

URBIS

Section 4.55(8) - 149-163 Milton Street, Ashbury

Prepared for
Coronation Pty Ltd
19 March 2024

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Report Number	Final

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1. Introduction

This Statement of Environmental Effects (SEE) report has been prepared by Urbis Ltd on behalf of Coronation Property (the Applicant) in support of a Section 4.55 application to modify DA-826/2020. This development consent relates to the residential precinct at 149-163 Milton Street, Ashbury (the site).

DA-826/2020 was determined by the Land and Environment Court (LEC) (ref: LEC No 2021/0089891) on 23 November 2021. This modification application has been prepared and submitted to the LEC, pursuant to s4.55(8) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and addresses the relevant assessment requirements under section 4.15.

A s4.56 modification application was lodged with Canterbury-Bankstown Council (referred to as MOD 1) on 27 December 2023 (DA-826/2020/B) and is currently under assessment.

Modification DA-826/2020/B seeks consent for:

Internal and External alterations including increased floor to floor heights and overall building height, increase lift overrun height, amended window layout and design, changes to unit configuration, increase in GFA, delete voids, install additional fire stairs to basement.

The above amendments are minor in nature and are primarily a result of design development required to be resolved prior to the issue of CC1. The applicant is targeting the determination of MOD 1 prior to the end of March 2024.

This modification application (MOD 2) proposes broader design amendments which seek to improve the amenity, facilities and overall design of the principal communal open space areas. Building C is also proposed to be modified, with an extension to Level 3 and 4 and an additional part level (Level 5). Minor internal layout changes are proposed to Building B and C, with associated façade upgrades to Building C and, separately, to Building F. Accessible toilets have also been added to the northern communal open space and the rooftop of Building B.

Other minor amendments are also proposed to the basement, including a reduction in the OSD tank, reconfiguration of parking and services, the addition of a mechanical exhaust and amendments to the lift lobby for Buildings A & E.

The proposed modifications result in an increase in the overall GFA from 17,147m² to 17,841m² (remaining compliant with the mapped LEP FSR of 1.1:1), an increase in the building height for Building C from 17.8m to 20.8m (resulting in a non-compliance with the mapped LEP height of 18m), an increase in dwellings from 127 to 133 and an increase in the car parking spaces from 251 to 252 spaces.

The approved development application, inclusive of the proposed MOD 1 amendments, has an FSR of 1.06:1, which is 695m² below the maximum FSR contemplated for the site. The approved development yield is a result of consideration given in the assessment of the original development application to maintain the northern communal open space areas and the building separation between Building C and D and Building F. In order to accommodate the expansive communal open space areas, which exceed minimum ADG requirements, the maximum yield contemplated and permitted for the site was unable to be achieved in the original architectural design.

In order to achieve the permitted yield, whilst retaining the fundamental design elements, the proposed modification seeks to extend levels 3 and 4 of Building C, replacing the surplus rooftop communal open space area and provide an additional part level. Whilst the additional part level protrudes beyond the height plane by a maximum of 2.8m (15.56% exceedance of the height limit for 3.4% of the overall site), the protrusion is sensitively located on the site, in an area that is partially obscured by tall trees bordering WH Wagener Oval, it remains below the sight lines from Milton Street and Yabsley Avenue and, the part level ensures that the objective of having a stepped building form across the site is maintained.

Overall, the proposed amendments maintain the fundamental design elements and the nature and essence of the approved development as a whole, in that it is a residential development comprising 8 buildings of varying heights from 2 storeys to 6 storeys, over a common basement.

1.1. Structure of Report

In assessing the above modifications, this report provides a comprehensive description and assessment of the proposed modifications within the following sections of the report as listed below:

- **Section 2:** Outline of site context.
- **Section 3:** Approval history.
- **Section 4:** Overview of proposed modifications, including amendments to the current development consent conditions.
- **Section 5:** Assessment of the proposed modifications in accordance with section 4.55(8) of the EP&A Act.
- **Section 6:** Assessment of the application in accordance with the matters for consideration listed in section 4.15 of the EP&A Act.
- **Section 7:** Conclusion.

1.2. Supporting Documentation

This s4.55(8) modification application is accompanied by the following documentation:

- Owners Consent
- Amended Architectural Plans prepared by SJB Architects
- Amended Landscape Plans prepared by Arcadia
- ADG assessment prepared by SJB Architects
- Architectural Design Verification Statement prepared by SJB Architects
- BCA Letter prepared by Jensen Hughes
- Access Letter prepared by Jensen Hughes
- Traffic Letter prepared by TTPA
- Structural Statement prepared by ABC Consultants
- Stormwater Management Statement prepared by Integrated Group Services
- Waste Management Compliance Statement prepared by MRA Consulting Group
- BASIX Certificate prepared by Integrated Group Services

2. Site Context

The site is located at 149-163 Milton Street, Ashbury within the City of Canterbury-Bankstown Local Government Area (LGA) and is legally described as Lots B and C in Deposited Plan 30778. The site has an area of 16,220m², with a 105m frontage to Milton Street in the east, whereby vehicular access is obtained.

The site is located at the northern end of Ashbury, at approximately the mid-point between the commercial centres of Ashfield and Canterbury and approximately 8km west of Sydney CBD.

The site is part of the Ashbury Estate, which comprises two former industrial land holdings which were rezoned to deliver a high-density residential precinct. The southern site is under construction. In contrast, the subject site is at the initial site establishment stages, with site demolition and clearing undertaken in accordance with the development consent.

The surrounding area consists of single and two storey detached dwellings, while further north of the site, older style residential flat buildings line Milton Street.

Figure 1 Aerial photograph of site



Source: Urbis

3. Approval History

3.1. PP-2020-314

The site, together with the southern lot at 165-171 Milton Street, were the subject of a Council-led Planning Proposal prepared in 2017 to enable the redevelopment of the then Ashbury Industrial Precinct into a high-density residential precinct. Specifically, the following amendments to the Canterbury LEP 2012 were gazetted:

- Rezone the site from IN2 Light Industrial to R4 High Density Residential
- Increase the FSR from 1:1 to 1.1:1
- Introduce maximum building height controls, ranging from 8.5m, 11m, 14m, 18m and 21m

The planning proposal was gazetted on 20 March 2020. A site-specific DCP was then also adopted to guide the sites future redevelopment, the provisions of which are now contained within Canterbury Bankstown DCP 2023.

3.2. DA-826/2020

DA-826/2020 was approved by the LEC on 23 November 2021 (ref: LEC No 2021/0089891) for the construction of a residential precinct consisting of 127 dwellings on the subject site.

Development consent was granted for *“demolition of all structures, removal of 50 trees, excavation, site remediation, civil works, new road, site landscaping and construction of 8 residential buildings including 127 dwellings over a single level common basement for parking.”*

3.3. DA-826/2020/B

A s4.56 modification application to DA-836/2020 was lodged on 27 December 2023 and is currently under assessment (Council ref: DA-826/2020/B). Modifications are being sought for *“minor internal and external amendments including increases to floor-to-floor heights, increase in lift overrun height for Building B, minor external changes to roof pitch and design, minor internal layout changes, deletion of internal voids, and construction of fire egress stairs”*.

Council issued an RFI on 9 February 2024, which requested further information relating to site and roof level RL's, overshadowing and clarifications on the site setbacks. A response to the RFI was provided to Council on 4 March 2024 and is currently under review. In submitting the architectural plans for MOD 2, where necessary and relevant, the drawing documentation has captured those amendments sought as part of MOD 1.

4. Proposed Modifications

This Section 4.55(8) application seeks consent for alterations and additions to the approved development, including modifications to the upper levels of Building C to create an additional part storey, minor internal changes to Building B and C, façade amendments, and a redesign of the communal landscape open space to allow for improved landscaping, a new pool and associated amenities. Amendments to the basement layout and services are also proposed, including to increase the carparking from 251 to 252 and increase the bicycle spaces from 39 to 40.

4.1. Summary of Amendments

A detailed breakdown of the proposed design changes is summarised below and in Figures 3-7:

Area / building	Proposed amendments
Communal Open Space	<ul style="list-style-type: none"> - Redesign of northern communal open space area to include a pool, associated BBQ facilities and accessible WC. - Redesign of southern landscape communal open space to create casual lawn pockets and bench seating.
Building B	<ul style="list-style-type: none"> - Accessible WC added to the rooftop in lieu of previous mechanical plant, at the rear of the lift core.
Building C	<ul style="list-style-type: none"> - Removal of rooftop communal open space to building C - Extension of the south-eastern corner of level 3 and 4 by 8m, creating two x 3-bedroom, 2-storey apartments, with balconies of 35m² and 53m² respectively. - Addition of a part level (level 5) to the building comprising 2 x 1-bedroom and 2 x 3-bedroom apartments.
Internal layout changes	<ul style="list-style-type: none"> - Minor internal layout changes to Unit C4.06 in Building C in response to additional built form above. - Minor alteration to the lift lobby area of Building B Level 5 and provision of an accessible bathroom, in lieu of surplus plant area.
Façade amendments	<ul style="list-style-type: none"> - Minor façade updates to Building C in response to additional built form on Building C. Minor materiality change to Building F. These changes include the following: <ul style="list-style-type: none"> o Building C Northern façade of eastern wing: Façade amended to read architecturally as two offset vertical forms in response to the additional built form above. o Building C West: The materiality on Level 4 is changed to brickwork, with the new uppermost level now having a light metal clad finish, mirroring the expression of Building B. o Building F East: A small portion of metal cladding changed to brickwork to allow for clearer definition of roof forms. o Building F North & South: Material change from glazing to infill panelling where windows are located against kitchens or stairs to offer greater privacy.
Basement changes	<ul style="list-style-type: none"> - Increase in the number of car parking spaces from 251 to 252, including the following changes: <ul style="list-style-type: none"> o Reduction in the number of resident parking spaces from 226 to 225. o Increase in the amount of visitor parking spaces from 25 to 27. o Relocation of the car wash bay / service vehicle space away from high traffic junction within basement. - Increase in the number of bicycle parking spaces from 39 to 40. - Refinement of the layout and allocation of services and waste in basement (to comply with DA conditions) including the following: <ul style="list-style-type: none"> o Fire pump room reduced in size. o Fan room relocated from under Building B to area near visitor parking. o Bin Room 2 and Bulky Waste 2 reorganised to allow for additional parking. o Addition of plant room associated with pool. - Reduction in extent and size of OSD tank and amendments to overall stormwater design to align with current DCP standards.
Mechanical exhaust	<ul style="list-style-type: none"> - Construction of four additional exhaust shafts located adjacent to Building C, D2, F2 and adjacent to the proposed dining amenities in the northern communal open space.
Lift lobby roof	<ul style="list-style-type: none"> - Lift lobby roof for Buildings A and E amended to reflect headroom required for lift.

Figure 2 Approved and Proposed (Mod 1 and Mod 2) Western Elevation of Buildings B and C



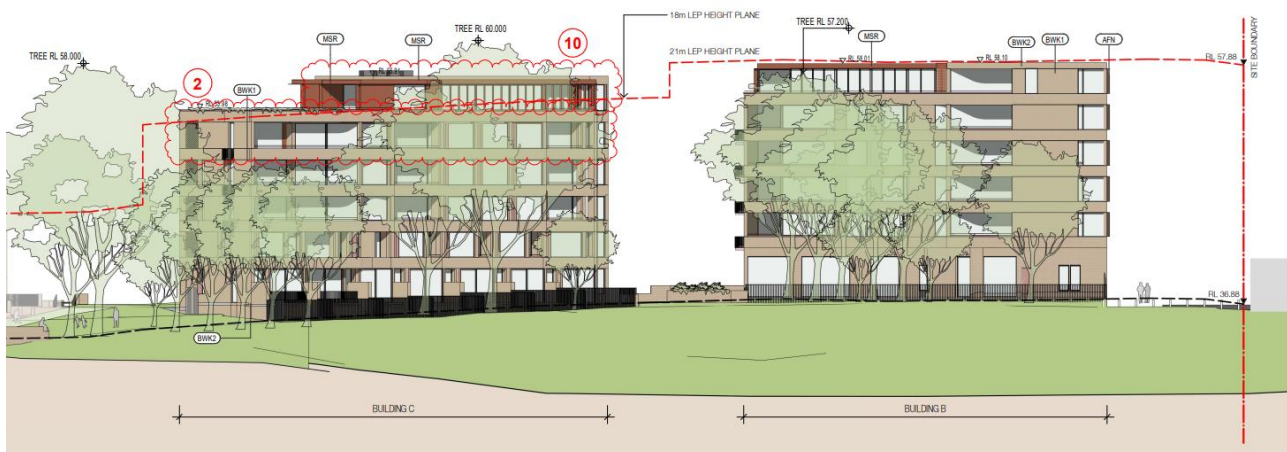
Picture 1 Approved western elevation of Buildings B and C.

Source: SJB Architects



Picture 2 Mod 1 western elevation of Buildings B and C (under assessment).

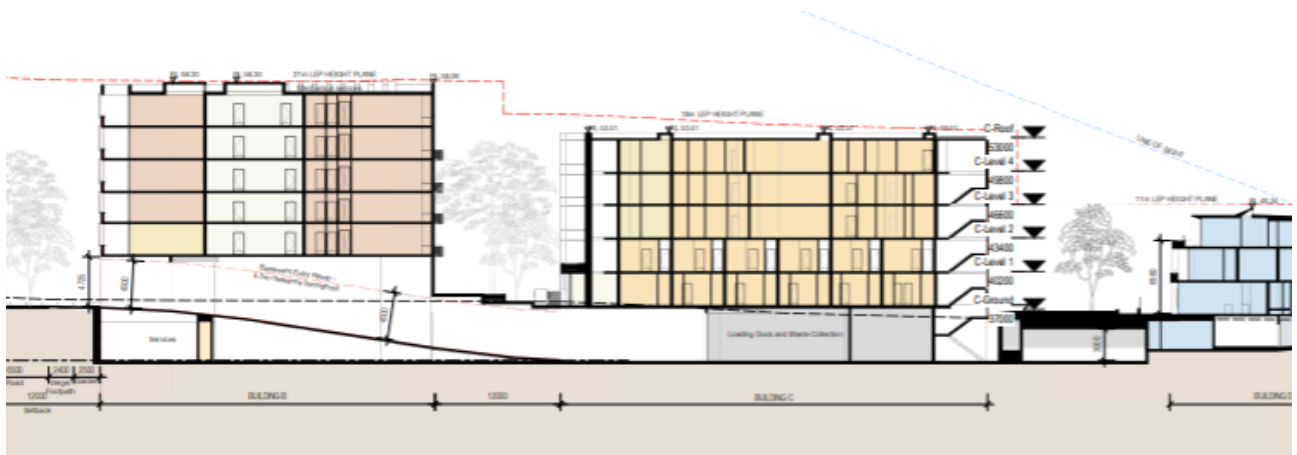
Source: SJB Architects



Picture 3 Mod 2 proposed western elevation showing additional part level to Building C and minor amendments to the façade of Building B.

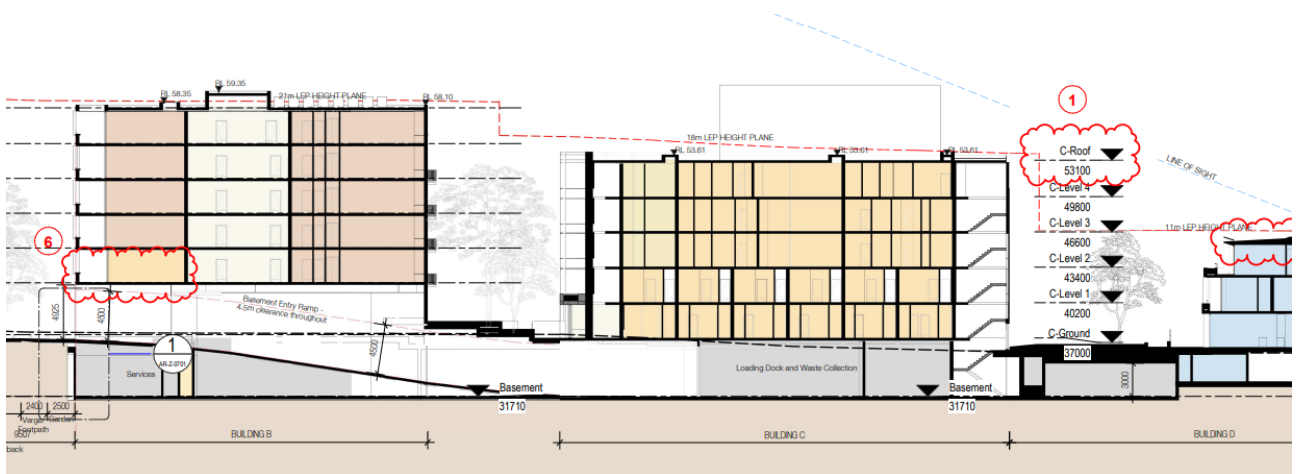
Source: SJB Architects

Figure 3 Approved and Proposed (Mod 1 and Mod 2) Sections of Building C



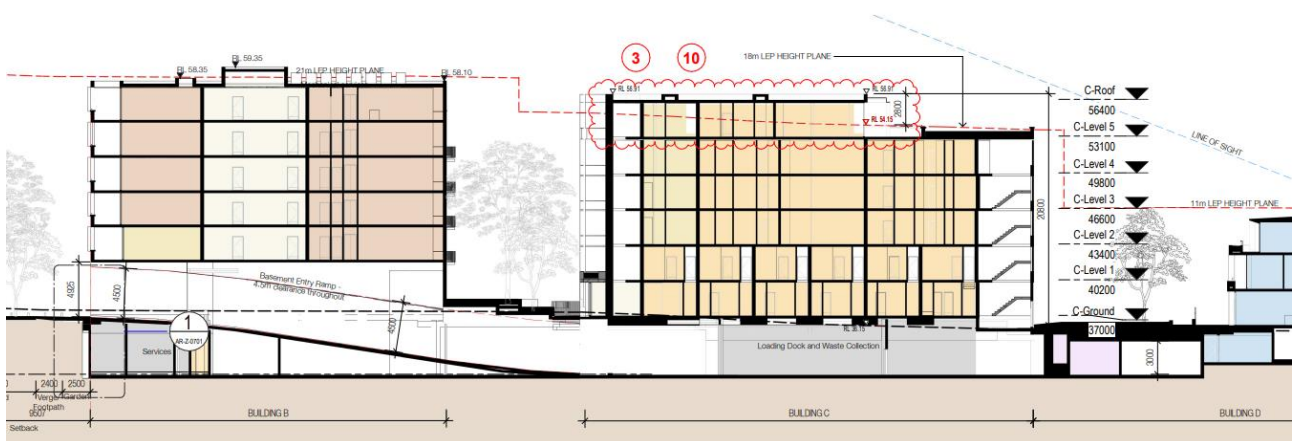
Picture 4 Approved Building C Section (centre)

Source: SJB Architects



Picture 5 Mod 1 Building C section (under assessment)

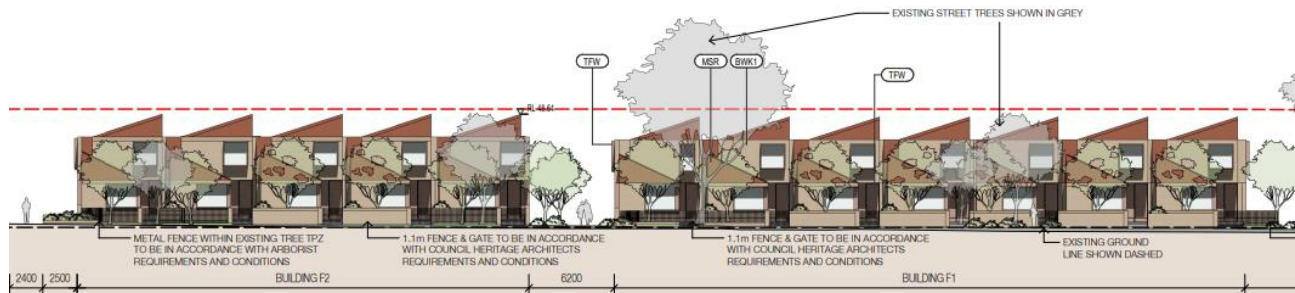
Source: SJB Architects



Picture 6 Mod 2 proposed Building C Section showing additional height.

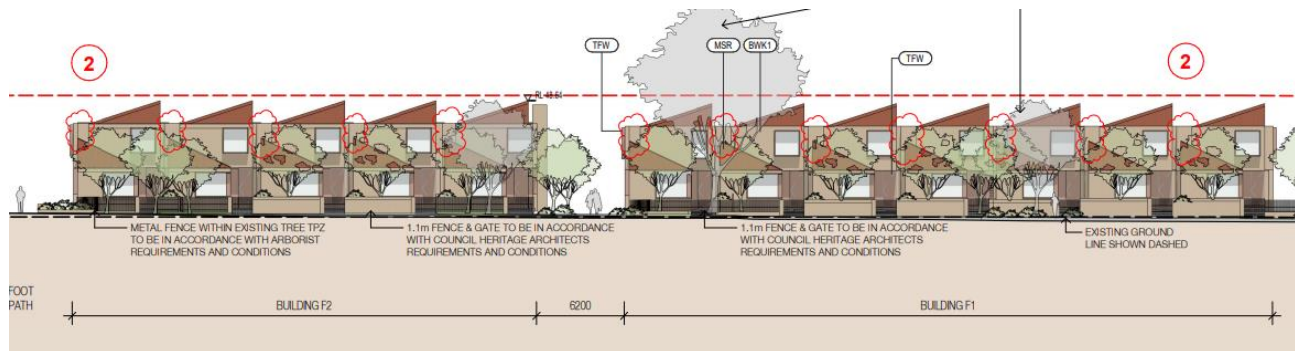
Source: SJB Architects

Figure 4 Approved and Proposed Eastern Elevation



Picture 7 Approved Eastern Elevation showing Building F.

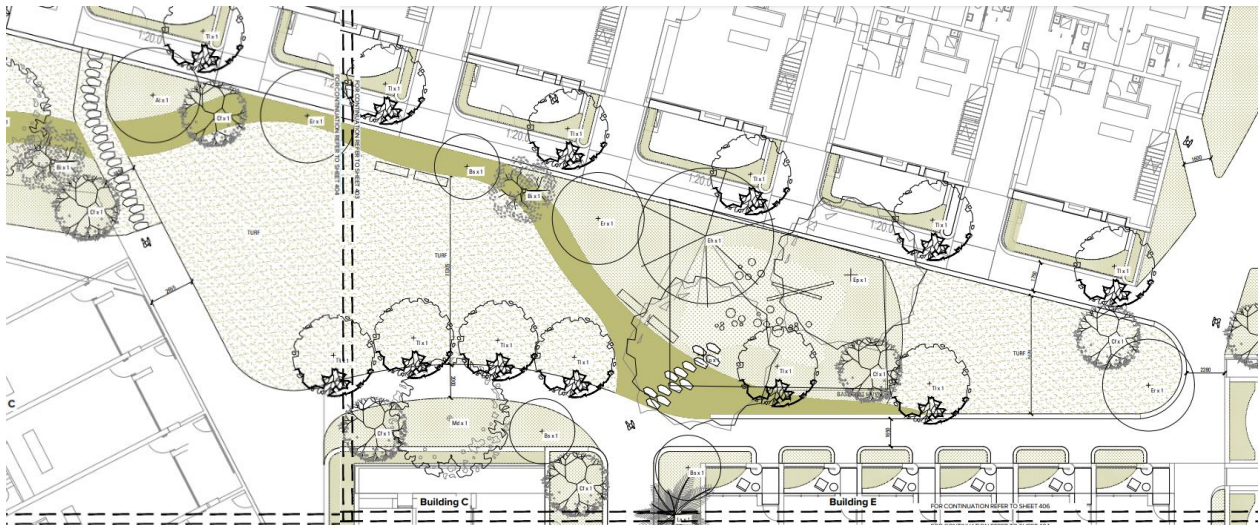
Source: SJB Architects



Picture 8 Proposed Eastern Elevation showing façade changes to Building F.

Source: SJB Architects

Figure 5 Approved and Proposed Landscape Plans – Northern Communal Open Space



Picture 9 Approved Communal Open Space

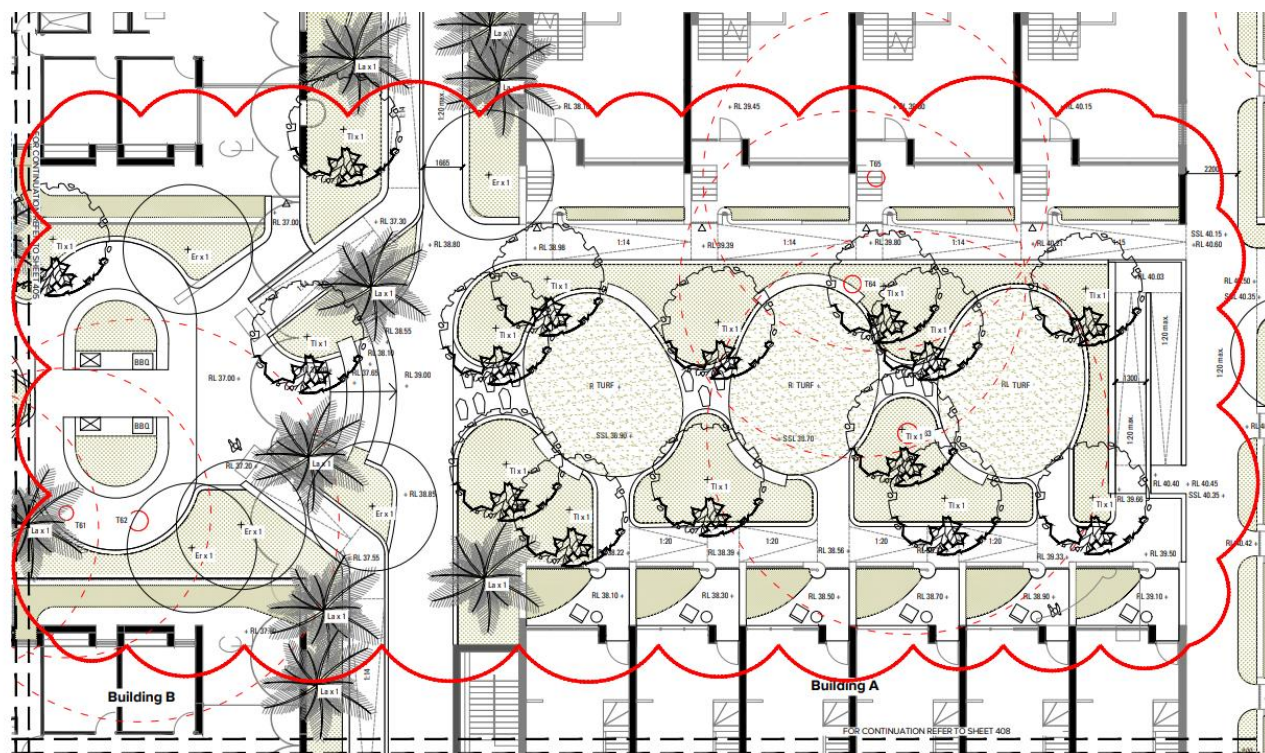
Source: Arcadia



Picture 10 Proposed Communal Open Space

Source: Arcadia

Source: Arcadia



Source: Arcadia

4.2. Amended Conditions

This section outlines the proposed modification to the conditions of consent included in DA-826/2020. The proposed modifications are shown by a strikethrough for deleted text and **red** for new text.

The modification application proposes to vary conditions of consent 1, 1.3 1.13, 2.19, 2.20, 4.6, 4.10 5.4 and 5.5.

4.2.1. Approved Plans

Proposed amendments to the conditions of consent for DA-826/2020 to reflect updates to the approved plans are outlined below in red and strike-through text.

1. **Approved Development.**

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan Name	Sheet No.	Date	Rev.	Prepared By
Site Plan- Analysis	004	18.09.2021	7	SJB
Overall Plan- Basement	0101	27.10.2021 12.03.2024	46 22	SJB
Overall Plan- Ground Floor	0110	27.10.2021 12.03.2024	45 22	SJB
Overall Plan- Level 1	0111	27.10.2021 12.03.2024	44 18	SJB
Overall Plan- Level 2	0112	27.10.2021 12.03.2024	44 17	SJB
Overall Plan- Level 3	0113	18.09.2021 12.03.2024	9 15	SJB
Overall Plan- Level 4	0114	18.09.2021 12.03.2024	40 16	SJB
Overall Plan- Level 5	0115	18.09.2021 12.03.2024	40 16	SJB
Overall Plan- Roof	0116	18.09.2021 12.03.2024	9 15	SJB
Building A	0201	30.08.2021	8	SJB
Building B- Sheet 1	0211	27.10.2021	10	SJB

Plan Name	Sheet No.	Date	Rev.	Prepared By
Building B- Sheet 2	0212	30.08.2021 12.03.2024	8 12	SJB
Building C- Sheet 1	0221	30.08.2021 12.03.2024	10 14	SJB
Building C- Sheet 2	0222	30.08.2021 12.03.2024	10 14	SJB
Building D- Sheet 1	0231	27.10.2021	9	SJB
Building D- Sheet 2	0232	27.10.2021	9	SJB
Building D- Sheet 3	0233	18.09.2021	8	SJB
Building E	0241	30.08.2021	8	SJB
Building F- Sheet 1	0251	30.08.2021 12.03.2024	7 10	SJB
Building F- Sheet 2	0252	30.08.2021 12.03.2024	2 5	SJB
Elevations- North & East	0501	27.10.2021 12.03.2024	10 15	SJB
Elevations- South & West	0502	27.10.2021 12.03.2024	10 15	SJB
Elevations- Internal Sheet 1	0503	27.10.2021 12.03.2024	10 16	SJB
Elevations- Internal Sheet 2	0504	27.10.2021 12.03.2024	10 16	SJB
Elevations- Internal Sheet 3	0505	27.10.2021 12.03.2024	9 14	SJB
Sections- Sheet 1	0601	27.10.2021 12.03.2024	8 13	SJB
Sections- Sheet 2	0602	27.10.2021 12.03.2024	8 13	SJB
Apartment Plans- Building A & E	1401	18.09.2021	8	SJB
Apartment Plans- Building B	1402	27.10.2021	8	SJB

Plan Name	Sheet No.	Date	Rev.	Prepared By
Apartment Plans- Building C	1403	30.08.2021	6	SJB
Apartment Plans- Building D	1404	18.09.2021	8	SJB
Apartment Plans- Building E	1405	30.08.2021	6	SJB
Adaptable Apartment Types	1406	30.08.2021	3	SJB
Materials and Finishes- Milton Street Façade	2201	30.08.2021	2	SJB
Materials and Finishes- Terraces A+E	2202	30.08.2021	3	SJB
Materials and Finishes- Building B+C	2203	30.08.2021	15	SJB
Demolition Plan	2501	18.09.2021	6	SJB
Pedestrian Walkway	9908	18.09.2021	2	SJB

Landscape Plans:

Drawing/Report	Name	Revision	Date
ARCADIA 149-163 Milton Street_LA DA [E] 211028	Landscape Design Report	£ Mod - A	28.10.2024 December 2023
Sheet 000	Cover Sheet	£ Mod - A	28.10.2024 December 2023
Sheet 101	Landscape Masterplan	£ Mod - A	28.10.2024 December 2023
Sheet 400	Plant Schedule	£ Mod - A	28.10.2024 December 2023
Sheet 401	Softworks Plan	£ Mod - A	28.10.2024 December 2023
Sheet 402	Softworks Plan	£ Mod - A	28.10.2024 December 2023
Sheet 403	Softworks Plan	£ Mod - A	28.10.2024 December 2023
Sheet 404	Softworks Plan	£ Mod - A	28.10.2024 December 2023
Sheet 405	Softworks Plan	£ Mod - A	28.10.2024 December 2023

Drawing/Report	Name	Revision	Date
Sheet 406	Softworks Plan	≡ Mod - A	28.10.2021 December 2023
Sheet 407	Softworks Plan	≡ Mod - A	28.10.2021 December 2023
Sheet 408	Softworks Plan	≡ Mod - A	28.10.2021 December 2023
Sheet 409	Softworks Plan	≡ Mod - A	28.10.2021 December 2023
Sheet 410	Softworks Plan	≡ Mod - A	28.10.2021 December 2023
Sheet 501	Landscape Details	≡ Mod - A	28.10.2021 December 2023
Sheet 502	Landscape Details	≡ Mod - A	28.10.2021 December 2023
Sheet 601	Landscape Specification	≡ Mod - A	28.10.2021 December 2023

4.2.2. Landscaping

Condition 1.3 of the consent for DA-836/2020 currently contains a reference to the previously approved landscape plans which is proposed to be amended as follows to reference the updated landscape plans associated with Mod 2:

*1.3 All aspects of the landscaping must be completed in accordance with the submitted landscape plan (drawn by Arcadia ~~Revision E / Issue DA - E~~ **Issue Mod - A**, submitted to Council on ~~8th October 2021~~) except where amended by the conditions of this consent. The landscaping and deep soil areas and communal open spaces are to be maintained at all times to the Council's satisfaction.*

4.2.3. Car and Bicycle Parking

Conditions 5.4 and 5.5 of the consent for DA-826/2020 currently outline the required number of car and bicycle parking spaces for the development. In response to the proposed increase in the number of units within the development and the proposed changes to the OSD tank and basement services layout, this modification application proposes to increase the number of car and bicycle parking spaces.

The total number of car parking spaces within the development will increase by one, however this will be achieved by increasing the number of visitor parking spaces by two and decreasing the number of resident parking spaces by one. There will also be a reallocation of the number of car parking spaces allocated for each housing typology. These changes will not result in non-compliance with the minimum required parking rates.

The number of resident bicycle parking spaces provided will also increase by one.

Conditions 5.4 is proposed to be amended as follows:

*5.4. ~~251~~ **252** off- street car spaces being provided in accordance with the submitted plans. This shall comprise:*

*~~226~~ **225** residential spaces including 13 accessible spaces; and*

~~25~~ **27** residential visitor spaces including 1 accessible car space.

14 of the above car parking spaces are to be provided for people with mobility impairment in accordance with AS 2890.1. All car parking spaces shall be allocated and marked according to these requirements.

Conditions 5.5 is proposed to be amended as follows:

5.5. A total of ~~39~~ **40** bicycle spaces, comprising of ~~26~~ **27** residential bicycle spaces and 13 visitor bicycle spaces, must be provided on-site in accordance with the approved plans.

4.2.4. BASIX

Condition 1.13 of the consent for DA-826/2020 outlines that the approved development is to be carried out in accordance with the BASIX certificate which accompanied that proposal. This modification application is accompanied by an updated BASIX certificate which confirms that the proposed modification remains compliant with water, energy and thermal comfort requirements. Accordingly, it is proposed to update this condition to reflect the details of the updated BASIX certificate.

Condition 1.13 is proposed to be amended as follows:

1.13 The development is to be carried out in accordance with the commitments shown in the approved BASIX Certificate No. ~~1123393~~ **1123393M_04**. The BASIX commitments approved with the development application are to be reflected in the construction certificate plans and specifications.

4.2.5. Stormwater

A number of conditions in the consent for DA-826/2020 refer to the Canterbury Development Control Plan 2012 which has since been superseded by the Canterbury-Bankstown Development Control Plan 2023. The new DCP controls include stormwater requirements that are significantly reduced compared to those that applied to the original approval. This modification application therefore proposes to update the size of the OSD tank to the requirements of the new DCP. This will require an update of a number of conditions to refer to the Canterbury-Bankstown Development Control Plan 2023 rather than the Canterbury Development Control Plan 2012 as outlined below.

Condition 2.19 is proposed to be amended as follows:

2.19 Stormwater drainage from the development shall be designed so as to comply with Council's ~~Canterbury Development Control Plan 2012 Part B5~~ **Canterbury-Bankstown Development Control Plan 2023 Section 3.1** and the requirements of the BASIX Certificate. A final detailed stormwater drainage design shall be prepared by a professional engineer as defined by the Building Code of Australia in accordance with the above requirements and shall generally be in accordance with the approved concept stormwater plan as shown in the table below. The final plan shall be certified by a professional engineer as defined by the Building Code of Australia that it complies with Council's ~~Canterbury Development Control Plan 2012 Part B5~~ **Canterbury-Bankstown Development Control Plan 2023 Section 3.1**, the BASIX Certificate and the relevant Australian Standards.

Drawing Number	Revision	Date	Prepared by
SW00	B C	30.08.21 13.03.24	Integrated Group Services
SW01	B C	30.08.21 13.03.24	Integrated Group Services
SW02	B C	30.08.21 13.03.24	Integrated Group Services
SW03	B C	30.08.21 13.03.24	Integrated Group Services
SW04	B C	30.08.21 13.03.24	Integrated Group Services
SW05	B C	30.08.21 13.03.24	Integrated Group Services

Condition 2.20 is proposed to be amended as follows:

*2.20 The proposed internal drainage for the site incorporates a groundwater collection system to reduce the inflow of groundwater to Wagener Oval. This system requires approval from the NSW Office of Water. Prior to the issue of a construction certificate, the applicant shall direct their environmental consultant to formally engage with Council to prepare the required documentation to submit to the NSW Office of Water, or other bodies as required, for approval of the proposed groundwater collection system described on stormwater drawing SW02&SW03 revision B ~~C Dated 30.08.2024~~ **13.03.24**, prepared by Integrated Group Services.*

Condition 4.6 is proposed to be amended as follows:

*4.6 All civil and hydraulic engineering works on site must be carried out in accordance with Council's ~~Canterbury Development Control Plan 2012 Part B5~~ **Canterbury-Bankstown Development Control Plan 2023 Section 3.1**. All Civil and Hydraulic engineering works associated with Council's assets and infrastructure must be carried out in accordance with Council's Work Permit requirements and to Council's satisfaction.*

Condition 4.10 is proposed to be amended as follows:

*4.10 The stormwater drainage system shall be constructed in accordance with Council's ~~Canterbury Development Control Plan 2012 Part B5~~ **Canterbury-Bankstown Development Control Plan 2023 Section 3.1** and the engineering plans and details approved by the Principal Certifier. Should the person having benefit of this Determination Notice encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, then they must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at their own expense.*

5. Section 4.55(8) Application

5.1. SUBSTANTIALLY THE SAME DEVELOPMENT

This section assesses the proposed modifications in accordance with Section 4.55 of the EP&A Act. The proposal has been assessed using both a quantitative and qualitative assessment to determine whether the modified development would be substantially the same as the approved development.

5.1.1. Relevant Case Law

The 'substantially the same' test requires a qualitative and quantitative analysis to be undertaken before and after the modification. *Moto Projects (No. 2 Pty Ltd v North Sydney Council* [1999] NSWLEC 280 describes the following:

55. *The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development.*
56. *The comparative task does not merely involve a comparison of the physical features or components of the development as approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).*

Relevant Court decisions pertaining to modification applications indicate that by applying a merit-based assessment, it is reasonable to accept a breach in a development standard, if the nature and essence of the development is substantially the same as that to which consent was originally granted.

Principles drawn from the relevant judgements include:

- *The term “substantially” means “essentially or materially having the same essence”,*
- *When a council makes a determination as to whether a development is substantially the same it is a question of fact and degree,*
- *The term to “modify” means to “alter without radical transformation,*
- *In comparing the approved development and the development as proposed to be modified it is necessary to undertake a qualitative and quantitative assessment of the developments in their proper context, and*
- *To undertake a numeric or quantitative assessment of the modification only in the absence of a qualitative assessment would be flawed.*

5.1.2. Quantitative Assessment

Table 1 provides a summary of the key elements of the approved and proposed development to demonstrate that the development remains substantially the same to that approved under DA-826/2020.

Table 1 Comparative analysis of approved and proposed schemes

Feature	Approved Development	Proposed Modification	Change from approved
Building Height (Building C i.e. area subject to modification)	17.8m	20.8m	+ 3m (16.85% increase)
Height in storeys	2 storeys – 6 storeys	2 storeys - 6 storeys	No change
Total roof area that protrudes beyond the LEP height plan	0%	3.4% of total site or 4.2% including MOD 1	+3.4% increase
Gross Floor Area	17,077sqm	17,841sqm	+ 764sqm (4.4% increase)
Building footprint	38%	38%	No change
Number of Dwellings	127	133	+ 6 dwellings (4.7% increase)
Solar access	98/127 - 77%	99/133 – 74.4%	- 2.3% decrease
Cross ventilation	113/127 – 89%	116 / 133 – 87%	- 2% decrease
Car Parking	251 spaces total	252 spaces total	+ 1 car parking space (0.39% increase)
Bicycle Parking	39 spaces total	40 spaces total	+ 1 bicycle parking space (2.5% increase)
Communal Open Space	Ground floor: 5,380sqm (33% of site area)	5,101sqm (31.4% of site area)	- 279sqm (5.1% decrease)
Deep Soil Zone	3,035sqm	3,305sqm	No change

Overall, the proposed modification seeks to convert “surplus” communal open space into residential floor space, with the addition of a new part level. The overall provision of communal open space and the GFA / FSR remain fully compliant with the applicable ADG and LEP controls. To accommodate the GFA available to the site under the LEP, a departure to the LEP building height control by a maximum of 15.56% is required.

It is noted that when compared with the building footprint under the site-specific DCP, the DCP building footprint accounts for 41% of the site area whereas the approved envelope accounts for 38% of the site area. The fundamental design elements of the approved development were centred around the maintenance of ground plane communal areas, building separation, retention of trees and through site lines. In order to maintain these fundamental elements, the modification application proposes to locate the available yield at the top of buildings, in the less sensitive areas of the site.

5.1.3. Qualitative Assessment

A qualitative comparison between the approved and the modified development relies on the compatibility of the building within the local site context and the associated amenity impacts to neighbouring dwellings to determine whether the “essence” of the development can be considered substantially the same.

The original development consent granted approval for, inter alia, 127 residential dwellings across 8 buildings, varying in height from 2 storeys to 6 storeys and with a shared common basement.

The development includes distinct features, such as terrace houses to Milton Street and along the northern boundary which provided for a suitable interface and relationship to the heritage conservation areas. It includes the retention of trees along Milton Street and adjacent to WH Wagner Oval, a publicly accessible through site link from Yabsley Avenue, two visual and pedestrian links from Milton Street and a new publicly accessible road from Milton Street to WH Wagner Oval along the southern boundary.

The size, shape and location of the ground level communal open space areas within the northern and southern portions of the site formed a fundamental element of the residential precinct and dictated the location of building footprints and thus building separation. The provision of a deep soil zone in the north, in addition to that noted in the site-specific DCP was also required.

These elements are referred to as the fundamental design elements which formed part of the original development consent.

Proposed amendments to the communal open space

This modification application seeks to amend the design of the northern and southern ground level communal open space areas. However, in doing so, the size, shape and location of those area ground level communal open space areas remains unchanged, as does the additional deep soil zone in the north.

North:

The northern ground level communal open space area extends from Milton Street in the north to the new publicly accessible through site connection in the west. As approved it contains a kids play area, accent planting to create different zones, shading and added interest, a large zone for tree planting and three flexible turf areas.

Maintaining all the other elements, the modification application seeks to transform one of the three flexible turf areas into a pool, with associated BBQ facilities and seating.

The introduction of a pool and associated BBQ facilitates at the ground level, significantly enhances the amenity afforded to residents and is considered an overall improvement to the development. The ADG states that communal open space areas should be designed to allow for a range of activities and facilities, including:

- *seating for individuals or groups*
- *barbecue areas*
- *play equipment or play areas*
- *swimming pools, gyms, tennis courts or common rooms*

The introduction of a pool is considered to be consistent with the intent of this northern communal open space zone, which was to provide for a range of activities.

Figure 7 Northern ground level communal open space area



Picture 13 Approved northern ground level communal landscaped area



Picture 14 Amended northern communal landscaped areas

Source: Arcadia

South:

The southern ground level communal open space zone extends from Milton Street in the northern and connects to WH Wagner Oval in the west.

The proposed amendments to this area are minor in nature and relate to a slight redesign of the central landscaped area to include three smaller, more discreet pockets of turfed lawn with integrated seat benches and shade planting, as opposed to a larger zone. Within the western elevated section, the BBQ facilities have been modified to provide for two BBQ areas rather than a single BBQ.

The changes are considered minor design refinements which improve the amenity offering of the communal open space zone.

Figure 8: Southern communal open space area



Picture 15 Approved southern communal open space zone



Picture 16 Proposed southern communal open space zone

Source: Arcadia

Summary

As evident above, the proposed modifications to the communal open space areas are minor in nature, are considered to be consistent with typical design refinements and result in a much-improved amenity and lifestyle offering for future residents.

Under the approved development, a total of 33% (5,350m²) of the site is dedicated to communal open space. That is 8%, or 1,295m², greater than what is required under the ADG.

Given the significant surplus in communal open space, and the planned in GFA that was otherwise permitted for the site, the applicant seeks to remove the 261m² communal open space area at the rooftop of Building C.

This will result in a decrease in total communal open space across the site from 33% of the total site area to 31.4%. Given that the rooftop communal open space area forms a “surplus area” in both size and location and it was not identified as a requirement under the site-specific DCP, the deletion of this space is not considered to result in a fundamental change to the nature and essence of the overall communal open space elements of the proposal.

Proposed amendments to Building C

Most notably, the proposed modification seeks to amend the eastern wing at Level 3 and 4 of Building C and include an additional part level, converting the existing 5 storey building into a part 5, part 6 storey building.

The extension of level 3 and 4 has been designed to replace the rooftop communal open space area with 2 x 2 storey, 3-bedroom apartments, which extend to align with the LEP height map, where it transitions from 18m to 11m. This results in the façade of the apartments having a 6.6m setback from the eastern parapet.

The upper level comprises 2 x 1-bedroom and 2 x 3-bedroom apartments and is setback 15.4m from the northern parapet.

The proposed changes to Building C result in an increase in floorspace by 689m², with an additional 6 dwellings being delivered in accordance with the planned floor space for the site, as per the LEP.

Reviewing the approved development as a whole, the proposed modifications are not substantially different from that to which development consent was originally granted.

Ultimately, the development application and the overarching intent for the site, as documented in the site-specific DCP, is to have building heights on the site that transition in height and scale, with the tallest buildings located along WH Wagner Oval and descending in height to Milton Street and the northern boundary.

That intent and those fundamental design elements are retained, with the building heights stepping from 6 storeys, 5 storeys and 3 storeys along the WH Wagner Oval frontage. As such, it is considered that the nature of the overall development remains consistent with that approved for the site.

The amenity impacts associated with the increase in the building height and a full assessment is discussed in Section 6.5.1 below.

Proposed Internal Layout Changes

The modification application proposes minor internal layout changes to Unit C4.06 in Building C in response to the additional built form above on Level 5. The changes do not alter the unit mix or size of the apartment, nor do they introduce any non-compliances with the ADG in terms of amenity.

An accessible bathroom has also been added to Level 5 of Building B. This is lieu of previous plant area and does not add to any bulk or scale.

Proposed Façade Changes

The proposed façade changes to Buildings C and F are very minor in nature and will not change the overall character and built form of the development as approved, or have an adverse impact on the significance of the Ashbury Heritage Conservation Area.

The proposed modifications to Building C seek to refine the materiality and design in response to the additional built form on Levels 3, 4, and 5. The proposed modifications to Building F seek to make a minor change in the material along the eastern façade, from metal cladding to brick. This amendment will allow for a clearer definition of the roof forms and is considered to be a positive addition. Between the southern laneway, the modification also proposes to change the materiality from glazing to infill panelling.

Proposed Ventilation Shafts

The proposed ventilation shafts are necessary to ensure effective ventilation of the basement car park. The shafts will be visible at ground level, being adjacent to Buildings C, D2 and F2. However, they will be effectively obscured by landscaping along the site boundary which will limit their visual bulk and reduce any perceived impact they may have on the Ashbury Heritage Conservation Area.

The ventilation shafts are a result of detailed design development and are not considered to alter the nature and essence of the development.

Proposed amendments to the basement layout and car parking

As a result of detailed design development and to service the additional residential yield, proposed amendments are noted throughout the basement level. Importantly, since the development was originally approved, Council's DCP has been updated, which now includes revised car parking rates. As a result, the

proposed yield can be accommodated on the site, with the resultant car parking requirements resulting in an additional 1 car space, which would have a negligible impact on traffic generated by the site.

Other amendments include refinements to the layout and allocation of services and waste, including the addition of a plant room associated with the pool, and a reduction in the extent and size of the OSD tank to align with current DCP standards.

5.1.4. Summary

As highlighted above, the proposed modifications do not radically transform the approved development, to the extent that it is no longer substantially the same for which development consent was granted. In other words the “essence” of the approved development is not substantially altered. This is summarised below:

- The fundamental nature of the development remains as approved, in that it is a residential precinct, containing 8 buildings varying in height from 2 storeys to 6 storeys and developed over a common basement.
- The approved building footprints remain unchanged.
- The streetscape presentation and interface remain largely unchanged and therefore external impacts beyond the site boundary are akin to that of the approved development.
- Whilst there are numerical changes, these are largely minor in nature when considering the development as a whole and are not considered to result in a fundamentally different development outcome.
- The key design elements for which consent was granted have been retained or, in the case of the landscaped open space, have been improved to offer a greater level of amenity.
- The additional impacts associated with the additional height is considered reasonable and appropriate, given that the proposed changes will not be visible from a standing position at Milton Street or Yabsley Avenue, remain below the canopy line of the tallest tree and any degree of overshadowing is nominal and does not result in the development receiving less than 70% solar access.
- The loss of communal open space is considered reasonable given that the approved development significantly exceeds the minimum requirements and the approved GFA is well below that planned for the site. The resultant outcome continues to exceed the minimum communal open space requirements however now achieves the site’s planned density and thus results in the most efficient use of the land.
- The traffic generated by the proposed amendments result in 1 additional car space, which would be negligible.
- The site is entirely suitable for the development as modified as the continued use of the site as a residential development does not conflict with any of the surrounding land uses in the locality.
- The modification will result in minimal additional environmental impacts beyond those considered in the original development application.

Based on the above quantitative and qualitative assessments, the modified proposal is considered substantially the same as the approved development.

6. SECTION 4.15 ASSESSMENT

The section 4.55 application has been assessed in accordance with the matters for consideration listed in section 4.15 of the EP&A Act and as outlined below.

6.1. Environmental Planning Instruments

The proposed modifications have been assessed in accordance with the relevant State and local environmental planning instruments.

6.1.1. State Environmental Planning Policy (Sustainable Buildings) 2022

The *State Environmental Planning Policy (Sustainable Buildings) 2022* (Sustainable Buildings SEPP) came into effect on 1 October 2023. Chapter 2 of SEPP applies to residential development and requires all residential development in NSW to achieve a minimum target for energy efficiency, water efficiency and thermal comfort. Given the development was lodged and approved before 1 October 2023, this SEPP does not apply to this modification application.

Despite the above, the proposed development was assessed in accordance with the relevant requirements under *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, and a BASIX Certificate prepared by IGS and dated 16 November 2021 was assessed as part of DA-826/2020. An updated BASIX Assessment Report and BASIX Certificate were prepared by IGS and dated 26 January 2024 in response to the proposed modifications which confirmed that the proposal remains compliant with water, energy and thermal comfort requirements.

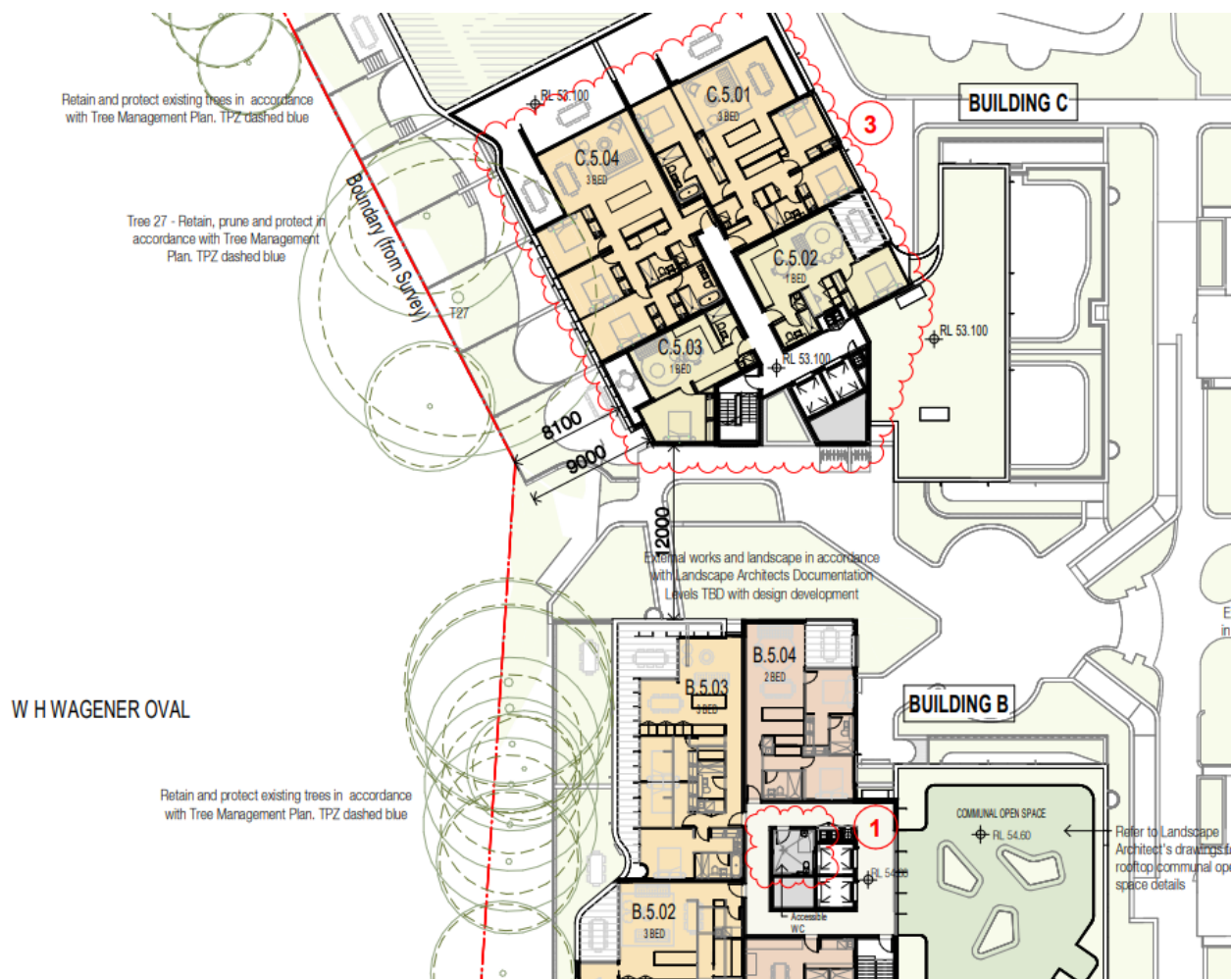
6.1.2. State Environmental Planning Policy (Housing) 2021

Chapter 4 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) applies to development for the purposes of a building that comprises three or more storeys and four or more self-contained dwellings.

The proposed modification includes the creation of six additional dwellings across Levels 3-5 of Building C. A Design Statement and ADG Compliance Report has been prepared by SJB Architects which confirms that the proposed modifications remain consistent with the ADG. The relevant matters are summarised below:

- **Communal Open Space:** The proposed modification involves the removal of the rooftop communal open space on Building C. However, the total communal open space remains at 31.4% of the total site area, which exceeds the minimum requirement of 25% of the site area.
- **Apartment size and private open space:** The proposed 6 new dwellings meet the minimum apartment sizes, with the private open space areas either meeting or exceeding the minimum requirements.
- **Solar access:** The proposed development, as modified maintains compliance, with 74% of dwellings receiving a minimum 2 hours solar access. A maximum of 15% of apartments receive under 2 hours solar access.
- **Cross ventilation:** The proposed development, as modified maintains compliance, with 87% of dwellings being naturally cross ventilated.
- **Building Separation:** For buildings between 5-8 storeys, the ADG requires a building separation of 13.5m between habitable and non-habitable facades. Buildings B and C, as approved, currently have a building separation of 12m at this level. The interface of these buildings includes a non-habitable southern façade for Building C and a combination of habitable and non-habitable facades for Building B and the addition of privacy screens, as shown in Figure 9. The non-compliance is limited in nature, with the proposed amendments impacting a total of 2 apartments. Given that this duplicates the existing situation and is fully compliant with the DCP separation controls, it is considered that the separation distances and proposed mitigation measures are acceptable.

Figure 9 Level 5 Plan showing relationship between Buildings B and C



Source: SJB Architects

6.1.3. Canterbury-Bankstown Local Environmental Plan 2023

Canterbury-Bankstown Local Environmental Plan 2023 (CBLEP) is the principal instrument relevant to the site. The proposed modifications have been assessed in accordance with the relevant provisions as outlined in **Table 2**.

Table 2 CBLEP Compliance Table

Clause	Proposed	Compliance
Clause 2.1 – Land Use Zones R4 High Density Residential	The proposed amendments retain the residential uses which are permissible with consent in the R4 zone.	Yes – no change
Clause 4.3 – Height of Buildings Part 8.5m, part 11m, part 18m, part 21m.	The proposed amendments arising from MOD 2, result in Building C exceeding the 18m height plane by a maximum of 2.8m.	No – refer to section 6.5.1 below.
Clause 4.4 – Floor Space Ratio FSR control: 1.1:1 Site area: 16,220sqm	The proposed amendments result in an increase in the GFA, with a GFA totalling 17,841m ² and resulting in an FSR of 1.1:1.	Yes

Clause	Proposed	Compliance
Maximum GFA: 17,842sqm		
Clause 5.10 – Heritage Conservation	<p>The site is not identified as a heritage item nor is it located within a heritage conservation area. It is however located to the west of the Ashbury Heritage Conservation Area (HCA).</p> <p>Aside from the minor materiality change to Building F, there are no amendments proposed at the interface of the site which would result in additional impacts to the heritage conservation area, beyond that which has already been approved and assessed.</p>	Yes

6.2. PROPOSED ENVIRONMENTAL PLANNING INSTRUMENTS

No draft environmental planning instruments are relevant to this proposal.

6.3. REGULATIONS

This application has been prepared in accordance with the relevant provisions of the *Environmental Planning and Assessment Regulation 2021*.

6.4. DEVELOPMENT CONTROL PLAN

Canterbury-Bankstown Development Control Plan 2023 (DCP) provides the core controls for the site, including site-specific provisions in Chapter 11.1. The proposed modifications have been assessed in accordance with the relevant provisions as outlined Table 3.

Table 3 DCP Compliance Table

Provision	Proposed	Complies
Chapter 11.1 149-171 Milton Street, Ashbury		
Section 2 - Siting The Development		
<p>2.1 Locate building form within the development in accordance with the building footprints and envelopes shown in Figure 12.1.3 Number of Storeys and Figure 12.1.5 Minimum Setbacks and Building Separation.</p> <p>2.2 Any variation from the building footprints and heights shown in these figures must demonstrate that it achieves a higher quality outcome in terms of:</p> <ul style="list-style-type: none"> • Scale transition across the site. • Response to the conservation character and scale of Milton Street. • Amenity to adjacent residential lots, the oval and dwellings within the site itself. • Visibility to and visual impact from the conservation area. • Visual and physical permeability through and into the site. • Consolidated landscape areas throughout the site. 	<p>Building C is identified as having a maximum height of 5 storeys in Figure 12.1.3 Number of Storeys.</p> <p>The proposed modification seeks to increase the height of Building C to part 5, part 6 storeys, which will enable the maximum development yield of the site to be achieved. The DCP supports variations to building height controls, providing that it maintains compliance with the set criteria. In this regard:</p> <ul style="list-style-type: none"> ▪ The additional height maintains a stepped, scaled transition across the site, transitioning within this portion of the site, from 6 storeys, 5 storeys and 3 storeys. ▪ Building C is centrally located along the western site boundary meaning it has a limited relationship with Milton Street, forming a backdrop to the entire residential precinct. The scale of the additional part level provides for an appropriate transition and would not be considered out of character, when viewed from Milton Street. ▪ The overshadowing diagrams confirm that there will be minor additional overshadowing to WH Wagner Oval, which will impact a maximum of 0.1% of the Oval (1m² – 377m²). It is noted that the shadow falls within the existing shadow of the tall trees and along an area of passive recreation. Any additional overshadowing would therefore be negligible. 	Complies with the variation criteria

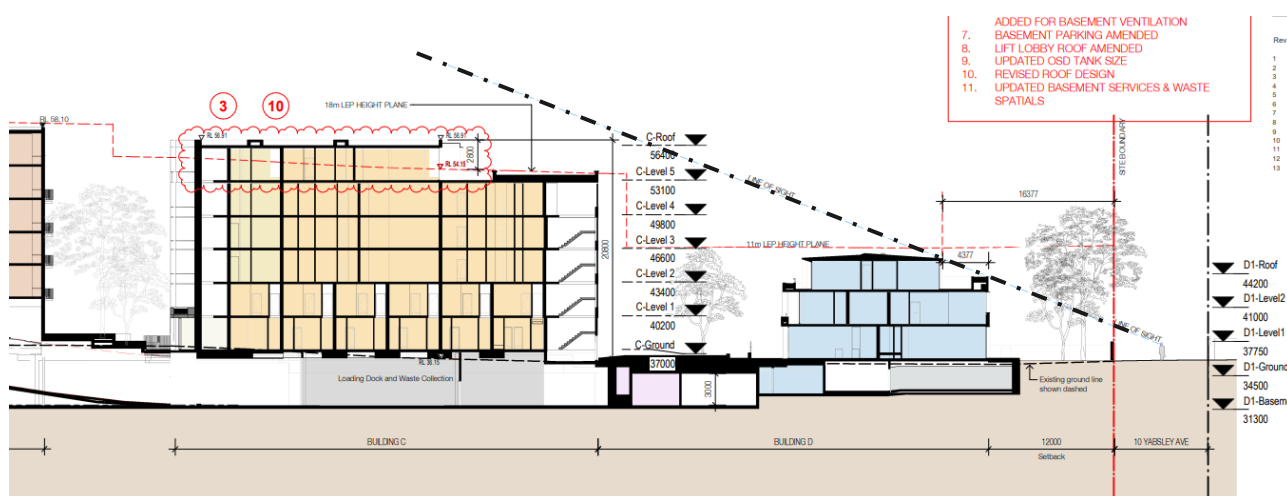
Provision	Proposed	Complies
	<ul style="list-style-type: none"> The proposed amendments remain below the standing eye line from Milton Street and Yabsley Avenue, ensuring that the height will not have an adverse impact on the conversation character and scale of Milton Street. There is no change to the building footprints, approved separation distances or physical permeability throughout the site. <p>Therefore, whilst the building in part exceeds the height in storeys control, the development remains compliant with the outcomes and objectives sought by the control.</p> <p>This is further discussed in Section 6.5.1 below</p>	
2.4 Communal open space throughout is to be designed as public domain with active street edges, street furniture, lighting and planting.	The communal open space areas will remain publicly accessible as through-site links connecting Milton Street to WH Wagener Oval. Seating and shade structures will be provided, as well as appropriate lighting and planting.	Yes
Section 3 – Building Height and Density		
<p>3.1 The detailed distribution of height within the maximum height allowed within the precinct is to be in accordance with the height in metres in the following table and the maximum height in storeys designated in Figure 12.1.3 Number of Storeys.</p> <p>Maximum height in metres for a 6 storey building, including allowance for plant, lift overrun and roof form, is given as 21m.</p>	<p>Whilst the proposal results in a departure from the maximum building height for Building C, as discussed above, the height remains distributed across the site as envisaged in the DCP to provide for an appropriate scale transition. Most notably, the proposed development does not exceed the maximum permitted density on the site, being 1.1:1.</p> <p>Building C will have a maximum height of 20.8m which is compliant with the maximum height of 21m permissible for a 6-storey building.</p>	<p>No</p> <p>Yes</p>
3.7 Taller development along the edge of WH Wagener Oval is not to be visible above the canopy line of the tallest existing mature tree on the eastern edge of the oval.	The proposed increase in Building C height will remain below the tree canopy line when viewed from W H Wagener as demonstrated in Figure 10 below.	Yes

Provision	Proposed	Complies
3.8 The maximum floor space ratio may not be achievable if adverse visual, acoustic or privacy amenity impacts occur to neighbouring dwellings or dwellings within the development.	<p>The proposed modification has been subject to a detailed design process which has determined that the provision of additional height on Building C will not result in unacceptable visual, acoustic or privacy amenity impacts.</p> <p>Building C is located within the centre of the site and does not have any interface to neighbouring dwellings. It is designed to step down in height towards the north and east to minimise its impact to other buildings within the development, which also has the effect of reducing its visual bulk and scale.</p> <p>Appropriate building separation distance is provided to Building B to mitigate potential acoustic or privacy impacts.</p> <p>As such, the proposed modification is able to achieve the maximum FSR for the site without resulting in any unacceptable visual, acoustic or privacy impacts.</p> <p>This is further discussed in Section 6.5.1 of this report.</p>	Yes
3.9 The majority of the new dwellings are to be located within the centre of the precinct to the western end of the new street and along the centre part of the WH Wagener Oval boundary to minimise privacy, scale and acoustic impacts to adjoining residential dwellings.	The proposed additional dwellings are to be located in Building C which aligns with the centre of the WH Wagener Oval boundary. This location has been chosen in order to minimise all impacts, including privacy, scale and acoustic, to dwellings both within and adjoining the site.	Yes
Section 9 – Deep Soil Zones		
<p>9.1 A minimum of 15% of the site area is to be provided as deep soil zone.</p> <p>9.2 The locations of deep soil areas shall be in accordance with the Figure 12.1.7 Deep Soil Zone and Communal Open Space.</p>	The proposed modification will not result in any change to the size or location of deep soil zones as approved.	Yes
Section 10 – Communal Open Space		
10.1 Communal open spaces are to be provided in accordance with Figure 12.1.7 Deep Soil Zone and Communal Open Space.	The location of the communal open spaces at ground level has not been changed from that approved. This	Yes

Provision	Proposed	Complies
	modification relates solely to the layout and design of these spaces.	
10.5 Larger communal open spaces should be designed as public parks with appropriate facilities and shade structures.	The communal open space areas retain the nature and essence of these areas, as large landscape zones, with turfed areas, play grounds, seating, shade and through-site links connecting Milton Street to WH Wagener Oval.	Yes
Chapter 3.2 Parking		
<p>The following parking rates apply to the development:</p> <ul style="list-style-type: none"> 1 space / 1 bedroom apartment 1.2 spaces / 2 bedroom apartment 1.5 spaces / 3 bedroom apartment 2 spaces / 3 bedroom terrace 1 visitor car space / 5 dwellings 	<p>A total of 133 units are proposed, including:</p> <ul style="list-style-type: none"> 15 x 1 bedroom apartments, 16 x 2 bedroom apartments 102 three-bedroom apartments/terraces. <p>The proposal accommodates a total of 225 resident car parking spaces and 27 visitor parking spaces which complies with the provided parking rates.</p>	Yes
<p>The following bicycle parking rates apply to the development:</p> <ul style="list-style-type: none"> 1 visitor bicycle space / 10 dwellings. 	<p>A total of 133 units are proposed which requires a total of 13 visitor bicycle parking spaces.</p> <p>The proposal accommodates 27 resident bicycle parking spaces and 13 visitor bicycle parking spaces.</p>	Yes

[illegible]

Figure 11 Sight lines from Yabsley Avenue



Source: SJB Architects

Figure 13: Heights of existing trees as viewed from the WH Wagener Oval

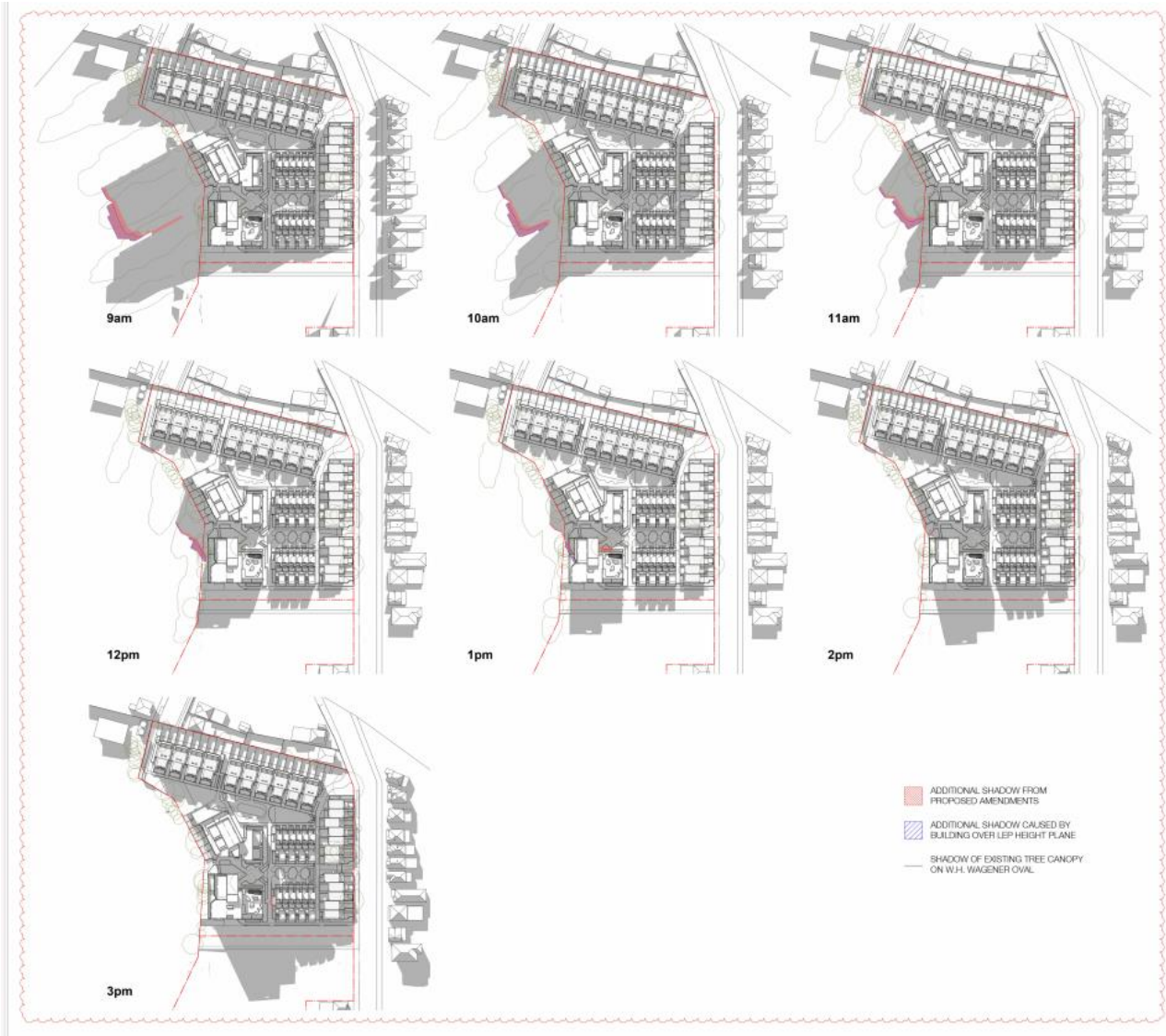


Figure 14 Canopy line of the tallest tree



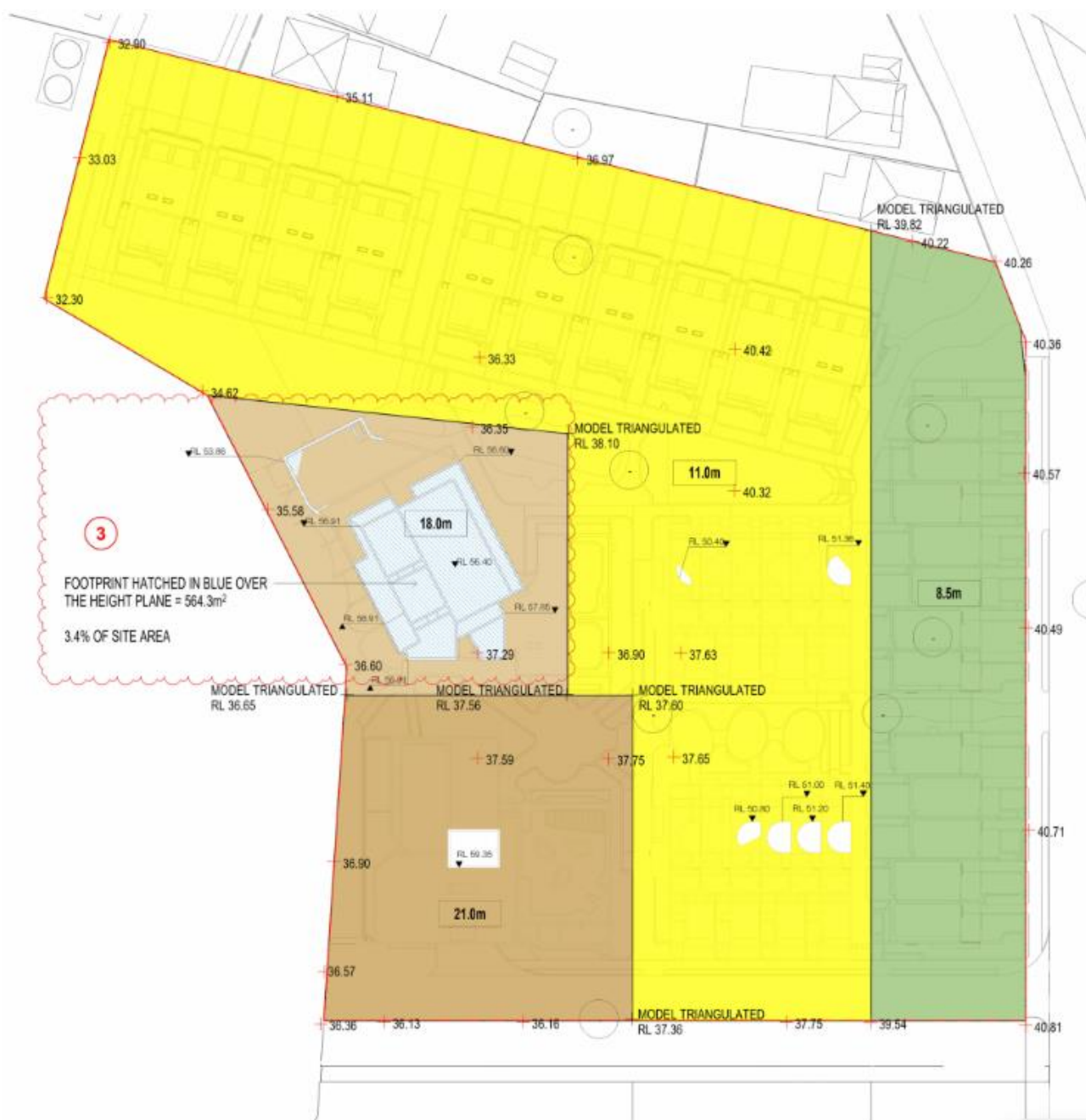
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Figure 15 Overshadowing to WH Wagner Oval



Source: SJB Architects

Figure 17 Area of site exceeding LEP height plane



Source: SJB Architects

Justification for non-compliance

During the assessment of DA/826/2020, a number of amendments were made to the building envelope in order to retain the existing trees on the site, increase deep soil zones and increase building separation to ensure substantial communal open space zones were provided at the ground level.

As a result, the building footprint originally contemplated for the site by way of the DCP, was reduced, thus resulting in a reduction in the FSR from 1.1:1 to 1.05:1. This resulted in surplus of available GFA of 765m² when compared to that originally planned and contemplated for the site.

In reviewing the approved development, it is evident that there remains capacity within the site to achieve that yield by sensitively locating additional density within Building C. Part of that density is capable of being accommodated within a compliant building envelope however the additional part upper level to Building C results in a departure from two of the four relevant height of buildings controls.

These controls include:

1. The LEP mapped maximum building height of 18m
2. Number of storeys control, being 5 storeys
3. The 'sight lines' control - any taller development within the precinct is not visible over the existing housing when viewed from the surrounding streets and public domain areas.
4. The 'canopy height' control - taller development along the edge of WH Wagener Oval is not to be visible above the canopy line of the tallest existing mature tree on the eastern edge of the oval.

Broader objectives and controls relating to building heights contained within the site specific DCP, depict a very clear picture of how development is to occur within the site. This includes:

- Minimising the visibility of any taller development within the precinct from surrounding streets to achieve a transition in scale from Milton Street and the rear boundaries of existing residential lots edging the site to the oval edge.
- To locate taller development in locations of high-quality amenity and outlook over the oval.
- To reinforce the sense of enclosure to WH Wagener Oval by providing taller buildings along its edge while ensuring sufficient gaps and openings are provided to allow for views through the development.
- To ensure the greatest height is only located along the western end of the new street within the site.

Building C is centrally located along the western boundary, at the rear of the site and therefore is not prominent when viewed from the Milton Street streetscape. It is setback 60m from the Milton Street frontage and is setback approximately 47m from the northern boundary. As illustrated in Figure 11 and Figure 12 above, the building is not within the line of sight when viewed from Yabsley Avenue or Milton Street.

Further, the building height is located below the canopy line of the tallest existing mature tree and is positioned in the centre of the tree canopy, reducing the extent of visibility from WH Wagner Oval, further reinforcing the transition and stepped nature of building forms, when viewed from this angle (refer to Figure 18).

Most importantly, from a built form and scale perspective, the proposed amendments are consistent with the broader objectives and controls relating to building height, transition, bulk, scale and visibility further reinforcing the appropriateness of the proposed modification for reasons outlined earlier in this report

From an external impact and amenity perspective, the non-compliant component of the building results in a minor degree of additional overshadowing to WH Wagner Oval on June 21st. This is illustrated in Figure 15. The extent of overshadowing associated with the non-compliant component of the development impacts 0.1% the Oval.

Aside from the Oval, there will be no additional overshadowing beyond the site boundary, including the existing southern residential precinct. The proposed amendments will create additional overshadowing within the precinct however it remains compliant with the ADG.

It is not considered that the additional 3 dwellings that protrude beyond the height plane would result in any additional undue acoustic amenity impacts, beyond that contemplated within the precinct. This is due to the fact that the balconies of the upper level apartments are substantially separated from Building D (18m) and Building E (25m) or overlook the Oval. The 3 additional dwellings only account for 2.2% of the overall dwelling yield.

As outlined above, the proposed additional part level is located within a portion of the site that is fully capable of being able to accommodate the height without having any unreasonable impacts on the surrounding heritage conservation area, the lower density residential zone and maintains a compliant degree of solar access. Notwithstanding the numerical non-compliances, the development achieves the broad objectives and intent for locating taller building forms along the Oval, maintaining a stepped transition and retaining views and openings through the development. The proposed non-compliance is therefore fully justifiable on planning and urban design grounds.

Figure 18 Approved and proposed building envelope from Wagner Oval



View from W.H Wagener Oval (Approved DA)



View from W.H Wagener Oval (Proposed Modification)

Source: SJB Architects

Figure 19 Approved and proposed building envelope from Wagner Oval



View from W.H Wagener Oval (Approved DA)



View from W.H Wagener Oval (Proposed Modification)

Source: SJB Architects

Compliance with the objectives of the development standard

The objectives of the height of buildings control (i.e. Clause 4.3) in the CBLEP are detailed in Table 4. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 4 Assessment of Consistency with Clause 4.3 Objectives

Clause 4.3 Objectives	Assessment
<i>(a) to establish the height of development consistent with the character, amenity and landform of the area in which the development will be located,</i>	<p>No change is proposed to the overall site layout, with low-scale development fronting Milton Street and the sites to the north maintained and height increasing away from these areas. This provides an appropriate and sensitive response to the surrounding area which the height increase to Building C will not interfere with.</p> <p>Moreover, the proposed maximum height of Building C remains below the maximum approved height of Building B, with the two buildings located adjacent to each other. Building B will present as a full 6 storey building whereas Building C will step from 6 storeys down to 5 storeys, maintaining the existing scale and transition between Building C and Building D1. The proposed modification will remain consistent with the overall character and built form of the surrounding area as a building of the same height has already been approved on site under the original DA.</p>
<i>(b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of 2 storeys in Zone R2,</i>	<p>The proposed development is not located within the R2 zone.</p>
<i>(c) to provide appropriate height transitions between development, particularly at zone boundaries,</i>	<p>The proposal continues to locate two-storey development adjacent to R2 Low Density Residential land north of the site, which transitions to 5-6 storeys fronting land zoned R4 High Density Residential.</p> <p>The proposed modification to the design of Building C incorporates a stepped approach to the increase in height which will reduce the appearance of the bulk and scale of the development and assist in creating a cohesive height transition across the site.</p> <p>Additionally, as there are no changes proposed to the height of any other buildings within the site, including the buildings adjoining the R2 zone boundary, this modification will retain an appropriate height transition.</p>
<i>(d) to minimise overshadowing to existing buildings and open space,</i>	<p>The proposed height increase will not result in any additional overshadowing to existing buildings, including residential uses adjoining the site. There will be some additional overshadowing of WH Wagener Oval, primarily early in the day, however this will be on the eastern portion of the oval which is not a highly used portion of the park and would be unlikely to receive significant usage early in the day. As such, the increase in height will not result in any</p>

Clause 4.3 Objectives	Assessment
	considerable loss of solar amenity. The development will continue to comply with the minimum ADG requirements for solar access.
<i>(e) to minimise the visual impact of development on heritage items and heritage conservation areas,</i>	Building C is located within the site and is setback significantly from the road frontage and the Ashbury Heritage Conservation Area. This location will minimise the visual impact of the proposed development. The stepped massing of the building design will also soften the appearance of the bulk and scale of the development, further reducing impact to the heritage conservation area.
<i>(f) to support building design that contributes positively to the streetscape and visual amenity of an area.</i>	<p>The original DA achieved a high quality architectural and urban design outcome in line with Council's vision for the site which complements the surrounding streetscape. The proposed modifications will retain this overall high-quality design and is not considered to result in any negative outcomes for the streetscape or visual amenity.</p> <p>Additionally, the updated landscape design will provide additional visual amenity within the site, resulting in a positive outcome.</p>

Sufficient environmental planning grounds

The above assessment demonstrates that the proposed development is both consistent with, and will achieve the objectives of, the LEP height of buildings development standard and the relevant DCP chapter, notwithstanding the exceedance of the maximum height control.

Moreover, there is an absence of environmental harm arising from the exceedance and sufficient environmental planning grounds to justify contravening the height development standard for the following reasons:

- The proposed height increase will accommodate additional dwellings on site that enable full utilisation of planned FSR, with no discernible loss of amenity to future residents and surrounding areas.
- The portion of the development that will exceed the height plane (i.e. Building C) is setback from the road frontage and the low-density dwellings north of the site which will minimise the potential visual impacts of the height increase, including to the Ashbury Heritage Conservation Area.
- The increase in height will continue to be screened by the existing tree canopy when viewed from WH Wagener Oval which mitigates its visual impact.
- Overshadowing impacts are limited in nature and primarily fall within WH Wagener Oval and within the existing shadows of the trees.
- The oval retains considerable solar access, especially at peak times of the day in the early to mid-afternoon. The proposed height increase will not result in any overshadowing impacts to surrounding residential uses. There will be minor increases in overshadowing within the site, including a small portion of the communal open space south of Building C at 1pm.
- The proposal will have minimal amenity impacts to neighbouring land, in relation to solar access, visual impact and overshadowing.

6.5.2. BCA and Access

A BCA Letter and an Access Capability Letter have been prepared by Jensen Hughes which both confirm that the proposed modifications, particularly relating to the internal layout changes, additional dwellings in Building C and landscape changes including the new swimming pool, are capable of complying with the BCA and the relevant Australian Standards, subject to continued assessment during detailed design. Some design elements have been identified as requiring assessment via Performance Solutions and are

considered as being able to achieve compliance by Jensen Hughes and the appointed fire engineer, being Scientific Fire Services.

6.5.3. Stormwater

The overall stormwater design, including stormwater pits and OSD tank size have been amended to comply with the current standards and guidelines as contained in the CBDP 2023. These DCP controls now align with the last ARR guidelines and Australian Standards.

The stormwater approach has been designed to ensure that no localised flooding occurs within the site and that the peak stormwater discharge does not exceed pre-development stormwater discharge.

6.5.4. Waste

A Waste Management Compliance Statement has been prepared by MRA Consulting Group which confirms that the proposed addition of six dwellings to Building C will not necessitate any changes to the waste management strategy for the development as approved under DA-826/2020. The additional dwellings will cause a slight increase in waste volumes generated by the development, however this is able to be accommodated within the waste management strategy as approved and will remain compliant with the relevant requirements of the Canterbury-Bankstown Development Control Plan 2023.

6.6. SUITABILITY OF THE SITE

The modification does not propose significant amendments or a change of use to the approved development that would make it unsuitable for the site. The development as modified will remain suitable for the site for the reasons stated in the original approval of DA-826/2020.

6.7. Consultation with Approval Bodies

The original development application was referred to Water NSW requiring approval under the Water Management Act 2000. General Terms of Approval were issued.

The original development application was referred to TfNSW for concurrence as the development contains more than 75 dwellings and has a connection within 90m of a classified road.

The proposed modifications are not considered to alter or impact the General Terms of Approval or comments issued by authorities or approval bodies.

6.8. Public Notification and Submissions

It is understood that the application will need to be assessed in accordance with the Canterbury-Bankstown Development Control Plan 2023. Any submissions received by Council will need to be considered in the assessment of the proposed modifications.

6.9. PUBLIC INTEREST

The modified proposal is considered in the public interest for the following reasons:

- The proposed modifications substantially comply with the relevant State and local planning controls. The proposed exceedance of the height control enables the realisation of the planned development capacity of the site and will have limited impacts to overshadowing and visual amenity.
- The proposed amendments will not result in any negative amenity impacts to surrounding properties.
- No adverse environmental, social or economic impacts will result from the proposal.
- The proposed landscape amendments will result in higher-quality communal open spaces which will provide increased amenity for future residents of the development.

7. CONCLUSION

The proposed modifications have been assessed in accordance with section 4.55(8) and section 4.15 of the EP&A Act and are considered appropriate as summarised below:

- The proposed modifications do not impact the permissibility of the development within the CBLEP 2023.
- The proposed modifications seek to more efficiently utilise the site's planned development capacity whilst minimising potential amenity, visual and overshadowing impacts to adjoining properties, the public domain and the Ashbury Conservation Area.
- The proposed modifications will result in a minor exceedance of the LEP height plane for Building C, however the proposal remains consistent with the objectives of the building height development standard in the CBLEP, as well as the relevant section of the CBDCP, and will result in minimal amenity impacts to surrounding land uses.
- The proposed landscape changes will result in high-quality communal open space and higher amenity for future residents which will offset any potential negative impacts of the proposed height increase.
- The development remains substantially the same as that to which the consent was originally granted and does not conflict with any surrounding land uses.

Having considered all relevant matters, it is concluded that the proposed modifications are appropriate for the site and approval is recommended, subject to appropriate conditions of consent.

8. Disclaimer

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