

## Bayside Planning Panel

**24/04/2018**

Item No	6.5
Application Type	Development Application
Application Number	DA-2016/86/C
Lodgement Date	12 January 2018
Property	<b>15-17 Gertrude Street, Wolli Creek</b>
Owner	MGC Wealth Pty Ltd
Applicant	MGC Wealth Pty Ltd
Proposal	Section 96(2) Application - Modifications comprising the reconfiguration of level 8 to create a dual key apartment and alterations to rooftop communal open space area.
No. of Submissions	Three (3)
Cost of Development	\$30,000.00
Report by	Fiona Prodromou – Senior Assessment Planner

## Officer Recommendation

- 1 That the Bayside Planning Panel support the variation to the FSR development standard, as contained in Clause 4.4 – FSR of Rockdale LEP 2011.
- 2 That Development Application No 2016/86/C, being a Section 4.55(2) application to amend Development Consent Number 2016/86, for modifications comprising the reconfiguration of level 8 to create a dual key apartment and alterations to rooftop communal open space area at 15-17 Gertrude Street Wolli Creek be APPROVED and the consent amended in the following manner:
  - A. By amending conditions as follows:
  2. *The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.*

Plan / Dwg No.	Drawn by	Dated	Received by Council
Site Plan Rev P	Pagano Architects Pty Ltd	07/04/2018	12/04/2018
Basement & Ground Level Plan Rev R	Pagano Architects Pty Ltd	21/07/2016	21/07/2016
Floor Levels 1/2/3/6/7 Rev O	Pagano Architects Pty Ltd	15/06/2016	22/06/2016
Floor Levels 4/5 Rev R	Pagano Architects Pty Ltd	15/06/2016	22/06/2016
Floor Level 8 Rev Y	Pagano Architects Pty Ltd	12/04/2018	12/04/2018
Elevations, Roof Terrace Detail, Letter Box Details Rev S	Pagano Architects Pty Ltd	07/04/2018	12/04/2018
Roof Plan, Sections, Window Schedule Rev S	Pagano Architects Pty Ltd	07/04/2018	12/04/2018
Materials and Finishes Rev E	Pagano Architects Pty Ltd	26/04/2016	16/06/2016

*[Amendment A-S96(1A) amended on 4 August 2016]  
[Amendment B-S96(1) amended on 20 December 2016]  
[Amendment C-S96(2) amended on 24 April 2018]*

5. *The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 649218M\_04 other than superseded by any further amended consent and BASIX certificate.  
Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -  
•(a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.  
Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."  
Note: For further information please see <http://www.basix.nsw.gov.au>.  
(Amendment A-S96(1A) amended on 4 August 2016)  
(Amendment C-S96(2) amended on 24 April 2018)*
31. *The following recommendations of the Wind Report prepared by ANA Civil Pty Ltd dated 16 February 2018 are to be implemented on site.*
- Balcony/terrace balustrades – preferably of masonry/concrete construction with no openings.*
  - Pergolas, canopies and awnings over open areas*
  - Landscaping such as dense shrubs and trees.*
  - Canopy or pergola on the roof terrace.*
- Details to be approved by the PCA prior to the issue of the Construction Certificate.*

*[Amendment C - S96(2) amended on 24 April 2018]*

- B. By inserting the following additional condition:

*2A. For the purposes of strata subdivision of the development, Unit 21 at level 8, shall remain as 1 strata lot.*

*[Amendment C - S96(2) inserted on 24 April 2018]*

*Reason for additional condition 2A is:*

*- To ensure diversity of housing within the development.*

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



Fig 1 – Location Plan

# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2016/86/C
<b>Date of Receipt:</b>	12 January 2018
<b>Property:</b>	15 - 17 Gertrude Street, WOLLI CREEK
<b>Owner:</b>	MGC Wealth Pty Ltd
<b>Applicant:</b>	MGC Wealth Pty Ltd
<b>Proposal:</b>	Section 96(2) Application - Modifications comprising the reconfiguration of level 8 to create a dual key apartment and alterations to rooftop communal open space area.
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	Three (3)
<b>Author:</b>	Fiona Prodromou
<b>Date of Report:</b>	12 April 2018

### Key Issues

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A maximum 2.2:1 FSR applies to the subject site. Given a site area of 834.6sq/m, this equates to a maximum permissible gross floor area of 1836.12sq/m. The proposal as modified seeks to reconfigure the top floor of the development, resulting in a slight variation to the gross floor area and FSR proposed on site. A total gross floor area of 1842.5sq/m and FSR of 2.207:1 is proposed as part of this application. This equates to 6.4sq/m of surplus gross floor area, being a 0.34% variation to the standard.

Three (3) submissions were received in relation to the proposal as modified. The issues raised have been addressed in this report.

### Recommendation

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1. That the Bayside Planning Panel support the variation to the FSR development standard, as contained in Clause 4.4 – FSR of Rockdale LEP 2011.
2. That Development Application No 2016/86/C, being a Section 4.55(2) application to amend Development Consent Number 2016/86, for modifications comprising the reconfiguration of level 8 to create a dual key apartment and alterations to rooftop communal open space area at 15-17 Gertrude Street Wolli Creek be APPROVED and the consent amended in the following manner:

A. By amending conditions as follows:

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

<b>Plan / Dwg No.</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
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<i>Basement &amp; Ground Level Plan Rev R</i>	<i>Pagano Architects Pty Ltd</i>	<i>21/07/2016</i>	<i>21/07/2016</i>
<i>Floor Levels 1/2/3/6/7 Rev O</i>	<i>Pagano Architects Pty Ltd</i>	<i>15/06/2016</i>	<i>22/06/2016</i>
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<i>Materials and Finishes Rev E</i>	<i>Pagano Architects Pty Ltd</i>	<i>26/04/2016</i>	<i>16/06/2016</i>

[Amendment A-S96(1A) amended on 4 August 2016]

[Amendment B-S96(1) amended on 20 December 2016]

[Amendment C-S96(2) amended on 24 April 2018]

5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 649218M\_04 other than superseded by any further amended consent and BASIX certificate.

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

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

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(Amendment A-S96(1A) amended on 4 August 2016)

(Amendment C-S96(2) amended on 24 April 2018)

31. The following recommendations of the Wind Report prepared by ANA Civil Pty Ltd dated 16 February 2018 are to be implemented on site.

- Balcony/terrace balustrades – preferably of masonry/concrete construction with no openings.
- Pergolas, canopies and awnings over open areas
- Landscaping such as dense shrubs and trees.
- Canopy or pergola on the roof terrace.

Details to be approved by the PCA prior to the issue of the Construction Certificate.

*[Amendment C - S96(2) amended on 24 April 2018]*

*B. By inserting the following additional condition:*

*2A. For the purposes of strata subdivision of the development, Unit 21 at level 8, shall remain as 1 strata lot.*

*[Amendment C - S96(2) inserted on 24 April 2018]*

*Reason for additional condition 2A is:*

*- To ensure diversity of housing within the development.*

3. That objectors are advised of the Bayside Planning Panel's decision.

## Background

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### History

DA-2016/86 Approved 20 April 2016

Construction of nine (9) storey residential flat building development, comprising of 21 residential units, basement parking and demolition of existing structures.

Deferred commencement satisfied on 22 June 2016.

DA-2016/86/A Approved 4 August 2016

Modifications to internal layout to Units 1 to 21 and reallocation of car parking spaces

DA-2016/86/B Approved 20 December 2016

Modifications to condition 2

DA-2016/86/C Submitted to Council 12 January 2018

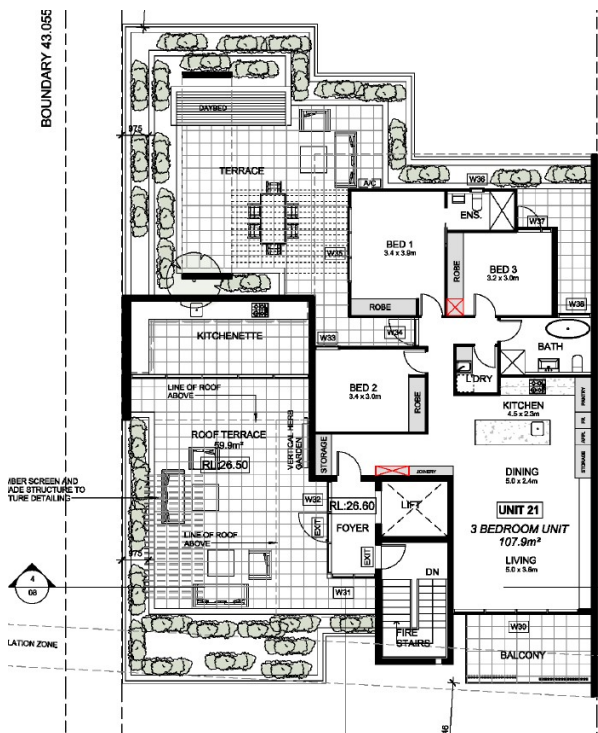
Modifications to delete roof terrace communal space, reconfiguration of three(3) bedroom unit and foyer area at Level 8 and addition of one(1) bedroom unit to create a total of 22 units

### Proposal

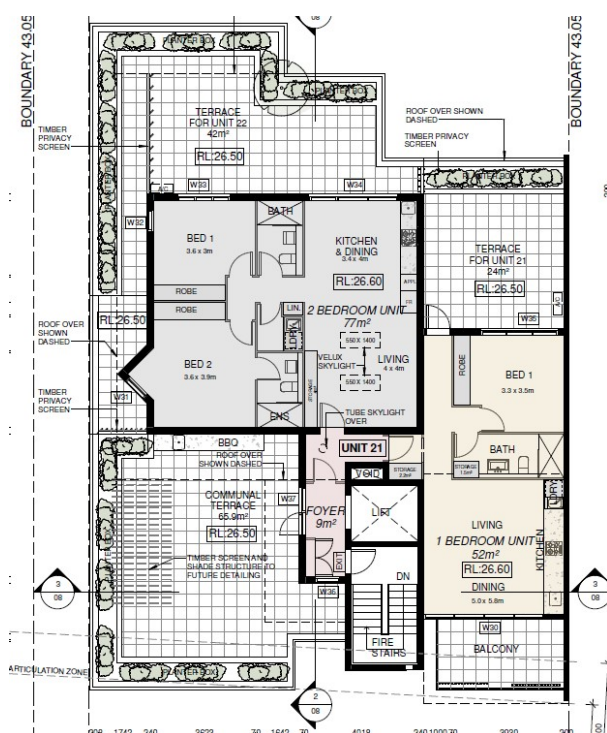
The proposal as modified seeks to alter the layout of previously approved level 8 as follows:

a) Reconfiguration to level 8 communal open space area, including a reduction in width of planter box area along the northern edge to increase useable communal areas from 59.9sq/m to 65.9sq/m.

b) Alteration to level 8 building footprint and creation of 1 x dual key apartment in lieu of previously approved 3 bedroom unit. The dual key apartment is accessed via a single foyer and can be utilised as 1 x 2 bed & 1 x 1 bed dwelling. Associated balcony spaces are provided to this dwelling, along with velux roof windows maximising solar access.



As Approved



As Proposed

## Site location and context

The subject site is a rectangular allotment with a frontage of 19.205 metres to Gertrude Street, a length of 43.055 metres and total site area of 834.6sq/m. The subject site comprises no significant vegetation only two small avocado trees, one to the front the other to the rear of the site. The site is affected by a slight slope for south to north (1.54RL at the rear to 1.29RL at front boundary). The site also slopes west to east, from 1.61RL to 1.36RL. Along the rear boundary of the site an open box drainage reserve spans the width of the site, this is 1.22m in width. A power pole is positioned at the Gertrude Street frontage of the site.

The subject site is affected by:

- Flooding
- Potential Contamination
- Class 3 Acid Sulfate Soils
- Obstacle Limitation Surface & 15.24m Building Height Civil Aviation Regulations
- 2m wide reservation (depth of site) to Roberts Lane

## Statutory Considerations

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

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

### **S4.55 (2) - Modification**

#### 1.2. S96(2) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

S96(2) states:



A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to an in accordance with the regulations, modify the consent if:

*a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comments: The proposed modifications alter the top floor of the development, reconfiguring the layout and providing an additional residential dwelling. The proposal however remains as a residential flat building development. As such it is considered substantially the same development.

*b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

Comments: The proposal as modified was referred to the NSW Department of Primary Industries for review, given the original development required dewatering of the site. It is noted that the basement or level of excavation on site was not altered by the proposal as modified. No response was received at the time of finalising this report. The proposal is satisfactory in this regard.

*c) it has notified the application in accordance with:*

*(i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and*

Comments: The application has been notified in accordance with the provisions of Council's DCP 2011.

*d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comments: Three submissions were received in relation to the proposed development. Issues raised in submissions have been addressed further in this report.

## S96(3) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

S96(3) of the Environmental Planning and Assessment Act 1979 states:

*In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.*

An assessment of the application has been carried out under the provisions of Section 79(C) of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered. The following is an assessment of the proposed development under the provisions of



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

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

The following Environmental Planning Instruments are relevant to this application:

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

The applicant has submitted a revised BASIX Certificate for the proposal as modified. The Certificate number is 649218M\_04. The commitments made result in reductions in energy and water consumption within the development. Condition 4 is to be modified to reflect the revised BASIX certificate and ensure that these requirements are adhered to.

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

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

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

The proposal was not referred to the Design Review Panel given the minor nature of proposed modifications. Notwithstanding, an assessment of the proposal against SEPP 65 was undertaken below.

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

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

#### Principle 1 – Context and Neighbourhood Character

The proposal as modified has been designed to fit comfortably within the approved and emerging streetscape and is consistent with the nature of approvals contextually surrounding the site. The immediately surrounding area is undergoing change from a relatively low density industrial area to a high density residential area to take advantage of the proximity to Wolli Creek railway station. The proposal as modified relates satisfactorily to the desired future character of the area. The proposed modifications are therefore appropriate in this regard.

#### Principle 2 – Built Form and Scale

The bulk, massing and scale of the proposal as modified fits appropriately with existing developments nearby, those approved and under construction further to the east and west of the property. Proposed modifications are minor in overall form, consistent with the scale of existing and emerging contextual development and are generally consistent with the desired future character of the area. The proposal as modified is satisfactory in regards to this principle.

#### Principle 3 – Density

Whilst it is acknowledged that the proposal as modified comprises a variation to the FSR requirement for the site, this is relatively minor, and does not result in adverse amenity impacts on site, nor to neighbouring properties. The proposal as modified is satisfactory in this regard.

#### Principle 4 - Sustainability

The proposal as modified does not alter previously approved sustainability measures on site, including those BASIX requirements.

The reconfigured top floor has been designed to ensure that optimal solar access and cross ventilation is provided to residential units. Further more, generous and sufficient landscaped communal areas are provided on site. The proposal as modified is satisfactory in this regard.

#### Principle 5 – Landscape

The proposal as modified retains all previously approved deep soil landscaped areas on site. It is noted that as approved and sought to be retained by the proposal as modified, the development provides a total of 19.8% (165.6sq/m) of the site as a deep soil zone. This greatly exceeds the 7% required by the Apartment Design Guide. The proposal as modified remains satisfactory in this regard.

#### Principle 6 – Amenity

The proposal as modified provides for appropriate solar access, cross ventilation and outlook. Units, habitable rooms and balconies are of adequate size and dimensions and appropriate storage is provided within dwellings. Two communal open space areas are provided on site, at podium and rooftop levels, with varied outdoor spaces which will encourage social interaction between future occupants. The proposal as modified will retain a satisfactory level of amenity to future residents.

#### Principle 7 - Safety

The development as approved provides a prominent and clearly identifiable building entry to Gertrude Street which comprises direct pedestrian access, a generous lobby and provide a high level of visibility to the street. Residential apartments, communal open space & car parking areas will be accessible via a secure electronic system. Common areas are proposed to be appropriately lit with clearly defined pathways. The proposal as modified is satisfactory in regards to the requirements of this principle.

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

The design of the proposal as modified provides for varied housing choice for a variety of household types. The reconfiguration of the top is designed to provide two appropriate communal facilities at podium and rooftop level with various spaces including bbq and kitchenette facilities, which will encourage and provide opportunities for social interaction between future occupants. The DRP was supportive of the proposal in regards to this principle.

#### Principle 9 – Aesthetics

The proposal as modified does not seek to alter the previously approved palette of colours and materials on site. As approved the development provides visual interest when viewed from the public domain. Materials and finishes as approved include but are not limited to off form and rendered

concrete, face brick, blue stone pavers, aluminium framed glazing, timber privacy screening, aluminium louvres, recessed wall lighting and landscaped planter boxes. These materials provide a modern, contemporary, high quality and visually appealing development on site.

At ground level, mass planting is provided forward of the building line and wraps the corner to Robert Lane, providing a visually appealing and pleasant front yard to the site which softens the base of the development and provides amenity and visual interest. Planting includes ground covers as well as shrubs and trees capable of growing to a mature height of 8m.

The DRP was supportive of the proposal and it is considered that the proposed development satisfies this principle.

### *c. the Apartment Design Guide*

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

CLAUSe	DESIGN CRITERIA			COMMENTS	COMPLIES
3D - Communal Open Space	25% (208.6sq/m) site area 50% direct sunlight to principal useable part of COS for 2 hours in midwinter			218.4sq/m combined COS <i>Partial.</i> <i>See discussion below.</i>	Yes <b>Partial</b>
3E - Deep Soil Zones	<b>Site area</b>	<b>Min. dimensions</b>	<b>Deep soil zone (% site area)</b>	19.8% (165.6sq/m) deep soil zones provided on site.	Yes
	650-1500sq/m	3m	10% (83.4sq/m)		
3J - Bicycle and car parking	As per Guide to Traffic Generating Developments, Parking provided off street. 24 spaces required.			24 spaces provided	Yes
4D – Apartment size and layout	<b>Apartment type</b>		<b>Min internal area</b>	Dual Key 3 bed unit - 129sq/m. Unit can also function as a 2 bed and 1 bed unit. As individual dwellings min. unit sizes are also satisfied. i.e. 2 bed - 77sq/m & 1 bed - 52sq/m	Yes
	1 bed		50sq/m		
	2 bed		70sq/m		
	3 bed		90sq/m		
4C – Ceiling heights	Minimum ceiling heights:			2.8m floor to ceiling heights provided	Yes
	Habitable	2.7m			
	Non-habitable	2.4m			

3F Visual Privacy	Building height	Habitable rooms and balconies	Non habitable rooms	See discussion below.	Yes
	Up to 25m (5-8 Storeys)	9m	4.5m		
4A – Solar and daylight access	Living rooms + POS of at least 70% (?) of units receive min 2hrs direct sunlight b/w 9am & 3 pm mid-winter Max 15% (4) apartments receive no direct sunlight b/w 9am & 3pm mid-winter			66.6% (14 of 21 units)  33% (7 of 21)	<b>No</b> - See disc below.  <b>No</b> - see disc below.
4F – Common circulation and spaces	Max apartments off a circulation core on a single level is eight.			Maximum 3 apartments off single core	Yes
4E – Private open space and balconies	Dwelling type	Minimum area	Minimum depth	Appropriate POS areas proposed to be provided.	Yes
	1 bed	8m²	2m		
	3+ bed	12m²	2.4m		
4B – Natural ventilation	Min 60% (13 of 21) of apartments are naturally cross ventilated in the first nine storeys of the building. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.			All units are cross ventilated  17.9m building depth	Yes  Yes
	4G – Storage			Appropriate storage provided within residential dwellings.	Yes
Dwelling type		Storage size volume			
1 bed		6M²			
2 bed		8m²			
3 bed		10m²			

### 3D - Communal Open Space

The proposal comprises a total of 218.4sq/m communal open space provided in the form of two separate areas. i.e. Podium 152.5sq/m / Rooftop 65.9sq/m. Communal open space areas on site are well designed, provided with facilities, seating, equitable access and varied spaces for interaction and leisure.

Solar access to the podium communal open space is restricted, given its orientation to the south behind the proposed development. Solar access in midwinter is achieved to a portion of the podium COS from 12pm with the majority of the podium COS being in sun at 3pm in midwinter. Notwithstanding, the proposed rooftop communal area receives in excess of 2 hours solar access in midwinter given its location. The communal open space areas proposed will provide for appropriate on site amenity for future occupants and the proposed development is considered to satisfy the objectives of Part 3D Communal and Public Open Space of the Apartment Design Guide.

### 3F - Visual Privacy

The proposal provides a 12.59m building separation from level 8 between habitable rooms / balconies proposed on site and habitable rooms / balconies of 23 Gertrude Street to the east of the site.

The rear terrace adjoining bedroom 1 and the kitchen / dining area of the dual key apartment is provided with a 1.8m high fixed timber slat privacy screen along the eastern side, to limit sightlines and maximise privacy between neighbouring buildings.

Additionally, the window proposed to bedroom two is provided at an angle, ensuring adequate solar access to this bedroom, yet restricting visibility of neighbouring habitable windows / balconies. The proposal in this regard satisfies the objectives of 3F and is appropriate in this regard.

### 4A - Solar and Daylight Access

As noted above, the proposed development does not achieve a minimum of 2 hours of solar access in midwinter to 70% (15 of 21) of residential units within the development. As originally approved, 66% (14 of 21) residential units achieved 2 hours of solar access in midwinter. A minor variation was supported given the constraints of the site & design of the development.

The proposal as modified does not alter the aforementioned figures. Notwithstanding, the proposal as modified incorporates Velux sky lights to the top floor unit, a design feature not incorporated in the original approval, which will increase the level of solar access to the top floor unit and thus increases future residential amenity.

The ADG further requires that a maximum of 15% (4 of 21) apartments receive no direct sunlight b/w 9am & 3pm mid-winter. The proposal as originally approved and as is proposed to be modified does not alter the aforementioned, retaining a total of 33% (7 of 21) units which do not receive direct sunlight in midwinter between 9am - 3pm.

Given the predominantly north south orientation of the site and resultant width of the property following the requirement of Rockdale LEP 2011 to provide a local road dedication along Robert Lane, it is difficult to design a development upon the subject site which achieves full compliance with the aforementioned requirements.

Residential units have been designed to be no deeper than 8m, are all naturally cross ventilated given their corner or cross through design, have dual street frontage where possible and no units are designed to only face south. Given the above, the previously approved variations which remain as part of the proposal as modified are not deemed to be unreasonable. The proposal as modified is worthy of support as residential units, specifically reconfigured unit 21 the subject of this application, will afford appropriate residential amenity to future occupants and satisfy the objectives of this provision of the ADG.

### Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R4 High Density Residential	Yes	Yes - see discussion
4.3 Height of buildings	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.4 Floor space ratio - Residential zones	Yes	No - see discussion
5.1 B4 Mixed Use	Yes	Yes - see discussion
5.1A Development on land intended to be acquired for a public purpose	Yes	Yes

### 2.3 Zone R4 High Density Residential

The subject site is zoned R4 - High Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal as modified is defined as a residential flat building which constitutes a permissible development only with development consent. The proposal as modified is consistent with the objectives of the zone.

### 4.3 Height of buildings

A maximum height of 29.5m applies to the subject site. The proposal as modified does not alter the previously approved height of the development at 29.3m to the top of the lift overrun. The proposal as modified remains compliant in this regard.

### 4.4 Floor space ratio - Residential zones

A maximum 2.2:1 FSR applies to the subject site. Given a site area of 834.6sq/m, this equates to a maximum permissible gross floor area of 1836.12sq/m. The original development proposed an FSR variation of 77.48sq/m (4.2%). This was not supported and the application was approved subject to a deferred commencement condition, which required compliance with the FSR standard.

Amended plans were subsequently submitted to Council illustrating compliance with the FSR standard and the deferred commencement consent was activated on this basis on 22 June 2016.

The proposal as modified seeks to reconfigure the top floor of the development, resulting in a slight variation to the gross floor area and FSR proposed on site. A total gross floor area of 1842.5sq/m and FSR of 2.207:1 is proposed as part of this application. This equates to 6.4sq/m of surplus gross floor area, being a 0.34% variation to the standard.

In accordance with *Gann & Anor v Sutherland Shire Council* [2008], the Land & Environment Court found that a development application can be modified even where this would result in the breach of development standards. Furthermore, it was the Court's view that no objection pursuant to Clause 4.6 of Standard template LEPs was required to be lodged, however that the consent authority was still required to take the relevant matters referred to in Section 79C in accordance with the requirements of Section 96(3) of the EP&A Act.

The applicant has addressed the relevant requirements in the documentation submitted to Council, with rationale provided to justify the proposed additional FSR. In summary, the applicant found that the proposed variation to the maximum FSR is acceptable for the following key reasons:

- *The proposed modifications continue the endeavour to provide well-designed residential accommodation that will assist in meeting the housing demands of the changing local area.*
- *Whilst the modifications propose additional gross floor area, this is considered inconsequential in terms of the approved buildings bulk and scale. The approved design is not compromised and a*

*balance between residential amenity and existing properties on adjoining sites is maintained. Whilst there is a slight increase in building envelope to the eastern elevation, along the laneway this is contained to a small element of the building and does not alter the way one would perceive the built form. No additional height is proposed.*

- There is no change in terms of visual privacy as all modifications continue to ensure units are orientated to address Gertrude Street or rear of the site.*
- The proposed modifications would not result in any further overshadowing impacts than what have been approved. A minor increase of the building envelope is contained to the eastern elevation and small building portion. The approved building height remains compliant, with no change proposed. With modifications contained to level 8, levels below are not compromised in terms of their solar access received.*
- The proposed modifications will result in a better planning outcome as additional residential accommodation is provided in an area that is well serviced by public transport and is proximate to local amenities, services and facilities.*
- The numerical departure from the standard equals 6.4m<sup>2</sup> or 0.34%. This minor breach is inconsequential from a planning standpoint as the additional bulk and scale does not impact upon the way one would perceive the built form. The development will continue to perpetuate design excellence and remains complimentary to the evolving character exhibited by recent approvals and construction within the area. Namely, DA-2015/69 which exceeded Council's floor space ratio standard by 657.8m<sup>2</sup> and DA-2016/69 which exceeded the standard by 327.6m<sup>2</sup> or 14.3%. The variation sought is considered minimal in this regard. A precedent for varying this standard would not result as variations have been sought and approved.*
- All units within the development, apart from the originally approved 3-bedroom unit on level 8 have been sold. Perspective buyers do not favour this outcome of having a 3-bedroom unit adjoining an area of communal open space from an amenity point of view given the likely negative noise impacts which would likely result from groups of people occupying this communal space. Therefore a 2 bedroom and 1-bedroom unit have been proposed on approved Level 8 in a dual key arrangement that reinstates the approved rooftop communal open space as amenity impacts are lessened in this regard.*

Following a review of the application, it is considered that the FSR variation as proposed is acceptable for the following reasons:

- a) Whilst the proposal as modified exceeds the maximum density permitted on the subject site, the variation is minimal and the resulting bulk, scale, mass and form of the development is entirely consistent with the future desired character of area as envisaged by DCP 2011.
- b) The proposal as modified continues to satisfy the relevant objectives of the FSR standard.
- c) The proposal as modified is consistent with the density and built form defined by existing developments and recent approvals on adjoining and nearby sites.
- d) The proposal as modified is consistent with the objectives of the R4 - High Density Residential zone.
- e) The proposal as modified does not result in significant adverse environmental planning impacts upon adjoining or nearby properties in terms of overshadowing, aural and visual privacy, solar access, natural ventilation and views & vistas.
- f) The proposal as modified provides a high quality built form that will provide a positive contribution to



the streetscape character of emerging development within Wolli Creek.

g) The proposal as modified continues to provide generous and well designed areas of communal open space for use by all residents at both the podium and top floor level.

h) The proposal as modified introduces a dual key apartment which is a positive addition to the development, introducing diversity to the housing types available within Wolli Creek. The dual key apartment can accommodate a diverse range of household types within this strategically accessible location. The proposal as modified will enable changing lifestyle needs and cater to different income groups, thus is a positive social outcome and is in the public interest.

The proposal as modified is considered to result in orderly development of this site and outweighs strict adherence to the numeric standards presented by the FSR standard in Clause 4.4 of RLEP 2011. Based on this, and the reasons outlined above, compliance with the FSR standard is deemed unreasonable and unnecessary and flexibility should be applied, given the circumstances of this case.

#### 5.1 B4 Mixed Use

A local road widening applies along the length of the north eastern side of the site to Robert Lane. This road widening is required to comprise a width of 2m. The original DA was conditioned to ensure the road widening occurs.

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

No relevant proposed instruments are applicable to this proposal as modified.

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

The following Development Control Plan is relevant to this application:

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

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

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.1 Views and Vista	Yes	Yes - see discussion
4.4.7 Wind Impact	Yes	Yes - see discussion
4.5.1 Social Equity - Housing Diversity and Choice	Yes	No - see discussion
7.1.2 Wolli Creek Vision	Yes	Yes
7.1.3 Wolli Creek Structure Plan	Yes	Yes
7.1.4 Wolli Creek Land Use Strategy	Yes	Yes
7.1.5 Wolli Creek Road Network and Vehicular Access	Yes	Yes
7.1.6 Wolli Creek Open Space and Movement	Yes	Yes
7.1.8 Wolli Creek Street Character and Setbacks	Yes	Yes
7.1.9 Wolli Creek - Environmental Management	Yes	Yes

#### 4.1.1 Views and Vista

The proposal as modified does not result in any adverse view loss impacts.

#### 4.4.7 Wind Impact

A revised Wind Assessment Report prepared by ANA Civil Pty Ltd dated 16 Feb 2018 was submitted with the proposal as modified.

The report noted that the most critical annual limiting gust wind speeds are expected in the following open areas.

- First Floor Communal Open Space
- Level 1-8 Balconies
- Level 8 Roof Terraces.

The report states that *"these open areas will be affected by north-westerly winds and subsequently the Annual Limiting Gust Wind Speed will exceed the Open Area outdoor sitting criteria of 10m/s"*. The following wind mitigation measures were therefore recommend:

- Balcony/terrace balustrades – preferably of masonry/concrete construction with no openings.
- Pergolas, canopies and awnings over open areas
- Landscaping such as dense shrubs and trees.
- Canopy or pergola on the roof terrace.

The original consent incorporates condition 31, which ensures the recommendations of the previous version of this report are adhered to. Condition 31 will be modified to ensure the updated version of the report is referenced and thus revised recommendations are implemented on site.

The proposal as modified complies with the objectives and requirements of this clause.

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

The proposal as modified indicates the following mix of units on site.

<b><i>DCP Requirement</i></b>	<b><i>Proposed</i></b>	<b><i>Complies</i></b>
1 bedroom 10% (3) - 20% (5)	6 x 1 bed 28%	No - As approved
2 bedroom 50% (11) - 75% (16)	14 x 2 bed 67%	Yes - As approved
3 bedroom 10% (3) - 30% (7)	1 x 3 bed (dual key) 5%	No

The proposal as modified is considered to provide for a range of housing options which cater to a diverse range of household types. The proposal as modified incorporates the dual key apartment, which is a positive addition to the development, accommodating inter generational house hold types and investor / occupiers could further potentially purchase the dwelling.

The proposal as modified will enable changing lifestyle needs and cater to different income groups. The proposal as modified is considered to be consistent with the objectives of this clause. A variation in this

instance is deemed satisfactory.

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

The provisions of the Regulations relating to demolition have been considered in the assessment of the original development application. This is for S96(2) to modify the previously approved unit mix and rooftop level of the development. In accordance with clauses 115(3) & (3A) of the EP&A Regulations, the Section 96 modification was accompanied by a 'design verification statement' confirming that the design as modified was directed by a registered architect and that it complies with the design quality principles. All relevant provisions of the Regulations have been considered in the assessment of this proposal as modified.

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

The impacts of the proposal as modified have been previously discussed in this report.

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

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. The subject site is strategically located within Wolli Creek, in close proximity to public transportation, the airport and opposite public open space. The subject site is capable of accommodating the proposed FSR variation and it is reiterated that there are sufficient environmental planning grounds in which to support a minor variation to the FSR for this site.

There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

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

The proposal as modified has been notified in accordance with the provisions of Rockdale DCP 2011 and three (3) submissions were received. The issues raised in the submission are discussed below:

*As a rule there seems to be no long term awareness with many developments of the impact new developments have on the existing ones. It seems that one can buy an apartment with a view (which may have been one of the main selling points) only to find a year later that the view is blocked by a new development. Development at Wolli Creek is a prime example.*

Comment: Where view loss impacts may be identified as a concern as part of any application, the assessing Council Planner will ensure an assessment is undertaken.

*When I inspected the property, one of the key features was the roof top garden, and from a sales perspective, this was given a prominent double page photo spread in the sales brochure on pages 4 & 5. The other communal space on the south of the building will not get anywhere near the same amount of solar access.*

Comment: Revised plans illustrate that the communal roof top garden is now being retained on site and slightly expanded.

*Additional apartment exceeds the FSR*

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

*Additional apartment takes away a parking space previously allotted as a visitor space and does not meet the requirements for this.*

Comment: The proposal modifies the configuration of the top floor to provide a dual key apartment, not an additional unit on site which is capable of being subdivided and sold individually. Conditions of consent have been imposed to ensure this occurs. The development remains 21 units, as previously approved.

In this regard the proposal as modified does not alter the previously approved parking requirements on site, which are in accordance with the RMS Guide to Traffic Generating Development. 5 car spaces were originally approved and shall remain as visitor car spaces. This is reinforced by condition 8A of the existing consent.

*With all the very hot weather we have been experiencing, we know that high building density will exacerbate the heat-island effect, unless it is mitigated by vegetation and greenery / The combination of the front plantings, the roof top garden and the ground floor communal garden would be instrumental in this, as well as being aesthetically pleasing.*

Comment: The proposal as modified retains the rooftop level communal open space area, which is provided with periphery landscaped planters which will assist with the objectors concerns.

*Construction delays unnecessary*

Comment: The above comment is beyond the scope of this application.

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

The proposal as modified has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the application, there are sufficient environmental planning grounds in which to warrant support of a minor increase to the FSR standard on site.

It is reiterated that the proposal incorporates a dual key residential dwelling on site, which is a positive attribute as it has the potential to accommodate a range of household types and cater to different household needs.

The proposal as modified does not create unreasonable impacts on surrounding properties and is consistent with the future desired character of the area. The proposal as modified is in the public interest.

## **Schedule 1 - Draft Conditions of consent**

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### **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.*

<b>Plan/Dwg No.</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
<i>Site Plan Rev P</i>	<i>Pagano Architects Pty Ltd</i>	<i>07/04/2018</i>	<i>12/04/2018</i>
Basement & Ground Level Plan Rev R	Pagano Architects Pty Ltd	21/07/2016	21/07/2016
Floor Levels 1/2/3/6/7 Rev O	Pagano Architects Pty Ltd	15/06/2016	22/06/2016
Floor Levels 4/5 Rev R	Pagano Architects Pty Ltd	15/06/2016	22/06/2016
<i>Floor Level 8 Rev Y</i>	<i>Pagano Architects Pty Ltd</i>	<i>12/04/2018</i>	<i>12/04/2018</i>
<i>Elevations, Roof Terrace Detail, Letter Box Details Rev S</i>	<i>Pagano Architects Pty Ltd</i>	<i>07/04/2018</i>	<i>12/04/2018</i>
<i>Roof Plan, Sections, Window Schedule Rev S</i>	<i>Pagano Architects Pty Ltd</i>	<i>07/04/2018</i>	<i>12/04/2018</i>
Materials and Finishes Rev E	Pagano Architects Pty Ltd	26/04/2016	16/06/2016

[Amendment A-S96(1A) amended on 4 August 2016]

[Amendment B-S96(1) amended on 20 December 2016]

[Amendment C-S96(2) amended on 24 April 2018]

- 2A. *For the purposes of strata subdivision of the development, Unit 21 at level 8, shall remain as 1 strata lot.*

[Amendment C - S96(2) inserted on 24 April 2018]

*Reason for additional condition 2A is:*

- *To ensure diversity of housing within the development.*
3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. *The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 649218M\_04 other than superseded by any further amended consent and BASIX certificate.*  
**Note:** Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for

*building work unless it is satisfied of the following matters: -*

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

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

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

*(Amendment A-S96(1A) amended on 4 August 2016)*

*(Amendment C-S96(2) amended on 24 April 2018)*

6. Balconies shall not be enclosed at any future time without prior development consent.
7. 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.
8. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S96 application and approval under the EP&A Act.
- 8A. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

**Allocated Spaces**

1 bedroom units - 0.6 spaces per dwelling

2 bedroom units - 0.9 spaces per dwelling

3 bedroom apartments - 1.4 spaces per dwelling

**Non-Allocated Spaces**

Visitor Spaces - 1 space per 5 apartments

1 x car wash bay shared within a visitor space

1 x loading / unloading area on site shared within a visitor space

Parking calculations that are not whole numbers must be rounded up to the nearest whole number.

All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Reason for the additional condition: To ensure adequate allocation of on site carparking for residents and visitors on site.

[Amendment A - S96(1A) amended on 4 August 2016]

9. INTEGRATED DEVELOPMENT / EXTERNAL AUTHORITIES

**SYDNEY AIRPORT CORPORATION LIMITED**

SACL has approved the maximum height of the proposed building at 31, relative to Australian Height Datum (AHD). This height is inclusive of all vents, chimneys,

aerials, TV antennae and construction cranes etc. No permanent or temporary structure is to exceed this height without further approval from Sydney Airport Corporation Limited.

Note: Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed “controlled activity” and is punishable by a fine of up to 50 penalty units. For further information on Height Restrictions please contact SACL on 9667 9246.

## *NSW OFFICE OF WATER*

### *General*

- i. An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified.
- ii. The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation.
- iii. Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and:
  - A. any groundwater mounding at the edge of the structure shall be at a level not greater than 10 % above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and
  - B. any elevated water table is more than 1.0 m below the natural ground surface existent at the location immediately prior to the construction of the structure; and
  - C. where the habitable structure is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable.
- iv. Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.
- v. DPI Water requires documentation (referred to as 'report') comprising measurements, maps, bore logs, calculations, results, discussion and justification for various matters related to the dewatering process. Information will be required at several stages: prior to construction commencing (initial report- which will accompany the application for the authorisation), at any time when an authorisation renewal is required or a significant change in activities occurs (intermediate report); and at the completion of dewatering and related operations (completion report). Reports need to be submitted to DPI Water at Parramatta Office, in a format consistent with electronic retrieval without editing restrictions; raw data should be presented in Excel spreadsheets without editing restrictions.



*Prior to excavation*

vi. The following shall be included in the initial report:

(a) measurements of groundwater levels beneath the site from a minimum of three relevant monitoring bores, together with details of the bores used in the assessment including bore logs and three-dimensional identification information.

(b) a map of the site and its immediate environs depicting the water table (baseline conditions) shown relative to the topography and approved construction footprint from the surface level and below. An assessment of the potential variation in the water table during the life of the proposed building together with a discussion of the methodology and information on which this assessment is based

(c) details of the present and potential groundwater flow paths and hydraulic gradients in and around the site; the latter in response to the final volumetric emplacement of the construction.

(d) a schedule for the ongoing water level monitoring and description of the methodology to be used, from the date of consent until at least two months after the cessation of pumping. (DPI Water prefers that monitoring be undertaken on a continuous basis using automatic loggers in boreholes)

vii. The Applicant shall assess the likely impacts of the dewatering activities on other groundwater users or structures or public infrastructure; this assessment will include an appropriate bore, spring or groundwater seep census and considerations relevant to potential subsidence or excessive settlement induced in nearby buildings and property, and be documented together with all calculations and information to support the basis of these in the initial report.

viii. Groundwater quality testing of samples taken from outside the footprint of the proposed construction, with the intent of ensuring that as far as possible the natural and contaminant hydrochemistry of the potential dewatered groundwater is understood, shall be conducted on a suitable number of samples and tested by a NATA-certified laboratory. Details of the sampling locations and the protocol used, together with the test results accompanied by laboratory test certificates shall be included in the initial report. An assessment of results must be done by suitably qualified persons with the intent of identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria for the intended dewatering purpose. In the event of adverse quality findings, the Applicant must develop a plan to mitigate the impacts of the hydrochemistry on the dewatered groundwater and present the details of all assessments and plans in the initial report.

ix. Groundwater quality testing generally in accordance with Clause 8, shall be undertaken on any anniversary or other renewal or alteration of any dewatering authorisation.

x. A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and included in the initial report; together with details and calculation methods for the parameters and supporting information to confirm their development or measurement (e.g. permeability predicted by slug-testing, pump-testing or other means).

xi. A copy of a valid consent for the development shall be provided in the initial report.

xii. The method of disposal of pumped water shall be nominated (i.e. reinjection, drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided in the initial report. The disposal of any contaminated pumped groundwater (sometimes called

"tailwater") must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority.

xiii. Contaminated groundwater (i.e. above appropriate NEPM 2013 thresholds) shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and included in the initial report and any subsequent intermediate report as necessary. The quality of any pumped water that is to be reinjected must be demonstrated to be compatible with, or improve, the intrinsic or ambient groundwater in the vicinity of the reinjection site.

#### *During excavation*

- xiv. Engineering measures designed to transfer groundwater around and beneath the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.
- xv. Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard or induce mounding of groundwater. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off- site discharge.
- xvi. Measurement and monitoring arrangements to the satisfaction of DPI Water are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.
- xvii. Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc.) without the controlling authority's approval and/or owner's consent/s. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.
- xviii. Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.
- xix. The location and construction of groundwater extraction works that are decommissioned are to be recorded in the completion report. The method of decommissioning is to be identified in the documentation.
- xx. Access to groundwater management works used in the activity is to be provided to permit inspection when required by DPI Water under appropriate safety procedures.

#### *Following excavation*

- xxi. Following completion of the dewatering operations, the applicant shall submit to DPI Water, Parramatta Office, the completion report which shall include:
- (a) detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores; and
  - (b) a water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and
  - (c) a detailed interpreted hydro-geological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an

assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.

xxii. The completion report is to be assessed by DPI Water prior to any certifying agency's approval for occupation or use of the completed construction.

## **Development specific conditions**

The following conditions are specific to the Development Application proposal.

10. All loading, unloading and transfer of goods to and from the loading bay and premises shall take place wholly within the property. One of the visitor's bay within the shared access shall be shared as a SRV loading bay.
11. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.
12. Loading and unloading within the site shall be restricted to commercial vehicles not exceeding the size and mass description of a Small Rigid Vehicle from AS2890.2:2002. Commercial vehicles greater in size and mass than the SRV are not permitted to enter the site.
13. Parking spaces shall not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.

Bicycle parking facilities shall be designed in accordance with AS2890.3:1993. Off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6. Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6.

14. The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system.

The Registered Proprietor will:

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

sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.

16. 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.
17. 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.
18. Temporary dewatering of the site to enable the construction of the subsurface structure shall not be carried out unless a permit has been issued pursuant to the Water Management Act 2000, and, in the case where water is to be pumped into the public road, a permit has been issued pursuant to the Roads Act 1993.
19. 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.
20. 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.
21. 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.
22. The development shall comply with the recommendations of the Acoustic Report prepared by Acoustic Noise & Vibration Solutions Pty Ltd, dated 2nd July 2015 and achieve the following minimum equivalent AAAC Star Rating within the below specified areas of the development.

- 3 Star for tiled areas within kitchens, balconies, bathrooms and laundries. Tiled flooring within corridors, living areas and bedrooms is not permitted.
- 4 Star for timber flooring in any area.
- 5 Star for carpet in any area.

The development shall comply with the Building Code of Australia requirement for walls dividing occupancies.

A report shall be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate. The report is to include BCA requirements and details of floor/ceilings between residential apartments. Floor coverings within apartments shall be identified within the report. A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the said report satisfy the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate for the relevant stage of works.

23. 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 authorized by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
  - iii. Evidence of the design architect's commission is to be provided to the Department prior to release of the Construction Certificate.
- b) The design architect of the project is not to be changed without prior notice and approval of the Council or Department.
- 24. Retaining walls over 600mm in height shall be designed and specified by a suitably qualified structural engineer.
  - 25. Any soil disposed of off-site shall be classified in accordance with the procedures in the NSW Environment Protection Authority's Environmental Guidelines: Waste Classification Guidelines (2009).
  - 26. The recommendations of the Access Report prepared by AE & D Access Pty Ltd, dated July 2015 are to be implemented on site.
  - 27. The fire hydrant booster shall be relocated to the Robert Lane frontage of the site and be screened from public view. Details are to be submitted to and approved by the PCA prior to the issue of the Construction Certificate.
  - 28. The management of acid sulfate soils on site shall be in accordance with the treatment and contingency measures specified within the Acid Sulfate Soils Assessment prepared by Sullivan Environmental Sciences dated 28 January 2016.

### **Prior to issue of the construction certificate**

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

- 29. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
  - i. A Footpath Reserve Restoration Deposit of \$6,681.00. 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 \$17.00.
- 30. **Safety & Security**
  - 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.

- Where applicable, security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
- A street sign shall be prominently displayed at the front of the development to comply with Local Government Act, 1993, Section 124, Order No 8 prior to the issue of the Occupation Certificate.
- Signage shall be erected at entry/exit points and throughout the development to assist users and warn intruders they may be prosecuted.
- Graffiti resistant materials are to be used to all ground floor external surface areas. Details to be provided prior to the issue of the Construction Certificate.
- Intercom facilities shall be installed into entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development prior to the issue of the Occupation Certificate.

31. *The following recommendations of the Wind Report prepared by ANA Civil Pty Ltd dated 16 February 2018 are to be implemented on site.*

- *Balcony/terrace balustrades – preferably of masonry/concrete construction with no openings.*
- *Pergolas, canopies and awnings over open areas*
- *Landscaping such as dense shrubs and trees.*
- *Canopy or pergola on the roof terrace.*

*Details to be approved by the PCA prior to the issue of the Construction Certificate.*

*[Amendment C - S96(2) amended on 24 April 2018]*

32. 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.
33. An application for Boundary levels shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary works, egress paths, driveways and fences shall comply with this level.  
A fee is payable to Council for the determination of boundary levels. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
34. Council requires a bond to be paid to cover the partial cost of the works relating to road widening new RC Council drainage pipe and pits, and footpath and pavement restorations. Where the works are undertaken by a Private Licensed Contractor. Contact Council for details of the value of the bond to be paid to Council.
35. The connection of storm water drainage pipes to the existing kerb inlet pit in Gertrude Street must be inspected by Council prior to backfilling. A payment is required prior to the issue of the Construction Certificate for inspection of the connection and/or alteration to the Council pipeline. If payment is made after the end of the financial year the amount is to be adjusted in accordance with Council's adopted fees and charges. Where the inspection is unsatisfactory, each additional inspection will incur an extra charge .
36. A Section 94 contribution of \$356 884.62 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	\$194 666.36
Community Services & Facilities	\$10 105.43
Town Centre & Streetscape Improvements	\$22 399.75
Roads Traffic Management & Public Parking	\$75 447.94
Flood Mitigation & Stormwater	\$34 534.04
Pedestrian & Cyclist	\$11 566.70
Administration & Management	\$6 164.40

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

37. Prior to the issue of the Construction Certificate a certificate from a practicing Structural Engineer, registered with NPER, shall be submitted to Council stating that the subsurface structural components located on the boundary of the public road, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads.
38. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.
39. A suitable qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 1% AEP flood event.
40. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood, or flow level. Details shall be provided and approved prior to the issue of a construction certificate.
41. Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Access in accordance with Australian Standard 4299 must be provided to and within two (2) residential units (10 and 13), and between these units and their allocated carparking spaces. The allocated parking spaces shall 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.

(Amendment A - S96(1A) amended 4 August 2016)

42. The applicant shall confer with Ausgrid to determine if:



- a. An electricity distribution substation is required.
- b. Installation of electricity conduits in the foot way is required.

Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.

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.

Where an electricity substation is required by Ausgrid, a final film survey plan shall be endorsed with an area having the required dimensions as agreed with Ausgrid over the location of the proposed electricity distribution substation site. The substation must be located within the boundary of the development site, or within the building, subject to compliance with the BCA. The substation site shall be dedicated to Council as public roadway, or as otherwise agreed with Ausgrid. Ausgrid's requirements shall be met prior to release of the issue of the Occupation Certificate.

- 43. All low voltage street mains in that section of the street/s adjacent to the development shall be placed underground. This shall include any associated services and the installation of underground supplied street lighting columns where necessary. The applicant shall confer with Ausgrid to determine Ausgrid's requirements. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.
- 44. The approved plans must be submitted to Sydney Water 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. The Principal Certifying Authority must ensure that Sydney Water has approved the plans before issue of any Construction Certificate. For more information, visit [www.sydneywater.com.au](http://www.sydneywater.com.au).
- 45. Details shall be submitted to Council for assessment and approval pursuant to Section 138 of the Roads Act 1993 in relation to the following:
  - i) Construction of drainage pits and pipes.
  - ii) Construction of footpath and streetscape works.
  - iii) Construction of a vehicular entrance.
- 46. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 20 and shall include all relevant levels, grades (%) and lengths.
- 47. The subsurface structure shall be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of

subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate.

**48. Safety & Security**

- a. 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
- b. Where applicable, security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners
- c. A street sign shall be prominently displayed at the front of the development to comply with Local Government Act, 1993, Section 124, Order No 8.
- d. Signage shall be erected at entry/exit points and throughout the development to assist users and warn intruders they may be prosecuted.
- e. Graffiti resistant materials are to be used to all ground floor external surface areas. Details to be provided prior to the issue of the Construction Certificate.
- f. Intercom facilities shall be installed into entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.

**49. Amended stormwater plans shall be submitted to the PCA for assessment and approval prior to Construction Certificate. The amended design shall address the following issues:**

- (a) Detailed plans showing the basement levels as tanked system.
- (b) In accordance with section 7.1.9 of Councils DCP 2011 where within the Wolli Creek area a development is required to capture the first 10-20mm of stormwater runoff and detained for re-use purposes, a rainwater tank is required.
- (c) The stormwater reuse from proposed rain tanks.
- (d) To incorporate an oil separator in accordance with Rockdale Technical Specification – Stormwater Management, section 7.5.4.
- (e) Rain tanks within the basement areas are not recommended and shall be located within the deep soil area or at grade.
- (f) The design shall identify, and discuss in detail, the measures put in place to re-use water, maintain groundwater quality, minimise at source generation of water pollutants, and convey stormwater flows through the site.

**Numerical design standards**

- The size of the rainwater storage tank should be sized such that water can be reused without supply from town water for the majority of the year. As a minimum, the storage tank should be capable of storing the first 10-20mm of runoff from the site. Rainwater should be used for landscape irrigation, car washing, and toilet flushing in apartments and general cold water supply at lower levels. NB: The ;
- The rainwater tank should have an overflow at or above the minimum habitable floor level (2.85m AHD).
- The piped drainage within the site should be capable of conveying the 5% AEP flow; and

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

### **General design standards**

- All piped drainage within the development should discharge to the rainwater storage tank; and
- All surface runoff from car park areas should be directed through a proprietary oil treatment system prior to discharge to the rainwater storage tank. NB: Information regarding the treatment system should be supplied including the type of system to be used and the compatibility of the system with regard to the rainwater reuse objective for the development. The proprietary oil treatment system must provide a high quality of water.

### **General controls**

- The design should meet water sensitive urban design principles.

50. Prior to the issue of the Construction Certificate a Flood Evacuation Management Plan shall be submitted to Principal Certifying Authority (PCA) for assessment and approval. The Flood Evacuation Management Plan shall demonstrate whether evacuation provisions are required, and if so how they will be managed.  
Alternatively, where it is recommended that occupants stay within the building, how is this to be communicated to occupants. In this situation occupants need to escape above the PMF level plus 0.5 m. The plan is also to detail how the flood awareness of owners, residents or occupants, who change through time, can be preserved. The Plan shall be prepared by a suitably qualified and experienced Flood/Hydraulic Engineer.
51. The low level driveway must be designed to prevent inflow of water from the road reserve. The assessment of flows and design of prevention measures shall be in accordance with the requirements of Rockdale Technical Specification Stormwater Management. Details shall be included in the documentation presented with the Construction Certificate application.
52. Any part of the proposed building located in the vicinity of the existing pipeline shall be constructed on a pier and beam type foundation, piers shall be located outside the boundary of the drainage easement and to extend to a depth of no less than 300mm below the pipeline invert. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
53. A visitor car space shall also operate as a car wash bay. The external car wash bay shall be covered, appropriately signposted with a fixed sign stating 'Visitor Car Space and Car Wash Bay', have a cold water tap and waterproof power outlet. Runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.

[Amendment A - S96 (1A) amended 4 August 2016]

54. A revised landscape plan shall be submitted to Council for approval prior to the issue

of the Construction Certificate. The landscape plan shall incorporate 'tuckeroo' trees within the landscaped area of the site adjoining the rear boundary of the property in lieu of 'spotted gums'.

The landscape plan shall provide details and elevations on proposed timber privacy screening within communal areas. Details of paving, colours, finishes, planter edging, lighting and the like are to be submitted to Council for approval prior to the issue of the Construction Certificate.

The plan shall be at a scale of 1:100 or 1:200 and comply with Rockdale Technical Specification Landscape and all other relevant conditions of this Consent.

55. The plans submitted with the Construction Certificate shall demonstrate compliance with the following:
- a. Glass balustrades shall be provided as frosted or opaque.
  - b. Hot water systems upon balconies of dwellings be encased in a recessed box with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed.
  - c. All plumbing, shall be concealed within the brickwork of the building.
  - d. Ceiling heights for all habitable areas shall be a minimum of 2.7 metres as measured vertically from finished floor level to the underside of the ceiling. Ceiling heights for all non-habitable areas shall be a minimum of 2.4 metres as measured vertically from finished floor level to the underside of the ceiling.
  - e. Relevant objectives and design code requirements of the Building Code of Australia 2015 / DDA Premises Standard pertaining to accessible common domain areas and access to all apartments and the Adaptable Housing standard AS4299 for two (2) adaptable units.
  - f. A minimum ground floor level of 2.85RL shall be provided within the development.
  - g. Structures on the western boundary of the site adjoining the location of the approved vehicular access way shall be of temporary construction. This is to enable future vehicular access to the adjoining sites at 11 / 13 Gertrude Street. Details of any retaining walls and / or fencing or structures on the boundary are to be submitted to the PCA for approval prior to the issue of the Construction Certificate.

## **Prior to commencement of works**

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

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 Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Access to the site for construction purposes via Gertrude Street is not permitted. Prior to the commencement of works the Certifying Authority shall be satisfied that the Construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction.

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

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

Copies of the CMP and TMP shall be submitted to Council.

59. 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.
60. 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.
61. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.
62. A Site Health & Safety Plan shall be prepared prior to the commencement of remediation works by a person competent to do so. All works shall be carried out in

accordance with this plan. This plan shall include:

- hazard identification and control
- site security
- personal protective equipment
- work zones and decontamination procedures
- contingency plans and incident reporting
- environmental monitoring.

63. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.
64. 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.
65. A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:
- i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
  - ii) building involves the enclosure of a public place,
- Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.
- Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:
- (i) the vertical height above footpath level of the structure being demolished is less than 4m; or
  - (ii) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.
- The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -
- (i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;
  - (ii) have a clear height above the footpath of not less than 2.1m;
  - (iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and
  - (iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa
- The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids.
- Any such hoarding, fence or awning is to be removed when the work has been completed.
- The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.
66. 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.

67. Consultation with Ausgrid is essential prior to commencement of work. Failure to notify Ausgrid may involve unnecessary expense in circumstances such as:
  - i) where the point of connection and the meter board has been located in positions other than those selected by Ausgrid or
  - ii) where the erection of gates or fences has restricted access to metering equipment.
68. Where clearances to any existing overhead High Voltage mains are affected, the builder shall make arrangements with Ausgrid for any necessary modification to the electrical network in question. These works shall be at the applicant's expense. Ausgrid's requirements under Section 49 Part 1 of the Electricity Supply Act 1995 shall be met prior to commencement of works or as agreed with Ausgrid.

### **During demolition / excavation / construction**

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

69. 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.
70. 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.
71. 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.
72. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to pollute the stormwater system.
73. 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.
74. All waste generated on site shall be disposed of in accordance with the submitted



## Waste Management Plan.

75. 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.
76. 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.
77. Any new information discovered during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, shall be notified to Council being the Regulatory Authority for the management of contaminated land.
78. All contractors shall comply with the following during all stages of demolition and construction:
- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.

- A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
- A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.

79. 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.

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

- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
- ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
  - a) spraying water in dry windy weather
  - b) cover stockpiles
  - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining

roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
- 81. 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.
- 82. Trees located within adjoining properties or Council's nature strip shall not be removed or pruned without the written consent of Council in the form of a Permit issued under Council's Development Control Plan 2011.

### **Prior to issue of occupation certificate or commencement of use**

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

- 83. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 84. Lot 33 DP 4301 and Lot 32 DP 4301 shall be consolidated into one allotment. A copy of the plan of consolidation shall be submitted to Council prior to release of the Occupation Certificate.
- 85. 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.
- 86. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.  
Note: Burning on site is prohibited.
- 87. A by-law shall be registered and maintained for the life of the development, which requires that :
  - (a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
  - (b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent;
  - (c) Notwithstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2, A test report from a qualified acoustic engineer

employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.

Proof of registration of the By Law shall be submitted to Council prior to the issue of the Occupation Certificate.

88. Damage to brick kerb and/or gutter and any other damage in the road reserve shall be repaired using brick kerb and gutter of a similar type and equal dimensions. All works shall be to Council's satisfaction at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
89. 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.
90. All landscape works are to be carried out in accordance with the approved landscape plans. The landscaping is to be maintained to the approved standard at all times.
91. 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.
92. The underground placement of all low voltage street mains in that section of the street/s adjacent to the development, and associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense. The works shall be completed and Ausgrid's requirements shall be met prior to issue of the Occupation Certificate.
93. The vehicular entry in Robert Lane is to be clearly marked and signposted ("entry" or "no entry") from the street and ("exit" or "no exit") internally.
94. 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".
95. 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.
96. The dedication to Council of land for road widening purposes as follows:
  - A strip of land 2m in width, running the length of the Robert Lane frontage of the site.
  - A 3m x 3m splay corner at the intersection of Robert Lane and Gertrude Street.
  - A drainage easement to Council along open drainage channel – 0.875m wide.

Council requires proof of lodgement of the signed Linen Plan and 88B Instrument

with the Land Titles Office.

97. 24 off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction. The pavement of all car parking spaces, maneuvering areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements. (Amendment A-S96(1A) amended on 4 August 2016)
98. 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.
99. Testing and evaluation of the wall insulation system and floor system is to be carried out at post construction stage by a suitably qualified acoustical engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership to confirm compliance with conditions of this consent. A report is to be prepared, including details & finishes of the walls and floors separating apartments, results of testing and compliance with conditions of this consent. The report is to be submitted to Council prior to the issue of the Occupation Certificate.
100. Prior to issue of Occupation Certificate the applicant shall submit to the Principal Certifying Authority (PCA) an acoustic compliance report to verify that the measures stated in the 'Acoustic insulation between floors and walls; Star Rating; and Mechanical Ventilation System for the proposed development at 15-17 Gertrude Street Wollie Creek by Acoustic Noise & Vibration Solutions P/L reference No. 2015-341 dated the July 2, 2015' and all other noise mitigation measures associated with the mechanical plants (ventilation systems, exhaust fans, ventilation fans and condenser units) and equipment including air-conditioners have been carried out and certify that the construction meets the above requirements. If Council is not the PCA, a copy shall be submitted to Council concurrently. The report shall be prepared by a suitably qualified and experienced acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
101. A certificate is to be provided to Council that all wet areas have been effectively waterproofed (prior to tiling) in accordance with AS3740 and the product manufacturer's recommendations.
102. 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.
103. 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.
104. An accredited auditor under the Contaminated Land Management Act 1997 shall review the Validation Report prepared by the contaminated land consultant and issue a Site Audit Statement. The accredited auditor shall provide Council being the Regulatory Authority for the management of contaminated land, with a copy of the Site Audit Report and Site Audit Statement, prior to issue of the Occupation Certificate.
105. A Site Audit Statement (SAS) shall be submitted to Council being the Regulatory Authority for the management of contaminated land, prior to the issue of Occupation Certificate, clearly demonstrating that the site is suitable for the intended use.

Conditions imposed on the SAS shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, the consent shall prevail to the extent of inconsistency and a S96 application pursuant to the Environmental Planning & Assessment Act 1979 will be required.

106. Prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
107. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable/commercial floor level is constructed a minimum of 500mm above the 1% Annual Exceedance Probability (A.E.P) Flood Level. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
108. 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.
109. A benchmark shall be established adjacent to the site to Australian Height Datum to enable comparison to the flood standard.
110. The underground garage shall be floodproofed to a minimum of 500mm above the 1% Annual Exceedance Probability flood level. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
111. The development shall comply with Rockdale Development Control Plan (DCP) 2011, and the Planning Considerations and Development Controls listed in the Flood Advice letter issued by Council on 10 July 2014.
112. A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater pump and treatment facility to provide for the maintenance of the pump and treatment facility.
113. 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.
114. Signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only - No waste".
115. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
  - Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
  - The overflow from the rainwater tank shall be directed to the storm water system.
  - All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.

- A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.

## Roads Act

116. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

117. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:

- i) construction of a concrete footpath along the frontage of the development site;
- ii) construction of a new fully constructed concrete vehicular entrance/s;
- iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
- iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
- v) construction of paving between the boundary and the kerb;
- vi) removal of redundant paving;
- vii) construction of kerb and gutter.

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

- i) Construction of stormwater pits and pipes in Robert Lane and drainage easement;
- ii) Construction of streetscape works in Robert Lane and Gertrude Street.

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

119. 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.

120. All driveway, footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken in accordance with Council's Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council. Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.

121. Where the works are undertaken by a Private licensed Contractor, the contractor shall:

i) Undertake quality system testing as specified in Specification CQS of AUS-SPEC. Records of quality testing shall be made available to Council at the completion of the works;

ii) Engage a supervising engineer (superintendent). The supervising engineer shall, upon completion of the works, submit an engineering certificate for the completed works;

iii) Provide Council with one (1) copy of works as executed drawings upon completion of the works. The works as executed drawings shall be based on a survey of the works by a registered surveyor.;

iv) A payment to Council shall be made for inspection of the works. The payment shall be determined by Council's City Assets Department and made prior to the commencement of works. If payment is to be made after the end of financial year, this amount shall be adjusted in accordance with Council's adopted fees and charges;

v) Provide Council with 48 hours notice of the following:

- a) Commencement of the works
- b) Completion of Sub base
- c) Completion of drainage trench before backfilling
- d) Completion of base course and
- e) Completion of works.

**Note:** An inspection by Council is required at each of these stages. Works shall not continue until inspected by Council. Inspection by Council does not relieve the responsibility of a Private Licensed Contractor to undertake quality testing in accordance with the Council's Construction Specifications (AUS-SPEC), have the works inspected by the superintendent and have the superintendent submit an engineering certificate.

vi) Maintain the works for the duration of the Defects Correction Period, which shall be 6 months. (The Defects Correction Period commences on the date of acceptance of the completed works by Council). During this period the contractor shall:

- a) Keep the works clean and free of silt, rubbish and debris;



- b) Maintain, renew and repair, either in whole or in part, defective works as identified in written notice by the Council so that the works function 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;
- c) Carry out the matters referred to in paragraphs (i) and (ii) at the contractor's expense;
- d) Not make alterations to the system or elements thereof without prior consent in writing of the Council;
- e) Comply with the terms of any written notice issued by the Council in respect to the requirements of this condition within the time stated in the notice.

In the event of the contractor failing to comply with the terms of any written notice served in respect of the matters in this condition the Council or its authorised agents may carry out any work required to ensure the safe and efficient operation of the system and recover from the registered proprietor the cost of carrying out the work, and if necessary, recover the amount due by legal proceedings (including legal costs and fees).

- 122. 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.
- 123. 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.
- 124. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu) or landscaped. If landscaping is proposed rather than turfing, details shall be submitted to the Property and Community Services Department for approval.
- 125. Council requires a bond to be paid to cover the partial cost of the works relating to the road widening, kerb and gutter and footpath and pavement restorations, where the works are undertaken by a Private Licensed Contractor. A bond equal to 20% of the full construction cost shall be provided to Council prior to the completion of the works. The bond may be provided as a monetary payment or as a bank guarantee.

The operation of the bond commences on the date of completion of the works, being the date of instruction by Council that works have been completed in accordance with any consent provided by Council pursuant to the Roads Act 1993. The bond is obtained to enable Council to retain and expend money to make good incorrectly or inadequately constructed works or to construct incomplete non-constructed works or parts of them associated with the new RC Council drainage pipe and pits, and footpath and pavement restorations as determined by Council.

The bond shall remain in force for not less than six (6) months from the date of completion of the works. Council is not obliged to release the bond or any part of it whilst the bond is in force as described above.

## **Development consent advice**

- a. A street number shall be prominently displayed at the front of the development. The street number shall be a minimum of 120 mm in height to assist emergency services

and visitors to locate the property. The numbering shall be erected prior to commencement of operations.

- b. 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.
- c. *Telstra Advice – Dial Before You Dig*

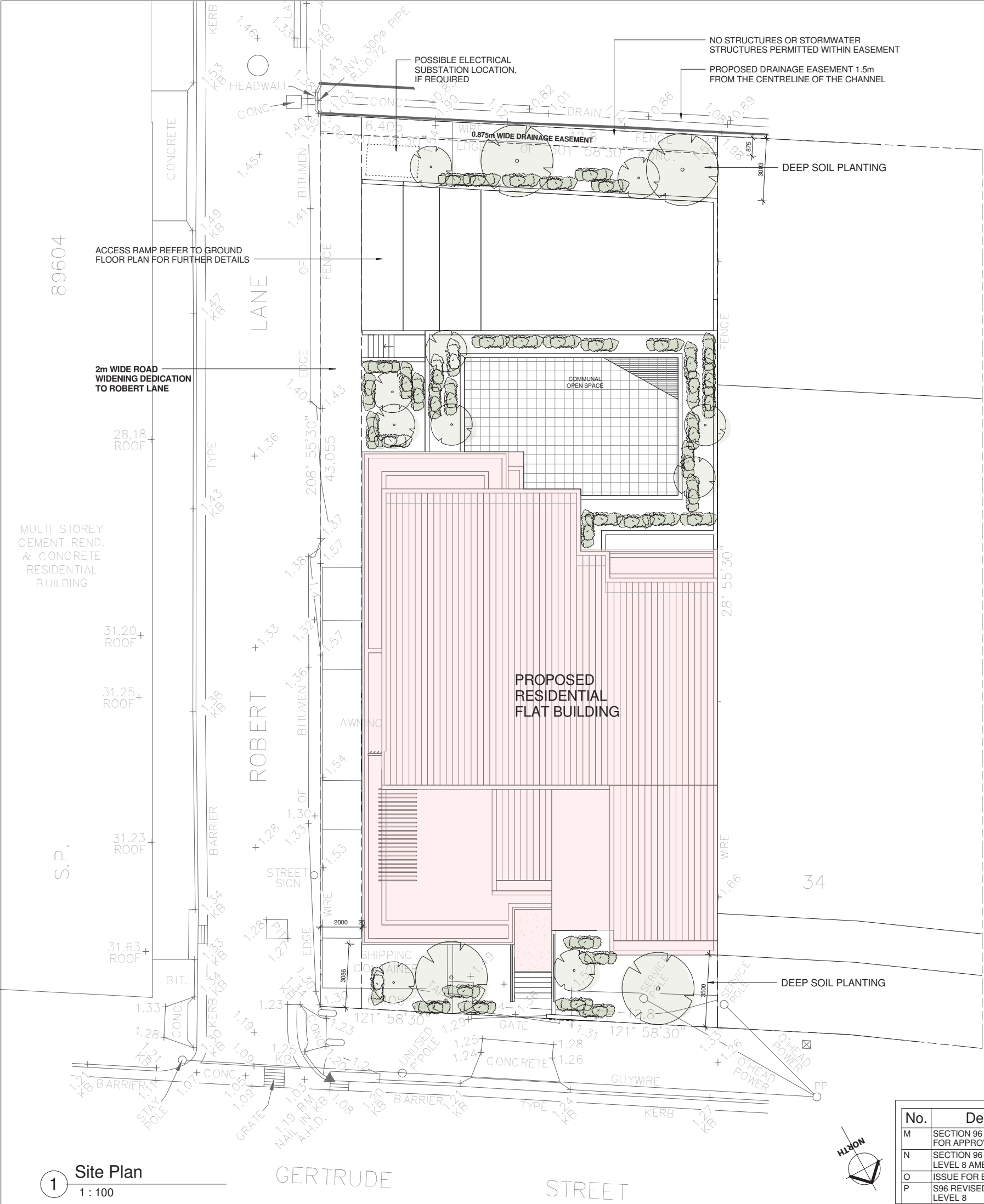
Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting 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.

- d. If Council is appointed as the Principal Certifying Authority (PCA), a fee shall be paid before a Construction Certificate is issued. If the fee is paid after the end of the financial year, it will be adjusted in accordance with Council's adopted fees and charges. The fees charged encompass all matters related to ensuring that the proposed development is carried out in accordance with the approved plans and any post inspection issues that may arise.
- e. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- f. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
  - Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
  - Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.

- g. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
  - Work Health and Safety Act 2011
  - Work Health and Safety Regulation 2011
  - Protection of the Environment Operations (Waste) Regulation 2005.

- h. Demolition and construction shall minimise the emission of excessive noise and prevent “offensive noise” as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
- choosing quiet equipment
  - choosing alternatives to noisy activities
  - relocating noise sources away from affected neighbours
  - educating staff and contractors about quiet work practices
  - informing neighbours of potentially noise activities in advance
  - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- i. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- If the development is not subject to BASIX, a mandatory rainwater tank may be required. Rainwater tank requirements for development not subject to BASIX are specified in Council's DCP 78.
- j. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- k. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.



DEVELOPMENT SUMMARY	
TOTAL SITE AREA: 834.6m²	
TOTAL FLOOR AREA APPROVED	1836.1m²
TOTAL FLOOR AREA PROPOSED	1842.5m²
LEVEL 8 APPROVED AREA (U21 + KITCHENETTE + FOYER)	131.6m²
LEVEL 8 PROPOSED AREA (U21 + U22 + FOYER)	138m²
TOTAL FLOOR AREA PROPOSED =	1836.1m²
(ADDITIONAL FLOOR AREA PROPOSED)	6.4m²
	1842.5 m²
PERMISSIBLE FSR 2.2 x 834.6 (1836.12m²)	2.2:1
PROPOSED FSR:	2.2:1
PARKING CALCULATION	
PARKING REQUIREMENTS IN ACCORDANCE WITH RMS GUIDE TO TRAFFIC GENERATING DEVELOPMENT. Metropolitan Sub-Regional Centres:	
7 x 1 Bedroom @ 0.6 per unit = 4.2 SPACES 14 x 2 Bedroom @ 0.9 per unit = 12.6 SPACES 1 x 3 Bedroom @ 1.4 per unit = 1.4 SPACES Visitors @ 1 per 5 units = 4.2 SPACES	
TOTAL PARKING REQUIRED	22.4 SPACES
TOTAL PARKING PROVIDED	24 SPACES
TOTAL OF 3 ACCESSIBLE SPACE PROVIDED 1 SPACE FOR VISITORS AND 1 SPACES FOR EACH ADAPTABLE UNITS	
MOTORCYCLE 1 per 15 units = 1.4 SPACES PROVIDED 2 SPACES BICYCLE 1 per 10 units = 2.1 SPACES PROVIDED 3 SPACES	
UNIT SUMMARY	
UNIT TYPES	QTY
1 BEDROOM	7
2 BEDROOM	14
3 BEDROOM	1
TOTAL UNITS PROPOSED:	22

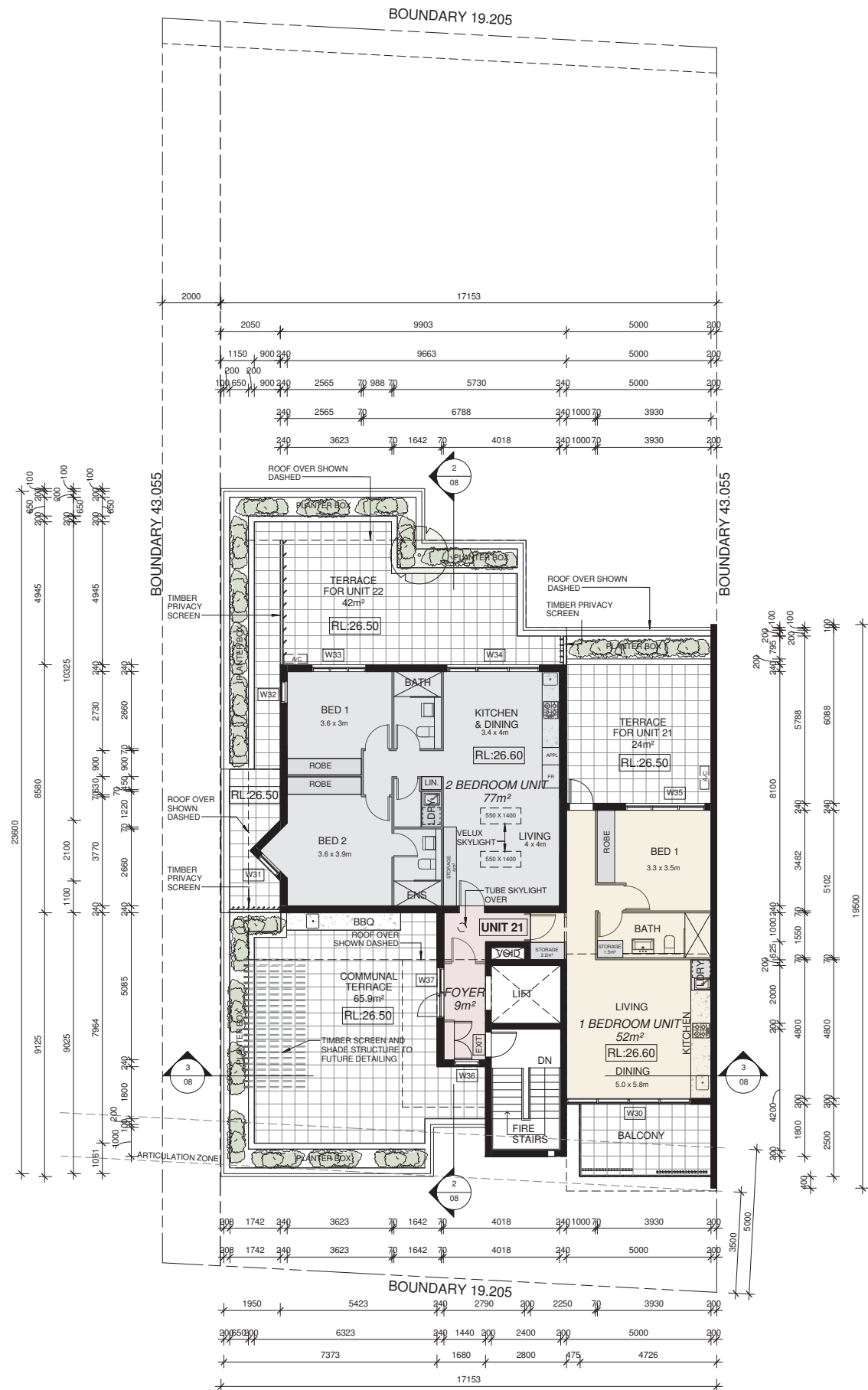
1 Site Plan  
1 : 100

No.	Description	Date
M	SECTION 96 AMENDMENTS - FOR APPROVAL	15.06.16
N	SECTION 96 APPLICATION - LEVEL 8 AMENDMENTS	04.12.17
O	ISSUE FOR BASIX	20.12.17
P	S96 REVISED APPLICATION - LEVEL 8	07.04.18

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SITE PLAN		Date	Job No.	Sheet No.
		15.06.16	2298DA	02
15-17 GERTRUDE STREET, WOLLI CREEK		Scale at A1	Drawn by	Issue.
		1 : 100	JM	P
PROPOSED RESIDENTIAL FLAT BUILDING		A. 1/64 Riverside Road, Chipping Norton NSW 2170 P. 02 9755 1318 F. 02 9755 1318 E. admin@pagano.com.au nominated architect Alfredo Pagano 6774 Salvatore Pagano 7003		





2 Level 8 - Proposed  
1 : 100

AREA CALCULATIONS	
TOTAL FLOOR AREA APPROVED	1836.1m²
LEVEL 8 APPROVED AREA (U21 + KITCHENETTE + FOYER)	131.6m²
LEVEL 8 PROPOSED AREA (U21 + U22 + FOYER)	138m²
ADDITIONAL PROPOSED AREA	6.4m²
TOTAL REVISED FLOOR AREA	1842.5m²

COMMUNAL OPEN SPACE CALCULATIONS	
REQUIRED COMMUNAL OPEN SPACE	25% X 834.6 = 208.65m²
LEVEL 1 COMMUNAL OPEN SPACE	159.2m²
LEVEL 8 COMMUNAL OPEN SPACE	69.5m²
TOTAL COMMUNAL OPEN SPACE PROPOSED	228.7m²

ROOF TOP PERIMETER PLANTING



Phormium tenax 'purpurea' (Purple NZ Flax)



Raphiolepis 'Oriental Pearl' (Dwarf Indian Hawthorne)

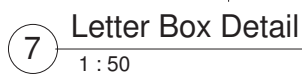
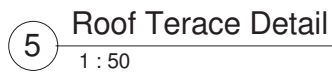


No.	Description	Date	NOTES.		
V	S96 REVISED 1 BEDROOM LAYOUT	28.03.18	This drawing is protected under copyright. It must not be copied, modified or used in any form without consent from the author. All dimensions are to be verified prior to commencement of work. Boundary dimensions and all levels are subject to survey. Use figure dimensions only, do not scale. All discrepancies are to be brought to the attention of the author. All building work shall be in accordance with the BCA & all relevant codes. Allow tolerance for window and sliding door openings.		
W	S96 REVISED - PLANNER	06.04.18			
X	S96 REVISED APPLICATION - LEVEL 8	07.04.18			
Y	SKYLIGHT ADDED	12.04.18			

LEVEL 8 FLOOR PLAN		Date	Job No.	Sheet No.
		15.06.16	2298DA	06
		Scale at A1	Drawn by JM	Issue.
		1 : 100		Y

15-17 GERTRUDE STREET, WOLLI CREEK	A. 1/64 Riverside Road, Chipping Norton NSW 2170
PROPOSED RESIDENTIAL FLAT BUILDING	P. 02 9755 1318 F. 02 9755 1318 E. admin@pagano.com.au nominated architect Alfredo Pagano 6774 Salvatore Pagano 7003

pagano architects



No.	Description	Date
P	SECTION 96 APPLICATION - LEVEL 8 AMENDMENTS	04.12.17
Q	ISSUE FOR BASIX	13.12.17
R	ISSUE FOR BASIX	20.12.17
S	S96 REVISED APPLICATION - LEVEL 8	07.04.18

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15-17 GERTRUDE STREET,  
WOLLI CREEK

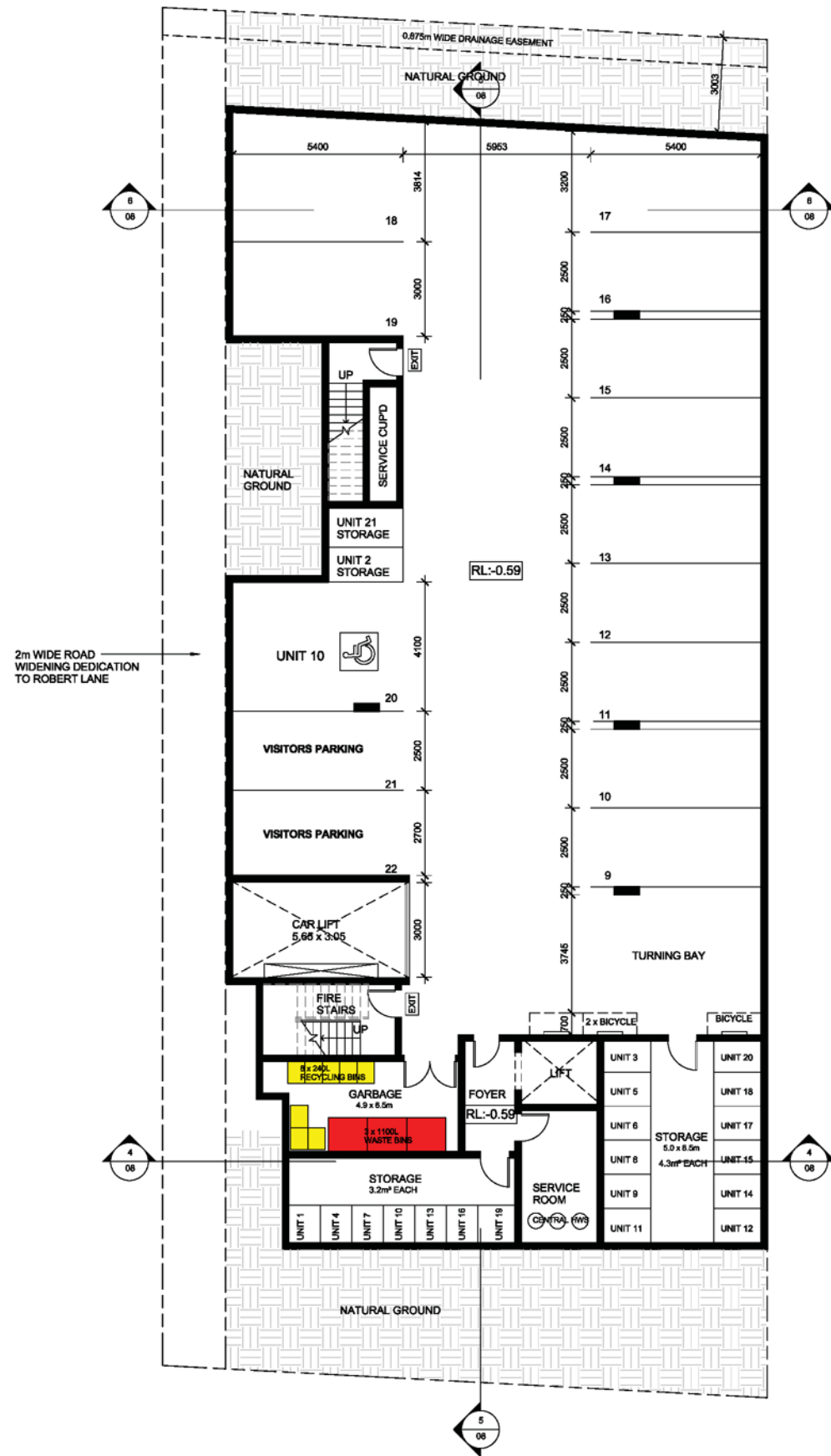
PROPOSED RESIDENTIAL FLAT  
BUILDING

Date	15.06.16	Job No.	2298DA	Sheet No.	07
Scale at A1	As indicated	Drawn by	JM	Issue.	S

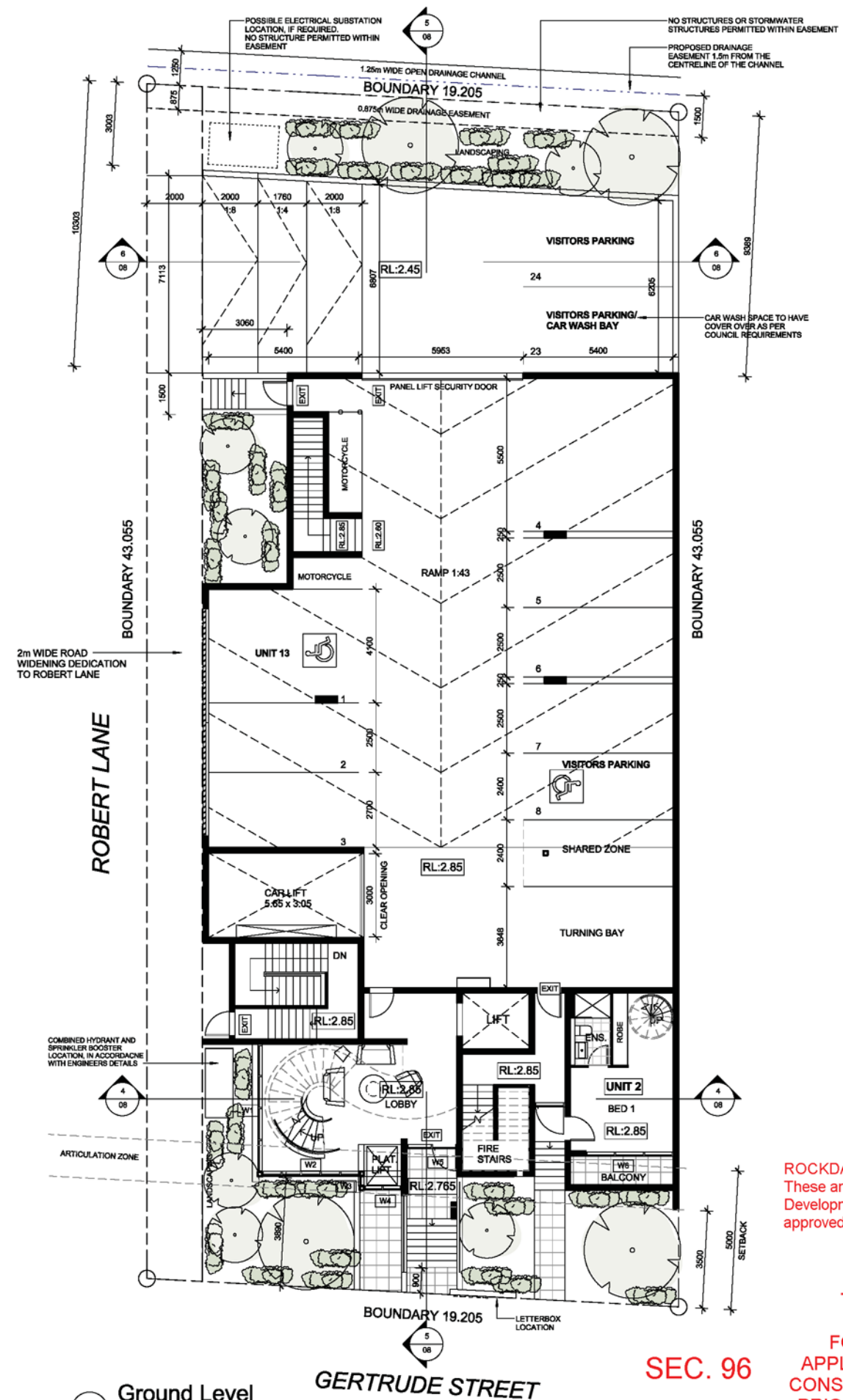
**A.** 1/64 Riverside Road,  
 Chipping Norton NSW 2170  
**P.** 02 9755 1318  
**F.** 02 9755 1316  
**E.** [admin@pagano.com.au](mailto:admin@pagano.com.au)  
 nominated architect Alfredo Pagano 6774  
 Salvatore Pagano 7003

  
 pagano architects





1 Basement Level 1  
1 : 100



2 Ground Level  
1 : 100

SEC. 96

ROCKDALE CITY COUNCIL  
These are the plans referred to in the  
Development Consent no. DA-2016/86/A  
approved on 4 August 2016

THESE PLANS ARE  
NOT APPROVED  
FOR CONSTRUCTION  
APPLICANT MUST OBTAIN A  
CONSTRUCTION CERTIFICATE  
PRIOR TO COMMENCEMENT  
OF ANY BUILDING WORK

No.	Description	Date	NOTES.	BASEMENT & GROUND LEVEL FLOOR PLANS	Date	Job No.	Sheet No.
P	AMENDED JOINERY AND STUDY AREAS	19.05.16	This drawing is protected under copyright. It must not be copied, modified or used in any form without consent from the author. All dimensions are to be verified prior to commencement of work. Boundary dimensions and all levels are subject to survey. Use figure dimensions only, do not scale. All discrepancies are to be brought to the attention of the author. All building work shall be in accordance with the BCA & all relevant codes. Allow tolerance for window and sliding door openings.	15-17 GERTRUDE STREET, WOLLI CREEK	21.07.16	2298DA	04
Q	SECTION 96 AMENDMENTS - FOR APPROVAL	15.06.16		PROPOSED RESIDENTIAL FLAT BUILDING	Scale at A1 1 : 100	Drawn by JM	Issue. R
R	AMENDED VISITOR PARKING SPACES	21.07.16			A. 1/84 Riverside Road, Chipping Norton NSW 2170 P. 02 9755 1318 F. 02 9755 1316 E. admin@pagano.com.au nominated architect Alfredo Pagano 6774 Salvatore Pagano 7003		



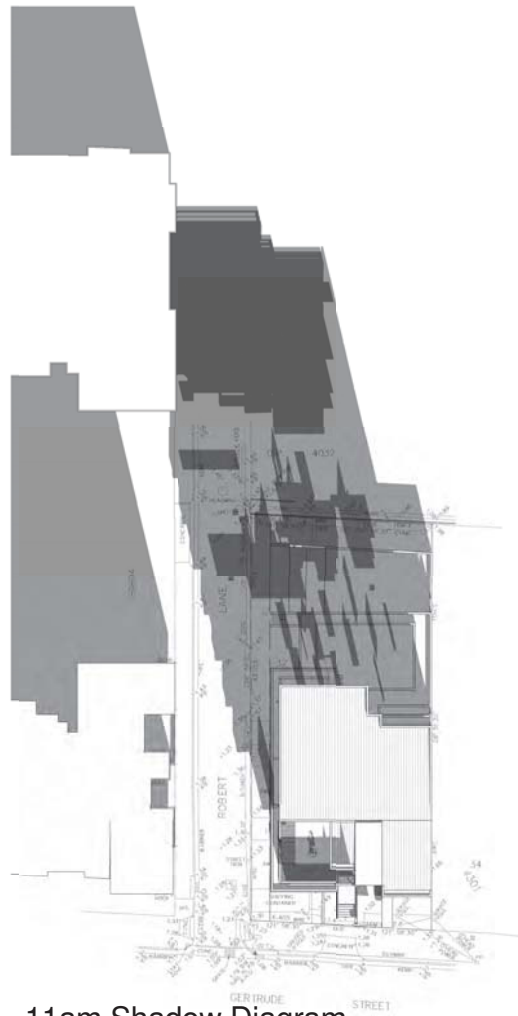
pagano architects



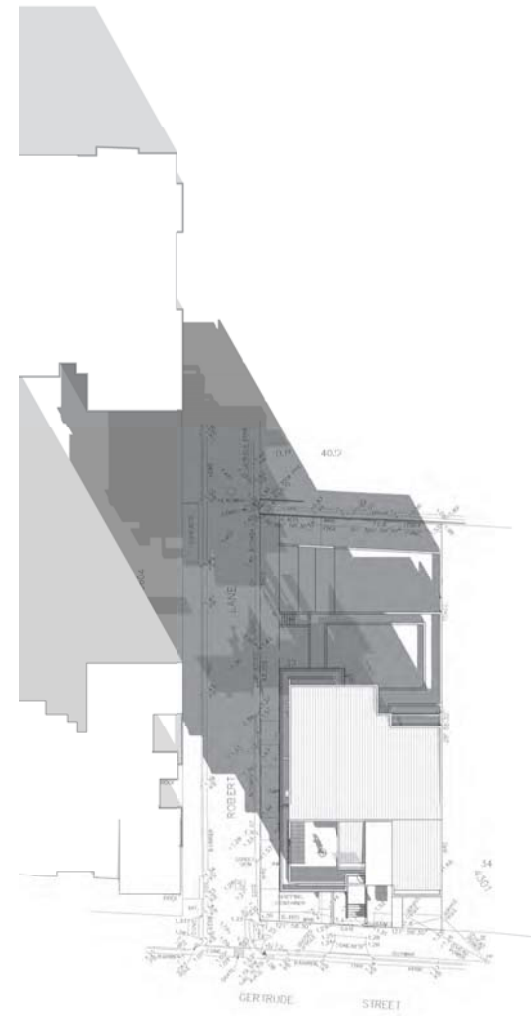
1 9am Shadow Diagram  
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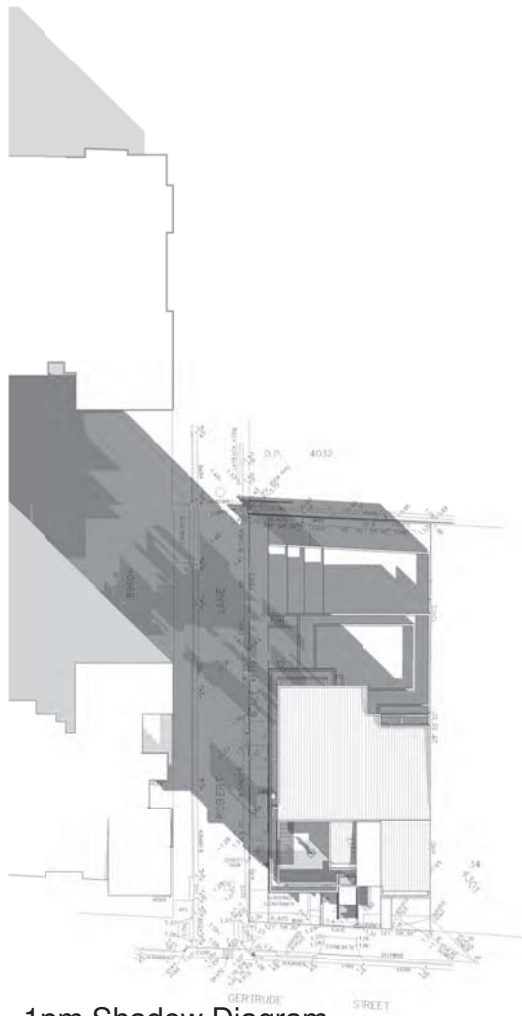
2 10am Shadow Diagram  
1 : 400



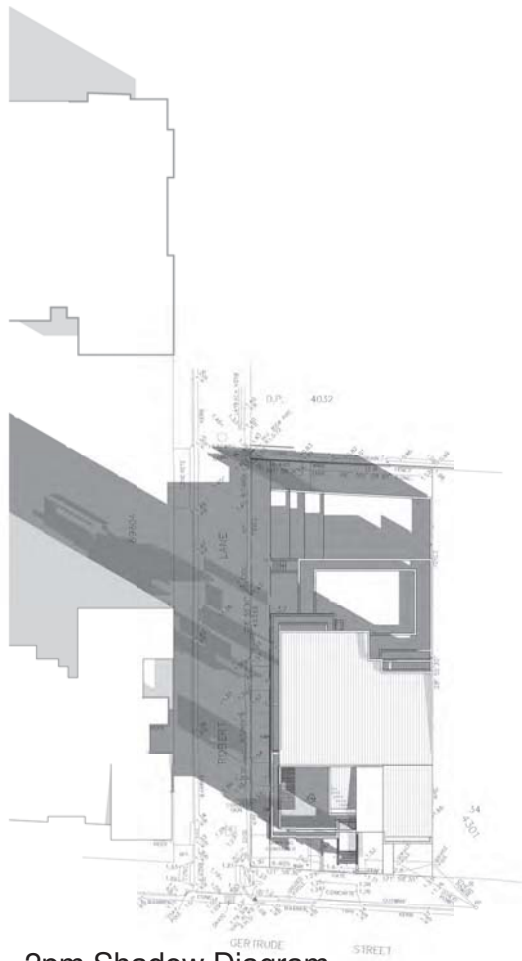
3 11am Shadow Diagram  
1 : 400



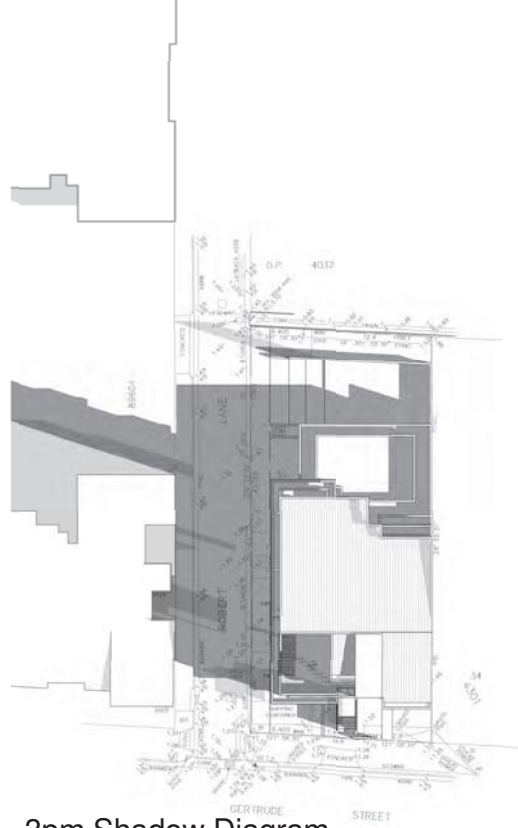
4 12pm Shadow Diagram  
1 : 400



5 1pm Shadow Diagram  
1 : 400



6 2pm Shadow Diagram  
1 : 400



7 3pm Shadow Diagram  
1 : 400

### Shadow Diagrams (Mid Winter 21st June)

No.	Description	Date
D	DEFERRED COMMENCEMENT CONDITIONS	26.04.16
E	SECTION 96 AMENDMENTS - FOR APPROVAL	15.06.16
F	S96 REVISED LEVEL 8	28.03.18
G	S96 REVISED APPLICATION - LEVEL 8	07.04.18

**NOTES.**  
This drawing is protected under copyright. It must not be copied, modified or used in any form without consent from the author. All dimensions are to be verified prior to commencement of work. Boundary dimensions and all levels are subject to survey. Use figure dimensions only, do not scale. All discrepancies are to be brought to the attention of the author. All building work shall be in accordance with the BCA & all relevant codes. Allow tolerance for window and sliding door openings.

**SHADOW DIAGRAMS**  
  
15-17 GERTRUDE STREET,  
WOLLI CREEK  
  
PROPOSED RESIDENTIAL FLAT  
BUILDING

Date	15.06.16	Job No.	2298DA	Sheet No.	13
Scale at A1	1 : 400	Drawn by	JM	Issue.	G
A. 1/64 Riverside Road, Chipping Norton NSW 2170 P. 02 9755 1318 F. 02 9755 1316 E. admin@pagano.com.au nominated architect Alfredo Pagano 6774 Salvatore Pagano 7003					

 pagano architects



06 April 2018

The General Manager  
Bayside Council  
PO BOX 21  
ROCKDALE NSW 2216

Attention: Town Planning

Dear Sir/Madam,

**RE: DA-2016/86: 15 – 17 GERTRUDE STREET, WOLLI CREEK**

This letter seeks to address the proposed variation to Clause 4.4 of the Rockdale Local Environmental Plan 2011, which relates to the floor space ratio development standard.

## **1. Introduction**

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This submission has been prepared with regards to a Section 96(2) Modification (now known as a 4.55 Modification), which seeks reconfiguration of the approved Level 8 to include reinstatement of the roof top communal open space and replacement of the approved 3-bedroom unit with a 2-bedroom and 1-bedroom unit under a dual key arrangement.

The proposed development meets the requirements as prescribed under Clause 4.6 of the Rockdale LEP 2011, as detailed in this written request for a variation to the maximum floor space ratio control.

Clause 4.6 states the following:

**"4.6 Exceptions to development standards**

- (1) *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does*

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w. [www.gatassoc.com.au](http://www.gatassoc.com.au)

*not apply to a development standard that is expressly excluded from the operation of this clause.*

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) the consent authority is satisfied that:*
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) the concurrence of the Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General must consider:*
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) the public benefit of maintaining the development standard, and*
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
  - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

**Note.** *When this Plan was made it did not include any of these Zones.*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
  - (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a*

- building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4*
- (ca) clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D) unless it is for a demonstrable public benefit, such as the provision of pedestrian links,*
- (cb) clause 4.3A."*

Clause 4.6 – Exceptions to development standards, establishes the framework for varying development standards applying under a LEP. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

- (a) the consent authority is satisfied that:*
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

The Environmental Planning Instrument to which these variations relate to is the Rockdale Local Environmental Plan 2011.

The development standard to which this variation relates to is Clause 4.4 – Floor Space Ratio, which reads as follows:

- "(1) The objectives of this clause are as follows:*
- (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,*
- (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,*
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.*
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

*(2A) The floor space ratio for a building on land that is in Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone R4 High Density Residential and that has an area of less than 460 square metres is not to exceed 0.55:1.*

*(2B) Without limiting subclause (2), the ratio of the gross floor area of all buildings (or parts of buildings) that are residential accommodation to the site area is not to exceed:*

*(a) (Repealed)*

*(b) 2.25:1 if the site is at 213 Princes Highway and 4 Wardell Street, Arncliffe.*

*(2C) Despite subclause (2), the floor space ratio for a building may exceed the maximum floor space ratio allowed under that subclause by up to:*

*(a) 1:1—if the building is in Area A identified on the Floor Space Ratio Map and on a lot having an area of at least 1,500 square metres,*

*(b) 1:1—if the building is in Area B identified on the Floor Space Ratio Map and on a lot having an area of at least 2,000 square metres,*

*(c) 0.5:1—if the building is in Area C identified on the Floor Space Ratio Map and on a lot having an area of at least 1,200 square metres,*

*(d) 2:1—if the building is in Area D identified on the Floor Space Ratio Map and on a lot having an area of at least 1,000 square metres,*

*(e) 0.5:1—if the building is in Area F identified on the Floor Space Ratio Map and on a lot having an area of at least 600 square metres,*

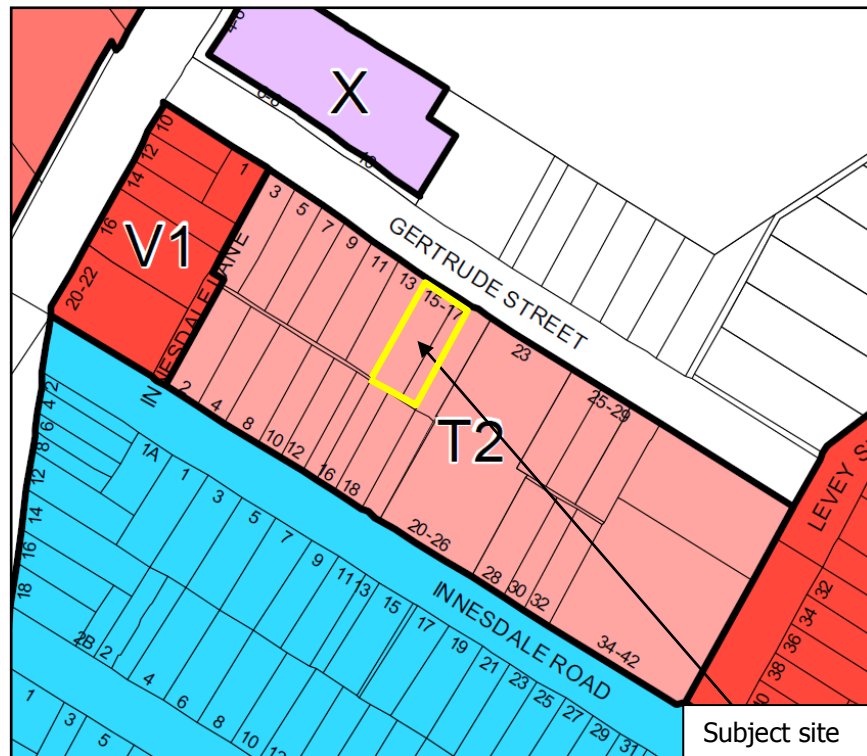
*(f) 0.7:1—if the building is in Area G identified on the Floor Space Ratio Map and on a lot having an area of at least 600 square metres and contains one or more pedestrian arcades.*

*(2D) Despite subclause (2), the maximum floor space ratio of a building on land in Area E identified on the Floor Space Ratio Map is 5:1. However, the ratio of the gross floor area of all buildings (or parts of buildings) that are commercial premises to the site area must be no less than 3:1.*

*(2E) Despite subclause (2), the maximum floor space ratio for a building on land identified as Area H on the Floor Space Ratio Map is, if the building is used only for the purpose of seniors housing, 1.25:1.*

**Note.** *Floor space ratios are determined cumulatively by calculating the gross floor area of all buildings on the site concerned (clause 4.5 (2)).*

The site is zoned R4 High Density Residential under the Rockdale Local Environmental Plan 2011. The floor space ratio on the site is not to exceed the maximum shown on the Floor Space Ratio Map, which for this site is 2.2:1. Refer to Figure 1.

**Figure 1: Floor Space Ratio Map**

**Source: RLEP 2011.**

The proposed development marginally exceeds the standard, seeking a floor space ratio of 2.207:1. The variation is equivalent to 6.4m<sup>2</sup> or just 0.34%.

A written justification is therefore required for the proposed variation to the maximum floor space ratio development standard, in accordance with Clause 4.6 of the Rockdale LEP 2011.

## **2. Extent of Non-Compliance**

As noted above Clause 4.4 of the Rockdale LEP 2011 states that the maximum FSR for the site is 2.2:1. This equates to a maximum gross floor area of 1,836.1m<sup>2</sup>, based on an existing site area of 834.6m<sup>2</sup>.

The current proposal seeks a gross floor area of 1,842.5m<sup>2</sup> or an FSR of 2.207:1. The proposal therefore exceeds the standard by 6.4m<sup>2</sup> or 0.34%.

It is noted that the existing site area has been used in this calculation, and that the road widening has not been factored into this area. This is considered to be in keeping with the provisions of Clause 4.5(4) of the Rockdale LEP 2011, whereby the only areas to be excluded from the calculation of site area are:

- a) "Land on which the proposed development is prohibited, whether under this Plan or any other law,
- b) Community land or a public place (except as provided by subclause 7))."

As the entirety of the site is currently zoned for the purposes of R4 High Density Residential and is not classified as community land or a public place, the entirety of the land may be included for the purposes of determining the floor space ratio.

The parking, service, storage and circulation spaces, being stairs and lifts, have not been included as per the definition of gross floor area.

It is our submission that the breach to the FSR control, will not impact on the amenity of the development or adjoining properties, nor will the variation compromise the architecture of the building or the bulk and scale of the approved development.

A degree of flexibility is considered reasonable in this instance.

### **3. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?**

The proposed variation from the development standard is assessed against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827*.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

*"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."*

It is therefore our submission that the Wehbe test is of relevance in the consideration of a standard to determine whether or not it is unreasonable or unnecessary in the circumstances of the case and it is evident in the Four2Five matter, the above test is relevant.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out below:

<b>First</b>	<p><i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i></p> <p><i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i></p>
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<b>Second</b>	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
<b>Third</b>	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
<b>Fourth</b>	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. (not applicable)</i>
<b>Fifth</b>	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the floor space ratio standard, the first method is invoked.

The objectives supporting the floor space ratio control identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4.

- "(1) *The objectives of this clause are as follows:*
- (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,*
  - (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,*
  - (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.*

The proposed modifications continue the endeavour to provide well-designed residential accommodation that will assist in meeting the housing demands of the changing local area. The additional gross floor area has no effect on the approved buildings design with regards to objective (a).

Whilst the modifications propose additional gross floor area, this is considered inconsequential in terms of the approved buildings bulk and scale. The approved design is not compromised and a balance between residential amenity and existing properties on adjoining sites is maintained. Whilst there is a slight increase in building envelope to the eastern elevation, along the laneway this is contained to a small element of the building and does not alter the way one would perceive the built form. No additional height is proposed. Consequently, the buildings modern architectural style and contemporary

design remains as approved. A consistency with the forms and scale of newer development in the immediate area is retained.

The approved building continues to be well articulated through balcony projections, stepped external walls and louvre/privacy screens to the northern, eastern and southern facades. A mix of finishes including rendered walls and glass balustrades continue to break up the building's façade. There is no change in terms of visual privacy as all modifications continue to ensure units are orientated to address Gertrude Street or rear of the site. As mentioned previously, the building envelope is minimally increased along the eastern elevation, along the laneway. However, this is contained to a small building element and given this part of the building adjoins the laneway, no additional impacts in this regard would result.

The proposed modifications would not result in any further overshadowing impacts than what have been approved. A minor increase of the building envelope is contained to the eastern elevation and small building portion. The approved building height remains compliant, with no change proposed. With modifications contained to level 8, levels below are not compromised in terms of their solar access received. The proposal is therefore considered to be in keeping with objective (b).

It is worthy to note that to reduce the floor area of the development, would not significantly alter the environmental outcomes to adjoining properties. The proposal will continue to locate majority of its bulk to the front portion of the site with appropriate setbacks to the eastern and rear boundaries maintained. As stated previously, the proposal continues compliance with Council's building height control prescribed for the site.

The modifications are to DA-2016/86 which is approved on the subject site, construction is currently underway. It is noted that the area is currently undergoing a transition, with the site and those adjoining now being zoned R4 High Density Residential under the Rockdale Local Environmental Plan 2011.

In keeping with objective (c) the proposed modifications do not impact upon the revitalisation of the neighbourhood, rather encourage it by providing additional residential accommodation at the subject site. No change to the approved building height will result with the modern design remaining complimentary design remaining consistent with recent development in the area.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard. As demonstrated, the objectives of this standard have been achieved.

#### **4. Are there Sufficient Environmental Planning Grounds?**

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The assessment above and as demonstrated within the accompanying Section 4.55(2) Letter, it has been shown that the resultant environmental impacts of the proposal will be satisfactory, as the development remains as being substantially the same.

The proposal addresses the site constraints, streetscape and relevant objectives of both the standards and the zone. The proposal will not result in any unreasonable amenity of environmental impacts.



We respectfully submit that the proposed modifications will result in a better planning outcome as additional residential accommodation is provided in an area that is well serviced by public transport and is proximate to local amenities, services and facilities.

The numerical departure from the standard equals  $6.4\text{m}^2$  or 0.34%. This minor breach is inconsequential from a planning standpoint as the additional bulk and scale does not impact upon the way one would perceive the built form. The development will continue to perpetuate design excellence and remains complimentary to the evolving character exhibited by recent approvals and construction within the area. Namely, DA-2015/69 which exceeded Council's floor space ratio standard by  $657.8\text{m}^2$  and DA-2016/69 which exceeded the standard by  $327.6\text{m}^2$  or 14.3%. The variation sought is considered minimal in this regard. A precedent for varying this standard would not result as variations have been sought and approved.

Overall, the perceived bulk and scale of the development will not change when viewed from the public domain or surrounding development.

All units within the development, apart from the 3-bedroom unit on level 8 have been sold. Perspective buyers do not favour this outcome of having a 3-bedroom unit adjoining an area of communal open space from an amenity point of view given the likely negative noise impacts which would likely result from groups of people occupying this communal space. Therefore a 2 bedroom and 1-bedroom unit have been proposed on approved Level 8 in a dual key arrangement that reinstates the approved rooftop communal open space as amenity impacts are lessened in this regard.

In this case, strict compliance with the development standard for floor space ratio in the Rockdale LEP 2011 is unnecessary and unreasonable.

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## **5. Is the Variation in the Public Interest?**

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Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.4.

The proposed development is in our submission consistent with the desired future controls and that the proposed modifications when assessed against the ADG is also compliant in terms of ventilation, amenity and the like.

The building contextually has regard to its surrounding properties and the separation which has been created internally improves the amenity for the apartments. There is no change in this regard.

Furthermore, it is important to also consider the objectives of the R4 High Density Residential zone in relation to the development, which are as follows:

### ***Zone R4 High Density Residential***

#### ***Objectives of zone***

- To provide for the housing needs of the community within a high density residential environment.*
- To provide a variety of housing types within a high density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

In response to the above the following is provided:

This letter accompanies a Section 96(2) modification application under DA-2016/86 (now known as a 4.55 Modification), which seeks reconfiguration of approved Level 8 to include reinstatement of the roof top communal open space and replacement of the approved 3-bedroom unit with a 2-bedroom and 1-bedroom unit under a dual key arrangement.

Consequently, the development will now provide for a total of twenty-two (22) residential units at land known as 15-17 Gertrude Street, Wolli Creek. With the dual key unit proposed, this hence contributes to the diversity of housing choice in the community. Notably, the proposed development is consistent with other high density residential development in the Wolli Creek and Turrella area.

The proposed modifications do not alter compliance in terms of visual privacy, overshadowing, parking and visual appearance as all works are contained to level 8. There will be no additional perceived visual bulk and scale when viewed from the public domain and adjoining sites. It is considered that the changing character of the area is well suited and equipped to cope with an increased floor space ratio.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

## **6. Public Benefit of Maintaining the Standard**

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It is considered that there is no benefit to the public or the community in maintaining the standard, rather there is a benefit in maintaining a degree of flexibility in this scenario. The proposed modification will allow for the enhancement and creation of additional housing stock within the locality, which as stated above meets the desired objectives of the standard.

It is not considered that the variation sought raises any matter of significance for State or regional planning.

It is considered that the area can support an increased density which is encouraged by Council as demonstrated in the R4 High Density Residential zoning afforded to the site.

The departure from the floor space ratio control within the Rockdale LEP 2011 allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

## 7. Is the Variation Well Founded?

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It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Rockdale LEP 2011 in that:

- ❑ Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- ❑ There are sufficient environmental planning grounds to justify the departure from the standard;
- ❑ The development meets the objectives of the standard to be varied (floor space ratio) and objectives of the R4 High Density Residential zoning of the land;
- ❑ The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- ❑ The breach does not raise any matter of State of Regional Significance; and
- ❑ The proposed modifications align with approved DA-2016/86, as there is minimal change to the bulk and scale if the approved development which is contained to the eastern elevation adjoining the laneway and relates to a minor building element. It is deemed that due to its minor nature there will be no change in the developments presentation to the streetscape or to adjoining development, with its design and architectural character remaining as approved.

Based on the above, the variation is considered to be well founded.

## 8. General

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Clause 4.6 also states that:

*"(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

**Note.** *When this Plan was made it did not include any of these zones.*

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) clause 5.4,*
  - (ca) clause 4.3 (2A), 4.4 (2A), 2(b), 2(c) or 2(d) unless it is for a demonstrable public benefit, such as the provision of pedestrian links,*
  - (cb) clause 4.3A."*

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate was provided for the development.

Clause 5.4 of the Rockdale Local Environmental Plan does not apply to the proposal.

Clause 4.3A, 4.3(2A), 4.4 (2A), 2(b), 2(c) or 2(d) of the Rockdale Local Environmental Plan do not apply to the site.

## **9. Conclusion**

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The proposal does not strictly comply with the maximum floor space ratio controls as prescribed by Clause 4.4 of the Rockdale Local Environmental Plan 2011. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Rockdale LEP 2011 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Rockdale LEP 2011 to vary this development controls appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum floor space ratio is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Valdis Aleidzans  
**Town Planner**

GAT & Associates  
April 2018  
Plan 2468