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Dear Alice,

SECTION 4.56 APPLICATION TO MODIFY DA-826/2020 | 149-163 MILTON STREET, ASHBURY

1. INTRODUCTION

This letter has been prepared by Urbis Ltd on behalf of Coronation Property (the Applicant) in support of a section 4.56 application to modify DA-826/2020 pertaining to land at 149-163 Milton Street, Ashbury (the site).

DA-826/2020 was determined by the Land and Environment Court (ref: LEC No. 2021/0089891) on 23 November 2021. The modification application has therefore been submitted under section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

This modification application seeks approval for the following amendments:

- Removal of the proposed swale and associated drainage system for collecting groundwater from the eastern site boundary.
- Minor amendments to the design and layout of the stormwater drainage system.

The application has been prepared in accordance with the EP&A Act and *Environmental Planning and Assessment Regulations 2021*.

This letter provides a description of the site, surrounding context, description of the proposed modifications and an environmental assessment of the proposed modification.

1.1. SUPPORTING DOCUMENTATION

This s4.56 modification application is accompanied by the following documentation:

- Owners Consent.
- Letter from Integrated Group Services – civil engineer.

- Amended Stormwater Management Plans prepared by Integrated Group Services. A full set of plans has been provided, however changes are limited to Drawings CV-Z-1002, CV-Z-1003, CV-Z-1111, CV-Z-1112, and CV-Z-1113.
- Stormwater Management OSD Calculation and WSUD Report prepared by Integrated Group Services.
- Groundwater Take Assessment prepared by EI Australia.

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

The site forms Stage 2 of the Asbury estate which is a former industrial estate, transitioning to a residential precinct. The lot immediately south of the subject site is currently under construction for a similar residential development which will comprise a mix of terrace-style townhouses and low-rise residential apartment buildings.

Figure 1 Aerial photograph of site



Source: Urbis

Figure 2 Site context



Source: Urbis

3. DEVELOPMENT HISTORY

3.1. PP-2020-314

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

- 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.

3.2. DA-826/2020

DA-826/2020 was approved by the Land and Environment Court on 23 November 2021 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

DA-826/2020/B was approved on 14 June 2024 for the following amendments to the development application:

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

3.4. DA-826/2020/C

DA-826/2020/C was approved by the Land and Environment Court on 19 December 2024 and related to a range of design modifications, including to the communal open space, building envelope for Building C, basement changes and façade amendments.

3.5. DA-826/2020/D

DA-826/2020/D was approved on 26 June 2024 and related to a minor error in relation to Condition 1.17 and the identified building heights.

3.6. DA-826/2020/E

DA-826/2020/E was approved on 21 February 2024 for the removal of three trees on the site.

3.7. DA-826/2020/F

DA-826/2020/F was lodged with Canterbury-Bankstown Council on 16 January 2025 seeking consent for the extension of construction hours to allow for concrete pumping and finishing activities between 6:30am and 8:00pm on Monday to Saturday for a 6-month period.

This application is still under assessment.

3.8. DA-826/2020/G

DA-826/2020/G was lodged with Canterbury-Bankstown Council on 22 January 2025 seeking consent for the construction of a new lockable gate and landscaped private footpath to provide access to a new single-storey dwelling proposed to be constructed within Lot 1 DP 205503, which adjoins the subject site to the north. Consent for the proposed dwelling is sought under a separate development application to Inner West Council.

This application is still under assessment.

4. PROPOSED MODIFICATION

This Section 4.56 application seeks development consent to amend DA-826/2020 to remove the requirement to construct the originally proposed groundwater drainage system consisting of swales along the eastern site boundary and an associated drainage system.

Following approval of the original DA, further geotechnical investigations have been undertaken which have identified that the anticipated volume of groundwater during the operational phase of the development is very minor. Subsequently, it has been determined that the existing basement perimeter drainage system is sufficient for the proposed development, eliminating the need for a separate groundwater drainage system.

Advice has been received via email (dated 20/02/2025) from Council's engineers indicating their support of the removal of the proposed groundwater drainage system and that they are satisfied the existing basement perimeter drainage system will be sufficient for the anticipated groundwater volume.

Additionally, this modification application proposes minor amendments to the layout of the stormwater drainage design, as shown in Figure 3. These proposed changes will not result in any significant impacts to the overall functioning of the stormwater drainage system.

Source: Integrated Group Services

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.

Stormwater drainage from the development shall be designed so as to comply with Council's Canterbury Development Control Plan 2023 Chapters 3.1 and 11.1 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 2023 Chapters 3.1 and 11.1, the BASIX Certificate and the relevant Australian Standards.

Drawing number	Revision	Date	Prepared by
CV-Z-0000	2	10.10.24	Integrated Group Services
CV-Z-0001	2	10.10.24	Integrated Group Services
CV-Z-1001	2	10.10.24	Integrated Group Services
CV-Z-1002	2 3	10.10.24 28.02.25	Integrated Group Services
CV-Z-1003	2 3	10.10.24 28.02.25	Integrated Group Services
CV-Z-1004	2	10.10.24	Integrated Group Services
CV-Z-1005	2	10.10.24	Integrated Group Services
CV-Z-1006	2	10.10.24	Integrated Group Services
CV-Z-1007	2	10.10.24	Integrated Group Services
CV-Z-1111	2 3	10.10.24 28.02.25	Integrated Group Services
CV-Z-1112	2 3	10.10.24 28.02.25	Integrated Group Services
CV-Z-1113	2 3	10.10.24 28.02.25	Integrated Group Services
CV-Z-1114	2	10.10.24	Integrated Group Services
CV-Z-1115	2	10.10.24	Integrated Group Services
CV-Z-1116	2	10.10.24	Integrated Group Services
CV-Z-1117	2	10.10.24	Integrated Group Services
CV-Z-3001	2	10.10.24	Integrated Group Services
CV-Z-3002	2	10.10.24	Integrated Group Services
CV-Z-3003	2	10.10.24	Integrated Group Services
CV-Z-4001	2	10.10.24	Integrated Group Services

The above listed stormwater management plans shall be amended to ensure the following:

a. The OSD tank shall be designed to include an overflow to cater for the 1% AEP flows and be directed to Council Trunk drainage system.

b. All surface water including basement pump out drainage shall be directed to the OSD tank.

Condition 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 drawings ~~CV-Z-1003~~, CV-Z-1005 and CV-Z-1007, Revision 2, Dated 10.10.2024 **and CV-Z-1003, Revision 3, dated 28.02.25**, prepared by Integrated Group Services and Stormwater Management OSD Calculation and WSUD Report, Revision 2, Dated 10.10.2024, prepared by Integrated Group Services.*

5. SECTION 4.56 ASSESSMENT

The proposed modifications have been assessed in accordance with section 4.56 of the EP&A Act in the following sections of this correspondence.

Section 4.56 of the EP&A Act states that:

(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development 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)...*

The proposed amendments can appropriately be assessed under s4.56, as elaborated in the following sections.

5.1. MINIMAL ENVIRONMENTAL IMPACT

The proposed modifications will have minimal environmental impact for the reasons listed below:

- The removal of the proposed groundwater drainage system will not result in any adverse environmental impacts as it has been determined that the existing basement perimeter stormwater drainage system is sufficient to accommodate the anticipate volume of groundwater during the operational phase of the development.
- Similarly, the proposed minor amendments to the layout of a portion of the stormwater drainage design will not result in any adverse impacts as they will not substantially alter the overall functioning of the stormwater system.
- The proposed modification does not involve any changes to the approved built form or open space provision of the development and will not result in any non-compliances with State and local planning controls.

Based on the above, the proposed modifications can be assessed in accordance with section 4.56 of the EP&A Act.

5.2. SUBSTANTIALLY THE SAME DEVELOPMENT

The development as modified will remain substantially the same as the approved development as outlined below:

- The proposed changes are minor in nature and will remain essentially consistent with DA826/2020.
- The proposed amendments do not alter the nature or essence of the approved development.
- When considered in the context of the entire site, the proposal will result in substantially the same development as that approved, with no new impacts resulting from the proposal that have not already been addressed.
- The site will continue to be developed in the manner that it was intended for. The existing basement perimeter stormwater drainage system will be sufficient for the anticipated groundwater volume during operation, removing the necessity for a separate drainage system.

As such, the proposed works can be assessed as a modification to the original development application in accordance with section 4.56 of the EP&A Act.

6. SECTION 4.15 ASSESSMENT

The application has been assessed in accordance with the relevant matters for consideration listed in Section 4.15 of the EP&A Act.

6.1. ENVIRONMENTAL PLANNING INSTRUMENTS

Canterbury-Bankstown Local Environmental Plan 2023 (CBLEP) is the principal environmental planning instrument that applies to the site.

The proposed modification does not introduce any new non-compliances with the CBLEP.

6.2. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

No draft environmental planning instruments are relevant to this proposal.

6.3. DEVELOPMENT CONTROL PLAN

Canterbury-Bankstown Development Control Plan 2023 (CBDPCP) provides detailed planning controls relevant to the site and the proposal. Chapter 11.1 of the CBDPCP provides site-specific development control relevant to the subject site.

The development as modified will continue to comply with the relevant DCP provisions.

6.4. PLANNING AGREEMENT

No planning agreements are relevant to this proposal.

6.5. REGULATIONS

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

6.6. LIKELY IMPACTS OF THE PROPOSAL

The proposed modifications have been assessed considering the potential environmental, economic and social impacts as outlined below.

A Groundwater Take Assessment Report has been prepared by EI Australia following approval of the original development application which identified that the anticipated volume of groundwater during the operational phase of the development is approximately 1,500 litres per day (or 0.47 ML per year). This groundwater volume is less than what was anticipated prior to approval, and it has been determined that this amount of groundwater can be efficiently managed by the existing basement perimeter drainage system without the need for the additional proposed swale drainage system.

The collected groundwater is now proposed to be directed to the approved pump-out pit within the development, then to a filtration chamber and an OSD tank, before being discharged into Canterbury-Bankstown Council's stormwater network. Integrated Service Group, as the civil engineers for the development, have confirmed that the approved pump-out pit, filtration chamber and OSD tank can accommodate the additional volume of groundwater and will remain compliant with all relevant standards and Council requirements.

As such, the removal of the additional drainage system as proposed by this modification application will result in no adverse impacts on the stormwater management of the development.

6.7. 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.

6.8. SUBMISSIONS

It is acknowledged that submissions arising from the public notification of this application will need to be assessed by Council.

6.9. PUBLIC INTEREST

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

- The proposed modifications do not introduce any new non-compliances with State and local planning controls.
- The proposed amendments will not result in any negative amenity impacts to surrounding residential properties.
- No adverse environmental, social or economic impacts will result from the proposal.

7. CONCLUSION

The proposed modifications have been assessed in accordance with section 4.56 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 are minor in nature and will result in minimal amenity and environmental impacts to adjoining properties, the public domain and the Ashbury Heritage Conservation Area. In other words, there are no environmental planning grounds that would limit the ability to approve the modifications sought.
- The proposal continues to provide an appropriate stormwater design solution to accommodate the anticipated operational groundwater volume.
- The development remains substantially the same as that to which the consent was originally granted.

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

Please do not hesitate to contact me should you wish to discuss our application in greater detail.

Kind regards,

A handwritten signature in blue ink, appearing to read "Sophy Purton", written over a horizontal line.

Sophy Purton
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