
Bayside Planning Panel

22/08/2017

Item No	5.1
Application Type	Development Application
Application Number	DA-2016/209
Lodgement Date	30 November 2015
Property	3-5 Arncliffe Street, Wolli Creek
Owner	Kasaf Pty Ltd
Applicant	Kasaf Pty Ltd (as Trustee for) Kass Family Trust
Proposal	Construction of a nine (9) storey mixed use development comprising 26 residential units, 1 x 2 bedroom live / work unit, 9 boarding house rooms, basement parking and demolition of existing structures
No. of Submissions	Nil
Cost of Development	\$7,696,286.00
Report by	Pascal van de Walle, Senior Assessment Planner

Officer Recommendation

- 1 That the Bayside Planning Panel accept the Clause 4.6 variation to Clause 4.4 of RLEP 2011 (FSR) as requested by the Applicant.
 - 2 That this Development Application be **APPROVED** pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
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Attachments

- 1 Planning Assessment Report
 - 2 Site Location Plan & Photomontage
 - 3 Elevations
 - 4 Colour & Material Finishes Board
 - 5 Clause 4.6 Variation
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Location Plan



BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2016/209
Date of Receipt:	30 November 2015
Property:	3 Arncliffe Street, WOLLI CREEK Lot 1 DP 319872 5 Arncliffe Street, WOLLI CREEK Lot 2 DP 319872
Owner(s):	Kasaf Pty Ltd
Applicant:	Kasaf Pty Ltd (As Trustee For) Kass Family Trust
Proposal:	3 & 5 Arncliffe Street, Wolli Creek NSW 2205 - Construction of a nine (9) storey mixed use development comprising 26 residential units, 1 x 2 bedroom live / work unit, 9 boarding house rooms, basement parking and demolition of existing structures
Recommendation:	Approved
No. of submissions:	Nil (to the amended proposal). One (1) letter of support following initial notification.
Author:	Pascal van de Walle
Date of Report:	3 August 2017

Key Issues

The key issues with the proposal are as follows:

- **Determining Authority** - The Council was originally advised by the Joint Regional Planning Panel (JRPP) that the proposal comprised development for the purposes of 'affordable housing' with a capital investment value (CIV) of over \$5 million, and that the JRPP was therefore the determining authority in accordance with clause 6(b) of Schedule 4A of the EP&A Act.

Based on a summary of legal advice provided to Council from the Sydney Central Planning Panel (which has replaced the JRPP), the proposal is no longer considered to meet the threshold set out in clause 6(b) of Schedule 4A of the EP&A Act and, accordingly, the SCPP does not have the jurisdiction to determine the DA.

In accordance with Bayside Council's IHAP Charter, the proposal is now referred to the Bayside Planning Panel (BPP) for determination as the proposal includes a Clause 4.6 variation which proposes to vary the FSR standard in RLEP 2011 by more than 10%.

- **Boarding House** - the proposal includes a single level containing nine (9) boarding rooms at Level 2. The proposal generally satisfies the requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009 and the mix of housing types is supported.

- Clause 4.6 variation - The proposal exceeds the maximum permitted FSR by 18.6% and the application is therefore accompanied by Clause 4.6 variation which requests a variation to the maximum permitted FSR under Clause 4.4 of RLEP 2011. The Clause 4.6 variation is well founded and demonstrates that strict compliance with the maximum permitted FSR is considered unreasonable and unnecessary in the circumstances of this case. The proposed variation to the development is therefore supported for the reasons detailed in the body of the report.
- Concurrence Authority - the site is located adjacent to the Illawarra Railway Line and Sydney Trains issued their letter of concurrence on 9 November 2016.
- Site Isolation - the adjoining sites (No. 1 & No.7) will be potentially isolated by the proposed development. The applicant has submitted adequate information to demonstrate that they satisfy the Land and Environment Court *Planning Principles* relating to site isolation.
- Building Separation Distance - the proposal complies with the ADG building separation distance requirements with the exception of the separation distance between units fronting the proposed internal courtyard. The applicant has increased the separation distance for the internal courtyard as recommended by the Council's Design Review Panel. Furthermore, acoustic and visual privacy impacts have been resolved through design and use of double-glazing / air-conditioning so that windows can be closed if required. Finally, the applicant has improved the design of the internal courtyard area to include feature cladding to provide an improved outlook for future occupants. The variation to the ADG is therefore supported in this case.
- SEPP 55 - Remediation of Land - The site contains some chemically impacted soil. The submitted Remediation Action Plan (RAP) provides a methodology for remediation, and concludes that the site will be made suitable following remediation and validation in accordance with the RAP. Council's Environmental Health Officers have assessed the report and have recommended standard conditions which have been included in the draft Notice of Determination. Therefore, in accordance with Clause 7(1)(b) of SEPP 55, Council is satisfied that the land can be made suitable for the proposed mixed use development, and the proposed development satisfies the requirements & objectives of the SEPP.

Recommendation

1. That the Bayside Planning Panel accept the Clause 4.6 variation to Clause 4.4 of RLEP 2011 (FSR) as requested by the Applicant;
2. That this Development Application be **APPROVED** pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

Background

History

There are no recent applications on the subject site.

The following applications on the surrounding sites are of most relevance to this proposal (see **Figure 1**):

- DA 2013/51 - 30-32 Arncliffe Street - Approved 11 February 2013 - Integrated Development - Construction of a mixed use development comprising 41 residential units and 3 commercial units and two basement carparking levels with a total of 56 car spaces, and demolition of existing structures.
- DA-2013/181 - 9-11 Arncliffe Street - Approved 7 August 2013 - Integrated Development - Demolition of existing buildings and construction of an eight storey mixed use development comprising a ground floor retail shop and 39 residential units and 2 levels of basement parking.
- DA-2014/122 - 13-21 Arncliffe Street - Approved 15 May 2014 - Integrated Development - Construction of an eight (8) storey mixed use development with rooftop terrace comprising 60 residential units (38 x 2 bed / 18 x 1 bed / 4 x 3 bed) 4 commercial tenancies, basement and ground level carparking for 84 vehicle, and demolition of existing structures.
- DA-2014/122/A - 13-21 Arncliffe Street - Under Assessment - Section 96(2) Application to modify DA-2014/122 to increase height of building, increase in residential units from 60 to 75, carparking from 84 to 103 spaces and deletion of communal rooftop terrace.
- DA-2015/342 - 9-13 Willis Street - Construction of two x eight (8) storey residential flat buildings comprising 44 residential units, two (2) levels of basement parking and demolition of existing structures. Approved 16 November 2016.
- DA-2014/27 - 1-3 Willis Street & 1 Guess Avenue - Approved 17 February 2014 - Integrated Development - Construction of an eight (8) storey mixed use development over two (2) levels of basement parking, and demolition of existing structures.
- DA-2016/24 - 2-10 Willis Street - construction of a nine (9) storey residential flat building comprising 93 residential units, basement car parking and demolition of existing buildings. The application was approved on 16 December 2015. It incorporates No. 2 Willis Street, a previously isolated site, into the proposal.
- DA-2014/89 - 4-10 Willis Street - Approved on 5 May 2014 - Integrated Development - Construction of an eight (8) storey residential flat building including roof terrace, comprising 68 apartments and parking for 87 vehicles, and demolition of the existing structures.
- DA-2015/279 - 15-21 Willis Street - Construction of two x eight (8) storey residential flat buildings comprising 67 residential units, basement parking and demolition of existing structures. Approved by the JRPP on 16 September 2015.
- DA-2015/279/A - 15-21 Willis Street - Section 96(2) Application to modify DA-2015/279 Additional storey to each of the approved residential towers to accommodate an additional 7 units, reconfiguration of rooftop communal open space, additional part basement level, and minor changes including decrease in floor to floor heights for Ground & Level 1 and minor increase in floor space to each approved level of Tower B1 by 5m² (total of 40m²)
- DA 2014/335 - 40-50 Arncliffe Street - Approved 13 November 2014 - Integrated development -

Construction of 2 x eight (8) storey residential flat buildings with rooftop terrace areas, comprising 175 residential units and basement parking, and demolition of existing structures.

- DA 2012/180 - 52 Arncliffe Street - Approved 27 June 2012 - Integrated Development - Construction of residential flat building comprising one-hundred and fifty (150) residential units and two (2) basement levels with capacity for 190 vehicles, and demolition of existing structures.
- DA 2012/180/A - 52 Arncliffe Street - Withdrawn - Section 96(2) Application to modify DA 2012/180 to include twelve (12) additional residential units to create a total of 162 residential units and 200 carparking spaces.
- DA 2012/180/B - 52 Arncliffe Street - Approved 14 August 2013 - Section 96(2) Application to modify DA 2012/180 to include six (6) additional residential units to create a total of 156 residential units and 200 car parking spaces.



Figure 1 - Recent approvals in the locality.

Proposal

The proposal seeks consent for construction of a nine (9) storey mixed use development comprising 26 residential units, 1 live/work unit, 9 x boarding rooms and basement parking over two levels, and demolition of the existing buildings. The application does not include subdivision.

The proposal consists of:

Demolition & Site Clearing

Demolition of all existing structures on site and removal of all eight (8) trees located on the site and one (1) tree located on the adjoining property No. 1 Arncliffe Street.

Construction

Construction of a mixed use development comprising 26 residential units, 1 x 2 bedroom live / work

unit, and nine (9) boarding rooms, as follows:

- *Residential Units - Level 1 & Levels 3-9*

The 26 residential units and the residential component of the one (1) live/work unit result in the development comprising the following mix of unit sizes:

- 2 x studio units (7.4%),
- 6 x 1 bedroom units (22.2%),
- 17 x 2 bedroom units (including the live/work unit) (63%),
- 2 x 3 bedroom units (7.4%).

- *Live / Work Unit - Ground Floor & Level 1*

The live/work unit is a split-level unit comprising 28.76m² of commercial floor space at the ground floor level and two bedrooms, living area / kitchen / dining, balconies and bathroom at the first floor level with an internal area of 68.9m².

- *Boarding House - Level 2*

- The nine (9) boarding rooms are located at Level 2;
- Each room contains a bathroom, small kitchen area and balcony (except for Room 2.09 which fronts the central Courtyard and has no balcony).
- A communal room with bathroom is provided (38.76m²),
- One (1) boarding room is accessible.

Access & Public Domain Interface

A single residential lobby, entrance to the live/work unit and driveway access are proposed from Arncliffe Street. A small planter box has been provided, and an awning is proposed to match the awning on the recently completed development nearby at 9-11 Arncliffe Street.

Car Parking

Car parking is provided for 31 vehicles as follows:

- 22 x residential car spaces (including 2 x accessible spaces);
- 6 x visitor spaces (including 1 x accessible space and 1 x shared car wash bay / loading bay);
- 2 x boarding house spaces (including 1 x accessible space); and
- 1 x commercial space.

Servicing

A service bay for a Small Rigid Vehicle (SRV) removalist van is provided at the front of the site within part of the driveway entry.

Communal Open Space

The proposal includes a 197.5m² area of communal open space at the rear of the site, elevated above the ground floor level car parking.

Photomontage of the proposal is provided below (see **Figure 2**):



Figure 2 - Photomontage

Site location and context

The subject site is comprised of two (2) existing allotments commonly known as 3-5 Arncliffe Street (see **Figure 3**). It is located on the northern side of Arncliffe Street between Allen Street to the south and Willis Street to the west. The site also has rear frontage to the Illawarra Railway line.

The site has a 16.26m frontage to Arncliffe Street, a rear (splayed) frontage of 25.96m to the Illawarra Railway line, an eastern side boundary of 59.565m and a western side boundary of 39.33m, resulting in a total site area of 803.8m².

The site is located within the Wolli Creek Precinct and is affected by Class 5 Acid Sulfate Soils.



Figure 3 - Subject Site (3-5 Arncliffe Street), and part of adjoining sites No. 1 & No. 7 Arncliffe Street

Surrounding development is comprised of a mix of existing industrial developments and recently completed multi-storey residential and mixed use developments which represent the changing

character of the area.

Immediately to the east is No. 7 Arncliffe Street, an existing industrial property that has a similar lot width as the subject site, an area of 1,115m² and does not benefit from any current development approvals. Further to the east are No. 9-11 Arncliffe Street and No. 13-21 Arncliffe Street. Both of these properties have been recently redeveloped with mixed use developments. No. 9-11 Arncliffe Street has a height of eight (8) storeys, and No. 13-21 Arncliffe Street has a height of nine (9) stories.

Immediately to the west of the site is No. 1 Arncliffe Street, a triangular shaped allotment with an area of 534.1m². Potential site isolation issues are addressed in the body of the report.

To the south, on the opposite side of Arncliffe Street, lies 30-32 Arncliffe Street. Construction works have also been recently completed on this site for an eight storey residential flat building.

The site is located within the Wolli Creek Precinct and approximately 600m walking distance of Wolli Creek railway station and 525m walking distance to Arncliffe railway station.

Site plans & photos of the locality are provided below to depict the site context (see **Figures 4 - 9**)



Figure 4 - Aerial Photo of Site & immediate context.



Figure 5 - Site Location Plan (3-5 Arncliffe Street)



Figure 6 - No. 1 Arncliffe Street (located immediately to the west of the site)



Figure 7 - No. 7 Arncliffe Street (& 9-11 Arncliffe Street, Wolli Creek), located immediately to the east of the subject site.



Figure 8 - No. 9-11 Arncliffe Street



Figure 9 - No. 30-32 Arncliffe Street, located opposite the subject site.

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.79C(1) - Matters for Consideration - General

S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Affordable Rental Housing) 2009

The proposal includes a "new generation" boarding house containing 9 boarding rooms at Level 2 of the proposed nine (9) storey mixed use development, therefore State Environmental Planning Policy (Affordable Rental Housing) 2009 applies (AHSEPP).

"Boarding House means a building that:

(a) is wholly or partly let in lodgings, and

(b) provides lodgers with a principal place of residence for 3 months or more, and

(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and

(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment."

A "new generation" boarding house is one in which some, or all, of the rooms are self contained with en-suite and kichenette facilities, and that also comply with the size, communal living space, height, landscape area, car parking and other requirements contained in the AHSEPP.

The AHSEPP contains the following development standards and controls which are of relevance to the proposed boarding house component of the development.

Part 2 – New Affordable Rental Housing			
Division 3 – Boarding Houses			
Clause	Requirement	Proposed	Complies
26 - Land to which this division applies	SEPP applies to land zoned B4 Mixed Use	B4 Mixed Use zone	Yes
27 – Development to which this Division Applies	This division applies to development, on land to which this Division Applies, for the purposes of boarding houses.	The proposal seeks approval for a boarding house on B4 zoned land (which is located within 800m from the entrance of both Wolli Creek & Arncliffe railway stations).	Yes

29 -Standards that cannot be used to refuse consent	FSR - Cannot be refused if the FSR is less than that permitted (including bonus FSR).	The proposal has an FSR of 3.38:1 and the applicant has submitted a Clause 4.6 variation for the proposed variation to the maximum 2.85:1 FSR permitted by RLEP 2011.	Yes - The Applicant's Clause 4.6 variation is supported. Refer to assessment of Clauses 4.4 & 4.6 of RLEP 2011.
	Height – 28m maximum	28m	Yes
	Landscape front setback – compatible with streetscape	Street tree planting and minor landscape planter box proposed which is consistent with the streetscape.	Yes
	Solar Access – 3hrs midwinter to communal living room	Minimum 3 hour solar access provided between 12pm and 3pm.	Yes
	Private Open Space – 1 x 20sq/m with min dimension 3m for lodgers	A 38.76m ² communal room has been provided with. This includes the access corridor & accessible toilet. A 22m ² area with minimum 3m dimension has been provided. A kitchen & balcony have also been provided.	Yes
	Parking – 0.2 spaces per room <i>9 rooms = 1.8 car spaces (1 accessible spaces required)</i>	2 spaces required	Yes
	Accommodation Size – 12sq/m per single room (excl kitchen / bathroom) OR 16sq for multiple	Minimum 16.51m ² (excl kitchen & bathroom)	Yes
	Facilities – Can be shared or independent e.g. kitchen / bathroom	Each room contains a kitchenette and bathroom.	Yes
30 - Development	5+ rooms / min one communal living room	The proposal includes a communal room.	Yes

Standards	Boarding room max size 25sq/m	Two (2) rooms marginally exceed this requirement (Rooms 2.01 & 2.04), however a condition is proposed in the consent requiring that they be reduced in size prior to issue of the Construction Certificate. The proposal will therefore comply.	Yes - subject to condition.
	Boarding room max 2 adult person occupancy	Maximum of 2 adults proposed per room. A condition is proposed requiring compliance.	Yes
	Provision of kitchen / bathroom facilities for each lodger	A kitchen has been provided in the communal room, and a kitchenette is provided in each room. A condition restricts the type of cooking facilities to microwave only in accordance with case law.	Yes
	No ground level residential accommodation if zone is for commercial purposes.	The boarding rooms are provided on Level 2.	Yes
	Boarding House Manager required on site if boarding house has capacity to accommodate 20 or more lodgers. Boarding room or dwelling to be provided for manager.	N/A - only 9 boarding rooms and capacity for 18 residents.	N/A.
	1 bicycle & 1 motorcycle spaces required per 5 rooms	2 bicycle & 2 motorcycle spaces required	Yes
30A - Character of local area	Development to be compatible with local area	The proposed boarding house is provided at Level 2 of a 9 level mixed use building. The proposal has been considered by the Council's Design Review Panel and is found to be acceptable and compatible with the changing nature of the area.	Yes - see <i>Note 1</i> for further detail.
52 - Subdivision	No subdivision of boarding houses	The proposal does not include subdivision, and a condition is proposed to ensure that this does not occur.	Yes.

Note 1 - Character of Local Area

Clause 30A of the ARH SEPP states that "A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area".

Recent Land and Environment Court of NSW (L&E Court) decisions relating to boarding houses have utilised the Planning Principle '*Compatibility in the urban environment*' published in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191* to establish whether the proposal satisfied the 'character test' under the Affordable Housing SEPP. Consideration has therefore been given to the two key questions identified in the L&E Court Planning Principles:

(a) Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

The proposed boarding house contains nine rooms and occupies a single level within a nine (9) storey mixed use development. The impacts of the proposed boarding house will be minimal in their own right, however consideration has been given to the impacts of the overall mixed use development in detail throughout this report, primarily in the assessment against RELP 2011, RDCP 2011 and Section 79C(1)(b) of the EP&A Act. In summary, it has been found that the proposal will have minimal impacts on the amenity of surrounding properties and the locality. In addition, detailed consideration has been given to potential site isolation issues associated with No. 1 & No. 7 Arncliffe Street in the assessment of Part 4.1.9 of RDCP 2011 (later in this report), and the proposal has been found to be comply with the relevant Land and Environment Court Planning Principles in this regard.

(b) Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The proposed height, massing and density of the development is consistent with existing development and the desired future character of the area as articulated in the assessment of the relevant policies, including SEPP 65, RLEP 2011 and RDCP 2011. Refer specifically to the assessment against SEPP 65 for a detailed response to this matter which demonstrates that the proposal is acceptable in terms of streetscape character.

The proposal is therefore found to respect the character of the local area and is consistent with Clause 30A of the Affordable Housing SEPP.

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

The applicant has submitted a BASIX Certificate for the proposed development (as amended). The Certificate number is 684168M_02.

The commitments made result in the following reductions in energy and water consumption:

- Reduction in Energy Consumption - 20%
- Reduction in Water Consumption - 40%
- Thermal Comfort - Pass

A condition has been imposed on the consent to ensure that these requirements are adhered to.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 - Development likely to affect an electricity transmission or distribution network

The proposal includes excavation works within 2 metres of an underground electricity power supply line and electricity supply box, therefore the application was referred to Ausgrid inviting comments about the potential safety risks in accordance with clause 45 of the Infrastructure SEPP. No response was received from Ausgrid, however subject to imposition of the standard conditions provided by Ausgrid for other similar proposals, the proposal is considered to satisfy the relevant requirements of clause 45.

Clause 86 - Excavation in, above or adjacent to rail corridors

The proposal involves excavation within 25 metres of the Illawarra rail corridor and requires the concurrence of the rail authority in accordance with clause 86(1)(b). On 9 November 2016, Sydney Trains (on behalf of Railcorp) provided concurrence to the proposal subject to recommended conditions of consent. These conditions have been incorporated into the draft notice of determination.

Clause 87 - Impact of rail noise or vibration on non-rail development

Before determining a development application for a residential building adjacent to a rail corridor consideration must be given to the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads – Interim Guidelines". The proposal must also demonstrate that measures have been taken to ensure that noise impacts within the dwelling do not exceed the following LAeq (equivalent continuous noise levels):

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

The site is located within 50 metres of the Eastern Suburbs & Illawarra Rail Line and an acoustic report prepared by Acoustic Logic, dated 15th September 2015 (Ref No. 20151062.1) was submitted with the application. The acoustic report considers the impacts of rail noise and vibration on site and includes recommendations in Section 4 to ensure that the internal noise levels required by the SEPP are complied with. To achieve these noise levels glazing of windows and external glass doors (including frame construction) must meet specified standards, the concrete roof must be provided and external walls must be composed of concrete or masonry elements (and should not contain any vents), and penetrations should be acoustically sealed. In this regard, the proposal is considered satisfactory subject to recommended conditions requiring implementation of the recommended measures and certification prior to Occupation.

State Environmental Planning Policy No 55—Remediation of Land

The site and surrounding area has been used for a range of commercial and industrial land uses, and the site is therefore potentially contaminated. In accordance with the requirements of SEPP 55, the application was therefore accompanied by a Preliminary Site Investigation (PSI) for KASAF PTY LTD 3-5 Arncliffe Street Wolli Creek Report No: 15/2434 Project No: 20524/5938C dated October 2015 - Section 15.

The Conclusion and Recommendations section of the PSI stated that "*The excavation during the proposed development should effectively remediate the site and make the site suitable for the proposed high-density residential redevelopment*". There was no clear statement that the site is suitable and there was no Remedial Action Plan (RAP).

The applicant subsequently prepared and submitted a RAP which was prepared by STS GeoEnvironmental Pty Ltd (Report No. 16/1661, Project No. 20524/7139C, dated July 2016). The

report states that all chemically impacted soil is likely to be removed from the site during excavation works associated with redevelopment, and that this soil will be classified and disposed of in accordance with legislative requirements. The RAP also includes a methodology for ensuring that the site is properly validated at completion of the works, and concludes that the site will be made suitable following remediation and validation in accordance with the RAP.

Council's Environmental Health Officers have assessed the report and have recommended standard conditions which have been included in the draft Notice of Determination.

Therefore, in accordance with Clause 7(1)(b) of SEPP 55, Council is satisfied that the land can be made suitable for the proposed mixed use development, and the proposed development satisfies the requirements & 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 considered by the Design Review Panel on 12 January 2016. The Panel raised a number of issues which have been considered and addressed by the applicant, as discussed below:

- *Potential isolation of the adjoining site No. 1 Arncliffe Street given that the applicant relies on the railway line being the side boundary of the site, rather than the rear of the site as proposed with this DA;*
Officer's Comment: The adjoining site No. 1 Arncliffe Street is triangular in shape and the applicant has submitted amended diagrams which include a 3 metre landscape setback from the railway line. This is consistent with other nearby developments which have been approved with landscaped 'side setbacks' to the railway line of 3 metres - e.g. 15-21 Willis Street (DA-2016/279) and 2-10 Willis Street (DA-2016/24). While final approval would be required from Sydney Trains once a DA is lodged, based on these recent approvals a 3 metres setback to the boundary with the railway line should provide adequate clearance to meet Sydney Train's requirements. The applicant has therefore submitted draft plans for the adjoining site No. 1 Arncliffe Street which demonstrate that the site can be developed in its own right and will not become isolated in future. They have also adequately addressed the Planning Principles associated with Site Isolation (refer to detailed assessment of this matter in response to RDCP later in this report).
- *Resolution of the 'deep soil' interface with the railway line requires further consideration in relation to levels, selection of landscaping species and provision of usable communal open space.*
Officer's Comments: The plans have been amended to provide a 3m landscape strip adjacent to the railway line, which is consistent with nearby approvals. The site landscape scheme has been amended to include appropriate species to the satisfaction of Council's Landscape Architect, and the communal open space has also been amended to be more usable. It is noted that Sydney Trains conditions require that the landscape planting species within the rear area be approved by them, however this area will remain deep soil to permit high quality tree planting.

- Protrusions into the 12m rear setback seem possible and would be appropriate to improve the shape, functionality and amenity of the development by eliminating sharp corners.*

Officer's Comment: the amended plans include some balcony protrusions which are considered to address this issue.
- Amenity - Concerns were identified with the amenity afforded to units & boarding rooms fronting the light-well / central courtyard, screening to boarding rooms 205-207 and the boarding house communal space, the communal open space area at the rear of the site, and the use of clear glass balustrades to the street front.*

Officer's Comment: The separation distance of the light-well has been increased to 6 metres and the boarding room has been increased in size rather than providing a balcony, as recommended by the DRP. The applicant has also committed to inclusion of mechanical ventilation and double glazing to windows fronting the internal courtyard. With regards to balustrades, the applicant proposes to use a variation of balustrade materials, including partial solid, partial opaque and part clear glazed. A condition is recommended to ensure that the balustrades of balconies at Levels 01 & 02 are fully opaque (where not solid), and that balustrades for Levels 03-07 are part opaque and part clear (where not solid) to ensure adequate privacy is retained (and to screen display of bicycles etc. that may be stored on the balconies).
- Sustainability measures must be included and improved.*

Officer's Comment: The plans show compliance with BASIX, inclusion of rainwater harvesting for landscaped areas, and planting of larger trees. The amended proposal satisfactorily addresses the sustainability issues raised by the DRP.
- Communal open space and landscape planting area unusable and inadequate. The DRP recommended reconfiguration of the basement car park and communal space, and provision of planting at the sites frontage (including tree planting in the public domain).*

Officer's Comment: The rear communal open space and landscape areas have been reconfigured, and BBQ and seating provided, as suggested by the DRP. The landscape plan has been approved by Council's Landscape Architect, and the amended proposal is acceptable in this regard.
- Street trees - a consistent line of street trees on Arncliffe Street should be provided and the awning reduced (to mark the building entry) or removed to provide capacity for viable street tree planting.*

Officer's Comment: The proposal includes street tree planting in accordance with Council's Wolli Creek Public Domain Plan. A condition is proposed requiring that amended plans be submitted including an awning for the full width of the street frontage (with cut-outs for trees) to provide weather protection for residents similar to the recently completed development at 9-11 Arncliffe Street.
- Aesthetics - the roof top level has a completely different architectural structure and has an unappealing appearance. It should be amended to appear as a separate roof element or complementary, but not the same as the treatment of the levels below or as a continuance of the lower levels in terms of structural elements.*

Officer's Comment: The rear elevation has been amended to include a number of boxed privacy screen balconies. Combined with the architectural treatment, including the yellow coloured framed facade element and white structural element at Level 8, the proposal is considered to

provide an individual and positive design outcome when viewed from the north.

(b) The design quality of the residential flat building when evaluated in accordance with the ten design quality principles.

The application was accompanied by a Statement of Environmental Effects (SEE) prepared by Plan Urban Services that addresses the nine (9) design quality principles under the SEPP. In addition, the architect has prepared a design statement that has been submitted with the proposal. The position provided in the SEE is generally agreed with, and the 9 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 area is undergoing a transition from an industrial to high density mixed use area containing retail, commercial and residential uses to take advantage of the proximity to the nearby railway stations. The design is generally consistent with the adjoining approved developments, and the desired future character of the area in terms of height, bulk and scale.

Principle 2 – Built form and scale

The building height is consistent with surrounding approved developments and consistent with Council's LEP requirements. The scale of development when viewed from the street frontages is consistent with adjoining approved developments. The proposed building has been amended to address the built form issues raised by the DRP and Council. The amended proposal is satisfactory, with appropriate use of articulation to the facades via the incorporation of balconies, pedestrian entries at ground level, and a range materials which adds visual interest to the facades.

Principle 3 - Density

The proposed FSR exceeds that permitted by RLEP 2011, however the increased density complies with the requirements of the Affordable Housing SEPP. The proposal also has a density that is similar to other nearby approved developments, and is considered acceptable in this case.

Principle 4 – Sustainability

The application has been amended to include a 3m deep soil landscape zone along most of the rear boundary adjacent to the railway line. Solar access is maximised to dwellings particularly given the orientation of the buildings and internal layout of the units, with many of the dwellings receiving northern sunlight. The proposal also includes rainwater re-use for landscape planting and toilet flushing, and complies with BASIX requirements.

Principle 5 - Landscape

The proposal includes deep soil landscape planting along the rear of the site to permit mature trees to grow. Planting is also provided at podium level. The proposed landscape areas will be complemented by planting within the public domain, and will complement the building, screen the building from adjoining properties, and contribute to the streetscape and locality.

Principle 6 - Amenity

The proposal satisfies the solar access and cross ventilation requirements of the SEPP. Amenity issues identified by the DRP have been addressed in the amended plans as discussed in response to Item (a) above. A condition is proposed requiring improvements to the communal open space area to ensure that it is usable, and a communal area has been provided internally for the boarding house. The units and rooms are of adequate size and dimensions as required by the SEPP, and storage has also

been provided in accordance with SEPP 65. The built form at both street frontages has been reorganised to improve the building's relationship with the public domain, benefiting the amenity of pedestrians and users of the surrounding public domain. Overall, the amended proposal has improved the level of amenity that will be afforded to future residents (as well as future residents of adjoining sites). The proposal is therefore considered to provide a good standard of amenity.

Principle 7 - Safety

The proposal has been amended to further activate the street frontage, and recessed areas are not proposed. Access to the car park is secure, and security access points are provided at several points to gain access to the lift lobby. Suitable lighting will be required by conditions of consent, and the proposed design is satisfactory in this regard.

Principle 8 - Housing diversity and social interaction

The site is well located between Wolli Creek & Arncliffe railway stations and the proposal includes a variety of apartment sizes and layouts to accommodate a diverse range of families, including nine (9) boarding rooms. The lobby has been increased in size and provides space for people to meet, and the communal area has been improved. The proposal is therefore satisfactory in this regard.

Principle 9 - Aesthetics

The amended proposal includes a range of materials, colours and finishes is proposed to provide for a satisfactory contemporary development in the context of the site and the Wolli Creek locality. The proposal is therefore considered comply with this principle.

(c) The 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
3J - Bicycle and car parking	As per Guide to Traffic Generating Developments, SEPP Affordable Rental Housing & RDCP 2011: - 0.6 spaces / Studio or 1 bed = 4.8 - 0.9 spaces / 2 bed = 15.3 - 1.4 spaces / 3 bed = 2.8 - 1 x visitors / 5 units = 5 - 1 space / 5 boarding rooms (AHSEPP) = 2 - 1/40m2 commercial = 1	Total Required = 30.9 spaces Total Provided = 31 spaces (This includes 2 boarding house spaces & 1 commercial space for the live/work unit)	Yes

4D – Apartment size and layout	Minimum internal areas:		All units comply, with the exception of a minor variation of 1.11m ² for the 2 bed Live / Work Unit 1.01 and 1.97m ² variation for the 3 bed Unit 7.04. Boarding rooms assessed separately under AHSEPP.	NO - However Acceptable. (see <i>Note 1</i>)
	Apartment type	Minimum internal area		
	Studio	35m ²		
	1 bedroom	50M ²		
	2 bedroom	70m ²		
	3 bedroom	90m ²		
	Internal areas includes only one bathroom. Additional bathrooms increase area by 5m ² each.			
	Further bedrooms increase minimum internal area by 12m ² each.			
4C – Ceiling heights	Minimum ceiling heights:		3.05m floor to floor level provided will ensure that the proposal will comply with the minimum ceiling height requirements.	Yes.
	Habitable	2.7m		
	Non-habitable	2.4m		
	Two storey apartments	2.7m main living 2.4m first floor, area < 50% of apartment area		
	Attic spaces	1.8m at edge 30deg min slope		
	Mixed use area	3.3m for ground and first floor		

3F Visual Privacy	Min separation - side & rear boundaries:			The proposal faces the Illawarra Railway Line to the rear and Arncliffe Street to the front, with no separation distance issues to any buildings on adjoining sites. The proposal includes an internal courtyard with a separation distance of 6 metres which does not satisfy the ADG.	NO - However acceptable. (see <i>Note 2</i>)
	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		
	Buildings on the same site combine required building separations. Gallery treated as habitable space				
4A – Solar and daylight access	Living rooms + POS of at least 70% of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter Max 15% apartments receive no direct sunlight b/w 9am & 3pm mid-winter			67% achieve in excess of 2 hours solar access. The proposal could be made to comply, however the current scheme provides better overall amenity.	NO - However acceptable. (see <i>Note 3</i>).
4F – Common circulation and spaces	Max apartments off a circulation core on a single level is eight. 10 storeys and over, max apartments sharing a single lift is 40.			Maximum apartments off a single lift core is 4.	Yes.
4E – Private open space and balconies	Primary balconies as follows:			Private open space areas comply.	Yes.
	Dwelling type	Minimum area	Minimum depth		
	Studio	4m ²	-		
	1 bed	8m ²	2m		
	2 bed	10m ²	2m		
	3+ bed	12m ²	2.4m		
	Min balcony depth contributing to the balcony area is 1m. Ground level, podium or similar POS provided instead of a balcony: min area 15m ² and min depth of 3m.				

4B – Natural ventilation	Min 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Ten storeys or > 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. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	77%	Yes										
4G – Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio</td><td>4m²</td></tr><tr><td>1 bed</td><td>6M²</td></tr><tr><td>2 bed</td><td>8m²</td></tr><tr><td>3 bed</td><td>10m²</td></tr></table> At least 50% of the required storage is located within apartment	Dwelling type	Storage size volume	Studio	4m ²	1 bed	6M ²	2 bed	8m ²	3 bed	10m ²	Storage provided and will be subject to conditions.	Yes.
Dwelling type	Storage size volume												
Studio	4m ²												
1 bed	6M ²												
2 bed	8m ²												
3 bed	10m ²												

Note 1 - Unit Size

The proposal includes a minor 1.11m² variation to the size of the residential component of the 2 bedroom live / work unit (Unit 1.01) which has an area of 68.89m² instead of 70m², and a minor 1.92m² variation to the 3 bedroom Unit 7.04 which contains 2 bathrooms and has an area of 93.08m² instead of 95m². The room sizes, private open space areas and storage areas of these two units comply with the ADG, and the proposed unit layouts are efficient and provide a good level of amenity for future occupants. The minor variation to these units is therefore acceptable in this case.

Note 2 - Building Separation Distance

The proposal complies with the building separation distance requirements of the ADG with the exception of proposed units located within the development which front the internal courtyard and which have a separation distance of 6 metres instead of between 12 and 18 metres. The variation is acceptable in this case as the separation distance between units fronting the internal courtyard has been increased from 4m to 6m to satisfy the recommendations of Council's Design Review Panel. Furthermore, the windows facing the internal courtyard are either high-light, offset or screened to minimise privacy impacts. Also, all windows facing the internal courtyard will be double glazed, and all units facing the internal courtyard will be provided with mechanical ventilation to ensure that the windows can be closed if required to maintain a satisfactory level of acoustic amenity for future occupants. Furthermore, the internal wall of the courtyard will be treated with lighting and articulation to provide

interest to occupants (see **Figure 10**). Therefore, the proposal is considered to comply with the objectives of the control and the variation is acceptable in this case.



Figure 10 - Example of proposed treatment to internal courtyard.

Note 3 - Solar Access

A total of 67% of units achieve in excess of 2 hours solar access to the balconies and living rooms of units within the development while a minimum of 70% is required to comply with the ADG. This is a 3% variation (i.e. 0.81 units). The proposal could be amended so that 78% of units achieve 2 hours solar access by re-organising the living spaces and balconies of the three (3) top floor level units to face north, however the applicant has purposely designed these units to benefit from district views of the airport and Botany Bay. Furthermore, they have included skylights above the living areas of these 3 units which, combined with the high level of sunlight obtained to the bedroom windows (which face north) will allow good levels of sunlight to be obtained to these units at mid-winter and throughout the year. Combined with the unobstructed views, the proposal is considered to provide a higher level of overall amenity for future residents and the minor variation to solar access is supported in this case.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone B4 Mixed Use	Yes	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	Yes	Yes - see discussion
4.6 Exceptions to development standards	Yes	Yes - see discussion
5.9 Preservation of trees or vegetation	Yes	Yes - see discussion
5.9AA Trees or vegetation not prescribed by development control plan	Yes	Yes
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

Relevant clauses	Compliance with objectives	Compliance with standard/provision
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 Shop Top Housing which constitutes a permissible development in the zone only with development consent. The objectives of the zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The proposed development is consistent with the objectives of the zone in that it provides a mixed use building in an area surrounded by recent approvals for RFB's and mixed use developments of similar height and scale. The site is also located within easy walking distance of both Arncliffe and Wolli Creek Railway Station and nearby proposed future bicycle pathways along Arncliffe Street and Guess Avenue.

2.7 Demolition requires consent

The proposed development seeks consent for the demolition of the existing buildings and structures on the sites and hence satisfies the provisions of this Clause.

4.3 Height of buildings

The height of the proposed building is 27.6m and therefore does not exceed the maximum 28m height permitted for the land on the Height of Buildings Map.

Further, the proposed development will result in a high quality urban form, maintain satisfactory sky exposure and daylight to buildings, key areas and public domain, and will provide an appropriate transition in built form and land use intensity. Accordingly, the proposed height of the building satisfies the objectives of this clause.

4.4 Floor space ratio

The Gross floor area of the proposed development has been calculated as 2,720.31m² over a site area of 803.8m², resulting in a proposed floor space ratio (FSR) for the building of 3.38:1. The proposal exceeds the maximum 2.85:1 FSR permitted under RLEP 2011 by 425.7m² (18.6%).

The applicant has submitted a clause 4.6 variation to the proposed variation to Clause 4.4 of RLEP 2011 which has been addressed below in the assessment of Clause 4.6. In summary, the proposed Clause 4.6 variation is well founded and demonstrates that strict compliance with the maximum permitted FSR is considered unreasonable and unnecessary in the circumstances of this case. The proposed variation to the FSR development standard is therefore supported in this case.

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.

It is noted that 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 site circumstances of the site and development.

Extent of Variations Proposed - FSR

The Gross floor area of the proposed development has been calculated as 2,720.31m² which, over a site area of 803.8m², exceeds the maximum 2.85:1 FSR permitted under RLEP 2011 by 425.7m² (18.6%).

Consideration of Clause 4.6 Variation

The applicant has submitted a detailed justification to the proposed variation to the maximum 2.85:1 FSR development standard in accordance with Clause 4.6 of RLEP 2011.

A summary of the key rationale provided by the Applicant in respect of the FSR development standard are as follows:

- Compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the case for the following key reasons:
 - The proposed development is consistent with the relevant aims of the RLEP 2011, particularly as the proposal provides a new high quality mixed-use development within close proximity to good public transport, will have benefits for the local economy, will facilitate a positive landscape outcome, and minimise opportunities for flood inundation;
 - The proposal is consistent with the objectives of the B4 Mixed Use Zone; particularly as the proposal includes a mix of compatible land uses, including residential units, boarding house rooms and live/work tenancies; the development will encourage walking and cycling due to the sites location in close proximity to Wolli Creek Railway Station and nearby cycle paths;
 - The proposal is consistent with the underlying purposes of the FSR development standard contained in Clause 4.4 of RLEP 2011, particularly as the site is well located near public transport where additional FSR can be accommodated, the proposal satisfies the parking requirements and will have minimal impacts to on-street parking, the proposal meets the

maximum permitted building height, the proposal provides bicycle and motorcycle parking to encourage alternative forms of transport, the proposal does not result in adverse impacts to adjoining properties and the development provides an appropriate built form context in the locality undergoing change.

- The proposal will not have unreasonable overshadowing or privacy impacts to adjoining properties, nor have adverse impacts on significant views or nearby heritage items;
 - The proposal complies with the maximum 28m height permitted by Clause 4.3 of RLEP 2011 a suitable bulk and scale response to the sites position. In addition, the proposal will provide a positive contribution to the streetscape and locality that will not adversely impact the ability of adjoining sites to redevelop.
- There are sufficient environmental planning grounds to justify contravening the FSR development standard, particularly for the following reasons:
 - the proposal significantly improves the streetscape appeal of the site;
 - the proposal includes 9 boarding house rooms to increase the availability of affordable rental accommodation in an accessible location;
 - the proposal increases the residential dwelling stock in the locality;
 - the proposal is consistent with the general aims of RLEP 2011 and the objectives of the B4 Mixed Use zone;
 - the proposal is consistent with the design quality principles under SEPP 65 and the ADG;
 - the proposal complies with the maximum building height permitted under RLEP 2011;
 - the proposal will have no unreasonable adverse environmental impacts in relation to nearby properties or the locality more generally;
 - the proposal will have no unreasonable impacts in relation to traffic generation and car parking;
 - the proposal provides high quality accommodation in a highly convenient and central location.
 - The proposal's contravention of the FSR standard does not raise any matter of significance for state or regional environmental planning.
 - There would be no public benefit from requiring compliance with the FSR standard. The proposal provides a public benefit for the following key reasons:
 - The proposal includes nine (9) boarding house rooms providing affordable accommodation within the locality;
 - the proposal has minimised its amenity impacts;
 - the bulk and scale is commensurate with several other recently approved DA's in the immediate vicinity, and will therefore provide a positive contribution to the locality;
 - the proposed FSR is similar to that of nearby approvals within the immediately locality (see Location Plan provided in Clause 4.6 variation), including:
 - 13-21 Arncliffe Street (DA-2014/122, as modified) which was approved with an FSR of 3.41:1, exceeding the maximum permitted 2.85:1 FSR by 20%. The proposed nine (9) storey building also exceeded the maximum 28m height permitted under Clause 4.3 by 2.71m;
 - 2-10 Willis Street (DA-2016/24) for a nine (9) storey residential flat building with an FSR of 3.4:1 which exceeded the maximum 2.85:1 FSR by 20%. The proposal also exceeded the height control by 0.81m.
 - 7-13 Willis Street (DA-2016/296) which incorporated 2 x 9 storey RFB's with an FSR of 3.42:1, exceeding the maximum 2.85:1 FSR by 20%. The proposal also

exceeded the maximum 28m height by 1.9m.

- 19-21 Willis Street (DA-2015/279, as modified) with an FSR of 3.15:1 and height of 32.91m exceeded both the height and FSR standards.
- There are no other known matters required to be taken into consideration by the Director-General before granting concurrence;
- The variation is well founded; and,
- Typically developments incorporating boarding house components are subject to an FSR bonus, as an incentive to provide affordable accommodation.

The applicant's justification is generally agreed with in context of clause 4.6 for the following reasons:

- The redevelopment of the site is consistent with the objectives of the zone in that the proposal provides a mixture of compatible land uses that are located nearby to good public transport and on a future regional bicycle route. The proposal will therefore inherently maximise public transport patronage and encourage walking and cycling.
- The proposal is consistent with the objectives of Clause 4.4 – FSR in that the development does not result in adverse amenity impacts on site, to neighbours or properties within the context of the site.
- The proposed development provides an appropriate built form, intensity and public domain response on the subject site and contributes to the streetscape character of emerging development within Wolli Creek.
- The proposal has been amended to address the issues raised by the Design Review Panel and results in a development with a high level of amenity, maximising solar access, cross ventilation, outlook, and natural ventilation to ensure a good level of amenity for future occupants.
- The development provides a built form which does not result in significant adverse impacts upon adjoining or nearby properties in terms of overshadowing, aural and visual privacy, solar access, natural ventilation and views & vistas.
- The building complies with the height controls in RLEP 2011.
- The application includes a level of boarding house rooms that will provide a public benefit for the community. The boarding house component of the development has a gross floor area of 355.4m², which comprises a majority (83%) of the proposed FSR variation.
- The proposal provides a development that facilitates the orderly economic development of the site in an appropriate manner that will also not prevent redevelopment of adjoining properties in accordance with the Land and Environment Court Planning Principles (refer to assessment of Site Isolation).
- The proposed non-compliance is commensurate to recent approvals for developments within the same block as the proposed development, as detailed by the applicant and as shown in **Figure 11** below..
- The proposal is consistent with the objectives of Part 4 - Designing the Building, of the Apartment Design Guide, providing appropriate internal and external amenity, satisfactory environmental performance and an aesthetically pleasing built form on the subject site.
- The proposal generally complies with the ADG and relevant planning policies.
- The variation would complement the future character of the locality when viewed in conjunction with the adjoining developments.
- The urban design response in the form of the proposed development achieves a high quality urban form which allows for increased housing opportunities and choice for future occupants

without adversely impacting on the amenity of adjoining properties.



Figure 11 - Location plan showing the subject site (outlined in red) in the context of nearby developments (outlined in blue) which have been approved with an FSR variation commensurate with that proposed at the subject site.

It is considered that in this instance, there are sufficient environmental planning grounds and public benefit in which to justify the contravention of the FSR standard for the site. In addition, the public benefit of orderly development of this site outweighs strict adherence to the numeric standards presented by the height & FSR controls of RLEP 2011 and the Clause 4.6 variation is well founded. The FSR development standard aforementioned are deemed unreasonable and unnecessary in this instance for the reasons noted above.

5.9 Preservation of trees or vegetation

The application was accompanied by an Arborists Report which identified that eight (8) trees within the site and one (1) tree on the adjoining site No. 1 Arncliffe Street required removal due to excavation and construction works associated with the proposed development (Owner's consent has been provided for removal of the tree on No. 1 Arncliffe Street). The trees include seven (7) Leighton's Green conifers located toward the rear boundary (approx. 2 metres height), a Magnolia and a Cypress tree (located on No. 1 Arncliffe Street). Council's Tree Management Officer has agreed to the removal of trees subject to replacement tree planting in accordance with the Landsape Plan, which has been amended to include a 3m wide strip containing five (5) Lemon Scented Gums (mature height of 20-30m), eight Qandong's (mature height approx. 3 metres) and other planting. In addition, space is available for one (1) street tree located in front of the property that will be planted during public domain works to Arncliffe Street in accordance with Council's Section 94 Plan.

The Arborists Report also includes recommendations to ensure that the trees in Railways Land are protected throughout construction works on the site. These recommendations will be included as draft conditions of consent. The proposal is therefore satisfactory with regards to this clause.

6.1 Acid Sulfate Soil - Class 5

Acid Sulfate Soils (ASS) – Class 5 affect the property. Development Consent is required as the proposed works is within 500 metres of adjacent Class 1, 2, 3 or 4 that is below 5 AHD and the works may lower the watertable beyond 1m of adjacent Class 1, 2, 3 or 4 land.

In this regard, a Geotechnical Investigation and Acid Sulfate Soils Assessment report prepared by STS GeoEnvironmental, Report No. 15/2282, dated September 2015, was prepared for the proposed development and identified that, based on their assessment, an Acid Sulfate Soil (ASS) Management Plan will not be required. Additional conditions of consent are imposed in the draft Notice of Determination requiring that an ASS Management Plan be prepared should ASS's be encountered during works. Therefore, the proposal is consistent with the objectives and requirements of clause 6.1.

6.2 Earthworks

The proposal involves extensive excavation within the site to accommodate the two (2) basement levels. The impacts of the proposed earthworks have been considered in the assessment of this proposal. The Applicant has demonstrated that the proposed development will not have any adverse impacts on the adjoining Railway, and concurrence has therefore been provided by Sydney Trains. In addition, the Applicant has provided an Arboricultural Impact Assessment report which demonstrates that the proposal will not adversely impact on the existing trees located within the adjoining (RailCorp) land. The proposal was not required to be referred to the NSW Water, however a condition is included requiring that works cease and approval be obtained from NSW Water should any dewatering works be required. Therefore, subject to relevant conditions of consent the proposal will result in minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal therefore 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 51m to Australian Height Datum (AHD). The building height is at 34.6m to AHD and in this regard, it is considered that the proposed building will have minimal adverse impact on the OLS.

6.7 Stormwater

The stormwater plans submitted with the proposal do not comply with the relevant policy requirements and a condition is proposed requiring that plans be submitted to, and approved by, the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate. The condition includes requirements for a rainwater re-use tank and other relevant measures. On-site detention or retention is not required given the sites proximity to waterways. Rainwater will be re-used within the landscape areas and communal toilets, as well as to satisfy any other BASIX commitments. The proposal is considered to satisfy this clause subject to compliance with recommended conditions.

6.12 Essential services

Services are generally available to the site, and the site has direct frontage and access to Arncliffe Street. Sydney Water has advised by letter dated 18 August 2016 that detailed consideration will be given to any infrastructure works at the Section 73 Certificate stage. Additional conditions of consent are proposed requiring consultation with relevant utility providers in regards to any specific requirements for the provision, relocation and/or amplification of services on the site.

S.79C(1)(a)(ii) - Provisions of any Draft EPI's

No relevant proposed instruments are applicable to this proposal.

S79C(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	Yes	Yes - see discussion
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	Yes	Yes
4.1.3 Groundwater Protection	Yes	Yes
4.1.4 Soil Management	Yes	Yes
4.1.7 Tree Preservation	Yes	Yes
4.1.9 Lot size and Site Consolidation - isolated sites	Yes - see discussion	No - see discussion
4.2 Streetscape and Site Context - General	Yes	Yes
4.3.1 Open Space and Landscape Design - Mixed Use	Yes	Yes
4.4.4 Glazing - General Controls	Yes	Yes
4.4.5 Acoustic privacy	Yes	Yes
4.4.6 Noise Impact	Yes	Yes
4.4.7 Wind Impact	Yes	Yes - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	Yes - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes
4.6 Travel Demand Parking Concession	Yes	Yes
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 Access to Parking	Yes	Yes
4.6 Design of Loading Facilities	Yes	Yes - see discussion
4.6 Car Wash Facilities	Yes	Yes
4.6 Pedestrian Access and Sustainable Transport	Yes	Yes
4.7 Air Conditioning and Communication Structures	Yes	Yes
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes
4.7 Servicing - Wolli Creek and bonar Street	Yes	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes
4.7 Letterboxes	Yes	Yes
4.7 Hot Water Systems	Yes	Yes
5.2 RFB - Rear Setbacks	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
5.2 RFB - Building Design	Yes	Yes
5.2 RFB - Building Entry	Yes	Yes
5.2 RFB - Lift Size and Access	Yes	Yes
5.3 Mixed Use - Ground Level Uses	Yes	Yes
5.3 Mixed Use - Retail	Yes	No - see discussion
5.3 Mixed Use - Commercial	Yes	Yes
5.3 Mixed Use - Flexible Space for First Floor Level	Yes	Yes
5.3 Mixed Use - Building Design	Yes	Yes
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 - see discussion
5.3 Mixed Use - Secured Access to Parking	Yes	Yes
7.1.2 Wolli Creek Vision	Yes	Yes
7.1.3 Wolli Creek Structure Plan	Yes	Yes
7.1.4 Wolli Creek Land Use Strategy	Yes	Yes - see discussion
7.1.5 Wolli Creek Road Network and Vehicular Access	Yes	Yes
7.1.6 Wolli Creek Open Space and Movement	Yes	Yes
7.1.7 Wolli Creek Built Form: Building Heights and Density	Yes	No - see discussion
7.1.8 Wolli Creek Street Character and Setbacks	Yes	Yes
7.1.8 - Wolli Creek Mixed Use Street Frontage	Yes	No - see discussion
7.1.9 Wolli Creek - Environmental Management	Yes	Yes

Rockdale Development Control Plan 2011

The application is subject to Rockdale Development Control Plan (RDCP) 2011. A compliance table for the proposed development is provided above. It is noted that clause 6A of SEPP 65 indicates that the several provisions of the Apartment Design Guide (ADG) override this DCP and as such the related provisions under the DCP will not be addressed, including:

- Visual privacy
- Solar access and daylight access
- Common circulation and spaces
- Apartment size and layout
- Ceiling heights
- Private open space and balconies
- Natural ventilation
- Storage

4.1.1 Views and Vista

The units at the top floor level have been orientated to benefit from district views toward the airport & Botany Bay. As discussed previously in the assessment of SEPP 65, this has resulted in the balconies being orientated toward the south. This is supported given the inclusion of skylights to these units, as well as provision of bedroom windows facing north. Consideration has also been given to the potential impacts to views enjoyed by surrounding properties. In this case, the proposal complies with the maximum height permitted under RLEP 2011 and there will be no unexpected impacts to views resulting from the proposed development.

4.1.9 Lot size and Site Consolidation - isolated sites

Two controls are of relevance from Part 4.1.9 of RDCP 2011. These issues are discussed separately below:

1. Variation to Minimum 18m Lot Width - Control 1(g) of Part 4.1.9 of RDCP 2011

The application involves the amalgamation of two (2) of the four (4) remaining lots located on the northern side of this section of Arncliffe Street. Combined the sites have a frontage of 16.26m to Arncliffe Street. This falls 1.74m short of the minimum 18m frontage required by Control 1(g) of Part 4.1.9 of RDCP 2011.

The plans and documentation submitted with the application demonstrate that the proposal satisfies the objectives of the control and that the site is capable of being developed in its own right. In this regard, the applicant has demonstrated that the proposal:

- (i) introduces new residential and boarding house accommodation in a highly accessible and desirable location;
- (ii) provides all services and vehicular & pedestrian access at ground floor level while continuing to provide an active street frontage which provides adequate passive surveillance of the street.
- (iii) includes car parking, deep soil, landscape planting and communal open space areas which meet (or exceed) the ADG requirements,
- (iv) has no unreasonable adverse impacts in relation to privacy and overshadowing;
- (v) the adjoining sites can be economically developed.

Based on the above, a variation to the minimum 18m lot frontage requirement is acceptable in this case.

2. Site Isolation

The proposal does not include the two adjoining sites - No. 1 Arncliffe Street and No. 7 Arncliffe Street. These two lots will be the only remaining sites located between this proposal and the railway line to the west and the recently completed mixed use development to the east at No. 9-11 Arncliffe Street (DA-2013/181), and therefore may be isolated if this application is approved. In accordance with Controls 2 & 3 of Part 4.1.9 of RDCP 2011 consideration has been given to site isolation, including consideration of the Planning Principles established by the Land and Environment Court in relation to site isolation in *Melissa Grech V Auburn Council* (2004) NSWLEC40, *Cornerstone Property Group Pty Ltd V Warringah Council* [2004] NSWLEC 189 and *Karvellas V Sutherland Shire Council* [2004] NSWLEC 251. The Planning Principles are generally as follows:

"(i) Is amalgamation of the sites feasible?

To determine the answers to this question the principles set out by Brown C in Melissa Grech V Auburn Council (2004) NSWLEC 40 are used:

(a) Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.

(b) Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

(c) Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.

(ii) Can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

To answer this question, the following principles established in Cornerstone Property Group Pty Ltd V Warringah Council [2004] NSWLEC 189, and further established in Karvellas V Sutherland Shire Council [2004] NSWLEC 251, are used:

In answering this question the key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments".

Assessment:

The application was accompanied by a lengthy 221 page document prepared by Genevieve

Slattery Urban Planning (dated 28/11/15) which considered the site isolation issues associated with the proposal, including copies of emails and notes of negotiations undertaken by the owner of No. 3-5 Arncliffe Street to purchase both of the adjoining properties. The submission also included plans illustrating possible developments on both adjoining sites.

The documentation initially provided to Council did not include a recent valuation of the adjoining allotments nor a valuation of a comparable (amalgamated) development site. Council officers were therefore unable to determine whether the offers made to the adjoining owners were 'reasonable' in accordance with the Planning Principles. Furthermore, the schematic plans for development of No. 7 Arncliffe Street did not reflect the reality of the sites context and therefore failed to demonstrate that the orderly and economic development of this allotment was possible. Therefore, the applicant was asked to address these issues, including the provision of additional 'reasonable' offers (if necessary) to the adjoining land owners based on a recent valuation.

On 21 December 2016, the Applicant submitted the following additional information to Council:

- (i) Cover Email from Genevieve Slattery Urban Planning;
- (ii) Valuation Report for No.'s 1, 3, 5 & 7 Arncliffe Street, Wolli Creek, prepared by Herron Todd White, dated 6 December 2016.
- (iii) Amended schematic plans for a proposed development at 7 Arncliffe Street.
- (iv) Email from the owner of No. 7 Arncliffe Street declining a new offer to purchase their property. The offer was based on the valuation report.

On 11 January 2017 the applicant submitted a copy of an email from the owner of No. 1 Arncliffe Street rejecting the offer to purchase their property given that, in their opinion the "offer is manifestly below the fair market value of the property". The offer made was based on the recent valuation report.

On 30 January 2017 the applicant submitted additional overshadowing plans showing potential impacts resulting from the amended draft scheme at No. 7 Arncliffe Street on the existing development (and communal open space) of No.9-11 Arncliffe Street.

Council's Property Team reviewed the applicant's valuation and recommended that some further sales evidence be considered to demonstrate that the valuations were 'reasonable'. A further letter report prepared by Herron Todd White, the applicant's valuer, dated 13 February 2017 considered the additional properties and concluded that they consider that the valuations provided in their valuation report dated 6 December 2016 "are within market parameters".

While amalgamation of the sites is likely to achieve a better planning outcome, based on the above it is found that the offers made to the adjoining properties are reasonable offers. For this reason, combined with the historic evidence of negotiations undertaken by the applicant to purchase the adjoining sites (as discussed in more detail below), it is found that the first Planning Principle has been satisfied.

Furthermore, based on the schematic plans and information provided it has been found that the applicant has satisfied the second Planning Principle.

A more detailed assessment of each potentially isolated site is provided below:

A. Potential Isolation of No. 1 Arncliffe Street

No. 1 Arncliffe Street is a triangular shaped allotment with an area of 534.1m² and a primary frontage to Arncliffe Street of 25m. While the site frontage of 25m exceeds the minimum 18 metres required of RDCP 2011, the lot depth varies between 0m and 39.8m, and the triangular shaped site may therefore be unable to be developed to its maximum capacity.

The applicant has demonstrated that negotiations between the property owners commenced early on 30 August 2011 and continued until 15 May 2015, during which time the owner of No. 3-5 Arncliffe Street (the subject site) made three (3) written and verbal offers to purchase No. 1 Arncliffe Street. These offers were not based on a formal valuation of the adjoining site, but rather on recent sales evidence of nearby properties and various valuations of No. 3 & 5 Arncliffe Street. The owner of No.3-5 also met with the both owners of No. 1 & No. 7 Arncliffe Street during this time to discuss the development potential and opportunities of the sites if amalgamated, as detailed in the applicant's submission. As discussed above, the applicant has now made a further offer to purchase No. 1 for a value based on the recent valuation (dated 6 December 2016). This offer is considered to be a 'reasonable' offer as discussed above, however this offer has been declined in writing by the adjoining owner.

The applicant also submitted schematic plans for No.1 Arncliffe Street with the application. The plans were amended during the assessment process to include a 3m landscape setback to the railway line to be consistent with the landscape setback on 3-5 Arncliffe Street and on other nearby recent approvals at 15-21 Willis Street and 2-10 Willis Street. The amended plans demonstrate that development of No. 1 appears possible without resulting in significant and unexpected adverse impacts on adjoining sites as well as ensuring that an adequate level of amenity will be provided to future occupants of this site in accordance with the Apartment Design Guide. The proposal is schematic and a full assessment of detailed plans is required for this site, including consideration of SEPP 55 (Remediation of Land), SEPP BASIX, SEPP 65, and other relevant policy requirements. While the proposal may not be able to achieve its maximum potential, based on the information provided it is considered that the orderly and economic development of No. 1 Arncliffe Street can be achieved without amalgamation.

Therefore, while amalgamation of the sites would achieve a better planning outcome, the applicant has demonstrated that they have satisfied the Planning Principles established by the Land and Environment Court of NSW in relation to No. 1 Arncliffe Street.

B. Potential Isolation of No. 7 Arncliffe Street

No. 7 Arncliffe Street has a 16.1m frontage and a site area of 1,115m². The lot width does not satisfy the minimum 18m frontage required for a mixed use development under RDCP 2011 and is therefore potentially isolated. The site frontage is almost identical to the 16.26m frontage of the subject site (No.3-5 Arncliffe Street), while having a larger site area (being some 312m² larger than the subject site). The site is, however, constrained by its narrow width combined with its side boundary lengths of 60.1m and 70.2m, its site context and the railway line to the north. The site shape and its context will make it difficult for any development at the site to achieve its maximum potential due primarily to the potential overshadowing, bulk, scale and privacy impacts

to the adjoining property at No. 9-11 Arncliffe Street, as well as compliance with the Apartment Design Guide setback, cross-ventilation requirements and other key requirements.

Many of the challenges associated with development of No. 7 were articulated in Council's pre-DA meeting which was attended by the current owner of the site and detailed in the pre-DA letter dated 29 April 2014. The current owner of No. 7 is therefore aware of the site context, planning requirements and potential challenges associated with development of their land.

The applicant's submissions are assessed separately below and demonstrate that the Planning Principles have been satisfied:

(i) Applicant's submission dated 28 November 2015 (lodged with the DA).

The applicant's original submission lodged with the application includes evidence that negotiations between the property owner of No. 7 commenced early on 4 October 2013 and continued until 15 May 2015. The Development Application was subsequently lodged with Council on 30 November 2015. Furthermore, the applicant has provided evidence that a formal offer was made to the owner of No. 7 Arncliffe Street to purchase the property on 4 October 2013 and that an email response from owner of No. 7 was received on 5 October 2013 rejecting the offer and advising that they *"are not looking at selling this property at all as we are seeking Architects advise to submit DA to council for our own use of this property"*. The offer was not based on a formal valuation, however it was based on recent sales of adjoining properties in the same manner as discussed above previously.

The owner of No. 3 & 5 has advised Council that the following further actions were undertaken with the aim of purchasing or amalgamating their sites:

- (a) 10 January 2014 - met with owners of No. 1 & 7 to discuss options of amalgamating the sites,
- (b) June 2014 - met with owner at which time the owner of No. 7 presented plans for their site prepared for a pre-DA meeting with Council
- (c) August 2014 - discussions held with the owner of No. 7 at which time they advised that they had changed architects and intended to lodge a DA for their site
- (d) 7 May 2015 - letter sent to the owner of No. 7 requesting access to their property for the purposes of carrying out a formal valuation.
- (e) 12 May 2015 - the owner of No. 7 left a message for the owner of No. 3-5 Arncliffe Street advising them not to proceed with a valuation of his property.
- (f) 15 May 2015 - Letter from owners of No.1 & 7 Arncliffe Street denying access to their properties for purposes of a valuation.
- (g) 15 May 2015 - Letter from owners of No. 1 & 7 Arncliffe Street advising that the best course of action is to amalgamation the properties.

The draft plans for No. 7 Arncliffe street provided in the Applicant's submission of 28 November 2015 included a development comprising 40 apartments, 47 car parking spaces and ground floor retail tenancy. Based on a preliminary assessment, the proposed built form was found to be unacceptable due to potential impacts to adjoining properties (specifically No. 9-11 Arncliffe Street).

Therefore, the information submitted in the applicant's initial submission was inadequate to

demonstrate compliance with the Planning Principles.

(ii) Applicant's additional submission dated 21 December 2016

The supplementary information provided by the applicant on 21 December 2016 demonstrates that a 'reasonable' offer has been made to purchase No. 7 as discussed previously. Therefore the first of the two Planning Principles has been satisfied.

The amended schematic plans proposed a development with an FSR of 2.942:1 which exceeds the maximum 2.85:1 permitted under RLEP 2011. The proposal also included 13% deep soil area and provided, however included a shortfall of car parking spaces. These spaces could be provided over an additional level of basement.

The proposal did not, however, demonstrate that overshadowing impacts to No. 9-11 Arncliffe Street were minimised and in accordance with the ADG. Specifically the information provided ignored the impacts to the communal open space of No. 9-11 Arncliffe Street, including consideration of the cumulative impacts of this development combined with adjoining developments currently under construction. Based on the information provided it appeared that the communal open space area of No. 9-11 would be significantly impacted and would not comply with the ADG. It is noted that overshadowing impacts to No. 9-11 was also a key issue raised in the pre-DA advice provided to the architect for the owner of No. 7 (PDA-2014/32).

(iii) Applicant's additional submission dated 30 January 2017

The applicant submitted an additional solar analysis to Council on 30 January 2017 showing potential impacts resulting from their draft scheme at No. 7 Arncliffe Street on the existing development (and communal open space) of No.9-11 Arncliffe Street.

The additional overshadowing plans demonstrate that the draft scheme at No. 7 would continue to allow adequate direct sunlight to be provided to the units and communal open space of No. 9-11 at mid-winter in accordance with the ADG.

While the schematic plans for No. 7 propose a 4.5m side setback to No. 9-11 Arncliffe Street, while a 6m setback may be necessary to satisfy the visual privacy requirements from the Apartment Design Guide (ADG), it is considered that the plans demonstrate that the site can be developed without unreasonable impacts to the adjoining properties.

(iv) Conclusion - No. 7 Arncliffe Street

It has been found that the applicant has made a reasonable offer to purchase No. 7 Arncliffe Street and that they have therefore satisfied the first Planning Principle associated with isolated sites.

While it has been found that the development of No. 7 in isolation may not allow the site to be developed to its full potential, it is considered that the site will be capable of accommodating a mixed use or residential flat development of reasonable scale and density, and it is therefore considered that the site will not be 'isolated'.

Furthermore, the owner of No. 7 was made aware of the site constraints associated with

development of their site in isolation through the pre-DA meeting which they attended on 25 March 2014 (PDA-2014/32), and they must therefore be conscious of the implications this 'may' have for development of their land.

Therefore, while amalgamation of the sites would achieve a better planning outcome, the applicant has demonstrated that they have satisfied the Planning Principles established by the Land and Environment Court of NSW in relation to No. 7 Arncliffe Street.

4.4.7 Wind Impact

The application was accompanied by a Pedestrian Wind Environment Study prepared by Windtech (dated 20 November 2015) which included consideration of the effect of nearby buildings and land topography within a radius of 312.5m of the site. The study revealed that treatments are necessary to certain locations to achieve acceptable wind speed criteria for pedestrian comfort and safety. The measures include the extension of the awning above the car park entrance (at higher level to provide clearance for trucks) or provision of tree planting, and inclusion of full height impermeable screening along the eastern perimeter of the balcony to Unit 7.07 and the balustrade and roof of the balcony to be impermeable. These measures have been included in the draft conditions. Subject to compliance with the conditions and submitted wind report, the proposal is satisfactory in this regard.

4.5.1 Social Equity - Housing Diversity and Choice

Part 4.5 of RDCP 2011 contains objectives and controls that aim to ensure that apartments in mixed use developments are flexible, maximise housing choice and provide equality of access. The proposal is considered to satisfy the relevant objectives and requirements. Compliance with the key controls are discussed below:

- Provision of 10%-30% 1 bedroom units, 50-75% 2 bedroom units, and 10-20% 3 bedroom units. The proposal includes 29.6% x one-bed & studio units, 63% x two-bed units and 7.4% three-bedroom units, as well as nine (9) boarding rooms. The proposal generally complies with the unit mix with the exception of the proportion of 3 bed units. The proposal provides a mix of units that is consistent with surrounding development and the objectives of the clause. The proposed variation is minor. The mix is therefore considered satisfactory in this case.
- Minimum 10% of units being adaptable in accordance with AS 4299, and barrier free access to be provided to a minimum of 20% of apartments.
Part 4.5.1 requires that a minimum of three (3) dwellings are to be provided as adaptable units in accordance with AS 4299. The proposed development was accompanied by an Access Report prepared by Design Confidence which concludes that the proposal will be capable of providing the required number of accessible units, including two units and one boarding room (and associated car parking spaces), and achieving compliance with the BCA and applicable codes / standards.

The proposal is therefore considered to satisfy the requirements of Part 4.5 of RDCP 2011 subject to inclusion of recommended conditions.

4.6 Design of Loading Facilities

The proposal includes a loading area for Small Rigid Vehicles (SRV) with a maximum height of 3.5m within a part of the driveway at the front of the site for use by removalist companies. The proposal is considered satisfactory for the relatively small development.

4.7 Waste Storage and Recycling Facilities

The application includes a garbage chute for waste and provision of a 240L recycling bin at each floor level of each building. A garbage storage room is provided at ground floor level which can accommodate three 1,100L bins and a six 240L recycling bins. In addition, space is available for the storage of bulky waste items such as furniture. This is consistent with Council's Technical Specifications and all recent approvals for developments in the locality. The proposal is therefore satisfactory with regards to waste storage & recycling.

4.7 Servicing - Wolli Creek and Bonar Street

There are no overhead cables located in front of the subject site, therefore the applicant is not required to place any cables underground as part of this proposal.

5.2 RFB - Rear Setbacks

The proposal has been designed to comply with the minimum 12m rear setback requirement contained in RDCP 2011, however the proposal was amended to include some encroachments into the 12m zone as recommended by the Design Review Panel (DRP). The proposal is acceptable in this regard.

5.3 Mixed Use - Retail

The proposal does not include 10% of the gross floor area as retail development as required by RDCP 2011, however the development includes a live / work unit which has its work component at ground level comprising 1.16% of the total GFA. The applicant contends the variation is acceptable in this case as the site is not located within the Wolli Creek Town Centre as identified in the DCP and is instead located within the periphery of an area where pure residential development is permissible. Also, the proposal has included additional ceiling height on the first floor being 3.2m to allow for commercial adaptation should the demand arise in future. The applicant's rationale is generally agreed with. The proposal includes a commercial premises at the ground level to activate the street, and is considered to provide adequate ability for commercial uses within the site if required in future. The proposal meets the objectives of the requirement and is supported.

5.3 Mixed Use - Awnings

The amended proposal includes an awning to identify the building entry, however the wind report recommended that the awning be provided for the full frontage of the building, including at elevated level above the small rigid vehicle parking area. The provision of a continuous awning is consistent with other similar developments nearby and will provide weather protection for people accessing the building and walking to the train station. Therefore, a condition is proposed requiring that an awning be provided for the full site frontage, however that it be stepped to avoid conflict with future tree planting in the verge. The proposal is therefore acceptable in this regard.

7.1.4 Wolli Creek Land Use Strategy

The site is characterised as 'mixed use' within the land use strategy, and the proposal includes a live / work unit which aims to achieve this objective of the DCP. The proposal also has 3.2m floor to ceiling heights at first floor level to provide flexibility for commercial use in future if required. While the provision of commercial floor space is minimal, as discussed previously, the policy does not strictly require that all buildings be designed as mixed-use buildings. Residential flat buildings are also permissible on these sites and within the B4 Mixed Use zone, and some developments on nearby and adjoining sites are also fully residential. In this case, it is unlikely that a larger commercial tenancy would be feasible due to the sites location and visibility. Additionally, numerous other commercial tenancies are proposed nearby at the intersection of Willis Street and Arncliffe Street under separate development applications,

as well as within other nearby mixed use developments and Wolli Creek town centre. The proposal has been designed to ensure that the street frontage is activated and will provide passive surveillance of the street, and that the first floor level can be converted to commercial if required. The proposal is therefore acceptable in this regard.

7.1.7 Wolli Creek Built Form: Building Heights and Density

The proposed development is part eight (8) and part nine (9) stories in height, and exceeds the maximum eight (8) storeys specified in the Building Height Control map in RDCP 2011. The proposal complies with the maximum 28m height limit in RLEP 2011, and is considered to satisfy the objective of this control which is " *To provide a reasonable incentive to achieve high quality development with a range of use*". The applicant also considers that the variation is acceptable for the following additional reasons:

- *the proposed additional level has been setback in excess of 5.15m from the front of the level below, so that it will not be readily visible to pedestrians in the Arncliffe Street public domain;*
- *the proposed additional level has been designed with access from the level below, so as to eliminate the requirement for fire stairs and lift overruns, which would further add to the height of the proposed development;*
- *the proposed additional part storey does not create any unreasonable overshadowing impacts in relation to nearby properties;*
- *the proposal complies with the maximum FSR permitted at the site, including the Affordable Housing bonus.*

Other developments on nearby sites have also exceeded the maximum eight (8) storey height limit, and the proposal is within the maximum height permitted by RLEP 2011. Therefore, the variation is acceptable in this case.

7.1.8 - Wolli Creek Mixed Use Street Frontage

The proposal has zero side setbacks to ensure that street wall buildings will be achieved as required by the DCP. Furthermore, the proposal has a 2 metre setback to the building facade at all levels as required by RDCP 2011, however includes a nil setback for the 3m width of bedrooms at Level 1 & Levels 3 to 7.

The applicant considers that the proposed variation to the 2m front setback control is acceptable in this case as the proposal is consistent with the objectives of the control in the following ways:

- *the proposed building is primarily setback 2m, with small protrusions to create articulation and modulation. To this end, the proposed front elevational treatment will reinforce the public domain and relate appropriately to the neighbouring sites, once they are redeveloped (objective a);*
- *the proposal incorporates an active frontage at ground floor level with a live/work tenancy and generously proportioned entry lobby. An awning coupled with the minimal driveway width, provide a pleasant pedestrian environment (objective b);*
- *the proposal incorporates an active frontage to the street, with balconies, living rooms, boarding house rooms, bedrooms and a live/work tenancy provided on the front elevation. This combination of uses will ensure maximum opportunity for passive surveillance over the approaches to the site (objective c); ad*
- *the proposal provides a generously proportioned entry lobby and live/work tenancy at ground floor level, to provide an attractive and comfortable pedestrian environment. It is envisaged*

that the live/work tenancy will be occupied by a small professional (e.g. real estate agent, accountant, hairdresser, beautician, masseuse or similar), who would provide a service to the local population (objective d).

The applicant's rationale is generally agreed with. The minor protrusions into the building setback provide a vertical break in the building which, combined with other architectural treatments, breaks up the facade and enhances the buildings appearance in the streetscape. Furthermore, similar protrusions into the 2m setback zone have been provided for the nearby development at 9-11 Arncliffe Street and this development is found to provide a positive contribution to the streetscape (see **Figure 8**). The proposal will meet the objectives of the control and the minor variation is therefore supported in this case.

Clause 92 EP&A Regulation 2000 – Additional Matters

In accordance with Section 79C(1)(a)(iv), consideration has been given to the provision of the Regulations. Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of *AS 2601:1991 - Demolition of Structures* when demolition of a building is involved. In this regard a condition of consent is proposed to ensure compliance with the standard.

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

S.79C(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:

- **Traffic & Parking**
The site is located approximately 600m walking distance of Wolli Creek railway station and 525m walking distance to Arncliffe railway station, an in proximity to bus stops for a number of bus routes linking Wolli Creek to the wider region. The application complies with the parking requirements in the ADG as well as the provision of motorcycle and bicycle parking facilities, visitors parking, loading bay and car wash bay in accordance with RDCP 2011. The proposal was also accompanied by a Traffic & Parking Impact Assessment Report prepared by Transport & Traffic Planning Associates (amended to address the amended plans, Revision E), which concluded that the proposal would add only very minor additional movements to the network which would not contribute to any perceptible change to the existing traffic circumstances. Therefore, the parking and traffic impacts of the proposal are considered to be minimal and satisfactory.
- **Social Impact**
The proposal incorporates nine (9) boarding rooms within a mixed use development. Combined with the range of unit sizes, the development will encourage a social mix that is considered appropriate and is supported. The amended proposal will also activate and enhance the public domain. The residential units have access to good public transport that will assist to reduce car use, and the proposal includes motorcycle and bicycle parking. The proposal also includes a north facing area of communal open space which will benefit from good solar access throughout the year. The proposal is not considered to result in any significant adverse social impacts and is satisfactory for the site.

- **Safety and Security**
Safer by Design principles of crime prevention through environmental design are incorporated into RDCP 2011 and this aspect has been considered in the assessment of this proposal. The proposal has been designed as a secure development, with restricted access to private and communal areas. The proposal has been amended to further activate the Arncliffe Street ground level to maximise passive surveillance of the public domain. Furthermore, draft conditions are proposed requiring the installation of CCTV cameras at relevant locations, the preparation of a lighting maintenance policy, use of graffiti resistant materials at ground floor level and provision of an intercom facility for residents.
- **Construction**
Construction of the mixed use development involves excavation works, piling, and construction of the building. The impacts will be minimised through use of standard conditions relating to hours of construction, noise and vibration, dust suppression, traffic management, shoring of adjoining properties, and the like, as well as specific conditions imposed by Sydney Trains to minimise impacts on the adjacent rail line. A draft condition is also proposed requiring submission of a Construction Management Plan (CMP) that will address all relevant conditions and include measures to be implemented to minimise impacts to nearby residents / tenants and the general public during construction.

S.79C(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. The application was referred to Sydney Trains given the sites proximity to the railway line, and concurrence has been issued. 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.

S.79C(1)(d) - Public submissions

The development has been notified in accordance with the provisions of Rockdale DCP 2011 and one (1) letter of support was received. The amended proposal was notified to surrounding properties in accordance with RDCP 2011, and no submissions were received.

S.79C(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.

S94 Contribution towards provision or improvement of amenities or services

The proposal is subject to Council's S94 Contributions Plan and a condition of consent has been included in the draft Notice of Determination requiring the payment of the relevant contributions.

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 5 Prohibition of the construction of buildings of more than 50 feet in height in specified areas

The subject site is affected by the 15.24m building height Civil Aviation Regulation. The proposed building height exceeds 15.24m and has a maximum height of 34.7m (to AHD), and therefore the proposal was referred to Sydney Airports for comment. Sydney Airports by letter dated 14 December 2015 approved the proposed height subject to conditions. The recommended conditions have been included in the draft Notice of Determination.

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
Architectural Plans – Project No. 14004			
Cover Page / Location Plan DA001 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Visual Design Statement DA002 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Site Analysis Plan DA100 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Basement 02 Floor Plan DA110 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Basement 01 Floor Plan DA111 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Ground Floor Plan DA112 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Level 01 Floor Plan DA113 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016

Level 02 Floor Plan DA 114 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Level 03-06 Floor Plan DA115 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Level 07 Floor Plan DA116 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Level 07 Attic Floor Plan DA117 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Roof Floor Plan DA118 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Elevations DA210 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Sections DA310 (Rev D)	BKA Architecture	14 Nov 2016	14 Nov 2016
Driveway Profile DA311 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Area Diagrams DA711 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Colour & Material Finishes Board DA900 (Rev C)	BKA Architecture	5 Jul 2016	28 Jul 2016
Landscape Plans			
Hardworks Plan Ground & L1 LA01 (Rev A)	Taylor Brammer	21 Jul 2016	28 Jul 2016
Planting Plan – Ground & L1 LA02 (Rev C)	Taylor Brammer	21 Jul 2016	28 Jul 2016
Landscape Sections LA03 (Rev A)	Taylor Brammer	21 Jul 2016	28 Jul 2016
Landscape Details LA04 (Rev A)	Taylor Brammer	21 Jul 2016	28 Jul 2016

If there is any inconsistencies between the above plans and the conditions, then the conditions of consent prevail.

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 (684168M_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>.

6. Further alterations and/or additions to the subject building shall not be undertaken without first obtaining approval. This includes the fitting of any form of doors and/or walls.
7. Any balconies required to be partially enclosed to comply with Sydney Trains requirements (refer to Condition 11) must not be used for habitable purposes. These areas must be retained as 'private open space'.
8. The pergola structures 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. Materials and Finishes
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 Section 96 application and approval under the EP&A Act.

Development specific conditions

The following conditions are specific to the Development Application proposal.

11. Sydney Trains

The development must be undertaken in accordance with all requirements contained in the letter of Concurrence issued by Sydney Trains, dated 9 November 2016, including the following:

A1. The following items are to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate:
drainage

- Revised Geotechnical Report based on additional boreholes undertaken following the demolition of any buildings. Location and depth of new boreholes are to be agreed to by Sydney Trains.
- Final Structural Drawings/Methodology based on the revised Geotechnical Report containing (but not limited) the following:
 - The deflection wall extending 2 metres above track level rather than 2m above ground level as Sydney Trains specify height requirements for the walls in terms of height above track level. This would require the wall to be another 1200mm higher.
 - Details regarding whether the wall and the floors that prop the wall have sufficient strength to support the earth pressure and impact loadings that it needs to be designed for.
- Details regarding the development's compliance with Australian Standard AS5100.
- If required by Sydney Trains, a Finite Element Analysis (or similar assessment) based on the revised Geotechnical Report and Final Structural drawings/methodology. This Analysis shall predict (but not limited to) the

lateral and vertical displacement at the track position and what mitigations are to be put in place to manage any risks.

The Principal Certifying Authority is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.

A2. The following items are to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate:

- Machinery to be used during excavation/construction.
- Construction and Demolition plan listing the vibration generating equipment, anticipated levels of vibration and proposed method of monitoring
- A vibration and track settlement monitoring plan containing.

The Principal Certifying Authority is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.

A3. All piling and excavation works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects.

A4. No rock anchors/bolts are to be installed into Sydney Trains property or easements.

A5. Prior to the commencement of works the Applicant shall peg-out the common property boundary with RailCorp's land. This work is to be undertaken by a registered surveyor.

A6. The Applicant is to submit to Council, for its records, copies of any certificates, drawings or approvals given to or issued by Sydney Trains.

A7. During all stages of the development extreme care shall be taken to prevent any form of pollution entering the railway corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.

A8. Drainage from the development must be adequately disposed of/managed and not allowed to be discharged into the corridor unless prior approval has been obtained from Sydney Trains.

A9. Sydney Trains and Transport for NSW, or any persons authorised by them for this purpose, are entitled to inspect the site of the approved development and all structures to enable it to consider whether those structures on that site have been or are being constructed and maintained in accordance with these conditions of consent, on giving reasonable notice to the principal contractor for the approved development or the owner or occupier of the part of the site to which access is sought.

A10. Prior to the commencement of works, on the completion of works, or at any time during the works period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys

will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains.

A11. An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines".

A12. Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.

A13. The Applicant is to ensure that the development incorporates appropriate anti-graffiti measures acceptable to Sydney Trains.

A14. Given the possible likelihood of objects being dropped or thrown onto the rail corridor from balconies, windows and other external features (eg roof terraces and external fire escapes) that are within 20m and face the rail corridor, the Applicant is required to install measures (eg awning windows, louvres, enclosed balconies, window restrictors etc) which prevent the throwing of objects onto the rail corridor. These measures are to comply with Sydney Trains requirements. The Principle Certifying Authority is not to issue the Construction Certificate until it has confirmed that these measures are to be installed and have been indicated on the Construction Drawings.

A15. The design, installation and use of lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of Sydney Trains. The Principle Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

A16. Prior to the issue of a Construction Certificate a Risk Assessment, Rail Safety Management Plan, and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail. The Principal Certifying Authority shall not issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

A17. Prior to the commencement of works the Applicant shall obtain Sydney Trains advice regarding the adequacy of the existing fencing along the rail corridor to prevent access to the rail corridor during these works. Should Sydney Trains determine that fencing needs to be augmented in order to comply with this requirement then this shall be undertaken in accordance with the Sydney Trains requirements.

A18. Prior to the commencement of works appropriate fencing is to be in place along the rail corridor to prevent unauthorised access to the rail corridor during construction. Details of the type of fencing and the method of erection are to be to

the satisfaction of Sydney Trains prior to the fencing work being undertaken.

A19. The development shall have appropriate fencing fit for the future usage of the development site to prevent unauthorised access to the rail corridor by future occupants of the development. Prior to the issuing of an Occupation Certificate the Applicant shall liaise with Sydney Trains regarding the adequacy of any existing fencing along the rail corridor boundary. Details of the type of new fencing to be installed and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.

A20. Prior to the issuing of a Construction Certificate the Applicant is to submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. The Principal Certifying Authority shall not issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

A21. Prior to the issue of a Construction Certificate the Applicant is to submit to Sydney Trains the demolition, excavation and construction methodology and staging for review and endorsement. The Principle Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

A22. No metal ladders, tapes and plant/machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to the train pantographs and 1500V catenary, contact and pull-off wires of the adjacent tracks, and to any high voltage aerial supplies within or adjacent to the rail corridor.

A23. Prior to the undertaking of works or the issuing of a Construction Certificate (whichever occurs first), the Applicant must hold current public liability insurance cover for a sum to be determined by Sydney Trains. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.

A24. Prior to the undertaking of works or the issuing of a Construction Certificate (whichever occurs first), the Applicant is to contact Sydney Trains Rail Corridor Management Group to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the entire works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to the issuing of the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.

A25. Prior to the issuing of an Occupation Certificate the Applicant is to submit the as-built drawings to Sydney Trains and Council. The as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into Sydney Trains property or easement.

The Principal Certifying Authority is not to issue the Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this

condition has been satisfied.

A26. The Applicant must provide a plan of how future maintenance of the development facing the rail corridor is to be undertaken. The maintenance plan is to be submitted to Sydney Trains prior to the issuing of the Occupancy Certificate. The Principle Certifying Authority is not to issue an Occupation Certificate until written confirmation has been received from Sydney Trains advising that the maintenance plan has been prepared to its satisfaction.

A27. The Applicant is to obtain Sydney Trains endorsement prior to the installation of any hoarding or scaffolding facing the common boundary with the rail corridor.

A28. No work is permitted within the rail corridor, or its easements, at any time unless prior approval or an Agreement has been entered into with Sydney Trains. Where the Applicant proposes to enter the rail corridor, the Principal Certifying Authority shall not issue a Construction Certificate until written confirmation has been received from Sydney Trains confirming that its approval has been granted.

A29. There is a need to ensure that the roots and foliage of trees being planted beside the rail corridor do not have an impact on the rail corridor. The development landscaping and planting plan should be submitted to Sydney Trains for review.

12. Ausgrid Requirements

(a) Prior to any development being carried out, the approved plans must be submitted to Ausgrid's local customer service office for approval to determine whether the development will affect Ausgrid's network or easements.

(b) The applicant must check the location of underground cables by using Dial Before You Dig and comply with the requirements of NS156: Working Near or Around Underground Cables (Ausgrid, 2010).

13. Sydney Airport Corporation Limited (SACL) Conditions

Sydney Airport Corporation Limited (SACL) has approved the maximum height of the proposed development at 34.7 metres relative to Australian Height Datum (AHD). This height is inclusive of all vents, chimneys, aerials, TV antennae, trees and construction cranes etc. No permanent or temporary structure (including construction cranes, etc.) is to exceed this height without further approval from Sydney Airport Corporation Limited. Construction cranes require approval prior to the commitment to construct as they may not be approved under the Airports (Protection of Airspace) Regulations.

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.

14. Construction Plans / Documentation

The plans submitted with the Construction Certificate shall include, and/or be amended to address, the following matters:

(a) Balustrades - The balustrades of balconies facing Arncliffe Street at Levels 01 & 02 must be fully opaque / frosted glass (where not solid), and the balustrades for

Levels 03-07 must be part opaque / frosted glass and part clear glazing (where not solid) (i.e. Material BAL1 as shown on Plan DA900). This requirement is to ensure adequate privacy is retained for residents and to screen display of bicycles etc. that may be stored on the balconies.

(b) Awning - An awning shall be provided for the full width of the frontage of the site (at an elevated level above the loading bay) to provide wind and weather protection for pedestrians using the footpath along Arncliffe Street as detailed in the submitted Wind Report prepared by Windtech (dated 20 November 2015). The awning shall be designed in accordance with the requirements in RDCP 2011, and shall include provisions for proposed street tree planting.

(c) Boarding Room Sizes - The size of boarding Rooms 2.01 and 2.04 must be reduced to ensure compliance with Clause 30(1)(b) of State Environmental Planning Policy (Affordable Rental Housing) 2009 which restricts boarding rooms to a maximum gross floor area of 25 square metres (excluding any area used for the purposes of private kitchen or bathroom facilities). No boarding room may have a GFA in excess of 25m².

(d) The finished surface level of the rear outdoor podium area must be constructed a minimum of 200mm below the habitable floor level for the whole building perimeter to prevent water from flowing into the building.

(e) Podium Level 01 - The following amendments are required to Level 01:

(i) the seating and BBQ located toward the northern corner of the site shall be provided with a permanent roof structure for weather protection. The structure shall have a maximum height of 3.5 metres and a maximum area of 15m²;

(ii) the depth of the private courtyards for Units 1.03 & 1.04 shall be reduced to be a maximum depth of 4.0 metres when measured perpendicular to the rear elevation of each dwelling. The remaining area shall be dedicated as communal open space and provided with planter beds to ensure that a usable area is provided for residents of the facility;

(iii) the architectural plans are to be made consistent with the items above and the amended Landscape Plans (see below).

(f) Landscape Plan must be amended as follows:

(i) Minimum 1m depth of planting soil to be provided for the full 3m wide deep soil zone located at the rear of the site to permit tree planting.

(ii) The drainage pit located within the planter bed within the deep soil planting area adjacent to No. 7 Arncliffe Street must be moved to be within the turf area to ensure that planting in the planter beds will not be impeded.

(iii) Permanent roofing shall be provided to the BBQ and table located toward the northern corner of the site.

(iv) A minimum 800mm soil depth is required for any planter boxes at podium level.

(v) A fully automated drip irrigation system, approved by Sydney Water, must be installed and maintained to ensure adequate water is provided to the podium and roof landscaping. Such system must be connected to the rainwater tank.

(vi) podium landscaping and paved areas shall be drained into the stormwater

drainage system.

(g) Any hot water systems/units located on the balcony of a dwelling shall be encased in a recessed box with the lid/cover of the box designed to blend in with the building and all associated pipe work is to be concealed, as required by Control 19 of Part 4.7 of Rockdale DCP 2011.

(h) Ceiling Heights

(i) 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.

(ii) Ceiling heights for all non-habitable areas shall be a minimum of 2.4 metres as measured vertically from finished floor level to the underside of the ceiling.

(i) Lift Size – All lift cars are to have minimal internal dimensions of 2.1m x 1.5m, must be capable of carrying stretchers and have lift door openings wide enough to enable bulky goods (white goods, furniture etc) to be easily transported.

(j) The windows to the breezeway / access corridors for both buildings must include operable windows to ensure natural ventilation of these spaces.

(k) Mechanical ventilation - Any mechanical ventilation system for the basement car park must comply in all respects with the requirements of Australian Standard 1668, Part 1 & 2. If vents for this system are proposed within the podium level landscape area they must be appropriately designed and screened by landscape planting.

(l) The walls of the internal courtyard shall be finished with white panels / cladding similar to the image submitted to Council on 14 November 2016.

15. Parking Allocation

Car, motorcycle and bicycle parking spaces shall be provided and allocated in accordance with the Apartment Design Guide (ADG) and relevant Rockdale Development Control Plan (RDCP) 2011 requirements, and this shall be reflected in any subsequent strata subdivision of the development. The allocation shall occur at the following minimum rates:

Dwelling Size	Required
Studio / 1 bed dwellings = 8	0.6 spaces / dwelling = 4.8
2 bedroom dwellings = 17	0.9 spaces / dwelling = 15.3
3 bedroom dwellings = 2	1.4 spaces / dwelling = 2.8
Boarding Rooms = 9	1 space / 5 boarding rooms = 2
Total Residential Car Parking Spaces	25 spaces (min.) (including 3 accessible spaces)
Visitor	1 space / 5 dwellings = 6 spaces (including 1 accessible space)
Bicycle (Res. + Com.)	1/10 units + 1/10 boarding rooms = 5 spaces (Min.)
Motorcycle (Res + Com.)	1/15 units + 1/10 boarding rooms = 4 spaces (Min.)

Carwash Bay

1 space (shared with visitors /
van space)

Notes:

- *Visitor's parking spaces are to be restricted to Ground Floor Level only.*
- *All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.*
- *Stacked parking spaces must only be allocated to a single residential unit.*
- *Car-wash bay 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.*

16. Street Numbering & Letterbox Provision

(a) The building shall be provided with the following street number:

- 3 Arncliffe Street, Wolli Creek

(b) Mail boxes must be installed in the position shown in the approved plans. The letterboxes must be lockable.

(c) 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.

17. Design Quality

(a) 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 the Council 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.

18. Storage

Prior to issue of the Occupation Certificate accessible storage shall be provided for all apartments in accordance with the Apartment Design Guide (ADG) and the following requirements:

(a) The minimum storage area to be provided for each dwelling shall be:

- Studio / 1 bed unit = 6m³
- 2 bed unit = 8m³
- 3 bed unit = 10m³

(b) A minimum 50% of the storage space required by (b) above shall be provided in each apartment.

(c) The storage areas located within the basement levels shall be of metal construction (mesh and/or solid metal) and be provided with lock and key prior to issue of the Occupation Certificate.

19. **Boarding House Conditions**

(a) Occupancy - Nothing in this consent authorises the use of Level 2 of the premises as detailed on the approved plans for any land use of the site beyond the definition of Boarding House.

A Boarding House is defined as "a building that:

- (i) is wholly or partly let in lodgings, and
- (ii) provides lodgers with a principal place of residence for 3 months or more, and
- (iii) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
- (iv) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

Note. Boarding houses are a type of residential accommodation—see the definition of that term in this Dictionary.

(b) The Boarding House is to operate in accordance with the requirements of the State Environmental Planning Policy (Affordable Rental Housing) 2009. Any variation of the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

(c) The boarding house shall comply with the following:

- A maximum of 9 boarding rooms and one (1) common room shall be provided on the site.
- No boarding room will be occupied by more than two (2) persons, accommodating a maximum of 18 persons at any one time;
- All fixtures, fittings, furniture, shall be constructed of durable, smooth, impervious materials capable of being easily cleaned. All parts of the premises and all appurtenances (including furniture, fittings, bedsteads, beds and bed linen) must be kept in a clean and healthy condition, and free from vermin.
- Cooking facilities including hotplates, ovens and the like are not permitted within boarding rooms. Microwaves are permitted.
- A 24 hour, 7 day contact number shall be provided to all immediate and nearby residential neighbours for use in the event of a disturbance. If the contact number changes, neighbouring residents shall be provided with a new telephone number with 7 days.

(d) Plan of Management (PoM)

- The boarding house shall at all times be operated in accordance with the Plan of Management (PoM) prepared by Genevieve Slattery Urban Planning (Ref: 15048, dated 14 November 2016) and submitted to Council on 14 November 2016 (except where amended in accordance with item (d) below).
- A copy of the the approved PoM shall be displayed in the Communal Room and within each of the boarding rooms at all times;
- A copy of the PoM shall be made freely available to family and visitors who frequent the facility, as well as to neighbouring property owners and local residents, if requested.
- The PoM shall be reviewed annually. If the Plan of Management is updated following the review, the operator is required to:
 - ensure that the amended PoM is consistent with all conditions of this consent;
 - a copy of the amended Plan of Management is provided to Council within 7 days of completion;
 - the PoM is updated, if required, to include comments provided by Council.

(e) Subdivision of the boarding rooms is not permitted. The boarding house, comprising the whole of Level 2, is to remain in single ownership and management at all times.

(f) All tenants must enter into an occupancy agreement prior to commencing tenancy at the premises. The minimum period for the occupancy agreement must three (3) months in accordance with the definition of 'boarding house' in the AHSEPP & Rockdale Local Environmental Plan 2011 (see 'A' above).

(g) A copy of the annual fire safety statement is to be prominently displayed in the approved Boarding House. Note: An annual inspection will be carried out by Council to determine that all conditions of consent and fire safety measures are being complied with. An additional fee may be charged for the required inspection as adopted in Council's fees and charges.

(h) The boarding house component of the building shall be designed, constructed and maintained to comply with the requirements of the Local Government Act 1993, Local Government (General) Regulations 2005, Public Health Act 2010, Public Health Regulation 2012, Boarding Houses Act 2012 and Boarding Houses Regulation 2013.

(i) Two (2) car parking spaces, a minimum of two (2) motorcycle spaces and a minimum of two (2) bicycle parking spaces shall be provided for use by occupants of the Boarding House at all times. This shall be shown in any future subdivision of the development.

(j) Prior to issue of the Occupation Certificate:

- The boarding house must be registered with Council.
- Details, including name, contact number & email address of the Boarding House Manager are to be provided to Council. Should these details change at any time, revised information shall be provided to Council within 7 days of the change in manager.
- Each bedroom must be numbered in accordance with the approved plans.
- The maximum number of persons allowed to be accommodated in each boarding room must be displayed clearly on the door of or in each rooms.
- A schedule showing the numeral designating each bedroom and dormitory and the number of persons permitted to be accommodated in each must be conspicuously displayed on the premises.

20. Services

(a) Fire Boosters - The fire booster valves must be located in the position shown in the approved plans. Any amendment to the Fire Booster location must be approved by Council's Director of City Planning and Development. A S96 application may be required.

(b) Antenna / Satellite Dishes - The proposal may include the installation of a single master antenna for the development in accordance with Controls C1 and C2, Part 4.7 of RDCP 2011. No further antennas or satellite dishes may be installed without obtaining further approval (unless permitted as exempt development).

(c) Substation - If a substation is required by Ausgrid, the location shall be approved by Council's Director of City Planning and Development prior to issue of the Construction Certificate. Note: Council's preference for the location of the substation is within the footprint of the building. A S96 application may be required.

(d) All vertical plumbing, other than roofwater heads and downpipes, shall be concealed within the brickwork / facade of the building.

21. 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:

(a) 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.

(b) 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.

(c) Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.

(d) Graffiti resistant materials shall be used to ground level external surfaces.

- (e) 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.

22. Communal Open Space - Use

The Communal Open Space area provided to the rear of the site at Podium / Level 1 must be freely available to all occupants of the development, including residents of the boarding rooms, for the lifetime of the development in accordance with the commitments provided with the Application. This must be reflected in any future subdivision of the development.

- 23. Signs or goods shall not be displayed or placed on the public footpath or any other part of the public road at any time without Council's consent.
- 24. 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.
- 25. The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the rainwater tank and pump systems.

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.
- 26. 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.
 - 27. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.
 - 28. Noise from Mechanical Plant / Ventilation & Air Conditioning
 - (a) 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.

(b) 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.

(c) 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.

29. Dewatering Not Approved

This consent does not grant approval for any dewatering of the site on a temporary, permanent or semi-permanent basis. If groundwater is encountered, the works must cease until a permit has been issued by the Department of Primary Industries (NSW Office of Water) pursuant to the Water Management Act 2000, and, in the case where water is to be pumped into the public road, a permit has been issued pursuant to the Roads Act 1993.

30. 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.

31. 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.

32. Hot and cold water hose cocks shall be installed to the garbage room.

33. (a) Flooring within the development shall achieve the following minimum equivalent Association of Australian Acoustical Consultants (AAAC) Star Rating within the below specified areas of the development:

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.

(b) Walls within the development shall be constructed to satisfy the requirements of the Building Code of Australia.

(c) A report shall be submitted to the Principal Certifying authority for approval prior to the issue of the relevant 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.

(d) A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the report required by (c) above satisfies the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

34. The trees located within the footprint of the proposed building, and the tree located on No. 1 Arncliffe Street impacted by excavation works, may be removed subject to

replacement tree planting in accordance with the approved landscape plan.

35. Any soil disposed of off-site shall be classified in accordance with the procedures in the NSW Environment Protection Authority's Environmental Guidelines: Waste Classification Guidelines (2009).

36. Acoustic Report

Adopt and implement all recommendations contained in the acoustic report prepared by Acoustic Logic – 3-5 Arncliffe Road Wolli Creek, - DA Rail Noise and Vibration and Aircraft Noise Assessment Project Number. 20151062.1, Document Reference 20151062.1/1509A/R0/GC dated the 15 September 2015.

37. Remediation of Land - SEPP 55

The contaminated site shall be remediated in accordance with 'State Environmental Planning Policy No 55 Remediation of Land' (SEPP55). All remediation and validation works shall be carried out in accordance with the Site Remedial Action Plan called Report – Remedial Action Plan for Kasaf Pty Ltd, 3-5 Arncliffe Street Wolli Creek – Report No. 16/1661 Project No. 20524/7139C dated July 2016 prepared by STS GeoEnvironmental.

38. Parking & Vehicular Access

The design and construction of the off-street parking facilities shall comply with the following requirements:

- Comply with Australian Standards, as follows:
 - (i) AS/NZS 2890.1:2004
 - (ii) AS2890.2:2002
 - (iii) AS2890.3:1993
 - (iv) AS/NZS2890.6:2009
- Car Wash Bay - Comply with Rockdale Technical Specification – Stormwater Management, in relation to the minimum width and configuration of car wash bays.
- Provide bicycle parking facilities for residents that are class 1 or 2 in accordance with AS2890.3:1993. Bicycle parking facilities for residents shall not be Class 3 facilities.
- Provide for a raised median between ingress and egress lanes of the access driveways to allow for installation of entry and communication systems at entry gates.
- 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.
- Design the entry gate location for the basements so that there is no effect to traffic on the road (including footpath / cycleway) from vehicle queuing at the gate, and as a minimum of 1 car space must be provided between the gate and the future property boundary, subject to compliance with AS2890.1:2004, which may require more than 1 car space queue length.
- The visitor parking must be conveniently located at Ground Floor Level only to permit tenant parking to be able to be securely separated from the visitor

parking area if required in future. One (1) visitor parking space shall be marked for use by a Van for loading and unloading purposes, and be a minimum dimension of 5.4m x 3.0m, with an unrestricted height clearance of 2.3m.

- The SRV loading dock area to have minimum 3.5m height clearance.
- Allocate all off street visitor parking, loading bays and car wash bays as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.
- Parking allocation conditions apply 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.
- Headroom clearance for car spaces located below planter boxes or deep soil areas shall be a minimum of 2.3m.
- 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.

39. (a) A by-law shall be registered prior to registration of any Strata Plan and maintained for the life of the development, which requires that :

(i) 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;

(ii) 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;

(iii) 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.

(iv) The planter boxes located within the central courtyard must be maintained at all times.

(b) Proof of registration of the By Law shall be submitted to Council prior to the registration of any Strata Plan.

40. Public Place Activities - Design and Construction of Works in Public Places

The implementation of this Consent generates a need for works to be completed in a public place owned by Council.

A. Design

The scope of works is to be identified 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 City Council.

Note: To enable the scope of works to be determined and alignment levels issued a completed application 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 determined and alignment levels issued.

Note: The works required will be determined using the following criteria:

- i) To ensure that infrastructure construction and reconstruction required to facilitate both pedestrian and vehicular access into and around the site is provided.
- ii) To ensure that there is adequate construction and reconstruction of stormwater infrastructure to facilitate drainage of the site and minimise impacts to the site and adjoining properties as a result of the development.
- iii) To ensure that infrastructure relevant to the proposed development meets current standards and specifications.
- iv) To mitigate any impacts the development may have on traffic and pedestrian safety.
- v) To satisfy the requirements of any Development Control Plan, Public Domain Plan, Streetscape Manual or any other relevant Council Plan, including the Section 94 Contributions Plan.
- vi) To ensure there are adequate transitions between newly constructed infrastructure and existing infrastructure.

B. Before Construction of public domain works

A detailed design and specification for works to be carried out on public land (including a road or footpath) shall be completed and approved by Bayside Council pursuant to the Roads Act and/or Local Government Act prior to construction. All fees for inspection by Bayside Council shall be paid and the works approval for works in a public place activated.

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.

C. Before Occupation

All works required in the public place as detailed by the approved design and specification must be completed before occupation of the development. All works-as-executed records for works establishing infrastructure assets to be handed over to Council for ongoing maintenance shall be provided to Bayside Council, and a handover certificate issued by Bayside Council.

41. Public Place Works - Pre-commencement Inspection

The implementation of this Consent generates a need for the adequate regulation of the works and activities in a public place.

A. Before Public Place Works

A Pre-commencement Inspection/meeting is to be convened by the holder of the

Consent for the works approval for works in a public place. The meeting shall be held on-site a minimum 5 days prior to any demolition and/or construction activity and be held between the hours of 8.00 am and 4.30 pm Monday to Friday. The meeting must be attended by a representative of the Principal Certifying Authority, the builder/site manager of the building/civil construction company and supervising engineer, in addition to a representative of Bayside Council. The attendance of the owner is required when it is intended to use more than one builder/principal contractor throughout the course of construction.

The purpose of the meeting is to:

- i) Ensure safe passage for pedestrians, Work and Hoarded Zones are maintained in accordance with Bayside Council requirements;
- ii) Check the installation and adequacy of all traffic management devices;
- iii) Confirm that the consents, approved design plans and approved specifications are retained on site.

Note: The consent for the works approval for works in a public place must be activated and all inspection fees must be paid to Bayside Council prior to the meeting. Please refer to Bayside Council Councils Adopted Schedule of Fees and Charges

42. Public Place Activities - Approvals Required under Roads Act or Local Government Act

A. Before Construction

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.

43. Public Place Activities - Site Management Plan

The implementation of this Consent generates a need for works on the development site and in a public place to be appropriately managed to ensure the protection of the environment and safety of the other public place users.

A. Before Commencement of Works including Demolition

A Site Management Plan must accompany the completed application form. If any demolition of infrastructure in a public place is to commence prior to the issue of a works approval for works in a public place the applicant must submit to Bayside Council a separate Demolition Site Management Plan. These plans must satisfy the Objectives and Controls of Bayside Council Development Control Plan 2011 relating to site management and must incorporate the following throughout demolition and construction:

- i) safe access to and from the site during construction and demolition
- ii) safety and security of the site, road and footpath area including details of proposed fencing, hoarding and lighting
- iii) method of loading and unloading excavation machines, building materials
- iv) how and where, construction materials, excavated and waste materials will be stored.
- v) methods to prevent material being tracked off the site onto surrounding roadways
- vi) erosion and sediment control measures

B. During Works

The site management plan measures must remain in place and be maintained throughout the period of works and until the site has been stabilised and/or restored in accordance with the works approval for works in a public place.

Prior to issue of the construction certificate

The following conditions must be completed prior to the issue of the Construction Certificate.

44. 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 \$6,804.00. 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.
45. 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.
46. An application for Boundary levels shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary works, egress paths, driveways and fences shall comply with this level.
A fee is payable to Council for the determination of boundary levels. 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.
47. A Section 94 contribution of \$659,585.41 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	\$384,995.39
Community Services & Facilities	\$1,077.74
Child Care Services	\$1,006.05
Library Services	\$14,564.32
Town Centre & Streetscape Improvements	\$37,484.70

Wolli Creek Redevelopment Area Infrastructure	\$77,326.67
Traffic Management	\$132,755.00
Wolli Creek Employment Development (Amend 5)	\$19.62
Plan Administration & Management	\$10,355.92

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.

48. 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.
49. Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Access in accordance with Australian Standard 4299 must be provided to and within two (2) residential units and one (1) boarding room as shown in the approved plans, and between this units and their allocated carparking space. The unit numbers are 2.04, 3.03 and 4.03 and the allocated parking space must be located in close proximity to the access points of the building. Please note that compliance with this condition requires the relevant unit(s) to be constructed to comply with all the essential (Type C) requirements of AS4299.

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.

50. 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.
51. (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.

52. 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.
53. **Sydney Water**
The approved plans must be submitted to Sydney Water's 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.

The new Tap in™ online self-service replaces Sydney Water's Quick Check Agents

as of 30 November 2015, and is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

The Tap in™ service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, eg relocating or moving an asset.

54. Details shall be submitted to Council for assessment and approval pursuant to Section 138 of the Roads Act 1993 in relation to the following:
 - (i) Construction of a median running for the full length of the street frontage of the subject site being 3 and 5 Arncliffe Street.
55. 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.
56. 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.

57. As the basement floor 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) Implement all recommendations contained in the report prepared by STS GeoEnvironmental Pty Ltd., Report No: 15/2434, Project No: 20524/5938C, dated October 2015 and the Geotechnical Investigation and Acid Sulfate Soil Assessment report, Report No: 15/2282, Project No: 20524/5937C, dated September 2015.

(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.

58. 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 damage 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.

59. Any sub-surface structure within the highest known groundwater table / rock + 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.**

60. 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.
61. Prior to issue of Construction Certificate, a swept path analysis shall be submitted to, and approved by, the Certifying Authority for assessment.

The swept path drawings shall include the entry/exit of the internal ramps within the basement levels and an ‘SRV’ sized vehicle entering/exiting 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.

62. The Principal Certifying Authority shall not issue a Construction Certificate until a detailed acoustic assessment /report of all mechanical plants (ventilation systems, exhaust fans, ventilation fans and condenser units) and equipment including air-conditioners which meet the NSW EPA Industrial Noise Policy and Protection Of Environment Operations Act 1997 noise emission criteria for residential air - conditioners as specified in acoustic report prepared by Acoustic Logic – 3-5 Arncliffe Road Wolli Creek, - DA Rail Noise and Vibration and Aircraft Noise Assessment Project Number. 20151062.1, Document Reference 20151062.1/1509A/R0/GC dated the 15 September 2015 has been carried out.

The acoustic assessment / report shall include at least the following information:

- the name and qualifications or experience of the person(s) preparing the report
- the project description, including proposed mechanical plants, ventilation systems, exhaust fans, ventilation fans and condenser units and any noise producing equipment including air-conditioners
- relevant guideline or policy that has been applied
- results of background and any other noise measurements taken from most noise affected location at the boundary line
- meteorological conditions and other relevant details at the time of the measurements
- details of instruments and methodology used for noise measurements (including reasons for settings and descriptors used, calibration details)
- a site map showing noise sources, measurement locations and potential noise receivers

- noise criteria applied to the project
- noise predictions for the proposed activity
- a comparison of noise predictions against noise criteria
- a discussion of proposed mitigation measures, the noise reduction likely and the feasibility and reasonableness of these measures
- how compliance can be determined practically

The report shall be prepared by a suitably qualified and experienced acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants). It shall be submitted to the Principal Certifying Authority. All recommendations and/or noise mitigation measures (If applicable) shall be complied with.

63. 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.
64. 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.
65. Prior to the issue of the Construction Certificate, amended detailed drainage design plans for the management of stormwater are to be submitted to, and approved by, the Principal Certifying Authority.

The amended design shall address the following issues:

The detailed plans are required to show that

- (a) The detailed plans are required to show the basement levels as tanked system.
- (b) In accordance with section 7.1.9 of Councils DCP 2011 where within the Wollie Creek area a development is required to capture the first 10-20mm of stormwater runoff and detained for re-use purposes, a rainwater tank is required.
- (c) To incorporate an oil separator in accordance with Rockdale Technical Specification – Stormwater Management, section 7.5.4.
- (d) The design shall identify, and discuss in detail, the measures put in place to re-use water, maintain groundwater quality, minimise at source generation of water pollutants, and convey stormwater flows through the site

Numerical design standards

- The piped drainage within the site should be capable of conveying the 5% AEP flow; and
- Overland flow paths (i.e. situated internally within the building and used when the flow in the piped drainage exceeds the 5% AEP flow) should be capable of conveying the 1% AEP flows.

Meet general controls

- 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.

66. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with the Rockdale Council Stormwater Management Technical Specifications.

Prior to commencement of works

The following conditions must be completed prior to the commencement of works.

67. 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.
68. 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.

69. 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.
70. 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.
71. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably

qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.

72. 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.
73. 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.
74. If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first; and the arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant/ developer.

During demolition / excavation / construction

The following conditions must be complied with during demolition, excavation and or construction.

75. 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.
76. 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.
77. 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.

78. 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.
79. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
80. 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.
81. 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.

82. 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.

83. Any new information discovered during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, shall be notified to Council being the Regulatory Authority for the management of contaminated land.

84. 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.

85. 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.
86. Adopt and implement all recommendations contained in the Geotechnical Investigation and Acid Sulfate Soil Assessment for KASAF Pty Ltd ATF KASS Family Trust prepared by STS GeoEnvironmental Pty Ltd Report No. 15/2282 Project No. 20524/5937C dated September 2015.
87. 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.
- 88. 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.
- 89. All trees located within the adjoining Railways property must not be removed or pruned without the prior written consent of Sydney Trains and, where relevant, in the form of a Permit issued under Council's Development Control Plan 2011.

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.

- 90. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 91. 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.
- 92. 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.
- 93. The two existing lots 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.
- 94. Landscape Completion / Certification / Management
Prior to issue of the Occupation Certificate:
 - (a) All landscape works are to be carried out in accordance with the approved landscape plans.
 - (b) 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.

The certificate shall, amongst other matters, confirm compliance with the following

- (i) Minimum 1m depth of planting soil to be provided for the full 3m wide deep soil zone located at the rear of the site to permit tree planting.
- (ii) A minimum soil depth of 800mm is provided for planter beds on the podium levels;
- (iii) A fully automated irrigation system has been installed to the podium landscaping;
- (iv) Podium landscaping and paved areas are drained into the stormwater drainage system.

(c) The approved landscaping is to be maintained to the approved standard at all times.

- 95. 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.
- 96. 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.
- 97. Where an electricity substation is required, it shall be provided in the approved location prior to issue of the Occupation Certificate. 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 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.
- 98. 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".
- 99. 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.
- 100. The driveway is to be constructed to a maximum width of 6.0m at the boundary.

Note: The public domain related works to be in accordance with Wolli Creek Precinct Public Domain Plan and Technical Manual.

- 101. Convex mirrors shall be installed at blind corners to provide increased sight distance for vehicles.

The single lane 2 way ramps shall be controlled by traffic signals with the following operational mode:

- Automatically revert to and dwell on green for incoming
- Outgoing driver activates push button
- Signals change to red for incoming and green for outgoing
- After a preset clearance time signals revert to red for outgoing and green for Incoming.

- 102. The gate for the basement shall be located in order to permit the queuing of one (1)

vehicle when waiting to enter the basement garage.

103. Bollard(s) shall be installed by the Developer on adaptable shared spaces.
104. Thirty-one (31) off-street car spaces, and a minimum of four (4) motorcycle spaces and a minimum of five (5) bicycle parking spaces, shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction. The pavement of all parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements. The car / motorcycle / bicycle parking spaces shall be allocated in accordance with the requirements of Condition 15 of this consent.
105. 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.
106. 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.
107. Acoustic Report - Compliance Certificate
 - (a) Prior to issue of the Occupation Certificate the applicant shall submit to the Principal Certifying Authority (PCA) an acoustic compliance report to verify that the measures stated in the acoustic report by 'Acoustic Logic – 3-5 Arncliffe Road Wollri Creek, - DA Rail Noise and Vibration and Aircraft Noise Assessment Project Number. 20151062.1, Document Reference 20151062.1/1509A/R0/GC dated the 15 September 2015', and the acoustic report required by Condition 62 which includes all other noise mitigation measures associated with the mechanical plants (ventilation systems, exhaust fans, ventilation fans and condenser units) and equipment including air-conditioners, have been carried out and certify that the construction meets the requirements contained in the report.
 - (b) The acoustic compliance report required by (a) above must also confirm that all windows facing the internal courtyard are double glazed and that air-conditioning has been provided to all units that have any windows facing the internal courtyard.
 - (c) The report required by (a) and (b) above shall be prepared by a suitably qualified and experienced acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
 - (d) If Council is not the PCA, a copy of the report required by (a) above shall be submitted to Council concurrently.
108. 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.

109. An accredited auditor under the Contaminated Land Management Act 1997 shall review the Validation Report prepared by the contaminated land consultant and issue a Site Audit Statement. The accredited auditor shall provide Council being the Regulatory Authority for the management of contaminated land, with a copy of the Site Audit Report and Site Audit Statement, prior to issue of the Occupation Certificate.
110. A Site Audit Statement (SAS) shall be submitted to Council being the Regulatory Authority for the management of contaminated land, prior to the issue of Occupation Certificate, clearly demonstrating that the site is suitable for the intended use. Conditions imposed on the SAS shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, the consent shall prevail to the extent of inconsistency and a S96 application pursuant to the Environmental Planning & Assessment Act 1979 will be required.
111. 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.
112. 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.
113. The underground garage shall be floodproofed to a minimum of 100mm above the 1% Annual Exceedance gutter flow. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
114. Positive covenants pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain
 - (i) the stormwater / rain tank facility to provide for the maintenance of the system; and
 - (ii) the ramp control traffic signals.
115. 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.

116. The outside finished ground level shall be constructed a minimum of 200mm below the habitable floor level for the whole building perimeter.
117. Signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only - No waste".

118. 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.

Roads Act

119. 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.

120. 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.

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

- (i) The existing concrete median island in Arncliffe Street shall be constructed / extended for the full length of the street frontage of the subject site being 3 and 5 Arncliffe Street to create a left entry/exit only for vehicles accessing the site.

Note: Detailed plans of the works 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.

122. 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.
123. 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.
124. 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.
125. 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 Arncliffe Street:
 - (i) Detailed design plans and specifications, including structural details and including compliance with the requirements of Condition 14; and,
 - (ii) Design certificate.

The awning shall be designed by a Chartered Professional Engineer (Structural).

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.

Subject to compliance with the requirements above, 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.

126. 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.
127. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu) or landscaped. If landscaping is proposed rather than turfing, details shall be submitted to the Property and Community Services Department for approval.

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. *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.

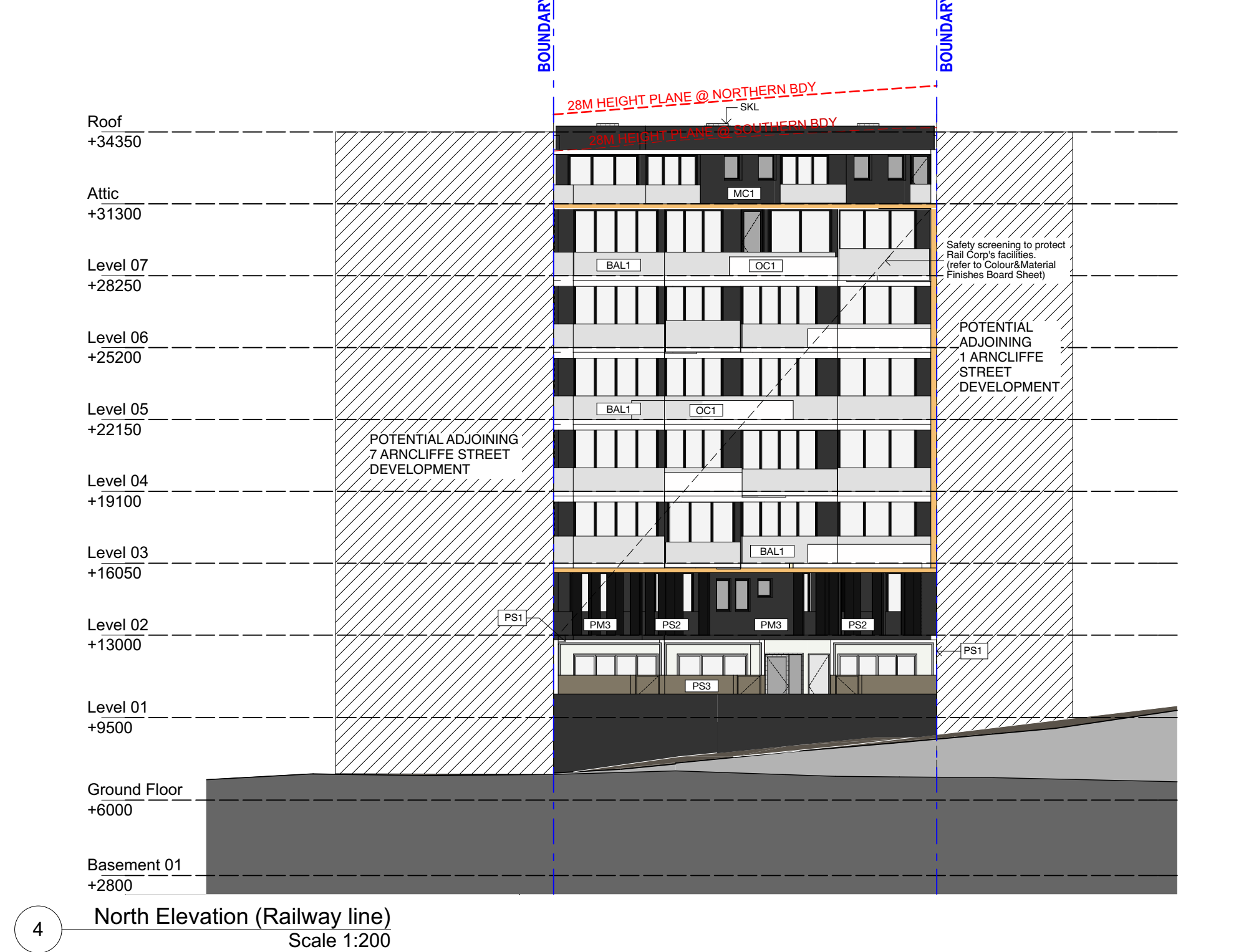
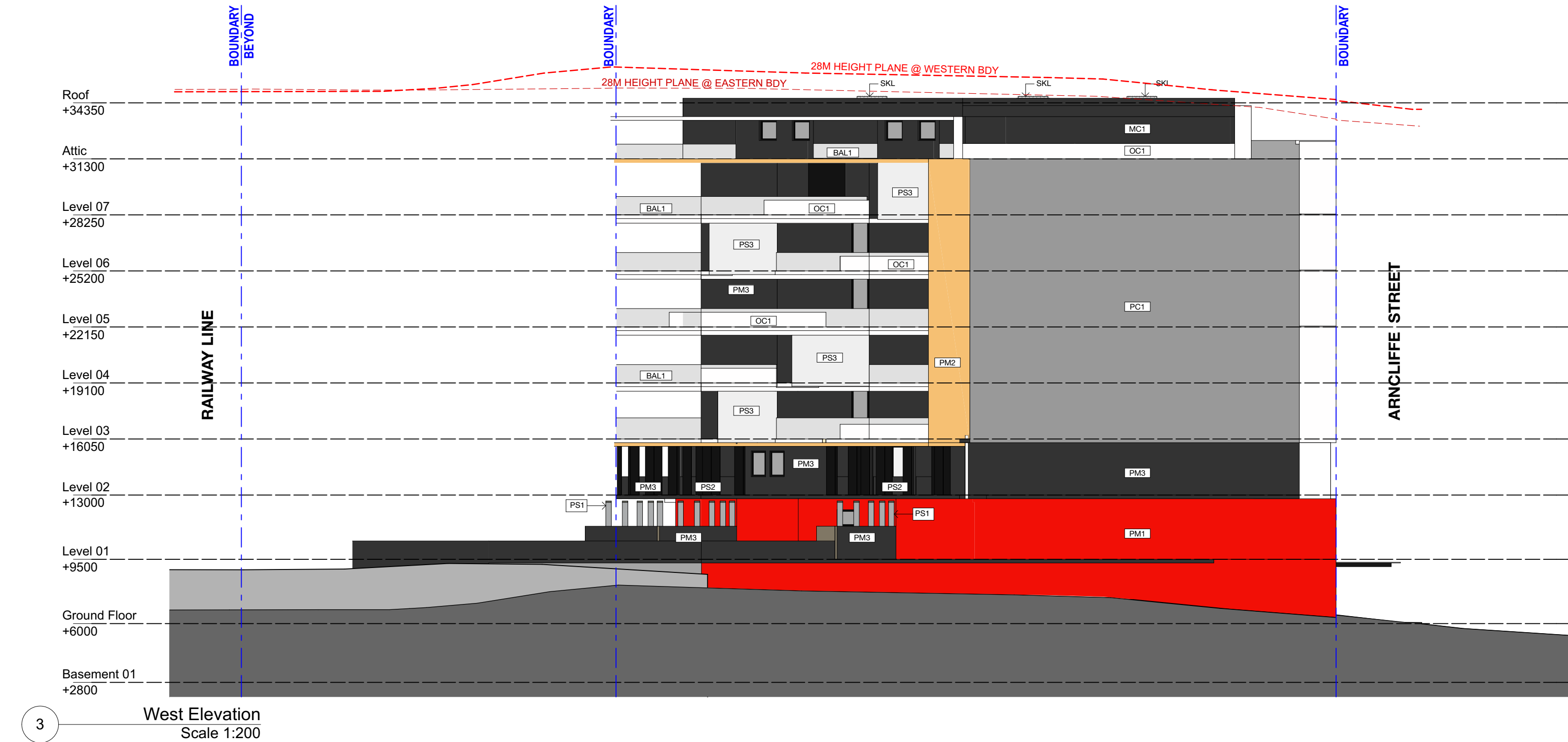
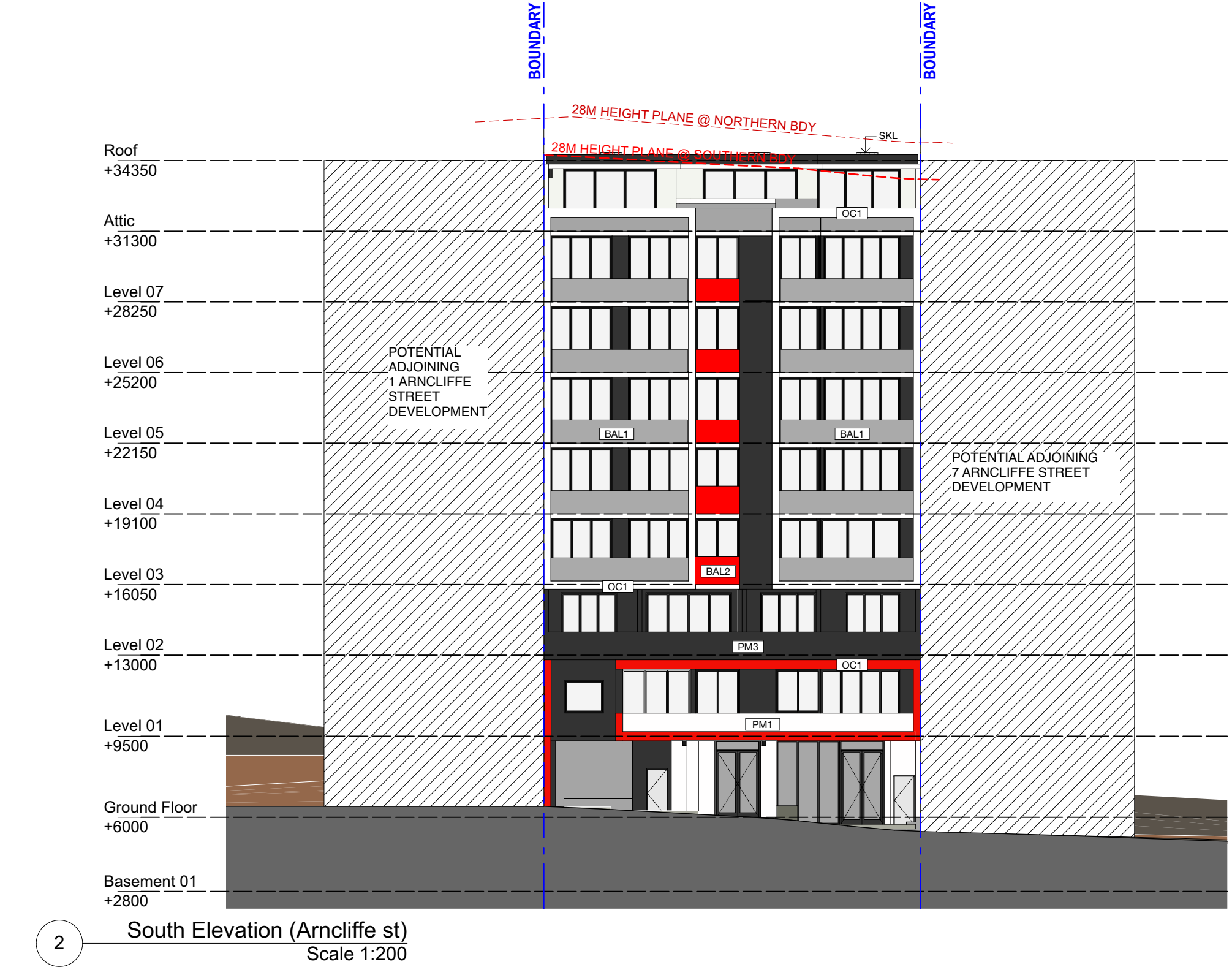
- c. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- d. 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.

- e. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Protection of the Environment Operations (Waste) Regulation 2005.
- f. 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.
- g. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- h. 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.

ISSUE	C	DATE	05.07.2016	REVISION	REVISED ISSUE FOR DA		
PROJECT	Mixed Use Development						
ADDRESS	3-5 Arncliffe St Wollli Creek NSW 2205						PROJECT # 14004
CLIENT	KASAF P/L ATF KASS				DATE	05.07.2016	DWG #
					SCALE @ A1	1:1, 1:100	
DWG	COVER PAGE / LOCATION PLAN				DRAWN	LS	DA001
					CHECK	JK	REVISION
							C



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ISSUE

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METAL CLADDING

PAINTED MASONRY TYPE 1

PAINTED MASONRY TYPE 2

PAINTED MASONRY TYPE 3

BALUSTRADE TYPE 1

BALUSTRADE TYPE 2

PERGOLA

POWDER COATING TYPE 3

SKYLIGHT

NORTH

BKA

architecture

Baker Kavanagh Architects

Suite 1.04, 77 Dunning Ave, Rosebery NSW

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W: www.bka.com.au

F: 612 9318 9222

E: bka@bka.com.au

ISSUE

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DATE

05.07.2016

REVISION

REVISED ISSUE FOR DA

PROJECT

Mixed Use Development

ADDRESS

3-5 Arnccliffe St Wolli Creek NSW 2205

CLIENT

KASAF P/L ATF KASS

DWG

ELEVATIONS

PROJECT #

14004

DATE

05.07.2016

DWG #

DA210

SCALE @ A1

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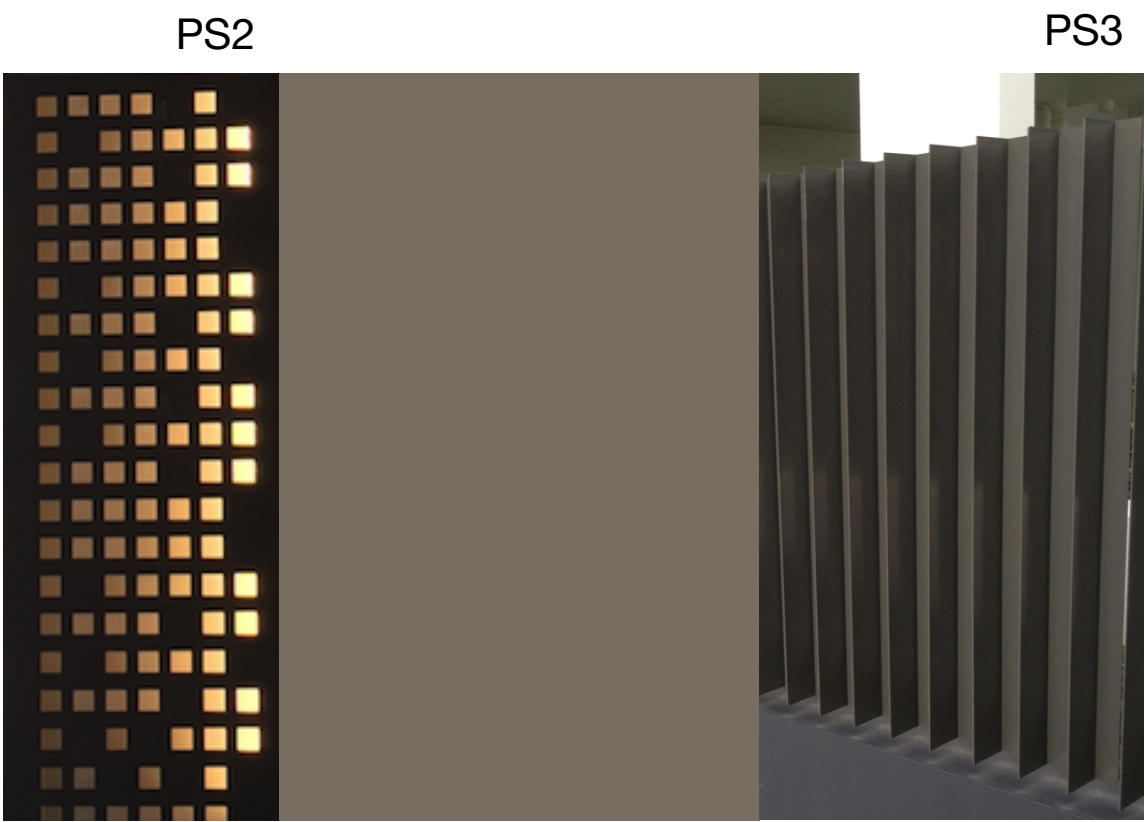
REVISION

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PERGOLA

7377K
VINTAGE SILVER
DULUX Electro



PRIVACY SCREENS

3116K
SHIMMERING CHAMPAGNE
DULUX ELECTRO



WALLS

PB1F6
SYMPHONY RED
DULUX



FRAME FACADE ELEMENT

PB2A7
CRAZY
DULUX



WALLS

PN2H7
TAMED TEXAN
DULUX



GRAPHIC PRECAST
CONCRETE

NATURAL CONCRETE GREY
COLOUR



COMMERCIAL SHOP FRONT

GLAZED



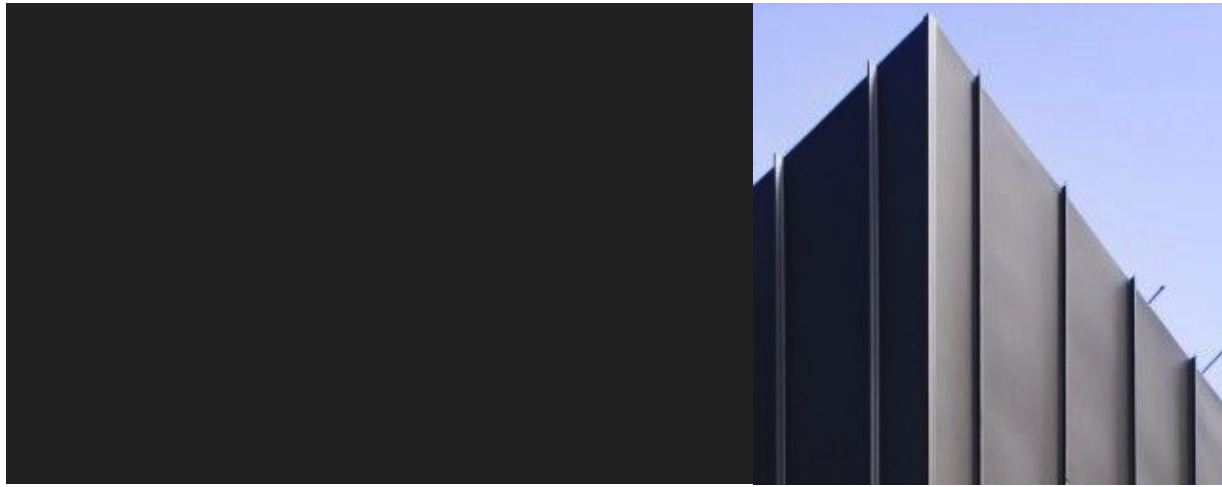
POWDERCOATED AL.
WINDOWS AND DOORS

88362 Satin
BERRY GREY
DULUX Duralloy



SOLID BALUSTRADES/
SLAB EDGES

NATURAL CONCRETE
GREY COLOUR



ATTIC

MONUMENT
COLORBOND



NORTH FACADE

VERTICAL MESH



PRIVACY SCREENS



BALUSTRADES

Fascia fixed. Flat handrail
THUMP



BALUSTRADES

Fascia fixed. Flat handrail
RED GLASS
THUMP



PS4

OC1

PC1

PS4

PM3

PS2

PM1

PS1

PS3

PM3

PM3

PC1

OC1

BAL1

PM1

PM3

PM1

PM3

BAL2

PWC1

PM3

OC1

CSF

REVISED ISSUE FOR DA

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All dimensions are in millimetres unless stated otherwise.
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ISSUE	C	DATE	05.07.2016	REVISION	REVISED ISSUE FOR DA
PROJECT	Mixed Use Development				
ADDRESS	3-5 Arncliffe St Wolli Creek NSW 2205				PROJECT # 14004
CLIENT	KASAF P/L ATF KASS				DATE 05.07.2016
DWG	COLOUR & MATERIAL FINISHES BOARD				DWG # DA900
SCALE @ A1	1:100				DRAWN LS
CHKD	JK				REVISION C



REQUEST PURSUANT TO CLAUSE 4.6, FOR EXCEPTION TO COMPLIANCE WITH CLAUSE 4.4(2) OF ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011

1.0 INTRODUCTION

This Clause 4.6 Exception Submission has been prepared by Genevieve Slattery Urban Planning Pty Ltd on behalf of Kasaf Pty Ltd T/F KASS Family Trust, the Applicant in relation to a Development Application for demolition of the existing structures at the site, and construction of a new mixed-use development at Nos. 3-5 Arncliffe Street, Wolli Creek, containing:

- two (2) basement parking levels;
- ground floor level car parking and a live/work tenancy;
- nine (9) boarding house rooms; and
- twenty-six (26) residential apartments.

This request has been prepared having regard to:

- Land and Environment Court of NSW judgment in Winten Property v North Sydney Council [2001];
- Land and Environment Court of NSW judgment in Wehbe v Pittwater Council [2007];
- Land and Environment Court of NSW judgments in Four2Five Pty Ltd v Ashfield Council [2015];
- Land and Environment Court of NSW judgments in Micaul Holdings Pty Limited v Randwick City Council [2015];
- Land and Environment Court of NSW judgments in Moskovich v Waverley Council [2016]; and
- NSW Department of Planning and Infrastructure's Varying Development Standards: A Guide 2015.

2.0 THE SITE

The site is located on the northern side of Arncliffe Street, to the west of its intersection with Willis Street, in Wolli Creek.

Figure 1 below shows the site. **Figure 2** provides an aerial view of the site in its immediate context.



Figure 1: location plan (© www.google.com.au)



Figure 2: aerial view of the site (© www.google.com.au)

The site is legally described as Lots 1 and 2 DP 319872 and commonly known as Nos. 3-5 Arncliffe Street, Wolli Creek (the site). The site has a frontage of 16.26m to Arncliffe Street and an overall area of approximately 803.8m².

The site contains a pair of single storey semi-detached dwelling houses with turfed/concreted rear yards and offstreet car parking. The rear of the site adjoins a railway line.

The site can be seen in **Figure 3** below.



Figure 3: View of the site looking north from Arncliffe Street

2.2 Surrounding development

2.2.1 To the south (front)

The site is adjoined to the south by Arncliffe Street. On the opposite side of Arncliffe Street is an eight (8) storey shoptop housing development currently under construction (see **Figure 4**).



Figure 4: view of the development under construction to the south of the site, looking south east from Arncliffe Street

2.2.2 To the north (rear)

To the north, the site is adjoined by a railway corridor (see **Figure 2** above). The corridor is largely screened from view within the site, by a series of trees along the site's northern boundary, which are proposed to be retained.

2.2.3 To the east (side)

To the immediate east the site is adjoined by No. 7 Arncliffe Street, which contains a single storey warehouse building (see **Figure 5**). Further east are two (2) construction sites, associated with the construction of new mixed-use developments at Nos. 9-11 and 13-21 Arncliffe Street respectively (see **Figure 6**).



Figure 5: View of No. 7 Arncliffe Street, looking north from Arncliffe Street



Figure 6: View of Nos 9-11 (in the foreground) and 13-21(behind scaffolding) Arncliffe Street, looking north east from Arncliffe Street

2.2.4 To the west (side)

The site is adjoined to the immediate west by No. 1 Arncliffe Street, which contains a two (2) and three (3) storey brick factory (see **Figure 7**).



Figure 7: View of No. 1 Arncliffe Street, looking north west from opposite the front of the site

2.3 Local streetscape

The surrounding area is undergoing significant transformation, with older style single and double storey industrial buildings being replaced with multi-storey residential flat and mixed-use buildings. The new buildings range between 8 and 13+ storeys, as part of the Wolli Creek Precinct redevelopment. Architecture in the locality is generally contemporary in style.

2.4 Public transport

The site is well located in relation to public transport, with the Wolli Creek and Arncliffe Railway Stations situated approximately 350m and 400m respectively from the site. Bus route 348 to Bondi Junction also operates from the Wolli Creek Railway Station.

3.0 THE PROPOSAL

The DA which this document accompanies, s Application seeks consent for the demolition of the existing structures at the site, and construction of a new mixed-use development containing:

- two (2) basement parking levels;
- ground floor level car parking and a live/work tenancy;
- nine (9) boarding house rooms; and
- twenty-six (26) residential apartments.

4.0 WHAT IS THE CLAUSE SOUGHT TO BE VARIED?

4.1 Clause 4.4(2) of Rockdale Local Environmental Plan 2011 (LEP 2011)

Clause 4.4(2) of LEP 2011 states the following:

“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 FSR map referred to by Clause 4.4(2) of LEP 2011 permits a maximum FSR of 2.85:1 at the site. The proposed development has an FSR of 3.38:1 and therefore exceeds the maximum permitted by 425.749m² or 18.6%.

It must be noted that as a result of written pre-DA advice from Council, where the Applicant was advised that a maximum FSR of 3.42:1 was permitted (including a 20% bonus under Clause 29(1)(c)(ii) of State Environmental Planning Policy (Affordable Rental Housing), that the proposal was designed to achieve compliance with this maximum.

It is understood that Council has subsequently received input from the Sydney Central Planning Panel, suggesting that since the development in its entirety does not comprise a boarding house, that pursuant to Clause 29 of the AHSEPP, Division 3 of the Policy, which includes reference to the bonus FSR provisions, does not apply to this DA.

While this position would seem contrary to the objectives of the AHSEPP, which are to encourage the development of affordable residential accommodation in appropriate locations, it is acknowledged, and this Clause 4.6 variation is submitted to Council as a gesture of abundant caution, in the event that this opinion is found to be correct.

5.0 CLAUSE 4.6 OBJECTIVES

Clause 4.6 of LEP 2011 has the following objectives:

- “to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

As discussed below, it is considered appropriate to invoke the provisions of Clause 4.6 of LEP 2011, in order to achieve a positive planning outcome at the site.

6.0 CLAUSE 4.6(3) PROVISIONS

Clause 4.6(3) states that 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 the following:

- (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 following discussion constitutes a written request seeking to justify the contravention of Clause 4.3 of LEP 2011.

7.0 CLAUSE 4.6(3)(a) - IS COMPLIANCE WITH THE STANDARD UNREASONABLE AND UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

7.1 Rockdale LEP 2011 aims

Clause 1.2(2) of LEP 2011 specifies the following broad aims:

- (a) *“to provide a vibrant area in which Rockdale residents can live, work and play,*
- (b) *to conserve the environmental heritage of Rockdale,*
- (c) *to maintain and improve residential amenity and encourage a diversity of housing to meet the needs of Rockdale residents,*
- (d) *to promote economic activity within Rockdale through the facilitation of commercial, employment-generating and tourism opportunities,*
- (e) *to provide high quality open space and a range of recreational facilities to meet the demands of Rockdale and its visitors,*
- (f) *to promote and enhance Rockdale’s foreshores,*
- (g) *to encourage residential and employment densities around transport nodes in order to provide sustainable transport options,*
- (h) *to minimise impacts on land subject to environmental hazards, particularly flooding.”*

The proposed development is consistent with the relevant aims, as follows:

- the proposal comprises a new high quality mixed-use development, in close proximity to public transport and Wolli Creek centre, which will encourage residents to make use of local services and the environment;

- the proposal will introduce 26 new dwellings and 9 boarding house rooms, which will bring a new population to the site, which is anticipated to have flow-on effects with the local economy;
- the proposal incorporates landscaping within the site so as to maximise opportunities for passive recreation;
- the proposal is within walking distance of Wolli Creek Railway Station and future residents will be encouraged to utilise rail infrastructure, due to its proximity; and
- the proposed development has been designed to minimise opportunities for potential flood inundation.

In this regard, the proposal meets the aims of LEP 2011, despite the non-compliance with Clause 4.4.

7.2 B4 Mixed Use Zone objectives

The site is located in the B4 Mixed Use zone where the objectives are as follows:

- *“To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.”*

The proposed development, incorporating construction of a new mixed-use development ¹, is permissible with consent in the B4 zone, and is consistent with the abovementioned zone objectives, as follows:

- the proposal incorporates residential, boarding house and live/work tenancies, which are compatible with each other and the context of the site; and
- the site is located within close proximity to Wolli Creek Railway Station and future residents and workers will be encouraged to use public transport, walking and cycling, rather than the private vehicle, due to the site's location, proximity to nearby cycle paths and provision of bicycle parking.

In this regard, the proposal meets the objectives of the zone, despite the non-compliance with Clause 4.4.

¹ “**Mixed-use development**” is defined in Rockdale Local Environmental Plan 2011 in the following manner:

“Means a building or place comprising 2 or more different land uses.”

8.3 Clause 4.4 Objectives

The objectives of the FSR Standard in Clause 4.3 of LEP 2011 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 proposal, despite the non-compliance with Clause 4.4(2) of LEP 2011, is consistent with the underlying objectives or purpose of the Development Standard, for the following reasons:

- the site is located within the Wolli Creek redevelopment area, where access to public transport is excellent, and where new infrastructure is either already provided, or in the process of being provided. The precinct is essentially a new urban precinct, where additional FSR can be accommodated;
- the proposal meets the numeric requirements in relation to the provision of car parking so as to minimise the demand for onstreet car parking;
- the proposal meets the maximum permitted building height standard;
- the proposal provides bicycle parking to encourage future occupants to travel by bike rather than by car;
- the proposal has no unreasonable adverse amenity impacts in relation to adjoining properties (see **Section 7.4** below); and
- the proposed development has been designed in a manner so as to provide an appropriate built form while the locality is undergoing transformation, as well as providing opportunities for the future redevelopment of the neighbouring properties.

7.4 Consideration of environmental impacts

7.4.1 Overshadowing

In order to quantify the impacts of the proposed development, BKA Architecture has prepared shadow diagrams, demonstrating the overshadowing impacts of the proposal on both the existing and potential future developed versions of the neighbouring sites.

The diagrams show that in the event that the neighbouring sites were to be redeveloped for mixed use or residential purposes, the proposal would meet the numeric requirements of Apartment Design Guide, which requires that developments ensure that a minimum of 50% direct sunlight is retained to the principal usable part of the communal open space of adjoining

developments for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).

7.4.2 Visual bulk, massing and streetscape

The overall height of the proposal complies with the maximum 28m height building height control in LEP 2011.

The proposed height is also commensurate with the height of other recently approved buildings in the locality, including that at Nos. 9-11 Arncliffe Street (see **Figure 8** below).



Figure 8: *Photomontage of the proposal in its context, including Nos. 9-11 Arncliffe Street which has an FSR commensurate with that proposed by this DA*

The building's facades are well modulated and articulated, incorporating contemporary design elements, varying materials, finishes and colours which also assist in reducing the visual bulk and scale of the building as viewed from the street and neighbouring properties.

The proposed form also allows for the redevelopment of Nos. 1 and 7 Arncliffe Street, as demonstrated in the schematics prepared by Baker Kavanagh Architecture, which have been supplied to Council.

As can be seen from **Figure 8** above, the proposed Arncliffe Street elevation has been broken into three (3) separate vertical elements, so as to minimise the perception of bulk and scale associated with the building. This is achieved through the use of vertical framing elements, screens, balcony balustrades and fenestration. The vertical emphasis reduces the perception of bulk and scale and achieves a rhythm which complements other recently constructed buildings in the locality.

The proposed built form also incorporates a clear base, middle and top, with the uppermost level well setback from the street edge, so as to minimise its visual impact.

The proposed ground floor level incorporates the lower level of a live/work dwelling, to activate the public domain and maximise future flexibility in terms of the provision of non-residential uses at the site's interface with the public domain. The proposed new building has been sensitively designed, so as to provide a high degree of articulation and modulation. The proposed development adopts a contemporary character and style, and achieves a bulk, scale and elevational character that complements the surrounding buildings and desired future character for the location.

The proposed landscaped areas will contribute significantly to the amenity and enjoyment of future occupants of the development while also providing a visually interesting aspect from the properties adjoining the site. Significant screen planting is proposed at the rear of the site, to provide a visual buffer between the site, communal open space and the adjoining railway corridor.

7.4.3 Visual privacy

The proposal will have an acceptable impact on the visual privacy of neighbouring properties for the following reasons:

- proposed landscaping has been arranged around the rear of the site to maximise visual privacy and amenity, and the incorporation of consolidated areas of deep soil permits substantial planting, to ensure a landscaped buffer is achieved, particularly to the adjoining railway corridor;
- screen landscaping minimises opportunities for overlooking into neighbouring properties;
- the western elevation has no windows;
- the eastern elevation has only a lightwell, which will be treated to minimise overlooking opportunities;
- north-facing balconies will primarily overlook the rear communal open space and opportunities for direct downward viewing into adjoining properties will be minimal due to their orientation and the provision of screen landscaping;
- adequate separation distances are provided between balconies and neighbouring properties, to minimise direct overlooking;
- proposed apartment layouts have been designed to minimise noise transmission between adjoining dwellings;

- the proposed development will comprise adequate insulation so as to comply with the BCA in relation to noise transmission; and
- an Acoustic Report, prepared by Acoustic Logic accompanied this DA, and Council can impose appropriate conditions of consent requiring compliance with the recommendations of the report.

7.4.4 Views

The proposal will not have an adverse impact upon any known significant views.

7.4.5 Heritage

The proposal has no impacts on any nearby heritage items or heritage conservation areas.

In this regard, the proposal meets the objectives of Clause 4.3 of LEP 2011, despite the non-compliance.

8.0 CLAUSE 4.6(3)(b) - ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

As can be seen from the preceding discussion, the proposed development has a minimal and acceptable level of impact in relation to neighbouring properties and the streetscape. The proposed development will make a positive contribution to the local streetscape.

The proposal has the following particular merits:

- it significantly improves the streetscape appeal of the site;
- it provides nine (9) new boarding house rooms to increase the availability of affordable residential accommodation in the locality;
- it provides twenty-six (26) new residential dwellings to increase housing stock;
- it is consistent with the general aims of LEP 2011;
- it is consistent with the objectives of the B4 zone under LEP 2011;
- it is consistent with the design quality principles of SEPP 65 and the ADG;
- it complies with the maximum building height control contained in LEP 2011;
- it will have no unreasonable adverse environmental impacts in relation to nearby properties or the locality more generally;
- it will have no unreasonable impacts in relation to traffic generation and car parking; and
- it provides high quality accommodation in a highly convenient and central location.

Furthermore, having regard to the merits of the proposal, demonstrated consistency with the zone and relevant Development Standard, it is considered that there are sufficient environmental planning grounds to justify contravening the Development Standard.

On this basis, it is considered that the proposal satisfies the requirements of Clause 4.4(2) of LEP 2011.

9.0 CLAUSE 4.6(5)(a) - MATTERS OF STATE OR REGIONAL ENVIRONMENTAL PLANNING

The proposed contravention of the Standard does not raise any matter of significance for State or regional environmental planning.

10.0 CLAUSE 4.6(5)(b) - THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD

The proposal could be amended to comply with the FSR Development Standard, however such a design change is considered to result in an inferior planning outcome, for the following reasons:

- the proposal provides boarding house rooms, which provide new affordable accommodation within a locality where such accommodation is expected to be in high demand, given the recent development of numerous apartment complexes in the area, priced outside the affordable housing range;
- the proposal complies with the maximum 28m height control which applies to the site;
- the proposal has been designed to minimise adverse amenity impacts in relation to neighbouring properties, as discussed above;
- the bulk and scale of the proposal is commensurate with several other recently approved DAs in the immediate vicinity, such that the resultant form at the site will sit comfortably within the transforming streetscape and make a positive contribution to the locality in terms of its form and streetscape presentation;
- the proposed FSR is consistent with that of several other recently approved developments in the immediate locality, including the following:
 - DA No. 2014/122 in relation to Nos. 13-21 Arncliffe Street, which incorporated mixed use development. The approved development (by way of a S96 Application) had an FSR of 3.41:1, which was 20% in excess of the maximum permitted by LEP 2011. The approved development also exceeded the maximum 28m height control, having an overall height of 30.71m;
 - DA No. 2016/24 in relation to Nos. 2-10 Willis Street, which incorporated a nine (9) storey residential flat building with an FSR of 3.4:1, being 20% in excess of the maximum permitted by LEP 2011. The approved development also exceeded the maximum 28m height control, having an overall height of 28.81m;
 - DA-2016/296 in relation to Nos. 7 & 9-13 Willis Street, which incorporated two (2) x nine (9) storey residential flat buildings. The approved development had an FSR of 3.42:1, being 20%

- more than permitted, and a height of 29.9m which exceeded the maximum 28m permitted under LEP 2011; and
- DA-2015/279/A in relation to Nos. 19-21 Willis Street, which incorporated two (2) x nine (9) storey residential flat buildings. The approved development had an FSR of 3.15:1 and a building height of 32.91m, both of which exceed the maximums permitted by LEP 2011.

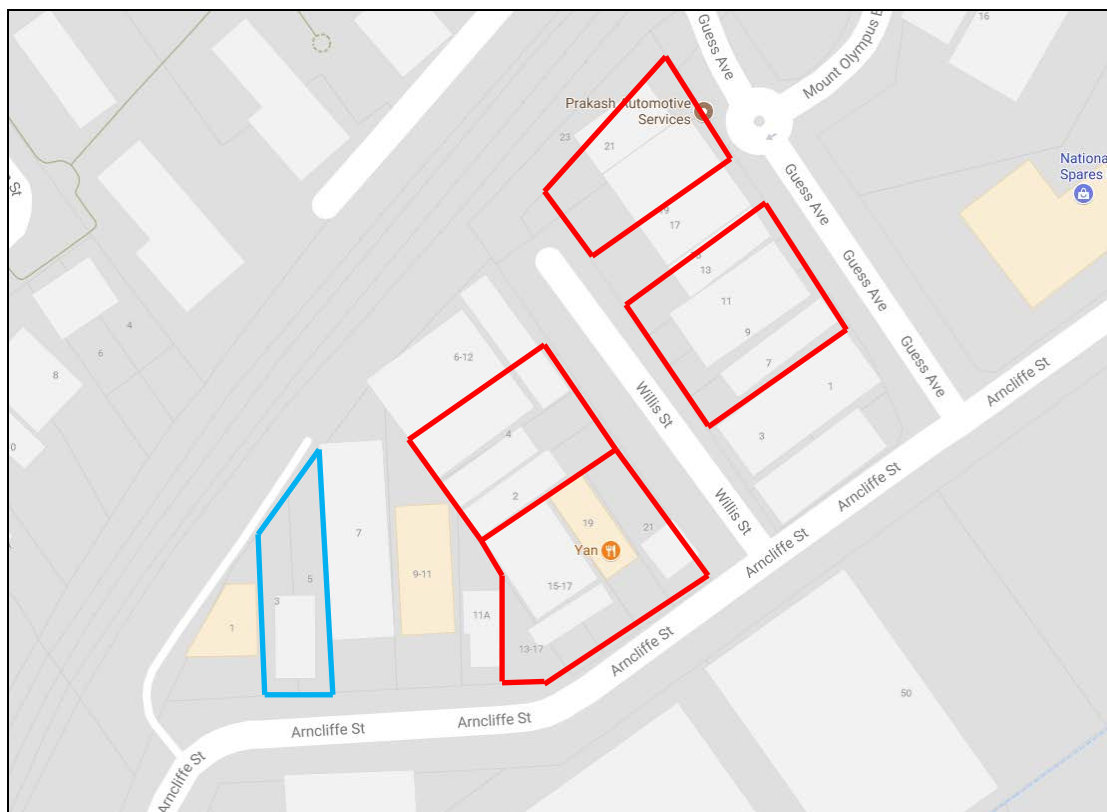


Figure 9: Location plan showing the site (in blue) and location of other DAs in the vicinity (in red), with FSRs commensurate with that proposed at the site

To this end, it is considered that there would be no public benefit arising from requiring compliance with Clause 4.4(2) of LEP 2011 and on this basis, the public benefit is considered to have been met regardless of the non-compliance.

11.0 CLAUSE 4.6(5)(c) – ANY OTHER MATTERS REQUIRED TO BE CONSIDERED

There are no other known matters required to be taken into consideration by the Director-General before granting concurrence.

12.0 IS THE OBJECTION WELL FOUNDED?

In considering if this Objection is well-founded, consideration of the following five-part test, established by the NSW Land and Environment Court is required to be made:

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. 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;
5. 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.

12.1 Are the objectives of the standard achieved despite the non-compliance?

As outlined above in **Section 4.3**, the objectives of the Development Standard is achieved despite the non-compliance.

12.2 Is the underlying objective or purpose of the standard not relevant to the development, such that compliance is unnecessary?

It is not considered that the underlying objectives of the Standard are irrelevant to the proposal, however, as demonstrated herein, it is submitted that the proposal is able to achieve consistency with the intent of the Standard, despite the non-compliance.

12.3 Would the underlying object or purpose of the standard be defeated or thwarted if compliance was required?

The underlying object of the Standard would not be thwarted if compliance with the Standard was not required. However, it is considered that the proposal, incorporating the non-compliance with the FSR Standard, achieves a superior development than a compliant building, in a form which meets the objectives of the standard and achieves consistency with several other recently approved developments in the immediate locality.

To this end, the objectives of the Standard would not be thwarted, if compliance was required, however it is considered that on the basis of the public benefits arising from the proposal, the non-compliance is supportable in planning terms.

12.4 Has the standard been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard?

It is not considered that the Standard has been virtually abandoned or destroyed by Council's actions, however, as outlined above, there have been several other DAs approved in the immediate locality, with FSRs commensurate with that proposed at the site. Other DAs have also been

approved with heights exceeding the maximum permitted. To this end, and having regard to the particulars of this Application, it is considered that flexibility in the application of the Standard is warranted.

12.5 Is compliance with the development standard unreasonable or inappropriate due to existing use of land and current environmental character of the land?

There are no particular issues relating to the site and its environmental character, apart from its location in the vicinity of numerous properties which have approval for buildings displaying non-compliant FSR, which would deem compliance with the standard as unreasonable or inappropriate.

13.0 CONCLUSION

Having regard to the discussion contained herein, it is considered that the matters required to be addressed, pursuant to Clause 4.6 of LEP 2011, the five-part test established in the Land and Environment Court and the Varying Development Standards: A Guide, have been fully canvassed herein.

The proposal, which seeks approval for a variation to the FSR development standard, achieves a better outcome on the site than a compliant scheme, as it provides high quality residential accommodation, including boarding house rooms, in a transitioning locality where affordability is expected to be of great importance, in a form which is consistent with other recently approved developments and without having an unacceptable impact on the streetscape or the amenity of adjoining residents.

Furthermore, it is noted that typically, developments incorporating boarding house accommodation are subject to an FSR bonus, as an incentive to provide affordable housing. While advice has been provided to Council that such a bonus may not be applicable in this case as the proposal is not solely for boarding house accommodation, the proposal would meet the intent of the AHSEPP by providing new boarding house accommodation in a locality where such would be in high demand.

Having regard to the particulars of the proposal, as outlined above, it is considered that there would be no benefit to requiring the proposal to comply with Clause 4.4(2) of LEP 2011 and on this basis, an exception to the Standards, pursuant to Clause 4.6 of LEP 2011, is considered well-founded, and worthy of Council's support.