

**ANGEL PLACE  
LEVEL 8, 123 PITT STREET  
SYDNEY NSW 2000**

URBIS.COM.AU  
Urbis Ltd  
ABN 50 105 256 228

24 June 2025

Robert Steedman  
[Bob.Steedman@cbc.city.nsw.gov.au](mailto:Bob.Steedman@cbc.city.nsw.gov.au)  
City of Canterbury-Bankstown Council  
PO Box 8  
Bankstown NSW 1885

Dear Robert,

## **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:

- Staging of the issue of Occupation Certificates for the development as follows:
  - Stage 1: Part Basement and Buildings A, B, C, F1 & F2.
  - Stage 2: Part Basement and Buildings D1, D2 & E.
- Internal amendments to the basement to enable a communal gym beneath the car park entry ramp, and associated amendments to the location of residential bicycle parking.
- Addition of a mail room within the ground floor of Building B.
- Minor external design changes including:
  - Removal of skylights in Buildings A, D & E.
  - Removal of architectural metalwork to Building F.
  - Amendment to design of Building A and E rooftop awnings.
- Installation of security fencing and gates on ground floor to control access to communal open space and amenities.

- Update to design and materiality of boundary fencing.
- Minor amendments to landscaping design including removal of planter boxes to private terrace courtyards.
- Removal of pergola at the ground floor between Buildings B & C.
- Reconfiguration of the size of the pergolas within the ground floor communal open space areas and the Building B and C rooftop communal areas.

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.
- Amended Architectural Plans prepared by SJB Architects.
- Amended Landscape Plans and Design Report prepared by Arcadia.
- BASIX Certificate prepared by JHA Consulting Engineers.
- Notification Plans prepared by SJB Architects.

## **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 16,220m<sup>2</sup>, 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.



### 3.9. DA-826/2020/H

DA-826/2020/H was lodged with Canterbury-Bankstown Council on 14 March 2025 seeking consent for an amendment to the design and layout of the approved stormwater infrastructure scheme, including removal of the proposed swale drainage system.

This application is still under assessment.

## 4. PROPOSED MODIFICATION

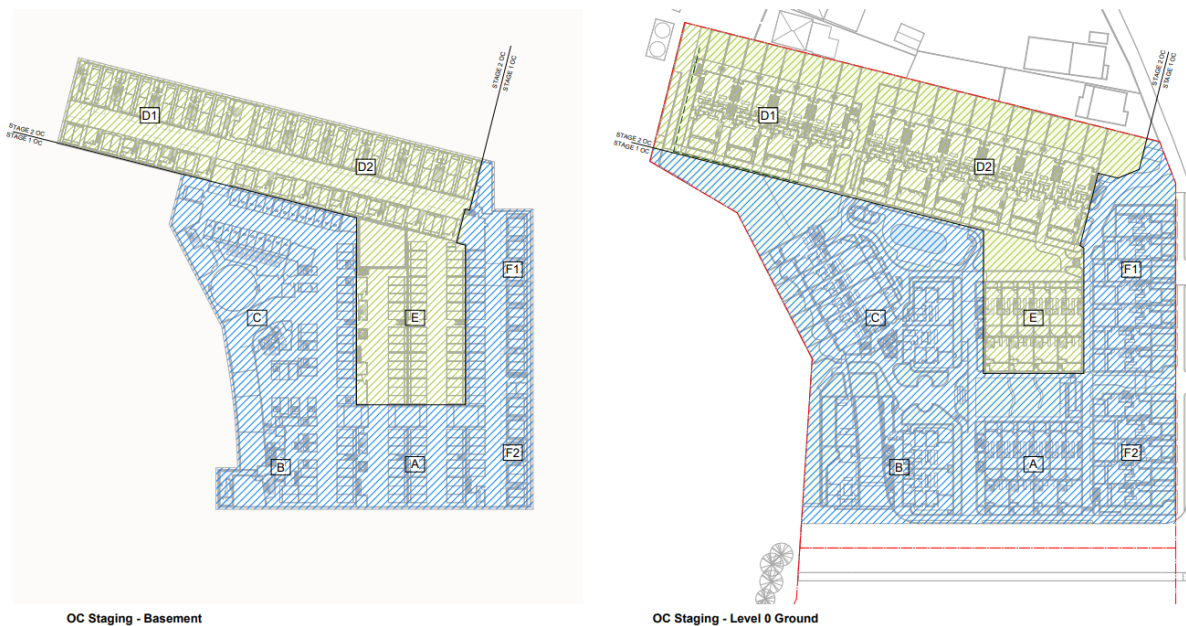
This Section 4.56 application seeks consent for staging of the development, minor external design changes and the inclusion of a gym and mail room within the existing building envelope development.

A detailed breakdown of the proposed design changes is provided below:

### 4.1. STAGING

- Staging of the conditions of consent to enable the approved development to be delivered in stages. The staging is described below and shown in **Figure 3**.
  - Stage 1: Part Basement and Buildings A, B, C, F1 & F2.
  - Stage 2: Part Basement and Buildings D1, D2 & E.

Figure 3 Proposed OC Staging Plan – Basement and Ground Level (Stage 1 shown in blue and Stage 2 shown in green)



Source: SJB Architects

## 4.2. ARCHITECTURAL CHANGES

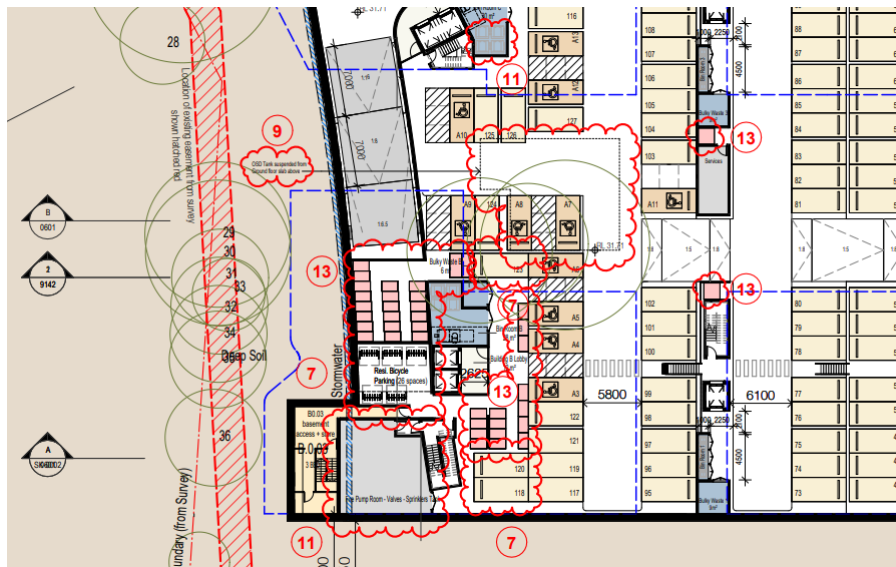
- Replacement of excess storage cages within the basement, with a communal gym which can be accessed from the Building B lift. Residential bicycle parking has also been relocated to accommodate the proposed location of the gym. The proposed development will continue to comply with requirements for residential storage under the Apartment Design Guide and bicycle parking provision under the Canterbury-Bankstown DCP.
- Addition of a mail room to the ground floor of Building B and associated opening to Building B façade. This will provide for a consolidated location for mail and parcel collection to service the entire development. Access to the mail room will be provided internally from the Building B lobby. Currently the approved development does not contain a mail room, and this is essential to the orderly operation of the site.
- Removal of skylights to Buildings A, D1, D2 and E.
- Refinement of the rooftop awning design of Buildings A and E to simplify construction. The revised roof design continues to provide weather protection to the door opening and will not result in an increase in height.
- Removal of metal window covers to Building F.
- Installation of security fencing and gates to entrances to the site to control access and ensure resident safety.
- Update to design and materiality of fence along northern and western site boundaries.

The proposed inclusion of a gym and mail room will result in a slight increase in the GFA of the proposed development, as summarised in **Table 1** below.

Table 1 Proposed Change to GFA and FSR

Maximum Permissible FSR	Maximum Permissible GFA	Approved FSR	Approved GFA	Proposed FSR	Proposed GFA	Proposed Change from Approved
1.1:1	17,842m <sup>2</sup>	1.07:1	17,383m <sup>2</sup>	1.08:1	17,539m <sup>2</sup>	+156m <sup>2</sup> (0.9% increase)

Figure 4 Approved and Proposed Basement Floor Plan



Picture 1 Approved Basement plan

Source: SJB Architects

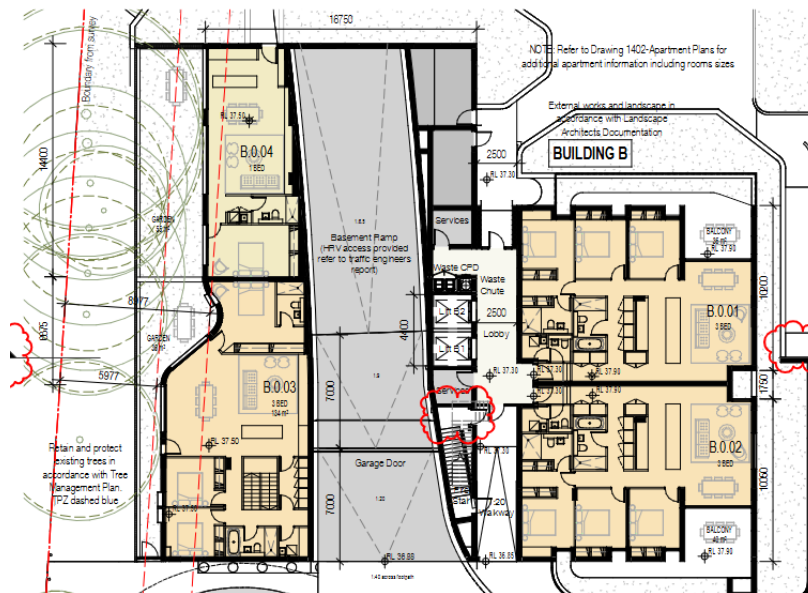


Picture 2 Proposed basement floor plan showing location of gym and relocation of bicycle parking

Source: SJB Architects

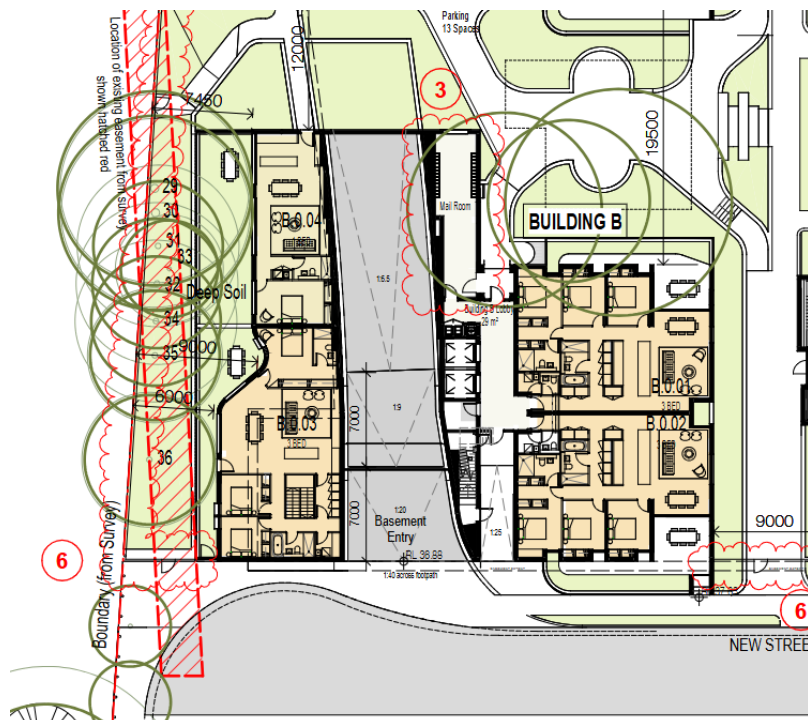


Figure 5 Approved and Proposed Building B Ground Floor Plan



Picture 3 Approved Building B Ground Floor Plan

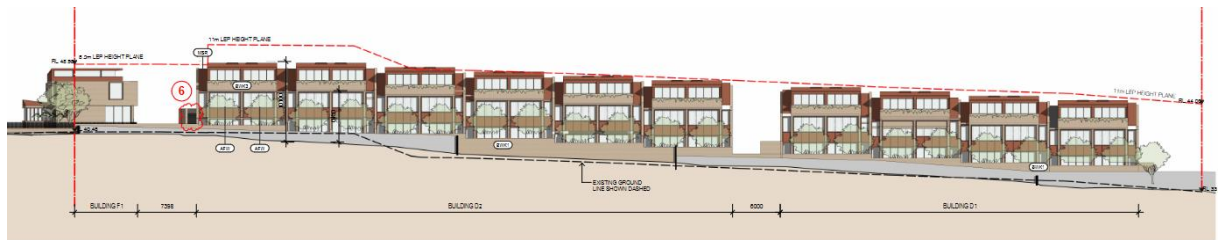
Source: SJB Architects



Picture 4 Proposed Building B Ground Floor Plan shown proposed mail room

Source: SJB Architects

Figure 6 Approved and Proposed Northern Elevation



North

Picture 5 Approved northern elevation

Source: SJB Architects

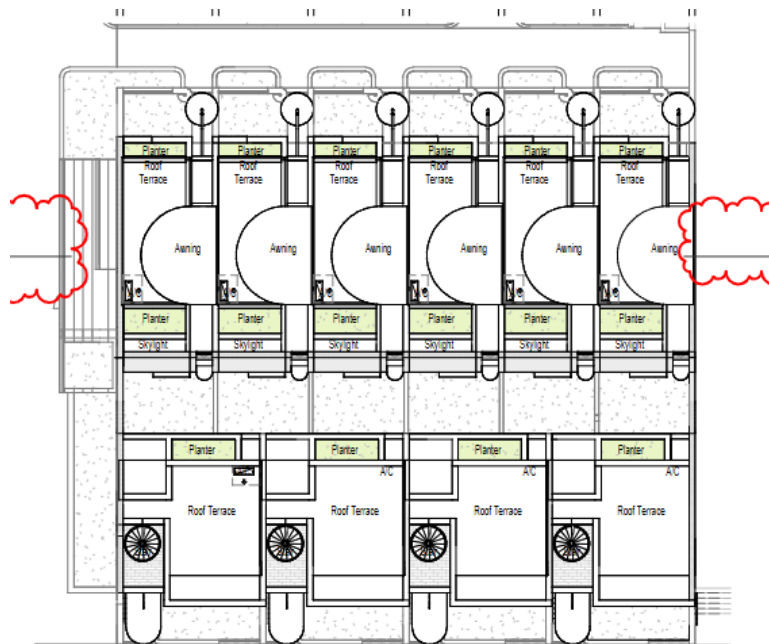


North

Picture 6 Proposed northern elevation showing proposed boundary fence

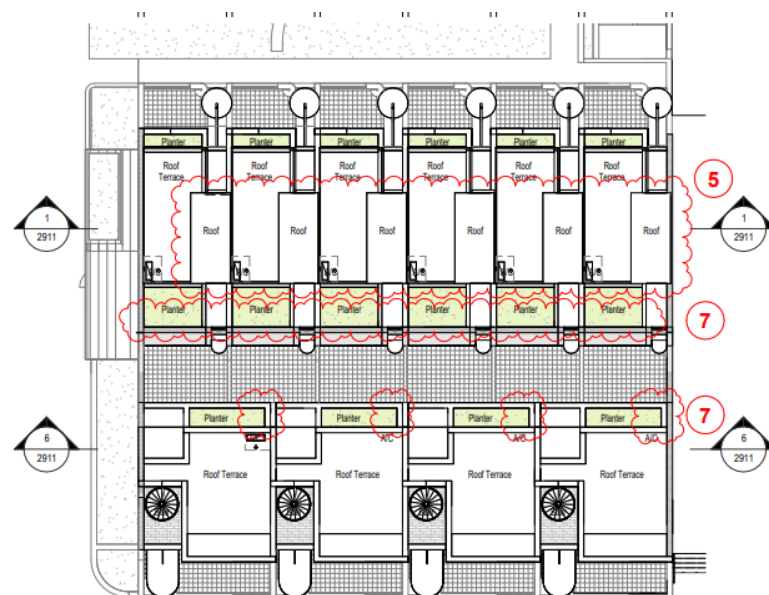
Source: SJB Architects

Figure 7 Approved and Proposed Building A and E Rooftop Design



Picture 7 Approved Building A and E rooftop design

Source: SJB Architects



Picture 8 Proposed Building A and E rooftop design, including removal of skylights and awning redesign.

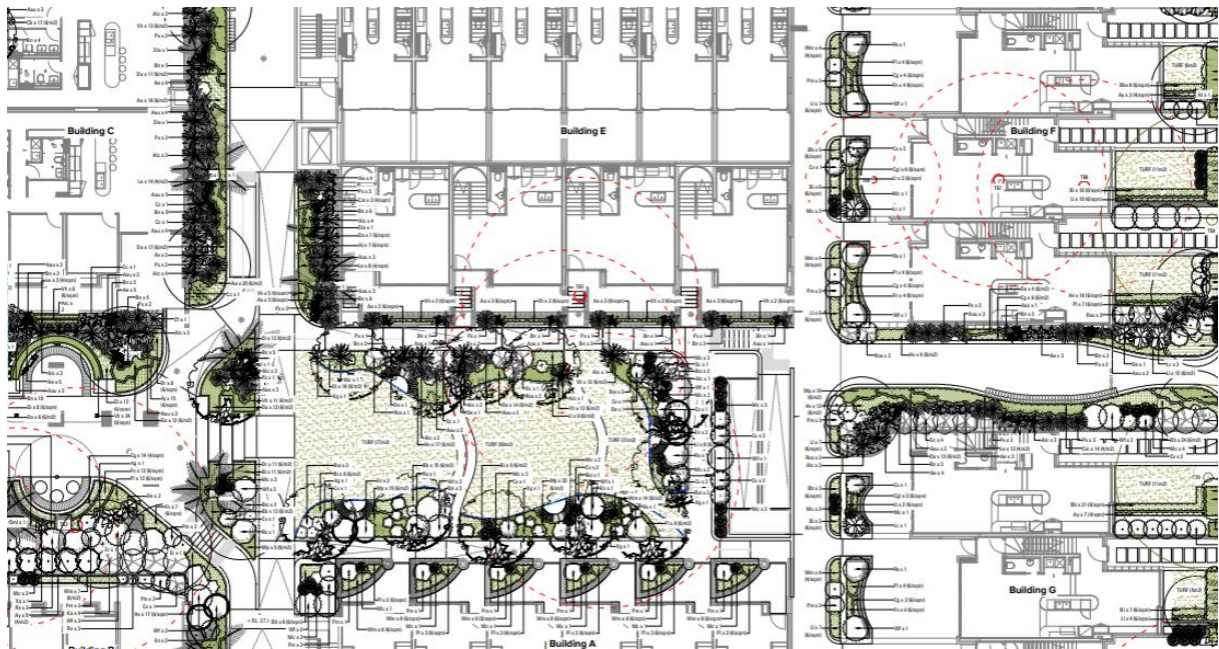
Source: SJB Architects

### **4.3. LANDSCAPING CHANGES**

- Removal of planter boxes within ground level private terrace courtyards in Buildings A, D, E and F to increase the usable space of the courtyards for activities. This change has been made in response to purchaser feedback from the adjoining development at 165 Milton Street, Ashbury which established that the preference of purchasers was for the courtyard to contain more usable space.
- Increased useable turf area to Building C private terrace gardens.
- Amendments to turfed landscaped areas at the ground floor.
- Adjustment to the extent of the planter wall adjoining the eastern façade of Building D to ensure safe access can be provided to the basement stairs in this location.
- Amendment to the design and layout of amenities of Building B rooftop communal open space.
- Reduction in extent of planter bed to Building C rooftop communal open space to increase useable space.
- Removal of pergola at the ground floor between Buildings B & C.
- Reconfiguration of the size of the pergolas within the ground floor communal open space areas and the Building B and C rooftop communal areas.
- Change in pergola material from timber battens to aluminium battens.

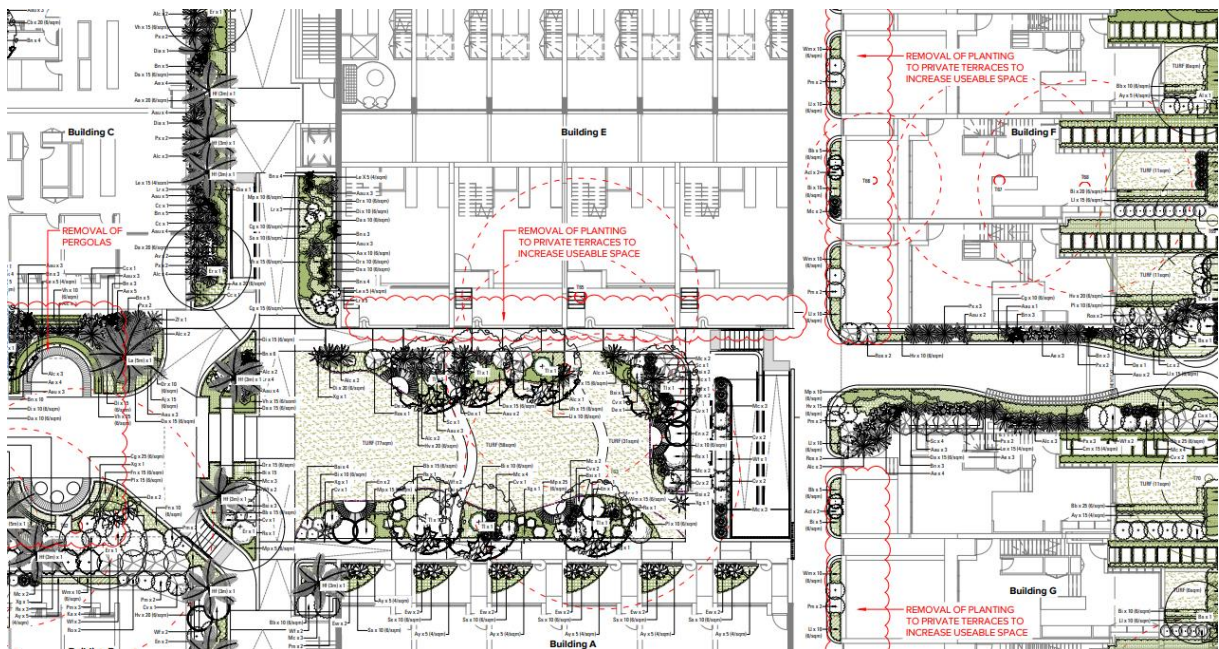


Figure 8 Extract of Approved and Proposed Ground Floor Landscape Plans



Picture 9 Extract of approved ground floor landscape plan.

Source: Arcadia

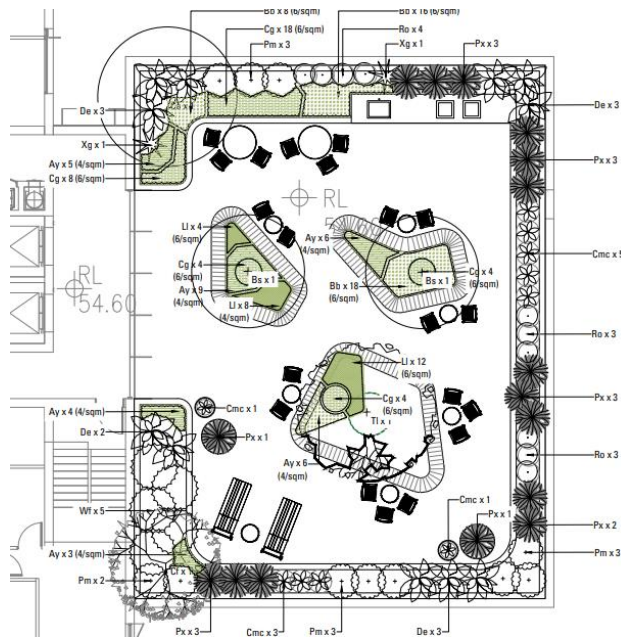


Picture 10 Extract of proposed ground floor landscape plan showing proposed removal of planter boxes to private terrace courtyards.

Source: Arcadia

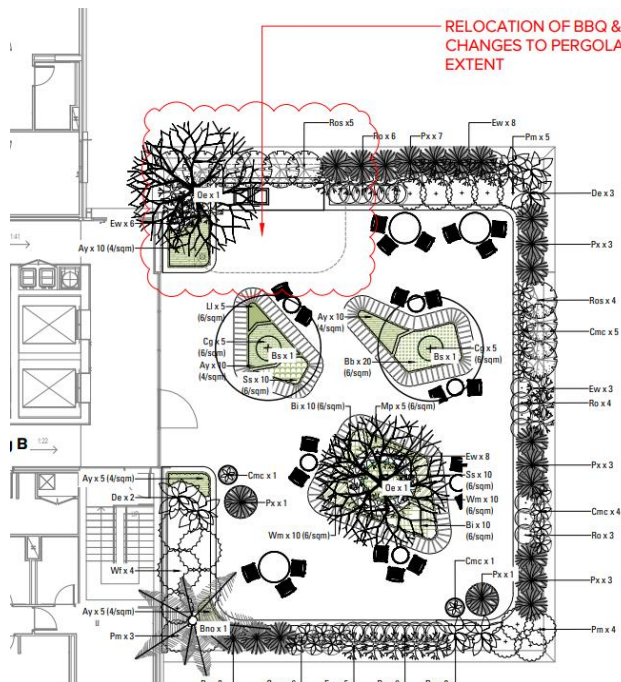


Figure 9 Approved and Proposed Building B Communal Open Space Landscape Design



Picture 11 Approved Building B Communal Open Space Landscape Design

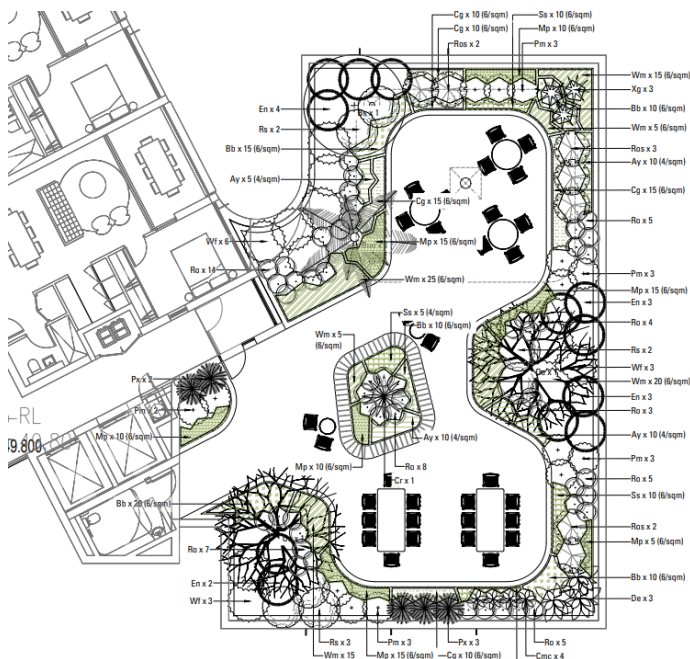
Source: Arcadia



Picture 12 Proposed Building B Communal Open Space Landscape Design

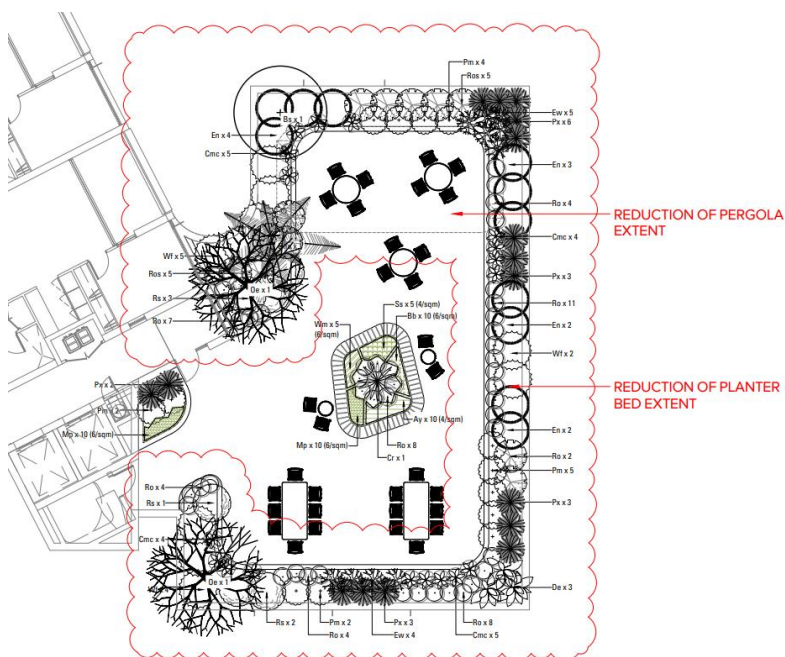
Source: Arcadia

Figure 10 Approved and Proposed Building C Communal Open Space Landscape Design



Picture 13 Approved Building C Communal Open Space Landscape Design

Source: Arcadia



Picture 14 Proposed Building C Communal Open Space Landscape Design

Source: Arcadia

## 4.4. AMENDMENTS TO CONDITIONS OF CONSENT

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, 1.4, 1.11, 1.13, 2.43, 5.1, 5.2, 5.3, 5.6, 5.7, 5.10, 5.13, 5.14, 5.15, 5.16, 5.17, 5.18, 5.19 and 5.20.

### 4.4.1. 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	0004	29.11.2024	8	SJB
Overall Plan- Basement	0101	<del>11.11.2024</del> <b>22.05.2025</b>	<del>28</del> <b>29</b>	SJB
Overall Plan- Ground Floor	0110	<del>29.11.2024</del> <b>22.05.2025</b>	<del>28</del> <b>32</b>	SJB
Overall Plan- Level 1	0111	<del>29.11.2024</del> <b>22.05.2025</b>	<del>21</del> <b>22</b>	SJB
Overall Plan- Level 2	0112	29.11.2024	19	SJB
Overall Plan- Level 3	0113	<del>29.11.2024</del> <b>22.05.2025</b>	<del>18</del> <b>19</b>	SJB
Overall Plan- Level 4	0114	<del>29.11.2024</del> <b>22.05.2025</b>	<del>20</del> <b>21</b>	SJB
Overall Plan- Level 5	0115	<del>29.11.2024</del> <b>22.05.2025</b>	<del>23</del> <b>24</b>	SJB
Overall Plan- Roof	0116	<del>18.11.2024</del> <b>22.05.2025</b>	<del>20</del> <b>21</b>	SJB
Building A	0201	<del>19.02.2024</del> <b>22.05.2025</b>	<del>10</del> <b>11</b>	SJB
Building B- Sheet 1	0211	<del>19.02.2024</del> <b>22.05.2025</b>	<del>11</del> <b>14</b>	SJB
Building B- Sheet 2	0212	<del>29.11.2024</del> <b>22.05.2025</b>	<del>15</del> <b>16</b>	SJB
Building C- Sheet 1	0221	29.11.2024	19	SJB

Plan Name	Sheet No.	Date	Rev.	Prepared By
Building C- Sheet 2	0222	<del>29.11.2024</del> <b>22.05.2025</b>	<del>23</del> <b>24</b>	SJB
Building D- Sheet 1	0231	19.02.2024	10	SJB
Building D- Sheet 2	0232	19.02.2024	10	SJB
Building D- Sheet 3	0233	<del>19.02.2024</del> <b>22.05.2025</b>	<del>9</del> <b>10</b>	SJB
Building E	0241	<del>19.02.2024</del> <b>22.05.2025</b>	<del>10</del> <b>11</b>	SJB
Building F- Sheet 1	0251	18.11.2024	11	SJB
Building F- Sheet 2	0252	<del>18.11.2024</del> <b>22.05.2025</b>	<del>6</del> <b>7</b>	SJB
Elevations- North & East	0501	<del>18.11.2024</del> <b>22.05.2025</b>	<del>16</del> <b>17</b>	SJB
Elevations- South & West	0502	<del>11.11.2024</del> <b>22.05.2025</b>	<del>18</del> <b>19</b>	SJB
Elevations- Internal Sheet 1	0503	<del>18.11.2024</del> <b>22.05.2025</b>	<del>20</del> <b>21</b>	SJB
Elevations- Internal Sheet 2	0504	<del>18.11.2024</del> <b>22.05.2025</b>	<del>20</del> <b>21</b>	SJB
Elevations- Internal Sheet 3	0505	<del>18.11.2024</del> <b>22.05.2025</b>	<del>15</del> <b>16</b>	SJB
Sections- Sheet 1	0601	<del>18.11.2024</del> <b>22.05.2025</b>	<del>17</del> <b>18</b>	SJB
Sections- Sheet 2	0602	<del>11.11.2024</del> <b>22.05.2025</b>	<del>16</del> <b>17</b>	SJB
Apartment Plans- Building A & E	1401	18.09.2021	8	SJB
Apartment Plans- Building B	1402	27.01.2021	8	SJB
Apartment Plans- Building C	1403	18.11.2024	7	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
Apartment Plans – Building C	1407	11.11.2024	3	SJB

Plan Name	Sheet No.	Date	Rev.	Prepared By
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	3	SJB
Demolition Plan	2501	18.09.2021	6	SJB
Building Height Compliance Sections	2911	<del>29.11.2024</del> <b>22.05.2025</b>	<del>7</del> <b>8</b>	SJB
Building Height Compliance Sections	2912	<del>29.11.2024</del> <b>22.05.2025</b>	<del>2</del> <b>3</b>	SJB
Pedestrian Walkway	9908	18.09.2021	2	SJB
<b>OC Staging Diagram</b>	<b>9950</b>	<b>22.05.2025</b>	<b>1</b>	<b>SJB</b>

Landscape Plans:

Drawing/Report	Name	Revision	Date
ARCADIA Landscape Development Application Design Report	Landscape Design Report	<del>E</del> <b>F</b>	<del>November 2024</del> <b>May 2025</b>
Sheet 101	Landscape Masterplan	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 400	Plant Schedule	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 401	Softworks Plan	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 402	Softworks Plan	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 403	Softworks Plan	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 404	Softworks Plan	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 405	Softworks Plan	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 406	Softworks Plan	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>



Drawing/Report	Name	Revision	Date
Sheet 407	Softworks Plan	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 408	Softworks Plan	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 409	Softworks Plan	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 410	Softworks Plan	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 501	Landscape Details	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 502	Landscape Details	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 503	Landscape Details	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>
Sheet 601	Landscape Specification	<del>E</del> <b>G</b>	<del>November 2024</del> <b>June 2025</b>

#### 4.4.2. Landscape Plans

Condition 1.4 of the consent for DA-826/2020 currently contains a reference to the previously approved landscape plans which is proposed to be amended to reference the amended landscape plans:

*1.4 All aspects of the landscaping must be completed in accordance with the submitted landscape plan (drawn by Arcadia ~~Revision E / Issue November 2024~~ **Revision F / Issue May 2025** submitted to Council on 29 November 2024) 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.*

#### 4.4.3. BASIX Certificate

Condition 1.14 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:

*1.14 The development is to be carried out in accordance with the commitments shown in the approved ~~BASIX Certificate No. 1123393M\_09 dated 11 November 2024~~ **BASIX Certificate No. 1123393M\_11 dated 3 June 2025**. The BASIX commitments approved with the development application are to be reflected in the construction certificate plans and specifications.*

#### 4.4.4. Fencing

Condition 2.3 of the consent identifies a requirement for the replacement of boundary fencing for the site. This condition provides requirements for the colour and materiality of the fencing, as well as a requirement to consult with adjoining property owners. It is proposed to amend this condition to stipulate that the fence to the northern boundary, which is the only fence adjoining any private neighbouring properties, will be constructed in Manor Red Colorbond.

The colour and materiality for the fence has been selected to align with the material palette for the site and to complement the design of the broader Ashbury Estate. This colour has been specifically chosen to complement the species of planting to be used in landscaping along the site boundary. Additionally, the selection of this fencing material will match that proposed for the dwelling house to be constructed adjacent to the subject site as part of the Ashbury Estate (subject to approval by Inner West Council). Therefore, a consistent colour and material palette will be applied to the northern boundary of the Ashbury Estate and will present a cohesive image of the site to the neighbours.

It is proposed to update Condition 2.3 as follows:

*2.3 The landscape plan shall include the provision for the replacement of all boundary fencing. A new 1.8m fence is to be erected along all side and rear boundaries of the subject allotment at full cost to the developer. The colour of the fence is to complement the development and the fence is to be constructed of lapped and capped timber paling, sheet metal or other suitable material unless the type of material is stipulated in any flood study prepared for the site. **The fence along the northern boundary is to be constructed in Manor Red Colorbond to complement the development.** ~~The selection of materials and colours of the fence is to be determined in consultation with the adjoining property owners.~~ Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council.*

#### 4.4.5. Development Staging – New Condition

This modification application seeks to stage the issue of Occupation Certificates for the proposed development. As such, it is proposed to introduce a new condition of consent to permit the proposed staging. The proposed wording of the new condition is as follows:

***The works may be carried out in stages with the relevant conditions being satisfied prior to the issue of an Occupation Certificate for stages outlined in the table below and the approved Occupation Staging Plan prepared by SJB Architects (dated 22.05.25 Revision 1):***

Stage	Works
<b><i>Stage 1 Occupation Certificate</i></b>	<b><i>Part Basement, Buildings A, B C &amp; F and landscape works identified in the Staging Plan (dated 22.05.25 Revision 1)</i></b>
<b><i>Stage 2 Occupation Certificate</i></b>	<b><i>Part Basement, Buildings D &amp; E and landscape works identified in the Staging Plan (dated 22.05.25 Revision 1)</i></b>

#### 4.4.6. Development Staging – Occupation Certificates

Conditions 1.11, 1.13, 2.43, 5.1, 5.2, 5.3, 5.6, 5.7, 5.10, 5.13, 5.14, 5.15, 5.16, 5.17, 5.18, 5.19 and 5.20 are conditions to be satisfied prior to the issue of an occupation certificate. The wording of these conditions is proposed to be amended from referring to 'an' or 'any' occupation certificate to referring to 'the relevant' occupation certificate in order to ensure that the development can be issued with occupation certificates in a staged manner without being required to meet conditions that are only relevant to a subsequent stage of the development.

The conditions are proposed to be amended as follows:

##### Condition 1.11

*1.11 All soils and material, liquid and solid, to be removed from the site must be analysed and classified by an appropriately qualified and experienced environmental consultant, in accordance with the Protection of the Environment Operations (Waste) Regulation 2014 and related guidelines, the 'Waste Classification Guidelines' (NSW EPA, 2014), prior to off-site disposal.*

*The waste classification report, including the results of testing, must be compiled, or reviewed and approved by an appropriately qualified and certified consultant, and must be submitted to and approved by the Principal Certifying Authority before off-site disposal. A copy of the waste classification report must be submitted to Council prior to issuing of **the relevant** an Occupation Certificate.*

*All waste material must be disposed of at an appropriately licensed waste facility for the specific waste. Receipts for the disposal of the waste must be submitted to Council prior to issuing of **the relevant** an Occupation Certificate.*

*All waste must be transported by a contractor licensed to transport the specific waste, and in vehicles capable of carting the waste without spillage and meeting relevant requirements and standards. All loads must be covered prior to vehicles leaving the site.*

##### Condition 1.13

*1.13 Any fill imported onto the site must be virgin excavated natural material or excavated natural material, classified as such in accordance the 'Waste Classification Guidelines' (NSW EPA, 2014) or excavated natural material meeting the requirements of the Excavated Natural Material Exemption (NSW EPA, 2014). Certificates verifying that imported fill is virgin excavated natural material or excavated natural material must be provided to Council prior to the issue of **the relevant** an Occupation Certificate. All imported fill must be compatible with the existing soil characteristics of the site.*

##### Condition 2.43

*2.43 A Construction Traffic Management Plan will be required to be submitted six months prior to issue of Construction Certificate and commencement of works for the site, for both the demolition and construction phases of the development. The CTMP shall indicate the proposed travel route to the nearest state road and this route shall be approved by the Council's Director of City Assets. A pre and post construction dilapidation report shall be provided to Council for records and a damage assessment undertaken on the issue of the **relevant** Occupation Certificate. The cost of restoration of damage to road assets that can be attributed to the development construction traffic shall be borne by the applicant.*

##### Condition 5.1

5.1 The occupation or use of the building must not commence unless **the relevant** ~~an~~ occupation certificate has been issued.

#### **Condition 5.2**

5.2 **The relevant** ~~An~~ occupation certificate must not be issued until all conditions relating to demolition, building and subdivision works have been satisfied and Council has issued a Work Permit Compliance Certificate (where applicable).

#### **Condition 5.3**

5.3 Prior to the issue of **the relevant** ~~any~~ Occupation Certificate a design verification from a qualified designer shall be submitted to the Principal Certifying Authority. The design verification is a statement in which the qualified designer verifies that the development has been constructed as shown in the plans and specifications in respect of which the Construction Certificate was issued, having regard to the design quality principles set out in Schedule 1 of SEPP No. 65.

#### **Condition 5.6**

5.6 Before the issue of **the relevant** ~~an~~ occupation certificate, the principal certifier must be satisfied that all landscape and tree-works, including pruning in accordance with AS 4373-2007 Pruning of amenity trees and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.

#### **Condition 5.7**

5.7 A suitably qualified Professional Civil Engineer shall certify that the driveways, parking bays, and service areas have been constructed in accordance with the approved plans and specifications. Such Certification shall be submitted prior to the issue of the **relevant** Occupation Certificate or occupation of the site.

#### **Condition 5.10**

5.10 **The relevant** ~~An~~ Occupation Certificate for the completed development must not be issued until all conditions relating to demolition, building have been satisfied and Council has issued a Work Permit Compliance Certificate (where applicable).

#### **Condition 5.13**

5.13 The Section 73 compliance certificate under the Sydney Water Act 1994 must be submitted to the Principal Certifier prior to the issue of **the relevant** ~~an~~ occupation certificate.

#### **Condition 5.14**

5.14 Prior to issue of **the relevant** ~~an~~ Occupation Certificate, the proponent must submit a detailed validation report to Council and the principal certifying authority. The validation report must be prepared in accordance with:

- a. 'State Environmental Planning Guideline (SEPP) 55 — Remediation of Land' (Department of Urban Affairs and Planning and NSW EPA, 1998);
- b. Relevant EPA Guidelines, noting the 'Guidelines for Consultants Reporting of Contaminated Land 2020 and
- c. National Environmental Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013).

*The validation report must be prepared or reviewed and approved by an appropriately qualified environmental consultant.*

#### **Condition 5.15**

*5.15 Council Inspection — Waste Management Facilities - Prior to the issue of **the relevant** any Occupation Certificate, an authorised Council waste officer is to inspect and approve all waste management facilities to ensure they comply with the development approval, and Waste Management Plan. Specifically, the path of travel for all waste, from unit to point of waste collection, waste storage room sizing, access to water and sewer connections, finished materials, access and door way dimensions, truck turntables, and that all waste facilities are fit for purpose.*

#### **Condition 5.16**

*5.16 Waste Collection Agreement with Council - Prior to the issue of **the relevant** any Occupation Certificate, the developer is to enter into a formal agreement with Council for the utilisation of Council's Domestic Waste Collection Service. This is to include Council being provided an easement for unimpeded access to and from the waste collection locations for council and its contractors to enter and exit for the purpose of waste and recycling collection. The development is also required to indemnify council and its contractors against claims for loss or damage or wear and tear of access roads or to other parts of the building. A positive covenant shall be placed on the property title, such as section 88B certificate.*

*Note: By entering into an agreement with Council for waste collection, the development will be required to operate in full compliance with Council's Waste Management collection requirements. The provision of Council's waste collection service will not commence until formalisation of the agreement.*

#### **Condition 5.17**

*5.17 Inspection — Waste Vehicle Access and Manoeuvring - Prior to the issue of **the relevant** any Occupation Certificate, a traffic engineer is to inspect and approve all waste vehicle access and manoeuvring/turning movements to ensure they comply with the development approval and design certificate, and that the development can be accessed and serviced by the nominated waste collection vehicle in accordance with the Waste Management Guide for New Developments. Specifically:*

- a. The path of travel for the waste collection vehicle to the nominated collection area (which includes all entrance/exit, internal driveways, vehicle ramps, loading docks and basement) has been designed in accordance with HRV specification in AS2890.2-2004.*
- b. Waste collection vehicles can enter and exit the development site in a forward direction without the need for reversing.*
- c. Turning circles, turntables and manoeuvring areas can accommodate a Heavy Rigid Vehicle.*
- d. Roads and manoeuvring areas have been designed in accordance with AS2890.2- 2004 for HRV.*
- e. A Site operational traffic management plans shall be provided, and Road signage is as specified and in place as per Site Operational Traffic Management Plan; and the Loading Dock Management Plan, prepared by ASON GROUP dated 9th November 2021. At a minimum it shall include the following Traffic Management Equipment:*
  - 3 x Stop / Go Signal with R1-4N sign*
  - 2 x Stop / Go Signal*



- 2 x Dynamic Signboards at New Street / Milton Street intersection
- 1 x Dynamic Signboard adjacent to Signal #2 (refer to sketch)
- 2 x R6-248 (mod) signs
- Detection devices (i.e., induction loop, laser or other detection mechanism)
- 1 x Customised Direction Sign for trucks accessing 149-163 Milton Street basement

#### Condition 5.18

5.18 Prior to the issue of **the relevant** any Occupation Certificate the principal certifier shall obtain a report from an appropriately qualified acoustic consultant, not previously involved with the development, stating that the recommendations outlined in the acoustic report prepared by Pulse White Noise Acoustics, titled, 'Acoustic Review of the Proposed Section 4.55 Changes', dated 3 June 2024 have been implemented and that the relevant noise criteria have been satisfied. A copy of the report is to be submitted to Council prior to the issue of **the relevant** any occupation certificate.

#### Condition 5.19

5.19 Prior to the issue of **the relevant** an Occupation Certificate or any Subdivision Certificate, a Restriction on the Use of the Land and Positive Covenant shall be registered on the title of the subject property, for the road reserve, in accordance with the provisions of the Conveyancing Act 1919, to permit access by Council and the public but remain in private ownership, in accordance with Chapter 11.1, Control 12.11 of Canterbury Bankstown Development Control Plan 2023

#### Condition 5.20

5.20 Prior to the issue of **the relevant** an Occupation Certificate, and as a result of Modification E to remove 3 additional trees over the original development application, the consent holder is to plant 6 x replacement trees (as replacement for trees T6, T17, and T33) on the site as follows and in accordance with the landscape details received by Council on 31 January 2025:

Species	Mature Height	Minimum Pot Size when Planted	Location
<i>Tristaniaopsis laurina</i> (Water Gum)	12m	300L	TR1
<i>Corymbia saligna</i> (Spotted Gum)	30m	75L	TR2
<i>Tristaniaopsis laurina</i> (Water Gum)	12m	75L	TR3
<i>Corymbia saligna</i> (Spotted Gum)	30m	75L	TR4
<i>Eucalyptus saligna</i> (SydneyBlue Gum)	30m	100L	TR5
<i>Eucalyptus microcorys</i> (Tallowwood)	40m	75L	TR6

- *The tree/s shall be planted no closer than 3.5 metres from the wall of any approved dwelling on the property.*
- *The tree/s shall be planted so that future growth is not in conflict with overhead electricity wires.*
- *The tree/s shall be maintained for the life of the development.*
- *Should the tree/s die or fail to establish within 5 years of the date of this consent, they must be replaced.*

## 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 proposed gym and mail room are located entirely within the approved building envelope and will not result in any impacts to the bulk and scale of the development. The proposal will result in a minor increase in GFA, however the development remains compliant with the maximum permissible FSR of 1.1:1. Therefore, these internal changes will have no impact on the approved building envelope, bulk or scale. In particular, the mail room is a requirement that was overlooked in the design of the original development application and is required to be included to enable the orderly operation and function of the development site.
- The basement residential storage cages which will be deleted to make way for the residential gym, were provided in surplus and are not required. The development as modified will continue to comply with the ADG.
- The proposed modifications will not significantly impact the approved built form of the development. Minor external changes are proposed to the roof design of some of the buildings, however these modifications will have a neutral impact on the approved visual appearance of the development and will not be incompatible with the approved architectural design.
- The proposed amendments to the rooftop awning design of Buildings A and E will not result in any increase in building height.
- The proposed landscaping amendments are minor in nature and will not result in any non-compliances with requirements relating to deep soil zones or communal open space provision.

- The proposed condition changes largely relate to the timing of compliance with the consent conditions to allow for the staging of Occupation Certificates so that the development can be delivered in two stages. This will not result in any new or additional environmental impacts and will rather result in a more efficient and functional construction program.
- The proposed modifications are minor in nature and will not impact on the amenity of neighbouring land uses or the heritage significance of the Ashbury Heritage Conservation Area.

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 DA-826/2020 as modified.
- The proposed amendments do not alter the nature or essence of the approved development.
- The changes are the result of detailed design development and will not affect the overall design or visual appearance of the approved development when viewed from public spaces.
- The proposed modification will result in the creation of new GFA and a slight increase to the maximum FSR of the proposed development. However, the areas of new floor space are located entirely within the approved building envelope and as such will have no impact on the perceived bulk and scale of the 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.

Accordingly, the proposed modifications can be assessed in accordance as a modification to the original development 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**

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 Certificate has been prepared by JHA Consulting Engineers and dated 3 June 2025 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 modifications are minor in nature and do not result in any changes to the development's compliance with the Housing SEPP and Apartment Design Guide (**ADG**). This includes the proposed removal of residential storage cages in the basement, which currently provide storage in excess of the ADG requirements. The removal of this storage will not result in any non-compliance with the ADG.

### 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 will not result in any increase to the maximum building height as approved.	Yes – no change.
Clause 4.4 – Floor Space Ratio FSR control: 1.1:1 Site area: 16,220sqm Maximum GFA: 17,842sqm	The proposed amendments result in an increase in the GFA, with the GFA totalling 17,539sqm and resulting in an FSR of 1.08:1.	Yes
Clause 5.10 – Heritage Conservation	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).  This modification does not propose any significant external changes to the Milton Street frontage and therefore will have no adverse impacts on the adjoining HCA.	Yes

## **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 as summarised below:

- The proposed increase in FSR is minor and will not result in any impacts to the approved building envelope.
- There will be no change to the perceived bulk and scale of the development, or the provision of deep soil zones or communal open space.
- The installation of fencing and gates to the development will not result in any change to the overall look, feel, intent or function of the ground floor communal open space, and is a necessary security measure to ensure the safety and privacy of future residents.

## **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:

### **6.6.1. Bulk and Scale**

The proposed modifications will result in a minor increase to the GFA of the proposed development as a result of the proposed gym and mail room. However, this increase in GFA is located entirely within the existing building envelope and will result in no change to the built form, bulk or scale of the development. As such, this GFA increase will not result in any adverse amenity impacts to the dwellings within the subject site or in adjoining sites.

### **6.6.2. Landscaping**

The proposed landscaping modifications are minor in nature and do not constitute any significant changes from the development as approved. The proposed removal of landscape planters within private courtyards throughout the site seeks to improve the amenity of private dwellings for future residents, by increasing the usable area of their private open space and providing more flexibility with what they can achieve within the space, allowing it to adapt to suit their unique and individual needs.



The modifications will not result in any change to the approved provision of communal open space, private open space or deep soil.

### **6.6.3. Privacy**

This modification application seeks to remove planter boxes within the private courtyards of several units, including in locations adjoining the ground floor communal open space. The removal of these planters will not result in any privacy or overlooking impacts to these private open spaces, as the approved brick courtyard fences will continue to provide appropriate screening, as will the retained planter boxes within the communal areas and pathways adjacent to the terraces of Buildings F.

### **6.6.4. Solar Amenity**

The proposed removal of skylights and window covers to Buildings A, D, E and F, as well as the change in rooftop awning design for Buildings A and E, will not have any impact on solar access or amenity for the affected units. The development continues to comply with the requirements for solar access outlined in the Apartment Design Guide.

Solar amenity and appropriate shading will continue to be provided to the ground floor communal open space, despite the proposed removal of the pergola, by the generous planting throughout the communal open space consisting of a variety of shrubs, trees and palms.

The proposed pergolas on the rooftop communal open spaces of Buildings B and C will continue to provide shading to these spaces, despite the reduction in the size of these pergolas.

## **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 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 will result in a minor increase in GFA, however this will be entirely contained within the approved building envelope and will not result in any impacts to the bulk and scale of the development. The proposed FSR remains compliant with the CBLEP and key provisions of the CBDP.
- The proposal continues to provide a high-quality landscape setting and complies with requirements for deep soil, private open space and communal open space provision.
- 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 do not limit the ability to approve the modifications sought.
- 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 are 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", with a stylized flourish at the end.

Sophy Purton  
Associate Director  
+61 2 8233 9970  
spurton@urbis.com.au