

## COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-484
MOD Number	MOD2024/0005
LGA	City of Ryde
Proposed Development	Modification to Land and Environment Court Consent 2021/216311 to amend the operation of the residential apartment buildings (Buildings A, B & C), internal changes to ground floor of Building A and deletion of Basement 3 resulting in a reduction of number of car parking spaces.
Street Address	1 -20 Railway Road & 50 Constitution Road Meadowbank <ul style="list-style-type: none"> <li>- Lots 1 to 8 of DP 13637;</li> <li>- Lots 4 and 5 of DP 7533;</li> <li>- SP 35053;</li> <li>- Lots 1 and 2 of DP 384872; and</li> <li>- Lots 9, 10 and 11 of DP 7533</li> </ul>
Applicant	Juey Thanyakittikul, Sasco Developments P/L
Owner	Shepherds Bay Holdings Pty Ltd
Date of DA lodgement	17 January 2024
Total number of unique submissions	Four (4) submissions. (One (1) of the submissions was in support of the development).
Recommendation	Approval
Regionally Significant Development (Schedule 6 of the SEPP (Planning Systems) 2021)	A Section 4.56 modification application to a development with a capital investment value of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979;</li> <li>• Environmental Planning and Assessment Regulation 2021</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011;</li> <li>• State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP); (<i>Savings provision</i>)</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;</li> <li>• Ryde Local Environmental Plan 2014; and</li> <li>• City of Ryde Development Control Plan 2014.</li> </ul>
List all documents submitted with this report for the Panel's consideration	Attachment 1: Architectural Plans Attachment 2: Recommended Conditions of Consent Attachment 3: L & E Court Reasons for Approval Attachment 4: Applicant's "Substantially the same" submission Attachment 5: Crime Risk Assessment Report

Clause 4.6 requests	Not applicable to a Modification Application
Summary of key submission issues	<ul style="list-style-type: none"> <li>• Overcrowding of the area</li> <li>• Parking</li> </ul>
Report prepared by	Sandra McCarry – Senior Town Planner
Report date	2 August 2024
<b>Summary of s4.15 matters</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the Assessment report?	Yes
<b>Legislative clauses requiring consent authority satisfaction</b> Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
<b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not applicable
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (S7.24)?	Not applicable
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	Yes

## 1. EXECUTIVE SUMMARY

This modification application (MOD20247/0005) seeks to modify development application LDA2020/0199 under Section 4.56 the Environmental Planning and Assessment Act 1979 as follows:

- Amend the operation of the approved residential apartments buildings (Buildings A, B & C) to rental stock under single ownership. The apartments will not be strata subdivided.
- Deletion of Basement 3 resulting in a reduction in car parking spaces.
- Provision of a new lobby/reception and gym (for use of residents) on the ground floor of Building A. This will result in internal changes to the commercial area which will be used as a gym and lobby/reception area for the residents of the rental housing component.
- Conversion of 4 apartments (Units 101, 102, 107 & 108) on the first floor of Building A to a communal room for use by the residents of the rental housing component. This will result in reduction of apartments from 133 to 129 apartments.
- Due to the deletion of Basement 3, the Boarding House (Building D) laundry facility will be relocated to Basement 2.
- Due to the deletion of Basement 3, storage provision for the residential apartment buildings will be relocated to Basement 2 resulting in an overall reduction in storage area.

Note: There are no changes proposed to the approved building envelopes, in relation to height, bulk and scale, setbacks and buildings separation.

The modification will require amendment to the description of the development to read:

*Demolition of existing structures and construction of a mixed use development comprising four x 6 to 7 storey buildings containing ~~433~~ **129 apartments**, 162 boarding rooms, **gym (for residents use only)** and commercial floor space with basement parking at 1-20 Railway Road and 50 Constitution Road, Meadowbank.*

A Voluntary Planning Agreement was entered into as part of the parent application (LDA2020/0199) for:

- The dedication of land to widen Faraday Lane and allow for two-way full carriageway access, the dedication of land to widen the road reserve and carriageway on Underdale Lane, and the dedication of an area in stratum title for the public footpath on Faraday Lane.
- The carrying out of works within the road reserve and on the areas of land proposed to be dedicated.
- The carrying out of works to create a connection from Faraday Lane to Constitution Avenue and associated civil works.

No changes are proposed to the VPA.

The modification will result in non-compliances with the following:

*State Environmental Planning Policy Affordable Rental*

- Clause 29(1)(ii) – Floor Space (variation of 0.13%).

*State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development*

- Apartment Design Guide:  
Part 3J – Car Parking.  
Part 4G – Storage.

The above matters are addressed in detail in Section 4.2 of this report.

## **Public Exhibition and Submissions**

The application was publicly exhibited between 19 January 2024 and 4 February 2024 in accordance with Council's Community Participation Plan.

As a result of the notification, a total of 4 submissions were received (1 was in support of the proposal). The other submissions raised the following issues:

- Concern about the removal of parking.
- Meadowbank already overcrowded, too many apartments.

- Renters do not care about the area.

The issues raised in the submissions do not warrant the refusal of the application and are addressed in Section 8 of this report.

### **Referral to the Sydney North Planning Panel**

This application is lodged under s4.56 of the Environmental Planning and Assessment Act 1979 (the Act) and is referred to the Sydney North Planning Panel (SNPP) as required by the *Sydney District & Regional Planning Panels Operational Procedures November 2022 (Operational Procedures Manuel)* which states:

*A court granted consent may be modified by a Panel under section 4.56 if it is in relation to regionally significant development.*

The SNPP is the consent authority given the Parent LDA2020/0199 is regionally significant development (over \$30m) and this modification application is submitted under s4.56 of the Act.

### **Recommendation**

After consideration of the development against Section 4.15 of the Act and the relevant statutory and policy provisions, the proposal is considered suitable for the site and is in the public interest.

An assessment of the application against the relevant planning framework and consideration of various design matters has not identified any unresolvable issues of concern.

This report recommends that consent be granted to the modification in accordance with the amended conditions and additional conditions provided in **Attachment 2**.

## **2. THE SITE**

The subject site known as Nos.1 - 20 Railway Road and 50 Constitution Road, Meadowbank. The site is an irregular shape and comprises a total of 16 allotments, legally described as:

- Lots 1 to 8 of DP 13637;
- Lots 4 and 5 of DP 7533;
- SP 35053; Lots 1 and 2 of DP 384872; and
- Lots 9, 10 and 11 of DP 7533.

The site has four street frontages, a 59.9m northern boundary to Constitution Road, a 42.8m southern boundary to Underdale Lane, a 139.4m western boundary to Railway Road, and a 136.8m eastern boundary to Faraday Lane. The site has a total area of 7,773m<sup>2</sup>. The location of the subject site is shown edged red in the aerial image provided at **Figure 1**.

The site falls approximately 4.8m from east to west, with a fall on the western side of the site (down to Railway Road). It also falls approximately 3.3m from north to south, through the centre of the site. Adjacent to the north of the site is a rock face which is raised approximately 3.6m above the street level on Constitution Road. Located adjacent to the north-western corner of the site is public stairs with access from Faraday Lane to Constitution Road.

Demolition of the existing buildings is currently being undertaken.



**Figure 1:** Aerial view of the development site bounded by Constitution Road to the north, Underdale Lane to the south, Railway Road to the west and Faraday Lane to the east.  
*Source: City of Ryde Mapping.*

### Surrounding Development

The site is located within the Shepherds Bay, Meadowbank locality. The character of the surrounding area has changed from general industrial sites to an area undergoing redevelopments to multi storey mixed use developments.

To the east and south of the site contain new residential apartment buildings and mixed used developments





**Figure 2:** Development surrounding the site. *Source: City of Ryde Mapping*

## Background

Parent LDA2020/0199 (PPSSNH-107) was lodged with Council for demolition of the existing structures and construction of a mixed use development comprising four buildings ranging in height between 6 and 7 storeys with 3 basement levels for 419 car parking spaces. The development comprised of 133 residential apartments, a boarding house with 162 rooms and 3,591m<sup>2</sup> of commercial floor space. See **Figures 3 & 4** below.

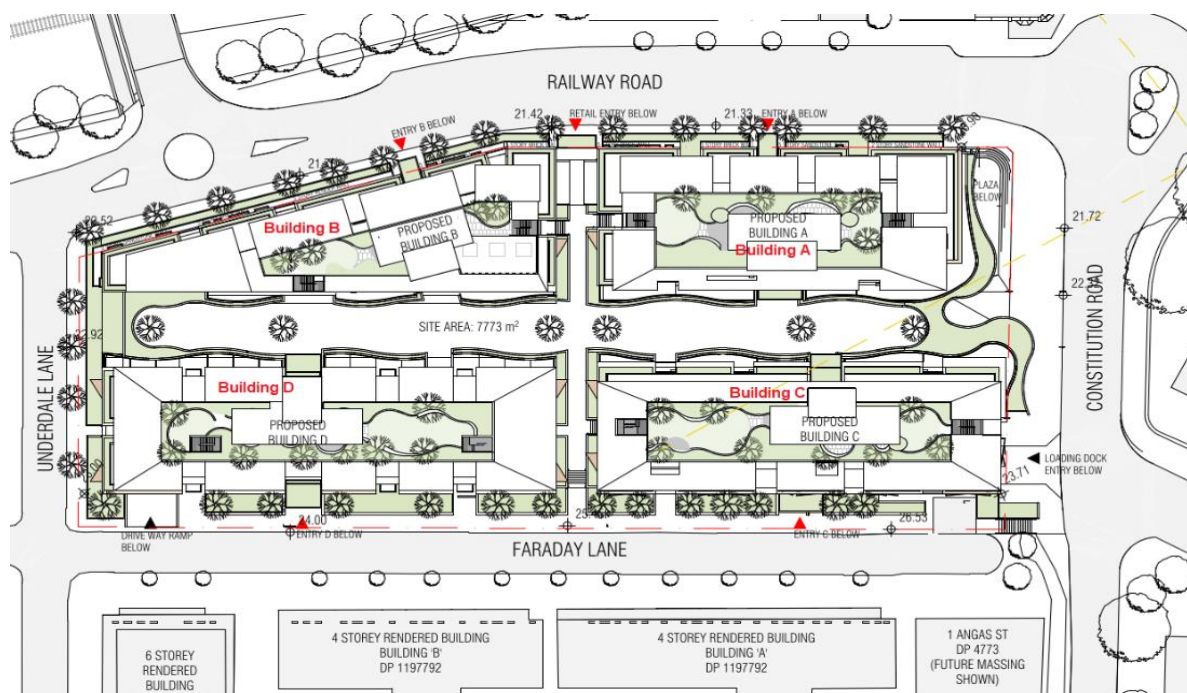
On 21 July 2021, SNPP refused the application under s4.16 of the EP&A Act. The Panel did not accept the applicant's Clause 4.6 variation to building height for the reasons stated in the assessment report.

A Class 1 Appeal was filed with the Land and Environment Court (LEC) on 29 July 2021 and on 18 July 2022 the LEC granted deferred commencement consent. The deferred commencement conditions were satisfied, and the consent became operative on 14 April 2023.

A Voluntary Planning Agreement was entered into and this modification will not alter the scope of works agreed to in the VPA.



**Figure 3:** Photomontage of the approved development as viewed opposite from the corner of Railway and Constitution Road, Buildings A & C are shown with an open plaza area on the corner in front of Building A.



**Figure 4:** Plan showing the development, showing the roof level and location of each of the buildings.

MOD2022/0210

MOD2022/0210 was approved on 20 March 2023 to amend Conditions 109, 166, 3 & 173 relating to stormwater management and BASIX requirements.

## MOD2024/0095

MOD2024/0095 was approved on 21 June 2024 to amend Condition 181 relating to remediation of the land.

### This modification - MOD2024/0005

- The application was lodged into Council's system on 17 January 2024.
- Following preliminary assessment, Council sent a letter to the applicant on 20 March 2024 requesting clarification of which planning pathway is being undertaken and why it was not proposing to apply the Housing SEPP (2021) for Built to Rent (BTR). Also requested further information regarding the operation of the gym and for an acoustic report. A Plan of Management for the Rental Housing was also required.
- On 23 April 2024, a meeting was held between Council and the applicant. At the meeting it was advised that the proposal was lodged under S4.56 due to time constraints and an earlier pre-meeting discussed this and a modification would be acceptable.

It was confirmed that the under Schedule 7A, saving provisions of the Housing SEPP (2021), this SEPP was not applicable.

The applicant emphasised that the modification does not seek a formal "change of use" to BTR, but seeks to change the operational model to utilise the apartments as rental, and do not require the building to be subdivided as it will be operated under one entity. The applicant seeks to amend by way of a condition to not to allow strata subdivision of the residential apartments.

The question was raised as to whether the imposition of a condition of consent to restrict strata subdivision of the residential flat buildings would be "fair and reasonable", whether it would be an enforceable condition given that strata subdivision of RFBs are permissible and there is no planning legislation restricting strata subdivision of RFBs.

The applicant advised that they are willing to accept a restriction on the title of the land to not allow strata subdivision of the residential apartments for 15 years. The requirement/condition to not to allow strata subdivision for 15 years is akin to other rental housing development type (i.e. BTR under SEPP Housing 2021).

At the meeting the possibility of providing car share spaces to offset the shortfall in parking was discussed. It was requested that a Plan of Management be provided with their future application for the operation of the rental housing.



### 3. THIS PROPOSAL - MOD2024/0005

This modification proposes to:

- Amend the operation of the approved residential apartments buildings (Buildings A, B & C) to rental housing stock under single ownership. The apartments will not be strata subdivided.
- Deletion of Basement 3 resulting in reduced car parking provision.
- Provision of a new lobby/reception and gym (for use of residents) on the ground floor of Building A. This will result in internal changes to the commercial area which will be used as a gym and lobby/reception area for the residents of the rental housing component.
- Conversion of 4 apartments (Units 101, 102, 107 & 108) on the first floor of Building A to a communal room for use by the residents of the rental housing component. This will result in reduction of apartments from 133 to 129 apartments.
- Due to the deletion of Basement 3, the Boarding House (Building D) laundry facility will be relocated to Basement 2.
- Due to the deletion of Basement 3, storage provision for the residential apartment buildings will be relocated to Basement 2 resulting in an overall reduction in storage area.

Note: No changes are proposed to Building D (Boarding House) in terms of operation, car parking and use.

The bulk and scale and generally the visual appearance of the overall development will not change as no changes are proposed to the buildings envelopes, setbacks or height.

A comparison of the approved and proposed ground and first floor changes to Building A is illustrated in **Figures 5 to 8** below. The proposed changes are internal with no changes to the setbacks, building separation or bulk and scale.

The description of the development will be amended to read:

*Demolition of existing structures and construction of a mixed use development comprising four x 6 to 7 storey buildings containing ~~433~~ **129** apartments, 162 boarding rooms, **gym (for residents use only)** and commercial floor space with basement parking at 1-20 Railway Road and 50 Constitution Road, Meadowbank.*

The modifications will amend the following conditions:

- Conditions 1 – Approved plans & documents
- Conditions 3 & 174 – BASIX
- Condition 109 – Stormwater Management
- Condition 166 – Stormwater Management Construction
- Condition 220 – Parking Allocation

Additional **Conditions 78A, 176A, 214A, 250, 251, 252, 253 & 254** have been imposed requiring the operation of the rental housing, gym and communal area. See **Attachment 2**.

**Note:** In the SEE the applicant proposed a condition of consent be imposed to prohibit any strata subdivision of the residential apartments in Buildings A, B & C into separate lots so that it will be retained as rental products under one ownership.

However, the proposed modification do not seek a formal change of use to Built to Rent under SEPP (Housing) 2021 but rely on the saving provision of this SEPP and instead SEPP (Affordable Rental Housing) 2009 and SEPP 65 remain the correct planning pathway for the proposed development.

As discussed and detailed further in the report, the site is located in close proximity to good public transport infrastructure, ie within walking distance to trains, buses and ferries, and therefore is suitable for reduced parking as assessed under SEPP 65 and Council's Development Control Plan – Part 9.3 – Parking Controls. As the proposal is not a BTR under SEPP Housing 2021, and from a merit assessment basis, Council can support the variations under the applicable planning controls. Therefore, it is not considered necessary to impose a condition restricting the ability to strata subdivide the residential apartments.







**Figure 7:** Approved Plan – red circle denotes the area where it is proposed change the apartments to communal facility as shown below.



**Figure 8:** Proposed Level 1 Plan showing internal changes to Building A. This will reduce the number of apartments from 133 to 129. No changes to the envelope of the building.



## 4. STATUTORY PROVISIONS

### 4.1 Section 4.56 of the Environmental Planning and Assessment Act 1979 Modification of consents granted by the Court

The proposal constitutes an amendment under Section 4.56 of the Act, the consent authority may consider an application to amend a development consent provided that:

- (1)(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require, and*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*
- (1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

In considering the above:

In determining 'substantially the same' there should be no consideration of the merits of the proposal but rather a straight before and after comparison of the original approval against the proposed modified development. If it is determined to be substantially the same, then the proposed modifications need to be assessed on their merits having regard to submissions received and any relevant council planning controls.

The proposed modification involves:

- changing the 3 residential buildings, from being able to be individually owned apartments to rental housing under a single ownership;
- deletion of Basement 3 car parking level resulting in reduction in car parking and storage; and
- provision of a gym and lobby/reception area for the residential apartments.

The applicant has provided the following propositions that the proposal is substantially the same as the existing development consent and cited the following cases to support their “substantially the same” case:

- Court of Appeal in *Vacik Pty Limited v Penrith City Council* [1992] NSWLEC 8 and endorsed by J Bignold in *Moto Projects (No 2) Pty Ltd v North Sydney C* [1999] NSWLEC 280,
- *Tipalea Watson Pty Limited v Ku-ring-gai Council* [2003] NSWLEC 253.
- *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3)* [2015] NSWLEC 75,
- *Arrage v Inner West Council* [2019] NSWLEC 85,
- *Hunter Development Brokerage Pty Limited trading as HDB Town Planning and Design v Singleton Council* [2022] NSWLEC 64,
- *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2024] NSWLEC 3.

The applicant submission on ‘substantially the same’ is found in **Appendix 4**. In response to their submission, the following discussion is provided:

The applicant contends that the modified development would remain “substantially the same” because the ‘essence’ of the development can be considered essentially the same as originally approved, being a mixed used development of 3 residential buildings and one boarding house with basement parking. It was also argued that the proposed amendments will not result in any significant changes to the built form/envelopes of the buildings, and instead will facilitate a change to the operation of the approved residential apartments buildings. The applicant contends that the modifications will maintain the approved use of the site (mixed use with residential apartments and boarding house) and will not result in an increase in intensity beyond that of the approved scheme.

In *Hunter Development Brokerage Pty Limited trading as HDB Town Planning and Design v Singleton Council* [2022] NSWLEC Justice Duggan acknowledged that the provisions of S4.56 of the Act are “beneficial and facultative” and that “substantially the same” is to mean “essentially or materially having the same essence” *Vacik Pty Ltd v Penrith City Council* [1992] & *Sydney Council v Michael Standley & Associates Pty Ltd* (1998).

In the above caselaw, Justice Duggan provided the following:

[97] *Having regard to the totality of the 1994 DC, for the reasons outlined above, the disposal of coal tailings was an essential component of the development the subject of the 1994 DC. The Applicant contends that it is impermissible to “focus” upon a single element of the development in determining whether it is substantially the same and that the totality of that approved must be compared to the totality of that modified. That is so, but this exercise cannot be undertaken in a numeric “tick a box” approach. The significance of a particular feature or set of features may alone or in combination be so significant that the alteration is such that an essential or material component of the development is so altered that it can no longer be said to be substantially the same development – this determination will be a matter of fact and degree depending upon the facts and circumstances in each particular case. Such an exercise is not focusing on a single element, rather it is identifying*

*from the whole an element which alone has such importance it is capable of altering the development to such a degree that it falls outside the jurisdictional limit in s 4.56.*

*[98] In this case, for the reasons I have found, the disposal of coal tailings was a fundamental element of the proposal, which if altered to a material degree would have the potential to alter an essential or material component of the development the subject of the 1994 DC. The replacement of the fuel source of coal tailings with biomass would be such a change. However, that is not what the Modification Application proposes in this case. The fundamental question here is whether the change proposed is so material that the modified development as proposed in the Modification Application is no longer substantially the same development.*

*[99] The Applicant has taken great care to ensure that the Modification Application does not preclude the burning of coal tailings as fuel even though it acknowledges that at the present time it is not commercially viable for it to do so. So, it is true to say, as the Applicant does, that it is not seeking to replace coal tailing with biomass, but rather to provide for an additional fuel source, namely biomass. The power station will remain functionally capable of burning coal tailings. But is that enough to maintain the Modification Application as substantially the same as the 1994 DC? The answer must be no.*

*[100] The 1994 DC had as an essential requirement the burning of coal tailings. The Modification Application leaves open to the operator an absolute discretion – as provided for in the proposed condition 16 – as to whether to burn biomass or coal tailings as fuel. As a consequence, the relationship between the coal mines and the disposal of coal tailings which was a fundamental aspect of the 1994 DC may be abandoned at the decision of the operator. The inherent discretion renders the continued capacity to burn coal tailings as fuel as an illusory maintenance of the essence of the 1994 DC.*

This proposed modification will alter the operation/function of the 3 residential apartment buildings from a mix of owners occupied and investors (rental) to solely rental housing only. The question here is whether this will alter the essential characteristic/material of the development of the original consent.

In answering this, the parent application was approved by the L&E Court as a mixed use development comprised of a boarding house, commercial premises, and shop top housing comprising of units mix of 1, 2 & 3 bedrooms. The buildings were for residential accommodation regardless of whether it was owner-occupied or for rental purposes (except for the boarding house which is not allowed to be strata subdivided) and the stratum subdivision of the other buildings is usually routine and generally an uncontroversial practise.

In the parent DA there were no specific requirements for the residential apartments to be owner-occupied or rental stock and as the names imply, the difference between owner-occupied residences and rental comes down to ownership. The matter of ownership, whether 1 or 129 owners does not fundamentally change the “look, feel or function” of the apartments or of the whole mixed use development. The purpose of the development remains fundamentally the same, to provide residential accommodation.

Furthermore, in a recent court case, *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 143, outlines a new avenue for considering the “substantially the same” test. This decision suggests that the traditional way of considering if modification applications meet the test (quantitative and qualitative) is outdated and the approach should be based upon a “balancing and holistic” approach.

In this modification the quantitative and qualitative differences are relatively minor with no changes to the bulk, scale and use (residential and commercial) of the development. The development appears the same as the approved when viewed from the streets and adjoining properties and amenities offered to future residents will not be reduced. As discussed above, the operational use as rental housing compared to owner-occupied is still for residential accommodation purpose and is not such a fundamental change as to alter the essence or character of the development. Thus, given the minor quantitative changes and that the apartments are still residential buildings used for housing purposes, it is considered that the modifications will result in a development that will be ‘substantially the same’ as that approved.

#### *Subsection (1)(b): Notification*

The application was notified in accordance with City of Ryde Community Participation Plan.

As required by Section 107 of the Environmental Planning Assessment Regulation 2021 the Land and Environment Court was notified of the application on 15 April 2024.

#### *Subsection (1)(c) Notification of previous submitters*

Each person who made a submission in respect of the original development application has been notified or a reasonable attempt has been made to notify, each person by sending written notice to the last known address.

#### *Subsection (1)(d): Submissions*

Four unique submissions were received in response to the notification of the proposal. The issues identified in the submissions have been considered in the ‘Community Consultation’ section of this report.

#### *Subsection (1A): Section 4.15(1) considerations and consideration of reasons for granting of the consent (See **Attachment 3**).*

The proposed modifications do not result in a development that is contrary to the reasons that informed the decision of the Court. The proposed modification has been assessed against the relevant environmental planning instruments and policies and was found to be acceptable. This assessment report includes consideration of the relevant matters specified in Section 4.15 of the Act.

## **4.2 Section 4.15 of the Environmental Planning and Assessment Act 1979**

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the Act.



## Environmental planning instruments (s4.15(1)(a)(i))

The following Environmental Planning Instruments are relevant to this application:

### 4.2.1 State Environmental Planning Policy (Resilience and Hazards) 2021 (previously SEPP 55 – Remediation of Land).

*State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and Hazards SEPP) commenced on 1 March 2022, repealing and replacing three former SEPPs related to coastal management, hazardous and offensive development and remediation of land, including SEPP 55 (Remediation of Land).

A Detailed Site Investigation (DSI) and a subsequent Remediation Action Plan (RAP) were submitted with the original development application. The RAP outlined the remediation strategy, as well as remediation works and validation necessary to make the site suitable for the development.

MOD2024/0095 has been approved to modify Condition 18 relating to remediation of land.

The proposed modifications do not alter the approved land uses, or their intensity, and will reduce the extent of excavation required as a result of the removal of Basement Level 03. As such, the proposed modifications will not affect the conclusions of the DSI or RAP and further assessment of the SEPP is not considered necessary.

### 4.2.2 State Environmental Planning Policy (Transport and Infrastructure) 2021 (replaced State Environmental Planning Policy (Infrastructure) 2007)

SEPP (Transport & Infrastructure) 2021	Comments	Compliance
<p><b>Development likely to affect an electricity transmission or distribution network</b> Clause 2.48</p> <p>This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—</p> <p>(a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,</p> <p>B(2) Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must—</p> <p>(a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and</p> <p>(b) take into consideration any response to the notice that is received within 21 days after the notice is given.</p>	<p>The proposal was originally referred to Ausgrid who advised that “<i>there are existing underground electricity network assets in Railway road, Meadowbank.</i></p> <p><i>In this regard, Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, Electric &amp; Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.</i></p> <p><i>Ausgrid consents to the development subject to conditions.”</i></p> <p>This modification will not alter the above and the relevant conditions imposed in the parent DA will still be applicable.</p>	<p>Yes – Conditions imposed in parent DA still applicable.</p>

SEPP (Transport & Infrastructure) 2021	Comments	Compliance
<p><b>Development in or adjacent to rail corridors</b></p> <p>Clause 2.100 Impact of rail noise or vibration on non-rail development</p> <p>(1) This clause applies to development for any of the following purposes that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration—</p> <p>(a) Residential accommodation, (b) A place of public worship, (c) A hospital, (d) An education establishment or centre-based child care facility.</p> <p>(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.</p> <p>(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—</p> <p>(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am, (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.</p>	<p>This applies to the development as the application proposes residential accommodation and is located on land that is adjacent to a railway corridor.</p> <p>An Acoustic Report prepared by Acoustic, Vibration &amp; Noise P/L was submitted with the original application. The report concludes that <i>"the development if carried out as recommended in plans and specifications and including the acoustic recommendations in this report, will meet the required noise reduction levels as required by Clause 87 of the SEPP - (Infrastructure) 2007, Australian Standards AS 2107 'Acoustics - Recommended Design Sound Levels and Reverberation Times' and the Department of Planning's document titled 'Development Near Rail Corridors and Busy Roads – Interim Guidelines' &amp; City of Ryde Council Condition/Requirements."</i></p> <p>Section 11 of the report contains construction/building material recommendations for the windows/slider/door/external walls and roof which will ensure compliance with the requirements of the SEPP.</p> <p>The modification do not change the use of the approved buildings – still being residential. The original conditions of consent requiring compliance with the Acoustic Report and any other relevant legislation will still be applicable.</p>	<p>Yes - Conditions imposed in parent DA still applicable.</p>
<p><b>Clause 2.122 – Traffic Generating Development.</b></p> <p>Pursuant to Clause 2.122 the clause applies to new premises of the relevant size or capacity. In this clause, 'relevant size or capacity' means: <i>"in relation to development on a site that has direct vehicular or pedestrian access to any road-the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3"</i>.</p> <p>Schedule 3 of the SEPP requires that car parks (whether or not ancillary to other development) with 200 or more car parking spaces be referred to Transport for NSW (TfNSW) as Traffic Generating Development:</p>	<p>The site is more than 90m from a classified road. However, has basement car parking for more than 200 vehicles.</p> <p>The proposal was referred to TfNSW who has raised no objections to the modification.</p>	<p>Yes - Conditions imposed in parent DA still applicable.</p>

**Table 1:** SEPP (Transport & Infrastructure) 2021

#### 4.2.3 State Environmental Planning Policy (Sustainable Buildings) 2022

State Environmental Planning Policy (Sustainable Buildings) 2022 came into effect on 1 October 2023, replacing the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

The aim of this policy is to, inter alia, to encourage the design and delivery of sustainable buildings.

In the assessment of the original application, BASIX/NatHERS/Section J Reports were submitted and the development achieved compliance with solar access and natural ventilation controls prescribed by the applicable controls.

A revised BASIX Certificate is submitted with the modification application and confirms that the development as modified will comply with the water, thermal comfort and energy efficiency requirements of the Policy.

#### 4.2.4 State Environmental Planning Policy (Affordable Rental Housing) 2009

At the time of the parent application, the boarding house component (Building D) was assessed under the provisions of SEPP (Affordable Rental Housing) 2009 (ARH SEPP).

Since then, State Environmental Planning Policy (Housing) 2021 (Housing SEPP) commenced on 26 November 2021, repealing ARH SEPP.

Schedule 7A of the Housing SEPP stipulates savings and transitional provisions where the new policy does not apply:

### **2. General savings provision**

*(1) This Policy does not apply to the following matters—*

*(a) a development application made, but not yet determined, on or before the commencement date,*

*(b) a concept development application made, but not yet determined, on or before the commencement date,*

*(c) a staged development application made subsequent to a concept development application approval granted on or before the commencement date,*

*(d) a development consent granted on or before the commencement date,*

*(da) an application to modify a development consent granted after the commencement date, if it relates to a development application made, but not determined, on or before the commencement date,*

The commencement date is 26 November 2021 and LDA2020/0199 was lodged with Council on 26 May 2020 and approved on 18 July 2022.

In accordance with Schedule 7A, the provisions of the ARH SEPP remain relevant and applicable with regards to the approved Boarding House. No changes to the boarding house are proposed (other than the storage requirement stipulated in the condition of consent). However it is proposed to do internal alternations to the ground floor of Building A which will result in a slight increase in the total GFA.

#### Clause 29 – Standards that cannot be used to refuse consent

Clause 29 stipulates that a consent authority must not refuse development on certain grounds if the development complies with the standards set out in subclause (1) or (2).

Clause 29 Standards which cannot be used to refuse consent	Required	Proposed	Complies
<p>(1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than—</p> <p>(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or</p> <p>(b) if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or</p> <p>(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus—</p>	<p>Existing maximum FSR for any residential accommodation permitted on the land is 2.7:1 or GFA of 20,987m<sup>2</sup> (Site area x 2.7 = 7,773m<sup>2</sup> x 2.7 = 20,987m<sup>2</sup>)</p> <p>-</p> <p>Subclause (c)(ii) permits an additional 20% if the existing FSR is greater than 2.5:1.</p> <p>Therefore 20% floor space bonus prescribed under Clause 29(1)(c)(ii) (4,897.1 x 20% = bonus of <b>979.3m<sup>2</sup></b> of GFA) is allowable for the development, equating to a</p>	<p>The approved parent DA has a total GFA of <b>21,950m<sup>2</sup></b> (FSR of 2.82:1).</p> <p>It is now proposed to increase the GFA to <b>21,995m<sup>2</sup></b>.</p> <p><b>21,967 – 21,995 = 28m<sup>2</sup></b></p>	<p><b>No – minor variation acceptable. See discussion below.</b></p>



Clause 29 Standards which cannot be used to refuse consent	Required	Proposed	Complies
(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	total allowable GFA of <b>21,967m<sup>2</sup></b> (2.82:1).  These is the same figures as shown in the applicant's bonus floor space Drawing D508.	The GFA is over the maximum allowed by 28m <sup>2</sup> . Variation of 0.13% (FSR of 2.83:1).	
(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	-	Non-compliance with 29(c) for maximum floor space (as above).	<b>Yes - Assess on merit. Variation supported. See discussion below.</b>

The proposed modifications will have no impact on the approved boarding house with no changes proposed to the boarding rooms, boarding house parking provision, landscaped area or private open space, and the building height of the development will remain as approved.

#### Non-compliance with Clause 29(1)(ii)

The internal layout changes to the ground floor of Building A will slightly increase the approved GFA. Under the ARH SEPP, the approved development utilised the additional 20% FSR permitted under Clause 29(1)(c)(ii) and as such was permitted a maximum GFA of up to 21,967m<sup>2</sup> (2.82:1).

This amended proposal seeks a departure from the floor space ratio control with an exceedance of 28m<sup>2</sup> (variation of 0.13%). The additional floor spaces are a result of internal configuration with floor space which was previously excluded from GFA calculations (plant room areas reduced). See **Figures 9 & 10** below.

The approved parent application complied with the maximum permissible GFA under the ARH SEPP and provided a total gross floor area of 21,950m<sup>2</sup>, which was under the maximum allowed by 17m<sup>2</sup>. The additional GFA of 45m<sup>2</sup> which results from the proposed internal modifications will create a minor non-compliance with the maximum FSR permitted on the site by 28m<sup>2</sup> equating to a variation of 0.13% (FSR or 2.83:1)



**Figure 9:** Approved ground floor plan – red circle illustrate area excluded from floor space calculation.



**Figure 10:** Proposed amended plan ground floor plan – internal reconfiguration with increased floor space as plant area deleted and now included in floor space.

Clause 29(4) of the SEPP ARH

*A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).*

In the judgement for *Gann & Anor v Sutherland Shire Council* [2008], and 193 *Liverpool Road Pty Ltd v Inner West Council* [2017] NSWLEC 13, the Commission, Moore J, found the following and

**“48** I do not consider that a strict cl 4.6-like approach is mandated because there is nothing in the terms of this provision of the SEPP that purports to impose fetters on the exercise of the discretion given by it in the fashion that

*arises from the very structured testing regime that flows from cl 4.6 itself. The absence of such a regime, in my view, means that it is inappropriate to infer that such a strict regime would be required to be applied.*

*49 A proper merit assessment, having regard to the matters pressed by the Council in its contentions, would, in my view, be the appropriate course to follow.”*

In addition, Clause 29(4) of the ARH SEPP makes it clear that the discretion to grant consent remains despite a non-compliance and a written Clause 4.6 variation request to vary Clause 29(1) (c) is not required to be submitted. However, the Court held that despite a Clause 4.6 variation not being required, the consent authority is to take into consideration those matters referred to in Section 4.15 of the Act. These matters, where relevant to the application are assessed below.

#### FSR Justification:

Whilst a Clause 4.6 variation is not required, it is reasonable to apply the reasoning established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to determine if the proposal is well founded despite the variation.

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, the Court established potential ways in which a variation to a development standard can be demonstrated to be unreasonable or unnecessary. The first test is:

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard*

The first test of *Wehbe* requires demonstration that the objectives of a development standard can be achieved notwithstanding non-compliance with that particular standard.

The objectives of the development standard for floor space ratio (FSR) under clause 4.4 of the Ryde LEP 2014 are:

- (a) *to provide effective control over the bulk of future development,*
- (b) *to allow appropriate levels of development for specific areas,*
- (c) *in relation to land identified as a Centre on the Centres Map—to consolidate development and encourage sustainable development patterns around key public transport infrastructure.*

The proposed modifications are for internal reconfiguration and will not alter the approved building envelopes. The bulk and scale of the development will be retained with the proposal providing a similar mix of commercial and residential development on the site. The approved intensity of development will not be increased, and the proposed modifications will not alter the bulk and scale or essence of the approved development.

The proposed FSR in this instance reflects the land use context of the immediate locality of Meadowbank which comprises of residential and mixed use business. Given

the minor nature of the variation, the proposed FSR does not represent an inappropriate level of development for the area.

The third objective is also achieved as the development is within close proximity to Meadowbank Railway station and bus stops and will continue to provide a sustainable mixed use development within a highly accessible location.

Accordingly, the proposal maintains the existing building envelopes and will not create adverse amenity impacts to surrounding development. Furthermore, the streetscape appearance of the development remain as approved. The additional floor space is to provide for a lobby/reception area for the residential buildings which will aid in the management of the buildings, providing a central point for meeting visitors, and information. Accordingly, strict compliance with the FSR standard would not result in any positive planning outcomes as the additional floor space will not be perceptible from surrounding development or the public domain and will provide an added amenity to the development.

In the particular circumstances of this case, the proposed minor variation to the floor space ratio development standard is considered well founded and can be supported.

#### 4.2.5 State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development (SEPP 65) (now repealed)

At the time of the parent application, the 3 residential flat buildings (Buildings A, B & C) were assessed under the provision of SEPP 65. Since then, State Environmental Planning Policy (Housing) 2021 (Housing SEPP) commenced on 26 November 2021, repealing SEPP 65.

However the saving provisions of Schedule 7A of the Housing SEPP stipulates savings and transitional provisions where the new policy does not apply:

## **2. General savings provision**

*(1) This Policy does not apply to the following matters—*

- (a) a development application made, but not yet determined, on or before the commencement date,*
- (b) a concept development application made, but not yet determined, on or before the commencement date,*
- (c) a staged development application made subsequent to a concept development application approval granted on or before the commencement date,*
- (d) a development consent granted on or before the commencement date,*
- (da) an application to modify a development consent granted after the commencement date, if it relates to a development application made, but not determined, on or before the commencement date,*



The commencement date is 26 November 2021 and LDA2020/0199 was lodged with Council on 26 May 2020 and approved on 18 July 2022.

In accordance with Schedule 7A, the provisions of the SEPP 65 remain relevant and applicable with regards to the residential flat buildings.

The proposal has been assessed against the following matters relevant to SEPP 65 for consideration:

(i) The SEPP 65 Design Quality Principles

The parent LDA2020/0199 was reviewed by an Urban Design Review Panel and assessed against the nine design principles of the SEPP. In accordance with the provisions of SEPP No. 65 a statement prepared by Curzon + Partners is submitted with the application which verifies that the proposed modifications do not diminish or detract from the design quality of the development for which consent was originally granted.

The proposed internal changes are:

- Deletion of Basement 3 resulting in reduced car parking;
- Provision of a gym and reception area on the ground floor; and
- Conversion of apartments 101, 102, 107 & 108 on the first floor to a communal area for use by the residents of the apartment buildings.

The proposal does not alter the approved overall design of the development, or the apartment sizes, private open space, communal open space, building separation, natural ventilation, solar access or any other physical aspects of the residential apartments.

(ii) The Apartment Design Guide

The SEPP requires consideration of the "Apartment Design Guide" (ADG) which supports the 9 design quality principles by giving greater detail as to how those principles might be achieved. The table below addresses the relevant matters.

ADG	Required / Proposed	Compliance
<p><b>Part 3</b></p> <p><b>3 J Bicycle and car parking</b></p> <p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>• on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>• on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less The car parking needs for a development must be provided off street</li> </ul> <p>Parking and facilities are provided for other modes of transport.</p>	<p>The minimum parking for residents and visitors to be as per <i>TfNSW Guide to Traffic Generating Developments</i>, or Council's car parking requirement, whichever is less.</p> <p>Zone MU – Mixed use. The site is within 800m of the Meadowbank Railway Station. The following TfNSW rate will apply:</p> <ul style="list-style-type: none"> <li>• 0.6 space to 1 space/ 1 bed</li> <li>• 0.9 space to 1.2 / 2 bed</li> <li>• 1.4 space to 1.6/ 3 bed</li> <li>• 0.2 space/ unit (visitor parking)</li> </ul> <p>The proposal is for:</p> <p>30 one bedroom 71 two bed <u>28 three bedroom</u> 129 apts</p> <p>The required parking is:</p> <p>1 Bed: 30 X 0.6/1 = 18 to 30 spaces 2 Bed: 71X 0.9 /1.2 = 63.9 to 85.2 3 Bed: 28 X 1.4 /1.6 = 39.2 to 44.8 = <u>121.1 to 160</u></p> <p>Visitor: 129 X 0.2 = 25.8 (26) visitor spaces.</p> <p>Total required = <b><u>148 to 186 for the RFB</u></b></p> <p><b><u>Proposed: 45 spaces (inclusive of 3 car share spaces)</u></b></p> <p>Shortfall of 103 spaces for the residential apartment.</p> <p><b><u>Bicycle Parking</u></b></p> <p>Council' DCP requires bicycle parking to be provided equivalent to 10% of the required car spaces or part thereof. Based on the above for 129 residential apartments, a minimum of 13 bicycle spaces are required to be provided. It is proposed to provide 23 bicycle spaces for the residential apartments. This is 10 bicycle spaces more than what is required.</p> <p>Car parking and bicycle parking for Boarding House not altered.</p>	<p><b>No*</b> – applicant seeking variation as the proposal will be for rental housing. See full discussion below after the table.</p> <p>Yes</p>
<p><b>Part 4</b></p> <p><b>4H Acoustic Privacy</b></p>	<p>A ground floor gym for residents only is located on the ground floor. The gym is not adjacent to any residential apartments however there will be</p>	

<p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3.0m away from bedrooms</p>	<p>apartments directly above the gym. The gym will be available to residents 24/7.</p> <p>An Acoustic Report has been submitted and reviewed by Council's Environmental Health and conditions have been imposed to minimise noise impact and in accordance with the acoustic treatments and gym management protocols contained in the Acoustic Report. <b>Conditions 78A &amp; 176A</b> have been imposed. <b>Conditions 251, 252, 253 &amp; 254</b> restrict the night time noise levels which will ensure that appropriate amenity to residents are maintained.</p> <p>A communal facility area with adjacent patios is located at Level 01 of Building A which is adjacent to residential apartments. The communal facility is for residents co-working, games area, dining, media room, communal kitchen.</p> <p>Co-working space: Dedicated space furnished with workstations including both communal and private working spaces for residents to work. The quiet indoor portion of the resident workspace will be available to residents 24/7. The outdoor portion will only be conducive for day use and be closed by 10pm.</p> <p><b>Condition 254</b> has been imposed stating that noise from any communal area/facility shall not be audible in any habitable room in any residential premises between the hours of 10pm and 7am. Any amplified music used within a communal room (including the gymnasium) shall be limited in volume so as not to cause a disturbance to the amenity of the adjoining residences.</p>	<p>Yes – Conditions imposed to ensure noise and acoustic treatments are adhered to.</p>				
<p><b>4G Storage</b></p> <p>Adequate, well designed storage is to be provided for each apartment.</p> <p>Design criteria</p> <p>1.In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided</p> <table><tr><td>Dwelling Type</td><td>Storage (m³)</td></tr><tr><td>Studio</td><td>4m³</td></tr></table>	Dwelling Type	Storage (m³)	Studio	4m³	<p>A mix of storage is located within the apartment and in the basement.</p> <p>The ADG requires 50% of the required storage to be located in the apartment.</p> <p><u>Proposed:</u></p> <p>The amended storage scheme complies with the requirement for storage <u>within the apartments</u>:</p> <p>1 bedroom – 3.4m³ to 4m³</p> <p>2 bedroom – 4m³ to 8.1m³ and</p> <p>3 bedroom – 5m³</p>	<p>Yes – storage <u>within the apartments</u> complies with the ADG.</p>
Dwelling Type	Storage (m³)					
Studio	4m³					

1 bed apt	6m <sup>3</sup>	<p>The modification will reduce the amount of storage in the basement area from range of 7.3m<sup>3</sup> to 8.5m<sup>3</sup> to 3.9m<sup>3</sup> for each apartment. The reduction in storage area within the basement will result in 17 apartments (2 bedroom and 3 bedroom apartments) not complying with the total amount of storage required.</p>	<p><b>No</b><sup>2</sup> – 17 of the 129 apartments will not comply with the required storage.</p>
2 bed apt	8m <sup>3</sup>		
3 + bed apt	10m <sup>3</sup>		
<p>At least 50% of the required storage is to be located within the apartment.</p> <p>Additional storage is conveniently located, accessible and nominated for individual apartments (show on the plan).</p>			
<p><b>4K Apartment mix</b> A range of apartment types with different number of bedrooms (1bed, 2 bed, 3 bed etc) should be provided</p>		<p>A mix of 1, 2 &amp; 3 bedroom apartments have been provided.</p> <p>The reduction in apartments has reduced the number of one and two bedroom apartments to:</p> <p>30 one bedroom 71 two bed 28 three bedroom <u>129 apts</u></p> <p>A mixture of apartments have been provided.</p>	Yes

#### \*1 Part 3J - Car parking variation

The applicant is seeking a reduction in parking based on the apartments being rental housing. The modification proposes to change the “operation” of the residential buildings to rental housing and the applicant has made reference to BTR Housing for the purpose of providing a merit based argument (numerical guide) to support proposed modification in terms of parking and storage for the lesser parking rates for similar development types (BTR).

The applicant states, that despite the variation, the modification is able to satisfy the various objectives of the parking controls and has provided the following argument for varying the control:

*Despite the numerical non-compliance, the reduced car parking satisfies the objective of the design criteria under Section 3J of the ADG, Guide to Traffic Generating development and Ryde Development Control Plan 2014 Part 9.3 Car Parking, as follows:*

*Objective 3J-1 (ADG): Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.*

*The site is situated within a highly accessible location, adjacent to the Meadowbank Railway Station, and therefore is an ideal location to provide for higher density development given the significant levels of accessibility afforded by the Railway Station, and other public transport services, including bus services from stops within*

100m of the site, and the ferry service from the Meadowbank Ferry Wharf within 600m walking distance of the site.

### Guide to Traffic Generating Developments

Whilst the Guide to Traffic Generating Developments does not prescribe any objectives for the parking requirements, the following is included at Section 5.2 of the Guide which establishes the basis for the recommended provisions:

*Adequate off-street parking is the main criterion in the assessment of parking areas provided for developments. Adequate provision of off-street parking discourages on-street parking, thereby maintaining the existing levels of service and safety of the road network.*

*The proposed development is considered to provide adequate off-street parking within the basement parking levels. The proposed parking provision is supported by the Traffic & Parking Assessment prepared by TTPP and submitted with this application.*

*Furthermore, the location of the site is significant to determining an adequate parking provision for the site. The site is situated within a highly accessible location, adjacent to the Meadowbank Railway Station, and therefore the parking provision is appropriate given the number of residents, employees and visitors to the site who will utilise the public transport options available.*

*The proposal will also combat the technical parking non-compliance with the provision of 3 car share spaces that will be allocated to EV car share which will be operated by a Third Party such as Ohmie Go who will be responsible for supplying the EV car share along with its ongoing service and maintenance. The vehicles will be exclusive to residents only and booked on demand using the third-party app. This is detailed within the Plan of Management that has been prepared by Apt to accompany this application.*

*Most importantly, the proposed parking provision is considered acceptable since rental housing is not expected to provide the same parking provision as standard residential apartments. Indeed, studies on rental housing have found that car use is consistently lower for renters when compared to owner occupiers, as evidenced by the BTR parking provisions under the Housing SEPP.*

### Ryde DCP

*Whilst the provisions within Part 9.3 of the Ryde DCP 2014 are not technically the applicable parking rate, they are consistent with the rates under the Guide to Traffic Generating Development, but for the range offered by the DCP, and therefore the objectives of the Part 9.3 of the DCP are considered relevant and are addressed in turn below.*

- 1. To minimise traffic congestion and ensure adequate traffic safety and management.*



*The proposed development will reduce the number of vehicles on the site and therefore will reduce traffic congestion on the surrounding road network and will result in an improved traffic outcome for operation of the site's development compared to the approved development.*

- 2. To ensure an adequate environmental quality of parking areas (including both safety and amenity).*

*No changes are proposed to the approved car park access arrangements at Faraday Lane. The volume of traffic utilising the access will be reduced by the proposed modification, namely the reduction in total on-site car parking spaces. Thus, the approved access arrangements would satisfactorily accommodate the traffic generation of the proposed modifications.*

*The proposed basement car parking areas are essentially the same as the approved car parking layouts. The changes to the car parking are simply the removal of the lowest basement level (Basement 3) and the associated vehicle circulation and ramp connections between Basement 2 and 3.*

*The proposed basement car parking layout will retain security measures to limit retail (customer) parking to Basement 1.*

*As such, the proposed development will have no impact on the quality of the approved parking areas, despite the parking non-compliance.*

- 3. To minimise car dependency for commuting and recreational transport use, and to promote alternative means of transport - public transport, bicycling, and walking.*

*The proposed development will reduce the number of vehicles on the site and therefore will minimise the car dependency for residents and encourage the use of public transport to and from the site, which is appropriate given the sites highly accessible location.*

- 4. To provide adequate car parking for building users and visitors, depending on building use and proximity to public transport.*

*Despite the ADG requirement, the proposed modification will restrict the approved residential apartments on the site to be used for the purpose of rental housing only, and therefore the parking rates for residential flat buildings, in which units are bought and sold under separate ownership, is not considered to be the most suitable parking provision to inform the proposal.*

*Instead, whilst the parking rates under SEPP (Housing) 2021 do not technically apply to the proposal as a formal change of use is not sought, we believe it is logical to consider the rental housing parking rates to help justify the proposed parking provision, particularly since the Applicant will be restricted by a condition of consent, or restriction on title, to use these apartments for rental products for a period of 15 years, as would be required for BTR housing under the Housing SEPP.*

*Whilst the proposal will result in a parking shortfall with the ADG, the proposed shortfall is considered acceptable since rental housing is not expected to provide the same parking provision as standard residential apartments. Indeed, studies on rental housing have found that car use is consistently lower for renters when compared to owner occupiers, as evidenced by the BTR parking provisions under the Housing SEPP.*

*Furthermore, it is important to highlight that the apartments to be used as rental housing are to be available to the general public. There is no requirement to provide affordable or social housing on the site.*

*Importantly, the site is situated within a highly accessible location, adjacent to the Meadowbank Railway Station, and therefore the parking provision is appropriate given the number of residents, employees and visitors to the site who will utilise the public transport offered to the site.*

*The proposal will also combat the technical parking non-compliance with the provision of 3 car share spaces that will be allocated to EV car share which will be operated by a Third Party such as Ohmie Go who will be responsible for supplying the EV car share along with its ongoing service and maintenance. The vehicles will be exclusive to residents only and booked on demand using the third-party app. This is detailed within the Plan of Management that has been prepared by Apt to accompany this application.*

*5. To minimise the visual impact of car parking when viewed from the public domain and adjoining sites.*

*As per the approved scheme, all parking is located at the basement level and will not be visible from the public domain or adjoining sites. The proposal will remove Basement Level 3, however, this modification will not have any impact on the visual appearance of the development, as approved.*

*6. To maximise opportunities for consolidated areas of deep soil planting and landscaping.*

*The proposed parking provision will have no impact on the approved deep soil and landscape area on the site.*

*7. To reduce congestion in the Macquarie Park Corridor by restricting parking for commercial and industrial development to work towards achieving a target of a 70% private vehicle mode share by 2031.*

*This objective does not apply to the subject site.*

*Overall, the proposed development satisfies the objectives of each of the relevant guidelines and policies which dictate the parking requirement for the site, despite the numerical non-compliance.*

*It is also important to stress that the Applicant has not revisited the VPA for the approved development which Council will recall sought to offset the traffic*

*generation caused by the development. The proposed modification will reduce the total parking provision by 148 spaces, significantly reducing the traffic generated by the development on the site. The proposal will of course reduce traffic generation when compared with the original approval, whilst not seeking any reduction to the monetary contributions required by the VPA.*

*Following the above justification for the parking non-compliance, it is important to highlight that the Housing SEPP specifies 'non-discretionary development standards' for BTR development within an accessible area within the Greater Sydney Area to be:*

- 0.2 parking spaces for each dwelling (129 apartments x 0.2 = 26 spaces required)*

*In accordance with the above parking rate, the total required car parking provisions for the modified development are reduced from 419 to 271 car parking spaces, inclusive of the retail parking requirement.*

*The proposed provision of 45 car parking spaces, exceeds the minimum requirement of the Housing SEPP.*

#### Planner's Comments:

The modification proposes to reduce the number of car parking on site for the residential apartment buildings (Buildings A, B & C) from 193 spaces (i.e. a minimum of 165 residential and 28 visitor car spaces) for 133 apartments, to 45 spaces, inclusive of 3 car share, for 129 apartments. Based on reduction of 4 units and amended unit mix, 148 (including visitors) car parking spaces are now required for the residential apartments.

Accordingly, there is a shortfall of 103 parking spaces for the residential apartments. Despite this deficiency, it is acknowledged that the 'rental housing stock' category is relatively new, and that there is no direct source of information available to corroborate the strict applicability of the apartment guideline for residential parking for rental housing.

Therefore, when addressing what constitutes 'adequate car parking', consideration is given to the location of the development within the City of Ryde, connection to the public transport network, the strategic vision of the locality and its potential impact upon the local road network.

It is agreed that the development site, in terms of public transport (trains, ferries and buses), is ideally located for consideration for reduced parking. The site is within an accessible area, it is less than 40m from Meadowbank Station, regular bus services and 400m from Meadowbank ferry wharf. Plus the site is located within an area that provides good amenities such as supermarkets, restaurants and educational facilities (Meadowbank TAFE) which are all within walking distance and will help provide a vibrant and walkable community. See **Figure 11** below.



**Figure 11** – Subject site outline in red and distances to transport, Meadowbank TAFE, parks and facilities such as Shepherd Bay Village which contains range of specialty stores, medical centre and gym.

Given that the site is ideally located in terms of public transports, with good nearby amenities, will capitalise on existing infrastructure and encourage use of alternate form of transport, car ownership is not essential and should be discouraged. Therefore, reduced parking is considered a logical step to help curb traffic congestion and promote active transport like cycling and walking.

Furthermore, one of the major issues at the time of the parent application was traffic generated from the development. Concerns were raised in the original assessment of worsening congestion levels at the intersections of Railway Road/Bay Drive/Bank Street and Bay Drive/Underdale Lane, extensive queuing with Bay Drive and traffic impacts at the junction of Constitution Road and See Street. To address these concerns, traffic mitigation measures were agreed to via a VPA, which will not be changed as part of this modification.

The applicant contends that removal of one basement level of parking (removal of 148 spaces) will help to further reduce the traffic impact and will result in improved traffic within the immediate area. This is because less parking on site will discourage car ownership which will significantly reduce the volume of traffic accessing the site compared to the approved development. Furthermore, the reduced parking will not only help reduce the cost of the development, which is passed on to renters, will help shift travel mode to public transport and active transport (walking and cycling) thus helping to improve affordability and improve urban planning outcomes.

Given the above, the applicant has demonstrated that the objective(s) of the ADG, the objective of the Guide to Traffic Generating Development and objectives 1 to 5 of Ryde DCP – Car parking are achieved. Therefore strict compliance is unnecessary and unreasonable as the modified outcome will result in a better sustainable development with good amenities. Plus there will be no adverse impacts on the environment or inconsistency with the objectives of the standard.

Ryde DCP 2014 Part 4.2 Shepherd's Bay, Meadowbank, outlines the vision for the area, which include, inter alia:

- *To create a higher density transit-orientated neighbourhood, providing for a mix of residential and commercial/retail uses.*
- *Excellent transport infrastructure will provide a high level of access and mobility, ensuring efficient connections from the east to west and north to south.*

The reduced provision of on-site parking within an area with excellent transport infrastructure will result in a development that supports the above vision with the proposed high density development having access to good public transport.

In addition, despite the variation, it is considered that the proposal is able to satisfy Section 1.3 of the EPA Act as follows:

- a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.*
- b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.*
- c) to promote the orderly and economic use and development of land.*
- d) to promote the delivery and maintenance of affordable housing.*
- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.*
- f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).*
- g) to promote good design and amenity of the built environment.*
- h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*
- i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.*
- j) to provide increased opportunity for community participation in environmental planning and assessment.*

The modifications will promote an orderly and economic development of the land, provide a sustainable and affordable accommodation within an area that provide good public transport. The modifications will not alter the visual appearance of the development which is of a good design that will promote ecologically sustainable development by integrating economic, environmental and social considerations, therefore satisfying the relevant Objects of the Act, including s1.3 (a), (b), (c), (d), (g) and (j).



The proposal was also reviewed by Council's Engineer who raised no objections to the reduced parking, noting that the site is in close proximity to multiple transport nodes.

#### Engineer comments:

*The development proposes 129 units and nominates 45 parking spaces. Whilst this is less than the level of parking required under the DCP Part 9.3 (Parking Controls) for high density units (122 resident parking spaces + 26 visitors = 148), the applicant has presented a number of aspects which clarifies the lower parking provision.*

*These are summarised below:*

- The site is located in close proximity to multiple public transport options. Meadowbank train station is opposite the site, there are numerous bus stops / routes fronting the site in Railway Road and there is a ferry service 400m from the site.*
- 3 car share spaces are to be incorporated within the parking area exclusively for the resident use are to be provided on the site.*
- The reduced level of parking will reduce traffic generation from the site and therefore has significantly reduced imposition on the surrounding road network.*
- The applicant has made note to the legislative requirements relating to similar development types (build-to-rent) and noted that the proposal exceeds the non-discretionary parking requirements for such development.*

*Council's Development Engineering Services is in agreement with these matters. Of additional note, the development is located in proximity to the TAFE and so may likely be occupied by a greater proportion of students.*

*Otherwise, the following points are noted:*

- The proposed modifications present a minor reduction in the retail / commercial area component due to the implementation of a reception area and the gym on ground level.*
- 8 retail spaces are proposed on the basement parking level 2 despite it being predominantly resident spaces.*
- The parking demand for the retail use is reduced by the very likelihood of most customers accessing the store as a linked trip (i.e. patrons visiting before / after work periods when commuting by rail / bus).*
- The gym facility is for residents of the development only.*

*No visitor parking has been nominated. However, noting the lower rates of vehicle ownership attributed to the suspected demographics of future occupants and applying this rationale to the visitor parking demand, it would be posed that the original development requirement of 28 visitor spaces (26 under the proposed unit density) could potentially be reduced by, say 50% (14 parking spaces). It is recommended that 14 spaces (from 45) be allocated as visitor spaces, which is addressed by condition of consent.*

*There are no objections to the proposed development with respect to the engineering components, subject to the modification of the relevant conditions relating to parking allocation and stormwater management.*

*Given that the site is located within proximity to the transport hub of Meadowbank; is close to Meadowbank TAFE; and will provide a car share scheme and bicycle parking spaces (all of which are alternative and environmentally acceptable forms of transport) no objection is raised. The reduced parking will encourage the use of alternate forms of transport, discouraging reliance on private vehicles and reduce traffic congestion. In these respects, the development is considered to satisfy the objectives of the parking controls and Council's desire for less car reliance. It is considered that the proposed parking variation can be supported.*

\*2 Part 4G Storage variation:

The original approval provided each apartment with more storage than what was required under the ADG. It is now proposed to delete some of the storage area in the basement. The original approved had basement storage of between 7.3m<sup>3</sup> to 8.5m<sup>3</sup>. It is now proposed to modify this to 3.9m<sup>3</sup> for each apartment. The reduction in storage area within the basement will result in 17 apartments (6 x 2 bedroom and 11 x 3 bedroom apartments) not complying with the total amount of storage required as outlined in the table below. All the 1 bedroom apartments comply with the ADG requirement.

Building A:

ADG requirement	Internal storage	External storage	Total
<b>Two bedroom requires a total of 8m<sup>3</sup></b>	Requires: 4m <sup>3</sup> Proposed: 4 to 8.1m <sup>3</sup>	Requires: 4m <sup>3</sup> Proposed: 3.9m <sup>3</sup> Short by 0.1m <sup>3</sup>	<u>7.9 to 12m<sup>3</sup></u> 3 apartments are short of the external storage area and total amount by 0.1m <sup>3</sup>
<b>Three bedroom requires a total of 10m<sup>3</sup></b>	Requires: 5m <sup>3</sup> Proposed: 5 to 11m <sup>3</sup>	Requires: 5m <sup>3</sup> Proposed: 3.9m <sup>3</sup> Short by 1.1m <sup>3</sup>	<u>8.9 to 14.9m<sup>3</sup></u> Only one apt is short by 1.1m <sup>3</sup>

Building B:

ADG requirement	Internal storage	External storage	Total
<b>Two bedroom requires a total of 8m<sup>3</sup></b>	Required: 4m <sup>3</sup> Proposed: 4.0 to 9m <sup>3</sup>	Required: 4m <sup>3</sup> Proposed: 3.9m <sup>3</sup> Short by 0.1m <sup>3</sup>	<u>7.9 to 12.9m<sup>3</sup></u> 2 apartments are short by 0.1m <sup>3</sup>
<b>Three bedroom requires a total of 10m<sup>3</sup></b>	Required: 5m <sup>3</sup> Proposed: 5.3 to 6.8m <sup>3</sup>	Required: 5m <sup>3</sup> : Proposed: 3.9m <sup>3</sup> Short by 1.1m <sup>3</sup>	<u>9.2 to 10.7m<sup>3</sup></u> 4 apartments are short by 0.8m <sup>3</sup>

Building C

ADG requirement	Internal storage	External storage	Total
<b>Two bedroom requires a total of 8m<sup>3</sup></b>	Required: 4m <sup>3</sup> : Proposed: 3.9 to 5.3m <sup>3</sup> Unit 601 internal - 3.9m	Required: 4m <sup>3</sup> : Proposed: 3.9m <sup>3</sup> Short by 0.1m <sup>3</sup>	<u>7.8 to 9.36m<sup>3</sup></u> 1 apartment is short by 0.2m <sup>3</sup>
<b>Three bedroom requires a total of 10m<sup>3</sup></b>	Required: 5m <sup>3</sup> Proposed: 5.3 to 7m <sup>3</sup>	Required: 5m <sup>3</sup> : Proposed: 3.9m <sup>3</sup> Short by 1.1m <sup>3</sup>	<u>9.2 to 9.7m<sup>3</sup></u> 6 apartments are short by 0.8m <sup>3</sup>

The applicant has sought justification for the departure in storage space based on them being rental and the provision for storage for rental apartments should be flexible.

The ADG provides the following guidelines for storage:

- *Storage is accessible from either circulation or living areas*
- *Storage provided on balconies (in addition to the minimum balcony size) is integrated into the balcony design, weather proof and screened from view from the street*
- *Left over space such as under stairs is used for storage*

**Figure 12** below is a typical floor plan showing the internal storage area. Only one apartment is short of the internal storage requirement by  $0.1\text{m}^3$ . All apartments have storage accessible from living and circulation areas. The shortfall in storage is due to the deletion of Basement 3 where storage area was previously located. The proposed modification provide each apartment with  $3.9\text{m}^3$  of storage instead of  $4\text{m}^3$  and  $5\text{m}^3$  for 2 bedroom and 3 bedroom apartments, respectively. The variation is between  $0.1\text{m}^3$  to  $1.1\text{m}^3$  is for the external storage, with the majority of apartments providing more internal storage beyond what is required.

In considering a variation under the ADG consideration should be given to whether the development will provide good amenities to future tenants, albeit the variation in storage space. Each of the apartments balconies complies with the minimum size and depth required under the ADG, plus the internal floor area of the two and three apartments range from:

- 2 bedroom (2 bathrooms) –  $74\text{m}^2$  to  $90\text{m}^2$
- 3 bedrooms (2 bathrooms) –  $95\text{m}^2$  to  $122\text{m}^2$

Therefore, the internal areas of the apartments are generally larger than what is required, are well designed with POS complying with the ADG requirements. In addition, the proposal has provided more storage for bicycle parking (10 bicycle spaces more than required) which in such location promote the use of alternative transport.

Accordingly future tenants will be provided with sufficient POS, good outdoor open space, a large community hall, access to a gym, close to shops, a supermarket and cafes. There is a range of apartment mix and sizes for tenants to choose from.

It is considered that as the apartments have provided the minimum internal storage with the majority of apartments providing more internally and that the shortfall of total amount storage for 17 apartments (out of 129 apartments) is relatively minimum (maximum shortfall of  $1.1\text{m}^3$  for one apartment with the rest having a shortfall of between  $0.1\text{m}^3$  to  $0.8\text{m}^3$ ), the variation to the AGD requirement is supported in this instance.



**Figure 12:** Proposed location of internal storage area with each apartment complying with the minimum private open space area.

### 4.3 Ryde Local Environmental Plan 2014

The following is an assessment of the proposed development against the applicable provisions of Ryde Local Environmental Plan 2014 (Ryde LEP 2014).

#### Clause 2.2 - Zoning

The site is located within the MU1 - Mixed Use zone under the Ryde LEP 2014.

#### Clause 2.3 - Zone Objectives

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives for the MU1- Mixed Use zone are as follows:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*
- *To promote strong links between Macquarie University and research institutions and businesses in the Macquarie Park corridor.*

The proposal as proposed to be modified is consistent with the zone objectives given that it still delivers a mixed-use building with retail, housing and employment opportunities within an accessible location. The last two objectives are not applicable as the site is not near or within Macquarie Park Corridor.

#### Clause 4.3 - Height of Buildings

Clause 4.3 of Ryde LEP 2014 prescribes the maximum building height for the site with the maximum building heights permitted at the subject site being 18.5m and 21.5m. No changes are proposed to the approved height of the buildings.

#### Clause 4.4 - Floor Space Ratio

Clause 4.4 of RLEP 2014 prescribes the maximum floor space ratio for the site with the maximum FSR permitted at the subject site being, 2.7:1. The original application was approved by the Land & Environment Court on 18 July 2022. The development was approved with a FSR of 2.82:1 across the whole site.

In summary, an additional 20% bonus was allowed (FSR 2.82:1) under Clause 29 of the ARH SEPP and the approved development complied with the maximum permissible GFA. The exceedance of GFA (28m<sup>2</sup>) proposed under this modification application will create a minor non-compliance with the maximum FSR permitted equating to a variation of 0.13%.

Full discussion of the variation is discussed earlier in the report under the ARH SEPP (which prevails over the RLEP 2014).

#### Clause 6.4 – Stormwater Management

The stormwater management system has been modified with respect to the onsite detention design strategy.

Council's Senior Co-ordinator Development Engineering has advised that the revised plans are acceptable subject to amendment to **Conditions 109 & 166** of the consent (stormwater conditions).

#### Clause 5.10 - Heritage Conservation

The subject site is within the vicinity of two heritage items:

- i) 'House' 1 A Angas and 34 See Streets, Meadowbank (Item No.1116)
- ii) 'Sundin's Building' 58-64 Constitution Road, Meadowbank (Item No.137)



The proposed changes to the “operational” use of Buildings A, B & C will not affect the existing heritage items nearby.

## Ryde Development Control Plan 2014

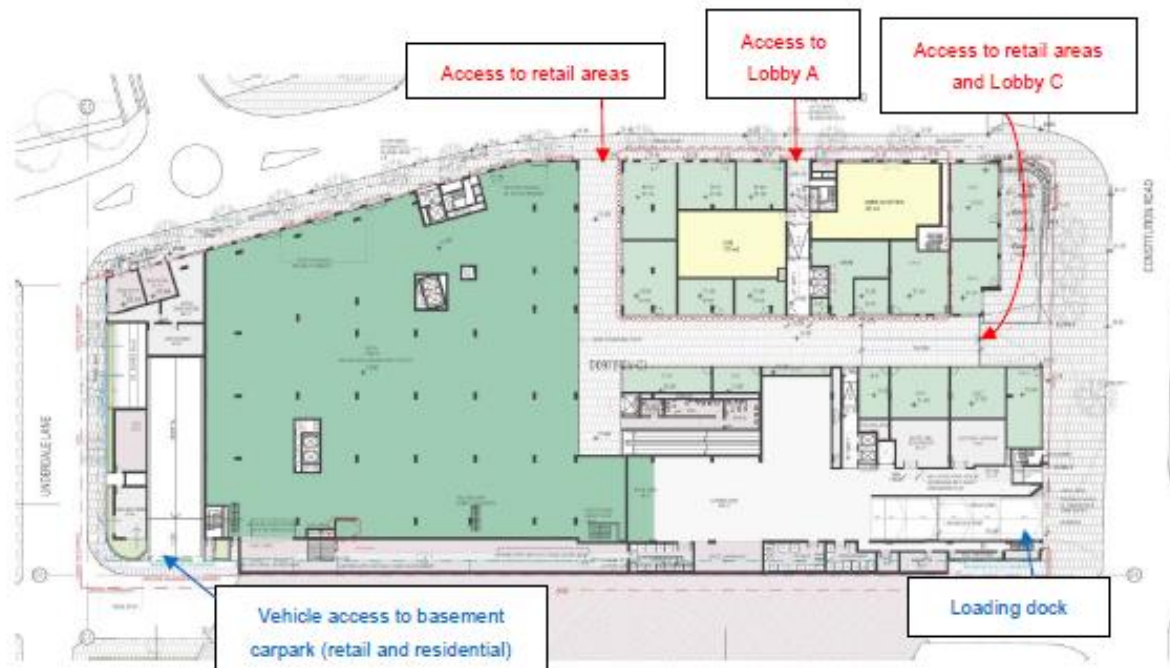
### Part 4.2 – Shepherds Bay Meadowbank

The proposed modifications relate to changes to the operational use of the 3 residential apartment buildings to solely rental, owned and operated by one entity. The modification will not alter the buildings envelope, as the height, setback and built forms will not be altered.

However it is important to ensure that the new ‘operational/function’ use as rental residential apartments, meets Crime Prevention Through Environmental Design (CPTED) principles. The relevant section of the DCP is provided below.

4.1.7 Safety	Comment	Compliance
Public spaces need to be designed to meet Crime Prevention Through Environmental Design (CPTED) principles (DUAP 2001).	NSW Police has reviewed the parent DA and advised the proposal is satisfactory in terms of Safer by Design and CPTED principles including natural surveillance, natural access control, territoriality, maintenance have been conditioned. These conditions are not being altered. However, as it is proposed to change the operation use for rental housing only with more transitional residents, an updated Crime Risk Assessment Report has been submitted. The Report is attached as <b>Attachment 5</b> .	Yes
Open sightlines and landscaping needs to be provided that allows for high levels of public surveillance by residents and visitors.	Not changed - open sightlines and landscaping have been provided to ensure public surveillance of common areas including open space.	Yes
Lighting is to be provided to all pedestrian ways, building entries, corridors, laundries, lifts, stairwells, driveways and car parks to ensure a high level of safety and security for residents and visitors at night. Further, external lighting including street lighting if necessary (in accordance with pedestrian lighting AS1158 is to be provided which makes visible potential hiding spots at night.	Parent DA imposed conditions for lighting around the buildings, plaza, carparking areas and shops. These conditions are not altered.	Have been conditioned for lighting.
Entrances to public open spaces will need to encourage pedestrian use and establish clear sightlines to improve visual security.	Not altered - corner of Railway Road and Constitution Road – public plaza is open and provide clear sight lines and visual security.	Yes
The design of public domains must not result in dead ends or similar design outcomes.	The pedestrian walkway on the ground floor does not lead to a dead end.	Yes

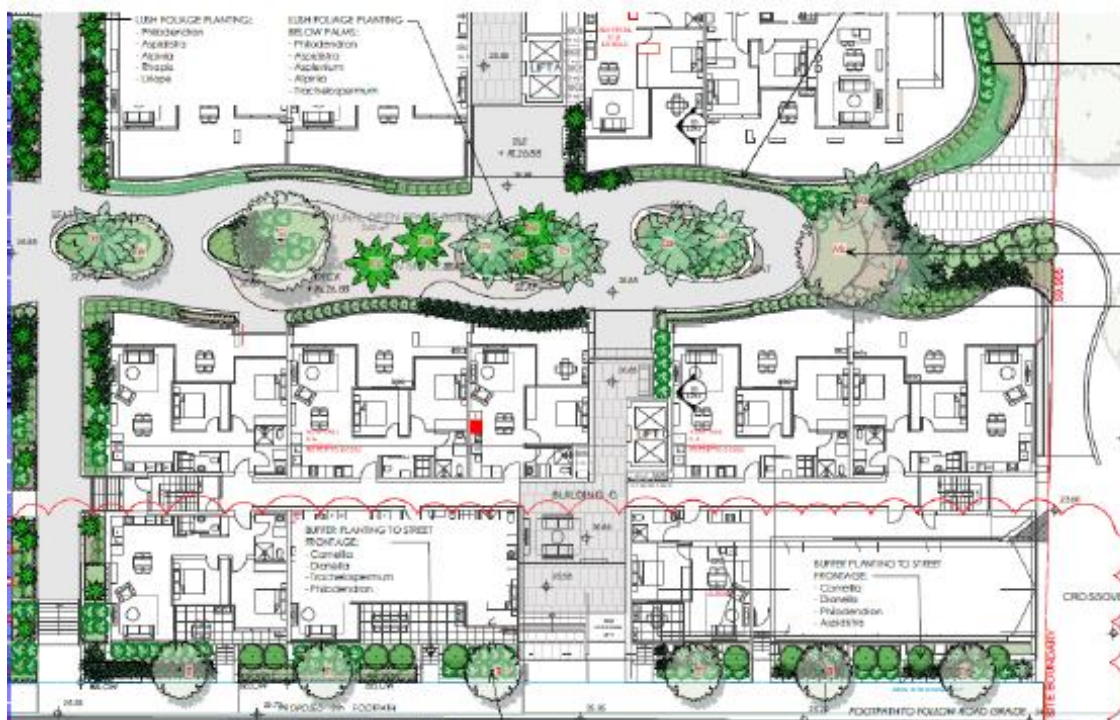
The proposed modification does not alter the approved overall design of the buildings, with clear pedestrian access points, clear and multiple pedestrian access points from the footpath off Railway Road to enter the new lobby area of Building A, and retail level (ground floor level) of Buildings B and D. The new lobby area will also enhance surveillance and security within the development. See **Figures 13 to 15**.



**Figure 13:** Ground floor plan with pedestrian and vehicle access indicated.



**Figure 14:** First floor plan with pedestrian access indicated.



**Figure 15** Extract of Landscape Plan showing planting near entrances.

Generally the private open space areas of each apartment are oriented towards the street frontage as well as towards the internal common access and open space areas. The design and orientation of these spaces assist with casual surveillance to the street and internally to the site. Open space areas are provided along the south to north spine of the site as well as within the areas that separate each building.

An updated Crime Risk Assessment Report which reflects the proposed modification (use for rental housing) has been submitted with the application. The report includes a safety audit of the proposed development against the *Crime Prevention Through Environmental Design* and *NSW Police Safer by Design Guidelines for Crime Prevention*, see Section 4.4 of the report. The Safety Audit addresses the CPTED key strategies (Territorial re-enforcement, Surveillance, Access Control and Space/Activity Management).

The report states that “*the proposed modification to use of the approved development, to restrict the operation and function of the residential apartments as rental only housing products, will not have any impact on the conclusions from the original Crime Risk Assessment and Safety Audit under LDA2020/0199. This revision is simply to ensure the report is consistent with the proposed modifications, inclusive of the minor modifications to the approved plans*”.

In addition, Section 4.4.1 of the report provides recommendations to be implemented to ensure that the development will be deemed safe. These recommendations include:

- *Vegetation at all entrances are to be maintained to ensure that vegetation does not obstruct sight lines from the adjoining public roadways;*
- *The main pedestrian access points to the buildings as well as the facades of the building, basement areas, the terrace and areas beneath the awnings are*

*to be illuminated after daylight hours to a level that allows clear lines of sight from the street frontages and spaces immediately surrounding the building as well as in a manner compatible with the safe operation of CCTV;*

- *Each entry foyer door is to be a security door with access being restricted to an intercom, code or card lock system;*
- *Access to the residential levels of the basement is to be controlled by a security door with access being restricted to an intercom, code or card lock system;*
- *Street number and way-finding signage of all buildings is to be readily identifiable from Railway Road, Underlay Road, Faraday Lane and Constitution Road;*
- *A security alarm is to be linked to the basement and pedestrian foyer doors to be activated in the event of forced entry;*
- *Windows and doors on the ground floor retail units are to be made of toughened glass;*
- *The internal portions of the basement are to be illuminated in accordance with the AS1158.1, AS1680 and AS2890.1;*
- *Install CCTV to monitor the perimeter and any naturally secluded or dark areas;*
- *The ceiling of each basement level shall be painted white or a like colour to increase visibility and reflective light throughout each basement level;*
- *All painted surfaces on the external parts of the building are to be treated with a graffiti resistant coating;*
- *Remove graffiti as quickly as possible to minimise potential for cumulative graffiti and vandalism actions; and*
- *Strata management is to be responsible for the maintenance of common property including landscaping and removal of any graffiti. Graffiti should be removed as quickly as possible as to reduce accumulative graffiti.*

**Condition 214A** has been added to ensure that the recommendations contained in Section 4.4.1 of the updated Crime Risk Assessment Report, Reference; M180330 are implemented prior to the issue of the Occupation Certificate.

### Part 3.5 – Boarding Houses

No changes are proposed to Building D (Boarding House) in terms of the physical building form. However, it is proposed to delete Basement 3 and relocate the laundry area for the Boarding house to Basement 2.

Condition 133 of the consent states:

- 133. Laundry facilities (Boarding House) -** *Washing machines and sinks shall be provided at a rate of one tub per ten rooms or one tub per twelve occupants (whichever is the greater) with a minimum WELS rating of 4 stars on the washing machines. Hot and Cold water shall be supplied to all washing machines and sinks. The internal clothes drying facilities shall be provided at a*

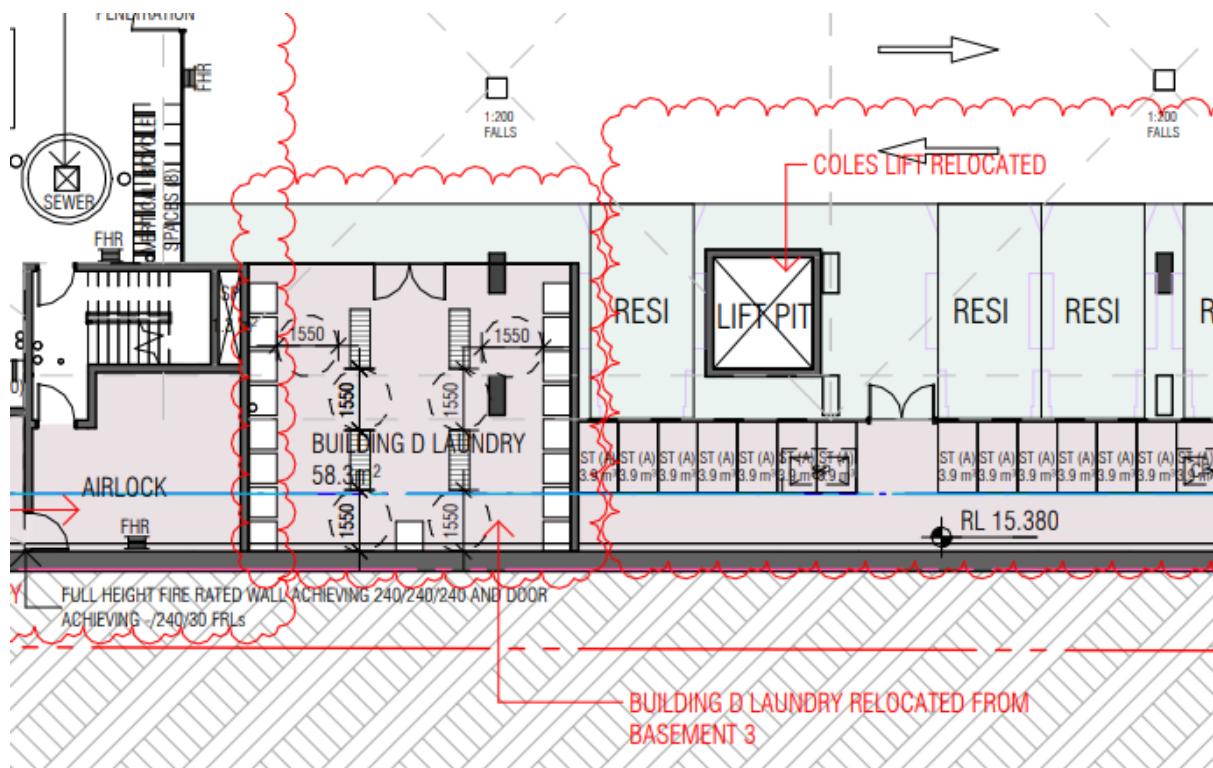


*rate of one dryer per 10 rooms with a minimum energy star rating of 4 stars and shall be rated no less than one star below the maximum available energy star rating available at the time of installation.*

*(Reason: To ensure provision of adequate and safe facilities).*

The approved laundry area was 84m<sup>2</sup>. The applicant has advised that the approved laundry is excessive to accommodate the required number of washers/dryers by Condition 133, as such it is proposed to seek to reduce the laundry size to 58.3m<sup>2</sup>.

A total of 162 boarding (co-living) rooms are provided (consistent with the approval), and as such 16.2 washers and dryers are required in accordance with Condition 133 of the consent. A total of 17 washer/dryers can be accommodated within the laundry, as modified, which satisfies Condition 133.



**Figure 16:** The modified laundry area with 17 washer/dryers.

### Part 9.3 – Parking Controls

Part 9.3 specifies that car parking is to be provided at the following rates:

#### *Residential Development - High Density (Residential Flat Buildings)*

- 0.6 to 1 space / one bedroom dwelling
- 0.9 to 1.2 spaces / two bedroom dwelling
- 1.4 to 1.6 spaces / three bedroom dwelling
- 1 visitor space / 5 dwellings



### *Boarding Houses – accessible area:*

- At least 0.2 parking spaces / boarding room (1 space /5 boarding rooms).
- Not more than 1 parking space for each person employed in connection with the development.

The development will not alter the boarding house component for carparking, providing the required 82 spaces as per the original approval. The retail component will also remain the same, 144 spaces allocated for retail.

The development will amend the number of apartments from 133 to 129 comprising of: 30 x 1 bedroom, 71 x 2 bedroom and 28 x 3 bedroom apartments.

Based on the above, the following car parking is required:

	Min	Max
<b>30 x 1 bed</b>	18	30
<b>71 x 2 bed</b>	63.9	85.2
<b>28 x 3 bed</b>	39.2	44.8
<b>Total 129 units</b>	<b>121.1 (122)</b>	<b>160</b>
<b>Visitor 1 space per 5 units</b>	25.8 (26)	25.8 (26)
<b>Total</b>	<b>148</b>	<b>186</b>

Based on the above a minimum of 148 spaces to maximum of 186 spaces are required for the residential parking.

It is proposed to reduce the number of carparking for the residential apartments to 45 spaces including 3 car share. This is a shortfall of  $148 - 45 = 103$  parking spaces.

The justification for the reduction in car spaces is that the operational/use of the apartments will change from individual owned apartments to rental apartments.

As discussed earlier in the report, it is not a matter of whether the apartments are individually owned or are rental housing, it is essentially whether the reduction in parking will impact on the area and whether it will achieve the objectives of the zone and parking controls.

The site is located within close proximity to good public transport ie within walking distance from Meadowbank Station and bus services and 400m from Meadowbank wharf. The proposal will also provide for 3 car share vehicles for the exclusive use of residents of the residential apartments.

The use of 3 car share is supported by Council. In Land and Environment Court ruling in *Turner Architects v City of Botany Bay Council* [2016] NSW 1186, Commissioner O'Neill held at [38]: *'...I accept the applicant's submission that... a car share vehicle replaces up to 10 to 12 private cars...'* In the matter of *Dimitri Dilles v Randwick City Council* [2017] NSWLEC 1202, Commissioner Smithson observed at [56] that *'...further, the Council's website advised that one car share space was equivalent to taking 7-20 cars off the road...'* In this matter, the Court found at [125] that *'on*

*balance, I therefore believe it is a reasonable outcome to accept a car share space and car sharing membership for occupants as an alternative to onsite provision...'. Therefore the provision of 3 car share will equate to 36 car spaces.*

The applicant contend that removal of one basement level of parking (removal of 167 spaces) will help to reduce traffic and will result in an improved traffic within the immediate area. The outcome is less parking on site will discourage car ownership which will significantly reduce the volume of traffic accessing the site compared to the approved development. Furthermore, the location of this site, having great access to public transport options, the use of 3 private share cars to replace parking spaces is supported.

Bicycle parking spaces are also required to be provided, at 10% equivalent to the required car parking spaces. Accordingly a minimum of 13 bicycle spaces is required. 23 bicycle spaces are provided. This is considered satisfactory.

Council's Engineers have reviewed the modification and raised no objections to the reduction in car parking. The justifications and merit assessment for the reduction in car parking has been discussed in details earlier in the report under Section 4.2.5.

**Condition 220** will be amended to reflect the car parking and bicycle spaces for the different uses on site.

### **Section 7.11 Contribution.**

The Section 7.11 Contributions was paid 16 July 2024. No further amendment is required.

## **5. LIKELY IMPACTS OF THE DEVELOPMENT**

All relevant issues regarding environmental impacts of the proposed development are discussed throughout this report.

The modifications proposed by this application will not exacerbate any environmental impacts already considered and supported under LDA2020/0199 and MOD2022/0210.

The development is considered satisfactory in terms of environmental impacts.

## **6. SUITABILITY OF THE SITE**

The proposed modification substantially relates to changes to the operational function of the 3 residential apartment buildings.

The modifications do not increase the overall scale of the development to what was originally approved and will not adversely impact upon the local road network.

As such, the site is considered to continue to be suitable for the development, as amended.

## 7. REFERRALS

The following section outlines the latest response from each of the internal and external referrals in relation to the subject application:

### External Referral:

#### Transport for NSW:

TfNSW has reviewed the application and has raised no objection as the proposed modifications. The modifications are not expected to have a significant impact on the classified road network.

### Internal Referral Comment

#### City Works (Traffic)

*The abovementioned changes in the use of apartment units, unit numbers and parking provision are not expected to result in any significant variations to the traffic generation assessed as part of the previously approved development application (LDA2020/199) because the number of apartment units has not been significantly reduced compared to the approved development. As such, the proposal is not expected to result in any significant changes to the traffic impacts of the development compared to what has been previously assessed as part of the current consent.*

*Traffic Services department therefore have no objection to the proposed Section 4.56 modification.*

#### Environmental Health

Council's Environmental Health Officer raises no objection to the proposal (provision of a residents' only gym). An Acoustic report has been submitted and the proposal is supported subject to operational conditions. **Conditions 78AA, 176A, 250 to 255.**

#### Development Engineering

Council's Senior Development Engineer has reviewed the application and has provided the following comments:

#### Stormwater Management

*The stormwater management system has been modified with respect to the onsite detention design strategy.*

*The site happens to straddle a ridge line with the southwestern portion discharging to Faraday Lane which is falling to the south towards Shepherds Bay, approximately 280m away by line of sight. The northwestern portion of the site discharges to the north and discharges to a significant trunk drainage line traversing Wool Way Reserve and Meadowbank.*

*For the northern catchment, the site would present as being higher in the catchment due to the runoff travel time. It is therefore deserving that onsite detention be provided for this catchment (as it is proposed) due to the flood affectation in Wool Way Reserve and Meadowbank Park. For the southern catchment however the discharge route is reasonably direct to the harbour with no flood affectation in the downstream region. It is supported that onsite detention not be implemented for this catchment as there is scope that the peak site discharge would proceed the peak flood event in the downstream catchment (i.e. it is beneficial that the site discharge fully through the downstream catchment completely before the arrival of a flood “wave” proceeding down from the upper catchment areas). Standard conditions are advised.*

### *Vehicle Access and Parking*

*Proposed: 45 on-site parking spaces, which include 3 car share for the residential apartments.*

*The plans have significantly modified the parking allocation in the removal of a basement parking level and seeking to convert the residential component to be owned by a single entity (business) who will rent out the residential apartments. The arrangement can be likened to a Boarding House operation with long term occupants and with no owner / occupiers. The boarding house and retail components of the development look to remain unchanged.*

*The development proposes 129 units and nominates 45 parking spaces. Whilst this is less than the level of parking required under the DCP Part 9.3 (Parking Controls) for high density units (122 resident parking spaces), the applicant has presented a number of aspects which clarifies the lower parking provision.*

*These are summarised below:*

- The site is located in close proximity to multiple public transport options. Meadowbank train station is opposite the site, there are numerous bus stops / routes fronting the site in Railway Road and there is a ferry service 400m from the site;*
- 3 car share spaces are to be incorporated within the parking area exclusively for the resident use are to be provided on the site;*
- The reduced level of parking will reduce traffic generation from the site and therefore has significantly reduced imposition on the surrounding road network; and*
- The applicant has made note to the legislative requirements relating to similar development types (build-to-rent) and noted that the proposal exceeds the non-discretionary parking requirements for such development.*

*Council's Development Engineering Services is in agreement with these matters. Of additional note, the development is located in proximity to the TAFE and so may likely be occupied by a greater proportion of students.*

*Otherwise, the following points are noted:*

- The proposed modifications present a minor reduction in the retail / commercial area component due to the implementation of a reception area and the gym on ground level.*

- *8 retail spaces are proposed on the basement parking level 2 despite it being predominantly resident spaces.*
- *The parking demand for the retail use is reduced by the very likelihood of most customers accessing the store as a linked trip (i.e. patrons visiting before / after work periods when commuting by rail / bus).*
- *The gym facility is for residents of the development only.*
- *No visitor parking has been nominated however noting the lower rates of vehicle ownership attributed to the suspected demographics of future occupants and applying this rationale to the visitor parking demand, it would be posed that the original development requirement of 28 visitor spaces (26 under the proposed unit density) could potentially be reduced by, say, 50% (14 parking spaces). It is recommended that 14 spaces (from 45) be allocated as visitor spaces, which is addressed by condition of consent.*

See amendments to **Conditions 109, 166 & 220.**

## **8. PUBLIC NOTIFICATION & SUBMISSIONS**

In accordance with Council's Community Participation Plan, the application was publicly exhibited between 19 January 2024 and 4 February 2024 to the same properties and objectors as those notified under LDA2022/0199.

The Land and Environment Court has been notified as required under the EPA Act 1979 & EPA Regulation 2021. Notification was given to the NSW Land and Environment Court on the 15 April 2024.

As a result of the public exhibition, four submissions were received, one in support and three in objection of the application. The submissions raise the following issues:

- *Concern about the removal of parking.*

The proposal will remove a basement level as such reducing the number of car parking spaces on site.

With regards to the parking impact, the development has been considered in detail under Section 4.2.5 of the report. In that consideration it was concluded that the subject site is an ideal site for consideration for reduced parking given its close proximity to public transport options (i.e. trains, buses and ferries), to good amenities such as supermarkets, restaurants and to Meadowbank TAFE.

The modification will result in the residential apartments being for rental housing not being able to be individually owned, i.e. operated and managed by a single entity, and generally this type of operation indicate that resident population do not own or use private vehicles in the same quantum or manner as residents of a residential flat building (which is reflected in the different parking rates for rental development).

The proposal will provide 3 car share vehicles for use solely by the residents of the rental component. It is estimate that 1 carshare vehicle can comfortably replace 12 private vehicles. The Land & Environment Court ruling in *Turner Architects v City of Botany Bay Council* [2016] NSW 1186, Commissioner O'Neill accepted the

submission that a car share vehicle replaces up to 10 to 12 private cars. **Condition 220** has been amended to impose 3 car share vehicles being provided for the use of the 3 residential apartment buildings.

The application is accompanied by a Traffic and Parking Assessment prepared by ttp (Transport Planning) dated 15 November 2023 which states that the reduction in car parking will also reduce the volume of traffic accessing the site and traffic impact on the local road network.

Given the provision of public transport alternatives within walking distance, and the on-site provision of 3 car share vehicles and excess bicycle parking spaces, the site is considered suitable for reduced parking. The site is within 40m from trains and buses and 400m from ferries, therefore the provision of 45 on-site parking spaces, which include 3 car share for the residential apartments is acceptable. All other parking provision for the Boarding House and commercial/retail component remains unaltered.

- *Meadowbank already overcrowded, too many apartments. Area already congested – the new addition will make it worse. The development should be for commercial business, oppose to the residential component.*

On 18 July 2022, the Land & Environment Court granted approval for demolition of existing buildings and construction of 4 x 6 to 7 storey buildings containing 133 apartments, 162 boarding rooms and commercial floor space with basement parking. This modification will slightly reduce the approved number of residential units from 133 to 129 apartments with some minor changes to the commercial component. The commercial component such as the supermarket, retail tenancies and general use of the public plaza will remain unchanged.

This modification involving deletion of a basement level will reduce the number of car parking spaces on site. This can be supported given that site being near different public transport options and Council's assessment is that traffic generation will not be made worse by this development. The reduction to the number of car parking spaces will reduce the number of car ownership on the site, helping to relief pressure on traffic generation.

- *Renters do not care about the area.*

This is not a planning consideration and there are no empirical evidence to support this.

## **CONCLUSION**

The application has been assessed under the matters for consideration of Section 4.15 of the Environmental Planning and Assessment Act 1979 and the relevant statutory and policy provisions. The proposal continues to be suitable for the site and is not contrary to the public interest.

Therefore, it is recommended that the application be approved for the following reasons:



- The modification satisfies the provisions of Section 4.56 of the Environmental Planning and Assessment Act 1979.
- The modification is substantially the same as the original approval.
- The development continues to be a permissible use, is consistent with the zone objectives and the floor space objectives under RLEP 2014.
- The variations to the ADG for parking and storage are acceptable as the proposal satisfies the parking and storage objectives and will promote public and active transport within a transport orientated site.
- The issues raised in the submissions do not warrant the refusal of the application and have been adequately addressed in this report.
- The proposed development does not create unreasonable environmental impact to development in the immediate vicinity.
- The development is in the public interest through the provision of accommodation and associated services to meet the demands of rental accommodation, especially close to public transport and educational facilities and will support the growth of the local community.

## RECOMMENDATION

That MOD2024/0005 to modify the consent for Local Development Application No. LDA2020/0199 on land at 1-20 Railway Road and 50 Constitution Road, Meadowbank be approved subject to the following conditions.

### A. Amend Condition 1 to read as follows:

#### GENERAL

The following conditions of consent included in this Part identify the requirements, terms and limitations imposed on this development.

1. **Approved Plans/Documents.** Except where otherwise provided in this consent, the development is to be carried out strictly in accordance with the following plans (stamped approved by Council) and support documents:

Document Description	Drawing No / Revision	Date	Prepared by
<b>Architectural Plans</b>			
Cover	Revision <del>E</del> <b>F</b>	<del>January 2022</del> <b>November 2023</b>	Curzon + Partners
Drawing Register	D001 Rev <del>D</del> <b>H</b>	<del>11/01/2022</del> <b>21/11/2023</b>	Curzon + Partners
Site Survey	D002 Rev C	26/11/2021	Curzon + Partners
Demolition Plan	D003 Rev C	26/11/2021	Curzon + Partners
Site Analysis	D004 Rev <del>C</del> <b>D</b>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Site Plan	D008 Rev <del>C</del> <b>D</b>	<del>26/11/2021</del>	Curzon + Partners

		<b>13/11/2023</b>	
Yield & Schedules	D009 Rev <del>C</del> <b>D</b>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
BASIX Commitments – Building A B & C	D010 Rev C	26/11/2021	Curzon + Partners
BASIX Commitments – Building D	D011 Rev C	26/11/2021	Curzon + Partners
<del>Basement 03 Floor Plan</del>	<del>D097 Rev C</del>	<del>26/11/2021</del>	<del>Curzon + Partners</del>
Basement 02 Floor Plan	D098 Rev <del>C</del> <b>F</b>	<del>26/11/2021</del> <b>21/11/2023</b>	Curzon + Partners
Basement 01 Floor Plan	D099 Rev <del>C</del> <b>E</b>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Ground Floor Plan	D100 Rev <del>D</del> <b>E</b>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Level 1 Plan	D101 Rev <del>E</del> <b>F</b>	<del>11/01/2022</del> <b>13/11/2023</b>	Curzon + Partners
Level 2 Plan	D102 Rev D	26/11/2021	Curzon + Partners
Level 3 Plan	D103 Rev D	26/11/2021	Curzon + Partners
Level 4 Plan	D104 Rev D	26/11/2021	Curzon + Partners
Level 5 Plan	D105 Rev E	11/01/2022	Curzon + Partners
Level 6 Plan	D106 Rev E	11/01/2022	Curzon + Partners
Level 7 Plan	D107 Rev C	26/11/2021	Curzon + Partners
Level 8 Plan	D108 Rev C	26/11/2021	Curzon + Partners
North-west Elevation Railway Rd	D200 Rev C	26/11/2021	Curzon + Partners
North-east Elevation Constitution Rd	D201 Rev D	11/01/2022	Curzon + Partners
South-east Elevation Faraday Ln	D202 Rev D	11/01/2022	Curzon + Partners
South-west Elevation Underdale Ln	D203 Rev C	26/11/2021	Curzon + Partners
North-west internal elevation – Building C & D	D204 Rev <del>C</del> <b>D</b>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
South east internal elevation – Building A & B	D205 Rev <del>D</del> <b>E</b>	<del>11/01/2022</del> <b>13/11/2023</b>	Curzon + Partners
Internal Elevations	D206 Rev <del>C</del> <b>D</b>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Sections	D250 Rev <del>C</del> <b>D</b>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Sections	D251 Rev <del>C</del> <b>D</b>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Sections	D252 Rev <del>C</del> <b>D</b>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners

Material Board	D300 Rev C	26/11/2021	Curzon + Partners
Material Board	D301 Rev D	11/01/2022	Curzon + Partners
Perspectives	D302 to D310 Rev C	26/11/2021	Curzon + Partners
FSR Calculation	D500 & D501 Rev <del>C-D</del>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Building Height Analysis	D502 Rev C	26/11/2021	Curzon + Partners
Solar & Ventilation Analysis	D503 & D504 Rev <del>C-D</del>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Communal Open Spaces & Communal Rooms	D505 Rev C	26/11/2021	Curzon + Partners
Car Parking Calculations	D507 Rev <del>C-D</del>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
GFA Bonus Calculations	D508 Rev <del>C-D</del>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Storage volumes – Building A	D509 Rev <del>C-D</del>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Storage volumes – Building B	D510 Rev <del>C-D</del>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Storage volumes – Building C	D511 Rev <del>C-D</del>	<del>26/11/2021</del> <b>-13/11/2023</b>	Curzon + Partners
Storage volumes – Basement	D512 Rev C	26/11/2021	Curzon + Partners
Plaza Detail Plan	D600 Rev B	26/11/2021	Curzon + Partners
Privacy Screen Details	D601 Rev A	26/11/2021	Curzon + Partners
Permeability Plan	D602 Rev B	26/11/2021	Curzon + Partners
Land Dedication Plan	D603 Rev D	11/01/2022	Curzon + Partners
Land Dedication Plan	D603_1 Rev C	26/11/2021	Curzon + Partners
Faraday Lane Planter Details	D604 Rev C	26/11/2021	Curzon + Partners
Survey Road Widening	D606 Rev C	26/11/2021	Curzon + Partners
Building A Cover Page	DA000 Rev C	26/11/2021	Curzon + Partners
Level 1	DA101 Rev <del>C-F</del>	<del>26/11/2021</del> <b>13/11/2023</b>	Curzon + Partners
Level 2	DA102 Rev C	26/11/2021	Curzon + Partners
Level 3	DA103 Rev C	26/11/2021	Curzon + Partners
Level 4	DA104 Rev C	26/11/2021	Curzon + Partners
Level 5	DA105 Rev C	26/11/2021	Curzon + Partners
Level 6	DA106 Rev C	26/11/2021	Curzon + Partners
Level 7	DA107 Rev C	26/11/2021	Curzon + Partners
Level 8	DA108 Rev C	26/11/2021	Curzon + Partners

Yield Analysis – Building A	DA501 Rev C	26/11/2021	Curzon + Partners
Adaptable & Livable Apartments – Building A	DA502 & DA503 Rev C	26/11/2021	Curzon + Partners
Building B Cover Page	DB000 Rev C	26/11/2021	Curzon + Partners
Level 1	DB101 Rev C	26/11/2021	Curzon + Partners
Level 2	DB102 Rev C	26/11/2021	Curzon + Partners
Level 3	DB103 Rev C	26/11/2021	Curzon + Partners
Level 4	DB104 Rev C	26/11/2021	Curzon + Partners
Level 5	DB105 Rev D	11/01/2022	Curzon + Partners
Level 6	DB106 Rev D	11/01/2022	Curzon + Partners
Level 7	DB107 Rev C	26/11/2021	Curzon + Partners
Level 8	DB108 Rev C	26/11/2021	Curzon + Partners
Yield Analysis – Building B	DB501 Rev C	26/11/2021	Curzon + Partners
Adaptable & Livable Apartments – Building B	DB502 Rev C	26/11/2021	Curzon + Partners
Building C Cover Page	DC000 Rev C	26/11/2021	Curzon + Partners
Level 1	DC101 Rev D	11/01/2022	Curzon + Partners
Level 2	DC102 Rev C	26/11/2021	Curzon + Partners
Level 3	DC103 Rev C	26/11/2021	Curzon + Partners
Level 4	DC104 Rev C	26/11/2021	Curzon + Partners
Level 5	DC105 Rev C	26/11/2021	Curzon + Partners
Level 6	DC106 Rev C	26/11/2021	Curzon + Partners
Level 7	DC107 Rev C	26/11/2021	Curzon + Partners
Level 8	DC108 Rev C	26/11/2021	Curzon + Partners
Yield Analysis – Building C	DC501 Rev C	26/11/2021	Curzon + Partners
Adaptable & Livable Apartments – Building C	DC502 Rev C	26/11/2021	Curzon + Partners
Building D Cover Page	DD000 Rev C	26/11/2021	Curzon + Partners
Level 1	DD101 Rev C	26/11/2021	Curzon + Partners
Level 2	DD102 Rev C	26/11/2021	Curzon + Partners
Level 3	DD103 Rev C	26/11/2021	Curzon + Partners
Level 4	DD104 Rev C	26/11/2021	Curzon + Partners
Level 5	DD105 Rev C	26/11/2021	Curzon + Partners
Level 6	DD106 Rev C	26/11/2021	Curzon + Partners
Level 7	DD107 Rev C	26/11/2021	Curzon + Partners
Level 8	DD108 Rev C	26/11/2021	Curzon + Partners
Yield Analysis – Building D	DD501 Rev C	26/11/2021	Curzon + Partners
Co-Living Rooms	DD502 Rev C	26/11/2021	Curzon + Partners
<b>Civil Plans</b>			

Cover	-	04/05/2022	Alpha Engineering & Development
General Arrangement Plan	CIV01 Rev H	04/05/2022	Alpha Engineering & Development
Service and Utility Plan (Sheet 1 Of 2)	CIV02 Rev H	04/05/2022	Alpha Engineering & Development
Service and Utility Plan (Sheet 2 Of 2)	CIV03 Rev H	04/05/2022	Alpha Engineering & Development
Public Domain Plan (Sheet 1 Of 2)	CIV04 Rev H	04/05/2022	Alpha Engineering & Development
Public Domain Plan (Sheet 2 Of 2)	CIV05 Rev H	04/05/2022	Alpha Engineering & Development
Swept Path Analysis	CIV06 Rev H	04/05/2022	Alpha Engineering & Development
Public Domain Alignment Chainage and Spot Elevation	CIV07 Rev H	04/05/2022	Alpha Engineering & Development
Cut and Fill Details	CIV08 Rev H	04/05/2022	Alpha Engineering & Development
Underdale and Faraday Lane Road - Centreline Long Section	CIV09 Rev H	04/05/2022	Alpha Engineering & Development
Faraday Lane Lip of Gutter (Left) - Longitudinal Section	CIV10 Rev H	04/05/2022	Alpha Engineering & Development
Underdale and Faraday Lane – Boundary Long Section	CIV11 Rev H	04/05/2022	Alpha Engineering & Development
Cross Sections (Sheet 1 of 5)	CIV12 Rev H	04/05/2022	Alpha Engineering & Development
Cross Sections (Sheet 2 of 5)	CIV13 Rev H	04/05/2022	Alpha Engineering & Development
Cross Sections (Sheet 3 of 5)	CIV14 Rev H	04/05/2022	Alpha Engineering & Development
Cross Sections (Sheet 4 of 5)	CIV15 Rev H	04/05/2022	Alpha Engineering & Development
Cross Sections (Sheet 5 of 5)	CIV16 Rev H	04/05/2022	Alpha Engineering & Development
Council Standard Drawings – Kerb Ramp and Pavement Type Granite	CIV17 Rev H	04/05/2022	Alpha Engineering & Development
Council Standard Drawings - Tree Pit Detail and Typical	CIV18 Rev H	04/05/2022	Alpha Engineering & Development

Pavement Structure Local Road			
Council Standard Drawings - Heavy Duty Layback And Driveway	CIV19 Rev H	04/05/2022	Alpha Engineering & Development
Council Standard Drawings – Raised Pedestrian Crossings Typical Section	CIV20 Rev H	04/05/2022	Alpha Engineering & Development
Typical Drawing for Service Conduit Under Footpath	CIV21 Rev H	04/05/2022	Alpha Engineering & Development
<b>Landscape Design Drawings</b>			
Landscape Plan: Ground Floor	LP01 Issue G	28/01/2022	Landscape Architecture
Landscape Plan: Level 1(North)	LP02 Issue G	12/01/2022	Landscape Architecture
Landscape Plan: Level 1(South)	LP03 Issue G	12/01/2022	Landscape Architecture
Landscape Plan: Level 2 & 3	LP04 Issue F	02/12/2021	Landscape Architecture
Landscape Plan: Level 4 & 5	LP05 Issue F	02/12/2021	Landscape Architecture
Landscape Plan: Level 6	LP06 Issue F	02/12/2021	Landscape Architecture
Landscape Plan: Level 7 (North)	LP07 Issue F	02/12/2021	Landscape Architecture
Landscape Plan: Level 7 (South)	LP08 Issue F	02/12/2021	Landscape Architecture
Schedule	LP08 Issue F	02/12/2021	Landscape Architecture
Paradigm Imagery	LP10 Issue F	02/12/2021	Landscape Architecture
Levels Plan: Level 1 (North)	LP11 Issue C	12/01/2022	Landscape Architecture
Levels Plan: Level 1 (South)	LP12 Issue B	12/01/2022	Landscape Architecture
Landscape Sections 01	LP13 Issue B	23/11/2021	Landscape Architecture
Landscape Sections 02	LP14 Issue A	02/11/2021	Landscape Architecture
<b>Reports/Supporting Documentation</b>			
<b>Document Name</b>	<b>Date</b>	<b>Prepared by</b>	
Arborist Report	1/11/2021	Tree and Landscape Consultants	
Preliminary Site Investigation	20/06/2019	Benviron Group	



Detailed Site Investigation	03/02/2020	Benviron Group
Remediation Action Plan	07/02/2020	Benviron Group
Geotechnical Investigation Report	13/10/2020	Benviron Group
Acid Sulphate Assessment	13/10/2020	Foundation Earth Sciences
Demolition Report and Activity Method Statement	2020	Elite Civil Engineering
Waste Management Plan	1/10/2020	Dickens Solutions
BASIX Certificate – Building A, B and C	<del>14/10/2020</del> <b>20/11/23</b>	GEC Consulting Pty Ltd
BASIX Certificate – Building D	17/11/2022	
Acoustic Assessment	07/05/2020 & <b>24 April 2024.</b>	- Acoustic, Vibration & Noise Pty Ltd - <b>Pulse White Noise Acoustics, reference 240007-Railway Road Meadowbank-Gym Acoustic Assessment-R0.</b>
Preliminary Fire Safety Engineering Report	07/05/2020	Design Confidence
Proposed Consolidation Boundary	18/11/2020	Daw & Walton Consulting Surveyors
Boarding House Plan of Management	1/11/2020	Sasco Development Pty Ltd
<b>Plan of Management</b>	<b>23/04/2024</b>	<b>Apt.</b>

The Development must be carried out in accordance with the amended plans approved under this condition.

(Reason: To ensure the development is carried out in accordance with the determination).

**B. Amend Conditions 3, 122, 109, 166, 174 & 220 to read as follows:**

- 3 **BASIX.** Compliance with all commitments listed in BASIX Certificate(s):
- Buildings A, B & C: BASIX Certificate ~~1080973M\_06 dated 16 February 2023~~ **1080973M\_08 dated 20 November 2023**
  - Building D: 1082544M\_04 dated 17 November 2022.

(Reason: Statutory requirement).

109. **Stormwater Management.** Stormwater runoff from the development shall be collected and piped by gravity flow to the existing kerb inlet pit fronting the site in Railway Road, generally in accordance with ~~the revised stormwater drawings prepared by Smart Structures Australia (Refer to Project No: 220502, DWG D00 – D004 (REV A), D13-D15 (REV A) and D20-D22 (REV A) – October 2022)~~ **Smart**

**Structures Australia (Refer to Project No. 220502 Sheets D00-D22 Rev A dated 20 October 2023)** subject to any variations marked in red on the approved plans or noted following;

- The volume of the sump tank for the pump system must be enlarged as per the Council DCP and required by condition “*Stormwater – Pump System*”.
- ~~The proposed location and configuration of rainwater tank 1 presents potential for inundation of the internal retail floor area at ground level, despite the measures implemented (sealed access manholes). Such measures may potentially fail over time (inadequate seal) or may not be reinstalled correctly following any access to the tank. To circumvent this, the tank is to be relocated so as to adjoin the lift shaft and stairwell to the north, swapping the location with the bike parking on Basement Level 01. A short access shaft is to be provided at the northern end, elevated sufficiently so as to provide an exposed surcharge grate opening to the footpath along Railway Road.~~
- Connection to the public drainage infrastructure will require the approval of Council’s City Works (Stormwater) Department. Any conditions associated with this approval must be noted on the plans.

The detailed plans, documentation and certification of the drainage system must be submitted with the application for a Construction Certificate and prepared by a suitably qualified Civil Engineer and comply with the following;

- The certification must state that the submitted design (including any associated components such as WSUD measures, pump/ sump, absorption, onsite dispersal, charged system) are in accordance with the requirements of AS 3500.3 (2003) and any further detail or variations to the design are in accordance with the requirements of Council’s DCP 2014 Part 8.2 (*Stormwater and Floodplain Management*) and associated annexures.
- The submitted design is consistent with the approved architectural and landscape plan and any revisions to these plans required by conditions of this consent.

The subsurface drainage system must be designed to preserve the pre-developed groundwater table so as to prevent constant, ongoing discharge of groundwater to the public drainage network, as well as avoid long term impacts related to the support of structures on neighbouring properties.

(Reason: To ensure that the developments stormwater management system is aligned with the controls and objectives of the City of Ryde DCP 2014 Part 8.2)

166. **Stormwater Management - Construction.** The stormwater drainage system on the site must be constructed in accordance with the Construction Certificate version of ~~the revised stormwater drawings prepared by Smart Structures Australia (Refer to Project No: 220502, DWG D00 – D004 (REV A), D13-D15(REV A) and D20-D22 (REV A) – October 2022)~~ **Smart Structures Australia (Refer to Project No. 220502 Sheets D00-D22 Rev A dated 20 October 2023)** submitted in compliance to the condition labelled “*Stormwater Management.*” and the requirements of Council in relation to the connection to the public drainage system.

(Reason: To ensure the stormwater system is constructed as approved).

174. **BASIX.** The submission of documentary evidence of compliance with all commitments listed in BASIX Certificate(s) numbered:

- Buildings A, B & C: BASIX Certificate ~~1080973M\_06 dated 16 February 2023~~ **1080973M\_08 dated 20 November 2023**
- Building D: 1082544M\_04 dated 17 November 2022.

220. **Parking Allocation.** Both the owner and occupier of the development must provide and maintain the required parking allocation as follows;

Basement Level 1

- A minimum ~~144~~ **136** retail parking spaces.

~~Any staff and long term parking spaces must be located in the western most parking aisle, commencing from the boom gate entry onwards.~~ **Any staff and long-term parking spaces must be located close to a lift core or travelator to facilitate easier access to ground floor retail**

- Minimum ~~8~~ **12** bicycle parking spaces

Basement Level 2 & 3

- **Minimum** ~~28~~ **14** visitor spaces
- **Minimum 8 retail parking spaces**
- **Minimum** ~~165~~ **31** residential spaces. **Within the residential spaces, 3 car share spaces are to be provided solely for the use of the residents of the rental apartments in Buildings A, B & C.**
- 82 spaces for the boarding house (including 1 staff / management space)
- ~~43~~ **11** bicycle spaces (residential)
- 33 bicycle and 33 motorcycle spaces (boarding house).

(Reason: To ensure the development maintains the capacity and allocation of parking spaces on the site.)

**C. Additional Conditions 78A, 176A, 214A, 250, 251, 252, 253, 254, 255 & 256 are added:**

**78A. Compliance with Acoustic Report (Gym).** Prior to the issue of a Construction Certificate, the construction drawings and construction methodology must be assessed and certified by a suitably qualified Acoustic Consultant to be in accordance with any requirements and recommendations of the approved acoustic report for the gymnasium, prepared by Pulse White Noise Acoustics, reference 240007-Railway Road Meadowbank-Gym Acoustic Assessment-R0, dated 24 April 2024.

Note: Suitably qualified Acoustic Consultant means a consultant who holds a current member grade of the Australian Acoustics Society.

(Reason: To ensure appropriate noise attenuation measures are used)

**176A Acoustic Verification Report** - Prior to the issue of the Occupation Certificate, a suitably qualified acoustic consultant\* must prepare an acoustic verification report to the satisfaction of the Principal Certifier that confirms the following:

- a) All recommendations contained in the DA acoustic report prepared by Pulse White Noise Acoustics, reference 240007-Railway Road Meadowbank-Gym Acoustic Assessment-R0, dated 24 April 2024 have been implemented, and
- b) The project specific noise criteria established in the DA acoustic report and any other noise and vibration criteria specified in this consent are being complied with.

\*Note: Suitably qualified Acoustic Consultant being a consultant who holds a current member grade of the Australian Acoustical Society.

(Reason: To protect residential amenity)

214A. **Crime Assessment Report.** The recommendations contained in Section 4.4.1 of the updated Crime Assessment Report, Ref:M180330 are to be fully implemented/complied with prior to the release of the Occupation Certificate.

(Reason: Ensure security and safety on site).

250. **Use of Gymnasium and Communal Facility.** The use of the gymnasium and the first floor communal area are not for commercial purposes. The use of these areas are only for the residents of the development only.

(Reason: To protect residential amenity).

251. **Operational noise of the Gymnasium** . The LA10(15minute) noise from the gymnasium or exercise facility shall not exceed the background noise level in any octave band frequency (31.5Hz to 7 kHz inclusive) by more than 5 dB at the boundary, or within at any affected residence between 7am\* and 10pm (\*8am on Sundays and public holidays).

(Reason: To maintain appropriate amenity to nearby occupants).

252. **Operational noise of the Gymnasium** - Impact noise from weight-drops or other similar sources must not exceed LAFMAX 25 dB during the night-time period\* when measured within the closest sensitive receiver location (\*night-time is 10pm to 7am, 8am on Sundays and public holidays).

(Reason: To maintain appropriate amenity to nearby occupants)

253. **Operational noise of the Gymnasium.** Impact noise from weight-drops or other similar sources must not exceed the LAFMAX levels in octave bands 31.5 Hz to 250 Hz within the closest sensitive receiver location:

- (a) LAFMAX  $\leq$  35 dB for daytime (7am to 6pm)
- (b) LAFMAX  $\leq$  30 dB for evening (6pm to 10pm)
- (c) LAFMAX  $\leq$  25 dB for night time (10pm to 7pm)

(Reason: To maintain appropriate amenity to nearby occupants)

254. **Residential Amenity – Noise (Communal area).** Noise from any communal area/facility shall not be audible in any habitable room in any residential premises between the hours of 10pm and 7am. Any amplified music used within a communal room (including the gymnasium) shall be limited in volume so as not to cause a disturbance to the amenity of the adjoining residences. Noise insulating materials or construction (such as acoustic rubber matting or panelling) should be installed wherever it is anticipated that activities or the use of plant and equipment may generate a noise disturbance to surrounding premises.

Within the communal facility, the playing of amplified music or messages, any spruiking and the likes are not to disturb the amenity of other private places.

(Reason: To maintain appropriate amenity to nearby occupants).

255. **Compliance with the approved Plan of Management (for the rental housing).** The operation of the rental housing apartments shall be in accordance with the approved Plan of Management dated and listed at Condition 1 is not to be altered without the prior approval of Council. Where there are any inconsistencies between the Plan of Management and the conditions of the consent, the conditions prevail.

(Reason: To ensure the development is in accordance with the determination).

**D. That TfNSW be advised of the decision.**

**E. That those persons who provided a submission be notified of the decision.**

**Report prepared by:**

**Sandra McCarry**  
Senior Town Planner

**Report approved by:**

**Holly Charalambous**  
Senior Coordinator Development Assessment

**Carine Elias**

## Manager Development Assessment