
Bayside Planning Panel

12/09/2017

Item No	5.2
Application Type	Development Application
Application Number	DA-2016/150
Lodgement Date	22 October 2015
Property	401-405 Princes Highway, Rockdale
Owner	Mr & Mrs Ibrahim & Ibrahim Pastry Pty Ltd
Applicant	Architecture & Building Works Pty Ltd
Proposal	Integrated Development - Construction of part 8, part 11 storey mixed use development comprising 57 residential units and 2 commercial units with basement parking.
No. of Submissions	1
Cost of Development	\$17,219,801
Report by	Fiona Prodromou, Senior Assessment Planner

Officer Recommendation

- A That Development Application DA2016/150 for the construction of part 8, part 11 storey mixed use development comprising 57 residential units and 2 commercial units with basement parking at 401-405 Princes Highway Rockdale, be REFUSED pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act 1979, for the following reasons:
- 1 Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following principles of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development:
 - a) Principle 1 – Context and Neighbourhood Character
 - b) Principle 2 – Built Form and Scale
 - c) Principle 3 – Density
 - d) Principle 4 – Sustainability
 - e) Principle 5 – Landscape
 - f) Principle 6 – Amenity
 - g) Principle 7 - Safety
 - h) Principle 9 – Aesthetics
 - 2 Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of State Environmental Planning Policy - No 55—Remediation of Land.
 - 3 Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of State Environmental Planning Policy - BASIX.

- 4 Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements or objectives of Rockdale LEP 2011:
 - a) Clause 4.3 – Height of Buildings
 - b) Clause 4.6 – Exceptions to Development Standards.
 - c) Clause 6.6 - Flood Planning
 - d) Clause 6.7 - Stormwater
- 5 The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and provisions of Rockdale Development Control Plan 2011 including:
 - a) 4.1.3 - Water Management / Flood Risk Management
 - b) 4.2 - Streetscape and Site Context
 - c) 4.4.7 - Wind Impact
 - d) 4.6 - Design of Loading Facilities
 - e) 4.7 - Air Conditioning and Communication Structures / Services Lines and Cables / Waste Storage and Recycling Facilities
 - f) 5.3 - Mixed Use (Retail)
 - g) 7.5.1 - Commercial Space
 - h) 7.5.2 - Street Character / Laneway
- 6 Having regard to the above non-compliances and pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory and represents an overdevelopment of the subject site.
- 7 Pursuant to the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the suitability of the site for the proposed development has not been adequately demonstrated.
- 8 Pursuant to the provisions of Section 79C(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 and Clause 54 of the Environmental Planning and Assessment Regulation 2000, insufficient information has been provided by the applicant to enable a proper and thorough assessment of the impacts of the proposed development.
- 9 Having regard to the reasons noted above, pursuant to the provisions of Section 79C(1)(d) and Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

B That the objector be advised of the Bayside Planning Panel's decision.

Attachments

- 1 Assessment Report
- 2 Site Plan

- 3 North Elevation
 - 4 South Elevation
 - 5 East Elevation
 - 6 West Elevation
 - 7 Section AA
 - 8 Section BB
 - 9 Shadow Diagrams 1
 - 10 Shadow Diagrams 2
 - 11 Landscape Plan
 - 12 Amended Clause 4.6 – Exception to Development Standard
 - 13 Registered 88B and Linen Plan
-

Location Plan



Fig 1 – Location Plan

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2016/150
Date of Receipt:	22 October 2015
Property:	401 Princes Highway, ROCKDALE (Lot 100 DP 1097898)
Owner(s):	Mr Ibrahim Ibrahim Mrs Pelin Ibrahim Ibrahim Pastry Pty Ltd
Applicant:	Architecture & Building Works Pty Ltd
Proposal:	Integrated Development - Construction of part 8, part 11 storey mixed use development comprising 57 residential units and 2 commercial units with basement parking.
Recommendation:	Refused
No. of submissions:	1
Author:	Fiona Prodromou
Date of Report:	22 August 2017

Key Issues

The proposal in its current form is inconsistent with the provisions of relevant state policies, being State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, State Environmental Planning Policy - BASIX and State Environmental Planning Policy No 55—Remediation of Land for the reasons outlined within this report.

A maximum height limit of 22m applies to the subject site as per the provisions of Clause 4.3 - Height of Buildings Rockdale LEP 2011. Clause 4.3 (2A) permits a 'bonus height' of 12m for certain sites within the Rockdale Town Centre, subject to the lot having an area of at least 1,500 square metres. The lot, subject of this application, comprises a total site area of 1306sq/m, being 194sq/m deficient of the lot area required to be eligible for the aforementioned height bonus. Accordingly the site is not eligible for additional height provided by the bonus.

The proposal seeks to construct a development with a height of 25.15m - 34.17m. This is a breach of the applicable 22m height standard by 3.15m - 12.17m inclusive of lift / stair overruns and represents a 14.3% to 55.3% proposed variation to the maximum permissible height limit for the site.

Where a site complies with the lot requirements and seeks to benefit from the 'bonus height' provisions referred to above, the provisions of Clause 6.14 - Design Excellence apply, and applicants are required to partake in a 'design competition' process prior to the lodgement of a development application with Council. This process has not been followed by the applicant. Notwithstanding it is reiterated that the applicants site is of insufficient overall area so as to benefit from the bonus height provisions.

The proposed height variation as sought by the applicant is not supported for the reasons outlined within Clause 4.6 - Exceptions to Development Standards as detailed within this report.

The proposal in its current form does not comply with the provisions of Rockdale DCP 2011 in relation to water management, streetscape and site context, wind impact, design of loading facilities, site services and level of commercial space proposed. These matters are discussed in more detail in the planning report.

A number of easements burden the site, these benefit Telstra and Bayside Council. Basement levels and the first floor of the development protrude into easements which are required by Telstra to ensure unobstructed access and clearance to the Telstra Exchange Facility adjoining the site to the north west. The applicant has not provided Council with documentation confirming that Telstra agree to modify and / or remove these easements, in order to enable the proposed design to proceed. The proposal also protrudes into the right of footway easement benefitting Bayside Council. No discussions have been held with Council in relation to the aforementioned as proposed.

The applicant has not submitted a revised BASIX, Stormwater Plans, Wind or Traffic Reports to Council as would be necessitated by the submission of the amended plans. Additionally, solar access to the proposed development is reduced as a result of the recently approved development at 397 Princes Highway on the northern neighbouring site. The applicant has not taken this into account the shadow of this recently approved building and therefore the solar access levels achieved to the development in midwinter are unable to be ascertained. Insufficient information has thus been provided to Council in this regard.

The applicant was invited to withdraw the application on numerous occasions or revise their plans to comply with the relevant height standard for the site. This has not occurred to date and the applicant did not seek to withdraw the application.

Recommendation

A. That Development Application DA2016/150 for the construction of part 8, part 11 storey mixed use development comprising 57 residential units and 2 commercial units with basement parking at 401-405 Princes Highway Rockdale, be REFUSED pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act 1979, for the following reasons:

1. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following principles of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development:

- a) Principle 1 – Context and Neighbourhood Character
- b) Principle 2 – Built Form and Scale
- c) Principle 3 – Density
- d) Principle 4 – Sustainability
- e) Principle 5 – Landscape
- f) Principle 6 – Amenity
- g) Principle 7 - Safety
- h) Principle 9 – Aesthetics

2. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of State Environmental Planning Policy - No 55—Remediation of Land

3. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of State Environmental Planning Policy - BASIX.

4. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements or objectives of Rockdale LEP 2011:

- a) Clause 4.3 – Height of Buildings
- b) Clause 4.6 – Exceptions to Development Standards.
- c) Clause 6.6 - Flood Planning
- d) Clause 6.7 - Stormwater

5. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and provisions of Rockdale Development Control Plan 2011 including:

- a) 4.1.3 - Water Management / Flood Risk Management
- b) 4.2 - Streetscape and Site Context
- c) 4.4.7 - Wind Impact
- d) 4.6 - Design of Loading Facilities
- e) 4.7 - Air Conditioning and Communication Structures / Services Lines and Cables / Waste Storage and Recycling Facilities
- f) 5.3 - Mixed Use (Retail)
- g) 7.5.1 - Commercial Space
- h) 7.5.2 - Street Character / Laneway

6. Having regard to the above non-compliances and pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory and represents an overdevelopment of the subject site.

7. Pursuant to the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the suitability of the site for the proposed development has not been adequately demonstrated.

8. Pursuant to the provisions of Section 79C(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 and Clause 54 of the Environmental Planning and Assessment Regulation 2000, insufficient information has been provided by the applicant to enable a proper and thorough assessment of the impacts of the proposed development.

9. Having regard to the reasons noted above, pursuant to the provisions of Section 79C(1)(d) and Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

B. That the objector be advised of the Bayside Planning Panel's decision.

Background

History

Prior to DA lodgement plans of the proposal were submitted to the Design Review Panel for consideration on two occasions being 19 August 2014 and 13 November 2015. On both occasions the DRP raised concerns in relation to the insufficient site area to enable the site to benefit from the 'bonus' height provisions of RLEP 2011. Concerns were also raised in regards to the height, bulk, scale and density of the proposal.

23 October 2016 DA-2016/150 submitted to Council

Construction of an eleven (11) storey mixed use development comprising 69 residential units and 2 commercial units with basement parking.

3 November - 4 December 2015 Public notification of proposal.

13 November 2015 consideration by Design Review Panel. The DRP once again raised concerns in relation to the insufficient site area to enable the site to benefit from the 'bonus' height provisions, bulk, scale, density, solar access, design and provision of communal open space, management of portions of the site burdened by easements, residential amenity and potential areas of concealment.

12 May 2015

Letter sent to applicant raising issues of the DRP, matters raised by Sydney Trains, Sydney Airports and Council's concerns including but not limited to Height, building separation, insufficient setbacks, solar access, insufficient communal open space provision and unsatisfactory design, inappropriate unit mix, insufficient information.

The issues raised within correspondence to the applicant were a direct consequence of the size of the subject site and density sought to be achieved. The applicant was advised that a significant reduction in the height and gross floor area of the development was required in order to resolve the issues raised, ensure a satisfactory built form and streetscape response and to ensure that residential amenity to future occupants and neighbouring properties is retained and maximised.

The applicant was requested to withdraw the application.

6 June 2016

The applicant did not seek to withdraw the application and thus submitted a revised scheme to Council on 6 June 2016, proposing a part 8, part 11 storey mixed use development comprising 57 residential units and 2 commercial units with basement parking.

4 August 2016

Reconsideration by Design Review Panel. DRP reiterated concerns previously raised.

24 August 2016

Applicant was emailed to advise of issues related to DA which require resolution. These matters included but were not limited to easements affecting the site, excessive height, unsatisfactory design and amenity issues, Traffic Committee requirements, insufficient information, engineering and stormwater matters.

6 September 2016

Meeting with applicant to discuss issues. Applicant was advised variations would not be supported and plans required substantial amendment to be brought into compliance. It was further advised that matters relating to easements required discussion with Telstra.

8 November 2016

Applicant emails Council to advise they are still in discussions with Telstra regarding easements affecting the property.

7 March 2017

Applicant pursues meeting with Director City Futures and Place Outcomes Team to discuss potential closure / purchase of Fox Lane in order to obtain a site area greater than 1500sq/m and be eligible for the RLEP height bonus. Amongst other matters, it was noted in this meeting that the proponent would be required to obtain in-principle support from Sydney Trains for the extinguishment / deletion of Fox Lane as this provides access to Sydney Trains land to the rear of the subject site. Should the applicant be successful a Design Competition would be required as per RLEP 2011 and a new DA to be lodged.

26 April 2017

Applicant invited via email to withdraw the DA. Applicant did not agree to withdraw the DA.

11 August 2017

Applicant advised to withdraw application as assessment of the application was being finalised. Applicant did not agree to withdraw the DA.

23 August 2017

Applicant seeks to submit amended plans yet these are rejected, as the assessment of the application had been finalised prior to this date and the information sought to be submitted to Council was incomplete and contrary to the requirements of Clause 55 of the Environmental Planning and Assessment Regulation 2000.

Proposal

The proposal seeks to undertake the construction of part 8, part 11 storey mixed use development comprising 57 residential units and 2 commercial units with four basement levels incorporating residential and commercial on site parking. The proposed development incorporates as follows:

Basement 4 (FFL 2.45RL - 2.9RL)

21 car spaces, 3 bicycle spaces, 1 motorbike space, pedestrian and vehicular circulation, two lift cores, residential storage, fire stairs.

Basement 3 (FFL 5.45RL - 5.9RL)

20 car spaces, 5 bicycle spaces, 1 motorbike space, pedestrian and vehicular circulation, two lift cores, residential storage, fire stairs.

Basement 2 (FFL 8.45RL - 8.9RL)

17 car spaces (including 6 accessible), 5 bicycle spaces, 1 motorbike space, pedestrian and vehicular circulation, two lift cores, residential storage, fire stairs.

Basement 1 (FFL 11.45RL - 11.90RL)

17 car spaces (including 1 accessible), 2 motorbike spaces, pedestrian and vehicular circulation, two lift cores, fire stairs, plant / service rooms and accessible toilet facility.

Ground Level (FFL 14.84RL - 15.24RL)

Retail space 2 (183sq/m + 160sq/m 'seating' area within building envelope) fronting Princes Highway, with accessible chair lift to main entrance of this tenancy. Recessed residential lobby to Princes Highway, letter boxes and hydrant boosters. Retail space 1 (158sq/m) fronting Princes Highway and wrapping the corner to Fox Lane via full height glazed facades. The primary access to retail space 1 is via Princes Highway, yet a second pedestrian access is also provided via Fox Lane. Retail tenancies have independent toilet facilities.

The ground level of the proposed building is setback 3m from the existing front property boundary of the site to the Princes Highway and 3m from the existing property boundary to Fox Lane. The area forward of the building line at ground level in these locations is proposed to comprise as follows:

- a. Princes Highway frontage - Paving, three planter beds comprising 4 trees (Crab Apple, 4m - 6m mature height) and shrubs (False Cardamom Ginger, 1.5m - 2m mature height).
- b. Fox Lane frontage - Paving, three planter beds comprising 8 trees (Blueberry Ash, 4m - 6m mature height) and shrubs (False Cardamom Ginger, 1.5m - 2m mature height).

An awning structure is proposed along the Princes Highway and Fox Lane frontages of the site.

Four (4) fire exit stairs front and exit onto Fox Lane. A second residential lobby with letterboxes is also provided. Vehicular access to the site is proposed via Fox Lane, with a substation proposed to be located adjoining the vehicular entry.

The ground floor of the development further incorporates a loading / unloading bay for an SRV, plant rooms, designated residential and commercial garbage storage rooms.

Level 1 (FFL 18.84RL)

6 residential dwellings with associated private open spaces, podium level communal open space, lift / stairwell access, garbage chute, recycling and services cupboards. Level 1 communal open space is tiled with a planter box incorporating mass planting of shrubs to a mature height of 5m provided along the northern side boundary.

Level 2 (FFL 21.89RL)

8 residential dwellings with associated private open spaces, lift / stairwell access, garbage chute, recycling and services cupboards.

Level 3 (FFL 24.94RL)

7 residential dwellings with associated private open spaces, lift / stairwell access, garbage chute, recycling and services cupboards.

Level 3 (FFL 24.94RL) Level 4 (FFL 27.99RL) Level 5 (FFL 31.04RL) Level 6 (FFL 34.09RL) Level 7 (FFL 37.14RL) (per floor)

7 residential dwellings with associated private open spaces, lift / stairwell access, garbage chute, recycling and services cupboards.

Level 8 (FFL 40.09RL - 40.19RL)

Communal open space area, incorporating tiled flooring, balustrading, periphery planter boxes, bbq facilities, two arbour areas, seating, internal communal kitchen and toilet. 4 residential units with associated private open space areas, lift / stairwell access, garbage chute, recycling and services cupboards.

Level 9 - 10 (FFL 43.24RL - 46.29RL)

4 x 2 storey residential units with associated private open space areas, lift / stairwell access, garbage chute, recycling and services cupboards.



Proposed development viewed from Princes Highway.

Site location and context

The subject site is 401-405 Princes Highway, Rockdale which is currently vacant with industrial building waste across the site. The development site consists of Lot 100 in DP 1097898. The subject site has two street frontages to Princes Highway (east) and Fox Lane (south). The subject site is irregular in shape and comprises of a 26.015 metre eastern Princes Highway boundary, a 2.37 metre south-eastern splay to the corner of Fox Lane and Princes Highway, a 43.075 metre southern Fox Lane boundary, a 26.6 metre western boundary abutting the Illawarra line railway, a 25.82 metre (part) northern boundary, a 7.705 metre (part) western boundary and a 27.1 metre (part) northern boundary. The development site area is approximately 1306m².



Figure 1 - Aerial context of site (outline in blue)

The site is currently vacant and appears to be used as a builders yard. The site has a fall of approximately 1m from the rear to the front property boundary. The site is burdened by a number of easements, including an easement for telecommunications and an overlapping easement for services and drainage of water (both 7.5m wide) along the north-eastern edge of the site, a right-of-footway (900mm wide) and an easement for drainage (1.83m wide) along the southern edge of the site.

To the north-west of the subject site is No.397A Princes Highway which is occupied by a two storey brick telephone 'Telstra' exchange building with basement level occupied by significant and substantial cabling. Telecommunication antennas exist on the roof and vehicular access is provided to this site from an unnamed laneway off Princes Highway. The subject site is burdened by the following easements and rights of way for the purposes of telecommunications, services, access and drainage as follows;

- A / B. Easement for telecommunications & drainage purposes, 7.5m wide, limited in height, along the northern side boundary of the site with 397A Princes Highway.
- C. Right of Access and easement for parking 6.2m wide, part limited in height, running the length of the rear boundary of the site.
- D. Right of footway 0.9m wide limited in height, running the depth of the site from the Princes Highway to the rear boundary of the property.
- E. Easement for drainage 1.83m wide, running the depth of the site from the Princes Highway to the rear boundary of the property.
- F. Easement for access and drainage variable width
- G. Area of easement 1.1m wide unlimited in height and depth running the width of the rear boundary of the site.
- H. Area of easement 5.1m wide, limited in height to RL19 and unlimited in depth, running the width of the rear boundary of the site.

To the north of the subject site is No.397 Princes Highway 'The Small Car Shoppe' a car sales yard with a demountable aluminium car sales office and awning. The site has no permanent buildings and comprises a total site area of 1696sq/m and is eligible for a 12m height bonus as per Rockdale LEP 2011. DA-2016/420 for the construction of an eleven (11) storey mixed use development comprising 91 residential units, 3 commercial units & three levels of basement parking was approved on 3 August 2017 on this property. The DA at 397 Princes Highway Rockdale was lodged following the conclusion of a Design Competition of the site, as required by Clause 6.14 of Rockdale LEP 2011.

To the east of the subject site, opposite Princes Highway, is No.386-388 Princes Highway 'Snow & Water Skiers Warehouse' a two-storey brick render commercial/retail shop with windows on the upper floor levels fronting Princes Highway. Vehicular/loading bay access is from the rear King Lane.

To the south-east of the subject site, opposite Princes Highway, is No.390 Princes Highway a two-storey brick render commercial/retail shop with windows on the upper floor levels fronting Princes Highway. Vehicular/loading bay access is from the rear King Lane. Also to the south-east of the subject site is No.394-396 Princes Highway is also a two-storey brick render commercial/business premises with windows on the upper floor levels fronting Princes Highway.

To the south is No.407 Princes Highway 'Paint Trade Centre' which is a two-storey brick render warehouse building with vehicular/loading bay access from Fox Lane. Also to the south-east of the subject site is No. 409 Princes Highway 'Inspirations paint' which is a two-storey brick render warehouse building. A small allotment is located at 407A Princes Highway to the rear of 407, this lot is

owned by Sydney Trains.

Adjoining the subject site, to the west, adjoining the rear boundary of the subject site is the Railway Corridor, which comprises numerous one-and-two brick buildings, rail sidings and signal box and buildings and are within the 'Rockdale Railway Station and Yard Group' heritage item I222 which is of state significance. Further to the south west are single and two storey buildings constructed on 1-2 Waines Crescent and over the railway corridor and used for the purposes of a meat processing operation. It is noted that although the site adjoins the railway corridor to the rear, the physical railway line is positioned a minimum of 21m from the rear boundary of the subject site. As can be seen below, the land outlined in red is owned by Sydney Trains and leased, with a small slither of land outside this lease and behind the development site providing Sydney Trains access to the Railway Corridor for maintenance and emergency purposes.

The subject site is potentially affected by contamination due to the previous industrial land uses. The subject site is affected by acid sulphate soils - Class 5.

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.91A - Development that is Integrated Development

The proposal includes excavation works for basement car parking that will transect the water-table and require temporary dewatering during the construction phase. The proposal is therefore Integrated Development pursuant to Section 91 of the Environmental Planning and Assessment Act 1979, and requires approval from the NSW Office of Water (NOW). The NOW deemed that the construction dewatering proposed for the project would be an 'aquifer interference activity' in accordance with the definition in the Water Management Act 2000, and issued General Terms of Approval (GTA's) appropriate to this activity on 27 November 2015.

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 (Building Sustainability Index: BASIX) 2004

The applicant submitted a BASIX Certificate with the original application. Following amendments to the scheme a revised BASIX certificate was not submitted to Council. The proposal therefore does not satisfy the requirements of the SEPP.

State Environmental Planning Policy (Infrastructure) 2007

The following clauses of the SEPP apply, given the location of the subject site on the Princes Highway which is a classified road and its position adjoining a railway corridor to the rear.

- Clause 101 - Development with frontage to classified road
- Clause 102 - Impact of road noise or vibration on non-road development

The above requires the consent authority to require vehicular access from an alternative road other than the classified road, to ensure the ongoing efficient operation of the classified road and also to ensure the development is appropriately insulated from potential road noise and vibration. The property benefits from alternative means of vehicular access via Fox Lane which directly adjoins the subject site to the south. The proposal seeks to provide vehicular access from this lane and as such satisfies the requirements of clause 101.

Further to the above, the proposal has been accompanied by an Acoustic Report, prepared by Acoustic Noise & Vibration Solutions, dated 24/07/2015 which recommends appropriate design construction measures in order to ameliorate traffic and rail noise and vibration. The proposal complies with the provisions of clause 102 and clause 87 referred to below.

- Clause 85 - Development immediately adjacent to rail corridors
- Clause 86 - Excavation in, above or adjacent to rail corridors
- Clause 87 - Impact of rail noise or vibration on non-rail development (for residential development)

The proposal seeks to undertake excavation greater than 12m on site in order to construct basement car parking levels for the proposed development. The site adjoins Sydney Trains land to the rear of the site and the proposal was referred to Sydney Trains for comment. Sydney Trains recommended Deferred Commencement Conditions to ensure any excavation and/or construction will not adversely impact upon the railway corridor or its operations, in the event that the proposal was supported.

- Clause 45 - works within the vicinity of electricity infrastructure

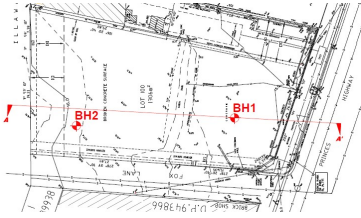
The application is subject to clause 45 of the SEPP as the development proposes works within the vicinity of electricity infrastructure, being power poles and lines at the Princes Highway frontage of the site and along Fox Lane. In accordance with clause 45(2) written notice was provided to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risk. Accordingly, the proposal was referred to Ausgrid, who raised no objections to the proposed development subject to the imposition of standard conditions of consent, in the event that the proposal was support

State Environmental Planning Policy No 55—Remediation of Land

The property is not identified in Council's records as being potentially contaminated. Notwithstanding the subject site is currently used for the purposes of storing building waste from other development sites, and has been utilised previously for industrial uses. As such it is prudent to ensure the requirements of SEPP 55 are taken into consideration.

The application is accompanied by a Preliminary Geotechnical Investigation and Waste Classification Assessment report prepared by Douglas Partners and dated January 2015.

The report confirmed that two (2) borehole log profiles were taken on site to depths of 14.3m and 16.5m below ground level. Eleven (11) samples taken from the bore holes and were tested for contaminants. Laboratory analysis showed that concentrations of contaminants were all below the threshold criteria for General Solid Waste (non-putrescible) and no asbestos was detected in the samples.



The report further noted that *'the natural soils below the filling may be able to be described as virgin excavated natural material (VENM) upon excavation providing they are not cross-contaminated during site works. The preliminary waste classification is limited to the in-situ material collected from boreholes BH1 and BH2 on 18 and 19 December 2014 and does not cover other material on the site'*.

Notwithstanding the above, Clause 7(1)(b) of SEPP 55 requires the consent authority to be satisfied that the land is suitable for the purpose for which the development is proposed to be carried out and that remediation of the land is not necessary. The aforementioned report does not stipulate that the site is suitable for residential purposes and as such it is the assessing officer's view that further investigations and a revised report are necessary to confirm the suitability of the site for the proposed development.

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 reviewed by the Design Review Panel on three occasions, 19 August 2014, 13 November 2015, with the final revised scheme submitted to Council in June 2016, reviewed by the DRP on the 4 August 2016. With respect to the final revised scheme, the Panel raised concerns in relation to the insufficient site area to enable the site to benefit from the 'bonus' height provisions of RLEP 2011. Concerns were also raised in regards to the height, bulk, scale and density of the proposal in addition to concerns relating to solar access levels, design and provision of communal open space, management of portions of the site burdened by easements, residential amenity and potential areas of concealment. These issues are discussed below.

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

The design quality principles have been considered in the assessment of the proposal. The proposal in its current form is unsatisfactory and does not satisfy the relevant design principles as detailed below.

Principle 1 – Context and Neighbourhood Character

The DRP noted that the *"site is not of sufficient size to qualify for the height bonus. The only justification that the Panel sees for any increased height along the Princes Highway frontage would be through:*

- *The widening of Fox Lane and landscaping treatment,*
- *Compliance with Council's Princes Highway Vision in the style guide*

- *The maintenance of the Council height regulation for the rear building (defined as those units currently served by the Fox Lane lift)*
- *Provision of roof communal open space to the full extent of the rear building (defined as those units currently served by the Fox Lane lift).*

The DRP stated that the points above to some degree have been addressed. However, the Panel still feels that *Units A8.4, 9.4 should be removed and the roof terrace be expanded to provide sufficient usable space for the number of proposed residents. Furthermore, this would reduce the bulk of the building, particularly adjacent to Fox Lane.* DRP stated that *"the Council's height regulation to Fox Lane is not complied with and should be complied with. Communal facilities breaching the height plane are acceptable (including lift, fire stairs, shade structures, kitchen, common rooms and toilets)."*

Comment: Fox Lane comprises a variable width of 5.825m at the western end and 6.1m at the eastern end at the junction with the Princes Highway. Plans do not seek to widen the existing lane width as suggested by the DRP. Plans illustrate a 3m building setback at ground level to Fox Lane, with an associated pedestrian pathway and landscaping proposed, all within the property boundaries of the subject site. Proposed finishes, levels and specifications of any kerb / gutter and any associated stormwater works likely to be required within Fox Lane have not been submitted for assessment. The entire length of the southern boundary of the site is burdened by Telstra easements for drainage and a right of footway which benefits Bayside Council. As such the current design conflicts with these easements.

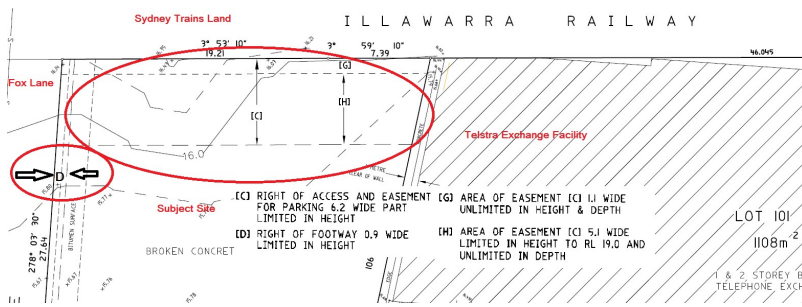
Plans further illustrate that the proposed building form beyond the Fox Lane lift core, maintains a breach to the height standard as can be identified in yellow and illustrated in the southern elevation below. This is contrary to the comments of the Design Review Panel and is not supported. Further, units 8.4 and 9.4 have not been deleted as suggested by the DRP. Revised plans illustrate the provision of the required 3m building setback from the front property boundary, with basement levels below also setback 3m from this front boundary, in order to facilitate Councils Princes Highway Green Gateway Vision and enable the planting of trees in deep soil on site.

The DRP noted that *'there is insufficient information to understand the constraints arising from the various easements on the site. Full documentation and sign off by Telstra is required.'*

Comment: The formally registered 88B Instrument and linen plan applying to the subject site details a number of easements and restrictions burdening the property, which benefit Telstra and Bayside Council.

Those of particular concern given the design of the proposed development are detailed below.

1. Easement 'C' - Right of Access and Easement for parking 6.2 wide, part limited in height. (19RL) (Authority to Benefit - Telstra)
2. Easement 'D' - Right of Footway 0.9m, limited in height (19RL) (Authority to Benefit - Bayside Council)
3. Easement 'G' - Unlimited in height and depth. (Authority to Benefit - Telstra)
4. Easement 'H' - Area of easement 'C', 5.1 wide limited in height to 19RL and unlimited in depth. (Authority to Benefit - Telstra)
5. Restriction on Use of Land - Maximum height 2 storeys (Authority to Benefit - Telstra)



The following comments are provided in respect of the above:

- 1) The proposal incorporates 4 basement levels on the subject site. These basement levels directly adjoin the rear boundary of the site and protrude into easement areas D, G and H as noted above.
- 2) Easement H requires a minimum clearance height of 19RL for future Telstra access across the site. Current plans indicate the height of level 1 of the development at 18.74RL, thus protruding into this easement.
- 3) Correspondence dated 20 October 2015 was submitted by the applicant to Council, to confirm that Telstra provides its approval for the erection of a building on the subject site greater than 2 storeys in height as stipulated by the Restriction on the Use of the Land referred to in (5) above.
- 4) Plans illustrate the provision of proposed landscaping along the existing southern boundary, this conflicts with existing easement D identified above. Further any associated awning structure (18.9RL top of awning) related to the shop at the junction of Fox Lane and the Princes Highway would protrude into the height limitation 19RL imposed by this easement.

The applicant provided Council with a copy of a confidential 'Redevelopment Agreement' between Telstra and the current owner which seeks to modify the easements and restrictions referred to above. Nil documentation has been submitted to Council to confirm that this agreement has been executed to date. Given the above, it is understood that the current linen plan and 88B outlining the subject easements requires amendment in order to enable the proposal as currently designed to proceed.

Insufficient information has been submitted to Council to date in order to confirm and resolve the above matters.

DRP was of the view that *"the current proposal seeks to benefit excessively from a concession to allow the bonus height and needs to be significantly altered as recommended in the minutes to earn the right to that concession, should the Council be of a mind to grant it"*.

Comment: Rockdale Town Centre currently comprises a mix of commercial and light industrial older building stock and is currently undergoing transition from a relatively low scale commercial / light industrial precinct to a high density mixed use residential area.

In this location, the eastern side of Princes Highway is subject to a 28m maximum height limit, whilst the western side of Princes Highway is subject to a maximum height limit of 22m. Additionally, sites on the western side of the Princes Highway in this location, with an overall site area greater than 1500sq/m are also eligible for an additional 12m height bonus as per the provisions of Clause 4.3(2A) of RLEP 2011. Recent applications / approvals in close proximity to the subject site are illustrated below.



The northern adjoining site (397 Princes Highway) has a site area of greater than 1500sq.m thus was eligible for the 12m height bonus. This neighbouring site was also the subject of a design competition as required by Clause 6.14 - Design Excellence. The maximum approved height on this site is 34.14m to the parapet and 34.43m to the top of the lift overrun.

Given the above, with respect of the subject application and notwithstanding the comments of the DRP above, it is the assessing officers view that a difference in height, bulk and scale of potential buildings fronting the Princess Highway would provide visual interest and relief from a consistent row of buildings with higher building forms and densities. A variety of building heights will facilitate solar access penetration to the public domain and outlook.

Given the numerous lots to the south of the site and individual ownership patterns, which do not make these sites eligible for the 12m height bonus, a transition and reduction in the overall height of the building form, in compliance with that permitted, would enable a more consistent streetscape response with the lower scale buildings likely to be constructed upon southern adjoining properties. This would further enable the higher building form recently approved on the northern adjoining site at 397 Princes Highway to present as a gateway building into the Rockdale Town Centre.

The consistent height of the podium along the Princes Highway is considered to be imperative, rather than the overall height of the development. This creates a human scale when viewed from the public domain. The three storey podium level as proposed steps the building down from the recently approved four storey podium of the northern neighbour. The three storey podium of the proposed development, should be wrapped around the site into Fox Lane, with tower levels above being setback from the building edge to recess the upper levels and provide a more appropriate scale and bulk when viewed from Fox Lane which is no greater than 6m in width.

Given the above, it is considered that substantial amendments are required to the height, bulk, scale and density in order to enable an appropriate streetscape response as envisaged by the provisions and objectives of DCP 2011. The proposal is inconsistent with this principle.

Principle 2 – Built Form and Scale

The DRP recommended an "*L shape building configuration for the site*".

Comment: The final scheme retains a U shaped form in order to maximise density and yield. As a consequence this has potential amenity impacts on site and to neighbouring properties to the south. i.e. overshadowing, overlooking and the like.

The Panel was adamant that a setback of 3 metres for the full building height is required to provide for deep soil planting, tree planting and a pedestrian footpath up the lane to the rear access lobby. This has been successfully addressed. However, the location of the substation in the laneway footpath is not acceptable and should be incorporated into the building footprint.

Comment: Plans illustrate the provision of a 3m setback for the full height of the building along Fox Lane. Notwithstanding, and as noted below, it is the opinion of the assessing officer that the 3 storey podium should wrap the corner and continue into Fox Lane, with levels above the third floor being setback further from the building edge to recess the tower element of the proposal and provide a more appropriate scale and bulk when viewed from Fox Lane which is no greater than 6m in width.

Plans retain the substation in the same position, this is unsatisfactory and the substation should be relocated as suggested by the DRP.

The DRP reiterated that the subject site does not qualify for an additional 12 metres in height. The DRP stated that the part of the building facing the Highway still exceeds the height limit, the Panel feels that this could be acceptable given the reduction of building mass recommended by the Panel to comply with the height limit along Fox Lane (in conjunction with reduction of the non-conforming bulk as mentioned above) which would facilitate alignment with bulk and scale of the developments to the south on sites less than 1500sq.m and would also facilitate solar access to buildings to the south.

Comment: The matter of the bonus height has been addressed above in Principle 1.

Principle 3 – Density

The DRP noted that "*the recommendations provided to the applicant will reduce density to a more appropriate level.*"

Comment: The revised scheme has provided a reduction in density on site as a result of increasing setbacks and reduction in building height to the rear of the site. Notwithstanding the recommendations of the DRP are not entirely satisfied and as such the density proposed, in addition to the resultant bulk and scale is inappropriate for the site. The proposal does not satisfy this principle.

Principle 4 - Sustainability

The DRP noted that a revised BASIX report was required. It was further stated that "*for a development of this size, it is expected that a full range of sustainability features will be incorporated (water recycling, energy efficiency, WSUD, recycling materials etc)*"

Comment: A revised BASIX was not submitted with revised plans as such it cannot be confidently stated that the revised scheme complies with the BASIX SEPP. The applicant confirmed

that apartments provide "a good level of solar access", have "good natural ventilation", provide for "deep soil areas which facilitate the provision of street trees and natural water infiltration", seek to install "rainwater tanks to the common areas for irrigation and toilet use".

With respect to the above, it is noted that the level of solar access to proposed residential dwellings on site cannot be ascertained, as the shadow impact of the development approved upon 397 Princes Highway has not been accurately depicted on plans.

Principle 5 – Landscape

The DRP was of the opinion that the open space provided at level 1 is of *"limited utility for communal use and should be confined to decorative planting to improve outlook. This planting should be carefully selected to achieve screening and outlook for apartments adjacent and above"*.

Comment: Plans do not address the above and retain the L1 area as communal open space contrary to the panels recommendation.

The proposed undercroft *'outdoor seating area in the Telstra right of way on the northern side of the site is of very low amenity and is not endorsed. Further clarification is required as to how this space might be designed, managed and used. This requires further detailing, explanation as to the fitout and functionality and how appropriate amenity levels can be achieved. Detailed landscape drawings and images by a qualified Landscape Architect and an interior designer should be provided"*.

Comment: Plans and information detailing the proposed fit out and *'functionality'* of the *'outdoor seating area'* referred to by the DRP above have not been submitted to Council for assessment. The revised SEPP 65 report submitted by the applicant states that *'the quality of this space is dependent on the nature of the fitout by future user having regard to restriction of Telstra'*. It was further detailed that this space is to be provided with double height glazing to the Princes highway façade and a glass ceiling above a portion of the rear outdoor seating area, which is intended to provide some sunlight in midwinter into the space. Tiles are provided to the floor, enabling removal where required in the event Telstra requires access to cabling below.

A review of the applicants submitted revised shadow diagrams confirms that solar access is achievable in midwinter to this seating area as a result of the 'glass roof' as proposed. A review of the of the shadow diagrams for the final approved development upon 397 Princes Highway, the northern adjoining site however illustrates that this is not the case as the approved development form upon the neighbouring northern site and existing Telstra Exchange facility to the west overshadow the glass roof and rear façade of this 'outdoor seating area' in midwinter, albeit for a small portion at 12pm.

Further detail is required in order to resolve the concerns of the panel as noted above.

The DRP stated that *"Fox Lane should be improved as part of this proposal, through the provision of street tree planting, footpath and upgraded streetscape elements such as kerbs and paving. This would also improve the address to the proposed residential lobby on the lane. Streetscape improvements should also be provided to the Princes Highway frontage. It would be desirable to provide street tree planting to improve residential outlook and street amenity"*. The DRP further noted with respect to the Princes Highway frontage planting that the *"primary tree species nominated are of insufficient scale to achieve avenue planting and Council's Green Gateway Vision. A larger species*

(min. 15m high) should be incorporated".

Comment: Plans illustrate the provision of street tree planting (8 x Blueberry Ash) and a 2m wide footpath along the Fox Lane frontage of the site. Details in relation to kerbing have not been submitted for assessment. Proposed planting in this location protrudes into the 0.9m right of footway easement benefitting Bayside Council. This would require amendment of the easement, nil discussions have undertaken with Council in relation to this matter.

The proposal includes a 3m building setback to the Princes Highway with basement levels below also setback 3m in order to accommodate deep soil and facilitate tree planting. Plans illustrate the provision of planters with shrubs and 4 x Crab Apple trees planted along this frontage, with the awning above reduced in depth i.e. protruding 1.5m from the building edge, in order to enable trees to grow above the awning level. It is noted that the Crab Apple has a maximum mature height of 6m and thus this tree species is of insufficient scale to achieve avenue planting and Council's Green Gateway Vision as noted by the DRP.

The "substation should be relocated. Furthermore, details should be provided on overhead power lines (undergrounded)."

Comment: The substation has not been relocated as noted by the DRP. Nil detail has been provided in relation to the undergrounding of overhead power lines. Notwithstanding should the proposal have been supported this is a matter which could have otherwise been conditioned.

The DRP noted that the number of parking spaces provided on site is "over provided" and that "deep soil should be provided along the Fox Lane setback zone to facilitate street tree growth to supplement the proposed 3m deep soil setback along the Princes Highway".

Comment: Plans illustrate a reduction in the basement footprint of the development and reduction in car parking numbers from 95 to 75 on site. The 3m building and basement setbacks to both Fox Lane and the Princes Highway enable the provision of deep soil areas which would facilitate tree growth. Planters with shrubs and trees are proposed along these two frontages as discussed above.

The DRP noted that the "proposed communal open space on the rooftop level 8 needs much more considered design to provide a series of spaces defined by planting and providing a diverse range of areas for residents to use. There is an over reliance on arbours and excessive paving. This should be redesigned to include more tree/ground level planting where possible. Rainwater tanks should be integrated into the building and not attached to the wall of the communal open space".

Comment: The above issues raised by the DRP remain and have not been resolved.

It is evident that further resolution of the above issues and an increase in genuine deep soil areas on site would assist in achieving the satisfaction of this principle. It cannot be stated that the proposal in its current form is satisfactory in regards to Principle 5 - Landscape.

Principle 6 – Amenity

The panel raised concerns in relation to 'privacy conflicts' between the proposed communal area at level 1 and adjoining units. Whilst the floor plan has been reconfigured in the revised scheme and reduced the number of units directly adjoining the communal open space, this issue remains as three

units, A1.3, A1.5 and A1.6 adjoin this area.

The DRP raised concerns in relation to:

a) *'poor quality of communal space'*

Comment: The level 1 communal open space area proposed comprises a total area of 72sq/m. Of this, 30sq/m comprises a raised mass planter with the remaining area being irregularly shaped and no greater than 1.7m in overall width. The location, design and configuration of this COS area is not appropriately designed so as to be functional, encourage social interaction and maximise amenity for future occupants.

As noted by the DRP in Principle 5 - Landscape above, the level 8 COS area requires further design improvement in order to reduce excessive paving and create a delineated, attractive and inviting space which is designed to enable a range of activities and encourage social interaction of future occupants.

b) *"remote and spatially constructed entrance lobby off Fox Lane"*

Comment: The residential entry lobby off Fox Lane is recessed 1.4m - 1.7m from the newly proposed splayed southern boundary to Fox Lane. This creates concealment opportunities and raises potential concern for the safety and security of future users of this building. This requires resolution.

c) *"unsafe access to lifts in basement"*

Comment: Accessible car spaces within basement levels 1 and 2 are not all located within close proximity to proposed lift cores and require kerb cross overs in order to access lifts. This requires further resolution in order to maximise the safety of persons with a disability / mobility impairment whom will utilise these spaces.

d) *"Solar access to the east and west facing units should be illustrated to show a compliant minimum of 2 hours of direct sunlight to the living areas"*

Comment: 'solar access' plans submitted to Council seek to illustrate the number of units within the development which receive a minimum of 2 hours of access in midwinter. These diagrams do not accurately depict the approved building form upon the northern adjoining site. As such an accurate assessment of the number of units within the development receiving adequate solar access in midwinter is unable to be ascertained.

A review of the shadow diagrams associated with the approved built form upon 397 Princes Highway illustrates substantial overshadowing, which requires due consideration by the applicant in designing a compliant development upon their site.

e) *"In-unit storage is generally provided but some units do not appear to have the required 50% of storage volume. Design amendments should be made to comply and a table of storage provision for each unit should be submitted demonstrating such compliance with the ADG"*

Comment: Plans illustrate the provision of storage cupboards within residential dwellings, yet the volume of this storage has not been quantified by the applicant as sought by the DRP. It is noted that supplementary storage is provided within the basement levels.

f) *"While 6 adaptable units are provided, they are all served by a single lift which means that disabled occupants could be stranded or excluded when the lift is out of action. It is recommended that disabled units be located at levels where an interconnecting corridor between the two lifts can be provided"*.

Comment: Plans do not address this issue.

g) *"Excessively narrow inaccessible balconies are unacceptable"*

Comment: Plans illustrate L shaped balconies to 7 x 2 bedroom units which comprise sections of balcony being 0.4m in width. The design criteria of the Apartment Design Guide nominates that the minimum balcony width to be counted as contributing to the balcony area is 1m. Given the aforementioned, these units comprise insufficient private open space areas. i.e. A 1.5 / A 2.8 / A 3.7 / A 4.7 / A 5.7 / A 6.7 / A 7.7 require balcony spaces of 10sq/m and are provided with 7sq/m useable balconies. This is not acceptable.

As demonstrated above, the proposal in its current form raises amenity concerns which require further resolution in order to ensure this Principle is satisfied.

Principle 7 - Safety

The DRP raised the following concerns:

a) *'The very narrow lane requires pedestrians to step into the roadway and this is unacceptable.'*

Comment: Plans illustrate the provision of a delineated pedestrian pathway within the site boundaries along Fox Lane.

b) *'Areas of concealment along the driveway are still an issue'.*

Comment: A roller door has been introduced to the loading / unloading area adjoining the driveway on site. This issue has been resolved.

c) *"The deeply recessed entrance from Princes Highway to the lobby is a place of concealment. The entrance door should be moved forward which would create an opportunity to improve the internal quality of this otherwise uninviting space. Similarly, the doors to the Fox Lane residential entrance should be moved out as far as possible to minimize a place of concealment"*.

Comment: The above issues have not been addressed.

The proposal requires further design amendment in order to ensure the safety and security of future users is maximised and to ensure that this Principle is satisfied.

Principle 8 - Housing Diversity and Social Interaction

The DRP noted that the unit mix has been *'substantially improved'*.

Comment: Original plans did not incorporate any 3 bedroom units. The revised scheme comprises 4 x

3 bed, 17 x 1 bed and 36 x 2 bed dwellings. The proposed unit mix provides a range of housing to cater for diverse household types and different income groups and the revised unit mix is deemed satisfactory.

Principle 9 – Aesthetics

The Panel recommends that the *'applied framed elements with curved corners be deleted and the façade treatments be made more simple and cohesive. It is also recommended that the top two floors corresponding to the maisonette units be distinguished from the rest of the building with subtle differentiation in materials and elevational details'*.

Comment: The above issue remains unresolved.

The DRP noted that the *"application should include details of the Telstra equipment that is intended to be installed on this building and measures taken to minimise any adverse aesthetic impacts"*.

Comment: Details of the potential Telstra communication structures to be installed upon the development have not been submitted for assessment.

Given the above, an accurate holistic assessment of the aesthetics of the proposed development is unable to be undertaken.

c. Apartment Design Guide

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

CLAUSE	DESIGN CRITERIA	COMMENTS	COMPLIES
3D - Communal Open Space	25% (326.5sq/m) site area 50% direct sunlight to principal useable part of COS for 2hrs in midwinter	72sq/m (L1) + 240sq/m (L8) + 25sq/m (L8 communal room) = 337sq/m	Yes (see <i>discussion below</i>)
3E - Deep Soil Zones	7% (91.4sq/m) deep soil zone with minimum dimensions of 3m	35.2sq/m planting in the form of periphery planters at the Fox Lane and Princes Highway frontage	No - 56.2sq/m deficiency. Setback areas to Princes Highway / Fox Lane are primarily hard paved.
3J - Bicycle and car parking	Minimum Rate (<i>Guide to Traffic Generating Developments</i>) = 71 (50 residential / 12 visitor / 9 commercial) Maximum Rate (<i>DCP 2011</i>) = 79 (61 residential / 12 visitor / 9 commercial)	75 car spaces in total	Yes

4D – Apartment size and layout	Apartment type		Min area	1 bed - 50sq/m - 63sq/m 2 bed - 70sq/m - 88sq/m 3 bed - 111sq/m - 146sq/m	Yes Yes Yes
	1 bedroom		50M ²		
	2 bedroom		70m ²		
	3 bedroom		90m ²		
4C – Ceiling heights	Minimum ceiling heights:			2.7m habitable 2.4m non habitable 3.3m ground floor 2.7m first floor	Yes Yes Yes No
	Habitable		2.7m		
	Non-habitable		2.4m		
	Mixed use area		3.3m for ground and first floor		
3F Visual Privacy	Building height	Habitable rooms and balconies	Non habitable rooms	See discussion below.	See discussion Below.
	Up to 12m (4 storeys)	6m	3m		
	Up to 25m (5-8 storeys)	9m	4.5m		
	Over 25m (9+storeys)	12m	6m		
4A – Solar and daylight access	Living rooms + POS of at least 70% (40 of 57) of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter Max 15% (9 of 57) apartments receive no direct sunlight b/w 9am & 3pm mid-winter			Shadow diagrams submitted do not accurately depict the approved building form on the northern adjoining site, the resultant shadow cast and impact upon the proposed development.	No - insufficient information provided.
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.			Max 4 units per core <40 at level 10	Yes Yes
4E – Private open space and balconies	Dwelling type	Minimum area	Minimum depth	1 bed - min 8sq/m provided 2 bed – A 1.5 / A 2.8 / A 3.7 / A 4.7 / A 5.7 / A 6.7 / A 7.7 comprise 7sq/m balconies 3 bed - min 12sq/m provided	Yes Partial - 7 of 36 2 bed units have insufficient POS area. Yes
	1 bed	8m ²	2m		
	2 bed	10m ²	2m		
	3+ bed	12m ²	2.4m		

4B – Natural ventilation	Min 60% (35 of 57) of apartments are naturally cross ventilated in the first nine storeys of the building.		44 of 57 units are cross ventilated (77%) Balonies at level 10 are open <18m depth	Yes
	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.			Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.			Yes
4G – Storage	Dwelling type	Storage size volume	Appropriate inter - unit storage provision with supplementary within basement levels	Yes
	1 bed	6M²		
	2 bed	8m²		

Discussion

3D - Communal Open Space

Whilst the provision of communal open space within the proposed development technically complies with the 25% design criteria, as discussed above in Principle 6 - Amenity, the proposed level 1 communal open space area is not appropriately designed and is deemed to be inconsistent with the design guidance provided within Part 3D of the Apartment Design Guide. The level 1 communal open space area is not easily identifiable, does not incorporate any facilities i.e. seating and is not functional given the proposed useable area. This space has the potential to result in adverse over looking and acoustic impacts to units A1.6, A1.3 and A1.5 given its location adjoining bedroom windows and private open space areas.

Where 1.8m high fencing is provided to the periphery of the private open space areas of units A1.3 /A1.6, this is likely to result in a sense of enclosure and combined with the lack of facilities or seating, is not conducive to a well designed communal open space area on site.

3F - Visual Privacy

The tables below illustrate the building separation distance proposed on site and to the northern neighbouring development as approved. Whilst building separation distances as proposed do not adhere to the requirements of the ADG, visual privacy between the proposed development and that approved upon 397 Princes Highway is considered to be satisfactory.

Building Separation	On Site	Compliance
Up to L4 12m required	Up to L4 = 14.4m	Yes

L5 – L8 18m required	L4 to L7 = 14.4m	No – 3.6m deficient. Angled privacy louvres provided to bedroom windows. Privacy satisfactory
L8 + 24m required	L8 + = >24m as no building component above L7 on site	Yes

Building Separation	With 397 Princes Highway <i>(9m side setback approved for building form upon 397 Princes Highway above Level 5, to side boundary with subject site)</i>	Compliance
Up to L4 12m required	Lower 3 levels fronting Princes Highway built to Boundary.	No – Build to side boundary proposed. This is satisfactory given 4 storey podium upon 397 adjoining as approved. Nil privacy impacts likely.
L5 – L8 18m required	L4 – L8 = 4.53m to common side boundary. (13.53m proposed building to approved building upon 397 Princes Highway)	No – 4.47m deficiency. Satisfactory given provision of obscured and highlight windows to ensuite, kitchen and living areas of units.
L8 + 24m required	L9 – L10 = 4.53m to common side boundary. (13.53m proposed building to approved building upon 397 Princes Highway)	No – 10.47m deficiency. Satisfactory given provision of obscured and highlight windows to stairwell, kitchen and living areas of units.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
1.9A Suspension of covenants, agreements and instruments	Yes	Yes - see discussion
2.3 Zone B4 Mixed Use	Yes	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes
4.3 Height of buildings	No - see discussion	No - see discussion
4.3 Height of buildings - Rockdale Town Centre	No - see discussion	No - see discussion
4.6 Exceptions to development standards	No - see discussion	No - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.3 Between 25 and 30 ANEF (2033) contours	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
6.4 Airspace operations	Yes	Yes - see discussion
6.6 Flood Planning Land	No - see discussion	No - see discussion
6.7 Stormwater	No - see discussion	No - see discussion
6.12 Essential services	Yes	Yes - see discussion

1.9A Suspension of covenants, agreements and instruments

The formally registered 88B Instrument and linen plan applying to the subject site details a number of easements and restrictions burdening the property, which benefit Telstra and Bayside Council. These easements have been discussed in detail within the SEPP 65 (Principle 1) section of this report.

Whilst the provisions of this clause would normally suspend a covenant, easement or instrument, the provisions of this clause do not specifically apply to a covenant imposed by the Council nor suspend the rights or interests of any public authority. It is noted that Telstra is deemed to be a 'Public Authority' as per Clause 277 of the Environmental Planning and Assessment Regulation 2000. As such the provisions of this clause do not specifically apply.

2.3 Zone B4 Mixed Use

The subject site is zoned B4 - Mixed Use under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as commercial and residential flat building which constitute permissible development only with development consent. The proposed development is consistent with the objectives of the zone.

4.3 Height of buildings

As per the provisions of this clause, a maximum height limit of 22m applies to the subject site. The proposal seeks to construct a development on site, with a height of 25.15m - 34.17m in height as follows.

- a. Rooftop of 8 storey building component = 25.15m
- b. Top of Arbour structure at level 8 communal open space area = 27.24m
- c. Top of lobby to level 8 communal open space area = 27.78m
- d. Top of lift / stair overrun to level 8 communal open space area = 28.98m
- e. Rooftop of 11 storey building component = 33.97m
- f. Parapet of 11 storey building component = 34.17m

The proposed development breaches the height limit on site by 3.15m - 12.17m inclusive of lift / stair overruns and represents a 14.3% to 55.3% proposed variation to the maximum permissible height limit for the site.

The applicant has submitted a clause 4.6 variation to development standard in relation to the proposed above exceedance. The above has been addressed within Clause 4.6 of this report. The proposal is deemed to be inappropriate and inconsistent with the objectives of clause 4.3 - Height of Building for the reasons outlined within Clause 4.6.

4.3 Height of buildings - Rockdale Town Centre

The provisions of this clause allow a potential 'bonus height' of 12m for certain sites within the Rockdale

Town Centre, subject to the lot having an area of at least 1,500 square metres. The lot subject of this application, comprises a total site area of 1306sq/m, being 194sq/m deficient of the lot area required to be eligible for the aforementioned height bonus. Accordingly the lot is not eligible for additional height provided by the bonus.

Notwithstanding the above, the applicant seeks to pursue the 'bonus height', submitting a clause 4.6 variation to support their arguments for the additional height (3.15m - 12.17m) proposed. The Clause 4.6 submitted by the applicant has been considered and is not supported for the reasons outlined below.

It is reiterated that sites eligible for the 'bonus height' are required to partake in a 'design competition' process, in accordance with the provisions of Clause 6.14 of RLEP 2011.

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

4.6 Exceptions to development standards

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

- (3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and*
- (3)(b) that there are sufficient environmental planning grounds to justify the variation.*

In considering the applicant's submission, the consent authority must be satisfied that:

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.*

- 5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and*
- 5(b) the public benefit of maintaining the development standard.*

The variations to the height standard has been assessed below.

The proposal has further been assessed against the principles established by the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90, where it was 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.

Variation Sought - Height

As noted within Clause 4.3 - Height of Buildings, the proposal seeks to vary the maximum 22m height standard applicable to the subject site, proposing a height of 25.15m - 34.17m as illustrated in the image below.



Proposed Height Variation

The proposed development breaches the height limit on site by 3.15m - 12.17m inclusive of lift / stair overruns and represents a 14.3% to 55.3% proposed variation to the maximum permissible height limit for the site.

Applicants Height Justification

A summary of the key arguments of the applicant's clause 4.6 arguments in respect of the height development standard are summarized as follows;

- a) Strict compliance with the height of buildings principal development standard under Rockdale Local Environmental Plan 2011 is unreasonable or unnecessary in the circumstances of the case, where the proposed building height could otherwise have been achieved in a development scheme that involved amalgamation of the adjoining site to the north, such that the additional 12m height incentive available under subclause 4.3(2A)(a) of the LEP would have realised an allowable building height of 34m across both sites.*
- b) The proposed design solution is considered to represent an appropriate development outcome for the site, displaying design excellence, whilst ensuring that a high standard of amenity for future residents will be achieved. There are sufficient environmental planning grounds to justify the contravention to the development standard as the building has been designed to a high quality and the amenity for future residents will be to a high standard;*
- c) The non-compliance does not directly result in any adverse environmental impacts in terms of the building being out of context with the anticipated bulk and scale of development in the locality;*
- d) The proposal will provide a high quality shop top housing development that is in keeping with the desired future character of the area;*
- e) The scale and nature of the non-compliance does not give rise to any matter of State or Regional significance, nor does it adversely affect the public interest.*
- f) The overall style, scale and built form of the building will be commensurate with the likely future 'built environment' and desired character of the area;*

g) The non-compliant height will have negligible impact on the streetscape appearance and character of the locality having regard to the similar height of the proposed development on the adjoining site to the north, for which a development application is soon to be lodged;

h) The proposal is generally consistent with the aims and objectives of Rockdale Local Environmental Plan 2011; and

i) The proposal is generally consistent with the objects of the Environmental Planning & Assessment Act 1979, in particular, the orderly and economic use and development of land and ecologically sustainable development.

Height Discussion

The applicants written request is satisfactory in regard to addressing clause 4.6(3).

Following a review of the application, it is however considered that the height variation as proposed is inappropriate for the following reasons:

A. The subject site is not the only property within the street block bound by the Railway line, Fox Lane, Princes Highway and an unnamed lane to the north. The site and its northern neighbour 397 Princes Highway are adjoined by a Telstra Exchange facility to the north west. This property is known as 397A Princes Highway and is currently occupied by a two storey brick telephone exchange building.

Although this site houses electricity infrastructure, burdens the subject site and its northern neighbour with relevant easements at the present time, the potential to redevelop this site should not be ignored purely given its existing use. This adjoining property is of sufficient dimensions and area (1108sq/m) in which to accommodate redevelopment in its own right.

Given the above, the subject site is not the only property within the aforementioned street block ('urban island') which is less than 1500sq/m in overall site area. In the event that 397A Princes Highway is sought to be redeveloped, this site would also be required to adhere to the applicable 22m height limit that applies. Accordingly, the subject site does not warrant special consideration.

B) The streetscape analysis and massing diagram submitted by the applicant is misleading and inaccurate. Properties depicted as redevelopment sites within the analysis at 407-411 Princes Highway and 413-425 Princes Highway do not comprise sufficient overall site area i.e. 1500sq/m in order to benefit from the height bonus provisions. These properties and the subject site are not eligible for the bonus additional height as they have insufficient overall site area. As such the potential height of these southern properties will be restricted to 22m.



Applicants massing diagram



Applicants streetscape analysis

Additionally the streetscape analysis and massing diagram depict that the bonus height is also applicable to 381-391 Princes Highway. This is the building mass furthest to the right in the above figures. It is noted that this particular site is outside the confines of the Rockdale Town Centre and as such the bonus height provisions do not apply to this property. Current planning controls for 381-391 Princes Highway restrict height on this property to 14.5m.

Given the subject site and southern adjoining properties within the Rockdale Town Centre are not as yet developed to their full potential and of which are less than 1500sq/m where the additional height bonus does not apply, they are also restricted to a 22m height limit. The subject site is therefore not considered to warrant special consideration.

C) The proposed 3.15m - 12.17m of additional building height represents a 14.3% to 55.3% variation in excess of the maximum height permitted upon the subject site. Supporting the proposed additional height upon this site has the potential to set a significant undesirable precedent. The bonus height provisions within RLEP 2011 were introduced to encourage developers and / or property owners to amalgamate adjoining sites and create sites with an overall area which would be capable of not only facilitating a development of greater height, but providing a development which complies in full with the relevant applicable planning requirements and ensuring the provisions of clause 6.14 which require a design competition to be undertaken, are followed. The proposal has the potential to inadvertently discourage the amalgamation of sites for future redevelopment purposes.

D) The applicants written request to vary the Height standard has not adequately provided appropriate justification as to why the current height standard is unreasonable or unnecessary in the circumstances of the development or subject site.

E) The applicant has not provided sufficient environmental planning grounds particular to this development and site, which demonstrate that the Height development standard is unreasonable or unnecessary. The applicants written request is inconsistent with the objectives of Clause 4.6 - Exceptions to Development Standards.

F) Should the applicant be permitted to accommodate the additional 12m bonus height on the subject site, the applicant would obtain the benefit of the bonus provisions without delivering design excellence as intended and / or required by the provisions of Rockdale LEP 2011. This would set a significant undesirable precedent and potential abandonment of the design excellence clause recently introduced into RLEP 2011.

G) The proposal does not regard or respect the principles established in the Council endorsed Rockdale Town Centre MasterPlan. That being, to encourage site amalgamation. The subject site and its neighbour at 397 Princes Highway are not being amalgamated, or developed as a single entity. By allowing the additional height, there is no incentive for any site amalgamation.

H) The site is located within what is known as the 'Arterial Edge' street character as per the provisions

of Part 7.5 of DCP 2011. Accordingly, the street edge is to be defined by modulated built forms transitioning from the strong urban character in the town centre core further to the south, to provide a more spacious and open character, which allows vistas between buildings to the skyline beyond. The additional height as proposed does not provide these opportunities.

I) Given building envelope controls apply to the site in lieu of FSR provisions, the height standard is the principal control which sets the overall bulk and scale for development upon this site. The proposal is inconsistent with the objectives and requirements of Clause 4.3 - Height of Buildings and is of insufficient overall site area to be eligible for the bonus height permitted by the provisions of this clause.

J) The proposal is not in the public interest given the above.

It is reiterated that given the Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90, the applicant has been unable to establish the site and development specific circumstances which could otherwise warrant the proposed additional height on the subject site.

It is important to note that prior to the establishment of the judgement for the aforementioned court case, variations to development standards could have been supported on the basis of compliance with objectives and nil environmental planning impacts. Given the establishment of this judgement the requirement for justifying a variation to a development standard such as Height is challenging and must be correlated to the particular circumstances of the site or development. This has been unable to be demonstrated in this instance by the applicant.

Given the above, it is not considered that the proposed height variation should be supported and that the height standard for the site and development is reasonable and necessary in this instance. It is reiterated that there are insufficient environmental planning grounds particular to the site and development presented by the applicant of which to justify the contravention of the height standard for the site.

6.1 Acid Sulfate Soil - Class 5

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

6.2 Earthworks

The proposal involves extensive excavation in excess of 12m within the site to accommodate the basement levels. The impacts of the proposed earthworks have been considered in the assessment of this proposal. The proposal meets the objectives of this clause.

6.3 Between 25 and 30 ANEF (2033) contours

The development is on land that is not located near the Sydney (Kingsford-Smith) Airport, however the land is located between the 25 and 30 ANEF (2033) contours and as such is affected by aircraft noise. The proposed development will result in an increase in the number of dwellings and people affected by aircraft and in accordance with this clause, the proposed development requires noise mitigation measures.

The proposal was accompanied by an Acoustic Report prepared by Acoustic Noise and Vibration Solutions Pty Ltd dated 24/07/2015. The submitted report considered the matter of aircraft noise and provided recommendations in order to ensure acoustic amelioration measures are incorporated into the proposed development. The proposed development complies with the requirements and objectives

of this clause.

6.4 Airspace operations

The proposed development is affected by the 50-51AHD Obstacle Limitation Surface (OLS). The proposed development has a height of 49.19RL and thus was referred to Sydney Airports for comment. Sydney Airport responded to Council on 30/10/2015 confirming nil objection to the erection of structures to a maximum height of 49.2m AHD. The proposal satisfies the requirements of this clause.

6.6 Flood Planning Land

The site is affected by flooding and the floor level of the development is required to be raised, with car parking areas also protected appropriately. Whilst the ground floor level of the building has been designed in accordance with the requirements contained in Council's Flood Advice Letter, it is not clear as to whether the basement carpark access ramp crest level is 500mm above the 1 in 100-year flow level. Given the aforementioned it cannot be stated that the proposal satisfies the objectives and requirements of this clause.

6.7 Stormwater

The proposed development will be able to drain by gravity to a detention system, with over flow directed to proposed new kerb outlets in the Princes Highway, this is subject to RMS approval. The applicant has submitted stormwater concept plans and a stormwater management plan prepared by Australian Consulting Engineers. The system proposed fails to demonstrate the use of a Water Sensitive Urban Design Approach (WSUD) and is thus inconsistent with the objectives and provisions of this clause.

6.12 Essential services

Services will generally be available on the site.

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

Draft ISEPP

The NSW Department of Planning has released for public comment its amendments to the State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP). The amendments to the Infrastructure SEPP propose to simplify the delivery and maintenance of social infrastructure including health facilities, correctional centres, emergency and police services, and council services. They will simplify the approval process while still ensuring appropriate levels of environmental assessment and consultation are undertaken for these activities. The proposal remains consistent with the provisions of this draft.

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
4.1.1 Views and Vista	Yes	Yes
4.1.3 Water Management	No - see discussion	No - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.3 Flood Risk Management	No - see discussion	No - see discussion
4.1.4 Soil Management	Yes	Yes
4.2 Streetscape and Site Context - General	No - see discussion	No - see discussion
4.4.4 Glazing - General Controls	Yes	Yes - see discussion
4.4.5 Acoustic privacy	Yes	Yes - see discussion
4.4.6 Noise Impact	Yes	Yes
4.4.7 Wind Impact	No - see discussion	No - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	No - see discussion	No - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
4.6 Parking Rates - Shops	Yes	Yes - see discussion
4.6 Car Park Location and Design	Yes	Yes
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes
4.6 Basement Parking - General	Yes	Yes
4.6 Driveway Widths	Yes	Yes
4.6 Traffic - Classified Roads	Yes	Yes
4.6 Access to Parking	Yes	Yes - see discussion
4.6 Design of Loading Facilities	No - see discussion	No - see discussion
4.6 Car Wash Facilities	Yes	Yes - see discussion
4.6 Pedestrian Access and Sustainable Transport	Yes	Yes
4.7 Air Conditioning and Communication Structures	No - see discussion	No - see discussion
4.7 Waste Storage and Recycling Facilities	No - see discussion	No - see discussion
4.7 Service Lines/Cables	No - see discussion	No - see discussion
4.7 Laundry Facilities and Drying Areas	Yes	Yes - see discussion
4.7 Letterboxes	Yes	Yes - see discussion
4.7 Hot Water Systems	Yes	Yes - see discussion
5.2 RFB - Building Entry	Yes	Yes - see discussion
5.2 RFB - Lift Size and Access	Yes	Yes - see discussion
5.3 Mixed Use - Retail	Yes	No - see discussion
5.3 Mixed Use - Access to Premises	Yes	Yes - see discussion
5.3 Mixed Use - Awnings	Yes	Yes - see discussion
7.5.1 Street Role - Centre Edge Residential	Yes	Yes - see discussion
7.5.1 Residential Apartment Design	Yes	Yes
7.5.1 Parking and Loading	Yes	Yes
7.5.1 Commercial Space	No - see discussion	No - see discussion
7.5.2 Setbacks	Yes	Yes - see discussion
7.5.2 Street Character	No - see discussion	No - see discussion
7.5.2 Arterial Edge	Yes	Yes - see discussion
7.5.2 Laneway	No - see discussion	No - see discussion

4.1.3 Water Management

Matters in relation to stormwater have been previously discussed in this report.

4.1.3 Flood Risk Management

The matter of flooding was previously addressed in this report.

4.2 Streetscape and Site Context - General

The matter of streetscape and site context has been addressed as part of the SEPP 65 assessment of this report.

4.4.4 Glazing - General Controls

The proposed development provides appropriate sun shading devices during summer for glazed areas facing west and east, including the use of awnings and external screen louvers. The proposal is satisfactory in regards to this clause.

4.4.5 Acoustic privacy

As previously discussed within this report, an Acoustic report prepared by a suitably qualified acoustic consultant was submitted with the application which provided recommendations on appropriate measures to be incorporated into the design of the building in relation to potential acoustic impacts from road, rail, aircraft and mechanical plant noise. The development will also be appropriately acoustically attenuated to ensure acoustic amenity is maximized between inter tenancy units. The proposal satisfies the requirements and objectives of this clause.

4.4.7 Wind Impact

A wind report prepared by ANA Civil Pty Ltd dated 20 July 2015 was submitted to Council with the original version of the scheme. Plans were subsequently amended and resubmitted to Council on 6 June 2016. No revised wind report was submitted.

In the absence of a revised Wind Report, it cannot be stated that the proposal satisfies the provisions of this clause.

4.5.1 Social Equity - Housing Diversity and Choice

The development is required to comply with the following unit mix:

Unit	DCP Requirement	Proposed	Complies
1 bed	10% - 30% (6-18)	17 x 1 bed	Yes
2 bed	50% - 75% (29-43)	36 x 2 bed	Yes
3+ bed	10% - 20% (6-12)	4 x 3 bed	No

Notwithstanding the above, the proposal provides for a range of housing within the development to cater to diverse household types. The proposal provides for a range of housing options which will enable changing lifestyle needs and cater to different income groups. The proposal is considered to be consistent with the objectives of this clause. A variation in this instance is deemed satisfactory.

4.5.2 Social Equity - Equitable Access

As per the requirements of this clause a minimum of 6 adaptable units are required to be provided

within the development. A total of 7 adaptable units are proposed, being units A1.1/A2.3/A3.3/A4.3/A5.3/A6.3/A7.3. The proposal complies with the requirements of this clause.

4.6 Parking Rates - Shops

Plans illustrate the provision of 341sq/m of commercial floor space at ground level in the form of two shops. As per the provisions of this clause and factoring in the applicable Travel Demand Management Concession which permits a 20% reduction of the 'non-residential' component of the parking requirement within the Rockdale Town Centre, the following is required for the development.

- a) 7 commercial car spaces
- b) 2 bicycle and 1 motorbike spaces

Plans illustrate the provision of 7 commercial car spaces, in addition to a total of 5 motorbike and 15 bicycle spaces and the proposal complies with the provisions of this clause.

Note - Residential car parking requirements are addressed within the Apartment Design Guide section of this report.

4.6 Access to Parking

Vehicular access to the site is provided via Fox Lane in the form of a proposed 6.193m wide access way along the rear boundary of the subject site. The proposal provides secure carparking behind a shutter, with the provision of an intercom for visitor access. Parking for persons with a disability / mobility impairment has been provided within close proximity to lifts and vehicles are able to enter and exit the site in a forward direction. The proposal is satisfactory in regards to the provisions of this clause.

4.6 Design of Loading Facilities

Plans illustrate a dedicated loading / unloading bay on site adjoining the ground level commercial / residential garbage rooms for garbage collection and furniture removal. Whilst this area is illustrated on plans, insufficient clearance i.e. 3.65m is provided to facilitate the use of this area for a Council garbage truck. A 4.5m minimum height clearance is required by Council. The proposal is unsatisfactory in this regard.

4.6 Car Wash Facilities

Basement level 2 incorporates a dedicated car wash bay on site for use by future occupants. It is of appropriate dimensions and satisfactory in this regard.

4.7 Air Conditioning and Communication Structures

Plans do not illustrate the provision of proposed air conditioning or communication structures on site. An accurate assessment cannot thus be undertaken.

4.7 Waste Storage and Recycling Facilities

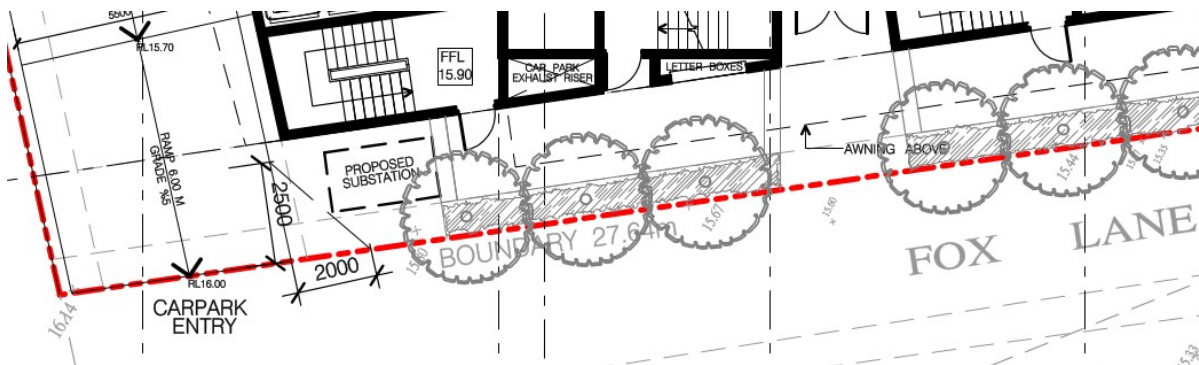
Plans indicate the provision of waste chutes within the development, adjoining each lift core within the building. Waste is to be discharged into 1100 litre bins within the waste storage rooms at ground level within the development. A separate waste storage room is provided for the commercial component of the development.

Waste storage rooms are of sufficient dimensions and area to accommodate the proposed development. The proposal provides for appropriate on site waste management and

satisfies the provisions of this clause.

4.7 Service Lines/Cables

Revised plans illustrate the provision of a proposed substation within the physical boundaries of the site adjoining Fox Lane and the proposed southern fire stair.



The location of the proposed substation is deemed to be inappropriate given it is positioned within a proposed pedestrian walkway, fully visible with no apparent screening and would obscure pedestrian access beyond this point. The substation should be integrated into the built form on site. The proposal is unsatisfactory with regards to the provisions of this clause.

4.7 Laundry Facilities and Drying Areas

Residential units are provided with appropriate internal laundry facilities. The proposal satisfies the provisions of this clause.

4.7 Letterboxes

Plans indicate the provision of residential mail boxes adjoining the main entry foyers to the upper residential levels. The proposal complies with the requirements of this clause.

4.7 Hot Water Systems

No details are provided on plans regarding the location of hot water units to residential dwellings. The proposal will be conditioned to ensure that all hot water systems/units located on the balcony of a dwelling be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed.

5.2 RFB - Building Entry

Two residential building entries are provided at ground level from both the Princes Highway and Fox Lane. Residential entries are spacious, inviting, accessible and clearly identifiable, providing a direct physical and visual connection between the street, pedestrian connection and the development. The proposal satisfies the requirements and objectives of this clause.

5.2 RFB - Lift Size and Access

The provisions of this clause require the provision of lifts within all residential flat buildings. Lift cars are to have minimal internal dimensions of 2.1m x 1.5m, be accessible from all levels of the building and each dwelling on a level above the sixth storey is to have access to two lifts.

Additionally all common corridors are required to have a minimum width of 2 metres to enable bulky goods (white goods, furniture etc) to be easily transported through the building.

Plans indicate the provision of appropriately sized and located lift cores within the proposed

development. Lifts are accessible from basement level to all levels within the development. Cross over between lifts is provided at level 8 via the rooftop communal open space area, enabling future occupants access to two within the building.

Further to the above it is noted that communal corridors within the development are 1.77m - 3.4m, thus a minor component of the corridors are 0.23m deficient with the required corridor width as per DCP 2011. Notwithstanding, it is considered that the corridor widths as proposed are satisfactory as they would enable the movement of bulky goods within the development.

The proposed development is satisfactory with regards to the objectives of this clause.

5.3 Mixed Use - Retail

The proposal is required to provide 10% (500sq/m) of the gross floor area of the development as commercial space. Plans indicate the provision of a total of 341sq/m of commercial space on site, this is equivalent to 6.8% and as such does not comply with this requirement.

Notwithstanding the proposal is deemed to be acceptable given the provision of commercial space fronting the Princes Highway and wrapping the corner to Fox Lane, which activates the northern edge of the town centre and public domain, providing for a commercial focus at ground level. The proposal is satisfactory in this regard and satisfies the objectives of this requirement.

5.3 Mixed Use - Access to Premises

Access for persons with a disability / mobility impairment has been provided on site from basement to rooftop levels, including ground floor commercial areas. The proposal satisfies the requirements of this clause.

5.3 Mixed Use - Awnings

An awning is proposed to the full length of the Princes Highway frontage. The awning has a soffit height of 3.4m and a maximum fascia height of 100mm. The kerb setback is in excess of 600mm. The awning will provide appropriate weather protection and the proposal is satisfactory with regards to the provisions of this clause.

7.5.1 Street Role - Centre Edge Residential

Developments are to comply with the standards for ground floor building uses and access locations set out by this part, with respect to their intended core function. The site is subject to two street frontages and subsequent core functions as follows:

Princes Highway - Contributory Retail

The proposal incorporates commercial shopfront premises along the frontage of the site to the Princes Highway in addition to a residential entry. The southernmost commercial tenancy wraps the corner to Fox Lane and continues for a length of approximately 12.5m into the site, partially addressing the Fox Lane frontage.

The proposal is consistent with the DCP requirements for the provision of a contributory retail street frontage.

Fox Lane - Service Laneway

As referred to above, the southern most commercial tenancy wraps the corner to Fox Lane and continues for a length of approximately 12.5m into the site, partially addressing the Fox Lane frontage. A second residential entry lobby is proposed off Fox Lane, with vehicular and service access proposed via the lane as required by the provisions of this clause.

Given the above the proposal satisfies the requirements of this clause.

7.5.1 Commercial Space

The proposal does not incorporate the provision of commercial space at first floor level, nor is a higher floor to ceiling i.e. 3.3m at first floor level provided in order to facilitate future commercial conversion. The proposal is unsatisfactory in regards to the requirements of this clause.

7.5.2 Setbacks

The subject site is located within the 'Green Gateway' and as such a 3m setback is required to the Princes Highway frontage of the site. Revised plans incorporate this required setback to ground and upper levels and the proposal thus complies with this requirement.

7.5.2 Street Character

The proposal seeks to vary the relevant street character diagrams applicable to the subject site. These have been discussed in detail below.

7.5.2 Arterial Edge

The proposed development is required to provide a 3 storey podium setback 3m from the Princes Highway frontage of the site, in order to accommodate the envisaged 'Green Gateway' corridor.

Additionally, levels 4 and above are to be recessed an additional 3m from the podium below, with a side setback of 4.5m at level 4 and above with a minimum building separation distance of 9m to neighbouring buildings.

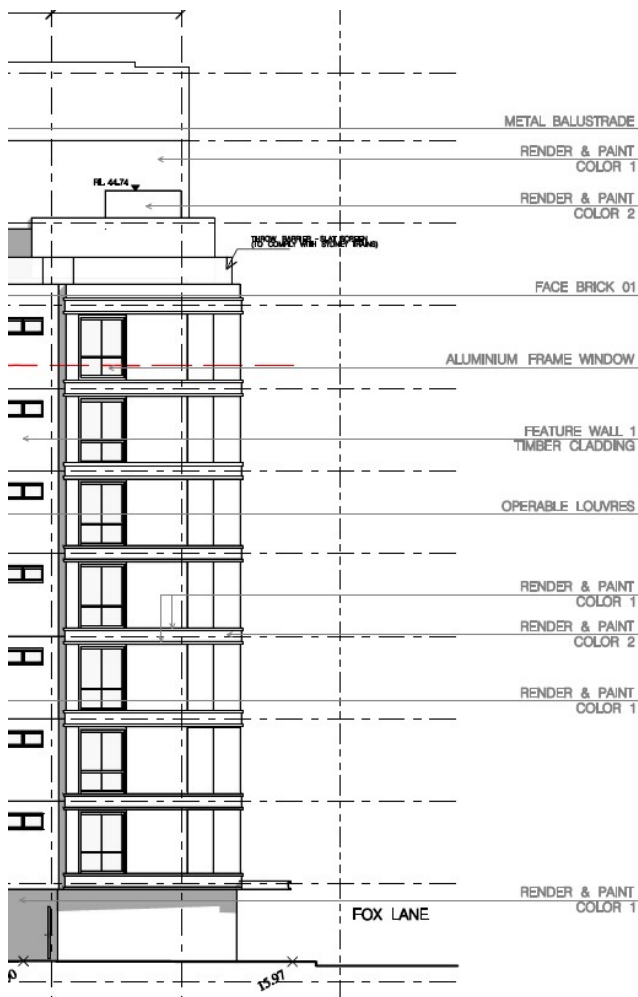
The proposal provides a 3 storey podium, recessed 3m from the front property boundary, with levels 4 and above recessed a further 3m as required by this clause.

Level 4 and above is setback 4.5m from the northern common side boundary of the site as required by the provisions of this clause.

7.5.2 Laneway

Along the 'Laneway' frontage of the site, the proposal is required to provide a 3 storey podium built to the property boundary, with levels 4 and above recessed an additional 3m from the podium below.

The ground level of the development and all subsequent levels above are positioned 3m from the Fox Lane boundary of the site. This 3m setback is provided at ground level in order to facilitate a pedestrian pathway to the development. This provides amenity for future occupants and is thus supported.



Notwithstanding, in order to avoid an expansive, lengthy, unarticulated built form it is considered that the building should be further recessed from level 4 and above, creating a podium level and tower form above as intended by the provisions of this clause. This has not been occurred and the tower of the development does not provide an appropriate human scale within the narrow laneway. The proposal is not satisfactory with regards to the provisions of this clause.

S.79C(1)(a)(iv) - Provisions of regulations

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

Traffic Impacts

The proposal was considered by the Bayside Traffic Development Advisory Committee on 10th August 2016, and the following recommendations were made:

1. That the applicant needs to undertake road widening to accommodate a two-way traffic flow as well as garbage trucks, for entry and exit in a forward direction from the lane-way without mounting the kerb and footpaths. Swept paths for the same will have to be submitted to traffic team for further appraisal based on technical specifications of Council's garbage vehicles. A minimum 6m width is needed for two-way traffic flow with additional widening required depending on garbage vehicle turning paths.

Comment: Revised plans illustrate that the proposed built form is setback 3m from the southern

boundary to Fox Lane. As a result this allows for the incorporation of a 1m wide footpath along this side, with associated planting of trees and shrubs along the southern boundary of the site. A manual calculation of the revised ground floor plan appears to illustrate that a 6m road width is now possible within Fox Lane kerb to kerb.

The applicant did not submit swept path details as required by Traffic Committee and as such an accurate assessment is unable to be undertaken in relation to the above.

2. RMS requires any vehicles entering the laneway including delivery trucks to the property to be able to enter and leave in a forward direction. Appropriate manoeuvring space has to be provided on site.

Comment: The applicant did not submit information to confirm the above nor to enable further referral to the RMS for comment. Further to the above the development cannot accommodate a garbage truck on site given the low head height clearances and as designed the proposal does not enable any vehicles larger than an SRV to enter and exit the site in a forward direction.

3. That the street lighting be provided in the lane-way as per Ausgrid standards and public domain plan.

Comment: Nil detail was provided by the applicant in respect of the above.

4. The power pole at the corner of Fox Lane and Princes Highway, will have to be relocated if the lane is going to be widened.

Comment: Nil detail regarding the proposed relocation of the power pole was provided by the applicant in respect of the above.

5. Garbage collection cannot be carried out on street based on existing plans as there is insufficient lane width to enable Council's garbage vehicles to manoeuvre.

Comment: As previously discussed within this report, a Council garbage truck is unable to enter and exit the site in a forward direction and insufficient head height is provided in the loading bay on site to facilitate garbage collection.

6. Works zone cannot be provided in the lane-way due to the narrowness of the street. All construction and delivery vehicles will have to be undertaken within the site. there are other businesses which require access to their properties via the laneway. This access is to be maintained at all times during construction.

Comment: The above is noted.

The above matters have not been satisfactorily addressed or resolved within revised plans and documentation. The proposal thus fails to satisfy the recommendations above and is unsatisfactory in this regard.

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. It is reiterated that the subject site is of insufficient

overall area to benefit from the bonus height provisions of Rockdale LEP 2011. The subject site is not suitable for the development as proposed, nor are there sufficient environmental planning grounds in which to support a variation to the relevant height standard for the site.

As such the proposal is recommended for Refusal and the site is not suitable for the proposed development in its current form.

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

The development has been notified in accordance with the provisions of Rockdale DCP 2011 and one (1) submission has been received. The issues raised in the submission are discussed below:

An eleven (11) storey structure seems excessive considering the many high rise structures in the Rockdale CBD are only eight (8) storeys./ Eleven (11) storeys will produce considerable overshadowing to the east of this proposed development over the residential properties and their gardens that have been there for well over 50 years. I do not want hundreds of eyes from such a high rise looking into my property invading my privacy and that of my neighbours. From my back garden we already can see people on their eight-storey balconies in Bryant Street to the south of my property. Therefore eleven storeys will be even more intrusive. Perhaps nine storeys would not be so intrusive / This proposed structure will block some of the western late afternoon sun light over York and George Streets and therefore my property and that of my neighbours in George Street.

Comment: Matters relating to height, overshadowing and visual privacy have been previously addressed in this report.

Vehicles going in and out of the premises could also cause more congestion onto the already congested Princes Highway.

Comment: Matters relating to traffic and car parking have been previously addressed in this report.

This proposed structure is under the flight path. When my parents bought my property over 50 years ago they were advised by the relevant authorities that there was a height restriction in this area being under the flight path.

Comment: The maximum permissible height limit as permitted by RLEP 2011 has taken into consideration the requirements of Sydney airport.

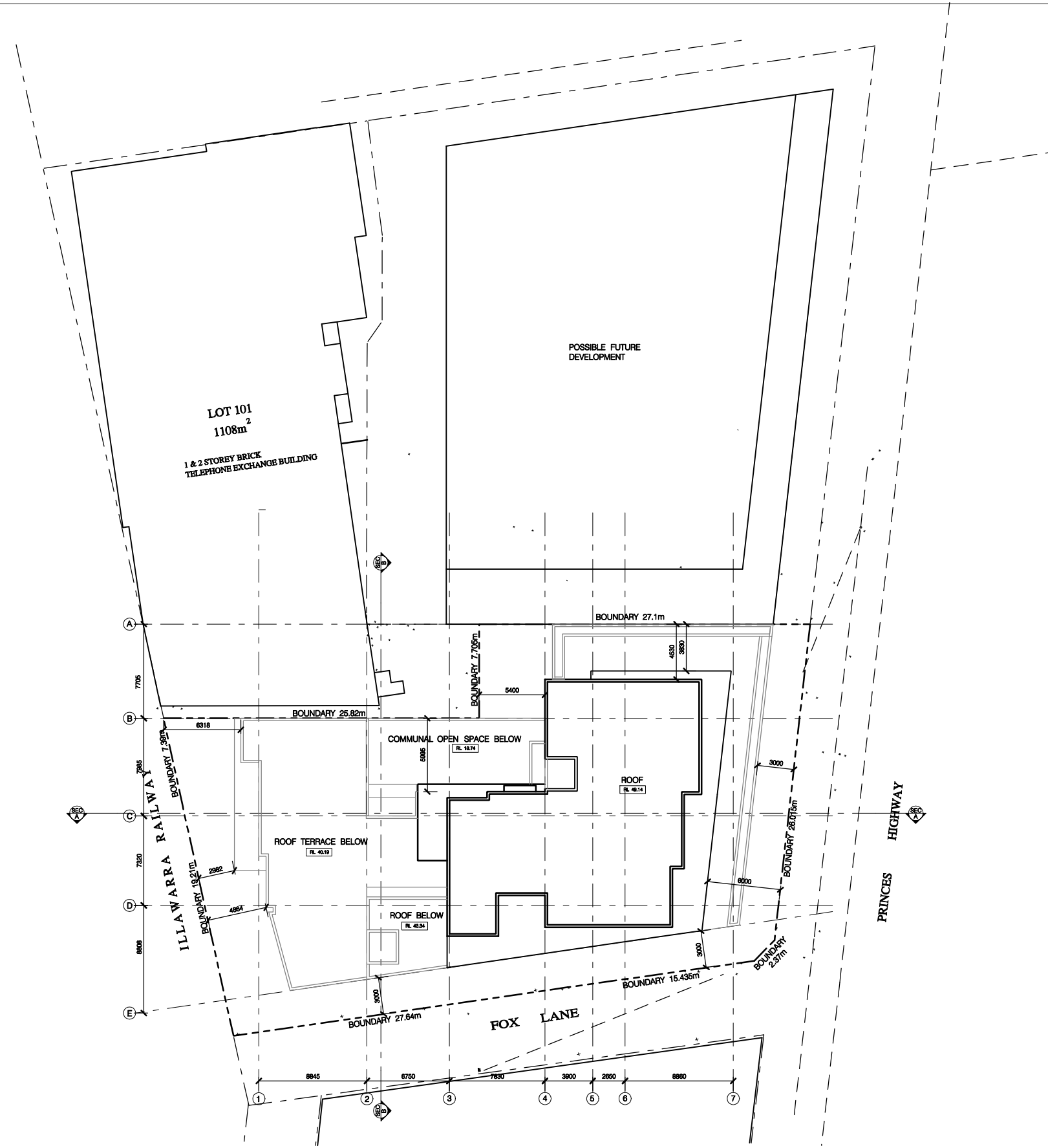
S.79C(1)(e) - Public interest

For the reasons outlined previously within this report, the proposed development is inconsistent with the requirements and objectives of relevant planning policies and as such is deemed to be unsatisfactory and not in the public interest in its current form.

S94 Contribution towards provision or improvement of amenities or services

S94 contributions would apply to the development, as a result of the proposed increase in density, should the proposal have been supported.

Schedule 1 - Draft Conditions of consent



BASIX THERMAL COMMITMENTS

- All window and sliding door frames to be New Improved Aluminium
- All glazing to be Pyrolytic Low 'E' (unless noted otherwise)
- Units: A3.1, A3.2, A3.3, A3.5
1. R2.5 Ceiling Insulation
2. R1.0 foil sided external wall insulation
- Units: A2.1, A2.2
1. R1.0 foil sided insulation to underside of slab above Retail outdoor seating
- Units: A1.4, A1.5
1. R1.0 foil sided insulation to underside of slab above driveway
- Units: A10.3
1. R2.5 Ceiling Insulation
2. R1.0 foil sided external wall insulation
3. Living room glazing Double Glazed Low 'E'
- Units: A9.4, A10-1, A10.2, A10.4, A10.5
1. R2.5 Ceiling Insulation

GFA CALCULATIONS

	COMMERCIAL	RESIDENTIAL	TOTAL
GROUND FLOOR	345 m2	31 m2	376 m2
FIRST FLOOR		496 m2	496 m2
SECOND FLOOR		649 m2	649 m2
THIRD FLOOR		533 m2	533 m2
FOURTH FLOOR		533 m2	533 m2
FIFTH FLOOR		533 m2	533 m2
SIXTH FLOOR		533 m2	533 m2
SEVENTH FLOOR		533 m2	533 m2
EIGHTH FLOOR		305 m2	305 m2
NINTH FLOOR		287 m2	287 m2
TENTH FLOOR		225 m2	225 m2
TOTAL	345 m2	4658 m2	5,003 m2

- SITE AREA = 1,306 m2
- PROPOSED FSR- 3.83:1

Scale: 1:200 @A1 1:400 @A3

0 2 4 6 8 10 20m

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Date Printed: 6/06/2016



ISSUE	REV	REVISION DESCRIPTION	APPRO	DATE
B	2	REISSUE FOR DA		06.06.2016
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AMENDMENTS				

ARCHITECTURE & BUILDING WORKS

ABN 35 093 181 518
Level 3, Suite 6, 7-9 Gibbons Street
Rockdale NSW 2016
Australia
Tel: (02) 8052 9800
Email: admin@abworks.com.au

Architects
Construction Managers
Interior Designers
Town Planners

Project Details:

MIXED USE DEVELOPMENT
401 - 405 PRINCES HIGHWAY, ROCKDALE

Client:
PELIN IBRAHIM

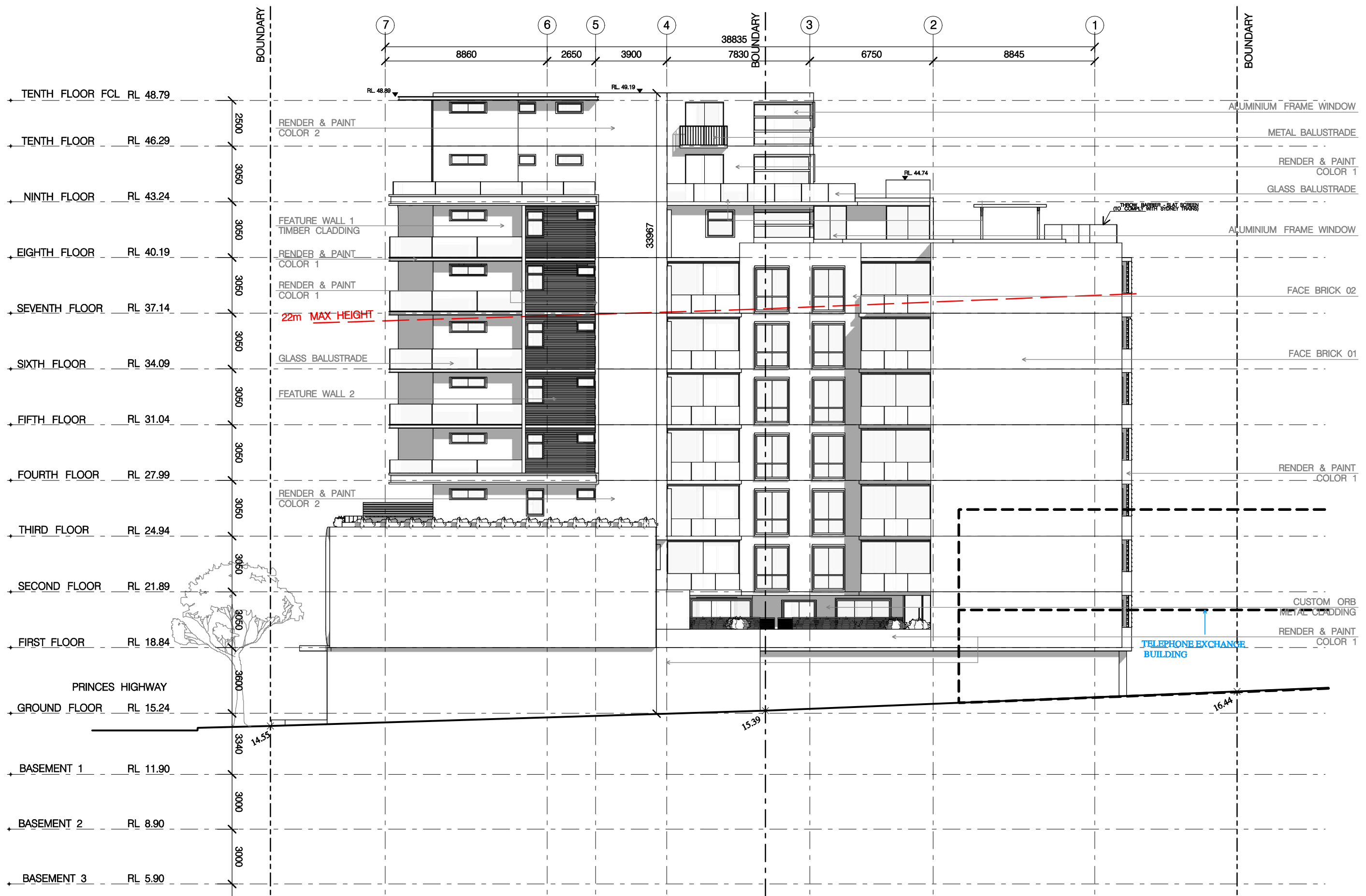
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Drawing Status:
AUTHORITY APPROVAL

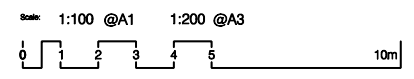
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PN-391

Issue: - Date Printed: 6/06/2016

Drawing Number:
A-0100



04 NORTH ELEVATION
SCALE 1:200 @ A3



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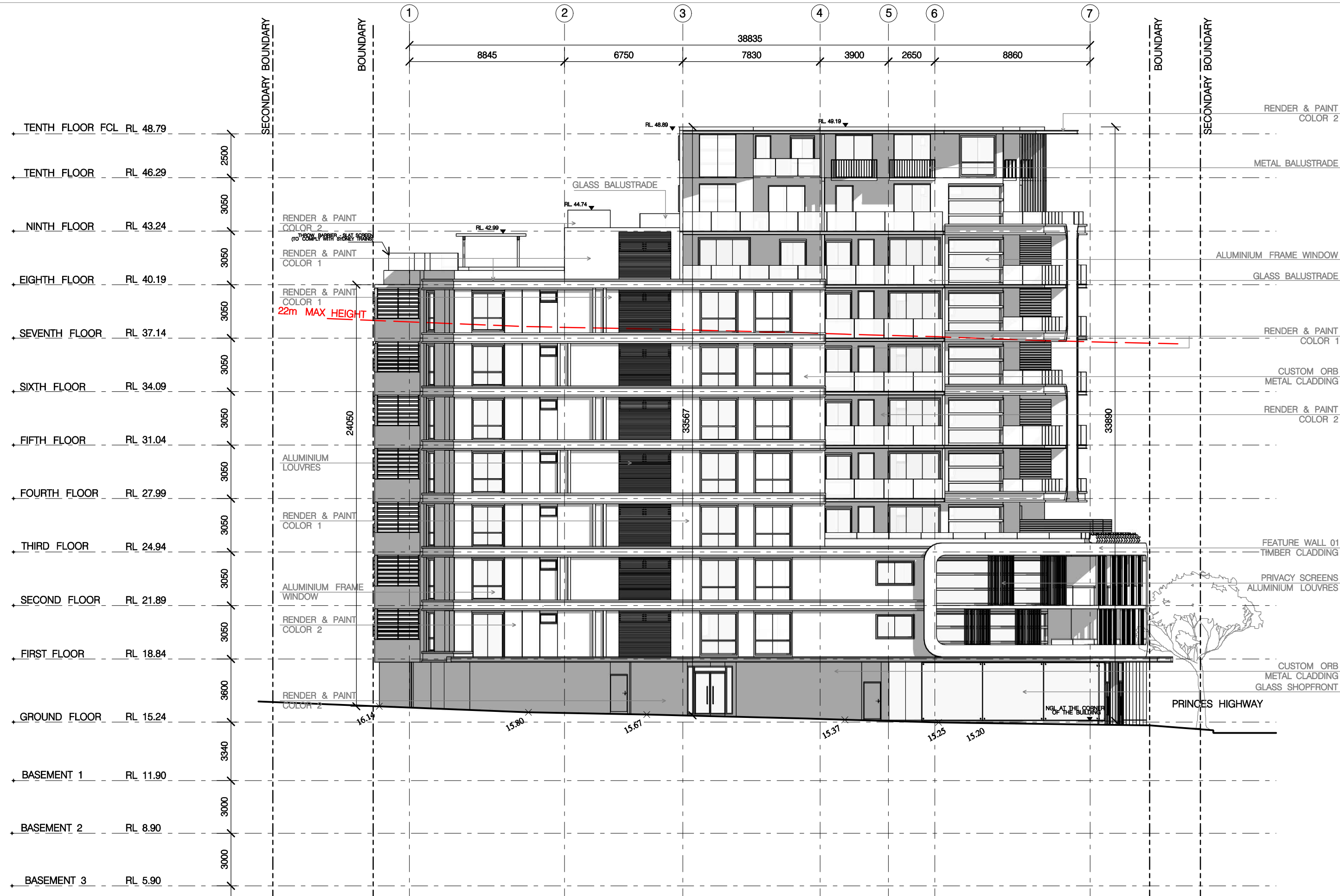
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1	2	DA ISSUE	MA	09.09.2015
1	3	REVISION DESCRIPTION	APPRO	DATE

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Level 3, Suite 6, 7-9 Gibbons Street
Rockdale NSW 2016
Australia
Tel: (02) 8052 9800
Email: admin@abworks.com.au

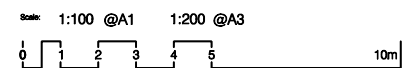
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Town Planners

Project Details:
MIXED USE DEVELOPMENT
401 - 405 PRINCES HIGHWAY, ROCKDALE
Client:
PELIN IBRAHIM

Drawing Title:
ELEVATIONS
Drawing Status:
AUTHORITY APPROVAL
Project Number:
PN-391
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DA-1230
Issue:
6/06/2016
Date Printed:
6/06/2016
Drawing Number:



02 SOUTH ELEVATION (FOX LANE)
SCALE 1:200 @ A3



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Date Printed: 6/06/2016

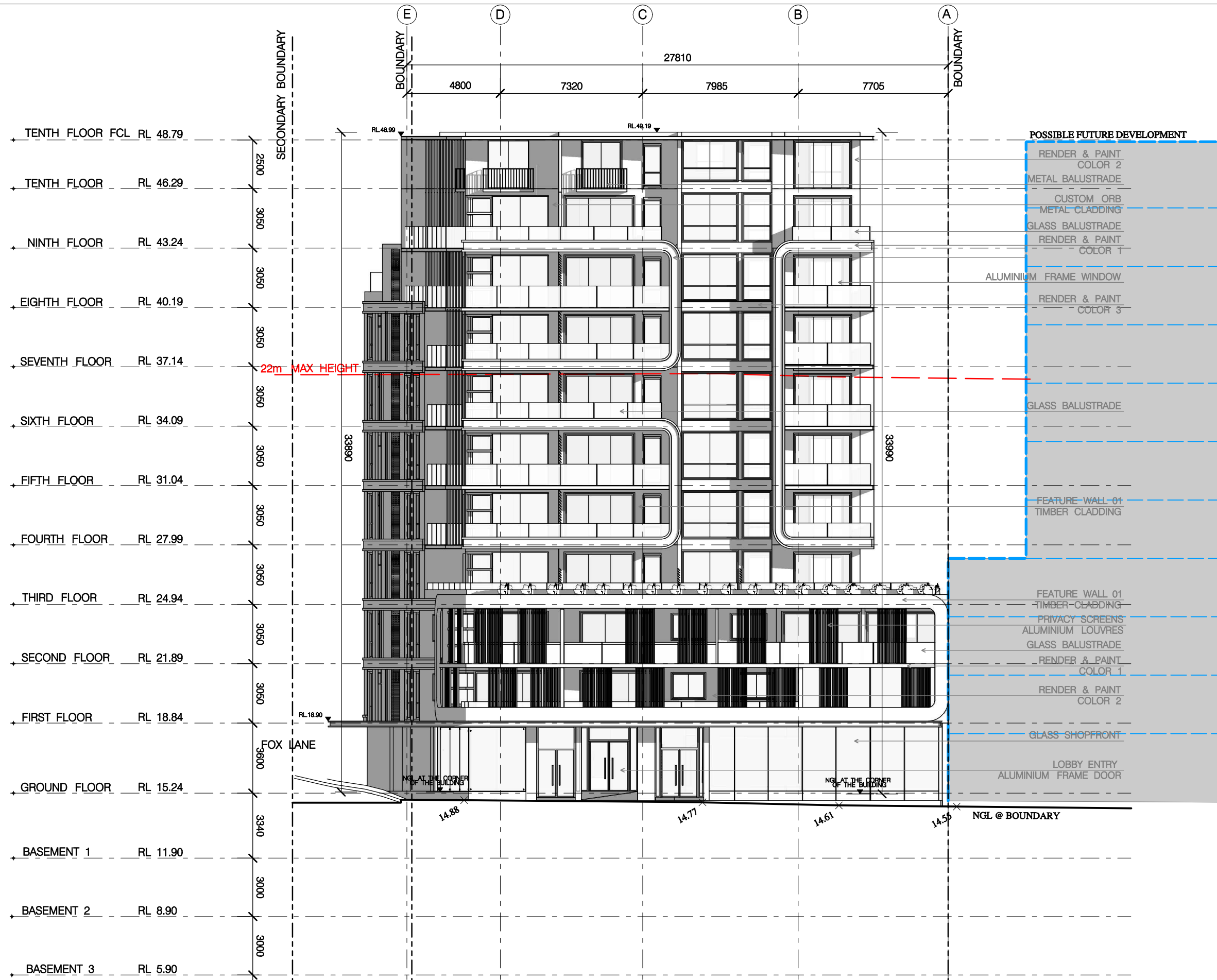
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A		1	DA ISSUE	MA		09.09.2015
ISSUE		REV	REVISION DESCRIPTION	APPRO		DATE
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BUILDING WORKS
ABN 35 093 181 518
Level 3, Suite 6, 7-9 Gibbons Street
Rockdale NSW 2016
Australia
Tel: (02) 8052 9800
Email: admin@abworks.com.au

Architects
Construction Managers
Interior Designers
Town Planners

Project Details:
MIXED USE DEVELOPMENT
401 - 405 PRINCES HIGHWAY, ROCKDALE
Client:
PELIN IBRAHIM

Drawing Title:
ELEVATIONS
Drawing Status:
AUTHORITY APPROVAL
Project Number:
PN-391
Issue:
-
Date Printed:
6/06/2016
Drawing Number:
Page 46 DA-1210



BASIX THERMAL COMMITMENTS

- All window and sliding door frames to be New Improved Aluminium

- All glazing to be Pyrolytic Low 'E' (unless noted otherwise)

Units: A3.1, A3.2, A3.3, A3.5
1. R2.5 Ceiling Insulation
2. R1.0 foil sided external wall insulation

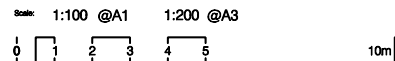
Units: A2.1, A2.2
1. R1.0 foil sided insulation to underside of slab above Retail outdoor seating

Units: A1.4, A1.5
1. R1.0 foil sided insulation to underside of slab above driveway

Units: A10.3
1. R2.5 Ceiling Insulation
2. R1.0 foil sided external wall insulation
3. Living room glazing Double Glazed Low 'E'

Units: A9.4, A10-1, A10.2, A10.4, A10.5
1. R2.5 Ceiling Insulation

01 EAST ELEVATION (PRINCESS HIGHWAY)
SCALE 1: 200 @ A3



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ABN 35 093 181 518
Level 3, Suite 6, 7-9 Gibbons Street
Rockdale NSW 2016
Australia
Tel: (02) 8052 9800
Email: admin@abworks.com.au

Architects
Construction Managers
Interior Designers
Town Planners

Project Details:

MIXED USE DEVELOPMENT
401 - 405 PRINCES HIGHWAY, ROCKDALE
Client:
PELIN IBRAHIM

Drawing Title:
ELEVATIONS

Drawing Status:
AUTHORITY APPROVAL

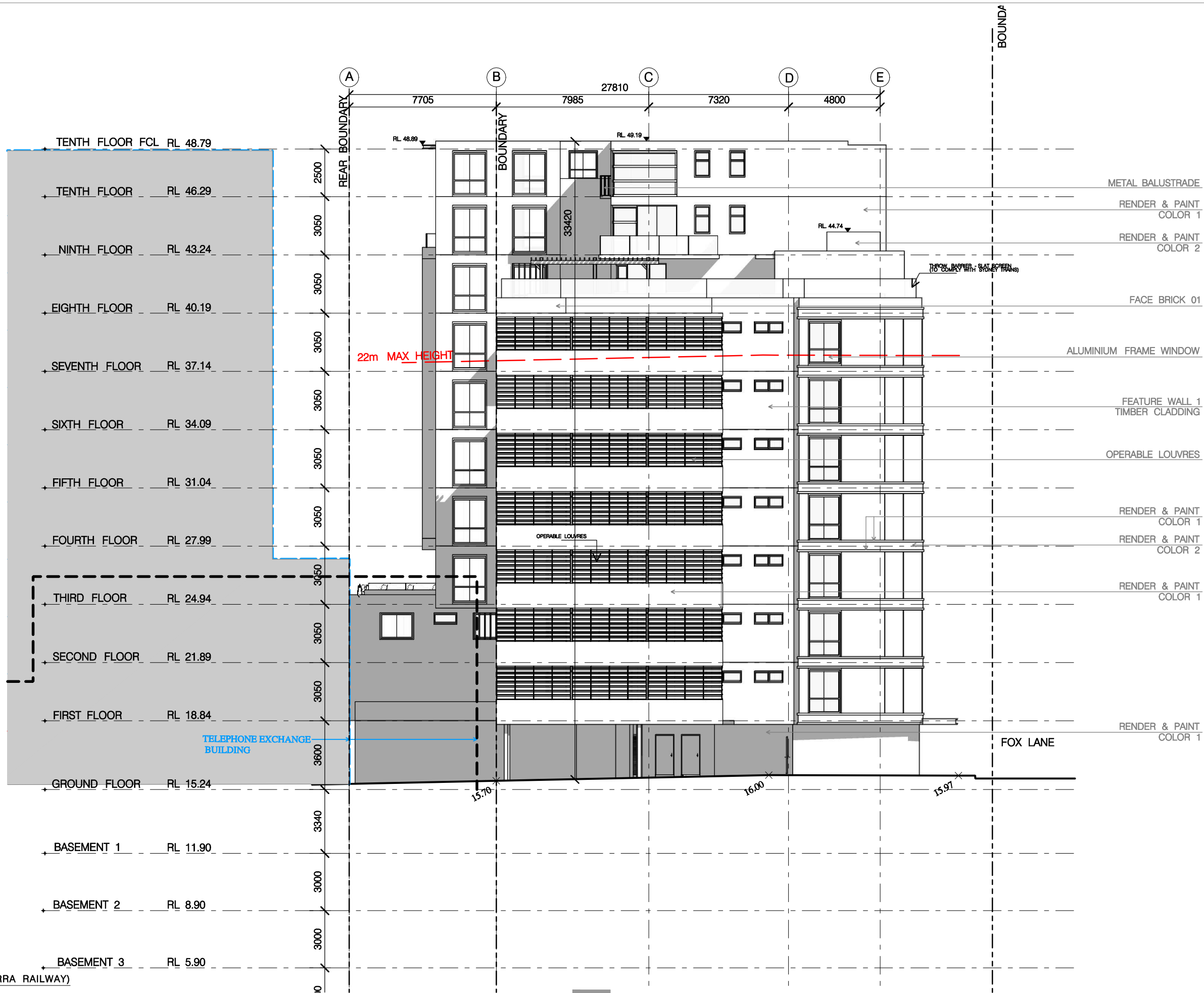
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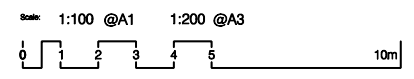
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6/06/2016

Drawing Number:

DA-1200



03 WEST ELEVATION (ILLAWARRA RAILWAY)
SCALE 1:200 @ A3



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BUILDING WORKS
ABN 35 093 181 518
Level 3, Suite 6, 7-9 Gibbons Street
Rockdale NSW 2016
Australia
Tel: (02) 8052 9800
Email: admin@abworks.com.au

Architects
Construction Managers
Interior Designers
Town Planners

Project Details:
MIXED USE DEVELOPMENT
401 - 405 PRINCES HIGHWAY, ROCKDALE
Client:
PELIN IBRAHIM

Drawing Title:
ELEVATIONS
Drawing Status:
AUTHORITY APPROVAL
Project Number:
PN-391
Issue:
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Date Printed:
6/06/2016
Drawing Number:
DA-1220



Scale: 1:100 @A1 1:200 @A3
0 1 2 3 4 5 10m

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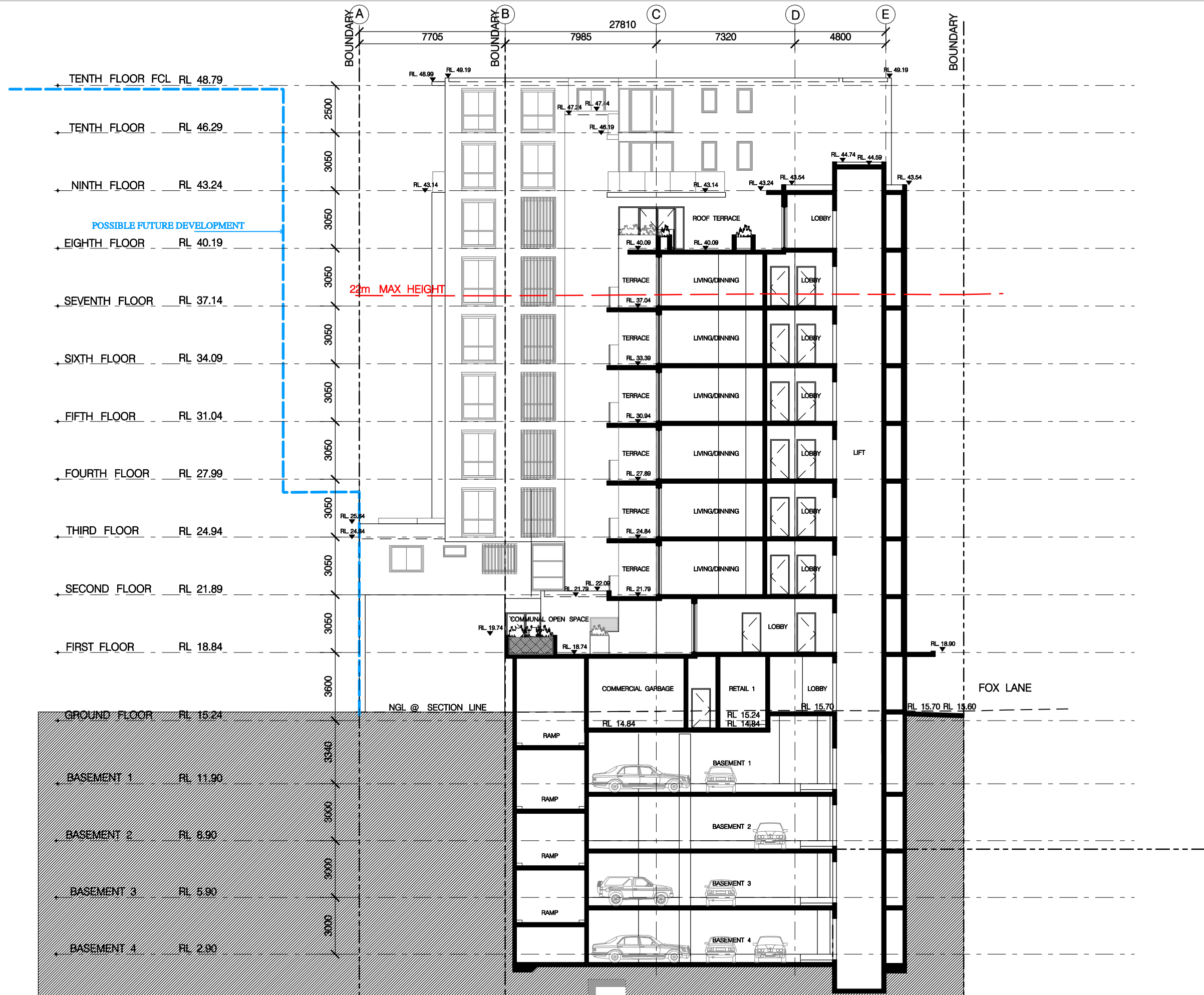
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1	REVISION DESCRIPTION	APPO	DATE
1	AMENDMENTS		

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BUILDING WORKS
ABN 35 083 181 518
Level 3, Suite 6, 7-9 Gibbons Street
Rockdale NSW 2216
Australia
Tel: (02) 8052 9800
Email: admin@ebworks.com.au

Architects
Construction Managers
Interior Designers
Town Planners

Project Details:
MIXED USE DEVELOPMENT
401 - 405 PRINCES HIGHWAY, ROCKDALE
Client:
PELIN IBRAHIM

Drawing Title:
SECTION A-A
Drawing Status:
AUTHORITY APPROVAL
Project Number:
PN-391
Page 49
DA-1240
Issue:
P3
Date Printed:
6/06/2016
Drawing Number:



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ABN 35 083 181 518
 Level 3, Suite 6, 7-9 Gibbons Street
 Rockdale NSW 2216
 Australia
 Tel: (02) 8052 9800
 Email: admin@abwworks.com.au

Architects
 Construction Managers
 Interior Designers
 Town Planners

Project Details:

MIXED USE DEVELOPMENT
 401 - 405 PRINCES HIGHWAY, ROCKDALE
 Client:
 PELIN IBRAHIM

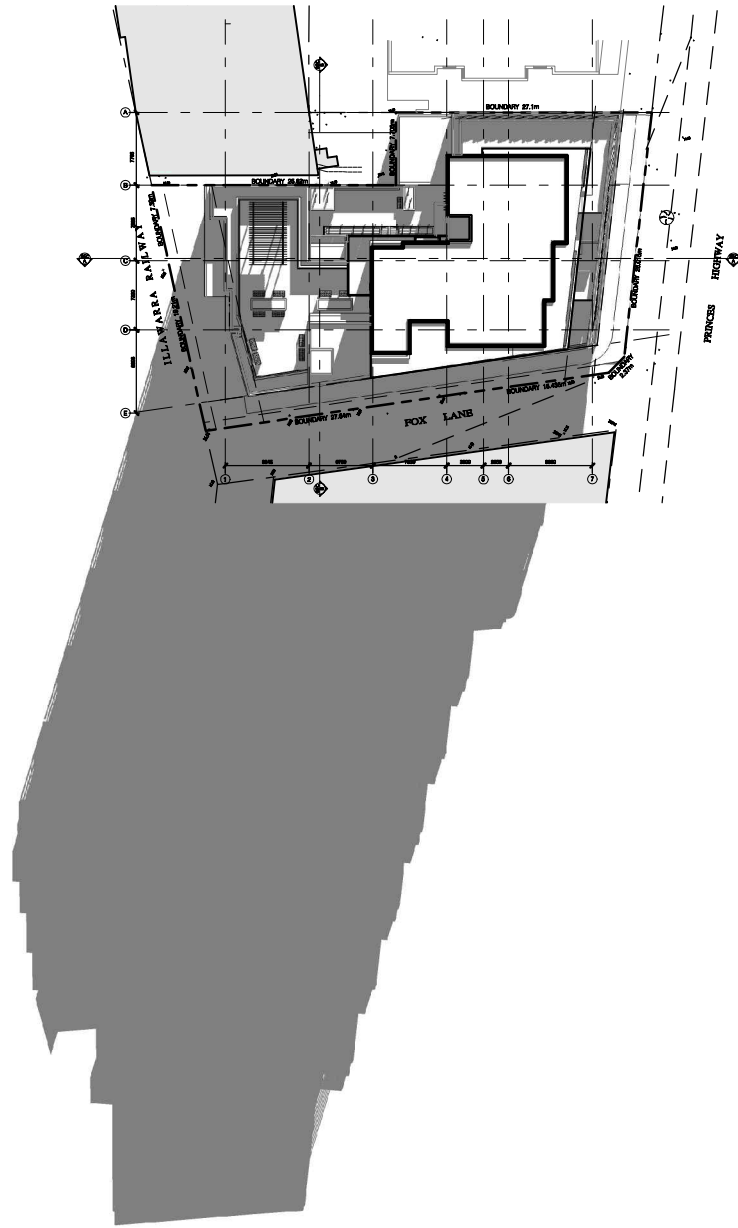
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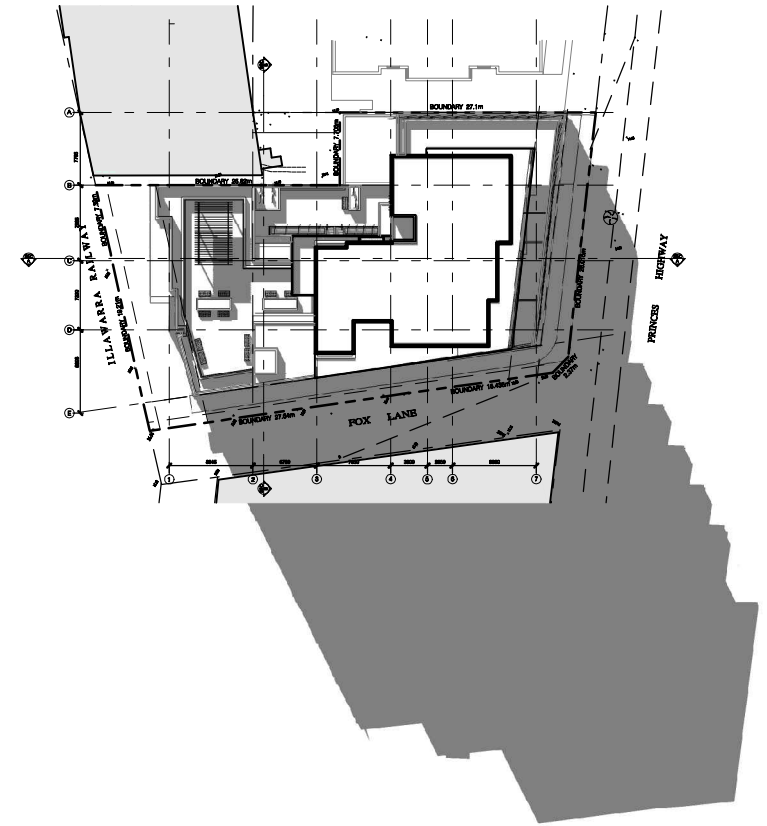
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 6/06/2016

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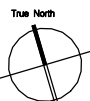
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02 JUNE SHADOWS 12:00 PM
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Date Printed: 6/06/2016



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A	1	DA ISSUE	MA	09.09.2015	
ISSUE	REV	REVISION DESCRIPTION	APPRO	DATE	
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ABN 35 093 181 518

Level 3, Suite 6, 7-9 Gibbons Street
Rockdale NSW 2016
Australia
Tel: (02) 8052 9800
Email: admin@abworks.com.au

Architects
Construction Managers
Interior Designers
Town Planners

Project Details:

MIXED USE DEVELOPMENT
401 - 405 PRINCES HIGHWAY, ROCKDALE

Client:
PELIN IBRAHIM

Drawing Title:

SHADOW DIAGRAMS

Drawing Status:

AUTHORITY APPROVAL

Project Number:

PN-391

Issue:

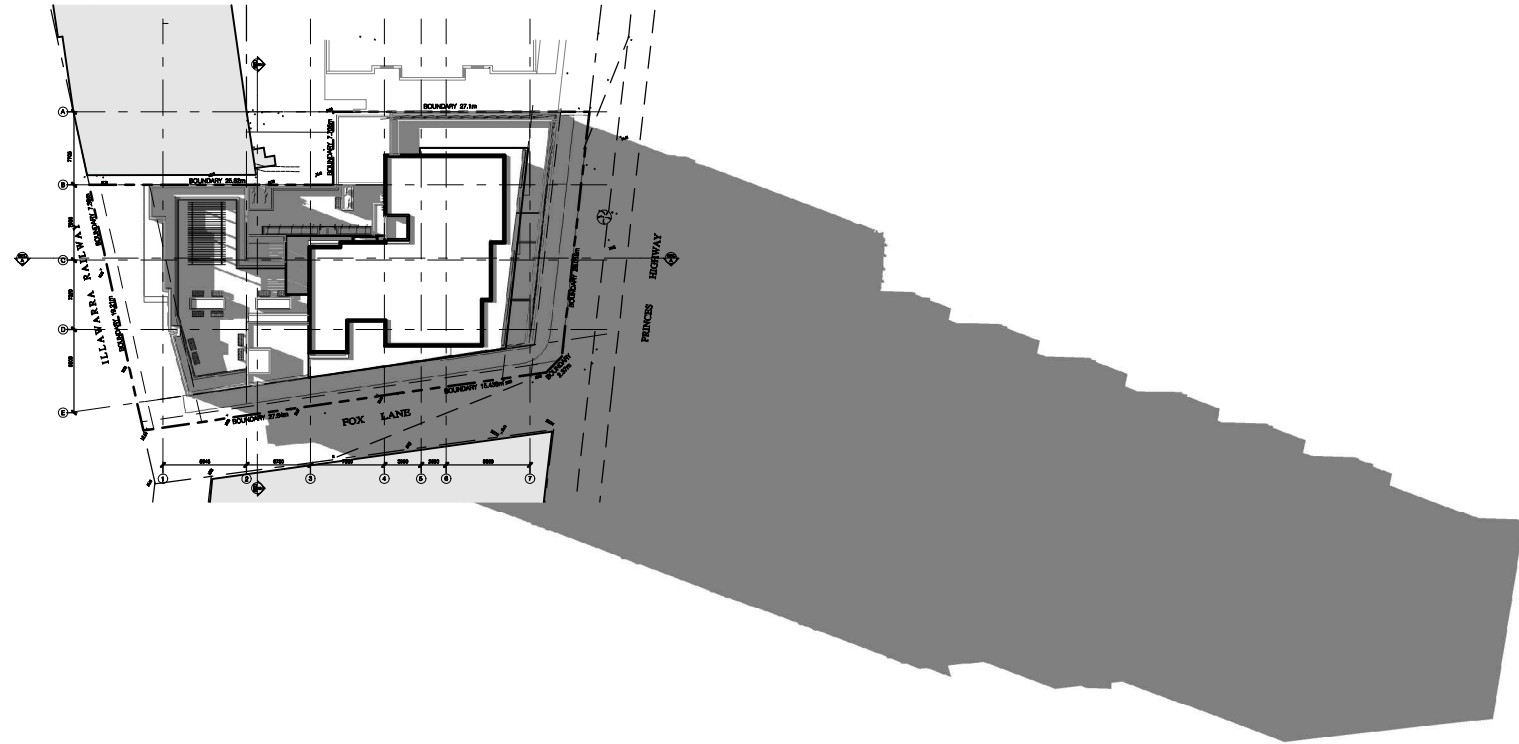
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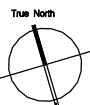
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ISSUE	REV	REVISION DESCRIPTION		APPRO	DATE
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ABN 35 093 181 518
Level 3, Suite 6, 7-8 Gibbons Street
Rockdale NSW 2016
Australia
Tel: (02) 8052 9800
Email: admin@abworks.com.au

Architects
Construction Managers
Interior Designers
Town Planners

Project Details:

MIXED USE DEVELOPMENT
401 - 405 PRINCES HIGHWAY, ROCKDALE
Client:
PELIN IBRAHIM

Drawing Title:

SHADOW DIAGRAMS

Drawing Status:

AUTHORITY APPROVAL

Project Number:

PN-391

Issue:

- 6/06/2016

Drawing Number:

DA-1310

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ILLAWARRA RAILWAY

1 & 2 STOREY BRICK
TELEPHONE EXCHANGE BUILDING

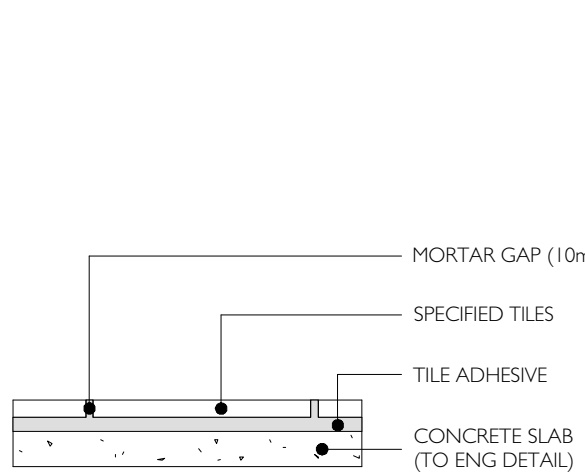
POSSIBLE FUTURE
DEVELOPMENT 34M
(EXISTING CARYARD)

HIGHWAY

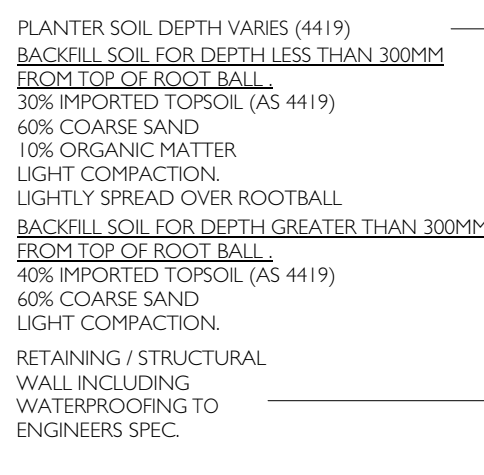
PRINCES

FOX LANE

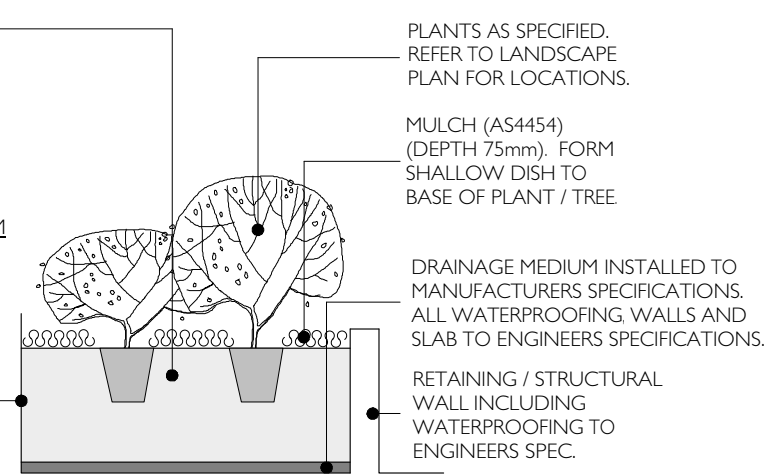
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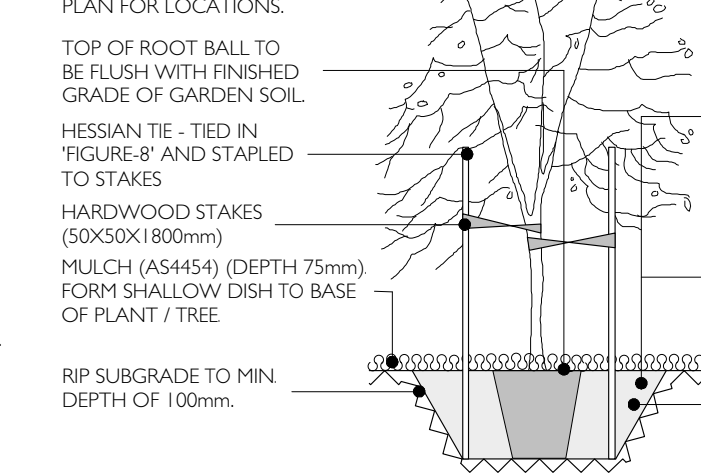
1. TILING TO CONCRETE SLAB NTS
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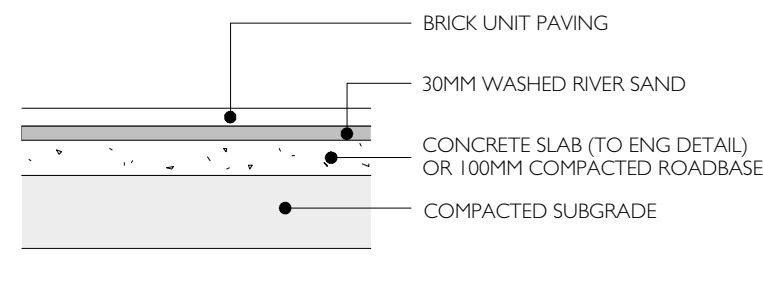
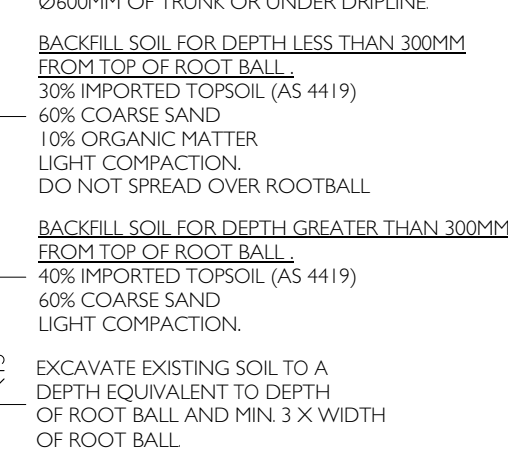
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NOT FOR CONSTRUCTION



3. DEEP SOIL TREE PLANTING NTS
NOT FOR CONSTRUCTION



4. GARDEN BED PLANTING NTS
NOT FOR CONSTRUCTION



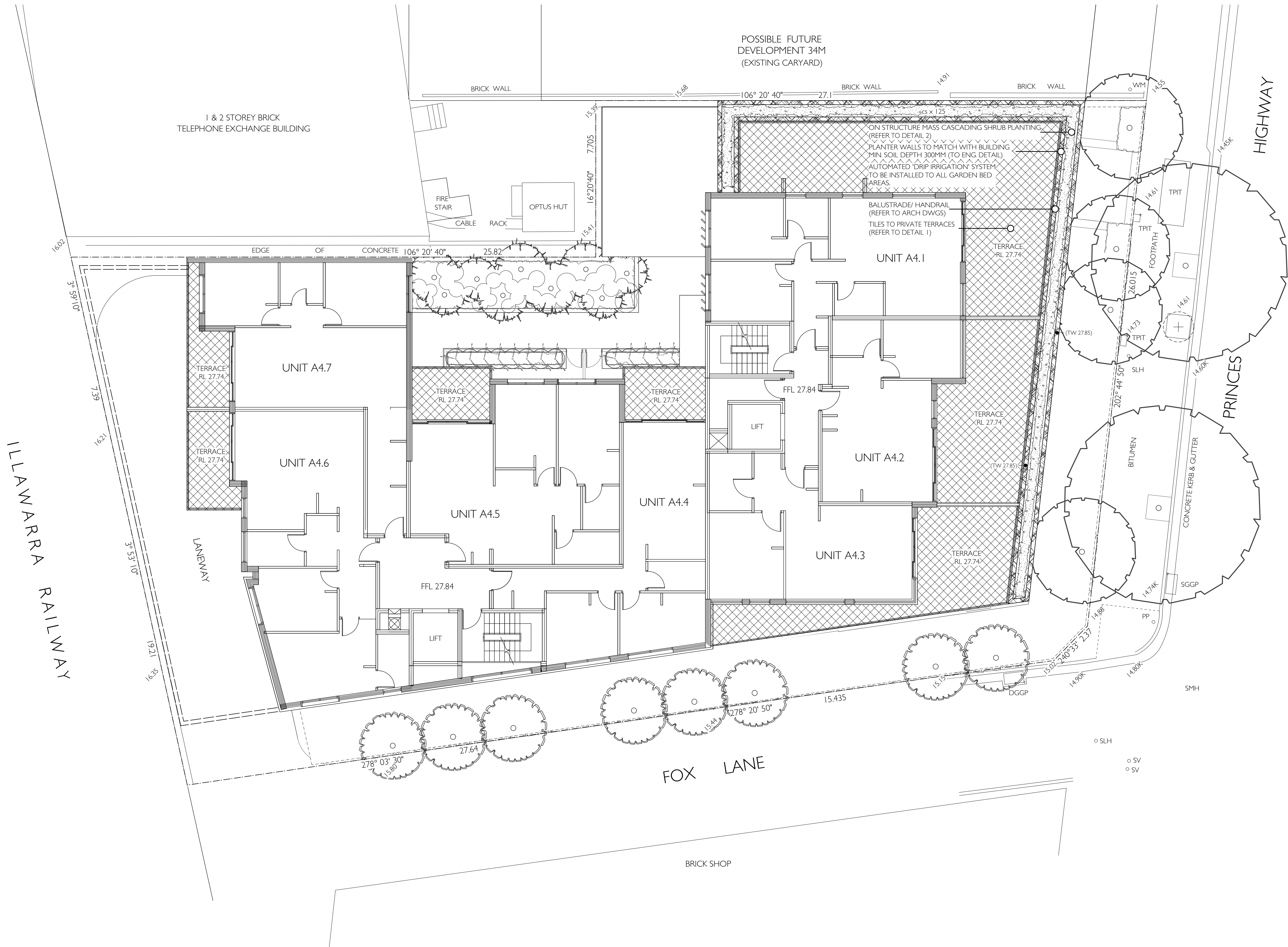
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NOT FOR CONSTRUCTION

KEY	
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+ 1490	PROPOSED LEVELS
+ 1461	EXISTING TREE TO BE RETAINED
---	EXISTING STRUCTURES TO BE REMOVED
---	EXTENT OF BASEMENT
[Pattern]	TILES TO PRIVATE TERRACES (REFER TO DETAIL 1)
[Pattern]	TILES TO COMMON OPEN SPACE (REFER TO DETAIL 1)
[Pattern]	UNIT PAVING TO GROUND FLOOR ACCESS (REFER TO DETAIL 5)
[Pattern]	PUBLIC DOMAIN PAVING (as per Rockdale Town Centre Public Domain Plan 2012)
[Pattern]	PLANTER WALLS (min. soil depth 300mm) (TO ENG. DETAILS)
[Pattern]	PLANTER WALLS (min. soil depth 600mm) (TO ENG. DETAILS)
[Pattern]	MASS PLANTING ACCENT GROUND COVER (AJUGA REPTANS 'CATLINS GIANT') @ 0.3m spacing
[Pattern]	PROPOSED ACCENT MASS PLANTING (ALPINIA MUTICA) @ 0.5m spacing
[Pattern]	CASCADING MASS PLANTINGS (CARISSA 'DESERT STAR') @ 0.4m spacing
[Pattern]	MASS PLANTING ACCENT GROUND COVER (MYOPORUM PARVIFOLIUM 'YAREENA') @ 0.3m spacing
[Pattern]	MASS PLANTING ACCENT GROUND COVER (TRACHELOSPERMUM ASIATICUM) @ 0.3m spacing
TOTAL AREA OF SOFT LANDSCAPING - 37m ² - 3% of total site area	


Sheet 2 of 6

REV.	AMENDMENT:	INT.	DATE:
C	ARCHITECTURAL REVISIONS	MW	25.05.16
B	AUTHORITY APPROVAL - REVISION TO GROUND FLOOR	MW	09.11.15
A	AUTHORITY APPROVAL	MW	26.06.15

LANDSCAPE PLAN		DWG: IS0181DA2
FIRST FLOOR		ISSUE: C
401-405 PRINCES HIGHWAY, ROCKDALE 2216		
DATE:	MAY 2016	
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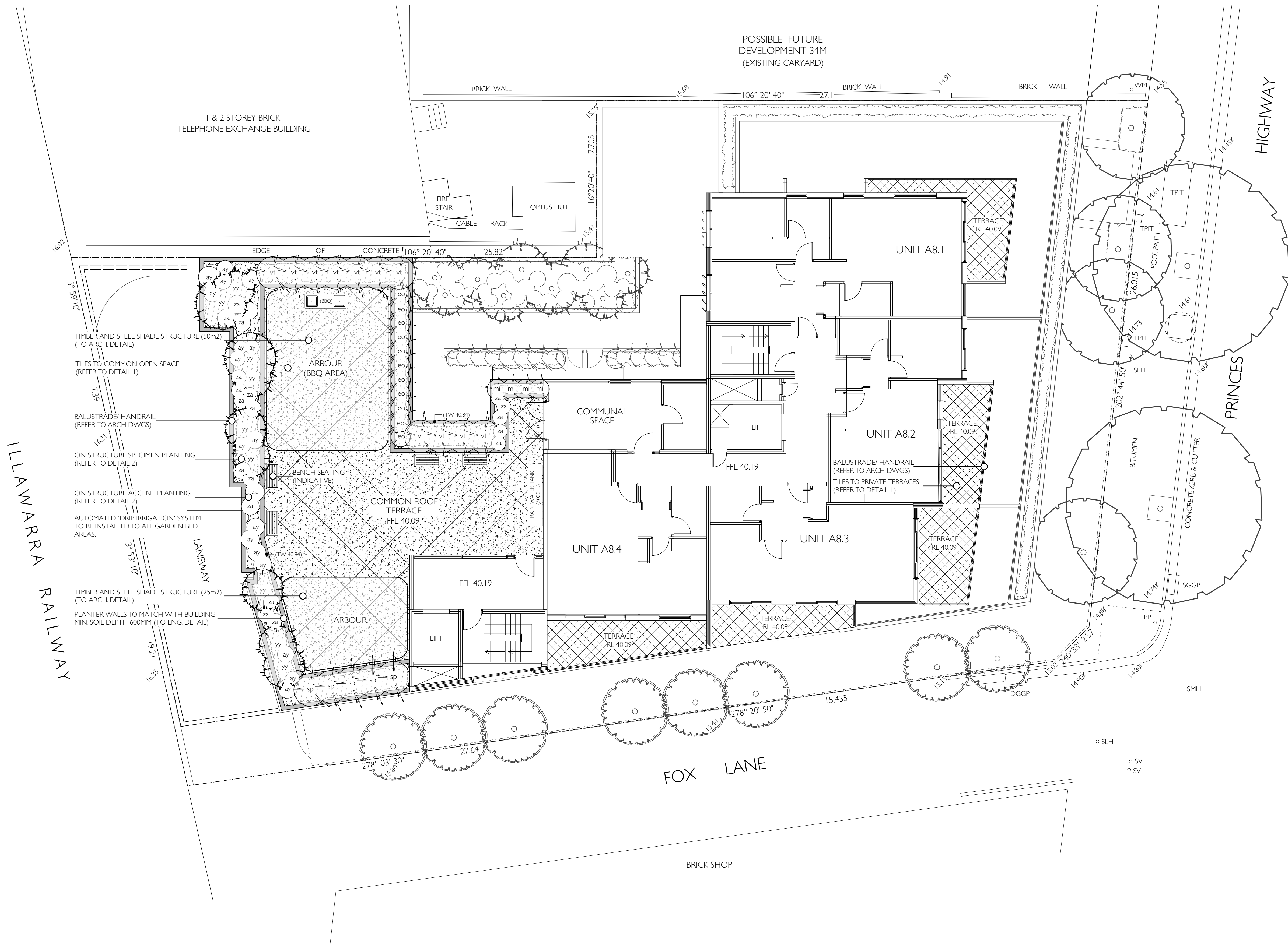


Sheet 3 of 6

REV:	AMENDMENT:	INT:	DATE:	LANDSCAPE PLAN		DWG:	ISO181DA3
						ISSUE:	C
				FOURTH FLOOR	401-405 PRINCES HIGHWAY, ROCKDALE 2216		
C	ARCHITECTURAL REVISIONS	MW	25.05.16	DATE:	MAY 2016		
B	AUTHORITY APPROVAL - REVISION TO GROUND FLOOR	MW	09.11.15	SCALE:	1:100@A1		
A	AUTHORITY APPROVAL	MW	26.06.15				

01510m

Page 55



KEY	
14.93	EXISTING LEVELS
+ 14.90	PROPOSED LEVELS
14.61	EXISTING TREE TO BE RETAINED
---	EXISTING STRUCTURES TO BE REMOVED
---	EXTENT OF BASEMENT
[Pattern]	TILES TO PRIVATE TERRACES (REFER TO DETAIL 1)
[Pattern]	TILES TO COMMON OPEN SPACE (REFER TO DETAIL 1)
[Pattern]	UNIT PAVING TO GROUND FLOOR ACCESS (REFER TO DETAIL 5)
[Pattern]	PUBLIC DOMAIN PAVING (as per Rockdale Town Centre Public Domain Plan 2012)
[Pattern]	PLANTER WALLS (min. soil depth 300mm) (TO ENG. DETAILS)
[Pattern]	PLANTER WALLS (min. soil depth 600mm) (TO ENG. DETAILS)
[Pattern]	MASS PLANTING ACCENT GROUNDCOVER (AJUGA REPTANS 'CATLINS GIANT') @ 0.3m spacing
[Pattern]	PROPOSED ACCENT MASS PLANTING (ALPINIA MUTICA) @ 0.5m spacing
[Pattern]	CASCADING MASS PLANTINGS (CARISSA 'DESERT STAR') @ 0.4m spacing
[Pattern]	MASS PLANTING ACCENT GROUNDCOVER (MYOPORUM PARVIFOLIUM 'YAREENA') @ 0.3m spacing
[Pattern]	MASS PLANTING ACCENT GROUNDCOVER (TRACHELOSPERMUM ASIATICUM) @ 0.3m spacing
TOTAL AREA OF SOFT LANDSCAPING - 37m ² - 3% of total site area	







Unit 2, 182 Old Canterbury Road
Summer Hill, NSW, 2130
Ph: 02 9798 0953
Fax: 02 9797 7696
andrew_arps@bigpond.com



Amended Clause 4.6 Exceptions to Development Standards Clause 4.3 Height of Buildings - Rockdale Local Environmental Plan 2011

Proposed Construction of a Part Eight Storey and Part Eleven (11) Storey Shop Top Housing Development - Nos. 401-405 Princes Highway, Rockdale

1.0 Introduction

This amended Clause 4.6 Exceptions to Development Standards request has been prepared by Andrew Robinson Planning Services Pty Ltd on behalf of Hellublott Pty Ltd to accompany a development application for a proposed shop top housing development at Nos. 401-405 Princes Highway, Rockdale.

The Clause 4.6 Exceptions to Development Standards request relates to the height of buildings principal development standard prescribed under subclause 4.3(2) of *Rockdale Local Environmental Plan 2011*. Subclause 4.3(2) states:

The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Buildings Map indicates a maximum building height of 22m applies to the site (refer to **Figure 1**).

When measured in accordance with the definition for building height under the LEP, the proposed development has a maximum height of 33.99m. This exceeds the 22m statutory maximum building height by 11.99m.

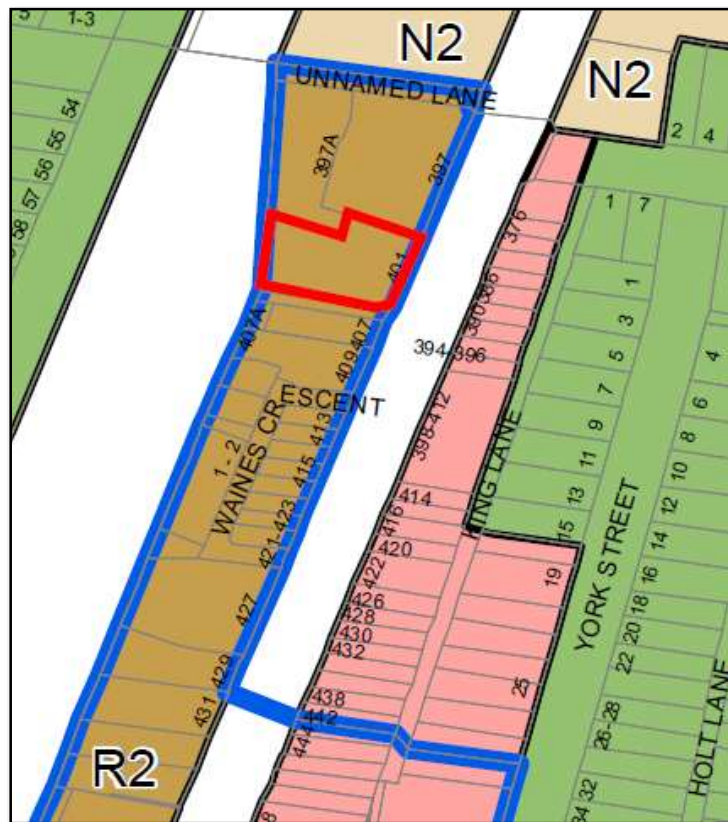
Subclause 4.3(2A)(a) of the LEP states:

Despite subclause (2), the height of a building may exceed the maximum height shown for the land on the Height of Buildings Map by an additional:

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

The site is wholly located within Area A, as shown on the Height of Buildings Map. However, the site has an area of only 1306m² and therefore does not benefit from the additional 12m height allowance under subclause 4.3(2A)(a).

Figure 1: Extract from Rockdale LEP 2011 Height of Buildings Map showing the 22m height limit for the site (R2 = 22m)



The following definition under *Rockdale Local Environmental Plan 2011* is important in considering the proposed variation:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excludes communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Having regard to the above definition, the non-compliance to the height of buildings principal development standard relates to the upper four (4) storeys of the building, with the parapet closest to the Princes Highway frontage being the highest point of the building, at 33.99m above the existing ground level immediately below.

2.0 The Effect of Clause 4.6 Exceptions to development standards

Clause 4.6 of *Rockdale Local Environmental Plan 2011* states (in part):

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

This request has been prepared having regard to the latest authority on Clause 4.6, contained in the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386
- *Moskovich v Waverley Council* [2016] NSWLEC 1015

In summary, the principles arising from the above matters are:

- (i) That the relevant objectives are those stated in the controls not unidentified underlying objectives - at [57] in Four2Five No. 1;

- (ii) That the environmental planning grounds must be particular to the circumstances of the proposed development and/or the site - at [60] in Four2Five No. 1;
- (iii) The five methods of establishing that compliance is unreasonable or unnecessary identified by Preston J in *Wehbe* remain relevant. However, in order to satisfy the unreasonable and unnecessary test in Clause 4.6(3)(a), you need something more than way 1 in *Wehbe*, because that test is now encompassed in Clause 4.6(4)(a)(ii) where consistency with the objectives of the standard is a mandatory precondition;
- (iv) That the consent authority must be satisfied that the applicant's written 4.6 variation request has adequately addressed everything in 4.6(3), rather than the consent authority being 'directly satisfied' as to each of those matters – at [58] in *Micaul Holdings Pty Limited*.

In relation to (iii) above, Method 1 in *Wehbe* requires an applicant to demonstrate that the objectives of the relevant development standard will be achieved, despite the non-compliance with the numerical standard.

However, as a result of Four2Five, it is now necessary to demonstrate something *more* than simply achieving the objective of the standard. In this regard, a proposed development that contravenes the development standard, but as a result, achieves the objective of the development standard to a greater degree than a development that complied with the standard, would suffice.

3.0 Justification for Variation

What is the context of the variation?

In June 2015, Amendment No. 8 to *Rockdale Local Environmental Plan 2011* was gazetted. The amendments to the LEP related to the Rockdale Town Centre and (in part) rezoned certain land, altered the permitted height of buildings and floor space ratio for certain land, offered building height incentives for certain sites and introduced the requirement for an architectural design competition for certain sites.

The increased statutory controls of building height and floor space ratio under the LEP are supported by Section 7.5 of Rockdale DCP 2011. As noted in the DCP:

A Masterplan for the future role and character of Rockdale Town Centre was developed with the community and adopted by Council.

This section of the DCP provides detailed building design and built form controls to complement Rockdale LEP 2011 and facilitate the implementation of the Rockdale Town Centre Masterplan vision.

These controls work in conjunction with the Rockdale LEP Height of Buildings Map and Design Excellence and Competition clause which establishes development standards for height and further building envelope controls within the Town Centre.

The site at 401-405 Princes Highway is identified in the DCP as being within the Centre Edge Residential, where the anticipated built form and land use was for high density residential at the edge of the Town Centre, with active retail uses permitted on the ground floor frontage.

Strict Compliance is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the development standard.

The overall building height of 33.99m exceeds the 22m maximum building height by 11.99m, representing a variation of 54.5% above the numerical development standard. In numerical terms this represents a significant variation to the principal development standard. Notwithstanding, as demonstrated in the recent NSW LEC decisions in *Micaul Holdings Pty Limited v Randwick City Council* and *Moskovich v Waverley Council* there should be no artificial conservatism about the use of Clause 4.6 based on the numerical extent of the variation being sought, given that the purpose of

Clause 4.6 is to allow flexibility and to achieve better outcomes for a site by allowing developments to exceed height and/or FSR where there are justifiable circumstances.

An important finding in *Micaul Holdings Pty Limited* was that while the judgement did not directly overturn the *Four2Five v Ashfield* decision, the Chief Judge indicated that one of the obligations of a consent authority is to be satisfied that the applicant's written request has adequately addressed the matters in Clause 4.6(3), namely.....*that compliance with the development standard is unreasonable and unnecessary in the circumstances of the caseand that there are sufficient environmental planning grounds to justify contravening the development standard.*

In this particular instance, it is considered that compliance with the development standard is unreasonable and unnecessary and that there is sufficient environmental planning merit to justify the proposed non-compliance, as described below:

The objectives of the height of buildings principal development standard are:

- (a) *to establish the maximum limit within which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*
- (d) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*

Having regard to the first method in *Wehbe*, it is considered that the proposed development achieves the objectives of the standard to a greater degree than a development that complied with the standard for the following reasons:

The site has an area of 1306m² and therefore on its own, does not benefit from the 12m height incentive offered to sites in Area A that have an area of 1500m² or greater. However, it is understood that in making this additional height incentive available to certain sites, Council's intent was to encourage larger site amalgamations in order to achieve better architectural and urban design outcomes. As such, under a scenario whereby this site was amalgamated with the adjoining site to the immediate north, the combined area would be well in excess of 1500m² and the site would then benefit from the additional 12m height allowance. The site to the immediate north has an area in excess of 1500m² and therefore benefits from the additional height. It is understood that a development application for an 11 storey shop top housing development on the adjoining site (Nos. 395-397 Princes Highway) has previously been lodged with Council.

The subject site, together with the adjoining site to the north are somewhat unique in that they are both bounded by the Princes Highway and are 'book-ended' by Rockdale Street (to the north) and Fox Lane (to the south), forming an 'urban island' together with a third parcel of land (1108m²) that is occupied by the 2 storey Telephone Exchange building. As an important utility installation, it is unlikely that the telephone exchange site will be available for redevelopment in the foreseeable future. The western side of the 'urban island' is bounded by the Illawarra Rail Line.

Therefore, although the sites have not been amalgamated, Council's intent of realising the redevelopment of larger amalgamated sites will still be met, albeit in 2 separate built forms that address the highway frontage. In addition, it is considered that despite being 2 separate built forms, the buildings will be of a high quality design and will add to the vibrancy and vitality of the streetscape and built form character of the northern end of the Rockdale Town Centre.

Having regard to the objectives set out at Clause 4.3 of the LEP and in particular, objectives (c) & (d), despite exceeding the statutory height limit, a more appropriate transition in built form will be realised if

the proposed building has a similar height to the building on the adjoining site, that can benefit from the additional height on its own. The most logical place for a transition in height to occur is at the street (i.e Fox Lane and Rockdale Street) and given the somewhat unique circumstance of an 'urban island' between these two streets, it is considered that a building on the subject site that is 4 storeys lower than the adjoining site will not result in a better urban outcome. It is considered that a more desirable urban outcome will be facilitated through a comparable building height and form on both of these sites.

It is also noted that a restriction on building height will have an adverse impact on the ability of this site to attain the objects of the EP&A Act, namely the orderly and economic development of land. While the contractual arrangements between vendor and purchaser are not strictly a planning consideration, the ongoing efficacy of the telecommunications infrastructure in this location is likely to be compromised if the site cannot achieve a building height that is comparable to surrounding development. The current owners of No. 401-405 Princes Highway purchased it from Telstra Corporation, who still owns the site of the Telephone Exchange Building adjoining the north-western corner of the site. The Telephone Exchange Building is an important and integral component of the telecommunications network and currently houses a number of antennae/transmitters associated with the mobile phone infrastructure. Under the previous planning regime, these antennae/transmitters were able to operate effectively located on top of the two storey building. However, the increase in allowable building heights has now compromised the efficacy of this infrastructure. A condition of the contract of sale requires any new multi storey building on No. 401-405 to support telephone infrastructure in order to maintain the effective operation of the telecommunications network. Unless a building height can be achieved to support the effective operation of the telecommunications infrastructure, a condition of the contract of sale restricts any redevelopment on the site to 4 storeys, in order to ensure the ongoing efficacy of the telecommunications infrastructure. As such, such a restriction would severely inhibit the ability to achieve the orderly and economic development of the land in line with the applicable planning regime.

In light of the above, the requirement to strictly adhere to the numerical development standard for building height is considered to be unreasonable and unnecessary in this instance.

Further, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard. Key environmental planning grounds to support the variation include:

- Despite the upper four (4) storeys on the eastern side of the building exceeding the height of buildings principal development standard, the overall bulk and scale of the building is considered to be acceptable in terms of the streetscape character and built form and the relationship of the building to the adjoining (anticipated) development;
- The most logical place for a transition in built form and scale is at the street block edge (Fox Lane), rather than mid-block; and
- Despite an increased height, the proposed development will not have an unreasonable impact on adjoining sites in terms of overshadowing or visual or aural privacy.
- The increase in allowable building heights under the recent LEP amendment has compromised the efficacy of the telecommunications infrastructure on the adjoining Telephone Exchange building. In order to ensure the ongoing efficacy of the telecommunications infrastructure, the infrastructure needs to be raised above it current height. Unless a building height can be achieved to support the effective operation of the telecommunications infrastructure, a condition of the contract of sale for the site restricts any redevelopment on the site to 4 storeys. As such, such a restriction would severely inhibit the ability to achieve the orderly and economic development of the land in line with the applicable planning regime.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The Table below demonstrates that the proposed development will be in the public interest because it will be consistent with both the height of buildings principal development standard objectives and the B4 Mixed Use zone objectives of the LEP.

LEP Clause	Objective	Proposal
Clause 4.3 Height of Buildings	a) <i>To establish the maximum limit within which buildings can be designed and floor space can be achieved.</i>	Despite the non-compliance, the scale and form of the building is consistent with the intended redevelopment potential of the land.
	b) <i>To permit building heights that encourage high quality urban form.</i>	<p>The proposed building represents a high quality urban form and has been designed to achieve 'design excellence'. The architectural detailing and proposed materials and finishes will realise a building of distinction that will make a significant contribution to the quality of the urban streetscape character and appearance. Further, the internal amenity for residents will be of a high standard, with the levels of solar access and natural ventilation exceeding the design criteria under the ADG.</p> <p>The increased setback to Fox Lane allows for a wider deep soil area (similar to across the highway frontage) and will significantly improve the appearance and amenity of Fox Lane.</p> <p>The generously proportioned and landscaped communal open space areas will provide a useable and desirable outdoor recreation space for residents, while landscaping of the communal areas and at the level 4 podium will add to and soften the built form.</p> <p>Despite the non-compliance, the height and form of the building is consistent with the desired future character of the locality.</p>
	c) <i>To provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain.</i>	The proposed building height will not cause unacceptable overshadowing or a loss of sky exposure to the adjoining properties or surrounding public domain. If the 2 adjacent sites were to be amalgamated and redeveloped together, there is the potential that sky exposure would be reduced and an expansive built form in excess of 80m in length would potentially extend across the Princes Highway frontage, in order to maximise a north-easterly aspect. Accordingly, it is considered that the redevelopment of these sites individually will realise a better urban outcome.
	d) <i>To nominate heights that will provide an appropriate transition in built form and land use intensity.</i>	The 34m building height limit available to larger sites within Area A is considered to be an appropriate height in terms of the desired built form anticipated along the Princes Highway frontage within the

		Rockdale Town Centre. A transition in height between Fox Lane and the more 'fine grain' properties to the south will realise a better urban outcome.
B4 Mixed Use Zoning Objectives	<i>To provide a mixture of compatible land uses.</i>	The commercial/retail tenancies will provide for additional retail shops / businesses etc that will serve the needs of the community and potentially provide employment opportunities. The residential apartments will provide additional housing stock and choice for Rockdale.
	<i>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.</i>	As above, the commercial/retail tenancies have the potential to provide employment opportunities at the northern end of the Rockdale Town Centre and the residential apartments will provide additional housing stock in proximity to public transport options, as well as local shops and services. The sites proximity to the shops and services in the Rockdale Town Centre, Railway Stations and bus stops will encourage public transport patronage, walking and cycling.

4.0 Director General's Concurrence

Clause 4.6(4)(b) requires the concurrence of the Director-General to be obtained prior to granting consent to a development that contravenes a development standard. However, as advised in Planning Circular PS 08-003, the Director-General's concurrence can be assumed in respect of any environmental planning instrument that adopts Clause 4.6 of the Standard Template LEP.

Accordingly, as *Rockdale Local Environmental Plan 2011* adopts Clause 4.6 of the Standard Template LEP concurrence can be assumed in this instance.

Notwithstanding, provided below is a discussion on the matters under subclause 4.6(5) that the Director-General must consider in deciding whether to grant concurrence:

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The variation to the height of buildings principal development standard under *Rockdale Local Environmental Plan 2011* will not give rise to any environmental planning matter which could be deemed to have either State or Regional significance. The variation to the development standard being sought will not have any effects outside the immediate area of the site.

The public benefit of maintaining the development standard.

No substantive public benefit would be realised by maintaining the development standard. Reducing the height of the building to strictly comply with the 22m height limit would not alter the overall design approach or outcome for the site and would not realise an improvement to the relationship between the site, the adjoining buildings and the surrounding area. The building, as proposed, provides a distinct 'base', 'middle' and 'top' consistent with the

Further, it is considered that there would not be a visual improvement to the streetscape in the circumstances where the building height would be capped at 22m, when the likely built form outcome will be for a taller building (up to 34m) on the adjoining site to the north, contrary to the intended transition in height towards the Rockdale Town Centre.

Any other matters required to be taken into consideration by the Director-General before granting concurrence.

Despite exceeding the statutory maximum building height, the proposed redevelopment of the site will facilitate the orderly and economic redevelopment of the site for the purposes of a shop top housing development that will positively contribute to the achievement of the vision and strategic objectives of the Draft South Subregional Strategy and *Rockdale Local Environmental Plan 2011*.

5.0 Conclusion

Based on the discussion provided above, it can be concluded that:

- strict compliance with the height of buildings principal development standard under *Rockdale Local Environmental Plan 2011* is unreasonable or unnecessary in the circumstances of the case, where the proposed building height could otherwise have been achieved in a development scheme that involved amalgamation of the adjoining site to the north, such that the additional 12m height incentive available under subclause 4.3(2A)(a) of the LEP would have realised an allowable building height of 34m across both sites;
- despite the non-compliance to the height standard, the proposed development is consistent with the objectives of both the height of buildings development standard and the B4 Mixed Use zone;
- the proposed design solution is considered to represent an appropriate development outcome for the site, displaying a design of high quality and appearance, whilst ensuring that a high standard of amenity for future residents will be achieved;
- there are sufficient environmental planning grounds having regard to the Court matters *Four2Five v Ashfield Council* and *Wehbe v Pittwater Council* to justify the contravention to the development standard as the building has been designed to a high quality and the amenity for future residents will be to a high standard;
- the non-compliance does not directly result in any adverse environmental impacts in terms of the building being out of context with the anticipated bulk and scale of development in the locality;
- the proposal will provide a high quality shop top housing development that is in keeping with the desired future character of the area; and
- the scale and nature of the non-compliance does not give rise to any matter of State or Regional significance, nor does it adversely affect the public interest.

Having regard to the circumstances of this case where:

- the overall style, scale and built form of the building will be commensurate with the likely future 'built environment' and desired character of the area;
- the non-compliant height will have negligible impact on the streetscape appearance and character of the locality having regard to the similar height of the proposed development on the adjoining site to the north, for which a development application is understood to have been lodged;
- the proposal is generally consistent with the aims and objectives of *Rockdale Local Environmental Plan 2011*; and
- the proposal is generally consistent with the objects of the *Environmental Planning &*

Assessment Act 1979, in particular, the orderly and economic use and development of land and ecologically sustainable development,

it is submitted that this Clause 4.6 Exceptions to Development Standards request is well founded. As such, strict compliance with the height of buildings principal development standard prescribed in Clause 4.3 of *Rockdale Local Environmental Plan 2011* is unreasonable and unnecessary having regard to the circumstances of the case. Accordingly, having regard to the assessment contained in this Clause 4.6 Exceptions to Development Standards submission, it is requested that Council support the proposed variation and the development in its proposed form.

Dated: 2 June 2016

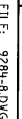
Andrew Robinson Planning Services Pty Ltd

A handwritten signature in black ink, appearing to read 'A Robinson', with a long horizontal stroke extending to the right.

Andrew Robinson MP/IA CPP
Director

DP1097898

SURVEYOR'S REFERENCE: 9284-8 "CHECKLIST"



PLAN AMENDED AT SURVEYORS REQUEST *OFFICE USE ONLY

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS, RESTRICTIONS ON
THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE
CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT, 1919.**

Lengths are in metres

Sheet 1 of 6 sheets

DP1097898

PLAN OF SUBDIVISION OF LOT 1 DP
445036, LOT 1 DP447152 AND LOT 1
DP570950

Covered by Subdivision certificate
No SC2006544 of 09-05-06

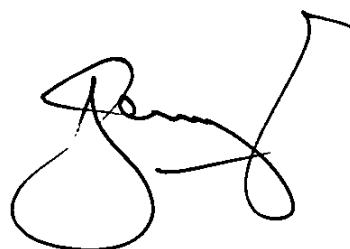
**Full name and address
of the owner of the
land**

**TELSTRA CORPORATION
LIMITED**
(ACN 051 775 556)
3/201 Sussex Street
Sydney NSW 2000

PART 1 (Creation)

Number of item shown in the intention panel on the Plan	Identity of Easement to be created and referred to in the plan	Burdened Lots	Lots and or Authority Benefited
1	Easement for Telecommunications Purposes 7.5 wide Limited in Height	100	Telstra Corporation Limited
2	Easement for Services and Drainage of Water 7.5 wide Limited in Height	100	101
3	Right of Access and Easement for Parking 6.2 wide Part Limited in Height	100	101
4	Right of Footway 0.9 wide Limited in Height	100	Rockdale City Council
5	Restriction on the Use of Land	100	101 and, Telstra Corporation Limited

x 



x

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Sheet 2 of 6 sheets

Plan:

PLAN OF SUBDIVISION OF LOT 1 DP
445036, LOT 1 DP447152 AND LOT 1
DP570950

DP1097898

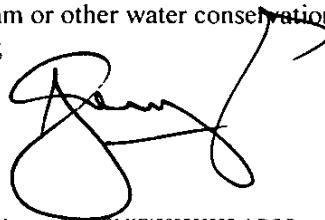
Covered by Subdivision certificate
No ~~SC2006/54~~ of 09-06-06

PART 2 (Terms)

**1. Terms of Easement for Telecommunications Purposes 7.5 wide Limited in
Height numbered 1 in the plan.**

- 1.1 The Authority Benefited, its officers, servants, workmen, contractors and agents have the right to enter the Lot burdened with or without vehicles or machinery and construct, lay down, erect, replace, repair, renew, clean, maintain and remove underground telecommunication and electricity cables (which are collectively termed *the cable* in this easement) and cable ducts, cable chambers, tunnels, culverts, bridges, cable joints, permanent marker posts, manholes, cable pits and other apparatus (which are collectively termed "the works" in this easement) for the transmission of telephone, television, radio and control signals and currents and electric current and for other incidental purposes under, over through and beneath the surface of the Lot Burdened at such heights or depths as it thinks proper.
- 1.2 In order to carry out the rights referred to in 1.1, the Authority Benefited, its offices, servants, workmen, contractors and agents may bring and place on the Lot Burdened and remove from the Lot Burdened all materials, apparatus, instruments, machinery, tools, implements, appliances, and articles and may do and perform all such other incidental acts and things as maybe reasonably necessary or required.
- 1.3 The Authority Benefited may exercise and perform in and upon the Lot Burdened any of the rights, powers and authorities conferred on or vested in the Authority by the Telecommunications Act 1997 as amended.
- 1.4 The proprietor of the Lot Burdened covenants with the Authority Benefited that **without the written approval of the Authority Benefited** the proprietor of the Lot Burdened will not, within the area of the easement, himself nor will he permit or suffer any other person or corporation to:
 - (a) do any act deed matter or thing which may injure or damage the cable and the works or may prevent or hamper the exercise by the Authority Benefited of its rights under this easement;
 - (b) erect any building or other structure of any kind or description or construct any roadway, driveway, footpath or railway in, upon or above the Lot Burdened;
 - (c) construct or build or form any dam or other water conservation feature in, upon or above the Lot Burdened;

x 



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PLAN OF SUBDIVISION OF LOT 1 DP
445036, LOT 1 DP447152 AND LOT 1
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No ~~SC2006/54 of 09-05-06~~

- (d) erect or sink or lay down any posts or poles, water pipes, drains, gas pipes or other service leads of whatsoever kind in or on the Lot Burdened;
- (e) alter in any way whatsoever the existing level of the surface of the Lot Burdened;
- (f) construct or build or form any drain, ditch, channel, canal, erosion control measure or other water controlling or containing feature of whatsoever kind on the Lot Burdened;
- (g) erect or construct any fence on the Lot Burdened other than in the renewal or maintenance of an existing fence without providing at his own expense a gate for access by the Authority Benefited to the cable and works. Where fencing is renewed or maintained, gates as existing within the Lot Burdened are to be re-erected and all posts re-located on their former sites.

- 1.5 The easement is limited in height to RL 19 metres on Australian Height Datum and is unlimited in depth.

AND the proprietor of the Lot Burdened further covenants with the Authority Benefited that where reasonably possible in any future plan of subdivision affecting the Lot burdened the proprietor of the Lot Burdened shall not provide for the cable and the works to be situated any where but underneath footpaths or roads.

2. Terms Of Easement for Services and Drainage of Water 7.5 wide Limited in Height numbered 2 in the plan

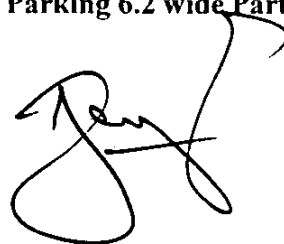
- 2.1 Terms as set out in Part 11 and Part 8 of Schedule 8 of the Conveyancing Act 1919

AND

- 2.2 The easement is limited in height to RL 19 metres on Australian Height Datum and is unlimited in depth.

3. Terms Of Right Of Access And Easement For Parking 6.2 wide Part limited in Height numbered 3 in the plan

x Sean



**INSTRUMENT SETTING OUT TERMS OF EASEMENTS, RESTRICTIONS ON
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Sheet 4 of 6 sheets

Plan:

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3.1 Terms as set out in Part 14 of Schedule 8 of the Conveyancing Act 1919 AND

3.2 The owner of the lot benefited may:

- a) Park vehicles or equipment on the lot burdened, but only within the site of this easement, for any period of time
- b) Erect any traffic control devices within the site of this easement
- c) Take anything onto the lot burdened and carry out any work within the site of this easement for the purpose of constructing, placing, repairing or maintaining traffic control devices

In exercising those powers, the owner of the lot benefited must:

- a) ensure that all work is done properly, and
- b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
- c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
- d) make good any collateral damage.

3.3 The easement is unlimited in height in part and limited in height in part to RL 19 metres on Australian Height Datum and is unlimited in depth.

4. Right of Footway 0.9 wide Limited in height numbered 4 in the plan

4.1 Terms as set out in Part 2 of Schedule 8 of the Conveyancing Act 1919

AND

4.2 The easement is limited in height to RL 19 metres on Australian Height Datum and is unlimited in depth.

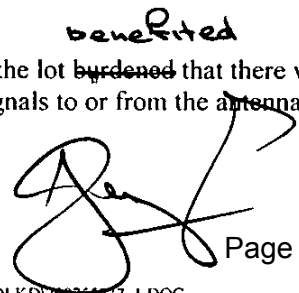
5. Terms Of Restriction On The Use Of Land numbered 5 on the plan

Any building or construction over 2 stories in height on the burdened lot will require approval of the owner of the lot ~~burdened~~ benefited

Such approval will not be withheld if:

- 1) it can be shown to the satisfaction of the owner of the lot ~~burdened~~ benefited that there will be no adverse impact on the telecommunication signals to or from the antennas erected on the benefited lot OR

x 

 benefited
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Sheet 5 of 6 sheets

Plan:

DP1097898

PLAN OF SUBDIVISION OF LOT 1 DP
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No SC2006/54 of 09-05-06

- 2) if alternate arrangements can be made to the siting of the aerials such that the signal will not be interrupted or the signal condition will be maintained with no reduction in strength or coverage.

**NAME OF AUTHORITY OR PERSONS EMPOWERED TO RELEASE, VARY OR
MODIFY THE EASEMENTS NUMBERED 1 AND 5 IN THE PLAN.**

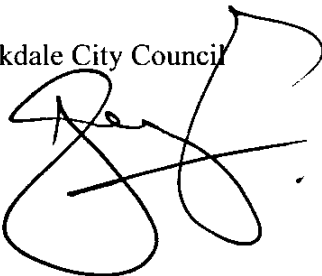
Telstra Corporation Limited

**NAME OF AUTHORITY OR PERSONS EMPOWERED TO RELEASE, VARY OR
MODIFY THE EASEMENTS NUMBERED 2 AND 3 IN THE PLAN.**

The Registered proprietors of the burdened and benefited lots

**NAME OF AUTHORITY OR PERSONS EMPOWERED TO RELEASE, VARY OR
MODIFY THE EASEMENT NUMBERED 4 IN THE PLAN.**

Rockdale City Council



x 

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS, RESTRICTIONS ON
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Sheet 6 of 6 sheets

Plan:

PLAN OF SUBDIVISION OF LOT 1 DP
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Covered by Subdivision certificate


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DP1097898

I certify that **TERRANCE JOHN LAYTON**
with whom I am personally acquainted or as to whose identity I am otherwise satisfied,
signed this document in my presence as attorney for **TELSTRA CORPORATION
LIMITED** under Power of Attorney registered book **4457** No **829**



Signature of witness

x 

Signature of attorney

LISA MARIE KALCINA

Name of witness (block letters)

Attorney's Names: **TERRANCE JOHN LAYTON**

225 GEORGE STREET, SYDNEY

Address of witness (block letters)

Signing on behalf of Telstra
Corporation Limited

By executing this document the attorney states that the attorney has received no notice of
revocation of the power of attorney

