

Section 4.56 Application

149–163 Milton Street, Ashbury

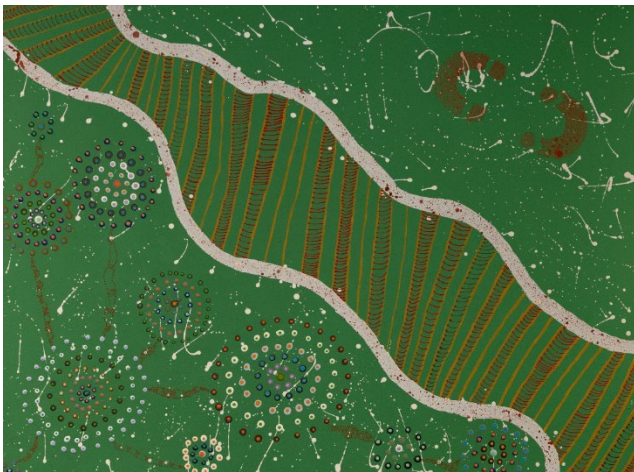
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Report Number	FINAL

Acknowledgment of Country

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Urbis is committed to incorporating our respect for First Nations cultures, peoples and storytelling in our work across the Country. We are proud to have partnered with Darug Nation artist, **Hayley Pigram**, and to profile her artwork – **Sacred River Dreaming**.



The river is the symbol of the Dreaming and the journey of life. The circles and lines represent people meeting and connections across time and space. When we are working in different places, we can still be connected and work towards the same goal.

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1 Introduction

This modification report (**report**) has been prepared by Urbis Ltd on behalf of Ashbury Projects Pty Ltd (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:

- Internal amendments to the layout of Buildings B and C, specifically the conversion of larger two- and three-bedroom units to studio, one-bedroom and two-bedroom units. This will result in an increase in the total dwellings on the site from 131 dwellings to 158 dwellings.
- Conversion of all newly created studio, one-bedroom and two-bedroom units within Buildings B and C from standard market apartments (i.e. build-to-sell) to build-to-rent (BTR) units. This will result in a total of 42 build-to-sell dwellings and 54 BTR dwellings within Buildings B and C.
- Amendments to the car park layout and reallocation of car parking, including an increase in visitor and accessible spaces and an increase in bicycle parking from 39 spaces to 48 spaces. The overall car parking numbers remain the same.
- Minor external façade changes to facilitate an increase in window size for studio apartments created on the western façade of Building B, as well as the addition of a window to the ground floor mail room in Building B.
- Introduction of rooftop skylights to Building C.
- Provision of a staircase on the western end of the northern communal open space adjacent to Building D2 to provide access to the communal open space and pool area from the west.
- Minor adjustment to the basement slab within the approved gym to allow for appropriate ceiling heights.

The primary driver for the modification application is to seek approval for the conversion of existing Build-to-Sell (BTS) apartments within the residential flat buildings (Building B and C) of the development, to Build-to-Rent. The end state will consist of 30 out of 47 units within Building B being BTR and 24 out of the 49 units within Building C as BTR. The remaining apartments will be retained as BTS.

The Ashbury Estate comprises Stage 1, located at 165 Milton Street, Ashbury which is soon to be fully completed and operational, and Stage 2, the site the subject of this application. The market sentiment received during the sales of Stage 1 signifies a clear demand for a more diverse housing stock. Whilst there was a strong preference for the townhouse product which caters to families and people looking to downsize, demand was also identified from young families, couples, professionals and students who prefer apartment living and smaller unit sizes (i.e. studio, 1-bedroom and 2-bedroom apartments), including those who are unable to buy a home right away and would prefer the option to rent.

The Ashbury Estate as a whole has been designed with community at heart, with the residential dwellings framing a precinct that has an abundance of open space, BBQ facilities, lush landscaping and communal pool areas. This has sparked a keen interest and demand for those seeking to rent within the community, rather than invest. As a result of this identified demand for smaller units and rental dwellings, Coronation are seeking to convert existing larger apartments into smaller studio, 1-bedroom and 2-bedroom apartments as well as pivot some BtS apartments into BtR apartments to provide the local community with greater flexibility around tenure choice and apartment diversity.

With limited purpose built BtR product within the immediate vicinity, this signifies a positive social offering to the local community and reflects the increased demand for people wanting to live in places that offer a high-quality living environment.

Stage 2 is well progressed through construction and therefore, the proposed design amendments have been made to limit disruption to the existing built form to the greatest extent possible. The structure is almost complete, the façade is underway and fit outs are due to commence as soon as possible, with the aim being to complete and deliver Stage 2 by Q4 2026. Timing of the modification is critical to enable the continued and ongoing construction of the precinct and to avoid delays to the greatest extent possible.

The proposed amendments positively address earlier Pre-DA feedback from Council regarding the dual-key arrangements, window placements and outlook and minor spatial issues. The proposed design amendments represent a much simpler apartment stacking arrangement and allow for functional and diverse unit planning layouts.

As the amendments are largely internal, and do not change the nature and essence of the building, in that they are continued to be used as residential flat buildings, the proposal is substantially the same as that which development consent was granted and is unlikely to have any significant impacts, beyond that already contemplated by the approved development.

The application has been prepared in accordance with the Environmental Planning and Assessment Act 1979 (EP&A Act) and Environmental Planning and Assessment Regulations 2021.

This report should be read in conjunction with the following supporting documentation:

- Owners Consent
- Amended Architectural Plans prepared by SJB Architects.
- Amended ADG Report prepared by SJB Architects.
- Legal Advice Letter prepared by Mills Oakley.
- Waste Management Plan prepared by MRA Consulting Group.
- BCA Letter prepared by Jensen Hughes.
- Access Letter prepared by Jensen Hughes.
- BASIX Certificate.

2 Site Context

2.1 Site Description

The site is located at 149-163 Milton Street, Ashbury within the City of Canterbury-Bankstown Local Government Area (LGA). The site is legally identified as Lot 2 in Deposited Plan I321055.

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 Site Aerial



Source: Urbis

Figure 2 Site context



Source: Urbis

3 Project Background

3.1 Development History

3.1.1 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.

3.1.2 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.*”

3.1.3 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.

3.1.4 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.

3.1.5 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.

3.1.6 DA-826/2020/E

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

3.1.7 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 on the adjoining lot. Consent for the proposed dwelling was sought under a separate development application to Inner West Council.

This application was refused by Canterbury-Bankstown Council on 3 July 2025 as the applicant had not registered the required easements over the land, which would provide access to the adjoining lot.

3.1.8 DA-826/2020/H

DA-826/2020/H was approved on 25 August 2025 for an amendment to the design and layout of the approved stormwater infrastructure scheme, including removal of the proposed swale drainage system.

3.1.9 DA-826/2020/I

DA-826/2020/I was approved on 28 November 2025 for internal and external alterations and additions to the development including formation of a gym in the basement, relocation of bicycle parking, formation of a mail room in building B, removal of skylights in Buildings A, D & E, removal of metal work on Building F, amended rooftop open space on Buildings A and 3, installation of security fencing, amended boundary fencing, removal of planter boxes and landscaping amendments, removal of pergola between Buildings B and C and staging of the issue of Occupation Certificates.

3.1.10 DA-826/2020/J

DA-826/2020/J was lodged with Canterbury-Bankstown Council on 13 November 2025 seeking consent for similar works to DA-826/2020/G, following resolution of issues with that application that were raised by Council in their determination report.

The application is still under assessment.

3.2 Pre-DA

In late 2024, the applicant began preliminary discussions with Canterbury Bankstown Council regarding the proposed intent to convert the two RFB's into BTR style products. Council positively engaged with the applicant and project team, with the follow matters for consideration to be addressed in the DA stage:

- Clarification around dual key apartment arrangement
- Clarification around the apartment size and layout, including ensuring the ability for the apartments to be furnished and functional
- Confirmation regarding waste arrangements, parking and communal facilities

Since the Pre-DA stage, the architectural plans have been amended to remove the dual key apartment arrangement which in turn removes a number of concerns raised by Council.

All units are now independent units.

Design refinements to the apartments have resulted in an increase in window size for the studio apartments and further rationalisation of the apartment split, resolving concerns around the functionality of the converted units.

The s4.56 is supported by technical advice from waste and BCA whilst parking and bicycle parking have been adjusted to address Councils preliminary comments.

4 Description of Modifications

4.1 Overview of Modification

This Section 4.56 application seeks consent for modifications to enable the conversion of existing 2- and 3-bedroom apartments within Buildings B and C into studio, 1- and 2-bedroom apartments. The proposed amendments also involve the conversion of the newly created studio, 1- and 2-bedroom apartments from standard market units to build-to-rent units.

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

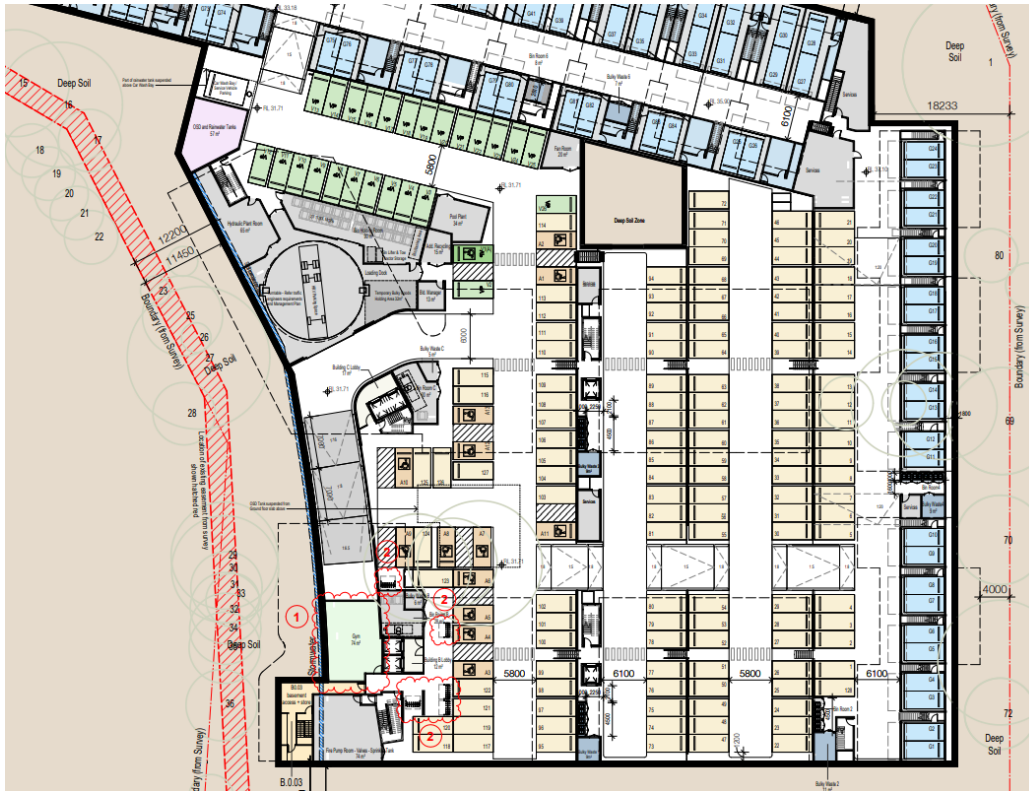
4.1.1 Internal Design Alterations

- Internal amendments to the layout of Buildings B and C:
 - Conversion of larger apartments into smaller apartments, increasing the quantum of studio, 1 bed and 2 bed apartments and decreasing the number of 3-bedroom apartments.
 - The proposed conversion will result in an additional 15 units for Building B and an additional 12 units for Building C.
 - Minor internal alterations are proposed to the common circulation areas of both Buildings B and C to accommodate the entrances to the proposed additional apartments.
- Conversion of all new studio, one-bedroom and two-bedroom apartments within Buildings B and C created due to the proposed internal amendments from standard market apartments (i.e. build-to-sell units) to build-to-rent (BTR) units.
 - The proposed BTR conversion relates to 54 units across Buildings B and C. All other dwellings within the development will remain as build-to-sell.
- Amendments to the car park layout and car parking allocation to respond to dwelling total and typology changes. There will be no reduction in the total number of parking spaces on the site.
 - Conversion of 10 resident parking spaces to 5 visitor spaces and 4 accessible resident spaces.
 - Addition of one visitor car parking space.
- Provision of additional bicycle parking at the basement and ground levels, including adjacent to parking space A3 in the basement and between Buildings C & E at ground level. These modifications will result in an increase in bicycle parking from 39 spaces to 48 spaces.
- Minor adjustment to the basement slab within the approved gym to allow for appropriate ceiling heights.

4.1.2 External Design Alterations

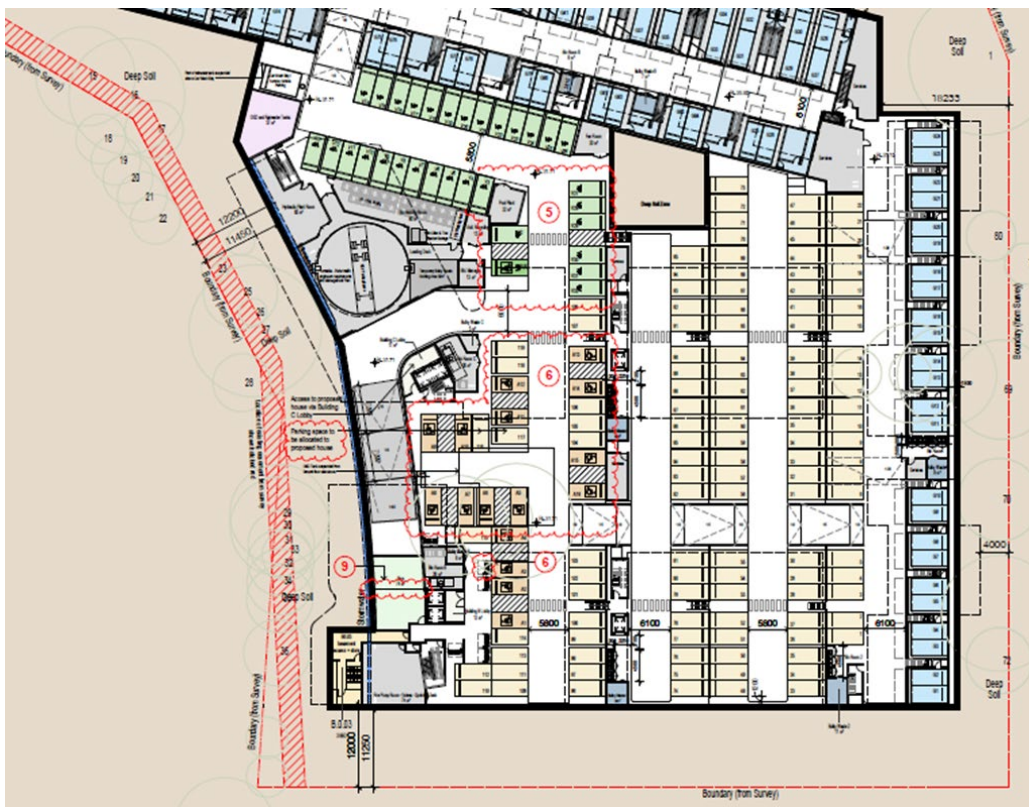
- Minor external façade changes to facilitate an increase in window size for studio apartments created on the western façade of Building B.
- Addition of a window to the ground floor mail room on the eastern façade of Building B.
- Introduction of rooftop skylights to Building C.
- Provision of a staircase on the western end of the northern communal open space adjacent to Building D2 to provide access to the communal open space and pool area from the west.

Figure 3 Approved and Proposed Basement Plan



Picture 1 Approved Basement Plan

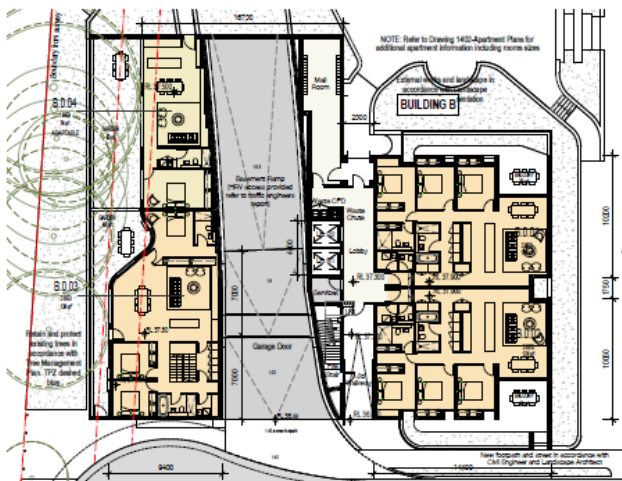
Source: SJB Architects



Picture 2 Proposed Basement Plan showing changes to carparking layout and allocation

Source: SJB Architects

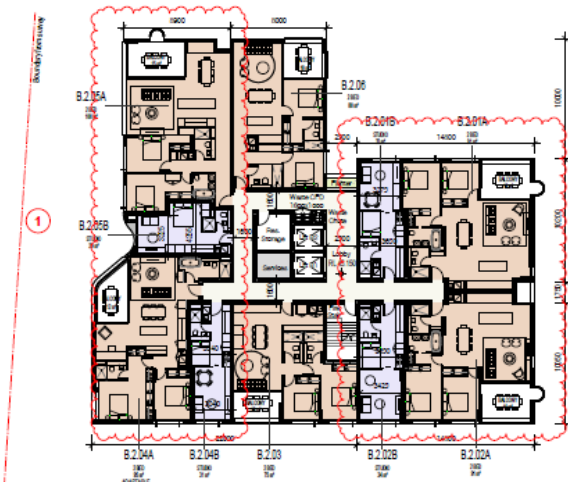
Figure 4 Approved and Proposed Ground Floor Plan
s4.56 Report - 149-163 Milton Street, Ashbury



B-Ground
1:200@A1



B-Level 1
1:200@A1



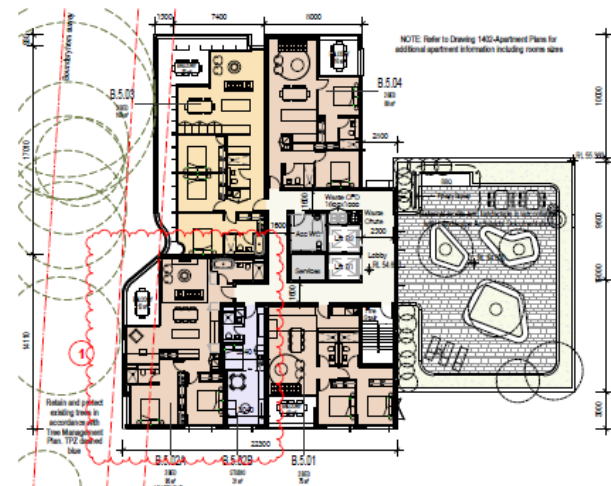
B-Level 2
1:200@A1



B-Level 3
1:200@A1



B-Level 4
1:200@A1

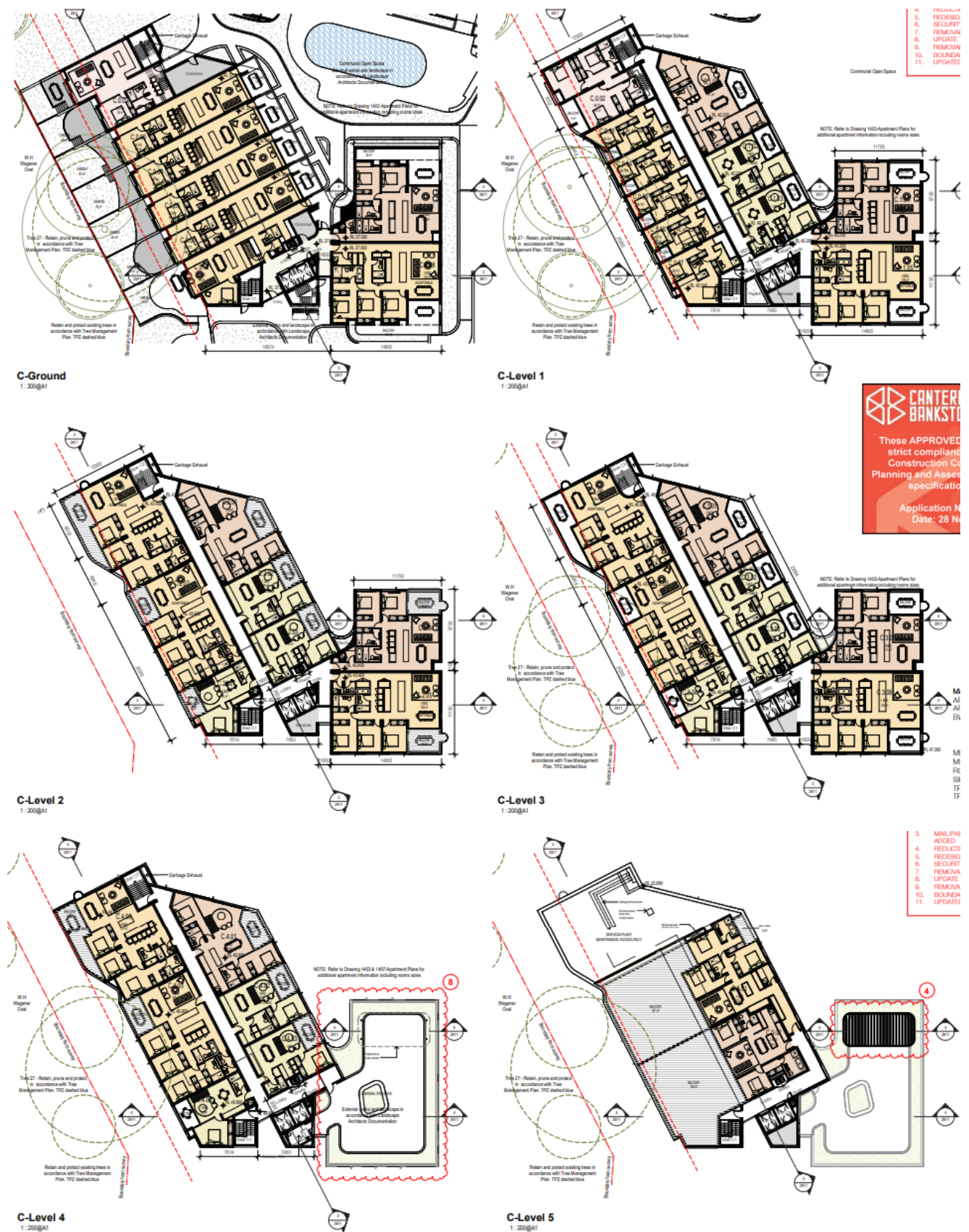


B-Level 5
1:200@A1

Picture 6 Proposed Building B Floor Plans

Source: SJB Architects

Figure 6 Approved and Proposed Building C Floor Plans

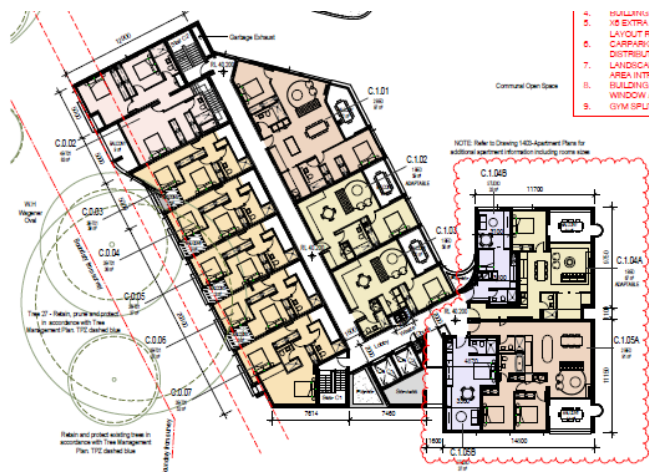


Picture 7 Approved Building C Floor Plans

Source: SJB Architects



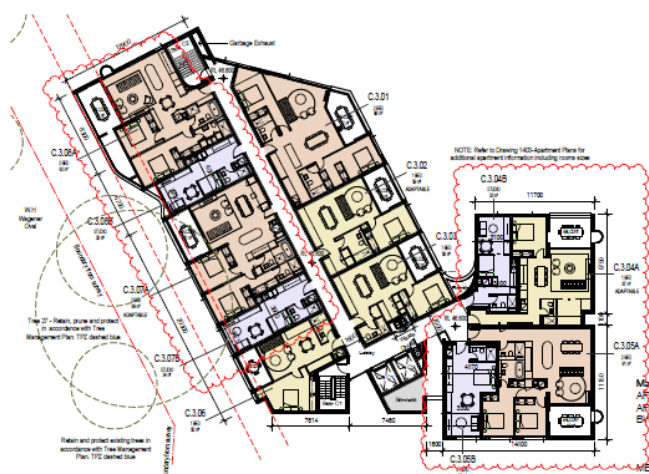
C-Ground
1:200@A1



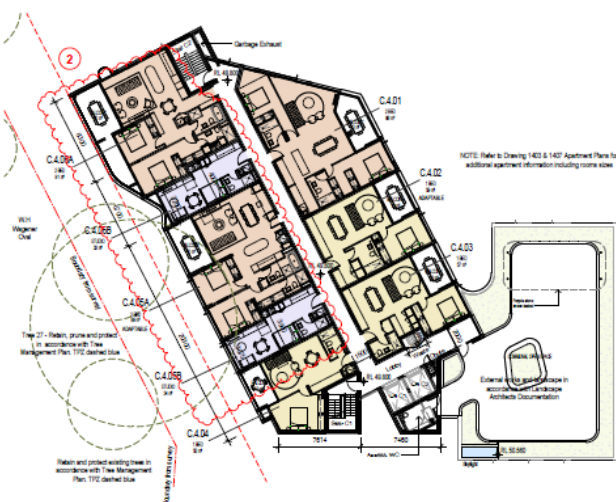
C-Level 1
1:200@A1



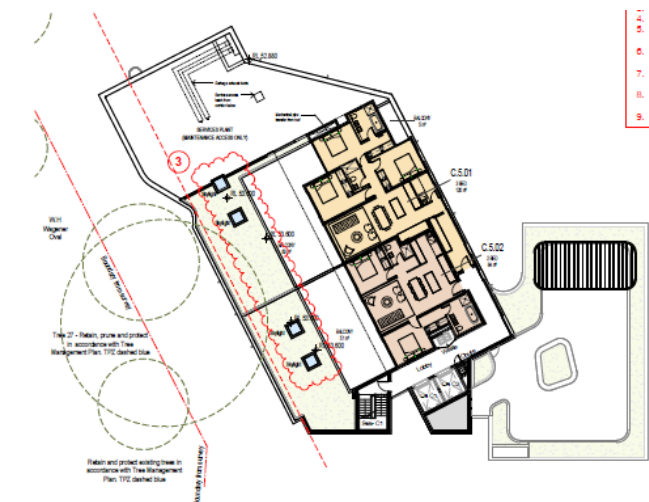
C-Level 2
1:200@A1



C-Level 3
1:200@A1



C-Level 4
1:200@A1



C-Level 5
1:200@A1

Picture 8 Proposed Building C Floor Plans

Source: SJB Architects

Figure 7 Approved and Proposed Building B Western Elevation



Picture 9 Approved Building B Western Elevation

Source: SJB Architects



Picture 10 Proposed Building B Western Elevation showing enlarged windows on western façade

Source: SJB Architects

4.2 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, 1.14, 2.47, 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	01.10.2025 17.02.2026	10 11	SJB
Overall Plan- Basement	0101	01.10.2025 17.02.2026	31 32	SJB
Overall Plan- Ground Floor	0110	10.09.2025 17.02.2026	33 35	SJB
Overall Plan- Level 1	0111	10.09.2025 17.02.2026	23 24	SJB
Overall Plan- Level 2	0112	10.09.2025 17.02.2026	21 22	SJB
Overall Plan- Level 3	0113	10.09.2025 17.02.2026	20 21	SJB
Overall Plan- Level 4	0114	10.09.2025 17.02.2026	22 23	SJB
Overall Plan- Level 5	0115	10.09.2025 17.02.2026	25 26	SJB
Overall Plan- Roof	0116	10.09.2025 17.02.2026	22 23	SJB
Building A	0201	10.09.2025	12	SJB
Building B- Sheet 1	0211	10.09.2025 17.02.2026	15 16	SJB
Building B- Sheet 2	0212	10.09.2025 17.02.2026	18 19	SJB
Building C- Sheet 1	0221	10.09.2025 17.02.2026	20 21	SJB
Building C- Sheet 2	0222	10.09.2025 17.02.2026	25 26	SJB

Building D- Sheet 1	0231	01.10.2025	12	SJB
Building D- Sheet 2	0232	10.09.2025	11	SJB
Building D- Sheet 3	0233	10.09.2025	11	SJB
Building E	0241	10.09.2025	12	SJB
Building F- Sheet 1	0251	10.09.2025	12	SJB
Building F- Sheet 2	0252	10.09.2025	8	SJB
Elevations- North & East	0501	10.09.2025	18	SJB
Elevations- South & West	0502	10.09.2025 17.02.2026	20 21	SJB
Elevations- Internal Sheet 1	0503	10.09.2025	22	SJB
Elevations- Internal Sheet 2	0504	10.09.2025 17.02.2026	22 23	SJB
Elevations- Internal Sheet 3	0505	10.09.2025	17	SJB
Sections- Sheet 1	0601	10.09.2025 17.02.2026	19 20	SJB
Sections- Sheet 2	0602	10.09.2025 17.02.2026	18 19	SJB
Apartment Plans- Building A & E	1401	10.09.2025	9	SJB
Apartment Plans- Building B	1402	10.09.2025 17.02.2026	9 10	SJB
Apartment Plans- Building C	1403	10.09.2025 17.02.2026	8 9	SJB
Apartment Plans- Building D	1404	10.09.2025	9	SJB
Apartment Plans- Building E	1405	10.09.2025	7	SJB
Adaptable Apartment Types	1406	30.08.2021 17.02.2026	3 4	SJB
Apartment Plans – Building C	1407	10.09.2025	4	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	3	SJB
Demolition Plan	2501	18.09.2021	6	SJB
Building Height Compliance Sections	2911	29.11.2024	8	SJB
Building Height Compliance Sections	2912	29.11.2024	3	SJB
Pedestrian Walkway	9908	18.09.2021	2	SJB
OC Staging Diagram	9950	10.09.2025	2	SJB

4.2.2 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_11 dated ~~3 June 2025~~ **18 February 2026**. The BASIX commitments approved with the development application are to be reflected in the construction certificate plans and specifications.*

4.2.3 Car Parking Provision

Conditions 5.4 and 5.5 of the consent for DA-826/2020 outline the required number of car and bicycle parking spaces for the development. In response to the proposed change in the number and typology of units within the development, this modification application proposes to amend the number of car and bicycle parking spaces.

The total number of carparking spaces will remain the same as approved, however the distribution of these spaces has changed, resulting in fewer residential spaces and more visitor spaces. This reflects the increase in the number of dwellings within the development which necessitates the provision of more visitor spaces, as well as the fact that the parking rates for BTR development set out in the Housing SEPP are lower than those that apply to standard market housing under the Canterbury-Bankstown DCP, meaning fewer resident spaces are required. These changes will not result in any non-compliances with the relevant minimum parking rates.

The total number of bicycle parking spaces provided within the development is proposed to increase in line with the increase in the number of dwellings.

Condition 5.4 is proposed to be amended as follows:

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

*a. ~~225~~ **219** residential spaces including ~~13~~ **16** accessible spaces; and*

*b. ~~26~~ **32** residential visitor spaces including 1 accessible car space.*

*~~14~~ **17** 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.*

Condition 5.5 is proposed to be amended as follows:

*5.5 A total of ~~39~~ **48** bicycle spaces, comprising of ~~26~~ **32** residential bicycle spaces and ~~13~~ **16** visitor bicycle spaces, must be provided on-site in accordance with the approved plans.*

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 additional dwellings will be completely contained within the approved building envelope, having no impact to the bulk and scale of the development. The modifications will not result in any adverse environmental or amenity impacts either within the site or to neighbouring sites, including in relation to solar access, overshadowing, privacy or visual impact.
- Whilst the proposed amendments will result in an overall increase in dwellings, this is achieved through the conversion of larger 2- and 3-bedroom apartments into 1-bedroom, 2-bedroom and studio apartments. As such, there will be no change to the number of bedrooms within the development and thus the intensity of the development and demand on infrastructure is substantially the same to that originally approved.
- Whilst the proposal includes an additional 27 dwellings, there is no increase to the overall car parking and therefore the traffic generation will remain akin to that approved.
- The proposed modifications will not significantly impact the approved built form of the development. Minor external changes are proposed to the façade of Building B, specifically the enlargement of existing windows and addition of one window to the ground floor, as well as to the roof of Building C through the introduction of skylights, 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 BTR dwellings are capable of achieving an appropriate level of compliance with the ADG when factoring in the flexibility afforded by Chapter 3, Part 4, Section 75 of the Housing SEPP, as discussed further in **Sections 286.1.1.2** and **6.6.1** of this report.
- The proposed modifications will not result in any change to the approved FSR and building height of the development.
- The proposed modifications are minor in nature and will not impact on the heritage significance of the Ashbury Heritage Conservation Area.

5.2 Substantially the Same Development

The proposed modifications have been assessed using both a quantitative and qualitative assessment to determine whether the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted.

5.2.1 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 as modified.

Table 1 Modified development summary table – Building B & C – quantitative elements

Element	Approved Development	Modified Development	Change from approved
Building Height	Building B: 21.91m Building C: 21.78m	Building B: 21.91m Building C: 21.78m	No change
Gross Floor Area	17,551m ²	17,551m ²	No change
Number of Dwellings (total)	Total: 131 Building B: 32 Building C: 37	Total: 158 Building B: 47 Building C: 49	Total: + 27 dwellings Building B: + 15 dwellings Building C: + 12 dwellings
Studio Units	0	27	+ 27 units
1-Bedroom Units	13	16	+ 3 units
2-Bedroom Units	18	39	+ 21 units
3-Bedroom Units	37	13	- 24 units
4-Bedroom Units	1	1	No change
Car Parking	251 spaces total	251 spaces total	No change
Bicycle Parking	39 spaces	48 spaces	+ 9 spaces
Communal Open Space	4,930m ² (30.4% of site area)	4,930m ² (30.4% of site area)	No change

The most notable quantitative change associated with this modification application is the conversion of 2- and 3-bedroom apartments into studio, 1- and 2-bedroom apartments. However, the development as a whole will continue to provide a variety of dwelling typologies to suit the needs of a variety of residents, from young professionals to established families. A large quantity of 3-bedroom terraces are provided within the broader Ashbury Terraces development, with this modification effectively addressing a deficit in smaller dwelling typologies within the development by providing increased studio, 1-bedroom and 2-bedroom dwellings to replace the 3-bedroom apartment style product. As such, this modification application represents a more diverse unit mix compared to the existing approved development, and therefore provides a positive social outcome.

Having regard to the above quantitative assessment, the development as modified will be substantially the same development as the development for which consent was originally granted, especially when considering that minimal external alterations are proposed.

5.2.2 Qualitative Assessment

A qualitative comparison between the approved and the modified development must determine whether the “essence” of the development can be considered substantially the same as what was originally approved. Legal advice has been obtained from Mills Oakley which confirms that the proposed modifications constitute ‘substantially the same development’ as originally approved under DA-826/2020.

The original development consent granted approval for “*Demolition of all existing structures, removal of 57 trees, excavation, site remediation, civil works, new road, site landscaping and construction of two residential flat buildings and seven multi-dwelling housing buildings comprising 129 dwellings over a single level common basement for parking*”.

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, as well as two residential flat buildings along the western site boundary to WH Wagner Oval. The development 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 development also includes ground level communal open space areas within the northern and southern portions of the site which formed a fundamental element of the residential precinct and dictated the location of building footprints.

These elements are referred to as the fundamental design elements which formed part of the original development consent. No changes are proposed to the communal open space and ground plane within the development, nor to Buildings A, D, E and F.

The proposed modifications do not substantially change the development for which consent was originally granted for the reasons outlined in the table below.

Table 2 Modified development summary table – qualitative elements

Element	Commentary
Conversion to BTR Dwellings	- The proposed modifications seek to convert a portion of Buildings B and C, which were approved as residential flat buildings, into BTR residential apartments, specifically 54 units. - This does not constitute a change to the approved use on the site (residential accommodation), and the development remains permissible on the site. This is supported by the legal advice provided by Mills Oakley which states that, despite the modifications, <i>“the proposed modifications maintain the approved residential use. While the additional BTR units slightly increases the intensity of the use, the increase is achievable within the approved built form”</i>. - This change in operational arrangements for some units from build-to-sell to BTR will have a negligible impact on the development as a whole and does not represent a substantially different development to what was previously approved. Both BtS and BTR are defined as residential flat buildings, it is only the operational matters that differ which are not of relevance to the consideration of whether the development is substantially the same as the original approval, which is affirmed by the legal advice provided by Mills Oakley.
Internal Amendments to Buildings B & C	- The proposed development seeks to convert larger two- and three-bedroom units within Buildings B and C to smaller studio, one-bedroom and two-bedroom units. - No changes to the building envelope, bulk or scale of the approved development are proposed to achieve this and instead it will be facilitated through internal layout amendments to divide existing apartments into two smaller apartments. - Subsequently, despite the increase in the number of dwellings within the development, there will be no substantial changes to the physical appearance of the development. - These changes will not substantially alter the nature or functionality of the development.
External Design Changes	The proposed external changes to Building B and C are very minor in nature and relate solely to enlarging a series of windows on the

	western façade of Building B, the addition of a ground floor window on the eastern façade of Building B, and the introduction of skylights to Building C. These changes seek to provide improved solar access and amenity to the proposed apartments. ▪ These changes will not change the overall character and built form of the development as approved, will be discrete and not transformative, and will not have an adverse impact on the significance of the Ashbury Heritage Conservation Area. ▪ As the extent of the external design changes are limited to the minor Building B façade amendments and the introduction of skylights to Building C, the Mills Oakley legal advice concludes that <i>“the relationship of [the development with] the public domain remains unchanged”</i> compared to the original development consent, which is relevant as the relationship of the development with the public domain is considered a fundamental design element of the proposal. ▪ As such, the external modifications should be considered to remain substantially the same as the original approved development.
Basement Layout Amendments	▪ In response to the amended dwelling mix and unit numbers associated with this modification application, amendments have been made to the basement layout to better accommodate the required parking spaces. ▪ This includes a reallocation of spaces between residential and visitor spaces, as well as the introduction of additional accessible parking spaces. ▪ There will be no change to the overall number of parking spaces within the development. As such, there will be no impacts on traffic generation compared to the approved development. ▪ This modification also proposes a minor adjustment to the basement slab within the approved gym to allow for appropriate ceiling height. There will be no impacts to the built form of the development or the functionality of the gym as a result of this amendment.

5.2.3 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 2 residential flat buildings and 7 multi-dwelling housing buildings varying in height from 2 storeys to 6 storeys and developed over a common basement.
- The approved building footprints remain unchanged, as do the approved height and FSR of the development.
- The streetscape presentation and interface remain 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 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.
- The legal advice prepared by Mills Oakley concludes that *"the development will remain as per the Original Consent and (relevantly) two residential flat buildings and seven multi-dwelling housing buildings comprising a set number of dwellings (increased per this modification to 158) over a single level common basement for parking", and that "it is clear [the proposed modifications] are not significant enough to 'radically transform' the already originally approved development and do not tip the balance such that a new DA would be required".*

Based on the above quantitative and qualitative assessments, the development proposed to be modified is considered substantially the same as the original approved development.

6 Section 4.15 Assessment

In accordance with s4.55(3) of the EP&A Act 1979 this modification 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 (Housing) 2021

6.1.1.1 Build-to-Rent Housing

The *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**) enables development of diverse housing types, including build-to-rent housing. It encourages development that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with disabilities. Chapter 3, Part 4 of the Housing SEPP outlines the relevant provisions for BTR housing development.

Table 3 below provides an assessment of the proposed concept scheme against relevant provisions under Chapter 3, Part 4 of the Housing SEPP.

Table 3 Relevant Housing SEPP Provisions – BTR

Provision	Requirement	Compliance
Part 4 Build-to-rent Housing		
Section 72 Development for the purposes of build-to-rent housing permitted with consent	(2) <i>This Part applies to development for the purposes of multi dwelling housing, residential flat buildings or shop top housing on land—</i> (a) <i>in the following zones—</i> (i) <i>a zone in which development for the purposes of residential flat buildings is permissible under another environmental planning instrument,</i> (ia) <i>Zone E2 Commercial Centre,</i> (ib) <i>Zone MU1 Mixed Use,</i> (ii) <i>Zone B3 Commercial Core,</i> (iii) <i>Zone B4 Mixed Use,</i> (iv) <i>Zone B8 Metropolitan Centre,</i> (v) <i>Zone SP5 Metropolitan Centre</i>	Compliant – the proposed scheme includes BTR housing in the form of residential flat buildings on land zoned R4 High Density Residential. Residential flat buildings are permitted in the R4 Zone under the CBLEP.
	(3) <i>Development consent may be granted for development to which this Part applies if—</i> (a) <i>the development will result in at least 50 dwellings occupied, or intended to be occupied, by individuals under residential tenancy agreements, and</i> (b) <i>all buildings containing the dwellings are located on the same lot of land.</i>	Compliant – The proposed modification will deliver a total of 54 BTR units which will be under residential tenancy agreements. Building B & C are located on the same lot. The remaining 42 apartments in Buildings B and C and all terrace dwellings within the site will remain build to sell and will be contained on

Provision	Requirement	Compliance
		separate strata or stratum lots. BTR provisions are only applicable to Buildings B and C.
Section 73 Conditions of build-to-rent housing to apply for at least 15 years	(1) <i>Development consent must not be granted to the erection or use of a building for development to which this part applies unless the consent authority is satisfied that, during the relevant period, the tenanted component of the building—</i> (a) <i>will not be subdivided into separate strata lots, and</i> (b) <i>will be owned and controlled by 1 person, and</i> (c) <i>will be operated by 1 managing agent, who provides on-site management.</i> (3) <i>In this section—</i> <i>relevant period means—</i> (b) <i>otherwise—a period of 15 years commencing on the day an occupation certificate is issued for all parts of a building to which the development relates.</i>	Compliant – The proposed BTR units will be managed as required under Section 73 for 15 years.
Section 74 Non-discretionary development standards	(2) <i>The following are non-discretionary development standards in relation to the carrying out of the development to which this Part applies—</i> (a) <i>the building height of all proposed buildings is not more than the maximum building height permitted under Chapter 5, Chapter 6 or another environmental planning instrument for a building on the land,</i> (c) <i>if paragraph (b) does not apply—a floor space ratio that is not more than the maximum permissible floor space ratio for residential accommodation on the land under Chapter 5, Chapter 6 or another environmental planning instrument,</i> (d) <i>for development carried out wholly or partly on land in the Eastern Harbour City, Central River City or Western Parkland City—</i> (i) <i>for land within an accessible area—at least 0.2 parking spaces for each dwelling, or</i> (ii) <i>otherwise—at least 0.5 parking spaces for each dwelling, or</i> (iii) <i>if a relevant planning instrument specifies a requirement for a lower number of parking spaces—the lower number specified in the relevant planning instrument,</i>	Compliant – This modification application does not seek to amend the approved building height of the development. Compliant – The proposed development is compliant with the maximum permissible floorspace for the site. Compliant – The subject site is located within an accessible area. The proposed development will deliver a total of 54 BTR units. As such, the development is required to deliver a minimum of 11 parking spaces for the BTR units. This application seeks to allocate 94 parking spaces to Buildings B and C, a significant portion of which will be allocated to the BTR apartments, thereby complying with the minimum

Provision	Requirement	Compliance
		rate set out in the Housing SEPP.
Section 75 Design Requirements	<i>(1) This section applies to development to which this Part applies only if Chapter 4 applies to the building resulting from the development.</i> <i>(2) In determining an application for the modification of a development consent or a development application for the carrying out of development to which this section applies, the consent authority must—</i> <i>(a) be flexible in applying the design criteria set out in the Apartment Design Guide, including, in particular, the design criteria set out in Part 4, items 4E, 4G and 4K, and</i> <i>(b) in its consideration of the objectives set out in the Apartment Design Guide, Part 4, consider the following—</i> <i>(i) the amenities proposed to be provided to tenants residing in the building through common spaces and shared facilities and services,</i> <i>(ii) whether the configuration and variety of dwellings in the building will provide adequate options to prospective tenants in relation to the size and layout of the dwellings,</i> <i>(iii) whether tenants residing in the building will be able to relocate to other dwellings in the building that will better accommodate their housing requirements if their requirements change.</i>	Compliant – The application seeks to utilise the flexible design criteria as permitted under this clause to the following design criteria of the ADG: - Item 4A: Solar and daylight access - Item 4D: Apartment size and layout - Item 4E: Balconies and private open space - Item 4G: Storage Further discussion of the ADG and the proposed flexibility is provided in the following subsection.

6.1.1.2 Apartment Design Guide

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 BTR dwellings have been assessed against the ADG amenity criterion, with reference to the flexibility to the ADG applied by Chapter 3, Part 4, Section 75 of the Housing SEPP. The following table provides a summary compliance assessment, noting that many ADG matters, including those relating to building siting and overall design (e.g. building separation, ceiling heights, deep soil), remain unchanged from what has previously been approved on the site given that there are no significant external alterations proposed as part of this modification.

Table 4 Relevant ADG Controls

Provision	Requirement	Proposal
Part 3D Communal and public open space	Communal open space has a minimum area equal to 25% of the site area	Compliant – 30.4% of site area (unchanged from approved development)

Part 4A Solar and daylight access	70% of apartments receive a minimum of 2 hours direct sunlight between 9am – 3pm on June 21 A maximum of 15% of apartments in a building receive no direct sunlight	69% (109 out of 158 dwellings) receive 2 hours of sunlight. 24% (38 out of 158 dwellings) receive less than 15 minutes of sunlight. Further justification of this non-compliance is provided in Section 6.6.1.3 below.
Part 4B Natural Ventilation	60% of apartments are naturally cross ventilated.	Compliant – 71% (113 out of 158 dwellings) are naturally cross ventilated.
Part 4D Apartment size and layout	Studio: 35m² 1-bedroom: 50m² 2-bedroom: 70m² 3-bedroom: 90m² 4-bedroom: 102m² Where minimum areas or room dimensions are not met apartments need to demonstrate that they are well designed and demonstrate the usability and functionality of the space with realistically scaled furniture layouts and circulation areas. These circumstances would be assessed on their merits.	The internal area of the proposed studio apartments range in size from 29m² – 38m², with several studio apartments being slightly under the minimum area requirement of 35m². All other 1-, 2-, 3- and 4-bedroom apartments are compliant with the relevant minimum areas. The ADG states that “<i>where minimum areas or room dimensions are not met apartments need to demonstrate that they are well designed and demonstrate the usability and functionality of the space with realistically scaled furniture layouts and circulation areas. These circumstances would be assessed on their merits.</i>” The plans prepared by SJB demonstrate that notwithstanding the reduced apartment size, the internal layout has been well designed to maximise space and is capable of accommodating furniture and adequate circulation space. Further justification of this non-compliance is provided in Section 6.6.1.1 below.
	Living rooms or combined living/dining rooms have a minimum width of: ▪ 3.6m for studio and 1-bedroom apartments ▪ 4m for 2- and 3-bedroom apartments	As above, the studio apartments have variable dimensions, and in some instances do not achieve the minimum width. Further justification of this non-compliance is provided in Section 6.6.1.1 below.
Part 4E Private Open Space and Balconies	Studio: 4m² 1-bedroom apartments: 8m² with a minimum depth of 2m	The proposed studio apartments (27 apartments) do not have balconies or private open space.

	2-bedroom apartments: 10m² with a minimum depth of 2m 3+ bedroom apartments: 12m² with a minimum depth of 2.4m	All other apartments comply. This is consistent with the flexible design criteria permitted for BTR under Chapter 3, Part 4, Section 75 of the Housing SEPP to justify the non-compliance with this provision. Further justification of this non-compliance is provided in Section 6.6.1.2 below.
Part 4F Common circulation spaces	The maximum number of apartments off a circulation core on a single level is 8 or, if this cannot be achieved, 12.	Compliant – Building B has up to 10 apartments off a circulation core on a single level and Building C has up to 12 apartments off a circulation core.
Part 4G Storage	Studio: 4m² 1-bedroom apartments: 6m³ 2-bedroom apartments: 8m³ 3+ bedroom apartments: 10m³ At least 50% of storage is to be in the apartment.	51% of the proposed apartments do not achieve the minimum storage requirements. All other apartments and dwellings within the development comply. This proposal seeks to apply flexibility to the ADG storage requirement. Further justification of this non-compliance is provided in Section 6.6.1.4 below.
Part 4K Apartment Mix	Provide a range of apartment mix.	Compliant – The proposed development, as modified, provides for the following apartment mix: ▪ 27 x studio apartment (17%) ▪ 16 x 1-bedroom apartment (10%) ▪ 39 x 2-bedroom apartment (25%) ▪ 13 x 3-bedroom apartment (8%) ▪ 1 x 4-bedroom apartment (1%) ▪ 62 x 3-bedroom townhouses (40%)

Flexibility of Design Criteria for BTR

Chapter 3, Part 4, Section 75 of the Housing SEPP encourages consent authorities to apply flexibility in the assessment of dwellings that are designed as BTR, provided that the development as a whole and in particular, the communal open space areas, are designed to offer residents with a high level of external amenity, including variety within the communal offerings. Section 75 of the Housing SEPP specifies that flexibility must be provided in relation to the following ADG criteria:

- Item 4E: Balconies and private open space
- Item 4G: Storage
- Item 4K: Apartment mix

In addition, the NSW Department of Planning, Housing and Infrastructure (**DPHI**) has prepared a 'Build-to-rent housing and flexible design' fact sheet which identifies that, in addition to the above criteria, consent authorities should also consider flexibility to the following ADG criteria:

- Item 4A: Solar and daylight access

- Item 4D: Apartment size and layout
- Item 4F: Common circulation spaces

The relaxation of the ADG design criteria in its application to BTR developments is evident in a number of existing approvals granted by the Department. This includes:

1. 39-43 Hassall Street, Parramatta (Applicant: Novus). Approved by the Independent Planning Commission on 5 April 2024 (SSD-34919690). Variation from:
 - Item 4D: Approved 32.7sqm studio apartments, less than the ADG minimum of 35sqm.
 - Item 4E: The majority of the terraces and balconies in the development are less than the minimum ADG area and the furnished studio apartment types do not have a balcony. The Department considered the reduction in private open space and balconies acceptable due to the high quality communal outdoor and indoor spaces provided as part of the development.
2. 12 Hassall Street, Parramatta (Applicant: Gurner/Qualitas). Approved by the Department on 2 March 2023 (SSD-35609161). Variation from:
 - Item 4A: 68% of approved dwellings achieved the minimum solar access requirements, less than the minimum provision of 70%.
 - Item 4E: Private open space was not provided to two apartments. The Department considered this acceptable based on a large area of communal space provided in the development.
3. 67 & 73-83 Mary Street, 50-52 Edith Street and 43 Roberts Street, St Peters (Applicant: GFM Investment Group Pty Ltd). Approved by the Land and Environment Court on 14 March 2023 (DA 2021/0800/ LEC No: 2021/00361726). Variation from:
 - Item 4E: Balconies were not provided to 30 studio apartments. The Court found that there was no specific regulatory requirement for the balconies for the BTR apartments and the BTR provisions stipulate a requirement to be flexibly in applying certain design criteria set out in the ADG.
4. 1 Farmhouse Road, Westmead (Applicant: Western Sydney University). Approved by the Department on 9 February 2025 (SSD-65614712). Variation from:
 - Item 4A: 19% of approved dwellings receive no direct sunlight, greater than the permissible amount of 15%.
 - Item 4E: Balconies of insufficient area were approved, due to the substantial provision of communal open space within the development exceeding the minimum requirements of the ADG.
 - Item 4F: Development approved with 11-18 units per circulation core.
5. 763-769 Pacific Highway, Chatswood (Applicant: Novus). Approved by the Independent Planning Commission on 17 July 2025 (SSD-59805958). Variation from:
 - Item 4A: 48% of approved dwellings achieved the minimum solar access requirements, less than the minimum provision of 70%.
 - Item 4D: Approximately 50% of studio apartments have an internal area less than the ADG minimum of 35m². The Department considered this to be acceptable as all studios have been designed to maximise the useability of the internal areas with detailed spatial planning undertaken, including furniture layout options, to ensure that resident amenity is maximised.
 - Item 4E: Approved with insufficient private open space provision, however this was considered to be offset by the quantum of and quality of external and internal communal open space provided throughout the development.
 - Item 4G: 62% of apartments achieve the required minimum internal storage within the apartment. Shortfall is supplemented by a large communal basement storage to be allocated according to need of residents. Storage cages are provided at a rate of 1 per 2 apartments.

The above confirms that there is growing evidence to support flexibility around the strict application of the ADG design criteria, with a stronger focus on achieving the overarching objective through skilful design solutions.

As outlined in Table 4 above, the application seeks to vary the design criteria of the following:

- Item 4A: Solar and daylight access
- Item 4D: Apartment size and layout
- Item 4E: Balconies and private open space
- Item 4G: Storage

A justification against these non-compliances will be provided in **Section 6.6** of this report.

6.1.2 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 was prepared in response to the proposed modifications which confirmed that the proposal remains compliant with water, energy and thermal comfort requirements.

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 5**.

Table 5 CBLEP Compliance Table

Clause	Proposed	Compliance
Clause 2.1 – Land Use Zones R4 High Density Residential	The application does not seek to amend the permissibility of the development. Residential flat buildings are permitted in the R4 Zone.	Yes – no change
Clause 4.3 – Height of Buildings	The proposed amendments to Building B and C relate predominantly to internal apartment layout changes and do not alter the approved building envelope. There is no change proposed to the approved building height of the development.	Yes – no change
Clause 4.4 – Floor Space Ratio	The proposed amendments to Building B and C relate predominantly to internal apartment layout changes and do not alter the approved building envelope. The internal layout changes will not result in any changes to the approved GFA of the development. There is no change proposed to the approved FSR of the development.	Yes – no change

Clause	Proposed	Compliance
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 and will have no adverse impacts on the adjoining HCA.	Yes

Based on the above, it is considered the development as modified will comply with the relevant provisions within 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 (CBDPC) provides detailed planning controls relevant to the site and the proposal. Chapter 11.1 of the CBDPC 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 amendments are largely internal and continue to maintain compliance with key DCP controls, notably in relation to setbacks, building separation and landscaping.
- 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 conversion of the approved standard market housing to BTR housing remains permissible on the site and does not contravene the future character envisioned by the site-specific DCP chapter.

As the proposed modifications will result in an increase in the number of dwellings within the proposal, as well as change the approved unit mix, an assessment against the car and bicycle parking provisions contained in Chapter 3.2 of the DCP is provided below:

Table 6 DCP Compliance Table

Provision	Proposed	Complies
Chapter 3.2 Parking		
The following parking rates apply to the development: • 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	A total of 158 dwellings are proposed, including: • 27 x studio apartments • 16 x 1-bedroom apartments • 39 x 2-bedroom apartments • 13 x 3-bedroom apartments • 1 x 4-bedroom apartment • 62 x 3+ bedroom terraces • 1 x 3-bedroom house (located on adjoining lot but parking provided as part of the Ashbury Terraces development. This dwelling is excluded from the above dwelling count).	Complies

The proposed development, excluding the resident parking for studio apartments, would require the provision of 208 resident car parking spaces and 32 visitor car parking spaces under the DCP controls.

The proposal accommodates a total of 208 resident car parking spaces (excluding studio apartments) and 32 visitor parking spaces, meaning it is entirely compliant with the DCP controls.

As there is no parking rate outlined in the CBDP for studio apartments, the required parking for these dwellings has been separately calculated using the parking rate for BTR development set out in Chapter 3, Part 4, Section 74(d) of the Housing SEPP, which is reproduced below:

(d) for development carried out wholly or partly on land in the Eastern Harbour City, Central River City or Western Parkland City—

(i) for land within an accessible area—at least 0.2 parking spaces for each dwelling, or

(ii) otherwise—at least 0.5 parking spaces for each dwelling, or

(iii) if a relevant planning instrument specifies a requirement for a lower number of parking spaces—the lower number specified in the relevant planning instrument,

As the site is located in an accessible area and the DCP does not specify a lower number of parking spaces, the development has adopted the minimum 0.2 spaces/dwelling control for the proposed BTR studio apartments. All other parking rates are as per the DCP.

Taking into account the Housing SEPP parking rate for the studio apartments, the development is required to deliver a minimum of 214 resident parking spaces, which the proposed provision of 219 resident parking spaces complies with.

The following bicycle parking rates apply to the development:

- 1 visitor bicycle space / 10 dwellings.

A total of 158 units are proposed which requires a total of 16 visitor bicycle parking spaces.

The proposal accommodates 32 resident bicycle parking spaces and 16 visitor bicycle parking spaces.

Complies

6.4 Any Planning Agreement

No planning agreements are relevant to this proposal.

6.5 Relevant Matters Prescribed by the Regulations

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

6.6 Impact Assessment

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

6.6.1 Design Quality and Amenity

6.6.1.1 Room Size and Width

Building B and C are currently under construction. The building is progressing in accordance with the approved plans. As is the case, there is significant limitations on the ability to convert apartments without undertaking wholesale changes, both internally and externally.

A key consideration has been the location and placement of existing windows and the ability to convert apartments, without significant changes to the façade, along with placement of drainage etc within the apartment.

The development is therefore constrained by the size and layout of the existing larger apartments when creating the smaller apartments. This has resulted in the creation of several studio apartments within the development which are below 35m² and have room widths of less than 3.6m.

Despite this non-compliance, the proposed studio apartments remain capable of achieving a high degree of amenity and usability for residents. Detailed floor plans have been prepared by SJB which illustrates the functionality and useability of these apartments. This includes:

- Location and placement of door openings and where possible, the inclusion of sliding doors on cabinetry
- Arrangement of furniture and circulation space between tables, couches, bed and cabinetry
- Expansion of windows for the studio to take up almost the full width of the apartment, increasing light and air into the units
- Variable dimensions to define spaces and allow for clear circulation

The proposed layout and design achieves the overall objective of 4D which is to ensure apartments are function, well organised and provide a high standard of amenity. The design is also consistent with the design guidance.

The variation to the apartment size and dimension is further offset by the overall design and amenity offered by the precinct, in that it provides for a range of indoor and outdoor communal open spaces for residents to gather and engage in activity normally conducted within an apartment. Therefore, despite the minor ADG non-compliance, the proposed development will ensure that a high level of amenity and useability can be achieved for residents both within the apartments and in the broader development.

6.6.1.2 Private Open Space

The proposed modifications seek to convert larger 3-bedroom apartments into two smaller studio, 1- or 2-bedroom apartments without substantially altering the approved built form of the development. This will result in the creation of 27 studio apartments within the development which do not have access to their own balcony and lack private open space.

As specified in Chapter 3, Part 4, Section 75 of the Housing SEPP, the consent authority must apply flexibility when applying the ADG to BTR developments, including in relation to design criteria 4E Private Open Space. Whilst the 27 studio apartments within the development which lack private open space are not strictly compliant with part 4E of the ADG, the development as approved has significant areas of communal open space which is able to compensate for the 27 studio apartments which will not have private open space, in accordance with the Housing SEPP.

The development has 4,930m² of communal open space, equivalent to 30.4% of the site area which is well in excess of the minimum ADG benchmark of 25% of site area. The communal open space includes a variety of spaces which will suit the needs of various residents, including rooftop terraces for both Buildings B and C, both landscaped and turfing zones, a pool and barbeque facilities. The development also includes a gym

within the basement for the use of all residents. Therefore, the development offers a high level of shared amenity and a large quantum of communal open spaces, located both outdoors and indoors, which are readily capable of supporting the proposed BTR units and offsetting the lack of private open space and balconies for some units.

6.6.1.3 Solar Access

The proposed development will have 69% of dwellings (total) receiving a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter to living rooms and private open space and 24% of units receiving less than 15 minutes of sunlight. This is non-compliant with the ADG which requires that developments achieve a minimum of 70% of dwellings with more than 2 hours of direct sunlight and maximum of 15% of dwellings with less than 15 minutes.

However, DPHI's 'Build-to-rent housing and flexible design' fact sheet supports flexibility regarding the ADG solar access requirements where residents can enjoy solar access in communal spaces. Any adverse impacts of the development's non-compliance are offset by the provision of an array of high-quality communal open spaces within the development which receive good solar access. These include private rooftop terraces on both Buildings B and C which achieve high solar access throughout the day, as well as various landscaped open spaces and the pool area at the ground level of the development. Approximately 50% of the communal open space within the approved development receives solar access during midwinter, representing a significant area within the site. Therefore, the proposed non-compliance is considered acceptable given the high provision of communal open space throughout the development which provides alternate locations for residents to benefit from solar access and outdoor spaces.

6.6.1.4 Storage

All new apartments are provided with suitable storage arrangements for their size and configuration.

Chapter 3, Part 4, Section 75 of the Housing SEPP allows for flexibility in relation to the ADG storage requirements to be applied to BTR developments, which reflects the unique typology and operations of a BTR development and the flexibility and choice provided to residents.

The overall planning and design of the apartments is intended to maximise storage in other fixtures, such as cupboards within kitchens and bathrooms, and the above the laundry, as well as within additional spaces throughout the apartment. The very nature of BTR products means that residents are not constrained and have greater choice in their living arrangements. Therefore, residents choose the style and size of apartment that best suits their living needs, with the ability to move and re-locate periodically.

The flexible application of the ADG storage requirements is consistent with the objectives for BTR typology apartments.

6.6.2 Parking

The proposed modifications will increase the total number of dwellings within the development from 131 to 158, as well as change the unit mix within the development. The CBDP parking rates have been applied to all new and existing 1-, 2- and 3-bedroom apartments and terraces, as well as to visitor parking. However, as there is no parking rate for studio apartments within the CBDP, the non-discretionary minimum parking rate under Chapter 3, Part 4, Section 74(d) of the Housing SEPP for BTR units has been applied to the 27 proposed studio apartments.

The table below outlines the minimum parking requirements for the development under the Housing SEPP and the CBDP, as well as the proposed parking provision.

Table 7 Car Parking Requirements and Allocation

Dwelling Typology	Parking Rate	Required Parking	Proposed Parking
1-, 2- and 3+ bedroom apartments (excluding studios)	Various rates derived from CBDCP	85	88
Studio apartments	0.2 spaces / dwelling <i>(note: as the CBDCP does not include a studio apartment parking rate, the Housing SEPP BTR minimum parking rate has been used)</i>	6 (minimum)	6
3+ bedroom terraces	2 spaces / dwelling	124	124
3-bedroom house (on adjoining lot)	1 space / dwelling	1	1
Visitor	1 space / 5 dwellings	32	32
Total		246	251

As shown in **Table 7**, the proposed development will deliver a total of 251 parking spaces. This parking provision is compliant with the parking rates outlined in the CBDCP, as well as with the Housing SEPP minimum parking rates where the CBDCP does not apply. Therefore, the proposed parking provision is acceptable and compliant with the relevant controls.

6.6.3 BCA and Access

A BCA Letter and an Access Capability Letter have both been prepared by Jensen Hughes in relation to the proposed modifications. These letters confirm that the development as modified complies or is capable of complying with the BCA, Disability (Access to Premises—Buildings) Standards 2010 and 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.

6.6.4 Waste Management

A Waste Management Plan (**WMP**) has been prepared by MRA Consulting Group to outline the operational waste requirements associated with the additional 27 dwellings.

The WMP confirms that the proposed amendments require four additional general waste bins for Building B and two additional bins for Building C, resulting in a total of eight bins for each building.

The overall approved operational waste management method for Buildings B and C, consisting of a single waste chute leading to a bin room and a 240L recycling bin located on each residential level, will not change as a result of this modification application. In response to the Food Organics Garden Organics (FOGO) Recycling Bill 2026, a 240L FOGO bin will also be located on each residential level. The waste management arrangements for Buildings A, D, E and F will also remain unchanged compared to the approved development, apart from the introduction of FOGO bins.

All bins required to be collected from the site will be stored in the bin holding room located adjacent to the Basement Level 1 loading dock. There is sufficient holding capacity within the existing bin holding, in combination with any overflow required for storage of additional bins proposed in the temporary bulky waste storage area also located adjacent to the loading dock. This bulky waste storage area is not expected to

retain bulky waste often and can therefore, be utilised on a regular basis for the storage of bins prior to regular collections.

The WMP confirms that the proposed waste arrangements, as modified, are compliant with Council's waste requirements.

6.7 Suitability of the Site

The modification application seeks to convert the affected units within Buildings B and C from standard market dwellings to build-to-rent dwellings. While this is a change in residential tenure, the buildings will continue to be used for the purposes of a residential flat building and therefore, there is no overarching change to the approved use. Additionally, there will be no external changes to the built form of the development, aside from an increase in window size for 1 row, an additional window at ground level and the introduction of rooftop skylights. The proposed development provides ample amenities and communal open space, ensuring the site will remain suitable for the development despite the increase in dwellings.

Therefore, the development as modified will remain suitable for the site for the reasons stated in the original approval of DA-826/2020 as it continues to be for the purposes of residential development and there are no significant amendments proposed.

6.8 Submissions

In accordance with s4.15(1)(d) of the EP&A Act, it is acknowledged that submissions arising from the public notification of this modification application will need to be considered by the Consent Authority in its assessment. The proponent will undertake to formally respond and attempt to resolve to any relevant issues relating to the proposed modifications.

6.9 Public Interest

In accordance with s4.15(1)(e) the proposed development as modified is considered to be in the public interest for these reasons:

- The proposed modifications do not introduce any new non-compliances with State and local planning controls, apart from those permissible under Chapter 3, Part 4, Section 75 of the Housing SEPP which provides flexibility to the Apartment Design Guide provisions for BTR developments.
- The proposed modifications 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 4.55 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 amend the dwelling mix and operational model for the apartments within Buildings B and C of the development in order to respond to an identified market demand for smaller, rental dwellings in the area.
- ✓ The proposed modifications will result in minor non-compliances with certain criteria within the ADG, including apartment sizes, solar access and private open space. However, this is acceptable due to the high level of amenity and communal open space provided throughout the development as a whole which is able to compensate for minor non-compliance. This approach is supported by the Housing SEPP and DPHI's guidance regarding ADG flexibility for BTR developments.
- ✓ 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, it is concluded that the proposed development as modified is appropriate for the site and approval is in the public interest subject to appropriate consent conditions.

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