
Bayside Planning Panel

27/03/2018

Item No	6.4
Application Type	Development Application
Application Number	DA-2017/26
Lodgement Date	25 July 2016
Property	83-85 Railway Street, Rockdale
Owner	Mr E E Daccour
Applicant	Urbanlink Architects Pty Ltd
Proposal	Demolition of existing buildings and construction of a seven (7) storey mixed use development containing 18 residential units, one (1) commercial tenancy and basement car parking, provision of public footway access at the rear, and stratum subdivision into 2 lots.
No. of Submissions	Nil
Cost of Development	\$4,799,518.00
Report by	Pascal van de Walle, Coordinator Development Assessment

Officer Recommendation

- 1 That the Bayside Planning Panel accept the Clause 4.6 variation to Clause 4.3 of RLEP 2011 (Height) as requested by the Applicant.
- 2 That **DEFERRED COMMENCEMENT** consent be granted to this Development Application pursuant to Section 80(1)(3) of the Environmental Planning and Assessment Act 1979 in accordance with the Deferred Commencement Conditions provided below, and subject to the conditions of consent attached to this report:
 - a. This consent is not to operate until the Applicant satisfies the Council, within 12 months of the date of this consent, that it has obtained approval/certification from Sydney Trains as to the following matters and the approval/certification has been forwarded to the Council:
 - i. The Applicant shall prepare and provide to Sydney Trains for approval / certification the following items:
 - a. Detailed Rail specific Geotechnical Engineering Report and Civil and Structural design plans that meet Sydney Trains requirements. The Geotechnical Report must be based on actual borehole testing conducting on the site closest to the rail corridor. The report shall demonstrate that the development has no negative impact on the rail corridor or the integrity of the infrastructure through its loading and ground deformation and shall contain structural design details/analysis for review by Sydney Trains. The report shall include the potential impact of demolition and excavation, and demolition- and excavation-induced vibration in rail facilities, and loadings imposed on Sydney Trains facilities by the development.

- b. Construction methodology with construction details pertaining to structural support during excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.
 - c. Cross sectional drawings showing the rail corridor, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the rail corridor. All measurements are to be verified by a Registered Surveyor.
 - d. Detailed Survey Plan showing the relationship of the proposed development with respect to Sydney Trains easement and rail corridor land.
 - e. If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.
- ii. Any conditions issued as part of Sydney Trains approval/certification of the above documents will also form part of the consent conditions that the Applicant is required to comply with.

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

Attachments

- 1 Planning Assessment Report
 - 2 Design Review Panel Minutes
 - 3 VPA Offer
 - 4 Site Plan
 - 5 Elevations & Sections
 - 6 Clause 4.6 Variation
-

Location Plan



BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/26
Date of Receipt:	25 July 2016
Property:	83 - 85 Railway Street, ROCKDALE (Lot 1 DP 3560)
Owner:	Mr Elias Estephan Daccour
Applicant:	Urbanlink Architects Pty Ltd
Proposal:	Demolition of existing buildings and construction of a seven (7) storey mixed use development containing 18 residential units, one (1) commercial tenancy and basement car parking, provision of public footway access at the rear, and stratum subdivision into 2 lots.
Recommendation:	Deferred commencement
No. of submissions:	Three (3) in response to the original notification letter. One (1) in response to notification of the amended proposal.
Author:	Pascal van de Walle
Date of Report:	12 March 2018

Key Issues

The proposal includes demolition of the existing structures and construction of a seven (7) storey mixed use development comprising one (1) commercial tenancy, eighteen (18) residential units, basement parking, and stratum subdivision into two (2) lots.

The site is not restricted by FSR controls, similar to all properties within the Rockdale Town Centre. Bulk and scale is restricted by the height provisions in Rockdale Local Environmental Plan (RELPE) 2011 and the setback provisions contained in Rockdale Development Control Plan (RDCEP) 2011. The proposal generally complies with the 22m height provisions contained within RELPE 2011, with the exception of the roof-top communal open space and a minor section of residential units at the Railway Street frontage of the site. The applicant has provided a justification to the variation under Clause 4.6 which is supported in this case.

The site is located immediately adjacent to the Rockdale School of the Arts (Guild Theatre) and St Joseph's Convent, both heritage items of local significance. The site is also located nearby Rockdale Railway Station and Yard Group, a further item of local heritage significance. The amended proposal was accompanied by a Heritage Impact Statement (HIS) which recommended that the proposal be approved from a heritage perspective. Council's Heritage Officer has assessed the amended proposal and HIS and found that the amended design responds to the heritage concerns.

The applicant has submitted a formal VPA offer for the following key matters:

- Public domain / landscape works to the existing 3m wide Heston Lane to create additional

- public car parking to the rear of the Guild Theatre site;
- Stratum subdivision and dedication of a portion of the rear of the site to Council (with depth of approx. 1200mm and unlimited in height) to facilitate a future pedestrian link to Heston Lane and future public car parking to the north;
- Landscaping and public domain works associated with the future pedestrian link; and,
- Works on the proposed Right of Way across the Guild Theatre Site to facilitate access to the site.

Council's Property Team has confirmed that the letter of offer is satisfactory in terms of the essential items of the VPA offer, and agrees that a right of way can be created over the Guild Theatre site (No.87 Railway Street) to facilitate vehicular access to the site. A deferred commencement condition is proposed to ensure that the VPA is entered into, and relevant conditions are included in the consent to ensure that works are carried out within the agreed timeframes.

The proposal is located within proximity to the Eastern Suburbs and Illawarra Railway Line and Sydney Trains has issued their concurrence subject to imposition of recommended conditions of consent, including a Deferred Commencement Condition.

The amended proposal generally complies with the requirements of the Apartment Design Guide (ADG) and the recommendations provided by Council's Design Review Panel.

The development application was notified in accordance with the provisions of Rockdale DCP 2011 and three (3) submissions were received. The amended application was notified and one (1) submission was received. The key issues raised related to suitability of the site for the proposed development, potential impacts to the adjoining properties (including future redevelopment of adjoining properties), the destruction of an historical building and the relationship of the proposed right of way to the adjoining property. The issues have been considered in the assessment, and the impacts have been adequately minimised and/or addressed as detailed in the body of the report.

Overall, the proposal is considered to satisfy the requirements and/or objectives of the ADG and Council's controls, satisfactorily minimise impacts to neighbouring properties, and provide an appropriate design response to the streetscape and adjoining heritage items. The proposal is therefore recommended for approval subject to recommended conditions of consent.

Recommendation

- (1) That the Bayside Planning Panel accept the Clause 4.6 variation to Clause 4.3 of RLEP 2011 (Height) as requested by the Applicant;
- (2) That **DEFERRED COMMENCEMENT** consent be granted to this Development Application pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979 in accordance with the Deferred Commencement Conditions provided below, and subject to the conditions of consent attached to this report. The deferred commencement conditions below must be satisfied within twelve months from the date of determination.
 - (A) This consent is not to operate until the Applicant satisfies the Council, within 12 months of the date of this consent, that it has obtained approval/certification from Sydney Trains as to the following matters and the approval/certification has been forwarded to the Council:
 - (i) The Applicant shall prepare and provide to Sydney Trains for approval/certification

the following items:

- (a) Detailed Rail specific Geotechnical Engineering Report and Civil and Structural design plans that meet Sydney Trains requirements. The Geotechnical Report must be based on actual borehole testing conducting on the site closest to the rail corridor. The report shall demonstrate that the development has no negative impact on the rail corridor or the integrity of the infrastructure through its loading and ground deformation and shall contain structural design details/analysis for review by Sydney Trains. The report shall include the potential impact of demolition and excavation, and demolition- and excavation-induced vibration in rail facilities, and loadings imposed on Sydney Trains facilities by the development.
 - (b) Construction methodology with construction details pertaining to structural support during excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.
 - (c) Cross sectional drawings showing the rail corridor, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the rail corridor. All measurements are to be verified by a Registered Surveyor.
 - (d) Detailed Survey Plan showing the relationship of the proposed development with respect to Sydney Trains easement and rail corridor land.
 - (e) If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.
 - (ii) Any conditions issued as part of Sydney Trains approval/certification of the above documents will also form part of the consent conditions that the Applicant is required to comply with.
 - (B) A voluntary planning agreement (VPA) in accordance with the offer set out in the letter from Think Planners to Bayside Council dated 2 March 2018 is to be entered into between the developer and Council.
 - (C) The applicant is to provide draft Stratum Subdivision Plans for subdivision of the site into two (2) lots, including the rear portion of the site that is to be dedicated to Council (refer to Item (a) in the VPA offer) and the remainder of the site. The area of land to be dedicated will be unlimited in height but limited in depth to approximately 1200mm below the finished surface level of the pedestrian link. The plans are to be to the satisfaction of Council.
- (3) That the objectors be notified of the Bayside Planning Panel's decision.

Background

History

The site has been subject to several development applications, however the main applications of relevance are the pre-DA, development application and Section 96 application relating to a mixed use development. A summary of these applications is provided below:

- DA-2010/321 - Demolition of existing buildings and construction of a five (5) storey mixed use building containing 1 commercial unit and 10 residential units. Application lodged on 2 March 2010 and approved on 28 January 2011.
- DA-2010/321/A - Section 96(2) Application lodged on 9 May 2014 for modifications to the approved mixed use development to provide two (2) additional residential units creating a total of 12 residential units, some of which will be 'affordable housing' pursuant to SEPP (Affordable Rental Housing) 2009, removal of mechanical car stackers and provision of ten (10) car parking spaces at grade. Application Withdrawn on 7 August 2014.
- PDA-2010/30 - Pre-DA for a mixed use development.

The ground floor of the site is currently used as a fruit & vegetable shop and a 'thai massage' salon. The site has formerly had approval for use as a massage salon, art & craft shop (serving light refreshments) and a chicken and fish shop.

Proposal

The proposal is for a mixed use (shop-top housing) development containing 18 residential units, one (1) commercial tenancy (36sq/m), basement parking, stratum subdivision, strata subdivision and demolition of existing structures.

A detailed description of the proposal is provided below:

Demolition

Demolition of all existing structures on site, including the two storey mixed use brick building with awning.

Construction

Construction of a seven (7) storey mixed use development comprising one commercial tenancy (36sq/m), 18 residential units and basement parking, as follows:

- Commercial Premises (36sq/m) - The proposed commercial tenancy is located at the ground floor level with frontage to Railway Street. The tenancy has secondary doors which open out into the building lobby to provide potential for an extended seating area for a cafe or other use.
- Residential Units - The 18 residential units comprising the following unit mix:
 - 7 x 1 bedroom (all 1 bed units include a study);
 - 9 x 2 bedroom (3 x 2 bed units include a study);
 - 2 x 3 bedroom units (1 x 3 bed unit includes a study).
- Car parking / Basement - Split level car park, including two and a half levels of parking at ground floor and basement levels containing 18 parking spaces, two motorbike and two bicycle spaces, including:
 - 1 x commercial space;
 - 1 x visitors / car-wash space;
 - 16 x residential spaces (including 2 x accessible spaces);
 - 2 motorbike spaces; and,
 - 2 bicycle spaces.
- Awning - An awning is proposed for the full Railway Street frontage.

Access to the site

Vehicular access is provided across the Guild Theatre site in accordance with the Voluntary Planning Agreement (VPA) offer and recommended conditions of consent. The Guild Theatre is Council owned and operated, and the VPA will enable a Right of Way access over the Guild Theatre Site prior to occupation. The Right of Way will provide two way access to and from the basement car park entry.

Vehicular access was originally proposed via the existing one-way (3m wide) Heston Lane located immediately to the west of the site. Access is now provided via the Guild Theatre site for the following key reasons:

- To ensure that two-way access was provided to their car parking area to minimise traffic impacts that may result from use of the single width Heston Lane that would be managed by traffic signals;
- To create additional public car parking within the guild theatre site (Council land) for public use associated with the Guild Theatre and ; and,
- To provide a pedestrian link at the rear of the site to access future public car parking.

Pedestrian access is via the lobby from Railway Street, and access to the commercial premises is also directly from Railway Street.

Communal Open Space

The proposal includes a rooftop communal open space area with an area of 170sq.m. The rooftop area includes an accessible toilet, bbq / servery, fixed timber tables and benches, periphery planting and shade structures. Access to the communal open space is by lift and fire stairs.

Landscape Planting

Two planters are proposed within the rear of the site, one adjoining the rear boundary and the other adjoining the garage entry. Planters incorporate a range of planting including shrubs and trees capable of a mature height of up to 10m.

Periphery shrub planting is proposed along the southern perimeter of the balcony to unit L1.3 at level 1, to the perimeter of the rear facing balcony at Level 5 (Unit 6.2) and to the perimeter of the communal open space area at roof top level.

Stratum Subdivision / Public pedestrian access across rear of site

A 5.1m rear setback has been provided to the ground floor level. This area will be subject to Stratum Subdivision, with the rear 5.1m area containing the footpath / planter boxes being dedicated to Council to provide future public access to the sites and future public car parking to the north.

Strata Subdivision

The original application included strata subdivision, however the plans have not been updated to reflect the amended plans. Therefore approval for strata subdivision is not provided, however can be undertaken as Complying Development in accordance with State Environmental Planning Policy (Exempt and Complying Development) 2008.



Figure 1 - Photomontage of proposed development.



Figure 2 - 3D image of Guild Theatre and subject proposal beyond



Figure 3 - 3D image of rear of Guild Theatre across the existing car park toward the subject development.

Site location and context

The subject site is known as 83-85 Railway Street, Rockdale and is legally described as Lot 1 in DP 3560. The total has a 12.8m frontage to Railway Street, a 43.28m depth, and a total site area of 554sq.m. The site is a regular shape and has a slope of more than 3m from the rear down towards the front boundary. There are no trees or vegetation of significance on the site. Vehicular access to the site is via Hesten Lane at the rear, which is a single width un-formed carriageway.

The site contains a two storey brick building of the Interwar period. The building contains a number of commercial tenancies on both levels. There is an awning over the footpath.

The site is located on the western side of Railway Street, Rockdale, immediately opposite Eastern Suburbs & Illawarra Railway line and a part of Rockdale Railway Station (a heritage item under RLEP 2011). The site is located within the Rockdale Town Centre as defined in RDCP 2011, and within the B2 Local Centre zone. It is situated toward the northern end of the commercial precinct on the northern side of the Railway line.

To the south of the site at 87 Railway Street is a single storey community building known as the Guild Theatre (formerly known as School of Arts). Immediately to the rear (west) of the site is 3-7 Walz Street which is zoned R2 Low Density Residential and which contains the St Joseph's Primary School, Church and Convent. Both properties are listed as items of heritage significance under RLEP 2011.

Adjoining the site to the north is a three storey commercial building and further to the north is a two storey commercial building, both of contemporary character. These sites are the subject of a planning proposal which is still under consideration.

The Council's Design Review Panel (DRP) have described the Site Context as follows:

- *The site is adjacent to an important heritage listed building, to the south the Rockdale Community Centre Guild Theatre. The site contains a 1921 two-storey commercial retail building, which although not heritage listed has architectural merit and makes a significant contribution to the streetscape of the centre. To the west is St Joseph Church which is also heritage listed.*
- *Further to the south on Railway Street the existing two-storey commercial buildings have very attractive character and form and provide an important part of the context of the subject site.*
- *The site is across the road from Rockdale railway station and bus stops.*
- *To the north are three-storey modern commercial buildings on a site which is under consideration for substantial height and floor space increases. Vehicular access is provided by a lane to the rear of the site accessed from Walz Street.*

A site plan and zoning plan are provided below:

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

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 73829M_02.

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

Reduction in Energy Consumption 20%

Reduction in Water Consumption 40%

Thermal Comfort Pass

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

State Environmental Planning Policy (Infrastructure) 2007

SEPP (Infrastructure) 2007 has been considered in the assessment and the following key matters are of relevance to this proposal:

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

The application is subject to clause 45 of the SEPP as the development proposes works within the vicinity of above ground electricity infrastructure. Ausgrid objected to the proposed works by letter dated 14 February 2017 subject to submission of additional information. It is considered that the details required can be resolved by way of conditions of consent to be satisfied prior to issue of any construction certificate. Consideration has therefore been given to the response received from Ausgrid and the application is therefore consistent with the provisions of the SEPP and is acceptable in this regard.

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

The proposal involves excavation within 25 metres of the Illawarra rail corridor and requires the concurrence of the rail authority in accordance with clause 86(1)(b). On 7 February 2017 Sydney Trains (on behalf of Railcorp) provided concurrence to the proposal subject to recommended conditions of consent, including a deferred commencement condition. These conditions have been incorporated into the draft notice of determination.

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

The proposal is subject to Clause 87 - Impact of rail noise or vibration on non-rail development, and in this regard, the consent authority must not grant consent to the development for residential use unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

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

The applicant has submitted an Acoustic Report dated 25 July 2016 and prepared by Acoustic Noise & Vibration Solutions P/L, which considered the impact of rail noise on the proposed mixed use development. This report also considers the impact of aircraft noise on the development, as the site is located on the ANEF 25 contour, and compliance with the inter-tenancy acoustic attenuation requirements in RDCP 2011.

The report concludes that the development will satisfy the noise level requirements as outlined in the SEPP, should the recommendations in the report be incorporated into construction. Accordingly, the recommendations have been incorporated as conditions in the draft Notice of Determination.

State Environmental Planning Policy No 55—Remediation of Land

The subject site is not identified as potentially contaminated in Council's records, and the existing and historical land uses are not potentially contaminating land uses identified in Table 1 of the SEPP 55 Planning Guidelines. Adjoining properties contain commercial, residential and community land uses, and there is no evidence to suggest that the site could be contaminated. The Applicant's Statement of Environment Effects (SEE) advises that "Council can be satisfied that the provisions of clause 7 of the SEPP is satisfied given there is no underlying change of use or history of contaminating activities". Therefore, based on the information provided, the site inspection, and a review of the current and historic uses of the site, it is highly unlikely that the site is contaminated and it is therefore considered suitable for the proposed commercial and residential land uses.

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 original application proposed two buildings and was considered by the Design Review Panel (DRP) on 23 August 2016. The DRP identified a number of major concerns with the proposal and concluded that the proposal could not be supported in the form proposed. The key issues raised by the DRP included the relationship of the proposal to the adjoining heritage item and commercial buildings further to the south, the bland and dominant southern facade, the central open space area that would be 'extremely poor quality' and 'have no value as communal open space', the split levels between the two buildings and the lack of any deep soil within the site. The DRP also recommended that the existing commercial facade be retained.

The application has been significantly amended in consultation with a Heritage Architect. The amended proposal is found to address the issues raised by the DRP as discussed below:

- *Issue:* Relationship to adjoining heritage listed building (The Guild Theatre) and the two storey character of commercial buildings to the south. The Panel recommended conservation of the façade of the existing 1921 commercial building, a setback of 3 metres at the third level and above (rather than the fourth level as in the DCP).

Comment: Retention of the existing facade is preferred, and solutions were explored with the applicant's Heritage Consultant. The building is not a heritage item and no practical or suitable solutions were found for the applicant to retain the building, and its retention can not be required. The scale of the proposed building frontage to Railway Street has been amended to a two storey brick podium with a 3m setback to the building above as recommended by the DRP and the applicant's Heritage Consultant. The amended design is found to sympathetic to the adjoining heritage item and is supported by Council's Heritage Adviser.

- *Issue:* The bland and dominant south façade which is unsympathetic to the heritage buildings;

Comment: The southern facade has been significantly amended. The two buildings originally proposed have been joined into a single built form, and additional and varied setbacks and materials have been used to provide a facade that is sympathetic to the adjoining heritage item. The amended proposal was designed in consultation with a heritage consultant and is supported by Council's Heritage Adviser.

- *Issue:* The DRP found that the two proposed buildings would create issues with the central open space and access. The central open space would be extremely poor quality, receiving minimal sunlight, and split into two parts by the access bridge above, having no value as a communal space. The split level between the front and rear floors requiring access by steps from lift to all rear units and the centre generally. The DRP recommended moving the two building elements together but maintaining a lightwell for ventilation purposes, providing the communal open space at roof top level and arranging the building so that the levels at each floor are the same.

Comment: The applicant has amended the development to satisfy these recommendations.

- *Issue:* Lack of deep soil provision anywhere on the site.

Comment: The application has been amended to include substantial size planter boxes and to utilise rainwater reuse within the site. This includes planter boxes within the pedestrian footpath along the rear site boundary that will provide a link to future public car parking on adjoining sites. Significant attempts were made to provide deep soil, and the proposal has been amended to include a 65m² area at the rear of the site with a 2m depth of soil, which provides 135m³ of soil volume that will permit large trees to grow in accordance with the ADG guidelines. Combined with the rainwater reuse and stormwater system, the proposal is considered to be acceptable with regards to the objectives of the ADG.

- *Issue:* A full awning should be provided over the footpath (perhaps with cut-outs for major tree growth).

Comment: A full awning has been provided.

- *Issue:* Investigate the opportunity to include some 3 bedroom units in the redesign.

Comment: The amended proposal includes two (2) x 3 bedroom units.

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

The design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

Principle 1 – Context and Neighborhood Character

The site is located adjacent to the Guild Theatre, a single storey heritage item with car park to the rear, opposite the Rockdale Railway Station and within the western portion of the Rockdale Town Centre. The sites to the south are two-storey commercial buildings and the sites to the north are currently zoned to permit developments of a similar nature and scale. The sites to the north are, however, subject to a Planning Proposal that is nearing completion and would permit development with a maximum height of 28m. The proposal has been amended with consideration of this existing and future site and planning context, and with regard to the DRP comments as discussed above. The proposal as amended is

considered to provide an acceptable outcome in this context.

Principle 2 – Built Form and Scale

The amended proposal provides an acceptable built form appearance and scale of development. While the height exceeds the maximum 22m building height permitted, the variation is primarily for the roof top communal open space area and the applicants rationale provided in their clause 4.6 variation is supported. Detailed consideration has been given to the buildings appearance from the public domain, specifically the buildings southern facade which adjoins the Guild Theatre and its carpark and which is highly visible from the public domain.

Principle 3 – Density

The Rockdale Town Centre is not subject to FSR controls, and the density is generally guided by the maximum height provisions in RLEP 2011 and the required setbacks in the ADG and RDCP 2011. The proposed height and setbacks are found to be acceptable and the density is considered suitable for this site. The proposal is therefore acceptable in this regard.

Principle 4 - Sustainability

The application complies with BASIX and the applicant has included planting at various levels, including ground, podium and most levels that will provide wind breaks and shading for units and amenity impacts for the public domain. A communal open space area has been provided at roof top level to ensure that residents have access to communal open space which receives high levels of sunlight at mid-winter. The units also achieve the minimum requirements for solar and cross ventilation under the ADG.

Principle 5 – Landscape

Landscape planter beds are provided at various locations throughout the development, including generous planting at the rear and at roof-top level. The proposed landscape areas will complement the building, and contribute to the streetscape and locality. The proposed landscape planting is supported by Council's Landscape Architect.

Principle 6 – Amenity

The amended proposal satisfies the cross ventilation and solar access requirements of the ADG, and includes 4m floor to ceiling height at ground level and 3.3m floor to ceiling heights at first floor level to provide flexibility for potential future commercial uses as required by the ADG and RDCP 2011. The proposal generally complies with other amenity issues identified by the DRP. The proposal includes a high quality communal open space area at roof top level that will have quality views and amenity for the benefit of residents. The units and rooms are of adequate size and dimensions. Overall, the amended proposal has significantly improved the level of amenity that will be afforded to future residents when compared with the original scheme. The proposal is therefore considered to provide an acceptable standard of amenity.

Principle 7 - Safety

The proposal provides minimal concealment opportunities and includes ground level commercial that provides passive surveillance of Railway Street. In addition, the upper level units have balconies facing toward the public carpark and Walz Street that will provide increased passive surveillance of these public and openly accessible areas. Access to the car park is secure, and security access points are provided to gain access to the lift lobbies. Suitable lighting and CCTV will be required by conditions of consent, and the proposed design is satisfactory in this regard.

Principle 8 - Housing Diversity and Social Interaction

The site is well located near Rockdale railway station, and the proposal includes a variety of apartment sizes and layouts including three (3) bedroom units and adaptable units. The proposal is therefore satisfactory in this regard.

Principle 9 – Aesthetics

The amended proposal includes a range of materials and finishes that, combined with the proposed design, will provide a satisfactory contemporary development in the context of the site. Specific attention has been given to the proposals relationship with the adjoining heritage item and commercial buildings to the south, and to the visibility of the southern facade from the public domain.

(c) The Apartment Design Guide

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

CLAUSE	DESIGN CRITERIA	COMMENTS	COMPLIES
3D - Communal and Public Open Space	25% of site area. (138.5sq/m) 50% direct sunlight to principal usable part of communal open space for min. 2 hours between 9am and 3pm on 21 June.	170sq/m proposed at roof top level. This area receives in excess of 2 hours sunlight.	Yes
3E - Deep Soil	7% of the site area and with minimum dimensions of 6m	No genuine deep soil provided, however 2m soil depth provided at rear.	NO - however acceptable (see Note 1 below)
3J - Bicycle and car parking	As per Guide to Traffic Generating Developments, or per council requirement, whichever is less. Parking provided off street. <u>Required</u> $0.6 \times 1 \text{ bed} = 0.6 \times 7 = 4.2 \text{ spaces}$ $0.9 \times 2 \text{ bed} = 0.9 \times 9 = 8.1 \text{ spaces}$ $1.4 \times 3 \text{ bed} = 1.4 \times 2 = 2.8 \text{ spaces}$ $TOTAL \text{ Residential Spaces required} = 15.1 \text{ spaces} = 16$ · Visitors (1 / 5) = 4 spaces · Commercial = 1 / 40 spaces = 1 space $TOTAL \text{ PARKING REQUIRED} = 21 \text{ spaces.}$ $PROPOSED = 18 \text{ spaces provided}$	Only 1 visitors parking space provided while 4 spaces are required. The variation is supported as the proposal will create additional public parking spaces for use of visitors of the site and nearby shops.	NO - however acceptable (see Note 2 below)

4D - Apartment size & layout	Apartment type		Minimum internal area	All units comply with the minimum requirements. 1 bed units are between 55.3m2 & 68.5m2, 2 bed units are between 75.7m2 & 92m2, and 3 bed units are 107.5m2 and 119.4m2.	Yes
	Studio		35m²		
	1 bedroom		50M²		
	2 bedroom		70m²		
	3 bedroom		90m²		
4C – Ceiling heights	Minimum ceiling heights:			* Ground Floor = 4.0m ceiling height * First Floor = 3.3m ceiling height * Upper floors = 3.05m floor to floor is provided, which will permit a minimum 2.7m floor to ceiling height for habitable spaces.	Yes.
	Habitable	2.7m			
	Non-habitable	2.4m			
	Two storey apartments	2.7m main living 2.4m first floor, area < 50% of apartment area			
	Mixed use area	3.3m for ground and first floor			
3F Visual Privacy	Min separation - side & rear boundaries:			The proposal does not comply with the numeric requirements, however satisfies the objectives of the setback provisions.	NO - however acceptable (see Note 3 below)
	Building height	Habitable rooms and balconies	Non habitable rooms		
	Up to 12m (4 storeys)	6m	3m		
	Up to 25m (5-8 Storeys)	9m	4.5m		
	Over 25m (9+storeys)	12m	6m		
Buildings on the same site combine required building separations. Gallery treated as habitable space					
4A – Solar and daylight access	Living rooms + POS of at least 70% of apartments receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter			72% (13 of 18 units)	Yes
	Max 15% apartments receive no direct sunlight b/w 9am & 3pm mid-winter			Nil (0%)	Yes

4F – Common circulation and spaces	<p>Max apartments off a circulation core on a single level is eight.</p> <p>10 storeys and over, max apartments sharing a single lift is 40.</p>	<p>Three (3) are located off a single circulation core.</p> <p>One (1) lift provided.</p>	<p>Yes</p> <p>Yes</p>															
4E – Private open space and balconies	<p>Primary balconies as follows:</p> <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio</td><td>4m²</td><td>-</td></tr><tr><td>1 bed</td><td>8m²</td><td>2m</td></tr><tr><td>2 bed</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bed</td><td>12m²</td><td>2.4m</td></tr></table> <p>Min balcony depth contributing to the balcony area is 1m.</p> <p>Ground level, podium or similar - POS provided instead of a balcony: min area 15m² and min depth of 3m.</p>	Dwelling type	Minimum area	Minimum depth	Studio	4m ²	-	1 bed	8m ²	2m	2 bed	10m ²	2m	3+ bed	12m ²	2.4m	<p>All units comply with these requirements</p>	<p>Yes</p>
Dwelling type	Minimum area	Minimum depth																
Studio	4m ²	-																
1 bed	8m ²	2m																
2 bed	10m ²	2m																
3+ bed	12m ²	2.4m																
4B-1 - Natural ventilation - All habitable rooms naturally ventilated	<p>Light wells are not the primary air source for habitable rooms</p>	<p>The proposal includes a light well that has been amended to provide natural light and ventilation for study areas only.</p>	<p>Yes</p>															
4B-3 – Natural ventilation	<p>Min 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>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.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>66.7% (12 of 18 units) achieve genuine cross ventilation. The remaining 6 units may achieve cross ventilation through the study windows facing the future light-well. No information has been provided to demonstrate that the light well will provide genuine cross-ventilation.</p>	<p>Yes</p>															

4G – Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	The plans demonstrate compliance, however a condition is also proposed.	Yes										
	<table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio</td><td>4m²</td></tr><tr><td>1 bed</td><td>6M²</td></tr><tr><td>2 bed</td><td>8m²</td></tr><tr><td>3 bed</td><td>10m²</td></tr></table>	Dwelling type	Storage size volume	Studio	4m ²	1 bed	6M ²	2 bed	8m ²	3 bed	10m ²		
Dwelling type	Storage size volume												
Studio	4m ²												
1 bed	6M ²												
2 bed	8m ²												
3 bed	10m ²												
	At least 50% of the required storage is located within apartment												

Note 1 - Deep Soil

The ADG requires that a minimum of 7% of the site area and with minimum dimensions of 3m be provided as deep soil. The provision of deep soil is considered critical to ensuring the long term health of landscape planting as well as allowing recharge of the groundwater. The proposal includes a 65m² area at the rear of the site with a 2m depth of soil, which provides 135m³ of soil volume that will permit large trees to grow in accordance with the ADG guidelines. No genuine deep soil is provided. The applicant considers that *"deep soil is not feasible or necessary in the B2 zone, however as shown on the revised plans the proposal now adopts landscape planting along the rear R.O.W. area to provide for landscape and additional planter boxes are introduced across the building"*. The provision of deep soil has been provided on all sites within Rockdale, including those zoned B2 Local Centre. In this case, the site is located in the Rockdale Town Centre adjacent to the railway station and is severely constrained by its size and dimensions, and the ADG permits variations in these cases subject to *"acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure"*. The proposal includes the 65m² area of landscape area at the rear of the site which has soil volume that can accommodate large trees, as well as substantial planter boxes at first and roof top levels resulting in a total 25% of the area of the site as landscaped area. The proposal also includes on-site stormwater detention as well as rainwater re-use for the planter boxes. Therefore, in this case, the proposal variation to the deep soil requirement is considered acceptable.

Note 2 - Visitors Parking

Only 1 visitors parking space provided while 4 spaces are required in accordance with the ADG. The variation is supported as the proposed R.O.W. access through the Guild Theatre car park will provide up to 5 additional public parking spaces for use by visitors of the site and the adjoining commercial precinct. Combined with the R.O.W. across the back of the site that would provide pedestrian access to future public parking associated with No. 75-83 Railway Street, the proposal will ensure adequate public parking is available for visitors to the site. The parking can also be utilised by the visitors to the commercial precinct.

Note 3 - Building Separation

The proposal includes a nil setback to the sites northern side boundary, a 9m rear (western) setback and a 2.2m - 2.8m southern side setback. The rear 9m setback complies with the ADG setback requirements of 6m - 9m for buildings up to 8 storeys, however the southern and northern side setbacks do not comply with the ADG setback requirements. The proposed setbacks are, however, found to be acceptable and in accordance with objectives of the control as discussed below:

- Northern side setback - A nil northern side setback with no windows is proposed, however small operable high-light windows are provided within the lightwell to provide light and ventilation to small study areas and the entrance corridors to one-bedroom units located on Levels 1 - 6. These windows are located 3m from the northern boundary, have sill heights of approximately 1600mm and will not cause any privacy impacts to adjoining properties. Therefore no privacy impacts will result and the setback is acceptable in this case.
- Southern side setback - The proposed southern elevation faces towards Council's Guild Theatre site - a local heritage item in RLEP 2011. This southern side setback vary been 0m and 2.8m and does not satisfy the 6m - 9m required by the ADG. The proposed areas with a nil side setbacks are located toward the front of the site and at ground levels and do not contain windows. These areas are in accordance with RDCP 2011 setbacks and satisfy the ADG. The 2.2m - 2.8m setbacks at Levels 1 - 6 do not comply with the ADG setbacks, however are also found to be acceptable in the context due to the adjoining single storey heritage item and car park that will be retained on this site. This setback has been redesigned to provide an improved relationship with, and appearance from, Walz Street and surrounding public domain areas. The proposed setbacks are acceptable in the context.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone B2 Local Centre	Yes	Yes - see discussion
2.6 Subdivision - consent requirements	Yes	Yes - see discussion
2.7 Demolition requires consent	Yes	Yes - see discussion
4.3 Height of buildings	Yes	No - see discussion
4.6 Exceptions to development standards	Yes	Yes - see discussion
5.10 Heritage conservation	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.3 On 25 ANEF (2033) contour	Yes	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes - see discussion

2.3 Zone B2 Local Centre

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

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To accommodate population growth through high density mixed use development that complements the role of retail, commercial, civic and cultural premises in the Rockdale town centre.

- To create a lively Rockdale town centre with an amenable and pedestrian focused public domain activated by building uses that engage with the street.

The proposed development is consistent with the objectives of the zone as it provides a mix of commercial and residential land uses on the site which are located within close proximity to Rockdale Train Station. Also, vehicular access to the building is provided from the rear which allows the full frontage of the site to be activated with the single commercial tenancy, other than space required for the residential lobby and fire egress stairs.

2.6 Subdivision - consent requirements

The application includes stratum subdivision, which is permitted in accordance with this clause.

2.7 Demolition requires consent

The proposed development seeks consent for the demolition of the existing building and hence satisfies the provisions of this Clause.

4.3 Height of buildings

The maximum height limit applicable to the subject site is 22m. Following an assessment of the plans and Clause 4.6 variation submitted, the proposal seeks to exceed the maximum 22m height standard on site by the following:

- Maximum 950mm (4.3%) variation for the habitable portion of the building at the front of the site.
- Maximum 3.3m (15%) variation to the top of the roof for the communal open space area.
- Maximum 5.25m (23.8%) variation to the top of the lift overrun.

The applicant has submitted a clause 4.6 variation to development standard in relation to the proposed exceedance. The clause 4.6 request is considered to be well founded and reasonable in the circumstances of this case. As such, the proposed variation to height is supported in this instance as discussed in detail in response to clause 4.6.

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.

Further to the above, the proposal has further been assessed against the principles established by the

Land and Environment court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90. The judgement established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular site circumstances of the site and development.

As discussed within Clause 4.3 Height of Buildings, and demonstrated in the diagrams below, the proposal seeks to vary the maximum 22m height standard on site as follows:

- Maximum 950mm (4.3%) variation for the habitable portion of the building at the front of the site.
- Maximum 3.3m (15%) variation to the top of the roof for the communal open space area.
- Maximum 5.25m (23.8%) variation to the top of the lift overrun.



Figure 6 - Southern Elevation - Height Variation

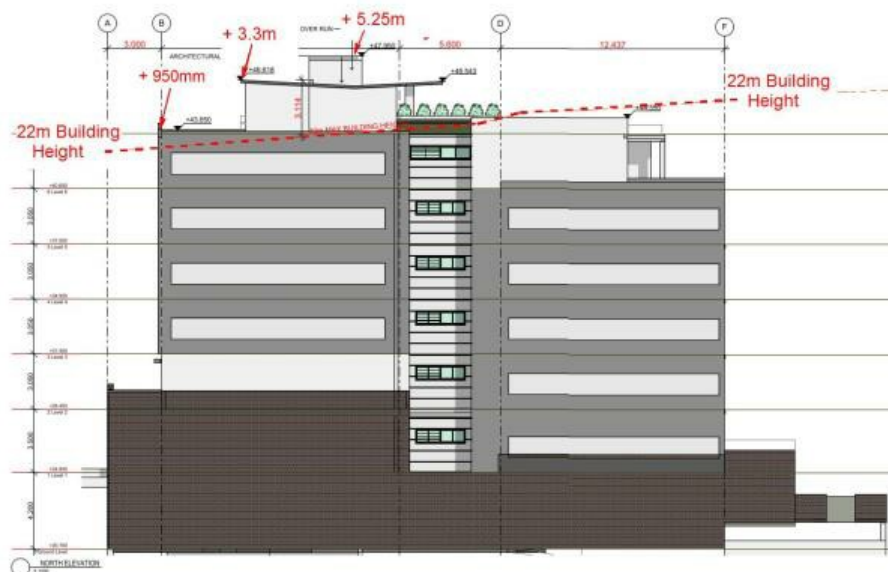


Figure 7 - Northern Elevation height variation diagram

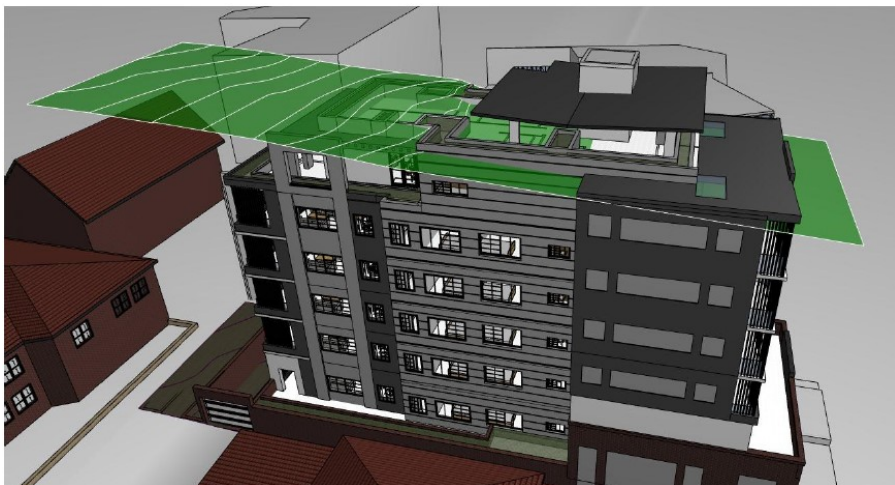


Figure 8 - 3D height variation diagram

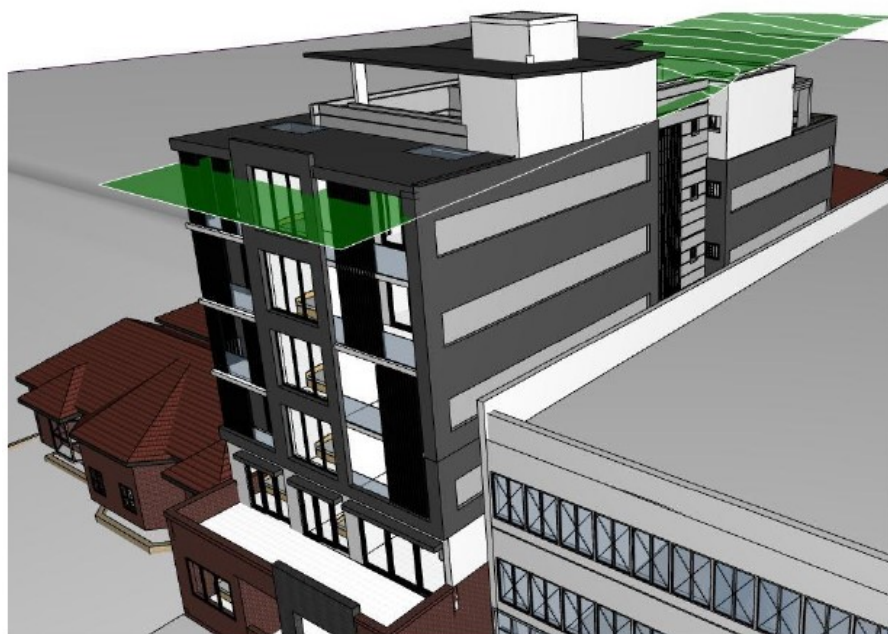


Figure 9 - 3D height variation diagram

Objectives of the Height Standard and B2 Local Centre zone

The objectives of the height standard in Clause 4.3 of RLEP 2011 are as follows:

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

The objectives of the B2 Local Centre zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To accommodate population growth through high density mixed use development that complements the role of retail, commercial, civic and cultural premises in the Rockdale town*

centre.

- *To create a lively Rockdale town centre with an amenable and pedestrian focused public domain activated by building uses that engage with the street.*

Applicant's Submission

The applicant has submitted a detailed justification to the proposed variation of the height development standard in accordance with Clause 4.6 of RLEP 2011. The have found strict compliance with the building height standard is unreasonable and unnecessary in the context of the proposal and its particular circumstances. They consider that the proposal meets the underlying intent of the control and is compatible with adjoining developments. A summary of the key rationale provided by the applicant includes:

- The objectives of the height standard in Clause 4.3 of RLEP 2011 can be met notwithstanding the variation to the maximum height, for the following key reasons:
 - The upper level of the building is recessed so that the top of the building will not be visually prominent when viewed from the street level and the height protrusion will not be visible from the adjoining properties,
 - The additional height facilitates the delivery of quality common open space that is partly covered to enable year round use, providing a better outcome for residents,
 - The portion exceeding the height control is not intended to gain additional floor space,
 - The proposal will not obstruct existing view corridors as compared to a compliant built form,
 - The proposal provides an appropriate transition to the adjoining site to the south (the Guild Theatre site),
 - The proposal will provide a better transition to the adjoining site to the north that is subject to a planning proposal to permit a maximum height of 28m,
 - The building is stepped back above level two to provide a podium effect at lower levels than required by RDCP 2011. This reduced footprint at lower levels has led to a slight increase in building height that results in a better urban form for the building on the site and warrants the minor height encroachment,
 - The floor to floor heights ensure that a high level of amenity is achieved within the apartments.
- The proposal is consistent with the objectives of the B2 Local Centre zone. The proposal is a mixed use development that will provide an activated street frontage with the proposed commercial premises as well as much needed housing in a location that is ideal for high density development. The site is within 100m of Rockdale train station and all the conveniences within Rockdale town centre. The proposal provides a variety of unit layouts and designs to suit the needs to future residents as well as a variety of affordable accommodation. The site is well located and is located within proximity essential services, public transportation and recreation opportunities.
- There are sufficient environmental planning grounds for contravening the height development standard, specifically:
 - the roof top area will be accessible to all by lift and provide a high level of amenity for future occupants,
 - the topography of the site falls toward the street and further stepping of the building would result in a suboptimal outcome when compared with the proposed development.
- The proposal will not be contrary to the public interest in that the proposal is consistent with the objectives of the height control and of the B2 Local Centre zone.
- The proposal will not raise any matter of State or Regional Planning Significance.

- Strict compliance would not itself result in a public benefit, nor an improved planning outcome.

Assessment

The applicant's justification is generally agreed with and is considered to adequately address Clause 4.6(3) of RLEP 2011. The area of non-compliance to the height primarily relates to structures that will permit the roof-top area to be used for recreational purposes by future occupants. The proposed variation to the height standard is supported in this case in context of clause 4.6 for the following reasons:

- The elements exceeding the maximum height are generally elements of communal garden and ancillary roof / plant / lift overrun that will maximise amenity for future occupants. The proposed rooftop structures (i.e. lift overrun, toilet, planters, etc.) are recessed into the site, integrated with the design of the building and account for a limited portion of the building footprint, minimising their visual bulk and prominence. The balustrades and built form that exceeds the maximum 22m height will not affect the visual perception of the overall built form of the proposed building, nor the land use intensity at the site.
- The proposal is consistent with the objectives of Clause 4.3 – Height of Buildings of Rockdale LEP 2011, in that the development is a high quality urban form & retains appropriate sky exposure and solar access on site and to neighbouring properties.
- The proposal is consistent with the objectives of the B2 Local Centre zone in that it provides an active street frontage to Railway Street that will provide for business / commercial uses that serve the needs of people, and will increase residential densities within close proximity to good public transport connections.
- There are sufficient site specific environmental planning grounds for the variation. In this case the variation is primarily related to the provision of high quality communal open space. Furthermore, the applicant has stepped the building back 3m above Level 2 to provide an appropriate relationship with the adjoining Guild Theatre heritage item, as recommended by Council's Design Review Panel, rather than stepping it back above Level 4 as required by RDCP 2011. The additional minor portion of residential GFA that exceeds the height limit is a result of the relocated floor space which provides a better planning outcome and relationship to the adjoining heritage item. The applicant has also provided 3.3m floor to ceiling height at Level 1, and units are provided with a good level of amenity. The site is located adjacent to No. 75-81 Railway Street which is subject to a Planning Proposal that is currently on exhibition until 22 March 2018 that proposes to increase the maximum height on these adjoining sites from 22m to 28m. The proposal has a maximum height of 25.25m for a minor portion and would provide an appropriate relationship with these adjoining sites whether the Planning Proposal is successful or does not proceed.
- The additional height proposed does not result in detrimental environmental planning outcomes, as it does not give rise to adverse solar access, view loss or visual or acoustic privacy impacts on site, or to neighbouring properties.

The written submission provided by the applicant in relation to the proposed height variation is satisfactory in the context of Clause 4.6. The height variation does not create an undesirable outcome, the objectives of the zone and clause 4.3 have been met, and the proposal is deemed to be in the public interest, given the public benefit of orderly development of the site outweighs strict adherence to the numeric standards presented by the height control of RLEP 2011. Strict compliance with the height development standard is deemed unreasonable and unnecessary in this instance for the reasons noted above and there are sufficient environmental planning grounds in which to justify the contravention of the height standard for the site. The applicant's clause 4.6 variation is considered to be well founded and the proposed variation to clause 4.3 of RLEP 2011 is supported in this case.

5.10 Heritage conservation

The subject site is positioned directly adjacent to two (2) and opposite one (1) Heritage Items as identified within Rockdale LEP 2011 as identified below and show in Figure 10:

- (i) Item 221 - Rockdale School of Arts (Guild Theatre) - 87 Railway Street, Rockdale
This heritage item is located immediately south of the site and is occupied by a community facility known as the Rockdale School of Arts building colloquially called the 'Guild Theatre' which was constructed in 1912. The Guild Theatre is historically significant for its role in the early establishment of education in Rockdale. The building is aesthetically significant for its contribution to the character of the Rockdale Town Centre. The building is an excellent representative example of a Federation style community building with distinctive decorative features such as the bay windows facing Railway Street and the side entry porch. The main facade of the building has been completely obscured on the Railway Street elevation by a row of trees planted in the last 20 years.
- (ii) Item 222 - Rockdale Railway Station and Yard Group - Brick buildings on platforms, signal box and overhead booking office.
Rockdale railway station and yard are located directly opposite the site to the east and constructed in 1883-1884. The item is a Victorian style structure representative of the construction of the Illawarra railway and contributing to the historic qualities of the Rockdale town centre.
- (iii) Item 223 - St Joseph's Convent - 3-11 Walz Street, Rockdale
This property directly adjoins the site to the west and is occupied by an educational establishment known as 'St Josephs Catholic Primary School'. The heritage item, the convent. St Josephs Convent, is a prominent and distinctive building in Walz Street contributing to the historic and aesthetic qualities of the Rockdale town centre. The Saint Joseph's Convent is historically significant as representative of the changing education needs of Rockdale Primary school in the 1920's. It is also demonstrates the history of the establishment of Catholic education in Rockdale. The convent building is in good condition and is still home to Josephite nuns.

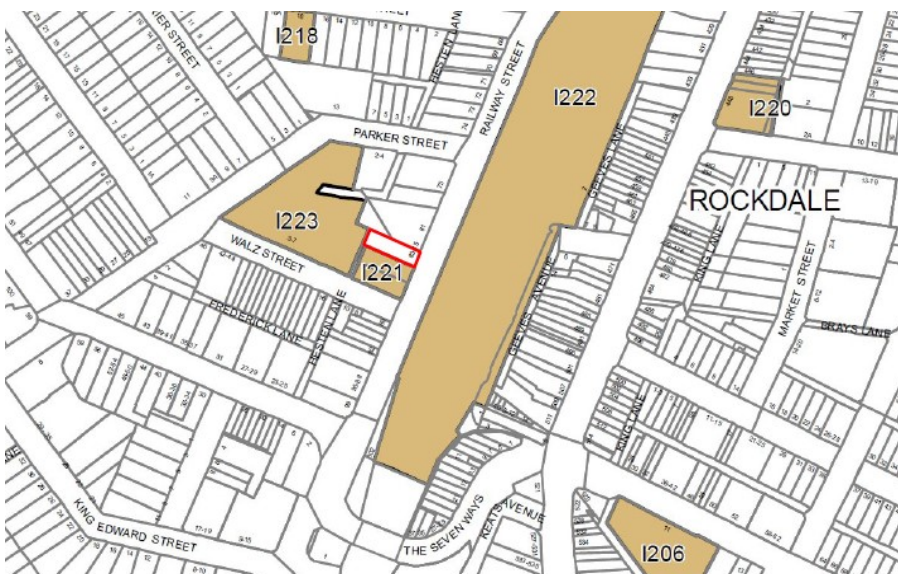


Figure 10 - Map of heritage items in vicinity of the subject site.

Assessment

The application was accompanied by a copy of the Heritage Impact Statement (HIS) dated 2010, prepared by Wier Philips. This HIS was submitted for the previously approved four storey scheme (DA-2010/321) and it was not of relevance to the current development proposal.

A new HIS prepared by Urbis, dated 14 July 2017, has guided the amended design and its relationship to the adjoining heritage items (and most critically the Guild Theatre site).

The applicant's HIS finds that the proposal has no visual or physical impact on the St Joseph's Convent (I223) or Rockdale Railway Station (I222). Council's Heritage Officer agrees that the proposal will not have an adverse heritage impact on these items due to their separation distance and due to St Joseph's Convent being located away from the site and obscured by a large contemporary addition and associated roof top structures.

The HIS also concludes impacts to the Guild Theatre have been reduced through careful design and use of sympathetic materials and that, combined with the current planning context, is acceptable. The conclusions from the HIS are as follows:

- *"The subject site is not a listed heritage item, nor is it located within a heritage conservation area. The proposed works apply only to the subject site, and do not include any alterations or additions to nearby heritage items.*
- *The proposed development has no visual or physical impact on the proximate heritage items being St Joseph's Convent and Rockdale Railway Station. The potential impacts of the proposed development to the immediately adjoining heritage item (Rockdale School of Arts / Guild Theatre) have been reduced through careful design and adoption of sympathetic materials and articulation of façades. The proposal has been redesigned considering Council's initial comments, and the overall design was simplified in the process to be a quieter backdrop to the adjacent heritage item.*
- *The proposal has had regard to and responds to the adjoining heritage item where possible. The ground floor and first floor of the proposed new building have face brick detail to respond to the exposed masonry exterior of the adjoining heritage item, and which also serves to reference the former (existing) building on the site.*
- *The proposed building is a large scale, multi-storey residential apartment building containing some retail/commercial space on the ground floor. This form of development is of a greater scale compared with the adjoining single storey heritage item, being the Rockdale School of Arts (Guild Theatre). However, the form and scale of the proposed development has been provided for by Rockdale Council's planning provisions, which allow for new development of up to 22 metres along the Railway Street corridor where the subject site is situated. Given the existing relatively low scale of development along this corridor, the current underlying planning provisions confirm that Rockdale Council has identified this precinct for future uplift in development scale and urban density".*

Council's Heritage Adviser has assessed the amended proposal and HIS and found that the amended design responds to the heritage concerns, primarily through the amended setback to Railway Street above Level 2 and the cladding of the two storey shopfront element facing railway Street being changed to face brick to respond to the brick work in the Guild Theatre.

The overall impact of the proposed development has been minimised through the amendments to the design. The Guild Theatre will remain prominent on its corner location and there will be an acceptable level of heritage impact in accordance with Clause 5.10 of RLEP 2011.

6.2 Earthworks

The proposal involves extensive excavation within the site to accommodate the basement levels. The impacts of the proposed earthworks have been considered in the assessment of this proposal. Conditions of consent have been imposed in the draft Notice of Determination to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal meets the objectives of this clause.

6.3 On 25 ANEF (2033) contour

The proposal was accompanied by an Acoustic Report prepared by Acoustic Noise & Vibration Solutions (dated 25 July 2016) which addresses the matter of aircraft noise and details noise amelioration measures to be incorporated into the construction of the development in order to minimise aircraft noise impacts to future occupants, in compliance with the Australian Standards for indoor design sound levels. Subject to compliance with the acoustic report and recommended conditions of consent requiring the development to meet with the Australian Standards for indoor design sound levels, the proposed development complies with the requirements and objectives of this clause.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51m (AHD). The proposed building height has a maximum height of 48.0m (AHD) and in this regard, it is considered that the proposed building will have minimal adverse impact on the OLS.

Furthermore, the proposal was referred to Sydney Airports who have approved the development subject to conditions which have been included in the draft notice of determination.

6.12 Essential services

Services will generally be available on the site. Additional conditions have been incorporated in the draft Notice of Determination requiring consultation with relevant utility providers in regards to any specific requirements for the provision of services on the site.

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

No relevant proposed instruments are applicable to this proposal.

S79C(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

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

Relevant clauses	Compliance with objectives	Compliance with standard/provision
Rockdale Development Control Plan 2011	Yes	Yes - see discussion
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.2 Heritage Conservation - Vicinity of Heritage Item	Yes	Yes
4.1.3 Water Management	Yes	Yes
4.1.4 Soil Management	Yes	Yes

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.7 Tree Preservation	Yes	Yes
4.1.9 Lot size and Site Consolidation - Mixed use	Yes - see discussion	No - see discussion
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.4.1 Energy Efficiency - Residential	Yes	Yes
4.4.4 Glazing - General Controls	Yes	Yes - see discussion
4.4.5 Visual privacy	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	Yes	Yes - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	Yes - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes
4.6 Parking Rates - Office Premises	Yes	Yes - see discussion
4.6 Travel Demand Parking Concession	Yes	Yes
4.6 Car Park Location and Design	Yes	Yes
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes
4.6 Basement Parking - General	Yes	Yes - see discussion
4.6 Driveway Widths	Yes	Yes
4.6 Access to Parking	Yes - see discussion	No - see discussion
4.6 Design of Loading Facilities	Yes	Yes - 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	Yes	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes
4.7 Laundry Facilities and Drying Areas	Yes	Yes
4.7 Letterboxes	Yes	Yes
4.7 Hot Water Systems	Yes - see discussion	Yes
5.2 RFB - Building Entry	Yes	Yes - see discussion
5.2 RFB - Lift Size and Access	Yes	Yes - see discussion
5.3 Mixed Use - Building Design	Yes	Yes
5.3 Mixed Use - Ground Floor Articulation	Yes	Yes - see discussion
5.3 Mixed Use - Access to Premises	Yes	Yes
5.3 Mixed Use - Visual Connections	Yes	Yes
5.3 Mixed Use - Awnings	Yes	Yes
7.5.1 Street Role - Contributory Retail	Yes	Yes - see discussion
7.5.1 Street Role - Service Laneway	Yes	Yes - see discussion
7.5.1 Residential Apartment Design	Yes	Yes - see discussion
7.5.1 Parking and Loading	Yes	Yes
7.5.1 Commercial Space	Yes	Yes - see discussion
7.5.2 Setbacks	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
7.5.2 Street Character	Yes	No - see discussion
7.5.2 Local Core	Yes	No - see discussion
7.5.2 Laneway	Yes - see discussion	Yes

Rockdale Development Control Plan 2011

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

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

4.1.1 Views and Vista

The occupants of the proposed development will enjoys views toward Botany Bay, most notably from the upper floor levels and the roof top terrace, in accordance with this clause. Consideration has also been given to potential impacts to views of Botany Bay currently enjoyed by residents living to the west of the site. In this regard, the proposal is generally compliant with the height requirements contained in RLEP 2011 and therefore will not result in an unexpected loss of views from these properties.

Furthermore, properties that currently enjoy views of Botany Bay are located a distance from the site and residents will continue to enjoy broader district views. The proposal is also immediately adjacent to a site that may have a maximum height limit of 28m. Therefore the proposal is acceptable in this regard.

4.1.9 Lot size and Site Consolidation - Mixed use

For mixed use development which is over 4 storey high the minimum lot width is 18m. The site has a lot width of 12.8m which does not comply.

The applicant has provided the following rationale for the variation:

"The development site is unable to consolidate with adjoining sites due to the site to the south being a heritage item and the site to the north being a large 3 storey commercial development that cannot be acquired noting that a Planning Proposal has been submitted on that adjoining site by the owner that also nominates the subject site in the planning proposal.

Therefore there are no consolidation options available that are feasible. Although the site is slightly under the width the development is capable of delivering sufficient land for common open space, parking, pedestrian and vehicular access while at the same time not compromising overshadowing or privacy of adjoining lots.

Therefore this small variation can be supported, particularly when noting:

- *The proposal has been designed to respond to the likely future built form to the north as indicated on the Candalepas Urban Design Study. Therefore it integrates with the overall urban design context.*
- *The proposal adopts a similar form to a previous consent issued on the site indicating the general building arrangement has been previously found to be satisfactory".*

Officer Comment: Consideration has been given to the applicant's justification and the objectives of the minimum lot width requirement. The amended plans demonstrate that the allotment size and width is adequate to accommodate the proposed development without significant and unreasonable impacts on adjoining properties. The proposal is of a height and scale that relates to that of the current and proposed height permitted on the sites to the north. The proposal cannot consolidate with the Guild Theatre heritage site, however has been designed to relate to that property as well as ensure that additional public car parking can be provided within that lot. The proposal is therefore considered to satisfy the objectives of the control and the variation is acceptable in the circumstances of this case.

4.2 Streetscape and Site Context - General

The proposed development has been significantly amended to ensure that it appropriately addresses the site context. This has been discussed in detail in response to SEPP 65 and the Heritage provisions in RLEP 2011. The proposal is considered to respond sensitively to the surrounding properties and public domain in accordance with the Streetscape and Site Context controls in Part 4.2 of RDCP 2011.

4.4.4 Glazing - General Controls

The proposal is designed such that west and east facing glazed windows and doors are screened by balconies above. The proposal is therefore acceptable in this regard.

4.4.5 Visual privacy

Part 4.4.5 of RDCP 2011 requires that *"balconies, terraces, rooftop recreation areas and the like should be located to minimise overlooking of an adjoining property's open space or windows. Techniques such as recessing, screens or landscaping may be used to prevent direct views into habitable rooms or private open space of adjacent dwellings"*.

The proposal has minimal visual privacy impacts to adjoining properties. No privacy impacts will occur from the east facing windows which overlook Railway Street and the Rockdale Railway Station, and no privacy impacts will occur from the north facing study windows which are high-light windows. The rear balconies have been setback 9m from the rear boundary and comply with the Visual Privacy setback requirements under the ADG, and the south facing windows provide a relationship with, and passive surveillance to, the Guild Theatre heritage item and the public domain area of Walz Street beyond. Consideration has also been given to privacy impacts in response to Part 3F 'Visual Privacy' of the ADG. The visual privacy impacts are considered to have been minimised in accordance with the requirements and objectives of RDCP 2011.

4.4.5 Acoustic privacy

The applicant has submitted an Acoustic Report dated 25 July 2016 prepared by Acoustic Noise & Vibration Solutions P/L, which considered the impact of rail noise and aircraft noise on the proposed mixed use development. The report also included compliance with the inter-tenancy acoustic attenuation requirements in RDCP 2011, as well as potential noise impacts that may result from future car park mechanical ventilation and air-conditioning units. Relevant conditions have been included in the draft consent to minimise potential noise impacts to future occupants and residents / occupants of

adjoining sites.

4.4.7 Wind Impact

The application was accompanied by a Wind Report dated . The report concluded that *"the proposed development is not expected to induce any significant additional wind flow on neighbouring properties"*. The report was not updated for the amended design. Additional impacts are not expected, however a condition is proposed requiring submission and approval of an amended Wind Report prior to issue of the Construction Certificate. The proposal is considered to satisfactorily address the requirements of these controls in RDCP 2011.

4.5.1 Social Equity - Housing Diversity and Choice

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

- Provision of 10%-30% 1 bedroom units, 50-75% 2 bedroom units, and 10-20% 3 bedroom units.
Comment: The proposed unit mix generally complies with the requirements of RDCP 2011. In this case, the proposal includes 38.9% one-bedroom units (7), 50% two-bedroom units (9) and 11.1% three-bedroom units (2). The proposed variation for 1 bedroom units is minor, and the application includes in excess of 10% x 3 bedroom units. The mix is therefore considered satisfactory in this case.
- Minimum 10% of units being adaptable in accordance with AS 4299, and barrier free access to be provided to a minimum of 20% of apartments.
Comment: The application was accompanied by an Access Report. In accordance with Part 4.5.1 of RDCP 2011 two (2) dwellings are to be provided as adaptable units in accordance with AS 4299. Relevant conditions are included to ensure that access is provided to and within the development, and that two adaptable units are provided, in accordance with RDCP 2011, the BCA and applicable codes / standards.

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

4.6 Parking Rates - Office Premises

The proposal includes 1 car parking space for the 36m² commercial premises. This complies with the requirements of RDCP 2011 which requires 1 car space per 40m² of the commercial premises.

4.6 Basement Parking - General

The basement has been designed to comply with the requirements of RDCP 2011, however the lower basement level extends into the area of landscape planting at the rear of the site and does not permit any deep soil within the property. This has been discussed previously in the assessment of SEPP 65 and was found to be acceptable in the circumstances of this case.

4.6 Access to Parking

The amended proposal includes two-way vehicular access across the Council owned Guild Theatre site via a Right of Way that will be provided by Council prior to issue of the Occupation Certificate in accordance with a VPA. The original proposal requested use of the 3m wide Heston Lane for vehicular access and egress from the site that would have required signals to manage traffic movements.

Relevant conditions are proposed to ensure that access is provided in a manner that will minimise interference with the use of public car park within the Guild Theatre site. Therefore, access to the site is provided in a manner that is consistent with RDCP 2011.

4.6 Design of Loading Facilities

Council's Engineers have required that the commercial parking space be available for use for deliveries using a van. Internal access is provided from the car parking space to the small commercial premises. In this regard the proposal is acceptable with regards to deliveries.

4.6 Car Wash Facilities

A condition is proposed requiring that Car Space number 2 be used as a shared visitor space and car wash bay. The proposal is therefore acceptable with regards to RDCP 2011 in this regard.

4.7 Air Conditioning and Communication Structures

The proposal includes provision of air-conditioning for all units to address acoustic impacts associated with aircraft noise and noise from the adjoining railway line. Relevant conditions are proposed to ensure that the units, and any satellites or TV antennas, are provided in areas that do not detract from the streetscape.

4.7 Waste Storage and Recycling Facilities

Appropriately sized and located waste storage areas are proposed within the development for both the commercial and residential uses proposed.

4.7 Hot Water Systems

No details provided on plans. Recommended conditions will ensure that should individual instantaneous gas hot water systems be required for residential units, that they be recessed into the built form and designed to blend into the building. The proposal is therefore consistent with the requirements of this clause.

5.2 RFB - Building Entry

Plans illustrate the provision of a residential building entry from Railway Street. The proposed residential entry is spacious, inviting, accessible and clearly identifiable, providing a direct physical and visual connection between the development and the public domain. The proposal satisfies the requirements and objectives of this clause.

5.2 RFB - Lift Size and Access

The provisions of this clause require appropriately dimensioned lifts, with each dwelling on a level above the sixth storey to have access to two lifts.

Plans illustrate the provision of a single lift core, with lift cart 2.5m x 2.5m in dimensions, this is deemed to be satisfactory. The proposal incorporates six levels of residential units and thus complies with the provisions of this clause. Dual lift access is not required.

5.3 Mixed Use - Ground Floor Articulation

Careful consideration has been given to the ground floor frontage to Railway Street. The site has vehicular access from the side Walz Street, and the plans show the area required for fire boosters has been minimised. The entrance lobby is of a suitable dimension for the residential building and can accommodate some of the retail use if required and acceptable by the Strata Body in future (e.g. for tables for a cafe). The commercial tenancy has maximised its frontage to Railway Street and

appropriate conditions are included to ensure that the glazing and frontage will provide passive surveillance and an active street frontage once built.

7.5.1 Street Role - Contributory Retail

The site is located in the "Contributory Retail" Street Role area of the Rockdale Town Centre. This area is anticipated to have high activity and active frontages. The proposal provides ground floor retail and residential lobbies off Railway Street. Vehicular access is from the side Walz Street. The proposal has maximised its commercial presence given the constraints of the narrow site, and is acceptable in this regard.

7.5.1 Street Role - Service Laneway

Access is proposed from the rear laneway. This lane is narrow (one car wide) and terminates at the rear of the site. Therefore, this is not a typical laneway and the proposal is not required to address and/or activate the laneway frontage in this case. The proposal satisfies the relevant requirements of the control and is satisfactory in relation to the controls.

7.5.1 Residential Apartment Design

The proposal includes a range of housing choices, and includes 3.3m floor to ceiling height for the first floor level such that it could be converted to commercial operations in future if required. The proposal includes a range of unit sizes, however does not include a diversity of housing as broad as is encouraged by Control 3 of Part 7.5.1 of RDCP 2011. The proposal is however acceptable with regards to the controls.

7.5.1 Commercial Space

The proposal includes 3.3m floor to ceiling heights for the first floor level, and several units are provided with generous study areas. The proposal is satisfactory in accordance with these controls.

7.5.2 Setbacks

The proposal is located within the 'Local Core' area and has been built to the the street edge on the lower levels, and to the side boundaries to abut adjoining developments at the street edge, in accordance with RDCP 2011. Retention of the existing building facade was recommended by the DRP and was supported, however the applicant demonstrated that this could not be achieved practically. The amended building has been setback 3m from the front boundary above the first floor level rather than above the fourth floor level as required by the Street Character diagrams for the 'Local Core' contained in RDCP 2011. This setback is supported and is in accordance with the recommendations from the Design Review Panel and Heritage Impact Statement. The proposal is also setback 9m from the rear boundary, which accords with Control 1(c), and an awning has been provided for weather protection in accordance with Control 1(e). The proposed scale and setbacks of the building are found to be acceptable by Council's Heritage Adviser in terms of the proposals relationship with the adjoining heritage item, and the setbacks are supported in the context of the site. The proposal is acceptable with regards to the objectives of the 'Local Core' Character for Rockdale Town Centre in RDCP 2011.

7.5.2 Street Character

Refer to discussion under '7.5.2. Setbacks' above. The proposal is considered satisfactory with regards to the 'Street Character' requirements of RDCP 2011.

7.5.2 Local Core

Refer to discussion under '7.5.2. Setbacks' above. The proposal is considered satisfactory with regards to the 'Local Core' requirements of RDCP 2011.

7.5.2 Laneway

The laneway is not a true laneway, and compliance with this control is not relevant in this case. The building has been further setback from the rear to provide landscape planting generally as recommended by the DRP and required by the ADG.

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

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed are as follows:

- **Construction Traffic & Works Zone(s)**
The site is narrow and may require use of Railway Street and/or the adjoining Guild Theatre site during construction works. Construction traffic will need to be managed carefully to ensure impacts to traffic and safety. Therefore, recommended conditions require that a Construction and Traffic Management Plan be prepared prior to issue of the Construction Certificate. Subject to compliance with the submitted reports and recommended conditions of consent, the impacts from the construction traffic and works is found to be satisfactorily minimised.
- **Construction Works**
Impacts associated with construction works under this DA will be minimised through use of standard conditions relating to hours of construction, noise and vibration, dust suppression, traffic management, shoring of adjoining properties, and the like, as well as specific conditions imposed by Sydney Trains and other authorities to minimise impacts on the adjacent railways and other infrastructure and the environment.
- **Safety and Security**
Safer by Design principles of crime prevention through environmental design are incorporated into RDCP 2011 and this aspect has been considered in the assessment of this proposal. The proposal has been designed as a secure development, with restricted access to private and communal areas and to the basement parking areas. The proposal activates and enhances the sites frontage and will increase passive surveillance of the public domain. Furthermore, draft conditions are proposed requiring the installation of CCTV cameras at relevant locations, the preparation of a lighting maintenance policy, use of graffiti resistant materials at ground floor level and provision of an intercom facility for residents.

S.79C(1)(c) - Suitability of the site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. The site is a narrow and small site that is located adjacent and/or in the vicinity of three heritage items. The amended plans have overcome issues associated with the constrained nature of the site. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

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

The development application was notified in accordance with the provisions of Rockdale DCP 2011 and three (3) submissions were received. The amended application was notified and one (1) submission was received. This submission was the second submission from the neighbouring property owner. The issues raised in the submission are discussed below:

Issue 1: Lot Size, Site Access, Through-Site Link and Consolidation - The proposal relies upon an informal vehicle access driveway and does not benefit from legal rights of access to the property. The site frontage is less than the minimum 18m required by RDCP 2011 and will create an inappropriate street frontage. The site should not be developed in isolation but rather consolidated with the adjoining properties to ensure a coherent streetscape and optimise residential amenity for the site and neighbouring sites. Site consolidation would also permit creation of a through-site link to the north to link adjoining streets and align with the Rockdale Town Centre Masterplan.

Comment: The site benefits from a 3m wide lane that is accessed from Waltz Street, however the proposal has been amended to provide two-way access to the site through the adjoining 'Guild Theatre' site to mitigate impacts associated with this one-lane site access. The proposal has also been amended to provide a pedestrian through-site link at the rear that will be dedicated to Council and permit access to the site(s) and streets to the north, and to address issues with building design and associated impacts. The amended proposal is considered to address the issues raised with regards to lot size and site access, and the amended proposal is considered to result in a built form that is suitable for the subject site and that will not impact on the development potential of adjoining properties.

Issue 2: Units and communal open space within the development will obtain insufficient solar access

Comment: The communal open space area in the original proposal achieved a poor level of amenity and was not supported. The proposal has been amended to provide roof-top communal open space that achieves significant amounts of solar access and amenity. The proposal also complies with the minimum amount of solar access to units within the development.

Issue 3: Destruction of an historical building which is older than Rockdale Town Hall and significantly contributes to the character of Rockdale should not be supported. Further, the new development is unsympathetic to the streetscape and adjoining Heritage Items, and is not in the public interest. There is no need for the complete demolition of this contributory building, the developers could easily retain the façade of the existing building and build the new development behind and above the existing façade. Why must we continue to approve the cheapest and nastiest options, to the detriment of the Rockdale and benefit of developers wallets?

Comment: The applicant has explored retention of the existing facade as recommended by Council's Design Review Panel and discussed previously in the report under the assessment of SEPP 65. Retention of the existing facade is preferred, however the building is not a heritage item and no practical or suitable solutions were found for the applicant to retain the building. The scale of the proposed building frontage to Railway Street has been amended to a two storey brick podium with a 3m setback to the building above as recommended by the DRP and the applicant's Heritage Consultant. The amended design is found to be sympathetic to the adjoining heritage item and is supported by Council's Heritage Adviser.

Issue 4: Windows proposed in the northern facade should be high-light to protect privacy to future apartments and communal open space within the sites to the north.

Comment: The application has been amended and the windows proposed in the northern elevation are high-light windows to a small study / corridor area of units. The impacts from the windows are minimal and acceptable in this case.

Issue 5: To protect privacy to future apartments and communal open space within adjoining sites it is requested that council condition dense screen planting along the northern edge of the rooftop terrace.

Comment: The proposal includes planter boxes, landscape screen planting and built structures along the northern edge of the communal open space area to minimise impacts to the site to the north.

Issue 6: There was insufficient information exhibited to be understand the precise location and design of this access and its relationship to the proposed extension to Heston Lane under our draft VPA for the adjoining property at No. 75-81 Railway Street. The relationship between the proposed pedestrian access and our future development is critical.

Comment: The details regarding the proposed right of way are adequate to address the concerns raised, subject to the proposed VPA and recommended conditions of consent.

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

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the development of the site in accordance with its environmental capacity. The proposed building is a high quality building that will add architectural value to the existing streetscape. Furthermore, the proposal will result in the provision of an expected five (5) additional public parking spaces, as well as provide a pedestrian link to future public parking and the continuation of Heston Lane to the north. The proposal does not create unreasonable impacts on surrounding properties. As such it is considered that the development application is in the public interest.

S94 Contribution towards provision or improvement of amenities or services

A Section 94 Contribution Payment of \$114,885.56 is payable in accordance with Council's Policy and accordingly, imposed as a condition on the draft Notice of Determination.

Civil Aviation Act, 1988

The site is within an area that is subject to the Civil Aviation (Building Controls) Regulations 1988 made under the *Civil Aviation Act, 1988*.

Civil Aviation (Building Control) Regulations 1988

The Regulations require a separate approval from the Civil Aviation Safety Authority if a building or structure exceeds a prescribed height limit.

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

The subject site is affected by the 15.24m building height Civil Aviation Regulation. The proposed building has a maximum height that exceeds 15.24m and the proposal was therefore referred to Sydney Airports for comment. Sydney Airports has approved the proposal to a maximum height of

48.0m to AHD subject to conditions detailed in their letter dated 9 August 2016. The recommended conditions have been included in the draft Notice of Determination.

Schedule 1 - Draft Conditions of consent

General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Issue No.	Dated	Received
ARCHITECTURAL PLANS – prepared by Urban Link			
Cover / Site Analysis Drawing No. 01	F	22.01.2018	11.02.2018
Site Context Plan Drawing No. 02	F	22.01.2018	11.02.2018
Basement Drawing No. 04	F	22.01.2018	11.02.2018
Ground Floor Drawing No. 05	F	22.01.2018	11.02.2018
Level 1 Drawing No. 06	F	22.01.2018	11.02.2018
Level 2 Drawing No. 07	F	22.01.2018	11.02.2018
Levels 3 & 4 Drawing No. 08	F	22.01.2018	11.02.2018
Levels 5 & 6 Drawing No. 09	F	22.01.2018	11.02.2018
Roof Plan Drawing No. 10	F	22.01.2018	11.02.2018
North & East Elevations Drawing No. 11	F	22.01.2018	11.02.2018
South & West Elevations Drawing No. 12	F	22.01.2018	11.02.2018
Streetscape & Driveway Section Drawing No. 13	F	22.01.2018	11.02.2018

Section A-A Drawing No. 14	F	22.01.2018	11.02.2018
Section B-B Drawing No. 15	F	22.01.2018	11.02.2018
MATERIALS & FINISHES - Prepared by Urban Link			
Materials & Finishes Drawing No. 20	F	22.01.2018	11.02.2018

3. Voluntary Planning Agreement

- (a) All requirements contained within the Voluntary Planning Agreement that was entered into in accordance with Deferred Commencement Condition (B) of this consent must be complied with prior to the relevant stage.
- (b) No Construction Certificate or Occupation Certificate can be issued until any corresponding obligation has been satisfied.

4. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).

5. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**

6. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 738290M_02 other than superseded by any further amended BASIX certificate.

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

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

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

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

7. Further alterations and/or additions to the subject building shall not be undertaken without first obtaining approval. This includes enclosing of open fire stairs, relocation of fire booster valves, inclusion of a substation, the fitting of any form of doors and/or walls.

8. A separate approval is required for Strata Subdivision.

9. The roof top communal space and associated pergola / roof structures shall not to be used for habitable purposes.

10. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.

11. Excavation, filling of the site (with the exception of the area immediately under the building envelope), or construction of retaining walls are not permitted unless shown on the approved plans and authorised by a subsequent construction certificate.

12. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S96 application and approval under the EP&A Act.

Development specific conditions

The following conditions are specific to the Development Application proposal.

13. Sydney Trains

The following operational conditions imposed by Sydney Trains in their letter of concurrence dated 7 February 2017 must be complied with:

- (a) If required by Sydney Trains, prior to the commencement of works, prior to the issue of the Occupation Certificate, or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains.
- (b) An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines".
- (c) Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.
- (d) The design, installation and use of lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of Sydney Trains.
The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- (e) If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- (f) Unless advised by Sydney Trains in writing, all excavation, shoring and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects.
- (g) No rock anchors/bolts are to be installed into Railway Street, Rockdale.
- (h) Prior to the issuing of a Construction Certificate the Applicant is to submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.
- (i) If required by Sydney Trains, a track monitoring plan (including instrumentation and the monitoring regime during excavation and construction phases) is to

be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate. The Principal Certifying Authority is not to issue a Construction Certificate until written confirmation has been received from Sydney Trains advising of the need to undertake the track monitoring plan, and if required, that it has been endorsed.

- (j) Sydney Trains and Transport for NSW, and persons authorised by them for this purpose, are entitled to inspect the site of the approved development and all structures to enable it to consider whether those structures on that site have been or are being constructed and maintained in accordance with these conditions of consent, on giving reasonable notice to the principal contractor for the approved development or the owner or occupier of the part of the site to which access is sought.
- (k) Prior to the issue of a Construction Certificate, the Applicant shall undertake a services search to establish the existence and location of any rail services. Persons performing the service search shall use equipment that will not have any impact on rail services and signalling. Should rail services be identified within the subject development site, the Applicant must discuss with Sydney Trains as to whether these services are to be relocated or incorporated within the development site. Sydney Trains advises they have a high voltage underground cable in Loftus Street.

14. Sydney Airport Conditions

Sydney Airport Corporation Limited (SACL) has approved the maximum height of the proposed building at 48.0 metres relative to Australian Height Datum (AHD). This height is inclusive of all vents, chimneys, aerials, TV antennae and construction cranes etc. No permanent or temporary structure (including construction cranes, etc.) is to exceed this height without further approval from Sydney Airport Corporation Limited.

Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed “controlled activity” and is punishable by a fine of up to 50 penalty units.

For further information on Height Restrictions please contact SACL on 9667 9246.

Note: Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations. Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.

15. Ausgrid Requirements

Ausgrid have identified that the proposed building appears to encroach the minimum clearances required to the existing overhead powerlines as documented in Ausgrid's Network Standard NS220. Therefore, prior to issue of the Construction Certificate the applicant must ensure that the following is complied with:

- (a) The developer / applicant is required to engage an Accredited Service Provider Level 3 (ASP3) to either:
 - (i) Demonstrate that the current building proposal does not encroach the statutory clearances to the powerlines by engaging an Accredited Service Provider Level 3 (ASP3).
 - (ii) Make suitable arrangements for the existing powerlines to be modified

/ relocated prior to building construction commencing. Should the existing overhead mains require modification / relocation due to the minimum safety clearances being compromised in the above scenario, this relocation work will be at the developers cost. It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site, and from construction works.

- (b) Submit the approved plans to Ausgrid's local customer service office for approval to determine whether the development will affect Ausgrid's network or easements.
- (c) The applicant must check the location of underground cables by using Dial Before You Dig and comply with the requirements of NS156: Working Near or Around Underground Cables (Ausgrid, 2010).

16. Amended / Additional Information to be satisfied prior to issue of Construction Certificate

The following matters shall be satisfied prior to issue of the Construction Certificate:

- (a) The architectural Roof Plan prepared by Urban Link with Drawing No. 10 (Issue F) must be amended to be consistent with the amended and approved Landscape Plans (refer to Conditions 2 and 36).
- (b) Materials - An updated Material's Schedule must be submitted to, and approved by, Council's Director of City Futures prior to issue of the Construction Certificate. The materials schedule is to be accompanied by a sample of all materials proposed to be used. The updated materials schedule must include details of all proposed materials / finishes including:
 - (i) The brick base finish of the building identified as 'E' on the approved South and West Elevation Plan being constructed using PGH - Everest / Altitude, and the brick finish identified as 'C' on the elevation plans being Nobel / Academy as shown in the submitted Heritage Impact Statement, unless otherwise agreed by Council's Heritage Consultant.
 - (ii) The areas of render and paint finish identified as 'B' on the approved South and West Elevation Plan that are located between the area of brick finish ('E') and between the concrete and paint finish ('A') on the Southern Elevation must include some depth and texture finish. The proposed details and colour(s) to be agreed to in writing by Council's Heritage Adviser.
 - (iii) Full details of materials and finishes for the roof top communal terrace, including roofing.
 - (iv) Full details of materials and finishes for the awning structure.
- (c) Any hot water systems/units located on the balcony of a dwelling shall be encased in a recessed box with the lid/cover of the box designed to blend in with the building and all associated pipe work is to be concealed, as required by Control 19 of Part 4.7 of Rockdale DCP 2011.
- (d) Ceiling Heights
 - (i) Ceiling heights for all habitable areas shall be a minimum of 2.7 metres and ceiling heights for non-habitable areas shall be a minimum of 2.4m as measured vertically from finished floor level to the underside

of the ceiling.

- (ii) Ceiling heights for the ground and first floor levels shall be a minimum of 3.3m as measured vertically from finished floor level to the underside of the ceiling.
- (e) Elevator size - All passenger lift cars are to have minimal internal dimensions of 2.1m x 1.5m, must be capable of carrying stretchers and have lift door openings wide enough to enable bulky goods (white goods, furniture etc) to be easily transported.
- (f) Mechanical ventilation - The mechanical ventilation system for the basement car park must comply in all respects with the requirements of Australian Standard 1668, Part 1 & 2. The vents for this system shall be provided above roof top level, unless agreed in writing by the Director City Futures, Bayside Council, and must be appropriately designed to be screened from view from the public domain areas.
- (g) Mechanical ventilation for commercial / retail tenancies - The ground floor level commercial tenancy must be provided with mechanical ventilation which complies with the relevant Australian Standards to permit future uses for food and drink premises. The systems must vent above the roof top level.
- (h) The basement car park shall be fitted with an automated buzzer system that will allow residents to open the garage door remotely when approaching in their cars. A swipe system for the basement car park entry is not permitted as the associated post cannot be provided within Council's property (i.e. the Guild Theatre site).
- (i) The air-conditioning units required under SEPP BASIX shall not be fixed to the external walls of the balcony or building and must be located in a position that is not easily visible from the public domain.
- (j) The proposal shall include the use of rainwater harvesting for all landscape planting at roof top level, podium level and for the green gateway planting in accordance with the requirements of Part 7.5 of RDCP 2011.
- (k) All plumbing, shall be concealed within the brickwork / facade of the building.
- (l) Garbage Rooms - Hot and cold water hose cocks shall be installed to the garbage room. Services or utility systems shall not be located in the garbage room.

17. Street Numbering & Letterbox Provision

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

- Residential Lobby - 83 Railway Street, Rockdale
- Commercial Tenancy - 85 Railway Street, Rockdale

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

(c) Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.

18. Commercial / Retail Tenancy - Ongoing Use Conditions

The operations of the commercial / retail tenancy must comply with the following:

- (a) The tenancy shall be allocated one (1) car parking space in accordance with the plans and conditions of this consent;
- (b) Signs or goods shall not be displayed or placed on the public footpath or any other part of the public road at any time without Council's consent.

- (c) All loading and unloading must be undertaken from the shared visitors space / loading bay or designated commercial parking spaces, and the transfer of goods to and from the commercial / retail premises shall take place wholly within the property.
- (d) Display windows / glazing at the street front must not to be frosted or otherwise obscured at eye level (e.g. by shelving) between the heights of 0.7m-2.1m in accordance with RDCP 2011.
- (e) Roller shutters over windows and entry doors are not permitted.
- (f) Any signs must, unless separately approved, comply with the requirements of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and cannot have / use:
 - flashing lights;
 - electronically changeable messages;
 - animated display, moving parts or simulated movement; or
 - a method and level of illumination that distracts or dazzles.
- (f) All other relevant conditions of this consent.

19. Safer by Design

To maximise security in and around the development the following shall be incorporated into the development. Details for the following are to be approved by the Principal Certifying Authority prior to the issue of the Construction Certificate, implemented prior to issue of the Occupation Certificate, and maintained for the lifetime of the development:

- a) Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas.
- b) A lighting maintenance policy shall be established for the development. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 - Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.
- c) Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
- d) Graffiti resistant materials shall be used to ground level external surfaces.
- e) Intercom facilities shall be installed at all vehicular and pedestrian entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
- f) Display windows / glazing at the street front must not to be frosted or otherwise obscured at eye level (e.g. by shelving) between the heights of 0.7m-2.1m in accordance with RDCP 2011.

20. Approval for the footpath dining is not expressed or implied and a separate approval is required for the footpath dining. In this regard you are advised to contact Council to obtain a copy of the licensing agreement entitled *Outdoor Dining Licensing Agreement*.

21. Loading & Unloading

- (a) Loading and unloading within the site shall be restricted to commercial vehicles not exceeding the size and mass description of the VAN from AS2890.2:2002. Commercial vehicles greater in size and mass than the VAN are not permitted to enter the site.
- (b) All loading, unloading and transfer of goods to and from the loading bay and premises shall take place wholly within the property. Loading areas are to be

used only for the loading and unloading of goods, materials etc. not for any other purpose.

- (c) The loading bay must be allocated as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.

22. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system. The registered proprietor will:

- (i) permit stormwater to be temporarily detained by the system;
- (ii) keep the system clean and free of silt, rubbish and debris;
- (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
- (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
- (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
- (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
- (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.

23. All wastewater and stormwater treatment devices (including drainage systems, sumps and oil traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.

24. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.

25. Noise Impacts & Attenuation

- (a) The submitted Acoustic Report prepared by ACOUSTIC NOISE & VIBRATION SOLUTIONS P/L, dated 25 July 2016 (Ref: 2016/365) must be updated to reflect the amended architectural plans. The amended Acoustic Report must be prepared by a suitably qualified Acoustic Consultant must be submitted to, and approved by, the Principal Certifying Authority prior to issue of the Construction Certificate for any works above ground floor level.
- (b) The acoustic report required by (a) above must demonstrate that the plans submitted with the Construction Certificate comply with the relevant requirements from the following policies:
 - (i) Rockdale Council Development Control Plan (RDCP 2011);
 - (ii) NSW Department of Planning's 'Development near Rail Corridors and Busy Roads (Interim Guideline);
 - (iii) Clause 87 of State Environmental Planning Policy (INFRASTRUCTURE) 2007, which reads as follows:
 - (1) Appropriate measures must be taken to ensure that the following LAeq levels are not exceeded:
 - (a) in any bedroom in the building-35 dB(A) at any time between 10.00 pm and 7.00 am,
 - (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)-40 dB(A) at any time.

- (iv) Australian Standard AS2021-2000 for Aircraft Noise Intrusion (**the site is located on the ANEF 25 contour**); and
- (v) Australian Standard AS2107:2000.
- (c) The acoustic report required by (a) above must also demonstrate compliance with the following specific matters:
 - (i) Noise Impacts between units:
 - (1) Compliance with the inter-tenancy flooring & wall construction requirements contained in RDCP 2011 which are as follows:
 - (A) Flooring within the development shall achieve the following minimum equivalent Association of Australian Acoustical Consultants (AAAC) Star Rating within the below specified areas of the development:
 - 3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted.
 - 4 Star for timber flooring in any area.
 - 5 Star for carpet in any area.
 - (B) Walls within the development shall be constructed to satisfy the requirements of the Building Code of Australia.
 - (2) A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the report required by (c) above satisfies the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of the relevant Construction Certificate.
- (d) Noise from Mechanical Plant / Ventilation - A detailed acoustic assessment of all proposed mechanical services plant including fans, compressors, condensers, air-conditioning plant, basement ventilation, and exhaust systems for the commercial tenancies must be undertaken by a suitably qualified acoustic consultant prior to issue of the Construction Certificate to determine what acoustic treatments will be required to control noise emissions to achieve the noise emission levels detailed in the submitted Acoustic Report.
- (e) The architectural plans and documentation submitted with the Construction Certificate must demonstrate compliance with the amended and approved acoustic report required by (a) - (d) above.

26. Noise from Mechanical Plant / Ventilation & Air Conditioning

- (a) The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an “offensive noise” as defined under the provisions of the Protection of the Environment Operations Act, 1997.
- (b) The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy – 2000.
- (c) Residential air conditioners shall not cause ‘offensive noise’ as defined by the Protection of the Environment Operations Act 1997 or contravene provisions

of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.

27. Design Quality

- (a) In order to ensure the design quality excellence of the development is retained:
- i. A Registered Architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
 - ii. The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - iii. Evidence of the design architect's commission is to be provided to the Council prior to release of the Construction Certificate.

(b) The design architect of the project is not to be changed without prior notice and approval of the Council.

28. Storage

(a) The plans submitted with the Construction Certificate shall demonstrate that accessible storage has been provided to all apartments in accordance with the following requirements from the Apartment Design Guide (ADG):

- (i) The minimum storage area to be provided for each dwelling shall be:
- Studio / 1 bed unit = 6m³
 - 2 bed unit = 8m³
 - 3 bed unit = 10m³

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

(iii) The storage areas located within the basement levels shall be of metal construction (mesh and/or solid metal) and must be provided with lock and key.

(b) The storage areas required by (a) above must be provided in accordance with the above requirements prior to issue of the Occupation Certificate.

29. Services

(a) Fire Boosters - The fire hydrant booster valves must be located in the position shown in the approved plans, and shall be enclosed by a door as shown in the approved plans. The door shall be provided with appropriate locks and signage in accordance with AS2419.1. Any amendment to the Fire Booster location must be approved in writing by Council's Director of City Futures. A S96 application may be required.

(b) Substation - If a substation is required by Ausgrid, a s96 modification application will be required.

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

30. Strata By-Laws

- (a) By-laws shall be registered prior to registration of any Strata Plan and maintained for the life of the development, which requires that :
 - (i) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
 - (ii) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent;
 - (iii) Notwithstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2, A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.
 - (iv) The trees and plants located within all planter boxes must be maintained by residents of relevant units in accordance with the approved Landscape Plan for the lifetime of the development.
 - (b) Proof of registration of the By Law shall be submitted to Council prior to the registration of any Strata Plan.
31. Temporary dewatering of the site to construct the subsurface structure is not permitted.
32. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
33. Certification of Access, Car Parking and Commercial Vehicle Facilities
- (a) Prior to the issue of the construction certificate a qualified traffic engineer shall certify the vehicle access and all parking layout. Signage to be installed at the entry to the site and at the entry to the basement clearly displaying the maximum size of vehicle to enter the site and the basement.
 - (b) Details design and specification, maintenance schedule for traffic signal system to be provided.
 - (c) The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.
 - (d) A turning bay shall be provided within the lower basement.
 - (e) Commercial vehicle facilities shall be designed strictly in accordance with AS2890.2:2002.
34. All existing and proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.

35. External Cladding - Requirements

The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:

- (a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the relevant requirements of the NCC; and
- (b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.

36. Landscape Plans

The landscape plans prepared by A Total Concept Landscape Architects (Revision A, dated 19/06/2017, received by Council 31/07/2017) must be amended and submitted to, and approved by, Council's Director City Futures prior to issue of the Construction Certificate.

The following key matters are to be addressed:

- (a) The maintenance schedule provided by A Total Concept Landscape Architects rev B. should be produced to include;
 - (i) All soft landscape areas are to be maintained for a minimum period of twelve (12) months in accordance with the approved Maintenance Schedule provided as part of the landscape documentation. This Schedule must include weeding, watering, fertilising, replacement of dead or stolen plants, mulch replacement, and so on. Any maintenance requirements specific to the site must be included.
- (b) An irrigation plan with details linked to the WSUD of recycling water and details of a water tank, this needs to be applied to all drawings dealing with full depth planters along terraces, with automatic irrigation, which is not noted in Statement of environmental Effects.
- (c) Construction details for any of the proposals, e.g. soil depths of planters, irrigation etc. all must be to consistent with Rockdale Development Control Plan 2011'
- (d) All podium planters shall have a minimum soil depth of 800mm.
- (e) Rooftop garden (Level 7)
 - (i) A material finish schedule is required to provide all materials used, included the shelter/pergola structures and furniture. An elevation is also required to provide additional information regarding planter heights and shelter clearances. Rooftop plant list to be updated on schedule.
 - (ii) The communal space rooftop plan shall be amended to provide opportunities for food growing spaces as indicated in the Landscape Statement of Effects rev B.
 - (iii) The proposed pergola structure over the BBQ to be deleted unless separately approved.
- (f) A Rainwater tank shall be incorporated to provide an opportunity for irrigation to the roof, level 6, level 1 and ground level with consistent water.

- (g) A raised concrete edge shall be installed around the landscape areas to contain soil and mulch finishes from spilling out onto adjoining pavements. The edge shall be raised a minimum of 150mm above the adjoining pavement. Timber retaining edges are unsuitable.
- (h) Plant Species review:
 - (i) The Plant Schedule must include a majority of natives and planting of indigenous plant species is encouraged (DCP 4.1.8);
 - (ii) Philodendron 'Xanadu' Dwarf, should be replaced with the following; Doryanthes excelsa and helmholtzia glaberrima. Archontophoenix cunninghamiana can be interplanted with Lepidozamia peroffskyana and/or Ptychosperma elegans (for height) to produce a better aesthetic feature.
 - (iii) Syzygium australe and Syzygium australe 'Winter Lights' should be used to compliment the Syzygium paniculatum, and on the other levels as well.
 - (iv) The Planting Schedule must include all proposed plants (e.g. WAB, etc.) and differentiate between ACS and ACS Minor, The depth of planter beds at all levels.
- (i) The depth of planter beds and details of paving for the rear pedestrian access (area to be dedicated to Council). In addition, the finished surface levels of the rear footpath / area to be dedicated to Council (refer to VPA) shall accommodate the levels and transitions to match levels at the northern and southern boundaries. Where finished surface levels associated with redevelopment of the northern properties have not been finalised, Council will provide a finished surface level.

Prior to issue of the construction certificate

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

- 37. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
 - i. A Footpath Reserve Restoration Deposit of \$12,000.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
 - ii. An environmental enforcement fee of 0.25% of the cost of the works.
 - iii. A Soil and Water Management Sign of \$18.00.
- 38. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
- 39. An application for Frontage Works must be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All public domain frontage

works, boundary works, egress paths, driveways and fences shall comply with the requirements determined.

A fee is payable to Council for the Frontage Works Application. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.

40. A Section 94 contribution of \$114,885.56 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

Open Space	\$88,083.01
Community Services & Facilities	\$8,758.00
Town Centre & Streetscape Improvements	\$4,501.62
Pollution Control	\$12,987.90
Plan Administration & Management	\$555.03

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 444-446 Princes Highway, Rockdale.

41. Voluntary Planning Agreement (VPA) Obligations

- (a) Prior to issue of the Construction Certificate for the relevant stage of works, a Construction Certificate and/or Roads Act Approval under Section 138 of the Roads Act 1993 must be obtained for all relevant obligations under the VPA that are located within the Council's land (i.e. 87 Railway Street), Heston Lane and/or the road reserve and that are required to be authorised by a Construction Certificate or Roads Act Approval.
- (b) The plans and specifications that accompany the Construction Certificate and/or Roads Act Application must be in accordance with the standards contained in the VPA.
- (c) The works associated with the VPA must be approved by Council's Director of City Futures prior to issue of the Construction Certificate.

42. Car Parking Space Allocation

Prior to the issue of the construction certificate, the architectural plans must be modified as follows:

- (a) Car space number 1 to be allocated to the commercial tenancy for VAN space.
- (b) Car spaces 4 and 10 to be converted to disable space. This spaces must have 2.5m headroom clearance as per AS 2890.6.
- (c) Car space number 3 shall be a shared area dedicated to the disable space number 4. Bollards must be provided for the shared area.
- (d) Car space number 2 to be used as visitor space and car wash area. Car wash bay to be minimum 3.3m wide.
- (e) Shared space at lower basement to be converted to a standard car space.

Notes:

- *All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.*
- *Tandem parking spaces must only be allocated to a single residential unit.*
- *The car-wash bay must be connected to the Sydney Water sewer system in accordance with Sydney Water requirements.*
- *This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

43. Works required on Waltz Street, Hesten Lane and 87 Railway Street

- (a) Prior to issue of the Construction Certificate, details shall be submitted to, and approved by, Council's Director of City Futures in relation to the following: Drainage upgrade works along proposed pedestrian pathway at the rear of the site.
- (i) Construct new drainage pit with minimum 2.4m kerb inlet capacity over the existing 450mm drainage pipe located in the road reserve along Railway Street frontage.
 - (ii) Remove redundant driveway access from Waltz Street.
 - (iii) Remove redundant steel barrier along Hesten Lane.
 - (iv) Reconstruct existing pavement in Hesten Laneway to current standard.
 - (v) Provide linemarking & Install wheel stops for all new public car spaces within Hesten Laneway.
 - (vi) Provide at least 1 adaptable car space within the proposed car spaces within the Hesten Laneway.
 - (vii) Relocate existing street signage where this conflicts with new driveway entrance from Waltz Street.
 - (viii) Construction of the driveway on No. 87 Railway Street;
 - (ix) All other relevant works included in the VPA.
- (b) Works required on public roads must also be approved under Section 138 of the Roads Act 1993 prior to issue of the Construction Certificate (see also condition 111).

44. Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Access in accordance with Australian Standard 4299 must be provided to and within two (2) residential unit, and between this unit(s) and its allocated carparking space. The allocated parking space will be located in close proximity to the access points of the building. Please note that compliance with this condition requires the relevant unit(s) to be constructed to comply with all the essential (Type C) requirements of AS4299.

Note: Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

45. Compliance with Council's Development Control (DCP) 2011 in relation to requirements for access. Compliance with this condition will require the design and fitout of the commercial/retail areas to be in accordance with Australian Standard 1428.1-2009.

Note: Compliance with Council's Development Control Plan (DCP) 2011 and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

46. Any building proposed to be erected over or near the existing Sydney Water pipeline is to be approved by Sydney Water. A copy of Sydney Water's approval and requirements are to be submitted to Council prior to issuing a Construction Certificate.
47. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please contact Sydney Water.

The consent authority or a private accredited certifier must ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before issue of any Construction Certificate.

48. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

Sydney Water's Tap in™ online service is available at:

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

49. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%) and lengths.

50. Workzone Traffic Management Plan (TMP)

Prior to the issue of the relevant Construction Certificate, a workzone Traffic Management Plan (TMP) prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (a) ingress and egress of vehicles to the site;
- (b) loading and unloading, including construction zones;
- (c) predicted traffic volumes, types and routes; and
- (d) pedestrian and traffic management methods.

Copy of above documentation shall be submitted to Council prior to the issue of construction certificate.

51. The low level driveway must be designed to prevent inflow of water from the road reserve, and proposed pedestrian link at the rear of the subject site. The assessment of flows and design of prevention measures shall be in accordance with

the requirements of Rockdale Technical Specification Stormwater Management. Details shall be included in the documentation presented with the Construction Certificate application.

52. Car Wash Bay / Visitor Space

A visitor car space shall also operate as a car wash bay. A tap shall be provided. A sign shall be fixed saying 'Visitor Car Space and Car Wash Bay'. The runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.

53. Prior to the issue of the Construction Certificate, detailed drainage design plans in generally accordance with stormwater plan prepared by Alpha Engineering & Development, issue C, dated 16/6/2017, for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.

Following details shall also be included within the detailed stormwater plans:

a) Oil separator shall be provided within the basement prior to the directing the pump flow to the detention system as per section 7.5.4 of Rockdale Technical Specification Stormwater Management.

a) Detail hydrologic and hydraulic assessment shall be undertaken to determine the volume of runoff and depth of flow will enter the proposed pedestrian footway at the rear of the subject site in a 1 in 100 year event. Driveway access ramp to the site shall incorporate a crest level above the 1 in 100 year flood level. Entry driveway to the site shall have minimum 100mm freeboard from 1 in 100 year flood level.

b) New drainage pipe to be provided under the proposed car spaces in Hesten lane and to be designed to cater for 1 in 20 year flow. Drainage pipe to be minimum 375 mm diameter and shall connect to the street drainage in Walz Street.

54. Wind Report

Prior to issue of the Construction Certificate, an amended Wind Report is required to be submitted to, and approved by, the Director Futures at Bayside Council. The Wind Report must be carried out by a suitably qualified consultant and must establish that the amended proposal will satisfy the requirements of Controls 1 and 2, Part 4.4.7 of RDCP 2011, or include measures that will ensure that the proposal will satisfy the requirements of the DCP. The details shall be included in the plans submitted with the Construction Certificate. Some amendments may require submission of a Section 96 application.

55. **Geotechnical:**

As the basement floor are being proposed closer to existing built structures on neighbouring properties and other public assets, which may be in the zone of influence of the proposed works and excavations on this site, a qualified practicing geotechnical engineer must;

(a) All recommendations contained in the report prepared by Alliance Geotechnical, Report No. 2416-GR-1-1, Dated 8th July 2016 shall be implemented.

- (b) Provide a certificate that the construction certificate plans are satisfactory from a geotechnical perspective and
- (c) Prepare a Construction Methodology report demonstrating that the proposed construction methods (including any excavation, and the configuration of the built structures) will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate **for the relevant stage of works**.
- (d) Inspect the works as they progress. The Inspections are to occur at frequencies determined by the geotechnical engineer.
- (e) Where a Private Certifier issues the Construction Certificate a copy of the above documentation must be provided to Council, once the Construction Certificate is issued **for the relevant stage of works**.
- (f) The geotechnical engineer to comment on proposed stormwater drainage design for the basement area, mainly on AGG line connections, seepage/dewatering and a tanked basement structure (if required).

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the Conveyancing Act 1919.

Prior to commencement of works

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

- 56. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
- 57. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

- 58. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number

and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.

59. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- i. stating that unauthorised entry to the work site is prohibited, and
 - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
 - iii. building work carried out inside an existing building or
 - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
60. Protection of Trees within adjoining Properties
- (a) Prior to the commencement of work, a Tree Protection Zone shall be established in accordance with AS4970-2009 (Protection of trees on Development Sites) with protective fences at least 1.8 metres high erected outside the drip lines around each tree or group of trees which is required to be retained. The protective fences shall consist of chain wire mesh temporary fence panels securely mounted and braced to prevent movement, shall be in place prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction. Excavations for services, waste bins, storage of materials and equipment, site residue, site sheds, vehicle access or cleaning of tools and equipment are not permitted within the Tree Protection Zones at any time.
 - (b) Existing soil levels within the drip line of trees to be retained shall not be altered without reference to Council's Tree Management Officer.
 - (c) Any pruning of branches or roots of trees growing from within adjoining properties requires the prior written consent of the prior written consent of Council in the form of a Permit issued under Council's Development Control Plan 2011. The approved work must be carried out in accordance with AS4373:2007 by an experienced Arborist with minimum AQF Level 2 qualifications in Arboriculture.
 - (d) Where drainage or paving works are proposed to be constructed in the area below the dripline of trees, the proposed works and construction methods must not damage the tree. Where either the trees or works were not shown in detail on the approved plans, then Council approval must be obtained by contacting Council's Tree Management Officer.
 - (e) Underground Services such as pipelines or cables to be located close to trees, must be installed by boring or by such other method that will not damage the tree rather than open trench excavation. The construction method must be approved by Council's Tree Management Officer.
 - (f) Building materials, site residue, machinery and building equipment shall not be placed or stored under the dripline of trees required to be retained.
61. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
62. (a) A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:
- (i) is likely to cause pedestrian or vehicular traffic in a public place to be

obstructed or rendered inconvenient, or
(ii) building involves the enclosure of a public place,

(b) Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.

(c) Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:

(i) the vertical height above footpath level of the structure being demolished is less than 4m; or

(ii) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -

(i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;

(ii) have a clear height above the footpath of not less than 2.1m;

(iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and

(iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids. Any such hoarding, fence or awning is to be removed when the work has been completed.

(d) The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

63. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

64. Prior to the issue of the commencement of excavation work, vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice.

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

Note: Professional engineer has the same mean as in Clause A1.1 of the BCA.

Note: Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".

Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.

65. A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Prior to the commencement of works the Certifying Authority shall be satisfied that the construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction.

Copy of above documentation shall be submitted to Council.

During demolition / excavation / construction

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

66. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
67. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being

carried out on Sundays and all public holidays.

68. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:
- Sediment control measures
 - Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
 - Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
69. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
70. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
71. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
- i. After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
 - ii. Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
 - iii. Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
 - iv. On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.
 - v. On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels, accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.
72. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- i. preserve and protect the building from damage and
- ii. underpin and support the building in an approved manner, if necessary and
- iii. give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the

allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

73. When soil conditions require it:

- i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
- ii. adequate provision shall be made for drainage.

74. All contractors shall comply with the following during all stages of demolition and construction:

- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
- A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.

75. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.

76. The following conditions are necessary to ensure minimal impacts during construction:

- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and

access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

- ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - a) spraying water in dry windy weather
 - b) cover stockpiles
 - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.8m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

- 77. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
- 78. Building materials, site residue, machinery and building equipment shall not be

placed or stored under the dripline of trees required to be retained.

Prior to issue of occupation certificate or commencement of use

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

79. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
80. Voluntary Planning Agreement Obligations
Prior to issue of the Occupation Certificate all obligations under the Voluntary Planning Agreement (VPA) that must be completed prior to issue of the Occupation Certificate must be complied with. All works must be completed in accordance with the agreed specifications and/or standards as detailed in the VPA.
81. Land Dedication to Council
Prior to issue of any Occupation Certificate, the land at the rear of the site must be dedicated to Council in accordance with the Stratum Subdivision Plan approved by Council in accordance with Deferred Commencement Condition (C) and the Voluntary Planning Agreement.
82. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
83. Ground level surfaces are to be treated with anti-graffiti coating to minimise the potential of defacement. In addition, any graffiti evident on the exterior facades and visible from a public place shall be removed forthwith.
84. Landscape Completion / Certification / Ongoing Management
Prior to issue of the Occupation Certificate:
 - (a) All landscape works are to be carried out in accordance with the approved landscape plans.
 - (b) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.

The certificate shall also specifically confirm that the proposal complies with the following (including but not limited to):

 - (i) A minimum soil depth of 800mm is provided for all planter beds on the podium levels;
 - (ii) A fully automated irrigation system has been installed to all podium landscape areas; and
 - (iii) Podium landscaping and paved areas are drained into the stormwater drainage system.
85. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council prior to issue of any Occupation Certificate.
86. Noise Requirements - Compliance
 - (a) Prior to issue of the Occupation Certificate, a Certificate of Compliance prepared by a suitably qualified and experienced acoustic consultant must be submitted to the Principal Certifying Authority (PCA) validating that:

(i) Noise emissions from all mechanical services plant including fans, compressors, condensers, air conditioners etc. to the nearest residential receiver do not exceed the noise emission criteria provided within the DA Acoustic Assessment report prepared by Acoustic Logic and submitted with the Application;

(ii) The internal noise environment within all units complies with all relevant legislation and all other requirements contained in Condition 24 of this consent, including any updated and/or supplementary acoustic reports prepared to satisfy the requirements of Condition 24 of this consent.

(b) If Council is not the PCA, a copy of the Certificate of Compliance required by (a) above must be submitted to Council prior to issue of the Occupation Certificate.

87. Vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to the inside skin of the front fence, or where there is no front fence a prominent place approved by the Principal Certifying Authority, stating the following: "Vehicle shall enter and exit the site in a forward direction at all times".
88. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
89. The width of the single driveway at the boundary of the site shall be a minimum of 3.0 metres and a maximum of 4.5 metres.
90. Bollards shall be installed for all shared spaces dedicated to disable car spaces.
91. Prior to issue of the Occupation Certificate:
- (a) 18 off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction. Such parking spaces shall be allocated in accordance with Condition 40.
 - (b) 8 Car Spaces shall be provided, sealed & linemarked (within existing Hesten Lane / Council land at 87 Railway Street), unless otherwise agreed in the VPA. Wheel stops to be provided for all on street car parking spaces.

The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Austroads Guide to Pavement Design.

92. Prior to the issue of the Final Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

93. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.

94. Where the installation of electricity conduits is required in the footway, the builder shall install the conduits within the footway across the frontage/s of the development site, to Ausgrid's specifications. Ausgrid will supply the conduits at no charge. A Road Opening Permit must be obtained from Council prior to the installation of the conduits. The builder is responsible for compaction of the trench and restoration of the footway in accordance with Council direction. A Compliance Certificate from Ausgrid shall be obtained prior to the issue of the Occupation Certificate.
95. Prior to occupation or use of the premises, a qualified mechanical engineer shall certify that the mechanical ventilation/air conditioning system complies in all respects with the requirements of Australian Standard 1668, Part 1 & 2.
96. On completion of the installation of the mechanical ventilation systems and prior to the issue of the Occupation Certificate, a certificate of completion and performance from the design engineer shall be submitted to Council certifying that the system has been installed, inspected, commissioned, tested and performs in accordance with Australian Standards AS1668.
97. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
98. A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater detention facility to provide for the maintenance of the detention facility.
99. The pump system, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or PCA upon request.
100. The drainage system shall be constructed in accordance with the approved drainage plans and any amendments in red. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.

Drainage grates shall be provided at the boundary and at the lowest point in the basement ramp. Width of the drainage grates shall be in accordance with Rockdale Technical Specification Stormwater Management.

A silt/litter arrestor pit as detailed in Rockdale Technical Specification Stormwater Management shall be provided prior to discharge of stormwater from the site.

101. A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the Traffic Signal facility to provide for the maintenance of the Traffic Signal facility.
102. Wind Report - Compliance
The proposal shall comply with any requirements contained within the amended Wind Report that was submitted to, and approved by, Council prior to issue of the Occupation Certificate.

103. Prior to occupation a Chartered Professional Engineer competent in geotechnics shall certify that the construction works has been constructed in accordance with the approved geotechnical report and include an evaluation of the completed works. A copy of the certificate shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.

Prior to issue of subdivision certificate

The following conditions must be complied with prior to the issue of the Subdivision Certificate or the Strata Certificate.

104. A Subdivision Certificate and four (4) copies of the plans for the endorsement of the General Manager shall be submitted to Council prior to lodgment with the Land and Property Information office. If applicable, an original and four (4) copies of the 88B Instrument are to be submitted. A fee is payable in accordance with Council's current adopted Fees and Charges.
105. The submission and approval of a subdivision certificate application. In this regard, a fee is payable in accordance with Council's current adopted Fees and Charges.
106. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision/Strata Certificate.

107. All existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Bayside Council. These provisions are to be put into effect prior to the release of the Subdivision/Strata Certificate.

Roads Act

108. In addition to the works in the road reserve listed above, the following modification and/or improvement works to the road and drainage in surrounding streets will be required to be undertaken at the applicant's expense:
1. Drainage upgrade works along proposed pedestrian pathway at the rear of the site
 2. Construct new drainage pit with minimum 2.4m kerb inlet capacity over the existing 450mm drainage pipe located in the road reserve along Railway Street frontage.

3. Remove redundant driveway access
4. Remove existing redundant steel barrier
5. Reconstruct existing pavement in Hesten Laneway to current standard
6. Provide linemarking & Install wheel stops for all new car space within Hesten Laneway
7. Provide at least 1 adaptable car space within the public domain car spaces
8. Relocate existing street signage where this conflicts with new driveway entrance from Waltz Street.

Note: Detailed plans of the works are required to be submitted to Council for assessment and approval pursuant to Section 138 of the Roads Act 1993, prior to the issue of the Construction Certificate.

109. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
110. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
111. Prior to the issue of the Construction Certificate for the relevant stage of works, the following details shall be submitted to the principal certifying authority in relation to the awning over Railway Street frontage:
 - (i) Detailed design plans and specifications, including structural details and including compliance with the requirements of Condition 14; and,
 - (ii) Design certificate.

The awning shall be designed by a Chartered Professional Engineer (Structural). Awning design shall comply with following requirement of DCP section 5.3:

 - a). minimum soffit height of 3.3m;
 - b). maximum fascia height of 600mm;
 - c). minimum setback from edge of kerb of 600mm;
 - d). maximum step of 900mm on sloping sites, which must not compromise environmental protection.

Following completion of the installation of the awning a certificate from a Chartered Professional Engineer (Structural) shall be submitted to Council stating that the awning has been constructed in accordance with the design plans and specifications.

Subject to compliance with the requirements above, Council grants approval pursuant to Section 138 of the Roads Act 1993. Council's approval remains whilst the structure is in place and the structural stability of the awning is not compromised. Maintenance of the awning is the responsibility of the owner of the land.
112. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
113. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu).

Development consent advice

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. *Telstra Advice – Dial Before You Dig*

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.

- c. *Telstra Advice - Telecommunications Act 1997 (Commonwealth)*

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Commonwealth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800810443.

- d. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
 - choosing quiet equipment
 - choosing alternatives to noisy activities
 - relocating noise sources away from affected neighbours
 - educating staff and contractors about quiet work practices
 - informing neighbours of potentially noise activities in advance
 - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- e. The removal, cleaning and disposal of lead-based paint shall conform with the requirements of the NSW Environment Protection Authority's guideline - "Lead Alert - Painting Your Home".
- f. All site works shall comply with the occupational health and safety requirements of

the NSW WorkCover Authority.

- g. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.

St George Design Review Panel

Georges River Council | Rockdale City Council

REPORT OF THE ST GEORGE DESIGN REVIEW PANEL

Meeting held on Tuesday, 23 August 2016 at Rockdale City Council

[Panel members: Peter Webber, Peter Annand and Suzanne Moulis]

ITEM 2

Date of Panel Assessment:	23 August 2016
Applicant:	Urbanlink Architects Pty Ltd
Architect:	Urbanlink Architects Pty Ltd
Property Address:	83-85 Railway Street, ROCKDALE NSW 2216
Description:	Construction of a seven (7) storey mixed use development containing 18 residential units, one (1) commercial unit and basement car parking, demolition of existing buildings and strata subdivision
No. of Buildings:	1
No. of Storeys:	7
No. of Units:	18 residential units - 12 x one bedroom units, 6 x two bedroom units and 1 commercial unit
Consent Authority Responsible:	Rockdale City Council
Application No.:	DA-2017/26
Declaration of Conflict of Interest:	Nil

SEPP 65 – Design Quality of Residential Flat Buildings	Comments
<p>Context and Neighbourhood Character</p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The site is adjacent to an important heritage listed building, to the south the Rockdale Community Centre Guild Theatre. The site contains a 1921 two-storey commercial retail building, which although not heritage listed has architectural merit and makes a significant contribution to the streetscape of the centre. To the west is St Joseph Church which is also heritage listed.</p> <p>Further to the south on Railway Street the existing two-storey commercial buildings have very attractive character and form and provide an important part of the context of the subject site.</p> <p>The site is across the road from Rockdale railway station and bus stops.</p> <p>To the north are three-storey modern commercial buildings on a site which is under consideration for substantial height and floor space increases. Vehicular access is provided by a lane to the rear of the site accessed from Walz Street.</p>
<p>Built Form and Scale</p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>There are a number of major concerns about the proposal as submitted:</p> <ul style="list-style-type: none"> • It has no relationship to the adjoining heritage listed buildings or the two storey character of commercial buildings to the south; <p>The Panel recommends conservation of the façade of the 1921 commercial building, a setback of 3 metres at the third level and above (rather than the fourth level as in the DCP).</p> <ul style="list-style-type: none"> • The bland and dominant south façade which is unsympathetic to the heritage buildings; • The split level between the front and rear floors requiring access by steps from lift to <u>all</u> rear units and the centre generally; • Central open space would be extremely poor quality, receiving minimal sunlight, and split into two parts by the access bridge above. It would have no value as a communal space; • Lack of deep soil provision anywhere on the site; <p>These issues could be resolved by:</p> <ul style="list-style-type: none"> • Conserving the façade; • Setting back the bulk of building 3 metres above the second floor; • Moving the two building elements together but maintaining a lightwell for ventilation purposes; • Arranging the front and back floor levels so that they are the same; • Providing communal open space at the rooftop level; • Providing deep soil planting opportunities at the rear of the site (west). This may replace one or more visitor car spaces and should also include the northern corner of the site;

SEPP 65 – Design Quality of Residential Flat Buildings	Comments
	<ul style="list-style-type: none"> A full awning should be provided over the footpath (perhaps with cut-outs for major tree growth).
<p>Density</p> <p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>There is no FSR control applying to the site and whether or not the density is satisfactory will depend on the resolution of the amended design.</p>
<p>Sustainability</p> <p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>Subject to BASIX.</p>
<p>Landscape</p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>The current planning and design of communal open space is unacceptable (see comments in Built Form). It is recommended that communal open space instead be provided on the rooftop where it will receive adequate solar access, as well as offer district views.</p> <p>The design of a rooftop space must consider amenity for residents and provide for small gatherings of separate groups. Seating, shade, BBQ facilities and other amenities such as a sink and bench space and WC must be provided. Lift overrun amenity and facility rooms, pergolas and shade structures should be carefully positioned so as to have minimal impact and visibility from surrounding areas. These community elements may penetrate the height plane.</p> <p>Soft landscaping must be designed to suit exposed conditions and adequate soil depth and volume provided to support plant growth and performance.</p> <p>Investigate the opportunity for substantial and appropriate tree species in the footpath. This may require undergrounding power and provision of cutouts in the awning.</p> <p>There is opportunity to provide deep soil and soft landscape at the rear of the site replacing visitor car spaces. Substantial tree species must be proposed.</p>

SEPP 65 – Design Quality of Residential Flat Buildings	Comments
<p>Amenity</p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>Although the amenity of the residential units as proposed would be reasonable, other aspects of the design such as communal space are completely unacceptable, thereby requiring a major redesign.</p> <p>The opportunity should be taken to provide windows and outlook to the south over the existing heritage site. This will improve the performance of the building and its elevational appearance from the south (over the heritage building).</p>
<p>Safety</p> <p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>Security provisions are required to the rear of the site to car parking areas which appear not have been included in the submitted design.</p>
<p>Housing Diversity and Social Interaction</p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>Investigate the opportunity to include some 3-bedroom units in the redesign. As submitted the mix does not comply with DCP controls and is not acceptable.</p> <p>Provide attractive communal space at the roof level as recommended above under “Landscape”, including a small enclosed area fitted with kitchenette facilities.</p>
<p>Aesthetics</p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p>	<p>The aesthetics are currently unacceptable but could be dramatically improved by the redesign mentioned above, particularly:</p> <ul style="list-style-type: none"> • Conservation of existing 1921 façade; • Sensitive design of the southern façade to respect adjacent heritage item.

SEPP 65 – Design Quality of Residential Flat Buildings	Comments
The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.	

RECOMMENDATION

- The design cannot be supported in its present form and should be amended as outlined above for reconsideration by the Panel.



2 March 2018

General Manager
Bayside Council

**Re: Voluntary Planning Agreement Offer
83-85 Railway Street, Rockdale
DA2017/26**

I refer to our clients recent discussions, and Councils feedback, regarding the Voluntary Planning Agreement associated with the above development for the following aspects:

- Provision of access to the development via a right of carriageway on the Councils land, including for construction access to the development.
- Converting the existing laneway (Hesten Laneway) into public parking, to expand the availability of visitor parking and public parking in the area
- Dedication of a stratum lot to the north of Hesten Laneway to Council to facilitate access.

This constitutes a formal VPA offer on behalf of the proponent, Group Living Pty Ltd, in order to enable finalising of the pending development application on the site. It is noted that this VPA offer would be expected to then be enforced by way of a formal condition of consent requiring the Voluntary Planning Agreement to be entered into.

Councils urgent attention to this is requested as our client cannot obtain a consent until this is agreed to and a condition placed on the consent requiring the entering of a VPA.

Terms of VPA Offer

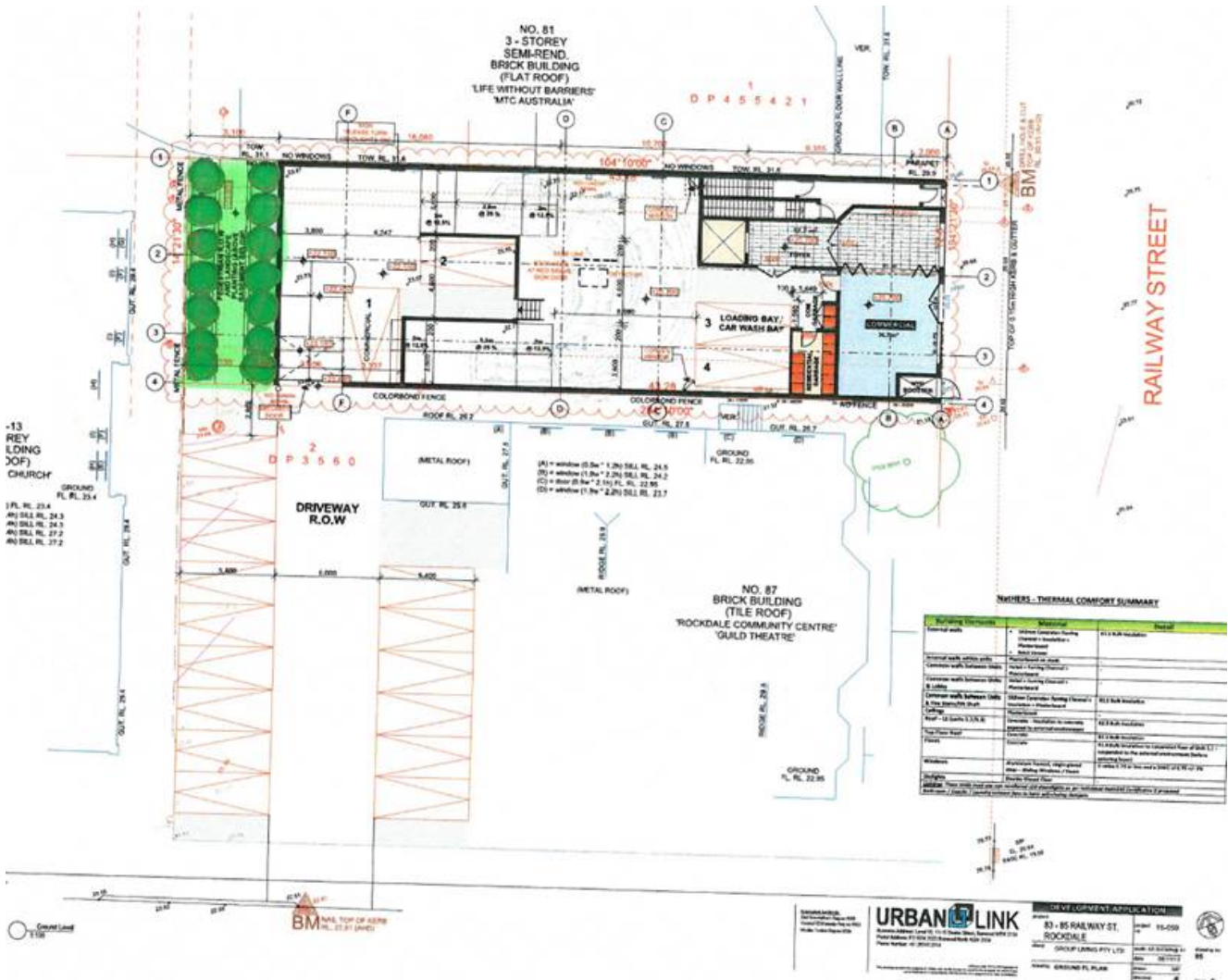
Background

The site relies upon vehicular access over the existing laneway and as such requires a formal right of carriageway from Council. In addition, the conversion of part of the laneway to public parking also enables visitor parking in this area to benefit the site and other users of the parking area. Council has identified a desire to provide a pedestrian link along the rear portion of the subject site that will ultimately connect to the land to the north.

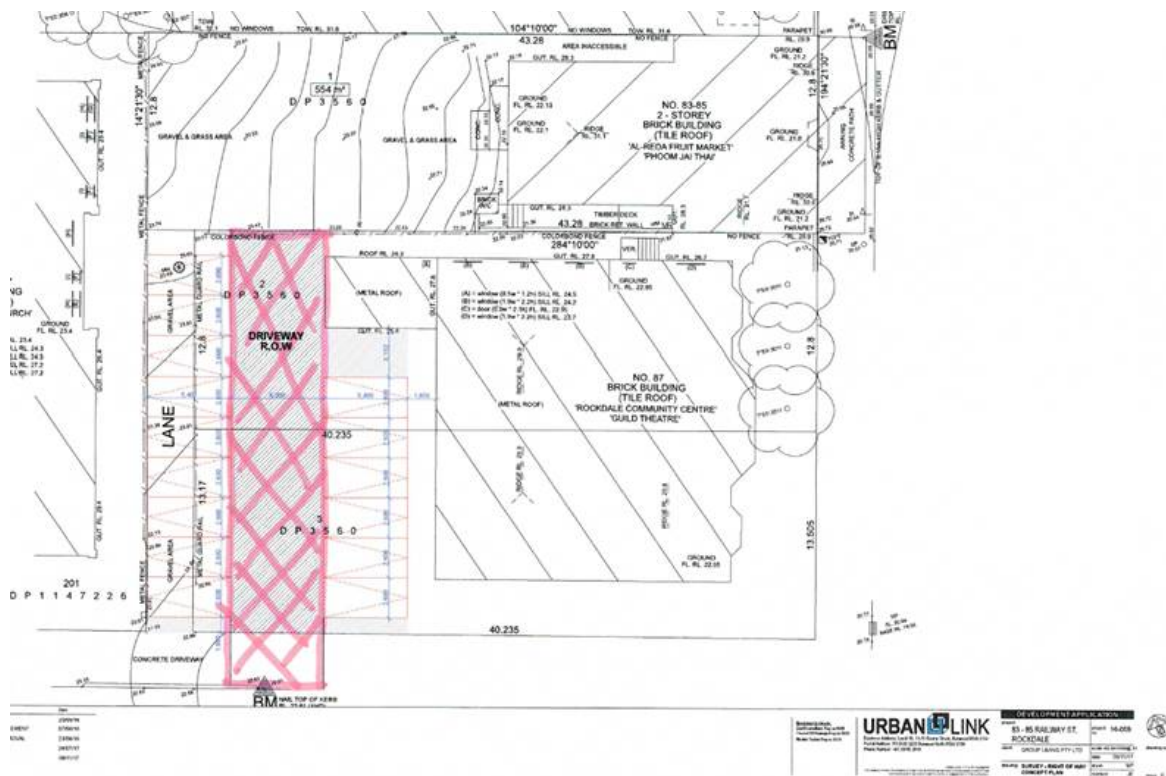
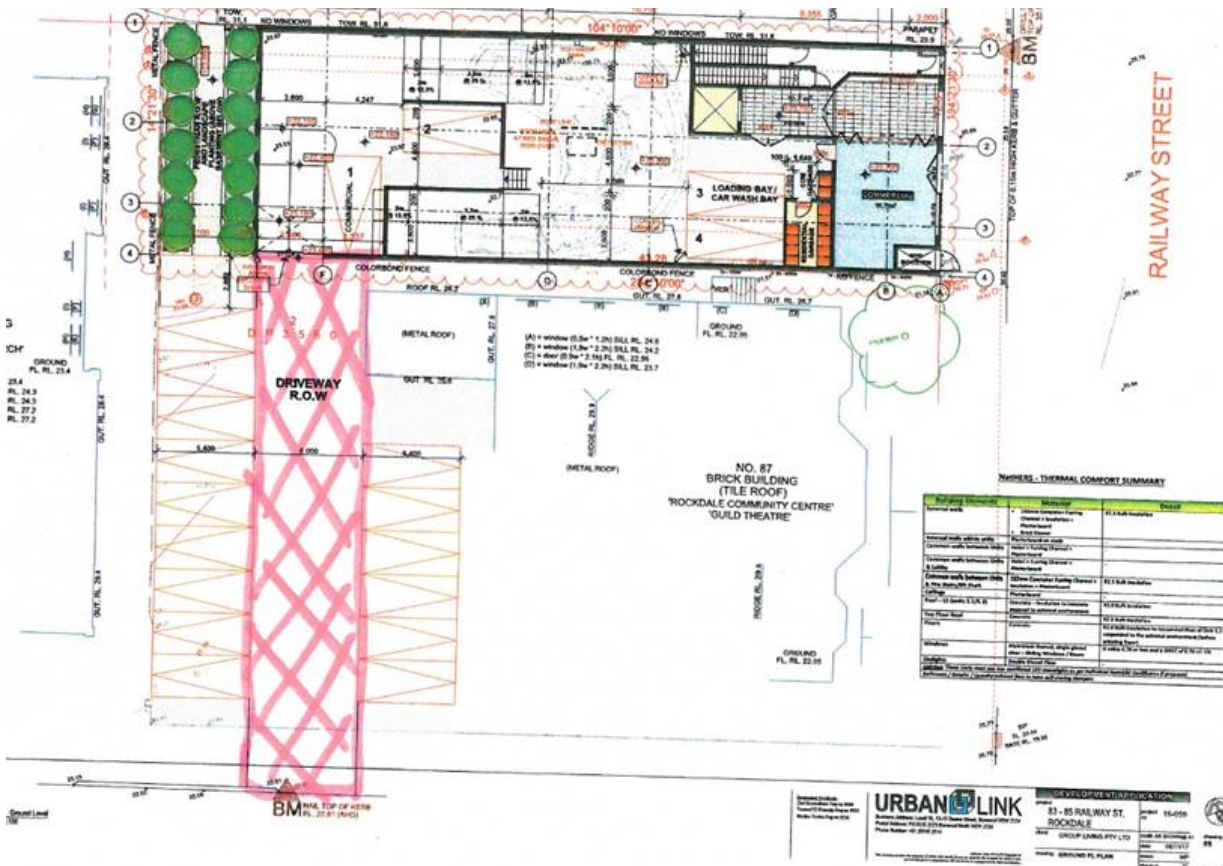
VPA Offer

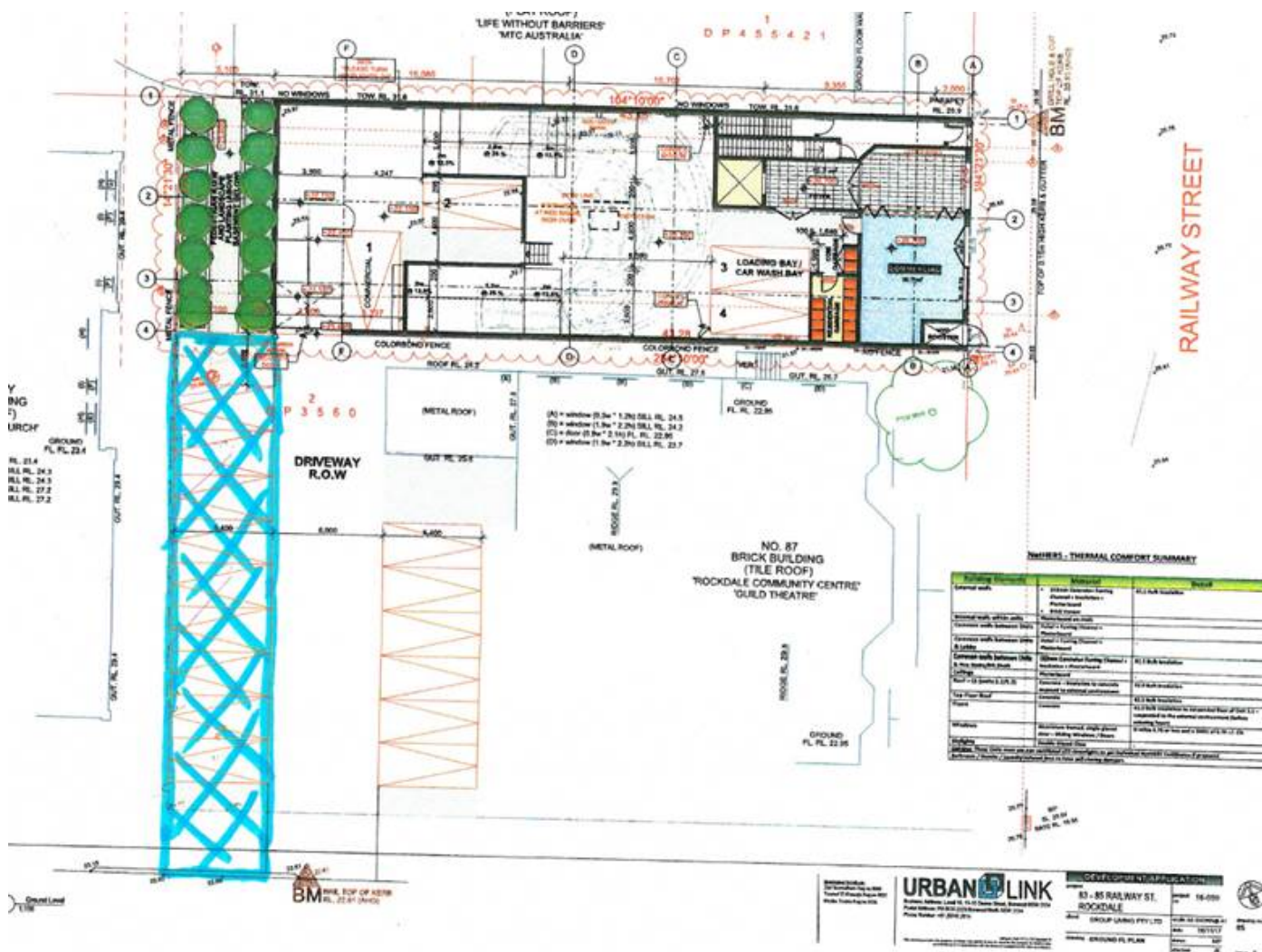
The VPA offer by the proponent is as follows:

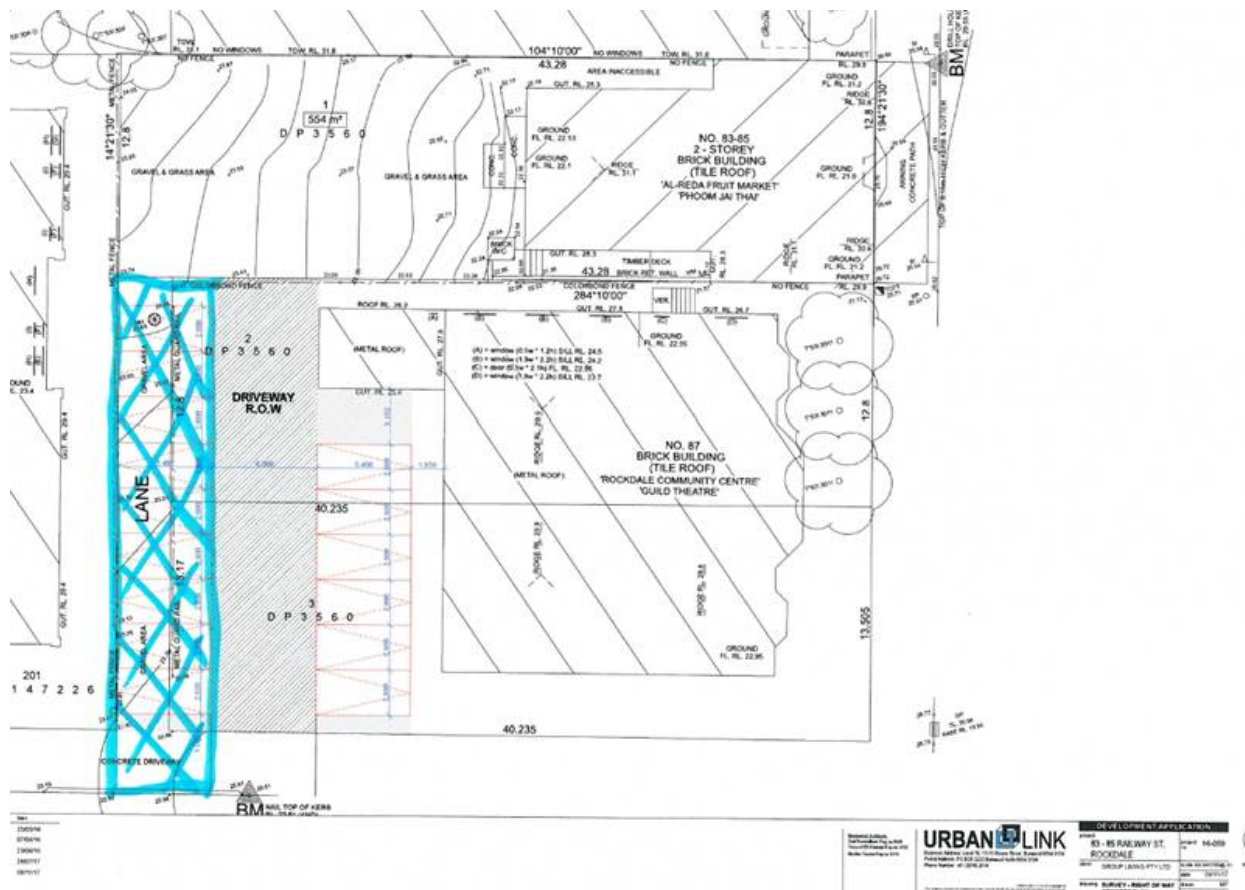
- (a) The developer of the land is to create the proposed stratum lot at the west of the site (north of Hesten Lane) and dedicate this to Council free of cost, that stratum lot being a stratum lot created in the area highlighted in green on the plan below, limited in depth to approximately 1200mm below the lowest level of the surface of the Lane and unlimited as to height:



- (b) The developer will carry out landscaping/ public domain works on the stratum lot to be dedicated free of cost, generally limited to the provision of a suitable footpath and associated landscaping either side of the footpath.
- (c) The developer will carry out works on the proposed right of way (ROW) on No. 87 Railway Street (owned by Council), and the area of the road reserve to the south of the ROW, so as to facilitate access to the proposed development. The area of land referred to is shown highlighted/ hatched in pink on the plans over the page.







In relation to the above offer:

- The timing/ 'trigger' for providing the contributions referred to above (i.e. the land and the works) to be prior to the issue of any Occupation Certificate;
- The Developer agrees that the VPA does not exclude the operation of s 94, s 94A or s 94EF to the development, and agrees that the benefits under the VPA are not to be taken into account in determining the development application.
- The Council agrees that on the basis of the above that the Council will create the easement over the ROW to facilitate access to the development, including an agreement that construction access over the ROW land can occur to facilitate the construction of the development and then construction and delivery of the matters stipulated in this VPA offer.

Councils urgent attention to this is requested to finalise this matter. Should you have any further concerns or questions I can be contacted on 0425 134 158

Regards,

Jonathon Wood

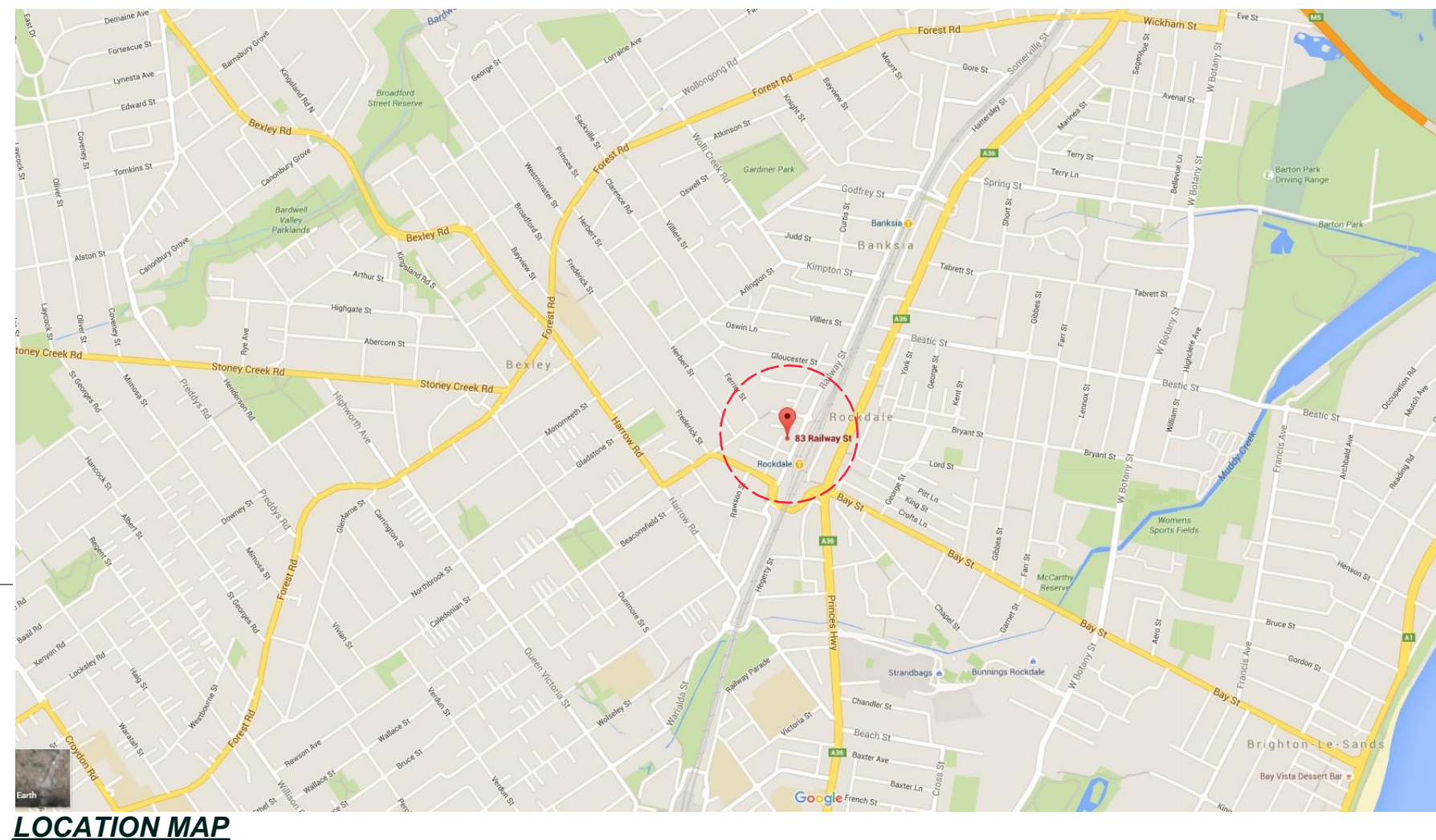
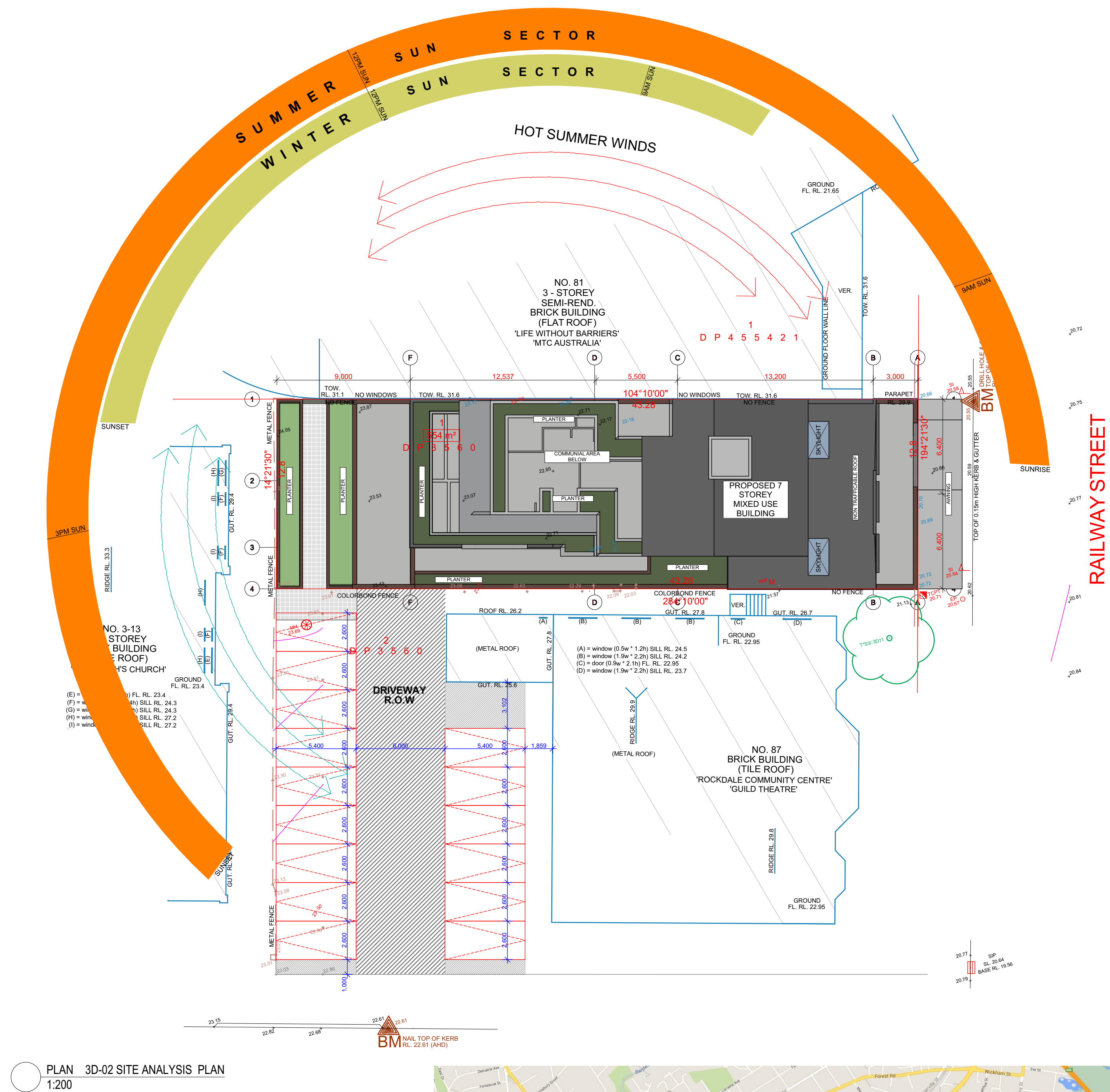
Director

Think Planners Pty Ltd

w w w . t h i n k p l a n n e r s . c o m

9A O'Connell St,
Parramatta NSW 2150
02 9890 8543

**PROPOSED MIX USE BUILDING COMPRISING OF A 7 STOREYS,
18 RESIDENTIAL UNITS, ONE COMMERCIAL SPACES AND 1.5 LEVELS OF BASEMENT PARKING
@ 83- 85 RAILWAY ST, ROCKDALE, FOR DEVELOPMENT APPLICATION**



Issue	Amendment	Date
A	CLIENT REVIEW	20/05/16
B	CONSULTANT ENGAGEMENT	07/06/16
C	ISSUED FOR DA APPROVAL	23/06/16
D	REVISED DRAWINGS	28/07/17
E	REVISED DRAWINGS	08/11/17

Do not scale drawings. Verify all dimensions on site.

Areas		Units									
		ADU = Adaptable Units									
	GFA	commercial	ADU	1Bed	ADU	1+ Study	ADU	2Bed	ADU	3Bed	ADU
Basement 1											
Ground	52.70 m2		1								
Level 1	281.20 m2					1		1		1	1
Level 2	270.00 m2							1		1	1
Level 3	254.70 m2					1		2		0	1
Level 4	254.70 m2					1		2		0	
Level 5	254.70 m2					1		2		0	
Level 6	207.60 m2			0		2		1		0	
	1,575.60 m2	1	0	0	0	7	0	9	0	2	2
				0.0%		38.9%		50.0%		11.1%	
								Total Units			18
								of which are Adaptable			2

Proposal Compliance				
Site Area	554.00 m2			
Rockdale Zone	Perimeter Area			
Control	Requirement	Proposed		
Floor Space Ratio (FSR)	MAX			✓
Gross Floor Area (GFA)	MAX	1,575.60 m2		✓
Building Height	22.00 m MAX	22m	*	✓
RMS Car Parking	1 Bed / 0.6 per unit MIN 2 Bed / 0.9 per unit MIN 3 Bed / 1.4 per unit MIN	18.0		✓
Solar Access	70% MIN	13	72.2%	
Gross Ventilation	60% MIN	18	100.0%	✓
Adaptable Units	10% MIN	2	11.1%	✓
Single orientated south facing units	10% MAX	0	0.0%	✓
Communal Open Space	25% MIN	166 m2	29.9%	✓
Deep Soil	10% MIN	0 m2	0.0%	✓
Waste Bins (1 x 240lt / 2 units)	9.00 MIN	9		✓
Recycling Bins (1/2 waste req.)	4.5 MIN	5		✓
Green Bins (up to 3/development)	0 MIN	0		P
Bulky Item Storage (At least 15m2)	0 m2 MIN	0 m2		P

NatHERS - THERMAL COMFORT SUMMARY

Building Elements	Material	Detail
External walls	<ul style="list-style-type: none"> 162mm Concrete+ Furring Channel + Insulation + Plasterboard Brick Veneer 	R1.5 Bulk Insulation
Internal walls within units	Plasterboard on studs	-
Common walls between Units	Hebel + Furring Channel + Plasterboard	-
Common walls between Units & Lobby	Hebel + Furring Channel + Plasterboard	-
Common walls between Units & Fire Stairs/lift Shaft	162mm Concrete+ Furring Channel + Insulation + Plasterboard	R1.5 Bulk Insulation
Ceilings	Plasterboard	-
Roof – L5 (units 5.2/5.3)	Concrete – insulation to concrete exposed to external environment	R2.0 Bulk Insulation
Top Floor Roof	Concrete	R2.5 Bulk Insulation
Floors	Concrete	R1.0 Bulk Insulation to suspended floor of Unit 1.1 – suspended to the external environment (before entering foyer)
Windows	Aluminium framed, single glazed clear – Sliding Windows / Doors	U value 6.70 or less and a SHGC of 0.70 +/- 5%
Skylights	Double Glazed Clear	-

Lighting: These Units must use non ventilated LED downlights as per individual NATHERS Certificates if proposed Bathroom / Ensuite / Laundry exhaust fans to have self-closing dampers

BASIS COMMITMENTS NOTES				
* TO BE READ IN CONJUNCTION WITH APPROVED BASIS REPORT*				
WATER				
Fixtures	All Shower Heads 3 star>6 but<=7.5L/(min)	All toilet flushing systems 4 star	All kitchen taps 6 star	All bathroom taps 6 star
Appliances:	Dishwashers - 4.5 star water rating			
ENERGY	Hot water system: Gas Instantaneous – 5.5 Stars Bathroom ventilation system: Individual fan, ducted to façade or roof manual switch on/off Kitchen ventilation system: Individual fan, ducted to façade or roof manual switch on/off Laundry ventilation system: Individual fan, ducted to façade or roof manual switch on/off Cooling system: air-conditioning 1 Phase – EER 2.5 – 3.0 – to living areas only Heating system: air-conditioning 1Phase – EER 2.5 – 3.0 – to living areas only Artificial lighting: As per BASIS Natural lighting: As per BASIS Appliances: Gas cooktop & electric oven Dishwashers: 3.5 star energy rating			
<u>REFER TO APPROVED BASIS</u>				
COMMON AREAS	<u>Refer to approved BASIS cert</u>			

DRAWING INDEX

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LEVEL 3 & 4 FLOOR PLANS	08
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ELEVATIONS	11
STREETSCAPE	12
SECTIONS	13
SHADOW DIAGRAMS	14

URBAN LINK
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Postal Address: PO BOX 2223 Burwood North NSW 2134
Phone Number: +61 29745 2014

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commissioned & in accordance with the terms of engagement for that commission.

DEVELOPMENT APPLICATION

project
83 - 85 RAILWAY ST,
ROCKDALE

client GROUP LIVING PTY LTD

drawing **COVER/ SITE ANALYSIS**

project 16-059

no 10 000

scale AS SHOWN@ A1

drawn	MP
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awing no

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WEST ELEVATION
1:100



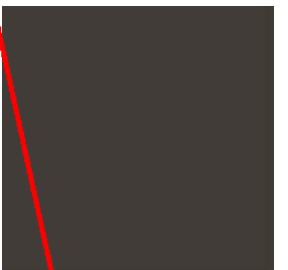



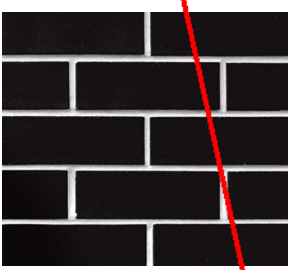
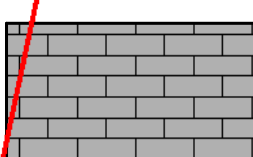

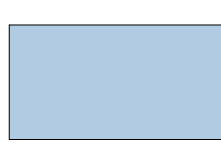

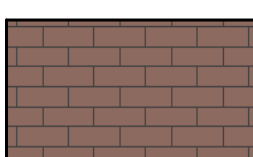

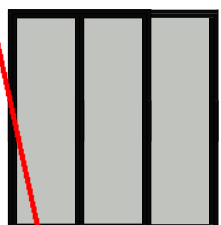

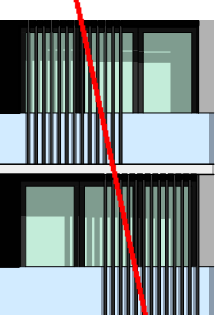
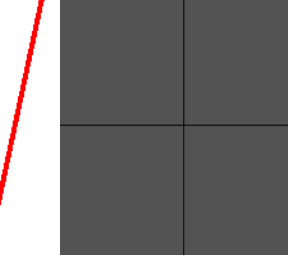

SOUTH ELEVATION
1:100

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Windows	Aluminium framed, single glazed clear – Sliding Windows / Doors	U value 6.70 or less and a SHGC of 0.70 +/- 5%

Materials and Colours to be updated in accordance with Condition 16(c).

COLOUR LEGEND

PER COLOUR SCHEDULE	PER ELEVATIONS
 A CONCRETE & PAINT FINISH DULUX - LEATHER BOOTS	
 B RENDER & PAINT FINISH DULUX SNOWY MOUNTAINS	
 C BRICK FINISH NOBEL / Academy	
 D BLACK FRAMED SEMI TRANSPARENT GLASS BALUSTRADE OR SIMILAR	
 E FINISHED STENCILLED CONCRETE OR SIMILAR	
 F ALUMINIUM FRAMED WINDOWS & DOORS STEGBAR CHARCOAL	
 G FIXED ALUMINIUM LOUVERS	
 H CONCRETE STENCILLED PAINT FINISHED DULUX - LEATHER BOOTS or similar (As shown in submitted Materials Samples Board)	

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Nominated Architects:
Ziad Boumelhem Reg no 8008
Youssef El Khawaja Reg no 8833
Nicolas Toubia Reg no 9338

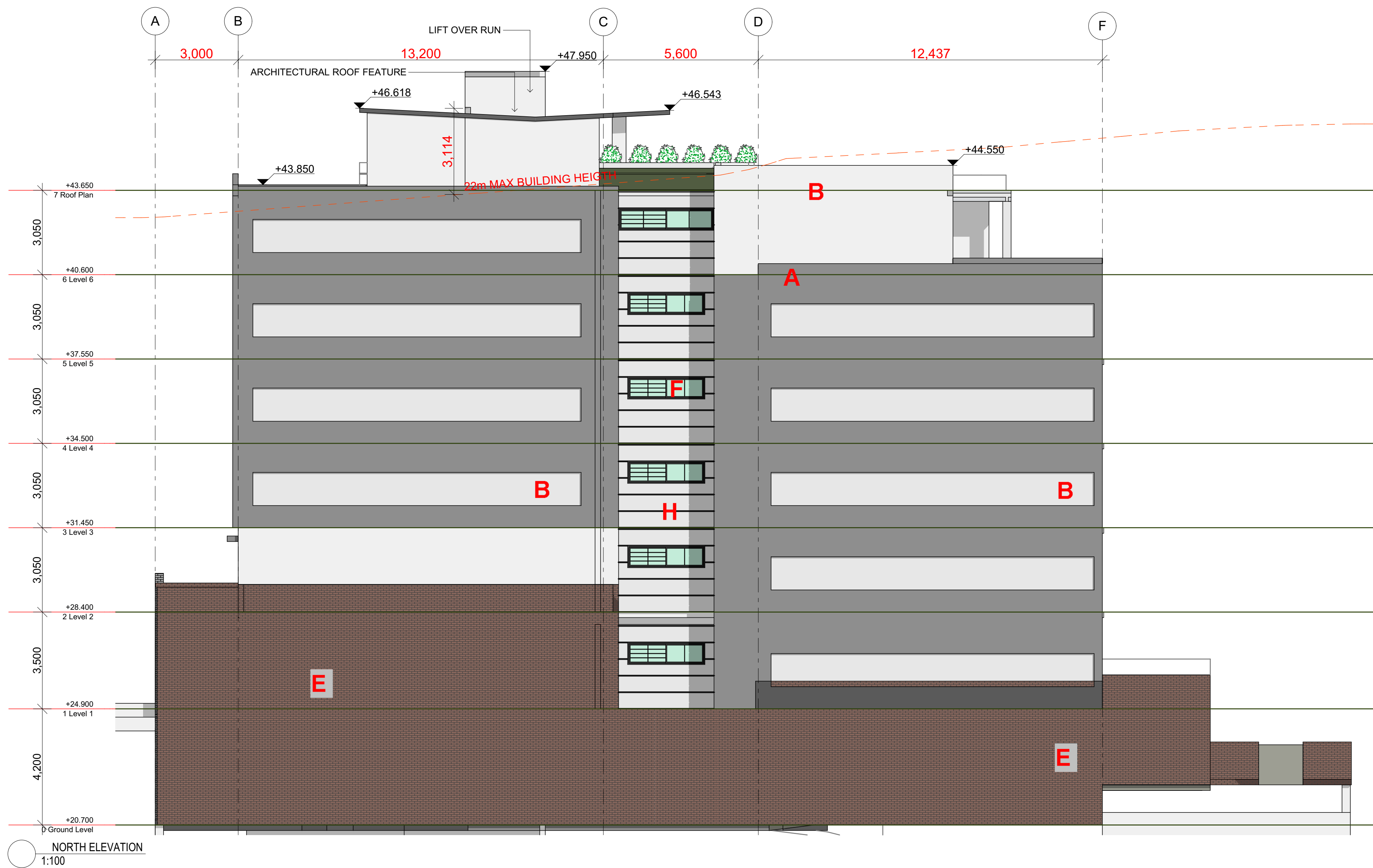
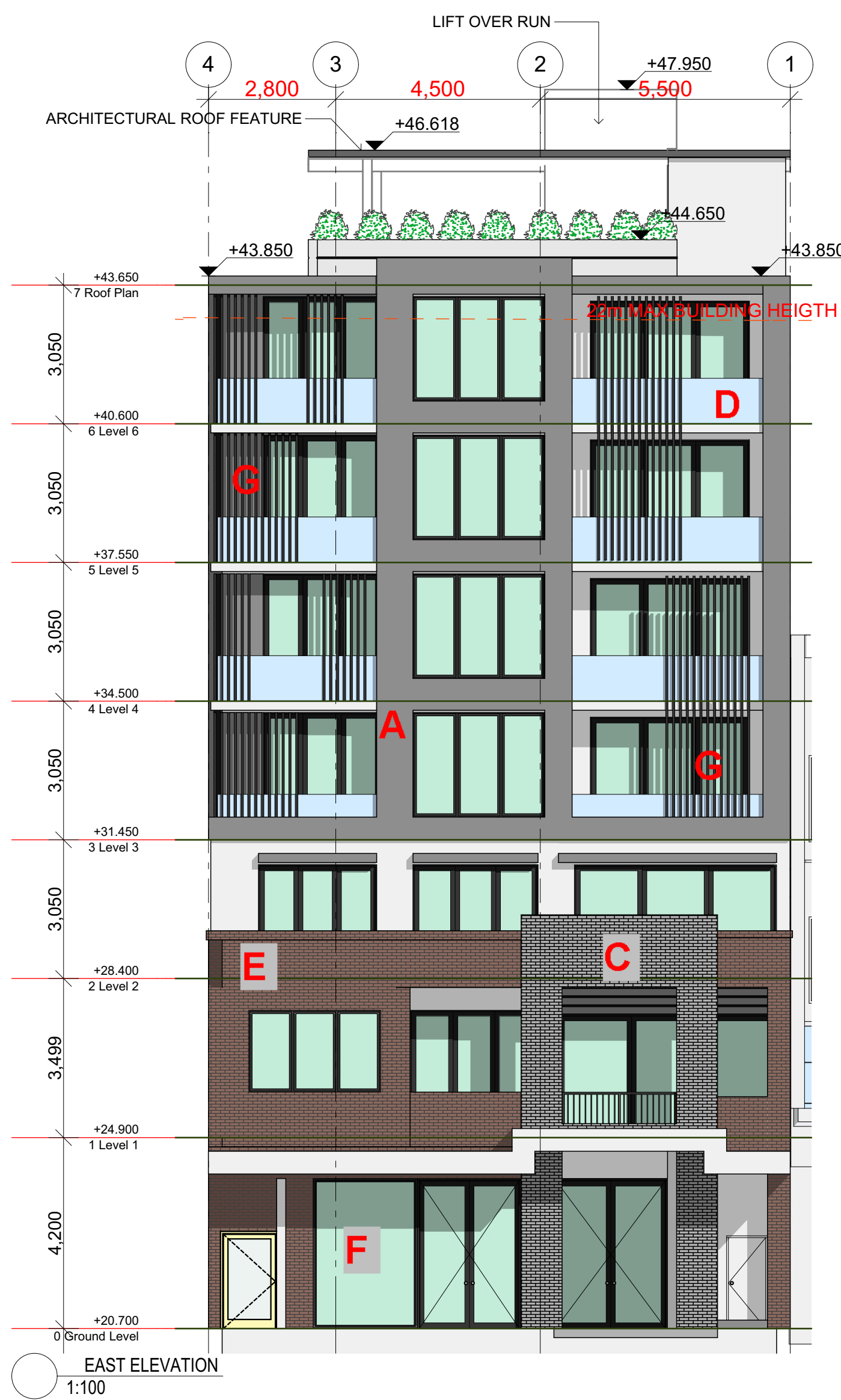
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 Phone Number: +61 29745 2014

DEVELOPMENT APPLICATION

project 83 - 85 RAILWAY ST, ROCKDALE	project no 16-059
client GROUP LIVING PTY LTD	scale AS SHOWN@ A1 date 08/11/17
drawing SOUTH & WEST ELEVATION	drawn MP checked JE
	drawing no 12 issue E



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Phone Number: +61 29745 2014

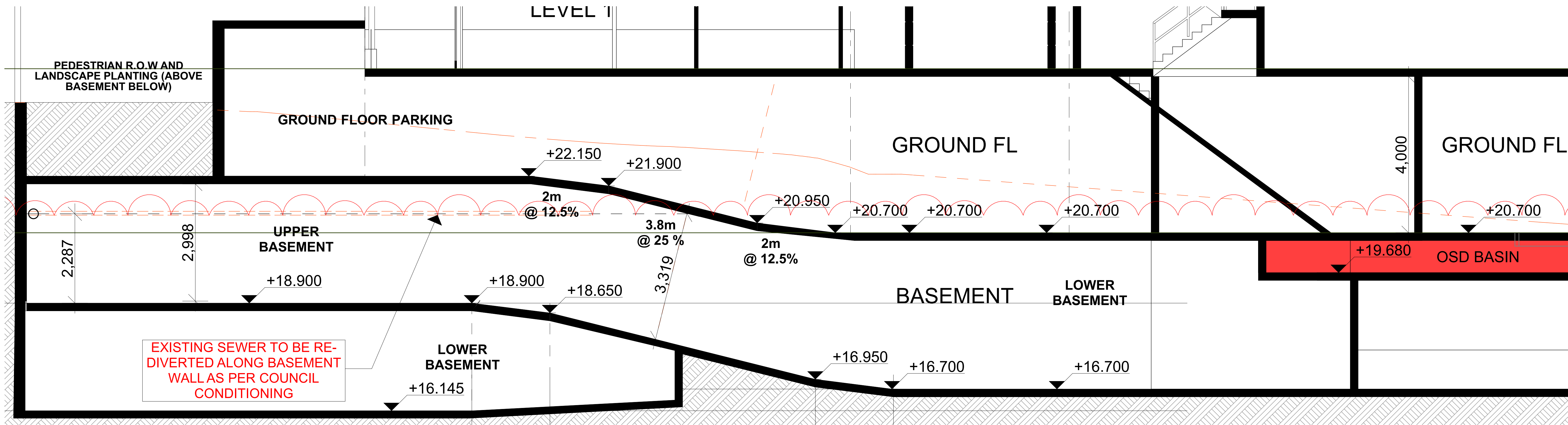
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DEVELOPMENT APPLICATION			
project	83 - 85 RAILWAY ST, ROCKDALE	project no	16-059
client	GROUP LIVING PTY LTD	scale	AS SHOWN@ A1
drawing	NORTH AND EAST ELEVATION	date	08/11/17
		drawn	MP
		checked	JE



drawing no
11
issue E

WALZ STREET



Issue	Amendment	Date
A	CLIENT REVIEW	20/05/16
B	CONSULTANT ENGAGEMENT	07/06/16
C	ISSUED FOR DA APPROVAL	23/06/16
D	REVISED DRAWINGS	28/07/17
E	REVISED DRAWINGS	08/11/17

Do not scale drawings. Verify all dimensions on site

A PLAN driveway section 1:25
1:50

Nominated Architects:
Ziad Bourmelhem Reg no 8008
Youssef El Khawaja Reg no 8833
Nicolas Toubia Reg no 9336

URBAN LINK
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DEVELOPMENT APPLICATION

project
83 - 85 RAILWAY ST,
ROCKDALE
client
GROUP LIVING PTY LTD

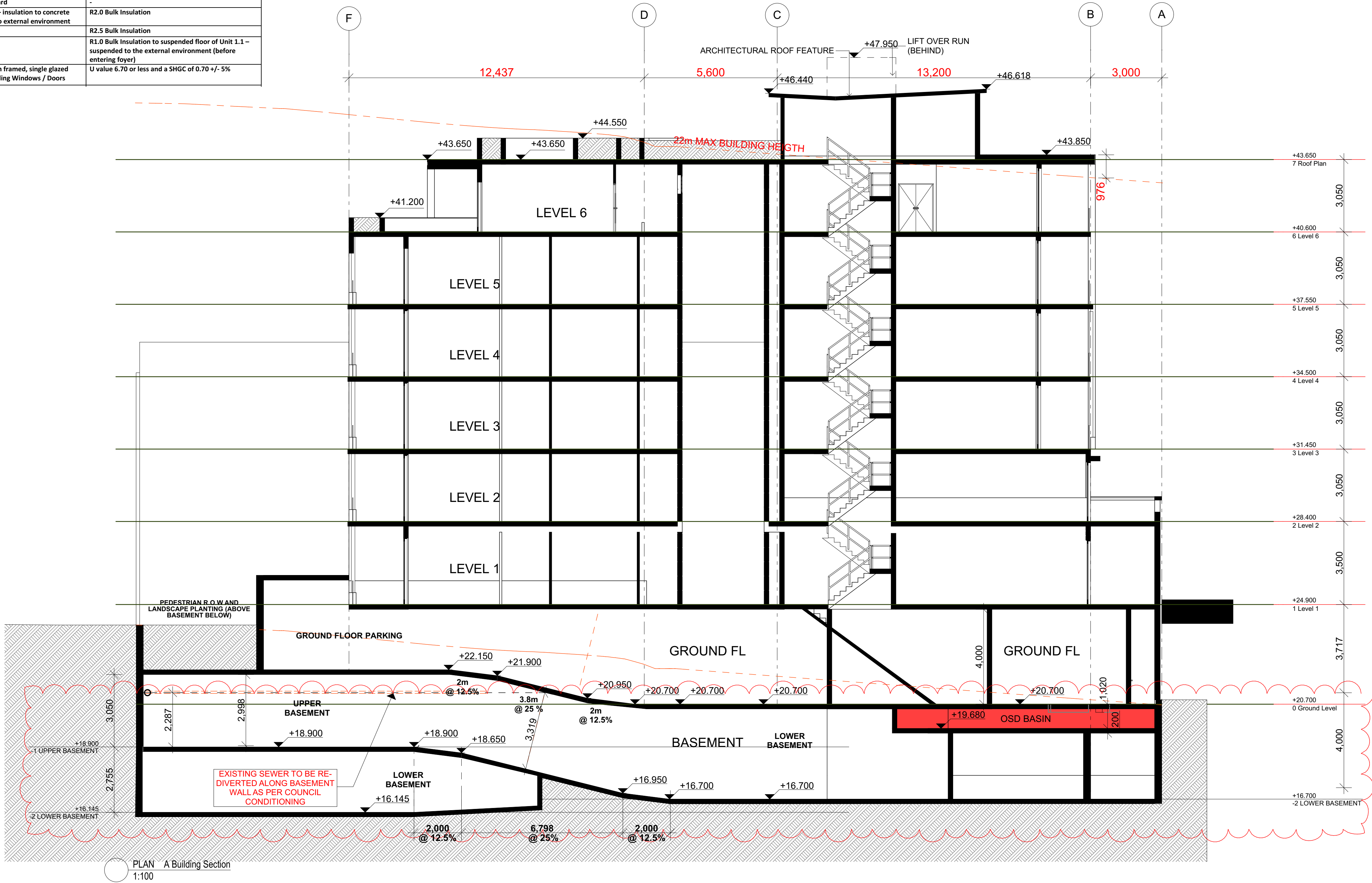
project no
16-059
scale AS SHOWN@ A1
date 08/11/17
drawn MP
checked JE
issue E



drawing no
13

NatHERS - THERMAL COMFORT SUMMARY

Building Elements	Material	Detail
External walls	• 162mm Concrete+ Furring Channel + Insulation + Plasterboard • Brick Veneer	R1.5 Bulk Insulation
Internal walls within units	Plasterboard on studs	-
Common walls between Units	Hebel + Furring Channel + Plasterboard	-
Common walls between Units & Lobby	Hebel + Furring Channel + Plasterboard	-
Common walls between Units & Fire Stairs/lift Shaft	162mm Concrete+ Furring Channel + Insulation + Plasterboard	R1.5 Bulk Insulation
Ceilings	Plasterboard	-
Roof – LS (units 5.2/5.3)	Concrete – insulation to concrete exposed to external environment	R2.0 Bulk Insulation
Top Floor Roof	Concrete	R2.5 Bulk Insulation
Floors	Concrete	R1.0 Bulk Insulation to suspended floor of Unit 1.1 – suspended to the external environment (before entering foyer)
Windows	Aluminium framed, single glazed clear – Sliding Windows / Doors	U value 6.70 or less and a SHGC of 0.70 +/- 5%



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DEVELOPMENT APPLICATION

project
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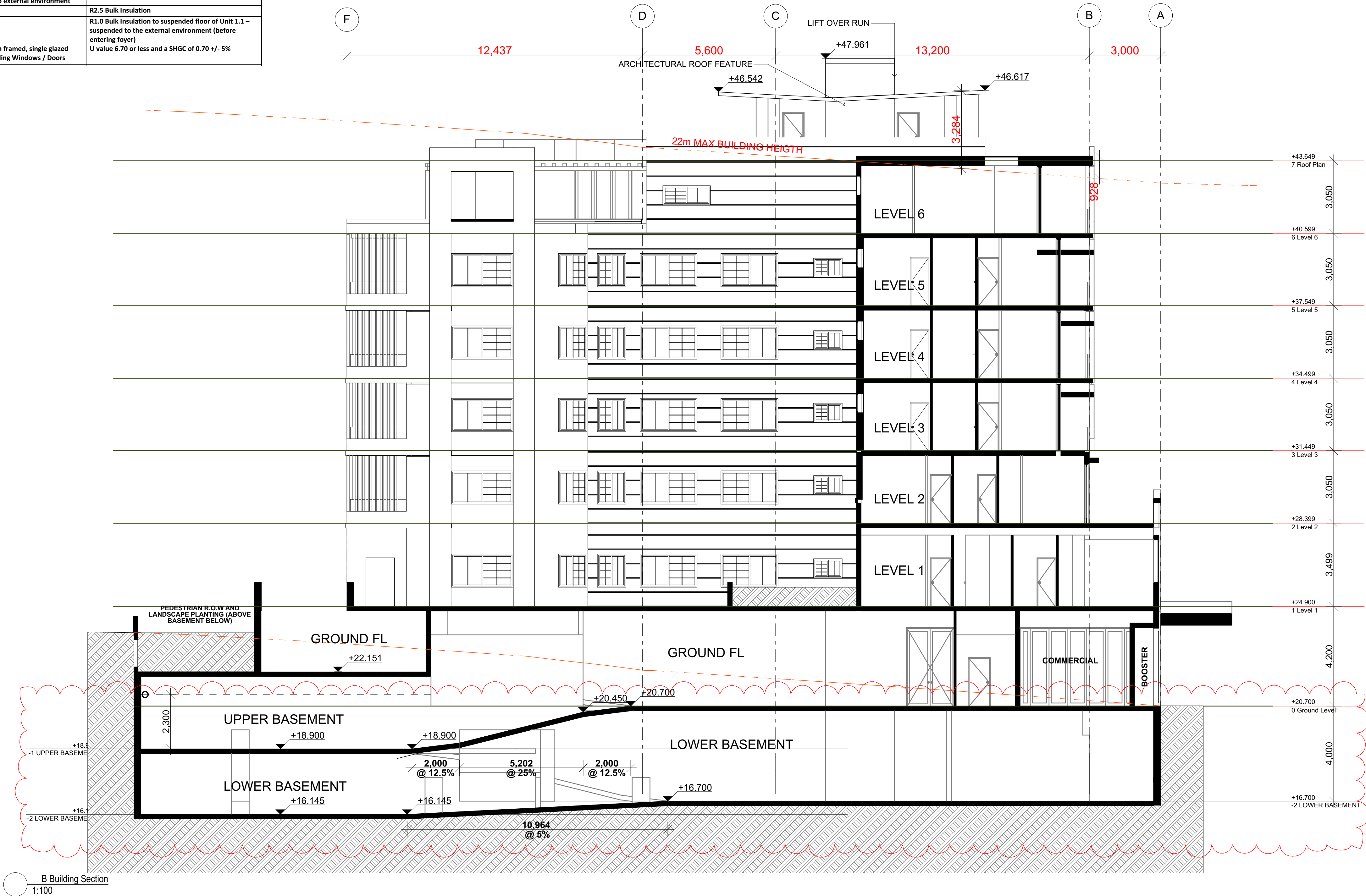


drawing no
14

issue E

NatHERS - THERMAL COMFORT SUMMARY

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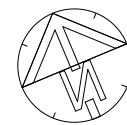
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15

issue E

Addendum –

Clause 4.6 Variation

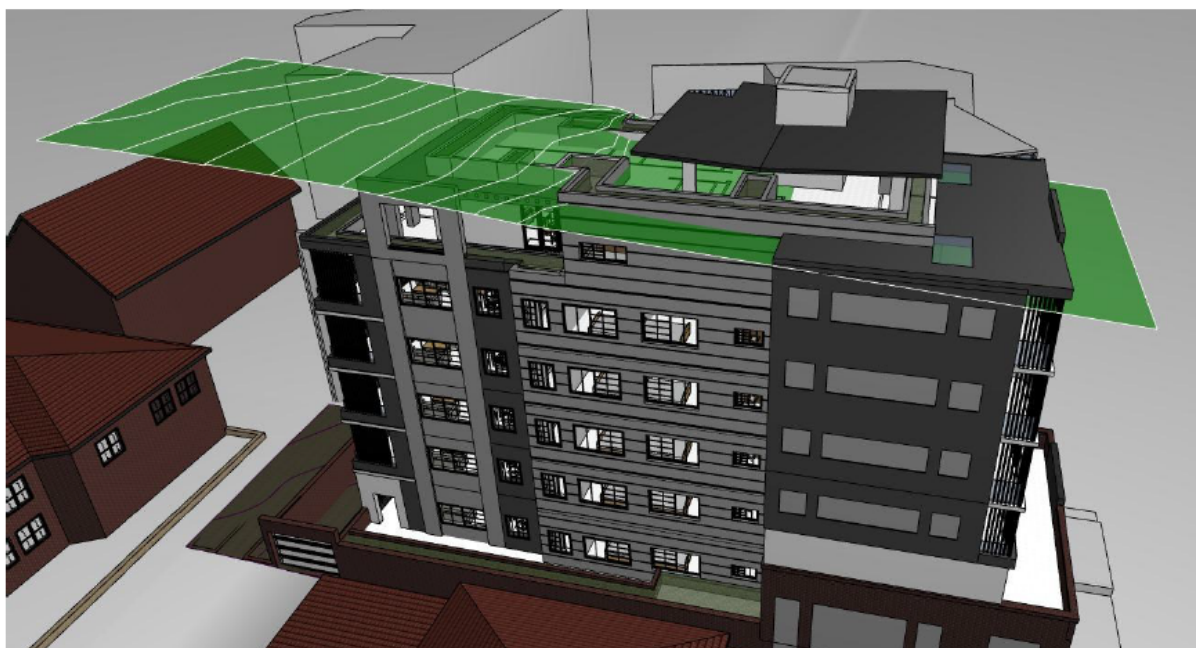
As is evident in the section extract below and the architectural plans submitted, the proposed development will comprise a 7 storey mixed use building that predominantly complies with the permitted maximum 22m building height.

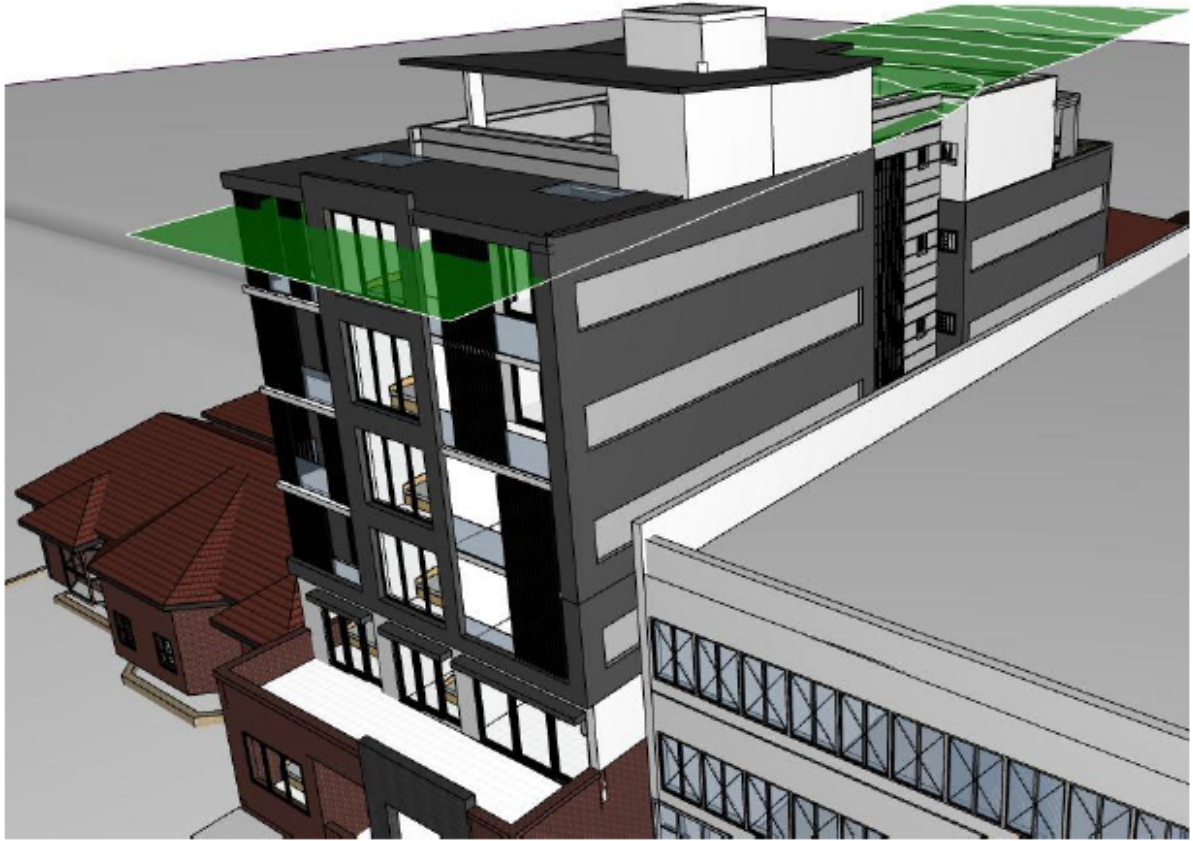
As shown on the sections below, the proposed development varies the height control to a portion of the upper level roof form, lift overrun and shade structures within the rooftop common open space.

This is a function of the topography of the site, architectural features of the proposed building, responding to the design of the building at the lower levels, additional amenity provided to the common open space area with a small scale pergola structure, and to ensure that the proposal integrates with the development proposed on the adjoining site. The proposal presents the following departures to the height controls:

- The height, relative to habitable floor areas, equates to 22.949m or 4% variation.
- The height, relative to the top of the lift over-run, fire stair and roof area provided for the rooftop common open space equates to 27.249m or 23.8% variation.

Two 3D height plans are provided below and a section drawing to demonstrate the nature of the departure and the portion of the building height control that is exceeded.





The location of the building height departure will ensure that they are not viewable from the street level from Railway Street and the recessed nature of the upper level means it will not be visually dominant.

It is relevant to note that the exceedance of the height control does not relate to habitable floor space, rather is to serve to provide additional amenities to the residents.

Clause 4.6 of the Rockdale LEP 2011 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular sub clause 3-5 which provide:

- 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*

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 Secretary has been obtained.*
- 5) *In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.*

Each of these provisions are addressed in turn.

This Clause 4.6 variation request has been prepared cognisant of, and addressing a number of recent Land and Environment Court cases including *Four 2 Five v Ashfield* and *Micaul Holdings Pty Ltd v Randwick City Council* and *Moskovich v Waverley Council*.

The key tests or requirements arising from the above judgements is that:

- The consent authority be satisfied the proposed development will be in the public interest because it is “consistent with” the objectives of the development standard and zone is not a requirement to “achieve” those objectives. It is a requirement that the development be compatible with the objectives, rather than having to ‘achieve’ the objectives.
- Establishing that ‘compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe “test” 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in *Wehbe v Pittwater*.
- When pursuing a clause 4.6 variation request it is appropriate to demonstrate how the proposal achieves a better outcome than a complying scheme; and
- The proposal is required to be in ‘the public interest’.

In relation to the current proposal the keys are:

- Demonstrating that the development remains consistent with the objectives of the building height standard;
- Demonstrating consistency with the zoning; and
- Satisfying the relevant provisions of Clause 4.6.

These matters are addressed below.

Clause 4.6(3)

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved.

The objectives of the building height development standard are stated as:

The objectives of this clause are as follows:

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

The current development proposal seeks to depart from the height control for small portions of the upper storey of the building and the top of lift core and rooftop common area. Despite this, the proposal remains consistent with the objectives of the clause and is a better outcome on the site (as per Four 2 Five v Ashfield) because:

- This upper level of the building is recessed in so that the top of the building will be less visually prominent when viewed from the street level and the height protrusion will not be visible from the adjoining properties which aligns with the intent of the planning controls contained within Rockdale LEP 2011.
- The additional height facilitates the delivery of the rooftop common area that facilitates the provision of a quality common open space that is partly covered to enable year round use and also enables compliance with the required solar access at mid-winter that would not be achievable in the absence of the rooftop common area. As such the variation is not an attempt to secure additional habitable and sellable floor space, but rather to provide a better outcome for residents through the provision of accessible open space.
- The portion of the building that exceeds the height control is not intended to gain additional floor space as the application demonstrates as all habitable floor space is contained below the maximum building height control.
- It is also noted that the proposal will not obstruct existing view corridors as compared to a compliant built form.

- The proposal presents a high quality urban form and provides suitable daylight access to surrounding properties.
- The building height, is well below the maximum to better transition to the adjoining site to the south.
- The building height is not inconsistent with adjoining development and provides an appropriate built form transition to the site to the east noting that the adjoining site will contain a building with a height limit above 22m, in the vicinity of 28m in height. The encroachment over the 22m will not result in a built form anomaly, nor an undesirable precedent, as the encroachment will be indistinguishable in the streetscape as it will be read as a transition to the higher building to the east of the site.
- The building has been designed to provide a podium effect at the lower level, where it adjoins Railway Parade and above level two the building is setback from the streetscape. The consequence of this positive architectural element is that the reduced footprint at the lower levels places pressure on the ability to achieve the floor space within the envelope and has led to the slight increase in the building height. The design approach is the better urban form for the building on the site, and warrants the minor height encroachment.
- The floor to floor heights of the proposal are an appropriate 3050mm (ground floor is 4020mm) that contribute to better amenity within apartments and any reduction in height by reducing the floor to floor heights will create unnecessary amenity impacts on the apartments.

The non-compliance to the height control has no unacceptable impact on the setting of any items of environmental heritage or view corridors.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the minor departure from the control.

Clause 4.6(4)

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3). As addressed the proposed development is in the public interest as it remains consistent with the objectives of the building height control. In addition, the proposal is consistent with the objectives of the zone as addressed previously in this statement.

It is understood that the concurrence of the Secretary can be assumed in the current circumstances.

Clause 4.6(5)

As addressed it is understood the concurrence of the Secretary may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the building height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the building height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality based on the observed building forms in the locality.

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

Land and Environment Court Case Law

The Land and Environment Court, through case law, provides guidelines for the consideration of Clause 4.6 departures.

Two cases that it is appropriate to discuss are:

- Wehbe v Pittwater Council (2007) NSWLEC 872; and
- Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 2009.

Wehbe v Pittwater Council Wehbe v Pittwater related to a SEPP 1 objection and outlines that there are 5 methods to establish that the application of a development standard is unreasonable or unnecessary in the circumstances of the case.

1. The development achieves the objectives of the development standard;
2. The underlying objective or purpose of the development standard is not relevant to the development with the consequence that compliance is unnecessary;

3. The underlying objective or purpose of the development standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
5. The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.

The case law indicates that if any of these methods are satisfied then the departure to the standard can be supported. In respect of this site, it is considered that the proposal satisfies method 1 for the reasons outlined above.


Four2Five Pty Ltd v Ashfield Council

Four2Five Pty Ltd v Ashfield Council relates to a consideration of a clause 4.6 departure to a Building height development standard. The court indicated that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6, (and 4.6(3)(a) in particular). The previous discussion clearly confirms that the objectives of the development standard are achieved.

Further, the requirement in cl4.6(3)(b) to justify that there are sufficient environmental planning grounds for the variation, may well require identification of grounds particular to the circumstances of the proposed development. As opposed merely to grounds that would apply to any similar development on the site or in the vicinity.

There are particular circumstances associated with this site and the building height departure. The variation to the building height is on the rooftop where there is common open space. The architect aims to create a variety of interesting gathering spaces on the rooftop garden and this has resulted in an area with a small pergola. This will ensure the space is shaded during the summer months and offers the residents with a high level of amenity. There is also a portion of the fire stairs that protrudes into the building height plane, however, this is to ensure accessible lift access to all levels within the building and does not add to the bulk and scale of the development. Higher amenity for the rooftop common open space is delivering a better environmental planning outcome.

There are also circumstances that relate to the topographical fall of the site and the relationship to the levels in Railway Street. This fall means that to achieve strict compliance results in the floor levels to be further stepped and cut into the site which results in a poor outcome for the ground floor units and it would result in a suboptimal outcome as compared to the current situation which results in the minor technical non-compliance to the building height control. Strict compliance is clearly not a preferred outcome on environmental planning grounds there are specific grounds to warrant departure to the height control that satisfy the test in Four2Five V Ashfield.



Therefore, the current proposal is a preferable outcome from an environmental planning perspective and demonstrates that there is merit in varying the height control to achieve a better design response on the site. Therefore, the departure to the height control satisfies the test set down under Four 2 Five V Ashfield.

Conclusion

Strict compliance with the prescriptive building height control is unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality, and is consistent with the future character envisioned, while supporting the role of Rockdale as a centre. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the proposed variation.