

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 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"> - 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
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"> • Environmental Planning and Assessment Act 1979; • Environmental Planning and Assessment Regulation 2021 • State Environmental Planning Policy (State and Regional Development) 2011; • State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP); (<i>Savings provision</i>) • State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development; • Ryde Local Environmental Plan 2014; and • City of Ryde Development Control Plan 2014.
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 Attachment 6: Amended Traffic & Parking Statement

Clause 4.6 requests	Not applicable to a Modification Application
Summary of key submission issues	<ul style="list-style-type: none"> • Overcrowding of the area • Parking
Report prepared by	Sandra McCarry – Senior Town Planner
Report date	27 August 2024
Summary of s4.15 matters Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the Assessment report?	Yes
Legislative clauses requiring consent authority satisfaction 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
Clause 4.6 Exceptions to development standards 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
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)?	Not applicable
Conditions 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 from 417 to 317 spaces, including the addition of 10 car share 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 ~~133~~ **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%).
- Clause 29

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

- Apartment Design Guide: 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 Manual)* 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 7,773m². 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 has been 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 (April 2024).*

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. This aerial view is prior to demolition works. All of the existing buildings on site has since been demolished. *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 of 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 3,591m² 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.

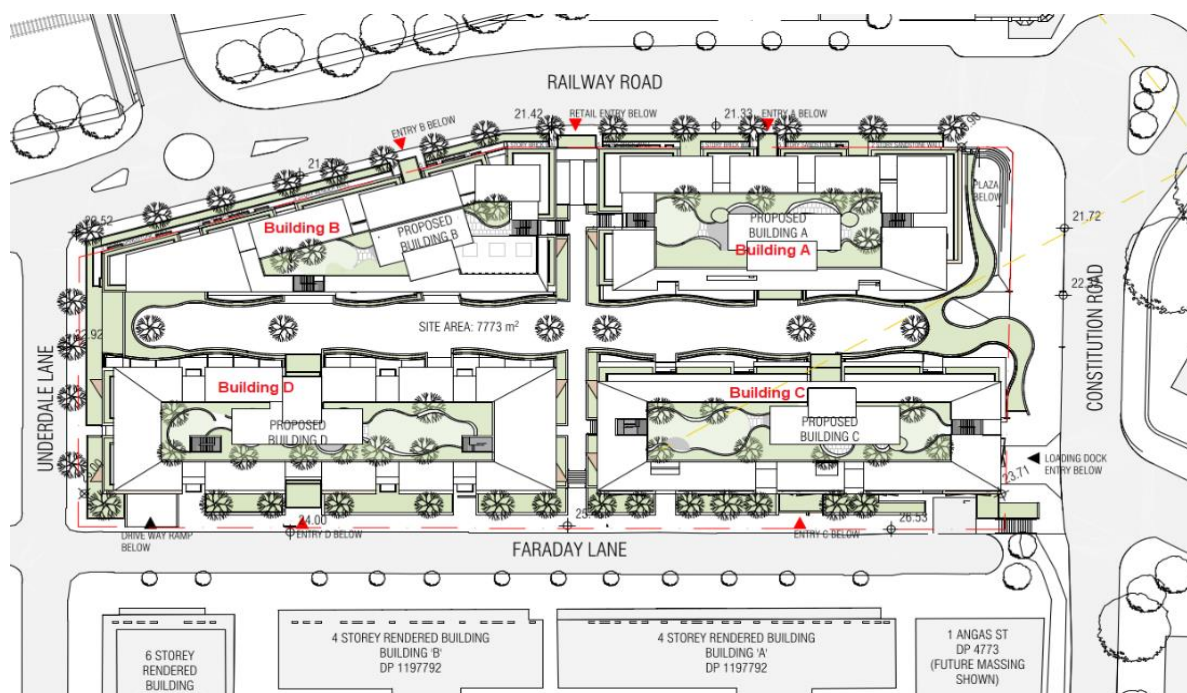


Figure 4: Plan showing the development, showing the roof level and location of each of the buildings.

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 as there were suggestions it was relying on Build to Rent (BTR) as well as requesting 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 rather than a new application due to time constraints. An earlier pre-meeting with council and the applicant discussed this and it was agreed that a modification would be acceptable.

It was confirmed that the under Schedule 7A, saving provisions of the Housing SEPP (2021), that 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. The applicant also clarified that they do not require the building to be subdivided as it will be operated under one entity. The applicant also sought to amend the consent to not to allow strata subdivision of the residential apartments by way of a condition.

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 were willing to accept a restriction on the title of the land to restrict the strata subdivision of the residential apartments for a period of 15 years as this requirement/condition was akin to other rental housing development type (i.e. BTR, albeit 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.

- A preliminary Briefing meeting was held on 19 June 2024 for the SNPP to review the proposal. The Panel at the briefing raised concerns about the reference to Build-To-Rent (BTR) provisions. The applicant advised that any reference made to the BTR Housing provisions under SEPP (Housing) 2021 was to liken the nature of the use to a commonly understood style of housing, and reference to BTR was for the

purpose of providing a merit based argument to supporting the proposed modification in terms of parking and storage. The applicant was advised to remove all reference to BTR provisions.

- Council had a meeting with the Panel on 14 August 2024 to ascertain whether the determination date could be brought forward. Panel advised that they still have concerns about the modification, in particular the shortfall in parking. The Panel wanted documentary evidence to support the reduction in car parking, that the proposed number of parking spaces is sufficient to cater for the development based on analytical data and surveys. The panel commented that the submitted Traffic report relied on the numerical requirement for a BTR development and as this is not BTR, a car parking analytical study/report should have been undertaken to support such a large variation under the ADG. The panel also raised that the test of substantially the same development is to be addressed in councils assessment report (this along with other matters is addressed within the body of this report).
- The applicant submitted an Amended Traffic and Parking Statement (**Attachment 6**) on 27 August 2024 and have amended the parking allocation to comply with the required parking spaces for each of the uses including the provision of more car share vehicles.

3. THIS PROPOSAL - MOD2024/0005 (as amended on 27 August 2024)

This modification proposes to:

- Deletion of Basement 3 resulting in a reduction in the number of car parking spaces and amend parking allocation/arrangement including provision of additional car share vehicles, (a total of 10 car share vehicles being provided).
- 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.

The applicant has also advised in their documentation that they are changing the operational management of the approved residential apartments buildings (Buildings A, B & C) to rental housing stock under single ownership. The apartments will not be strata subdivided.

The following changes are:

Basement Level 03

- Deleted.

Basement Level 02

- Building D storage added and building services reconfigured to suit detailed services coordination;
- Building D secure bicycle and motorcycle parking relocated from Basement Level 03;
- Building D laundry relocated from Basement Level 03;
- Coles lift relocated;
- Relocated parking spaces;
- Building B lift lobby reconfigured to suit detailed services coordination;
- Relocated Building A, B & C bicycle parking spaces;
- Removal of car parking spaces due to traveller above;
- Building A lift lobby reconfigured to suit detailed services coordination;
- Building C lift lobby reconfigured to suit detailed services coordination;
- Retail car parking spaces overflow from Basement Level 01;
- Provision of car wash bays;
- 600mm DIA Gatic Access lib relocated from Basement Level 03;
- Building B storage relocated;
- Fire pump room relocated from Basement Level 03; and
- Airlock relocated from Basement Level 03.
- Car share vehicles x 6 (2 of which are for the use of the boarding house and 4 are for the residential component of the development).

Basement Level 01

- Retail car spaces, car share vehicles x 4 for the residential component of the development; and
- RWT/OSD updated as per detailed services coordination.

Ground Floor (Building A)

- Reconfiguration of commercial/retail tenancies to provide a lobby/reception, gym and toilets.

Level 1 (Building A)

- Removal of Units 101, 102, 107 and 108; and
- New communal room added.

No changes to Buildings B, C & D

No changes are proposed to Building D (Boarding House) in terms of operation, use and built form.

The bulk and scale and generally the visual appearance of the overall development will not change as no changes are proposed to the building 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
- Condition 239

Additional **Conditions 78A, 176A, 214A, 250, 251, 252, 253, 254 & 255** have been imposed requiring the operation of the rental housing, gym, communal area and car share. 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 modifications do not seek a formal change of use to Build-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, i.e. within walking distance to trains, buses and ferries, and therefore is suitable for reduced parking as assessed under SEPP ARH, Apartment Design Guide 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 proposed modifications 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 5: Approved Ground floor plan – red circle indicates internal reconfiguration to gym and lobby area, see Figure 6 below.

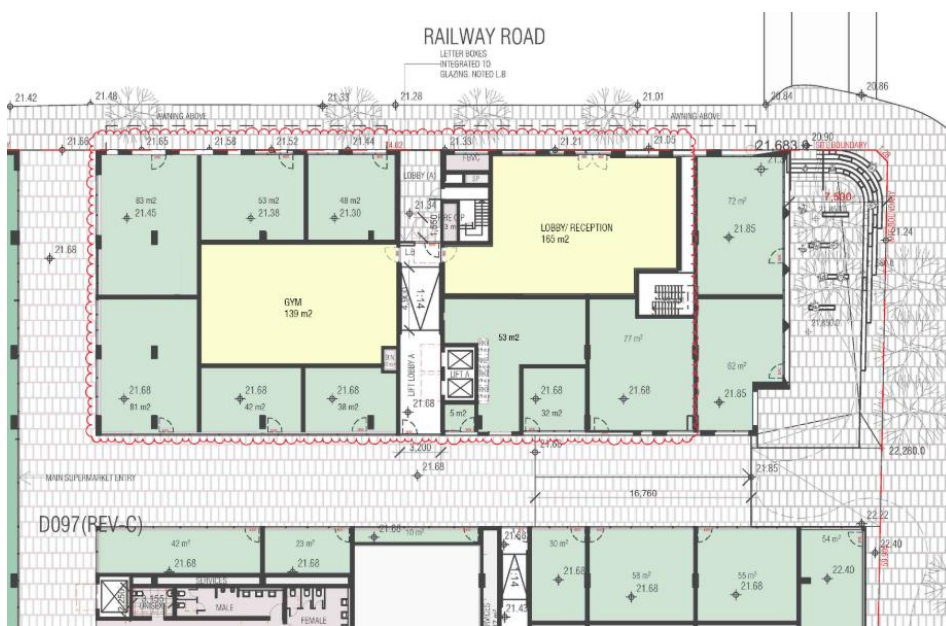


Figure 6: Proposed ground floor modification with new gym and lobby area.



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 and amendment to parking allocation and provision of additional car share spaces;
- Reduction in storage for the residential apartments; 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 **Attachment 4** and is supported. 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 deletion of the basement and single ownership 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 delete a basement level, change the parking arrangement and 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 the modifications on the whole 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 and 3 basement levels. 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, and *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2024] NSWLEC 31, (which was an appeal to the original finding), 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 *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2024] NSWLEC 31, the Commissioner needed to undertake three tasks:

- 1) *Finding the primary facts*: This involves drawing inferences of fact from the evidence of the respects in which the originally approved development would be modified. These respects include the components or features of the development that would be modified, such as height, bulk, scale, floor space, open space and use, and the impacts of the modification of those components or features of the development.
- 2) *Interpreting the law*: This involves interpreting the words and phrases of the precondition in s4.55/4.56) as to their meaning.
- 3) *Categorising the facts found*: This involves determining whether the facts found fall within the legal framework of the substantially the same test in s4.55/4.56 of the EPA.

In this modification, the components to be modified are the deletion of the basement car parking (and changing the parking arrangement), changing from being able to be individually owned to one ownership and reduction in the number of apartments from 133 to 129 and minor increase in floor space with lobby and gym space. The deletion of the basement level will alter the number of parking spaces provided on site. However, the deletion of a basement level will not alter the design features of the development such as height, bulk, scale, open space and uses.

The impacts of the modifications are considered minor, there will be no visual impacts of the proposal. The reduction in the number of standard of car parking spaces which is offset by the car share spaces. The reduction in the number of car space will reduce traffic generation/congestion and pollution. The impact of whether it is individually owned or one ownership, do not alter the original approval ownership structure. No conditions were imposed requiring the development to be strata or owned by a single entity.

The precondition in s4.56 is to address if the modifications are substantially the same development as the development for which the consent was originally granted.

The main quantitative differences relate to the reduction in car parking spaces and basement storage. The proposed internal layout changes will slightly increase the approved GFA, however, no changes are proposed to the approved building envelopes. Whilst the modification involves the deletion of a basement level, hence reduction in carparking, this is not a critical element which will be significantly altered to the extent that it would change the fundamental nature of the development. The proposal will still have basement carparking for the different uses on site. No changes are proposed to access to the development. Also, importantly, the works to widen Faraday Lane and create an intersection with Constitution Road will not be altered. The other physical aspects of the approved development to be modified are internal and have no bearing on the appearance or form of the approved development. The overall essence of the development remains unchanged.

In terms of qualitative assessment, the use is not changed. The development will still be for mixed use with boarding house, commercial and shop top. The overall design and characteristic features of the development is not changed, with the visual appearance of

the development generally being the same as that approved when viewed from the street and adjoining properties.

As discussed above, the operational use as rental housing compared to a mix of owner-occupied and rental do not change the fundamental use, the proposal is still for residential accommodation purpose and is not such a change as to alter the essence or character of the development. Thus, given the quantitative and qualitative changes, 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 and meets the legal framework of the substantially the same test in S4.56.

As detailed above, the proposal will not alter the key quantitative aspects of the development in terms of built form, and as a result will not alter the key qualitative aspects of the development in terms of its environmental impacts on the site and locality.

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.

The proposed modifications do not result in a development that is contrary to the reasons that informed the decision of the Court.

The consideration and reasons are attached as **Attachment 3**. In summary, Commissioner Gray granted deferred consent to the parent LDA as:

- The development for a boarding house, commercial premises, shop top housing are permissible in the B4 Mixed Used zone;
- SEPP ARH apply to the development and the development benefits from the saving provision of SEPP Housing. The development satisfies the matters in Clause 30(1) & 30(A) of the SEPP and as the development is between 6 & 7 storey, the design is compatible with the surrounding development and the high density character of the area. The development meets the criteria for density and

scale, private open space, parking and accommodation size under SEPP ARH (for the Boarding House).

- Under Clause 29(1) (c) (ii) the total permitted FSR (including the additional 20% Floor space applies to the whole of the site).
- The written request for the height contravention was supported as the written request demonstrated that compliance with the standard is unreasonable and unnecessary given that the proposal is consistent with the objectives of the standard. The written request established sufficient environmental planning grounds in that, the breach allows for building mass to be centred above the buildings to enable significant setbacks at the intersection of Constitution Road and Railway, which allow for a plaza area and for the built form to be broken up into 4 distinct towers.
- The development will not unacceptably impact on the heritage significant of nearby heritage items.
- Pursuant to Clause 6.1 of RLEP, appropriate consideration has been given to Acid Sulphate (An Acid Sulphate Assessment dated 13 October 2020) concluded that there will not be excavation below RL 1 AHD.
- Appropriate consideration has been given to earthworks (geotechnical report dated October 2020), Waste Management, BASIX report and stormwater and environmentally sustainability requirements under Clause 6.4 & 6.6 of the RLEP.
- Consideration has been given as to whether the subject site is contaminated as required by cl 4.6 of State Environmental Planning Policy (Resilience & Hazards) 2021. The commissioner considered a report specifying the findings of a preliminary investigation and a Detailed Site Assessment report prepared by Benviron Group dated February 2020. The report confirms that the site is able to be remediated and is suitable for the development.
- As required by CI 30(2) of the SEPP 65 – Design Quality of Residential Apartment Development and based on the Urban Design Report dated 27 May 2020 and the Design Verification Stated dated 11 May 2020, adequate regard has been given to the design quality principles and to the objectives specified in the Apartment Design Guide.
- SEPP (Transport & Infrastructure) 2021 applies – a Structural Engineering Report & Construction Methodology dated 11 March 2020 confirms that the excavation will be located at least 33m and CI 2.99 do not apply. Have taken into consideration the Acoustic Report dated 7 May 2021 and am satisfied that the appropriate measures taken.
- The development is a traffic generating development under Clause 2.122 of the SEPP TI and the Traffic & Parking Impact Assessment dated 23 November 2023 and the Traffic Review dated 1 December 2021, the matters required by Clause 2.122 (4) was considered.
- The Voluntary Planning Agreement provides a lawful manner in which interests in land can be dedicated to Council. The proposed VPA meets the requirements of s 7.4 of the EPA Act.

The proposed modifications do not result in a development that is contrary to the reasons provided by the Court in the granting of consent to the original development as:

- The proposal will not alter the use of the development as originally approved and will maintain the provision of mixed use with a boarding house, commercial

premises and shop top housing, and the relevant conditions of consent imposed will not be altered.

- The various considerations pertain to the SEPP (Affordable Rental Housing), the written request for height, and SEPP (Resilience and Hazards) have not been significantly altered as part of this application.
- In terms of SEPP 65, the development will not result in any significant changes to the architectural design/character of the approved development and will present to the streetscapes and neighbouring properties as originally approved. When looking at the subject modification in a holistic sense, the change in parking is only one of many aspects of the development as a whole, with the overall building form, physical appearance, setbacks, land uses, landscaping and egresses for the site fundamentally the same. These aspects form a significant portion of the development that remain unchanged.

The change in the parking and storage is a qualitative aspect of the development that has changed, however, forms only part of a development that overall is fundamentally the same as approved when looking at the development as a whole. The merits of car parking and storage are addressed further in this report.

- The modification is consistent with the matters considered under Clause 2.122 (4) of SEPP (Transport & Infrastructure) 2021. The reduced level of parking will reduce traffic generation from the site in addition to the VPA; which was entered into to mitigate traffic around the area and will not be altered.

In accordance with the above, the proposed modifications will not alter the reasons given by the Court in granting consent for the approved development. The proposed changes will not result in any significant or wholesale changes which require reconsideration of the reasons for approval. As such, it is considered that Clause 4.56(1A) has been satisfied.

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>Development likely to affect an electricity transmission or distribution network</p> <p>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 & 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>
<p>Development in or adjacent to rail corridors</p> <p>Clause 2.100</p> <p>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>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 & Noise P/L was submitted with the original application. The report concludes that <i>“the</i></p>	<p>Yes - Conditions imposed in</p>

SEPP (Transport & Infrastructure) 2021	Comments	Compliance
<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><i>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" & 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 modifications 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>	parent DA still applicable.
<p>Clause 2.122 – Traffic Generating Development. 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>	Yes - Conditions imposed in parent DA still applicable.

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>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>	<p>Existing maximum FSR for any residential accommodation permitted on the land is 2.7:1 or GFA of 20,987m² (Site area x 2.7 = 7,773m² x 2.7 = 20,987m²)</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 979.3m² of GFA) is allowable for the development, equating to a total allowable GFA of 21,967m² (2.82:1).</p> <p>These is the same figures as shown in the applicant's bonus floor space Drawing D508.</p>	<p>The approved parent DA has a total GFA of 21,950m² (FSR of 2.82:1).</p> <p>It is now proposed to increase the GFA to 21,995m².</p> <p>21,967 – 21,995 = 28m²</p> <p>The GFA is over the maximum allowed by 28m². Variation of 0.13% (FSR of 2.83:1).</p>	<p>No – minor variation acceptable. See discussion below.</p>
<p>(2)(a), Building Height</p> <p>(2) (b) Landscaped</p> <p>(2)(c) Solar access</p> <p>(2) (d) Private Open Space</p>	<p>No changes to the built form in terms of height, landscaping, POS or solar access</p>		<p>N/A</p>
<p>(2) (e) Parking</p>			

Clause 29 Standards which cannot be used to refuse consent	Required	Proposed	Complies
<p>i) In the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>((iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the</p>	Not a social housing provider so (iia) and (iii) are applicable.	<p>In the approved parent DA the boarding house (162 rooms) was allocated 82 car spaces within Basement Levels 02 and 03, applying a rate of 0.5 for each room.</p> <p>It is now proposed to allocate a rate of 0.2 parking space, which based on 162 rooms requires 32 + 1 parking space for employee = 33 spaces. 16 individual car spaces and 2 car shares will be allocated for the use of the boarding house.</p>	No – proposed rate considered acceptable. See discussion below.
(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).	Yes - Assess on merit. Variation supported. See discussion below.

Non-compliance with Clause 29(1)(ii) & (2)(e)

Floor Space

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 21,967m² (2.82:1).

This amended proposal seeks a departure from the floor space ratio control with an exceedance of 28m² (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 21,950m², which was under the maximum allowed by 17m². The additional GFA of 45m² which results from the proposed

internal modifications will create a minor non-compliance with the maximum FSR permitted on the site by 28m² 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.

Car parking:

clause 29 (2)(e) states;

(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds—

(e) parking

ii) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room

As such, the proposed Boarding House *could not be refused* provided the above requirements were satisfied (at least 81 parking spaces provided for occupants, and not more than a single space be provided for a person employed in connection with the development). The terms are such that allow the Consent Authority to consider a lesser rate in such situations.

The amended proposal seeks to consider a lower parking rate for the boarding house, from a rate of 0.5 spaces per boarding room to the Ryde Development Control Plan rate of 0.2 spaces per one boarding rooms within an accessible area.

The applicant has provided an amended Traffic and Parking Statement prepared by PDC Consultants, submitted on 27 August 2024 to address the revised parking requirements and to justify using the 0.2 parking rate. See discussion below.

Clause 29(4) of the SEPP ARH – Standards that cannot be used to refuse a consent

This clause states that *“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:

“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.”

Therefore, a merit assessment is undertaken for the standards under clause 29. 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 remains 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.

Car parking justification

Based on a rate of 0.5 parking spaces per bedroom, 82 car parking spaces would be required for the boarding house (being the rate in effect in cl 29 in SEPP ARH 2009 at the date of lodgement). The applicant is now seeking to use the rate of 0.2 parking space which reduced the required car parking for the boarding house to 32.4 spaces.

Note: The boarding house component technically must provide 33 parking spaces to be truly compliant with the DCP, which requires rounding up to the nearest whole number. In this case however, this non-compliance presents 0.4 parking spaces and therefore the degree is negligible.

The proposal provides 16 car parking spaces plus 2 car share spaces (for the exclusive use of the boarding house occupants). This equates to 32 spaces. The proposal also includes 33 bicycle and 33 motorcycle spaces for the boarding house.

The amended Traffic & Parking Statement submitted by the applicant states:

This RDCP rate of 0.2 spaces per one-bedroom boarding room has been in effect since 2017, well before SEPP ARH was repealed and replaced with SEPP Housing, representing a proactive and forward-thinking approach by Council to provide a car parking rate more applicable to the characteristics of boarding house developments. Council officers have agreed that the RDCP rate should be preferred to the SEPP ARH rate given that it was adopted after gazettal of the SEPP and was intended to better reflect local conditions. The RDCP rate has been consistently applied to boarding house development in the LGA.

Further, SEPP Housing, which repealed SEPP ARH before the original DA for the subject site was determined in 2022, has adopted lower car parking rates for similar developments of 0.2 spaces per unit within accessible areas. We describe this lower rate as the “contemporary approach” to boarding house development in accessible areas. Further, we note that the subject site rather than being within 400 metres of a transport node, is in fact within 40m.

The finding that a car parking rate of 0.5 spaces per room is excessive is not only supported by more planning Government planning controls in SEPP Housing and RDCP, but via independent research.

Occupant Survey of Recent Boarding House Developments in Central and Southern Sydney, City Futures Research Centre of UNSW, 2019 (Boarding House Surveys 2019) found that “In terms of the match between providing off-street parking and car ownership, the current requirement that one-space-for-two-rooms be provided is in excess of that evidently needed” [emphasis added].

Trip Generation and Parking Demand of Boarding Houses Analysis Report, TTPP, 2022 (Boarding House Surveys 2022) found an average surveyed peak occupancy rate for sites within the Sydney Metropolitan Area of 0.22 car spaces per boarding room, again well below the 0.5 spaces per room defined by SEPP ARH against which the site was originally assessed.

Accordingly, there is a wealth of contemporary evidence to suggest that application of a car parking rate of 0.5 spaces per boarding room for a site as accessible as the subject site is excessive and unreasonable.

Council’s Senior Coordinator Engineering Services also advised that the amended Traffic & Parking Statement presented that:

- *The site has excellent access to public transport options with it being located opposite Meadowbank Railway Station, Meadowbank Ferry Terminal and 9 separate bus services at the bus stops fronting the site. With the exposure to a multitude of public transport options, the applicant's consultant has presented that there will be a higher proportion of future occupants utilising this component. There is no disagreement with this statement.*
- *The consultant has made note the original development was submitted under the provisions relating to Boarding Houses under SEPP (Affordable Rental Housing) 2009. The clause relevant to parking in this case is clause 29 (2)(e).*

The terms are such that allow the Consent Authority to consider a lesser rate in such situations. The consultant has gone on to note the Council's own DCP Part 9.3 (Parking Controls) rate which stipulates a parking rate of 0.2 spaces per single bedroom unit. In this case, the development would warrant only 33 spaces (32.4). Given this has referred to the Council's own DCP controls for such development, the appropriateness of the rate cannot be disputed. The applicant has however allocated only 32 spaces, whereas the number should be rounded up to 33. However the 0.4

- *The applicant's consultant has presented an analysis of carshare to accommodate a portion of parking demand. The rates presented are:*

*Boarding Houses - 1 carshare space representing 8 typical parking spaces
Residential Units - 1 carshare space representing 5 typical parking spaces*

The Boarding House rate has been applied in numerous similar developments for student accommodation and smaller style boarding houses. The rate was adopted following a Council appeal for student accommodation following mediation of the matter.

- *The development is located in proximity to the TAFE and so the boarding house component highly likely to be occupied by a greater proportion of students.*

In considering the reduced rate, Council's DCP Part 9.3 Parking Controls states the following:

Objectives

Recognising the varying degrees of availability of public transport within Ryde, the aim of this Part of Ryde DCP is to provide a comprehensive guide for the provision of parking for new development in order:

- 1. To minimise traffic congestion and ensure adequate traffic safety and management;*
- 2. To ensure an adequate environmental quality of parking areas (including both safety and amenity);*
- 3. To minimise car dependency for commuting and recreational transport use, and to promote alternative means of transport - public transport, bicycling, and walking.*

4. *To provide adequate car parking for building users and visitors, depending on building use and proximity to public transport.*
5. *To minimise the visual impact of car parking when viewed from the public domain and adjoining sites.*
6. *To maximise opportunities for consolidated areas of deep soil planting and landscaping.*
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.*

The applicant has addressed the above objectives in the amended SEE and states that the proposed car parking will reduce the number of vehicles on site thus reduced and improve traffic congestion on the road network. The car parking access and basement car parking will not be altered, hence will not alter the physical appearance of the building, as approved. No changes are proposed to the approved deep soil and landscaping area for the site.

In addition, the lower car parking rate is appropriate given the site location (close to many different modes of public transport, i.e. buses, trains and ferries) which will help minimise car dependency.

The provision of the car share vehicles would be set up to be identical to that of a typical car share vehicle with the exception that it would be for use by residents of the boarding house only and not to all members of the community. Management and operation of the car share vehicles will be the responsibility of the on-site manager.

Council is supportive of the car share for the use of the boarding house residents. Furthermore, in *Luo V City of Parramatta Council* (2023) NSWLEC 1009, Senior Commissioner Dixon observed at [30, 31]:

30. *That said, in applying the provisions of the applicable ARH SEPP in this case a discretion remains to approve a fewer number of car spaces and grant consent to the application.*
31. *The parties submit that in the exercise of my discretion the current 2021 SEPP is not a relevant consideration. However, I do not agree. Naturally, any directly applicable commands of the ARH SEPP must be complied with. Notwithstanding this does not require the Court to have no regard to matters external to it if otherwise applicable according to s 4.15 of the EPA Act. In informing my discretion as part of the public interest I am entitled to have regard to the fact that on a “do not refuse basis” the car parking requirement under the current 2021 SEPP would be 5 car spaces - a substantially smaller number of car spaces than the 13 car spaces under the applicable Policy (Terrace Tower Holdings Pty Limited v Sutherland Shire Council (2003) 129 LGERA 195; [2003] NSWCA 289). Whilst in the exercise of my discretion the standard in the 2021 SEPP cannot be given determinative weight, after a consideration of all the evidence it nevertheless lends support to the conclusion that this DA should be approved with fewer onsite spaces than the ARH SEPP provides for on a “do not refuse basis.”*

This is reinforced by the 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 1 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...*'.

Council has previously supported 1 private share car replacing 5 car parking spaces whereas the L & E Court has recognised that one private car is equivalent to approximately 10-12 car parking spaces. The location of this site has better and very close access to public transport options than other sites at a rate of 1:5, as such the use of 1 share car to replace 8 car parking spaces is supported by Council's Senior Coordinator Engineering Services.

Accordingly, Council can support the lesser rate of 0.2 spaces per room, plus the 2 car shares for the boarding house. **Condition 220** has been amended to ensure that the parking number for the boarding house is adhered to and that the car share vehicles are solely for the occupant of the boarding house.

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>Part 3</p> <p>3 J Bicycle and car parking For development in the following locations:</p> <ul style="list-style-type: none"> • on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or • 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. <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"> • 0.6 space to 1 space/ 1 bed • 0.9 space to 1.2 / 2 bed • 1.4 space to 1.6/ 3 bed • 0.2 space/ unit (visitor parking) <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: $30 \times 0.6/1 = 18$ to 30 spaces 2 Bed: $71 \times 0.9/1.2 = 63.9$ to 85.2 3 Bed: $28 \times 1.4 / 1.6 = 39.2$ to 44.8 <u>$= 121.1$ to 160</u></p> <p>Visitor: $129 \times 0.2 = 25.8$ (26) visitor spaces.</p> <p>Total required = <u>148 to 186 for the RFB</u></p> <p><u>Proposed: 108 spaces + 8 car share spaces) = 148 spaces</u></p> <p><u>Bicycle Parking</u> Council's 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>Yes – provision of 8 car share which is equivalent to 40 spaces. See discussion below regarding car share provisions.</p> <p>Yes</p>
<p>Part 4</p> <p>4H Acoustic Privacy Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be</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 apartments directly above the gym. The gym will be available to residents 24/7.</p>	

located at least 3.0m away from bedrooms	<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. Conditions 78A & 176A have been imposed. Conditions 251, 252, 253 & 254 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>Condition 254 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>4G Storage</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><tr><td>1 bed apt</td><td>6m³</td></tr><tr><td>2 bed apt</td><td>8m³</td></tr></table>	Dwelling Type	Storage (m³)	Studio	4m³	1 bed apt	6m³	2 bed apt	8m³	<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>: 1 bedroom – 3.4m³ to 4m³ 2 bedroom – 4m³ to 8.1m³ and 3 bedroom – 5m³</p> <p>The modification will reduce the amount of storage in the basement area from range of 7.3m³ to 8.5m³ to 3.9m³ for</p>	<p>Yes – storage <u>within the apartments</u> complies with the ADG.</p> <p>No² – 17 of the 129 apartments will not</p>
Dwelling Type	Storage (m³)									
Studio	4m³									
1 bed apt	6m³									
2 bed apt	8m³									

3 + bed apt	10m ³	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.	comply with the required storage.
At least 50% of the required storage is to be located within the apartment. Additional storage is conveniently located, accessible and nominated for individual apartments (show on the plan).			
4K Apartment mix A range of apartment types with different number of bedrooms (1bed, 2 bed, 3 bed etc) should be provided		A mix of 1, 2 & 3 bedroom apartments have been provided. The reduction in apartments has reduced the number of one and two bedroom apartments to: 30 one bedroom 71 two bed 28 three bedroom <u>129 apts</u> A mixture of apartments have been provided.	Yes

Car share

The proposal has been amended to comply with the parking requirement for the 3 residential flat buildings by amendment to the boarding house parking provision (see discussion and justifications earlier in the report under SEPP ARH). The reduced parking demand for the boarding house has allowed some of the parking spaces to be allocated to the residential flat buildings.

The amended proposal will now provide a total of 108 standard parking spaces plus 8 car share spaces for the residential apartments, which results in a total equivalent of 148 spaces, hence achieving the ADG requirement.

One of the Design guidance of the ADG for parking states:

Where a carshare scheme operates locally, provide car share parking spaces within the development. Car share spaces, when provided, should be on site.

The Design guidelines allows for the provision of car share scheme and in this instance, the 8 residential car shares spaces are provided equally on each of the basement levels, accessible by the residents of the apartments.

The provision of 8 on site car share spaces (based on 1 car share equal to 5 car spaces) will equate to 40 spaces. Council Senior Coordinator Engineering Services has advised that the provision of the car share for residential apartments is acceptable:

The rate for residential units was forwarded by Council's Traffic Section, who have noted a recent Traffic study undertaken for the Parramatta Road Corridor Urban Transformation Strategy (PRCUTS) (Parking policy and rate review: Camperdown,

Leichhardt and Taverners Hill (nsw.gov.au)) from which, a recommended rate of 1 carshare space per provided in lieu of 5 typical parking spaces.

These rates are noted to be conservatively higher than the typical industry rate quoted at 1 car space being able to replace 10-15 private vehicles by the car share companies themselves.

As such, the implementation of the carshare arrangement is accepted. There is one point to note however that this scheme, for it to be truly effective in the development, must be maintained by the owners themselves and is to be open only to the residents of the development itself, not public.

It is also considered that as 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, providing car share vehicles for use by the residents is 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.

Given the above, the applicant has demonstrated that the objective(s) of the ADG and objectives 1 to 5 of Ryde DCP – Car parking are achieved. Therefore, the modified outcome will result in a better sustainable development with good amenities.

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 provision of on-site car share scheme plus 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 car share parking arrangement, noting that the site is in close proximity to multiple transport nodes.

Condition 220 has been amended to reflect the number of car parking and car share spaces required and the use of the car share vehicles are solely for the residents of the apartment buildings.

*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 7.3m³ to 8.5m³. It is now proposed to modify this to 3.9m³ 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
Two bedroom requires a total of 8m³	Requires: 4m ³ Proposed: 4 to 8.1m ³	Requires: 4m ³ Proposed: 3.9m ³ Short by 0.1m ³	7.9 to 12m ³ 3 apartments are short of the external storage area and total amount by 0.1m ³
Three bedroom requires a total of 10m³	Requires: 5m ³ Proposed: 5 to 11m ³	Requires: 5m ³ Proposed: 3.9m ³ Short by 1.1m ³	8.9 to 14.9m ³ Only one apt is short by 1.1m ³

Building B:

ADG requirement	Internal storage	External storage	Total
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Two bedroom requires a total of 8m³	<u>Required:</u> 4m ³ <u>Proposed:</u> 4.0 to 9m ³	<u>Required:</u> 4m ³ <u>Proposed:</u> 3.9m ³ Short by 0.1m ³	<u>7.9 to 12.9m³</u> 2 apartments are short by 0.1m ³
Three bedroom requires a total of 10m³	<u>Required:</u> 5m ³ <u>Proposed:</u> 5.3 to 6.8m ³	<u>Required:</u> 5m ³ : <u>Proposed:</u> 3.9m ³ Short by 1.1m ³	<u>9.2 to 10.7m³</u> 4 apartments are short by 0.8m ³

Building C

ADG requirement	Internal storage	External storage	Total
Two bedroom requires a total of 8m³	<u>Required:</u> 4m ³ : <u>Proposed:</u> 3.9 to 5.3m ³ Unit 601 internal - 3.9m	<u>Required:</u> 4m ³ : <u>Proposed:</u> 3.9m ³ Short by 0.1m ³	<u>7.8 to 9.36m³</u> 1 apartment is short by 0.2m ³
Three bedroom requires a total of 10m³	<u>Required:</u> 5m ³ <u>Proposed:</u> 5.3 to 7m ³	<u>Required:</u> 5m ³ : <u>Proposed:</u> 3.9m ³ Short by 1.1m ³	<u>9.2 to 9.7m³</u> 6 apartments are short by 0.8m ³

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 0.1m³. 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 provides each apartment with 3.9m³ of storage instead of 4m³ and 5m³ for 2 bedroom and 3 bedroom apartments, respectively. The variation is between 0.1m³ to 1.1m³ 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 apartment's 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) – 74m² to 90m²
- 3 bedrooms (2 bathrooms) – 95m² to 122m²

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 a 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 1.1m³ for one apartment with the rest having a shortfall of between 0.1m³ to 0.8m³), 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 (28m²) 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, deletion of basement 3 and minor internal changes will not affect the existing heritage items nearby. The overall design in terms of height, setbacks, bulk and scale and façade treatments will not be altered.

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 Attachment 5 .	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	Parent DA imposed conditions for lighting around the buildings, plaza, carparking areas and shops. These conditions are not altered.	Have been conditioned for lighting.

lighting AS1158 is to be provided which makes visible potential hiding spots at night.		
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**.

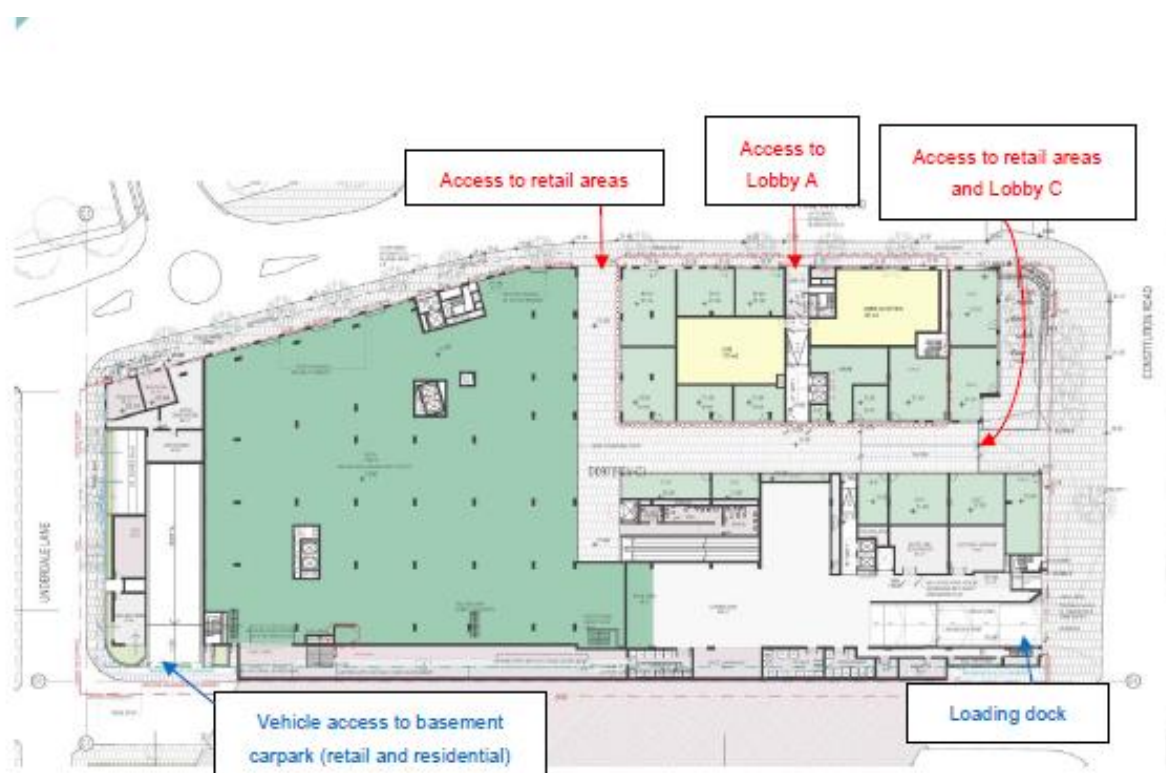


Figure 13: Ground floor plan with pedestrian and vehicle access indicated.



Figure 14: First floor plan with pedestrian access indicated.

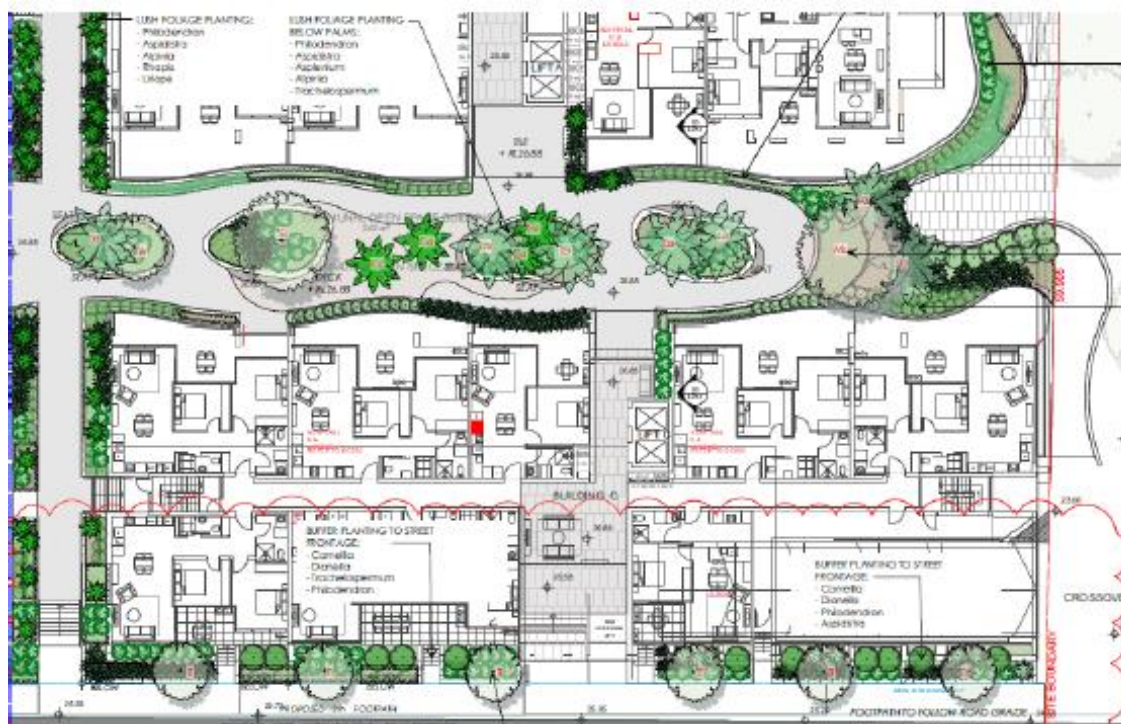


Figure 15 Extract of Landscape Plan showing planting near entrances.

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 reinforcement, 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*

- *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 84m². 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 58.3m².

A total of 162 boarding 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.

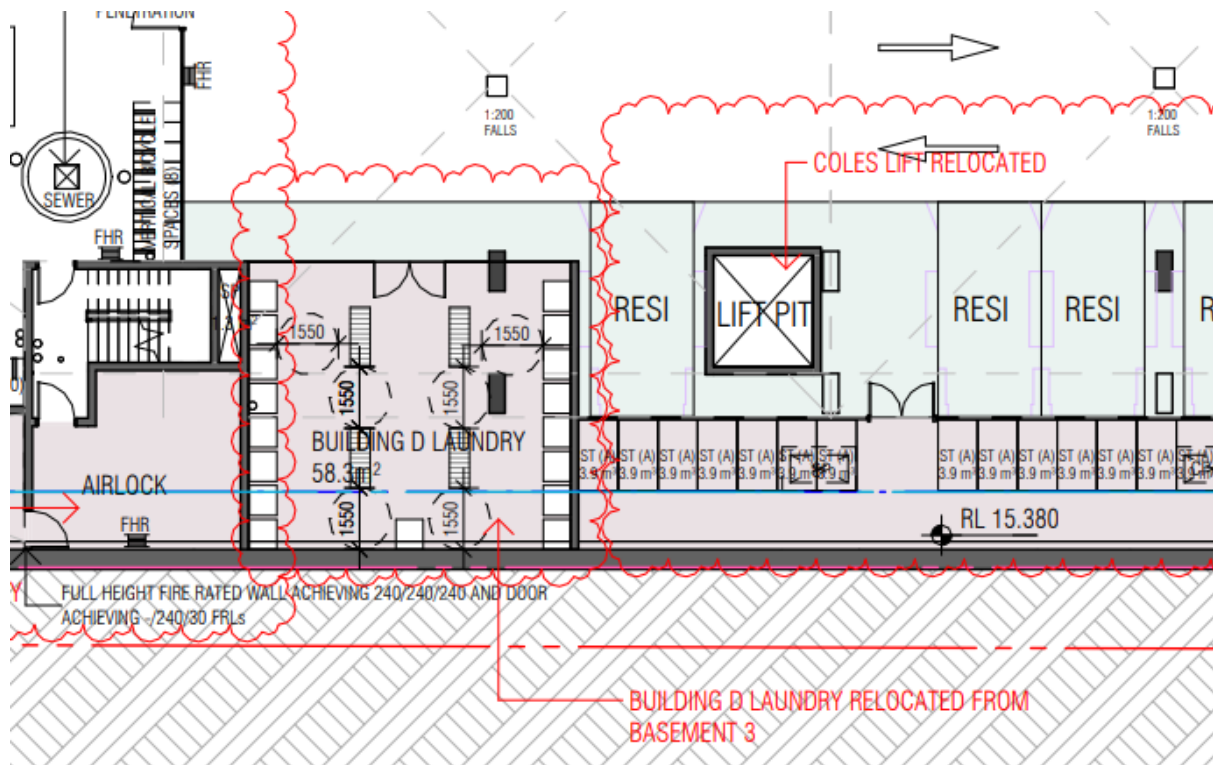


Figure 16: The modified laundry area with 17 washer/dryers.

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.

Retail Premises

- 1 space / 25m² GFA

Residential

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

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

The residential apartments will have 108 parking space plus 8 car share spaces. This is equal to 148 parking spaces, which complies with the required parking for the residential buildings. The provision of car shares vehicles has been discussed earlier in the report.

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.

Boarding House

Parking has been provided at a rate of 0.2 per room, which based on 162 rooms requires 32.4 parking spaces. 32 spaces are proposed comprising of 16 parking spaces and 2 car space vehicles. Council Senior Coordinator Engineering Services has advised that this non-compliance of 0.4 parking is negligible and raised no objections to the proposed parking for the boarding house.

Retail

The retail component will comprise of 3,427m² of floor area, based on the above of 1 space of 25m² would require 137 retail parking spaces. 137 retail spaces are proposed.

Council's Senior Coordinator Engineering Services has also advised:

Council's DCP Part 9.3 (Parking Controls) allows for the potential for mixed use parking spaces where there is potential for alternate parking demand periods. In this case, there is scope that the residential visitor / retail parking would have also have some portion of linked trips (i.e. where residential visitors are also shopping at the centre) and that the peak periods for these are alternate (e.g. peak visitor periods would be the evening periods whereas the retail parking would see a peak period on midday weekends).

A total of 317 parking spaces are required for the development. The proposal will provide the required parking spaces comprising of 271 individual parking spaces and 10 car share spaces. The table below illustrate the car parking provisions:

Table 5: Car Parking Provision

LAND USE	REQUIREMENT	PROVISION	EQUIVALENT SPACES
Residential	121	82 standard spaces	82 spaces
		8 car share spaces	40 spaces
Residential visitors	26	26 standard spaces	26 spaces
Boarding house	32	16 standard spaces	16 spaces
		2 car share spaces	16 spaces
Retail	137	137 standard spaces	137 spaces
TOTAL		271 spaces	317 spaces

Table: The car parking provision for the site

Condition 220 has been amended to reflect the car parking requirement 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 78A,176A, 250 to 254.**

Development Engineering

Council's Senior Coordinator Development Services 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 is 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

Extract of the comments provided by the Council’s Senior Coordinator Engineering Services regarding parking has been inserted earlier in the report under the relevant section discussion parking for the Boarding House and for the carshare scheme for the residential buildings.

Recommendation

With the above points in mind, the development has effectively accommodated the required parking demand. Parking allocation should be as outlined on Table 5 of the applicants traffic report (shown in the figure above).

The following points are to be taken in consideration;

- *The boarding house component technically must provide 33 parking spaces to be truly compliant with the DCP, which requires rounding up to the nearest whole number. In this case however, this non-compliance presents 0.4 parking spaces and therefore the degree is negligible. 32 spaces is acceptable.*
- *The SEPP provisions refer to parking spaces for those employed in relation to the Boarding House component however these are stated as a maximum only. It need not be provided.*

These parking allocations are to be reflected in the revised conditions.

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 from 417 to 317, 10 of which will be car share spaces.

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 a reduced parking rate for the boarding house however the reduced rate was supported as this type of operation indicate that resident population do not own or use private vehicles in the same quantum or manner as other type of housing.

The proposal will provide 10 (2 x boarding house & 8 x residential apartments) car share vehicles for use solely by the residents on site. It is estimate that 1 carshare vehicle can comfortably replace 8 private vehicles for the boarding house and 5 vehicles for the residential use.

Condition 220 has been amended to impose for the required parking spaces and car share vehicles being provided.

The application is accompanied by a Traffic and Parking Statement prepared by PDC Consultant dated 26 August 2024 which states that the proposed 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 car share vehicles and excess bicycle parking spaces, the site is considered suitable for other form of transport mode ie car share scheme. The site is within 40m from trains and buses and 400m from ferries, therefore the total provision of 317 parking spaces is considered acceptable.

- *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 and amend the number of car parking spaces on site 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 changes 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 is no empirical evidence to support this.

Changes to the parking arrangement:

The proposed amendment to the parking arrangement (additional car share vehicles and change to the parking rate for boarding house) was not required to be renotified as the amendment will result in more parking spaces (inclusive of the car share scheme) being provided on site. The original modification proposed parking arrangement provided for 271 parking spaces on site, this amended proposal will provide for equivalent to 317 car spaces, 10 of which will be car share spaces.

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
Architectural Plans			
Cover	Revision E F	January 2022 November 2023	Curzon + Partners
Drawing Register	D001 Rev D H	11/01/2022 21/11/2023	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 C D	26/11/2021 13/11/2023	Curzon + Partners
Site Plan	D008 Rev C D	26/11/2021 13/11/2023	Curzon + Partners
Yield & Schedules	D009 Rev C D	26/11/2021 13/11/2023	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
Basement 03 Floor Plan	D097 Rev C	26/11/2021	Curzon + Partners
Basement 02 Floor Plan	D098 Rev C G	26/11/2021 28/08/2024	Curzon + Partners
Basement 01 Floor Plan	D099 Rev C F	26/11/2021 28/08/2024	Curzon + Partners
Ground Floor Plan	D100 Rev D E	26/11/2021 13/11/2023	Curzon + Partners
Level 1 Plan	D101 Rev E F	11/01/2022 13/11/2023	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 C D	26/11/2021 13/11/2023	Curzon + Partners
South east internal elevation – Building A & B	D205 Rev D E	11/01/2022 13/11/2023	Curzon + Partners
Internal Elevations	D206 Rev C D	26/11/2021 13/11/2023	Curzon + Partners
Sections	D250 Rev C D	26/11/2021 13/11/2023	Curzon + Partners
Sections	D251 Rev C D	26/11/2021 13/11/2023	Curzon + Partners
Sections	D252 Rev C D	26/11/2021 13/11/2023	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 C D	26/11/2021 13/11/2023	Curzon + Partners
Building Height Analysis	D502 Rev C	26/11/2021	Curzon + Partners
Solar & Ventilation Analysis	D503 & D504 Rev C D	26/11/2021 13/11/2023	Curzon + Partners
Communal Open Spaces & Communal Rooms	D505 Rev C	26/11/2021	Curzon + Partners
Car Parking Calculations	D507 Rev C D	26/11/2021 13/11/2023	Curzon + Partners
GFA Bonus Calculations	D508 Rev C D	26/11/2021 13/11/2023	Curzon + Partners
Storage volumes – Building A	D509 Rev C D	26/11/2021 13/11/2023	Curzon + Partners
Storage volumes – Building B	D510 Rev C D	26/11/2021 13/11/2023	Curzon + Partners
Storage volumes – Building C	D511 Rev C D	26/11/2021 -13/11/2023	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 C E-F	26/11/2021 13/11/2023	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
Civil Plans			
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 Pavement Structure Local Road	CIV18 Rev H	04/05/2022	Alpha Engineering & Development
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
Landscape Design Drawings			
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
Reports/Supporting Documentation			
Document Name	Date	Prepared by	
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 BASIX Certificate – Building D	14/10/2020 20/11/23 17/11/2022	GEC Consulting Pty Ltd	
Acoustic Assessment	07/05/2020 & 24 April 2024.	- Acoustic, Vibration & Noise Pty Ltd - Pulse White Noise Acoustics, reference 240007-Railway Road Meadowbank-Gym Acoustic Assessment-R0.	
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	

Plan of Management Residential	26 August 2024	apt.
Plan of Management (Boarding House)	26 August 2024	apt
Amended Traffic & Parking Assessment	27 August 2024	PDC Consultants

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, 109, 166, 174, 220 & 239 to read as follows:

- 3 **BASIX.** Compliance with all commitments listed in BASIX Certificate(s):
- Buildings A, B & C: BASIX Certificate 4080973M_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~~ **132** 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.**

- **4 residential car share spaces solely for the use of the residents of the apartments in Buildings A, B & C.**
- Minimum ~~8~~ **12** bicycle parking spaces

Basement Level 2 & 3

- **Minimum 5 retail parking spaces**
- **Minimum ~~465~~ 108 residential spaces comprising of 82 resident spaces and 26 residential visitors spaces.**
- **4 residential car share spaces solely for the use of the residents of the apartments in Buildings A, B & C.**
- **16 spaces for the Boarding House**
- **2 car share spaces solely for the use of the residents of the boarding house.**
- ~~82 spaces for the boarding house (including 1 staff/management space).~~
- ~~43~~ **11 bicycle spaces (residential)**
- **33 bicycle and 33 motorcycle spaces (boarding house).**

All car parking spaces must be clearly designated and linemarked. The car share spaces are to have signage stating “Parking for car share vehicle only” so as to prevent inadvertent use of the space by other drivers when the car share vehicle is in use.

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

239. **Compliance with the approved Plan of Management (Boarding House).** The operation of the boarding house shall be in accordance with the approved Plan of Management dated ~~November 2020~~ **26 August 2024** 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).

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 residential apartments).** The operation of the rental housing apartments shall be in accordance with the approved Plan of Management dated 26 August 2024 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).

256. **Share Car Scheme.** The share car vehicles shall be provided for the use of the occupants of the boarding house and the residents of the residential apartments. The share car shall not be available for use by any person (including the owner) other than a current boarder of the boarding house and residents of the apartment buildings.

- The car share vehicles shall be available to occupants of the boarding house and apartment buildings subject to making a booking.
- The share car shall be maintained at all times with a full tank of petrol and shall be usable at no charge to the boarder on the basis that the car is returned with a full tank of petrol.
- The car share vehicles shall be maintained in good working condition. The car shall be maintained in accordance with the maintenance schedule of the manufacturer of the car.
- The car share vehicles shall be comprehensively insured at all times for use by the boarders of the boarding house and residents of the apartment

buildings and shall at all times have road side assistance taken out for the vehicles.

- All boarders /residents shall be made aware of the existence of the share car at the time of occupation and shall be made aware of how the booking system for the car operates and that the car is available for use at no cost (other than petrol).
- The car share vehicles must be accessible 7 days of the week, 24 hours of the day when not in use by other occupants.
- The car share vehicles must be managed by the site manager.
- The car share vehicles are to be maintained by the management of the boarding house and residential apartments. The use of a third party service is not permitted unless the vehicles provided by the service provider is limited for use by the occupants of the development only. Vehicles available for external members / registered drivers of the service providers operations are not permitted to use the vehicles.
- The car share parking spaces must be clearly designated, and line marked in the development so as to prevent inadvertent use of the space by other drivers when the car share vehicle is in use.
- The car share vehicle must be parked on site when not in use.

D. That TfNSW be advised of the decision.

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

Report prepared by:

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Report approved by:

Holly Charalambous
Senior Coordinator Development Assessment

Carine Elias
Manager Development Assessment