle Traffic

The Grand Parade carries both northbound and southbound traffic. However, vehicles travelling south are unable to turn right into Princess Street. Cars would need to turn right at Bay Street, right at Moate Avenue then right again into Princess Street.

Cars travelling north on The Grand Parade can turn directly left into Princess Street, although no left turn is permitted between 9pm to 2am on Friday, Saturday and Sunday.

Furthermore, on-street parking, while available, is limited.

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Overall, the quality of vehicle access and the levels of passing vehicle traffic to the ground floor shops at the Blue Apartments could be best described as poor to fair.

Pedestrian Traffic

Ample footpath space is located on both sides of Princess Street near the Blue Apartments. Those pedestrians passing the shops located at the subject site would be easily able to see and visit the tenancies.

However, as discussed in Section 2.3, no consistent and regular drivers of pedestrian traffic exist which are able to generate patronage to the shops at the subject site.

As is the case for vehicle traffic, the volume and consistency of pedestrian traffic in front of the Blue Apartments shop tenancies can be best described as poor to fair.

2.5 Description of Shop Tenancies

The layout of the three ground floor tenancies in the Blue apartment building are shown in Map 2.2, while Photo 2.2 show the street-frontage of the tenancies.

In relation to the tenancies we note the following aspects:

- **Frontage.** All three shops have generous frontages onto Princess Street, and are set back 3.25m from the building line.
- **Tenancy Size.** The three shop tenancies have a combined floorspace of 166m², comprising of Shop 1, 44m²; Shop 2, 73m² and Shop 3, 49m². The design of the three tenancies allows for combining adjacent tenancies if required. That is, the shops are configured in such a way that one, two or three tenants could operate from the site subject to tenant demand. This flexibility is 'best practice' from a leasing perspective as it maximises the attractiveness of the tenancies to a wider variety of potential operators.
- **Outdoor Area.** An outdoor seating area is available outside each tenancy, which is particularly useful given the northern aspect of the site and thus consistent access to sunshine. The paving at the front of the shops and extending onto the footpath is commercial grade, and suitable for external seating and high levels of traffic.
- **Fit-out.** Although the tenancies are currently in 'shell' condition (i.e. empty), exhaust fans and a grease trap have been installed to service potential commercial kitchen operators. In effect, the landlord has already undertaken some improvements to the shop tenancies to attract potential food operators.
- **Carparking.** Three basement car spaces have been reserved for potential tenants, with bollards protecting those spaces from casual use by residents and visitors.

In terms of target tenant types, the shops have physical attributes that would accommodate:

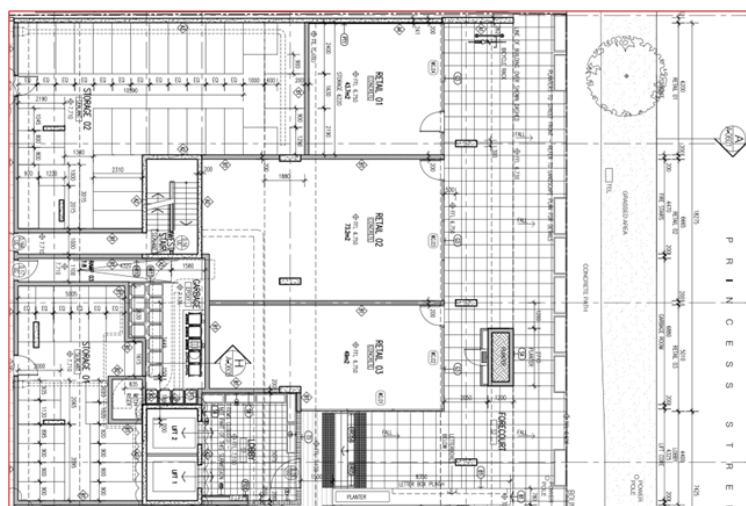
- Small restaurant, café, take-away food (cooked on the premises), deli or sandwich shop.

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- Small convenience store.
- Small liquor store.
- Non-food retail, such as toys, clothing boutique, hairdresser, beauty salon etc
- Commercial uses, such as real estate agency.

These shop spaces could be suitable for independent specialty traders or small chains. The shops would not attract interest from nationally branded retailers, who generally seek sites with higher exposure.

Map 2.2 Layout of Blue Apartments Ground Floor Tenancies



Source: SJB Architects

6-14 PRINCESS STREET BRIGHT-LE-SANDS
SHOP TENANCY ASSESSMENT**Photo 2.2 Blue Apartments Ground Floor Tenancies****2.6 Implications for Subject Site**

In terms of physical attributes only, the existing shop tenancies at the subject site are appropriate for a range of potential tenants, and have attributes and features likely to be attractive to possible operators.

However, that the spaces have not been leased suggests strongly that other factors, principally locational issues, are not conducive to sustaining a viable retail or commercial use at the site.

These locational issues are further discussed in Chapter 4 of this report.

3 LEASING CONSIDERATIONS

This Chapter of the report considers the leasing program implemented for the shop tenancies at the subject site.

3.1 Leasing History

On completion of the Blue Apartments building in September 2015, a leasing program was implemented for the shop tenancies. Notwithstanding the leasing program, the shops remain untenanted to this day.

A summary of the leasing program, based on information made available by the client and a review of online real estate data, is as follows:

Cushman and Wakefield

The original leasing program was undertaken by Cushman and Wakefield. A global commercial real estate services company, Cushman and Wakefield has a strong commercial real-estate leasing team in Sydney, with a specialisation in small and mid-scale commercial developments.

It is understood that the leasing program undertaken by Cushman and Wakefield in 2015 included advertising in the Sydney Morning Herald and St George Leader and other print media, emails to C&W database, site signage and an online listing.

Given the lack of initial interest from prospective tenants, in early-2016 Cushman and Wakefield was replaced as the leasing agent by Colliers International. I understand that appointing a new agent was a response to the lack of tenant interest, rather than any specific issues with the quality of representation from Cushman and Wakefield.

Colliers International

Colliers International is one of the largest Commercial real estate agencies in Australia, with a market share of 16.5% of total commercial real estate transactions in 2016 (Source IBISWorld).

In early-2016 Colliers International implemented a 6-month leasing strategy for the shop tenancies at the subject site, including:

- Website advertising – including Colliers website, Real Commercial etc
- Print media – SMH and St George and Sutherland Leader newspapers



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- Distribution of E-Flyer to prospective tenants
- Email contact with tenant database
- On-site sign boards

A total of 90 enquiries to the Colliers campaign did not result in any suitable candidates to lease the shop tenancies at the subject site.

In a letter to Lumex (16 May 2017), Colliers concluded:

“Overall, the sales and leasing campaign was conducted for a period of 6 months as set out above, limited interest was received in the tenancies and no suitable formal offers were provided. In light of the length of time dedicated to the campaign, and the lack of interest resulting from our efforts, it was my recommendation that the active campaign be ceased.

In my opinion, the tenancies are not located in a desirable position for non-residential uses which we believe are ordinarily suitable for such a site, such as a cafe or retail premise. The tenancies are removed from the core retail/commercial strip of Bay Street and Grand Parade, resulting in substantially less foot traffic which is unattractive to potential tenants. Furthermore, the context of the tenancies on Princess Street is largely residential, with limited attraction for non-residential uses due to concerns about noise impacts and potential complaint limiting or affecting operations.”

LJ Hooker Commercial

Given the lack of interest generated from the leasing campaigns operated by the previous two ‘corporate’ commercial leasing agents, the local office of LJ Hooker Commercial was engaged to continue the leasing program in June 2017.

LJ Hooker Commercial tends to operate from smaller regional offices who have a closer relationship with the local business community within the area that they serve.

Since June 2017, LJ Hooker Commercial has continued to market the property to potential tenants, with only six formal enquiries made in the past 6-months. None of these inquiries have proceeded to a formal commitment to lease the shops.

3.2 Comments on Leasing Program

The leasing program undertaken for the ground floor shops at the subject site has been comprehensive, with three well-regarded commercial agencies unable to lease the tenancies over a period exceeding 2.5 years.

Feedback from the leasing agents, including written advice from Colliers International, is that the tenancies lack the locational attributes able to attract commercial tenants.

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It is understood that the asking rental level for the shops has been reduced over the period since June 2015, in response to the lack of tenant interest. The current asking rent for the shops is at a discount to that being achieved in Bay Street.

Furthermore, the leasing agents for the subject site have successfully leased space at other locations controlled by the client.

3.3 Implications for Subject Site

Overall, the leasing program implemented for the ground floor shops at the Blue Apartments is consistent with normal industry expectations. Three well-known and competent leasing agencies have been engaged to undertake the leasing program, and available evidence suggests that all agents have made genuine efforts to attract tenants to the site.

The lack of interest in the site for potential tenants is not associated with the specific layout and design of the tenancies, rather the leasing agents have identified the poor locational attributes of the site as a key reason for a lack of tenant interest. The asking rents and leasing terms being sought by the owner for the shops are reasonable in the context of standard tenant expectations.

6-14 PRINCESS STREET BRIGHT-LE-SANDS
SHOP TENANCY ASSESSMENT

4 LOCATION ASSESSMENT

This Chapter undertakes a locational assessment for the subject site at the Blue Apartments in Brighton-Le-Sands with the application of criteria normally applied to commercial location decisions in private client advice by our firm.

4.1 Methodology and Criteria

An important consideration in the trading performance of any shop or retail outlet is the relative locational and design merits of the individual tenancy in which the outlet operates.

Two factors which are usually fundamental to business success in the retail industry are exposure and accessibility to potential customers.

A scorecard methodology can be used to assess the merits of shop tenancies for potential operators. A summary of 12 location criteria which are commonly applied in locational advice to clients is summarised in Table 4.1, with the relative performance of the subject identified according to each measure. In general, developers/landlords/tenants are seeking sites with an average score of 3 (average) or better.

Table 4.1 Location Assessment Criteria

Criteria	Considerations	Subject Site Score ^a
Retail Spending	Per capita food and non-food retail spending	3 - Average
Socio-Economic Profile	Are demographics of local population supportive of potential tenants	3 - Average
Resident Population	Is the local population stable, declining or growing.	3 - Average
Daytime population	Number of daytime workers and/or students	2- Below Average
Visitor spending	Visitors on weekends or during holidays	3 -Average
Significant retailers	Exposure to customers generated by national brand major, mini major and specialty stores	2- Below Average
Competition	Is the location well-placed relative to local competitors	1 - Very Low
Vehicle traffic and parking	Ease or difficulty of accessing the site by car. Availability of parking. Volume of passing vehicle traffic.	2 – Below Average
Pedestrian traffic	Ease or difficult of accessing the site for pedestrians. Volume of pedestrian traffic.	1 - Very Low
Visibility to passing traffic	Sight lines, signage opportunities	1 – Very Low
Adjacencies	Benefit of adjacent land uses to retail traders	1 – Very Low
Critical mass/destination appeal	Number and size of surrounding shops. Local attractiveness of site for shoppers.	1 – Very Low
Overall Average		1.9 Below Average
Source:	Essential Economics	
a.	1=Very Low, 2=Below Average, 3=Average. 4=Above Average, 5=Very High	

6-14 PRINCESS STREET BRIGHT-LE-SANDS
SHOP TENANCY ASSESSMENT

4.2 Implications for Subject Site

An average of score of 1.9 has been assessed for the subject site, which reflects locational attributes well-below average and indicates:

- A low desirability for potential tenants
- Poor locational attributes which may undermine the long-term trading success of any tenants which are attracted to the site
- A high 'vacancy risk' for the shop tenancies.

SJB Architects



Design Report

8 Princess Street
Brighton Le Sands

4 April 2017 | Version 1.0

SJB Architects

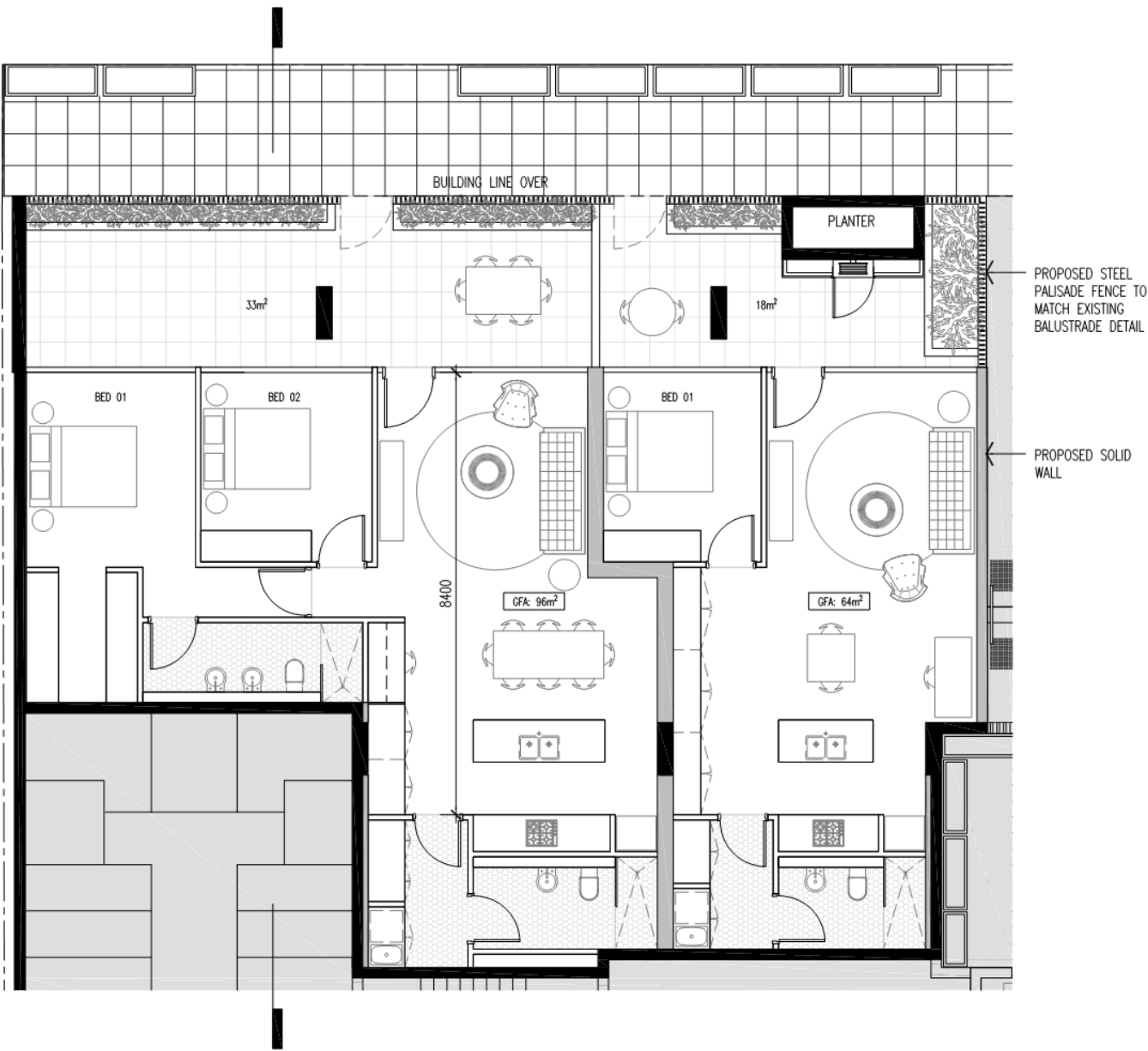


Design Report
8 Princess Street
Brighton Le Sands

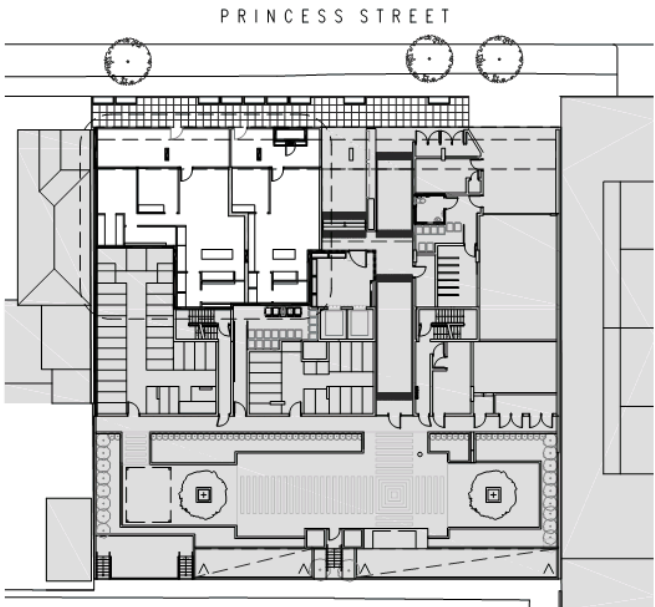
5627
Date issued: 4 April 2017
Version: 1.0
Prepared by: PC
Checked by: GS

Contact Details
SJB Architects
Level 2, 490 Crown Street
Surry Hills NSW 2010
Australia

T: 61 2 9380 9911
architects@sjb.com.au
www.sjb.com.au



Floor Plan - Proposed Apartment Layout



Existing Floor Plan - Ground Floor

Project	Job No.	Scale	
LUMEX	5627	1:100 @ A3	
6-14 Princess Street			

Drawing	Revision	
SK01	1.0	
Proposed Apartment Layout	04/04/17	

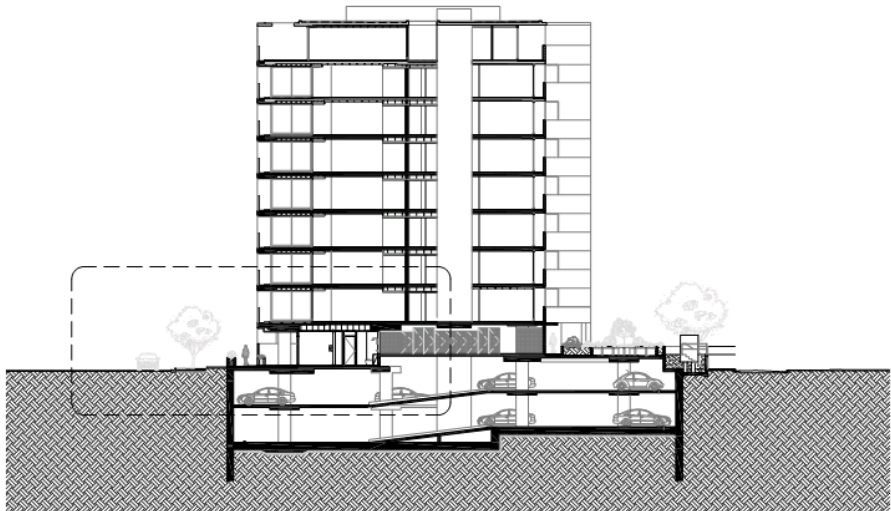
SJB Architects
Level 2, 490 Crown Street, Surry Hills NSW 2010
T 61 2 9390 9911 sjb.com.au
SJB Architecture (NGW) Pty Ltd ACN 061 094 724
Adam Haddow 7166 John Pradel 7004



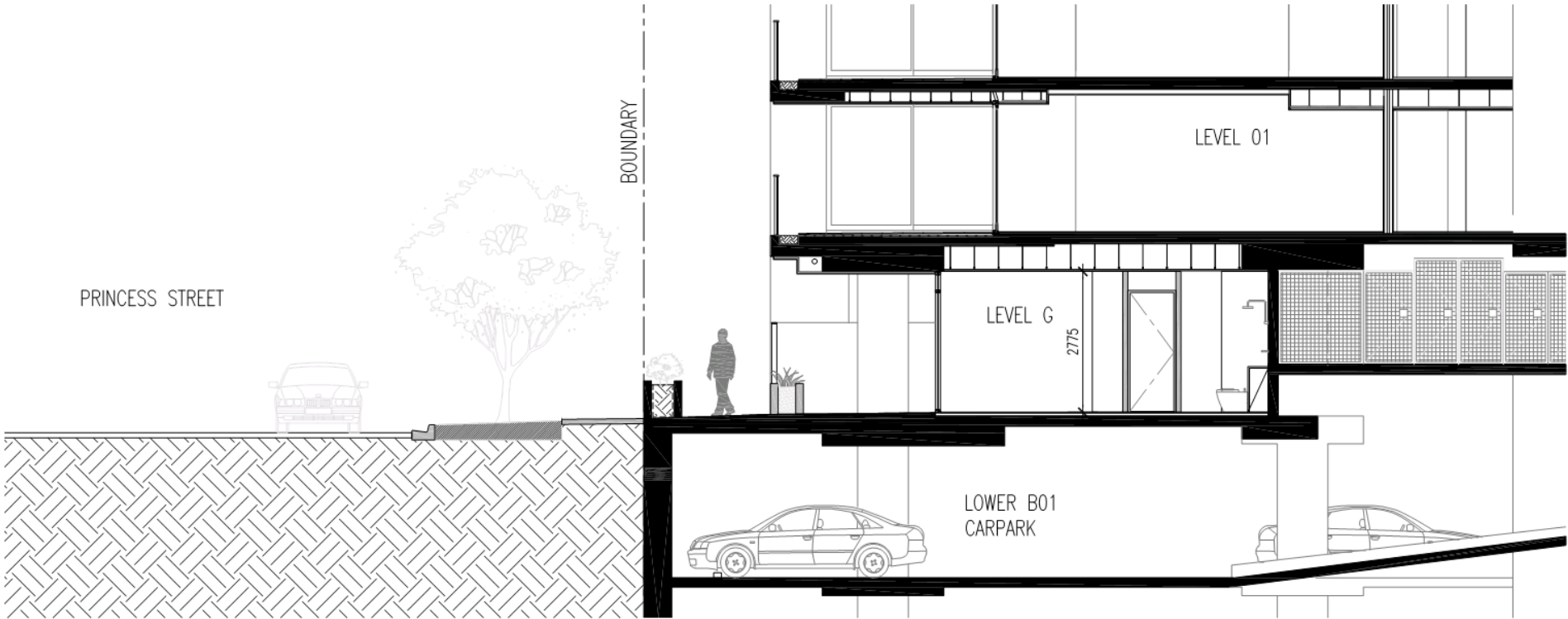
Project	Job No.	Scale
LUMEX	5627	1:100 @ A3
6-14 Princess Street		<div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div></div>

Drawing	Revision	SJB Architects
SK02	1.0	Level 2, 490 Crown Street, Surry Hills NSW 2010
North Elevation	04/04/17	T: 61 2 9390 9911 sjb.com.au
		SJB Architecture (NGW) Pty Ltd ACN 081 094 724
		Adam Haddow 7188 John Pradel 7004





Existing Section

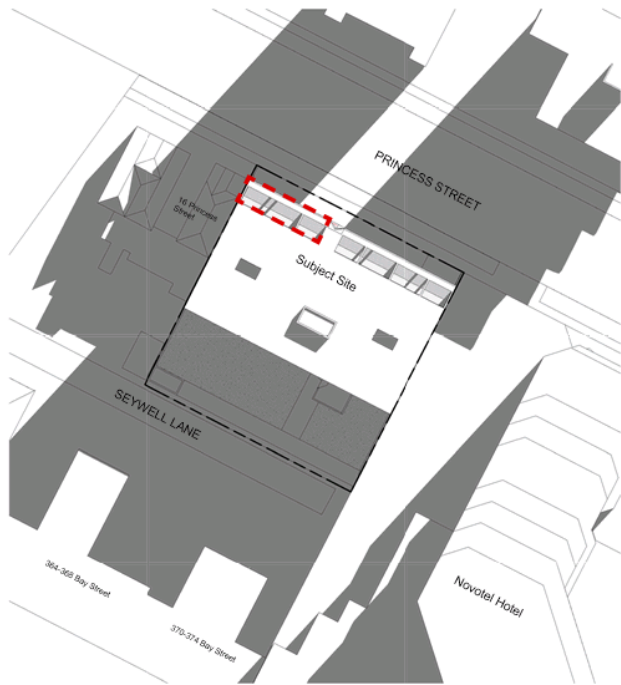


Section - Proposed Apartment Section

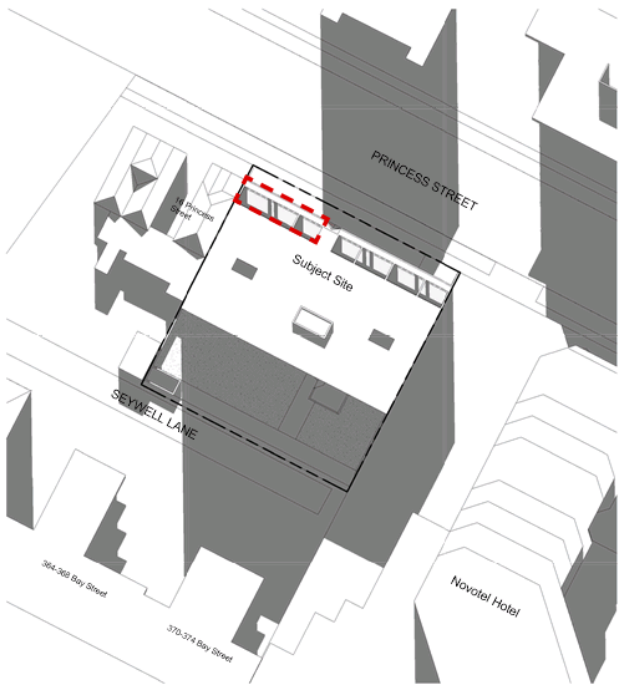
Project	Job No.	Scale
LUMEX	5627	1:100 @ A3
6-14 Princess Street		<div><div>1</div><div>2</div><div>3</div><div>4</div><div>5</div></div>

Drawing	Revision	SJB Architects
SK03	1.0	Level 2, 490 Crown Street, Surry Hills NSW 2010
Section	04/04/17	T: 61 2 9390 9911 sjb.com.au
		SJB Architecture (NSW) Pty Ltd ACN 081 094 724
		Adam Haddow 7166 John Pradel 7004





Shadow Diagram - Winter 9am



Shadow Diagram - Winter 12pm



Shadow Diagram - Winter 3pm

Solar Analysis

Achieves a minimum of 2 hours of direct sunlight on at least 1sq.m of living room glazing between 9am to 3pm, June 21st.

Approved Total: 51/67 (76%)
Proposed Total: 53/69 (76%)

Cross Ventilation

Approved Total: 53/67 (79%)
Proposed Total: 53/69 (76%)

Project	Job No.	Scale	
LUMEX	5627	1:100 @ A3	
6-14 Princess Street			

1

2

3

4

5

Drawing	Revision	SJB Architects Level 2, 490 Crown Street, Surry Hills NSW 2010 T 61 2 9390 9911 sjb.com.au SJB Architecture (NGW) Pty Ltd ACN 061 094 724 Adam Haddow 7166 John Pradel 7004
SK04	1.0	
Shadow Diagrams	04/04/17	

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Bayside Planning Panel

26/06/2018

Item No	6.1
Application Type	Development Application
Application No	DA-2017/195
Lodgement Date	02/12/2016
Property	1 Bruce Street, Bexley
Ward	Bexley
Owner	Shao Ying Pty Ltd
Applicant	Morning Sunshine Kids Academy Pty Ltd
Proposal	Alterations and additions to existing dwelling and conversion into a childcare centre with capacity for 32 children operating 7.30am to 6pm Monday to Friday
No. of Submissions	17 individual submissions and 1 petition with 27 signatories
Cost of Development	\$300,000
Report by	Senior Assessment Planner

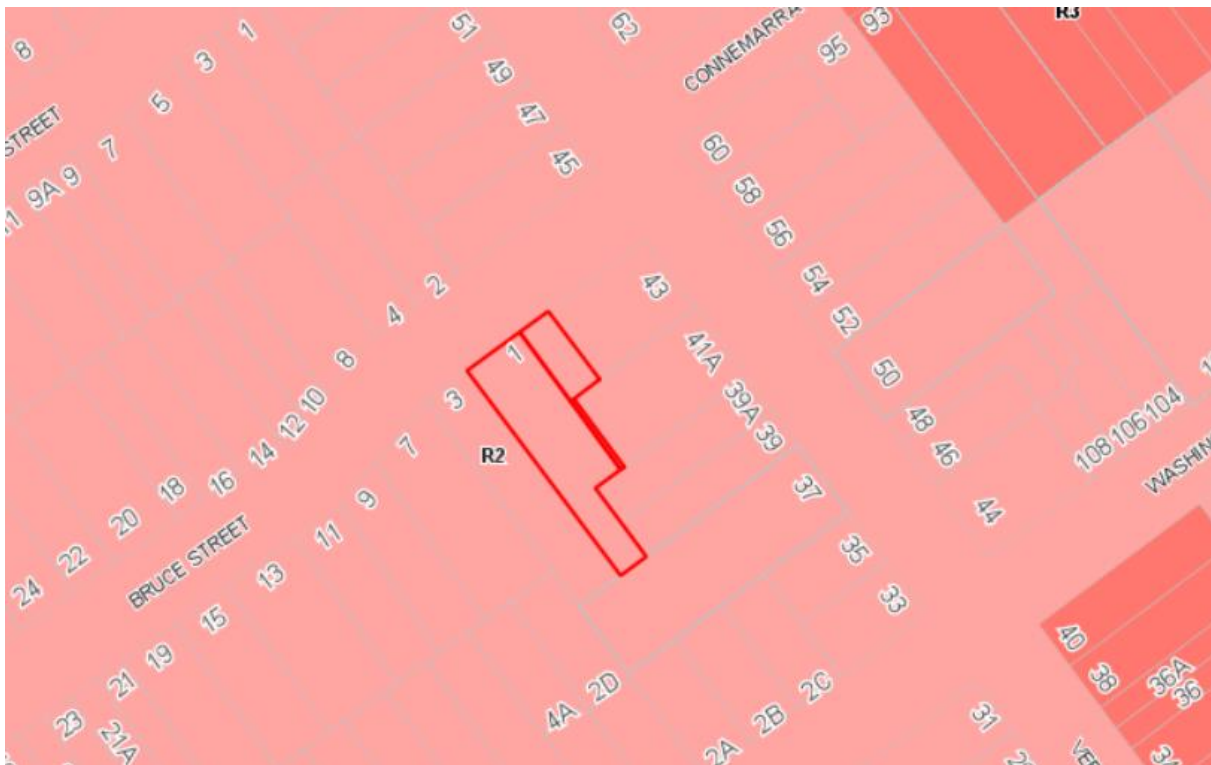
Officer Recommendation

- 1 That the applicant's amended plans and information have not adequately addressed the issues raised in the previous planning report to the Bayside Planning Panel on 13 March 2018.
 - 2 That Development Application No. DA-2017/195 be REFUSED pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:
 - a Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not suitable for the proposed development.
 - b Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the objectives of the R2 Low Density Residential zone of Rockdale LEP 2011.
 - c The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not provide appropriate car parking on site in accordance with the provisions of 4.6 of Rockdale DCP 2011.
 - d Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal creates an unsafe pedestrian environment on site, contrary to the provisions of Clause 6.1.4.7 of Rockdale DCP 2011.
 - e Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the constraints of the site necessitate excessively
-

high acoustic fencing in order to mitigate acoustic impacts to adjoining residential neighbours.

- f The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, is unsatisfactory and is likely to adversely impact on the privacy and amenity of adjoining residential development.
 - g Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development.
 - h Pursuant to the provisions of Section 4.15(1)(d) & 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, having regard to the reasons noted above and the number of submissions received by Council against the proposed development, approval of the development application is not in the public interest.
- 3 That the objectors be notified of the determination made by the Bayside Planning Panel.
-

Location Plan



Attachments

- 1 Planning Assessment Report
- 2 Draft Refusal Notice

- 3 Plan Of Management
- 4 Revised Ground Floor Plan
- 5 Revised Roof Plan
- 6 Revised North & West Elevations
- 7 Revised South & East Elevations
- 8 Revised Sections
- 9 Revised Landscape Plan
- 10 Letter from Applicants Planner
- 11 Revised Site Plan & Site Analysis
- 12 Original Report for Refusal [↓↓↓↓↓↓↓↓↓↓↓↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/195
Date of Receipt:	2 December 2016
Property:	1 Bruce Street, BEXLEY (Lot 2A DP 318502), (Lot A DP 350797), (Lot B DP 350261)
Owner:	Shao Ying Pty Ltd
Applicant:	Morning Sunshine Kids Academy Pty Ltd
Proposal:	Alterations and additions to existing dwelling and conversion into a childcare centre with capacity for 32 children operating 7.30am to 6pm Monday to Friday
Recommendation:	Refused
No. of submissions:	17 individual submissions and 1 petition with 27 signatories
Author:	Fiona Prodromou
Date of Report:	23 February 2018

Key Issues

The proposal was considered by the Bayside Planning Panel (BPP) on 13 March 2018. The BPP resolved as follows:

"That this Development Application be deferred to allow the applicant the opportunity to submit amended plans to address the concerns raised in the report and such amended plans to be submitted to Council within 4 weeks"

Panel Reason: To provide the applicant the opportunity to submit amended plans and documentation to address the issues raised in the officers report, in view of the limited notice of the matter being placed on the agenda.

Following the recommendation of the BPP, the applicant submitted amended plans to Council on 11 April 2018.

Plans illustrate the following changes to the original scheme;

- Extent of rear extension reduced and rear setback increased
- Mix of children revised, deletion of 0-2yr age group and cot room.
- Internal levels of the proposed rear extension lowered and rear balconies also lowered as a result
- Rear ramp within outdoor play area lowered and reconfigured given change in levels referred to

above.

- External storage added within rear outdoor play areas
- Three shade sails proposed within rear outdoor play area
- Landscaped areas in front setback expanded
- Side return front fencing reduced to 1.2m with planting of shrubs up to 3m height proposed along rear common side / rear boundary with 43 Verdun Street.
- Internal reconfiguration and introduction of a pram ramp
- Accessible parking space provided
- Driveway widths reduced from 3.7m to 3m
- Permeable parking provided to car parking areas and bike parking relocated
- OSD revised

Notwithstanding the above changes, the following issues remain unresolved;

A) Parking

The revised scheme is 1 car space deficient for the proposed development. Additionally the proposal retains multiple driveway crossings which have the potential to result in vehicles queuing on public roads, results in the loss of 1 on street car parking space and has the potential to result in conflict with pedestrians.

B) Acoustic Impact

The required overall height (2.3m) of acoustic fencing to the periphery of the outdoor play areas in order to mitigate acoustic impacts to residential neighbours, is a direct consequence of the residential context of the site, the proposed use, irregular site dimensions and narrow lot width towards the rear of the property.

The original assessment raised concerns with respect of acoustic impact, in relation to air conditioning units and an 'assumption' made within the acoustic report that adjoining first floor bedrooms are not utilised during the day. Revised floor plans illustrate the location of an air conditioning unit along the to show the eastern façade of the development within an alcove and enclosed by an 'acoustic gate'. Nil details of the proposed 'acoustic gate' have been submitted for assessment, nor a revised Acoustic Report which details the projected sound pressure outputs of the air conditioners and any recommendations required. In this regard an accurate acoustic assessment was unable to be undertaken.

C) Safe Pedestrian Access on Site

Consideration has not been given to providing a safe delineated pedestrian pathway from the proposed on site car parking area to the main entrance of the proposed facility. Pedestrians, including children, parents with prams and the like would be required to traverse vehicular manoeuvring areas, in order to access the facility. This raises safety concerns, and the proposal is unsatisfactory in this regard.

D) Raised Verandas / Overlooking

The proposed extension incorporates an internal ramp and steps which result in a lower building extension and verandas to the rear. The proposed extension and verandas are however raised up to a

maximum of 0.7m above existing natural ground level and the potential to overlook the rear yards of neighbours exists from the raised verandas as proposed.

E) Insufficient Information / Inconsistency in Plans

The following issues were identified following the submission of amended plans and information on 11 April;

- Nil detail submitted with respect of proposed elevations, details and materials of three shade structures, two storage sheds, and associated play equipment within the rear outdoor play area.
- Nil detail submitted with respect of proposed elevations, details and materials of proposed front fencing and vehicular access gates.
- Inconsistency between architectural plans, elevations and landscape plans with respect to rear / side boundary fencing with 43 Verdun Street. i.e. 1.8m or 1.2m fencing.
- Nil revised Acoustic Report
- Nil revised Traffic Report.

Whilst the revised scheme was not publicly notified given the scope of changes proposed, the application was notified on two occasions, in accordance with the provisions of Rockdale DCP 2011. A total of 17 individual submissions and 1 petition with 27 signatures were received during both notification periods.

The revised application is reported to the Bayside Planning Panel for determination.

Recommendation

1. That the applicant's amended plans and information have not adequately addressed the issues raised in the previous planning report to the Bayside Planning Panel on 13 March 2018.
2. That this Development Application be REFUSED pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:
 - a) Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not suitable for the proposed development.
 - b) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the objectives of the R2 Low Density Residential zone of Rockdale LEP 2011.
 - c) The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not provide appropriate car parking on site in accordance with the provisions of 4.6 of Rockdale DCP 2011.
 - d) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal creates an unsafe pedestrian environment on site, contrary to the provisions of Clause 6.1.4.7 of Rockdale DCP 2011.
 - e) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act

1979, the constraints of the site necessitate excessively high acoustic fencing in order to mitigate acoustic impacts to adjoining residential neighbours.

f) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, is unsatisfactory and is likely to adversely impact on the privacy and amenity of adjoining residential development.

g) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development.

h) Pursuant to the provisions of Section 4.15(1)(d) & 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, having regard to the reasons noted above and the number of submissions received by Council against the proposed development, approval of the development application is not in the public interest.

3. That the objectors be notified of the determination made by the Bayside Planning Panel.

Background

History

2 December 2016

DA-2017/195 submitted to Council

12 December 2017 to 13 January 2018

Public notification of proposal.

1 February 2017

Consideration by the Bayside Traffic Development Advisory Committee

6 June 2017

Letter sent to applicant outlining issues with application, including but not limited to inconsistency with streetscape and site context, suitability of the site not demonstrated, problematic allotment width, insufficient car parking on site, unsatisfactory raised ground floor level, excessive height of acoustic boundary fencing, unsafe pedestrian access and insufficient information. The applicant was advised to consider providing a basement level to accommodate all required parking on site. The proposal in its current form was recommended to be withdrawn.

17 July 2017

Amended plans and information were submitted to Council. Main changes to the scheme included a reduction in the number of children and staff proposed to be accommodated from 47 with 8 staff to 32 with 7 staff, deletion of outdoor play areas within the front and side setbacks, increase of landscaping on site, justification for allotment width and modification to the design of the acoustic fencing.

16-29 August 2017

Renotification of amended plans and information.

13 March 2018

Proposal reported to the Bayside Planning Panel for determination with a recommendation for Refusal. The BPP determined as follows:

"That this Development Application be deferred to allow the applicant the opportunity to submit amended plans to address the concerns raised in the report and such amended plans to be submitted to Council within 4 weeks"

Panel Reason: To provide the applicant the opportunity to submit amended plans and documentation to address the issues raised in the officers report, in view of the limited notice of the matter being placed on the agenda.

11 April 2018

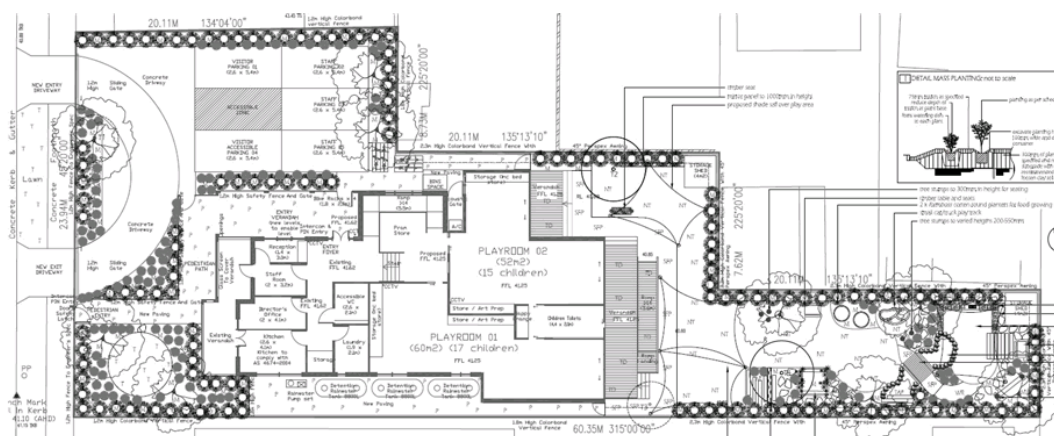
Amended plans and information submitted to Council. Amended plans were not renotified given the minimal scope and nature of changes to the development. Amended plans and information were however publicly available online.

Proposal

The proposed development seeks to undertake alterations and additions to the existing detached dwelling house on site, demolish the existing car port and convert the dwelling into a childcare centre with capacity for 32 children (15 x 2-3 / 17 x 3-5), 6 staff and operating 7.30am to 6pm Monday to Friday. The proposal incorporates as follows:

- a) New vehicular entry to Bruce Street to facilitate a drive through vehicular arrangement within the front setback, with six car parking spaces illustrated, being 2 visitor (1 accessible) and 3 staff.
- b) New boundary fencing, 1.2m in height along front property boundary with sliding vehicular entry gates,
- c) Pedestrian entry gate at front boundary with associated pedestrian walkway to proposed entry foyer.
- d) Landscaped areas within front yard.
- e) Bike racks adjoining front entrance to proposed facility
- f) Two indoor children's play rooms with associated hand wash sinks, bed stores, toilet facilities, staff room, kitchen, directors office, reception, accessible toilet, laundry and entry foyer.
- g) Externally within the south western side setback 3 x 8800 litre rainwater tanks are proposed, in addition to a rainwater pump set.
- h) Two raised veranda's to the rear with steps, one with elongated access ramp and landing.
- i) Rear and north eastern outdoor play areas.
- j) 1.8m high acoustic perimeter fencing with 45 degree Perspex 6mm thick canopy, resulting in an overall height of 2.3m positioned along the periphery of shrub planting which then adjoins existing common boundary fencing.

Within the outdoor play areas on site a range of shrubs, ground covers and trees are proposed in addition to the provision of seating, sandpit, outdoor play kitchen, timber bridge, climbing wall, balance beam, raised mounds etc. Three shade structures and two external storage sheds are proposed within the outdoor play areas on site.



Site location and context

The subject site is an irregularly shaped allotment comprising three lots, Lot 2A DP 318502, Lot A DP 350797, Lot B DP 350261, with a 23.95m frontage to Bruce Street and a total site area of 972sq/m. The site is currently zoned R2 Low Density Residential and occupied by a single storey detached dwelling house with detached double carport behind the building line and two shed structures within the rear yard of the site. The site has a fall to the rear of up to 1.33m, with three trees are located within the rear of the site with several trees located within the front yard of the property. A power pole and street light is positioned in front of the property, near the common boundary with 3 Bruce Street.

The site shares a common side boundary to the north / north east with several properties fronting Verdun Street, being as follows:

- 43 Verdun Street, a part 1 - 2 storey detached dwelling house located at the junction of Bruce and Verdun Streets. Vehicular access to this site is via Bruce Street.
- 41 / 41A Verdun Street, a two storey dual occupancy development with basement car parking. 41A Verdun Street comprises an inground pool within the rear of the site.
- 39 and 39A Verdun Street, single storey detached dwelling houses with associated outbuilding structures in the rear yard
- 37 Verdun Street, a single storey villa development comprising 5 villas, one of which shares a direct common rear boundary fence with the subject site.

To the south west, the site shares a common side boundary with a two storey detached dwelling house at 3 Bruce Street. This site comprises an in ground pool within the rear of the site located parallel to the common side boundary fence with the subject site.



The subject site is affected by:

- 15.24m Building Height Civil Aviation Regulations
- Surface flows
- Class 5 Acid Sulfate Soils
- Obstacle Limitation Surface.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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 (Educational Establishments and Child Care Facilities) 2017

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, has been considered in the assessment of the Development Application. The table below outlines the key controls within the SEPP that are applicable to the application:

Applicable Clause	Provision	Proposed development	Complies
22 - Concurrence of Regulatory Authority for certain applications (Reg.107/108 of Education & Care Services National Regulations)	Concurrence of regulatory authority required where a variation to the minimum required indoor / outdoor play areas is proposed.	Concurrence of regulatory authority not sought by applicant.	N/A
23 – Child Care Planning Guideline	The consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development	The provisions of the Child Care Planning Guideline have been taken into consideration in this assessment and detailed below.	Yes
25 –Non Discretionary Development Standards	a) Location -the development may be located at any distance from an existing or proposed early education and care facility.	The subject site is located in accordance with the provisions of this clause.	Yes
	b) Indoor / Outdoor space (i)3.25sq/m per child indoor (ii)7sq/m per child outdoor	Total indoor = 112sq/m (34 children can be accommodated) Total outdoor = 224sq/m (32 children can be accommodated)	Yes Yes
	c) Site Area & Site Dimensions - the development may be located on a site of any size and have any length of street frontage or any allotment depth.	23.95m frontage to Bruce Street and a total site area of 972sq/m	Yes

Applicable Clause	Provision	Proposed development	Complies
	d) Colour of building materials or shade structures -the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.	Beige and white colour scheme proposed.	Yes
26 – Development Control Plans	A provision of a DCP that specifies a requirement, standard or control in relation to any of the following matters(<i>including by reference to ages, age ratios, groupings, numbers or the like, of children</i>) does not apply to development for the purpose of a centre-based child care facility:		
	(a)operational or management plans or arrangements (including hours of operation),	POM submitted	Yes
	(b)demonstrated need or demand for child care services,	Needs analysis not required by Rockdale DCP 2011	Yes
	(c) proximity of facility to other early childhood education and care facilities,	Locational criteria of RDCP 2011 superseded by this provision	Yes

Applicable Clause	Provision	Proposed development	Complies
	(d) any matter relating to development for the purpose of a centre-based child care facility contained in: i) the design principles set out in Part 3 of the Child Care Planning Guideline, or ii) The matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning height, side and rear setbacks or car parking rates)	Part 3 of the Guideline does not apply to this proposal as per ' <i>ArtMade Architectural Pty Ltd v Willoughby City Council [2018] NSWLEC 1022.</i> ' Assessment against Part 4 undertaken below.	See below

Child Care Planning Guideline

As per the findings of Commissioner Smithson in "*ArtMade Architectural Pty Ltd v Willoughby City Council [2018] NSWLEC 1022*", 23 January 2018, Part 4 – Education and Care Services National Regulations of the Child Care Centre Guideline is the only part of the aforementioned Guideline to apply to the subject application.

This is as a result of the lodgement of the DA prior to the finalization of SEPP - Educational Establishments and Child Care Centres 2017 and the savings and transitional provisions found in Schedule 5 of the SEPP which are limited to Part 4.

Given the above, the proposal has been assessed against Part 4 of the guideline below.

Education and Care Services National Regulations

Part 4 – Education & Care Services National Regulations			
<i>Regulation</i>	<i>Design Guidance</i>	<i>Proposal</i>	<i>Complies</i>
104 – Fencing or barrier that encloses outdoor spaces	Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.	Child proof fencing provided at periphery of outdoor play areas on site	Yes
106 - Laundry & Hygiene Facilities	On site laundry facilities	Laundry facilities provided on site. Details of laundry not illustrated on plans. Laundry capable of accommodating required facilities.	Yes
107 - Indoor Space Requirements	Min 3.25sq/m unencumbered indoor space per child.	<i>Refer to SEPP - (Educational Establishments and Child Care Facilities) 2017 table above.</i>	Yes
	Storage - min 0.3m3 per child external - min 0.2m3 per child internal	Outdoor = Provided Indoor = 40m3	Yes Yes
	Prams, bikes and scooters should be located adjacent to the building entrance	Sufficient area adjoining main entrance for storage of prams etc	Yes
108 - Outdoor Space Requirements	Min 7sq/m per child unencumbered outdoor space	Total outdoor = 224sq/m (32 children can be accommodated)	Yes

109 - Toilet & Hygiene Facilities	Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants.	Proposal provides junior toilets, low level sinks and appropriate hand drying facilities with direct access from both indoor and outdoor play areas. Appropriate windows and screens are provided for supervision and privacy.	Yes
110 – Ventilation & Natural Light	Adequate natural light and ventilation to indoor areas used by children.	Natural light & ventilation to play rooms	Yes
111 – Administrative Space	Adequate accessible area or areas for the purposes of conducting the administrative functions	Accessible reception and office provided	Yes
112 – Nappy Change Facilities	Changing bench with appropriate bathing, hand wash & storage facilities	Appropriate nappy change facilities are illustrated on plans	Yes
113 – Outdoor Space Natural Environment	Outdoor spaces that allow children to explore and experience the natural environment	Varied spaces within proposed outdoor area i.e. sandpit, climbing wall, dry creek bed, play kitchen	Yes
114 – Outdoor Space Shade	Adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.	Shade cloth illustrated on landscape plan, yet nil elevations or details provided.	No
115 – Premises Designed to Facilitate Supervision	Rooms / facilities (including toilets, activity rooms etc) designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.	Facilities designed to maximise supervision of children including, nil doors to children's toilet cubicles, appropriately located windows to bathrooms / nappy change areas and installation of vision panels.	Yes

97 / 168 - Emergency & Evacuation Procedures	Emergency and evaluation plan should be submitted with a DA	Emergency procedures outlined within submitted Plan of Management	Yes
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State Environmental Planning Policy (Infrastructure) 2007

Clause 45 - works within the vicinity of electricity infrastructure

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

Accordingly, the proposal was sent to Ausgrid. Nil response was received following the notification period and as such concurrence was assumed. The application is consistent with the provisions of the SEPP and is acceptable in this regard.

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

Submitted plans illustrate the proposed removal of two trees on site, being, a *Corymbia* 'Summer Red' 5m H x 3m W and a *Syzygium Leuhmannii* (Lillypilly) 4m H x 3m W in order to facilitate the proposed development. An Arborist Report prepared by Ian Hills was submitted with the application, dated November 2016.

The report concluded *"There is adequate open space in the design of the proposed development to accommodate replacement plantings that will assist Council in meeting its Urban Forest Maintenance goals following the proposed removal of trees 1 and 3."*

Councils Tree Preservation Officer reviewed the proposal, Landscape Plan and submitted Arborist Report and concurred with the above. The proposal is therefore satisfactory in this regard and consistent with the provisions of the SEPP.

State Environmental Planning Policy No 64—Advertising and Signage

This policy applies to all signage that is visible from a public place except for signage that is exempt development. In granting consent, Council must take into account whether the signage is consistent with the objectives of this policy and whether the signage satisfies the criteria specified in Schedule 1 of SEPP 64.

Revised documentation accompanying the DA does not detail any signage as part of this application. Given the nature of the proposed use this is unusual, notwithstanding, proposed future signage would be subject to the lodgement, assessment and determination of a 4.55 application at a future date.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
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Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R2 Low Density Residential	No - see discussion	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.3 Height of buildings	Yes	Yes - see discussion
4.4 Floor space ratio - Residential zones	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.7 Stormwater	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

2.3 Zone R2 Low Density Residential

The subject site is zoned R2 - Low Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a 'child care centre' and is a permissible development with development consent.

Notwithstanding the above, given the lack of reliable information submitted with the revised scheme i.e. revised acoustic and traffic reports, the parking non compliance evident and raised veranda level to the rear of the site, it is maintained that the revised proposal is contrary to the following objective of the zone, and has the potential to adversely impact upon the amenity of the area;

•To ensure that land uses are carried out in a context and setting that minimizes any impact on the character and amenity of the area.

2.7 Demolition requires consent

The proposed development seeks consent for the partial demolition of the existing dwelling, outbuildings and carport on site and hence satisfies the provisions of this clause.

4.3 Height of buildings

The height of the revised proposal is 6.16m and therefore does not exceed the maximum 8.5m limit that applies to the subject site. Further, the proposed development complies with the objectives of this clause.

4.4 Floor space ratio - Residential zones

A maximum 0.5:1 FSR applies to the subject site. As such a maximum gross floor area of 486sq/m is permissible. The revised scheme reduces the proposed building extension and subsequently the FSR previously sought.

The revised proposal provides a total gross floor area of 243.65sq/m, equating to an FSR of 0.25:1. The proposal complies with this requirement.

6.1 Acid Sulfate Soil - Class 5

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

6.2 Earthworks

Earthworks including excavation are required on site in order to construct the proposed car parking areas, enable footings for the extension and accommodate the outdoor play areas on site. 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 51-60m AHD Obstacle Limitation Surface (OLS). The building height is proposed at a maximum of 6.16m (47.16RL) and in this regard, it is considered that the proposed building will have minimal adverse impact on the OLS.

6.7 Stormwater

A revised stormwater management plan was submitted. This illustrates the proposed use of an on site detention system using rainwater tanks, with overflow proposed to be directed to the street kerb outlet. Additionally, permeable paving has been proposed to reduce runoff from paved areas on site. Revised plans and information are satisfactory and the provisions of this clause are addressed.

6.12 Essential services

Services will generally be available on the site. The proposal is satisfactory in relation to the provisions of this clause.

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

No relevant proposed instruments are applicable to this proposal.

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:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	Yes	Yes
4.1.4 Soil Management	Yes	Yes - see discussion
4.1.6 Development on Sloping Sites	No - see discussion	No - see discussion
4.1.7 Tree Preservation	Yes	Yes
4.1.9 Lot size and Site Consolidation - isolated sites	Yes	Yes - see discussion
4.2 Streetscape and Site Context - General	No - see discussion	No - see discussion
4.2 Streetscape and Site Context - Fencing	No - see discussion	No - see discussion
4.3.1 Open Space and Landscape Design - Child care centres	Yes	Yes - see discussion
4.4.2 Solar Access - General Controls	Yes	Yes - see discussion
4.4.4 Glazing - General Controls	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.4.5 Visual privacy	No - see discussion	No - see discussion
4.4.6 Noise Impact - Non-residential	No - see discussion	No - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
4.6 Parking Rates - Child Care Centres	No - see discussion	No - see discussion
4.6 Car Park Location and Design	No - see discussion	No - see discussion
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes
4.6 Driveway Widths	No - see discussion	Yes - see discussion
4.7 Air Conditioning and Communication Structures	Yes	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes
6.1 Child Care Centre - Building Design	No - see discussion	No - see discussion
6.1 Child Care Centre - Parking and Pedestrian Safety	No - see discussion	No - see discussion

4.1.1 Views and Vista

The proposal seeks to utilize the existing building on site, incorporating additions, yet not exceeding the existing ridge height on site. The development comprises an overall height of 6.52m to the highest point. It is noted that the subject site and directly adjoining properties do not benefit from existing magnificent views or vistas. As such the proposal is satisfactory in regard to views and vistas.

4.1.4 Soil Management

The Soil & Water Management Plan has been submitted and general erosion and sediment control strategies are proposed to ensure that the potential for impact on adjoining land and surrounding waterways is minimized. Temporary fencing is to be erected along the boundaries of the site. A builders all weather access is required to be provided onto the site.

4.1.6 Development on Sloping Sites

The proposal seeks to retain a substantial portion of the existing building on site. Whilst the original scheme sought to retain the existing floor level, resulting in the proposed extension / verandas being raised 0.73m - 1.9m above existing ground level, the revised scheme incorporates a step down in order to accommodate the natural topography of the site.

The proposed extension incorporates an internal ramp and steps which result in a lower building extension and verandas to the rear. The proposed extension and verandas are however raised 0.4m to 0.7m above existing natural ground level.

Whilst effort to reduce the floor level has been made, the revised scheme maintains a raised floor level which is not warranted given the site is not flood affected, and the proposal, at this level has the potential to result in adverse amenity impacts to neighbouring properties. When standing at the rear veranda adjoining play rooms to the rear of the site, an individual has the potential to overlook the proposed 1.8m - 2.3m common side boundary fencing and into the rear private open space of neighbours. Whilst landscaping is provided along the periphery of the outdoor play area with the potential to grow to a height of 3m, landscaping alone should not be relied upon as a means to secure privacy between neighbours.

Given the raised extension and verandas are maintained, it is argued that the proposal has not been designed to relate to the natural topography or the site, nor has due consideration been given to the amenity of neighbouring properties. The proposal is unsatisfactory in relation to the objectives and requirements of this clause.

4.1.9 Lot size and Site Consolidation - isolated sites

The proposal does not result in the isolation of any neighbouring properties.

4.2 Streetscape and Site Context - General

As per the provisions of Clause 6.1.11 of Rockdale DCP 2011, child care centres must be designed in character with the existing streetscape and are required to be sympathetic within their context. The revised scheme retains a single storey building on site and introduces additional landscaped planting within the front setback of the site in addition to permeable paving, which assists in softening the previous large expanses of concrete parking areas proposed.

The proposal maintains manoeuvring and car parking areas in line with the existing building, however these are recessed in excess of 6m from the front property boundary and will be partially obscured by proposed planting.

Whilst efforts have been made to improve the streetscape response of the development, given the proposal is 1 car space deficient, concern is raised in relation to where this space can be accommodated on site. Given this space will be required to be provided within the front setback of the property, this will result in a reduction in the additional landscaping provided as part of the revised scheme, and as a consequence reintroduce concerns raised in the original assessment in relation to excessive hard paved vehicular manoeuvring and car parking areas within the front setback of the site.

Given the above, it cannot be confidently stated that the revised scheme satisfies the provisions of this clause, and provides an appropriate streetscape response.

4.2 Streetscape and Site Context - Fencing

With respect of fencing on site, the proposal as been assessed as follows:

A. Front Fencing

The provisions of this clause stipulate *"Front fences are to be a maximum height of 1.2m above footpath level"*. Plans illustrate the provision of a 1.2m high front boundary fence, however details in respect of materials, colours and finishes of the proposed front fence were not submitted for assessment.

B. Side Return Fencing Forward of Building Line

The revised scheme illustrates the provision of 1.2m side return fencing, along the common side boundary with 3 Bruce Street, which provides a satisfactory streetscape response.

Inconsistent information has however been provided on architectural & landscape plans with respect of the side return fence height at the common side / rear boundary with 43 Verdun Street to the east. It is unclear whether 1.2m or 1.8m fencing is proposed in this location. Given the aforementioned, an accurate assessment is unable to be undertaken.

Notwithstanding the above, the provision of a 1.8m fence adjoining the common boundary with the rear of 43 Verdun Street would be satisfactory, as this facilitates the enclosure of the rear private open space of this property and retains the status quo with existing fencing heights in this location.

C. Side / Rear Fencing Behind Building Line

The provisions of this clause state "*Side and rear fences are to have a maximum height of 1.8m on level sites or 1.8m measured from the low side where there is a difference in level either side of the boundary*".

The original acoustic report requires the provision of a 1.8m high solid continuous acoustic barrier with 45 degree Perspex canopy at the periphery of the entire rear outdoor play area, resulting in a total overall height of 2.3m.

The required height of this acoustic fencing is a direct consequence of the residential context of the site, proposed use, irregular site dimensions and narrow lot width towards the rear of the property. The height of this fencing is necessary in order to mitigate potential adverse acoustic impacts arising as a result of the proposed development.

Proposed fencing referred to above is excessive in height and form and is further uncharacteristic of the nature of fencing provided within the residential context of the site.

The proposal is unsatisfactory with respect of the provisions and objectives of this clause.

4.3.1 Open Space and Landscape Design - Child care centres

As per the provisions of Clause 4.3.1 Open Space and Landscape Design - Child care centres, a minimum of 20% (194.4sq/m) of the site area is to be provided as landscaped area. The definition of landscaped area is outlined within RLEP 2011 as follows:

"a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area."

Plans illustrate the provision of natural turf, landscaped planters and periphery landscaped areas on site.

A total of 295.9sq/m of landscape area is provided on site and the proposal thus satisfies the requirements of this clause.

4.4.2 Solar Access - General Controls

The proposed development is single storey in nature and does not result in adverse overshadowing impacts on site, or to neighbouring properties.

4.4.4 Glazing - General Controls

The revised scheme incorporates shading devices in the form of a colourbond roof above proposed verandas to the rear south eastern building façade. The revised scheme is satisfactory in this regard.

4.4.5 Visual privacy

Plans illustrate the provision of two rear veranda's raised up to 0.7m above existing natural ground level.

Given the verandas are designed in this manner with nil fixed privacy screens proposed, and irrespective of the proposed 1.8m - 2.3m high acoustic fencing and periphery planting with potential to grow up to 3m along side boundaries with neighbouring properties, the proposal has the potential to result in adverse visual privacy impacts to the rear private open space areas of neighbouring properties.

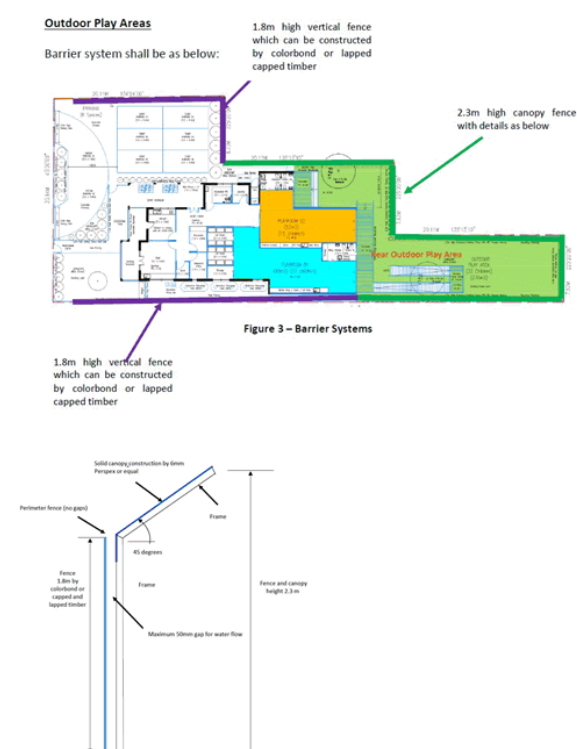
Given the above, the proposal is unsatisfactory with respect to visual privacy.

4.4.6 Noise Impact - Non-residential

The applicant submitted a revised Acoustic Report undertaken by Acoustic Logic dated 19 July 2016. The outdoor play noise within the report was predicted based on the assumptions below:

- Rear outdoor play area – worst scenario: 2-5 Years 12 kids
- Acoustic barrier system as recommended in Section 11 of acoustic report.
- Each outdoor area was divided into a few zones with the children evenly distributed for the calculations.

The acoustic report recommended a number of measures to be implemented on site during & following construction in order to minimise noise likely to be associated with the development. I.e. acoustic seals, glazing recommendations, all doors closed in addition to the construction of a 1.8m high solid continuous acoustic barrier with 45 degree Perspex canopy at the periphery of the entire rear outdoor play area resulting in an acoustic barrier with overall height of 2.3m.



Further to the above, the following management controls are recommended to be implemented, within the acoustic report;

- *No amplified music is allowed within outdoor area of project site.*
- *External doors remain closed except for people in/out.*
- *Maximum 12 kids play on back outdoor play area.*
- *Signs reminding staff and visitors to minimise noise at all times shall be installed at ingress/egress points from the child care centre.*
- *Management is to ensure children are supervised at all times to minimise noise generated by the children whenever practical and possible.*
- *Install a contact phone number at the front of the centre so that any complaints regarding centre operation can be made.*

It is noted that a revised Acoustic Report was not submitted with the revised scheme.

The original and revised Plan of Management (POM) maintains that a maximum of 12 children and associated staff are sought to occupy outdoor play areas at any one time between 8.30am - 11.30am and 3.00pm - 5.00pm.

The original Acoustic Report confirmed that subject to the recommendations of the report, adverse acoustic impacts arising from the proposed development are not anticipated.

Councils Environmental Health Officer initially raised concerns with respect of acoustic impact, in relation to air conditioning units and an 'assumption' made within the acoustic report that adjoining first floor bedrooms are not utilised during the day.

Revised floor plans illustrate the location of an air conditioning unit along the eastern façade of the development within an alcove and enclosed by an 'acoustic gate'. Nil details of the proposed 'acoustic gate' have been submitted for assessment, nor a revised Acoustic Report which details the projected sound pressure outputs of the air conditioners and any recommendations required. In this regard an accurate acoustic assessment was unable to be undertaken in the absence of a revised acoustic report,

It is maintained, that it cannot be confidently stated that the proposal will not result in adverse acoustic impacts onto neighbouring properties. The proposal is therefore unsatisfactory in relation to the provisions and objectives of this clause in relation to acoustic amenity.

4.5.2 Social Equity - Equitable Access

The proposal illustrates the provision of an accessible car space on site, in addition to an internal ramp within the development and ramp to the rear outdoor play area on site, in order to facilitate level unobstructed universal access throughout the development for persons with a disability / mobility impairment. The proposal is satisfactory in this regard.

4.6 Parking Rates - Child Care Centres

Car parking for the revised scheme is required to be provided as follows:

a) Visitor

32 children = 2 spaces required

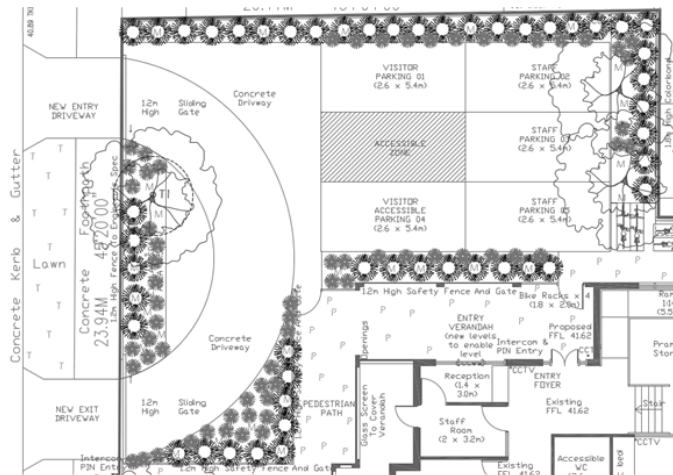
b) Staff

6 staff (5 child care staff and 1 cook) = 3 spaces required

c) Bike

32 children = 4 spaces required

Plans illustrate the provision of five (5) car parking spaces, of which four (4) are tandem and one (1) is forward of an accessible zone. Four (4) bicycle spaces near the entry foyer.



Documentation accompanying the revised scheme as submitted by the applicant notes that 5 car parking spaces (including one accessible space) are provided, and further notes that the "porte-cochere" may also be used for quick drop-off and temporary parking".

With respect of the above, it is noted:

a) A total of 4 car spaces as proposed are feasible (1/2/4/5). Staff parking space number 3, which is forward of the accessible shared zone is not a feasible car parking space, and cannot be counted in car parking calculations given the accessible zone (shared area) must not be obstructed and shall always be available for people with accessible needs to utilise to access their vehicles. The Accessible zone (shared area) is required to have a bollard to stop vehicles parking in this area as per (AS2890.6:2009).

b) With respect of the suggested spaces within the 'Porte-cochere', these spaces are positioned within the driveway, are not delineated permanent spaces and have the potential to cause pedestrian and vehicular safety concerns .

The parking layout is designed for one-way entry and one-way exit. By parking in the Porte-cochere aisle, all other parking spaces will be unable to function as the car in the port cohere aisle will block other parking spaces. It is noted that vehicle turnover in childcare facilities is high and when a vehicle blocks parking facilities, the delay is cumulative and would affect the efficiency of all other parking spaces available for pick up and drop off. In this regard these spaces are not supported.

The revised scheme is unsatisfactory in relation to the provision of parking on site, is 1 car space deficient and thus is unsatisfactory and inconsistent with the objectives of this clause.

4.6 Car Park Location and Design

The objectives of this clause seek to ensure, sufficient, convenient and safe on-site car parking is provided on site. The provisions of this clause do not permit multiple driveway crossings, in order to ensure parking areas minimise the potential of vehicles queuing on public roads, minimise the loss of on street parking and conflict with pedestrians.

As previously discussed within this report, the revised scheme does not provide appropriately delineated and safe pedestrian pathways from pick up / drop off or staff car parking areas on site to the main entrance of the facility.

The proposal further seeks to provide multiple driveway crossings, which is in conflict with the provisions of this clause. As designed, the proposal also results in the loss of 1 on street car parking space in front of the site.

The proposal is inconsistent with the objectives and requirements of this clause.

4.6 Driveway Widths

The revised scheme illustrates driveways being 3m in width at maximum as required by the provisions of this clause. Notwithstanding and as previously discussed, the proposal does not provide safe and delineated on site pedestrian areas, segregated from vehicle manoeuvring areas on site and thus raises concerns with respect of pedestrian safety.

The proposal is unsatisfactory with regards to the objectives and requirements of this clause.

4.7 Air Conditioning and Communication Structures

Plans illustrate the provision of air conditioning units within an alcove adjoining the north eastern side façade of the proposed development. The location of the proposed air conditioning units are satisfactory.

4.7 Waste Storage and Recycling Facilities

Plans illustrate the provision of appropriately sized and located bin storage areas behind the building line on site, away from neighbouring residential dwellings. The proposal satisfies the requirements of this clause.

6.1 Child Care Centre - Building Design

Refer to Part 4.2 Streetscape and Site Context - General of this report.

6.1 Child Care Centre - Parking and Pedestrian Safety

The provisions of part 6.1.4.7 of DCP 2011, require the provision of pedestrian access which is segregated from vehicular access on site. Plans do not illustrate the provision of clear, delineated and fenced pedestrian pathways from on site car parking areas.

As designed, it would appear that visitors seeking to use proposed parking areas on site would be required to traverse vehicle manoeuvring areas to access the front entrance of the proposed facility.

The proposal is unsatisfactory in this regard.

S4.15(1)(a)(iv) - Provisions of regulations

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

Staff to Child Ratio

The Education and Care Services National Regulations, specifies staff to child ratios which are to be adhered to by child care centre operators. Given the proposal seeks to accommodate 32 children (12 x 0-2 / 10 x 2-3 / 10 x 3-5) the following minimum number of staff are required.

Staff to Child Ratio	Requirement	Proposed	Complies
	2-3yrs 1 per 5 children (15 children = 3 staff)	6 child care staff	Yes
	3-6yrs 1 per 10 children (17 children = 2 staff)		
	Minimum 5 child care staff required		

Given the above, for the breakdown of children proposed, the proposal requires a minimum of 5 child care staff on site. The proposal seeks to accommodate 6 dedicated child care staff and thus satisfies the requirements of the regulations.

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

Concern is maintained in relation to the suitability of the site for the proposed development.

Site constraints including the irregular lot shape, narrow lot width at the rear of the property, number of shared common boundaries with adjoining residential properties and slope of the site to the rear combined with the design of the proposal and applicants desire to retain the existing dwelling, all contribute to the unsuitability of the site for the proposed development.

For the reasons outlined previously within this report, it is reiterated and maintained that the subject site is not considered to be suitable for the proposal.

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

The development was notified on two occasions, in accordance with the provisions of Rockdale DCP 2011. A total of 12 individual submissions and 1 petition with 27 signatures were received during the initial notification, with a further 5 submissions received following the renotification of amended plans. AThe final revised scheme was not publicly renotified given the minor nature of changes proposed, yet amended plans and information were available for public review online.

The issues raised in the original submissions are discussed below:

Adverse traffic, congestion and car parking impacts / Decrease of availability of parking in front of and around neighbouring properties / Incorrect traffic report estimated traffic movements per child inconsistent with RMS Guide for Traffic Generating Development / Vehicle queuing impacts /

Inadequate parking provision on site for the proposed use / Double parking and parking across driveways / Request for on street parking space is inappropriate

Comment: Matters in relation to car parking have been previously addressed in this report. It is reiterated that the current design, layout and location of the proposed on site car parking area is not supported and results in the unnecessary reduction of on street parking. Multiple driveways have the potential to result in vehicles queuing and safety concerns for pedestrians.

Councils Development Engineer has considered the potential traffic impacts and has concluded that the surrounding intersections are likely to function at a similar level of service to that as existing should the child care centre have been supported. It was further noted that sufficient on-street parking is available, to accommodate visitors and staff within the assessed peak parking occupancy periods adjacent to the site.

Port-cochere should be drop off & pick up area and not parking for visitors

Comment: The provision of visitor spaces within the port-cochere as proposed is not supported for the reasons previously discussed within this report.

Safety impacts for pedestrians

Comment: Pedestrian safety has been previously discussed within this report.

Adverse acoustic impacts to neighbours / Acoustic report does not adequately address impact on centre on adjacent dwellings and considers an underestimated traffic flow / Acoustic impacts and damage to fencing from play activities / The baseline increase of 5dB in the proposal does not adequately address the nature of the noise of a childcare facility. The sound of children at play is far louder than this increase suggests. We also find that the sound of distress which will inevitably occur daily would be far louder than the proposal claims.

Comment: The matter of acoustics has been previously discussed within this report.

Site is not suitable for a child care centre and doesn't satisfy locational criteria of DCP 2011 i.e. is not close to commercial centre of public transport node / There are 5 other child care centres within a 500m radius of the site / Business within a residential zone

Comment: The suitability of the site has been considered in this report. The provisions of SEPP - Educational Establishments and Child Care Facilities 2017 prevail over the provisions of Rockdale DCP 2011 of which the objectors have referred to. Nonetheless the site is not considered to be suitable for the proposed development for the reasons stated in this report.

Inappropriate streetscape response

Comment: The matter of streetscape has been previously addressed in this report.

Overshadowing to neighbouring pools

Comment: The proposal is single storey in nature and does not result in adverse overshadowing impacts on site, or to neighbouring properties.

Insufficient places for 0-2yr old children

Comment: Clause 26 of the SEPP - Educational Establishments and Child Care Centres voids the requirement of Rockdale DCP 2011 in relation to required groupings and age ratio's.

Privacy impacts to neighbours

Comment: The matter of visual privacy has been previously addressed in this report.

Inaccurate staff numbers provided by the applicant resulting in an inaccurate assessment of parking for the site

Comment: An assessment of the required staffing numbers has been undertaken within this report. A total of 7 staff, being 6 child care staff and 1 cook are required to operate the centre with 32 children as proposed. The revised traffic report has appropriately considered the correct number of staff required.

Inappropriate location of the outdoor play areas

Comment: Outdoor play areas previously proposed within the front and side setbacks of the site have been removed. Proposed outdoor play areas are within the rear of the property.

Provision of a 2.3m high acoustic fence is inappropriate / Colours, type and style of acoustic fence to common boundaries is inappropriate and not acceptable to neighbours

Comment: The matter of acoustic fencing has been previously discussed in this report.

Noise impact from construction period on health of unwell and elderly neighbours

Comment: Noise impacts from construction are generally temporary. Should the proposal be approved, conditions of consent would be imposed to limit hours of construction and require quiet machinery be utilised.

Increase of visitors may lead to an increase in break and enters

Comment: There has been no evidence submitted to substantiate this claim.

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

For the reasons outlined previously within this report, it is maintained that the proposed development in its current form, is not in the public interest.

S7.12 Fixed development consent levies

S94A contributions can be levied in accordance with Councils adopted fees and charges.

Schedule 1 - Draft Conditions of consent

Our Ref: DA-2017/195
Contact: Fiona Prodromou 9562 1666

Morning Sunshine Kids Academy Pty Ltd
PO BOX 794
ROCKDALE NSW 2216

NOTICE OF DETERMINATION

Issued in accordance with section 81(1a) of the *Environmental Planning and Assessment Act, 1979*

Application Number:	DA-2017/195
Property:	1 Bruce Street, BEXLEY (Lot 2A DP 318502), (Lot A DP 350797), (Lot B DP 350261)
Proposal:	Alterations and additions to existing dwelling and conversion into a childcare centre with capacity for 32 children operating 7.30am to 6pm Monday to Friday
Authority:	Delegated to Bayside Planning Panel
Determination:	Refused
Date of determination:	

The above development is refused pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

- a) Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not suitable for the proposed development.
- b) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the objectives of the R2 Low Density Residential zone of Rockdale LEP 2011.
- c) The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not provide appropriate car parking on site in accordance with the provisions of 4.6 of Rockdale DCP 2011.
- d) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal creates an unsafe pedestrian environment on site, contrary to the provisions of Clause 6.1.4.7 of Rockdale DCP 2011.
- e) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the constraints of the site necessitate excessively high acoustic fencing in order to mitigate acoustic impacts to adjoining residential neighbours.

f) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, is unsatisfactory and is likely to adversely impact on the privacy and amenity of adjoining residential development.

g) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development.

h) Pursuant to the provisions of Section 4.15(1)(d) & 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, having regard to the reasons noted above and the number of submissions received by Council against the proposed development, approval of the development application is not in the public interest.

Additional Information

- Under Section 97 of the Act applicants who are dissatisfied with the outcome of a consent authority have a right of appeal to the Land and Environment Court. This right must be exercised within six (6) months from the date of this notice. The Court's Office is situated at Level 1, 225 Macquarie Street, Sydney (Telephone 9228 8388), and the appropriate form of appeal is available from the Clerk of your Local Court.

Should you have any further queries please contact Fiona Prodromou on 9562 1666

Luis Melim
Manager - Development Services

Plan of Management



**Morning Sunshine Kids Academy
1 Bruce Street
Bexley NSW 2207**

8 April 2018 (Revised)

Plan of Management

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DOCUMENT CONTROL

Revision	Status	Date	Prepared by	Revisions
0	Draft	12 July 2017	Dr Brenda Abbey	
1	Final	8 April 2018	Dr Brenda Abbey	Ages of children, parking arrangements, update references to legislation

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Plan of Management

The following Plan of Management has been created for Morning Sunshine Kids Academy at 1 Bruce Street, Bexley NSW 2207. It is consistent with the requirements of the:

- Education and Care Services National Law Act 2010 (version 1 February 2018)
- Education and Care Services National Regulations 2011 (version 1 February 2018)
- Rockdale Development Control Plan 2011: Part 6.1 Child Care Centres
- Guide to the National Quality Standard 2011 (version October 2017)
- Early Years Learning Framework 2009

The Centre's policies and procedures will reflect the contents of this Plan. They will also detail how parents and staff will be informed, and the Centre's actions if these are not followed.

Objectives

The Plan of Management is designed to ensure that the Morning Sunshine Kids Academy, its facilities, and its day-to-day operations comply with all relevant national, state, and council requirements at all times, and that the Centre provides high quality education and care programs for children. The objectives of the Plan of Management are to outline:

- Staff numbers, hours, responsibilities, and code of conduct.
- Hours of operation.
- Staffing
- Code of Conduct
- Access and Security
- Workplace health and safety.
- Waste Management
- Maintenance and cleaning procedures.
- How any operational impacts on neighbours will be minimised, including noise and parking.

Hours of Operation

Morning Sunshine Kids Academy will operate from 7:30am to 6.00pm, Monday to Friday, 51 weeks per year. The Centre will close over the Christmas period, and for Public Holidays.

Capacity of Centre

Each day, the Centre provides education and care for up to 32 children from 2 years to 5 years of age. To facilitate children's sense of wellbeing and belonging, they are placed in small groups with educators and children familiar to them. These groups take into consideration the children's ages and developmental stages. The groups are:

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Age group	Room	Number of children	Number of staff
2 years – 3 years	Room 1	15	3
3 years – 5 years	Room 2	17	2
Total number of children		32	5*

*Each group is cared for with educator to child ratios and qualifications in accordance with the Education and Care Services National Regulations 2011. In addition, a cook will be employed (i.e. 6 staff in total).

Centre Staffing

Morning Sunshine Kids Academy recognises that educators are the key to high quality education and care programs. It will employ appropriately qualified and experienced educators in sufficient numbers to meet the staffing requirements detailed in the Education and Care Services National Regulations 2011. In addition, it is expected they will have diverse cultural and linguistic backgrounds and have varied professional and life experiences, bringing vitality to the Centre.

The Centre's Code of Conduct details the standards of professional conduct and integrity expected of staff in upholding the values and principles of the Centre. It reflects the ECA Code of Ethics 2016. The Code of Conduct forms part of the terms and conditions of the employment contract signed by each employee. Employees are expected to be guided by the Code when identifying and resolving ethical conduct issues that may arise in the course of their work.

The Centre is committed to continuously developing the professional knowledge and skills of its educators. In addition to their ongoing mentoring by the Nominated Supervisor/Educational Leader, educators are provided with professional development opportunities throughout the year. Educators sharing ideas with other members of the team is also encouraged. In addition, Lead Educators are also afforded time away from the children each week to prepare programs and to reflect upon their professional practices.

Staff Arrival and Departure

Six staff, (5 educators and 1 cook) will be at the Centre when it is operating at full capacity. Of the 5 educators, the Nominated Supervisor will be a full-time employee working 38 hours per week. The remaining four educators will be permanent part time which provides latitude for them to be called upon to work for up to 37.5 hours per week if required. Staff will be provided with a roster, and allocated their shifts fortnightly.

- Open shift commences at 7.30am.
- Close shift finishes at 6.00pm.
- Staff arrivals will be staggered between the hours of 7.30am and 9.30am.
- Staff departures will be staggered between the hours of 3.00pm and 6.00pm.

Family and Children Arrival and Departure

Morning Sunshine Kids Academy has an open-door policy. However, in practice, children's

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arrival is usually staggered between 7:30am–9:30am and families generally collect their children between 2:30pm–6:00pm.

To comply with the Education and Care Services National Regulations 2011, all children must be signed in and out of the Centre and the actual time of arrival and departure recorded by the accompanying parent or guardian. It is this daily attendance record which is used to ensure that everybody in attendance has been evacuated in an emergency, so it is vital that it is completed. Parents will sign their children in as soon as they arrive at the Centre and sign them out immediately prior to departure.

No child will be released into the care of any persons not known to our educators. If we do not know the person by appearance, the person must provide a form of photo identification which evidences that they are the person authorised on the enrolment form to collect the child.

Centre Parking and Set Down

The Centre will provide five parking spaces, including one disabled space. Three of these are for staff and two for parents and visitors. The porte-cochere can be used for quick drop-off and temporary parking. Staff will monitor the use of the porte-cochere at peak times. Four bicycle spaces are provided adjacent to the verandah and close to the pedestrian entry. Wherever possible, service and delivery will occur outside of the Centre's identified peak arrival and departure times for staff and those times when the majority of parents deliver and collect their children.

Daily Routine and Activities

The following routine is indicative only.

7:30 am	Centre opens. Staff not required to work directly with children will greet and assist parents arriving at the porte-cochere
7:30 am – 8:30 am	Mixed grouping – indoor play
8:30 am – 11:30 am	Indoor/Outdoor* structured/free play group time <ul style="list-style-type: none"> organised in 3 groups, rotated between indoor and outdoor environment maximum 12 children playing outdoor at any one time – weather permitting progressive morning tea for each group
11:30 am – 12:30 pm	Lunch time and later transition to rest time
12:30 pm – 2:30 pm	Rest time
2:30 pm – 3:00 pm	Pack away – progressive afternoon tea
3:00 pm – 4:30 pm	Indoor/Outdoor* structured/free play group time <ul style="list-style-type: none"> organised in 3 groups, rotated between indoor and outdoor environment maximum 12 children playing outdoor at any one time – weather permitting
4:30 pm – 5:00 pm	Pack away outdoor – children to pack bags
5:00 pm – 6:00 pm	Combined grouping – indoor free play
6:00 pm	Centre closes

NOTE: All indoor and outdoor activities are supervised by the regulated number of qualified educators.

*No more than 12 children will be on the back outdoor play area at any one time. The SunSmart Widget will be used to identify the times when ultra-violet radiation level is such that children can play outdoors safely.

Family Involvement

Morning Sunshine Kids Academy actively encourages family involvement and their communication about aspects of the Centre's operations such as the program and how it meets their children's needs. At enrolment, families receive a Family Handbook which provides an overview of all aspects of the Centre's philosophy, curriculum and policies. In addition, information between families and the Centre is exchanged by means such as:

- Conversations at arrival and departure times
- Sleep, meal and toileting charts
- Programs displayed in each room
- Information pockets
- White board notices
- Newsletters and regular e-mails
- Suggestion box

Program

The Centre's program is informed by the Early Years Learning Framework 2009: Belonging, Being and Becoming. It is play-based and provides babies and young children with many opportunities to explore and learn about the world, and provides older children with opportunities to discover, imagine, create, make friends, test out ideas, challenge each other's thinking and build new understandings. In addition, to engaging with children at these times, educators plan the indoor and outdoor learning environments and intentional teaching activities. Educators do so with the understanding that each child is unique as are their backgrounds and interests, and that each child's learning and development progresses at their own pace.

The Centre's goals for all children align with the outcomes of the Early Years Learning Framework. These outcomes are:

- **Outcome 1 – Children have a strong sense of identity**
 - Children to feel safe, secure, and supported
 - Children develop their emerging autonomy, inter-dependence, resilience and sense of agency
 - Children develop knowledgeable and confident self-identities
 - Children learn to interact in relation to others with care, empathy and respect
- **Outcome 2 – Children are connected with and contribute to their world**
 - Children develop a sense of belonging to groups and communities and an understanding of the reciprocal rights and responsibilities necessary for active community participation
 - Children respond to diversity with respect
 - Children become aware of fairness
 - Children become socially responsible and show respect for the environment
- **Outcome 3 – Children have a strong sense of wellbeing**
 - Children become strong in their social and emotional wellbeing

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- Children take increasing responsibility for their own health and physical wellbeing
- **Outcome 4 – Children are confident and involved learners**
 - Children develop dispositions for learning such as curiosity, cooperation, confidence, creativity, commitment, enthusiasm, persistence, imagination and reflexivity
 - Children develop a range of skills and processes such as problem solving, enquiry, experimentation, hypothesising, researching and investigating
 - Children transfer and adapt what they have learned from one context to another
 - Children resource their own learning through connecting with people, place, technologies and natural and processed materials
- **Outcome 5 – Children are effective communicators**
 - Children interact verbally and non-verbally with others for a range of purposes
 - Children engage with a range of texts and gain meaning from these texts
 - Children express ideas and make meaning using a range of media
 - Children begin to understand how symbols and pattern systems work
 - Children use information and communication technologies to access information, investigate ideas and represent their thinking.

Quality Assurance

As an Approved Service under the Education and Care Services National Law, Morning Sunshine Kids Academy is required to adhere to the seven quality areas of the National Quality Standard (NQS). These seven quality areas are:

- Educational program and practice
- Children's health and safety
- Physical environment
- Staffing arrangements
- Relationships with children
- Collaborative partnerships with families and communities
- Leadership and service management

The New South Wales Department of Education's Early Childhood Education and Care Directorate will assess and rate the Centre's performance against these quality areas and decide upon the Centre's overall quality rating.

Noise Management

The design of Morning Sunshine Kids Academy's indoor and outdoor play spaces minimises noise levels within, entering into and emanating from the Centre. It has incorporated the recommendations of the Acoustic Logic Pty Ltd Report issued 12 July 2017 to ensure the required indoor and outdoor noise levels are met. In addition, the Centre will implement the following management controls.

- Display the details of the Nominated Supervisor, the contact person for complaints, the Centre's telephone number and email, and the email of the Approved Provider at the entrance to the Centre;
- Display signs at the entrance to the Centre reminding staff, parents and visitors to minimise noise during arrival and departure;
- Monitor the noise levels of staff, parents and children at arrival and departure times;
- Keep all external doors and windows of the building closed except for ingress/egress;
- Limit the maximum number of children on the back outdoor play area to a maximum of 12 at any one time.
- Ensure no amplified music is played outside; and,
- Ensure a sufficient number of educators supervise children's indoor and outdoor play at all times and that these educators closely monitor the noise level of children's play and, when necessary, direct children to quieter activities.

Prior to commencing at the Centre, all staff/educators and families will be informed about the Centre's practices to minimise noise levels. In addition, they will be regularly reminded of these practices in the Centre's newsletters and emails throughout the year.

Safety and Security

- **CCTV cameras** will be installed in the car park, front entrance, reception area and each play room, and will record on-site and online 24/7.
- **Access to the Centre** is through a single, secured, well-lit entry point at the front of the Centre which has an intercom and PIN controlled entry. Parents and visitors without a PIN will be let into the premises by an authorised staff member after proof of identity has been obtained. Parents are required to sign their child in and out of the Centre each day the child attends. In addition, visitors will be required to sign in and out of the Centre.
- **Emergency contact numbers** for essential services such as fire, ambulance, and police are prominently displayed in the reception area of the Centre. A landline telephone is available to educators to call these services in the event of an emergency.
- **Fire evacuation plans and fire safety equipment** are displayed in prominent positions throughout the Centre. All exit routes are kept clear at all times.
- **An indoor/outdoor safety checklist form** is filled in by staff after they have completed the daily audit to ensure the health, safety, and wellbeing of the children, and also the safety of the premises.
- **Pest inspections** are held annually and at any other time they might be required.
- All staff are trained in **First Aid, CPR, asthma, anaphylaxis, and child protection procedures**.

Kitchen

The kitchen has been designed and constructed, and will be operated, in accordance with the:

- Food Act 2003
- Food Regulation 2010
- FSANZ Food Standards Code
- AS 4674:2004 Design, Construction, and Fitout of Food Premises.

The Centre will employ a cook (permanent part-time) who has completed a recognised Food Handling Course, and will prepare food menus which have been reviewed by an Early Childhood Nutritionist and endorsed as consistent with recognised nutritional guidelines for children in childcare centres.

Workplace Health and Safety

Workplace health and safety procedures implemented in the Centre are consistent with the *Work Health and Safety Act 2011*. Further, the Centre will comply with state and national WHS standards, codes of practice, and best practice recommendations from recognised authorities.

The Centre is responsible at all times for the protection of the health and safety of anyone entering our premises and/or using our equipment. It is understood that there is a shared legal responsibility, commitment, and accountability by all persons to follow our Centre's Workplace Health and Safety Policy and Procedures.

Emergency Procedures

Morning Sunshine Kids Academy's Emergency Evacuation Diagrams and Procedures will be developed by a fire engineer at a later stage. The following guidelines consistent with childcare regulations and standards will be incorporated into these Procedures.

- Emergency evacuation procedures based on the Centre's floor plans will be prominently displayed near each exit.
- The Centre will maintain an up-to-date and portable register of emergency telephone numbers that staff must take with them in an emergency or evacuation. This list will be stored in the main office.
- Emergency telephone numbers will be displayed prominently above telephones:
 - In the office
 - In each playroom.
- The Centre will ensure educators are provided with training on how to use fire extinguishers, fire blankets and other emergency equipment.
- Fire extinguishers, fire blankets, and other emergency equipment will be tested by recognised authorities, as recommended by the manufacturer. All tests will be documented.

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- Emergency procedures will be discussed with families and regular information will be provided to families. Families will also be advised in writing whenever an emergency rehearsal has taken place.
- The Nominated Supervisor is responsible for ensuring that all educators, including relief educators and staff members, know the Centre's policies and procedures relating to Emergency Management and Evacuation, and what is expected of them in a rehearsal and/or real situation.
- Informal games and discussions (e.g. Get Down Low and Go, Go, Go) will be used to familiarise children with the Centre's evacuation and emergency procedures.

Rehearsal Evacuation (Every 3 Months)

- The Centre will add to each child's sense of security, predictability, and safety by conducting rehearsal evacuations every three months. All persons present at the Centre during the evacuation rehearsal must participate accordingly.
- These rehearsal evacuations are documented and evaluated. Any improvements identified during these rehearsals are implemented.
- Parents will be informed when the rehearsals have occurred.

Role of Educators

- Return to the group of children you are working with (if it is safe to do so) immediately the fire alarm sounds. Assist other educators with the evacuation.
- Ensure sign in/out attendance sheets remain in the vicinity of that particular group of children at all times. If an evacuation is required, then a primary educator will collect that attendance sheet in the process of evacuating the children.
- Gather the children immediately the alarm has sounded and evacuate through the nearest exit to the designated safe area. Collect the sign in/out attendance sheet on the way out.
- Call the roll (primary educator).
- Supervise children to ensure their safety, and to settle and reassure them.
- Follow the Fire Evacuation Plan for your individual designated role (e.g. collect Fire Evacuation bag with emergency supplies).

Nominated Supervisor's Role

- Ring 000.
- Collect educator sign-in book, a telephone, emergency contact box and backpack.
- Check toilet, kitchen and playrooms.
- Follow children and other educators to designated area.
- Oversee and check attendances of children, educators, volunteers, families, and visitors.
- Supervise and reassure children.

Emergency Communication Plan

- At all times, the Centre will have access to a telephone.
- The Centre has a main telephone to be used in an emergency, located in the office area.
- In the event of a complete loss of electricity, and the telephones at the Centre are not functioning, the Centre's mobile phone will be ready to use at all times to ensure educators to make emergency contact. The Nominated Supervisor's/educators' mobiles could also be used.

Insurance

The Centre will maintain current insurance, which accords with the Education and Care Services National Regulations 2011.

Waste Management

Bins are located at the right side of the building in an area inaccessible to children. Staff will take waste to the bin area at least twice daily. Bins will be collected by a commercial contractor, as required.

Centre Maintenance

Maintenance at the Centre is initiated on a regular basis through the following processes:

- Maintenance checklist completed monthly by the Centre's directors, and any work required brought to the attention of the Approved Provider.
- Annual inspections to ensure buildings and outdoor spaces are maintained in accordance with regulations, standards and codes relevant to childcare.
- The Centre's cleaning procedures will be consistent with the Education and Care Services National Regulations 2011.

Complaint Management

Morning Sunshine Kids Academy has Policies and Procedures which detail the processes by which the Centre will manage complaints. These processes include:

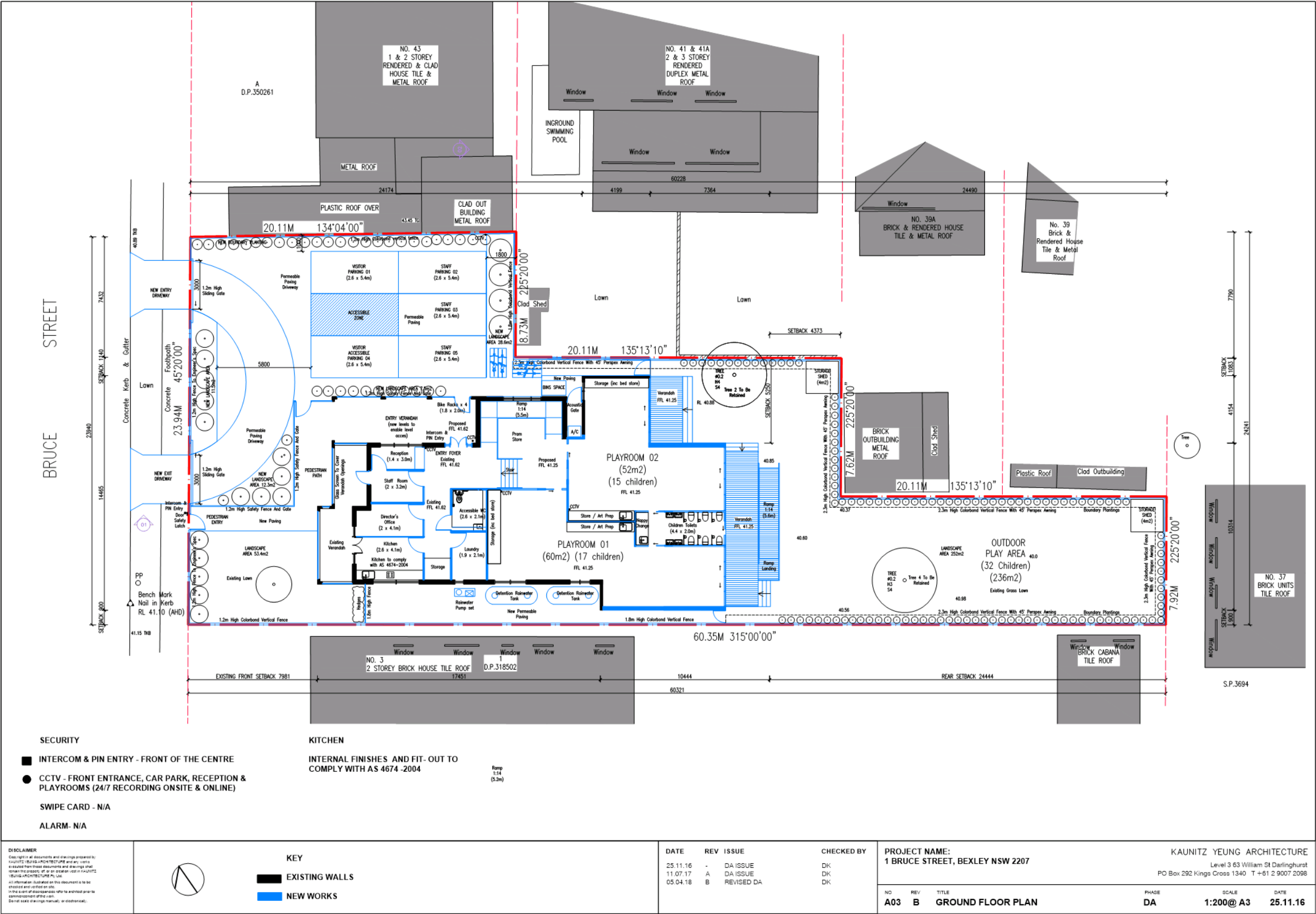
- A notice with the details of the Nominated Supervisor, the contact person for complaints, the Centre's telephone number and email, and the email of the Approved Provider will be prominently displayed in the entrance of the Centre.
- Formal complaints can be raised verbally with the Nominated Supervisor who will document the complaint clearly and objectively on the Centre's Grievance and Complaint Form.
- The Centre maintains a Grievance and Complaint Register of all complaints and actions taken in response to these complaints.

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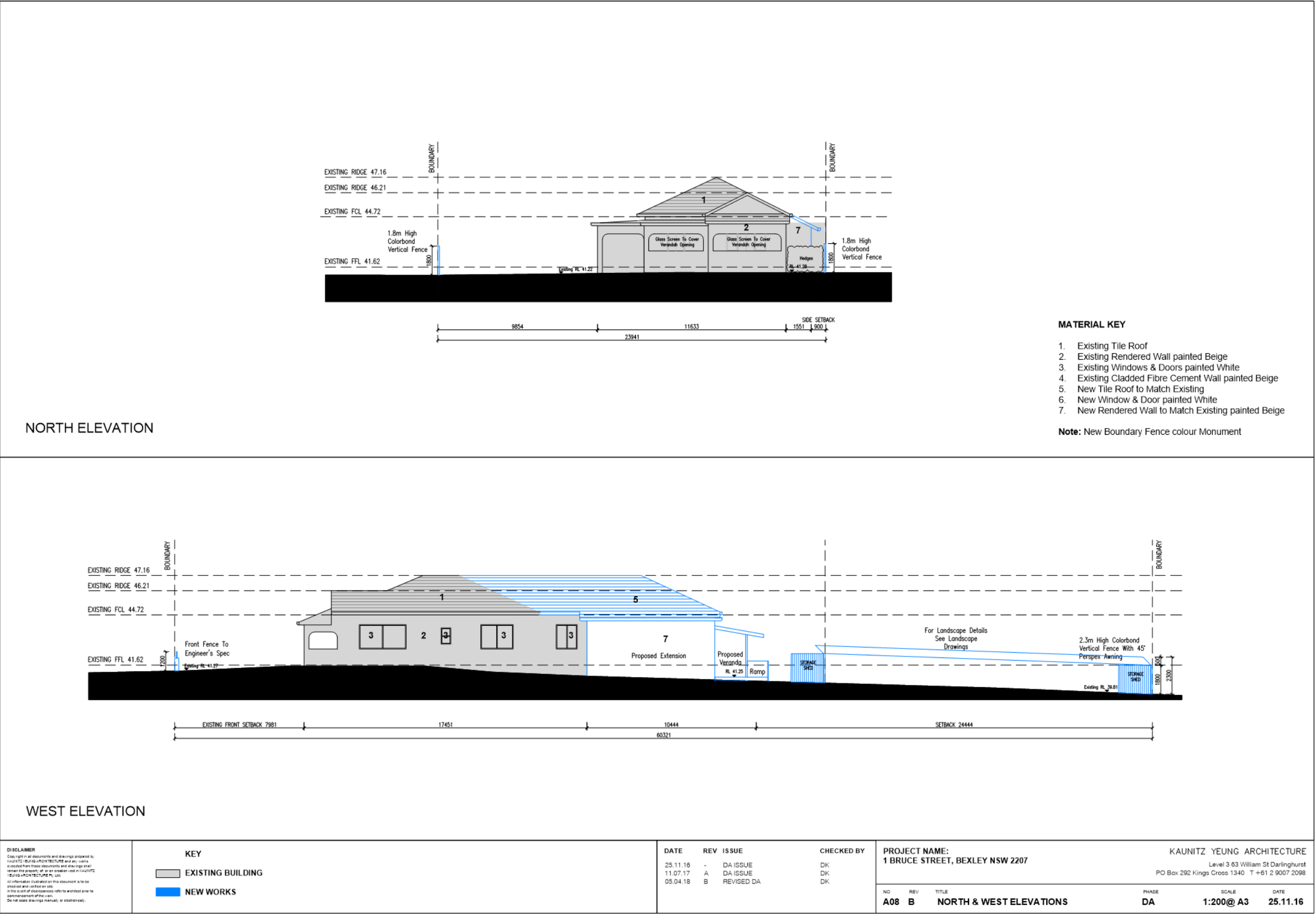
- The Register is reviewed regularly from the perspectives of the nature, recurrence (if any) and outcome to determine if the actions taken are consistent with the Centre's Quality Improvement Plan, and any changes to the Centre's Policies and Procedures that may be required. Each review is documented on a Grievance and Complaint Analysis Sheet.
- The Centre's procedure for formal written complaints is as follows:
- Complaints are to be submitted in writing using the Centre's Grievance and Complaint Form.
- Information requested includes the:
 - Name of the person making the complaint
 - Postal address and/or telephone number of the person making the complaint
 - Details of the complaint
 - Details of any witnesses.
- Each complaint will be dealt with in the strictest confidence. The Nominated Supervisor/Approved Provider or delegated staff member involved in investigating the complaint will ensure that information is restricted to those who genuinely need to be notified in order to deal with the complaint. If information specific to the complaint needs to be disclosed to others during its resolution, the complainant will be informed prior to disclosure.
- The complaint will be entered into the Centre's Grievance and Complaint Register, and written acknowledgment that the complaint has been received sent to the complainant.
- The Nominated Supervisor/Approved Provider will investigate the complaint in an equitable, transparent and fair manner, and document the findings. Investigations may involve consulting with the relevant stakeholders (including any person who may be the subject of the complaint) and reviewing documentation such as attendance records, accident reports and the Centre's Policies.
- Actions to address the complaint will be determined, and the complainant notified in writing of those actions.
- The Centre's Complaint Management processes will be reviewed every 12 months.
- Any online information related to the Centre provides details of the relevant contact person for complaints together with the process by which complaints can be lodged.

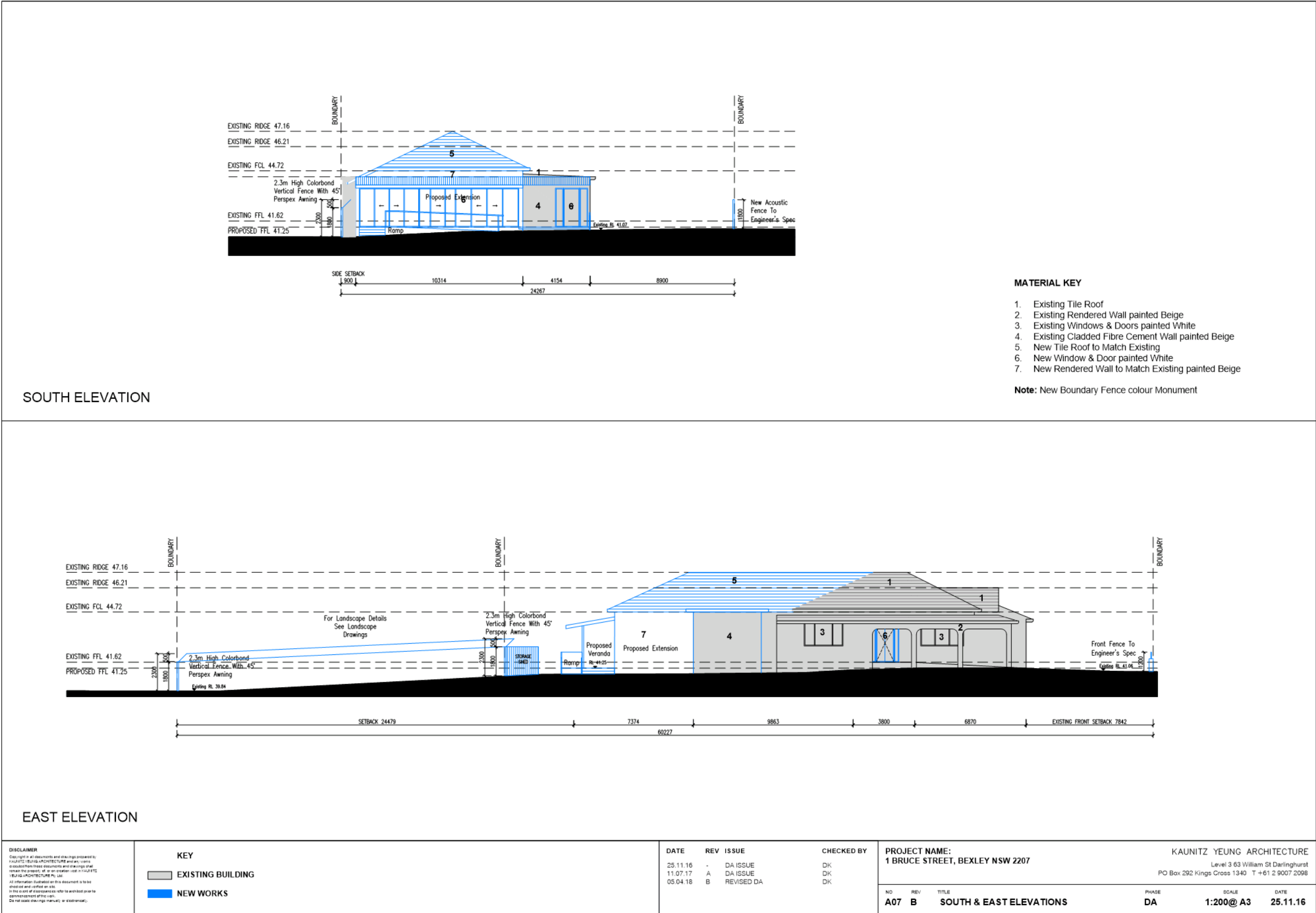
Amendment to the Plan of Management

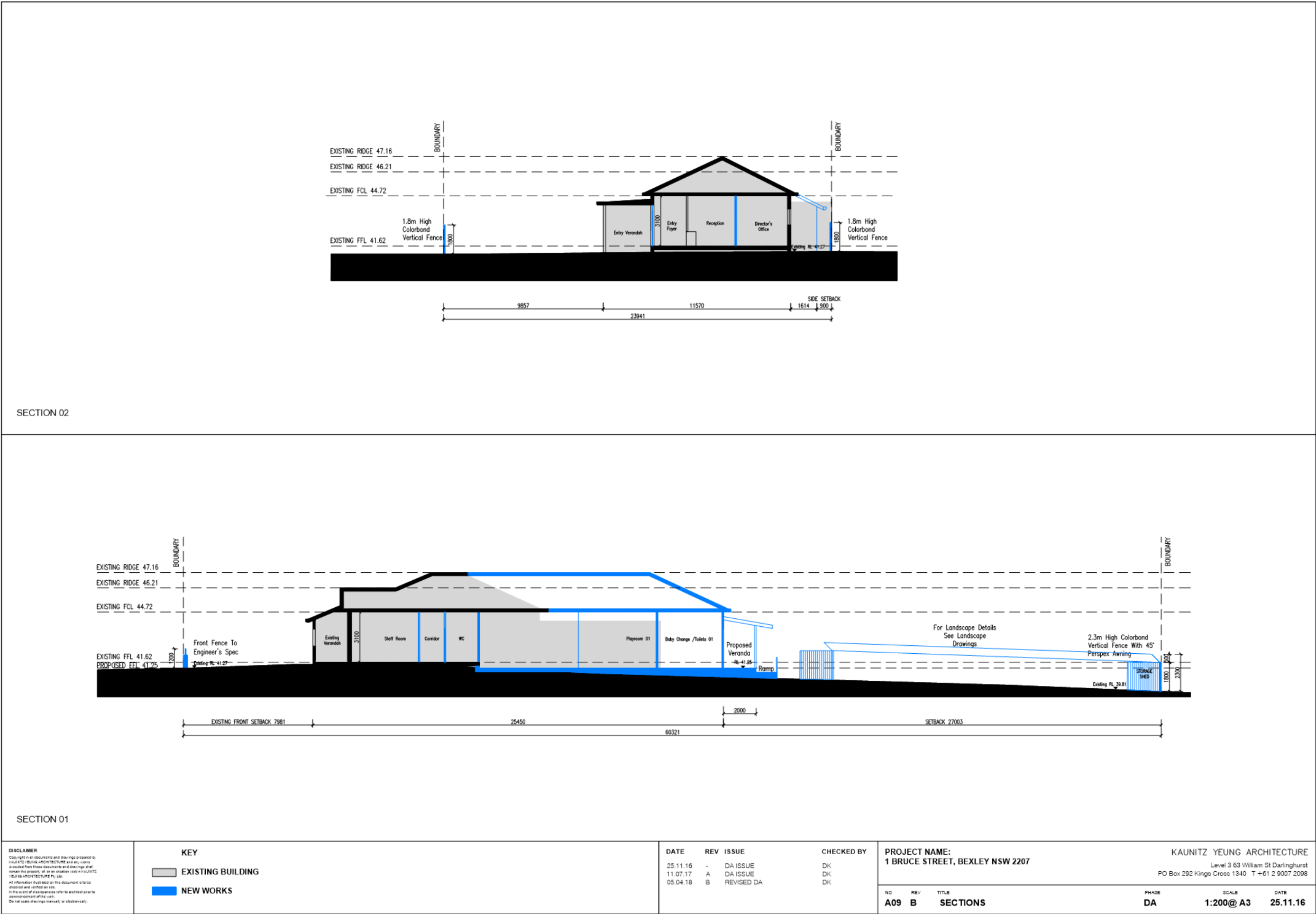
If, in circumstances where experience shows that it is reasonable or desirable to modify any provision of this plan for the better management of the premises, that modification shall be made to the Plan only with the consent of the relevant Council (whose consent shall not be unreasonably withheld).















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ABN: 33 232 568 415

Date: 7 April 2018

Ms Fiona Prodromou
Bayside Council
444-446 Princes Highway
Rockdale
NSW 2216

Dear Ms Prodromou

Re: 1 Bruce Street, Bexley (DA 2017/195)

As you are aware, on 13 March 2018 the Bayside Local Planning Panel ("the Panel") resolved to defer determination of the above DA, *"to allow the applicant the opportunity to submit amended plans to address the concerns raised in the report and such amended plans to be submitted to council within 4 weeks"*.

Amended plans addressing concerns raised in the previous report to the Panel have been prepared and are attached. We would request a meeting to discuss these changes, so the changes and the rationale for them are clear when reporting the matter back to the Panel.

The concerns raised in your report have been seriously reviewed and a number of changes have been made to address them. The issues raised in your report have led to an improvement to the proposal, and despite disagreement about refusal of the DA, the resulting improvements from your assessment should be acknowledged.

The following changes have been made:

- Extent of rear extension significantly reduced;
- Rear setback increased significantly;
- Mix of children revised (total unchanged);
- All space requirements comply with the childcare regulations and include additional space (refer to the compliance schedule on drawing A05);
- Ramp reduced to enable increased open space and better quality open space;
- Internal levels of the rear of the proposed building lowered to improve relationship between the internal areas and external play area and reduce height of rear balcony and external ramp;



- Ramp reduced and reorientated parallel to the building to minimise impact and maximise usable external play area;
- Most balustrades omitted due to lowering of internal levels;
- External storage added in two locations (complying with childcare regulations);
- Side return front fencing reduced to 1200mm;
- Side front planting to north adjoining fence added;
- Internal layout amended to ensure all rooms comply with childcare requirements for natural light;
- Existing front windows retained to ensure good openings/windows to the street for surveillance;
- Accessible parking space provided;
- Driveway widths reduced from 3.7m to 3m;
- Driveway and parking paving amended to permeable paving and revised O.S.D.;
- Bicycle parking relocated to provide safe storage and easy access;
- Additional gate added;
- Shade structures added and shown on landscape plan;
- Roof added to rear veranda.

The following are attached:

1. Revised Plans by Kaunitz Yeung;
2. Revised Landscape Plans by Tessa Rose; and
3. Revised stormwater plans and Design Statement from Stellen.

A supporting letter from Childcare by Design (also addressing open space and childcare Regulation requirements) and a revised Plan of Management will be submitted under separate cover. Further advice on acoustics or traffic/parking can be provided if required.

The following table responds to the issues raised in the previous Council staff report to the Panel:



Issue	Response
Character/Streetscape	<ul style="list-style-type: none"> See discussion below.
Children numbers and open space	<ul style="list-style-type: none"> The child care age groups have been revised, although the total number of 32 children has not altered (now 15 x 2-3 year olds and 17 x 3-5 year olds); The internal levels, external rear ramp and open space has been revised. The quantum of open space meets the Childcare Regulations (Clause 108 ECSN Regs) for the children accommodated; The calculation of open space needs has been checked and overseen by Dr Brenda Abbey.
Slope of land – rear	<ul style="list-style-type: none"> Considerable internal and external redesign has occurred to lower the elevation of the rear balcony, which has also allowed revision of the rear ramp, in turn improving open space provision and the internal/external relationship; The rear balcony is now only 450mm above the rear yard (a good sitting height); Balustrade provision has been revised and the visual impact of the rear ramp and veranda has been significantly reduced; The revised proposal meets and exceeds the space requirements for children (internal and external).
External storage	<ul style="list-style-type: none"> An external storage areas have been included in the plans, at the required rate and in a location similar to existing sheds being demolished.
Acoustic fence height/acoustic impacts	<ul style="list-style-type: none"> There has been no change to the rear fencing (also see discussion below).
Front side return Fence/Streetscape/Front surveillance	<ul style="list-style-type: none"> The side return fencing has been reduced to 1200mm; Additional northern front landscaping is included; Permeable paving for the driveway is included; The front elevation includes glazing and good activation of the street;



	<ul style="list-style-type: none"> Bicycle parking has been relocated and the building entrance is more open; The streetscape presentation is improved;
Natural light	<ul style="list-style-type: none"> All rooms have a window (except the internal accessible toilet);
Parking/two driveways	<ul style="list-style-type: none"> An accessible parking space is included; The allocation to visitor and staff parking has been revised to be more convenient to visitors; The reallocation of child care spaces and previous reduction in children has resulted in a reduction in parking demand and the revised parking numbers meet the DCP; Two driveways have been retained, as this is safe and appropriate, with minimal impact to the street and noting a very wide site frontage; The driveway crossing widths have been reduced from 3.7m to 3m each; Pedestrian accessibility within the site is better delineated;
Shade structures	<ul style="list-style-type: none"> These are included and shown on elevations within the Landscape Plan; It is common for Landscape Plans to be part of the approved plans; The rear verandah is covered and so rear glazing is appropriately protected;
Stormwater	<ul style="list-style-type: none"> Stellen, the applicant's hydraulic engineers, have liaised with Council engineering staff; The issue of surface water treatment was a misunderstanding of the rear landscaping by Council. Despite this, through discussion, the front driveway has been made permeable for better water absorption. This has also lead to a review of the O.S.D. system.



Suitability for the Site/Character

The following summarises why the site is suitable for the proposed use and proposal generally:

- The use is permissible in the zone;
- The relevant zone objective is: *"To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area"*. The land use is permissible and care should be taken in concluding a permitted use in a zone is contrary to zone objectives, having regard to past Court judgements. While there are some impacts upon amenity, these are reasonably minimised;
- The character of the area is respected by retaining the existing dwelling/bungalow form and existing street setbacks;
- The *"standard of design"* is stated to unsatisfactory for the streetscape in the Panel report due to parking *"visually dominating"* the streetscape, front side fencing, surveillance and lack of side landscaping to 43 Verdun Street. However, the key approach of retaining the existing dwelling form, with sympathetic additions, removal of some detracting exiting additions, adopting a low street fence and incorporating front parking and landscaping in the revised proposal (common for the existing site and surrounds) is sound;
- The existing site provides front parking, while the site planning and landscaping respects streetscape considerations and improves the existing situation;
- Front street surveillance is improved compared to the current situation. The entrance/exit has good visibility due to the low front fence there will be increased activity at the site. The previous cot room has been removed;
- The relationship with 43 Verdun Street to the north is improved compared to the current situation. There is currently a building and driveway abutting that boundary. There is new proposed landscaping and removal of the existing carport, while there is further landscaping to the northern side in the revised proposal;
- The under-development of the site in terms of height and FSR minimises the impacts on neighbours than may otherwise occur in terms of privacy, overshadowing and the like;
- The revised front fencing is low and the width of the site in this case suits a dual driveway as proposed;



- There are no other childcare centres in the street and there is a need and public benefit from the proposal (recognised in a recent new SEPP addressing Childcare supply);
- The rear open space has a depth which allows a range of open space and activities for children, to enhance their learning experience;
- With the removal of some rear structures and new landscaping, the outlook amenity of some surrounding properties will be improved;
- The proposal allows safe traffic distribution to the wider area.

Parking, Driveway width and Pathways

- The parking drop off and pick-up is relatively concentrated (in terms of times) and safety is facilitated by a porte-cochere arrangement (allowing forward entry and exit) and supervision by staff at key times (also addressed in the Plan of Management).
- The width of the site favours two driveways, and the "visual" impacts of parking are overstated when considered against the existing context and the landscaping proposed.
- The DCP parking rate is one space per 20 children (= 1.6 spaces) + 1 space per 2 staff. 6 staff are provided, requiring 3 spaces, resulting in a total of 4.6 spaces, rounded up to 5 spaces. The proposed provision of 5 parking spaces (including one disabled space) meets this requirement, also noting the porte-cochere may be used for quick drop-off and temporary parking.

Acoustic Impacts

- The rear fencing to meet acoustic requirements is retained as previously.
- The visual and character impacts of an additional 500mm Perspex above a standard fence height in the rear yard is an overstated concern.
- There will only be a maximum 12 children in the outdoor playground at any single time, for limited hours, and avoiding sensitive time of the day (8:30 - 11:30am, 3:00 - 5:00pm). This is enforceable by a DA Condition and through the Plan of Management.
- Children will be closely supervised by staff. There will be structured play programs supervised by educators and noise from children screaming is not an expected issue. The noise impacts on the neighbour to the north at the second floor ("Receiver 5") will be minimal and this has been addressed in the acoustic report.

Public Interest

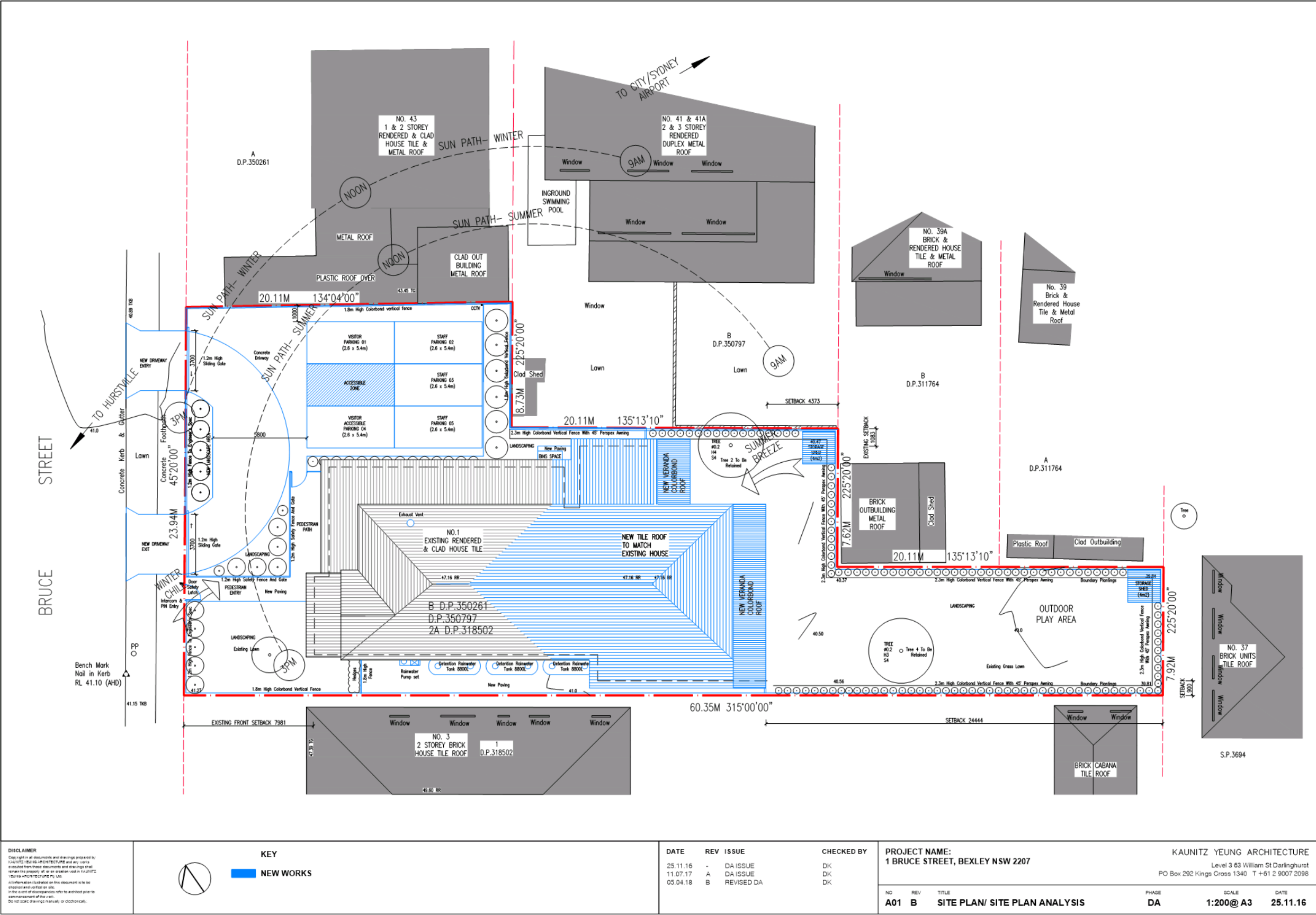
- Contrary to the view in the previous report to the Panel, provision of child care services at this site, helping to meet local demand and demand from a growing city, is in the public interest, despite some localised objections.
- The issues of concern raised in the Council staff report have been reviewed and appropriately addressed in the redesign.

The applicant has seriously and conscientiously addressed the concerns raised by Council staff, and hope the revised proposal is able to be supported by Council staff and the Panel. As previously stated, a meeting is requested to discuss the changes and additional information, and any further information that may assist the Council staff and Panel in considering and determining the matter.

If you have any queries please contact me on 9389-4457 or 0448-413-558.

Yours sincerely

Jason Perica
Director



BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/195
Date of Receipt:	2 December 2016
Property:	1 Bruce Street, BEXLEY (Lot 2A DP 318502), (Lot A DP 350797), (Lot B DP 350261)
Owner:	Shao Ying Pty Ltd
Applicant:	Morning Sunshine Kids Academy Pty Ltd
Proposal:	Alterations and additions to existing dwelling and conversion into a childcare centre with capacity for 32 children operating 7.30am to 6pm Monday to Friday
Recommendation:	Refused
No. of submissions:	17 individual submissions and 1 petition with 27 signatories
Author:	Fiona Prodromou
Date of Report:	23 February 2018

Key Issues

The proposal does not comply with the non discretionary minimum outdoor play space development standards of Clause 25 of State Environmental Planning Policy - Educational Establishments and Child Care Facilities 2017. The proposal has insufficient outdoor play area for the 32 children proposed to be accommodated, when this area is calculated in accordance with the requirements of Clause 108 of the Education and Care Services National Regulations. A maximum of 25 children can be accommodated within the proposed outdoor play areas on site.

The proposal is inconsistent with the Education & Care Services National Regulations and provides insufficient outdoor play areas, external storage and natural light and ventilation to proposed cot rooms.

The proposed development and its standard of design is unsatisfactory with respect of the low density residential streetscape and site context of which the property is positioned within. The proposal is inconsistent with the following objective of the R2 Low Density Residential zone. *"To ensure that land uses are carried out in a context and setting that minimizes any impact on the character and amenity of the area."*

The proposed development does not respond or appropriately relate to the natural topography of the subject site, thus resulting in adverse privacy and visual amenity impacts upon surrounding properties.

The required overall height (2.3m) of acoustic fencing to the periphery of the outdoor play areas in order to mitigate acoustic impacts to residential neighbours, is a direct consequence of the residential

context of the site, the proposed use, irregular site dimensions and narrow lot width towards the rear of the property. The site is not considered to be suitable for the proposed development.

The development was notified on two occasions, in accordance with the provisions of Rockdale DCP 2011. A total of 12 individual submissions and 1 petition with 27 signatures were received during the initial notification, with a further 5 submissions received following the renotification of amended plans.

The application is being reported to the Bayside Planning Panel given the number of submissions received opposing the proposed development. The recommendation is for Refusal.

Recommendation

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

a) Pursuant to the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not suitable for the proposed development.

b) Pursuant to the provisions of Section 79C(1)(a)(i) and 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development and its standard of design is unsatisfactory with respect of the low density residential streetscape and site context of which the property is positioned within. The proposal is inconsistent with the objectives of the R2 Low Density Residential zone of Rockdale LEP 2011 and the objectives of Part 4.2 Streetscape and Site Context of Rockdale DCP 2011.

c) Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the non-discretionary minimum outdoor play space development standards of Clause 25(b) of State Environmental Planning Policy Educational Establishments and Child Care Facilities 2017. The proposal has insufficient outdoor play area for 32 children as proposed to be accommodated.

d) Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part 4 of the Child Care Planning Guideline (Education and Care Services National Regulations), specifically in relation to the provision of external storage, outdoor play areas, natural light and ventilation to indoor areas used by children.

e) The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as the proposed development does not respond or appropriately relate to the natural topography of the subject site, resulting in adverse privacy and visual amenity impacts upon surrounding properties. The proposal is inconsistent with the provisions and objectives of Clause 4.1.6 Development on Sloping Sites and 4.4.5 Visual Privacy, as per Rockdale DCP 2011.

f) Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the constraints of the site necessitate excessively high acoustic fencing in order to mitigate acoustic impacts to adjoining residential neighbours.

g) Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not incorporate accessible car parking on site and as such does not comply with the equitable access requirements of Clause 4.5.2 Social Equity of Rockdale DCP 2011.

h) Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not accommodate clear, delineated and fenced pedestrian pathways from on-site car parking areas to the front entrance of the facility, thus results in an unsafe pedestrian environment on site, contrary to the provisions of Clause 6.1.4.7 of Rockdale DCP 2011.

i) Pursuant to the provisions of Section 79C(1)(d) & 79C(1)(e) of the Environmental Planning and Assessment Act 1979, having regard to the reasons noted above and the number of submissions received by Council against the proposed development, approval of the development application is not in the public interest.

2. That the objectors be advised of the Bayside Planning Panel's determination.

Background

History

2 December 2016

DA-2017/195 submitted to Council

12 December 2017 to 13 January 2018

Public notification of proposal.

1 February 2017

Consideration by the Bayside Traffic Development Advisory Committee

6 June 2017

Letter sent to applicant outlining issues with application, including but not limited to inconsistency with streetscape and site context, suitability of the site not demonstrated, problematic allotment width, insufficient car parking on site, unsatisfactory raised ground floor level, excessive height of acoustic boundary fencing, unsafe pedestrian access and insufficient information. The applicant was advised to consider providing a basement level to accommodate all required parking on site. The proposal in its current form was recommended to be withdrawn.

17 July 2017

Amended plans and information were submitted to Council. Main changes to the scheme included a reduction in the number of children and staff proposed to be accommodated from 47 with 8 staff to 32 with 7 staff, deletion of outdoor play areas within the front and side setbacks, increase of landscaping on site, justification for allotment width and modification to the design of the acoustic fencing.

16-29 August 2017

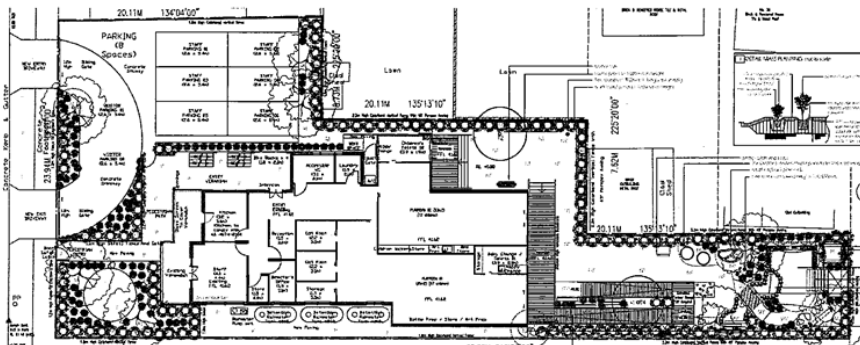
Renotification of amended plans and information.

Proposal

The proposed development seeks to undertake alterations and additions to the existing detached dwelling house on site, demolish the existing car port and convert the dwelling into a childcare centre with capacity for 32 children (12 x 0-2 / 10 x 2-3 / 10 x 3-5), 7 staff and operating 7.30am to 6pm Monday to Friday. The proposal incorporates as follows:

- a) New vehicular entry to Bruce Street to facilitate a drive through vehicular arrangement within the front setback, with six dedicated on site car parking spaces for staff. Two visitor drive through spaces.
- b) New boundary fencing, 1.2m in height along front property boundary with sliding vehicular entry gates,
- c) Pedestrian entry gate at front boundary with associated pedestrian walkway to proposed entry foyer.
- d) Landscaped areas within front yard.
- e) 4 x bike racks within front setback of site adjoining entrance to proposed facility
- f) Two indoor children's play rooms with associated storage, hand wash sinks, bottle preparation areas, bed stores, toilet facilities, two cot rooms comprising 6 cots in each room, staff room, kitchen, accessible toilet, laundry, entry foyer, reception and directors office.
- g) Externally within the south western side setback 3 x 8800 litre rainwater tanks are proposed, in addition to a rainwater pump set.
- h) Two raised veranda's to the rear with steps, one with elongated access ramp with landings.
- i) Rear and north eastern outdoor play areas.
- j) 1.8m high acoustic perimeter fencing along the periphery of the outdoor play area, with 45 degree Perspex 6mm thick canopy, resulting in an overall height of 2.3m.

Within the outdoor play areas on site a range of shrubs, ground covers and trees are proposed in addition to the provision of seating, sandpit, outdoor play kitchen, timber bridge, climbing wall, balance beam, raised mounds etc. A shade structure is proposed adjoining the rear boundary of the subject site over the proposed sandpit area.



Site location and context

The subject site is an irregularly shaped allotment comprising three lots, Lot 2A DP 318502, Lot A DP 350797, Lot B DP 350261, with a 23.95m frontage to Bruce Street and a total site area of 972sq/m. The site is currently zoned R2 Low Density Residential and occupied by a single storey detached dwelling house with detached double carport behind the building line and two shed structures within the rear yard of the site. The site has a fall to the rear of up to 1.33m, with three trees are located within the rear of the site with several trees located within the front yard of the property. A power pole and street light is positioned in front of the property, near the common boundary with 3 Bruce Street.

The site shares a common side boundary to the north / north east with several properties fronting

Verdun Street, being as follows;

- 43 Verdun Street, a part 1 - 2 storey detached dwelling house located at the junction of Bruce and Verdun Streets. Vehicular access to this site is via Bruce Street.
- 41 / 41A Verdun Street, a two storey dual occupancy development with basement car parking. 41A Verdun Street comprises an inground pool within the rear of the site.
- 39 and 39A Verdun Street, single storey detached dwelling houses with associated outbuilding structures in the rear yard
- 37 Verdun Street, a single storey villa development comprising 5 villas, one of which shares a direct common rear boundary fence with the subject site.

To the south west, the site shares a common side boundary with a two storey detached dwelling house at 3 Bruce Street. This site comprises an in ground pool within the rear of the site located parallel to the common side boundary fence with the subject site.



The subject site is affected by:

- 15.24m Building Height Civil Aviation Regulations
- Surface flows
- Class 5 Acid Sulfate Soils
- Obstacle Limitation Surface.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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 (Educational Establishments and Child Care Facilities) 2017

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, has been considered in the assessment of the Development Application. The table below outlines the key controls within the SEPP that are applicable to the application:

Applicable Clause	Provision	Proposed development	Complies
22 - Concurrence of Regulatory Authority for certain applications (Reg.107/108 of Education & Care Services National Regulations)	Concurrence of regulatory authority required where a variation to the minimum required indoor / outdoor play areas is proposed.	Concurrence of regulatory authority not sought by applicant.	N/A
23 – Child Care Planning Guideline	The consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development	The provisions of the Child Care Planning Guideline have been taken into consideration in this assessment and detailed below.	Yes
25 –Non Discretionary Development Standards	a) Location -the development may be located at any distance from an existing or proposed early education and care facility.	The subject site is located in accordance with the provisions of this clause.	Yes
	b) Indoor / Outdoor space (i)3.25sq/m per child indoor (ii)7sq/m per child outdoor	Total indoor = 118sq/m (36 children can be accommodated) Total outdoor = 175sq/m (25 children can be accommodated)	Yes No (see below)
	c) Site Area & Site Dimensions - the development may be located on a site of any size and have any length of street frontage or any allotment depth.	23.95m frontage to Bruce Street and a total site area of 972sq/m	Yes

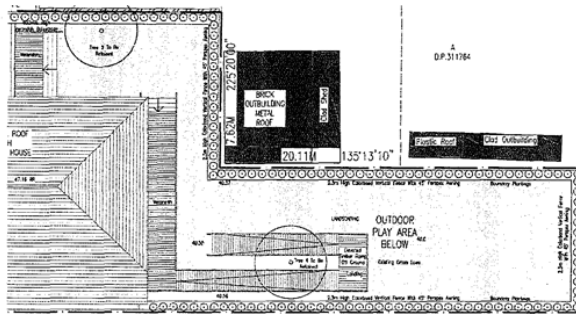
Applicable Clause	Provision	Proposed development	Complies
	d) Colour of building materials or shade structures -the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.	Beige and white colour scheme proposed.	Yes
26 – Development Control Plans	A provision of a DCP that specifies a requirement, standard or control in relation to any of the following matters(<i>including by reference to ages, age ratios, groupings, numbers or the like, of children</i>) does not apply to development for the purpose of a centre-based child care facility:		
	(a)operational or management plans or arrangements (including hours of operation),	POM submitted	Yes
	(b)demonstrated need or demand for child care services,	Needs analysis not required by Rockdale DCP 2011	Yes
	(c) proximity of facility to other early childhood education and care facilities,	Locational criteria of RDCP 2011 superseded by this provision	Yes

Applicable Clause	Provision	Proposed development	Complies
	<p>(d) any matter relating to development for the purpose of a centre-based child care facility contained in:</p> <p>i) the design principles set out in Part 3 of the Child Care Planning Guideline, or</p> <p>ii) The matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning height, side and rear setbacks or car parking rates)</p>	<p>Part 3 of the Guideline does not apply to this proposal as per 'ArtMade Architectural Pty Ltd v Willoughby City Council [2018] NSWLEC 1022.'</p> <p>Assessment against Part 4 undertaken below.</p>	See below

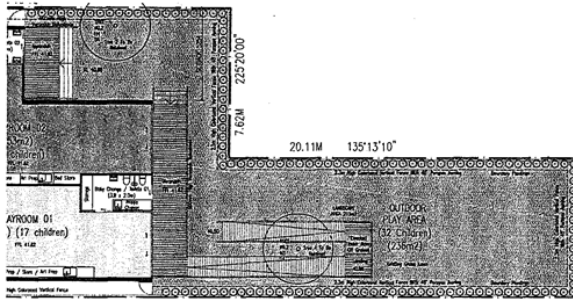
Non Compliance

Outdoor Play Areas

The image below illustrates areas included in Councils 'Outdoor Play Area' calculations. As is evident below, periphery hedging, narrow unusable areas, steps to verandas and the landing of the ramp which are not spaces suitable for children's play have not been included in outdoor play area calculations as they limit the useability of space. This calculation is consistent with Clause 108 of the Education and Care Services National (ECSN) Regulations.



Further to the above, the below illustrates the applicants outdoor play area calculations, which are not in accordance with the provisions of Clause 108 of the ECSN Regulations.



Child Care Planning Guideline

As per the findings of Commissioner Smithson in “*ArtMade Architectural Pty Ltd v Willoughby City Council [2018] NSWLEC 1022*”, 23 January 2018, Part 4 – Education and Care Services National Regulations of the Child Care Centre Guideline is the only part of the aforementioned Guideline to apply to the subject application.

This is as a result of the lodgement of the DA prior to the finalization of SEPP - Educational Establishments and Child Care Centres 2017 and the savings and transitional provisions found in Schedule 5 of the SEPP which are limited to Part 4.

Given the above, the proposal has been assessed against Part 4 of the guideline below.

Education and Care Services National Regulations

Part 4 – Education & Care Services National Regulations			
Regulation	Design Guidance	Proposal	Complies
104 – Fencing or barrier that encloses outdoor spaces	Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.	Child proof fencing provided at periphery of outdoor play areas on site	Yes
106 - Laundry & Hygiene Facilities	On site laundry facilities	Laundry facilities provided on site. Details of laundry not illustrated on plans. Laundry capable of accommodating required facilities.	Yes

107 - Indoor Space Requirements	Min 3.25sq/m unencumbered indoor space per child.	<i>Refer to SEPP - (Educational Establishments and Child Care Facilities) 2017 table above.</i>	Yes
	Storage - min 0.3m3 per child external - min 0.2m3 per child internal	Outdoor = Nil Indoor = 40m3	No Yes
	Prams, bikes and scooters should be located adjacent to the building entrance	Sufficient area adjoining main entrance for storage of prams etc	Yes
108 - Outdoor Space Requirements	Min 7sq/m per child unencumbered outdoor space	Total outdoor = 175sq/m (25 children can be accommodated)	No
109 - Toilet & Hygiene Facilities	Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants.	Proposal provides junior toilets, low level sinks and appropriate hand drying facilities with direct access from both indoor and outdoor play areas. Appropriate windows and screens are provided for supervision and privacy.	Yes
110 – Ventilation & Natural Light	Adequate natural light and ventilation to indoor areas used by children.	Nil natural light or ventilation to cot rooms within facility.	No
111 – Administrative Space	Adequate accessible area or areas for the purposes of conducting the administrative functions	Accessible reception and office provided	Yes
112 – Nappy Change Facilities	Changing bench with appropriate bathing, hand wash & storage facilities	Appropriate nappy change facilities are illustrated on plans	Yes
113 – Outdoor Space Natural Environment	Outdoor spaces that allow children to explore and experience the natural environment	Varied spaces within proposed outdoor area i.e. sandpit, climbing wall, dry creek bed, play kitchen	Yes

114 – Outdoor Space Shade	Adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.	Shade cloth illustrated on landscape plan, yet nil elevations or details provided.	No
115 – Premises Designed to Facilitate Supervision	Rooms / facilities (including toilets, activity rooms etc) designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.	Facilities designed to maximise supervision of children including, nil doors to children's toilet cubicles, appropriately located windows to bathrooms / nappy change areas and installation of vision panels.	Yes
97 / 168 - Emergency & Evacuation Procedures	Emergency and evaluation plan should be submitted with a DA	Emergency procedures outlined within submitted Plan of Management	Yes

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 - works within the vicinity of electricity infrastructure

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

Accordingly, the proposal was sent to Ausgrid. Nil response was received following the notification period and as such concurrence was assumed. The application is consistent with the provisions of the SEPP and is acceptable in this regard.

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

Submitted plans illustrate the proposed removal of two trees on site, being, a *Corymbia* 'Summer Red' 5m H x 3m W and a *Syzigium Leuhmannii* (Lillypilly) 4m H x 3m W in order to facilitate the proposed development. An Arborist Report prepared by Ian Hills was submitted with the application, dated November 2016.

The report concluded *"There is adequate open space in the design of the proposed development to accommodate replacement plantings that will assist Council in meeting its Urban Forest Maintenance goals following the proposed removal of trees 1 and 3."*

Council's Tree Preservation Officer reviewed the proposal, Landscape Plan and submitted Arborist Report and concurred with the above. The proposal is therefore satisfactory in this regard and consistent with the provisions of the SEPP.

State Environmental Planning Policy No 64—Advertising and Signage

This policy applies to all signage that is visible from a public place except for signage that is exempt development. In granting consent, Council must take into account whether the signage is consistent with the objectives of this policy and whether the signage satisfies the criteria specified in Schedule 1 of SEPP 64.

Documentation accompanying the DA states that nil signage is proposed as part of this application. Given the nature of the proposed use this is unusual, notwithstanding, proposed future signage would be subject to the lodgement, assessment and determination of a S96 application at a future date.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R2 Low Density Residential	No - see discussion	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.3 Height of buildings	Yes	Yes - see discussion
4.4 Floor space ratio - Residential zones	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.7 Stormwater	No - see discussion	No - see discussion
6.12 Essential services	Yes	Yes - see discussion

2.3 Zone R2 Low Density Residential

The subject site is zoned R2 - Low Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a 'child care centre' and is a permissible development with development consent.

Notwithstanding, the proposal given its design and likely impacts upon neighbouring properties is not considered to be consistent with the following objective of the zone:

•To ensure that land uses are carried out in a context and setting that minimizes any impact on the character and amenity of the area.

2.7 Demolition requires consent

The proposed development seeks consent for the partial demolition of the existing dwelling, outbuildings and carport on site and hence satisfies the provisions of this clause.

4.3 Height of buildings

The height of the proposed building is 6.52m and therefore does not exceed the maximum 8.5m limit that applies to the subject site. Further, the proposed development complies with the objectives of this clause.

4.4 Floor space ratio - Residential zones

A maximum 0.5:1 FSR applies to the subject site. As such a maximum gross floor area of 486sq/m is permissible. The proposal seeks to incorporate additional floor space on site, and provides a total gross floor area of 312.5sq/m, equating to an FSR of 0.32:1. The proposal complies with this requirement.

6.1 Acid Sulfate Soil - Class 5

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

6.2 Earthworks

Earthworks including excavation are required on site in order to construct the proposed car parking areas, enable footings for the extension and accommodate the outdoor play areas on site. 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 51-60m AHD Obstacle Limitation Surface (OLS). The building height is proposed at a maximum of 6.52m (47.16RL) and in this regard, it is considered that the proposed building will have minimal adverse impact on the OLS.

6.7 Stormwater

The application was accompanied by a stormwater management plan prepared by Stellen Consulting, dated 17/7/2017. An on site detention system is proposed, using rainwater tanks. Overflow is proposed to be directed to the street kerb outlet.

The submitted stormwater plan was reviewed by Councils Development Engineer who notes that the stormwater plan failed to demonstrate the appropriate management of surface water.

Given the above the proposal does not demonstrate the adequate disposal of stormwater from the subject site as part of the proposed development.

6.12 Essential services

Services will generally be available on the site. The proposal is satisfactory in relation to the provisions of this clause.

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

No relevant proposed instruments are applicable to this proposal.

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:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	No - see discussion	No - see discussion
4.1.4 Soil Management	Yes	Yes - see discussion
4.1.6 Development on Sloping Sites	No - see discussion	No - see discussion
4.1.7 Tree Preservation	Yes	Yes
4.1.9 Lot size and Site Consolidation - isolated sites	Yes	Yes - see discussion
4.2 Streetscape and Site Context - General	No - see discussion	No - see discussion
4.2 Streetscape and Site Context - Fencing	No - see discussion	No - see discussion
4.3.1 Open Space and Landscape Design - Child care centres	Yes	Yes - see discussion
4.4.2 Solar Access - General Controls	Yes	Yes - see discussion
4.4.4 Glazing - General Controls	No - see discussion	No - see discussion
4.4.5 Visual privacy	No - see discussion	No - see discussion
4.4.6 Noise Impact - Non-residential	No - see discussion	No - see discussion
4.5.2 Social Equity - Equitable Access	No - see discussion	No - see discussion
4.6 Parking Rates - Child Care Centres	No - see discussion	No - see discussion
4.6 Car Park Location and Design	No - see discussion	No - see discussion
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes
4.6 Driveway Widths	No - see discussion	No - see discussion
4.6 Access to Parking	No - see discussion	Yes
4.7 Air Conditioning and Communication Structures	Yes	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes
6.1 Child Care Centre - Building Design	No - see discussion	No - see discussion
6.1 Child Care Centre - Parking and Pedestrian Safety	No - see discussion	No - see discussion

4.1.1 Views and Vista

The proposal seeks to utilize the existing building on site, incorporating additions, yet not exceeding the existing ridge height on site. The development comprises an overall height of 6.52m to the highest point. It is noted that the subject site and directly adjoining properties do not benefit from existing magnificent views or vistas. As such the proposal is satisfactory in regard to views and vistas.

4.1.3 Water Management

Refer to discussion in Clause 6.7 - Stormwater of this report.

4.1.4 Soil Management

The Soil & Water Management Plan has been submitted and general erosion and sediment control strategies are proposed to ensure that the potential for impact on adjoining land and surrounding waterways is minimized. Temporary fencing is to be erected along the boundaries of the site. A builders all weather access is required to be provided onto the site.

4.1.6 Development on Sloping Sites

The proposal seeks to retain a substantial portion of the existing building on site, providing a rear addition at the same floor level of the current building. The subject site slopes to the rear, up to 1m in the location of the existing and proposed built forms.

As a consequence of the topography and design of the proposal, the finished floor level of the proposed rear extension, veranda, landings and accessible ramp are raised 0.73m - 1.12m above existing natural ground level. In addition to the aforementioned, the balustrading required for the proposed ramps is positioned up to 1.9m above existing ground level.

The subject site is not flood affected and as such there is no requirement, nor is it necessary that the extension and built forms be raised as proposed.

Given these built forms are designed in this manner, it is evident the proposal has not been designed to relate to the natural topography or the site, nor with due consideration of the amenity of neighbouring properties.

The proposal is considered to be unsatisfactory in relation to the objectives and requirements of this clause.

4.1.9 Lot size and Site Consolidation - isolated sites

The proposal does not result in the isolation of any neighbouring properties.

4.2 Streetscape and Site Context - General

As per the provisions of Clause 6.1.11 of Rockdale DCP 2011, child care centres must be designed in character with the existing streetscape and are required to be sympathetic within their context.

The following design responses as illustrated upon submitted plans are inconsistent within the existing and future desired streetscape and site context of the property.

- a) Excessive hard paved car parking and manoeuvring areas forward of the building line within the front setback of the site and adjoining the common side / rear boundary with 43 Verdun Street.
- b) Car parking areas as proposed visually dominate and detract from the residential streetscape.
- c) Provision of 1.8m high fencing forward of the building line adjoining the common side boundary with 3 Bruce Street.
- d) Lack of direct visual pedestrian connection to front building façade and ability to facilitate casual surveillance of Bruce Street.
- e) Lack of landscaping provision adjoining the common boundary with 43 Verdun Street.

Given the above, the proposal is not considered to adequately respond to, reinforce or sensitively relate to the existing residential context or predominant streetscape qualities in close proximity to the subject site. Side return fencing as referred to above does not complement, nor conserve the visual character of the street or neighbourhood.

As a result of the above, the proposal is deemed to be inconsistent with Part 4.2 – Streetscape and

Site Context of DCP 2011 and specifically the following objective of the R2 – Low Density Residential zone.

- *To ensure that land uses are carried out in a context and setting that minimizes any impact on the character and amenity of the area.*

4.2 Streetscape and Site Context - Fencing

With respect of fencing on site, the proposal as been assessed as follows:

A. Front Fencing

The provisions of this clause stipulate *"Front fences are to be a maximum height of 1.2m above footpath level"*. Plans illustrate the provision of a 1.2m high front boundary fence, however details in respect of materials, colours and finishes of the proposed front fence were not submitted for assessment.

B. Side Return Fencing Forward of Building Line

Plans illustrate the provision of a 1.8m high colourbond side return fence to both common side boundaries forward of the building line and adjoining the proposed new 1.2m high fence. Whilst the requirements of this clause stipulate *"Sheet metal fencing is not to be used at the street frontage or forward of the building line"*, the provision of the 1.8m fence adjoining the common boundary with the rear of 43 Verdun Street is deemed satisfactory, as this facilitates the enclosure of the rear private open space of this property and retains the status quo with existing fencing heights in this location.

The provision of a 1.8m high colourbond side return fence forward of the building line along the common side boundary of the site with 3 Bruce Street however is unsatisfactory and inconsistent with the nature of predominant low fencing forms provided in this location within the existing context and streetscape of Bruce Street.

C. Side / Rear Fencing Behind Building Line

The provisions of this clause state *"Side and rear fences are to have a maximum height of 1.8m on level sites or 1.8m measured from the low side where there is a difference in level either side of the boundary"*.

The submitted acoustic report has recommended the provision of a 1.8m high solid continuous acoustic barrier with 45 degree Perspex canopy at the periphery of the entire rear outdoor play area, resulting in a total overall height of 2.3m.

The required height of this acoustic fencing is a direct consequence of the residential context of the site, proposed use, irregular site dimensions and narrow lot width towards the rear of the property. The height of this fencing appears to be necessary in order to mitigate potential adverse acoustic impacts arising as a result of the proposed development.

Proposed fencing referred to above is excessive in height and form and is further uncharacteristic of the nature of fencing provided within the residential context of the site.

The proposal is unsatisfactory with respect of the provisions and objectives of this clause.

4.3.1 Open Space and Landscape Design - Child care centres

As per the provisions of Clause 4.3.1 Open Space and Landscape Design - Child care centres, a minimum of 20% (194.4sq/m) of the site area is to be provided as landscaped area. The definition of landscaped area is outlined within RLEP 2011 as follows:

"a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area."

Plans illustrate the provision of natural turf, landscaped planters and periphery landscaped areas on site.

A total of 295.9sq/m of landscape area is provided on site and the proposal thus satisfies the requirements of this clause.

4.4.2 Solar Access - General Controls

The proposed development is single storey in nature and does not result in adverse overshadowing impacts on site, or to neighbouring properties.

4.4.4 Glazing - General Controls

Plans illustrate the provision of uncovered east and south east facing rear verandas adjoining proposed indoor play rooms. Nil shading devices are proposed to full height floor to ceiling glazed sliding doors on the rear elevation. Further resolution of this matter is required. The proposal is unsatisfactory in this regard.

4.4.5 Visual privacy

Plans illustrate the provision of two raised rear veranda's, along with a raised ramp and landing. The aforementioned are raised 0.73m - 1.12m above existing natural ground level. Given these items are designed in this manner, and irrespective of the proposed 2.3m high acoustic fencing along the side boundaries with neighbouring properties in these locations, the proposal has the potential to result in adverse visual privacy impacts to the rear private open space areas of neighbouring properties.

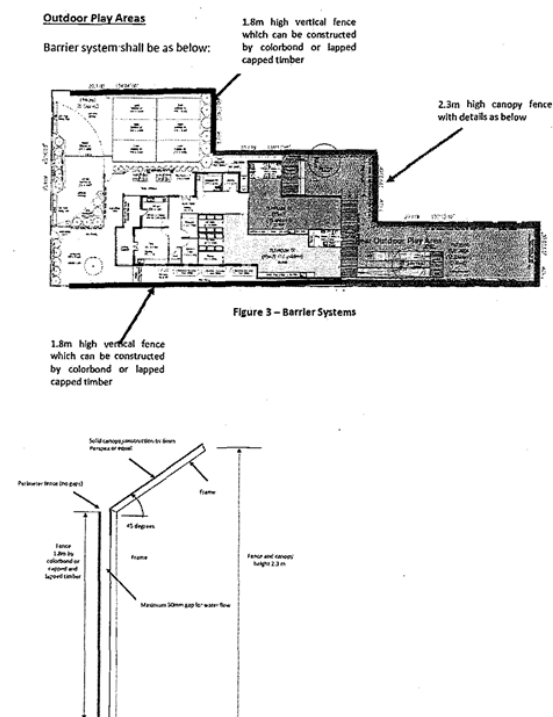
Given the above, the proposal is unsatisfactory with respect to visual privacy.

4.4.6 Noise Impact - Non-residential

The applicant submitted a revised Acoustic Report undertaken by Acoustic Logic dated 19 July 2016. The outdoor play noise within the report was predicted based on the assumptions below:

- Rear outdoor play area – worst scenario: 2-5 Years 12 kids
- Acoustic barrier system as recommended in Section 11 of acoustic report.
- Each outdoor area was divided into a few zones with the children evenly distributed for the calculations.

The acoustic report recommended a number of measures to be implemented on site during & following construction in order to minimise noise likely to be associated with the development. I.e. acoustic seals, glazing recommendations, all doors closed in addition to the construction of a 1.8m high solid continuous acoustic barrier with 45 degree Perspex canopy at the periphery of the entire rear outdoor play area resulting in an acoustic barrier with overall height of 2.3m.



Further to the above, the following management controls are recommended to be implemented, within the acoustic report;

- No amplified music is allowed within outdoor area of project site.
- External doors remain closed except for people in/out.
- Maximum 12 kids play on back outdoor play area.
- Signs reminding staff and visitors to minimise noise at all times shall be installed at ingress/egress points from the child care centre.
- Management is to ensure children are supervised at all times to minimise noise generated by the children whenever practical and possible.
- Install a contact phone number at the front of the centre so that any complaints regarding centre operation can be made.

A Plan of Management (POM) was further submitted by the applicant. The POM states that a maximum of 12 children and associated staff are sought to occupy outdoor play areas at any one time between 8.30am - 11.30am and 3.00pm - 5.00pm.

The submitted Acoustic Report confirms that subject to the recommendations of the report, adverse acoustic impacts arising from the proposed development are not anticipated.

Councils Environmental Health Inspector reviewed the submitted Acoustic Report and noted;

- a) Table 5 of the acoustic report states that Receiver 5 location is a two storey residential dwelling

and the report makes an assumption that upstairs is a sleeping space and not used during the day. Habitable rooms within dwellings are utilised both day and night and it is not realistic or reasonable to assume these areas at first floor are not used during the daytime.

b) Rain water pump sets are proposed. Section 10 of the revised acoustic report mentions that the criteria for plant noise emission is BG + 0 dB(A). The background noise (BG) the consultant has measured is 38 dBA (Table 2). Given the aforementioned, detailed design information with respect of proposed air conditioning units is required prior to determination, to ensure noise to be emitted is no greater than 38 dBA and where this is proposed, that air conditioning units be appropriate acoustically insulated.

Given the above concerns raised by Councils Environmental Health Officer, it cannot be confidently stated that the proposal will not result in adverse acoustic impacts onto neighbouring properties. The proposal is therefore unsatisfactory in relation to the provisions and objectives of this clause in relation to acoustic amenity.

4.5.2 Social Equity - Equitable Access

Plans submitted to Council do not illustrate the provision of accessible car parking on site. The proposal is unsatisfactory in this regard.

4.6 Parking Rates - Child Care Centres

Car parking for the proposed development on site is required to be provided as follows:

a) Visitor

32 children = 2 spaces required

b) Staff

7 staff (6 child care staff and 1 cook) = 4 spaces required

c) Bike

32 children = 4 spaces required

Plans illustrate the provision of 6 tandem staff car parking spaces, 2 drive through visitor spaces within the driveway arrangement on site and 4 bicycle spaces near the entry foyer.

Given two proposed visitor spaces are positioned within the driveway, are not delineated permanent spaces and have the potential to cause pedestrian safety concerns these spaces are not supported.

It is noted that 2 surplus staff car parking spaces are unnecessarily provided within the front setback of the site. Two of the staff car spaces, closest to the frontage of the site, would be better allocated as visitor spaces. This would enable the provision of an accessible visitor space as is required, ensure the driveway area is kept clear at all times and enable the reconfiguration of this car parking area on site to provide safe pedestrian passage behind parked staff vehicles on site.

Whilst the overall number of car spaces provided on site could result in compliance with the provisions of this clause if redesigned, the streetscape impacts of the current design, allocation and proposed pedestrian safety are unsatisfactory and inconsistent with the objectives of this clause.

4.6 Car Park Location and Design

The objectives of this clause seek to ensure, sufficient, convenient and safe on-site car parking is

provided and that on site car parking does not dominate or detract from the appearance of the local streetscape.

The provisions of this clause do not permit multiple driveway crossings, in order to ensure parking areas minimise the potential of vehicles queuing on public roads, minimise the loss of on street parking and conflict with pedestrians.

As previously discussed within this report, the proposal does not provide sufficiently delineated pedestrian areas for pick up / drop off, nor to staff car parking areas as proposed on site. The proposal further seeks to provide multiple driveway crossings, which is in conflict with the provisions of this clause and has the potential to result in vehicles queuing and safety concerns to pedestrians. As designed, the proposal also results in the loss of 1 on street car parking space in front of the site.

The proposal is inconsistent with the objectives and requirements of this clause.

4.6 Driveway Widths

As previously discussed, the proposal does not provide safe and delineated on site pedestrian areas, segregated from vehicle manoeuvring areas on site. Additionally, driveways as proposed, do not comply with Councils Rockdale Technical Specification.

Two driveways are proposed each being 3.7m wide at the property boundary. As per the Section 4.1.5 (viii) of the Rockdale Technical Specification, both driveways shall be 3m wide at the boundary and separated by 6m along the kerb to retain the provision of a single on street car parking space.

The proposal is unsatisfactory with regards to the objectives and requirements of this clause.

4.6 Access to Parking

As previously discussed in this report, proposed on-site car parking and driveways dominate and detract from the local streetscape and thus do not satisfy the objectives of this clause.

4.7 Air Conditioning and Communication Structures

Plans illustrate the provision of air conditioning units within an alcove adjoining the north eastern side façade of the proposed development. The location of the proposed air conditioning units are satisfactory.

4.7 Waste Storage and Recycling Facilities

Plans illustrate the provision of appropriately sized and located bin storage areas behind the building line on site, away from neighbouring residential dwellings. The proposal satisfies the requirements of this clause.

6.1 Child Care Centre - Building Design

Refer to Part 4.2 Streetscape and Site Context - General of this report.

6.1 Child Care Centre - Parking and Pedestrian Safety

The provisions of part 6.1.4.7 of DCP 2011, require the provision of pedestrian access which is segregated from vehicular access on site. Plans do not illustrate the provision of clear, delineated and fenced pedestrian pathways from on site car parking areas.

As designed, it would appear that visitors seeking to use proposed parking areas on site would be required to traverse vehicle manoeuvring areas to access the front entrance of the proposed facility.

The proposal is unsatisfactory in this regard.

S4.15(1)(a)(iv) - Provisions of regulations

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

Staff to Child Ratio

The Education and Care Services National Regulations, specifies staff to child ratios which are to be adhered to by child care centre operators. Given the proposal seeks to accommodate 32 children (12 x 0-2 / 10 x 2-3 / 10 x 3-5) the following minimum number of staff are required.

Staff to Child Ratio	Requirement	Proposed	Complies
	0-2yrs 1 per 4 children (12 children = 3 staff)	6 child care staff	Yes
	2-3yrs 1 per 5 children (10 children = 2 staff)		
	3-6yrs 1 per 10 children (10 children = 1 staff)		
	Minimum 6 child care staff required		

Given the above, for the breakdown of children proposed, the proposal requires a minimum of 6 child care staff on site. The proposal seeks to accommodate 6 dedicated child care staff and thus satisfies the requirements of the aforementioned regulations.

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

Concern is raised in relation to the suitability of the site for the proposed development.

Site constraints including the irregular lot shape, narrow lot width at the rear of the property, number of shared common boundaries with adjoining residential properties and slope of the site to the rear combined with the design of the proposal and applicants desire to retain the existing dwelling, all contribute to the unsuitability of the site for the proposed development.

For the reasons outlined previously within this report, the subject site is not considered to be suitable for the proposal.

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

The development was notified on two occasions, in accordance with the provisions of Rockdale DCP 2011. A total of 12 individual submissions and 1 petition with 27 signatures were received during the initial notification, with a further 5 submissions received following the renotification of amended plans. The issues raised in the submission are discussed below:

Adverse traffic, congestion and car parking impacts / Decrease of availability of parking in front of

and around neighbouring properties / Incorrect traffic report estimated traffic movements per child inconsistent with RMS Guide for Traffic Generating Development / Vehicle queuing impacts / Inadequate parking provision on site for the proposed use / Double parking and parking across driveways / Request for on street parking space is inappropriate

Comment: Matters in relation to car parking have been previously addressed in this report. It is reiterated that the current design, layout and location of the proposed on site car parking area is not supported and results in the unnecessary reduction of on street parking. Multiple driveways have the potential to result in vehicles queuing and safety concerns for pedestrians.

Councils Development Engineer has considered the potential traffic impacts and has concluded that the surrounding intersections are likely to function at a similar level of service to that as existing should the child care centre have been supported. It was further noted that sufficient on-street parking is available, to accommodate visitors and staff within the assessed peak parking occupancy periods adjacent to the site.

Port-cochere should be drop off & pick up area and not parking for visitors

Comment: The provision of visitor spaces within the port-cochere as proposed is not supported for the reasons previously discussed within this report.

Safety impacts for pedestrians

Comment: Pedestrian safety has been previously discussed within this report.

Adverse acoustic impacts to neighbours / Acoustic report does not adequately address impact on centre on adjacent dwellings and considers an underestimated traffic flow / Acoustic impacts and damage to fencing from play activities / The baseline increase of 5dB in the proposal does not adequately address the nature of the noise of a childcare facility. The sound of children at play is far louder than this increase suggests. We also find that the sound of distress which will inevitably occur daily would be far louder than the proposal claims.

Comment: The matter of acoustics has been previously discussed within this report.

Site is not suitable for a child care centre and doesn't satisfy locational criteria of DCP 2011 i.e. is not close to commercial centre of public transport node / There are 5 other child care centres within a 500m radius of the site / Business within a residential zone

Comment: The suitability of the site has been considered in this report. The provisions of SEPP - Educational Establishments and Child Care Facilities 2017 prevail over the provisions of Rockdale DCP 2011 of which the objectors have referred to. Nonetheless the site is not considered to be suitable for the proposed development for the reasons stated in this report.

Inappropriate streetscape response

Comment: The matter of streetscape has been previously addressed in this report.

Overshadowing to neighbouring pools

Comment: The proposal is single storey in nature and does not result in adverse overshadowing impacts on site, or to neighbouring properties.

Insufficient places for 0-2yr old children

Comment: Clause 26 of the SEPP - Educational Establishments and Child Care Centres voids the requirement of Rockdale DCP 2011 in relation to required groupings and age ratio's.

Privacy impacts to neighbours

Comment: The matter of visual privacy has been previously addressed in this report.

Inaccurate staff numbers provided by the applicant resulting in an inaccurate assessment of parking for the site

Comment: An assessment of the required staffing numbers has been undertaken within this report. A total of 7 staff, being 6 child care staff and 1 cook are required to operate the centre with 32 children as proposed. The revised traffic report has appropriately considered the correct number of staff required.

Inappropriate location of the outdoor play areas

Comment: Outdoor play areas previously proposed within the front and side setbacks of the site have been removed. Proposed outdoor play areas are within the rear of the property.

Provision of a 2.3m high acoustic fence is inappropriate / Colours, type and style of acoustic fence to common boundaries is inappropriate and not acceptable to neighbours

Comment: The matter of acoustic fencing has been previously discussed in this report.

Noise impact from construction period on health of unwell and elderly neighbours

Comment: Noise impacts from construction are generally temporary. Should the proposal be approved, conditions of consent would be imposed to limit hours of construction and require quiet machinery be utilised.

Increase of visitors may lead to an increase in break and enters

Comment: There has been no evidence submitted to substantiate this claim.

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

For the reasons outlined previously within this report, it is not considered that the proposed development is in the public interest.

S7.12 Fixed development consent levies

S94A contributions can be levied in accordance with Councils adopted fees and charges.

Bayside Planning Panel

26/06/2018

Item No	6.2
Application Type	4.55(1A) Application
Application No	DA-2015/289/B
Lodgement Date	09/03/2018
Property	533-537 Princes Highway, Rockdale
Ward	Rockdale
Owner	West Shanghai Rockdale Pty Ltd
Applicant	Mr Jinchao Zhang
Proposal	Modification to layout of the approved building including the provision of additional services, new balcony to Unit 107 and changes to terrace/courtyard areas
No. of Submissions	Nil
Cost of Development	\$25,000
Report by	Senior Assessment Planner

Officer Recommendation

That Application No DA-2015/289/B being a Section 4.55(1A) application to amend Development Consent Number DA-2015/289, for modifications to the layout of the approved building including the provision of additional services, new balcony to Unit 107, changes to terrace/courtyard areas and increase in height at 533-537 Princes Highway Rockdale be APPROVED and the consent amended in the following manner:

- A By amending conditions as follows:
2. *The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.*

Plan / Dwg No.	Drawn by	Dated	Received by Council
Landscape Plan LS-102 Rev A	greenplan pty ltd	10/05/2018	16/05/2018
Basement 2 Plan Rev D	Bechara Chan & Associates Pty Ltd	15/05/2018	16/05/2018
Basement 1 Plan Rev D	Bechara Chan & Associates Pty Ltd	15/05/2018	16/05/2018
Ground Floor Plan Rev C	Bechara Chan & Associates Pty Ltd	14/05/2018	16/05/2018

<i>Level 1 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 2 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 3 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 4 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 5 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 6 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 7 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 8 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 9 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Roof Plan Rev C</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>15/06/2018</i>	<i>19/06/2018</i>
<i>North Elevation Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>South Elevation Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>East Elevation Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>West Elevation Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Side Elevation West Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Side Elevation East Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Section AA Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>

[Amendment B - 4.55(1A) amended on 26/06/2018]

5. *The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 584079M_04 other than superseded by any further amended consent and BASIX certificate.*

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

•(a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see <http://www.basix.nsw.gov.au>.

[Amendment B - 4.55(1A) amended on 26/06/2018]

11. *Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:*

Allocated Spaces

Studio - 1 bedroom and 2 bedrooms - 1 space per unit

3 bedroom - 2 spaces per unit

Visitors - 9 spaces (2 shared with commercial)

Commercial 1 space per 40sq/m - 3 spaces

Accordingly a total of 65 residential spaces (including six (6) accessible spaces), 9 visitors, incorporating 2 shared retail/visitor spaces (including one (1) accessible space) and 1 designated commercial/retail space are to be provided on site. All residential visitor spaces, 1 car wash bay, 1 dedicated loading bay, a minimum of 7 bicycle and 4 motorcycle spaces shall be labelled as a common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

[Amendment B - 4.55(1A) amended on 26/06/2018]

39. *Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access, must be provided to and within six (6) residential units, and between these units and their allocated car parking spaces. The allocated parking space will be located in close proximity to the access points of the building. The adaptable units are to be unit numbers 302/502/602/702/802.*

Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

A revised Access Report shall be submitted to and approved by the PCA, prior to the issue of the Construction Certificate, which confirms an alternative solution is workable with respect of the dimension and design of accessible car parking spaces, and applicable shared areas within the development.

[Amendment B - 4.55(1A) amended on 26/06/2018]

87. *75 off-street car spaces including 9 visitor and 1 retail space with 2 visitors spaces shared with retail including seven (7) accessible spaces shall be provided in accordance with the submitted plans. All spaces shall be paved and line marked, with visitor / retail spaces and made freely available at all times during business hours of the site for staff and visitors.*

Car spaces shall be provided in accordance with the submitted plan and shall be sealed and line marked to Council's satisfaction. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.

[Amendment B - 4.55(1A) amended on 26/06/2018]

98. *Positive covenants pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the storm water detention and treatment facility to provide for the maintenance of the detention and treatment facility, waste removal by private waste contractor and the basement traffic control systems for ongoing compliance.*

[Amendment B - 4.55(1A) amended on 26/06/2018]

102. *A positive covenant shall be created over the visitor parking spaces to ensure that the commercial units retain exclusive use of the spaces between 7.30am to 6.00pm Monday to Friday and 7.30am to 1.00pm on Saturdays and comply with the shared parking register. A suggested wording for the covenant is indicated below:*

“The Registered Proprietors covenant as follows with Council with respect to the area of common property identified as ‘Visitor Parking’ spaces on the Strata Plan (herein called ‘The Burdened Land’).

The Registered Proprietor will:

- i) permit the registered proprietors and/or invitees of the registered proprietors of the three commercial lots inclusive to enter upon The Burdened Land with a vehicle or vehicles whether motorized or not and to park, leave or place such a vehicle upon The Burdened Land within the times commencing at 7.30am in the morning Monday to Saturday and ending at 6.00pm in the evening Monday to Friday and 1.00pm in the afternoon on Saturdays. The times referred to are Australian Eastern Standard time or Australian Eastern daylight saving time whichever is in effect at the time that the registered proprietor or invitee enters upon The Burdened Land.*
- ii) not obstruct or inhibit in any manner whatsoever access to or exclusive use of The Burdened Land in accordance with the prior cause.*
- iii) comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice.”*

[Amendment B - 4.55(1A) amended on 26/06/2018]

B By inserting the following conditions;

73A. Traffic Signs, Signal & Loop Detector

- (i) *A traffic signals/signs, convex mirrors and loop detector are to be designed and installed to manage vehicular movement in driveways that provide safe vehicle access to the site and all basement levels. The arrangement shall control traffic to ensure safe movement of vehicles within basement car park at all times.*
- (ii) *Prior to issue of the relevant Construction Certificate, a suitably qualified and experienced engineer shall design traffic management facilities within the site to the requirements of AS2890.1:2004 and relevant Austroads Guidelines. The facilities designed by the engineer shall include signals/signs (including traffic signal heads, vehicular guide signs, regulatory signs and warning signs), line marking and pavement markers, and other controls such as passing bays, traffic islands, median or separator and convex mirror to ensure safe movement of vehicles within the site at all times.*

The access driveway shall be controlled by traffic signals with the following operational mode:

- *After a pre-set clearance time signals revert to red for outgoing and green for incoming.*

[Amendment B - 4.55(1A) inserted on 26/06/2018]

Reason for additional condition 73A is:

- *To ensure the safety of vehicles entering and exiting the site.*

73B. Waste & Recycling Collection, Removalist Drop-off's & Pick-ups - Operational Requirements

- (i) *Waste & recycling collection and servicing, including removalist trucks, must be carried out within the approved loading bay at all times.*
- (ii) *Waste & recycling collection, deliveries, removalists and/or any other servicing must not, at any time, be undertaken from the Forest Roads and Harrow Road or elsewhere within the site.*
- (iii) *Waste and recycling may be collected by a private waste contractor. A contract for waste and recycling collection must be entered into prior to issue of the Occupation Certificate. The company engaged must ensure that all recycling is collected separately from waste.*
- (iv) *Waste & recycling collection must be undertaken during off-peak times.*
- (v) *The maximum size truck permitted to access the site is a Small Rigid Vehicle (SRV).*
- (vi) *The loading bay must be allocated as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.*

[Amendment B - 4.55(1A) inserted on 26/06/2018]

Reason for additional condition 73B is:

- To ensure appropriate loading, unloading and waste collection occurs on site.

Location Plan



Attachments

- 1 Planning Assessment Report
- 2 Revised Architectural Plans
- 3 Landscape Plan
- 4 Roof Plan
- 5 Access Report [↓↓↓↓↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2015/289/B
Date of Receipt:	9 March 2018
Property:	533 - 535 Princes Highway, ROCKDALE (Lot 18 DP 659502) 537 Princes Highway, ROCKDALE (Lot 1 DP 436761)
Owner:	West Shanghai Rockdale Pty Ltd
Applicant:	Mr Jinchao Zhang
Proposal:	533-537 Princes Highway, ROCKDALE NSW 2216 - Modification to layout of the approved building including the provision of additional services, new balcony to Unit 107, changes to terrace/courtyard areas and increase in height
Recommendation:	Approved
No. of submissions:	Nil
Author:	Fiona Prodromou
Date of Report:	19 June 2018

Key Issues

Modifications as proposed are sought in order to maximize amenity to future occupants, ensure compliance with the Building Code of Australia, rationalize and provide greater usability of previously approved floor plans, reduce complexity of construction and ensure provision of universal access throughout the development.

The proposal as modified results in a minor increase in building height to the eastern building fronting the Princes Highway, however the building maintains compliance with the height standard for the site.

The proposal as modified results in the reconfiguration of basement parking levels, yet parking compliance and numbers are maintained as per the original consent. There is nil reduction in car parking numbers on site.

The proposal as modified was notified in accordance with Councils DCP 2011, nil submissions were received.

The proposal as modified is recommended for Approval.

Recommendation

That Development Application No DA-2015/289/B being a Section 4.55(1A) application to amend

Development Consent Number DA-2015/289, for modifications to the layout of the approved building including the provision of additional services, new balcony to Unit 107, changes to terrace/courtyard areas and increase in height at 533-537 Princes Highway Rockdale be APPROVED and the consent amended in the following manner:

A. By amending conditions as follows:

2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan / Dwg No.	Drawn by	Dated	Received by Council
<i>Landscape Plan LS-102 Rev A</i>	<i>greenplan pty ltd</i>	<i>10/05/2018</i>	<i>16/05/2018</i>
<i>Basement 2 Plan Rev D</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>15/05/2018</i>	<i>16/05/2018</i>
<i>Basement 1 Plan Rev D</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>15/05/2018</i>	<i>16/05/2018</i>
<i>Ground Floor Plan Rev C</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>14/05/2018</i>	<i>16/05/2018</i>
<i>Level 1 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 2 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 3 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 4 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 5 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 6 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 7 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 8 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 9 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Roof Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>North Elevation Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>South Elevation Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>

East Elevation Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
West Elevation Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
Side Elevation West Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
Side Elevation East Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
Section AA Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018

[Amendment B - 4.55(1A) amended on 26/06/2018]

5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 584079M_04 other than superseded by any further amended consent and BASIX certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

•(a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see <http://www.basix.nsw.gov.au>.

[Amendment B - 4.55(1A) amended on 26/06/2018]

11. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

Allocated Spaces

Studio - 1 bedroom and 2 bedrooms - 1 space per unit

3 bedroom - 2 spaces per unit

Visitors - 9 spaces (2 shared with commercial)

Commercial 1 space per 40sq/m - 3 spaces

Accordingly a total of 65 residential spaces (including six (6) accessible spaces), 9 visitors, incorporating 2 shared retail/visitor spaces (including one (1) accessible space) and 1 designated commercial/retail space are to be provided on site. All residential visitor spaces, 1 car wash bay, 1 dedicated loading bay, a minimum of 7 bicycle and 4 motorcycle spaces shall be labelled as a common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

[Amendment B - 4.55(1A) amended on 26/06/2018]

39. Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access, must be provided to and within six (6) residential units, and between these units and their allocated car parking spaces. The allocated parking space will be located in close proximity to the access points of the building. The adaptable units are to be unit numbers 302/502/602/702/802.

Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

A revised Access Report shall be submitted to and approved by the PCA, prior to the issue of the Construction Certificate, which confirms an alternative solution is workable with respect of the dimension and design of accessible car parking spaces, and applicable shared areas within the development.

[Amendment B - 4.55(1A) amended on 26/06/2018]

87. 75 off-street car spaces including 9 visitor and 1 retail space with 2 visitors spaces shared with retail including seven (7) accessible spaces shall be provided in accordance with the submitted plans. All spaces shall be paved and line marked, with visitor / retail spaces and made freely available at all times during business hours of the site for staff and visitors.

Car spaces shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction. The pavement of all car parking spaces, maneuvering areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.

[Amendment B - 4.55(1A) amended on 26/06/2018]

98. Positive covenants pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the storm water detention and treatment facility to provide for the maintenance of the detention and treatment facility, waste removal by private waste contractor and the basement traffic control systems for ongoing compliance.

[Amendment B - 4.55(1A) amended on 26/06/2018]

102. A positive covenant shall be created over the visitor parking spaces to ensure that the commercial units retain exclusive use of the spaces between 7.30am to 6.00pm Monday to Friday and 7.30am to 1.00pm on Saturdays and comply with the shared parking register. A suggested wording for the covenant is indicated below:

"The Registered Proprietors covenant as follows with Council with respect to the area of common property identified as 'Visitor Parking' spaces on the Strata Plan (herein called 'The Burdened Land').

The Registered Proprietor will:

- i) permit the registered proprietors and/or invitees of the registered proprietors of the three commercial lots inclusive to enter upon The Burdened Land with a vehicle or vehicles whether motorized or not and to park, leave or place such a vehicle upon The Burdened Land within the times commencing at 7.30am in the morning Monday to Saturday and ending at 6.00pm in the evening Monday to Friday and 1.00pm in the afternoon on Saturdays. The times referred to are Australian Eastern Standard time or Australian Eastern daylight saving time whichever is in effect at the time that the registered proprietor or invitee enters upon The Burdened Land.*
- ii) not obstruct or inhibit in any manner whatsoever access to or exclusive use of The Burdened Land in accordance with the prior cause.*
- iii) comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice."*

[Amendment B - 4.55(1A) amended on 26/06/2018]

B. By inserting the following conditions;

73A. Traffic Signs, Signal & Loop Detector

(i) A traffic signals/signs, convex mirrors and loop detector are to be designed and installed to manage vehicular movement in driveways that provide safe vehicle access to the site and all basement levels. The arrangement shall control traffic to ensure safe movement of vehicles within basement car park at all times.

(ii).Prior to issue of the relevant Construction Certificate, a suitably qualified and experienced engineer shall design traffic management facilities within the site to the requirements of AS2890.1:2004 and relevant Austroads Guidelines. The facilities designed by the engineer shall include signals/signs (including traffic signal heads, vehicular guide signs, regulatory signs and warning signs), line marking and pavement markers, and other controls such as passing bays, traffic islands, median or separator and convex mirror to ensure safe movement of vehicles within the site at all times.

The access driveway shall be controlled by traffic signals with the following operational mode:

- After a pre-set clearance time signals revert to red for outgoing and green for incoming.*

[Amendment B - 4.55(1A) inserted on 26/06/2018]

Reason for additional condition 73A is:

- To ensure the safety of vehicles entering and exiting the site.*

73B. Waste & Recycling Collection, Removalist Drop-off's & Pick-ups - Operational Requirements

(i) Waste & recycling collection and servicing, including removalist trucks, must be carried out within the approved loading bay at all times.

(ii) Waste & recycling collection, deliveries, removalists and/or any other servicing must not, at any time, be undertaken from the Forest Roads and Harrow Road or elsewhere within the site.

(iii) Waste and recycling may be collected by a private waste contractor. A contract for waste and

recycling collection must be entered into prior to issue of the Occupation Certificate. The company engaged must ensure that all recycling is collected separately from waste.

(iv) Waste & recycling collection must be undertaken during off-peak times.

(v) The maximum size truck permitted to access the site is a Small Rigid Vehicle (SRV).

(vi) The loading bay must be allocated as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.

[Amendment B - 4.55(1A) inserted on 26/06/2018]

Reason for additional condition 73B is:

- To ensure appropriate loading, unloading and waste collection occurs on site.

Background

History

26 September 2015

DA-2015/289 - Approved by Council for the construction of a part 8 and part 9 storey mixed use development, comprising fifty five (55) residential units, three (3) commercial units, basement parking and demolition of existing structures.

30 March 2016

DA-2015/289/A - Approved, permitting the modification of condition 27, to permit the owner to engage a different registered architect than the original designer for the next stages of the approval.

9 March 2018

DA-2015/289/B - Submitted to Council.

14-28 March 2018

Public notification of DA-2015/289/B

Proposal

The proposal as modified alters three previously approved 2 bedroom units into 1 bedroom dwellings, results in a minor height increase to the eastern building on site by 1.92m overall and incorporates a number of minor revisions and changes, which are detailed below:

Basement levels 1 & 2

- Fire stair and lift locations altered
- Reconfiguration of car parking, waste, storage and plant room layouts
- Ramp to basement 2 amended.
- Waiting bays incorporated
- Accessible car spaces made 3.8m x 6m

Ground Floor

East Building

- Fire stair exits modified due to headroom issues;
- Garbage room for retail use added;
- Residential storage rooms relocated; and
- Retail A & B locations and sizes altered as result of new fire exit locations.
- Increase floor to floor height of Eastern tower from 3000mm to 3040mm

West Building

- Substation added;
- Fire stair exit routes modified;
- Platform lift for disabled access added;
- Retail C slightly reduced in area by 3sq/m;
- Fire stair and lift locations altered; and
- Dedicated loading area created.

Levels 1 - 6

East Building

- East facing balcony added to Unit 107
- Unit 105 reconfigured
- Internal layout changes
- NW curved corner of unit 105 & above, now straight instead of curved.
- Lobby reconfigured to access Fire stairs and accommodate services

West Building

- Reconfiguration of unit 101
- Terraces to units 101 & 104 reconfigured and expanded
- Layout changed due to substation on Ground floor;
- Internal reconfiguration due to altered fire stairs and lift location
- Curved building façade (eastern side) of unit 104 (and above), straightened in lieu of curved
- Unit 607 changed from 2 bedroom to 1 bedroom unit

Level 7

- Lobby extended for access to fire stair (wester building)
- Unit 701 changed from 2 bedroom to 1 bedroom unit
- Internal unit reconfigurations
- Rounded balcony edges straightened
- Eastern window / door openings to unit 705 revised

Level 8

- Lobby extended for access to fire stair
- 801 changed from 2 bedroom unit to 1 bedroom unit

Roof

- Plant room slightly expanded to accommodate gas hot water plant
- Roof to plant room extended to align with resized plant room

Site location and context

The subject site comprises an irregularly shaped allotment with a frontage of approximately 21m to the Princes Highway (east), 28.5m to Keats Avenue (west) to the rear and a total site area of 1131.9sq/m. The site is currently vacant with the approved development under construction. The subject site is zoned B2 - Local Centre and comprises a frontage to a state road.



Directly adjoining the site to the south is 541-545 Princes Highway Rockdale, a multi storey mixed use development comprising two buildings, being 7 storeys fronting the Princes Highway and 9 storeys fronting Keats Ave, comprising 31 units, two basement levels and ground level parking for 43 vehicles, two commercial tenancies fronting Princes Highway and level 1 podium communal open space.

Further to the south lies 551-553 Princes Highway Rockdale, a multi storey mixed use development comprising two buildings being, 7 storeys fronting Princes Highway and 9 storeys fronting Keats Avenue, comprising 51 residential units, two (2) commercial tenancies fronting the Princes Highway, basement and ground level car park for 75 vehicles, and communal open space at podium level between the two buildings.

Further to the south of the site lies the "Arena" development at 555 Princes Highway. This development has been constructed at the periphery of the site with a central landscaped courtyard and pool. The Arena development is a mixed commercial residential development up to 10 storeys in height. It includes 178 residential units, 433sq/m of commercial floor space, 240sq/m of flexible space and basement car parking for 218 vehicles. The site comprises a central communal open space within the site, with recreational facilities for residents including a gym and pool.

To the west of the site (rear) lies the Keats Avenue development "Rockdale Gardens", being 3 x 13 storey towers comprising a total of 288 residential units, parking at ground and level 1 and commercial space on level 2. Further to the west lies the East Hills Railway line.

To the east of the site lies the Princes Highway. Directly opposite the site are mixtures of commercial and mixed use buildings ranging in height from one to ten storeys fronting the Princes Highway. Rockdale railway station and bus interchange are located further north of the site, within 200m walking distance.

Directly adjoining the site to the north lies the St George Tavern, a two storey art deco styled hotel / pub at ground level with associated residential accommodation at first floor. This building is generally built to

boundaries and is located at the end of the block of sites bound by Hegerty St, Keats Ave & the Princes Highway. The St George Tavern is not listed as a Heritage Item.

The subject site is affected by:

- Frontage to a State Road
- 15.24m Building Height Civil Aviation Regulations / 51 OLS
- Class 5 Acid Sulfate Soils
- 20 - 25 ANEF (2033) contours

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

S4.55 (1A) - Modification

4.55(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

4.55(1A) states:

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

a) it is satisfied that the proposed modification is of minimal environmental impact, and

Comment: The proposal is minor in its overall nature and as discussed within this report is of minimal environmental impact.

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

Comments: In determining whether the proposal is 'substantially the same development' consideration has been given to the Land & Environment Court Case 'Moto Projects No.2 Pty Limited v North Sydney Council [1999] NSWLEC 280', which at paragraphs 55 and 56, Commissioner Bignold described the process for consideration of a proposed modification of development as follows:

"55. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the approved development."

The approved development constitutes an 8 - 9 storey mixed commercial / residential building with basement parking levels and podium communal open space. The proposal as modified does not include changes to the number of approved levels, footprint of the building or basement, and the building envelope, façade and separation of buildings on site remain largely unchanged. The proposed

modifications are sought in order to rationalise apartment and car parking configuration, maximise amenity for future occupants and ensure compliance with relevant BCA and Access legislative requirements.

Given the aforementioned the proposal as modified remains is essentially and materially the same as the approved development. As such, the proposal as modified is substantially the same development.

c) It has notified the application in accordance with:

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

Comments: The proposal as modified was notified in accordance with the above.

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

Comments: Nil submissions were received during the public notification period.

4.55(3) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

4.55(3) of the Environmental Planning and Assessment Act 1979 states:

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

An assessment of the application has been carried out under the provisions of s4.15 of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered. The following is an assessment of the proposed development under the provisions of s4.15(1) of the Environmental and Planning Assessment Act.

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 a revised BASIX Certificate for the proposal as modified. The Certificate number is 584079M_04. Condition 5 shall be modified accordingly, to ensure the revised BASIX requirements are reflected and adhered to. The proposal as modified is consistent with the provisions of the SEPP.

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 - Development with frontage to classified road

The approved development is located on land with a frontage to a classified road i.e. Princes Highway.

In this regard, clause 101- Development with frontage to a classified road, of the SEPP applied and was considered in the original assessment.

The development was approved with access to and from the site via a secondary road to the rear of the property, being Keats Avenue. As such the development was unlikely to adversely impact upon traffic flow for the classified road and was deemed acceptable.

The proposal as modified does not alter the aforementioned and remains compliant with the provisions of this clause.

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

The subject site is adjacent to a road with an annual average daily traffic volume of more than 40,000 vehicles. As such dwellings within the development are likely to be adversely affected by road noise or vibration. Accordingly, Clause 102 - Impact of road noise or vibration on non-road development, of SEPP Infrastructure is required to be considered.

Original conditions of consent require the development to adhere to the recommendations of the Acoustic report by Acouras Consultancy, dated 30/01/2015. The proposal as modified does not alter the aforementioned and the revised proposal maintains compliance with the SEPP.

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 as modified was not referred to the Design Review Panel given the minor nature and scope of changes proposed. Notwithstanding, an assessment has been undertaken below of the proposal as modified in relation to the relevant principles of the SEPP.

b. The design quality of the residential flat building when evaluated in accordance with the design quality principles.

The relevant design quality principles have been considered in the assessment of the proposal as modified below;

Principle 1 – Context & Neighbourhood Character

The proposal as modified does not significantly alter the originally approved building or basement footprint, overall mass, bulk or scale of the previously approved development. A minor increase in height is proposed to the eastern building fronting the Princes highway, in order to provide stair access to the roof for maintenance purposes.

The proposal as modified remains consistent with the established context of high density residential building forms surrounding the subject site within this portion of the Rockdale Town Centre.

The proposal as modified satisfies this principle.

Principle 2 – Built Form and Scale

As noted above, the proposal as modified does not significantly alter the previously approved building envelope on site, with the exception of minor revisions to improve amenity, simplify construction and ensure compliance with relevant Building Code of Australia requirements.

Modifications to the building form include;

- Curved balcony elements proposed to be straightened.
- Lobby area at level 7 slightly increased in size within approved envelope
- Stair access to roof of eastern building fronting Princes Highway
- Minor increase to gas hot water plant enclosure and roof form at rooftop level of western building

The above modifications are minor and do not result in adverse impacts to the previously approved building forms on site. The proposed overall built form and scale remains consistent within its context. The proposal as modified is satisfactory in respect of this principle.

Principle 3– Density

No FSR controls apply to the subject site given its location within the Rockdale Town Centre. The proposal is satisfactory with respect of density given it retains an appropriate built form and scale on site which does not result in adverse impacts on site or to neighbouring properties.

Principle 4 - Sustainability

The proposal as modified retains the previously approved stormwater management measures, solar panels at rooftop level and planting at podium level, incorporating medium sized frangipani trees capable of growing to a height of 5m. The proposal as modified was accompanied by a revised BASIX and complies with the provisions of the relevant SEPP.

The proposal as modified remains consistent with this principle.

Principle 5– Landscape

Minor changes are sought to the podium landscape level, where the terraces to units 101 and 104 are slightly reconfigured and expanded.

This minor change is not considered to result in adverse impact unto the previously approved landscaped podium communal open space area, which incorporates small scale trees (frangipani) with a mature height of 5m in addition to a mix of screening plants and shrubs.

The proposal as modified remains consistent with this principle.

Principle 6 – Amenity

The proposal as modified reconfigures several apartments within the development in order to maximise useability and functionality of unit floor plans. The proposal as modified does not alter levels of solar access or cross ventilation and floor to ceiling heights remain compliant. Room sizes and dimensions

are satisfactory and appropriate levels of inter unit storage are provided. Appropriately designed and located communal open space at podium level further enhances residential amenity.

The proposal as modified remains satisfactory with this principle.

Principle 7 - Safety

The proposal as modified does not seek to alter previously approved safety and security measures for the development. Whilst the residential entry from Keats Avenue has been modified from that originally approved, this entry is of a width and location, adjoining retail space C, which facilitates passive surveillance of Keats Avenue. The proposal as modified is considered satisfactory with respect of this principle.

Principle 8 - Housing Diversity and Social Interaction

The proposal as revised results in a minor change to the unit mix on site, via the conversion of 3 x 2 bedroom units into 3 x 1 bedroom units. The proposal as modified remains satisfactory in relation to this Principle as it retains a varied range and size of units which accommodate and cater to a varied demographic and different household types.

Principle 9 – Aesthetics

The proposal as modified does not alter the previously approved building materials, colours or finishes.

c. The Apartment Design Guide / Residential Flat Design Code

The original development was assessed against the Residential Flat Design Code, with a minor variation approved to the building separation on site.

The proposal as modified does not result in changes to the building separation or depth, cross ventilation and solar access remain as previously approved as does internal storage provision. Communal open space on site remains satisfactory and universal access remains throughout the development. The proposal remains satisfactory with respect of the provisions of the ADG.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone B2 Local Centre	Yes	Yes - see discussion
4.3 Height of buildings	Yes	Yes - 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 as modified is defined as commercial premises and shop top housing which constitutes a permissible development only with development consent. The proposal as modified remains consistent with the objectives of the zone.

4.3 Height of buildings

A maximum 28m height limit applies to the subject site. The below table illustrates the approved and

proposed heights of the development. It is noted that a variation to the height standard for the western building on site was previously approved, this is not proposed to be altered.

<i>Location</i>	<i>Approved</i>	<i>Proposed</i>	<i>Complies</i>
<i>Eastern Building</i>			
Lift Overrun	26.17m	26.17m	Yes
Stair Overrun	Nil stairs to roof	27.66m	Yes
<i>Western Building</i>			
Rooftop Structure	29.62m	29.62m	No – as approved

As illustrated above, the proposal as modified incorporates fire stair access to the roof of the eastern building for maintenance purposes. The proposal as modified remains compliant with the objectives and requirements of this clause.

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

No relevant proposed instruments are applicable to the proposal as modified.

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:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.4.6 Noise Impact	Yes	Yes - see discussion
4.4.7 Wind Impact	Yes	Yes - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	No - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
7.5.1 Street Role - Contributory Retail	Yes	Yes
7.5.1 Street Role - Centre Edge Commercial	Yes	Yes
7.5.2 Street Character	Yes	Yes - see discussion

4.4.6 Noise Impact

The proposal as modified does not seek to alter previously approved acoustic amelioration measures as conditioned by the original consent. The proposal as modified is satisfactory in this regard.

4.4.7 Wind Impact

The proposal as modified does not seek to alter previously approved wind amelioration measures on site, as conditioned by the original approval. The proposal as modified is satisfactory in this regard.

4.5.1 Social Equity - Housing Diversity and Choice

The table below illustrates the required, approved and proposed unit mix within the development.

<i>Requirement</i>	<i>Approved</i>	<i>Proposed</i>	<i>Complies</i>
--------------------	-----------------	-----------------	-----------------

1 bedroom 10% (6) - 20% (12)	10 x 1 bedroom 18%	13 x 1 bed 24%	No
2 bedroom 50% (28) - 75% (42)	35 x 2 bedroom 64%	32 x 2 bed 58%	Yes
3 bedroom 10% (6) - 30% (17)	10 x 3 bedroom 18%	10 x 3 bed 18%	Yes

The proposal as modified illustrates a minor exceedance in the maximum number 1 bedroom dwellings permitted by this clause, by 1 dwelling. Notwithstanding the above, the proposal as modified provides for a varied range and size of units within the development in order to cater for a varied demographic and different household types. As such the proposal as modified satisfies the objectives of the requirement and is satisfactory in this regard.

4.5.2 Social Equity - Equitable Access

The proposal as modified was accompanied by an Access Report prepared by Code Performance ref: 17387-R1.1 dated 11 May 2018. The report concludes that the proposal as modified is capable of compliance with a combination of the accessibility related Deemed-to-Satisfy provisions of the BCA and the BCA Performance Requirements as nominated under Sections 2.0 and 3.0 of the report.

Condition 39 is proposed to be modified accordingly. The proposal as modified satisfies the provisions of this clause.

7.5.2 Street Character

The proposal as modified does not alter the previously approved building setbacks, footprint, massing façade detail as previously approved. The proposal as modified remains generally compliant with the provisions of this part and will provide an appropriate building form and streetscape response within the Rockdale Town Centre.

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

The impacts of the proposal as modified have been previously detailed in this assessment.

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

The relevant matters pertaining to the suitability of the site for the development were considered in the assessment of the original proposal. The suitability of the site has not altered since the original assessment and there are no further matters or constraints which have been identified, that would otherwise render the site unsuitable for the proposal as modified.

The site is suitable for the proposal as modified.

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

The proposal as modified was notified in accordance with the provisions of Rockdale DCP 2011. Council did not receive any submissions.

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

The proposal as modified 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 proposal as modified, the revised proposal remains generally compliant with relevant planning instruments and does not create adverse impacts on site, nor to surrounding properties.

The proposal as modified is therefore deemed to be in the public interest.

Schedule 1 - Draft Conditions of consent

General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan / Dwg No.	Drawn by	Dated	Received by Council
<i>Landscape Plan LS-102 Rev A</i>	<i>greenplan pty ltd</i>	<i>10/05/2018</i>	<i>16/05/2018</i>
<i>Basement 2 Plan Rev D</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>15/05/2018</i>	<i>16/05/2018</i>
<i>Basement 1 Plan Rev D</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>15/05/2018</i>	<i>16/05/2018</i>
<i>Ground Floor Plan Rev C</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>14/05/2018</i>	<i>16/05/2018</i>
<i>Level 1 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 2 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 3 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 4 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 5 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 6 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 7 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 8 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Level 9 Plan Rev B</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>11/05/2018</i>	<i>16/05/2018</i>
<i>Roof Plan Rev C</i>	<i>Bechara Chan & Associates Pty Ltd</i>	<i>15/06/2018</i>	<i>19/05/2018</i>

North Elevation Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
South Elevation Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
East Elevation Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
West Elevation Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
Side Elevation West Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
Side Elevation East Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018
Section AA Rev B	Bechara Chan & Associates Pty Ltd	11/05/2018	16/05/2018

[Amendment B - 4.55(1A) amended on 26/06/2018]

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. *The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 584079M_04 other than superseded by any further amended consent and BASIX certificate.*
Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
 - (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."
Note: For further information please see <http://www.basix.nsw.gov.au>.

[Amendment B - 4.55(1A) amended on 26/06/2018]

6. A separate approval is required for the strata subdivision and specific use of the commercial tenancies. Additional conditions may be imposed on any such consent.

 Note: Parking and loading provisions in a mixed use development may preclude certain uses.
7. Balconies shall not be enclosed at any future time without prior development consent.
8. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S96 application and approval under the EP&A Act.
9. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be

displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.

10. The following address details shall apply to the development:

- Residential units fronting the Princes Highway shall be known as 539 Princes Highway
- Retail tenancy A shall be known as 537 Princes Highway
- Retail tenancy B shall be known as 533 Princes Highway
- Residential units fronting Keats Avenue shall be known as 2 Keats Avenue
- Retail tenancy C shall be known as Shop 1 / 2 Keats Avenue.

11. *Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:*

Allocated Spaces

Studio - 1 bedroom and 2 bedrooms - 1 space per unit

3 bedroom - 2 spaces per unit

Visitors - 9 spaces (2 shared with commercial)

Commercial 1 space per 40sq/m - 3 spaces

Accordingly a total of 65 residential spaces (including six (6) accessible spaces), 9 visitors, incorporating 2 shared retail/visitor spaces (including one (1) accessible space) and 1 designated commercial/retail space are to be provided on site. All residential visitor spaces, 1 car wash bay, 1 dedicated loading bay, a minimum of 7 bicycle and 4 motorcycle spaces shall be labelled as a common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

[Amendment B - 4.55(1A) amended on 26/06/2018]

Development specific conditions

The following conditions are specific to the Development Application proposal.

12. All loading, unloading and transfer of goods to and from the loading bay and premises shall take place wholly within the property. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.
13. Loading and unloading within the site shall be restricted to commercial vehicles not exceeding the size and mass description of the SRV from AS2890.2:2002. Commercial vehicles greater in size and mass than the SRV are not permitted to enter the site.
14. Parking spaces shall not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.

15. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention and treatment system. The registered proprietor will:
 - (i) permit stormwater to be temporarily detained by the system;
 - (ii) keep the system clean and free of silt, rubbish and debris;
 - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
 - (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
 - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
16. The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system.
 The Registered Proprietor will:
 - i) permit stormwater to be temporarily detained and pumped by the system;
 - ii) keep the system clean and free of silt, rubbish and debris;
 - iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - v) not make alterations to the system or elements thereof without prior consent in writing of the Council.
 - vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
 - vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
17. All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.
18. The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
19. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy – 2000.

20. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
21. Temporary dewatering of the site to construct the subsurface structure is not permitted without development consent.
22. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
23. Bicycle parking facilities shall be designed in accordance with AS2890.3:1993.

The off-street parking areas associated with the subject development and the internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6.

Commercial vehicle facilities shall be designed strictly in accordance with AS2890.2:2002.

24. All proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
25. Hot and cold water hose cocks shall be installed to the garbage room. Services or utility systems shall not be located in the garbage room.
26. The development shall achieve the following minimum equivalent AAAC Star Rating within the below specified areas of the development.
 - 3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted.
 - 4 Star for timber flooring in any area.
 - 5 Star for carpet in any area.
 - 5 Star for walls dividing occupancies.

A report shall be submitted to the Principal Certifying authority for approval prior to the issue of any Construction Certificate. The report is to include BCA requirements and details of floor/ceilings between residential apartments. Floor coverings within apartments shall be identified within the report.

A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate for the relevant stage of works.

27. a) In order to ensure the design quality excellence of the development is retained:
 - i. Tony Owen Partners and / or an equivalent registered architect is to have direct

involvement in the design documentation, contract documentation and construction stages of the project;
 ii. The design architect is to have full access to the site and is to be authorized by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 iii. Evidence of the design architect's commission is to be provided to the Department prior to release of the Construction Certificate.

b) The design architect of the project is not to be changed without prior notice and approval of the Council or Department.

[Amendment A - S96(1A) amended on 30 March 2016]

28. All plumbing shall be concealed within the brickwork of the building. All hot water systems / units which are located on the balcony of a unit, must be encased in a recessed box on the balcony with the lid / cover of the box designed to blend in with the building. All associated pipe work is to be concealed.

Utilities shall not detract from the overall appearance of the development and amenity of the streetscape. Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate.

29. Where natural ventilation fails to comply with the provisions of the Building Code of Australia, mechanical ventilation shall be provided in accordance with Australian Standard, 1668, Part 2.
30. Retaining walls over 600mm in height shall be designed and specified by a suitably qualified structural engineer.
31. Podium landscaping and paved areas shall be drained into the storm water drainage system. All waterproofing for planters on slab shall be installed and certified by a licensed waterproofing contractor.

The approved completed landscape works shall be maintained for a period not less than 12 months.

On completion of the maintenance period, a Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council if Council is not the principal certifying authority) stating the landscape maintenance has been carried out in accordance with approved landscape plans and designated specifications before release of the nominated landscape bond.

32. Prior to the commencement of work on site, the contractor must contact Council's Asset Maintenance Supervisor or Properties Team Leader on 9562 1500 to arrange removal and storage of Council's tree guards and grates surrounding the three Ficus street trees at the front of the site. Immediately following removal of the tree guards and grates, the tree pits shall be temporarily filled with road base and covered with cold or hot mix for pedestrian safety.
33. The provision of a 0.9 metre wide right of footway in favour of Rockdale City Council along the boundary with Keats Avenue. The right of footway is to be covered by a Section 88E Instrument, which may only be varied or extinguished with the consent of Rockdale City Council. Council requires proof of lodgement of the signed Subdivision Certificate and 88E Instrument with the Land Titles Office prior to the issue of the Occupation Certificate.

Prior to issue of the construction certificate

The following conditions must be completed prior to the issue of the Construction Certificate.

34. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
 - i. A Footpath Reserve Restoration Deposit of \$19 569.50. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
 - ii. An environmental enforcement fee of 0.25% of the cost of the works.
 - iii. A Soil and Water Management Sign of \$16.50.
 - iv. A fee of \$190 is payable to Council for the determination of boundary levels.
35. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
36. A Section 94 contribution of \$352 628.87 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

Open Space	\$265 367.44
Community Services & Facilities	\$ 28 492.23
Town Centre & Streetscape Improvements	\$ 14 645.11
Pollution Control	\$ 42 252.84
Plan Administration & Management	\$ 1 871.25

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.
37. Prior to the issue of the Construction Certificate a certificate from a practicing Structural Engineer, registered with NPER, shall be submitted to Council stating that the subsurface structural components located on the boundary of the public road, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads.
38. In the case of residential building work for which the Home Building Act 1989

requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.

39. *Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access, must be provided to and within six (6) residential units, and between these units and their allocated car parking spaces. The allocated parking space will be located in close proximity to the access points of the building. The adaptable units are to be unit numbers 302/502/602/702/802.*

Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

A revised Access Report shall be submitted to and approved by the PCA, prior to the issue of the Construction Certificate, which confirms an alternative solution is workable with respect of the dimension and design of accessible car parking spaces, and applicable shared areas within the development.

[Amendment B - 4.55(1A) amended on 26/06/2018]

40. The applicant shall confer with Ausgrid to determine if:
- an electricity distribution substation is required.
 - installation of electricity conduits in the foot way is required.
 - satisfactory clearances to any existing overhead High Voltage mains will be affected.

Written confirmation of Energy Australia's requirements shall be obtained prior to issue Construction Certificate.

41. All low voltage street mains in that section of the street/s adjacent to the development shall be placed underground. This shall include any associated services and the installation of underground supplied street lighting columns where necessary. The applicant shall confer with Ausgrid to determine Ausgrid's requirements. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.
42. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please contact Sydney Water.

The consent authority or a private accredited certifier must ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before issue of any Construction Certificate.

43. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 20 and shall include all relevant levels, grades (%) and lengths.

44. The low level driveway must be designed to prevent inflow of water from the road reserve. The assessment of flows and design of prevention measures shall be in accordance with the requirements of Rockdale Technical Specification Stormwater Management. Details shall be included in the documentation presented with the Construction Certificate application.
45. A visitor car space shall also operate as a car wash bay. A tap shall be provided. A sign shall be fixed saying 'Visitor Car Space and Car Wash Bay'. The runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.
46. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to the Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans.

Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the site, including final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management. Plans are to address the following.

- a. On-site detention shall have 2 and 50 year orifice controls.
- b. The use of a Water Sensitive Urban Design Approach (WSUD) to the design of the drainage system, including
 - a. Reduction in runoff and peak flows.
 - c. Conservation of water by reducing demand on potable water supplies.
 - d. Protection of water quality.
 - e. Concept stormwater design for basement level 1 to incorporate pits, carwash and grated drain for the ramp.
 - f. Stormwater control plans for basement 1.
 - g. Incorporation of an oil separator in accordance with Rockdale Technical Specification – Stormwater Management, section 7.5.4.
 - h. Basement pumpwell to comply with the requirements of the aforementioned technical specifications.
 - i. Discharge to the kerb and gutter must be less than 50l/sec for the combined discharge of the site for the 50 year ARI event.
 - j. Detailed stormwater design plans will require approval in concurrence with the RMS requirement.
47. Any sub-surface structure within the highest known groundwater table + 0.5m shall be designed with a waterproof retention system (i.e. tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate for the relevant stage of works.

48. Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice.

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

Note: Professional engineer has the same mean as in Clause A1.1 of the BCA.

Note: Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".

Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.

49. As the basement floor is proposed closer to existing built structures upon neighbouring properties, which may be in the zone of influence of the proposed works and excavations on this site, a qualified practicing geotechnical engineer must;

(a) Implement all recommendations contained in the report prepared by Aargus Pty Ltd, Report Ref: GS6073-1A, Dated 3 February 2015.

(b) Provide a certificate that the construction certificate plans are satisfactory from a geotechnical perspective and confirm the proposed construction methodology

(c) A Construction Methodology report is to be prepared, demonstrating that the

proposed construction methods (including any excavation, and the configuration of the built structures) will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate for the relevant stage of works.

(d) Inspect the works as they progress. The Inspections are to occur at frequencies determined by the geotechnical engineer.

(e) Comment on proposed stormwater drainage design for the basement area, mainly on AGG line connections / permanent dewatering and a tanked basement structure.

NB: (i) If the proposed construction of the basement carpark impedes the water table, thus requiring dewatering of the site, the application is Integrated Development.

(ii) From the proposed basement pumped discharge drainage systems are permitted subject to complying with the design criteria listed in DCP.

(iii) The design of the basement structure will require consideration of the effects of the water table, both during and after construction (Tanking / waterproofing).

Where a Private Certifier issues the Construction Certificate a copy of the above documentation must be provided to Council, once the Construction Certificate is issued for the relevant stage of works.

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the Conveyancing Act 1919.

50. Plans shall be amended prior to the issue of the Construction Certificate to require:

a) Removal of sliding operable glazing above balustrade level to units fronting the Princes Highway. These balconies shall remain open. Glazing to units with balconies fronting the Princes Highway shall be upgraded to ensure units are appropriately acoustically insulated from road traffic noise.

b) The provision of a doorway directly connecting Lobby B to the loading bay on site.

c) The provision of amenities (toilets and showers) to ground floor retail tenancies.

d) The provision of a 3.3m floor to ceiling height within the building fronting the Princes Highway.

Details are to be submitted to the PCA for approval prior to the issue of the Construction Certificate.

Prior to commencement of works

The following conditions must be completed prior to the commencement of works.

51. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) prior to issue of the Construction Certificate. The

insurance cover shall be a minimum of \$10 million.

52. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

53. A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Access to the site for construction purposes via the Princess Highway is not permitted. Prior to the commencement of works the Certifying Authority shall be satisfied that the Construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction.

Prior to the issue of the relevant Construction Certificate, a Construction Traffic Management Plan (TMP) prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (a) ingress and egress of vehicles to the site;
 - (b) loading and unloading, including construction zones;
 - (c) predicted traffic volumes, types and routes; and
 - (d) pedestrian and traffic management methods.
- Copies of the CMP and TMP shall be submitted to Council.

54. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
55. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- i. stating that unauthorised entry to the work site is prohibited, and
 - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
 - iii. building work carried out inside an existing building or
 - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
56. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
57. A hoarding or fence shall be erected between the work site and the public place

when the work involved in the erection or demolition of a building:

i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or

ii) building involves the enclosure of a public place,

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:

(i) the vertical height above footpath level of the structure being demolished is less than 4m; or

(ii) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -

(i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;

(ii) have a clear height above the footpath of not less than 2.1m;

(iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and

(iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa

The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids.

Any such hoarding, fence or awning is to be removed when the work has been completed.

The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

58. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.
59. Consultation with Ausgrid is essential prior to commencement of work. Failure to notify Ausgrid may involve unnecessary expense in circumstances such as:
 - i) where the point of connection and the meter board has been located in positions other than those selected by Ausgrid.
 - ii) where the erection of gates or fences has restricted access to metering equipment.
 - iii) where clearances to any existing overhead High Voltage mains are affected.

During demolition / excavation / construction

The following conditions must be complied with during demolition, excavation and or construction.

60. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon

request.

61. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
62. For Class 2, 3 and 4 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
 - i. after excavation for, and before the placement of, any footing, and
 - ii. prior to covering waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and
 - iii. prior to covering any stormwater drainage connections, and
 - iv. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.

63. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:
 - Sediment control measures
 - Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
 - Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
64. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
65. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
66. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
 - i. After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
 - ii. Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
 - iii. Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
 - iv. On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.

- v. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
67. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- i. preserve and protect the building from damage and
- ii. underpin and support the building in an approved manner, if necessary and
- iii. give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

68. When soil conditions require it:
- i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
 - ii. adequate provision shall be made for drainage.
69. All contractors shall comply with the following during all stages of demolition and construction:
- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a

permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.

- A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
- A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.

70. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.

71. The following conditions are necessary to ensure minimal impacts during construction:

- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
- ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - a) spraying water in dry windy weather
 - b) cover stockpiles
 - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel

shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
72. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.

Prior to issue of occupation certificate or commencement of use

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

73. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.

73A. Traffic Signs, Signal & Loop Detector

(i) A traffic signals/signs, convex mirrors and loop detector are to be designed and installed to manage vehicular movement in driveways that provide safe vehicle access to the site and all basement levels. The arrangement shall control traffic to ensure safe movement of vehicles within basement car park at all times.

(ii) Prior to issue of the relevant Construction Certificate, a suitably qualified and experienced engineer shall design traffic management facilities within the site to the requirements of AS2890.1:2004 and relevant Austroads Guidelines. The facilities designed by the engineer shall include signals/signs (including traffic signal heads, vehicular guide signs, regulatory signs and warning signs), line marking and pavement markers, and other controls such as passing bays, traffic islands, median or separator and convex mirror to ensure safe movement of vehicles within the site at all times.

The access driveway shall be controlled by traffic signals with the following operational mode:

- After a pre-set clearance time signals revert to red for outgoing and green for incoming.

[Amendment B - 4.55(1A) inserted on 26/06/2018]

Reason for additional condition 73A is:

- To ensure the safety of vehicles entering and exiting the site.

73B. Waste & Recycling Collection, Removalist Drop-off's & Pick-ups - Operational Requirements

(i) Waste & recycling collection and servicing, including removalist trucks, must be carried out within the approved loading bay at all times.

(ii) Waste & recycling collection, deliveries, removalists and/or any other servicing must not, at any time, be undertaken from the Forest Roads and Harrow Road or elsewhere within the site.

(iii) Waste and recycling may be collected by a private waste contractor. A contract for waste and recycling collection must be entered into prior to issue of the Occupation Certificate. The company engaged must ensure that all recycling is collected separately from waste.

(iv) Waste & recycling collection must be undertaken during off-peak times.

(v) The maximum size truck permitted to access the site is a Small Rigid Vehicle (SRV).

(vi) The loading bay must be allocated as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.

[Amendment B - 4.55(1A) inserted on 26/06/2018]

Reason for additional condition 73B is:

- To ensure appropriate loading, unloading and waste collection occurs on site.

74. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.

75. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.

Note: Burning on site is prohibited.

76. A by-law shall be registered and maintained for the life of the development, which requires that:

a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;

b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent.

c) Notwithstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall comply with the conditions of this consent. A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with the conditions of this consent. In the event that the conditions are not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to the conditions and in accordance with

any directions given by the Owners Corporation.

Proof of registration of the By Law shall be submitted to Council prior to the issue of an Occupation Certificate.

77. Damage to brick kerb and/or gutter and any other damage in the road reserve shall be repaired using brick kerb and gutter of a similar type and equal dimensions. All works shall be to Council's satisfaction at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
78. Ground level surfaces are to be treated with anti-graffiti coating to minimise the potential of defacement. In addition, any graffiti evident on the exterior facades and visible from a public place shall be removed forthwith.
79. Lot 18 DP 659502 and Lot 1 DP 436761 shall be consolidated into one allotment. Council requires proof of lodgement of the plan of consolidation with the Land and Property Information Office prior to occupation.
80. All landscape works are to be carried out in accordance with the approved landscape plans. The landscaping is to be maintained to the approved standard at all times.
81. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
82. The underground placement of all low voltage street mains in that section of the street/s adjacent to the development, and associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense. The works shall be completed and Ausgrid's requirements shall be met prior to issue of the Occupation Certificate.
83. Vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to the inside skin of the front fence, or where there is no front fence a prominent place approved by the Principal Certifying Authority, stating the following: "Vehicle shall enter and exit the site in a forward direction at all times".
84. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
85. A convex mirror is to be installed at outside of bends in the car park to provide increased sight distance for vehicles.
86. The gate for the basement shall be located in order to permit the queuing of two (2) vehicles when waiting to enter the basement garage. The control mechanism for the gate shall be arranged such that access to the basement garage for registered proprietors of the commercial units, and their visitors, does not require security clearance or assisted entrance between the hours of 7:30am to 6:00pm Monday to Saturday and 7:30am to 1:00pm on Sunday. Where the hours of operation of the commercial units are approved outside of these hours, the access arrangements shall match the approved hours of operation.
87. *75 off-street car spaces including 9 visitor and 1 retail space with 2 visitors spaces shared with retail including seven (7) accessible spaces shall be provided in accordance with the submitted plans. All spaces shall be paved and line marked, with visitor / retail spaces and made freely available at all times during business*

hours of the site for staff and visitors.

Car spaces shall be provided in accordance with the submitted plan and shall be sealed and line marked to Council's satisfaction. The pavement of all car parking spaces, maneuvering areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.

[Amendment B - 4.55(1A) amended on 26/06/2018]

88. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.
Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.
Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.
The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.
89. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
90. Testing and evaluation of the wall insulation system and floor system is to be carried out at post construction stage by a suitably qualified acoustical engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership to confirm compliance with relevant conditions of this consent. A report is to be submitted to the PCA and Council, prior to the issue of the Occupation Certificate. The report is to include details & finishes of the walls and floors separating apartments.

Acoustic recommendations in relation to traffic, aircraft and plant emissions contained in the Acoustic Report prepared by Acouras Consultancy, dated 30/01/2015 shall be validated by a Certificate of Compliance prepared by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently
91. On completion of the building, a suitably qualified Consultant is to certify that The Environmental Criteria for Road Traffic Noise, May 1999 standard has been met or, where this standard would not practically or reasonably be met, the internal noise objectives of the Building Code of Australia have been met before an occupation certificate will be issued.
92. A certificate is to be provided to Council that all wet areas have been effectively waterproofed (prior to tiling) in accordance with AS3740 and the product manufacturer's recommendations.
93. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and

documentation.

94. The air conditioning system shall be certified by a suitably qualified and experienced engineer at the completion of installation prior to the issue of an Occupation Certificate.
95. Prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
96. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
97. The underground garage shall be floodproofed to a minimum of 100mm above the 1% Annual Exceedance Probability Gutter floor level. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
98. *Positive covenants pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the storm water detention and treatment facility to provide for the maintenance of the detention and treatment facility, waste removal by private waste contractor and the basement traffic control systems for ongoing compliance.*

[Amendment B - 4.55(1A) amended on 26/06/2018]

99. The pump system, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or PCA upon request.
100. The provision of a 0.9 metre wide right of footway in favour of Rockdale City Council along the boundary with Keats Avenue. The right of footway is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council. These provisions are to be put into effect prior to release of the Occupation Certificate.
101. The recommendations of the Pedestrian Wind Environment Study prepared by Windtech, dated 12 December 2014 shall be implemented on site prior to the issue of the Occupation Certificate.
102. *A positive covenant shall be created over the visitor parking spaces to ensure that the commercial units retain exclusive use of the spaces between 7.30am to 6.00pm Monday to Friday and 7.30am to 1.00pm on Saturdays and comply with the shared parking register. A suggested wording for the covenant is indicated below:*

"The Registered Proprietors covenant as follows with Council with respect to the area of common property identified as 'Visitor Parking' spaces on the Strata Plan (herein called 'The Burdened Land').

The Registered Proprietor will:

- i) permit the registered proprietors and/or invitees of the registered proprietors of the three commercial lots inclusive to enter upon The Burdened Land with a vehicle or vehicles whether motorized or not and to park, leave or place such a vehicle upon The Burdened Land within the times commencing at 7.30am in the morning Monday to Saturday and ending at 6.00pm in the evening Monday to Friday and 1.00pm in the afternoon on Saturdays. The times referred to are Australian Eastern Standard time or Australian Eastern daylight saving time whichever is in effect at the time that the registered proprietor or invitee enters upon The Burdened Land.*
- ii) not obstruct or inhibit in any manner whatsoever access to or exclusive use of The Burdened Land in accordance with the prior cause.*
- iii) comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice."*

[Amendment B - 4.55(1A) amended on 26/06/2018]

Integrated development/external authorities

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act, 1979.

103. Sydney Airport Corporation Limited

Sydney Airport Corporation Limited (SACL) has approved the maximum height of the proposed building at 46.53 AHD relative to Australian Height Datum (AHD). This height is inclusive of all vents, chimneys, aerials, TV antennae and construction cranes etc. No permanent or temporary structure is to exceed this height without further approval from Sydney Airport Corporation Limited.

Note: Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units.

For further information on Height Restrictions please contact SACL on 9667 9246.

104. Roads & Maritime Service

a) Detailed design plans and hydraulic calculations of any changes to the storm water drainage system are to be submitted to the Roads and Maritime for approval, prior to the commencement of any works. Details should be forwarded to :-

The Sydney Asset Management
PO Box 973
Parramatta CBD NSW 2124

A plan checking fee may be payable and a performance bond may be required before the Roads and Maritime's approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime's Project Engineer, External Works Ph: 8849 2114.

b) The proposed development should be designed such that road traffic noise from Princes Highway is mitigated by durable materials in order to satisfy the requirements for habitable rooms under Clause 102 (3) of State Environmental

Planning Policy (Infrastructure) 2007.'

c) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. The report and any enquiries should be forwarded to:

Project Engineer, External Works
Sydney Asset Management
Roads and Maritime Services
PO Box 973 Parramatta CBD 2124.
Telephone 8849 2114
Fax 8849 2766

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

d) A Road Occupancy Licence should be obtained from Transport Management Centre (TMC) for any works that may impact on traffic flows on Princes Highway during construction activities.

e) A construction zone will not be permitted on Princes Highway.

f) All works associated with the proposed development shall be at no cost to the Roads and Maritime.

Roads Act

105. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

106. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:

- i) construction of a concrete footpath along the frontage of the development site;
- ii) construction of a new fully constructed concrete vehicular entrance/s;
- iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
- iv) reconstruction of selected areas of the existing concrete Footpath/vehicular

- entrances and/or kerb and gutter;
 - v) construction of paving between the boundary and the kerb;
 - vi) removal of redundant paving;
 - vii) construction of kerb and gutter.
107. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
108. All driveway, footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken in accordance with Council's Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council. Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.
109. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
110. The following details shall be submitted to the PCA for assessment and approval pursuant to Section 138 of the Roads Act 1993, in relation to the awning over Princes Highway:
- i) Detailed design plans and specifications, including structural details; and
 - ii) Design certificate.
- The awning shall be designed by a Chartered Professional Engineer (Structural).
 Note: Awnings are required to be set back a minimum of 600 mm from the kerb face and be a minimum height of 2.4 metres above the footpath level. Drainage from the awning shall be connected to the stormwater system for the development.
- Following completion of the installation of the awning a certificate from a Chartered Professional Engineer (Structural) shall be submitted to Council stating that the awning has been constructed in accordance with the design plans and specifications.
111. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.

Development consent advice

- a. Some forms of signage require separate development consent. Please refer to relevant planning policies for more information.
- b. A street/shop number shall be prominently displayed at the front of the development. The street number shall be a minimum of 120 mm in height to assist emergency services and visitors to locate the property. The numbering shall be erected prior to commencement of operations.
- c. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in

- order to fully understand their requirements before commencement of any work.
- d. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
 - e. *Telstra Advice – Dial Before You Dig*

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

- f. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- g. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
 - Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
 - Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

- h. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
 - choosing quiet equipment
 - choosing alternatives to noisy activities
 - relocating noise sources away from affected neighbours
 - educating staff and contractors about quiet work practices
 - informing neighbours of potentially noise activities in advance
 - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the

nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.

- i. The removal, cleaning and disposal of lead-based paint shall conform with the requirements of the NSW Environment Protection Authority's guideline - "Lead Alert - Painting Your Home".
- j. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- k. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.

SECTION-J REPORT

Proposed Mixed Use Development

Address: 533-535 Princes Highway Rockdale
NSW 2216 (Lot 1 DP 436761)

Prepared by : Outsource Ideas p/l

L-2, 10 King street Rockdale NSW 2217

e: ved@outsourceideas.com.au

p: 02 9597 9909 m: 0421 530 876

Prepared for : Alpine Projects Australia Pty Ltd

Unit 32a, 2 Chaplin Drive

Lane Cove NSW 2066

e: kristian.misevski@alpineprojects.com.au

p: 02 9428 4999 f: 1300 720 428

LGA : Bay side Council

DESIGN STATEMENT

Pursuant to NCC BCA A2.2; this report relies on supplied documentation for assessment in regards to adopting measures contributing to deemed-to-satisfy of designed and built deliverables. It is our opinion that the project can be constructed to satisfy the requirements of the NCC.

This report prepared from supplied materials for DA and CC purposes according to
<http://tinyurl.com/p4s7df6>.

Lighting and a/c designs have not been sighted for review.



Ved Baheti B. Arch, M. Arch(UNSW) JP
 Managing director

ABSA Assessor # 20901 | BDAV Assessor # 131521 | ACTPLA Assessor # 2011248

This document:

Rev	Date	Description
A	02/03/2018	Sec-J report prepared as per architectural drawings

Reference Document:

Issue	Date	Description
K	Sept 2017	Architectural Drawing by: Bechara Chan & Associates A: 13/9 Redmyre Rd, Strathfield NSW 2135 p: (02) 9746 6993 e: Info@bc-a.com.au Project # 170829 Drawing status # S96 CC Drawn:KP Chk:GB

Section-J report_533-535 Princes H'way Rockdale NSW

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Energy Efficiency

In response to concerns over global warming, the Australian Government announced in July 2000 that agreement had been reached with industry and State and Territory Governments to adopt a two-pronged approach to reducing greenhouse gas emissions from buildings. The first approach was the introduction of mandatory minimum energy performance requirements through the Building Code of Australia (BCA), and the second approach was the encouragement of best practice voluntary initiatives by industry. Industry was supportive of this two-pronged approach, taking the view that building-related matters should be consolidated in the BCA wherever possible.

Given the importance of the energy performance of buildings to overall national greenhouse gas emissions performance, the Australian Building Codes Board (ABCB) and the Australian Greenhouse Office signed a Memorandum of Understanding to jointly develop the BCA Energy Efficiency Provisions.

The Energy Efficiency Project was endorsed under the National Framework for Energy Efficiency (NFEE), an agreement between all Australian Governments established to improve energy efficiency. The objective of NFEE is to unlock the significant economic potential associated with increased implementation of energy efficiency technologies and processes to deliver a least cost approach to energy efficiency in Australia.

To enable the effective involvement of stakeholders in the development of the BCA Energy Efficiency Provisions, several committees and working groups comprising representatives from a range of government, industry and community organisations were developed.

At specific stages of the project, the ABCB sought the views of the wider community. This process was undertaken when the ABCB released the Directions Report on the Energy Efficiency Project (2001), and on the release of Regulation Documents (RDs) and Regulatory Impact Statements (RISs). Any proposed annual changes to the BCA are also made public prior to finalisation.

Energy efficiency requirements are now incorporated in the Building Code of Australia. In Volume 1, it is Section J, hence the "Section J Report".

This report undertaken under JV1. Deemed to satisfy.

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DESIGN CERTIFICATE TO THIS REPORT

SECTION J DESIGN CERTIFICATE

We certify that the design calculations contained in this report complies with NCC BCA A2.2(b).

Project: Proposed mixed use development
533-535 Princes Highway Rockdale
NSW 2216 (Lot 1 DP 436761)

Ved Baheti B. Arch, M. Arch(UNSW) JP
Managing director

ABSA Assessor # 20901 | BDAV Assessor # 131521 | ACTPLA Assessor # 2011248

Section J review

Application

Car parking Section J affected – complements BASIX

Retail areas Section-J affected

Residential units BASIX affected

Climate Zone check

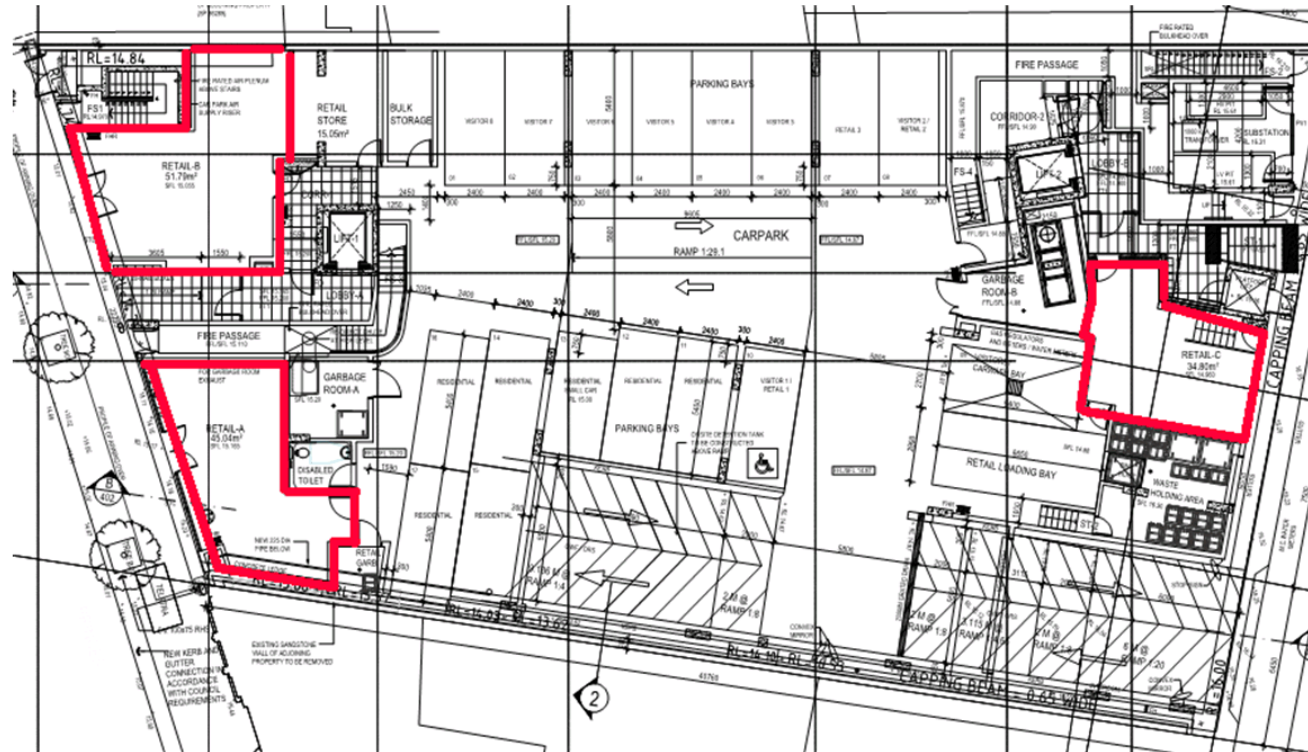
Sydney Urban



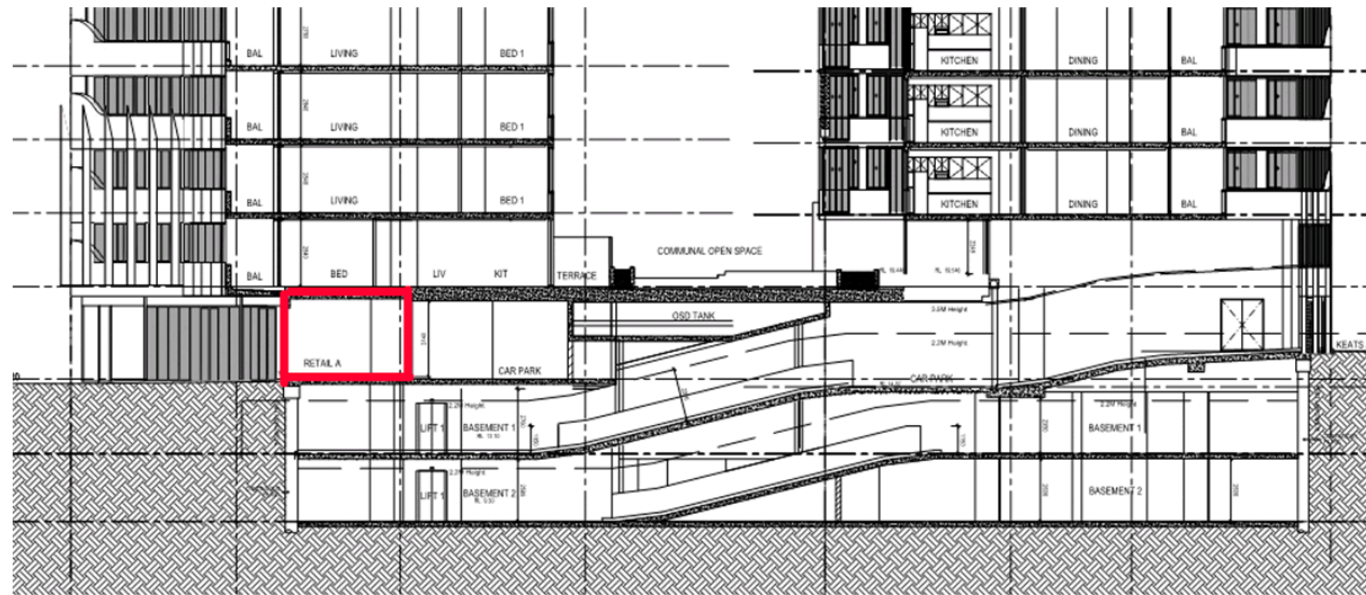
		Remarks
Climate zone:	5	As noted on http://www.abcb.gov.au

Conditioned spaces (likely to be heated or cooled)

Space	Conditioned	Non-conditioned
Car Park areas	-	X
Floor Lobbies	-	X
Retail units	X	-
Residential units	X	-



Ground Floor Plan



Section

1. BUILDING FABRIC

		Action by applicant	Certifier action
1.1	In order to apply the DTS method, only the following elements assessed and considered to be the boundary between conditioned area and the adjacent non-conditioned areas. <ul style="list-style-type: none"> • External Walls of the Commercial Unit • Floor • External Glazing Elements • Ceiling 	Note	Note
1.2	Insulation to wall or roof <i>if metal framed</i> (to simulate insulation equivalence to timber frame)	Note	Note
1.2 (A)	The installation of insulation must comply with the requirements of the BCA and AS/NZS 4859.1 and be installed so that the insulation abuts or overlaps adjoining insulation other than at supporting members; and forms a continuous barrier with ceilings, walls, bulkheads, floors or the like; and not affect the safe and effective operation of services.	Note	Note
1.2 (B)	Reflective insulation (if any) must be installed with the correct airspace; be close fitting to any door or window opening; be adequately supported; and adjoining sheet of roll membrane must be overlapped not less than 50 mm or taped together.	Note	Note

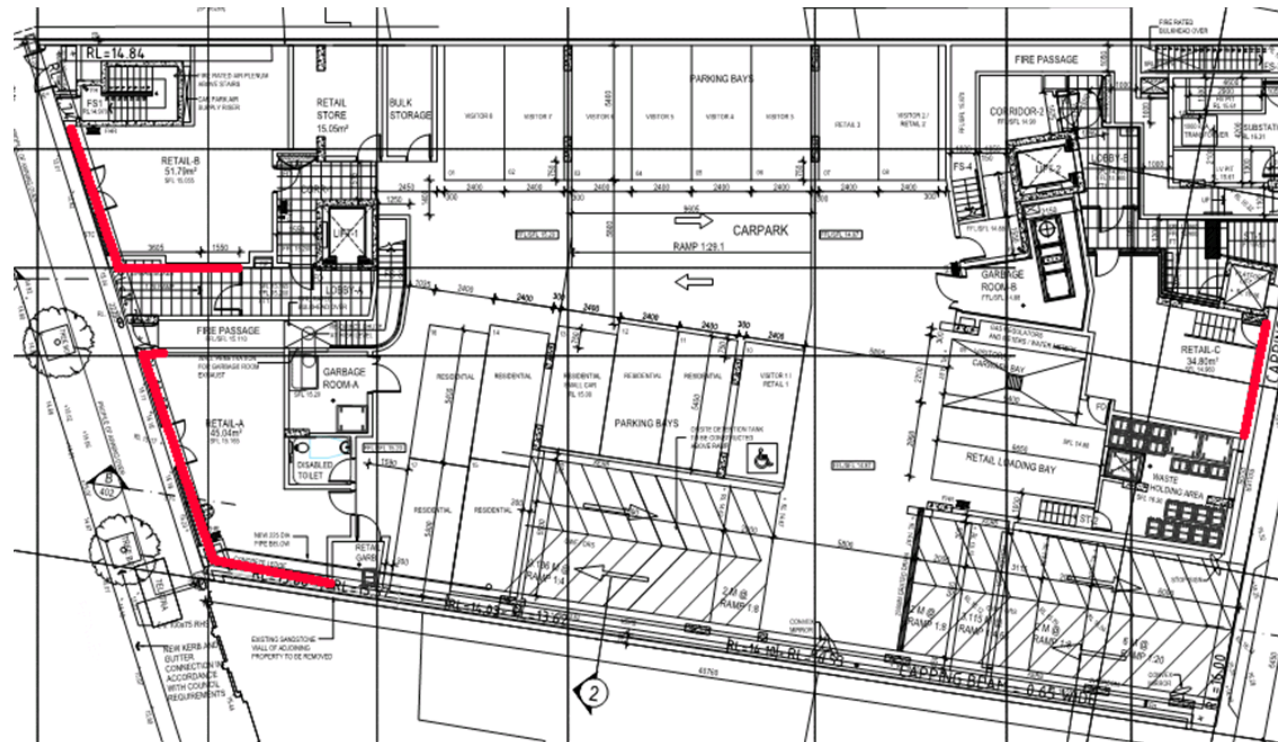
1.2 (C)	<p>Bulk insulation must be installed so that it maintains its position and thickness other than where it is compressed between cladding and supporting members, water pipes, electrical cabling or the like.</p> <p>Applicant must ensure that the roof, ceiling, wall and floor materials, and associated surfaces achieve the thermal properties of Specification J1.2 of BCA 2015.</p>	Note	Note
1.3	<p>Roof/ceiling insulation (medium)</p> <p>Required total R-value R 4.2 down</p> <p>Concrete roof = R 0.36</p>	The design proposes concrete roof. Provide appropriate insulation to make up total R value of R4.2	Certify that the installation is deemed to satisfy

ITEM	DESCRIPTION	R-VALUE
1	Outdoor air film (7m/s)	0.04
2	Concrete roof (250mm) + Ceiling	0.36
3	Roof air space (non-reflective)	0.28
4	Added Insulation Min R3.3	3.4
6	Indoor air film (Still air)	0.16
	TOTAL R VALUE	4.2



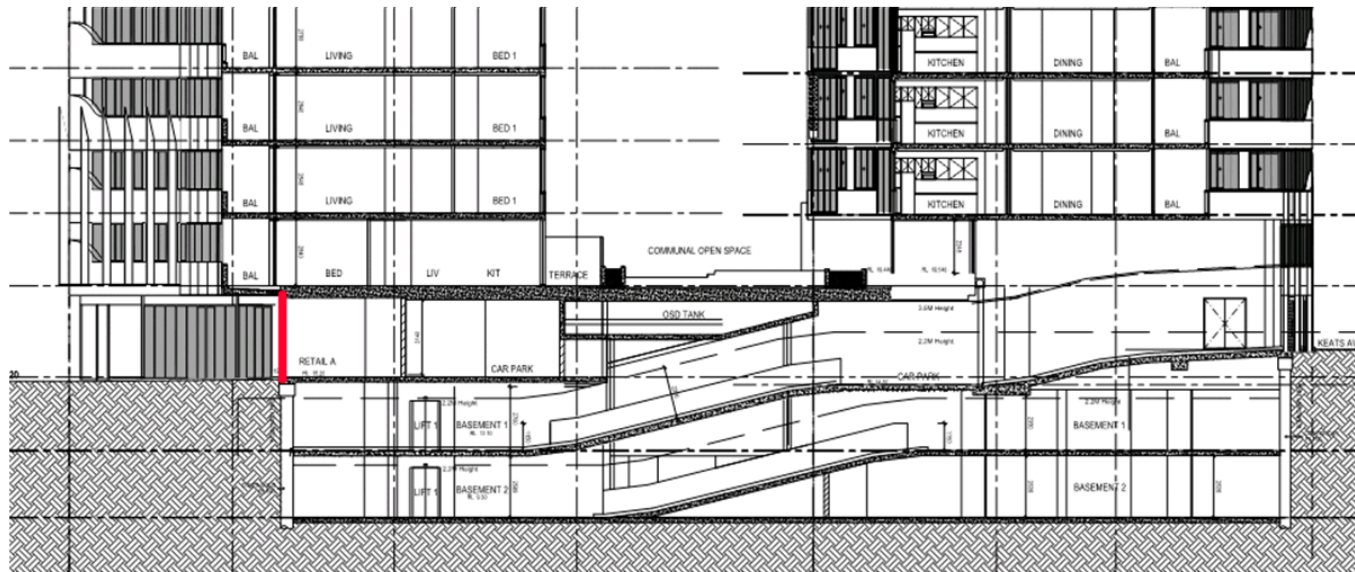
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1.4	Roof lights	Not applicable as the design does not propose any roof lights.	Note
1.5	External walls – insulation Total R-value required R 2.8	Provide appropriate external wall insulation to make out total R value of R2.8	Note
Typical options	BV wallsR 0.48 Cavity brickR 0.51 + 0.5 Conc blockR 0.54 Framed wallsR 0.42 200 HebelR 2.39 80mm PIRR 4.15 W-G AFS wallR 0.48 RC or AFS/DincellR 0.48	Refer typical option Conc blockR 0.54 Provide appropriate insulation (min R 2.26) for block walls to make up total R Value of R2.8	Certify that the installation is deemed to satisfy

**Ground Floor Plan**

Section-J report_533-535 Princes H'way Rockdale

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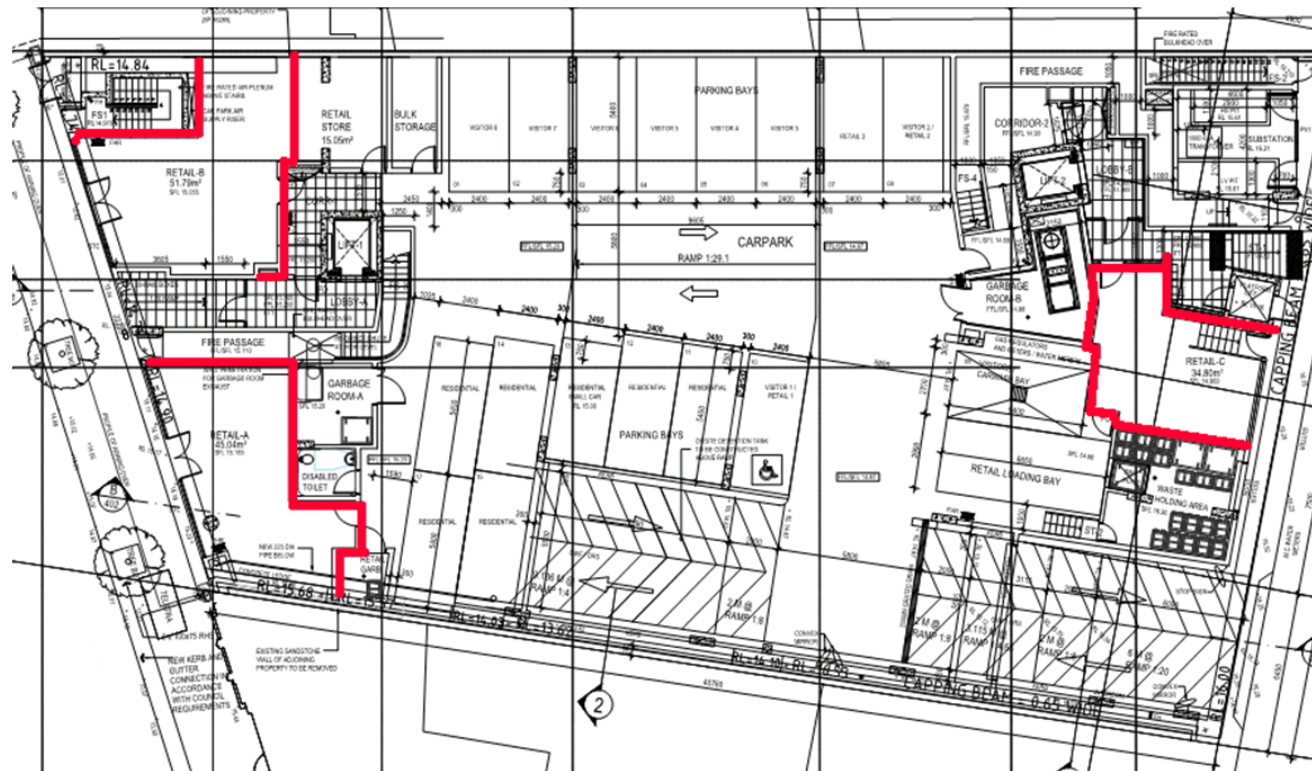


Section

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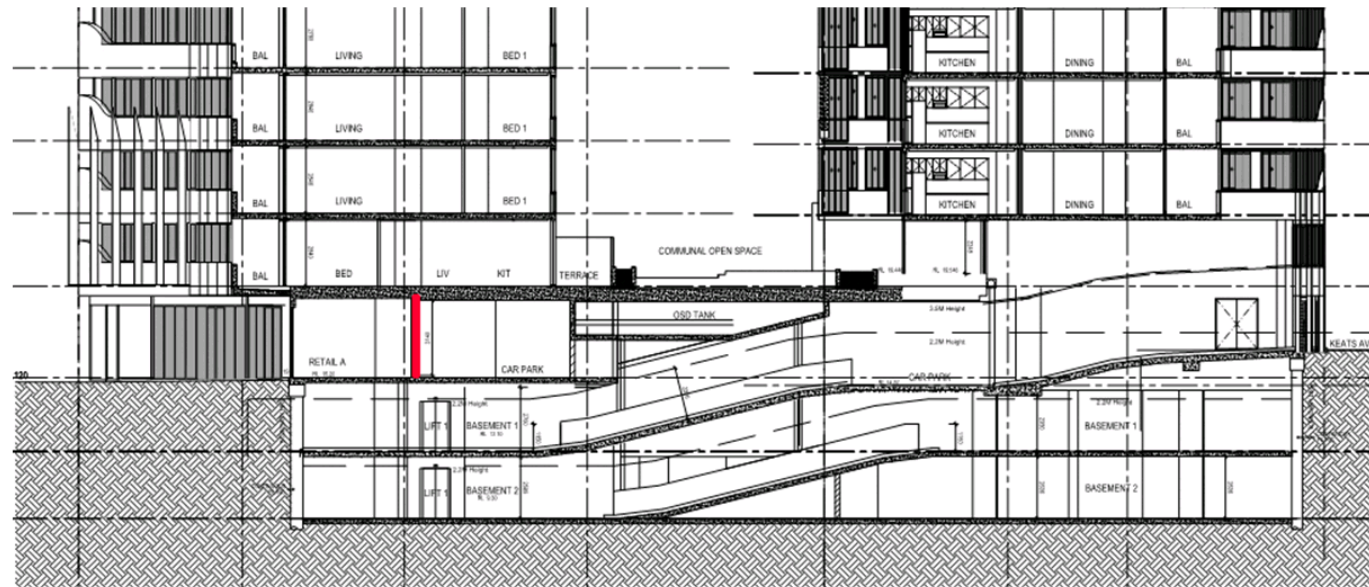
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		Action by applicant	Certifier action
1.5	Internal walls to unconditioned Required total R-value R1.0	Provide appropriate internal wall insulation to make up total R value of R1.0	Certify that the installation is deemed to satisfy
Typical options	Stud wallR 0.5 Masonry wallR 0.6 100 HebelR 1.4 W-G AFS wallR 0.48	Refer typical option	Note

**Ground Floor Plan**

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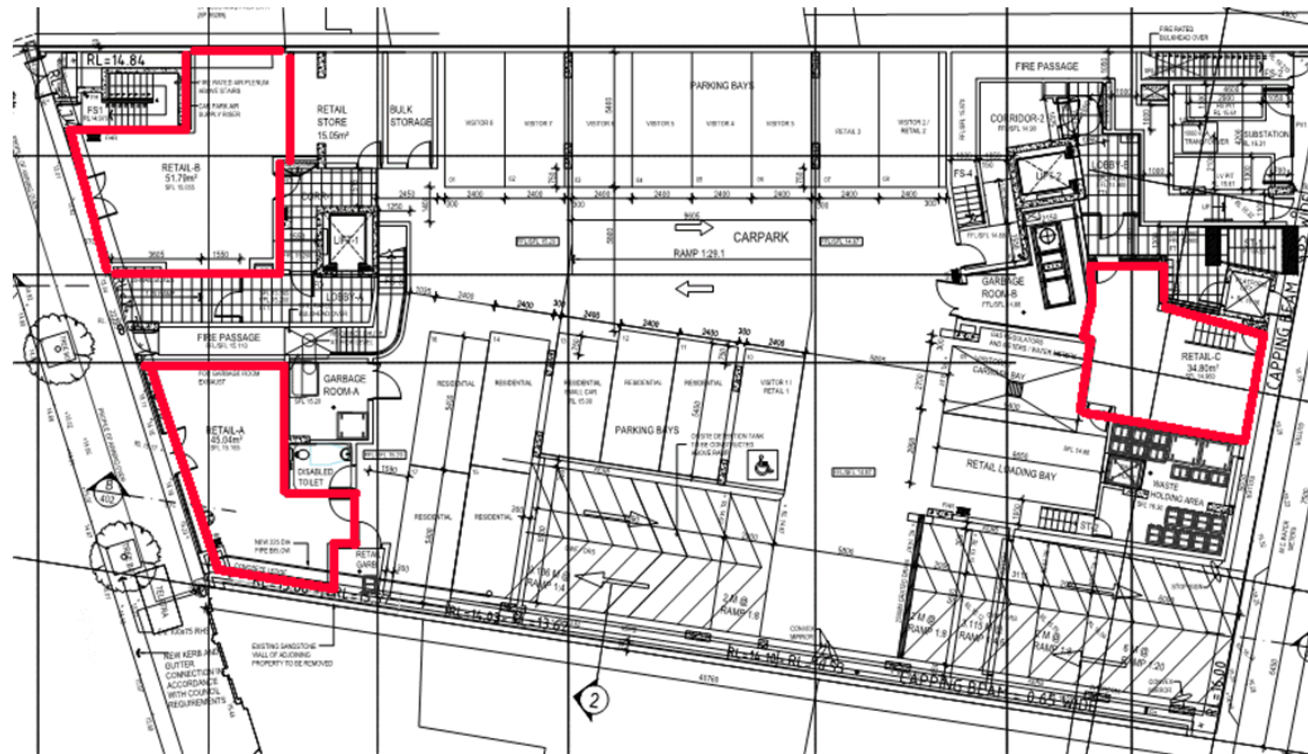


Section

		Action by applicant	Certifier action
1.6	Floor insulation. R2.0 for floor above unconditioned area	Provide appropriate floor insulation to make up total R value of min. R2.0 for GF floor above car parking below.	Certify that the installation is deemed to satisfy.

From Top to Bottom

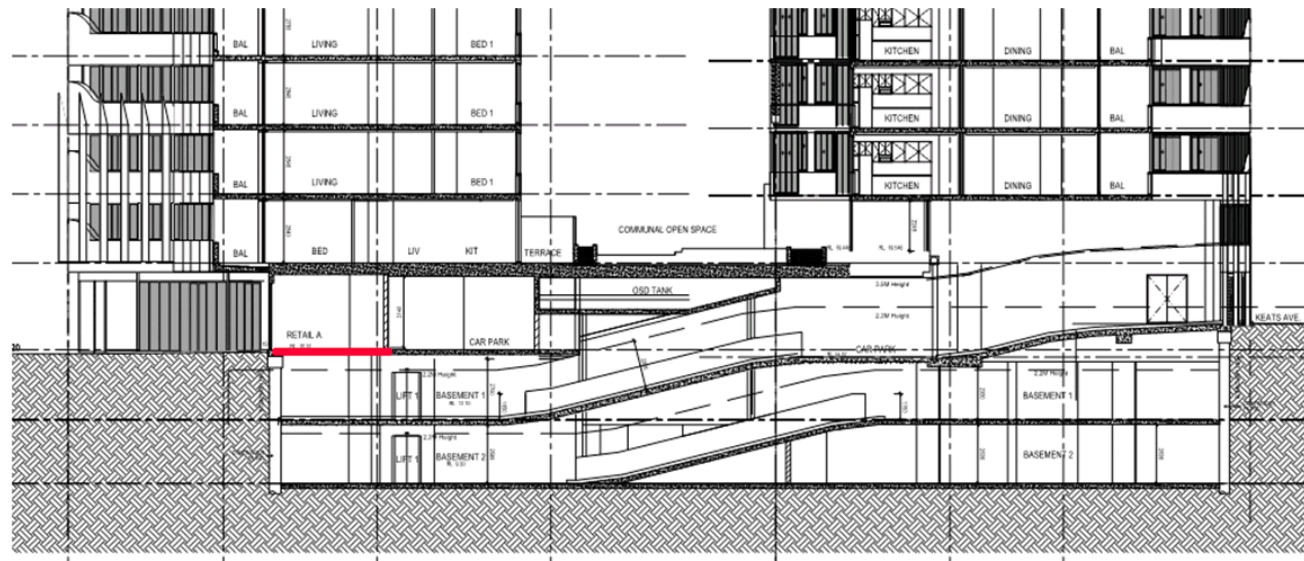
ITEM	DESCRIPTION	R-value
1	Indoor air film (Still air)	0.12
2	Concrete floor	0.17
3	Added required Insulation	1.6
6	Carpark air space	0.4
	TOTAL R VALUE	2.29



Ground Floor Plan

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Section

Section-J report_533-535 Princes H'way Rockdale

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2. EXTERNAL GLAZING

		Action by applicant	Certifier action
	<p>Total window performance i.e. glass AND frame.</p> <p>Note: Since lift lobby is not conditioned, the glazed entry door is not affected by this part.</p>	<p>Select from http://www.wers.net/werscontent/certified-products-commercial or use their search engine http://www.wers.net/werscontent/search-commercial-products Do not use +/- 10% rule!</p>	<p>Check and certify manufacturer's certificates if complies.</p> <p>Manufacturer's window data <i>MUST MATCH</i> U and SHGC values in the following calculator.</p> <p>Provide data of selected windows to Assessor for validation (see bottom of cover page).</p>

Report from Glazing calcs_533 Princes Highway Rockdale.xlsx

printed 12/04/2018

NCC VOLUME ONE GLAZING CALCULATOR (first issued with NCC 2014)

Building name/description

Proposed mixed use development @ 533 Princes Highway Rockdale

Application

Class 3

Climate zone

5

Storey

ALL

Facade areas

Option A

Option B

Glazing area (A)

N	NE	E	SE	S	SW	W	NW	internal
		92m ²					78m ²	
								n/a
		39m ²						15m ²

Number of rows preferred in table below

6 (as currently displayed)

GLAZING ELEMENTS, ORIENTATION SECTOR, SIZE and PERFORMANCE CHARACTERISTICS									SHADING		CALCULATED OUTCOMES OK (if inputs are valid)						
Glazing element		Facing sector		Size			Performance		P&H or device		Shading		Multipliers		Size	Outcomes	
ID	Description (optional)	Option A facades	Option B facades	Height (m)	Width (m)	Area (m²)	Total System U-Value (AFRC)	Total System SHGC (AFRC)	P (m)	H (m)	P/H	G (m)	Heating (S _H)	Cooling (S _C)	Area used (m²)	Element share of % of allowance used	
1	A	E		3.00	5.00		4.7	0.42	3.000	3.000	1.00	0.00	0.22	0.42	15.00	38% of 100%	
2	B	E		3.00	8.00		4.7	0.42	3.000	3.000	1.00	0.00	0.22	0.42	24.00	62% of 100%	
3	C	NW		3.00	5.00		4.7	0.42				0.00	1.00	1.00	15.00	100% of 100%	
4																	
5																	
6																	

IMPORTANT NOTICE AND DISCLAIMER IN RESPECT OF THE GLAZING CALCULATOR

The Glazing Calculator has been developed by the ABCB to assist in developing a better understanding of glazing energy efficiency parameters. While the ABCB believes that the Glazing Calculator, if used correctly, will produce accurate results, it is provided "as is" and without any representation or warranty of any kind, including that it is fit for any purpose or of merchantable quality, or functions as intended or at all. Your use of the Glazing Calculator is entirely at your own risk and the ABCB accepts no liability of any kind.

if inputs are valid



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3. BUILDING SEALING

		Action by applicant	Certifier action
3.1	Where air conditioning is by evaporative cooler or parts of building not fully enclosed	Not applicable to the project	Note.
3.2	Otherwise seal building if provided in the building	Not applicable to the project	Note

4. AIR MOVEMENT

		Action by applicant	Certifier action
4.0		Not applicable. Not used.	Note

5. AIR CONDITIONING – packaged a/c

		Action by a/c designer at CC and thereafter	Certifier action
5.1	Applies if air conditioned	Common corridors are not air-conditioned. So it's not applicable.	Note
5.2	Applies if air conditioned	Common corridors are not air-conditioned. So it's not applicable.	Note
5.3	Time Switch	Common corridors are not air-conditioned. So it's not applicable.	Note
5.4	Applies if Heating And Cooling System installed	Common corridors are not air-conditioned. So it's not applicable.	Note
5.5	Applies if Miscellaneous Exhaust Systems installed	Common corridors are not air-conditioned. So it's not applicable.	Note

6. ARTIFICIAL LIGHTING AND POWER

		Action by applicant	Certifier action
6		Refer separate electrical consultant submission. Below is the Lighting Calculator for common lighting areas anticipated in the project for reference	Refer also lighting designer certifications for compliance with Illumination code Part F4.
6.2	Artificial lighting: The aggregate design Illumination Power Load (IPL) must not exceed the sum of allowances obtained by multiplying the area of each space by the maximum illumination power density in table J6.2a. Note that while Section J specifies maximum Illumination Power Load, BCA Section F4.4 and AS/NZS 1680.0 specify minimum levels of illumination.	Not applicable	Note
6.3	Interior Artificial Lighting & Power Control: A switch or other control device must individually operate the artificial lighting of a room or space. A switch must be in a visible position. Design does not include details of interior artificial lighting and power controls.	Not applicable	Note
6.4	Interior Decorative & Display Lighting	Not applicable	Note
6.5	Artificial Lighting around the perimeter of a Building The artificial lighting around the perimeter of the building must be controlled by a daylight sensor or a	When the perimeter lighting load exceeds 100W, the light source efficacy must not be less than 60 Lumens/W. The perimeter lighting used for decorative purposes such as facade and signage lighting must have a separate time switch in accordance with Specification J6. Such a time	Certify that the installation is deemed to satisfy.

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		Action by applicant	Certifier action
	programmable time switch.	switch must be capable of switching on and off electric power at variable pre-programmed times and on variable pre-programmed days. It must also be capable of limiting the period the system is switched on to between 30 minutes before sunset and 30 minutes after sunrise is determined or detected including any pre-programmed period between these times; and being overridden by a manual switch or a security access system for a period of up to 30 minutes, after which the time switch must resume control.	

7. SWIMMING POOL & SPA

		Action by HW designer and installer	Certifier action
			Note regards NCC 2014 - HW requirements have been transferred from NCC-BCA to the NCC-Plumbing Code.
7.2	Applies if new HW provided	No hot water unit for common area proposed in the building. So its not applicable.	None

8. ACCESS FOR MAINTENANCE

		Action by applicant	Certifier action
8.2	Provide access to any operable controls.	Inclusions Times switches Thermostats Air dampers Light fittings Heat transfer equipment	Certify that respective controls are in place.

1. NSW J(A)1 BUILDING FABRIC –Building

		Action by applicant	Certifier action
Insulation	Thermal construction to J1.2	To AS/NZS 4859.1 Selection / branding / installation	Certify compliance
	Thermal breaks to external metal framing.	Provide thermal break DTS are <ul style="list-style-type: none"> • 15mm styrene • 25 timber OR mass insulation at fixing	Certify compliance
Ceiling insulation	Compensating insulation loss	Adjust to the following table	Certify compliance

Table J1.3b ADJUSTMENT OF MINIMUM R-VALUE FOR LOSS OF CEILING INSULATION

Percentage of ceiling area uninsulated	Minimum R-Value of ceiling insulation required to satisfy J1.3(a)							
	2.5	3.0	3.5	4.0	4.5	5.0	5.5	6.0
	Adjusted minimum R-Value of ceiling insulation required to compensate for loss of ceiling area insulation							
0.5% to less than 1.0%	2.8	3.4	4.0	4.7	5.4	6.2	6.9	↕
1.0% to less than 1.5%	2.9	3.6	4.4	5.2	6.1	7.0	↕	
1.5% to less than 2.0%	3.1	3.9	4.8	5.8	6.8	↕		
2.0% to less than 2.5%	3.3	4.2	5.3	6.5	↕			
2.5% to less than 3.0%	3.6	4.6	5.9	Not Permitted				
3.0% to less than 4.0%	4.2	5.7	↕					
4.0% to less than 5.0%	5.0	↕						
5.0% or more	↕							

Note: Where the minimum [R-Value](#) of ceiling insulation [required](#) to satisfy [J1.3\(a\)](#) is between the values stated, interpolation may be used to determine the adjusted minimum [R-Value](#).

2. NSW J(A)2 BUILDING SEALING – Building

		Action by applicant	Certifier action
Building sealing		Not Applicable	Note

3. NSW J(A)3 AIR CONDITIONING AND VENTILATION SYSTEMS – Building

		Action by applicant	Certifier action
	Must be capable of being deactivated <ul style="list-style-type: none"> when the sole-occupancy unit, building or part of the building 	Ensure that all devices are accessible.	Certify compliance

		Action by applicant	Certifier action
	<p>served is not occupied; and</p> <ul style="list-style-type: none"> where the air-conditioning unit or system has motorised outside air and return dampers, close the dampers when the air-conditioning unit or system is deactivated have any supply and return ductwork sealed and insulated in accordance with Specification J5.2 		
	A time switch	Not required if serves only one sole occupancy unit.	Note

4. NSW J(A)4 SWIMMING POOL & SPA - Building

		Action by HW designer and installer	Certifier action
	<p>Design and installed in accordance with Section 8 of AS/NZS 3500.4.</p> <p>e.g. insulation to service lines</p>	Provide certificate of compliance to PCA	<p>Note regards NCC 2014 -</p> <p>HW requirements have been transferred from NCC-BCA to the NCC-Plumbing Code.</p>

5. NSW J(A)5 ACCESS FOR MAINTENANCE - Building

		Action by applicant	Certifier action
--	--	---------------------	------------------

		Action by applicant	Certifier action
	Provide access to <ul style="list-style-type: none"> • adjustable or motorised shading devices; and • time switches and motion detectors; and • room temperature thermostats; and • plant thermostats such as on boilers or refrigeration units; and • motorised air dampers and control valves; and • reflectors, lenses and diffusers of light fittings; and • heat transfer equipment 	Ensure that all devices are accessible.	Certify compliance

Notes by certifier if any:

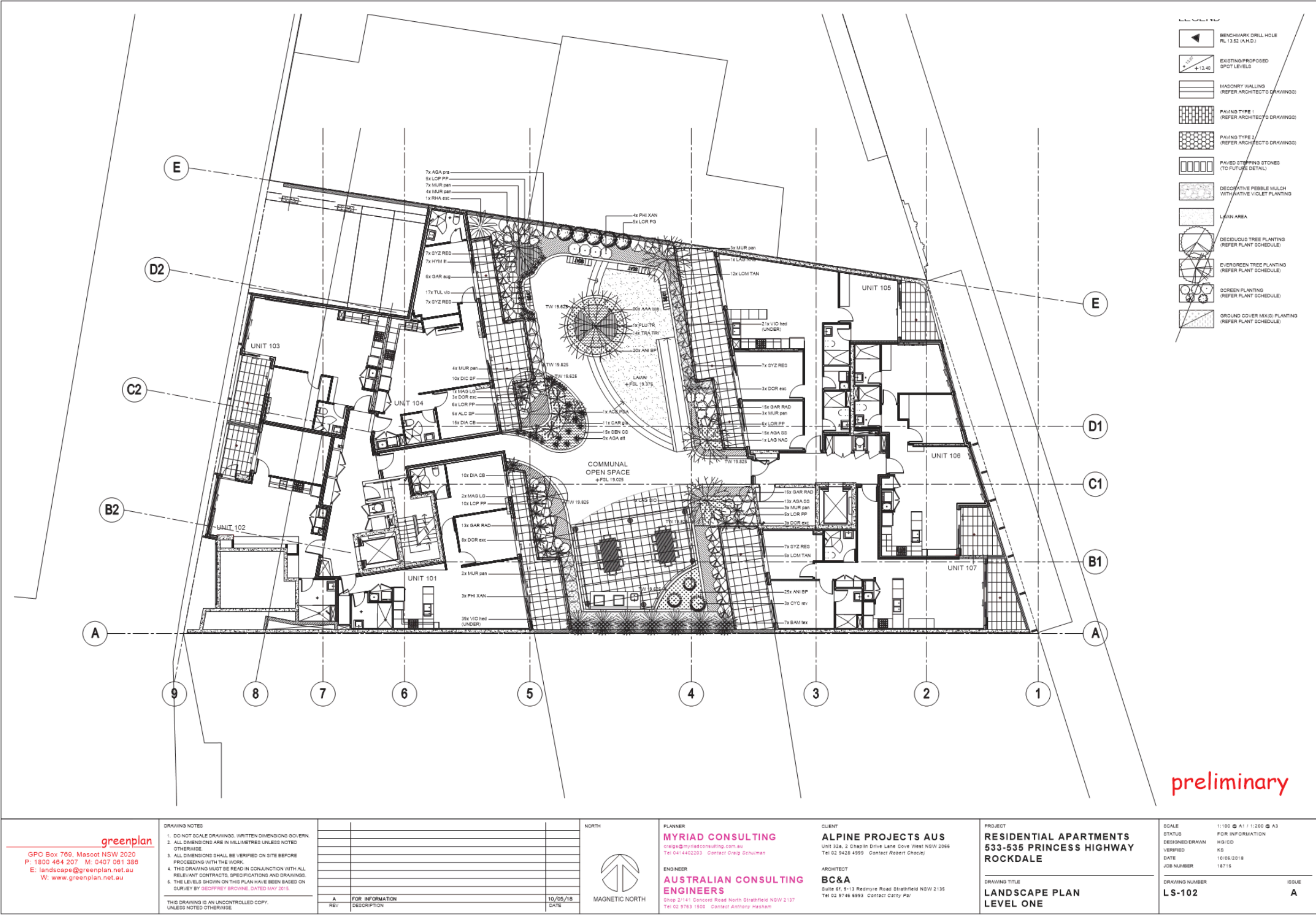
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Access Report

Project –

Proposed Multi-Storey Mixed-Use Development
533-535 Princes Highway, Rockdale

Design Phase –

S96 submission / Construction Certificate Phase

Date - 11 May 2018
For - Alpine Projects Australia Pty Ltd
Ref - 17387 – R1.1

Code Performance Pty Ltd
Suite 10, 185 Military Road,
Neutral Bay NSW 2089

ABN: 79 205 189 287
E: admin@codeperformance.com.au
W: www.codeperformance.com.au



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Amendment Schedule

Prepared By:	Reviewed By:	Comments	
 <u>Michael Zora</u> Director Grad Dip Build Surv. (UWS) B. Construction Mgmt (Hons) (UWS) Affiliate Member – ACAA No. 596	 <u>Anthony Banham</u> Director Grad Dip Build Surv (UWS) Accredited Certifier / PCA (Building) - A1 Accreditation No. BPB 0020 Associate Member – AACA	Final report issued to the client.	
		Version	Date
		Rev 1.0 – Draft	20.04.2018
		Rev 1.1 – Final	11.05.2018

The intellectual content contained within this report remains the property of Code Performance Pty Ltd and has been prepared and may only be used for the development / buildings being the subject of this report.



1.0 INTRODUCTION

1.1 General

This Access Report has been prepared at the request of Alpine Projects Australia for the purpose of completing an assessment of the S96 submission / Construction Certificate architectural documentation associated with the proposed multi-storey / mixed-use development to be located at 533-535 Princes Highway, Rockdale.

1.2 Purpose

The purpose of this report is to identify the compliance status of the architectural design documentation against the following –

- Relevant accessibility related 'deemed-to-satisfy' (DTS) requirements of Building Code of Australia (BCA) 2016. These provisions are generally contained within Part D3 and Clause(s) E3.6 & F2.4 of the code.
- Accessibility related Australian Standards as referenced by BCA 2016, as relevant to this project and as directly nominated in the report.
- The Disability (Access to Premises – Building) Standards 2010 (*Premises Standards*).
- Rockdale City Council DA No. DA-2015/289 – Access Related DA Conditions 23 and 39.
- Rockdale Development Control Plan 2011 – 'Part 4.5.1: Housing Diversity and Choice'

1.3 Documentation Relied Upon

Architectural plans prepared by Bechara Chan & Associates Pty Ltd, Job No. 170829, drawings as follows:

Drawing No.	Revision	Date	Drawing Title
CC111	S	09/05/18	Basement 2
CC112	P	09/05/18	Basement 1
CC113	S	09/05/18	Ground
CC114	I	19/03/18	Level 1
CC115	F	19/03/18	Level 2
CC116	F	19/03/18	Level 3
CC117	F	19/03/18	Level 4
CC118	F	19/03/18	Level 5
CC119	E	19/03/18	Level 6
CC120	E	19/03/18	Level 7
CC121	E	19/03/18	Level 8
CC122	E	19/03/18	Level 9
CC123	C	19/03/18	Roof Deck

1.4 Exclusions

The content of this report relates only to the matters directly nominated in this report and does not assess / include the following –

- Any parts of the BCA / standards not directly referenced in this report.
- Disability Discrimination Act 1992 (*DDA focuses on results. Does not offer prescriptive compliance options*).
- Work Health & Safety considerations.
- Services / equipment operating capacity / design.
- Local planning policies and/or guidelines, other than those directly identified.



- Does not constitute construction approval nor a Part 4A Certificate under the EP&A Act / Regulations.
- Fit-outs to any of the retail space.
- Livable Housing Design Guidelines.

1.5 BCA Assessment Data

Listed below are our understanding of relevant BCA classification(s) in relation to the subject building / part. BCA Consultant / Certifier shall have the final say in determining classifications.

BCA Building Classification(s):	Class 2	-	Residential and associated common areas
	Class 6	-	Retail
	Class 7a	-	Carpark

1.6 DA Assessment – Access Related Conditions

The following discussion / confirmation is offered in relation to access related conditions of development consent –

Condition 23

Compliance with this condition of development consent is achieved through compliance with this Access Report Section 2.0.

Condition 39

Compliance with this condition of development consent is achieved through compliance with this Access Report Section 3.0.



2.0 TECHNICAL ASSESSMENT & COMMENTARY

2.1 General

The following summarises the compliance status of the architectural design in terms of the DTS accessibility provisions of BCA 2016, as are principally contained within Part D3 and Clauses E3.6 & F2.4 of the code.

Alongside each clause heading; one of four compliance categories is provided, as follows –

Complies:	BCA design compliance is achieved.
Does not comply:	A BCA DTS compliance departure is noted. Resolution options are provided.
N/A:	Not Applicable or not directly relevant. Detail offered for application if / as relevant.
Design Detail:	Compliance commentary is provided. Such should not be considered deficiencies, but matters for consideration by the design team / assessment authority at relevant / nominated stages of design.

BCA Interpretation Note(s) –

- i. Readily moveable furniture has been treated as indicative. The person/s responsible for furnishing the building (parts) should ensure their furnishing layout/s do not cause AS1428.1 circulation deficiencies.
- ii. *Slip-resistant floor surface/s* - BCA 2016 does not directly specify slip-resistance classification(s) for all accessible paths of travel; however, we highlight the need under AS1428.1-2009 for all accessible paths of travel to have a slip-resistant surface. We recommend you should seek surface finish advice from an independent specialist slip safety consultant.

2.2 SECTION D – ACCESS & EGRESS

Part D3 – Access For People With Disabilities

BCA Clause D3.1 - General building access requirements

Buildings and parts of buildings must be accessible as required by Table D3.1 and as summarised below:

Class 2 (Residential Units)

Access is required from a pedestrian entrance required to be accessible to at least 1 floor containing Sole-Occupancy Units (SOU), to the entrance doorway of each SOU on that level and to/within any area for use in common by the residents.

Where a passenger lift is installed, access is required to the entrance doorway of each SOU, and to/within spaces for use in common by the residents; located on levels served by the lift.

Adaptable Housing (not BCA related) – See Section 3.0 of this report.

Class 2 (Residential Common Areas)

From a pedestrian entrance required to be accessible to the entrance doorway of each SOU and to and within rooms or spaces for use in common by residents on levels served by the lift.

Class 6 (Retail)

Access must be provided to and within all areas normally used by the occupants.

Class 7a (Carpark)

Access must be provided to and within the carpark if it contains “accessible carparking spaces”.

Design Detail	Access is required to and throughout the building in accordance with AS 1428.1-2009 (except where exempt by Clause D3.4), to the following extent –
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- To the entry doorway of every Class 2 SOU;
 - To and within all the residential common areas.
 - To and within the retail tenancies as well as commercial bin rooms.
- Compliance is readily achievable during construction phase subject to resolution of the below compliance departures.
- A summary of AS 1428.1-2009 requirements for accessways is provided at **Appendix 1** to assist the project team during construction.

Does
not
comply

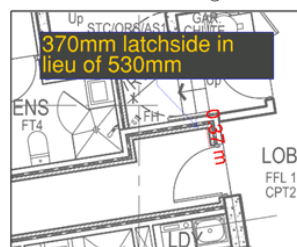
DTS Compliance Departure 1

The following doors do achieve suitable latchside clearance:

- Door to Building A from the L1 communal open space has only 440mm latchside clearance in lieu of 530mm as shown on the figure below:



- Door to Building B from the L1 communal open space has only 370mm latchside clearance in lieu of 530mm as shown on the figure below:



Resolution Option(s) 1

Either;

- Modify the design so the above doors achieve 530mm latchside clearance; or
- Pursue a BCA Performance Solution at CC stage to justify the above doors with reduced latchside clearance however the solution shall require an automatic door opening device to be installed to both doors.

BCA Clause D3.2 – Access to Buildings

An accessway must be provided to a building required to be accessible:

- From the main points of pedestrian entry at the allotment boundary; and
- From another accessible building connected by a pedestrian link; and
- From any required accessible carparking space on the allotment.

An accessway must be provided through the principal pedestrian entrance, and:

- through not less than 50% of all pedestrian entrances including the principal pedestrian entrance; and



- in a building with a floor area more than 500m², a pedestrian entrance which is not accessible must not be located more than 50m from an accessible pedestrian entrance.

Doors on an accessway having multiple leaves must have a clear opening width of not less than 850mm for a single leaf.

Design Detail

The detailed pedestrian entries from different parts of the allotment boundary are readily capable of compliance.

The detailed principal pedestrian building entries are all indicated as readily capable of compliance.

A summary of AS 1428.1-2009 requirements for accessways is provided at **Appendix 1** to assist the project team during construction.

BCA Clause D3.3 – Parts of Buildings to be Accessible

In a building required to be accessible:

- every ramp & walkway (*except fire-isolated*) must comply with Clause 10 of AS1428.1-2009;
- every stairway (*except fire-isolated*) must comply with Clause 11 of AS1428.1-2009;
- all fire-isolated stairways are required to comply with Clause 11.1 (f) and (g) of AS 1428.1-2009;
- carpet installed in an accessway must comply with clause D3.3(g) and (h)

Design Detail

- Passing spaces have been suitably provided.
- The fire-isolated stairways are readily able to accord with Clause 11.1 (f) and (g) of AS 1428.1-2009.
- Walkways (1 in 20 or shallower) are provided in number, location and with spatial allowance for compliance.

Features are readily able to be provided to these walkways as per Clause 10 of AS 1428.1-2009.

Compliance is readily achievable during construction phase subject to resolution of the below compliance departures.

A summary of AS 1428.1-2009 requirements for accessways is provided at **Appendix 1** to assist the project team during construction.

Does not comply

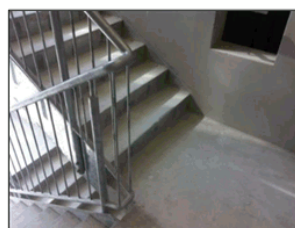
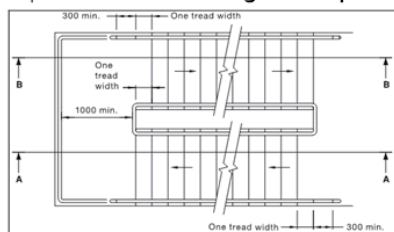
DTS Compliance Departure 1

Every fire stair in this development must comply with Cl. 12 of AS 1428.1-2009.

Fire stairs that incorporate an inner handrail, require such handrail to be continuous and achieve a consistent height above the stair nosing and at the landing transition.

Essentially, there are two types of stair configurations which enable an inner handrail inside a fire stair to achieve a consistent height, these are:

- Construct each fire stair so that the base of each stair flight is offset by a single tread depth as shown on the **figure** and **photo** below; or



- Construct wider intermediate landings so that they are 1000mm wide plus an additional one tread depth to accommodate the required handrail extension without compromise onto the minimum path of travel width.



Alternatively, provide a handrail on the outer edge of the stair, such handrail is not required to continue around the landings provided it extends for a one tread depth at the base of each stair flight (including the two steps at the quarter landings).

Majority of the fire stairs in this development either incorporate quarter landings or insufficiently sized half landings (with no offset between stair flights) thereby causing inevitably an inconsistent handrail height to occur inside those fire stairs.

Resolution Option(s) 1

Either;

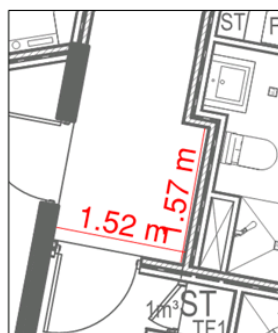
- a. Modify stair design to comply per the aforementioned fire stair configuration options (a) or (b) – noting quarter landings shall not occur under this design configuration; or
- b. Provide an outer handrail (in lieu of an inner handrail) which extends 1 tread depth at the base of each stair flight; or
- c. Pursue a BCA Performance Solution with respect to this matter to demonstrate the suitability of the current stair (incorporating quarter landings) and placing reliance upon (amongst other things); handrails to contain no vertical sections, handrail height to be between 865-1000mm and achieve a 30% luminance contrast to the handrail.

DTS Compliance Departure 2

Within 2m from the end of an accessway, a suitably sized space (1540mm x 2070mm) is required so to allow a wheelchair to carry out a 180-degree turn where it is not possible to continue travelling in that direction.

The following accessway dead-ends are lacking in the required 180-degree turning space –

- **Building B** – Levels 2 to 8 – North end of the corridor – The turning space is approximately 1520mm by 1570mm (substantially less than the required 1540mm by 2070mm). Refer to the Figure below for illustration of the nature and location of this compliance departure:



Resolution Option(s) 2

Either;

- a. Modify design at the above locations to detail a 1540mm by 2070mm turning space; or
- b. Pursue a BCA Performance Solution to justify the suitability of a 1520mm by 1570mm turning space. This solution shall require the level number to be provided outside the lift.

BCA Clause D3.4 – Exemptions

An area where access would be inappropriate because of the particular purpose for which the area is used, or would pose a health or safety risk for people with a disability; is not required to be fully accessible.



For Info The following parts of the building have been offered access exemption:

- Store rooms.
- Plant and equipment rooms.
- Substation.
- Waste holding area.
- Roof levels.

BCA Clause D3.5 – Accessible Carparking

Accessible carparking spaces complying with AS 2890.6-2009 must be provided in accordance with Table D3.5 in a Class 7a building required to be accessible and on the same allotment as a building required to be accessible.

Design Detail Commercial

The commercial accessible carparking space has been provided in suitable number and location to comply with this clause.

All required accessible features to the accessible carspace and shared zone area to accord with AS 2890.6-2009.

A summary of AS 2890.6-2009 is provided at **Appendix 1** to assist the team during construction.

Residential

This clause does not compel a Class 2 building to provide accessible car parking spaces.

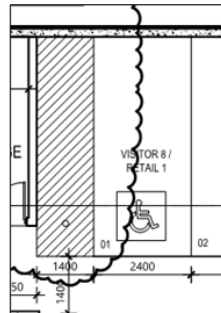
Carparking to the residential carspaces is therefore not governed by the BCA, but instead AS 4299 and condition 11(a) of development consent.

See Report Part 3.0 for AS 4299 detail.

Does not comply

DTS Compliance Departure 1

Whilst the accessible commercial carspace is provided in suitable number and location, the dimensions to the shared area does not comply noting only 1400mm wide in lieu of 2400mm minimum. Refer to below figure:



Resolution Option(s) 1

Either;

- a. Increase the shared area to achieve 2400mm minimum width and comply with AS 2890.6-2009 requirements; or
- b. Pursue a BCA Performance Solution at CC stage with respect to this matter to demonstrate the suitability of a commercial accessible car space having a width of 3.8m (with nil shared area). A performance solution is readily capable of being provided based on a comparative and qualitative assessment demonstrating compliance with BCA Performance Requirement DP8.



In any case, compliance is readily achievable at CC stage.

BCA Clause D3.6 – Signage

Accessible buildings must have signage to comply with AS1428.1-2009 and as follows –

- braille and tactile signage incorporating the international symbol of access or deafness, must identify each sanitary facility and space with hearing augmentation system; and
- identify each door required by Clause E4.5 to be provided with an exit sign and state “Exit” and “Level” followed by the floor number;
- signage incorporating the international symbol of access or deafness, must be provided within a room containing a hearing augmentation system identifying the hearing augmentation type, area covered and location of receivers;
- signage in accordance with AS1428.1 must be provided for accessible unisex sanitary facilities to identify left or right handed use;
- signage to ambulant accessible facility must be on the door of the facility;
- directional signage where a pedestrian entrance is not accessible.

Design Detail

Signage shall be installed in this project as necessary, but shall include as a minimum:

- Signage to the accessible sanitary compartment in accordance with AS1428.1-2009.
- identify each door required by Clause E4.5 to be provided with an exit sign and state “Exit” and “Level” followed by the floor number.
- signage in accordance with AS1428.1 must be provided for accessible unisex sanitary facilities to identify left or right handed use.
- Signage to any ambulant toilet facilities.

Compliance capability is readily achievable during construction.

BCA Clause D3.7 – Hearing Augmentation

Hearing augmentation system must be provided where an inbuilt amplification system (other than emergency warning) is installed:

- In a room in a Class 9b building; or
- Meeting room, conference room, auditorium, or room for judicatory purposes; or
- At any ticket office, teller booth, reception area or the like, where the public is screened from the service provider.

If provided in the form of an induction loop, it must cover no less than 80% of the floor of the room served.

If in the form of receivers, it must cover no less than 95% of the floor of the room served with a minimum of two (2) in any case, but depending on number of people accommodated.

Design Detail

It is not a BCA DTS requirement to have a hearing augmentation system, unless an inbuilt amplification system (other than emergency warning) is installed.

A building of this nature is unlikely to have an inbuilt amplification system (other than emergency warning), however, if provided, a hearing augmentation system must be provided to accord with this clause.

Compliance capability is readily during construction if applicable.

BCA Clause D3.8 – Tactile Ground Surface Indicators (TGSi)

Accessible buildings must have TGSi's complying with Sections 1 & 2 of AS/NZS1428.4.1-2009 to warn blind or vision impaired people of approaching stairways (other than fire-isolated), escalators, ramps (other than fire-isolated, step or kerb ramp), any overhead obstruction less than 2m above floor level and an accessway meeting a vehicular way adjacent to any pedestrian entrance to a building. Any screen or scoreboard in a Class 9b capable of displaying public announcements must be capable of supplementing any public address system, other than one used for emergency warning purposes only.



Design Detail	<p>TGSI's complying with AS/NZS1428.4.1-2009 shall be installed in this project as necessary, but shall include to areas as follows –</p> <ul style="list-style-type: none"> any overhead obstruction less than 2m above floor level. top and bottom of stairways (except fire-isolated stairways). Top and bottom of ramps (except kerb and step ramps). <p>Compliance capability is readily achievable during construction.</p>
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BCA Clause D3.9 – Wheelchair seating spaces in Class 9b assembly buildings

Where fixed seating is provided in a Class 9b assembly building, wheelchair seating spaces complying with AS 1428.1 must be provided in accordance with BCA Table D3.9.

N/A	No class 9b fixed seating proposed.
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BCA Clause D3.10 – Swimming Pools

Not less than one means of accessible water entry/exit in accordance with Specification D3.10 for each swimming pool required by Table D3.1 to be accessible (Refer to Table D3.1 'Class 2' common area requirements).

An accessible entry/exit must be by means of –

- a fixed or movable ramp and an aquatic wheelchair; or
- a zero-depth entry at a maximum gradient of 1:14 and an aquatic wheelchair; or
- platform swimming pool lift and an aquatic wheelchair; or
- a sling-style swimming pool lift.

Latching devices on gates and doors forming part of a swimming pool safety barriers need not comply with AS 1428.1

N/A	No swimming pools proposed.
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BCA Clause D3.11 – Ramps

On an accessway; a series of connected ramps must not have a combined vertical rise of more than 3.6 m; and a landing for a step ramp must not overlap a landing for another step ramp or ramp.

Complies	The proposed ramps do not rise more than 3.6m nor any step ramps have been detailed.
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BCA Clause D3.12 – Glazing on an Accessway

Where there is no chair rail, handrail or transom, all frameless or fully glazed doors, sidelights, including any glazing capable of being mistaken for a doorway or opening, shall be clearly marked for their full width with a solid contrasting line.

The contrasting line shall be not less than 75mm wide and shall extend across the full width the glazing panel. The lower edge of the contrasting line shall be located between 900mm and 1000mm above the plane of the finished floor level.

Any contrasting line on the glazing shall provide a minimum of 30% luminance contrast when viewed against the floor surface or surfaces within 2m of the glazing on the opposite side.

Design Detail	<p>All full height glazed doors, sidelights and walls forming part of an accessway must be clearly marked in accordance with AS 1428.1-2009.</p> <p>Compliance capability is readily achievable during construction.</p>
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2.3 SECTION E – SERVICES & EQUIPMENT

Ref: 17378 – R1.1

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Part E3 – Lift Installations

BCA Clause E3.6 – Passenger Lifts

Every passenger lift must:

- be one of the types identified in Table E3.6a, subject to the limitations on use specified in the Table; and
- have accessible features in accordance with Table E3.6b; and
- not rely on a constant pressure device for its operation if the lift car is fully enclosed.

Design Detail	<p>The proposed passenger lifts shall have the following features –</p> <ul style="list-style-type: none"> ▪ Handrail complying with the mandatory handrail provisions of AS1735.12, ▪ Lift floor dimensions not less than 1,400mm x 1,600mm as the lifts' vertical travel is greater than 12m otherwise if lift vertical travel is less than 12m then internal lift car dimensions shall be 1,100mm x 1,400mm (NOTE – Other BCA provisions may require greater lift floor dimensions i.e. lift may need to accommodate stretcher facility. BCA consultant / certifier to confirm at CC stage), ▪ Minimum clear door opening complying with AS1735.12, ▪ Passenger protection system complying with AS1735.12, ▪ Lift landing doors at the upper landing, ▪ Lift car and landing control buttons complying with AS1735.12, ▪ Lighting in accordance with AS1735.12, ▪ Any lift serving more than 2 levels: <ul style="list-style-type: none"> - Automatic audible information within the lift car to identify the level each time the car stops, - Audible and visual indication at each lift landings to indicate the arrival of the lift car, - Audible information and audible indication required by the points above to be provided in the range of between 20-80 dB(A) at a maximum frequency of 1500Hz, ▪ Emergency hands-free communication, including a button that alerts a call centre of a problem and a light to signal that the call has been received. <p>A design compliance certificate should be obtained from the lift designer to confirm compliance with the relevant provisions of the BCA and Australian Standards.</p> <p>Consideration should be given to lift control buttons and the like (no less than 500mm from an internal corner).</p>
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2.4 SECTION F – HEALTH & AMENITY

Part F2 – Sanitary & Other Facilities

BCA Clause F2.4 – Accessible Sanitary Facilities

In a building required to be accessible:

- Accessible unisex sanitary compartments must be provided as per Table F2.4(a),
- At each bank of toilets where there is one or more toilets in addition to an accessible unisex sanitary compartment at that bank of toilets, a sanitary compartment suitable for a person with an ambulant disability in accordance with AS 1428.1 must be provided for use by males and females.
- An accessible unisex sanitary compartment must contain a closet pan, washbasin, shelf or bench top and adequate disposal of sanitary towels.
- Circulation spaces, fixtures and fittings of all accessible sanitary facilities must comply with AS1428.1.



- Where two or more of each type of accessible unisex sanitary facility are provided, the number of left and right handed mirror image facilities must be provided as evenly as possible.
- An accessible unisex facility must be located so that it can be entered without crossing an area reserved for one sex.

**Design
Detail**

The base building accessible unisex sanitary toilet on ground floor is suitably provided in size, number and location.

All fixtures and fittings inside this toilet shall accord with Cl. 15 of AS 1428.1-2009.

Refer to summary of Clause 15 & 16 of AS1428.1-2009 provided at **Appendix 1** to assist the team during construction.



3.0 ADAPTABLE HOUSING (AS 4299) – TECHNICAL REVIEW SUMMARY

The purpose of this report part is to identify any areas of non-compliance with the architectural design in terms of the AS 4299-1995 (Adaptable Housing) *Essential Class C* Requirements. The following table details the compliance status of the architectural design against the aforementioned criteria.

The table identifies compliance assessment outcomes into one of four (4) categories, as follows –

<u>Complies</u>	– Design compliance is achieved.
<u>Satisfied</u>	– Compliance is achieved through compliance with requirements detailed in Section 2.0 of this assessment report (BCA requirements).
<u>Does not comply</u>	– A compliance departure requires rectification. Resolution options are provided.
<u>Subject to</u>	– Commentary is provided. Such should not be considered deficiencies, but matters for compliance at relevant design &/or construction stage.

Note/s:

1. Rockdale City Council DA No. DA-2015/289 – DA Condition 39 requires six (6) adaptable residential units to be provided, specifically units – 202, 302, 502, 602, 702 and 802 are nominated to be adaptable. **The design suitably reflects this DA condition - Complies.**
2. Rockdale Development Control Plan 2011 – 'Part 4.5.1: Housing Diversity and Choice' requires 10% of all dwellings to be adaptable and compliant with AS 4299 – **The provided 6x adaptable units suitably reflects the DCP requirement.**
3. Rather than repeating Access criteria in the below summary; where cross-over occurs between the Access requires of BCA and AS4299, then a simple comment is made ... *Satisfied by Access Report.*

AS 4299 – Essential Class C Requirements	Clause No.	Commentary
DRAWINGS		
Provision of drawings showing the housing unit in its pre-adaption and post-adaption stages along with a description of how the adaptation is to be achieved.	2.3	Post adaptable plans have been suitably provided.
SITING		
A continuous accessible path of travel from street frontage and vehicle parking to entry complying with AS 1428.1.	3.3.2	Subject to compliance with Part 2.0 of this report.
LETTERBOXES		
Letterboxes to be on hard standing area connected to an accessible pathway.	3.8	Compliance is readily achievable during construction. The letterboxes are to be located as per this clause.
PRIVATE CAR ACCOMMODATION		
<ul style="list-style-type: none"> ▪ Garage to have min. area 6.0m x 3.8m. ▪ A 2.5m internal vertical clearance (desirable not essential). 	3.7.2	<p>Per commentary under BCA Clause D3.5 in Section 2.0 of this report, BCA holds nil requirements for accessible carparking in a Class 2 building.</p> <p>The technical carparking requirements and trigger for adaptable dwellings is AS 4299.</p>



AS 4299 – Essential Class C Requirements	Clause No.	Commentary
		<p>Rockdale Council DCP 2011 dictates that adaptable units are required and must comply with AS 4299.</p> <p>The detailed design indicates 6 x (3.8m wide by 6m long) carspaces assigned to the 6x adaptable dwellings. This is a suitable design outcome and prescriptively compliant with the requirements of this clause and Rockdale City Council DCP.</p>
ACCESSIBLE ENTRY		
<ul style="list-style-type: none"> ▪ Accessible entry. ▪ Threshold to be low-level. ▪ Landing to enable wheelchair manoeuvrability. ▪ Accessible entry door to have 850mm min. clearance. ▪ Door lever handles and hardware to AS 1428.1 clause 11.1 door to be unlocked and opened with one hand. ▪ Where lever handles are provided, the clearance between the handle and the back plate or door face at the centre of the handle shall be not less than 35 mm and not more than 45 mm. 	4.3.1 4.3.2 4.3.4	<p>Doorway circulation space, opening width and flush threshold to the adaptable unit entry doors are suitably detailed.</p> <p>All other required features are readily capable of being achieved during construction.</p>
INTERIOR: GENERAL		
<ul style="list-style-type: none"> ▪ Internal doors of each of the adaptable housing units shall have a clear door opening width greater than 820mm. ▪ Internal corridors require minimum of 1000mm width ▪ Provision for compliance with AS 1428.1 for door approaches. 	4.3.3 4.3.7	<p>Compliance readily capable of being achieved at post adaption stage.</p>
LIVING ROOM & DINING ROOM		
<ul style="list-style-type: none"> ▪ Provision for circulation space of min. 2250mm diameter. ▪ A telephone outlet shall be provided adjacent to a GPO. ▪ Artificial lighting per AS 1680.1 	4.7.1 4.7.4 4.10	<p>Living rooms are suitably sized to accommodate required circulation space.</p> <p>Compliance capability shall be provided during construction for all other required features.</p>
KITCHEN		
<ul style="list-style-type: none"> ▪ Minimum width 2.7m (1,550mm clear between benches). ▪ Provision for circulation at doors to comply with AS1428.1. ▪ Provision for benches planned to include at least one work surface of 	4.5.1 4.5.2 4.5.4 4.5.5 4.5.6 4.5.6(c)	<p>Kitchens are suitably sized to accommodate required circulation space.</p> <p>Compliance capability shall be provided during construction for all other required features.</p>



AS 4299 – Essential Class C Requirements	Clause No.	Commentary
<p>800mm length, adjustable in height from 750mm to 850mm or replaceable. Refer to Figure 4.8.</p> <ul style="list-style-type: none"> Refrigerator adjacent to work surface. Kitchen sink adjustable to heights from 750mm to 850mm or replaceable. Kitchen sink bowl max. 150mm deep. Tap set capstan or lever handles or lever mixer. Tap set located within 300mm of front of sink. Installation of thermostatic mixing valve. Cooktops to include either front or side controls with raised cross bars. Cooktops to include isolating switch or gas stop valves which can be easily and safely operated while the cooktop is in use. Worksurface min. 800mm length adjacent to cooktop at same height. Oven located adjacent to an adjustable height or replaceable work surface. Locate handles towards the top of below bench cupboards and towards the bottom of overhead cupboards. Provide 'D' pull handles. At least one double GPO within 300mm of front of worksurface. GPO for refrigerator to be easily reachable when the refrigerator is in its operating position. Slip-resistant floor surface. 	<p>4.5.6(e) 4.5.6(f) 4.5.7 4.5.8 4.5.11</p>	
MAIN BEDROOM		
At least one bedroom of area sufficient to accommodate queen size bed and wardrobe and circulation space requirements of AS 1428.2.	4.6.1	Main bedrooms are suitably sized to accommodate 1x queen sized bed, wardrobe and suitable circulation space.
BATHROOM		
<ul style="list-style-type: none"> Provision for bathroom area to comply with AS 1428.1; circulation spaces at doors and around WC pans, washbasins and showers shall be able to be provided without major plumbing changes. Slip-resistant floor surface. 	<p>4.4.1 4.4.2 4.4.4(f) 4.4.4(h)</p>	<p>Main bathrooms are suitably sized and located.</p> <p>Capped services and wall strengthening shall be provided for future adaptation.</p> <p>Compliance capability shall be provided during construction for all other required features.</p>



AS 4299 – Essential Class C Requirements	Clause No.	Commentary
<ul style="list-style-type: none"> Shower recess-no hob. Minimum size 1,160mm x 1,100mm to comply with AS1428.1 (refer Figures 4.6 and 4.7). Shower area waterproofed to AS 3740 with floor to fall to waste. Recessed soap holder. Shower waste min. 80mm diameter. Provision for adjustable, detachable hand-held shower rose mounted on a slider grabrail or fixed hook (plumbing and wall-strengthening provision). Provision for grabrail in shower (refer to Figure 4.7 in AS 4299) to comply with AS 1428.1. Provision for folding seat in shower to comply with AS 1428.1. Taps sets to be capstan or lever handles with single outlet. Installation of thermostatic mixing valve. Provision for washbasin with clearances to comply with AS 1428.1. Wall cabinet with light over or similar. Double GPO beside mirror. Potential illumination level 300 lux generally with 600 lux task lighting. 		
TOILET		
<ul style="list-style-type: none"> Provision of either 'visitable toilet' or accessible toilet. Provision to comply with AS 1428.1. Location of WC pan at correct distance from fixed walls. Provision for grab rail zone. Slip resistant floor surface. <p>Note – A visitable toilet is a toilet which has a space of minimum 1250mm in front of the toilet pan x 900mm wide clear of door swings and fixtures.</p>	4.4.1 4.4.2 4.4.3 4.4.4(h)	Visitable toilets at the pre-adaptable unit configuration are suitably detailed.
LAUNDRY		
<ul style="list-style-type: none"> Provision for adequate circulation space in front of or beside appliances (min. 1550mm depth). To have a slip-resistant floor surface and where practicable, extend under cabinets to allow later adaptation. Task lighting above workspaces should be installed. Double GPO. Provision for an automatic washing machine. 	4.8 4.8(a) 4.8(c) 4.8(d) 4.8(f) 4.8(g) 4.8(h)	Laundry cupboards are suitably sized and located. Compliance capability shall be provided during construction for all other required features.



AS 4299 – Essential Class C Requirements	Clause No.	Commentary
<ul style="list-style-type: none"> ▪ Provision for a clothes drier mounted at a suitable height (preferably floor mounted) ▪ Where a clothes line is provided, an accessible path of travel shall be provided to the clothes line. ▪ Provision of a shelf at maximum 1200mm above the floor. 		
DOOR LOCKS		
<ul style="list-style-type: none"> ▪ Doorways to feature door hardware installed at between 900mm - 1100mm above the finished floor. ▪ Doorways to feature lever or D-pull style door hardware. ▪ All cupboard doors to have D-pull hardware. ▪ All lockable external doors in the housing unit should be keyed alike, including any garage doors, storeroom door and the like. 	4.3.4	Compliance capability is readily achievable during post-adaptation stage.



4.0 CONCLUSION

This report identifies the compliance status of the S96 Submission / Construction Certificate architectural design with the following –

- Relevant accessibility related 'deemed-to-satisfy' (DTS) requirements of the Building Code of Australia (BCA) 2016. These provisions are generally contained within Part D3 and Clause(s) E3.6 & F2.4 of the code.
- The Disability (Access to Premises – Building) Standards 2010 (Premises Standards);
- Rockdale City Council DA No. DA-2015/289 – Access Related DA Conditions 23 and 39.
- Rockdale Development Control Plan 2011 – 'Part 4.5.1: Housing Diversity and Choice'

The outcome of the report highlights that the current design is capable of compliance with a combination of the accessibility related Deemed-to-Satisfy provisions of the BCA and the BCA Performance Requirements as nominated under Sections 2.0 and 3.0 of this report.



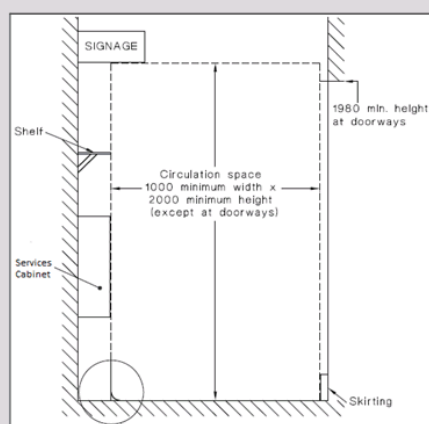
APPENDIX 1 – TECHNICAL SPECIFICATION(S)

BCA Clause D3.1 –

Summary of AS1428.1-2009 Requirements for accessways

Continuous accessible path of travel –

All paths of travel shall achieve unobstructed heights and widths in accordance with cl. 6 of AS 1428.1 – see diagram below for detail.



Doorways / Doors –

- (i) All doorways shall have a minimum luminance contrast of 30% between –
 - door leaf and door jamb;
 - door leaf and adjacent wall;
 - architrave and wall;
 - door leaf and architrave;
 - door jamb and adjacent wall.
- (ii) The minimum width of the area of luminance contrast shall be 50mm,
- (iii) Door hardware should be generally located between 900-1100mm from the floor and be of lever type with a clearance between the handle and the door face at the centre of the handle being not less than 35mm and not more than 45mm in accordance with AS1428.1-2009,
- (iv) Doors shall have a clear opening width of 850mm.
- (v) Door handles and related hardware shall be of the type that allows the door to be unlocked and opened with one hand. The handle shall be such that the hand of a person who cannot grip will not slip from the handle during the operation of the latch.
- (vi) 'D' type handles shall be provided on sliding doors.
- (vii) Any snibs shall have a lever handle of a minimum length of 45 mm from the centre of the spindle.
- (viii) For doors (other than fire doors and smoke doors) where a door closer is fitted, the force required at the door handle to operate the door shall not exceed the 20N,
- (ix) Where an outward opening door is not self-closing, a horizontal handrail or pull bar shall be fixed on the closing face of a side-hung door,
- (x) The location of controls for doors and gates above a level surface shall be provided as per Clause 13.5.3.
- (xi) Manual controls for power-operated doors shall be located no closer than 500 mm from an internal corner and between 1000 mm to 2000 mm from the hinged door leaf in any position or clear of a surface-mounted sliding door in the open position.
- (xii) Push-button controls shall have a minimum dimension of 25 mm diameter and be proud of the surface and shall activate the door before the button becomes level with the surrounding surface.



Floor or ground surfaces on continuous accessible paths of travel and circulation spaces –

- (i) A continuous accessible path of travel and any circulation spaces shall have a slip-resistant surface. The texture of the surface shall be traversable by people who use a wheelchair and those with ambulant or sensory disability.
- (ii) Abutment of surfaces shall have a smooth transition. Design transition shall be 0mm, however, construction tolerances are as follows –
 - $0 \pm 3\text{mm}$ vertical change in level – see Figure 1
 - $0 \pm 5\text{mm}$ change in level provided the edges have a beveled or rounded edge to reduce the likelihood of tripping – see Figure 2
 - Various tolerances for raked joint pavers – see Figure/s 3a - level surfaces, 3b - irregular surfaces & 3c - domed surfaces.



Figure 1

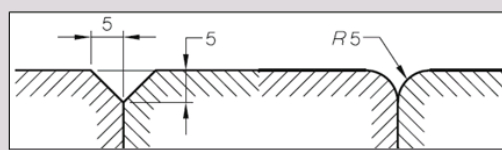


Figure 2

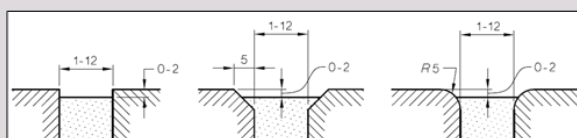


Figure 3a – For continuous paving units – level surfaces

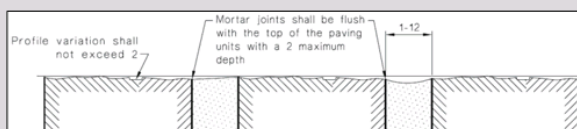


Figure 3b – For continuous paving units – irregular surfaces

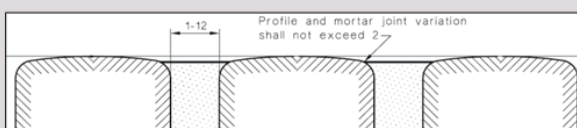


Figure 3c – For continuous paving units – domed surfaces

- (iii) Where carpets or any soft flexible materials are used on the ground or floor surface –
 - The pile height or pile thickness, shall not exceed 11mm and the carpet backing thickness shall not exceed 4mm,
 - Exposed edges of floor covering shall be fastened to the floor surface and shall have a trim along the entire length of any exposed edge,
 - At the leading edges, carpet trims and any soft flexible materials shall have a vertical face no higher than 3mm or a rounded beveled edge no higher than 5mm or above that height a gradient of 1:8 up to a total maximum height of 10mm.
- (iv) Matting recessed within an accessible path of travel –
 - Where of metal and bristle type construction or similar, its surface shall be no more than 3mm if vertical or 5mm if rounded or beveled, above or below the surrounding surface; and



- Where of a mat or carpet type material, shall have the fully compressed surface level with or above the surrounding surface with a level difference no greater than 3mm if vertical or 5mm if rounded or beveled.

Switches and Controls –

- (i) All new switches and controls, other than power points, shall be located not less than 900mm nor more than 1100mm above the finished floor and not less than 500mm from internal corners.
- (ii) Rocker action and toggle switches shall be provided in accordance with Clause 14.2 in accessible residential sole-occupancy units.

BCA Clause D3.3 –

Summary of AS1428.1-2009; Clause 10 & 11 Requirements (Ramps & Stairs)

Clause 10.2 – Walkways

Walkways shall comply with the following:

- The floor or ground surface abutting the sides of the walkway shall provide a firm and level surface of a different material to that of the walkway at the same level of the walkway, follow the grade of the walkway and extend horizontally for a minimum of 600 mm unless one of the following is provided:
 - Kerb in accordance with Figure 18.
 - Kerb rail and handrail in accordance with Figure 19.
 - A wall not less than 450 mm in height.
- Landings at top and bottom and at:
 - 25m intervals or less for 1:33,
 - 15m intervals or less for 1:20,
- For walkways shallower than 1 in 33, no landings are required.

Clause 10.5 - Threshold ramps

- Threshold ramps at doorways to have a max. rise of 35mm, max length of 280mm, max gradient of 1:8 and be located within 20mm of the door leaf.
- Edges of the threshold ramp shall be tapered or splayed at max 45° if not abutting a wall.

Clause 10.6 - Step ramps

- Step ramps shall have max. rise of 190mm, max. length of 1.9m, max. gradient of 1:10.
- Edges of the step ramp to have 45° splay where there is pedestrian traffic or otherwise be protected by suitable barrier such as a min. 450mm wall or kerb / kerb rail with open balustrade.
- Step ramps to have slip-resistant surfaces.

Clause 10.8 - Landings

Landings for walkways (up to 1:33) and ramps shall comply with one of the following:

- min. 1.2m if no change in direction as per Figure 25(A),
- min. 1.5m where change in direction not exceeding 90° internal corner to be truncated for min. 500mm in both directions as per Figure 25(B),
- 180° turn, landing as per Figure 25(C).
- Landings for step ramps shall be min. 1.2m in length as per Figure 22(A) and (B). Where a change in direction, the length of the step ramp landing to be min. 1.5m as per Figure 22(A). At doorways, landings as per Clause 13.3 for circulation spaces at doorways shown in Figure 25(D).
- Landings at kerb ramps shall be min. 1.2m in length, or 1.5m X 2.0m at 'T' junctions. Where a single change in direction is required, landings to be min. 1.5m X 1.5m.

Clause 11.1 - Stair construction

Stairs to be constructed as follows:

- Set back min. 0.9m from boundary,
- Where intersection is at an internal corridor, the stair to be set back as per Figure 26(A),
- Have opaque risers,



- Nosings shall not project beyond the face of the riser and the riser may be vertical of 25mm backwards splay,
- Nosing profiles to have a sharp intersection, be rounded up to 5mm radius or be chamfered up to 5mm x 5mm,
- 50mm – 75mm strip to full length of nosing, set back a max. 15mm from the front of the nosing, with a 30% min. luminance contrast. If not set back, luminance contrast to extend down the riser by max 10mm.
- TGSIs installed as per AS1428.4.1.

Clause 11.2 - Stairway handrails

Handrails to be continuous throughout the stair flight and around landings and have no obstructions 0.6m above, and as follows:

- Design & construction as per Clause 12,
- Installed both sides,
- No vertical sections and shall follow angle of the stairway nosings,
- Extend at bottom of stairs one stair tread depth and min. 300mm horizontally, (300mm extension not required if handrail is continuous,
- Dimensions of heights of handrails taken vertically from the nosing or landing to the top of the handrail.

Clause 12 - Handrails

Design and construction to comply with:

- Handrails and balustrades shall not encroach into required circulation,
- Circular or elliptical cross-section, not less than 30mm or more than 50mm for more than 270°. Elliptical handrails to have greater horizontal dimensions,
- Exposed edges or corners have min. radius of 5mm,
- Top of handrail to be between 865mm and 1.0m above nosing or landing,
- Height to be constant throughout,
- If balustrade is required at a height greater than the handrail, both shall be provided,
- Handrails to be securely fixed and rigid with ends turned through a total of 180°, or to the ground, or returned fully to end post or wall face (Figures 26 C and D),
- Min. 50mm clearance to adjacent wall or other obstruction, for a height of 600mm,
- Handrails to have no obstructions to the passage of a hand along the rail,
- Inside handrail at landings to always be continuous as per Figure 28(a).

BCA Clause F2.4 –

Summary of AS1428.1-2009 requirements for Accessible & Ambulant Sanitary Facilities

Water Taps – Must have:

- Taps shall have lever handles, sensor plates or other similar control,
- Lever handles to be min. 50mm clear from adjacent surface,
- Where hot water is provided, the water to be delivered through the mixing spout.

WC pan clearances

- WC pan clearance including set-out, seat height and seat width as per Figure 38 of AS1428.1.

Seat – As follows:

- full round type with minimal contours,
- be securely fixed when in use,
- seat fixings that create lateral stability,
- load rated to 150kgs,
- min. luminance contrast of 30%.

Backrest – As follows:

- be capable of withstanding 1100 N,
- height to the lower edge of backrest to the top of the WC pan of 120mm to 150mm,
- vertical height of 150mm-200mm and a width of 350mm and 400mm,
- front edge of the centre of the backrest to be at an angle of 95° to 100°.



Flushing control

- Flushing controls shall be user activated, either hand operated or automatic. Hand-operated controls to comply with Figure 40, or on the centre-line of the toilet within the vertical limit zone. Controls within this zone shall not be within the area required for grabrails.
- Controls shall be proud of the surface and activate the flush before being level with the surrounding surface.

Toilet paper dispenser

- Toilet paper dispenser to be located within zone specified in Figure 41. Dispenser shall not encroach on required grabrail clearances.

Grabrails

- Concealed, high level cisterns or flush valves require a continuous grabrail across the rear wall and the side wall closest to the pan as per Figure 42.
- Low-level non-concealed cistern or flush valves require the grabrail to terminate each side of the cistern as per Figure 42.

Circulation space – Shall be as per Figure 43 of AS1428.1-2009, except for the following intrusions:

- Toilet paper dispenser,
- Grabrails,
- Washbasins with 100mm intrusion,
- Hand dryers and towel dispensers,
- Soap dispensers,
- Shelves,
- Wall cabinets with 150mm intrusion, mounted between 0.9m and 1.25m,
- Clothes hanging devices,
- Portable sanitary disposal units (Figure 43),
- Other wall mounted fixtures with 150mm intrusion, mounted between 0.9m and 1.25m.
- The overlapping of circulation space shall be in accordance with Clause 15.6.

Baby change tables

- Where installed, baby change tables shall not encroach into the required circulation space when in the folded position and have a max height of 820mm with clearance underneath of min. 720mm when open.

WC doors

- To be either hinged or sliding,
- Outward-opening doors shall have a mechanism to hold in the closed position without the use of a latch,
- Doors provided with an in-use indicator and a bolt or catch. If fitted with a snib, the snib handle is to be min. length of 45mm from the centre of the spindle.
- Latch mechanism are to be openable from the outside in the case of an emergency.
- Force required as per Clause 13.5.2(e),
- Door handles and hardware as per Clause 13.5.

Washbasins for unisex accessible sanitary facilities

- A hand-washing facility shall be provided inside the toilet cubicle

Washbasins – As follows:

- Shall be located inside the cubicle,
- Washbasin outside pan circulation,
- Water taps as per Clause 15.2.1,
- Exposed hot water supply pipes to be insulated or located so as not a hazard,
- Projection of washbasins from wall and taps, bowl and drain outlet as per Figures 44 (A) and (B),
- Water supply pipes and waste outlets not to encroach on required clear space under basin.
- Each washbasin fixture to have unobstructed circulation space as per Figure 46, or Figure 45 for SOU's.

Mirrors

- Mirror to be located above or adjacent to washbasin.



- Where provided, a vertical mirror with a reflective surface not less than 350mm wide to extend from a height not less than 0.6m to not more than 1.85m.
- In an accessible residential unit, the mirror to be centred over the washbasin.

Shelves – To be provided adjacent to washbasin, as follows:

- A vanity top at a height of 800mm-830mm and min. width of 1200mm and depth of 300mm-400mm without encroaching circulation space,
- A separate fixture, within any circulation spaces at a height of 0.9m-1.0m, and external to all circulation space 0.79m-1.0m.

Soap dispensers, towel dispenser and similar fittings

- Soap and towel dispensers and hand dryers shall be operable by one hand and installed so the operative component or outlet between 0.9m and 1.1m and no closer than 0.5m from an internal corner.

Clothes-hanging devices

- A clothes-hanging device shall be installed 1.2m to 1.35m high and not less than 0.5m from an internal corner.

Sanitary disposal unit

- Where provided, sanitary disposal units to be as per Figure 43 for portable units or 0.5m from the pan for recessed units.

Switches and general purpose outlets

- Where provided near the washbasin, switches and GPOs to be located as per Clause 14 and as close to the shelf as possible.

Showers

- Shower recesses and circulation space to a height not less than 0.9m as per Figure 47. Grabrails, shower hose fittings, taps, soap holder, shelf and seat are the only fixtures permitted in these spaces.

Circulation spaces in accessible sanitary facilities

- Circulation spaces in accessible sanitary facilities shall be in accordance with Clause 15.2.8 and Figures 43-47 and 50.
- Circulation spaces, including door circulation space, may be overlapped.
- Fixtures shall not encroach circulation space except:
 - a. Washbasin in WC circulation as per Figure 43,
 - b. Washbasin in shower circulation as per Figure 50,
 - c. Washbasin in door circulation as per Figure 51(A) and 51(B).
- Clearances beneath washbasin as per Clause 15.3.

Summary of AS1428.1-2009 requirements for Ambulant Sanitary Facilities

General

- Ambulant sanitary facilities shall be in accordance with Figures 53(A) and 53(B).

Grabrails

- Grabrails shall be installed in accordance with Clause 17 and Figure 53(A).

Doors

- Doors to sanitary compartments for people with ambulant disabilities shall have openings with a minimum clear width of 700 mm, and shall comply with Figure 53(B).
- Doors shall be provided with an in-use indicator and a bolt or catch. Where a snib catch is used, the snib handle shall have a minimum length of 45 mm from the centre of the spindle. In an emergency, the latch mechanism shall be openable from the outside.

Coat hook

- A coat hook shall be provided within the sanitary compartment and at a height between 1350 mm to 1500 mm from the floor.

Bayside Planning Panel

26/06/2018

Item No	6.3
Application Type	Development Application
Application No	DA-2017/168
Lodgement Date	08/11/2016
Property	356-368 Forest Road, Bexley
Ward	Bexley
Owner	Mr & Mrs Ribar and Ribar Catering Equipment Pty Ltd
Applicant	AR Design
Proposal	Construction of a six (6) storey mixed use development comprising 22 residential units and 2 ground floor commercial tenancies, basement car parking, demolition of existing structures and strata subdivision
No. of Submissions	Fifteen (15)
Cost of Development	\$8,067,886.86
Report by	Senior Assessment Planner

Officer Recommendation

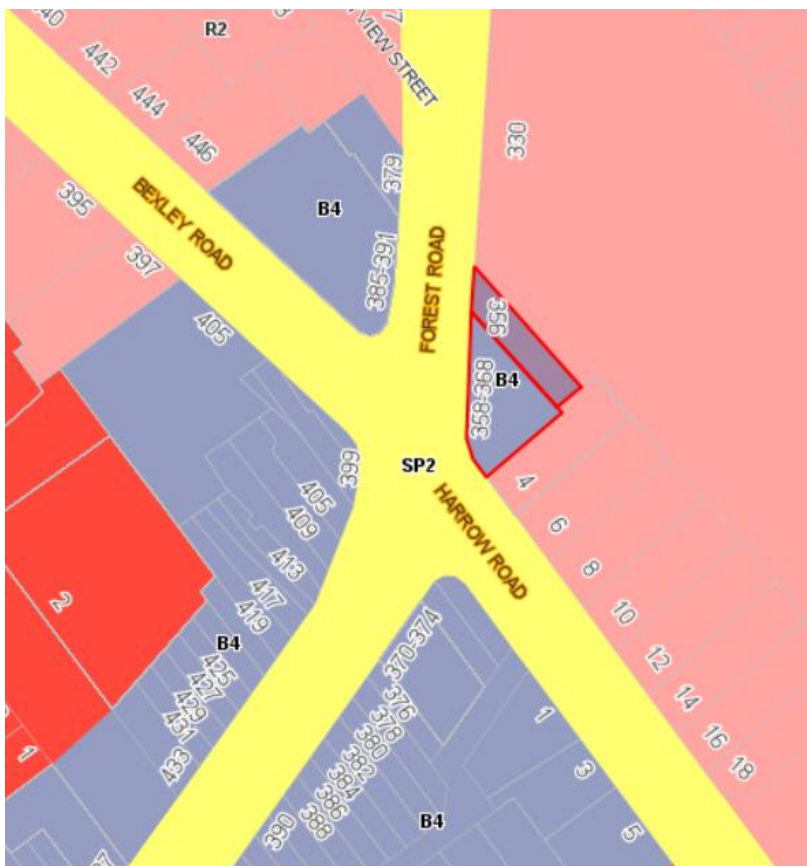
- 1 That the Bayside Planning Panel support the variation to the height development standard, as contained in Clause 4.3 – Height of Rockdale LEP 2011, in accordance with the request under clause 4.6 of RLEP 2011 submitted by the applicant.
 - 2 That the Bayside Planning Panel support the variation to the FSR development standard, as contained in Clause 4.4 – Floor Space Ratio of Rockdale LEP 2011, in accordance with the request under clause 4.6 of RLEP 2011 submitted by the applicant.
 - 3 That development application DA-2017/168 for the construction of a six (6) storey mixed use development comprising 22 residential units, 2 ground floor commercial tenancies, basement car parking, demolition of existing structures and strata subdivision be subject to a DEFERRED COMMENCEMENT consent, pursuant to Section 4.15(1)(3) of the Environmental Planning and Assessment Act 1979, subject to the conditions of consent attached to this report and satisfaction of the following matters;
 - i Submission of a Wind Report confirming wind amelioration measures required on site.
 - ii Submission of revised architectural plans, which illustrate:
 - a All required wind amelioration measures for the development.
 - b Unit 5 - Highlight or fixed obscure windows (not film) to both bedrooms and the living room with a minimum sill height of 1.7m. Fixed 1.8m high angled privacy screen to the eastern end of the balcony.
-

- c Units 4 / 9 / 14 / 19 - Highlight or fixed obscure windows (not film) to living rooms with a minimum sill height of 1.7m. Fixed 1.8m high angled privacy screens to the eastern end of balconies.
 - d Integration of fire booster / hydrant within the building envelope.
 - e Provision of security access details to the driveway, loading / unloading area and basement level.
 - f Details of air conditioning units to residential units.
 - g Toilet and shower facilities provided to commercial tenancies.
- iii Submission of a revised Landscape Plan which illustrates:
- a Additional screen planting along the common boundary with 4 Harrow Road in lieu of a pedestrian walkway.
 - b Relocation of accessible ramp away from the common boundary with 4 Harrow Road.
 - c Details of fencing to delineate between communal open space and the adjoining outdoor area to retail space 1 at ground level.
 - d Productive gardens shall be incorporated into the deep soil area on site.
 - e Vegetation and proposed landscaping/fencing must not hinder driver sightlines to/from the driveway to road users on Forest Road.

The period of the Deferred Commencement is six (6) months from the date of determination.

- 4 That objectors be notified of the Bayside Planning Panel's decision.

Location Plan



Attachments

- 1 Planning Assessment Report
- 2 Site Plan
- 3 Roof Plan
- 4 Landscape Plan
- 5 Streetscape Elevations
- 6 North and South Elevations
- 7 Sections and Schedules
- 8 Existing Shadow Diagrams
- 9 Proposed Shadow Impact
- 10 Clause 4.6 Height of Buildings
- 11 Clause 4.6 FSR [↓↓↓↓↓↓↓↓↓↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/168
Date of Receipt:	8 November 2016
Property:	356 Forest Road, BEXLEY (Lot A DP 356310) 358 - 368 Forest Road, BEXLEY (Lot 1 DP 500135)
Owner(s):	Mr Peter Ribar Mrs Suzanna Ribar Ribar Catering Equipment Pty Ltd Mr Ilo Ribarovski Mrs Katina Ribarovski
Applicant:	AR Design
Proposal:	356 & 358-368 Forest Road BEXLEY NSW 2207 - Construction of a six (6) storey mixed use development comprising 22 residential units and 2 ground floor commercial tenancies, basement car parking, demolition of existing structures and strata subdivision
Recommendation:	Deferred commencement
No. of submissions:	15
Author:	Fiona Prodromou
Date of Report:	8 June 2018

Key Issues

The subject site is zoned B4 Mixed Use under Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposed commercial and shop top housing development is permissible with consent.

The proposed development seeks to vary the maximum 16m height standard on site. The proposal comprises a height of 18.3m - 18.8m to the rooftop and 19.65m to the top of the lift and stair over run. This is a variation of 14.3% - 22.8%. The height variation as proposed, is supported in this instance for the reasons outlined within this report.

The proposed development seeks to vary the maximum 2:1 FSR standard on site. The proposal comprises an FSR of 2.05:1, which equates to a surplus floor area of 48.1sq/m on site, being a 2.9% variation. The FSR variation as proposed, is supported in this instance for the reasons outlined within this report.

The proposal indicates a variation to the building separation requirements of the Apartment Design Guide, whereby the ADG stipulates that at the boundary between a change in zone to a low density area, the building setback is to be increased a further 3m. The proposal illustrates a 6m setback up to level 5, with a 6m - 9m setback at level 6. This is therefore not strictly in accordance with the

requirements of the Design Criteria of the ADG, however is deemed suitable for the reasons detailed within this report.

The proposal illustrates variations to the provisions of DCP 2011 with regard to wind amelioration, unit mix, location of air conditioning units and hot water systems, car wash dimensions and percentage of commercial floor space within the development. These matters have been discussed within this report and are worthy of support.

The development application was notified in accordance with Council's Development Control Plan 2011. A total of fifteen (15) submissions were received in relation to the proposed development.

The proposal is recommended for Deferred Commencement Approval subject to the conditions attached to this report.

Recommendation

(A) That the Bayside Planning Panel support the variation to the height development standard, as contained in Clause 4.3 – Height of Rockdale LEP 2011, in accordance with the request under clause 4.6 of RLEP 2011 submitted by the applicant.

(B) That the Bayside Planning Panel support the variation to the FSR development standard, as contained in Clause 4.4 – Floor Space Ratio of Rockdale LEP 2011, in accordance with the request under clause 4.6 of RLEP 2011 submitted by the applicant.

(C) That development application DA-2017/168 for the construction of a six (6) storey mixed use development comprising 22 residential units, 2 ground floor commercial tenancies, basement car parking, demolition of existing structures and strata subdivision be subject to a DEFERRED COMMENCEMENT consent, pursuant to Section 4.15(1)(3) of the Environmental Planning and Assessment Act 1979, subject to the conditions of consent attached to this report and satisfaction of the following matters;

i) Submission of a Wind Report confirming wind amelioration measures required on site.

ii) Submission of revised architectural plans, which illustrate:

- a) All required wind amelioration measures for the development.
- b) Unit 5 - Highlight or fixed obscure windows (not film) to both bedrooms and the living room with a minimum sill height of 1.7m. Fixed 1.8m high angled privacy screen to the eastern end of the balcony.
- c) Units 4 / 9 / 14 / 19 - Highlight or fixed obscure windows (not film) to living rooms with a minimum sill height of 1.7m. Fixed 1.8m high angled privacy screens to the eastern end of balconies.
- d) Integration of fire booster / hydrant within the building envelope.
- e) Provision of security access details to the driveway, loading / unloading area and basement level.
- f) Details of air conditioning units to residential units.
- g) Toilet and shower facilities provided to commercial tenancies.

iii) Submission of a revised Landscape Plan which illustrates:

- a) Additional screen planting along the common boundary with 4 Harrow Road in lieu of a pedestrian walkway.
- b) Relocation of accessible ramp away from the common boundary with 4 Harrow Road.
- c) Details of fencing to delineate between communal open space and the adjoining outdoor area to retail space 1 at ground level.
- d) Productive gardens shall be incorporated into the deep soil area on site.
- e) Vegetation and proposed landscaping/fencing must not hinder driver sightlines to/from the driveway to road users on Forest Road.

The period of the Deferred Commencement is six (6) months from the date of determination.

(D) That objectors be notified of the Bayside Planning Panel's decision.

Background

History

The applicant presented their initial scheme comprising a 7 storey building with 29 units and 2 retail tenancies to the Design Review Panel (DRP) in February of 2016, prior to the lodgement of the DA. The DRP at this meeting raised concerns in relation to the constraints of the site, building form proposed, excessive density, height, insufficient communal areas, lack of deep soil zones, poor amenity and aesthetics.

In March 2016, the applicant presented 4 built form options to the DRP. The DRP reviewed the options and noted non compliances with these schemes in relation to height, FSR and setbacks. The applicant was advised that any height / fsr variation sought would need to be justified. The DRP noted that two options should be developed further and resubmitted to the panel for review.

8 November 2016

DA submitted to Council proposal sought approval for the demolition of existing structures and construction of a 7 storey development incorporating 2 retail tenancies at ground level, 30 residential units (18 x 1 bed / 12 x 2 bed) , basement car parking, amalgamation of 2 lots and strata subdivision.

10 November 2016

Additional information requested of applicant, including Geotechnical report, clarification of RL's, car parking numbers, potential impact on services within public domain i.e. red light camera and bus stop on Forest Road, schedule of colours / finishes, location of boosters, clarification of gross floor area etc. The applicant was further advised to contact Telstra in relation to the proposed Telstra pits along the frontage of the site.

21 November - 7 December 2016

Public notification of DA. Nine (9) submissions opposing the proposal were submitted.

16 November 2016

DA reviewed by the DRP. The DRP noted that the built form had been improved yet a number of issues remained in relation to proposed height / fsr variations, solar access impacts, residential amenity, architectural expression, poor communal open space provision, poor housing mix, safety and security.

21 December 2016

Applicant submits revised architectural and landscape plans to Council for review following receipt of DRP comments.

9 and 24 January 2017

Detail sought of applicant on 10 November 2016 once again requested to enable a thorough assessment of the proposal. Applicant response provided on 24th January, with revised plans submitted on 27 January 2017.

10 April 2017

Letter sent to applicant raising concerns in relation to revised plans, specifically noting that DRP concerns have not been addressed, height and FSR remain excessive, heritage considerations have not been taken into account i.e. school building adjoining site to the north, deficient car parking provision, lack of on site loading / unloading / waste collection bay, lack of car wash bay, visual privacy and overshadowing impacts, unacceptable unit mix, poor storage / laundry provision to units, tight corridor width, lack of detail with respect of services, engineering / stormwater issues, lack of detail and inconsistencies in plans.

23 June 2017

Lodgement of amended plans and information to Council. Plans resulted in various modifications, those most noticeable were the deletion of the 7th floor, recessed the sixth level, reduced units from 30 to 22 and modification to the architectural design, expression and layouts.

20 July 2017

Review of final revised plans by the DRP. The DRP noted the revised scheme is generally supported by the panel subject to recommendations to improve design / architectural expression, amenity and improvements to landscape design.

26 September 2017

Final revised plans were submitted to Council in response to DRP comments. These plans are the subject of this assessment.

25 January 2018

Applicant submission of revised Clause 4.6 statement for FSR & Height, and shadow analysis.

Proposal

Construction of a six (6) storey mixed use development comprising 22 residential units and 2 ground floor commercial tenancies, basement car parking, demolition of existing structures and strata subdivision.

Given the triangular dimensions of the subject site, the proposal comprises a triangular building on site and incorporates as follows:

Basement 4

Vehicular / pedestrian circulation, residential wire mesh storage cages, 10 residential car spaces, lift and fire stair access.

Basement 2 / 3 (per floor)

Vehicular / pedestrian circulation, residential wire mesh storage cages, 9 residential car spaces (including 1 accessible), lift and fire stair access.

Basement 1

Vehicular / pedestrian circulation, two retail storage rooms, water tank, 5 car spaces (1 car wash bay / 1 accessible retail space), garbage rooms, 3 motorbike spaces, lift and fire stair access.

Ground Floor

Two retail spaces (49.6sq.m / 95.8sq.m), residential lobby entrance from Forest Road, 8 bicycle spaces, lift / fire stairs and pedestrian circulation spaces, open communal area comprising a deep soil zone adjoining common boundary of site with 4 Harrow Road, incorporating stepping stones, groundcovers, shrubs, ferns, 1 x tree (Eumundii Quandong) and timber bench seating. The outdoor communal area in the north eastern corner of the site incorporates an artificially turfed area, communal seating and a bbq facility. An awning is proposed to the Forest and Harrow Road frontages.

A loading / unloading & waste collection bay, bin presentation area, bulk waste store and plant rooms are also located at ground level.

Levels 1 / 2 (5 units per floor)

Lift / fire stair, pedestrian circulation and lobby, services duct, garbage chute, 2 x 2 bed / 1 x studio / 2 x 1 bed with associated balconies. Planter box proposed adjoining units 4/9 on the south eastern façade comprising ground covers (pigface) with 0.2m height.

Levels 3/4 (5 units per floor)

Lift / fire stair, pedestrian circulation and lobby, services duct, garbage chute, 2 x 2 bed / 1 x studio / 2 x 1 bed with associated balconies. Planter box proposed adjoining units 4/19/24/29 on the south eastern façade comprising ground covers (pigface) with 0.2m height.

Level 5 (2 units)

2 x 3 bedroom units with associated lift and stair access, lobby and waste chutes. Planters are proposed along the periphery of this level adjoining the building walls and private open space areas. Planters incorporate a range of climbers, grasses, ground covers, shrubs and 1 x Dragon Blood Tree.

Vehicular access is proposed via Forest Road adjoining the northern common boundary of the site with Bexley Primary School. Associated storm water and landscape works are proposed on site. The building elevation fronting Forest Road incorporates laser cut decorative screens and associated louvres for weather protection.

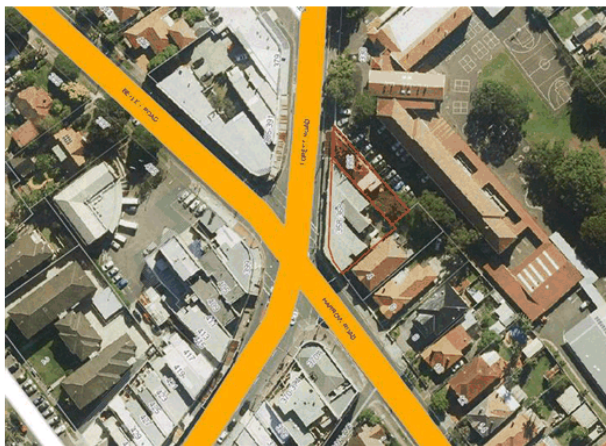




Site location and context

The site is located in the B4 Mixed Use zone, and also within the “Bexley Special Precinct” under Council’s Development Control Plan 2011. The subject site is located on the corner of Forest Road and Harrow Road, a busy intersection of two Classified (RMS) roads. A bus stop is located immediately in front of the site on Forest Road.

The site is generally triangular in shape, with its primary frontage to Forest Road (33.86m), and only a small secondary frontage of 9.805m to Harrow Road. The site has an area of approximately 815sq/m. The site is generally flat and contains some grass and one tree in the rear of No. 356 Forest Road (see aerial photo). Some mature trees are also located nearby the site within the rear yard of No. 2-4 Harrow Road & the Bexley Public School site. Existing development on the site includes two storey buildings containing a range of retail premises at ground floor level.



Aerial Context

The surrounding area is characterized by older two storey shop top housing style developments in Bexley Town Centre, however a number of more recent mixed use and multi-storey developments have been recently completed in the locality. To the south of the site on Forest Road are a mix of two storey flat buildings, dual occupancy and detached residential dwellings.

The site is not a heritage item, however it was located in a Conservation Area under the previous LEP.

The site adjoins Item 130 (Bexley Primary School at 330 Forest Road) and is located opposite Item 131 (Original Bexley School Buildings at 339-377 Forest Road).



Subject site viewed from intersection Harrow / Forest Roads



Two storey commercial / shop top housing opposite the site



View south to Bexley Town Centre



View further to the north up Forest Road (School on right)

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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 a BASIX Certificate for the proposed development. The Certificate number is 771235M_02 and the commitments made result in the following reductions in energy and water consumption:

Reduction in Water Consumption 40
Thermal Comfort Pass
Reduction in Energy Consumption 20

A condition has been imposed on the consent to ensure that these requirements are adhered to.

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 - Development with frontage to classified road

The subject site is located at the junction of Harrow and Forest Roads in Bexley. Both the aforementioned roads are classified roads and are under the control of the Roads and Maritime Service. As the site has direct frontage to a classified road, the provisions of this clause apply and must be considered before consent can be granted.

At present the site comprises nil vehicular access from either street frontage and thus nil parking for the existing ground level shops and first floor dwellings.

The proposed development involves access to and from the site via a 15m wide angled driveway crossing to Forest Road. The proposed driveway adjoins the northern boundary of the site with Bexley Public School. Nil secondary access to the site exists. The proposed driveway access narrows to 5.1m at the roller shutter, then widens to beyond the shutter to enable two way entry to the basement.

Accordingly, the proposal has been sent to the Roads & Maritime Service (RMS). The RMS seeks to impose conditions of consent in order to avoid right hand turns into and out of the site from Forest Road. The RMS has responded granting approval for the development subject to several conditions of consent, which have been imposed on the draft Notice of Determination. Conditions include the addition of signage within the public domain i.e. No Right Turn, Left Turn Only & relocation of the existing red light camera, which will be subject to further approval under the Roads Act following the determination of the DA.

The application is consistent with the provisions of the SEPP and is acceptable in this regard.

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

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

for residential use:

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

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

The proposal was accompanied by an Acoustic Report, prepared by Acoustic Logic and dated 12/10/2016, which considered the potential impact of road noise on the proposed development.

The report concludes that the development will satisfy the noise level requirements as outlined in the SEPP, should the recommendations in the report be incorporated into construction. Accordingly, the recommendations have been incorporated as conditions in the draft Notice of Determination.

Clause 45 - Works within the vicinity of electricity infrastructure

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

Accordingly, the proposal was referred to Ausgrid. The authority did not respond in due course and as

such concurrence has been assumed. Standard conditions of consent have been imposed on the draft Notice of Determination. The application is consistent with the provisions of the SEPP and is acceptable in this regard.

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 submitted survey plan indicates an existing tree within the rear north eastern corner of the site. This tree is proposed to be removed as part of the proposed works on site. Councils Tree Management Officer noted that the subject tree is insignificant in the landscape and may be removed.

Plans illustrate the provision of a 6m wide deep soil zone adjoining the common side boundary with the two storey block of flats upon 4 Harrow Road. This area is intended to be planted with a range of groundcovers, shrubs and trees i.e. jacaranda, smooth barked apple, capable of growing to a substantial height.

In this regard, the amenity of the area will be preserved and accordingly, the proposed development is satisfactory in regards to the provisions and objectives of the SEPP.

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 was referred to the Design Review Panel on several occasions, 4 February, 16 March and 16 November 2016. Following numerous revisions, the panel reviewed the final scheme on 20th July 2017. The DRP supported the scheme subject to additional revisions. The proposal has been assessed below.

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

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

Principle 1 – Context and Neighbourhood Character

The subject site is zoned B4 Mixed Use and located to the north of the identified Bexley Town Centre, of which a large number of similarly zoned properties remain undeveloped to their full potential. Current planning controls permit shop top housing developments of a greater height and density than existing building forms. Properties directly adjoining the site to the east are zoned R2 low density residential and can facilitate redevelopment up to a maximum height of 8.5m.

The proposed development is setback a minimum of 6m from common property boundaries with eastern and northern neighbouring properties and has been designed to present as a 5 storey building form, with the 6th level recessed. Recessing the top floor of the development reduces the visual

prominence, bulk and scale of the development and minimises adverse impacts to eastern neighbours.

The proposal in its current form has been designed to respond to the constraints and opportunities of the site. The proposal is deemed contextually appropriate as it does not result in unreasonable adverse impacts to neighbours as discussed in this report, provides an appropriate streetscape response and interface with the R2 zone to the east and is consistent with the future desired character of the adjoining Bexley Town Centre.

The DRP raised no objection to the proposal with respect of context and neighbourhood character. The proposal is satisfactory with regards to this principle.

Principle 2 – Built Form and Scale

The revised design was generally supported by the Panel. The Panel recommends:

- *Slightly increasing the curvature of the balconies at each end of the Forest Road elevation to be tangential to the adjoining facades.*
- *Removing the lower windows on each floor of the elevation facing the school.*
- *Increasing the proportion of solid (or translucent/frosted) in the curtain wall part of the south elevation to reduce the potential for overlooking of the adjacent site.*
- *There are a number of inconsistencies between plans and elevations that should be corrected.*

With respect of the DRP comments, it is noted:

- Curvature of balconies has been addressed.
- Lower windows have since been deleted.
- Modifications have been made to the south eastern elevation. Notwithstanding concerns remain with respect of overlooking, these have been discussed below in 3F - Visual Privacy and the proposal conditioned further.
- Inconsistencies in plans have been resolved.

Whilst the proposal seeks a variation to the FSR and height standards for the site, the bulk, scale and massing of the development fits appropriately within the anticipated future desired character of the area, including the Bexley Town Centre, as is permitted by the current planning controls.

The development incorporates a height of 5 storeys, positioned a minimum of 6m from common boundaries, with the 6th level recessed further. Recessing the top floor and utilising various materials and dark tones to this level will reduce the perceived bulk, scale and height of the development when viewed from the public domain and neighbouring properties.

The proposed development is not dissimilar to recent approvals in context of the site, specifically, 1-3 Harrow Road which was recently approved by the Land and Environment Court. The overall height, mass and bulk of the development does not generate adverse impacts which cannot be managed via appropriate conditions of consent referred to below.

Given the above, the proposal is satisfactory with regards to this principle.

Principle 3 – Density

The DRP confirmed that the density of the proposal was acceptable. The proposal has been designed with appropriate modulation and building depth which allows for proposed residential units to obtain appropriate solar access and ventilation. The proposed density is capable of being accommodated upon the subject site and as conditioned, the proposal will not result in adverse environmental impacts on site or to neighbours. The proposal satisfies this principle.

Principle 4 - Sustainability

The Panel noted that the design achieves acceptable sustainability taking into account BASIX and the ADG however there were still significant opportunities for further sustainability above and beyond those minimums (e.g. PV Solar generation, rainwater harvesting, productive gardens etc.)

The proposed development provides optimal solar access and cross ventilation to units, with generous landscaped areas on site. The proposal was accompanied by a BASIX certificate which confirms energy efficiency measures proposed to be implemented on site. Additionally plans illustrate the provision of a 20 000 litre rainwater tank on site. The landscape plan can be further improved via the incorporation of productive gardens and as such the proposal will be conditioned accordingly. The proposal as conditioned is satisfactory with respect to this principle.

Principle 5 – Landscape

The DRP stated that landscaping on site should:

- a) Provide vegetative screening to boundaries.*
- b) Relocate the ramp on the southern boundary away from the boundary.*
- c) Resolve the public domain design of the public outdoor space at the corner of Forest Road and Harrow Road within the site used by the café/retail space.*

With respect to the above it is noted:

- a) Screen vegetation and planting has been provided along the communal open space area in the north eastern corner of the site. Planting includes a range of ground covers and trees (Lillypilly / Rush Like Strelitzia) with a mature height of 1.5m - 2m and spread of 1m - 2m. Notwithstanding, the provision of screen planting along the common boundary with 4 Harrow Road could be further improved via the deletion of proposed stepping pads adjoining the boundary and provision of further planting. The proposal will be conditioned accordingly.
- b) The landscape plan has not relocated the ramp away from the common boundary with 4 Harrow Road. The proposal will be conditioned accordingly to ensure this occurs.
- c) Plans illustrate the provision of a tiled outdoor area adjoining retail space 1, with a hydrant and booster, at the junction of Forest and Harrow Road. Proposed tiled finish to the ground level within the boundary is acceptable, however the proposal will be further conditioned to ensure the booster / hydrant is relocated and integrated into the building envelope.

Finally, plans illustrate the provision of a 125.2sq/m deep soil zone adjoining the common side boundary with the two storey block of flats upon 4 Harrow Road. This area is to be planted with a range of groundcovers, shrubs and trees i.e. jacaranda, smooth barked apple, capable of growing to a substantial height. The proposal provides more than double the minimum deep soil zone required by the Apartment Design Guide and this area is designed appropriately so as to accommodate a range of landscaping which will provide amenity to both future occupants and visual outlook to the existing

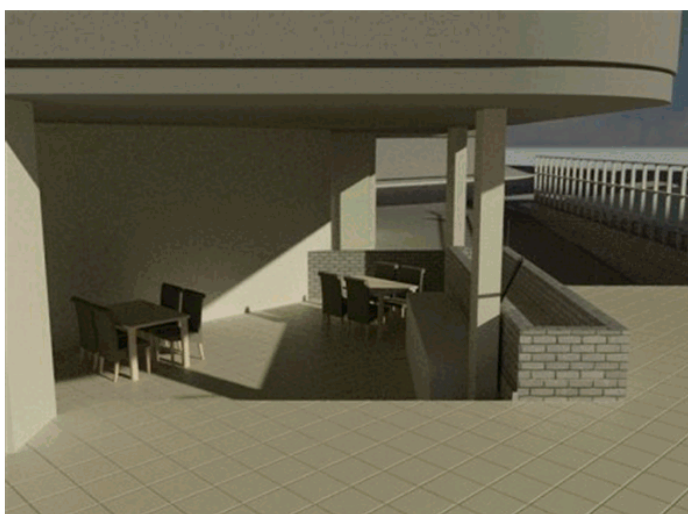
neighbouring building upon 4 Harrow Road.

As conditioned, the proposal is deemed satisfactory with respect of this Principle.

Principle 6 – Amenity

The DRP noted that the proposal provides acceptable amenity.

The proposed development satisfies the solar access and cross ventilation requirements of the ADG. Units, habitable rooms and balconies are of adequate size and dimensions and appropriate storage has been provided within dwellings. An appropriately oriented and dimensioned communal open space area is provided on site, at ground level with an adjoining open communal area with a kitchenette and bbq facilities which will encourage social interaction between future occupants.



Rendering of proposed COS area

The proposal as designed will ensure that a satisfactory level of amenity is afforded to future residents, without adversely compromising the amenity of neighbouring properties.

Principle 7 - Safety

The DRP noted that the driveway and loading / unloading areas should be secured, so as to maximise safety and minimise areas of concealment.

Plans do not clarify whether vehicular access gates or an intercom is proposed and as such the proposal is unclear in this regard. Notwithstanding, the proposal is subject to conditions which require the provision of further information to clarify this matter, as part of a deferred commencement approval.

Further to the above, the proposal will be conditioned to require the provision of CCTV security cameras at the residential entry and basement levels, with clear directional signage to be provided on site to advise users of security measures in place. As conditioned, the proposal is satisfactory in regards to the requirements of this principle.

Principle 8 - Housing Diversity and Social Interaction

The DRP noted that the proposal provides an acceptable mix of residential dwellings on site.

The design of the development and proposed unit mix provides for varied housing choice for a variety of household types including multigenerational families. The development is designed to provide an appropriately sized and designed communal area at ground level with various spaces including an artificially turfed area, naturally landscaped space and open communal area with bbq and kitchenette facilities which will encourage different uses of these spaces and provide opportunities for social interaction between future occupants.

Principle 9 – Aesthetics

The DRP noted that the proposed aesthetic of the development is acceptable.

The proposal incorporates a varied palette of colours and materials to create visual interest when viewed from the public domain. Materials proposed include but are not limited to face brick, laser cut screens, marine plywood, glass balustrades and dark materials and tones to the top recessed level. These materials will provide a modern, contemporary, high quality and visually appealing development on site.

c. Apartment Design Guide

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 Criteria	Comments	Complies
3B - Orientation	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% If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy.	See discussion below.	Yes
3D - Communal and public open space	Min 25% (203.75sq/m) of site 50% (101.8sq/m) direct sunlight to principal useable part for 2 hours in midwinter between 9am - 3pm	230sq/m communal area at ground level. Direct sunlight to 50% or greater of COS area provided from 10am - 3pm given north easterly orientation.	Yes

3E - Deep Soil Zones	7% (57sq/m) site with minimum 3m dimensions			125.2sq/m deep soil zone adjoining common boundary with 4 Harrow Road. Dimensions of this area exceed 3m	Yes
3F - Visual Privacy	Height	Habitable / Habitable	Non habitable	6m - 9.6m eastern and northern side boundaries	No See discussion below.
	12m (4 storey)	6m	3m		
	25m (5-8 storey)	9m	4.5m		
Further to the above, the ADG stipulates that at the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m.					
4A – Solar and daylight access	Living rooms + POS of at least 70% (16 of 22) of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter			16 of 22 units (72.7%) receive min 2 hours solar access in midwinter	Yes
	Max 15% (4 of 22) apartments receive no direct sunlight b/w 9am & 3pm mid-winter			Nil units receive no direct sunlight in midwinter	Yes
4B – Natural ventilation	Min 60% (14 of 22) of apartments are naturally cross ventilated in the first nine storeys of the building.			18 of 22 (81.8%) cross ventilated	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.			<18m glass line to glass line	Yes

4C – Ceiling heights	Min ceiling heights:		2.7m floor to ceiling to all residential levels including Level 1. This is deemed to be satisfactory at level 1, given the provision of appropriate commercial floor space at ground level and the unlikely use of the first floor for commercial purposes following any strata subdivision of the development.	Partial
	Habitable	2.7m		
	Non-habitable	2.4m		
	Mixed use	3.3m ground & first floor		
4D – Apartment size and layout	Unit	Min Area	Unit sizes compliant	Yes
	Studio	35M ²		
	1 bed	50M ²		
	2 bed	70m ²		
	3 bed	90m ²		
4E – Private open space and balconies	Unit	Min area	Satisfactory balcony sizes	Yes
	1 bed	8m ²		
	2 bed	10m ²		
	3+ bed	12m ²		
4F – Common circulation and spaces	Max apartments off a circulation core on a single level is eight.		Maximum 5 units off circulation core	Yes
4G – Storage	Unit	Volume	Appropriate inter unit storage provision, supplementary in basement	Yes
	1 bed	6M ²		
	2 bed	8m ²		
	3 bed	10m ²		

Non Compliance

3B - Orientation

The provisions of this clause state that where an adjoining property i.e. 4 Harrow Road, does not currently receive the required hours of solar access (2 hours in midwinter to habitable rooms / private and communal open spaces), the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.

Consideration has been given to the existing and proposed levels of solar access afforded to neighbouring sites and the zoning and redevelopment potential of these properties.

It is important to note that the existing buildings on the subject site are 2 storeys in height and positioned 1.2m - 1.5m from the common south eastern boundary with 4 Harrow Road. The proposed development will be positioned a minimum of 6m from the common boundary with 4 Harrow Road.

4 Harrow Road, Bexley

This property comprises as follows;

- a) Two storey residential flat building, 1.2m from common boundary with the site site. This building comprises 4 residential dwellings, with two at ground level and two at level 1. Units run the length of the building with a central stairwell core.

Existing shadow diagrams illustrate that the rear communal open space and windows upon the north western façade are in full sunlight at 9am and 10.30am. By 11am, a portion of the north western façade of this flat building is overshadowed by existing buildings upon the subject site. From 12pm onwards, the entire north western façade of 4 Harrow Road is overshadowed. As a result it is evident that as existing the north western façade of this building currently receives 1.5 hours of solar access in midwinter.

The rear communal open space of 4 Harrow Road, as existing, retains more than 3 hours of solar access in midwinter. Being in substantial to full sun from at 11am - 2.30pm in midwinter.

Proposed shadow diagrams illustrate that between 9am - 10.30am the north western façade of 4 Harrow Road receives full sun. From 11am onwards the NW façade of 4 Harrow Road is overshadowed by the proposed development. The rear communal open space of this property receives substantial to full sunlight from 11am - 2.30pm in midwinter.

As demonstrated above, with the setbacks as proposed, there is no adverse net decrease to the level of solar access currently afforded to residential dwellings or their rear ground level communal open space, upon 4 Harrow Road. Furthermore, an additional 3m increase to the setback with this common boundary, i.e. provision of a 9m setback, would severely impact the redevelopment potential of the site and this would not likely result in a substantial increase in solar access to this neighbour, greater than that currently obtained.

Given the above, the proposal is deemed satisfactory with regards to the objectives of 3B of the ADG.

6 - 8 Harrow Road Bexley

These properties comprise as follows:

- a) 6 Harrow Road - Single storey residential building with what appears to be 2-3 dwellings
b) 8 Harrow Road - Two storey attached dual occupancy

Existing shadow diagrams illustrate that from 11am - 3pm the rear private open spaces of these properties receive substantial to full sunlight. The proposed development does not alter the aforementioned.

3F - Visual Privacy

The existing 2 storey residential flat building upon 4 Harrow Road is setback 1.2m from the common boundary with the subject site. The proposal illustrates a 6m setback up to level 5, with a 6m - 9m setback at level 6 and is therefore not in accordance with the requirements of the Design Criteria of the

ADG.

With respect to visual privacy, concern is raised in relation to unit 5 at level 1, which has habitable windows and a balcony with direct outlook onto the north western façade of the adjoining residential neighbour. Further to the above, units 4, 9, 14, 19 have living room windows (6m from common boundary) and a balcony, which is positioned 5.2m from the common boundary with this adjoining site.

Given the above, in order to resolve potential adverse privacy impacts, the proposal has been conditioned as part of the Deferred Commencement to require as follows:

- a) Unit 5 - Highlight or fixed obscure windows (not film) to both bedrooms and the living room with a minimum sill height of 1.7m. Fixed 1.8m high angled privacy screen to the eastern end of the balcony.
- c) Units 4 / 9 / 14 / 19 - Highlight or fixed obscure windows (not film) to living rooms with a minimum sill height of 1.7m. Fixed 1.8m high angled privacy screens to the eastern end of balconies.

The above is deemed satisfactory in order to resolve potential privacy issues with the eastern neighbour at 4 Harrow Road.

With respect of overshadowing impacts and building separation, a detailed assessment has been undertaken above. For the reasons noted above, proposed setbacks are deemed satisfactory with respect of visual privacy, building separation and transition.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone B4 Mixed Use	Yes	Yes - see discussion
4.3 Height of buildings	Yes	No - see discussion
4.4 Floor space ratio	Yes	No - see discussion
4.6 Exceptions to development standards	Yes	Yes - see discussion
5.10 Heritage conservation	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.7 Stormwater	Yes	Yes - see discussion
6.11 Active Street Frontages	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

2.3 Zone B4 Mixed Use

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

4.3 Height of buildings

A maximum height limit of 16m applies to the subject site. The proposed development comprises a

maximum height as follows:

- a) 18.3m - 18.8m to the roof
- b) 19.65m to the top of the lift overrun.

As can be seen above, the proposed development has a surplus height of 2.3m - 3.65m to the recessed rooftop of the proposed top level and to the top of the lift overrun, equating to a 14.3% to 22.8% variation to the height limit.

The applicant has requested a variation to the maximum building height requirement. This has been discussed within Clause 4.6 - Exception to Development Standards, within this report. The proposal is considered to be satisfactory with regards to the objectives of this clause for the reasons outlined within Clause 4.6 of this report.

4.4 Floor space ratio

A maximum 2:1 FSR applies to the subject site. This is equivalent to a maximum permitted overall gross floor area of 1630sq/m.

The applicants calculations indicate a gross floor area of 1651.21sq/m, being an FSR of 2.03:1. This equates to a surplus floor area of 21.1sq/m.

The assessing officer has undertaken a manual calculation of plans, inclusive of the bulk waste store room at ground level (27sq/m) which should not be excluded from gross floor area calculations. Given the aforementioned, the proposal comprises a total gross floor area of 1678.2sq/m which equates to an FSR of 2.05:1. This illustrates a surplus floor area of 48.1sq/m.

Given the above, the proposal does not comply with the relevant FSR standard for the site. The proposed FSR variation has been accompanied by a clause 4.6 – Exception to development standards. The applicants 4.6 is supported for the reasons outlined further within this report. The proposal is considered to satisfy the objectives of this clause.

4.6 Exceptions to development standards

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

- (3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and*
- (3)(b) that there are sufficient environmental planning grounds to justify the variation.*

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

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.*
- 5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and*
- 5(b) the public benefit of maintaining the development standard.*

Variations to height and FSR have been assessed below. The proposal has further been assessed against the principles established by the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90. The judgement established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular circumstances of the site and development.

HEIGHT

As noted within Clause 4.3 - Height of Buildings, a maximum height limit of 16m applies to the subject site. The proposed development comprises a maximum height of 18.3m - 18.8m to the rooftop of the recessed top floor and 19.65m to the top of the lift overrun. This is a surplus height of 2.3m - 3.65m, equating to a 14.3% to 22.8% variation to the height limit to a portion of the development.



Yellow denotes additional height

Applicants Height Justification

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

- The breach to the building height control, will not impact on the amenity of the development or adjoining properties, nor will the variation compromise the architecture of the building or the bulk and scale of the development. A degree of flexibility is considered reasonable in this instance.
- The subject site is located at the corner of Forest and Harrow Roads just outside of the Bexley Town Centre. Development within the Bexley Town Centre, located immediately opposite the subject site, are awarded a bonus height and FSR provisions enabling a maximum building height of 19m (16m + 3m) and maximum floor space ratio of 2.5:1 (2.0:1 + 0.5:1). It is unclear why the subject site has been excluded from this area given its proximity and similarly zoned B4 land use.
- In view of the prominent corner location of the subject site, its relationship to the Bexley Town Centre and the availability of local infrastructure and public transport services, the proposed building height would reinforce the corner position of the subject site creating a landmark/gateway development to the town centre.
- The proposed development is of a high architectural design and responds to the constraints of the site and feedback received from the Design Review Panel.
- The proposed development provides for a free standing building which is triangular in its shape to reflect the irregularity of the site. The proposed building provides for consistent 6m setbacks to the side and rear boundaries enabling a clearly defined, modern form that acts as a gateway to the Bexley Town Centre.
- To the upper residential levels, the proposed dark tones of the concrete blockwork will be broken up by acrylic panels, glass balustrading and steel feature cladding providing for visual interest and creating a balance to the perceived bulk and scale of the development.
- The proposal will result in additional overshadowing to the adjoining flat building, particularly in the afternoon period though it is considered that this is a consequence of both the orientation of the site

(given the flat building is located to the south of the subject site) and the higher land use zoning afforded to the subject site (being B4 Mixed Use adjacent to R2 Low Density Residential).

- Deep soil planting is maintained along the eastern side boundary and wraps around to the rear of the building where the site adjoins Bexley Public School and enables a transition between the B4 zoning of the site and residential zoning of the neighbouring properties.

- While the standard has not been abandoned or destroyed, Rockdale Council has varied LEP standards in the past.

Height Discussion

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

a) The 3m height bonus, applies to sites greater than 600sq/m in area within the Bexley Town Centre, further to the south, directly opposite to the west and further to the south west, yet does not apply to the subject site. Notwithstanding, the subject site, given its location at a key intersection and its extent of frontage to Forest Road, visually forms and reads as a part of the Bexley Town Centre.

Whilst the height bonus does not apply to the subject site, it applies to commercially zoned properties directly opposite and within close proximity to the site along Forest Road. The proposed development has been designed to be of a height, bulk and scale which is commensurate with the anticipated future desired character of the Bexley Town Centre and commercially zoned properties fronting Forest Road. It is noted that 385-391 Forest Road Bexley, located directly opposite the site to the west comprises a site area of 1365sq/m. Whilst 385-391 is currently strata subdivided, this site is eligible for the height bonus should redevelopment be considered by the current / future owners.

Given the above, the proposal would provide an appropriate built form and streetscape response in this location and is considered to be satisfactory in this regard.

b) The subject site benefits from good access to public transportation, amenities and services, located further to the south within the town centre i.e. bus stops, supermarket, banks, bakeries etc. The proposed building height, form and scale would be generally consistent with potential future redevelopment of similar sized lots within the Bexley Town Centre which benefit from the bonus height control discussed in (a) above.

c) The subject site is triangular in nature and the proposed building form has been designed to respond to the constraints of the site. The additional building height is recessed into the design of the development, minimizing the visual bulk and prominence of the top level of the development. The top level will not be clearly visible from the public domain of the top at pedestrian level, will not affect the visual perception of the overall built form, nor adversely impact upon the land use intensity of the site.

d) The proposed area of height non compliance is not considered to result in a size or scale of development that is incompatible with the desired future character of Bexley Town Centre.

e) The height of the proposal is not inconsistent with the aims of the Building Height control as referred to within the Apartment Design Guide.

f) The proposed development provides appropriate building separation and transition in height to the

adjoining raised two storey school buildings to the north and two storey residential flat building to the south east. The proposal as designed recesses the top floor of the development 6.7m - 9m from the common northern boundary with the school and 7m - 9.6m to the two storey residential flat building at 4 Harrow Road.

f) The proposal is consistent with the objectives of Clause 4.3 – Height of Buildings of Rockdale LEP 2011 as it maintains satisfactory sky exposure to nearby buildings and the public domain and does not contribute to adverse overshadowing of living / private open space areas of neighbouring properties.

g) The proposal is consistent with the objectives of the B4 Mixed Use zone.

h) The proposal is consistent with objectives of SEPP 65 and is considered to be in the public interest.

Given the site and development circumstances as discussed above, the proposed additional height sought by the applicant is not considered to be unreasonable and is supported in this instance.

FSR

The proposal further seeks to vary the FSR standard for the site as noted in Clause 4.4 FSR. A maximum 2:1 FSR applies to the subject site. This is equivalent to a maximum permitted overall gross floor area of 1630sq/m. The proposal comprises a total gross floor area of 1678.2sq/m which equates to an FSR of 2.05:1. This illustrates a surplus floor area of 48.1sq/m.

Applicants FSR Justification

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

- *The breach to the FSR control, will not impact on the amenity of the development or adjoining properties, nor will the variation compromise the architecture of the building or the bulk and scale of the development.*
- *The proposed development has made specific regard to the form and scale of adjoining properties particularly in view of the differing land use zones. My client has notably acquired all properties within this stretch of the B4 Mixed Use Zone to ensure a holistic redevelopment of the land.*
- *With regards to visual privacy, to the north the proposal provides for a 6m side setback to the shared boundary and adjoins the school's staff car parking area. In this respect, there is no adverse impact to the adjoining site.*
- *To the south, a 6m setback is also proposed to the residential flat building with this area provided as deep soil planting. The residential flat building is notably two storeys in height and accordingly Levels 3 – 7 of the proposed development will overlook the roof of this development rather than any habitable windows. In terms of the two lower levels, the proposed ground floor has been designed as non-residential in its use comprising of retail spaces that are predominantly orientated to the street minimising the potential for any overlooking. The existing side boundary fence will also obstruct sight lines at this level. At Level 1, where windows are proposed off living rooms or bedrooms, they have been designed as either highlight windows or are narrow in their design minimising sight lines. Privacy screens may also be fitted to the balconies of these units further restricting sight lines.*
- *The proposal does not result in adverse additional overshadowing to the adjoining flat building*
- *The proposed development provides for a free standing building which is triangular in its shape to reflect the irregularity of the site. The proposed building provides for consistent 6m setbacks to the*

side and rear boundaries enabling a clearly defined, modern form that acts as a gateway to the Bexley Town Centre.

- The ground floor of the development promotes an active street frontage with large commercial spaces and glazed shopfronts addressing both the Forest and Harrow Road street frontages. The residential lobby is clearly defined to the street and reinforced through a strong vertical element which spans across all of the proposed seven storeys.*
- To the upper residential levels, the proposed dark tones of the concrete blockwork will be broken up by acrylic panels, glass balustrading and steel feature cladding providing for visual interest and creating a balance to the perceived bulk and scale of the development.*
- Deep soil planting is maintained along the eastern side boundary and wraps around to the rear of the building where the site adjoins Bexley Public School and enables a transition between the B4 zoning of the site and residential zoning of the neighbouring properties.*
- The proposal addresses the site constraints, streetscape and relevant objectives of both the standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts.*
- Given the prominent corner location of the subject site, its proximity to the Bexley Town Centre and the availability of local infrastructure and public transport services, the floor space ratio would be read consistently with development to the south, where bonus FSR controls apply.*

FSR Discussion

The applicants written request is satisfactory in regard to addressing clause 4.6(3). Following a review of the application, it is considered that the FSR variation as proposed is acceptable for the following reasons:

- a) Whilst the proposal exceeds the maximum density permitted on the subject site the resulting bulk, scale, mass and form of the development as proposed is entirely consistent with the future desired character of the area. It is noted that sites within the identified Bexley Town Centre may benefit from a 2.5:1 FSR whereby they are amalgamated or greater than 600sq/m in overall area. The subject site can facilitate and accommodate the proposed development, and as designed the proposal is consistent with the future desired character of the locale without resulting in adverse amenity impacts on site or to neighbouring properties.
- b) The extent of the proposed FSR variation is minimal (48.1sq/m) and is not of a scale or extent, that if removed, would significantly alter the overall mass, scale or building footprint of the proposed development. The proposed development has been designed to be of a bulk and scale which is commensurate with the anticipated future desired character of the area, including commercially zoned properties within the Bexley Town Centre, fronting Forest Road. The proposal would provide an appropriate built form and streetscape response in this location and is considered to be satisfactory in this regard.
- c) The subject site benefits from good access to public transportation, amenities and services, located further to the south within the Bexley Town Centre i.e. bus stops, supermarket, banks, bakeries etc. The proposed building form and scale would be less than the potential size of building forms permitted on similar, if not smaller, sized sites within the Bexley Town Centre which benefit from the bonus FSR provisions, permitting a 2.5:1 FSR.
- d) The proposal recesses the development a minimum of 6m from its common northern and south eastern boundaries, complying with the building separation requirements of the ADG. As discussed

earlier in this report, the proposal has been conditioned to require the provision of privacy screens and obscure / highlight windows to units 4, 5, 9, 14 and 19, in order to minimise sightlines and overlooking of the rear communal open space of 4 Harrow Road. Accordingly the proposal does not give rise to adverse privacy impacts and provides appropriate building separation to neighbouring properties.

e) The proposed development will not set an undue precedent given the circumstances of the site and development as noted above.

f) Apartment layouts as designed maximize solar access, cross ventilation and outlook to optimize internal amenity for future occupants.

g) The proposal is consistent with the objectives of Clause 4.4 - FSR.

h) The proposal is consistent with the objectives of the B4 Mixed Use zone.

i) The proposal is consistent with objectives of SEPP 65 and is considered to be in the public interest.

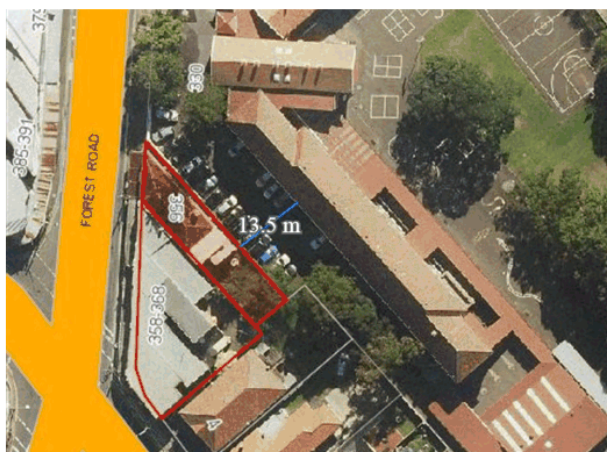
Given the site and development circumstances as discussed above, the proposed additional height and FSR as sought by the applicant in this instance are not considered to be unreasonable. Given the above, the proposal provides for a development that facilitates the orderly economic development of the site in an appropriate manner. The particular circumstances of the site are considered to outweigh strict adherence to the numeric standards presented by the Height and FSR standards within RLEP 2011. It is considered that in this instance, there are sufficient environmental planning grounds and site circumstances in which to justify flexibility of the standard and permit the contravention of the height and FSR standards for the site.

5.10 Heritage conservation

The subject site shares a common boundary with a heritage listed site, known as Bexley Primary School, located at 330 Forest Road. The heritage item is a two storey Inter-War red brick building with steep hipped roof, clad in Marseille patterned tiles. Large double hung timber windows are divided into small panes. The original front façade is oriented at an oblique angle to Forest Road. The school was historically part of the earlier school development across the road.

The school provides physical evidence of the rapid development growth in the area in the early twentieth century. The school has broader significance in that it is representative of State education in Rockdale in the mid twentieth century.

The aforementioned school building is positioned 13.5m from the common boundary with the subject site and is adjoined by an asphalt car parking area. The proposed development is positioned 6m from the common boundary with the adjoining heritage site to the north.



Separation distance to common boundary



Heritage school building

A Statement of Heritage Impact (SoHI) prepared by a suitably qualified heritage consultant has been submitted to Council given the proximity of the heritage item. The SoHI identifies one building on the school site as the heritage item, however the whole of the school site is listed in Schedule 5 of Rockdale Local Environmental Plan. The buildings facing the development site are not the earliest buildings on the school site but they are part of the development history of the site. The development site boundary adjoins the school; there is a car park on the school site next to the boundary which provides a setback of approximately 13.5 metres to the two storey school building.

Council's Heritage Advisor has reviewed the proposal and noted that the proposal will be higher than the school buildings however the 13.5 metre setback and the driveway together make a reasonable separation between the new building and the school. The proposed building has rounded corners which will assist views from Forest Road to the school buildings. Views to the school from Forest Road will not be impacted by the development.

The visibility of the school from Forest Road is limited due to the setbacks and angles of the buildings as well as the sound mitigation barriers. This will not be impacted by the development. The proposed

development has a neutral colour scheme and a modern design which retains the historic pattern of shopfronts with an awning at street level. The development will have an acceptable level of heritage impact.

Given the above the proposal is satisfactory with respect to the provisions of this clause.

6.1 Acid Sulfate Soil - Class 5

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

6.2 Earthworks

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

6.4 Airspace operations

The proposed development is affected by the 51AHD Obstacle Limitation Surface (OLS). The proposed building height at 19.65m (68.650RL) breaches the OLS by 17.65m and as such the proposal was referred to Sydney Airport Corporation Limited (SACL) and the Department of Infrastructure, Regional Development and Cities (DIRDC) for review and comment.

On 8th March 2018, Council received correspondence from DIRDC confirming the above and granting consent for the breach to the OLS, subject to specific conditions of consent, of which have been incorporated into the draft Notice of Determination.

Given the above, the proposal is satisfactory with respect of the objectives of this clause.

6.7 Stormwater

The proposal involves the construction of an above ground on site detention system to manage stormwater in addition to rainwater tanks with overflow directed to the existing street pits in Forest Road. Drainage from the basement carpark and driveway is to be pumped to the OSD system. The proposed stormwater system has been approved by Council's development engineers and is consistent with this clause.

6.11 Active Street Frontages

The subject site is land identified as Active Street Frontage in RLEP 2011 Active Street Frontage Map, and accordingly is subject to clause 6.11. The proposed ground floor of the development incorporates extensive commercial frontage, with direct access to both Harrow and Forest Roads. The proposal is considered to satisfy the requirements of clause 6.11.

6.12 Essential services

Services will generally be available on the site. The proposal is satisfactory in this regard.

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

No relevant proposed instruments are applicable to this proposal.

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:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.2 Heritage Conservation - Vicinity of Heritage Item	Yes	Yes
4.1.3 Water Management	Yes	Yes
4.1.4 Soil Management	Yes	Yes
4.1.7 Tree Preservation	Yes	Yes
4.1.9 Lot size and Site Consolidation - Mixed use	Yes	Yes - see discussion
4.1.9 Lot size and Site Consolidation - isolated sites	Yes	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes	Yes - see discussion
4.4.4 Glazing - General Controls	Yes	Yes - see discussion
4.4.4 Glazing - Commerical	Yes	Yes
4.4.5 Acoustic privacy	Yes	Yes - see discussion
4.4.6 Noise Impact	Yes	Yes
4.4.6 Noise Impact - Non-residential	Yes	Yes
4.4.7 Wind Impact	Yes	No - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	No - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
4.6 Parking Rates - Shop-top Housing	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes
4.6 Basement Parking - General	Yes	Yes
4.6 Driveway Widths	Yes	Yes
4.6 Traffic - Classified Roads	Yes	Yes
4.6 Access to Parking	Yes	Yes
4.6 Design of Loading Facilities	Yes	Yes - see discussion
4.6 Car Wash Facilities	Yes	No - see discussion
4.6 Pedestrian Access and Sustainable Transport	Yes	Yes
4.7 Air Conditioning and Communication Structures	Yes	No - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	No - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.7 Letterboxes	Yes	Yes - see discussion
4.7 Hot Water Systems	Yes	No - see discussion
5.2 RFB - Side Setbacks	Yes	Yes - see discussion
5.2 RFB - Rear Setbacks	Yes	No - see discussion
5.2 RFB - Building Entry	Yes	Yes - see discussion
5.2 RFB - Lift Size and Access	Yes	Yes - see discussion
5.3 Mixed Use - Front Setbacks	Yes	Yes - see discussion
5.3 Mixed Use - Side Setbacks	Yes	Yes
5.3 Mixed Use - Ground Level Uses	Yes	Yes - see discussion
5.3 Mixed Use - Retail	Yes	No - see discussion
5.3 Mixed Use - Commercial	Yes	No - 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 - Awnings	Yes	Yes

4.1.1 Views and Vista

Existing two storey buildings surrounding the site do not benefit from landmark views. Increased setbacks of 6m to common side boundaries with neighbouring properties as proposed, assist in retaining a future view corridor when viewed from the north and east. The proposal is satisfactory in regards to the requirements and objectives of this clause.

4.1.9 Lot size and Site Consolidation - Mixed use

The subject site comprises a frontage of 33.86m to Forest Road and thus complies with the minimum 18m frontage requirement as per the provisions of this clause.

4.1.9 Lot size and Site Consolidation - isolated sites

The proposed development does not result in the isolation of adjoining lots. The proposal is satisfactory in regards to the objectives of this clause.

4.4.3 Natural Lighting and Ventilation - Residential

The proposed development is designed to achieved natural ventilation and lighting, incorporating minimum ceiling heights of 2.7m and 2.4m to habitable and non habitable areas respectively.

4.4.4 Glazing - General Controls

Plans illustrate the provision of appropriately located and designed shading devices to elevations. The proposal is satisfactory in this regard.

4.4.5 Acoustic privacy

The application was accompanied by an Acoustic Report prepared by Acoustic Logic dated 12/10/2016 which considered potential traffic, aircraft and inter dwelling acoustic impacts. The report did not consider mechanical plant given nil detail was available at DA stage. The report noted '*detailed plant selection has not been undertaken at this stage, as plant selections have not been determined. Detailed acoustic review should be undertaken at CC stage to determine acoustic treatments to control noise emissions to satisfactory levels. Satisfactory levels will be achievable through appropriate plant selection and location and, if necessary, standard acoustic treatments*

such as duct lining, acoustic silencers and enclosures."

The report concludes that provided the treatments outlined within the report are implemented the acoustic amenity of future occupants will be maximised. With respect to potential mechanical plant emissions, the proposal will be conditioned to ensure compliance with relevant Australian Standards.

As conditioned the proposal is satisfactory with respect of the provisions and objectives of this clause.

4.4.7 Wind Impact

A wind report confirming that the proposed development has been designed and proportioned to consider wind generation effects has not been submitted with the application. Notwithstanding the proposal can be conditioned to ensure consideration is given and appropriate wind amelioration measures can be incorporated. In this regard, the proposal is subject to a Deferred Commencement Approval, to ensure appropriate wind amelioration measures are considered and implemented on final approved drawings.

As conditioned the proposal satisfies the objectives of this clause.

4.5.1 Social Equity - Housing Diversity and Choice

The development is required to comply with the following unit mix:

DCP Requirement	Proposed	Complies
1 bedroom / Studio	4 x studio	No - 54%
10% (3) - 20% (5)	8 x 1 bed	
2 bedroom	8 x 2 bedroom	No - 36%
50% (11) - 75% (17)		
3 bedroom	2 x 3 bedroom	No - 9%
10% (3) - 30% (7)		

As can be seen above the proposal does not comply with the required unit mix on site. Notwithstanding, the proposal provides a range of housing options within the proposed development which will enable changing lifestyle needs and cater to different household types and income groups. The proposal incorporates a number of smaller unit types which will provide more affordable housing choices within the local government area. The proposal is considered to be consistent with the objectives of this clause and as such a variation in this instance is deemed satisfactory.

4.5.2 Social Equity - Equitable Access

As per the provisions of this clause, a minimum of 2 adaptable dwellings are required within the proposed development. The 8 x 2 bedroom units with the proposed development are capable of appropriate adaptation so as to be accommodated as adaptable units. The proposal thus complies with the provisions and objectives of this clause.

4.6 Parking Rates - Shop-top Housing

As per the provisions of this clause, the following parking rates apply to the proposed development.

DCP Rate	Required	Proposed	Complies
Residential 1 space per studio - 2 bed unit	20 spaces	20 spaces	Yes
2 spaces per 3 bed unit	4 spaces	4 spaces	Yes
Visitor 1 space per 5 units	5 spaces	5 spaces (including car wash bay)	Yes
Commercial 1 space per 40sq.m	4 spaces	4 spaces	Yes
1 x car wash bay	1 space	1 spaces (shared with visitor)	Yes
1 x loading / unloading bay	1 x SRV space	1 space	Yes
<i>Motorbike</i> 1 space per 15 units	2 spaces	3 spaces	Yes
<i>Bicycle</i> 1 space per 10 units	3 spaces	8 spaces	Yes

The proposal satisfies the provisions of this clause.

4.6 Design of Loading Facilities

Plans illustrate the provision of an appropriately dimensioned and located loading, unloading and waste collection area on site. The proposal is thus satisfactory in this regard.

4.6 Car Wash Facilities

The proposal illustrates the provision of a dedicated car wash bay within basement level 1. This proposed space does not comprise sufficient overall dimensions as required by Councils Rockdale Technical Specification Stormwater Management. Plans indicate sufficient area within the vicinity of this space to enable the car wash bay to be appropriately provided. In this regard the proposal has been conditioned to ensure a compliant car wash bay is provided on site. As conditioned the proposal satisfies the requirements of this clause.

4.7 Air Conditioning and Communication Structures

Plans do not illustrate the proposed location of air conditioning units for the development. The proposal will be conditioned to ensure that this detail is provided prior to the issue of the Construction Certificate. The proposal will further be conditioned to require obscure glazing to balconies to ensure that should air conditioning units be located upon balconies that they are obscured from view from the public domain. As conditioned the proposal satisfies the provisions of this clause.

4.7 Waste Storage and Recycling Facilities

Appropriate and separated waste storage provision areas have been provided within the basement levels of the development. The proposal facilitates on site waste collection given its constrained location adjoining two busy roads. The proposal further incorporates garbage chutes for ease of future occupants and users. The proposal is satisfactory in this regard.

4.7 Service Lines/Cables

Plans illustrate the provision of an exposed fire hydrant / booster valve adjoining the side boundary with

4 Harrow Road, within the front of the site. The proposal has been conditioned to require that these services be screened appropriately from view of the public domain. This detail is to be provided to Council for endorsement prior to the issue of the Construction Certificate. As conditioned the proposal satisfies the objective and provisions of this clause.

4.7 Letterboxes

The proposal incorporates a communal letter box location adjoining the main residential entry from Forest Road. The proposal is satisfactory in this regard.

4.7 Hot Water Systems

Nil detail in relation to proposed hot water systems has been provided. As such the proposal has been conditioned to require that all hot water systems/units which are located on the balcony of a dwelling/unit must be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed. As conditioned the proposal complies with the requirements and objectives of this clause.

5.2 RFB - Side Setbacks

As per the provisions of this clause, the following side setbacks are required.

- a) minimum 3m for buildings up to three storeys
- b) minimum 4.5m for all levels above three storeys.

The proposal provides 6m setbacks to common boundaries with both adjoining side neighbouring properties and complies with the provisions of this clause.

5.2 RFB - Rear Setbacks

As per the provisions of this clause, as minimum rear setback of 12m is required.

Given the triangular nature of the site, it is difficult to ascertain the true 'rear' boundary. Furthermore, given the design of the proposed development, the two common boundaries with adjoining neighbours i.e. School and 4 Harrow Road are more akin to side boundaries.

Given the aforementioned a merit assessment has been undertaken, taking into account the building separation requirements of the Apartment Design Guide. Setbacks as proposed, are deemed to be sufficient.

5.2 RFB - Building Entry

The proposed residential building entry to Forest Road is a clearly identifiable element of the building in the street and provides a direct a physical and visual connection between the development and public domain. The proposal is satisfactory in regards to the provisions and objectives of this clause.

5.2 RFB - Lift Size and Access

As per the provisions of this clause, corridors require a minimum width of 2m, with lifts within a building to have minimal internal dimensions of 2.1m x 1.5m. Plans illustrate the provision of a lift with internal dimensions of 2.1m x 2.3m and corridors with a minimum width of 2m. The proposal complies with the requirements of this clause.

5.3 Mixed Use - Front Setbacks

The provisions of this clause require that development is to be built to the street alignment with a zero setback, with the uppermost floor level set back.

The proposal has been designed to align with street frontage boundaries to Harrow and Forest Road, providing for a street wall periphery development. The proposal further recesses the top level (level 6) of the development in order to minimise the bulk and scale of the proposal when viewed from the public domain.

The proposal satisfies the objectives and requirements of this clause.

5.3 Mixed Use - Ground Level Uses

Plans indicate the provision of active uses fronting the public domain at ground level, with a residential entry to Forest Road providing access to residential units at upper levels. The proposal is satisfactory with regards to the requirements and objectives of this clause.

5.3 Mixed Use - Retail

As per the provisions of this clause 10% (163sq/m) of the permitted gross floor area of the development shall be provided as retail floor space. The proposal provides two commercial premises at ground level, activating the street frontage of the site. A total of 145.48sq/m of retail spaces is provided on site. This illustrates a deficiency of 17.52sq/m of retail space.

The proposed variation is relatively minor and as designed, the proposed development provides an appropriate active retail frontage which is continuous and akin to existing retail tenancies on site and those within the Bexley Town Centre.

A minor variation is not deemed unreasonable in this instance and the proposed development is considered to satisfy the objectives of this clause.

5.3 Mixed Use - Commercial

As per the provisions of this clause, commercial premises under 200sqm must have internal access to staff toilets and showering facilities and such facilities may be shared with other tenancies. Whilst plans do not illustrate provision of these facilities, the proposal has been conditioned to require the addition of the aforementioned. As conditioned the proposal complies with the requirements of this clause.

S4.15(1)(a)(iv) - Provisions of regulations

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

Relocation of Bus Stop

The proposal was referred to the State Transit Authority of NSW, given the proposed relocation of the existing public bus stop on Forest Road 15m further to the north in order to accommodate the proposed vehicular crossing on site.

The STA provided a response to Council on 17th October 2017 confirming nil objection to the proposed bus stop relocation subject to conditions of consent to ensure all works are at the applicants expense, works are undertaken in accordance with relevant STA design guidelines and that the STA

are appropriately notified of works a minimum of 4 weeks prior to the commencement of works to relocate the bus stop. The proposal has been conditioned accordingly.

Roads Act 1993

As a result of the location of the proposed development on a classified road, with obstructions in the location of the proposed driveway, including a telegraph pole, red light camera and the bus stop as noted above, the proposal has been conditioned to require that further approval be required under the Roads Act, to facilitate the relocation of the aforementioned in line with relevant requirements and the addition of relevant signage to ensure the functionality of the classified road is not adversely impacted by future occupants and users of the site.

Safety & Security

The development provides a clearly identifiable and legible residential building entry from Forest Road. The residential lobby comprises direct pedestrian access and is glazed to provide a high level of visibility to the street. Residential apartments, communal open space & car parking areas will be accessible via a secure electronic system. Common areas are proposed to be well lit with clearly defined pathways. The proposal is satisfactory in this regard.

Social Impact

The proposal will activate and enhance the public domain and includes residential units of adequate size and mix for the demographics of the locality. Proposed residential units have access to good public transport and the proposal incorporates alternative transportation modes, via the provision of bicycle and motorbike parking. The proposal further provides a well designed and located communal area with facilities which will encourage social interaction between future occupants on site. The proposed development is not considered to result in any adverse social impacts and is satisfactory for the site.

Construction

Construction of the proposed development includes excavation works, piling and the construction of the development. Impacts will be minimized through the use of standard conditions of consent relating to hours of construction, noise, dust suppression traffic management and the like.

S4.15(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. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. 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.

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

The proposal was publicly notified in accordance with DCP 2011. A total of 14 submissions opposing the proposed development were originally received. Following a subsequent reduction in the height and density of the development and resultant design improvements, amended plans and information were not publicly renotified, however have at all times been publicly available online for viewing by the general public. Following the aforementioned, an additional submission was received in relation to revised plans.

Accordingly a total of 15 submissions were received, the following issues were raised.

Excessive height is inappropriate / height is out of character with rest of the street / Proposal is an eyesore / 5 storeys is still too high

Comment: The matter of height and streetscape character and context has been previously discussed within this report. The proposal is satisfactory in this regard.

Excessive FSR and site coverage / overdevelopment of site / Bulk and scale inappropriate / Too many units proposed

Comment: The matter of FSR, density, bulk and scale has been previously discussed within this report. The proposal is satisfactory in this regard.

Impact of noise and construction on students learning to school next door

Comment: Construction noise is temporary and classrooms are positioned in excess of 13m away from the common boundary with the subject site.

Privacy of children in adjoining school

Comment: The proposed development is positioned in excess of 19.5m from the closest school building within Bexley Public School and in excess of 25m away from the playground. The proposal is unlikely to result in adverse privacy impacts onto the school.

Traffic report is inaccurate and misleading / Traffic and car parking impacts / Vehicular conflict with future vehicles turning in and out of proposed driveway / dangerous location of proposed driveway / driveway conflicts with existing bus stop and will cause extra congestion to Forest Road / insufficient parking proposed on site

Comment: The proposal was reviewed by Councils Development Engineer and the Roads and Maritime Service. The proposed vehicular access, is deemed to be satisfactory and the proposal has been conditioned to minimise any vehicular conflicts or queuing onto Forest Road. The proposal complies with the parking requirements of DCP 2011 and accommodates all necessary parking for the development on site within basement car parking levels. The proposal will not generate a level of traffic which is unable to be accommodated within the surrounding road network.

Stormwater impacts to adjoining properties

Comment: The proposal has been designed to appropriately manage stormwater on site.

Location of site at intersection is dangerous

Comment: The site is suitable for the proposed development and the zoning of the property permits an increase in density. The proposal has been designed to maximise safety for future occupants, particularly in relation to vehicular entry and exit from the site.

Insufficient infrastructure to accommodate proposed development

Comment: The subject site is located adjoining the Bexley Town Centre, of which a number of retail premises and local public transport options are available. The site adjoins a local public school and is

also within close proximity to a second private school. The site is suitably located and there is sufficient infrastructure to accommodate the proposed development.

Unacceptable overshadowing from proposed development onto 4 Harrow Road

Comment: The matter of overshadowing has been previously discussed within this report. The proposal does not result in greater overshadowing onto 4 Harrow Road given the 6m setback to the common boundary with this property.

Privacy impacts to 4 Harrow Road and its communal areas

Comment: The matter of privacy has been previously addressed in this report. The proposal has been further conditioned to require screening to balconies and windows of units closest to 4 Harrow Road to further maximise privacy between neighbours.

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 will allow the development of the site in accordance with its environmental capacity. The proposed building is a high quality building that will add architectural value to the existing streetscape. Furthermore, the proposal does not create unreasonable impacts on surrounding properties. As such it is considered that the development application is in the public interest.

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

The proposal has been conditioned to ensure the payment of S94 Contributions as required for the increase in residential density on site.

Schedule 1 - Draft Conditions of consent

General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Drawn by	Dated	Received by Council
Site Plan Issue 22	ardesign	20/09/2017	26/09/2017
Basement 4 Plan Issue 22	ardesign	20/09/2017	26/09/2017

Basement 3 Plan Issue 22	ardesign	20/09/2017	26/09/2017
Basement 2 Plan Issue 22	ardesign	20/09/2017	26/09/2017
Basement 1 Plan Issue 22	ardesign	20/09/2017	26/09/2017
Ground Floor Plan Issue 22	ardesign	20/09/2017	26/09/2017
Level 1 & 2 Floor Plan Issue 22	ardesign	20/09/2017	26/09/2017
Level 3 & 4 Floor Plan Issue 22	ardesign	20/09/2017	26/09/2017
Level 5 Floor Plan Issue 22	ardesign	20/09/2017	26/09/2017
Roof Plan Issue 22	ardesign	20/09/2017	26/09/2017
North / South Elevation Issue 22	ardesign	20/09/2017	26/09/2017
Streetscape Elevations Issue 22	ardesign	20/09/2017	26/09/2017
Sections Issue 22	ardesign	20/09/2017	26/09/2017
Schedule Colours & Finishes	ardesign	-	26/09/2017

3. Department of Infrastructure, Regional Development and Cities

A) The building must not exceed a maximum height of 68.65m AHD, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lightning rods and any rooftop garden plantings, exhaust flues etc.

B) The Proponent must advise Airservices Australia at least three (3) days prior to the controlled activity commencing by emailing ifp@airservicesaustralia.com and quoting SY-CA-545 P2.

C) Separate approval must be sought under the Regulations for any construction equipment (i.e. cranes) required to construct the building. The Department notes that the proponent has proposed a self erecting crane of 68m AHD maximum height, which is below the final height of the building, in order to avoid any impact on the Runway 07/25 Approach and Take Off Surface.

D) At the completion of construction of the building, a certified surveyor is to notify (in writing) Sydney Airports Corporation Limited (SACL) of the finished height of the building.

4. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
5. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
6. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 771235M_02 other than superseded by any further amended consent and BASIX certificate.
Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
 - (a1) that the plans and specifications for the building include such matters as

each relevant BASIX certificate requires.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see <http://www.basix.nsw.gov.au>.

7. A separate development application shall be submitted for the specific use/uses of the property. Additional conditions may be imposed on any such consent.

Note: Parking and loading provisions in a mixed use development may preclude certain uses.

8. Balconies, car spaces and the loading / unloading bay shall not be enclosed at any future time without prior development consent.
9. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
10. Excavation, filling of the site (with the exception of the area immediately under the building envelope), or construction of retaining walls are not permitted unless shown on the approved plans and authorised by a subsequent construction certificate.
11. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S96 application and approval under the EP&A Act.
12. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.
13. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

Allocated Spaces

Studio, 1 bedroom and 2 bedroom apartments 1 space per apartment

3 bedroom apartments 2 spaces per apartment

Commercial Units 1 space per 40m² gross floor area

Non-Allocated Spaces

Residential Visitor Spaces 1 space per 5 apartments

Parking calculations that are not whole numbers must be rounded up to the nearest whole number.

All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the *Environmental Planning and Assessment Act 1979* or a Complying Development Certificate issued in accordance with Part 6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

14. Pumps attached to the development must be housed in a soundproof enclosure.
15. Work Activities on Council Sites - Application Requirements

All contractors shall obtain permits for, and comply with permit conditions during all stages of demolition and construction. Refer to Council "Work Activities on Council

Sites Application Form" to obtain permits for the following activities listed below. Contractors must have a valid permit prior to undertaking any work or activity within the public domain. Fines apply if an activity commences without a valid permit being issued.

- (i) Road, Footpath and Road Related Area Closure (EP05).
This permit will allow the applicant to close a road or part of, footpath or car park to vehicle or pedestrian traffic.
- (ii) Stand and Operate Registered Vehicle or Plant (EP03).
This permit is used when construction activities involve working from a vehicle parked on the street including mobile crane, concrete truck, concrete pump or other similar vehicles.
- (iii) Occupy Road with Unregistered Item (EP02).
This permit will allow the applicant to place unregistered items within the roadway including waste containers and skip bins.
- (iv) Works Zone (EP01).
This permit is used when a statutory work zone is required to conduct construction activities adjacent to the work site. These applications are assessed by Council officers and are referred to the Traffic Committee for approval.
- (v) Scaffolding, Hoarding and Fencing (EP04).
This permit applies to all temporary structures to enclose a work area within the public domain. These include site fencing, types A & B hoarding, type A & B hoarding with scaffolding and type B hoarding plus site sheds.
- (vi) Temporary Shoring/Support (EP09).
This permit will allow the applicant to install temporary support system in or under a public road to support excavation below the existing road surface level. The support systems include ground anchors and shoring.
- (vii) Tower Crane (EP06).
This permit is used when tower crane(s) are used inside the work site and will swing, slew or hoist over Council property or asset.
- (viii) Public Land Access (EP08).
This permit is used by applicants to access or occupy Council land including access over plus access over and occupy any part of Council land.
- (ix) Temporary Dewatering (EP07).
This permit is used when temporary dewatering is required to pump out water from the construction site into Council stormwater drainage system including gutter, pits and pipes. Dewatering management plan and water quality plan are required for this application.

Development specific conditions

The following conditions are specific to the Development Application proposal.

- 16. A total of 24 residential, 4 visitor, 4 commercial / retail car spaces, a minimum of 3 motorcycle parking spaces, a minimum of 4 bicycle parking spaces and 1 car wash bay shared with visitors, must be provided within the development. The parking must be allocated in accordance with the Rockdale Development Control Plan (RDCP) 2011 requirements in accordance with the minimum rates provided in the table below. This parking must be reflected in any subsequent strata subdivision of the development.

Dwelling Size (Proposed No. of units)	Required
Studio / 1 / 2 bed dwellings (20 units)	20 spaces
3 bedroom dwellings (2 units)	4 spaces
Total Residential Spaces	24 (including 2 accessible spaces)
Visitor	5 spaces (including 1 accessible space)
Com. / Retail	4 spaces
Bicycle (Res. + Com.)	4 spaces
Motorcycle	3 spaces
Car Wash Bay	1 (shared with visitor space) 3.5m wide
SRV Loading Bay	1 dedicated space (3.5m headroom)

Notes:

- All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.
- Tandem parking spaces must only be allocated to a single residential unit. The car-wash bays must be connected to the Sydney Water sewer system in accordance with Sydney Water requirements.
- This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

17. Safer by Design

To maximise security in and around the development the following shall be incorporated into the development. Details for the following are to be approved by the Principal Certifying Authority prior to the issue of the Construction Certificate, implemented prior to issue of the Occupation Certificate, and maintained for the lifetime of the development:

- Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas.
- A lighting maintenance policy shall be established for the development. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 - Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.
- Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
- Graffiti resistant materials shall be used to ground level external surfaces.
- Intercom facilities shall be installed at all vehicular and pedestrian entry/exit points to enable residents to communicate and identify with people prior to

- admitting them to the development.
- f) The front window of the ground floor tenancy must be kept free of shelves, and a maximum of 15% of the window display area may be covered with promotional materials to ensure passive surveillance is maintained to and from the tenancy.
18. Approval for the footpath dining is not expressed or implied and a separate approval is required for the footpath dining. In this regard you are advised to contact Council to obtain a copy of the licensing agreement entitled *Outdoor Dining Licensing Agreement*.
19. All loading, unloading and transfer of goods to and from the loading bay and premises shall take place wholly within the property. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.
20. Parking spaces shall not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.
21. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system. The registered proprietor will:
- (i) permit stormwater to be temporarily detained by the system;
 - (ii) keep the system clean and free of silt, rubbish and debris;
 - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
 - (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
 - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
22. The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system.

The Registered Proprietor will:

- (i) permit stormwater to be temporarily detained and pumped by the system;
- (ii) keep the system clean and free of silt, rubbish and debris;
- (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
- (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
- (v) not make alterations to the system or elements thereof without prior consent in writing of the Council.

- (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
 - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
23. All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.
24. The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
25. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy – 2000.
26. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
27. Temporary dewatering of the site to construct the subsurface structure is not permitted.
28. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
29. Bicycle parking facilities shall be designed in accordance with AS2890.3:1993.
30. All proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
31. Hot and cold water hose cocks shall be installed to the garbage room. Services or utility systems shall not be located in the garbage room.
32. (b) In order to ensure the design quality excellence of the development is retained:
- i) A registered architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
 - ii) The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - iii) Evidence of the design architect's commission is to be provided to Bayside Council prior to issue of the Construction Certificate.

- (c) The design architect of the project is not to be changed without prior notice and approval of Bayside Council.
33. All plumbing, other than roofwater heads and downpipes, shall be concealed within the brickwork of the building. Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate.
34. Where natural ventilation fails to comply with the provisions of the Building Code of Australia, mechanical ventilation shall be provided in accordance with Australian Standard, 1668, Part 2.
35. All hot water systems/units which are located on the balcony of a dwelling/unit must be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed.
36. Landscaping
- a) Stormwater and drainage systems are not to be located in, or under those areas shown as landscaped beds, or where existing or proposed trees are located.
- b) Tree planting which does not conflict with the on site detention system shall be provided within the eastern side setback.
- c) A minimum soil depth of 300mm is required for turfed areas on podiums or roof-tops or any other concrete slab, including the soil above stormwater drainage tanks.
- d) A minimum soil depth of 800mm is required for planted areas (other than turf) on podiums or roof-tops or any other concrete slab.
- e) Podium landscaping and paved areas shall be drained into the stormwater drainage system. All waterproofing for planters on slab shall be installed and certified by a licensed waterproofing contractor.
- f) All pavements shall comply with AS/NZ 4586:1999 standards Class W (low) for slip resistance on both private and Council property.
37. Retaining walls over 600mm in height shall be designed and specified by a suitably qualified structural engineer.
38. Landscape Maintenance
- The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of development approval and Council's Landscape DCP at all times. The Landscape Contractor shall be engaged weekly for a minimum period of 52 weeks from completion of the landscape installation to maintain the landscaping. After that time regular maintenance is required.
- The landscaped areas on the property shall be maintained in a clean and tidy state and with a dense, even coverage of plants to Council's satisfaction. On completion of the maintenance period, a Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council if Council is not the principal certifying authority) stating the landscape maintenance has been carried out in accordance with approved landscape plans
39. The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a

Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:

- a. Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the relevant requirements of the NCC; and
 - b. Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.
40. Prior to the issue of the Construction Certificate for the relevant stage of works, the following details shall be submitted to the Principal Certifying Authority in relation to the awning over the Forest and Harrow Road street frontages of the site:
- i. Detailed design plans and specifications, including structural details and,
 - ii. Design certificate.

The awning shall be designed by a Chartered Professional Engineer (Structural). Awning design shall comply with following requirement of Rockdale Development Control Plan section 5.3:

- a) minimum soffit height of 3.3m;
- b) maximum fascia height of 600mm;
- c) minimum setback from edge of kerb of 600 mm;
- d) maximum step of 900mm on sloping sites, which must not compromise environmental protection.

Following completion of the installation of the awning a certificate from a Chartered Professional Engineer (Structural) shall be submitted to Bayside Council stating that the awning has been constructed in accordance with the design plans and specifications.

Subject to compliance with the requirements above, Bayside Council grants approval pursuant to Section 138 of the Roads Act 1993. Council's approval remains whilst the structure is in place and the structural stability of the awning is not compromised. Maintenance of the awning is the responsibility of the owner of the land.

41. The following details shall be illustrated upon the Landscape Plan prior to the issue of the CC.

Planter boxes constructed on slab

Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements :

- Ensure soil depths in accordance with Council's Landscape DCP and SEPP65. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.
- A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
- Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to

eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.

- Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
- Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.

Installation

a) Establishing Subgrade Levels

Subgrade levels are defined as the finished base levels prior to the placement of the specified material (i.e. soil conditioner). The following subgrade levels shall apply:

- Mass Planting Beds - 300mm below existing levels with specified imported soil mix.

Note that all subgrades shall consist of a relatively free draining natural material, consisting of site topsoil placed previously by the Civil Contractor. No builder's waste material shall be acceptable.

b) Subgrade Cultivation

Cultivate all subgrades to a minimum depth of 100mm in all planting beds and all turf areas, ensuring a thorough breakup of the subgrade into a reasonably coarse tilth. Grade subgrades to provide falls to surface and subsurface drains, prior to the placement of the final specified soil mix.

c) Drainage Works

Install surface and subsurface drainage where required and as detailed on the drawing. Drain subsurface drains to outlets provided, with a minimum fall of 1:100 to outlets and / or service pits.

d) Placement and Preparation of Specified Soil Conditioner & Mixes.

- Trees in turf & beds - Holes shall be twice as wide as root ball and minimum 100mm deeper - backfill hole
- Mass Planting Beds - Install specified soil conditioner to a compacted depth of 100mm

Place the specified soil conditioner to the required compacted depth and use a rotary hoe to thoroughly mix the conditioner into the top 300mm of garden bed soil. Ensure thorough mixing and the preparation of a reasonably fine tilth and good growing medium in preparation for planting.

Planting

All trees over 300mm pot size must follow council requirements and be inspected

prior to planting. Tubestock not permitted, smallest pot size is 140mm.

a) Quality and Size of Plant Material

All trees supplied above a 25L container size must be grown and planted in accordance with Clarke, R 1996 Purchasing Landscape Trees: A guide to assessing tree quality. Natspec Guide No. 2. Certification that trees have been grown to Natspec guidelines is to be provided upon request of Council's Tree Management Officer.

42. Waste & Recycling Collection / Removalist Drop-offs & Pick-ups - Operational Requirements

1. Waste & recycling collection and servicing, including removalist trucks, must be carried out entirely within the approved loading bay at all times.
2. Waste & recycling collection, deliveries, removalists and / or any other servicing must not, at any time, be undertaken from the Forest Roads and Harrow Road or elsewhere within the site.
3. Waste and recycling may be collected by a private waste contractor. A contract for waste and recycling collection must be entered into prior to issue of the Occupation Certificate. The company engaged must ensure that all recycling is collected separately from waste.
4. Waste & recycling collection must be undertaken during off-peak times.
5. The maximum size truck permitted to access the site is a Small Rigid Vehicle (SRV).
6. The loading bay must be allocated as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.

43. The design and construction of the off-street parking facilities shall comply with Australian Standards, as follows:

- Comply with Council's Vehicular Entrance Policy in relation to the design of the access driveways, in particular the layout of the access driveways shall be provided in the form of a layback in the kerb and gutter.
- One (1) loading bay shall be provided at Ground level to accommodate SRV - removalist trucks as shown in the approved plans. The SRV space shall be in accordance with Council DCP, Rockdale Technical specification – Traffic, Parking and Access and AS 2890.2 and the swept path analysis for the RCV entering the loading bay shall be provided using a recognised computer software package such as Autoturn, complying with Section B3 of AS/NZS2890.1:2004.
- Any vehicular path of travel to or from loading bay for RCV shall have minimum headroom clearance of 3.5m.
- Bicycle parking facilities shall be designed in accordance with AS2890.3:1993.
- The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.
- Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6.
- Commercial vehicle facilities shall be designed strictly in accordance with AS2890.2:2002.
- All waste collection and deliveries to / from the site (including removalist trucks) must take place from within the approved loading bay.

- A buzzer providing access to the basement car park must be provided to Council's Waste Education & Contract Supervisor prior to issue of the Occupation Certificate.
- The loading bay must be allocated as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.
- The car parking spaces shall not be enclosed at any time.
- For parking with people with disabilities, the clearance above the parking bay shall be 2.5 minimum.
- Allocate all off-street visitor parking, loading bays and car wash bay as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.

44. Traffic Signs / Signal, loop detector

1. A traffic signals/signs, convex mirrors and loop detector are to be designed and installed to manage vehicular movement in driveways that provide safe vehicle access to the site and all basement levels. The arrangement shall control traffic to ensure safe movement of vehicles within basement car park at all times.
2. Prior to issue of the relevant Construction Certificate, a suitably qualified and experienced engineer shall design traffic management facilities within the site to the requirements of AS2890.1:2004 and relevant Austroads Guidelines. The facilities designed by the engineer shall include signals/signs (including traffic signal heads, vehicular guide signs, regulatory signs and warning signs), line marking and pavement markers, and other controls such as passing bays, traffic islands, median or separator and convex mirror to ensure safe movement of vehicles within the site at all times.

The access driveway shall be controlled by traffic signals with the following operational mode:

- After a pre-set clearance time signals revert to red for outgoing and green for Incoming.

45. Ceiling heights for all habitable areas shall be a minimum of 2.7 metres as measured vertically from finished floor level to the underside of the ceiling.

Ceiling heights for all non-habitable areas shall be a minimum of 2.4 m as measured vertically from finished floor level to the underside of the ceiling.

Prior to issue of the construction certificate

The following conditions must be completed prior to the issue of the Construction Certificate.

46. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
47. Required Infrastructure Works –Roads Act 1993

No occupation or works are to be carried out on public land (including a road or footpath) or access provided over a public reserve adjacent to the development site without approval being obtained from Bayside Council and the necessary fee paid under the Roads Act 1993 and/or the Local Government Act 1993.

Note: Approval under the Roads Act or Local Government Act cannot be granted by a principal Certifying Authority or by a Private Certifier. Failure to obtain approval from Bayside Council may result in fines or prosecution.

The implementation of this Consent generates a need for works to be completed in a public place owned by Council and / or Crown Lands, with such works being at no cost to Council or Crown Lands.

Works includes but is not limited to the following:

- i) Relocation of existing street lighting / power poles along Forest Road frontage of the site;
- ii) Construction of a driveway (vehicular entrance)
- iii) Relocation of existing STA bus stop
- iv) Relocation of existing red light camera
- v) Addition of directional signage
- vi) Construction of new kerb, gutter, footpath and streetscape works
- vii) Removal of redundant power pole(s) and proposal for undergrounding of power along Forest Road and Harrow Road frontages.
- viii) Public domain and drainage works.

A. Design

The scope of works is to be confirmed by Bayside Council. For identified works the preparation of the design and specification shall be undertaken in accordance with the design brief issued by Bayside Council, and the Engineering Drawing Guide: For Works In Association With Developments And Subdivisions and Engineering Specification Guide: For Works In Association With Developments And Subdivisions, or approved replacement documents. For identified works the preparation of the design and specification shall be undertaken by a professional engineer, or other professional person, meeting the requirements of the design brief issued by Bayside Council.

Note: To enable the scope of works to be determined and alignment levels issued a completed 'Public Domain Frontage Works Construction Application Form' must be submitted together with the required fee, under the Roads Act 1993 and/or the Local Government Act 1993 for the scope of works to be confirmed and alignment levels issued. If payment is made after the end of the financial year, the fee amount shall be adjusted in accordance with Council's adopted fees and charges.

48. A Section 94 contribution of \$2,178,38.01 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 444-446 Princes Highway, Rockdale.
49. Prior to the issue of the Construction Certificate for the development, an application for address allocation for all lots (units) within the strata subdivision shall be submitted to Council in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard, Section 5.2 of the NSW Address Policy and Ch.6.5.5 " Multi-

level Sub-Address Allocation" of the NSW Address User Manual.

50. Acoustic

Flooring within the development shall achieve the following minimum equivalent AAAC Star Rating within the below specified areas of the development.

- 3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted.
- 4 Star for timber flooring in any area.
- 5 Star for carpet in any area.

Walls within the development shall be constructed to satisfy the requirements of the Building Code of Australia.

A report shall be submitted to the Principal Certifying authority for approval prior to the issue of any Construction Certificate for each of the building stages. The report is to include BCA requirements and details of floor/ceilings between residential apartments. Floor coverings within apartments shall be identified within the report.

A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate for each of the building stages.

51. Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Access in accordance with relevant Australian Standards must be provided to and within nominated adaptable residential units, and between these units and their allocated car parking spaces. The allocated parking space will be located in close proximity to the access points of the building.

Note: Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

52. The applicant shall confer with Energy Australia to determine if an electricity distribution substation is required. Written confirmation of Energy Australia's requirements shall be obtained prior to issue Construction Certificate.
53. (i) The applicant shall confer with Ausgrid to determine if an electricity distribution substation and/or the installation of electricity conduits in the footway is required. The applicant shall confer with Ausgrid to determine if satisfactory clearances to any existing overhead High Voltage mains will be affected.
- (ii) All low voltage street mains in that section of the street/s adjacent to the development shall be placed underground. This shall include any associated services and the installation of underground supplied street lighting columns where necessary.

Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.

54. Any building proposed to be erected over or near the existing Sydney Water pipeline is to be approved by Sydney Water. A copy of Sydney Water's approval and

requirements are to be submitted to Council prior to issuing a Construction Certificate.

55. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

Sydney Water's Tap in™ online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

56. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%) and lengths.
57. A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Prior to the commencement of works the Certifying Authority shall be satisfied that the Construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction.

Prior to the issue of the relevant Construction Certificate, a Construction Traffic Management Plan (TMP) prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (a) ingress and egress of vehicles to the site;
- (b) loading and unloading, including construction zones;
- (c) predicted traffic volumes, types and routes; and
- (d) pedestrian and traffic management methods.

Note: The swept path of the longest vehicle entering and existing the subject site, as well as manoeuvrability through the site, shall be in accordance with Austroads. A swept path plan shall be submitted to Certifying Authority for approval illustrating compliance with this requirement, prior to release of the Construction Certificate.

Any proposed landscaping, fencing or signage is not to impede the desired sight lines of all road users including pedestrians and cyclists.

All road works / regulatory signposting associated with the proposed development shall be at no cost to the Council or RMS.

Copies of the CMP and TMP shall be submitted to Council.

58. Adjoining buildings founded on loose foundation materials

As the basement levels are being proposed closer to existing built structures on neighbouring properties, which may be in the zone of influence of the proposed works and excavations on this site, a qualified practicing geotechnical engineer

must;

- (a) All recommendations contained in the report prepared by STS GeoEnvironmental Pty Ltd. Ref: Report No: 17/0750, Project No: 21370/7991C, dated March 2017 shall be implemented.
- (b) Provide a certificate that the construction certificate plans are satisfactory from a geotechnical perspective and
- (c) Confirm that the proposed construction methodology
To prepare a Construction Methodology report demonstrating that the proposed construction methods (including any excavation, and the configuration of the built structures) will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate for the relevant stage of works.
- (d) Inspect the works as they progress. The Inspections are to occur at frequencies determined by the geotechnical engineer.
- (e) The geotechnical engineer to comment on proposed stormwater drainage design for the basement area, mainly on AGG line connections / permanent dewatering and a tanked basement structure.
NB: (i) If the proposed construction of the basement carpark impedes the water table, thus requiring dewatering of the site, the application is Integrated Development
(ii) From the proposed basement pumped discharge drainage systems are permitted subject to complying with the design criteria listed in DCP.
(iii) The design of the basement structure will require consideration of the effects of the water table, both during and after construction (Tanking / waterproofing).
- (f) Where a Private Certifier issues the Construction Certificate a copy of the above documentation must be provided to Council, once the Construction Certificate is issued for the relevant stage of works.

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the Conveyancing Act 1919.

59. Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately.

Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice.

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

Note: Professional engineer has the same mean as in Clause A1.1 of the BCA.

Note: Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".

Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.

60. Any sub-surface structure within the highest known groundwater table + 0.5m shall be designed with a waterproof retention system (i.e. tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of the subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate for the relevant stage of works.

A design certificate is required to be submitted for the design of the Basement system including shoring wall. The certificate shall be issued by a Chartered Professional Engineer competent in Structural engineering.

The design of the basement and any other underground structure or excavation shall take into consideration of geotechnical recommendations.

Note:

- a. All structures that are fully or significantly below ground shall be fully tanked to finished ground level.
- b. After construction is completed no seepage water is to discharge to the kerb. Permanent dewatering will not be permitted.
- c. Continuous monitoring of ground water levels may be required.

- 61. Prior to the issue of a Construction Certificate for *building works*, the Certifying Authority shall ensure that a letter from a qualified practicing Traffic Engineer registered on the National Engineering Register (NER), or a Compliance Certificate (issued in accordance with Section 109C of the Environmental Planning and Assessment Act 1979), has been issued to the Certifying Authority stating that the design of the off-street parking facilities including ramp control traffic signals comply with the conditions of consent.
- 62. Prior to issue of Construction Certificate, swept path analysis shall be submitted to Certifying Authority for assessment and approval.

The swept path drawings shall include the entry/exit of the internal ramps within the basement levels and an 'SRV' sized vehicle entering/exiting of the driveway/loading bay in accordance with section 7.2 of Councils Technical Specification – Traffic, Parking and Access.

Where a Private Certifier issues a Construction Certificate, the plans mentioned in the above paragraph must be provided to Council.

- 63. The low-level driveway must be designed to prevent the inflow of water from the road reserve. The assessment of Gutter flows and design of prevention measures shall be in accordance with the requirements of Rockdale Technical Specification Stormwater Management. Details shall be included in the documentation presented with the Construction Certificate application.
- 64. Any part of the proposed building within 3m of the proposed detention tank or absorption trench shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
- 65. A visitor car space shall also operate as a car wash bay. A tap shall be provided. A sign shall be fixed saying 'Visitor Car Space and Car Wash Bay'. The dimensions of the car wash bay and any runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.
- 66. Prior to the issue of the Construction Certificate, amended detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.

The drainage plans must show how groundwater is managed within basement including shoring walls, temporary and permanent.

Subsoil drainage shall be provided and designed to allow the free movement of groundwater around any proposed structure, but is not to be connected to the internal drainage system. The design shall take into consideration of geotechnical recommendations.

Note:

- a. The subsoil drainage for groundwater management for the proposed development should be in accordance with the requirements of DCP 4.1.3, 4.1.4 and Rockdale Technical Specification – Stormwater Management.
 - b. The basement pumpwell size shall be in accordance with Clause 4.2.4 of DCP2011- Technical Specification for Stormwater Management.
 - c. Implement all recommendations contained in the preliminary geotechnical investigation report prepared by STS GeoEnvironmental Pty Ltd. Ref: Report No: 17/0750, Project No: 21370/7991C, dated March 2017.
 - d. Since the site is subject to MFL, the design of the basement carpark access ramp crest level is to be 500mm above the 1 in 100-year flow level.
 - e. The low-level driveway shall be protected from street gutter flows. The driveway crest shall be in accordance with the Gutter Flow Analysis prepared by Wehbe Consulting Engineers, dated August 2017.
 - f. To incorporate an oil separator in accordance with Rockdale Technical Specification – Stormwater Management, section 7.5.4.
67. The developer is to contact Telstra and organise relocation works to Telstra Assets. Detailed documentation confirming Telstra acceptance of the aforementioned is to be submitted to Council prior to the issue of a Construction Certificate.
68. State Transit Authority

All works associated with the relocation of the existing bus stop along the frontage of the site within Forest Road are to be at no cost to the STA.

The applicant is to contact the STA's Service Delivery Manager - Southern Region on 9582 5965 in writing, a minimum of 4 weeks prior to the commencement of works, to confirm all necessary STA requirements prior to the commencement of relocation works.

The applicant is to ensure that relocation and reinstatement works for the bus stop are in accordance with the STA '*Bus Way Finding - Bus stop flag pole layout - Typical*' design guidelines' produced by the STA.

Relocation works are to be undertaken in a manner which will not affect existing bus services.

Confirmation of the STA acceptance of the applicants design and relocation works is to be submitted to Council prior to the issue of the Construction Certificate.

69. Prior to the issue of the Construction Certificate the following shall be submitted to and approved by Council:
- a) Details and location of proposed mechanical plant.
 - b) Submission of a revised Acoustic Report confirming compliance with relevant standards from a suitably qualified acoustic consultant.

Prior to commencement of works

The following conditions must be completed prior to the commencement of works.

70. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
71. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

72. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
73. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - i. stating that unauthorised entry to the work site is prohibited, and
 - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
 - iii. building work carried out inside an existing building or
 - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
74. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
75. Where construction/building works require the use of a public place including a road or footpath, approval under Section 68 of the Local Government act 1993 for a Barricade Permit is to be obtained from Council prior to commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.
76. (a) A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:
 - (i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - (ii) building involves the enclosure of a public place,

(b) Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.

(c) Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:

- (i) the vertical height above footpath level of the structure being demolished is less than 4m; or
- (ii) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -

- (i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;
- (ii) have a clear height above the footpath of not less than 2.1m;
- (iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and
- (iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa. The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids. Any such hoarding, fence or awning is to be removed when the work has been completed.

(d) The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

- 77. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.
- 78. Consultation with Ausgrid is essential prior to commencement of work. Failure to notify Ausgrid may involve unnecessary expense in circumstances such as:
 - i) where the point of connection and the meter board has been located in positions other than those selected by Ausgrid or
 - ii) where the erection of gates or fences has restricted access to metering equipment.
- 79. Where clearances to any existing overhead High Voltage mains are affected, the builder shall make arrangements with Ausgrid for any necessary modification to the electrical network in question. These works shall be at the applicant's expense. Ausgrid's requirements under Section 49 Part 1 of the Electricity Supply Act 1995 shall be met prior to commencement of works or as agreed with Ausgrid.

During demolition / excavation / construction

The following conditions must be complied with during demolition, excavation and or construction.

- 80. A copy of the Construction Certificate and the approved plans and specifications

must be kept on the site at all times and be available to Council officers upon request.

81. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
82. For Class 2, 3 and 4 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
 - i. after excavation for, and before the placement of, any footing, and
 - ii. prior to covering waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and
 - iii. prior to covering any stormwater drainage connections, and
 - iv. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.

83. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:
 - Sediment control measures
 - Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
 - Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
84. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
85. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
86. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
 - i. After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
 - ii. Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
 - iii. Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
 - iv. On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.

- v. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
87. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- i. preserve and protect the building from damage and
- ii. underpin and support the building in an approved manner, if necessary and
- iii. give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

88. When soil conditions require it:
- i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
 - ii. adequate provision shall be made for drainage.
89. All contractors shall comply with the following during all stages of demolition and construction:
- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath

Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.

- A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
- A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.

90. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.

91. The following conditions are necessary to ensure minimal impacts during construction:

- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
- ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - a) spraying water in dry windy weather
 - b) cover stockpiles
 - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt

leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
- 92. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
- 93. All existing trees located within the site may be removed.

Prior to issue of occupation certificate or commencement of use

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

- 94. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 95. The STA is to provide written confirmation clarifying that bus stop relocation works have been appropriately completed, prior to the issue of any Occupation Certificate. A copy of the aforementioned confirmation is to be submitted to Council prior to the issue of any Occupation Certificate.
- 96. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
- 97. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.
Note: Burning on site is prohibited.
- 98. A by-law shall be registered and maintained for the life of the development, which requires that :
 - (a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
 - (b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent;
 - (c) Notwithstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2, A test report from a qualified acoustic engineer

employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.

Proof of registration of the By Law shall be submitted to Council prior to the issue of the Occupation Certificate.

99. Testing and evaluation of the wall insulation system and floor system is to be carried out at post construction stage by a suitably qualified acoustical engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership to confirm compliance with conditions of this consent. A report is to be submitted to the PCA and Council, prior to the issue of the Occupation Certificate. The report is to include details & finishes of the walls and floors separating apartments.

Acoustic recommendations in relation to traffic and aircraft emissions contained in the acoustic report prepared by Acoustic Logic ref: 20161319.1/1210A/R0/EC dated 12/10/2016 shall be validated by a Certificate of Compliance prepared by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.

100. Ground level surfaces are to be treated with anti-graffiti coating to minimise the potential of defacement. In addition, any graffiti evident on the exterior facades and visible from a public place shall be removed forthwith.
101. Lot A DP 356310 and Lot 1 DP 500135 shall be consolidated into one allotment. Council requires proof of lodgement of the plan of consolidation with the Land and Property Information Office prior to occupation.
102. All landscape works are to be carried out in accordance with the approved landscape plans prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times.
103. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
104. All low voltage street mains in that section of the street/s adjacent to the development shall be placed underground. This shall include any associated services and the installation of underground supplied street lighting columns where necessary. The applicant shall confer with Ausgrid to determine Ausgrid requirements. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate and implemented prior to issue of any Occupation Certificate.
105. Where an electricity substation is required by Ausgrid, a final film survey plan shall be endorsed with an area having the required dimensions as agreed with Ausgrid over the location of the proposed electricity distribution substation site. The substation must be located within the boundary of the development site, or within the building, subject to compliance with the BCA. The substation site shall be dedicated to Council as public roadway, or as otherwise agreed with Ausgrid. Ausgrid's requirements shall be met prior to release of the issue of the Occupation Certificate.
106. Vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to the inside skin of the front fence, or where there is no front fence a prominent place approved by the Principal Certifying Authority, stating the following: "Vehicle shall enter and exit the

site in a forward direction at all times".

107. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
108. Mirrors at key locations (outside of bends in the car park), give way signs entering vehicles and entry sign recommending drivers turn on their headlights.
109. Suitable vehicular bollards shall be provided outside the exit doors that adjoin the vehicle circulation area or other exit door(s) that may be blocked by parked vehicles.
110. Bollard(s) shall be installed by the Developer on adaptable shared spaces.
111. 33 off-street car spaces and 1 loading / unloading bay shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.
112. Prior to the issue of the Final Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

113. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
114. An appropriately qualified Noise Consultant is to certify that Australian Standard 2021- 2000 Acoustic - Aircraft Noise Intrusion has been met before an occupation certificate will be issued.
115. The noise reduction measures specified in the noise report prepared by Acoustic Logic dated 12/10/2016 shall be validated by a Certificate of Compliance prepared by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.
116. A certificate is to be provided to Council that all wet areas have been effectively waterproofed (prior to tiling) in accordance with AS3740 and the product manufacturer's recommendations.
117. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
118. Prior to occupation or use of the premises, a qualified mechanical engineer shall certify that the mechanical ventilation/air conditioning system complies in all respects with the requirements of Australian Standard 1668, Part 1 & 2.
119. Prior to occupation, a chartered professional engineer shall certify that the Basement

structure has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.

120. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
121. The underground garage shall be floodproofed to a minimum of 100mm above the 1% Annual Exceedance Probability flood level. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
122. Positive covenants pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the following facilities to provide for the maintenance of the facilities.
 - i. The stormwater detention facility to provide for the maintenance of the system.
 - ii. Waste management is undertaken by a private contractor
 - iii. Traffic control system – stop line, loop detector & traffic signal
123. The pump system, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or PCA upon request.
124. The drainage system shall be constructed in accordance with the approved drainage plans and any amendments in red. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.

Drainage grates shall be provided at the boundary. Width of the drainage grates shall be in accordance with Rockdale Technical Specification Stormwater Management.

A silt/litter arrestor pit as detailed in Rockdale Technical Specification Stormwater Management shall be provided prior to discharge of stormwater from the site.

125. Signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only - No waste".
126. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
 - Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
 - The overflow from the rainwater tank shall be directed to the storm water system.
 - All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
 - A first flush device shall be installed to reduce the amount of dust, bird faeces,

leaves and other matter entering the rainwater tank.

Prior to issue of subdivision certificate

The following conditions must be complied with prior to the issue of the Subdivision Certificate or the Strata Certificate.

127. Lot 1 DP 500135 and Lot A DP 356310 shall be consolidated into one allotment. A copy of the plan of consolidation shall be submitted to Council prior to release of Strata Certificate.
128. Where Council is the Principal Certifying Authority, a Strata Certificate and four (4) copies of the plans for the endorsement of the General Manager shall be submitted prior to lodgement with the Land and Property Information office. If applicable, an original and four (4) copies of the 88B Instrument are to be submitted.
129. As construction of the building nears completion, or after it has been completed, council or an accredited certifier shall inspect the building, and the common property areas around the building so as to be satisfied that:
 - The floors, external walls and ceilings depicted in the proposed strata plan for the building correspond to those of the building as constructed.
 - The floors, external walls and ceilings of the building as constructed correspond to those depicted in the building plans that accompanied the construction certificate for the building.
 - Any facilities required by the relevant development consent (such as parking spaces, terraces and courtyards) have been provided in accordance with those requirements.
130. A Strata Certificate must be obtained prior to registration of the Strata Plan with the Land and Property Information Office. Where Council is the Principal Certifying Authority for the Strata Title Subdivision, an application form and associated fee are required to be submitted to Council's Customer Service Centre with lodgment of the Strata Plan.
131. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision/Strata Certificate.

132. All visitor car parking spaces are to be clearly shown as common property on the Strata Certificate for the strata subdivision.
133. The parking spaces on site are to be allocated to each unit as per the approved plans and conditions of this development consent.
134. Positive covenants shall be provided over the on-site detention system, Waste

management undertaken by a private contractor and Traffic control system. Section 88B Instruments and four copies shall be lodged with the Subdivision/Strata Certificate.

Integrated development/external authorities

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act, 1979.

135. Sydney Airport Corporation Limited (SACL) has approved the maximum height of the proposed building at 68.65metres relative to Australian Height Datum (AHD). This height is inclusive of all vents, chimneys, aerials, TV antennae and construction cranes etc. No permanent or temporary structure is to exceed this height without further approval from Sydney Airport Corporation Limited.

Note: Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units.
For further information on Height Restrictions please contact SACL on 9667 9246.

136. Roads and Maritime Service

All buildings and structures (other than pedestrian footpath awnings and footpath and road dedication works) together with any improvements integral to the future use of the site shall be wholly within the existing freehold property.

(A) All redundant driveways are to be removed and replaced with kerb and gutter to Roads and Maritime requirements. The design and construction of the new gutter crossing on Forest Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained from Roads and Maritime Services, Manager Developer Works, State-wide Delivery, Parramatta (telephone 9598 7798). Detailed design plans of the proposed gutter crossing are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

(B) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.

The report and any enquiries should be forwarded to:
Suppiah.THILLAI@rms.nsw.gov.au

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

(C) Should the post development storm water discharge from the subject site into the Roads and Maritime system exceed the pre-development discharge, detailed design plans and hydraulic calculations of any charges are to be submitted to Roads and Maritime for approval, prior to the commencement of works.

Details should be forwarded to: Suppiah.THILLAI@rms.nsw.gov.au

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

(D) A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Forest Road during construction activities.

(E) A Construction Traffic Management Plan 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.

(F) All vehicles must enter and exit the site in a forward direction.

(G) The swept path of the longest vehicle (to service the site) 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.

(H) All works and signposting (including any utility adjustment/relocation works) shall be at no cost to Roads and Maritime.

Roads Act

137. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

138. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:
 - i) construction of a concrete footpath along the frontage of the development site;
 - ii) construction of a new fully constructed concrete vehicular entrance/s;
 - iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
 - iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
 - v) construction of paving between the boundary and the kerb;
 - vi) removal of redundant paving;
 - vii) construction of kerb and gutter.
139. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
140. All driveway, footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken in accordance with Council's Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council. Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.
141. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
142. The following details shall be submitted to Council for assessment and approval pursuant to Section 138 of the Roads Act 1993, in relation to the awning over Forest and Harrow Roads:
 - i) Detailed design plans and specifications, including structural details; and
 - ii) Design certificate.

The awning shall be designed by a Chartered Professional Engineer (Structural).

Note: Awnings are required to comply with the requirements under Rockdale Development Control Plan 2011. Awnings are required to be set back a minimum of 600 mm from the kerb face and be a minimum height of 3.3 metres above the footpath level. Drainage from the awning shall be connected to the stormwater system for the development.

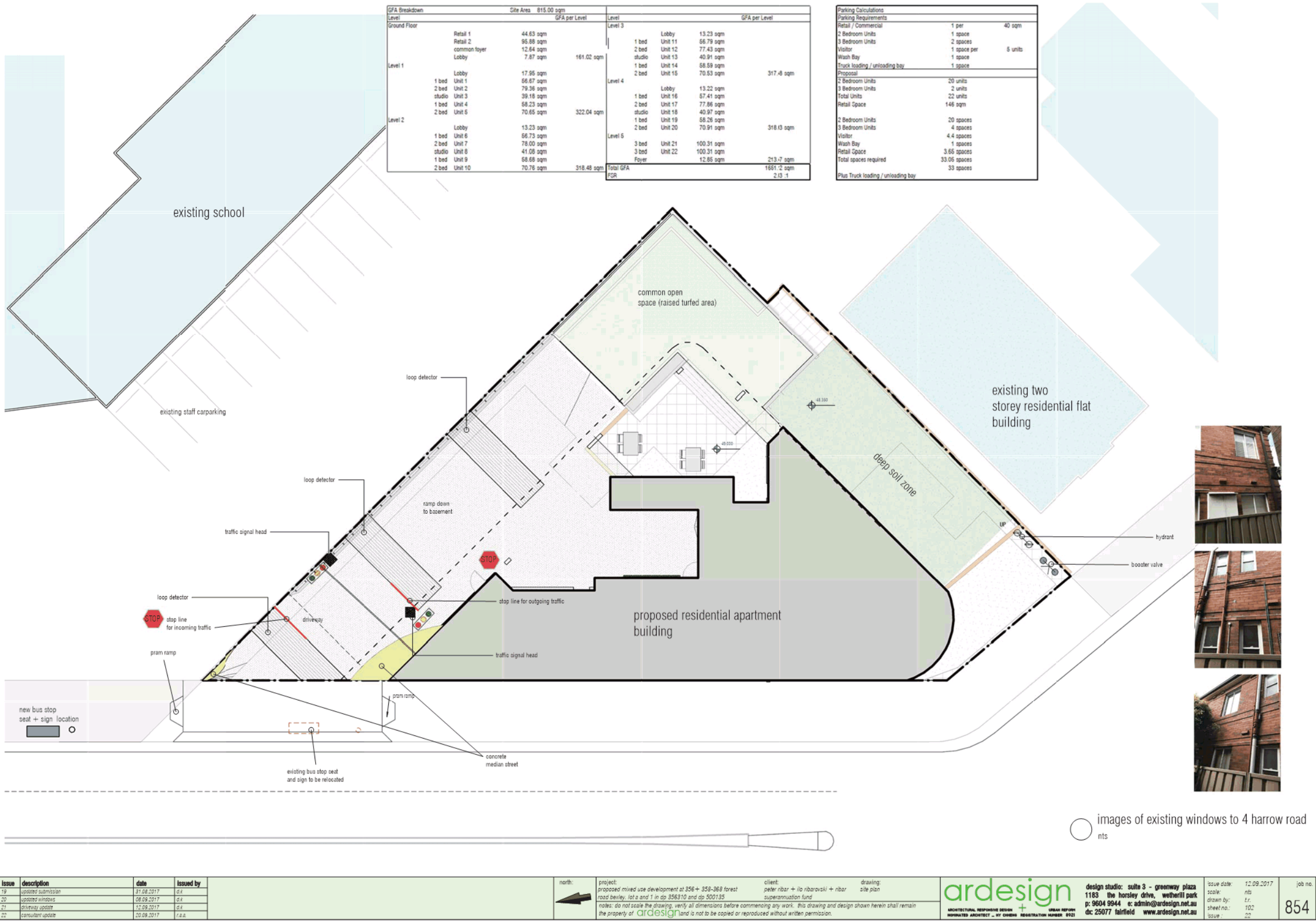
Following completion of the installation of the awning a certificate from a Chartered Professional Engineer (Structural) shall be submitted to PCA stating that the awning has been constructed in accordance with the design plans and specifications.

Copies of the approved documents and certificates shall be submitted to Council.

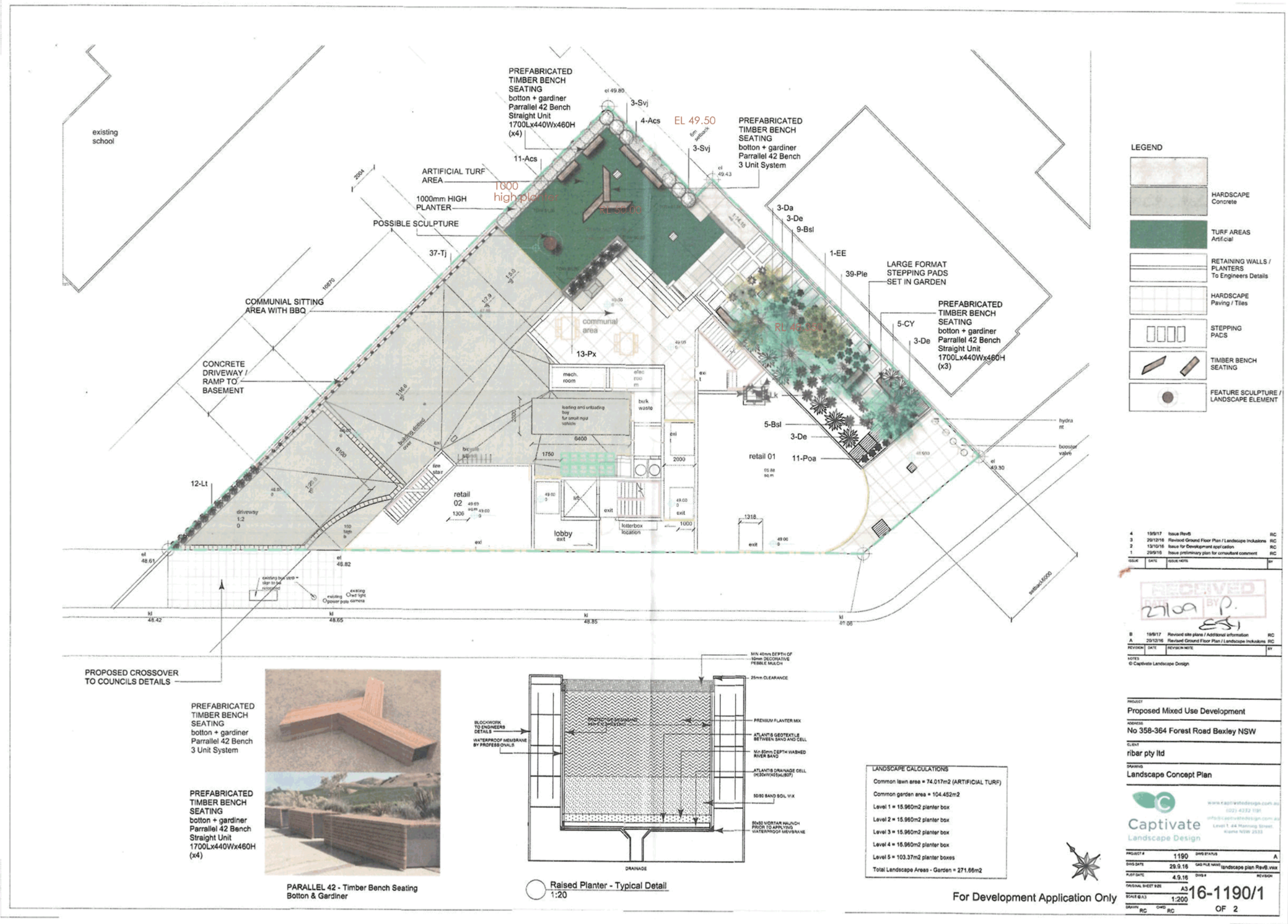
143. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
144. All works associated with the proposed development shall be at no cost to the RMS.

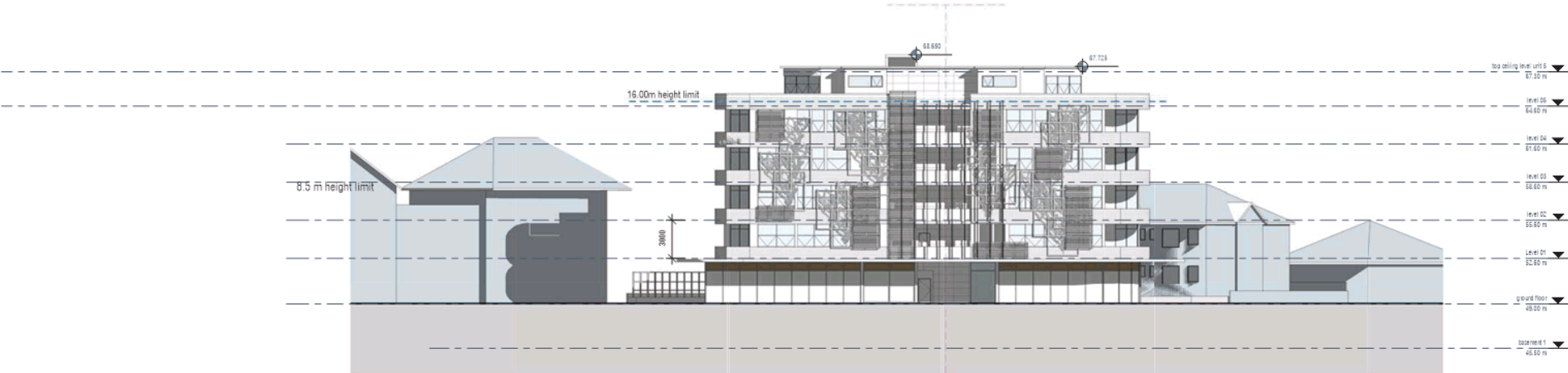
Development consent advice

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- c. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- d. If the development is not subject to BASIX, a mandatory rainwater tank may be required. Rainwater tank requirements for development not subject to BASIX are specified in Council's DCP 78.
- e. Council will not issue the Subdivision Certificate unless the following has been provided to Council:
 - Works-As-Executed Plan for Stormwater Drainage System
 - Engineer's Compliance certificate for Stormwater Drainage System
 - Final Occupation Certificate
 - Utility Service Plan
 - Original of Section 73 Compliance Certificate referring to Subdivision – (Sydney Water Act 1994)
 - Landscape certification (if Council not appointed as PCA)
 - Administration Sheet and 88B instruments prepared by a qualified surveyor

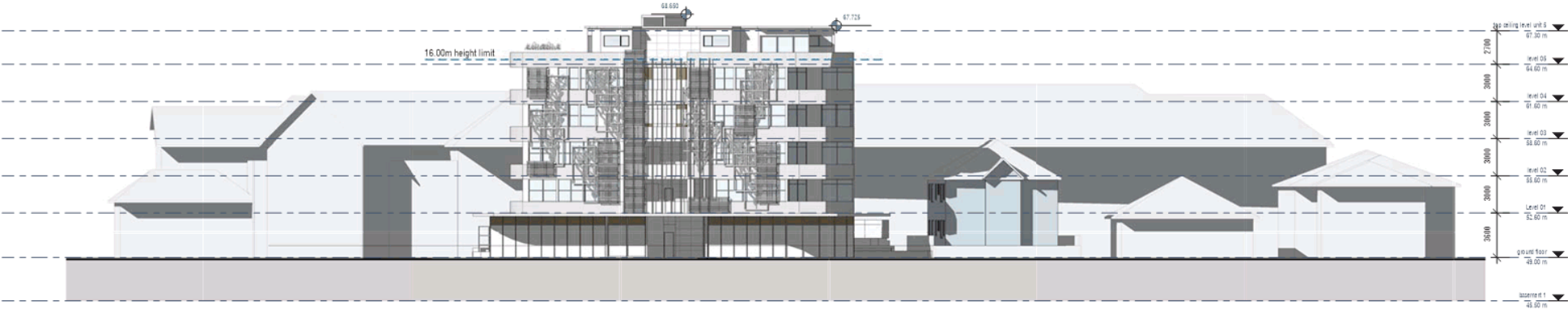


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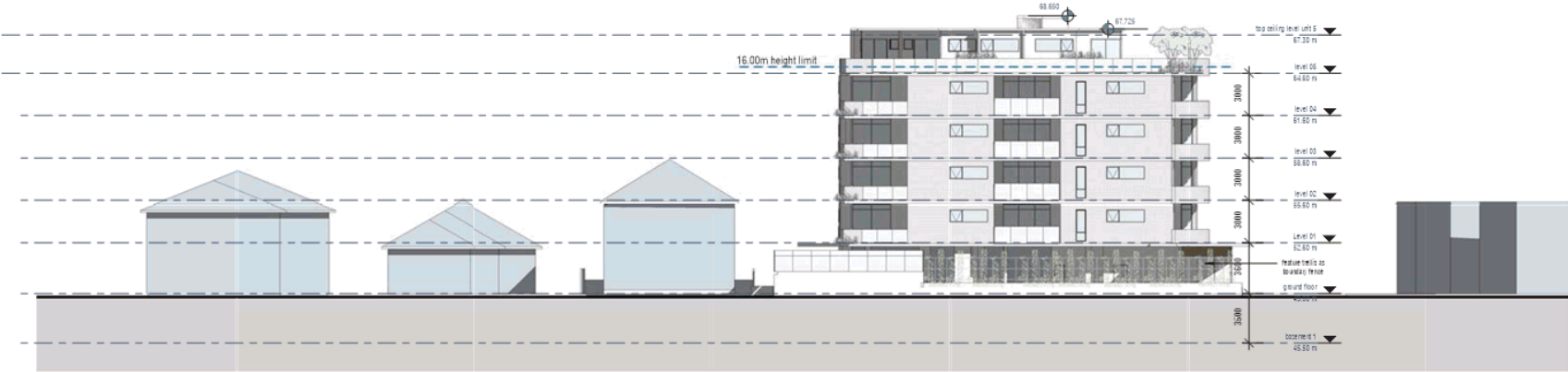


1 forest road streetscape elevation
1 : 200



2 harrow road streetscape elevation
1 : 200

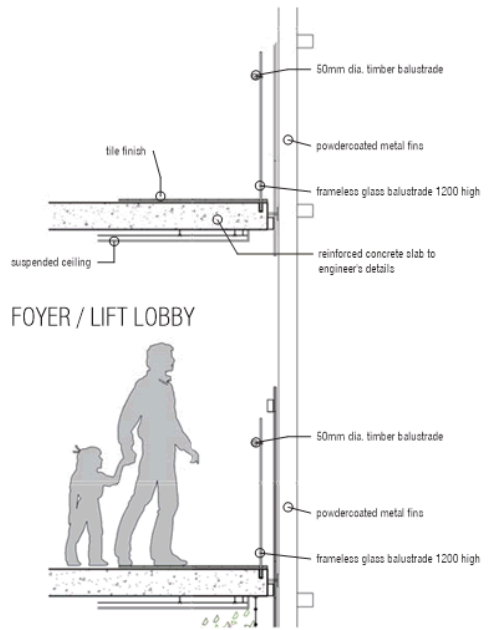
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19	updated submission	01.08.2017	0.1		proposed mixed use development at 356 + 358-368 forest road bevelly, lot 2 and 1 in dp 356310 and dp 500135	peter ribar + ilo ribarowski + ribar superannuation fund	elevations		1183 the horsley drive, wetherill park	12.09.2017	
20	updated windows	08.09.2017	0.1						p: 9604 9944 e: admin@ardesign.net.au	scale: 1:200	
21	drawings update	12.09.2017	0.1		notes: do not scale the drawing, verify all dimensions before commencing any work. this drawing and design shown herein shall remain the property of ardesign and is not to be copied or reproduced without written permission.				dc: 25077 fairfield www.ardesign.net.au	drawn by: 1.1	
22	consultant update	20.09.2017	1.2.4							sheet no.: 113	
										issue: 00	854



1 north-eastern elevation (facing school)
1 : 200

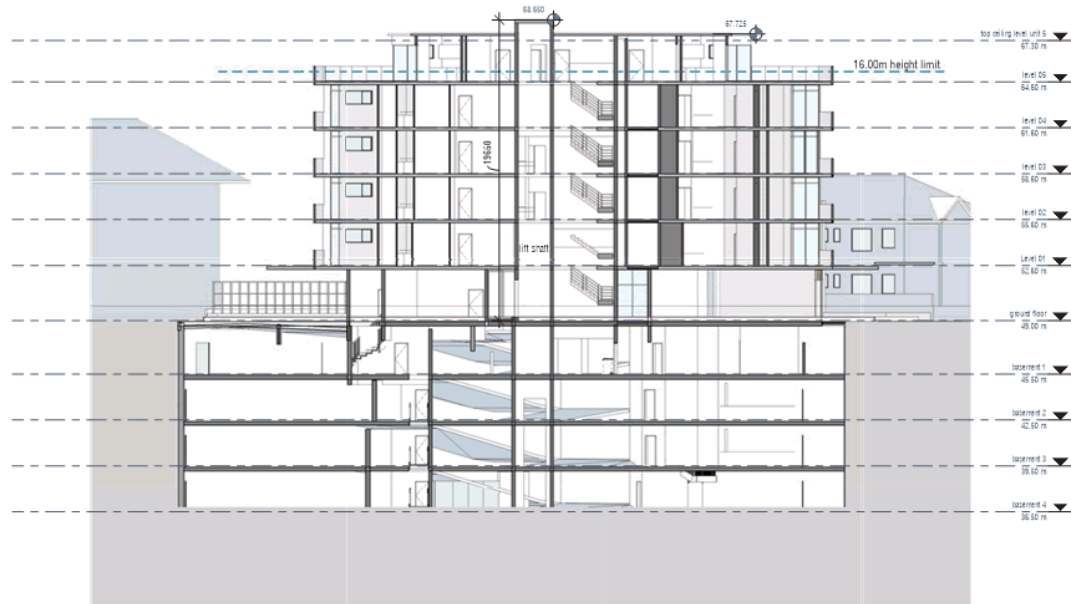


2 south - eastern elevation
1 : 200

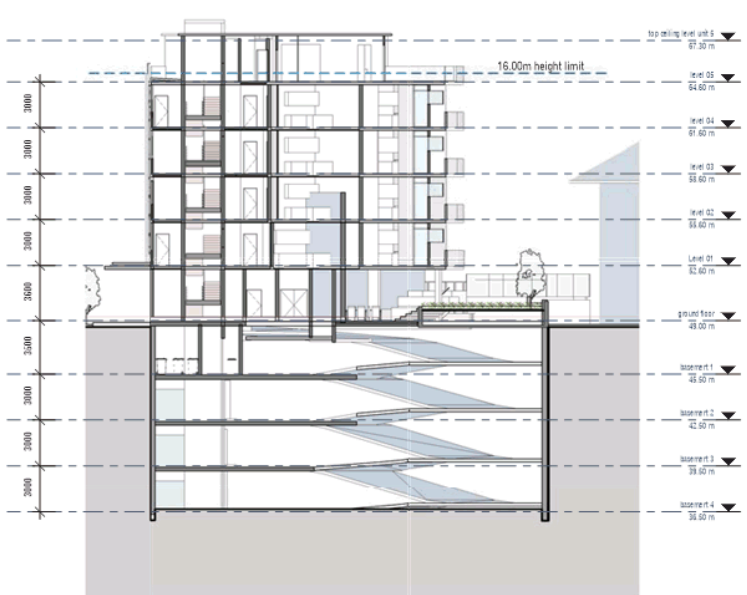


foyer facade detail
1 : 25

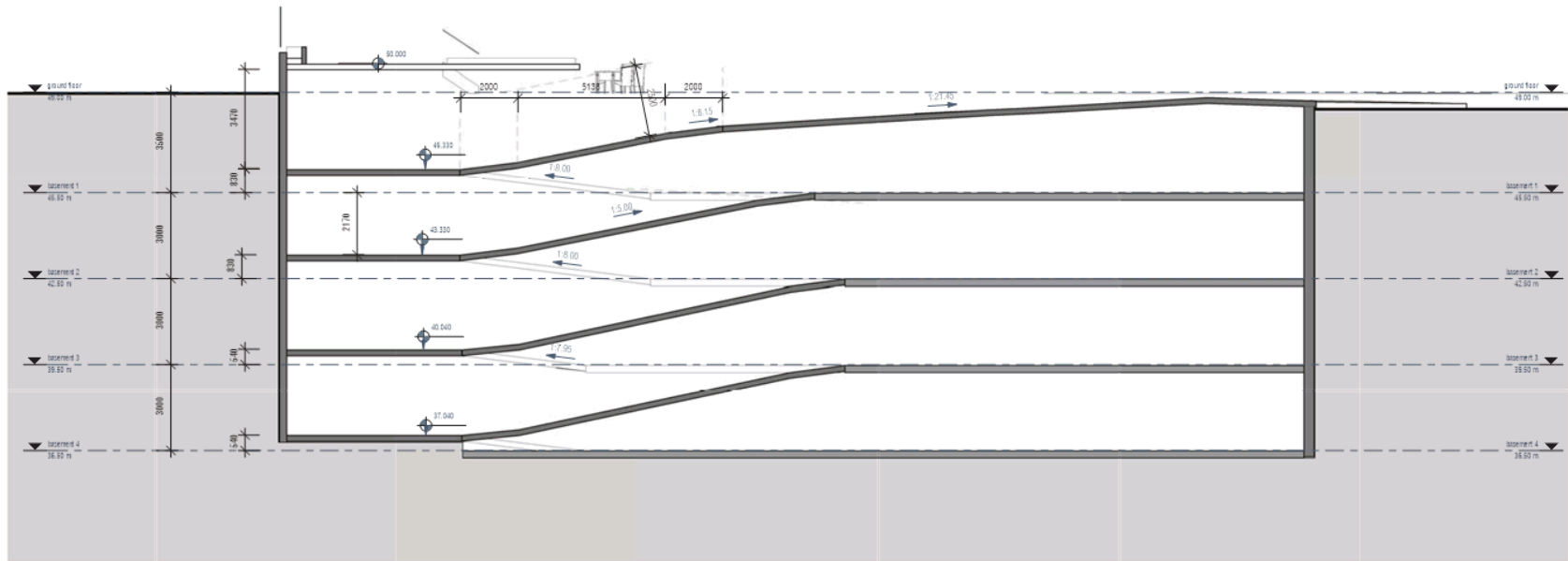
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20	updated windows	08.09.2017	G.F.						p: 9604 9944 e: admin@ardesign.net.au	As indicated	
21	drawings update	12.09.2017	G.F.		notes: do not scale the drawing, verify all dimensions before commencing any work. this drawing and design shown herein shall remain the property of ardesign and is not to be copied or reproduced without written permission.				dc: 25077 fairfield www.ardesign.net.au	Author	
22	consultant update	20.09.2017	F.A.							sheet no: 112	854
										issue: 20	



3 section thru lift
1:200



2 cross section
1:200



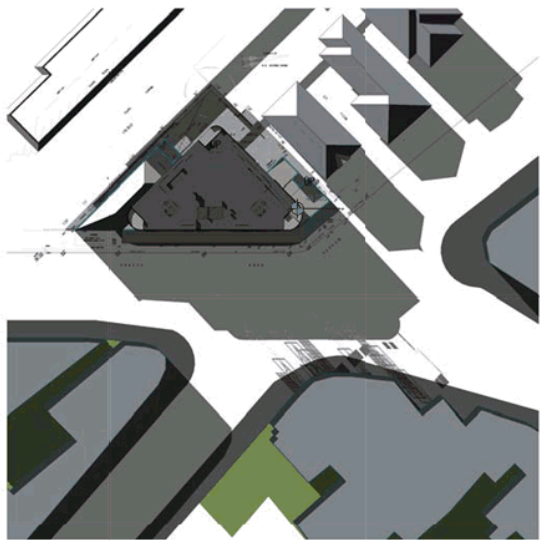
1 ramp detail1
1:100

balcony area schedule	
name	area (sq.m)
Level 01	
unit 1 balcony	11.45
unit 2 balcony	10.00
unit 3 balcony	9.40
unit 4 balcony	8.35
unit 5 balcony	10.05
Level 02	
unit 6 balcony	8.25
unit 7 balcony	10.00
unit 8 balcony	8.00
unit 9 balcony	8.05
unit 10 balcony	10.05
Level 03	
unit 11 balcony	8.15
unit 12 balcony	10.05
unit 13 balcony	8.05
unit 14 balcony	8.10
unit 15 balcony	10.05
Level 04	
unit 16 balcony	8.15
unit 17 balcony	10.30
unit 18 balcony	8.00
unit 19 balcony	8.10
unit 20 balcony	10.25
Level 05	
unit 21 balcony	49.45
unit 22 balcony	49.25

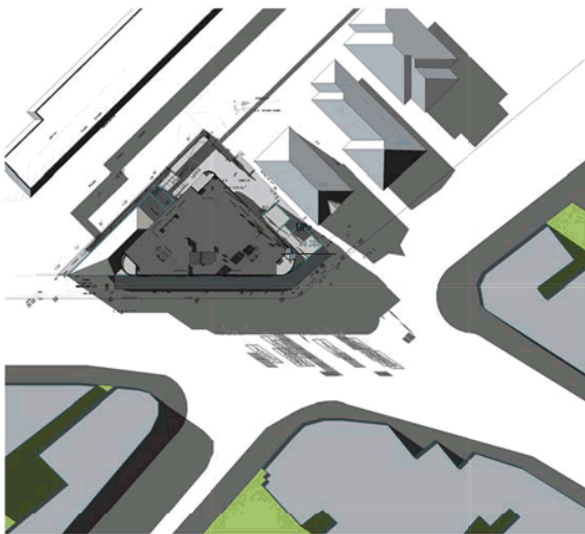
ADG Requirements			
unit	daylight access	cross ventilation	kitchen ventilated
1	1.5 hrs	yes	yes
2	6 hrs	yes	yes
3	6 hrs	-	-
4	6 hrs	yes	yes
5	2 hrs	yes	-
6	1.5 hrs	yes	yes
7	6 hrs	yes	yes
8	6 hrs	-	-
9	6 hrs	yes	yes
10	2 hrs	yes	-
11	1.5 hrs	yes	yes
12	6 hrs	yes	yes
13	6 hrs	-	-
14	6 hrs	yes	yes
15	2 hrs	yes	-
16	1.5 hrs	yes	yes
17	6 hrs	yes	yes
18	6 hrs	-	-
19	6 hrs	yes	yes
20	2 hrs	yes	-
21	6 hrs	yes	yes
22	6 hrs	yes	yes
total	18 units	16 units	14 units
percentage	82%	82%	64%

ADG requirements
nts

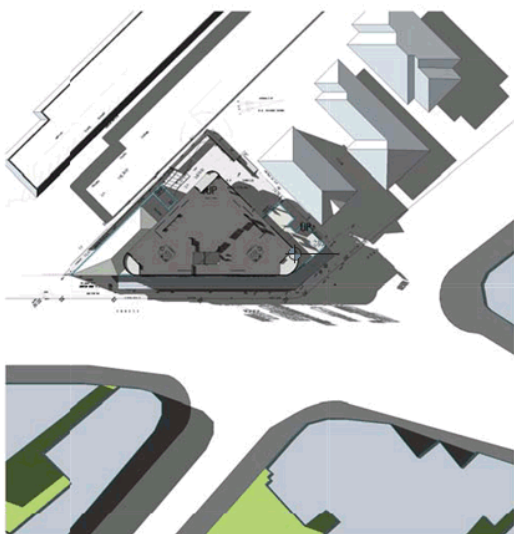
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19	updated submission	31.08.2017	0.1		proposed mixed use development at 356 + 358-368 forest road bevelly, lot 2 and 1 in dp 356310 and dp 500135	peter ribar + ilo ribarovski + ribar superannuation fund	sections + schedules		1183 the horsley drive, welthill park p: 9604 9944 e: admin@ardesign.net.au dc: 25077 fairfield www.ardesign.net.au	12.09.2017	
20	updated windows	08.09.2017	0.1							As indicated	
21	drawings update	12.09.2017	0.1							1:14	
22	consultant update	20.09.2017	1.2.2		notes: do not scale the drawing, verify all dimensions before commencing any work. this drawing and design shown herein shall remain the property of ardesign and is not to be copied or reproduced without written permission.					issue:	



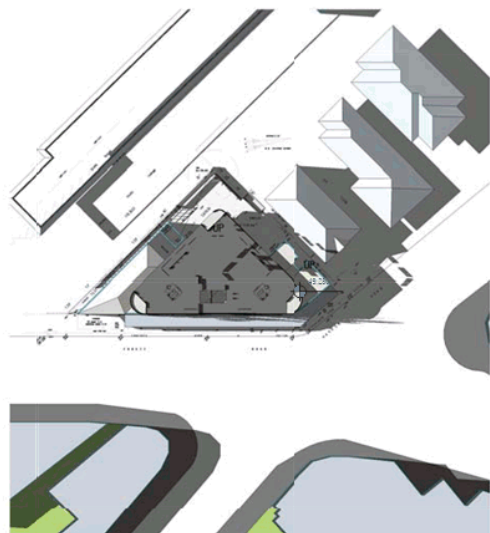
1 existing building model 9 am
1 : 600



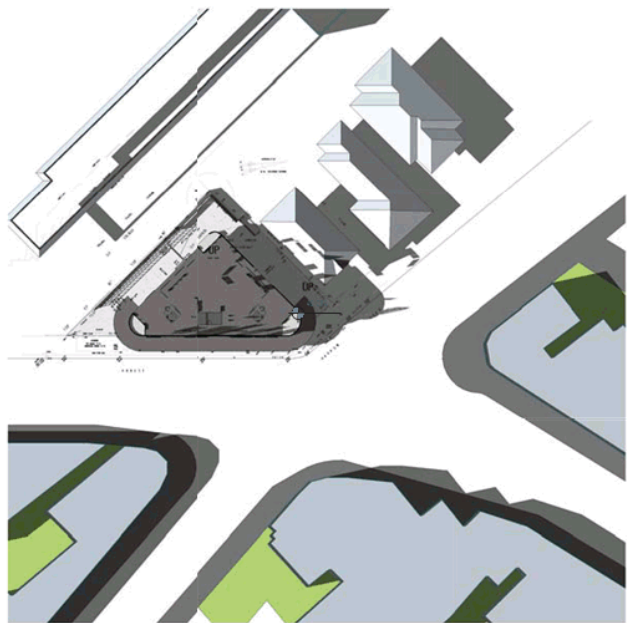
2 existing building model 10am
1 : 600



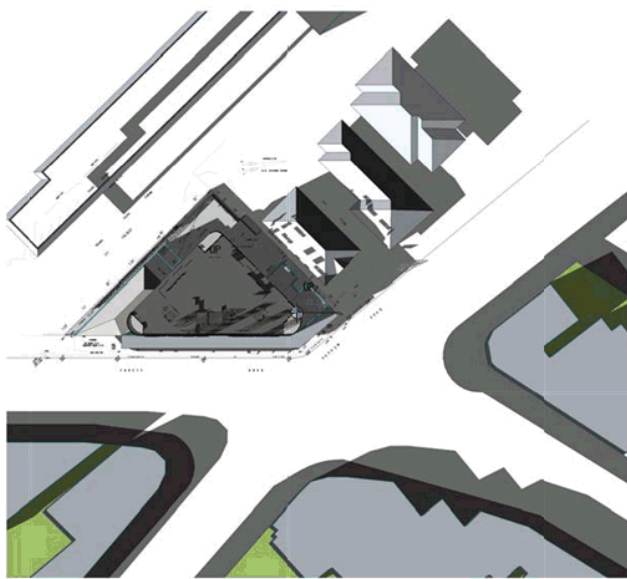
3 existing building model 11am
1 : 600



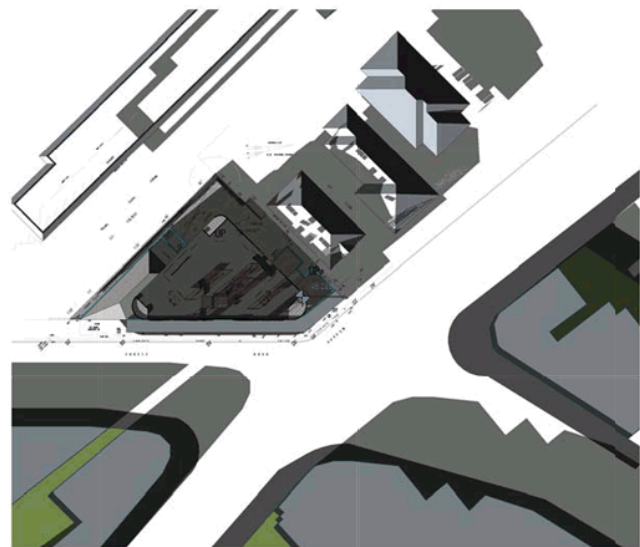
4 existing building model 12pm
1 : 600



5 existing building model 1pm
1 : 600

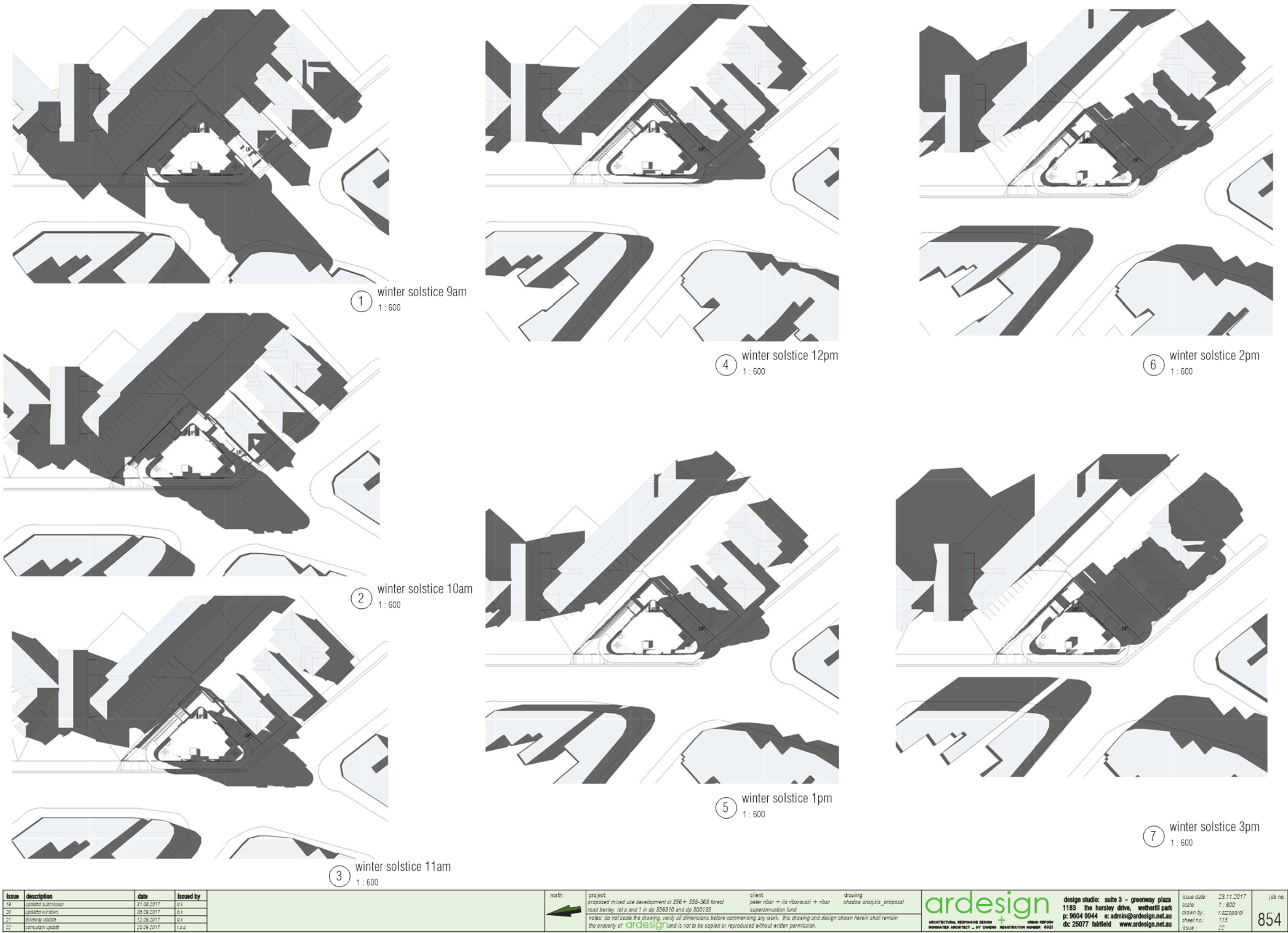


6 existing building model 2pm
1 : 600



7 existing building model 3pm
1 : 600

issue	description	date	issued by				
19	updated submission	31.08.2017	g.f.				
20	updated drawings	08.09.2017	g.f.				
21	drawings update	12.09.2017	g.f.				
22	consultant update	20.09.2017	f.a.				
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				notes: do not scale the drawing, verify all dimensions before commencing any work. this drawing and design shown herein shall remain the property of ardesign and is not to be copied or reproduced without written permission.			
				ardesign		design studio: suite 3 - greenway plaza 1183 the horsley drive, welberrill park p: 9604 9944 e: admin@ardesign.net.au dc: 25077 fairfield www.ardesign.net.au	issue date: 12.09.2017 scale: 1 : 600 drawn by: f.f. sheet no.: 116 issue: 22
				job no.		854	





19 January 2018

The General Manager
Bayside Council
PO Box 21
ROCKDALE NSW 2216

Attention: Town Planning

Dear Sir/Madam,

RE: CLAUSE 4.6 VARIATION TO CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF THE ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011

Nos. 356 – 368 Forest Road, Bexley

1. Introduction

This submission seeks a variation to Clause 4.3 of the Rockdale Local Environmental Plan 2011, which relates to the building height.

This submission has been prepared with regards to a development application for the redevelopment of Nos. 356 – 368 Forest Road, Bexley. The proposed development seeks the demolition of all existing buildings and the construction of a mixed use development comprising of two commercial premises and 22 residential units with four levels of basement car parking and landscaping.

The proposed development meets the requirements prescribed under Clause 4.6 of the Rockdale LEP 2011, as detailed in this written request for a variation to maximum building height control.

Clause 4.6 states the following:

"4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has*

■ **Sydney Office**
Suite 15, Level 1
469-475 Parramatta Rd
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considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

- (b) the concurrence of the Director-General has been obtained.*

- (5) In deciding whether to grant concurrence, the Director-General must consider:*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. When this Plan was made it did not include any of these Zones.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4*
- (ca) clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D)*
- (cb) clause 4.3A."*

Clause 4.6 – Exceptions to development standards, establishes the framework for varying development standards applying under a LEP. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

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

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

The Environmental Planning Instrument to which these variations relate to is the Rockdale Local Environmental Plan 2011.

The development standard to which this variation relates to is Clause 4.3 – Height of Buildings, which reads as follows:

4.3 Height of buildings

(1) The objectives of this clause are as follows:

(a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,

(b) to permit building heights that encourage high quality urban form,

(c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

(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,

(b) 6 metres—if the building is in Area B identified on the [Height of Buildings Map](#) and on a lot having an area of at least 2,000 square metres,

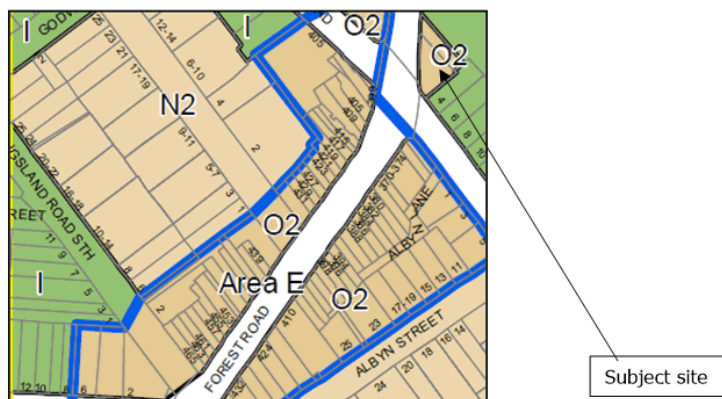
(c) 6 metres—if the building is in Area C identified on the [Height of Buildings Map](#) and on a lot having an area of at least 1,200 square metres,

(d) 15 metres—if the building is in Area D identified on the [Height of Buildings Map](#) and on a lot having an area of at least 1,000 square metres,

- (e) 3 metres—if the building is in Area E identified on the [Height of Buildings Map](#) and on a lot having an area of at least 600 square metres,
 - (f) 9 metres—if the building is in Area G identified on the [Height of Buildings Map](#) and on a lot having an area of at least 1,000 square metres,
 - (g) 12 metres—if the building is in Area H identified on the [Height of Buildings Map](#) and on a lot having an area of at least 2,000 square metres,
 - (h) 3 metres—if the building is in Area I identified on the [Height of Buildings Map](#) and on a lot having an area of at least 1,000 square metres,
 - (i) 9 metres—if the building is in Area J identified on the [Height of Buildings Map](#) and on a lot having an area of at least 2,000 square metres.
- (2B) Despite subclause (2), the maximum height of a building that is in Area K identified on the [Height of Buildings Map](#) and that is used only for the purpose of seniors housing is:
- (a) 14.5 metres—if the building is within 38 metres of Harrow Road, and
 - (b) 9.5 metres—if the building is not within 38 metres of Harrow Road.

The site is zoned B4 Mixed Use under the Rockdale Local Environmental Plan 2011. The building height on the site is not to exceed the maximum shown on the building height map, which for this site is 16m. Refer to Figure 1 below.

Figure 1: Building Height Map



Source: RLEP 2011.

The proposed development exceeds the standard, seeking a maximum building height of 19.6m. The variation is equivalent to 3.6m, this being to the lift overrun. The maximum height of habitable floor area is 18.7m and therefore, a lesser breach of 2.7m.

A written justification is therefore required for the proposed variation to the maximum building height development standard, in accordance with Clause 4.6 of the Rockdale LEP 2011.

2. Extent of Non-Compliance

As noted above Clause 4.3 of the Rockdale LEP 2011 states that the maximum building height for the site is 16m.

The current proposal seeks a maximum building height of 19.6m to the lift overrun. The proposal therefore exceeds the standard by a maximum of 3.6m. To habitable floor space, the maximum height equals 18.7m, with this being a lesser breach of 2.7m.

It is our submission that the breach to the building height control, will not impact on the amenity of the development or adjoining properties, nor will the variation compromise the architecture of the building or the bulk and scale of the development.
A degree of flexibility is considered reasonable in this instance.

3. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827*.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

It is therefore our submission that the Wehbe test is of relevance in the consideration of a standard to determine whether or not it is unreasonable or unnecessary in the circumstances of the case and it is evident in the Four2Five matter, the above test is relevant.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out below:

First	<p><i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i></p> <p><i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.</i></p>
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Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</i>
Fourth	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.</i>
Fifth	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.</i>

The following discussion is provided in response to each of the above:

i. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

The objectives supporting the maximum building height control identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3.

(1) The objectives of this clause are as follows:

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

With respect to objective (a), we acknowledge that the subject site is located at the corner of Forest and Harrow Roads just outside of the Bexley Town Centre. Development within the Bexley Town Centre, located immediately opposite the subject site, are awarded a bonus height and FSR provisions enabling a maximum building height of 19m (16m + 3m) and maximum floor space ratio of 2.5:1 (2.0:1 + 0.5:1). It is unclear why the subject site has been excluded from this area given its proximity and similarly zoned B4 land use.

In view of the prominent corner location of the subject site, its relationship to the Bexley Town Centre and the availability of local infrastructure and public transport services, the proposed building height would reinforce the corner position of the subject site creating a landmark/gateway development to the town centre.

In response to objective (b), the proposed development is of a high architectural design and responds to the constraints of the site and feedback received from the Design Review Panel.

The proposed development provides for a free standing building which is triangular in its shape to reflect the irregularity of the site. The proposed building provides for consistent 6m setbacks to the side and rear boundaries enabling a clearly defined, modern form that acts as a gateway to the Bexley Town Centre.

As demonstrated in the perspectives provided within Section 3 of this report, the ground floor of the development promotes an active street frontage with large commercial spaces and glazed shopfronts addressing both the Forest and Harrow Road street frontages. The residential lobby is clearly defined to the street and reinforced through a strong vertical element which spans across all of the proposed six storeys.

To the upper residential levels, the proposed dark tones of the concrete blockwork will be broken up by acrylic panels, glass balustrading and steel feature cladding providing for visual interest and creating a balance to the perceived bulk and scale of the development.

In response to objective (c), the proposal will result in additional overshadowing to the adjoining flat building, particularly in the afternoon period though it is considered that this is a consequence of both the orientation of the site (given the flat building is located to the south of the subject site) and the higher land use zoning afforded to the subject site (being B4 Mixed Use adjacent to R2 Low Density Residential).

The following comments are provided in relation to objective (d). Deep soil planting is maintained along the eastern side boundary and wraps around to the rear of the building where the site adjoins Bexley Public School and enables a transition between the B4 zoning of the site and residential zoning of the neighbouring properties.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards. As demonstrated, the objectives of these standards have been achieved.

ii. *the underlying objective or the purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above. Therefore, this clause is not applicable.

iii. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The underlying objective or purpose would not be defeated or thwarted if compliance was required.

- iv. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and*

While the standard has not been abandoned or destroyed, Rockdale Council has varied LEP standards in the past.

As demonstrated in this letter, the proposal will not result in any adverse environmental impacts to adjoining properties and will result in a high quality mixed use development on the site.

- v. *the zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Not applicable as the zoning of the site is appropriate.

4. Are there Sufficient Environmental Planning Grounds?

The assessment above and shown throughout the Statement of Environmental Effects demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The proposal addresses the site constraints, streetscape and relevant objectives of both the standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts as detailed in the submitted reports.

As detailed within this submission, the subject site is located just outside of the Bexley Town Centre at the corner of Forest and Harrow Roads. Development located immediately opposite the subject site within the Bexley Town Centre are awarded a bonus height and FSR control enabling a maximum building height of 19m (16m + 3m) and maximum floor space ratio of 2.5:1 (2.0:1 + 0.5:1). It is unclear why the subject site has been excluded from this area.

We submit that given the prominent corner location of the subject site, its proximity to the Bexley Town Centre and the availability of local infrastructure and public transport services, the proposed building height would be read consistently with development to the south (where the bonus controls apply) and would reinforce the corner position of the subject site creating a landmark/gateway development to the town centre. Therefore, contextually, the proposed development will be visually integrated into the surrounding area and will contribute towards the revitalisation of the precinct.

In this case, strict compliance with the development standard for building height in the Rockdale LEP 2011 is unnecessary and unreasonable.

5. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3.

The proposal before Council provides for a well-considered development that responds to the context of the site and its surrounds. In terms of ADG provisions, the development is compliant with respect to solar access, ventilation, common open space provisions and deep soil planting requirements.

Furthermore, it is important to also consider the objectives of the B4 Mixed Use zone in relation to the development, which are as follows:

Zone B4 Mixed Use – Objectives of zone

- *To provide a mixture of compatible land uses.*
- *To integrate sustainable business, office, residential, retail and other development in accessible locations to maximise public transport patronage and encourage walking and cycling.*

In response to the above the following is provided:

The proposed development satisfies the objectives of the zone. The proposal will provide for a mixed use development on the site comprising of 2 x commercial premises and 22 x residential units. It is considered that the proposal will positively contribute towards the revitalisation of the nearby town centre. The site is also well located to public transport with a bus stop located at the Forest Road frontage.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest.

6. Public Benefit of Maintaining the Standard

It is considered that there is no benefit to the public or the community in maintaining the development standards. The proposed development will allow for the creation of a high quality mixed use development which as stated above meets the desired objectives of the standard.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

The departure from the building height control within the Rockdale LEP 2011 allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

7. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Rockdale LEP 2011 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (building height) and objectives of the B4 Mixed Use zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State of Regional Significance; and
- The development submitted aligns with the revitalisation of the formerly industrial precinct.

Based on the above, the variation is considered to be well founded.

8. General

Clause 4.6 also states that:

“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. When this Plan was made it did not include any of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).

- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (ca) *clause 4.3 (2A), 4.4 (2A), 2(b), 2(c) or 2(d)*
 - (cb) *clause 4.3A."*

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate was provided for the development.

Clause 5.4 of the Rockdale Local Environmental Plan does not apply to the proposal.

Clause 4.3A, 4.3(2A), 4.4 (2A), 2(b), 2(c) or 2(d) of the Rockdale Local Environmental Plan do not apply to the site.

9. Conclusion

The proposal does not strictly comply with the maximum building height control as prescribed by Clause 4.3 of the Rockdale Local Environmental Plan 2011. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Rockdale LEP 2011 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Rockdale LEP 2011 to vary this development controls appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum building height is not necessary and that a better planning outcome is achieved for this development by allowing flexibility in the application.

Kind regards,

Valdis Aleidzans
GAT & Associates
Plan 2724

Nos. 356 – 368 Forest Road, Bexley
GAT & Associates Pty Ltd



19 January 2018

The General Manager
Bayside Council
PO Box 21
ROCKDALE NSW 2216

Attention: Town Planning

Dear Sir/Madam,

**RE: CLAUSE 4.6 VARIATION TO CLAUSE 4.3 (FLOOR SPACE RATIO) OF THE
ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011**

Nos. 356 – 368 Forest Road, Bexley

1. Introduction

This submission seeks a variation to Clause 4.4 of the Rockdale Local Environmental Plan 2011, which relates to the floor space ratio control.

This submission has been prepared with regards to a development application for the redevelopment of Nos. 356 – 368 Forest Road, Bexley. The proposed development seeks the demolition of all existing buildings and the construction of a mixed-use development comprising of two commercial premises and 22 residential units with four levels of basement car parking and landscaping.

The proposed development meets the requirements prescribed under Clause 4.6 of the Rockdale LEP 2011, as detailed in this written request for a variation to maximum floor space ratio control.

Clause 4.6 states the following:

"4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include any of these Zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4
 - (ca) clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D)
 - (cb) clause 4.3A."

Clause 4.6 – Exceptions to development standards, establishes the framework for varying development standards applying under a LEP. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

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

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

The Environmental Planning Instrument to which these variations relate to is the Rockdale Local Environmental Plan 2011.

The development standard to which this variation relates to is Clause 4.4 – Floor Space Ratio, which reads as follows:

“(1) The objectives of this clause are as follows:

- (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,*
- (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,*
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.*

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) The floor space ratio for a building on land that is in Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone R4 High Density Residential and that has an area of less than 460 square metres is not to exceed 0.55:1.

(2B) Without limiting subclause (2), the ratio of the gross floor area of all buildings (or parts of buildings) that are residential accommodation to the site area is not to exceed:

- (a) 1:1 if the site is at 108 Princes Highway, Arncliffe, or*
- (b) 2.25:1 if the site is at 213 Princes Highway and 4 Wardell Street, Arncliffe.*

(2C) Despite subclause (2), the floor space ratio for a building may exceed the maximum floor space ratio allowed under that subclause by up to:

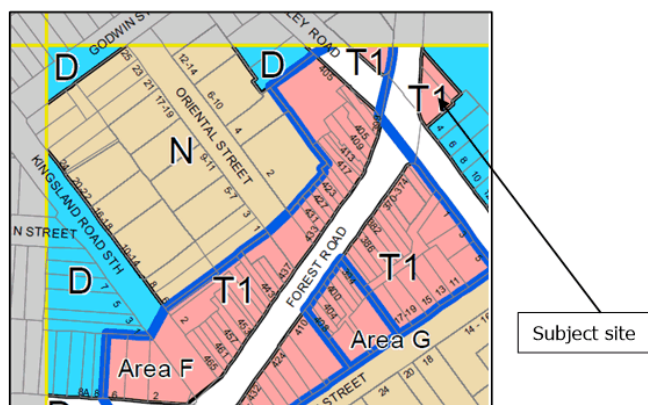
- (a) 1:1—if the building is in Area A identified on the Floor Space Ratio Map and on a lot having an area of at least 1,500 square metres,
- (b) 1:1—if the building is in Area B identified on the Floor Space Ratio Map and on a lot having an area of at least 2,000 square metres,
- (c) 0.5:1—if the building is in Area C identified on the Floor Space Ratio Map and on a lot having an area of at least 1,200 square metres,
- (d) 2:1—if the building is in Area D identified on the Floor Space Ratio Map and on a lot having an area of at least 1,000 square metres,
- (e) 0.5:1—if the building is in Area F identified on the Floor Space Ratio Map and on a lot having an area of at least 600 square metres,
- (f) 0.7:1—if the building is in Area G identified on the Floor Space Ratio Map and on a lot having an area of at least 600 square metres and contains one or more pedestrian arcades.

(2D) Despite subclause (2), the maximum floor space ratio of a building on land in Area E identified on the Floor Space Ratio Map is 5:1. However, the ratio of the gross floor area of all buildings (or parts of buildings) that are commercial premises to the site area must be no less than 2:1.

Note. Floor space ratios are determined cumulatively by calculating the gross floor area of all buildings on the site concerned (clause 4.5 (2))."

The site is zoned B4 Mixed Use under the Rockdale Local Environmental Plan 2011. The floor space ratio on the site is not to exceed the maximum shown on the floor space ratio map, which for this site is 2.0:1. Refer to Figure 1 below.

Figure 1: Floor Space Ratio Map



Source: RLEP 2011.

Nos. 356 – 368 Forest Road, Bexley
GAT & Associates Pty Ltd

The proposed development exceeds the standard, seeking a floor space ratio of 2.03:1. The variation is equivalent to 21.12m².

A written justification is therefore required for the proposed variation to the maximum floor space ratio development standard, in accordance with Clause 4.6 of the Rockdale LEP 2011.

2. Extent of Non-Compliance

As noted above Clause 4.4 of the Rockdale LEP 2011 states that the maximum FSR for the site is 2.0:1. This equates to a maximum gross floor area of 1,630m², based on an existing site area of 815.00m².

The current proposal seeks a gross floor area of 1,651.21m² or an FSR of 2.03:1. The proposal therefore exceeds the standard by 21.12m².

The parking, service, storage and circulation spaces, being stairs and lifts, have not been included as per the definition of gross floor area.

It is our submission that the breach to the FSR control, will not impact on the amenity of the development or adjoining properties, nor will the variation compromise the architecture of the building or the bulk and scale of the development.

A degree of flexibility is considered reasonable in this instance.

3. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827*.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

It is therefore our submission that the Wehbe test is of relevance in the consideration of a standard to determine whether or not it is unreasonable or unnecessary in the circumstances of the case and it is evident in the Four2Five matter, the above test is relevant.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i> <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.</i>
Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</i>
Fourth	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.</i>
Fifth	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.</i>

The following discussion is provided in response to each of the above:

i. the objectives of the standard are achieved notwithstanding non-compliance with the standard;

The objectives supporting the maximum floor space ratio control identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4.

- "(1) The objectives of this clause are as follows:*
- (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,*
 - (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,*
 - (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.*

The proposed development has been designed to respond to the context of the site, notably its proximity to the Bexley Town Centre. The proposal provides for adequate residential and commercial parking spaces. The proposal provides for new commercial premises at ground floor taking advantage of existing pedestrian traffic and supporting the local economy providing for new employment opportunities and local services.

With respect to objective (b), the proposed development has made specific regard to the form and scale of adjoining properties particularly in view of the differing land use zones. My client has notably acquired all properties within this stretch of the B4 Mixed Use Zone to ensure a holistic redevelopment of the land.

The amalgamated site does however join the R2 Low Density Residential zone to both side/rear boundaries, with Bexley Public School to the north and a two storey residential flat building to the south.

With regards to visual privacy, to the north the proposal provides for a 6m side setback to the shared boundary and adjoins the school's staff car parking area. In this respect, there is no adverse impact to the adjoining site.

To the south, a 6m setback is also proposed to the residential flat building with this area provided as deep soil planting. The residential flat building is notably two storeys in height and accordingly Levels 3 – 7 of the proposed development will overlook the roof of this development rather than any habitable windows. In terms of the two lower levels, the proposed ground floor has been designed as non-residential in its use comprising of retail spaces that are predominantly orientated to the street minimising the potential for any overlooking. The existing side boundary fence will also obstruct sight lines at this level. At Level 1, where windows are proposed off living rooms or bedrooms, they have been designed as either highlight windows or are narrow in their design minimising sight lines. Privacy screens may also be fitted to the balconies of these units further restricting sight lines.

The proposal will result in additional overshadowing to the adjoining flat building, particularly in the afternoon period though it is considered that this is a consequence of both the orientation of the site (given the flat building is located to the south of the subject site) and the higher land use zoning afforded to the subject site (being B4 Mixed Use adjacent to R2 Low Density Residential).

The following comments are made with regards to objective (c).

As detailed within the submitted Statement of Environmental Effects, the proposed development is highly constrained and challenged by a number of factors including its triangular shape, high level of traffic noise, interface with the lower density zones, a strata titled apartment building to its south and a heritage school to its north.

The site was also recognised as landmark site that is highly visible from many viewpoints.

The current proposal has taken on board the comments provided by both Council Officers and the Panel members during our earlier Pre-DA and Design Review Panel meetings. The proposed development provides for a free standing building which is triangular in its shape to reflect the irregularity of the site. The proposed building provides for consistent 6m setbacks to the side and rear boundaries enabling a clearly defined, modern form that acts as a gateway to the Bexley Town Centre.

As demonstrated in the perspectives provided within Section 3 of this report, the ground floor of the development promotes an active street frontage with large commercial spaces and glazed shopfronts addressing both the Forest and Harrow Road street frontages. The residential lobby is clearly defined to the street and reinforced through a strong vertical element which spans across all of the proposed seven storeys.

To the upper residential levels, the proposed dark tones of the concrete blockwork will be broken up by acrylic panels, glass balustrading and steel feature cladding providing for visual interest and creating a balance to the perceived bulk and scale of the development.

Deep soil planting is maintained along the eastern side boundary and wraps around to the rear of the building where the site adjoins Bexley Public School and enables a transition between the B4 zoning of the site and residential zoning of the neighbouring properties.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards. As demonstrated, the objectives of these standards have been achieved.

ii. *the underlying objective or the purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above. Therefore, this clause is not applicable.

iii. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The underlying objective or purpose would not be defeated or thwarted if compliance was required.

iv. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and*

While the standard has not been abandoned or destroyed, Rockdale Council has varied LEP standards in the past.

As demonstrated in this letter, the proposal will not result in any adverse environmental impacts to adjoining properties and will result in a high quality mixed use development on the site.

- v. *the zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Not applicable as the zoning of the site is appropriate.

4. Are there Sufficient Environmental Planning Grounds?

The assessment above and shown throughout the Statement of Environmental Effects demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The proposal addresses the site constraints, streetscape and relevant objectives of both the standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts as detailed in the submitted reports.

As detailed within this submission, the subject site is located just outside of the Bexley Town Centre at the corner of Forest and Harrow Roads. Development located immediately opposite the subject site within the Bexley Town Centre are awarded a bonus height and FSR control enabling a maximum building height of 19m (16m + 3m) and maximum floor space ratio of 2.5:1 (2.0:1 + 0.5:1). It is unclear why the subject site has been excluded from this area.

We submit that given the prominent corner location of the subject site, its proximity to the Bexley Town Centre and the availability of local infrastructure and public transport services, the floor space ratio would be read consistently with development to the south (where the bonus controls apply) and would reinforce the corner position of the subject site creating a landmark/gateway development to the town centre. Therefore, contextually, the proposed development will be visually integrated into the surrounding area and will contribute towards the revitalisation of the precinct.

Furthermore, we acknowledge that under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009, a bonus FSR of 0.5:1 could be applied to the site achieving the same density.

In this case, strict compliance with the development standard for floor space ratio in the Rockdale LEP 2011 is unnecessary and unreasonable.

5. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.4.

The proposal before Council provides for a well-considered development that responds to the context of the site and its surrounds. In terms of ADG provisions, the development is compliant with respect to solar access, ventilation, common open space provisions and deep soil planting requirements.

Furthermore, it is important to also consider the objectives of the B4 Mixed Use zone in relation to the development, which are as follows:

Zone B4 Mixed Use – Objectives of zone

- *To provide a mixture of compatible land uses.*
- *To integrate sustainable business, office, residential, retail and other development in accessible locations to maximise public transport patronage and encourage walking and cycling.*

In response to the above the following is provided:

The proposed development satisfies the objectives of the zone. The proposal will provide for a mixed use development on the site comprising of 2 x commercial premises and 22 x residential units. It is considered that the proposal will positively contribute towards the revitalisation of the nearby town centre. The site is also well located to public transport with a bus stop located at the Forest Road frontage.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest.

6. Public Benefit of Maintaining the Standard

It is considered that there is no benefit to the public or the community in maintaining the development standards. The proposed development will allow for the creation of a high quality mixed use development which as stated above meets the desired objectives of the standard.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

The departure from the floor space ratio control within the Rockdale LEP 2011 allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

7. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Rockdale LEP 2011 in that:

- ❑ Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- ❑ There are sufficient environmental planning grounds to justify the departure from the standards;
- ❑ The development meets the objectives of the standard to be varied (floor space ratio) and objectives of the B4 Mixed Use zoning of the land;
- ❑ The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- ❑ The breach does not raise any matter of State of Regional Significance; and
- ❑ The development submitted aligns with the revitalisation of the formerly industrial precinct.

Based on the above, the variation is considered to be well founded.

8. General

Clause 4.6 also states that:

- “(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include any of these zones.*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to*

which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
(c) clause 5.4,
(ca) clause 4.3 (2A), 4.4 (2A), 2(b), 2(c) or 2(d)
(cb) clause 4.3A."

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate was provided for the development.

Clause 5.4 of the Rockdale Local Environmental Plan does not apply to the proposal.

Clause 4.3A, 4.3(2A), 4.4 (2A), 2(b), 2(c) or 2(d) of the Rockdale Local Environmental Plan do not apply to the site.

9. Conclusion

The proposal does not strictly comply with the maximum floor space ratio controls as prescribed by Clause 4.4 of the Rockdale Local Environmental Plan 2011. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Rockdale LEP 2011 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Rockdale LEP 2011 to vary this development controls appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum floor space ratio is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Valdis Aleidzans

GAT & Associates
Plan 2724

Bayside Planning Panel

26/06/2018

Item No	6.4
Application Type	Development Application
Application No	DA-2017/199
Lodgement Date	05/12/2017
Property	205-207 President Avenue, Monterey
Ward	Botany Bay
Owner	Mr Johny Papantoniou
Applicant	MacGillivray Architects
Proposal	Demolition of existing structures and construction of a four (4) storey residential flat building containing 16 residential units, basement parking and front fence
No. of Submissions	Two in opposition and One in support
Cost of Development	\$4,438,500
Report by	Coordinator Major Assessments

Officer Recommendation

- 1 That the Bayside Planning Panel do not support the proposed variation to Clause 4.3 - Height of Buildings and Clause 4.4 - Floor Space Ratio under Rockdale Local Environmental Plan 2011.
- 2 That the development application DA-2017/199 for the construction of a four(4) storey residential flat building comprising 16 residential units, basement parking, front fence and demolition of existing structures at 205-207 President Avenue Monterey be **REFUSED** pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:
 - a Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following considerations listed within Clause 28 of State Environmental Planning Policy 65 Design Quality of Residential Apartment Development:
 - i 3C – Public Domain Interface
 - ii 3D – Communal Open Space
 - iii 3F – Visual Privacy
 - iv 4A – Solar Access
 - v 4E – Private Open Space
 - vi 4F – Common Circulation and Spaces
 - vii 4H – Acoustic Privacy
 - viii 4L – Ground Floor Apartments
 - ix 4O – Landscape Design
 - x 4Q – Universal Design
 - b Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the

requirements of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, as the proposed removal of the Jacaranda mimosifolia at the rear of the site, is not appropriate.

- c Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, as an amended certificate has not been provided to accompany the amended design.
- d Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements or objectives of Rockdale Local Environmental Plan 2011:
 - i Clause 2.3 – Zone Objectives
 - ii Clause 4.3 – Height of Buildings
 - iii Clause 4.4 – Floor Space Ratio
 - iv Clause 4.6 – Exception to Development Standards
 - v Clause 6.7 – Stormwater
- e The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and provisions of Rockdale Development Control Plan 2011 including:
 - i 4.1.3 – Water Management
 - ii 4.1.7 – Tree Preservation
 - iii 4.2 – Streetscape and Site Context
 - iv 4.3.1 Open Space and Landscape Design - Residential Flat Building
 - v 4.3.2 – Private Open Space
 - vi 4.3.3 – Communal Open Space
 - vii 4.3.4 – Open Space and Landscape Design – Residential Building
 - viii 4.4.2 – Solar Access
 - ix 4.4.5 – Visual and Acoustic Privacy
 - x 4.5.2 Social Equity - Equitable Access
 - xi 4.6 – Car Parking and Movement
 - xii 4.7 – Letterboxes
 - xiii 5.2 – Residential Flat Buildings
- f) Having regard to the abovementioned non-compliances and pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory and represents an overdevelopment of the subject site.
- g) Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the suitability of the site for the proposed development has not been adequately demonstrated.
- h) Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

3 That the objectors be advised of the Bayside Planning Panel's decision.

Location Plan



Attachments

- 1 Supplementary Planning Report 205-207 President Avenue Monterey
- 2 Basement and Site Plan
- 3 North East Elevation & Streetscape
- 4 West South Elevation
- 5 Amended Landscape Plan
- 6 CI 4.6 statement
- 7 Original Planning Assessment Report [↓↓↓↓↓↓↓↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/199
Date of Receipt:	5 December 2016
Property:	205 President Avenue, MONTEREY (Lot B DP 421111) 207 President Avenue, MONTEREY (Lot A DP 421111)
Owner:	Mr Johny Papantoniou
Applicant:	MacGillivray Architects
Proposal:	205-207 President Avenue MONTEREY NSW 2217 - Construction of a four (4) storey residential flat building development, comprising 16 residential units, basement parking, front fence and demolition of existing structures
Recommendation:	Refused
No. of submissions:	Two(2) in opposition and one (1) in support
Author:	Marta M Gonzalez-Valdes
Date of Report:	14 June 2018

Key Issues

The following issues have been identified in the original report to the Bayside Planning Panel, however, further comments are provided below to support the recommendation and for the Panel's consideration.

Non compliance with the building height and uncertainty as to whether the building height may have to be increased further as the proposed encasement of the sewer pipe transversing the site has not been endorsed by Sydney Water. The building as proposed is already not compatible with the scale and built form of the predominant streetscape in President Avenue and the proposal relies on extensive elevated areas, which creates visual impacts and perceived bulk. Further the extensive use of ramps and retaining walls given the elevated nature of the basement prevent the planting of proper vegetation to allow screening from adjacent buildings.

Non compliance with the maximum FSR requirement. The proposal exceeds the gross floor area (GFA) by 116sq.m. In calculating the GFA, circulation areas, voids and other areas which create additional bulk such as recessed balconies and external void areas, have not been included. It is noted that these areas contribute to extending the building footprint towards the rear and create a bulk beyond the predominant footprint of adjacent buildings.

Non compliance with the ADG under SEPP 65, particularly in regard to character and scale. The DRP recommended a recess of the levels at RL 16.11 to achieve better integration by following the parapet line of the adjacent buildings. This has not been achieved successfully.

Recommendation

A. That the Bayside Planning Panel do not support the proposed variation to Clause 4.3 - Height of Buildings and Clause 4.4 - Floor Space Ratio under Rockdale Local Environmental Plan 2011.

B. That the development application DA-2017/199 for the construction of a four(4) storey residential flat building comprising 16 residential units, basement parking, front fence and demolition of existing structures at 205-207 President Avenue Monterey be **REFUSED** pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

a) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following considerations listed within Clause 28 of State Environmental Planning Policy 65 Design Quality of Residential Apartment Development:

- i) 3C – Public Domain Interface
- ii) 3D – Communal Open Space
- iii) 3F – Visual Privacy
- iv) 4A – Solar Access
- v) 4E – Private Open Space
- vi) 4F – Common Circulation and Spaces
- vii) 4H – Acoustic Privacy
- viii) 4L – Ground Floor Apartments
- ix) 4O – Landscape Design
- x) 4Q – Universal Design

b) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, as the proposed removal of the Jacaranda mimosifolia at the rear of the site, is not appropriate.

c) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, as an amended certificate has not been provided to accompany the amended design.

d) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements or objectives of Rockdale Local Environmental Plan 2011:

- a) Clause 2.3 – Zone Objectives
- b) Clause 4.3 – Height of Buildings
- c) Clause 4.4 – Floor Space Ratio
- d) Clause 4.6 - Exception to Development Standards
- e) Clause 6.7 – Stormwater

e) The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and provisions of Rockdale Development Control Plan 2011 including:

- i. 4.1.3 – Water Management
- ii. 4.1.7 – Tree Preservation

- iii. 4.2 – Streetscape and Site Context
- iv. 4.3.1 Open Space and Landscape Design - Residential Flat Building
- v. 4.3.2 – Private Open Space
- vi. 4.3.3 – Communal Open Space
- vii. 4.3.4 – Open Space and Landscape Design – Residential Building
- viii. 4.4.2 – Solar Access
- ix. 4.4.5 – Visual and Acoustic Privacy
- x. 4.5.2 Social Equity - Equitable Access
- xi. 4.6 – Car Parking and Movement
- xii. 4.7 - Letterboxes
- xiii. 5.2 – Residential Flat Buildings

f) Having regard to the abovementioned non-compliances and pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory and represents an overdevelopment of the subject site.

g) Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the suitability of the site for the proposed development has not been adequately demonstrated.

h) Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

C. That the objectors be advised of the Bayside Planning Panel's decision.

Background

History

This development application was considered at the Bayside Planning Panel (BPP) meeting on 24 April 2017. The BPP resolved:

- 1 That this item be deferred to allow the applicant to submit an amended landscape plan which allows for the removal of the jacaranda mimosifolia and the replacement planting of two jacaranda mimosifolias. This is to ensure that the site will make a contribution to the vegetation of the district in the future. The deferral will also allow the applicant to address the height exceedance with a Clause 4.6 variation and similarly a variation to the FSR or verification of compliance with the FSR. The matter is to be referred back to the Panel in a timely manner with an appropriate set of draft conditions to allow determination.*
- 2 That the objectors be advised of the Bayside Planning Panel's decision.*

Panel reason:

The Panel considers that in the circumstances the applicant should be given the opportunity to finalize the plans and submit the necessary documentation prior to determination. The Panel is of the view that the location of the existing Jacaranda tree would unreasonably impact on the potential yield of the site and that the more appropriate course of action is to ensure that there is sufficient deep soil planting on site to accommodate two advanced replacement Jacarandas.

The amended landscape plan and CI 4.6 justification for a variation to CI 4.5 - Height of Buildings and Clause 4.4 - Floor Space Ratio were submitted on 29 May 2018. This information has been assessed. The proposed variation to the height and FSR controls are not supported for the reasons outlined in the reports. Importantly, the proposal is not considered to be consistent to the objectives of the standards and the applicant has not demonstrated there are sufficient environmental planning grounds to contravene the standards.

Council's landscape architect does not support the proposed landscape scheme given the excessive use of structures within the front and side setbacks, the limited setbacks, particularly along the south boundary and the inability of the proposed planting to grow so as to provide appropriate screen planting. Allowing greater setbacks along the sides is critical to ensure the elevated circulation areas are properly screened from neighbours. This has not been achieved successfully.

Further the proposal contains outstanding information critical to the determination of the application such as confirmation from Sydney Water that the encasement of the sewer pipe is supported.

Approval of the proposal is not in the public interest.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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:

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.6 Exceptions to development standards	No - see discussion	No - see discussion

4.6 Exceptions to development standards

The proposal does not comply with clause 4.3 - Height of Buildings and Clause 4.4 - Floor Space Ratio. The applicant has provided a CI4.6 justification which attempts to address CI4.6(3), which reads as below:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The Cl 4.6 justification provided by the applicant has been considered within the parameters of Cl4.6 (4) below.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Director-General has been obtained.

A summary of the assessment of the proposed variations to development standards is provided as follows:

Clause 4.3 - Height of Buildings

The maximum height permitted on the site under this clause is 14.5 metres. The non compliance has been established as follows:

Vertical elements and parapet - RL 20.11m - complies

Lift overrun - 2.942m over the height limit (20% variation)

Fire stairs - 1.741m over the height limit (12% variation)

Pergola - 1.452m over the height limit (10% variation)

In justifying the non compliance, the applicant states:

- The proposal is in an infill site and 'compliance with the minimum height standard is considered unnecessary'.
- 'The lift and stair structures pose no substantial loss of amenity to adjacent units, particularly in relation to privacy and loss of views. Any additional overshadowing would be minor and cast upon the adjacent units walls'.
- Privacy to adjacent units is maintained...'
- As the structures are located in the centre, they will have little to no visual impact and to the streetscape.
- The location of the COS at roof top will create less impacts than locating it at the rear. It will also provide residents with access to sun light and district views.

Clause 4.4 - Floor Space Ratio

The maximum floor space ratio (FSR) applicable to the site is 1:1 or 1347.4sq.m of gross floor area (GFA). The proposed GFA has been calculated as 1464.36 sq.m. This represents 116sq.m. above the permissible GFA or 1.087:1 FSR. The proposed variation is 8.7%.

In justifying the non compliance the applicant states:

- Compliance is considered unnecessary.

- The site is an infill site. 'It is considered that density is dictated more by envelope controls, particularly front, side and rear setback controls, rather than by a FSR.'
- The proposal complies with the setback controls.
- The variation is negligible.
- It does not result in impacts to the streetscape.
- It does not create significant amenity impacts to adjacent buildings. It will not add value to adjacent unit.
- The DRP considered the density of the proposal appropriate.

As a summary the applicant states that the proposal is in the public interest, and is consistent with the objectives of the development standards and zone objectives.

Assessment comments:

The proposal is an infill site. As indicated in Rockdale DCP at Cl 4.1.9 (3) - *The development of existing isolated sites is not to detract from the character of the streetscape and is to achieve a satisfactory level of residential amenity for its occupants. Development of existing isolated sites may not achieve the maximum potential, particularly height and floor space ratio and will be assessed on merit.*

The proposed raised basement level in proximity to the boundaries and the reliance on ramps and elevated communal areas such as the side entry portico (elevated approximately 1.24m from existing natural ground level) are uncharacteristic of the existing developments in President Avenue and will have a negative impact on the streetscape as well as visual and acoustic impacts to neighbouring properties. The front balconies of the dwellings on the northeast are recessed and limit solar access to the living areas. Similarly the side balconies for these units Units 5 and 9 as shown on the first and second floor plan create additional bulk and have the potential for being converted into habitable space in the future. The break in the building on the same units (Units 1, 5, 9 and 13) to create a courtyard at ground level, a void on levels one and two and a balcony on level 3 make no positive contribution and adds bulk to the building. The scale of the building and perceived density is further compromised by the architectural elements and unnecessary recesses. The recommendation by the Design Review Panel to recess the front of the building or provide a different treatment at RL 16.11 has not been satisfactorily achieved. As such the building presents with a bulkier and greater scale as compared to the predominant streetscape in President Avenue.

The removal of some of these elements would have allowed a more compact built form and a building footprint more compatible with the adjacent development. The retention of the existing significant Jacaranda tree at the rear, which was highly recommended for retention by specialists such as the DRP and Council's tree officer would also have been achieved. Further, the development has failed to demonstrate that impacts on overshadowing is not unreasonable.

The proposed landscaping has not been designed to mitigate impacts. As indicated by Council's landscape architect, screen planting so close to the building as well as planter beds 600mm deep on the western boundary are not optimal solutions for screening. The limited setbacks particularly along the eastern elevation prevents appropriate planting to achieve screening from neighbours.

The proposal is not consistent with the objectives of the height control in particular '(b) to permit building heights that encourage high quality urban form' and '(d) to nominate heights that will provide an appropriate transition in built form and land use intensity'. Similarly, the proposal is not consistent

with the objectives of the floor space ratio control in particular '(b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties' and '(c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.'

The CI4.6 justification submitted by the applicant has not adequately addressed CI4.6(3). Consistent with the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90, the applicant has been unable to establish the site and development specific circumstances which could otherwise warrant the proposed additional height and FSR on the subject site. As stated above, the proposal does not comply with the objectives of the standards sought to be varied and there has not been any compelling argument to demonstrate any particular reasons to justify such a variation.

For the above reasons and the reasons implicit in the original report to the BPP, it is considered that the proposed height and FSR variation should not be supported and that compliance with the standards is reasonable and necessary in this instance. Approval of the application is not in the public interest.

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:

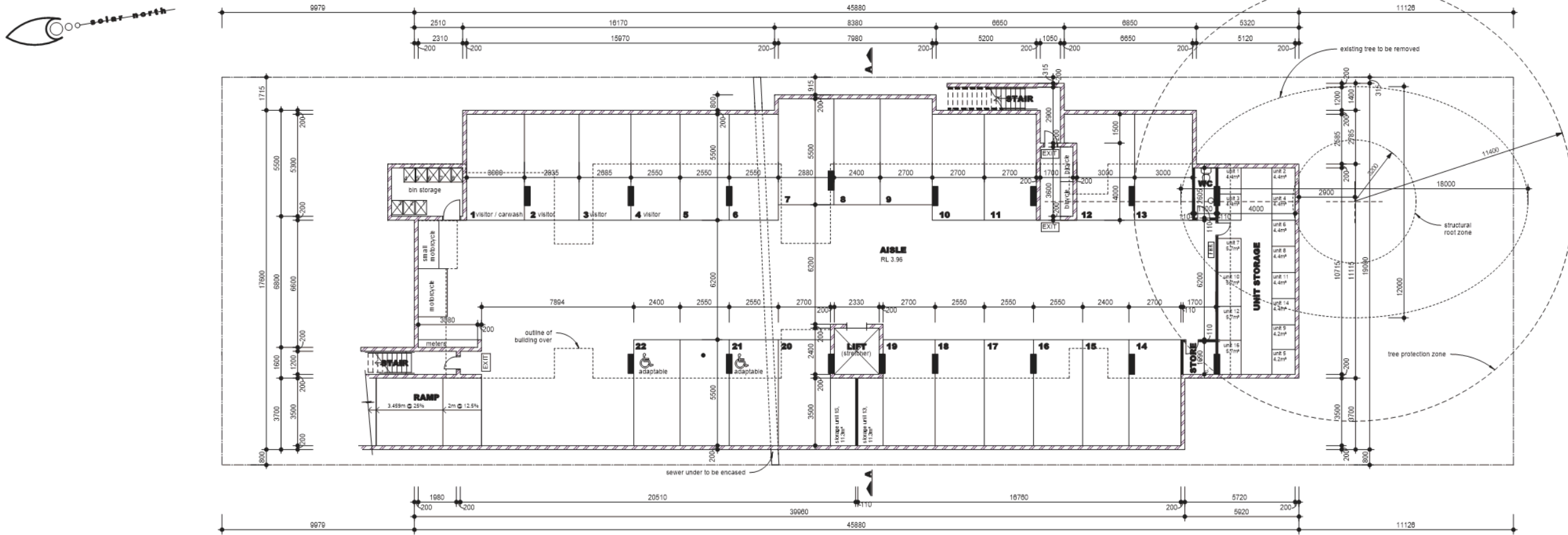
Relevant clauses	Compliance with objectives	Compliance with standard/provision
Rockdale Development Control Plan 2011	No - see discussion	No - see discussion
4.3.1 Open Space and Landscape Design - Residential Flat Buildings	No - see discussion	No - see discussion

Rockdale Development Control Plan 2011

Refer to original report.

4.3.1 Open Space and Landscape Design - Residential Flat Buildings

The submitted landscape plan has not been approved by Council's landscape architect. It has been found that the landscaped areas rely on excessive retaining walls and elevated areas with minimal setback from boundaries to allow adequate planting to mitigate visual and amenity impacts to adjacent buildings.



BASEMENT PLAN

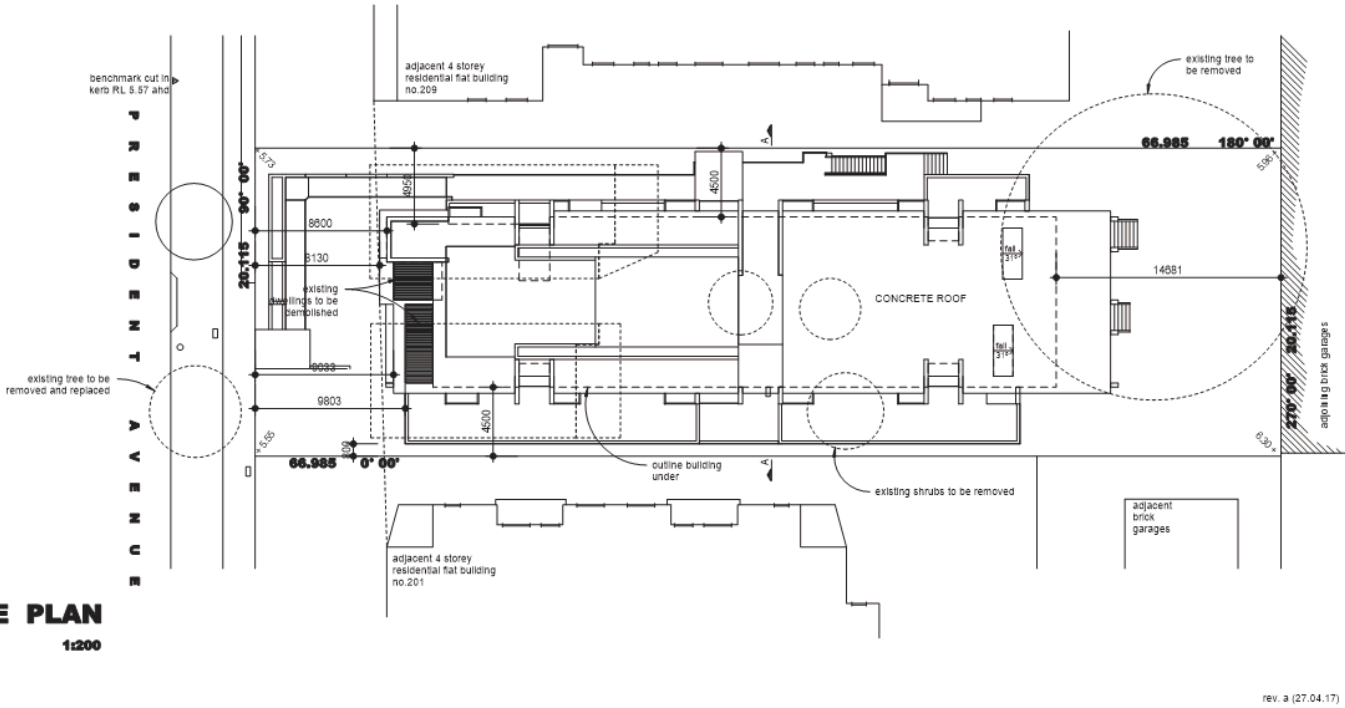
basic commitments

water
all garden planting to be low water use Indigenous species.
no pool or spa is to be installed.
all dwellings to have 3 star shower-heads, 4 star toilet flushing systems, 5 star kitchen taps, 5 star bathroom taps and 3.5 star dishwashers.
all dwellings to use alternative water supply (central water tank) for landscape.
central water tank to be min. 4500L collecting run-off from at least 200m² of roof.

energy
all dwellings to have natural light to kitchen
all dwellings to have natural lighting to toilets / bathrooms
all dwellings to have 5 star instantaneous gas hvs, ducted fans to bathrooms, kitchens and laundries all with manual switches.
all dwellings to have gas cook-tops and electric ovens
all dwellings to have single phase air-conditioning
all rooms have dedicated artificial lighting
all dwellings to have private outdoor clothes line
walls and floors to be constructed as per specifications in the certificate
car park must have fluorescent lighting with zoned switching and motion sensors and must have carbon monoxide monitor and used fan

site area: 1347.4m²
ftr: 1:1 = 1347.4m² gfa (allowable)
gfa (proposed): 1347.36m²
ftr (proposed): 1:1
landscape area required: 15%, 202.1m², deep soil
landscape area provided: 33.3%, 449.1m² (247.0m² more than required)

SITE PLAN
1:200

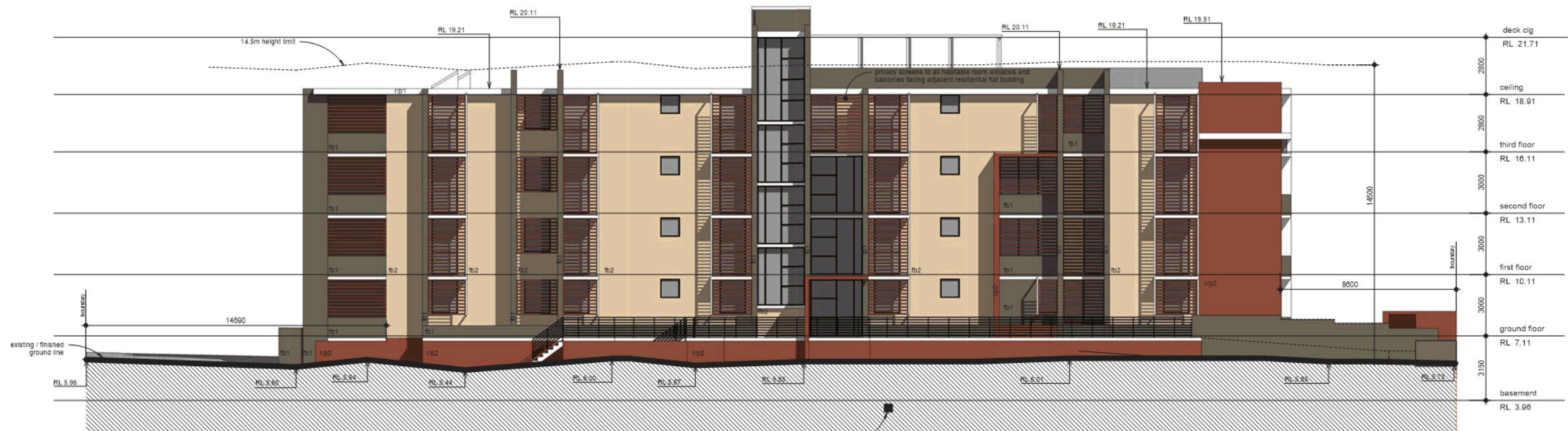


**PROPOSED
RESIDENTIAL FLAT BUILDING
CONTAINING
2x3 BED., 12x2 BED., AND
2x1 BED. UNITS
AT 205-207 PRESIDENT AVENUE
MONTEREY
FOR Mr. J. PAPANTONIOU**

macgillivray architects (arch reg. no.: 2583)
29 mutual road, mortdale, 2223
ph: 9594 4809 m3architects@optusnet.com.au
scale: 1:100@A1, 1:200@A3
date: 28.07.16 drawing no.: 2.926.1A

driveway widened, garbage area relocated from ground to basement, tree protection zone indicated, disabled entry ramp relocated from side boundary to front setback area, planters added to northern (street) side of ramp, site entry portico relocated adjacent to carpark ramp, security fence added to rear ground floor courtyard, top floor street fronting units amended by reducing blade walls, changing solid roof over balconies to open pergolas, balustrades changed to glazing and a horizontal element added, common open space and solar panels added to roof

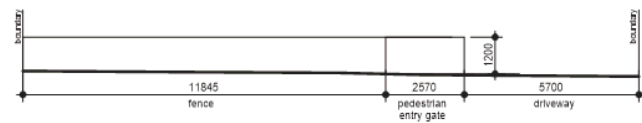
rev. a (27.04.17)



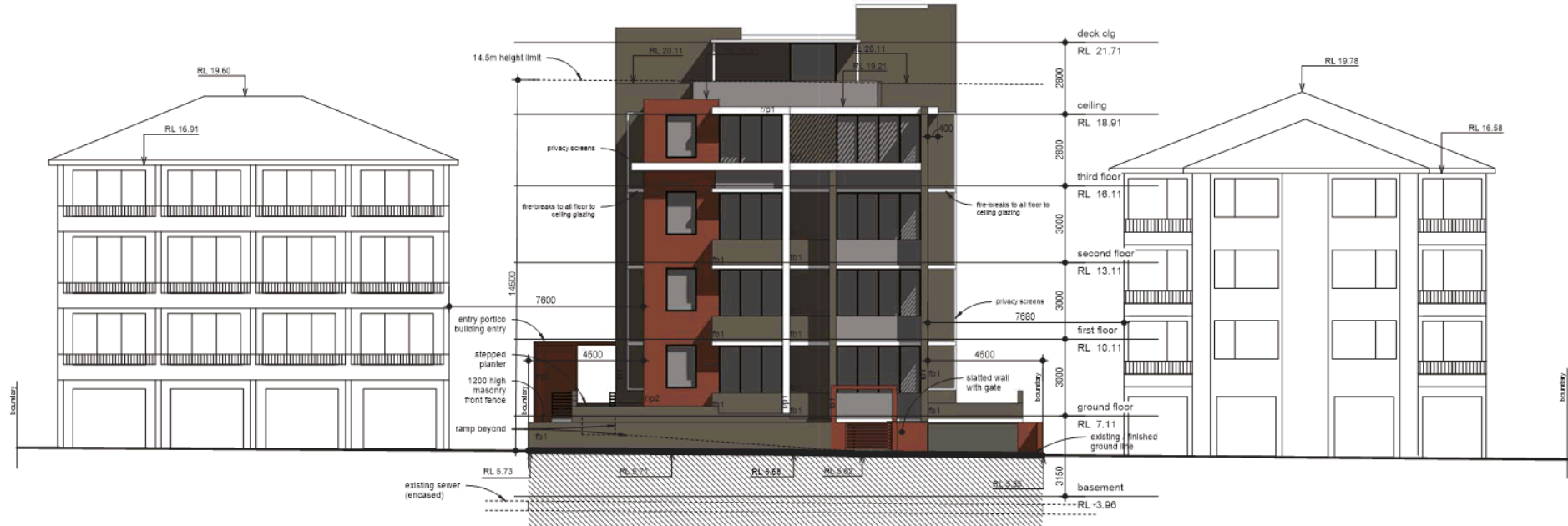
EAST ELEVATION

materials

fb1: face brick 1, neutral 'terracotta brown' or similar
fb2: face brick 2, neutral 'monumental olive' or similar
fp1: paint or render and paint 1, dulux 'wheatst' or similar
fp2: paint or render and paint 2, dulux 'maison red'
g: tinted aluminium glazing
all slab edges and firebricks, dulux 'wheatst'
all window frames to be aluminium



FRONT FENCE ELEVATION



NORTH ELEVATION

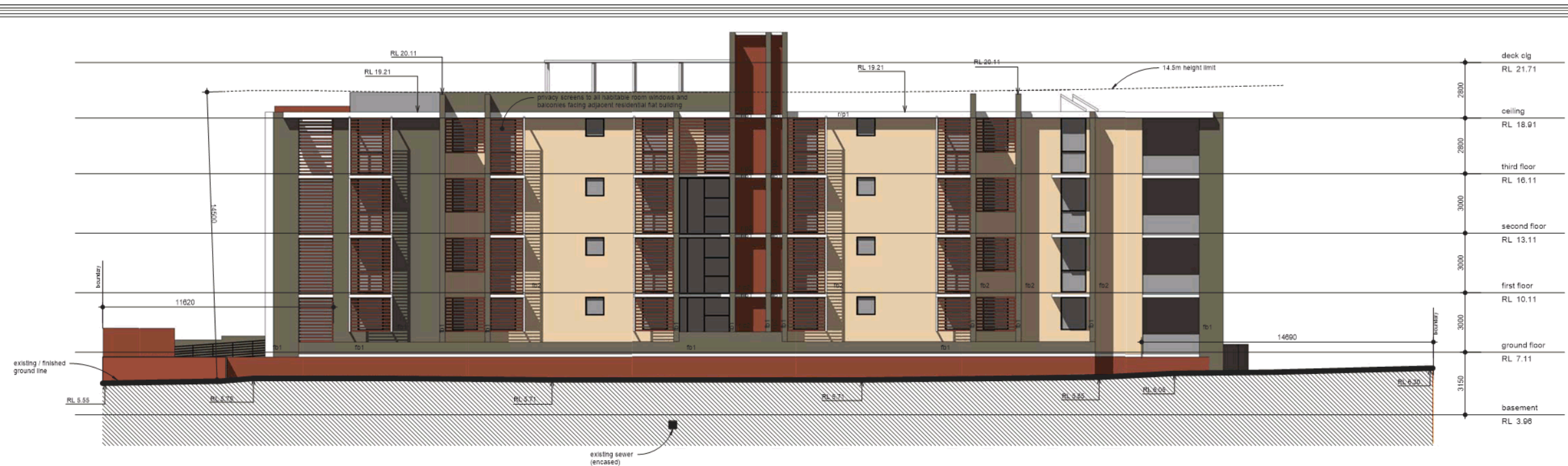
STREETSCAPE ELEVATION

**PROPOSED
RESIDENTIAL FLAT BUILDING
CONTAINING
2x3 BED., 12x2 BED., AND
2x1 BED. UNITS
AT 205-207 PRESIDENT AVENUE
MONTEREY
FOR Mr. J. PAPANTONIOU**

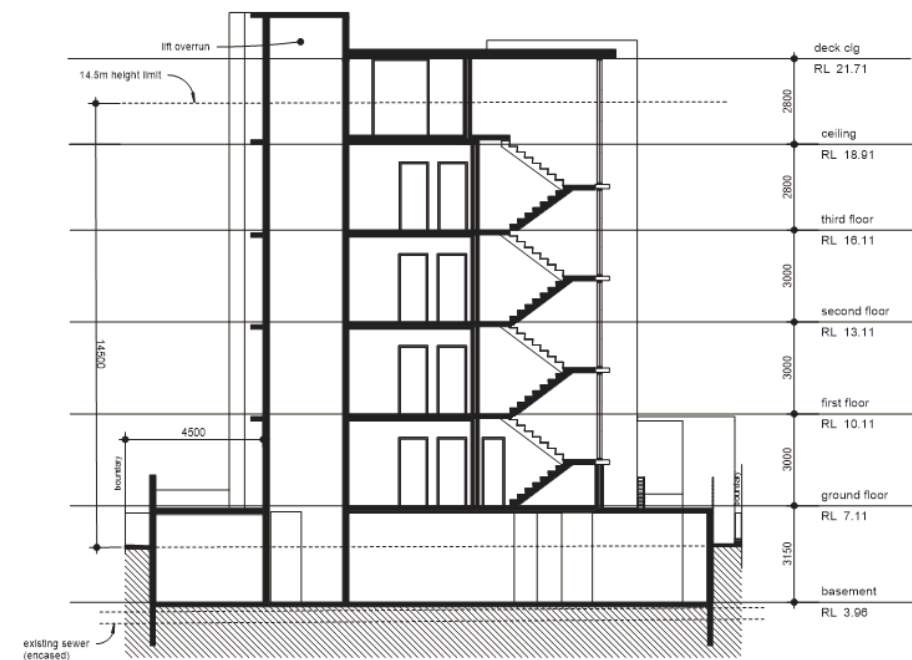
macgillivray architects (arch reg. no.: 2583)
29 mutual road, mortdale, 2223
ph: 9594 4809 m3architects@optusnet.com.au
scale: 1:100@A1, 1:200@A3
date: 28.07.16 **drawing no.: 2.926.6A**

driveway widened, garbage area relocated from ground to basement, tree protection zone indicated, disabled entry ramp relocated from side boundary to front setback area, planters added to northern (street) side of ramp, site entry portico relocated adjacent to carpark ramp, security fence added to rear ground floor courtyard, top floor street fronting units amended by reducing blade walls, changing solid roof over balconies to open pergolas, balustrades changed to glazing and a horizontal element added, common open space and solar panels added to roof

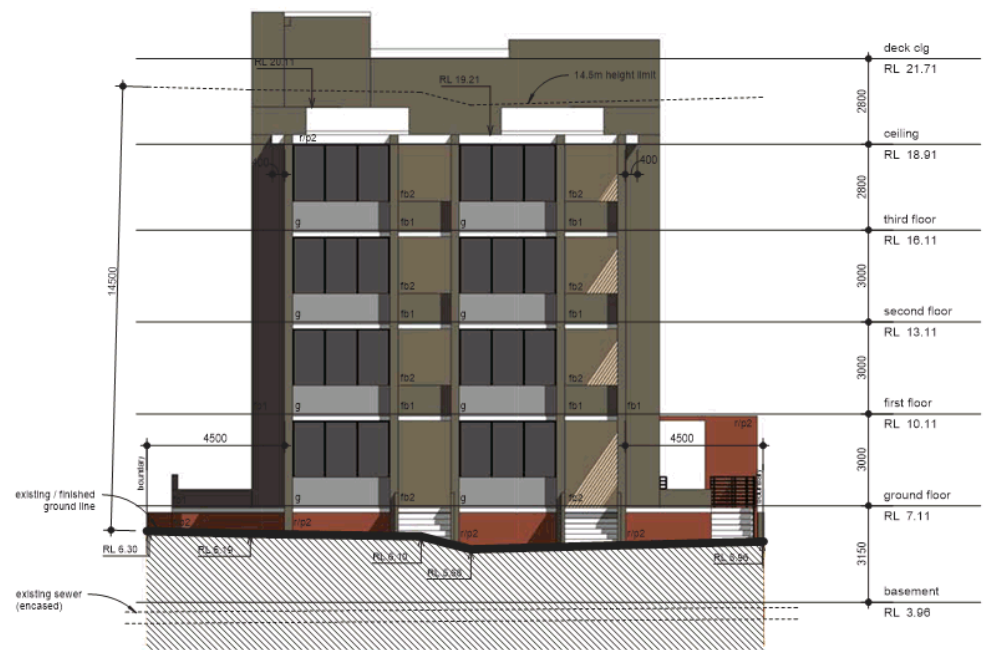
rev. a (27.04.17)



WEST ELEVATION



SECTION A - A



SOUTH ELEVATION

**PROPOSED
RESIDENTIAL FLAT BUILDING
CONTAINING
2x3 BED., 12x2 BED., AND
2x1 BED. UNITS
AT 205-207 PRESIDENT AVENUE
MONTEREY
FOR Mr. J. PAPANTONIOU**

macgillivray architects (arch reg. no.: 2583)
29 mutual road, mortdale, 2223
ph: 9594 4809 m3architects@optusnet.com.au
scale: 1:100@A1, 1:200@A3
date: 28.07.16 drawing no.: 2.926.7A

driveway widened, garbage area relocated from ground to basement, tree protection zone indicated, disabled entry ramp relocated from side boundary to front setback area, planters added to northern (street) side of ramp, site entry portico relocated adjacent to carpark ramp, security fence added to rear ground floor courtyard, top floor street fronting units amended by reducing blade walls, changing solid roof over balconies to open pergolas, balustrades changed to glazing and a horizontal element added, common open space and solar panels added to roof
rev. a (27.04.17)



designed by	drawn by
U	CT/HI

m a c g i l l i v r a y a r c h i t e c t s

29 mutual road, mortdale, nsw, 2223

ph: 02 9594 4809

m3architects@optusnet.com.au
ABN 86 246 365 621

Wednesday, 23 May 2018

The Manager,
Bayside Council (Rockdale),
2 Bryant Street,
Rockdale, NSW, 2216

Attention:
Marta Gonzalez-Valdes,
Coordinator Major Assessment Team, Development Services

Re: DA2017/199, 205-207 President Avenue, Monterey.

Dear Marta,

In relation to the Bayside Planning Panel (BPP) meeting, held 24th of April 2018, please find following additional information and amended plans as requested by the panel.

Amended landscape plan

Drawing no.: 117.18/356 A

Amendments incorporate comments from the Design Review Panel (DRP) minutes dated the 1st of February, 2017. The amendments also reflect the changes made to the Architectural plans, submitted to Council following receipt of the DRP minutes.

The main amendments include placing more planting along the eastern boundary at the front of the site, planter boxes beside the front ramp and adding the common open space area on the roof.

As noted in the BPP minutes, two Jacaranda Mimosifolia trees have been proposed in each corner at the rear of the site.

Jim MacGillivray B. Arch
Nominated Responsible Architect
Registration No.2583

Jamie MacGillivray B. Arch

Jasmina MacGillivray B. Arch

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m a c g i l l i v r a y
a r c h i t e c t s

Clause 4.6, Rockdale Local Environmental Plan 2011 (RLEP): Exceptions To Development Standards- height and floor space ratio / gross floor area variation.

In summary, Clause 4.6 indicates that Development Consent must not be granted for development that contravenes a development standard unless it is demonstrated that:

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.
- (c) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Clause 4.3 of the RLEP states, *'The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map'.*

The maximum height for the subject site, indicated on the Height of Buildings Map, is 14.5m.

Originally, the proposal was compliant with the height limit. However, both the DRP and Council officers concurred that the roof top area could support additional common open space (COS), which would provide better amenity than the on ground COS at the rear of the site, as it would achieve better solar access. An amended proposal was submitted as such.

As a result, the areas of access to the roof top area and additional pergola roof structure exceed the maximum 14.5m height limit. It is noted that these structures have been proposed as low as possible to reduce impacts.

The passenger lift and associated lift overrun consists of the greatest non-compliance to the height limit, being 2.942m (20%) over the limit.

The roof over the fire-isolated stair is 1.741m (12%) over the limit.

The pergola / roof over a portion of the COS is 1.452m (10%) over the limit.

In the circumstance relating to this proposal, in particular reference to an 'infill' proposal, compliance with the minimum height standard is considered unnecessary.

The lift and stair structures pose no substantial loss of amenity to adjacent units, particularly in relation to privacy and loss of views. Any additional overshadowing would be minor and cast upon the adjacent units walls.

Jim MacGillivray B. Arch
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Jamie MacGillivray B. Arch

Jasmina MacGillivray B. Arch

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m a c g i l l i v r a y
a r c h i t e c t s

Privacy to the adjacent units will be maintained with the proposed planters being located well within the perimeter of the roof, preventing any overlooking down upon the adjacent units.

With the non-compliant area being located primarily in the centre of the proposed building, there will be little to no visual impact when viewed from the street and no impact to the streetscape. This is also the case with the visual impact to adjacent units due to the height and proximity of the structures.

It is considered that provision of the primary COS centrally on the roof would have less impact on neighbours amenity than primary COS being located on the ground at the rear of the site, primarily relating to noise issues.

Positioning of COS space on the roof top, with little to no impact as described above, is considered to provide a much better outcome for future residents, primarily in relation to solar access and district views.

Clause 4.4 of the RLEP states, *'The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map'.*

The maximum floor space ratio (FSR) for the subject site, indicated on the Floor Space Ratio Map, is 1:1. This equates to a Gross Floor Area (GFA) of 1347.4m².

Council officers calculate the GFA as 1464.36m², 116m² (8.7%) more than the permissible GFA, at a 1.087:1 FSR.

In the circumstance relating to this proposal, compliance with the minimum FSR standard is considered unnecessary.

The proposal is an 'infill' development on an isolated, residual site. In this circumstance, it is considered that density is dictated more by envelope controls, particularly front, side and rear setback controls, rather than by a FSR.

The proposal is compliant with all setback controls whilst remaining appropriately modulated in accordance with SEPP 65. Non-compliance with the FSR has not resulted in any visual impact on the aesthetics of the design. Compliance with the FSR would have such a minimal impact visually, there would be little chance that any person would be able to determine any difference.

Due to compliance with the setback controls its is considered that non-compliance with the FSR will have no impact on the streetscape, with particular reference to bulk and scale.

Non-compliance with the FSR has not resulted in any significant amenity impacts on the adjacent units, particularly due to compliance with setback controls. Compliance with the FSR would not increase any amenity value to the adjacent units.

Jim MacGillivray B. Arch
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Jasmina MacGillivray B. Arch

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m a c g i l l i v r a y
a r c h i t e c t s

It is noted that the DRP considered the density of the proposal appropriate.

It is considered that the proposal is generally in the public's interest as the proposal satisfies the objectives of Zone R4, High Density Residential.

The proposal provides for the housing needs of the community within a high density residential environment.

The proposal provides a variety of housing types within a high density residential environment. 1, 2 and 3 bedroom units are proposed, all accessible and two being adaptable units.

The proposal will enable other land uses that provide facilities or services to meet the day to day needs of residents, such as car parking, storage, garbage facilities, COS facilities, etc.

It is therefore considered that the proposal is deemed consistent with the objectives of development standards and zone objectives, regardless of any non-compliance with the height or FSR controls.

Regards,



Jamie MacGillivray
B.A. Arch, B.Arch (hons)

BAYSIDE COUNCIL

Delegated Planning Assessment Report

Application Details

Application Number:	DA-2017/199
Date of Receipt:	5 December 2016
Property:	205-207 President Avenue, MONTEREY NSW 2217
Lot & DP/SP No:	Lot A and Lot B in DP 421111
Owner:	Mr Johny Papantoniou
Applicant:	MacGillivray Architects
Proposal:	Construction of a four (4) storey residential flat building development, comprising 16 residential units, basement parking, front fence and demolition of existing structures
Value:	\$4,711,892
Recommendation:	Refusal
No. of submissions:	Two (2) in opposition; one (1) in support
Author:	Brendon Clendenning, Creative Planning Solutions Pty Limited
Date of Report	4 April 2018

Key Issues

Council received Development Application No. DA-2017/199 on 5 December 2016 seeking consent for the construction of a four (4) storey residential flat building comprising 16 residential units, roof terrace, basement car parking and demolition of existing buildings, at 205-207 President Avenue, Monterey.

Following the receipt of amended plans in relation to the comments of the Design Review Panel DRP, and Roads and Maritime Services (RMS), Council issued an additional information request on 20 September 2017. This request raised a number of issues relating to Apartment Design Guide non-compliances, floor space ratio, streetscape, landscaping, building height, communal open space, solar access, parking, sewer information, and access. Additional information was also sought in relation to an apartment schedule, groundwater, architectural plans, and Design Review Panel comments.

The applicant issued a response to this letter on 25 September 2017 and met with Council on 28 September 2017. Following the meeting, Council issued further advice to provide clarification on points of discussion from the meeting held at Council offices.

On 8 February 2018, after which no amended proposal had been submitted, Council indicated to the applicant that the application would be determined if it was not withdrawn by 15 February 2018. The applicant indicated that the preparation of an amended proposal would be finalised

within 3-4 weeks, and Council indicated to the applicant that the information must be provided by 13 March 2018.

To date, no further amended plans have been submitted since the earlier amended set, responding to the issues raised by the DRP and the RMS.

The original proposal was compliant with the building height standard for the site. The proposal was amended in response to feedback from the DRP, which included potential support for a building which did not comply with the maximum building height requirement. Further, insufficient information was provided to demonstrate that the proposal was compliant with the floor space ratio standard, and the proposal is therefore deemed to be non-compliant with two development standards.

The proposal also seeks the removal of a large Jacaranda tree in the rear yard. The submitted arborist report indicates that it cannot be retained having regard to the proposed development; however, it is evident that there are design options available which would enable the retention of this tree. The proposal also exhibits various other non-compliances, which the applicant has attributed to being a consequence of the location of a sewer main; however, inadequate information has been provided to substantiate this.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for refusal, for the reasons outlined within the below 'Recommendation'.

Recommendation

That:

A. Development Application DA2017/199 for construction of a four (4) storey residential flat building development, comprising 16 residential units, basement parking, front fence and demolition of existing at 205-207 President Avenue, Monterey, be REFUSED pursuant to Section 4.16(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 satisfy the following considerations listed within Clause 28 of *State Environmental Planning Policy 65 Design Quality of Residential Apartment Development*:
 - a) 3C – Public Domain Interface
 - b) 3D – Communal Open Space
 - c) 3F – Visual Privacy
 - d) 4A – Solar Access
 - e) 4E – Private Open Space
 - f) 4F – Common Circulation and Spaces
 - g) 4H – Acoustic Privacy
 - h) 4L – Ground Floor Apartments
 - i) 4O – Landscape Design
 - j) 4Q – Universal Design
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfy the requirements of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*, as the proposed removal of the *Jacaranda mimosifolia* at the rear of the site, is not appropriate.
3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfy the requirements of Clause 101 of *State Environmental Planning Policy (Infrastructure) 2007*, as concurrence from the Road and Maritime Services, pursuant to the Roads Act 1993, has not been received in relation to the design of the vehicular access to the land.
4. Pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfy the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, as an amended certificate has not been provided to accompany the amended design.

5. Pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfy the following requirements or objectives of *Rockdale Local Environmental Plan 2011*:
 - a) Clause 2.3 – Zone Objectives
 - b) Clause 4.3 – Height of Buildings
 - c) Clause 4.4 – Floor Space Ratio
 - d) Clause 6.7 - Stormwater
6. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as it does not comply with the objectives and provisions of *Rockdale Development Control Plan 2011* including:
 - a) 4.1.3 – Water Management
 - b) 4.1.7 – Tree Preservation
 - c) 4.2 – Streetscape and Site Context
 - d) 4.3.1 Open Space and Landscape Design - Residential Flat Building
 - e) 4.3.2 – Private Open Space
 - f) 4.3.3 – Communal Open Space
 - g) 4.3.4 – Open Space and Landscape Design – Residential Building
 - h) 4.4.2 – Solar Access
 - i) 4.4.5 – Visual and Acoustic Privacy
 - j) 4.5.2 Social Equity - Equitable Access
 - k) 4.6 – Car Parking and Movement
 - l) 4.7 - Letterboxes
 - m) 5.2 – Residential Flat Buildings
7. Having regard to the abovementioned non-compliances and pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is unsatisfactory and represents an overdevelopment of the subject site.
8. Pursuant to the provisions of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development has not been adequately demonstrated.

9. Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of the development application is not in the public interest.

B. The objectors be advised of the decision of the Panel.

Background

History

5 December 2016 – DA-2017/199 submitted to Council

Construction of a four (4) storey residential flat building comprising 16 residential units, roof terrace, basement car parking, front fence and demolition of existing buildings.

19 December 2016 – 18 January 2017 - Public notification of proposal

16 February 2017 – Consideration by Design Review Panel (DRP)

The DRP recommended that a communal rooftop area be added to the development, despite the resultant non-compliance with the building height limit. The panel also provided a range of recommendations in relation to landscaping, including the requirement for the retention of the large Jacaranda tree in the rear yard.

1 February 2017 – Road and Maritime Services (RMS) referral response

The RMS indicates that that the driveway was to be a minimum of 5.5 metres wide for the first 6 metres to allow for simultaneous entry and exit movements.

21 February 2017 – Tree Management Officer referral response

The Tree Management Officer referral response indicated that the existing Jacaranda tree was to be retained and that redesign was required.

May 2017 – Submission of amended plans

21 July 2017 – Tree Management Officer referral response

After reviewing the arborist report, the Tree Management Officer referral response concluded that the tree would not be able to be retained, given the location of the proposal.

27 July 2017 – Tree Management Officer referral response

After reviewing the DRP minutes, the Tree Management Officer again indicated that the existing Jacaranda tree was to be retained and that redesign was required.

11 September 2017 – Request for further information

A letter sent to applicant regarding several deficiencies in the proposal. These dealt with various non-compliances with the specific design criteria and design guidance prescribed within the Apartment Design Guide (including balcony depths, building size, circulation spaces, garbage chutes, storage), floor space ratio, streetscape, landscaping, height, solar access, parking, sewer, acoustic impacts, access, and groundwater. Other information was also sought such as an apartment schedule and updates to the architectural plans.

28 September 2017 – Meeting with applicant held at Council offices

October 2017 – Follow up email sent to the applicant following the meeting

Further clarification was provided, primarily in relation to Council's position in relation to the Jacaranda tree. Information was also provided on Council's position on the balconies to the north-east apartments, the size of the awning over the pedestrian entry, the entry portico, storage, and garbage chutes.

8 February 2018 – Applicant advised that the application would be refused unless withdrawn by 15 February 2018.

27 February 2018 – Engineering referral response

The Development Engineer referral response indicated that there were issues in relation to the car park and stormwater design. Given the other issues contained above, the applicant was not afforded the opportunity to respond to this referral.

Site Description

The site is known as 205-207 President Avenue, Monterey. It comprises two lots which are legally described as Lot A and Lot B in DP 421111.

The site is located on the southern side of President Avenue, between its intersections with Wycombe Avenue to the west and The Grand Parade to the east.

The site is rectilinear in shape and has an area of 1,347.4sqm. It has a primary frontage of 20.115m to President Avenue and a depth of 66.985m.

The site is relatively flat with minimal variation in surface levels throughout the site. A large Jacaranda tree sits in the rear of the site, with smaller trees located in the rear setback and within the road reserve.

The two existing dwellings are each provided with vehicular access from President Avenue. The subject site is affected by Class 4 Acid Sulfate Soils and subject to Sydney Airport's Building Height Controls.

The site is located to the east of The Grand Parade, which runs along the shores of Botany Bay. North of President Avenue, The Grand Parade is the focal point for the Brighton Le Sands commercial centre, and that part of The Grand Parade and the adjoining waterfront area are characterised by high pedestrian traffic.

The southern side of President Avenue is characterised by four storey residential flat buildings, and the northern side of President Avenue is primarily characterised by single residential dwellings. The two dwellings located on the subject site are the only single dwellings fronting the southern side of President Avenue between its intersections with Wycombe Avenue and The Grand Parade. Development to the rear also consists of residential flat development, with a height of 3 storeys and fronting Banks Street.

The properties adjoining on either side of the subject site are each four storey brick walk-up residential flat buildings, with pitched roofs. Each of these buildings sit on a relatively narrow allotment, of a similar width to the subject site, but narrower than the majority of other allotments within the block.

The site is serviced by buses on nearby streets, including The Grand Parade and O'Connell Street, and is situated approximately 2km to the east of Kogarah Railway Station.

Description of Development

The development application, DA-2017/199, at 205-207 President Avenue, Monterey, seeks consent for the construction of a four (4) storey residential flat building development, comprising 16 residential units, basement parking, front fence and demolition of existing structures.

The key development statistics and details of the proposal are outlined below.

Site area	1347.4sqm (survey)
Site dimensions	<ul style="list-style-type: none"> • Frontage/width: 20.115m • Length: 60.985m
Gross floor area	Approx. 1493sqm
Floor space ratio	1.11:1
Building Height	17.3m
No. of Apartments	Two (2) x 1-bedroom: Twelve (12) x 2-bedroom: Two (2) x 3-bedroom: Total: 16 apartments
Apartment sizes	66.93sqm – 97.40sqm
Private Open Space sizes	10.162 sqm – 19.277sqm
Communal Areas	<ul style="list-style-type: none"> • Communal open space (rear): 156.5sqm • Communal open space (rooftop): 103.9sqm
Parking	<ul style="list-style-type: none"> • Car spaces: 22 • Accessible spaces: 2 • Visitor spaces: 4 • Motorcycle spaces: 2 • Bicycle spaces: 2

Built form

The proposed built form consists of a four (4) storey building, roughly rectangular in shape. The building includes a flat roof containing a rooftop communal open space. The building contains a lift core and stair core, situated on opposite sides of the foyer areas, and access is provided to each level, including the basement and rooftop.

The building is setback 8.5m from President Avenue, and approximately 11m from the rear southern boundary. The main building wall is setback 4.5m from the side boundaries; however, ancillary structures are proposed within the side setback areas.

Internal layout and facilities

The development consists of 16 units with a mix of 1-bedroom, 2-bedroom and 3-bedroom units, and each floor provides a floor plate containing four units. The majority of units contain a combined kitchen, dining, and living areas, which adjoin balconies or terraces spanning the entire width of the apartment. The exception being the north-eastern units, which contain kitchens situated alongside balconies/decks at the frontage of each apartment. Separate bathroom and WC areas are provided to each apartment, with laundries proposed within the bathrooms. A rooftop communal open space is proposed with stair and lift access. The rooftop communal open space features a barbecue area and seating.

Basement

The development includes a single level of basement car parking which comprises 22 car parking spaces, including 18 resident parking spaces, and 4 visitor parking spaces, 2 accessible spaces, 2 motorbike spaces, 2 bicycle spaces, a waste bin storage room, and 1 lift core providing pedestrian access to the building above. Vehicular access to the basement is provided off a driveway to President Avenue, and the car park is arranged in a single aisle. The basement has setbacks which are not entirely consistent with the setbacks of the buildings, being a 900mm side setback to the eastern side boundary, and a 800mm side setback to the western side boundary.

Materials and finishes

The materials and finishes of the development include a mixture of light and dark toned bricks, aluminium framed windows, and some render. A perspective from President Avenue is shown within *Figure 1*.



Figure 1 Streetscape Elevation (MacGillivray Architects, 2017)

Trees and landscaping

All of the existing four (4) trees identified on the survey are proposed to be removed, including the large Jacaranda in the rear. There is a street tree fronting the site and a tree located near the boundary on the adjoining property to the rear that are proposed to be removed, but another street tree, situated further to the east, is proposed to be retained.

The primary areas of landscaping on the site are proposed along the length of the southern side boundary, within a courtyard space between the buildings, and within a planter box in the front setback.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

S.4.15(1) - Matters for Consideration – General

S.4.15(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 proposed development includes BASIX affected buildings and therefore requires assessment against the provisions of this SEPP and BASIX certification. A BASIX certificate was submitted with the original proposal in accordance with the provisions of this SEPP.

However, an amended Basix Certificate was not provided with the amended plans that were submitted to Council. In this regard, it is unclear whether the proposal satisfies the provisions and objectives of this SEPP.

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 - Development with frontage to classified road

The proposal fronts President Avenue, which is listed as a classified road. Consent must not be granted to development on this site unless Council is satisfied of the following:

- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Vehicular access is proposed from President Avenue, given that the site is provided with no frontages to other streets. As works are proposed to accommodate the vehicular crossing, the application was referred to Roads and Maritime Service (RMS) for concurrence, as required by S138 of the *Roads Act 1993*. The RMS provided the following comment:

"The submitted plans show the driveway width is 3500mm. Roads and Maritime requires the driveway to be a minimum of 5.5 metres wide for the first 6 metres to allow for simultaneous entry and exit movements".

The amended plans depict the design amendment required by the RMS. However, concurrence is yet to be provided, and it is unclear if the proposed design amendment satisfies this clause.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of Part 4.1.5 Contaminated Land of the Rockdale Development Control Plan 2011. The likelihood of encountering contaminated soils on the subject site is considered to be extremely low given the following:

- 1 The site appears to have been continuously used for residential purposes.
- 2 The adjoining and adjacent properties are currently used for residential purposes.
- 3 The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in State Environmental Planning Policy 55, in particular industrial, agricultural or defence uses.

On this basis, the site is considered suitable in its present state for the proposed residential development. No further investigations of contamination are considered necessary.

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

As part of the application four (4) trees are proposed to be removed from the site to accommodate the proposed development, this includes a large *Jacaranda mimosifolia* at the rear of the site. The tree is shown within the image below:



Figure 2 Existing *Jacaranda mimosifolia* at the rear of the site

The submitted arborist report indicated as follows:

"This specimen is recommended to be removed and replaced as it cannot be retained due to the current proposed building footprint. Design options have been explored into the potential for the retention of the tree and with a Structural Root Zone of 3.2 metres and a Tree Protection Zone of 11.4 metres from centre of trunk and the relocation of the storage further to the west the encroachment is still too great for the specimen to remain viable".

Council's Tree Management Officer has reviewed the application and indicated that the building and landscape for the site needs to be redesigned to allow this tree to be retained as it provides significant amenity to the local area.

During a meeting with the applicant, Council indicated that there were other design options which would allow for the retention of the tree. The image below provides an excerpt of the amended basement floor plan. The basement floor plan shows that the basement storage provides a major incursion into the tree protection zone and the tree canopy.

The ADG indicates that at least half of the required apartment storage is to be provided within each individual unit, and allows for some storage to be provided within the basement. However, the ADG does not stipulate any minimum amount of storage that must be provided within the basement.

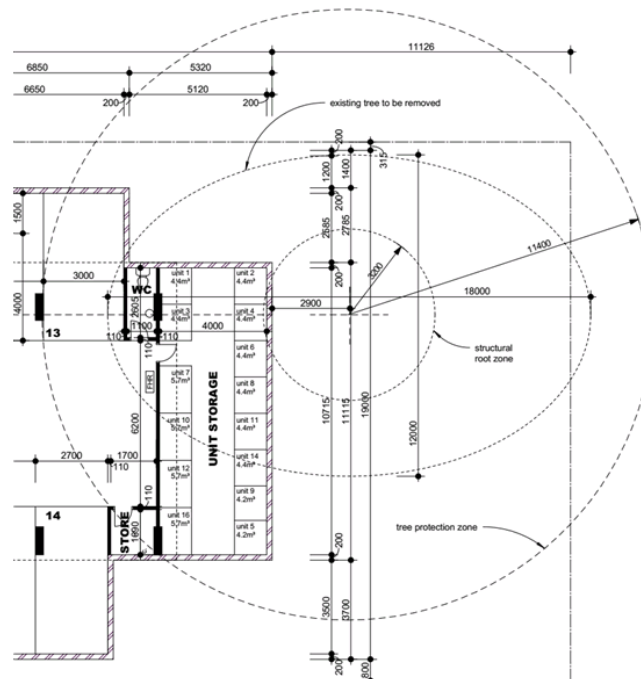
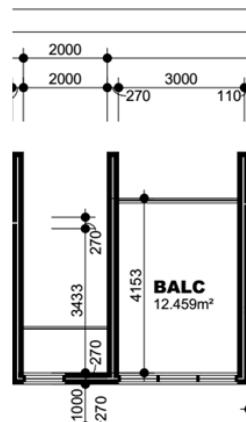


Figure 3 Basement Floor Plan showing (from centre) the structural root zone, canopy spread, and tree protection zone, of the existing *Jacaranda mimosifolia* (MacGillivray Architects, 2017)

In addition, the floor plans within each level provide 2 metre wide articulation areas, as well as some instances of second balconies oriented towards the side boundaries, which serve to unnecessarily increase the overall depth of the building. Void areas are also proposed to the foyer at First Floor and Second Floor, which add to the overall size of the building, despite also being excluded from floor space calculations. An example of such spaces is shown within the image below:



**Figure 4 – Articulated area and side balcony within Unit 5, situated on the first floor
(MacGillivray Architects, 2017)**

Finally, as shown within the image below, the ground floor courtyard areas of the rear units, are primarily comprised of hard stand areas, which are elevated above ground level, as a consequence of the limited depth of the basement (discussed further throughout the report). Although larger courtyard areas are favourable for ground floor units, within the context of the existing tree, every effort should be made to provide deep soil area surrounding the tree. For instance, it is possible to delete the lower level of the rear courtyards, as they are not required for to achieve minimum private open space requirements. It is not considered that this requirement is incompatible with the provision of suitable courtyard areas for the rear ground floor units.

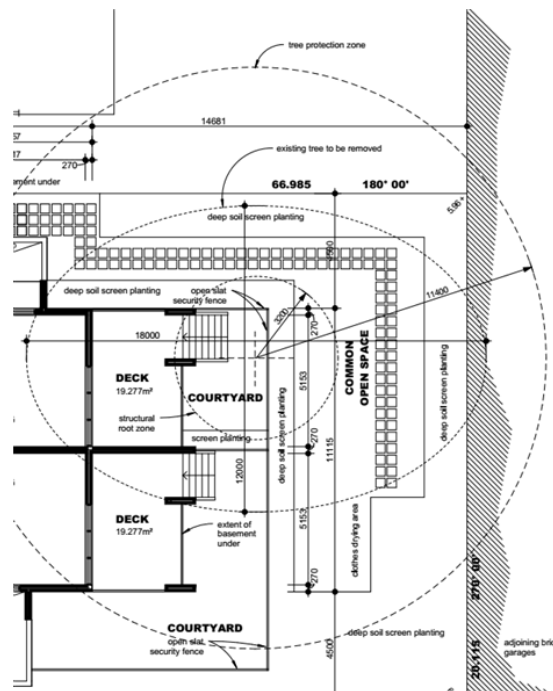


Figure 5 Ground Floor Plan showing (from centre) the structural root zone, canopy spread, and tree protection zone, of the existing *Jacaranda mimosifolia* (MacGillivray Architects, 2017)

It is evident that there are opportunities to shift the core of the building towards President Avenue and increase the rear setback to minimise the incursion on the tree. This information was communicated to the applicant as follows:

"The Design Review Panel had also earlier indicated that there may be some merit in a minor reduction in the front setback (of up to 1.5m) in order to 'slide' the building north on the site to contribute space for the retention of the Jacaranda if further space is considered necessary.

Council has given further consideration to this issue, and can advise that the following design modifications should be made to the development:

- The basement storage areas should be deleted or reduced in scale in order to minimise the impacts to the roots of the tree. As discussed during the meeting, the ADG does not require that 50% of storage be located within the basement, only that a minimum of 50% of the required storage be located within the apartment. Therefore, there is no impediment to providing all of the storage within the apartments.*
- The circulation core of the building (i.e. lifts and stairs) should be relocated further towards the street in order to enable the entirety of the development to be situated away from the tree. This may require a different approach to the mix of apartments*

located either side of the circulation core. It is recommended that consideration should be given to a floor plan which provides to the southern side of the circulation core, either 2 x 1-bedroom apartments, or 1 x 3-bedroom apartment.

- *It is recommended that a more efficient floor layout be proposed, with articulation elements that require only a minimal increase in the overall building footprint. If required, the front setback may also be reduced as recommended by the Design Review Panel.*
- *This design may also allow for adequate communal open space to be provided at the rear, with the potential for deletion of the rooftop communal open space, which could assist in minimising ongoing maintenance costs of the development”.*

It is therefore not accepted that the tree must be removed to accommodate a reasonable development on the site, and the application is recommended for refusal, given the impact to this tree.

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

SEPP 65 requires Council to consider the design quality of residential flat buildings comprising of three or more storeys and including four or more dwellings. In accordance with SEPP 65, before determining any development application subject to SEPP 65, the consent authority must consider the following:

- (a) the advice (if any) obtained from the design review panel,
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

Advice from Design Review Panel

The proposed development was considered by the Bayside Design Review Panel (DRP) on 16 February 2017. The DRP recommended several changes be made to the proposal in order to satisfy the nine (9) design quality principles of SEPP 65. The applicant responded to the recommended changes and provided amended architectural plans but the proposal was not again referred to the DRP.

The recommendations of the DRP are highlighted below, followed by a comment by the assessment officer in relation to any design response made by the applicant:

- a) **DRP comment:** The Panel supports in principle a flat roofed building despite the adjacent context of three levels buildings with pitched roofs. The Panel considers that, in order to better reflect the character of the adjacent buildings to the east and west, the upper level of the building, particularly on the street frontage, should be more recessive than the bottom three levels of the building (possibly achieved by a subtle change in materials, colours or textures or by minor setbacks to the top levels), and the banding element of the

floor line of the third floor at approximate RL 16.11 should be strengthened to provide a more distinctive line and horizontal delineation in the building façade that corresponds to the gutter line of adjacent buildings.

Assessment consultant comment: The amended proposal provided an additional horizontal banding element sitting above that highlighted by the DRP, and just under the glazing to the third floor apartments. However, none of the other changes have been introduced to the design.

- b) **DRP comment:** The Panel is only prepared to support the side setbacks being less than the minimum required by the Apartment Design Guide, considering its context and noting the provision of visual privacy screening to side windows, if the landscape quality of the long side spaces is significantly improved in order to provide a better quality outlook (see comments under landscape).

Assessment consultant comment: Refer to later comments specifically in relation to landscaping.

- c) **DRP comment:** The Panel considers that the large Jacaranda in the rear of the subject site must be retained and that the built form should be adjusted at the rear (and possibly along the eastern side in) to retain this tree.

In particular the basement storage should be reconfigured to avoid the root zone of the tree; and built form should be shortened to avoid the roots and branches of the tree. The Panel notes there are several indents in the building on the eastern side that could be removed in order to "slide" the design of the eastern side of the building to the north to provide space for shortening of the building without necessarily compromising on the yield. The Panel would also support a minor reduction in the front setback (of up to 1.5m) in order to slide the building north on the site to contribute space for the retention of the Jacaranda if further space is considered necessary.

Assessment consultant comment: The design has not sought to retain the Jacaranda. Further discussion is provided in relation to the Vegetation SEPP.

- d) **DRP comment:** The Panel notes that there are opportunities for solar power, and rainwater harvesting to be included in the design.

Assessment consultant comment: Solar panels are provided with the amended design. An absorption system is proposed with the design.

- e) **DRP comment:** The Panel notes that indigenous plants from council list are suggested but landscape plan does not accurately articulate.

Assessment consultant comment: A condition of consent requiring an amended landscape plan could accommodate this requirement. However, the application is recommended for refusal.

- f) **DRP comment:** The Panel considers that the large Jacaranda in the rear yard must be retained and the building redesigned to accommodate retention of this tree.

Assessment consultant comment: The design has not sought to retain the Jacaranda. Further discussion is provided in relation to the Vegetation SEPP.

- g) **DRP comment:** The quality of the deep soil planting areas available is not clearly defined as many of these areas are too thin to accommodate significant planting such as canopy trees to reduce bulk and scale and provide building articulation as well as reduce rising salinity.

Assessment consultant comment: Planting within the side setbacks is constrained by the width of the basement, and the proposal is recommended for refusal in this regard.

- h) **DRP comment:** The Panel considers that the side setback areas must be redesigned to accommodate an improved landscape solution with small and medium trees, shrubs and ground covers to improve the quality of this space. The Panel notes that this will involve work to redesign and rationalise ramping, stairs, paving areas, and other structures in this area; the relationship of fencing and retaining walls to provide for adequate planting space; and utilising of deep soil areas to provide for tree planting.

Assessment consultant comment: Planting within the side setbacks areas is further constrained by the structures built within the side setbacks and the proposal is recommended for refusal in this regard.

- i) **DRP comment:** Reuse and transplanting of existing Date Palms should be considered as part of this design proposal

Assessment consultant comment: A condition of consent requiring an amended landscape plan could accommodate this requirement. However, the application is recommended for refusal.

DRP comment: The Panel notes there is a lack of information in relation to landscape plans including: legend information; location of services (gas water etc); fencing; hardscape material colours and selections (including any use of permeable paving); irrigation systems; the plant schedule does not convey widths; graphics do not convey scale of trees; no layback and crossover defined; and mailbox location and design.

Assessment consultant comment: Irrespective of the level of information provided, the array of structures within landscaped areas is not supported, and the overall quality of the landscaped areas is not sufficient to warrant support.

- j) **DRP comment:** The Panel considers that the design is generally acceptable, but a higher level of amenity should be achieved in the communal and public open spaces of this development, and a better level of screening to the side setback areas through the provision of more landscape treatment.

Assessment consultant comment: Discussed throughout the report; these matters are reflected within the reasons for refusal.

k) **DRP comment:** The Panel considers:

- The bin storage area in front of boundary is inappropriate, and a better solution should be found.
- Safety of the side setback areas should be considered as they are redesigned in accordance with the comments above.
- Security to units 3 and 4 are of concern as accessible from communal open space areas

The quality of the deep soil planting areas available is not clearly defined as many of these areas are too thin to accommodate significant planting such as canopy trees to reduce bulk and scale and provide building articulation as well as reduce rising salinity.

Assessment consultant comment: Bin storage has been relocated to the basement. As indicated throughout this report, the rear of the site required a redesign in order to retain the Jacaranda tree, and there may be opportunities to improve the relationship between the private open spaces and the communal open space. For instance, it is possible to delete the lower level of the rear courtyards, as they are not required for to achieve minimum private open space requirements.

l) **DRP comment:** The Panel considers that the design is generally acceptable, but a higher level of amenity should be achieved in the communal and public open spaces of this development, and a better level of screening to the side setback areas through the provision of more landscape treatment.

Assessment consultant comment: The amended plans have accommodated this requirement, and this is reflected within the reasons for refusal.

Further discussion is provided throughout the report on the communal open space areas.

m) **DRP comment:** The Panel considers that the application is generally satisfactory in relation housing diversity and social interaction.

Assessment consultant comment: Noted.

n) **DRP comment:** The Panel considers that the quality of the communal open space should be significantly improved and designed to be more engaging.

The Panel notes there is an opportunity to utilise the rooftop as an additional communal space, and would support a height exceedance for extension of lift tower and pergola structure in order to provide a high quality rooftop communal garden noting that the height of this space in relation to the adjacent roof areas means it would could be easily designed to not overlook adjacent dwellings.

Assessment consultant comment: It is not considered that the amended design has addressed this point appropriately. The structures that are proposed to accommodate the rooftop communal open space are excessive in size, and the resultant height non-compliance is unable to be supported. Refer to further commentary provided in relation to Clause 4.3 of the RLEP 2011.

- o) **DRP comment:** The Panel considers that the building articulation and break up of materials, form and character are generally high quality particularly in relation to referencing and interpreting the local 1960s character in a contemporary design.

Assessment consultant comment: Noted.

Design Quality Principles

The following comments provide a general discussion of the response of the proposal to the design quality principles. These comments are partly informed by the commentary provided by the Design Review Panel.

Principle	Comment
Context	<p>The site is located in a prominent location along President Avenue, which experiences a high volume of traffic, particularly given it accommodates traffic travelling between the Sydney CBD and areas within Sutherland Shire and Wollongong. The southern side of President Avenue is characterised by four storey residential flat buildings, and the northern side of President Avenue is primarily characterised by single residential dwellings.</p> <p>The properties adjoining on either side of the subject site are each four storey brick walk-up residential flat buildings, with pitched roofs. Each of these buildings sit on a relatively narrow allotment, of a similar width to the subject site, but narrower than the majority of other allotments within the block. As a consequence, each of the neighbouring buildings are provided with generally small side setbacks; however, the side setbacks of the building to the east, at 209-211 President Avenue, are more generous through the central portion of the building. As is typical in this street, vehicular parking is provided to the rear of each lot, with minimal communal open space area.</p> <p>The rear boundary of the existing building to the west, at 201 President Avenue, sits further to the north than on other lots on the southern side of the street, and the rear building line is therefore much further to the north than on other lots.</p> <p>Balconies from each neighbouring building face directly towards the subject site, and the existing dwellings are currently afforded with very little privacy, particularly given the small side setbacks.</p> <p>The extent of overshadowing as a consequence of the setback non-compliances is also unclear, and insufficient information has been provided to enable a thorough consideration of this matter.</p>

Principle	Comment
	<p>The proposed non-compliant side setbacks could be supported, given the site is the last remaining development site within this block. However, further refinement is needed to improve the relationship between the proposed buildings and the neighbouring buildings, with additional landscaping recommended within the side setbacks.</p> <p>The proposal is not considered to be consistent with the desired future character established by the planning controls, and does not provide an appropriate response to this context and setting of the neighbourhood.</p>
Built Form & Scale	<p>In terms of bulk, scale and built form, the proposal is larger than neighbouring developments. This is a direct consequence of the rooftop communal open space and associated structures that are proposed above the habitable floors. Although the tallest parts of the building are located towards its centre, the scale of the building will readily be perceivable from the north from low density areas directly opposite President Avenue, and further beyond. The generous width of President Avenue, and the lower density on the northern side of the street would allow the larger parts of this building to be seen from a wide visual catchment, and consequently the overall scale of the proposal is not appropriate in this location.</p> <p>In order to better reflect the character of the adjacent buildings to the east and west, the DRP had sought for the upper level of the building, particularly on the street frontage, to be more recessive than the bottom three levels of the building (possibly achieved by a subtle change in materials, colours or textures or by minor setbacks to the top levels). The amended proposal provided an additional horizontal banding element sitting above that highlighted by the DRP, and just under the glazing to the third floor apartments. However, none of the other changes have been introduced to the design.</p> <p>The design features an array of ground floor structures within the front setback which are completely at odds with the prevailing character of the street, and these elements are not appropriate.</p> <p>The facades of the building are generally well articulated with balconies and architectural features, recesses in elevations, use of variable building materials and colours create visual interest along the streetscape and when viewed from adjoining properties. However, there are concerns with the location of kitchens within the north-eastern units, and with the excessive building depth that is created in part by articulation through the side elevations.</p>
Density	<p>The plans indicate that the proposed GFA is 1347.36sqm, which would comply with the FSR development standard. A GFA validation was submitted with the original proposal, but has not been provided with the amended design. Details on floor space ratio compliance was requested by Council; however, this information has not been provided.</p> <p>The GFA has been calculated by Council to be 1493.17sqm, which equates to an FSR of 1.11:1, and would be non-compliant with the development standard. However, no 4.6 variation request was submitted, as the applicant's figures</p>

Principle	Comment
	indicated compliance. In the absence of a clause 4.6 written request, and based on the assessment calculations there is no legal basis to consent to the subject DA. In any event, it is considered the proposed density is not suitable in this locality.
Sustainability	<p>The Design Review Panel had made a number of requests in relation to sustainability, including several changes to the landscaping proposal, and the exploration of opportunities for solar power and rainwater harvesting. The proposal has incorporated the latter requirements.</p> <p>Furthermore, the extent of overshadowing remains unclear as the impacts have not been demonstrated adequately. Finally, an amended Basix Certificate did not accompany the amended design.</p>
Landscape	The Design Review Panel had made a number of requests in relation to landscaping, including several changes to the landscaping proposal, and the exploration of opportunities for solar power and rainwater harvesting. Critically, the application still seeks the removal of the Jacaranda within the rear yard, and this is not appropriate, given the design alternatives that are available. Moreover, the applicant has not resolved the landscape design issues within the front and side setbacks.
Amenity	<p>The extent of overshadowing remains unclear as the shadow diagrams do not adequately demonstrate the impacts of the proposal.</p> <p>It is acknowledged that the design seeks to minimise privacy impacts through provision of privacy screening. However, details of landscaping is required to ensure that privacy impacts are ameliorated, particularly noting the minimal setbacks to the basements, and lack of planter depths.</p> <p>The deep narrow balcony layouts to the units in the northern eastern corner of the building, are not appropriate given they will limit the availability of solar access and daylight into the internal areas of these dwellings.</p>
Safety	The DRP comments outlined safety concerns with the original design, due to the relationship between the private open spaces and the communal open space, and it is considered that there are design solutions which could improve this outcome, as well as improving the overall allocation of communal open space. For instance, it is possible to delete the lower level of the rear courtyards, as they are not required to achieve minimum private open space requirements.
Housing diversity and social interaction	<p>The proposal provides an acceptable dwelling mix and is compliant with the RDCP 2011 requirements. The unit mix includes 12.5% of 1-bedroom units, 75.0% of 2-bedroom units and 12.5% of 3-bedroom units.</p> <p>Part 4.5.1 of the RDCP 2011 requires that two adaptable dwellings be provided for this development. The submitted Access Report indicates that this information can be provided with a Construction Certificate; however, this</p>

Principle	Comment
	<p>information should be provided for DA assessment to ensure compliance can be achieved the final built form outcome.</p> <p>Part 4F of the ADG provides guidance on the design of common circulation spaces at each level of the building. Part 4F requires that daylight and natural ventilation be provided to all common circulation spaces that are above ground. No natural light or ventilation is provided to the circulation spaces of the third floor, and this is related to the provision of two 3-bedroom apartments at this level.</p> <p>In addition, the overall function of common circulation spaces within the development are poor having regard to the following:</p> <ul style="list-style-type: none"> • The entry to the building sits in the centre of the building, with a long entry path provided from the street to the entry foyer. • There is no direct connection between the ground floor communal open space and the common internal areas <p>The design does not adequately facilitate incidental social interaction between residents.</p>
Aesthetics	<p>The DRP considers that the building articulation and break up of materials, form and character are generally high quality particularly in relation to referencing and interpreting the local 1960s character in a contemporary design.</p> <p>The garbage bin storage area within the front setback has been deleted and relocated within the basement area. However, there are further changes that can be made within the street to reduce the overall visual clutter within the street frontage, including removal of the entry awning, letterboxes, and level changes to remove the amount of ramps required for access.</p> <p>Furthermore, the fifth level, associated with the height non-compliance, will be readily perceived from properties to the north of the site, despite being setback from the street, and the proposal is not appropriate in this regard.</p>

Apartment Design Guidelines

The proposed development has been assessed against the NSW Apartment Design Guide (ADG). There are numerous non-compliances which are not considered acceptable. These non-compliances against the design criteria are discussed as follows:

Part 3C - Public Domain Interface

The objectives of Part 3C are as follows:

- Transition between private and public domain is achieved without compromising safety and security.
- Amenity of the public domain is retained and enhanced.

Part 3C includes a variety of controls aimed at achieving the above objectives. It is noted that the garbage bin storage area was relocated to the basement, however, the following concerns remain with regard to the public domain presentation:

- The main pedestrian entry to the building is not provided at the front of the building, and the letterboxes, portico, and ramps at the boundary provide a poor presentation to the streetscape. This is largely a consequence of the raised level of the ground floor.
- A prominent entry should be provided which is integrated into the overall building.
- Furthermore, the ground floor apartments that face the street are not provided with individual entries from the street, or the entry corridor.

In relation to the floor level of the ground floor, the submitted Statement of Environmental Effects indicated the following:

"The basement is proposed as low as possible but is not located completely below ground. It protrudes above ground to an approximate maximum height of 1.5m (to the ground floor level). This is due to the level of the sewer traversing the centre of the site.

Initial design consideration was to divert the sewer around the site perimeter to the rear, so the basement could be proposed below natural ground level. Harrison and Friedmann, Civil Engineers and Water Servicing Co-ordinator for Sydney Water, were engaged to determine if this was possible. They found that the fall of the sewer was not sufficient enough to allow diversion. They concluded that for any development to occur on the site, the sewer would require encasement and be built upon.

The position of the sewer and the subsequent encasement dimensions has determined the proposed basement floor level. A sewer 'peg-out' indicating the position and depth of the sewer is included with the application".

In relation to the discussion within the Statement of Environmental Effects, Council sought the following information

Further information is required on the site constraints relating to the sewer main, as much of the urban design issues with the street frontage, as well as the site coverage non-compliance, appear to be as a consequence of the sewer main. Specific details on the location of the sewer, and its effect on the construction of the basement, must be provided:

- *The Statement of Environmental Effects (SEE) indicates that there is not enough slope for the sewer to be diverted. A letter from the engineer should be provided to demonstrate this to be the case. The SEE also states that a sewer pegout has been prepared, which should be made available to Council.*
- *Details on the feasibility of alternative designs shall be provided, to demonstrate that the proposed levels present an optimal outcome for the site. If the proposed levels are unchanged, it must be demonstrated that site coverage, and the variation in levels, has been minimised as much as possible.*

No further information has been submitted in this regard.

Part 3D – Communal Open Space

Part 3D of the ADG requires that communal open space be provided to an area that is equal to 25% of the site, and that a minimum of 50% direct sunlight be provided to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).

The proposal provides approximately 156.5sqm of communal open space at ground level, at the rear of the property, which faces towards the south and would therefore receive very little solar access. Although the proposal complies with the lower spatial requirements within the RDCP 2011 (5sqm per apartment), the proposal is inconsistent with the solar access requirements of both the ADG and RDCP 2011.

To improve the provision of communal open space, the DRP recommended that a rooftop communal open space be provided. The plans indicate that 141sqm of communal open space has been provided; however, it has been estimated that the size of the communal open space is actually closer to 103.8sqm. This would give a total communal open space area of 260.3sqm, or 19% of the site, which is short of the required 25%, but is compliant with the requirements of the RDCP 2011.

Critically, the proposed rooftop communal open space requires a significant height non-compliance to obtain access. It has been indicated throughout this report, that there are opportunities to improve the provision of communal open space at the rear of the site. The extent and overall scale associated with the height non-compliance are excessive, and the rooftop communal open space as currently proposed is not able to be supported.

Part 3F - Visual privacy

The design criteria for Part 3F of the guidelines prescribes minimum separation distances to be provided between windows and balconies from a building to the side and rear boundaries, as reproduced below:

Design criteria		
1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:		
Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

Figure 6 Building Separation Requirements

The proposal incorporates five-storeys with a height of approximately 17.3 metres. The lower three storeys would require boundary setbacks of 3m for non-habitable rooms and 6m for habitable rooms and balconies. The fifth storey would require setbacks of 4.5m for non-habitable rooms and 9m for habitable rooms and balconies. Further, given the fourth storey partially sits above 12m, these more onerous setback requirements would also apply to the fourth storey.

The proposed setbacks can be summarised as follows:

- Each level is provided with 4.5m side setbacks to the external walls of the internal areas of the building. However, blade walls and privacy screening are proposed approximately 1 metre further towards the side boundaries. The pedestrian entry portico is also provided within the eastern side setback area.
- The basement has setbacks which are not entirely consistent with the setbacks of the buildings, being a 900mm side setback to the eastern side boundary, 800mm side setback to the western side boundary, and is raised approximately one metre above ground level.
- There is generally no variation in the setback to habitable and non-habitable areas.

The proposal therefore does not comply with the required setbacks of between 6m and 9m for the habitable areas of the building. Privacy screening has been proposed throughout the development, and given the site represents the only underdeveloped site within the urban block, and that the site does not meet the minimum requirement for lot width, it is reasonable to expect that full compliance with the setback requirements would not be possible, and would also not be consistent with the prevailing street character. However, it has not been demonstrated that the extent of the non-compliances is acceptable as proposed, particularly noting the DRP requirements for suitable planting within the side setback areas.

Part 4A – Solar Access

Refer to discussion in relation to Part 4.4.2 of the RDCP 2011.

Part 4E – Private Open Space

Part 4E of the outlines a range of provisions for the private open space areas associated with balconies. Design guidance in relation to 4E-2 indicates that primary open space and balconies should be orientated with the longer side facing outwards or be open to the sky to optimise daylight access into adjacent rooms.

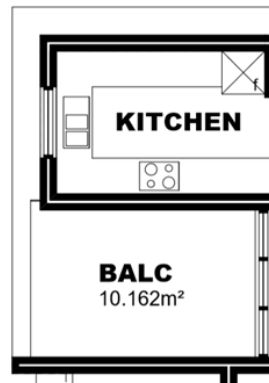


Figure 7 Kitchen and front balcony within Unit 13, situated on the third floor (MacGillivray Architects, 2017)

An example of the primary balconies to the north-eastern apartments are shown within the image above, and are almost 3.5m deep, allowing little solar access to reach the living rooms, particularly given privacy screening is proposed over eastern windows, and that small side setbacks within the proposal, and on neighbouring properties, limits the provision of solar access. These units are also provided with east facing balconies/courtyards, which are similarly-dimensioned, and further constrained given their location alongside narrow side setback areas.

In the correspondence sent to the applicant, Council indicated to the applicant that the north-east apartments should be redesigned to provide wide balconies with outlooks towards the north, and the kitchens should be relocated to sit further to the south. This is similar to what is provided within the apartments within the north-west portion of the building.

It is noted that this recommended design change would reduce the articulation to the front façade. However, given the overall width of the façade, it is considered that this feature is not required, and that the articulation provided by the suggested design amendments would be acceptable. The proposed front façade is depicted below.



Figure 8 Streetscape Elevation with kitchens shown on the left hand side of the front façade (MacGillivray Architects, 2017)

Part 4F – Common Circulation and Spaces

Part 4F provides guidance on the design of common circulation spaces at each level of the building. Part 4F required that daylight and natural ventilation be provided to all common circulation spaces that are above ground. No natural light or ventilation is provided to the circulation spaces of the third floor, and this is related to the provision of two 3-bedroom apartments at this level.

In addition, the overall function of common circulation spaces within the development are poor having regard to the following:

- The entry to the building sits in the centre of the building, with a long entry path provided from the street to the entry foyer.
- There is no direct connection between the ground floor communal open space and the common internal areas

The design is inconsistent with objective 4F-2, which requires designs to facilitate incidental social interaction between residents.

Part 4H – Acoustic Privacy

Bedrooms within the south-western units are located adjacent to the lift, which is contrary to the design guidance within Part 4H. The acoustic report provided with the application has not demonstrated that the indoor sound levels to these bedrooms are able to be made to be acceptable.

In addition, access from the ground floor entry foyer to both the street, and to the rear communal open space, requires residents to travel past ground floor bedroom windows.

Part 4L - Ground floor apartments

As indicated within the assessment of Part 3C, the ground floor apartments that face the street are not provided with individual entries from the street, or from the entry corridor. The proposal is inconsistent with Part 4L.

Part 4O – Landscape Design

Refer to discussion in relation to Part 4.3.1 of the RDCP 2011.

Part 4Q - Universal Design

Part 4Q requires that adaptable housing be provided in accordance with the relevant Council policy, which is outlined within Part 4.5.1 of the RDCP 2011. This policy would require that two adaptable dwellings be provided for this development. The submitted Access Report indicates the following:

“Two adaptable units have been provided, located in dwellings number 13 and 16. These are proposed within the three bedroom units as these units provide for the greatest ‘ease of adaption’. No detail is provided at this Development Application stage but will be provided for the Construction Certificate”.

This information is required to be provided for assessment of the development application.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with standard/provision
2.3 Zone R4 High Density Residential	No – see discussion
4.3 Height of buildings	No – see discussion
4.4 Floor space ratio - Residential zones	No – see discussion
4.6 Exceptions to development standards	4.6 request not submitted - see discussion in relation to Clause 4.3 and 4.4
5.10 Heritage conservation	Yes – see discussion in relation to 4.1.2 of RDCP 2011
6.1 Acid Sulfate Soil - Class 4	Yes – see discussion
6.2 Earthworks	Yes – see discussion
6.4 Airspace Operations	Yes – see discussion
6.7 Stormwater	No – see discussion
6.12 Essential Services	Yes – see discussion

2.3 Zone R4 High Density Residential

The subject site is zoned R4 – High Density Residential under the provisions of the RLEP 2011. The proposed development is for the purpose of a ‘residential flat building’ which is permitted with consent in the zone.

The objectives of the R4 zone are outlined in the following:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal is not considered to meet the first objective as discussed throughout this report.

4.3 Height of buildings

Clause 4.3 provides a maximum height of buildings on the subject site of 14.5 metres. The existing ground levels range from RL 5.44 – RL 6.03. No specific information has been provided on the maximum level of the proposal, however it has been measured off the plan to be approximately RL 22.75, which would result in a height non-compliance of between approximately 16.72m and 17.31m. Measuring directly from the plans also shows a maximum height of approximately 17.3m. The proposal does not comply with the development standard and therefore does not satisfy this clause.

Following its review of the original plans, the DRP indicated that they would support a height non-compliance at the site to offset the provision of communal open space at the rear, which is oriented the south. The DRP comments are provided below:

“The Panel notes there is an opportunity to utilise the rooftop as an additional communal space, and would support a height exceedance for extension of lift tower and pergola structure in order to provide a high quality rooftop communal garden noting that the height of this space in relation to the adjacent roof areas means it would could be easily designed to not overlook adjacent dwellings”.

Following a review of the amended plans, Council had indicated that the extent of the height non-compliance – that is, the portion of the roof structure that was non-compliant – was excessive, and that more effort was required to reduce the extent of the height non-compliance. These comments are provided below:

“The elevations indicate that the central element - which is non-compliant with the maximum building height – is situated across the entire width of the building. The scale of the lift overrun and adjacent structures must be minimised and centralised within the building envelope. The foyer should be deleted, and the ceiling heights around the stairwell reduced to be as small as possible”.

No further information has been submitted which responds to this concern, and no clause 4.6 variation was submitted with the amended design.

In addition, it is apparent that the increased rear setback required to allow for the retention of the Jacaranda tree, combined with smaller rear private open space areas would enable an improved communal open space. Furthermore, the depth of the building is unnecessarily large as discussed elsewhere, and the 2 metre wide articulation areas and second balconies oriented towards the side boundaries, serve to unnecessarily increase the overall depth of the building. There is capacity to reduce the overall depth of the building, allowing for the improvement of the rear communal open space, which could potentially negate the need for such a large rooftop communal open space.

Despite no 4.6 variation being submitted (as there being no legal basis for approval of the subject DA), it is not considered that such a request could be supported in any instance given that it is unlikely that it could be demonstrated that the height control is unreasonable or unnecessary, particularly noting other non-compliances with setbacks and site coverage, indicating that the scale of the development is excessive for this site.

4.4 Floor space ratio - Residential zones

Clause 4.4 restricts the development to a maximum floor space ratio (FSR) of 1:1, which equates to a total gross floor area (GFA) of 1347.4sqm. The amended plans indicate that the proposed GFA is 1347.36sqm, which would comply with the FSR development standard.

A GFA validation was submitted with the original proposal, but has not been provided with the amended design. Details on floor space ratio compliance was requested by Council; however, this information has not been provided.

The GFA has been calculated by Council to be 1493.17sqm, which equates to an FSR of 1.11:1, and would be non-compliant with the development standard. However, no 4.6 variation request was submitted, as the applicant's figures indicated compliance.

Given that the requested information was not provided, floor space ratio non-compliance is included as a reason for refusal.

6.1 Acid Sulfate Soil - Class 4

Acid Sulfate Soils – Class 4 affects the site. The proposal involves works more than 2 metres below the natural ground surface, and therefore an acid sulfate soils assessment is required. The submitted Acid Sulfate Soils Assessment concludes that an Acid Sulfate Soils Management Plan will not be required provided onsite dewatering does not lower the groundwater level outside the site. Information was sought in relation to groundwater, but was not provided, and this is reflected within the reasons for refusal. However, based on the information that is currently available on acid sulfate soils, it is considered that the clause could be satisfied.

6.2 Earthworks

Earthworks including excavation are required on site to accommodate the development. 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. The proposal meets the objectives of this clause.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51.00 AHD. The maximum building height is comfortably below this requirement at approximately RL 22.75.

6.7 Stormwater

Several issues are outstanding in relation to the submitted stormwater plans. Refer to discussion in relation to Part 4.1.3 of RDCP 2011.

6.12 Essential services

Services will generally be available on the site. The proposal complies with the requirements of this clause.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no draft planning instruments that will affect the proposed development.

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

A summary of the compliance assessment against the Rockdale Development Control Plan 2011 (RDCP 2011) for the proposed development is provided below. Detailed discussions are provided as noted.

Relevant Parts of the RDCP 2011	Compliance with standard/provision
4.1.1 Views and Vista	Yes – see discussion
4.1.2 Heritage – vicinity	Yes – see discussion

Relevant Parts of the RDCP 2011	Compliance with standard/provision
4.1.3 Water Management	No – see discussion
4.1.4 Soil Management	Yes
4.1.5 Contaminated Land	Yes – see discussion under SEPP 55.
4.1.6 Development on sloping sites	Yes
4.1.7 Tree Preservation	No – see discussion under Vegetation SEPP
4.1.9 Lot size and Site Consolidation – Residential Flat Buildings	No – see discussion
4.1.9 Lot size and Site Consolidation – Avoidance of Isolated Sites	Yes – see discussion
4.2 Streetscape and Site Context – General	No – see discussion in relation to SEPP 65
4.3.1 Open Space and Landscape Design – Residential Flat Building Centres	No – see discussion
4.3.2 Private Open Space - Residential Flat Building	No – see discussion in relation to the ADG
4.3.3 Communal Open Space	No – see discussion in relation to the ADG
4.3.4 – Open Space and Landscape Design – Residential Building	No – see discussion
4.4.2 Solar Access	No – see discussion
4.4.3 Natural Lighting and Ventilation - Residential	N/A – as per clause 6A(1)(b) and (g) of SEPP 65 this section no effect.
4.4.3 Natural Lighting and Ventilation - Ceiling heights	N/A – as per clause 6A(1)(b) and (g) of SEPP 65 this section no effect.
4.4.4 Glazing – General controls	Yes
4.4.5 Visual and Acoustic Privacy	No – see discussion in relation to the ADG in relation to acoustic privacy.
4.4.5 Visual privacy – Roof Top Area	Yes – see discussion
4.4.6 Noise impact	Yes
4.5.1 Social Equity - Housing Diversity and Choice	Yes
4.5.2 Social Equity - Equitable Access	No – see discussion in relation to the ADG
4.6 Car Parking	No – see discussion
4.7 Air Conditioning and Communication Structures	Yes
4.7 Waste Storage and Recycling Facilities	Yes – see discussion
4.7 Laundry Facilities and Drying Areas	Yes
4.7 Letterboxes	No – see discussion in relation to the ADG

Relevant Parts of the RDCP 2011	Compliance with standard/provision
4.7 Service Lines/Cables	Yes
5.2 Residential Flat Building – Site Coverage	No – see discussion
5.2 Residential Flat Building – General	No – see discussion in relation to the ADG
5.2 Residential Flat Building – Setbacks	No – see discussion in relation to the ADG
5.2 Residential Flat Building – Balcony Balustrade	Unclear – see discussion

4.1.1 Views and Vista

The subject site is located within a low lying area. The site is not afforded any view of Botany Bay or any items of local or State heritage. In this regard, the subject site does not enjoy any significant views or vistas.

It is unlikely that the siting of the proposed development will generate any significant impacts on the views of the street and general neighbourhood that are enjoyed by adjacent properties.

4.1.2 Heritage – vicinity

The nearest item of heritage significant is Cook Park (item I168, local significance) and is located approximately 200m to the west. The spatial distance between the subject site and heritage item is considered to be sufficient to ensure the heritage item is not impacted by the proposed development.

4.1.3 Water Management

Drainage

The following comments were provided by Council's development engineer:

- *"The absorption rate used in the assessment of the absorption system need to be factored down in accordance with Section 5.4.1 of Council Technical Specification Stormwater Management;*
- *An oil separator device is to be provided in the basement drainage system in accordance with Section 5.4.1 of Council Technical Specification Stormwater Management.*

Where a crest is required, an amended longitudinal surface profile must be also be submitted for assessment".

Given the other issues outlined elsewhere, the applicant was not afforded the opportunity to address these issues, and this matter is subsequently included in the recommended reasons for refusal.

Groundwater

The submitted geotechnical report indicates that some minor localised dewatering may be required if foundations extend below the groundwater table. Details were requested, as approval

of the proposal may require an approval for an aquifer interference activity pursuant to the *Water Management Act 2000*. No further information has been provided.

4.1.4 Soil management

The proposed development will involve considerable earthworks for the construction of the basement car parking level, which will result in the disturbance of soil and dust.

In this regard, conditions of consent requiring a Soil and Water Management Plan (prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils) to be submitted to the Principal Certifying Authority prior to the commencement of works. However, this application is recommended for refusal.

4.1.9 Lot size and Site Consolidation - Residential flat buildings

The subject site has a frontage of 20.115m, less than the frontage of 24m required under the DCP. The development site combines the only two remaining sites on the southern side of President Avenue, between Wycombe Avenue and The Grand Parade, to create an allotment that is of a similar size to each of the adjoining allotments, which each contain older residential flat buildings. As a result, the redevelopment of this land for the purpose of a residential flat building is a desirable outcome. The non-compliance with the minimum frontage is therefore not included as a reason for refusal.

4.1.9 Lot size and Site Consolidation – Avoidance of isolated sites

In accordance with RDCP 2011, a property will be isolated by a proposed development when that property cannot satisfy the minimum lot requirements to achieve its development potential under the planning controls. President Avenue is generally characterised by existing residential flat developments, and the subject site represents a consolidation of the remaining underdeveloped allotments within this block. Therefore, the proposal does not render any potential development sites as being isolated.

4.3.1 Open Space and Landscape Design - Residential Flat Building

Several deficiencies with the landscape design were identified by the DRP, and have not been resolved (refer to comments in relation to SEPP 65 and Vegetation SEPP assessment). In particular the proposal seeks unnecessary removal of a Jacaranda, and provides inadequate screen planting to the sides of the building, which would offset the non-compliant side setbacks. The latter issue is exacerbated by minimal basement side setbacks, and inadequate planter depth (600mm is proposed, and 800mm planters would be required).

4.4.2 Solar Access to residential flat buildings

Part 4.4.2 requires buildings to be designed and sited to minimise the extent of shadows cast on:

- private and communal open space within the development;
- private and communal open space of adjoining dwellings;
- public open space such as parkland and bushland reserves;

- solar collectors of adjoining development; and
- habitable rooms within the development and in adjoining developments.

Furthermore, Part 4A of the ADG requires the following:

- *Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.*
- *A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter*

Given that half of the apartments in the development are oriented towards the south, and that the proposal is provided with narrow side setbacks, it is unlikely that the proposal complies with the above requirements.

Council had sought further information in relation to overshadowing and solar access, as the information provided with the application is not sufficient to determine compliance with the various solar access requirements. Further information was required as follows:

- There is insufficient detail to determine the extent of overshadowing on the communal open space areas. An analysis of the provision of solar access to the ground floor communal open space should be provided. Shadows cast by neighbouring buildings, fences, and the proposal must be accounted for in this analysis.
- The shadow diagrams provide insufficient detail on neighbouring properties to determine the overall impact. The degree of overshadowing to neighbouring windows and balconies should be provided on shadow elevation plans. The impact of the proposal on the solar access provided to neighbouring communal open space area should be clearly outlined, either on plan, or through a separate written response.

This information has not been provided.

4.4.5 Visual Privacy – Roof Top Area

Part 4.4.5 of the RDCP 2011, outlines that the use of the roof top area for recreational purposes is permissible as long as the usable area of the roof is setback at least 1500mm from the edge of the building, and that other devices such as privacy screens and planter boxes are incorporated to protect the visual and acoustic amenity of neighbouring properties. The rooftop communal open space is setback over 2m from each edge of the building and complies with this requirement.

4.5.1 Housing Diversity and Choice

Part 4.5.1 outlines the dwelling mix that is required for residential flat developments to be as follows:

- 1 bed/studio units – 10-30%
- 2 bedroom units – 50-75%

- 3 bedroom unit – 10-20%

The proposal provides for two (2) x 1-bedroom units (12.5%), twelve (12) x 2-bedroom units (75%), and two (2) x 3-bedroom unit (12.5%). As a consequence, the proposal is compliant with this control.

4.6 Car Parking, Access and Movement

The proposed development provides for a complying 22 parking spaces for residents, two (2) of which are accessible, with four (4) car parking spaces for visitors, one (1) of which also doubles as a car wash bay, within the basement car park level. Two (2) motorbike and two (2) bicycle spaces are also provided within the basement. However, one of the motorbike spaces is provided as a 'small motorbike space', which are not appropriate for a development of this size as it is unlikely that they will cater to the limited number of residents within this development. Standard motorcycle spaces shall be provided to cater for the greatest number of potential occupants.

In addition, Part 4.6 requires that basements be located within the building footprint, fully below natural ground level, and that where site conditions mean that achieving this requirement is unachievable, the maximum basement projection above natural ground level is to be 1m at any point on the site.

The Statement of Environmental Effects indicates that the proposal is unable to be located completely below natural ground level or within the building footprint, because of the location of an existing sewer line. The maximum basement projection above natural ground level has been generally limited to approximately 1m; however, further information was by Council on the location of the sewer, to demonstrate that such a projection was necessary.

In addition, the following comments were provided by Council's development engineer:

- *Council technical and Parking Specifications Traffic, Parking and Access, table 3.3 require a Small Rigid Vehicle parking space be provided within the proposed development. refer to AS2890.2:2002 regarding grade, height clearance and parking space sizes. Note: Small Rigid Vehicles require less steep grades and more headroom;*
- *All Structural members to be located outside the parking spaces, refer to Section 5 of AS2890.1:2004;*
- *The 90 degree transition from a 5.5 metre Driveway to a 3.5 m is not accessible, a 60 degree splay must be incorporated in the transition to eliminate the need for reversing to access the ramp;*
- *The ramp access width must be 3.6m minimum to allow for a 300mm Kerb clearance in accordance with figure 2.8 of AS2890.1:2004;*
- *Carwash bays must be 3.5m wide minimum refer to Council Technical Specification Section 7.5.5;*
- *The driveway ramp is generally acceptable, except for headroom, headroom clearance need to be measured perpendicular to the ramp; however if a SRV vehicle is to be provided in the basement the grades do not comply.*

Given the other issues outlined elsewhere, the applicant was not afforded the opportunity to address these issues, and this matter is subsequently included in the recommended reasons for refusal.

4.7 Waste Storage and Recycling Facilities

The proposed waste storage area within the basement provides space for 8 bins within the basement, with temporary space available for larger waste. This is appropriate for a development of this size.

5.2 Residential Flat Building – Site Coverage

Part 5.2 indicates that building footprints for residential flat buildings are to be limited to 35% of the site area. The proposal provides for 792.82sqm (58.8%) of site coverage. The Statement of Environmental Effects indicates that this is a direct consequence of the location of the sewer main, as the basement is unable to be positioned entirely underneath the proposed building. Further information is required to substantiate this position. Refer to discussion in relation to Part 3C of the ADG.

5.2 Residential Flat Building – Balcony Balustrade

Part 5.2 of RDCP 2011 outlines that solid balustrading should be included in the façade design to provide screening of clothes line and other paraphernalia. The submitted finishes schedule does not clearly indicate whether balustrades will be transparent, and conditions would be able to be imposed to require opaque balustrades. However, the application is recommended for refusal.

S.4.15(1)(a)(iv) - Provisions of regulations

Clause 92 of the Regulation has been considered and there are no relevant provisions requiring further discussion.

S.4.15(1)(b) - Likely Impacts of Development

Potential impacts associated with the proposed development have been discussed in detail within this report.

S.4.15(1)(c) - Suitability of the site

As previously mentioned in this report, the subject site is of a suitable overall area and dimensions to accommodate a reasonable increase in density. The design of the proposal however is not suitable for the subject site for the reasons previously detailed within this report.

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. It is reiterated that the proposal exceeds the building height and FSR requirements and as a result, creates undue impacts.

As such, the proposal is recommended for refusal and the site is not suitable for the proposed development in its current form.

S.4.15(1)(d) - Public Submissions

The development has been notified in accordance with the provisions of the RDCP 2011. In response, three (3) submissions were received, plus a second objection from one of the original objectors. All but one of the submissions objected to the proposal.

The issues raised in the submissions have been taken into consideration in the assessment of the application as discussed below:

Issue 1: Site coverage non-compliance.

Comment: The non-compliance with site coverage has not been adequately justified, and this is included as a reason for refusal.

Issue 2: Privacy impacts to surrounding buildings.

Comment: It has not been demonstrated that the proposed setback non-compliances are acceptable, and as a consequence, this forms one of the reasons why the proposal is recommended for refusal.

Issue 3: Construction over sewer

Comment: It is expected that there are engineering solutions which would enable construction over the sewer. However, the applicant has not satisfactorily demonstrated that the sewer is unable to be diverted.

Issue 4: Overshadowing

Comment: The overshadowing impacts have not been adequately demonstrated, and the proposal is therefore recommended for refusal.

Issue 5: Not compatible with existing character

Comment: It is agreed that the height of the proposal, and the design of the ground floor front setback areas are not compatible with the existing character, and the proposal is recommended for refusal.

Issue 6: Removal of Jacaranda

Comment: It is considered that there are design options which would allow for the retention of the Jacaranda, and this is reflected within the reasons for refusal.

Issue 7: Support for proposal, and support for height increase to 6 or 7 storeys

Comment: Adequate statutory justification has not been provided for the proposed height non-compliance as is required by clause 4.6 of the RLEP 2011. A building of a height up to 7 storeys, would likely require the preparation of a planning proposal.

Issue 8: Parking availability, particularly on President Avenue, Banks Street and Solander Street.

Comment: Parking is generally compliant, however a range of issues remain outstanding with respect to the design of the parking areas, and this is reflected within the reasons for refusal.

S.4.15(1)(e) - Public interest

For the reasons outlined previously within this report, the proposed development is inconsistent with the requirements and objectives of the relevant planning policies, and as such is deemed to be unsatisfactory and not in the public interest.

Section 94 Contributions

S94 contributions would apply to the development as a result of the proposed increase in density, should the proposal have been supported.

Conclusion

Development Application No. 2017/199 for construction of a four (4) storey residential flat building development, comprising 16 residential units, basement parking, front fence and demolition of existing structures at 205-207 President Avenue, Monterey has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for refusal for the reasons outlined within the 'Recommendation' contained earlier in this report.

Bayside Planning Panel

26/06/2018

Item No	6.5
Application Type	Development Application
Application No	DA-2018/28
Lodgement Date	12/02/2018
Property	60 Monterey Street, Monterey
Ward	Rockdale
Owner	Mr R Mourched
Applicant	Mr R Moussawel
Proposal	Alterations and additions to the roof top terrace including retention and use of 6 timber posts and wires for the purpose of roof top garden
No. of Submissions	One (1)
Cost of Development	\$5,000
Report by	Development Assessment Planner

Officer Recommendation

- 1 That the Bayside Planning Panel supports the variation to clause 4.3 Height of building in accordance with the Clause 4.6 justification provided by the applicant.
 - 2 That the Development Application No.DA-2018/28 for the proposed alterations and additions to the roof top terrace including retention and use of 6 timber posts and wires for the purpose of roof top garden at 60 Monterey Street MONTEREY be APPROVED pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
 - 3 That the objector be advised of the Bayside Planning Panel's decision.
-

Location Plan



Attachments

- 1 Bayside Planning Panel Report
- 2 Roof plan
- 3 Elevations
- 4 Sections
- 5 Site Plan
- 6 Site Analysis
- 7 Clause 4.6 Variation [↓↓↓↓↓↓↓↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2018/28
Date of Receipt:	12 February 2018
Property:	60 Monterey Street, MONTEREY (Lot 154 DP 10707)
Owner:	Mr Rabi Mourched
Applicant:	Mr Rabi Moussawel
Proposal:	Alterations and additions to the roof top terrace including retention and use of 6 timber posts and wires for the purpose of roof top garden
Recommendation:	Approved
No. of submissions:	One
Author:	Adam Iskander
Date of Report:	29 May 2018

Key Issues

The key issues related to this application are:

- Non-compliance with Maximum Height of Building;
- Clause 4.6 submitted to justify the non-compliance in height; and
- One neighbour submission received

Recommendation

1. That the Bayside Planning Panel supports the variation to clause 4.3 Height of building in accordance with the Clause 4.6 justification provided by the applicant.
2. That the Development Application No.DA-2018/28 for the proposed alterations and additions to the roof top terrace including retention and use of 6 timber posts and wires for the purpose of roof top garden at 60 Monterey Street MONTEREY be APPROVED pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
3. That the objector be advised of the Bayside Planning Panel's decision.

Background

History

Council's records show that the following applications was previously lodged:

- DA- 2010/235 for demolition of existing structures and erection of new two storey dwelling with basement storage, detached double garage at rear and inground swimming pool was approved under delegation on 3 February 2010. This application also included a roof top terrace.
- DA-2010/235/A for modification of consent to increase the size of the basement to match outline of ground floor level above was approved on 20 May 2010.

This application is a result of a Customer Request Management (CRM) lodged in late 2016 raising concerns of unauthorised works at 60 Monterey Street. The timeline of CRM's are as follows:

- On 20 December 2016, A CRM was raised to Council of unauthorised structures on a roof top terrace at 60 Monterey Street consisting of lights and several poles along the perimeter of the building edge.
- On 19 January 2017, the owner was contacted by Council and advised to remove the structures from the roof. Over several months, the owner had removed the light structures from the roof top however the poles remained;
- On 16 March 2017, Councils compliance officer noted that the poles were temporary structures and not permanently fixed.
- On 17 July 2017, Council received further complaints about the poles on the roof and that the poles would soon be used to create a cover over the terrace. The owner of the property was advised that if they choose to retain the poles, that a Development Application will be required along with a Building Certificate for the unauthorised works.
- On 12 February 2018, the owner submitted DA-2018/28 for alterations and additions to the roof top terrace including retention and use of 6 timber posts and wires for the purpose of a roof top garden.

Proposal

Council is in receipt of a development application DA-2018/28 at 60 Monterey Street, MONTEREY, which seeks consent to carry out alterations and additions to the roof top terrace including retention and use of 6 timber posts and wires for the purpose of a covered roof top garden within an area of approximately 63sqm.

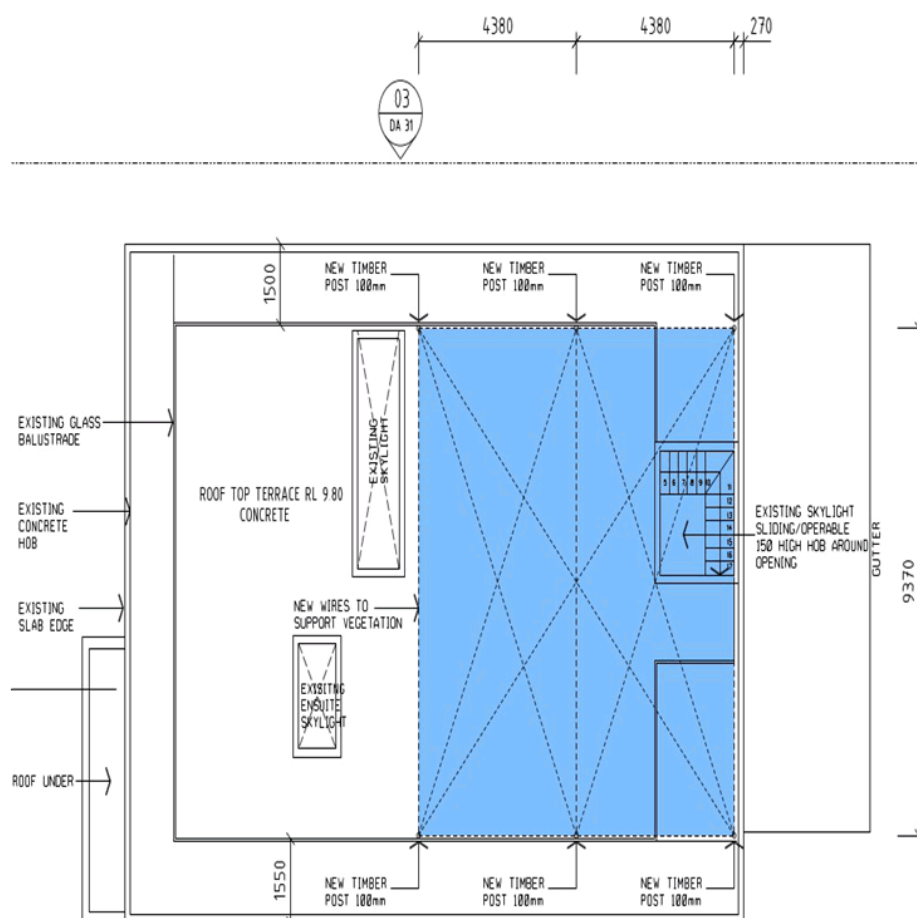


Figure 1: Originally proposed covered area over roof top terrace.

- On 1 March 2018, Council sent correspondence to the applicant advising that the proposed structure will not be supported and will be refused in its current form as it unreasonably contributes to bulk and scale and will potentially cause significant levels of over-looking and noise when in use. The applicant requested a meeting on site.
- On 23 March 2018 Council officers attended the subject site and further advised the applicant that the large structure would not be supported. A request for further information letter was sent out later that day to the applicant requesting that the covered area be reduced significantly and be located closer to the access point with greater setbacks from the building edge.
- On 15 May 2018 amended plans were received showing a reduced covered area totalling 30 sqm in size and increased setbacks from the building edge
- The amended plans have formed part of this assessment.

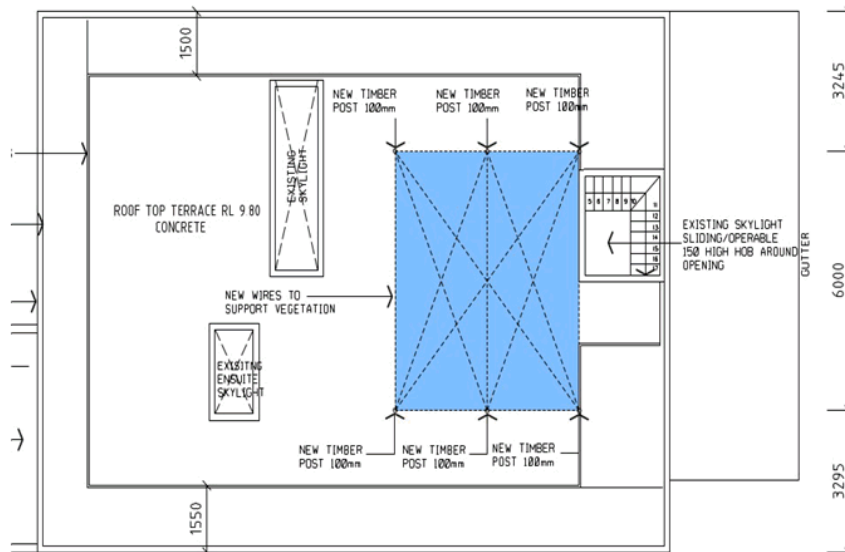


Figure 2: Amended plan showing a reduced covered area and greater setbacks from the building edge.

Site location and context

The subject site is located on the corner of Chuter Avenue and Monterey Street, Monterey. The site is irregular in shape with an overall frontage of 15.865m to Monterey Street and a 36.88m frontage to Chuter Avenue. The site has an area of approximately 600sqm with the eastern side boundary measuring 38.405m and the rear boundary measuring 15.24m. Existing on site is a two storey residential dwelling, basement storage, roof top terrace and a rear garage accessed via Chuter Avenue.

Surrounding developments consist of two storey residential dwelling and single storey residential dwellings. To the east are two storey residential dwelling with pitch roofs and on the opposite side of Monterey Street are two single storey residential dwellings. Immediately to the rear is a two storey pitched roof dual occupancy. Several trees are located on Council's foot path in front of the subject site and further into Monterey Street.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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:

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R2 Low Density Residential	Yes	Yes - see discussion
4.3 Height of buildings	Yes - see discussion	No - see discussion
4.6 Exceptions to development standards	Yes - see discussion	Yes
6.4 Airspace operations	Yes	Yes - see discussion

2.3 Zone R2 Low Density Residential

The subject site is zoned R2 - Low Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a residential dwelling which constitutes a permissible development only with development consent. The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

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

4.3 Height of buildings

The height of the proposed building is 9.75m which exceeds the maximum 8.5m height permitted in Clause 4.3 (Height of buildings) of RLEP 2011.

In accordance with clause 4.6 of RLEP 2011, the applicant has requested that a variation to the maximum building height be considered. The justification to vary the standard has been addressed in this report.

4.6 Exceptions to development standards

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

- (3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and
- (3)(b) that there are sufficient environmental planning grounds to justify the variation.

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

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.

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

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

Development standard to be varied

The applicant seeks variation to Clause 4.3 (2) Height of Buildings, which states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The maximum height shown for the land on the Height of Buildings Map is 8.5m, however the development proposes a maximum height of up to 9.75m and will therefore exceed the maximum allowable by 1.25m (or 15%).

The objectives of this clause are as follows:

(a) to establish the maximum limit within which buildings can be designed and floor space can be achieved;

This objective is met since the existing dwelling plus all its gross floor area, its existing roof terrace as well as the access to the roof terrace are entirely under the maximum height limit, having an existing maximum height of 7.35m. The proposed variation relates strictly to ancillary landscaping of an existing terrace and therefore does not create any new floor space nor enclose existing floor space since the noncompliant structures are only 100mm wide timber posts. In this regard, the proposal to vary the LEPs maximum height limit by an additional 1.25m for the sole purpose of 6 x timber posts does not contravene this objective

(b) to permit building heights that encourage high quality urban form;

This objective is met since the proposed building height variation is solely for the purpose of improving the quality and amenity of not only the existing dwelling house but also the streetscape and the locality. For the residents, the landscaping in the form of a hanging garden has significant benefits such as greening an existing flat concrete roof, increasing the amount of on-site landscaped areas, providing natural shade to the roof terrace and providing opportunities for the increased use of the roof terrace. For the public, the landscaping also has significant benefits not only just by contributing to the landscaped character of the area but especially by creating visual interest and a focal point at this important corner site which is positioned as a gateway, linking the site to the beaches located at the eastern end of Monterey Street and a short walk from the site. All these factors contribute to a high quality urban form.

(c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain;

This objective is met since the proposed timber posts, despite varying the LEPs building height limit have no negative impacts and do not reduce sky exposure, nor do they reduce daylight to existing buildings or to the public domain. The posts are only 100mm wide and can be likened to antennas on the roof top. The proposed timber posts just like other such ancillary structures that are typically located on residential rooftops are insignificant in terms of any impacts on existing buildings.

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity;

This objective is met since the proposed 6 x timber posts are a minimal 100mm wide and are not solid

walls that would otherwise give an impression of being an additional storey.

The Elevation Plan shown in Figure 2 below demonstrates that the proposed timber posts and the hanging garden will be situated below the line of existing tree canopies such that an appropriate transition is provided between existing built form and existing and proposed landscaping. Further the existing dwelling plus its roof terrace, access to the roof terrace and all balustrades are well under the LEPs height limit such that the minor variation of 1.25m resulting from the height of the timber posts is of no consequence in terms of built form. The proposal does not intensify the existing residential land use and as such does not contravene the second part of the objective in terms of land use intensity.

Five part-test

The applicant has taken into consideration the 'Five-part test' established in 'Wehbe' decision by NSW LEC which outlines ways in which an applicant can establish that compliance with a development standard is unreasonable or unnecessary. In this decision, it was suggested that only demonstrating the development achieves the objectives of the standard is insufficient to justify that a standard is unreasonable or unnecessary; and that to justify that there are 'sufficient' environmental planning grounds for the variation may require identification of 'grounds particular to the circumstances of the proposed development'. The applicant has identified methods (1) and (2) of the court case to have relevance with the proposal where (1) that the objectives of the standard are achieved notwithstanding non-compliance with the standard and (2) that the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The second method raised by the applicant is not supported. The applicant has discussed in their submission that the purpose of the standard is not relevant to the development as the definition of building height in RLEP 2011 excludes masts, flagpoles and the like. The applicant considers that the proposal falls under the exclusion of building height as the proposal consist of poles. However, Council does not agree with this interpretation as the proposal seeks the construction of several poles creating an undercover area which contributes to the height of the development. As such, assessing the development as flag poles, mast or the like will not be considered and therefore the objectives of the standard remains relevant to the assessment.

Justification for the variation

The applicant has provided the following factors particular to the site demonstrating that there are additional environmental planning grounds to justify that the standard is unreasonable, in accordance with the 'four2five' decision by the LEC:

- No new building works or solid walls proposed to be erected. Rather, the only structural work relates to the erection of 6 x timber posts which are each 2.4m high and 100mm wide to be erected on the existing roof terrace.
- The proposed timber posts result in a maximum building height of 9.7m from the existing ground level to the top of the posts, varying the standard by a maximum 1.2m equivalent to a variation of 14%. The existing dwelling is compliant, being well-under the LEPs maximum height control.
- The Objective of Clause 4.3 'height of building' is met since the existing dwelling plus all its gross floor area, its existing roof terrace as well as the access to the roof terrace are entirely under the maximum limit, having an existing maximum height of 7.35m. The proposed variation relates strictly to ancillary landscaping of an existing terrace and therefore does not create any new floor space nor enclose existing floor space since the non compliant structures are only 100mm wide timber posts. In this regard, the proposal to vary the LEPs maximum height limit by

- an additional 1.2m for the sole purpose of 6 x timber posts does not contravene this objective.
- landscaping in the form of a hanging garden has significant benefits such as greening an existing flat concrete roof, increasing the amount of on-site landscaped areas, providing natural shade and providing opportunities for increased use of the roof terrace by turning the roof into a featured area. For the public, the landscaping also has significant benefits not only just by contributing to the landscaped character of the area but especially by creating visual interest and a focal point at this important corner site which is positioned as a gateway,
 - The proposed timber posts, despite varying the LEPs building height limit have no negative impacts and do not reduce sky exposure, nor do they reduce daylight to existing buildings or to the public domain.
 - The proposed 6 x timber posts are a minimal 100mm wide and are not solid walls that would otherwise give an impression of being an additional storey.
 - The proposed timber posts and the hanging garden will be situated below the line of existing tree canopies located on Monterey Street, such that an appropriate transition is provided between existing built form and existing and proposed landscaping. Further the existing dwelling plus its roof terrace, access to the roof terrace and all balustrades are well under the LEPs height limit such that the minor variation of 1.2m resulting from the height of the timber posts is of no consequence in terms of built form

Assessment comments

The applicant's submission is supported in the context of clause 4.6 based on the reasons provided by the applicant above. Further, Council has previously varied the Height of Buildings development standard to facilitate provision of a roof top terrace with a covered area near the entry point. Strict compliance with this development standard is considered unreasonable and unnecessary in this instance. Taking into consideration further reductions in size to the covered area which will be discussed later in this report, the proposed variation to the height will not significantly contribute to the bulk or scale of the building, will not unreasonably impact the overshadowing on adjoining properties and will not likely set an undesirable precedent within the locality. Further, the proposal is consistent with the objectives of Zone R2 Low Density Residential and the Height of Buildings development standard (Clause 4.3) as per RLEP 2011. Accordingly, the proposal is not considered to be contrary to the public interest as it is consistent with the objectives of the particular standard and the objectives of the relevant zone.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51 metres to Australian Height Datum (AHD). The proposed building height is at 12.2 metres to AHD and in this regard, it is considered that the proposed development will have minimal adverse impact on the OLS and hence is acceptable with regards to this Clause.

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

No relevant proposed instruments are applicable to this proposal.

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:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes	Yes - see discussion
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.4.2 Solar Access - Low and medium density residential	Yes	Yes - see discussion
4.4.5 Visual privacy	Yes	Yes - see discussion

4.1.1 Views and Vista

The siting of the proposed building will ensure that there is minimal adverse impact on the surrounding views presently enjoyed by adjacent residents.

4.2 Streetscape and Site Context - General

The proposal is located in a R2 Low Density Residential Zone. The immediate context is relatively low scale consisting of residential dwellings and dual occupancy developments.

The proposal is for the construction of six timber posts connected by wires. The wires will also be used to support the growth of vegetation. The poles and wires will cover an area of 30sqm and will have a height of 2.4m. The cumulative impacts of the structure will be perceived as additional bulk to the dwelling when viewed from the neighbouring properties and public domain. Considering the position of the dwelling on the corner of Monterey Street and Chuter Avenue, the impacts of the proposal in terms perceived bulk and scale are significant. As such, it is considered that if the covered area was to be reduced to 15sqm in size the impacts would be minimised. Further, the reduced size would potentially locate the covered area further away from the front building edge which would reduce the visibility of the structure from Chuter Avenue. Taking this into consideration, the covered area will be conditioned to be reduced to a maximum area of 15sqm to achieve a design which will be sympathetic to the streetscape and neighbourhood character and will not unreasonably contribute to the perceived bulk and scale of the dwelling when viewed from the public domain and private properties.

4.4.2 Solar Access - Low and medium density residential

The applicant has submitted shadow diagrams for 9 a.m., 12 p.m. and 3 p.m. on June 21. The shadow diagrams show that the adjoining windows will receive the prescribed amount of sunlight and at least 50% of the private open space will receive sunlight during winter.

The development has sought to minimise the adverse impact on the adjoining property by providing the covered area with generous side setbacks from the building edge and reducing the over-all size when compared to the originally submitted plans. As such, the application satisfies Part 4.4.2 of RDCP 2011.

4.4.5 Visual privacy

In 2010, Council approved DA-2010/235 for demolition of existing structures and erection of new two storey dwelling with basement storage, detached double garage at rear and in-ground swimming pool. The roof top terrace was approved with a usable area of 138sqm with a setback of 1.5m from the front and side of the building edges and 2.12m from the rear building edge. The current proposal seeks approval for a covered area of 30 sqm. The size of the proposed covered area will provide sufficient space for large gatherings and entertaining which may cause impacts of noise and over-looking onto the adjoining neighbours. Therefore, the condition discussed previously to reduce the size of the covered area to 15sqm will not only lessen the impacts of bulk and scale but will also limit the use of the

covered portion of the roof top terrace for noise generating uses and reduce the impacts of direct-over-looking. Taking this into consideration along with the increased setbacks of the covered area from the building edge, the proposal reduced to 15sqm is assessed as reasonable and is not considered to generate excessive noise impacts and over-looking. The application satisfies the Objectives of Part 4.4.5 of RDCP 2011.

S4.15(1)(a)(iv) - Provisions of regulations

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

The application was referred to Council's Building Surveyors who have raised no concerns subject to a Building Certificate being lodged to regularise any existing unauthorised work.

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

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed are as follows:

Construction

The materials used for the construction consist of wooden poles and wires. There are no specific issues relating to the BCA in the proposed design.

Site and safety measures are to be implemented in accordance with conditions of consent and Workcover Authority guidelines/requirements.

S4.15(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. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. 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.

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

The development has been notified in accordance with the provisions of Rockdale DCP 2011 and one submission has been received. The issues raised in the submission are discussed below:

Issue 1: The use of the roof top will be intensified and will create additional impacts of noise and over-looking;

Comment: The amended plans received proposes a covered area of 30sqm with greater setbacks from the building edge. As discussed in the report, the covered area will be conditioned to be further reduced in size to a maximum area of 15sqm which will limit the use of the roof top terrace and will also reduce the impacts of over-looking and noise.

Issue 2: The proposal will create additional bulk and scale of the whole building.

Comment: The recommended reduction in covered area to 15sqm and the increased setbacks submitted with the amended plans will significantly reduce the bulk and scale of the proposal and reduce the visibility of the covered area when viewed from neighbouring properties and the public

domain. The covered area will be consistent with other covered areas on roof top terraces in the surrounding locality and will therefore not detract from the neighbourhood character.

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

The proposed development is considered satisfactory having regard to the objectives and requirements of Rockdale Local Environmental Plan 2011 and Development Control Plan 2011. Impacts on adjoining properties have been considered and addressed. As such it is considered that the proposed development is in the public interest.

Civil Aviation Act, 1988

The site is within an area that is subject to the Civil Aviation (Building Controls) Regulations 1988 made under the *Civil Aviation Act, 1988*.

Civil Aviation (Building Control) Regulations 1988

The Regulations require a separate approval from the Civil Aviation Safety Authority if a building or structure exceeds a prescribed height limit.

Section 6 Prohibition of the construction of buildings of more than 150 feet in height in certain areas

The proposed development is affected by the 15.24m Building Height Civil Aviation Regulations, however the proposed building height at 9.75m will have minimal impact upon the height requirement in the regulations.

Schedule 1 - Draft Conditions of consent

General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Drawn by	Dated	Received by Council
Roof Plan DA 22	RM Designers	1 January 2018	15 May 2018
Elevations 01,02, & 03 north, south and west elevations DA 30	RM Designers	1 January 2018	15 May 2018
Section A+B Elevations 03 Long Section & Elevation DA 31	RM Designers	1 January 2018	15 May 2018

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. The covered area on the roof top terrace shall not be enclosed at any future time without prior development consent.
6. A Building Certificate shall be lodged with Council and approved by Council to regularise any existing unauthorised work, which must be consistent with any Development Approval.
7. The covered area shall be constructed with dimensions of 2.5m in depth x 6m in length to equal a total area of 15sqm.

Prior to issue of the construction certificate

The following conditions must be completed prior to the issue of the Construction Certificate.

8. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
 - i. A Footpath Reserve Restoration Deposit of \$535.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
 - ii. An environmental enforcement fee of 0.25% of the cost of the works.
 - iii. A Soil and Water Management Sign of \$18.00.
9. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.

Prior to commencement of works

The following conditions must be completed prior to the commencement of works.

10. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A

copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

11. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.

During demolition / excavation / construction

The following conditions must be complied with during demolition, excavation and or construction.

12. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
13. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
14. For Class 1 and 10 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
 - i. prior to pouring any in-situ reinforced concrete building element, and
 - ii. prior to covering the framework for any floor, wall, roof or other building element, and
 - iii. prior to covering waterproofing in any wet areas, and
 - iv. prior to covering any stormwater drainage connections, and
 - v. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.

15. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre

or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to pollute the stormwater system.

16. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
 - i. On completion of the building showing the area of the land, the position of the building, setbacks of the covered area and verifying that the covered area has been constructed at the approved levels.
17. The following conditions are necessary to ensure minimal impacts during construction:
 - i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
 - ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
 - iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
 - iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
 - v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
 - vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - a) spraying water in dry windy weather
 - b) cover stockpiles
 - c) fabric fences
 - vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

Prior to issue of occupation certificate or commencement of use

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

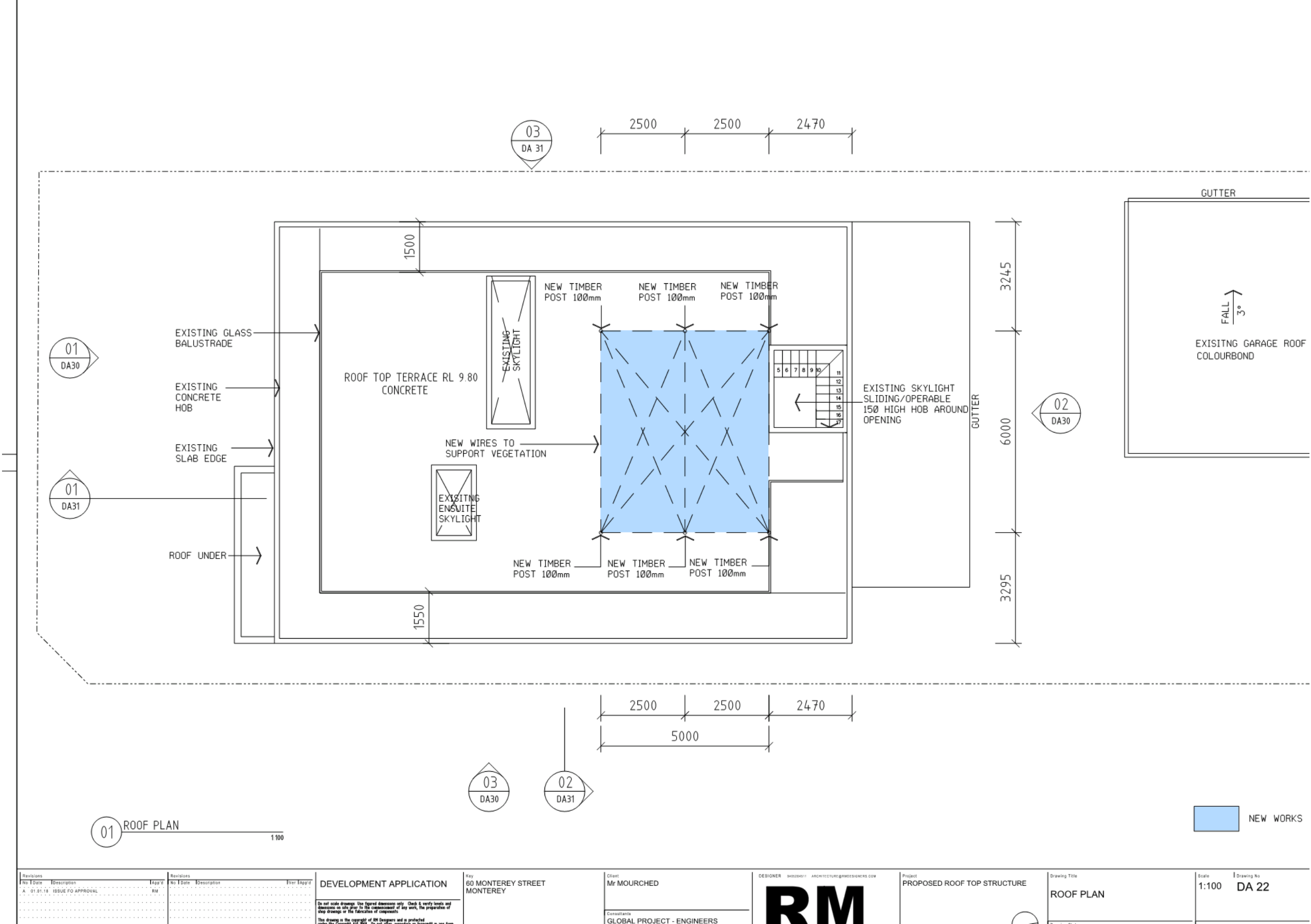
18. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
19. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.
Note: Burning on site is prohibited.
20. Prior to issue of any Occupation Certificate a registered plumber or other suitably qualified professional is to check the existing stormwater system for the building and shall provide a certificate stating that the system is satisfactory and in good working condition. If the existing system or any element of the system cannot be certified as being satisfactory and in good working condition then the substandard section of the existing system is to be renewed.

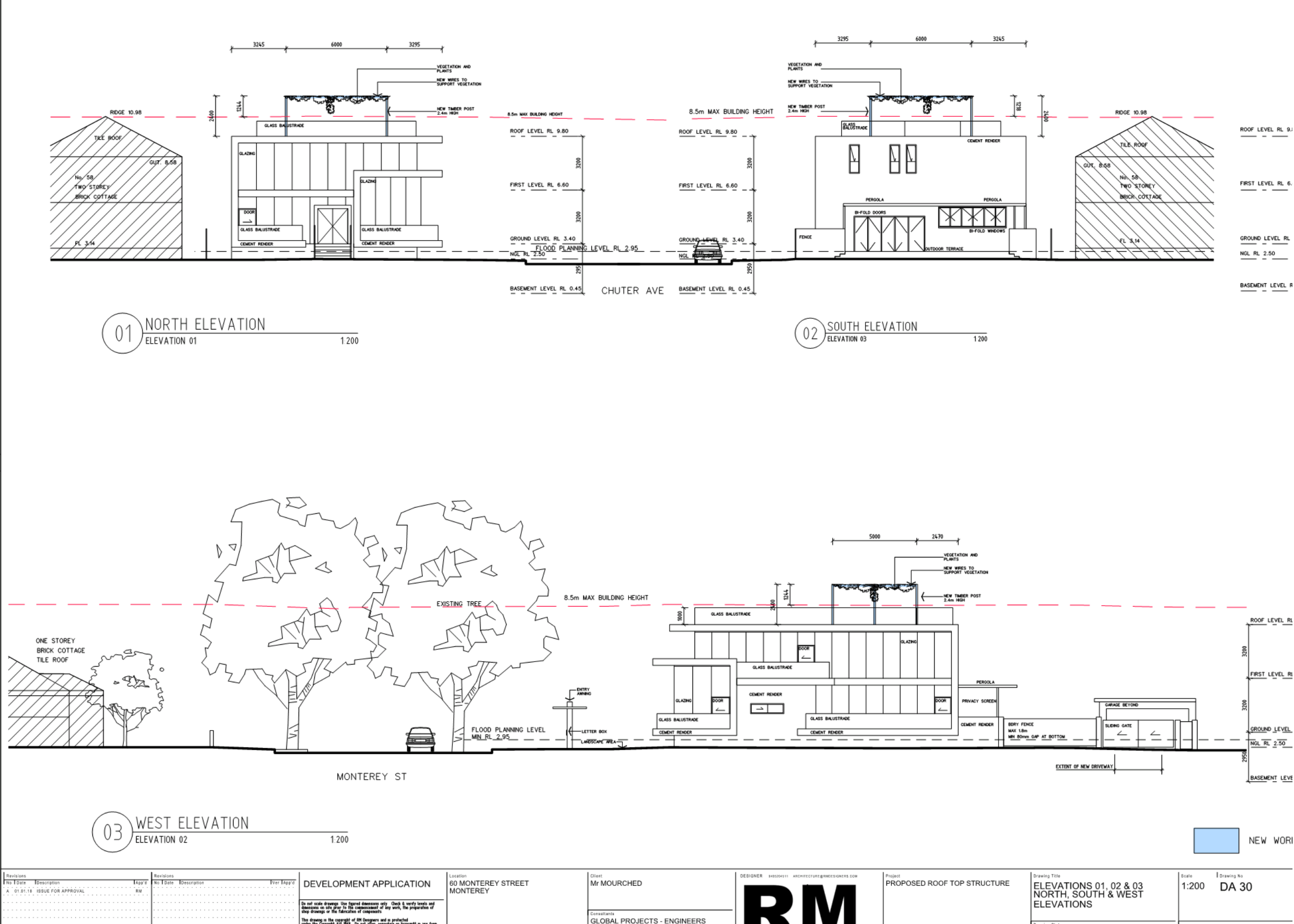
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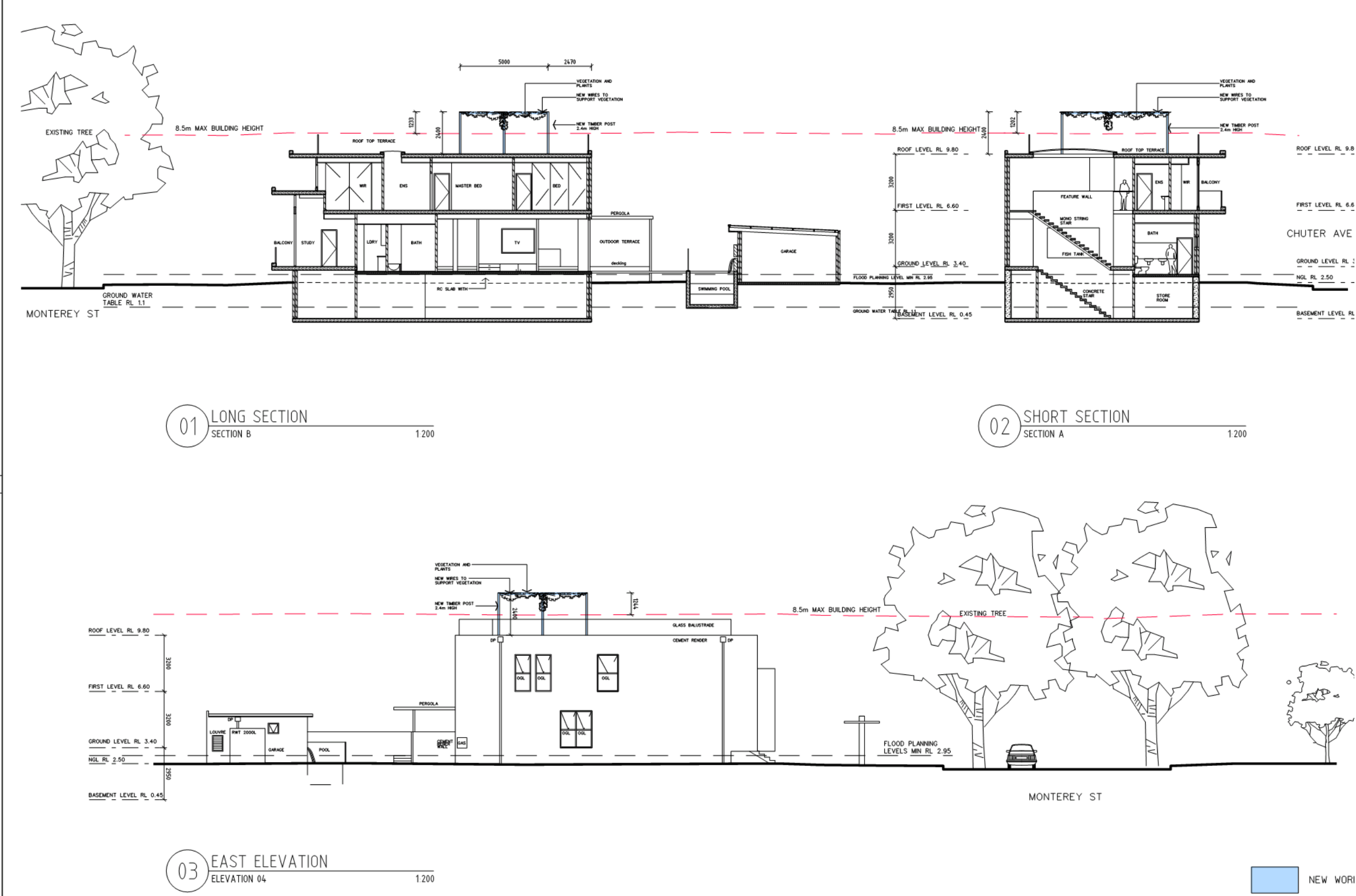
- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
- choosing quiet equipment
 - choosing alternatives to noisy activities
 - relocating noise sources away from affected neighbours
 - educating staff and contractors about quiet work practices
 - informing neighbours of potentially noise activities in advance
 - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall

be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.

- c. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.

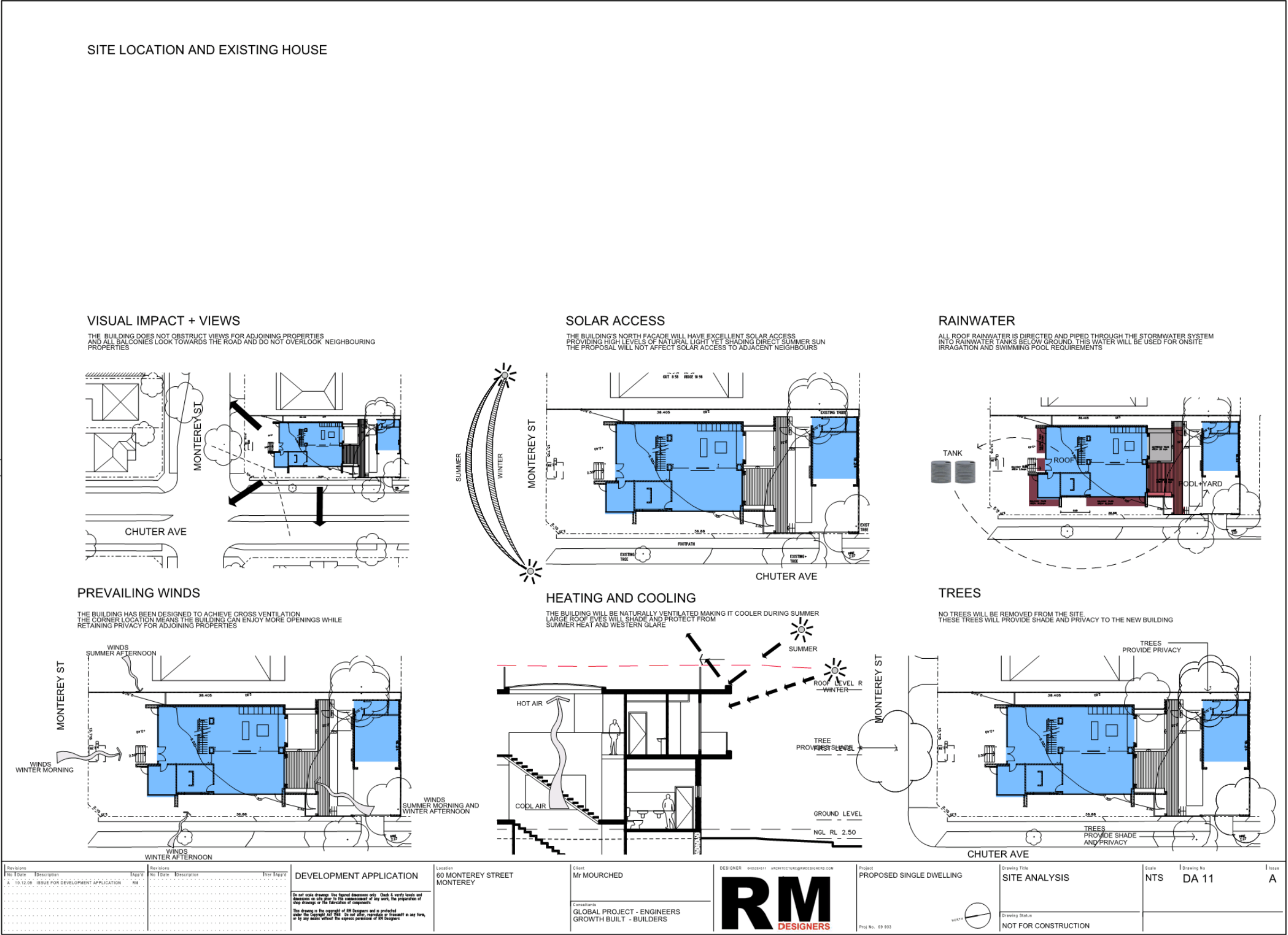






Revisions			Revisions			DEVELOPMENT APPLICATION	Location 60 MONTEREY STREET MONTEREY	Client Mr MOURCHED	DESIGNER 843204111 ARCHITECTURE@RMDESIGNERS.COM	Project PROPOSED ROOF TOP STRUCTURE	Drawing Title SECTION A+B & ELEVATIONS 03 LONG SECTION & ELEVATION	Scale 1:200	Drawing No DA 31							
No	Date	Description	No	Date	Description															
A	01.01.18	ISSUE FOR APPROVAL																		
Do not scale drawings. Use figured dimensions only. Check & verify levels and dimensions on site prior to the commencement of any work, the preparation of shop drawings or the fabrication of components.						This drawing is the copyright of RM Designers and is protected under the Copyright Act 1969.														
						GLOBAL PROJECT - ENGINEERS														





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Clause 4.6 Report

request for variation to
height of buildings
development standard

**60 Monterey Street,
Monterey**

1 February 2018



Telephone 0435 813 821 Email venetin@urbanable.com.au ABN 70 947 906 512

Page 1 of 14

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Clause 4.6 Request for Variation to Height of Buildings Standard Clause 4.3

1.0 Background

This written request is prepared on behalf of the applicant, in accordance with provisions of Clause 4.6 Exceptions to Development Standards of Rockdale Local Environmental Plan (LEP) 2011 which has as its objectives to allow a degree of flexibility in applying development standards, where a better outcome is able to be achieved. It accompanies a Development Application (DA) lodged by the applicant for retention of ancillary landscaping on the roof terrace of the existing dwelling house and must be read in conjunction with the Statement of Environmental Effects (SEE) submitted with that DA.

2.0 Request to Vary Height of Buildings Standard

2.1 What standard is being varied?

This Clause 4.6 variation request seeks a variation to Clause 4.3 of Rockdale LEP with respect to the height of buildings standard which allows a maximum 8.5m building height. The standard is not a performance based control.

2.2 What are the objectives of the standard?

The objectives of Clause 4.3 Height of Buildings standard are:

- (a) *to establish the maximum limit within which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*
- (d) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*



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The justification provided in Section 4.1 demonstrates that the proposal meets the objectives of the standard and is in the public interest, despite the numerical standard being contravened.

2.3 What is the numerical variation?

As described in detail within the accompanying SEE, there are no new building works or solid walls proposed to be erected. Rather, the only structural work relates to the erection of 6 x timber posts which are each 2.4m high and 100mm wide to be erected on the existing roof terrace.

The proposed timber posts result in a maximum building height of 9.75m from the existing ground level to the top of the posts, varying the standard by a maximum 1.25m equivalent to a variation of 14.7%. The existing dwelling is compliant, being well-under the LEPs maximum height control.

The reason for the variation is solely to provide landscaping to the existing roof terrace in the form of a hanging garden. The hanging garden can only be achieved by erecting timber posts (not dissimilar to flagpoles) with adequate headroom (i.e. 2.4m) connected by wires that support the plant growth.

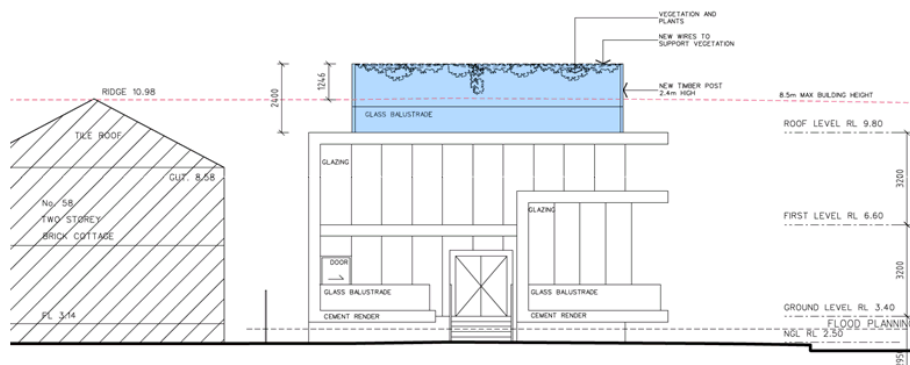


Figure 1. Proposed North Elevation illustrating the extent of timber posts situated above the LEPs maximum building height limit.



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2.4 What is the zoning of the land?

The land is zoned R2 Low Density Residential under Rockdale LEP.

2.5 What are the objectives of the zone?

The objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

The justification provided in Section 3.3 demonstrates that the proposal meets the objectives of the zone and is in the public interest, despite the numerical standard being contravened.

3.0 Established Framework for Justifying and Assessing Contraventions to Development Standards

The NSW Land and Environment Court (LEC) has established widely used tests to assist developers in justifying contraventions and to assist Councils in considering contraventions against the specific matters listed in Clause 4.6 of standard LEPs. The main tests include:

3.1 'Five-part test' established in 'Wehbe' decision by NSW LEC

In this decision, Chief Judge Preston identified ways in which an applicant can establish that compliance with a development standard is unreasonable or unnecessary and that it may be done in any of the following ways:



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1. **that the objectives of the standard are achieved notwithstanding non-compliance with the standard, or**
2. **that the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary, or**
3. that the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable, or
4. that the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable, or
5. that the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The first and second methods are of relevance to this proposal and are addressed in Section 4.1.

3.2 'Grounds particular to the circumstances' established in 'Four2Five' decision by NSW LEC

In this decision, Commissioner Pearson suggested that simply demonstrating the development achieves objectives of the standard is insufficient to justify that a standard is unreasonable or unnecessary; and that to justify that there are 'sufficient' environmental planning grounds for the variation may require identification of 'grounds particular to the circumstances of the proposed development' (meaning something more specific to the site and the development, not just generic grounds that apply to any similar development on the site or the vicinity).



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This additional test was expressly stated in subsequent appeals as being a discretionary or subjective opinion of the Commissioner and does not mean that variations can only be allowed where there is some special or particular feature of the site that justifies non-compliance.

The justification provided in Section 4.2 demonstrates circumstances that are particular to this development that provide additional environmental planning grounds to satisfy Council that compliance with the standard, for this particular site is unreasonable.

3.3 Matters prescribed in Clause 4.6 Exceptions to Development Standards of LEP

According to provisions of Clause 4.6, Council must be satisfied with the following three matters before approving development that contravenes a development standard:

1. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
2. that there are sufficient environmental planning grounds to justify contravening the development standard, and
3. that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The justification provided in Section 4.3 demonstrates that compliance with the development standard is both unreasonable and unnecessary (not just unreasonable); that there are more than sufficient environment grounds to justify contravening the standard; and that the proposal does not contravene the public interest.



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4.0 Justification for Contravening Height of Buildings Standard

This section sets out our justification for requesting Council to consider allowing the variation to the height of buildings standard of Clause 4.3 of Rockdale LEP.

4.1 'Five-part test' established in 'Wehbe' decision by NSW LEC

As noted earlier, the first and second methods out of the five methods established in the Wehbe decision are relevant to this proposal:

- **Method 1 - Meeting objectives of the standard:**

This method requires the applicant to demonstrate that the objectives of Clause 4.3 Height of Buildings standard are achieved notwithstanding non-compliance with the standard. The following demonstrates that the proposal meets each objective despite the non-compliance with the standard:

Objective (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved

This objective is met since the existing dwelling plus all its gross floor area, its existing roof terrace as well as the access to the roof terrace are entirely under the maximum limit, having an existing maximum height of 7.35m. The proposed variation relates strictly to ancillary landscaping of an existing terrace and therefore does not create any new floor space nor enclose existing floor space since the non-compliant structures are only 100mm wide timber posts. In this regard, the proposal to vary the LEPs maximum height limit by an additional 1.25m for the sole purpose of 6 x timber posts does not contravene this objective.



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Objective (b) to permit building heights that encourage high quality urban form

This objective is met since the proposed building height variation is solely for the purpose of improving the quality and amenity of not only the existing dwelling house but also the streetscape and the locality.

For the residents, the landscaping in the form of a hanging garden has significant benefits such as greening an existing flat concrete roof, increasing the amount of on-site landscaped areas, providing natural shade and providing opportunities for increased use of the roof terrace by turning the roof into a featured area.

For the public, the landscaping also has significant benefits not only just by contributing to the landscaped character of the area but especially by creating visual interest and a focal point at this important corner site which is positioned as a gateway, linking the site to the beaches located at the eastern end of Monterey Street and a short walk from the site. All these factors contribute to a high quality urban form.

Objective (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain

This objective is met since the proposed timber posts, despite varying the LEPs building height limit have no negative impacts and do not reduce sky exposure, nor do they reduce daylight to existing buildings or to the public domain. The posts are only 100mm wide and can be likened to antennas on the roof top. The proposed timber posts just like other such ancillary structures that are typically located on residential rooftops are insignificant in terms of any impacts on existing buildings.



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Objective (d) to nominate heights that will provide an appropriate transition in built form and land use intensity

This objective is met since the proposed 6 x timber posts are a minimal 100mm wide and are not solid walls that would otherwise give an impression of being an additional storey.

The Elevation Plan shown in Figure 2 below demonstrates that the proposed timber posts and the hanging garden will be situated below the line of existing tree canopies such that an appropriate transition is provided between existing built form and existing and proposed landscaping.

Further the existing dwelling plus its roof terrace, access to the roof terrace and all balustrades are well under the LEPs height limit such that the minor variation of 1.25m resulting from the height of the timber posts is of no consequence in terms of built form. The proposal does not intensify the existing residential land use and as such does not contravene the second part of the objective in terms of land use intensity.

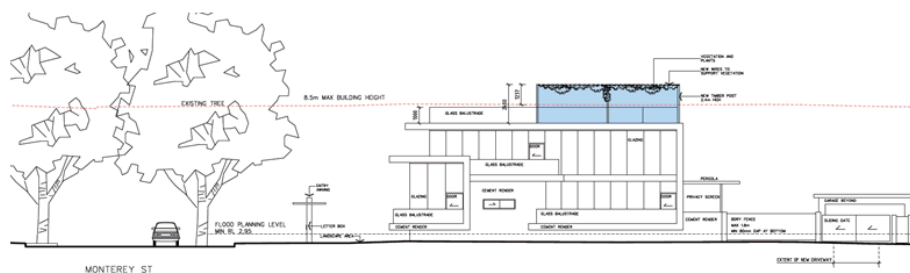


Figure 2. Proposed West Elevation to Chuter Avenue showing the landscaped area covering the rear half of the roof terrace

▪ **Method 2 - Purpose of the standard is not relevant:**

This method requires the applicant to demonstrate that the purpose of Clause 4.3 Height of Buildings standard is not relevant to the standard and therefore compliance is unnecessary. We demonstrate below that the purpose of the standard is not relevant with reference to the LEPs definition of 'building height'.



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We note Council advised the owner that timber posts exceed the LEPs building height standard and that written justification in accordance with Clause 4.6 was required to enable Council to consider the variation. Following Council's advice, this Clause 4.6 report was prepared which we consider adequately justifies the variation and demonstrates that it would be unreasonable to insist on compliance with the LEPs height standard.

However, insisting on compliance with the standard is also unnecessary on the basis of our interpretation that structures such as the timber posts (and the hanging plants) are excluded from measurement of height and that the purpose of Clause 4.3 is clearly to exclude such structures from the measurement.

The definition of 'building height' according to the LEP Dictionary is as follows:

building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, **but excluding** communication devices, antennae, satellite dishes, **masts, flagpoles, chimneys, flues and the like.***

On the basis that the LEPs definition of building height excludes structures such as *masts, flagpoles... and the like*, we consider that the proposed **timber posts** should also be excluded from height measurements. While timber posts are not specifically prescribed in the definition, the reference to '*..and the like*' implies that Council can entertain this exclusion if it is satisfied that the timber posts are 'like' a flagpole.



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We put forward that the timber posts are exactly like a flagpole in terms of shape, circumference and height and are also exactly like a flagpole in terms of being for the purpose of supporting something. Specifically, where a flagpole supports a mast, the proposed timber posts will support vegetation.

In this regard, since the proposed timber posts satisfy the reference to '...and the like' in the LEPs definition of building height, we request Council to consider that the purpose of the height standard in Clause 4.3 is very clearly not relevant to this particular proposal and therefore compliance with the standard is in fact unnecessary.

4.2 'Grounds particular to the circumstances' established in 'Four2Five' decision by NSW LEC

The following factors particular to the site demonstrates there are additional environmental planning grounds (in addition to consistency with objectives and in addition to the purpose of the standard being not relevant to the proposal), to justify that the standard is unreasonable:

▪ Corner site with link to beaches:

The subject site is particularly special being located at the corner of Monterey Street and Chuter Avenue. Council will recognise that this corner has the following additional important characteristics:

- Monterey Street is a quieter local street providing a direct 450m link from the site to beaches at the east end of Monterey Street,
- Chuter Avenue is a busy main road, making the site highly visible to passengers in both private vehicles and in buses which frequently run along the avenue,
- The site's location on this significant corner creates the impression of being a gateway to the beaches,
- The site's corner and gateway location having high visibility supports the idea of creating a unique focal point and visual interest.



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These features make the site conducive to a higher quality of urban form such as is proposed to be achieved through the proposed hanging garden. A hanging garden at this corner location is a positive and unique planning outcome but cannot be achieved unless Council allows flexibility of the LEPs building height standard. This is because a compliant height would require the timber posts to have a height of only 1.2m which would be impractical since insufficient head height would be available, making the terrace beneath the hanging garden unusable.

In this regard, it is considered that there are more than sufficient environmental planning grounds justifying that compliance with the standard is unreasonable in the particular circumstances of this case.

4.3 Matters prescribed in Clause 4.6 Exceptions to Development Standards of LEP

As noted earlier, Council is required to be satisfied with the following matters prescribed under Clause 4.6 of Rockdale LEP:

1. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and:

It was demonstrated in Section 4.1 and Section 4.2 that compliance with the development standard is unreasonable and unnecessary, not just unreasonable, in the circumstances of the case, particularly having regard to the purpose of the standard; in addition to the particular circumstances of the site and development; as well as considering that the proposal satisfies the objectives of the standard despite the minor numerical variation.



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2. that there are sufficient environmental planning grounds to justify contravening the development standard, and:

It has been demonstrated that there are more than adequate environmental planning grounds to justify contravening the standard including but not limited to the proposal's consistency with objectives of the standard and the zone despite its numerical non-compliance; its minimal impacts on the built and natural environment; its contribution to a higher quality urban form; the specific circumstances of the proposal (i.e. landscaping only) and the site such as its corner location and its relationship to the beaches. These factors further demonstrate that compliance with the standard is unreasonable and that the benefits of allowing the variation exceed any perceived negative effects.

3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out:

It was demonstrated in Section 4.1 that the proposal is in the public interest in terms of meeting the objectives of the particular standard, that is, the objectives of the Clause 4.3 Height of Buildings standard.

This Section demonstrates that the proposal is also in the public interest in terms of meeting the following generic objectives for development within the R2 Low Density Residential zone:

- ***To provide for the housing needs of the community within a low density residential environment.***

This objective is met since the proposal relates to an existing single dwelling house that is already within a low density residential environment. The minor variation of 1.25m above the building height standard resulting from the proposed timber posts whose purpose is solely to support landscaping does nothing to increase density nor does it increase gross floor area.



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- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

This objective is not relevant to the proposal since it relates to proposals that incorporate non-residential development.

- ***To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.***

This objective is met since the proposal does not result in any negative impacts on the character and amenity of the area. In fact, as demonstrated in the report, the proposal would improve amenity by increasing natural landscaping and contributing to the existing landscaped character of the area.

5.0 Conclusion

We ask Council to recognise the positive aspects of the proposal and to relax the LEPs height of buildings standard in this instance. Strictly applying the standard in the circumstances of this particular site would not represent a better outcome, defeating the purpose of the standard. Instead, relaxing the standard will result in a better outcome for this site.

This written request has demonstrated that it is appropriate for Council to allow a variation to Clause 4.3 Height of Buildings Standard under the Rockdale LEP 2011 and pursuant to the provisions of Clause 4.6 Exceptions to Development Standards on the basis that a better outcome is able to be achieved.

It has been adequately demonstrated that compliance with the standard would be both unreasonable and unnecessary, in the circumstances of this site and this particular proposal.



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Bayside Planning Panel

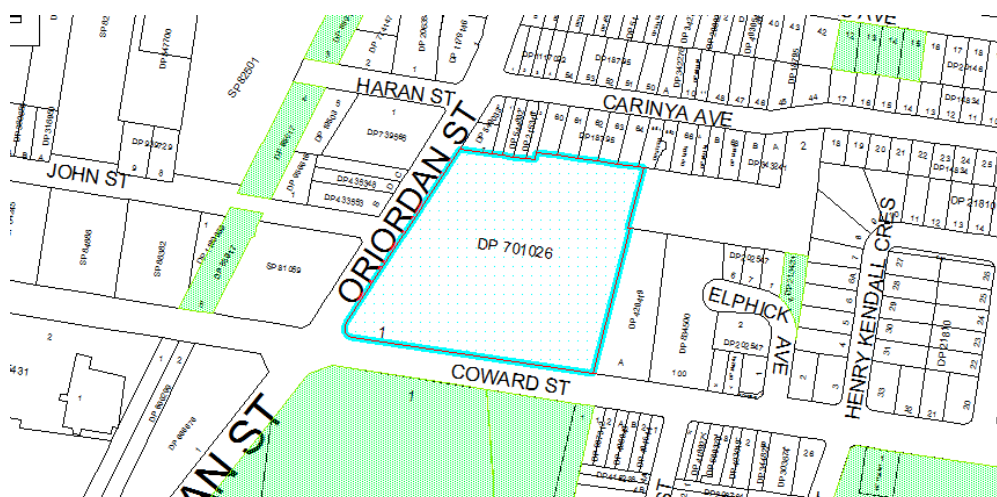
26/06/2018

Item No	6.6
Application Type	Alterations to approved mixed use development
Application No	SF18/1297
Lodgement Date	23/11/2017
Property	DA-2017/1222 - 200 Coward Street, Mascot
Ward	Mascot
Owner	Karimbla Properties (No. 36) Pty Ltd
Applicant	Karimbla Constructions Services (NSW) Pty Ltd
Proposal	Alterations to the approved mixed use development by converting certain balconies into wintergardens.
No. of Submissions	Nil
Cost of Development	\$1,369,600
Report by	Senior Development Assessment Officer

Officer Recommendation

- 1 That the Bayside Planning Panel is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Botany Bay Local Environmental Plan 2013 and that the proposed development is in the public interest as it is consistent with the objective of the FSR and the objectives for the B4 Mixed use zone.
- 2 That Development Application No. 2017/1222 for alterations to the approved mixed use development by converting balconies into wintergardens at 200 Coward Street, Mascot, be approved pursuant to section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

Location Plan



Attachments

- 1 Planning Assessment Report
- 2 Clause 4.6 variation
- 3 GFA Calculation
- 4 East Elevation Plan
- 5 North Elevation Plan
- 6 South Elevation Plan
- 7 West Elevation Plan
- 8 North Elevation Through Link Plan
- 9 South Elevation Through Link Plan
- 10 Wintergarden - Facade Sections [↓↓↓↓↓↓↓↓↓↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	2017/1222
Date of Receipt:	23 November 2017
Property:	200 Coward Street, Mascot Lot 1 in DP 701026
Owners:	Karimbla Properties (No. 36) Pty Ltd
Applicant:	Karimbla Constructions Services (NSW) Pty Ltd
Proposal:	Alterations to the approved mixed use development by converting certain balconies into wintergardens
Recommendation:	Approve the development, subject to conditions.
Value:	\$1,369,600.00
No. of submissions:	Nil
Author:	Angela Lazaridis, Senior Development Assessment Planner
Date of Report:	7 June 2018

Key Issues

Bayside Council received Development Application No. 2017/1222 on 23 November 2017 seeking consent for alterations to the approved mixed use development by converting certain balconies into wintergardens at 200 Coward Street, Mascot.

The application was placed on public exhibition for a twenty-one (21) day period from 19 January to 9 January 2018. No objections were received.

Key issues in the assessment of the development is a departure in the FSR, discussion relating to natural ventilation, acoustic privacy and private open space requirements under the ADG. The proposal will have a departure to the FSR standard of 2.5:1 by 2.66% with a total GFA of 44,017sqm or an FSR of 2.57:1. The applicant has provided a Clause 4.6 variation with the development application which justifies the non-compliance. This has been assessed in detail in Note 1 below. The additional GFA is acceptable as the building envelope has not been modified. The relevant provisions under the ADG have been assessed particularly against the private open space, acoustic privacy and natural ventilation controls. The proposed wintergardens will continue to receive natural ventilation through operable windows, will provide greater amenity to residents due to the surrounding noise generating uses and will continue to provide a useable space which is an extension to a primary living area.

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

Item Bayside Planning Panel Meeting 26/06/2018

Recommendation

It is RECOMMENDED that the Bayside Planning Panel:

1. That the Bayside Planning Panel is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of Botany Bay Local Environmental Plan 2013 and that the proposed development is in the public interest as it is consistent with the objective of the FSR and the objectives for the B4 Mixed use zone.
2. That Development Application No. 2017/1222 for alterations to the approved mixed use development by converting balconies into wintergardens at 200 Coward Street, Mascot, be approved pursuant to section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

Background

Relevant History

Development Application No. 16/9 was granted consent by the former Joint Regional Planning Panel (JRPP) on 27 July 2016. The approved development is for a mixed used development comprising of five buildings between 7 and 8 storeys. The development comprises two levels of basement car parking, residential apartments, serviced apartments, ground floor retail premises and childcare centre.

DA-16/9/2 was approved on 10 March 2017 for changes to two conditions of consent, being Condition 26, which requires the replacement of power poles, and Condition 48, which requires water and gas connections to be provided to each private open space area. The current modification application is the first modification lodged in relation to this development, and a further modification has also been lodged and is currently under assessment.

DA-16/9/3 was approved on 30 May 2017 to modify the approved development by seeking to make various internal and external changes to the buildings.

DA-16/9/4 was approved on 4 December 2017 to modify Condition No. 141 pertaining to the hours of operation of the approved retail premises and childcare centre to Monday to Friday 7am to 10pm and Saturday to Sunday 8am to 10pm.

DA-16/9/5 was approved on 4 December 2017 to modify Condition No. 72(b) pertaining to the hours of construction from Saturday 8am to 3pm.

DA-2017/1221 was approved on 8 March 2018 for alterations to the approved building to include additional retail area on the ground floor that replaces approved surplus car parking.

Proposal

The proposed development, in its amended form, seeks to enclose and convert a number of approved balconies into wintergardens. A total of 111 balconies will be converted and the breakdown on each floor is as follows:

Item	Bayside Planning Panel Meeting 26/06/2018
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Ground Floor:	2 units
Level 1:	31 units
Level 2:	31 units
Level 3:	28 units
Level 4:	8 units
Level 5:	6 units
Level 6:	5 units

The proposal will result in an additional GFA of 1,113sqm on the overall development.

The specific balconies that are to be converted with a breakdown of the unit, approved external area, proposed wintergarden area, terrace/balcony/courtyard area are provided as an attachment to this report.



Figure 1. Example of wintergardens- Proposed western elevation along O'Riordan Street



Figure 2. Example of detail of wintergardens on western elevation

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Bayside Planning Panel Meeting 26/06/2018

Site Description

The site is legally described as Lot 1 in DP 701026 and is known as 200 Coward Street Mascot. The site is on the north-eastern junction of Coward Street and O’Riordan Street. The site is generally regular in shape and has two street frontages with O’Riordan Street on the western boundary measuring 124 metres in length and Coward Street on the southern boundary measuring 147.5 metres in length. The site has a total area of 17,150sqm. The site is generally flat with a 1.5 metre fall across the site from north to south.

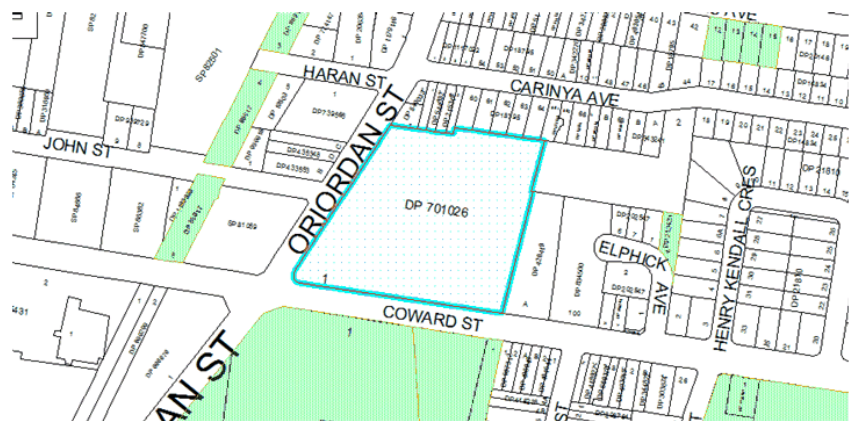


Figure 2. Locality Plan



Figure 3. Subject site (taken from intersection of Coward Street and O’Riordan Street)

Previously existing development within the site consisted of three industrial buildings with associated parking and loading areas. These buildings were demolished, as approved within a Complying Development Certificate and works have commenced and close to complete on the approved development.

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The surrounding area comprises of a mix of residential and community uses generally comprising of the following:

- Land to the north is occupied by two storey detached dwelling houses with frontage to Carinya Avenue.
- Mascot Oval and Lionel Bowen Park are situated to the south on the opposite side of Coward Street.
- The Graphic Arts Club (182 Coward Street), an at-grade car park and medium density housing are located to the east, beyond which is the St Catherine Greek Orthodox Church.
- An 8 storey residential flat building (Pinnacle Apartments) is situated to the west at 149-161 O'Riordan Street on the southern side of John Street. On the northern side of John Street, commercial and community uses are accommodated within single and two storey buildings. However, the former JRPP have provided in-principle support to a 14 storey residential development at 141 O'Riordan Street.

The site is approximately 350 metres from Mascot Train Station and 330 metres to 415 metres from Sydney Kingsford Smith Airport. The site forms part of Mascot Station Town Centre.

Statutory Considerations

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

S4.15(1) - Matters for Consideration – General

S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

Environmental Planning and Assessment Act 1979 – Part 4, Division 5 – Special Procedures for Integrated Development and Environmental Planning and Assessment Regulations 2000 – Part 6, Division 3 – Integrated Development

The relevant requirements under Division 5 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the development application.

Development Application No. 16/9 was approved as integrated development as the proposal approved basement car parking that would intercept the groundwater table. General Terms of Approval were placed in the consent relating to excavation of the basement level. The subject application does not change the envelope of the basement level approved therefore the subject application is not integrated development and does not need to be referred to Water NSW.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP No. 55 have been considered in the assessment of the development application, as the proposed development involves excavation for a basement car park. Clause 7 of State Environmental Planning Policy 55 requires Council to be satisfied that the

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Bayside Planning Panel Meeting 26/06/2018

site is or can be made suitable for its intended use at the time of determination of an application.

Consideration of SEPP No. 55 was carried out within the assessment of DA-16/9. Therefore SEPP No. 55 does not need to be assessed as part of this proposal.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The original development application for the buildings comprised of a BASIX Certificate and report. The applicant has had their BASIX Consultants look at the current proposal and the following advice has been provided:

"As per NatHERS modelling protocol's units with winter gardens are considered unconditioned spaces and the internal sliding doors are to be considered to be part of the external fabric. As such, our original modelling results reflect this scenario and do not need to be updated."

Based on the discussion above, the BASIX report submitted with the application which was approved under recent modifications relating to DA-16/9 is acceptable.

State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building

The provisions of State Environmental Planning Policy No. 65 'Design Quality of Residential Apartment Building' have been considered in the assessment of the Development Application. Due to the proposed modifications being predominately encased within the approved built form approved under DA-16/9, the development application was not required to be presented to the Design Review Panel. A design verification statement was submitted with the development application.

The proposal involves alterations to an approved SEPP 65 building and was originally assessed against the Apartment Design Guide. The introduction of wintergardens requires assessment against Part 4E- Private Open Space and Balconies and Part 4J – Noise and Pollution of the Apartment Design Guide. This has been discussed in greater detail below:

Part 4B – Natural Ventilation

Part 4B of the ADG requires a minimum of 60% of the units to be cross ventilated within the development. The proposal as approved utilised a number of the balconies for cross ventilation. The enclosure of the balconies and conversion into wintergardens should not change the approved cross ventilation as all wintergardens will have access to operable windows to allow natural ventilation through the unit. Therefore natural ventilation continues to comply.

Part 4E – Private Open Space and Balconies

Part 4E of the ADG requires private open space areas associated with apartments to be incorporated within a development. This section of the document also allows for wintergardens when a development is located within a noisy location. The applicant has advised that the units that are proposed to have their balconies converted to wintergardens front O'Riordan Street and Coward Street, to the childcare centre and the neighbouring Graphic Arts Club which is located to the east of the site.

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The size of the wintergardens/balconies do not change and will continue to be maintained to allow appropriate and sufficient use of this space. By installing the wintergardens, these spaces will be enclosed by sliding window or bifold window. They will not be enclosed by fixed glass and will continue to allow ventilation into the space and to the attached habitable room. They will continue to be located attached to a living area as approved in the original development application.

Part 4J – Noise and Pollution

Part 4J of the ADG recommends that enclosing balconies to function as wintergardens is an effective means of reducing road noise and other noise generating uses. There a number of units that front onto O'Riordan Street and Coward Street, which are considered to be busy roads, that will be converted to wintergardens particularly at the lower levels where road and traffic noise will be more dominant. The wintergardens will be enclosed by sliding glass windows or bifold windows that will continue to allow for appropriate ventilation should the resident require it. The enclosure of the balconies will help to improve the quality of life in affected apartments by minimising noise and pollution impacts. The width of the balconies and the openings provided has been designed to improve the liveability of the balcony and the adjoining habitable rooms which in most cases are to the living room or a bedroom. The width of the openings will continue to allow sufficient sunlight access to the principal living areas for a minimum of 2 hours in mid-winter. The proposed design of the wintergardens has considered noise and pollution within the proposal and is supported for this reason.

In regards to the acoustics within the habitable areas and the result of enclosure of the balconies, a condition of consent has been imposed for the applicants to provide a verification statement from an acoustic expert to demonstrate that the units meet the internal acoustic indoor design sound level.

Botany Bay Local Environmental Plan 2013 (BBLEP)

The provisions of the Botany Bay Local Environmental Plan (BBLEP) 2013 have been considered in the assessment of the Development Application and the following information is provided:

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Land use Zone	-	The site is zoned B4 Mixed Use under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposal involves enclosure of balconies to wintergardens which are permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the B4 zone: <ul style="list-style-type: none"> <i>To provide a mixture of compatible land uses.</i> <i>To integrate suitable business, office, residential, retail and other</i>

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Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
		<i>development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>
What is the height of the building?	N/A	No change to the approved development.
What is the proposed FSR?	No-Refer to Note 1	<p>The maximum FSR allowed on the site is 2.5:1 (42,875sqm).</p> <p>The site has an area of 17,150sqm.</p> <p>The original development application was approved with a FSR of 2.35:1.</p> <p>The most recent application related to the site approved a FSR of 2.43:1 (DA-2017/1221).</p> <p>The current proposal will increase the total GFA by 1,113sqm. This results in a FSR of 2.57:1 and a GFA of 44,017sqm. This exceeds Council's LEP requirement. The applicant has provided a Clause 4.6 variation which is discussed in greater detail in Note 1 below.</p>
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
<p>The following provisions in Part 6 of the LEP apply to the development:</p> <p>6.1 – Acid sulfate soils (ASS) 6.2 – Earthworks 6.3 – Stormwater management 6.8 - Airspace operations 6.9 – Development in areas subject to aircraft noise 6.15 – Active Street Frontages</p> <p>6.16 – Design excellence</p>	<p>N/A</p> <p>Yes</p>	<p>There is no change to the outcomes approved for the development.</p> <p>The design excellence of the development will not be significantly alter as a result of the proposal. The dwellings will continue to receive adequate ventilation and solar access.</p>

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Note 1 – Variation to the FSR development standard

The original development application (DA-16/9) was approved with a total gross floor area of 42,576.64sqm or FSR of 2.48:1 which included 84 surplus car parking spaces within the GFA calculation. The approved modification to the original DA (16/9/03) was approved with an additional 47sqm of GFA which increased the overall GFA on the site to 42,623.64sqm and FSR of 2.49:1. Development Application No. 2017/1221 was approved with additional retail area of 669sqm. 27 surplus car spaces that were included within the GFA calculations originally were removed to service the additional retail area, another 27 surplus car spaces were converted from car spaces to retail (351sqm) and the vehicle aisles were included within the retail amounts to 318sqm. This change in the GFA/FSR resulted in additional GFA approved as part of this application at approximately 42,904sqm or 2.5:1.

Clause 4.4 of the BBLEP 2013 specifies that the FSR of a building may not exceed the maximum FSR specified on the relevant FSR map. The maximum FSR for this site is 2.5:1. The proposed development will increase the overall GFA by 1,113sqm which will increase the total GFA to 44,017sqm or an FSR of 2.57:1. This is a variance of 1,142sqm or 2.66% to the development standard.

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

(2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument...

(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.*

The Applicant has provided a Clause 4.6 variation to justify contravening the FSR standard. Their justification and Councils comments are provided below:

What is the underlying objective or purpose of the standard?Applicant's justification:

"The objectives of the FSR control in clause 4.4 are as follows:

- a) to establish standards for the maximum development density and intensity of land use,*
- b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,*

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- e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,
- f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,
- g) to facilitate development that contributes to the economic growth of Botany Bay.

The proposal is consistent with the above objectives, in that:

- The proposal results in an overall development density of 2.57:1. It is 1,142 sqm above the maximum GFA, being 2.66% over the permissible density control. A variation of this scale in the context of the site and surrounding development will be unperceivable in the overall scale and built form of the development. Importantly, the proposed additional floor space is contained entirely within the existing building envelope. Therefore, the additional floor space results in an unperceivable increase in bulk and scale of the building.
- The majority of wintergardens are located on elevations of the building that are not facing the public domain. A vast majority of the wintergardens face into the site. This will further minimise any potential for visual bulk issues.
- The site is located within the Mascot Town Centre. The 1,142 sqm variation to the FSR control will not alter the built form from what can be supported in a compliant development. Accordingly, the proposed development will still deliver a built form that is compatible with the bulk and built form envisaged by the desired future character planned for the Mascot Town Centre.
- The site is located within a precinct undergoing transition from a predominantly industrial area, to a mixed-use area. There are a number of developments proposed or under construction surrounding the site.
- The departure from strict compliance with the numerical FSR control will not result in bulk or scale that is unacceptable.
- The proposal will not have any adverse impacts on its amenity."

Officer's Comment:

The objectives of the FSR development standard and the B4 mixed use zone continue to be consistent with the assessment that was carried out in DA-16/9 and DA-2017/1221. The proposal will enclose balconies and provide an additional 1,113sqm of gross floor area to an approved built form to allow for greater amenity to its residents and protection from noise sources which are in close proximity to these units.

The development application has demonstrated that it is appropriate in this circumstance to provide flexibility in the application of the FSR development standard because it will deliver a higher level of amenity for future occupants and provide an improved streetscape outcome. In this regards, requiring compliance would not deliver a better development outcome without any appreciable increase in bulk and scale.

Is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

Applicant's justification:

"In Wehbe v Pittwater Council (2007) NSWLEC 827 Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation. These are:

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1. Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development are achieved notwithstanding noncompliance with the standard.
2. Establish that the underlying objective or purpose is not relevant to the development with the consequences that compliance is unnecessary.
3. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required that the consequences that compliance is unreasonable.
4. Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable and unnecessary.
5. Establish that 'the zoning of particular land' was 'unreasonable or unnecessary' so that 'a development standard for that zoning was also unreasonable or unnecessary as it was applied to that land' and that compliance with the standard in that case would also be unreasonable and unnecessary.

In applying the test in Wehbe v Pittwater Council, only one of the ways of establishing the development standard is unreasonable and unnecessary needs to be demonstrated. As outlined in Section 3(c) above, the proposed development is able to achieve the objectives of the height development standard, even though the development results in a non-compliance with the numerical standard. On this basis, the development is able to demonstrate that the development is unreasonable and unnecessary in accordance with the first way Preston CJ outlines in Wehbe v Pittwater Council.

In the recent decision of Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 Pain J upheld the decision of Pearson C which indicated that a variation must be justified on sufficient environmental planning grounds particular to the circumstances of the proposed development and development site rather than grounds that would apply to a similar development on the site or a development in the vicinity.

However, in a the more recent case of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 Preston CJ stated that the consent authority did not have to be satisfied directly that compliance with each development standard was unreasonable and unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request adequately addressed the matter in Clause 4.6(3)(a) that compliance with each development standard was unreasonable and unnecessary. This decision indicates a move away from the more prescriptive approach to consideration of Clause 4.6 variation requests taken in Four2Five v Ashfield Council.

Applying Preston's CJ decision in Randwick City Council v Micaul, the proposed development is able to demonstrate that strict compliance with the numerical FSR development standard is unnecessary in the particular circumstances of the proposal, as the development is able to:

- *Meet the objectives of the development standard as outlined in Section 3(c);*
- *Meet other built form development standards; and*
- *Satisfactorily address all relevant planning considerations as detailed in section 3(e)."*

Officer's Comment:

The objectives of the FSR development standard remain relevant. The proposal is consistent with those objectives as detailed throughout the applicant's justification. The proposed variation will not result in any unreasonable impacts on the amenity of the

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adjoining properties and continues to be consistent with the desired future character outlined in the BBDCP 2013.

Are there sufficient environmental planning grounds to justify contravening the development standard?

Applicant's justification:

"The variation to the FSR development standard is considered well founded and reasonable for the following reasons:

- *The proposed development is consistent with the underlying objectives and purpose of the development standard as demonstrated above;*
- *The proposed non-compliance relates to the LEP 2013 provisions for FSR will not have any adverse impact on the bulk and scale of the development when viewed from surrounding properties; and*
- *Despite the non-compliance with the FSR control, the proposal is consistent with the scale of development anticipated in the locality. This is ensured by proposing all additional gross floor area within the existing approved building envelope. "*

Officer's comment:

The development reflects the desired built form character of the precinct and the approved development has been maintained despite the variation. The departure from the FSR will not involve any unreasonable impacts on the amenity of adjoining properties, the streetscape or the locality.

The applicant's justification is generally agreed with. The proposed enclosure of the balconies to wintergardens and the subsequent increase in FSR is considered acceptable as it will not increase the visual bulk or scale of the approved development and will not result in any adverse impacts on the locality. The exceedance in FSR is not out of character with other approved developments in the immediate area within Mascot Town Centre and the exceedance in FSR does not result in any adverse external impacts.

Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which the development is proposed to be carried out?

Applicant's justification:

"As outlined throughout the SEE and this Clause 4.6 Variation Statement, the proposal is consistent with the objectives of the FSR development standard and objectives of the B4 zone.

The proposed variation to the FSR control does not result in the loss of amenity to the neighbouring properties in any way, as the proposed additional gross floor area is contained entirely within the existing building envelope. The proposed FSR is considered to be acceptable particularly when balanced against the benefits of the project which include improved amenity to new apartments in the area"

Officer's Comment:

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Based on the above justifications, the proposal is not contrary to the public interest and is able to be supported. The proposal will improve the liveability and amenity of the units which will be impacted by road noise, noise generated by the neighbouring club and the child care centre that is located on the site. The proposal did not receive any objections during the notification period. It is not considered that the proposal will create any negative adverse impacts to the public.

The public benefit of maintaining the development standard

Applicant's justification

"It is considered that due to the absence of any demonstrable adverse impacts arising from the proposed development, adherence to the subject development standards would hinder the attainment of the objectives of the Act. Further, the proposed development is consistent with the objectives of the development standard. Therefore, such adherence would not be in the public interest in this instance."

Officer's Comment:

The proposal continues to be consistent with the objectives of the zone, the development standard and the objectives of Clause 4.6. The proposal will not increase the approved bulk and built form of the development that was supported in previous development applications. The enclosure of the balconies to wintergardens will not impact on the amenity of the neighbouring properties but would rather provide additional noise protection from these open spaces.

Botany Bay Development Control Plan (BBDCP) 2013

The most relevant and applicable clauses of the BBDCP 2013 are considered in the assessment of this development proposal and are provided below.

Part 4C – Residential Flat Buildings

Streetscape Presentation

The proposal will convert a number of balconies into winter gardens. The proposed method of enclosure is either through bifold windows or sliding windows with privacy louvres included over some of the windows to maintain privacy. The enclosure of the balconies will not significantly alter the approved streetscape along O'Riordan Street or Coward Street as demonstrated within the plans. The articulation of the buildings will be maintained as the balcony enclosures generally occur along the lower levels with the upper levels maintained. As discussed above, the enclosure of the balconies to winter gardens is to address noise issues from surrounding noise generating uses such as busy roads, the childcare centre on the site and the adjoining Graphic Arts Club.

Part 9A – Mascot Station Town Centre Precinct

The subject site is excluded from Part 9A of the BBDCP 2013 however is considered to be located within the Mascot Station Precinct. The proposal continues to be compatible with the desired future character for the area.

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S.4.15(1)(a)(iv) - Provisions of regulations

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

S.4.15(1)(b) - Likely Impacts of Development

As outlined in the assessment above, the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

S.4.15(1)(c) - Suitability of the site

The proposal does not alter the conclusions that were resolved and approved within DA-16/9 and DA-2017/1221. The proposed wintergardens do not impact on the flooding, zone of influence with the railway and the groundwater issues.

The proposed development is permissible in the zone and satisfies the objectives of the zone. The traffic impacts are not considered to be significant given the relatively small scale of the development and no significant planning issues are raised that would warrant the refusal of the proposed development.

S.4.15(1)(d) - Public Submissions

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising, the application was placed on public exhibition for a twenty-one (21) day period from 19 January to 9 January 2018. No submissions were received during the public notification period.

S.4.15(1)(e) - Public interest

It is considered that granting approval to the proposed development will have no significant adverse impact on the public interest.

Conclusion

Development Application No. 2017/1222 was received on 23 November 2017 for alterations to the approved mixed use development by converting certain balconies into wintergardens at 200 Coward Street, Mascot.

The development departs from the FSR development standard. A Clause 4.6 variation has been provided with the development application and it is considered that the variation is well founded. Other issues relating to cross ventilation and acoustic privacy have been addressed within the report or through conditions of consent.

The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposal is permissible within the B4 – Mixed Use zone and is considered to result in a development which is suitable in the context. Therefore, the application is recommended for approval, subject to conditions of consent.

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Attachment**Schedule 1 – Conditions of Consent****Premises: 200 Coward Street, Mascot****DA No: DA-2017/1222****GENERAL CONDITIONS**

- 1 The development is to be carried in accordance with the following plans and endorsed with Council's stamp, except where amended by other conditions of this consent. Reference documentation is also listed.

Plans	Author	Dated / Received by Council
Dwg No. 0006- Rev HH-GA Ground	Crone Architects	Dated 5 June 2018; Received 5 June 2018
Dwg No. 0007- Rev Z-GA Level 01		Dated 10 November 2017; Received 5 June 2018
Dwg No. 0008- Rev X-GA Level 02		Dated 10 November 2017; Received 5 June 2018
Dwg No. 0009- Rev X-GA Level 03		Dated 10 November 2017; Received 5 June 2018
Dwg No. 0010- Rev AA-GA Level 04		Dated 10 November 2017; Received 5 June 2018
Dwg No. 0011- Rev X-GA Level 05		Dated 10 November 2017; Received 5 June 2018
Dwg No. 0012- Rev W-GA Level 06		Dated 10 November 2017; Received 5 June 2018
Dwg No. 0015 Rev Q-Elevations		Dated 10 November 2017; Received 5 June 2018
Dwg No. 0016 Rev S-Elevations		Dated 10 November 2017; Received 5 June 2018
Dwg No. 0017- Rev M-Elevations		Dated 10 November 2017; Received 5 June 2018
Dwg No. 0018 Rev K-Elevations		Dated 7 December 2017; Received 5 June 2018
Dwg No. 0019 Rev J-Elevations		Dated 10 November 2017; Received 5 June 2018
Dwg No. 0020 Rev L-Elevations		Dated 7 December 2017; Received 5 June 2018
Dwg No. XX13 Rev A-Façade Sections		Dated 10 November 2017; Received 5 June 2018
Amended GFA Calculation	-	Received 5 June 2018

Reference Document(s)	Author	Dated / Received by Council
Amended Clause 4.6 variation	Meriton Group	Dated 5 June 2018; Received 5 June 2018
Amended Statement of Environmental Effects	Meriton Group	Dated 17 January 2018; Received 17 January 2018

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Thermal Comfort and Basix Assessment	Efficient Living	Dated 9 February 2017; Received 23 November 2017
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- 2 No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.
- 3 This Consent relates to land in Lot 1 in DP 701026 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
- 4 The consent given does not imply that works can commence until such time that:
 - a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - (i) The consent authority; or,
 - (ii) An accredited certifier; and,
 - b) The person having the benefit of the development consent:
 - (i) Has appointed a principal certifying authority; and
 - (ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
 - (iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.
- 5 All building work must be carried out in accordance with the provisions of the Building Code of Australia.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY WORKS

- 6 The proposed development shall comply with the following:
 - (a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - (i) Stating that unauthorised entry to the work site is prohibited;
 - (ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
 - (iii) The Development Approval number; and
 - (iv) The name of the Principal Certifying Authority including an afterhours contact telephone number.
 - (b) Any such sign is to be removed when the work has been completed.

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- 7 Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993: - (It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)
- a) Permit to erect hoarding on or over a public place, including Council's property/road reserve,
 - b) Permit to construction works, place and/or storage building materials on footpaths, nature strips,
 - c) Permit to install temporary ground anchors in public land,
 - d) Permit to discharge ground water to Council's stormwater drainage system,
 - e) Permit for roads and footways occupancy (long term/ short term),
 - f) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,
 - g) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services,
 - h) Permit to place skip/waste bin on footpath and/or nature strip, and
 - i) Permit to use any part of Council's road reserve or other Council lands.
- 8 Prior to the commencement of excavation or any building works, the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

- 9 The applicant must prior to the issue of any Construction Certificate, pay the following fees:
- (a) Development Control \$3,000.00
- 10 Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority.
- The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.

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- 11 Prior to the issue of a Construction Certificate, a statement from a qualified designer is to be submitted verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles, in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000.

DURING WORKS

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- a) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
- b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
- c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
- d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.

- 13 During Demolition, Excavation and Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure and surrounding development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

- 14 During Demolition, Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.

- 15 All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.

- 16 Vibration levels induced by the demolition activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.

- 17 The following shall be complied with during construction and demolition:

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- (a) Construction Noise
 - (i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
 - (b) Level Restrictions
 - (i) Construction period of 4 weeks and under:
 - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).
 - (ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
 - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
 - (c) Time Restrictions
 - (i) Monday to Friday 07:00am to 06:00pm
 - (ii) Saturday 08:00am to 01:00pm
 - (iii) No demolition or construction to take place on Sundays or Public Holidays.
 - (d) Silencing
 - (i) All possible steps should be taken to silence construction site equipment.
- 18 During excavation and construction work the Council nature strip shall be maintained in a clean and tidy state at all times. The nature strip shall be suitably replaced where damaged due to construction work in accordance with Council Specification at the completion of construction, and at the Applicant's expense.
- 19 During excavation and construction works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

- 20 Prior to the issue of any Occupation Certificate, a verification statement from an acoustic expert is to be provided to the principal certifying authority demonstrating that the units meet the internal acoustic design sound level in AS2021-2015.
- 21 Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be

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rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.

- 22 Prior to the issue of any Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority and the Council to the effect that:
 - (a) All reduced levels shown upon the approved plans, with relation to the required solar panels, drainage, boundary and road reserve levels, have been strictly adhered to; and
 - (b) A Floor Space Ratio (FSR) of 2.57:1 as approved under this Development Consent No. 2017/1222 has been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.
 - (c) The development as built, stands within Lot 1 in DP 701026.
- 23 Prior to the issue of an Occupation Certificate for occupation or use of residential flat development, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.
- 24 Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.

CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT

- 25 Council's footway (area between property boundary and street kerb) is to be kept clean, tidy, washed and maintained at the applicant's expense.
- 26 All intruder alarms shall be fitted with a timing device in accordance with the requirements of Regulation 12A of the Noise Control Act, 1975, and AS2201, Parts 1 and 2 - 1978 Intruder alarm systems.
- 27 The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.
- 28 Ongoing maintenance of the road verges and footpaths and nature strips in Coward Street and O'Riordan Street shall be undertaken by the owner/body corporate/Strata Corporation. Maintenance includes mowing, watering and maintaining the landscaping in these areas at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees at any time.
- 29 The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions

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should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.

- (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
- (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
- (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
- (d) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

1. INTRODUCTION

Clause 4.6 of Botany Bay Local Environmental Plan 2013 (LEP) provides the framework for consideration of proposed variations to development standards.

This Clause 4.6 variation request forms part of the Statement of Environmental Effects supporting documentation for a proposed Development Application that seeks approval for alterations (creation of 111 wintergardens) to a mixed use development.

The details of the proposal are included in Section 3 of the Statement of Environmental Effects report prepared by Meriton and reflected on the proposed submitted plans.

2. PROPOSED VARIATION

The proposal seeks variation to Clause 4.4(2) of the LEP, which states:

The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The Floor Space Ratio Map nominates a maximum Floor Space Ratio (FSR) of 2.5:1 for the site. FSR is defined in the LEP as follows:

The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

Gross Floor Area is defined in the LEP as follows:

means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and*
 - (b) habitable rooms in a basement or an attic, and*
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,*
- but excludes:*
- (d) any area for common vertical circulation, such as lifts and stairs, and*
 - (e) any basement:*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
 - (h) any space used for the loading or unloading of goods (including access to it), and*
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and*
 - (j) voids above a floor at the level of a storey or storey above.*

3. EXTENT OF VARIATION

a) Existing Approval (DA 16/009) and Additional Retail (DA 17/1221)

The existing DA 16/009 that applies to the site has been approved with the following Floor Space Ratio and Gross Floor Area:

Approved GFA of buildings	41,493 sqm
Approved GFA of excess car parking	Nil (was not considered in the determination of DA 16/009)
Approved GFA total	41,493 sqm
Approved FSR total	2.42:1

DA 17/1221 for additional retail on the site has been approved with the following Floor Space Ratio and Gross Floor Area:

Approved GFA of buildings	42,163 sqm
Approved GFA of excess car parking	741 sqm (57 car spaces)
Approved GFA total	42,904 sqm
Approved FSR total	2.50:1

b) Subject Proposal

It is proposed to add 1,113 sqm of gross floor area in the form of wintergardens. The table below provides a summary of the proposed new Floor Space Ratio and Gross Floor Area. The calculations are based on the figure for DA 17/1221, above.

Proposed GFA	44,017 sqm (DA 17/1221 + proposed)
Proposed FSR	2.57:1

The subject site has a land area of 17,150 sqm. At the maximum allowable floor space ratio of 2.5:1, the maximum allowable gross floor area is 42,875 sqm. Therefore, the extent of the proposed variation is 1,142 sqm, or 2.66%.

4. MATTERS FOR CONSIDERATION

a) Is the requirement a development standard?

The variation sought relates to the FSR of the proposal. The FSR control is a development standard, as it provides a numerical restriction to a particular aspect of the development, rather than a prohibition.

b) Is the development standard excluded from the operation of this clause?

Clause 4.6(8) outlines the exclusions of the operation of Clause 4.6, which are:

- Complying Development;
- Statement Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Clause 4.3(2A) – Height controls for certain sites on land in Zone R3 Medium Density Residential or Zone R4 High Density Residential.
- Clause 4.4B(3) – Exceptions to floor space ratio in Zone R3 and Zone R4.
- Clause 5.4 - Controls relating to miscellaneous permissible uses.

Clause 4.6 Variation Request
Botany Bay Local Environmental Plan 2013
Floor Space Ratio Development Standard

As the proposal does not relate to any of these types of developments, the variation to the Clause 4.4(2) FSR control sought is not excluded from the operation of Clause 4.6.

c) What is the underlying objective or purpose of the standard?

The objectives of the FSR control in clause 4.4 are as follows:

- (a) to establish standards for the maximum development density and intensity of land use,*
- (b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,*
- (e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (g) to facilitate development that contributes to the economic growth of Botany Bay.*

The proposal is consistent with the above objectives, in that:

- The proposal results in an overall development density of 2.57:1. It is 1,142 sqm above the maximum GFA, being 2.66% over the permissible density control. A variation of this scale in the context of the site and surrounding development will be unperceivable in the overall scale and built form of the development. Importantly, the proposed additional floor space is contained entirely within the existing building envelope. Therefore, the additional floor space results in an unperceivable increase in bulk and scale of the building.
- The majority of wintergardens are located on elevations of the building that are not facing the public domain. A vast majority of the wintergardens face into the site. This will further minimise any potential for visual bulk issues.
- The site is located within the Mascot Town Centre. The 1,142 sqm variation to the FSR control will not alter the built form from what can be supported in a compliant development. Accordingly, the proposed development will still deliver a built form that is compatible with the bulk and built form envisaged by the desired future character planned for the Mascot Town Centre.
- The site is located within a precinct undergoing transition from a predominantly industrial area, to a mixed-use area. There are a number of developments proposed or under construction surrounding the site.
- The departure from strict compliance with the numerical FSR control will not result in bulk or scale that is unacceptable.
- The proposal will not have any adverse impacts on its amenity.

d) Is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

In *Wehbe v Pittwater Council* (2007) NSWLEC 827 Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation. These are:

- 1) Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development are achieved notwithstanding noncompliance with the standard.
- 2) Establish that the underlying objective or purpose is not relevant to the development with the consequences that compliance is unnecessary.
- 3) Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required that the consequences that compliance is unreasonable.
- 4) Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable and unnecessary.
- 5) Establish that 'the zoning of particular land' was 'unreasonable or unnecessary' so that 'a development standard for that zoning was also unreasonable or unnecessary as it was applied to that land' and that compliance with the standard in that case would also be unreasonable and unnecessary.

In applying the test in *Wehbe v Pittwater Council*, only one of the ways of establishing the development standard is unreasonable and unnecessary needs to be demonstrated. As outlined in Section 3(c) above, the proposed development is able to achieve the objectives of the height development standard, even though the development results in a non-compliance with the numerical standard. On this basis, the development is able to demonstrate that the development is unreasonable and unnecessary in accordance with the first way Preston CJ outlines in *Wehbe v Pittwater Council*.

In the recent decision of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 Pain J upheld the decision of Pearson C which indicated that a variation must be justified on sufficient environmental planning grounds particular to the circumstances of the proposed development and development site rather than grounds that would apply to a similar development on the site or a development in the vicinity.

However, in a the more recent case of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 Preston CJ stated that the consent authority did not have to be satisfied directly that compliance with each development standard was unreasonable and unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request adequately addressed the matter in Clause 4.6(3)(a) that compliance with each development standard was unreasonable and unnecessary. This decision indicates a move away from the more prescriptive approach to consideration of Clause 4.6 variation requests taken in *Four2Five v Ashfield Council*.

Applying Preston's CJ decision in *Randwick City Council v Micaul*, the proposed development is able to demonstrate that strict compliance with the numerical FSR development standard is unnecessary in the particular circumstances of the proposal, as the development is able to:

- Meet the objectives of the development standard as outlined in Section 3(c);
- Meet other built form development standards; and

- Satisfactorily address all relevant planning considerations as detailed in section 3(e).

e) Are there sufficient environmental planning grounds to justify contravening the development standard?

The variation to the FSR development standard is considered well founded and reasonable for the following reasons:

- The proposed development is consistent with the underlying objectives and purpose of the development standard as demonstrated above;
- The proposed non-compliance relates to the LEP 2013 provisions for FSR will not have any adverse impact on the bulk and scale of the development when viewed from surrounding properties; and
- Despite the non-compliance with the FSR control, the proposal is consistent with the scale of development anticipated in the locality. This is ensured by proposing all additional gross floor area within the existing approved building envelope.

f) Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which the development is proposed to be carried out?

As outlined throughout the SEE and this Clause 4.6 Variation Statement, the proposal is consistent with the objectives of the FSR development standard and objectives of the B4 zone.

The proposed variation to the FSR control does not result in the loss of amenity to the neighbouring properties in any way, as the proposed additional gross floor area is contained entirely within the existing building envelope. The proposed FSR is considered to be acceptable particularly when balanced against the benefits of the project which include improved amenity to new apartments in the area.

g) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The proposed variation to the FSR development standard does not conflict with any matters of State or regional environmental planning significance, nor does it conflict with any State Planning Policies or Ministerial directives. The significance of the non-compliance is acceptable in the context of the overall development of the Mascot area and the broader Bayside Council area.

h) The public benefit of maintaining the development standard.

It is considered that due to the absence of any demonstrable adverse impacts arising from the proposed development, adherence to the subject development standards would hinder the attainment of the objectives of the Act. Further, the proposed development is consistent with the objectives of the development standard. Therefore, such adherence would not be in the public interest in this instance.

5. CONCLUSION

The proposal seeks variation to the FSR development standard. The proposal will have no adverse impacts and will have no conflict with any matters of State or regional environmental planning significance. Nor does it conflict with any State Planning Policies or Ministerial directives.

Overall, it is considered that the proposed variation to the FSR control (Clause 4.4) can be justified on the following grounds:

- The proposed variation is minor in scale, resulting in a 2.66% variation to the FSR control.
- The additional GFA is contained entirely within the existing approved building envelope.
- The proposal will result in a development, which remains consistent with the objectives of the B4 Mixed Use zone of the site.
- The proposal remains consistent with the objectives of the FSR development standard.
- The proposal is consistent with all other relevant development standards.
- The public benefit of maintaining the development standards in this particular proposal is not put at risk by allowing a departure in this particular instance.

On the basis of the above, support should be given to the proposed variation to the FSR development standard under the provisions of clause 4.6 of the LEP.

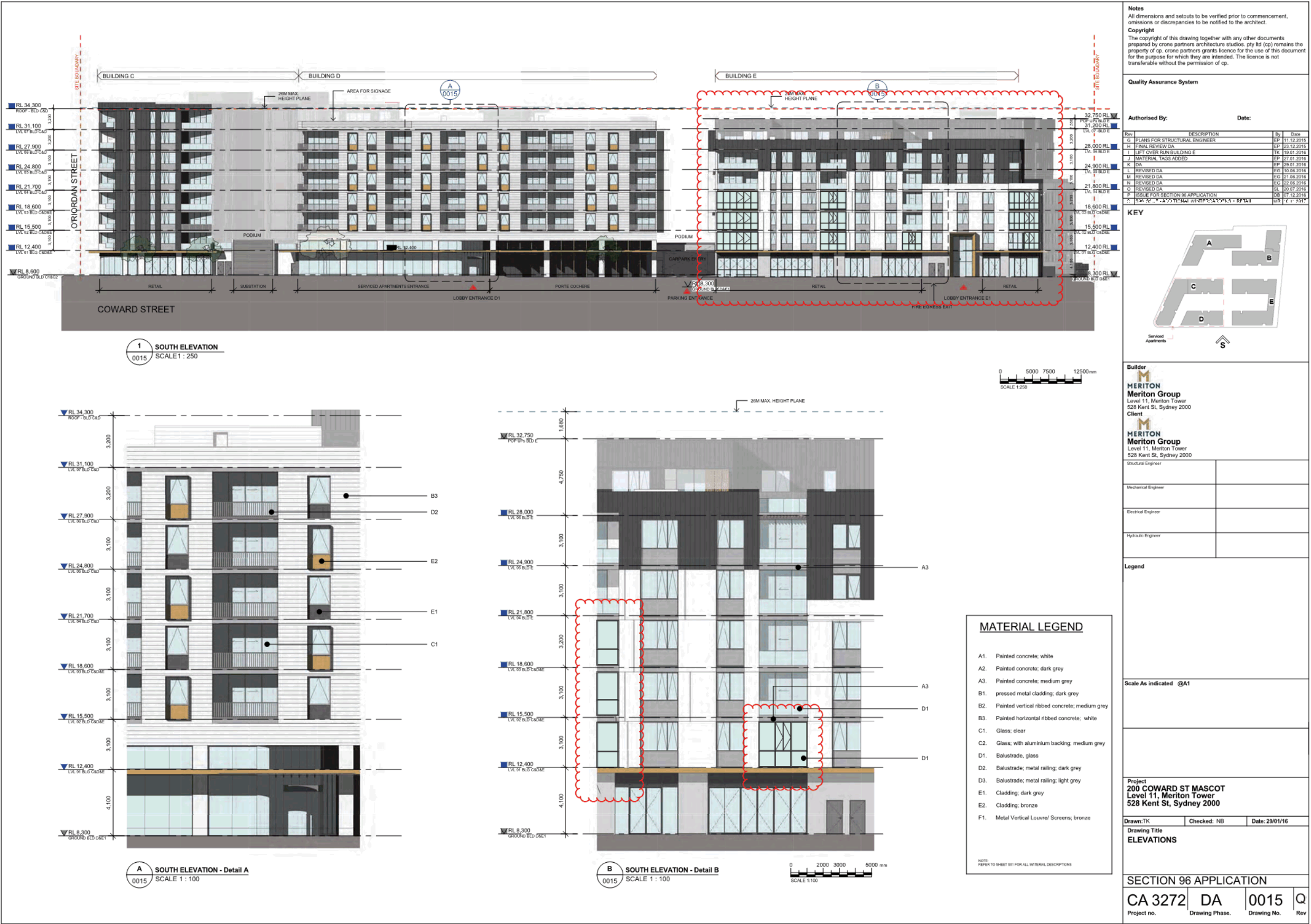
COWARD ST - ADDITIONAL WINTERGARDENS				
		PROPOSED		
UNIT #	APPROVED EXT. AREA	WINTERGARDEN AREA	TERRACE/BALC AREA	COURTYARD AREA
GROUND LEVEL				
B2-G-03	74	11		63
E2-G-06	54	11		43
LEVEL 01				
A1-01-01	47	8	39	
A1-01-02	12	12		
A1-01-03	11	11		
A1-01-04	10	10		
A1-01-05	26	12	14	
A2-01-01	47	12	35	
A2-01-02	33	12	21	
A2-01-03	8	8		
A2-01-04	8	8		
A2-01-05	8	8		
A2-01-06	8	8		
A2-01-07	10	10		
B1-01-01	13	10	3	
B1-01-02	9	9		
B1-01-05	11	11		
B1-01-06	10	10		
B1-01-07	8	8		
B1-01-08	8	8		
B1-01-09	10	10		
B2-01-01	8	8		
B2-01-02	8	8		
B2-01-03	11	11		
B2-01-04	8	8		
E1-01-02	13	9	4	
E1-01-03	8	8		
E1-01-04	8	8		
E1-01-05	10	10		
E1-01-06	12	12		
E2-01-06	11	11		
E2-01-07	14	10	4	
E2-01-08	12	12		
LEVEL 02				
A1-02-01	13	9	4	
A1-02-02	13	13		
A1-02-03	10	10		
A1-02-04	17	12	5	
A1-02-05	20	12	8	
A2-02-01	12	12		
A2-02-02	12	12		

COWARD ST - ADDITIONAL WINTERGARDENS				
UNIT #	APPROVED EXT. AREA	WINTERGARDEN AREA	PROPOSED	
			TERRACE/BALC AREA	COURTYARD AREA
A2-02-03	8	8		
A2-02-04	8	8		
A2-02-05	8	8		
A2-02-06	8	8		
A2-02-07	10	10		
B1-02-01	10	10		
B1-02-02	9	9		
B1-02-05	11	11		
B1-02-06	10	10		
B1-02-07	8	8		
B1-02-08	8	8		
B1-02-09	12	12		
B2-02-01	8	8		
B2-02-02	8	8		
B2-02-03	11	11		
B2-02-04	8	8		
E1-02-02	10	7	3	
E1-02-03	13	9	4	
E1-02-04	15	15		
E1-02-05	13	10	3	
E1-02-06	13	13		
E2-02-07	11	11		
E2-02-08	14	10	4	
E2-02-09	10	7	3	
LEVEL 03				
A1-03-01	13	9	4	
A1-03-02	13	13		
A1-03-02	10	10		
A1-03-04	16	11	5	
A1-03-05	20	12	8	
A2-03-02	12	12		
A2-03-04	8	8		
A2-03-05	8	8		
A2-03-06	8	8		
A2-03-07	10	10		
B1-03-01	14	10	4	
B1-03-02	9	9		
B1-03-05	11	11		
B1-03-06	10	10		
B1-03-07	8	8		
B1-03-08	8	8		
B1-03-09	12	12		
B2-03-02	8	8		
B2-03-03	11	11		

COWARD ST - ADDITIONAL WINTERGARDENS				
		PROPOSED		
UNIT #	APPROVED EXT. AREA	WINTERGARDEN AREA	TERRACE/BALC AREA	COURTYARD AREA
B2-03-04	8	8		
E1-03-02	10	7	3	
E1-03-03	13	9	4	
E1-03-04	15	15		
E1-03-05	13	10	3	
E1-03-06	13	13		
E2-03-07	11	11		
E2-03-08	14	10	4	
E2-03-09	10	7	3	
LEVEL 04				
A1-04-02	12	12		
A1-04-03	11	11		
A1-04-04	18	10	8	
B1-04-05	11	11		
B1-04-06	13	13		
B1-04-07	8	8		
B1-04-08	12	12		
E2-04-06	33	11	22	
LEVEL 05				
A1-05-02	12	12		
A1-05-03	11	11		
A1-05-04	10	10		
A1-05-05	8	8		
B1-05-01	10	10		
B1-05-06	13	13		
LEVEL 06				
A1-06-02	12	12		
A1-06-03	11	11		
A1-06-04	10	10		
A1-06-05	8	8		
B1-06-06	13	13		
TOTAL PROPOSED SQM		1113		
TOTAL # OF UNITS AFFECTED		111		



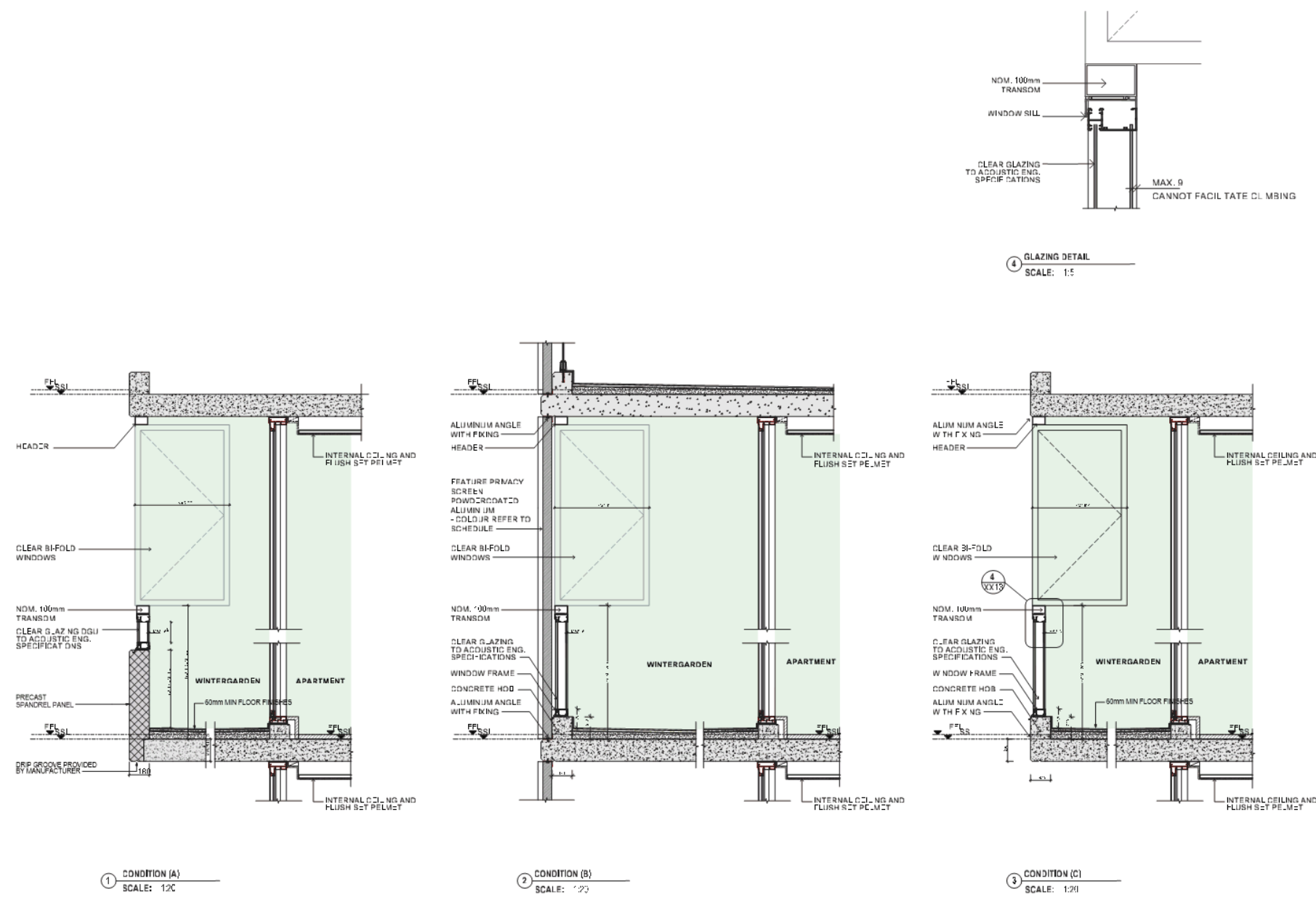












Notes
All dimensions and setbacks to be verified prior to commencement, omissions or discrepancies to be notified to the architect.

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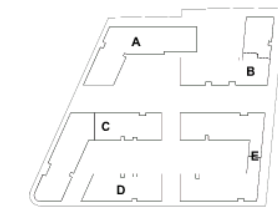
Quality Assurance System

Authorized By:

Date:

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KEY



Builder	
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528 Kent St, Sydney 2000
Client

Meriton Group
Level 11, Meriton Tower
528 Kent St, Sydney 2000
Structural Engineer

	Mechanical Engineer

Electrical Engineer

Hydraulic Engineer

Legend

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Drawn:TK	Checked: NB	Date: 29/01/16
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Drawing Title
FACADE SECTIONS

SECTION 96 APPLICATION

CA 3272	DA	XX13	A
Project no.	Drawing Phase.	Drawing No.	Rev