

## COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-540
MOD Number	MOD2024/0191
LGA	City of Ryde
Proposed Development	Modification to Land and Environment Court Consent 2021/216311 (LDA2020/0199) to amend the approved mixed used use development by external and internal alterations including increase in the overall height of each of the buildings.
Street Address	1 to 20 Railway Road & 50 Constitution Road Meadowbank. <ul style="list-style-type: none"> <li>• Lots 1 to 8 of DP 13637;</li> <li>• Lots 4 and 5 of DP 7533;</li> <li>• SP 35053;</li> <li>• Lots 1 and 2 of DP 384872; and</li> <li>• Lots 9, 10 and 11 of DP 7533.</li> </ul>
Applicant	Juey Thanyakittikul, The Trustee for Apt Hold Trust 1
Owner	The Trustee for Apt Hold Trust 1
Date of DA lodgement	12 September 2024
Total number of unique submissions	Seven (7) submissions. (One (1) submission is in support).
Recommendation	Approval
Regionally Significant Development (Schedule 6 of the SEPP (Planning Systems) 2021)	A Section 4.56 modification application to a development with a capital investment value of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979;</li> <li>• Environmental Planning and Assessment Regulation 2021.</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011;</li> <li>• State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP); (<i>Savings provision</i>).</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;</li> <li>• Ryde Local Environmental Plan 2014; and</li> <li>• City of Ryde Development Control Plan 2014.</li> </ul>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> <li>• Attachment 1: Amended architectural Plans.</li> <li>• Attachment 2: Recommended Conditions of Consent.</li> <li>• Attachment 3: L&amp;E Judgement and Conditions of Consent (LDA2020/0199).</li> <li>• Attachment 4: Urban Design Review Panel</li> </ul>
Clause 4.6 requests	Not applicable to a Modification Application

Summary of key submission issues	<ul style="list-style-type: none"> <li>• Increase in height – reduce amenity (overshadowing and privacy) to adjoining properties</li> <li>• Out of character with the area</li> <li>• Non compliance with height and FSR – already non compliant</li> </ul>
Report prepared by	Sandra McCarry – Senior Town Planner
Report date	12 February 2025
<b>Summary of s4.15 matters</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the Assessment report?	Yes
<b>Legislative clauses requiring consent authority satisfaction</b> Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
<b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not applicable
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (S7.24)?	Not applicable
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	Yes – No objection raised to amended /additional conditions.

## 1. EXECUTIVE SUMMARY

This Section 4.56 Modification Application is referred to the Sydney North Planning Panel ('SNPP') for determination as required by the *Sydney District & Regional Planning Panels Operational Procedures November 2022 (Operational Procedures Manual)*. The Parent LDA2020/0199 is regionally significant development (over \$30m) and this modification application is submitted under s4.56 of the Act.

The application is subsequent to the approved Local Development Consent No. LDA2020/0199 granted by the NSW Land and Environment Court for (as amended) for the *Demolition of existing structures and construction of a mixed-use development comprising four x 6 to 7 storey buildings containing 129 apartments, 162 boarding rooms, gym (for residents use only) and commercial floor space with basement parking.*

The modifications proposed under this application involve changes to the building height, apartment layouts, and minor internal and external alterations. There are no changes to the approved number of dwellings on the site.

A Voluntary Planning Agreement was entered into as part of the parent application (LDA2020/0199) and no changes are proposed to the VPA.

The exhibition of the proposal attracted seven (7) submissions, one (1) of which supports the modification.

The modified development is substantially the same as the approved development and the modifications do not materially impact the amenity of surrounding properties, or significantly alter the approved design or impact on the natural environment.

### **Urban Design Review Panel**

The application was reviewed by the Urban Design Review Panel on 31 October 2024 who were generally supportive of the proposed changes.

The Panel's comments and applicant's response are provided in **Attachment 4**.

**Note:** The applicant has taken into consideration the Panel's comments and responded accordingly, as documented.

### **Public Exhibition and Submissions**

The application was publicly exhibited between 18 September 2024 and 4 October 2024 in accordance with Council's Community Participation Plan. However it was noted that during the notification period the architectural plans and documents were not able to be viewed on Council's website by the public. The notification period was therefore extended to 6 November 2024. As a result of the notification, a total of seven (7) submissions were received (one (1) being in support of the proposal). The remaining submissions raised the following issues:

- Increase in height – impact on amenity in terms of solar access, overlooking and views.
- Meadowbank already overcrowded, too many apartments.
- Height is out of character for the area.
- Loss of privacy from overlooking into their apartment.

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

On balance, this assessment considers the proposal to be satisfactory and it is recommended that the SNPP, as the consent authority, grant approval to the modification application in accordance with the conditions provided in **Attachment 1**.

## **2. THIS PROPOSAL (as amended on 25 November 2024)**

This application seeks consent for internal and external amendments to the approved development.

The amendments include changes which aim to improve the building's layout, functionality and amenity.

It is proposed to:

- Increase the floor-to-floor heights to facilitate a 2.7m floor to ceiling in habitable rooms, as required by the National Construction Code (NCC). This will involve an increase to the overall building height by 540mm for each building and 1.29m for the lift overruns.
- Amend the apartment layout to improve amenity, resulting in an increase in overall GFA.
- Delete the 'wing' glazing between Buildings A & B and C & D, and provision of vertical glazing for privacy.

In detail, the proposed amendments are as follows:

### Basements 1 & 2

- Enclosure to lift lobbies removed within Basement 02.
- Structural grid columns changed and supporting concrete blade walls added in Basement 02.
- Ramp centre kerb added and new entry kerb to air lock in Basement 01 and 02.
- Storage area added to Basement 02.
- Grease arrestor and pump room relocated in Basement 02.
- Comms room relocated in Basement 02.
- Building D laundry removed, and pump room relocated in Basement 02.
- General adjustments to car parking positions in Basement 01 and 02.
- Service rooms changed in Basement 01.
- Service rooms changed from OSD tank to grease arrestor and OSD tank relocated to underside of loading dock ramp in Basement 01.
- FOGO bins added to Basement 02.
- Building D bulky waste added to Basement 02.

### Ground Floor

- Entry area changed and level reduced at Ground Floor.
- Gym relocated from ground floor to Level 1.
- New disability ramp at Ground Floor.
- Setback reduced at corner of Constitution Road to enable columns to align structural requirement at Ground Floor.
- General façade alignment modifications to the full length of the building due to structural grid change/coordination and revised apartment layouts.
- Amenities relocated at Ground Floor.
- Ramp gradients adjusted and services rooms reconfigured at Ground Floor.
- Coles Liquorland added at Ground Floor.
- Stair reconfigured at Ground Floor (no change to street egress point).
- Waste bins re-organised at Ground Floor.
- Mail areas added to each building entrance.

### Level 1 & above

- Apartment layouts changed to all levels of Building A, B, and C, and Level 5 & 6 of Building D.
- Roof services added.
- Facade screens removed to increase light quality into apartments in response to UDRP comments.
- Small balconies removed and apartment glazing moved out to balcony edge in response to UDRP comments.
- Entry awning reduced to public domain overlap.
- Additional storage room added, and façade line moved at Level 01.
- Privacy screens added.

#### Building D – Boarding House.

- Laundry area in basement for Building D removed and individual laundry space added within each room.

No changes are proposed to the approved number of apartments, car parking or vehicular access.

### **Amendment to Conditions**

The application will necessitate amendment to the following conditions:

- Condition 1 – Approved plans & documents.
- Conditions 3 & 174 – BASIX.
- Conditions 58, 126, 128, 208 & 209 – Waste.
- Conditions 109 & 166 – Stormwater Management.
- Condition 133 - Boarding House laundry facilities

Additional conditions relating to waste, noise mitigation and stormwater are added as follows:

- Conditions 1B; 112A; 112B; 112C; 112D; 126A; 130A; 130B; 130C; 133A; 142A; 142B; 163A; 191A; 194A; 196A; 197A; 257; 258; and 259.

Deletion of:

- Conditions 112 and 166 relating to stormwater.

### **3. THE SITE**

The subject site known as Nos. 1 to 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.
- Lots 9, 10 and 11 of DP 7533.

The site has four street frontages which comprise a 59.9m northern boundary to Constitution Road, a 42.8m southern boundary to Underdale Lane, a 139.4m western boundary to Railway Road, and a 136.8m eastern boundary to Faraday Lane.

The site has a total area of 7,773m<sup>2</sup>.



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

Demolition of the existing buildings on site has been undertaken.

### Surrounding Development

The site is located within the Shepherds Bay, Meadowbank locality.

The east and south of the site contain new residential apartment buildings and mixed used development.

## **4. Background**

Parent LDA2020/0199 (PPSSNH-107) was approved by the NSW Land and Environment on 18 July 2022 subject to deferred commencement consent. The deferred commencement consent became operative on 14 April 2023.

Several modifications have been approved since the approval of LDA2020/0199, the most recent being MOD2024/0005 which was approved on 11 September 2024 to change the operational mode of the residential flat buildings (Buildings A, B & C) to



rental only (under one ownership) and deletion of basement 3 (reduction in carparking to 271 car spaces).

MOD2024/0005 also reduced the number of apartments from 133 to 129.

MOD2024/0005 was approved by the SNPP on 11 September 2024.

A subsequent application (MOD2024/0275) was approved on 24 December 2024 to correct an error in the conditions for MOD2024/0005.

## **5. 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 *Tipalea Watson Pty Limited v Ku-ring-gai Council* [2003] NSWLEC 253, J Bignold came to deal with the matter of “substantially the same”, a list of matters or ‘tests’ to consider, being whether the modification involves the following:

- (a) significant change to the nature or the intensity of the use.*
- (b) significant change to the relationship to adjoining properties.*
- (c) adverse amenity impacts on neighbours from the changes.*
- (d) significant change to the streetscape.*
- (e) change to the scale or character of the development, or the character of the locality.*

The proposed modifications involve internal amendments to alter the floor to ceiling height and lift overruns. The modifications also include internal changes to the apartment layout, minor general façade alignment, internal changes to commercial and communal use.

The number and mix of apartments will not change, with the bulk and scale of the development remaining largely the same. Whilst, the apartment changes will increase the floor space, the increase is a result of internal changes with no additional apartments or number of storeys.

Visually the development is not significantly altered from the original approval when viewed from the public domain. The proposal remains as mixed use development comprising commercial at ground level with apartments above and a boarding house (Building D).

Accordingly:

- The nature or intensity of the use is not altered.
- The development will still be for 4 x 6 storey buildings, comprising of residential and commercial, therefore the relationship to the adjoining properties is not altered.
- The height increase being 1.29m to the lift overrun and 540mm to the parapet of the buildings. The increase in height is not considered to result in significant overshadowing and the internal changes will not adversely impact on the amenity of adjoining properties.
- The modifications to the façade alignment will not significantly alter the appearance of the development when viewed from the street frontages and will not change the essence of the approved development when viewed from the streetscape.

Essentially the development will retain the essence of the approved development and will provide for a development that is substantially the same as the development granted.

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

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

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

A total of seven (7) unique submissions were received in response to the notification of the proposal, one (1) being in support of the modification.

The issues identified in the submissions have been considered in the 'Community Consultation' section of this report.



### Subsection (1A): Section 4.15(1) Considerations 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 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**

*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.

The proposed modifications do not alter the approved land uses, or their intensity. 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**

This SEPP was considered in the original (and subsequent) development application and as proposed modifications will not alter the parking, change the traffic generation, noise impact, further assessment of the SEPP is not considered necessary.

#### **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*.

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 has been submitted with the modification application which confirms that the development, as modified, will continue to 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.

In accordance with Schedule 7A, the provisions of the ARH SEPP remain relevant and applicable with regards to the approved Boarding House.

This application proposes to delete the boarding house laundry area in the basement and provide each boarding room with its own washer/dryer.

However, the application also proposes internal alternations to apartments layouts, which will result in an increase in the total GFA. Clause 29 (c)(ii) of the SEPP stipulates the maximum floor space ratio allowance.

#### 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</p>	<p>Existing maximum FSR for any residential accommodation permitted on the land is 2.7:1 or GFA of 20,987m<sup>2</sup> (Site area x 2.7 = 7,773m<sup>2</sup> x 2.7 = 20,987m<sup>2</sup>)</p> <p>Subclause (c)(ii) permits an additional 20% if the existing</p>	<p>It is now proposed to increase the GFA to <b>22,649m<sup>2</sup></b>.</p> <p><b>21,967 – 22,649 = 682m<sup>2</sup></b> (3.1% variation) over the maximum allowed or <b>659m<sup>2</sup></b> (3%) over the last approved increase in GFA.</p> <p>FSR of 2.91:1.</p>	<p><b>No</b> See discussion below.</p>

Clause 29 - Standards which cannot be used to refuse consent	Required	Proposed	Complies
<p>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> <ol style="list-style-type: none"> <li>i. 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</li> <li>ii. 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</li> </ol>	<p>FSR is greater than 2.5:1.</p> <p>Therefore 20% floor space bonus prescribed under Clause 29(1)(c)(ii) (<math>4,897.1 \times 20\% =</math> bonus of <b>979.3m<sup>2</sup></b> of GFA) is allowable for the development, equating to a total allowable GFA of <b>21,967m<sup>2</sup> (2.82:1)</b>.</p> <p>Mod 2024/0005 approved an increase in GFA to <b>21,996m<sup>2</sup></b>, variation of 2.83:1.</p>		
<p><b>(2)(a) Building Height</b></p> <p>if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land.</p>	<p>A maximum height of buildings of 18.5m and 21.5m applies to the site.</p> <p>A maximum height of 21.5m applies to Building D. Building D was approved with a maximum height of 25.87m, a variation of 20%. The variation is mainly due to the lift overrun and pergola for the common open space area.</p>	<p>Increase in lift overrun by an extra 1.29m to maximum height of 27.1m, variation of 26%.</p>	<p><b>No</b></p> <p>See discussion below.</p>

## Clause 29(4)

Clause 29(4) 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 judgements for *Parker Logan Property Pty Ltd v Inner West Council* [2018] NSWLEC 1339, Commissioner Gray found the following:

*42. As such, the only way the consent authority, or the Court exercising the functions of the consent authority, can grant consent to development that contravenes a development standard is through cl 4.6 of the MLEP 2011. There is nothing in cl 29(4) of the SEPP ARH that is inconsistent with the terms of cl 4.6. That is:*

- Clause 29(4) of the SEPP ARH makes it clear that the discretion to grant consent remains despite a non-compliance with (1) or (2); and*
- Clause 4.6 of the MLEP 2011 makes it clear that consent cannot be granted if there is a breach of a development standard in the MLEP 2011 unless certain pre-conditions are met.*

However, notwithstanding the above, *Gann & Anor v Sutherland Shire Council* [2008], the Court held that there is power to modify a development application where the modification would result in the breach of development standards. The Court took the view that development standards within an LEP did not operate to prohibit the granting of consent if they were not complied with (and no objection pursuant to SEPP No. 1 (now relevant to a Clause 4.6 variation) had been lodged.

As such, clause 4.6 are not applicable to a section 4.5 modification. Notwithstanding, the Court held that despite a Clause 4.6 variation not being required, Section 4.56 of the EP&A Act still requires the consent authority to take into consideration those matters referred to in Section 4.15.

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

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

## Floor Space Ratio (FSR)

The increase in floor space is a result of internal layout and glazing alignment of the apartments to all levels of Building A, B and C, and Level 5 & 6 of Building D.

The internal layout changes to the 2 & 3 bedroom apartments and glazing alignment, will improve amenity and allow for more flexibility, as illustrated in Figure 3 below. The internal changes will result in slight changes to the apartment size i.e. removal of small balcony and replace with window. Whilst the changes to each apartment in itself is relatively minor, cumulatively they will increase the overall GFA by 659m<sup>2</sup>.

Under the ARH SEPP, the approved development utilised the additional 20% FSR permitted under Clause 29(1)(c)(ii) and as such was permitted a maximum GFA of up to 21,967m<sup>2</sup> (2.82:1).

The approved parent application complied with the maximum permissible GFA under the ARH SEPP and provided a total gross floor area of 21,950m<sup>2</sup>, which was under the maximum allowed by 17m<sup>2</sup>. A recently approved application (Mod2024/0005) increased the GFA by additional of 45m<sup>2</sup> equating to a variation of 0.13% (FSR or 2.83:1).

This amended proposal seeks a departure from the floor space ratio control with an exceedance of 659m<sup>2</sup> (variation of 3% or overall FSR of 2.91:1).

### **Justification to FSR Variation**

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 the applicant to demonstrate 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, as illustrated in **Figure 2** below.



**Figure 2:** Changes to apartment layout – living area off balcony, entry to living zone, and separate bedroom areas. The blue dotted line outlines the changes in the apartment layout resulting in increase in floor area. The increase is within the building envelope and complies with the ADG requirements in terms of layout and balcony size.

The additional GFA will largely be internalised within the site and within the approved building footprint and will not add additional significant bulk to the development. The additional GFA is not associated with the increased building height and is contained entirely within the approved building height. The proposal will continue to provide for a similar mix of commercial and the same number of residential dwellings 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. As such, the non-compliance will not contribute to any unreasonable or significant building bulk and will maintain a similar density and scale of development as that approved on the site.

The modification was reviewed and supported by the Urban Design Review Panel (UDRP), noting that the built form, bulk and scale of the buildings are maintained, and that the changes made to the apartment layout provide for improved amenity.

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.

Accordingly, given the building envelopes/setbacks are not substantially altered, 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.

The proposal maintains the existing building envelopes and will not create adverse amenity impacts to surrounding development. The additional floor space is a result of internal rearrangement of the apartments and within the approved 4 building footprint. 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 the internal changes to the apartment layouts will provide improve amenity to the future residents.

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

### **Building Height**

The height of Building D has increased by an additional 1.29m for the lift over run. This is due to: increase floor to floor height to ensure compliance with NCC and final details of the lifts and the overrun required.

An assessment of the proposed height variation across the four buildings are discussed in detail further in the report under Section 4.3 - Height.

#### **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, despite being repealed, SEPP 65 continues to apply to the proposed development in accordance with the savings provisions within Schedule 7A of the Housing SEPP.

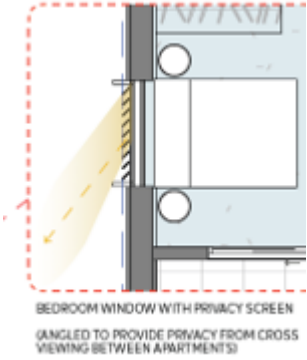
In accordance with the provisions of SEPP No. 65, a statement prepared by AJC Architects is submitted with the application which verifies that the proposed modifications do not diminish or detract from the design quality of the development for which consent was originally granted.

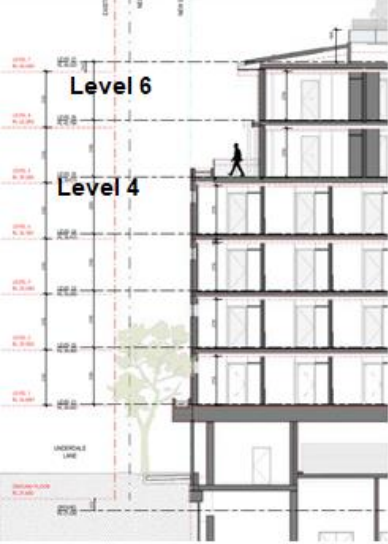
The modifications have been reviewed by the UDRP against the Design Principles of the Housing SEPP, who are generally supportive of the proposal subject to refinements. The Panel's comments and applicant's response are provided in **Attachment 2**.

### **Apartment Design Guide (ADG)**



The SEPP requires consideration of the ADG which supports the Design Quality Principles by giving greater detail as to how those principles might be achieved. The table below addresses the relevant matters.

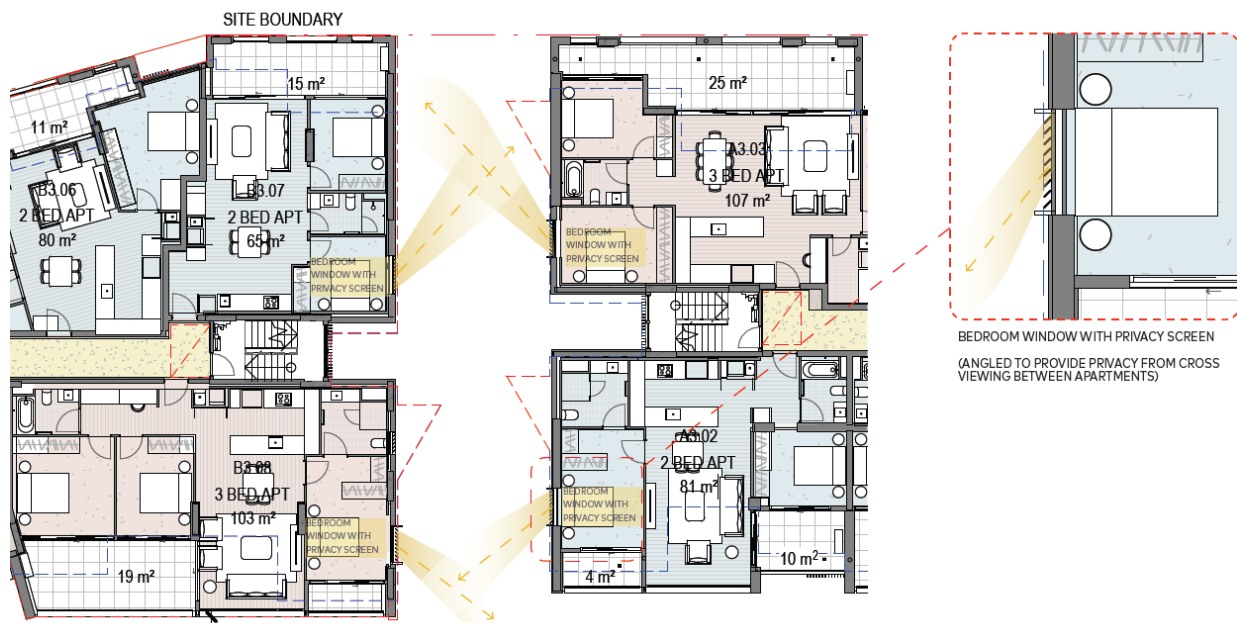
Control	Proposal	Compliance
<b>3D Communal &amp; public open space</b>  Provide communal open space to enhance amenity and opportunities for landscaping & communal activities.  <u>Design Criteria</u> Provide communal open space (COS) with an area equal to 25% of site; Minimum 50% of usable area of communal open space to receive direct sunlight for a minimum of 2 hours between 9 am and 3 pm on 21 June.	Communal open space on the roof area will be reduced due to the provision of services on the roof.  The roof of each of the buildings will be embellished with BBQ, seating and landscaping.  Required COS: $7773 \times 0.25 = 1943\text{m}^2$ ; Proposed: $2611\text{m}^2$  Majority of the communal open space on the roof top will receive at least 2 hours direct sunlight between 9:00 am and 12:00pm.	Yes
<b>3F Visual Privacy</b>  Building separation distances to be shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.  <u>Design Criteria</u> Separation between windows and balconies is provided to ensure visual privacy is achieved.	The amended plans & deletion of the 'pop out' wings between Buildings A&B and C & D have been reviewed by UDRP who has raised no objections to the deletion of the pop out wings.  The separation and privacy impact between Buildings A & B and C & D (north-south) are considered satisfactory. Privacy screen have been provided.   See <b>Figure 3</b> after this table.	Yes
<b>Part 4 Designing the building</b>		
<b>4A Solar &amp; daylight access</b>  Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.	No changes to the number of apartments receiving the required solar access as approved by LDA 2020/0199.	N/A No change

<b>4B Natural Ventilation</b>  All habitable rooms are naturally ventilated.	All habitable rooms are naturally ventilated (have access to a window).	N/A No change												
<b>4C Ceiling Heights</b>  Ceiling height achieves sufficient natural ventilation and daylight access. The following is required as a minimum: <table border="1"><tr><th colspan="2">Min ceiling height for apartment &amp; mixed use buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m (3.1m floor to floor)</td></tr><tr><td>Non Habitable</td><td>2.4m</td></tr><tr><td>2 storey apts</td><td>2.7m for main living area , 2.4m for 2<sup>nd</sup> floor</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room</td></tr><tr><td>Mixed used zone</td><td>3.3m for ground &amp; 1<sup>st</sup> floor to promote future flexibility of use.</td></tr></table>	Min ceiling height for apartment & mixed use buildings		Habitable rooms	2.7m (3.1m floor to floor)	Non Habitable	2.4m	2 storey apts	2.7m for main living area , 2.4m for 2 <sup>nd</sup> floor	Attic spaces	1.8m at edge of room	Mixed used zone	3.3m for ground & 1 <sup>st</sup> floor to promote future flexibility of use.	<p>Floor to floor for habitable rooms increased from 3.1m to:</p> <ul style="list-style-type: none"><li>- Levels 1,2,3 &amp; 5 are 3.165m. This allows for additional space for service reticulation and insulation to achieve a 5 star Green Star rating</li><li>- Level 4 has an increased height of 3.2m, this allows for balcony slab required for service reticulation and insulation.</li><li>- Level 6 an increase of 3.24m. Additional space for slab thickness at roof level due to structural loading of roof terraces.</li></ul> <p>Note: 3.2m floor to floor is emerging as the industry standard (to comply with NCC).</p> <p>The overall building height has increased by 540mm with the lifts overrun increased by 1.29m.</p> 	Yes
Min ceiling height for apartment & mixed use buildings														
Habitable rooms	2.7m (3.1m floor to floor)													
Non Habitable	2.4m													
2 storey apts	2.7m for main living area , 2.4m for 2 <sup>nd</sup> floor													
Attic spaces	1.8m at edge of room													
Mixed used zone	3.3m for ground & 1 <sup>st</sup> floor to promote future flexibility of use.													
<b>4D Apartment size and layout</b>  Apartments are required to have the following minimum internal areas with one bathroom: <ul style="list-style-type: none"><li>• Studio = 35m<sup>2</sup>;</li><li>• 1 bedroom = 50m<sup>2</sup>;</li><li>• 2 bedroom = 70m<sup>2</sup>;</li><li>• 3 bedroom = 90m<sup>2</sup>;</li><li>• 4 bedroom = 102m<sup>2</sup>.</li></ul>	All apartments comply with the minimum area.	Yes												

<p><u>Note:</u></p> <p>➤ Additional bathrooms increase the minimum internal area by 5m<sup>2</sup>.</p>																	
<p><b>4E Private Open Space and balconies</b></p> <p>Apartments must provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p><u>Design Criteria</u></p> <p>1.All apartments are required to have primary balconies as follows:</p> <table border="1" data-bbox="209 600 746 790"> <thead> <tr> <th>Dwelling type</th><th>Minimum area</th><th>Min.depth</th></tr> </thead> <tbody> <tr> <td>Studio apts</td><td>4m<sup>2</sup></td><td>N/A</td></tr> <tr> <td>1 bedroom</td><td>8m<sup>2</sup></td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m<sup>2</sup></td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12m<sup>2</sup></td><td>2.4m</td></tr> </tbody> </table>	Dwelling type	Minimum area	Min.depth	Studio apts	4m <sup>2</sup>	N/A	1 bedroom	8m <sup>2</sup>	2m	2 bedroom	10m <sup>2</sup>	2m	3+ bedroom	12m <sup>2</sup>	2.4m	<p>All balconies comply with minimum size and depth requirement.</p>	<p>Yes</p>
Dwelling type	Minimum area	Min.depth															
Studio apts	4m <sup>2</sup>	N/A															
1 bedroom	8m <sup>2</sup>	2m															
2 bedroom	10m <sup>2</sup>	2m															
3+ bedroom	12m <sup>2</sup>	2.4m															
<p><b>4H Acoustic privacy</b></p> <p>Noise transfer is minimised through the siting of buildings, building layout, and acoustic treatments.</p> <p>Plant rooms, services and communal open space and the like to be located at least 3m away from the bedrooms.</p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.</p>	<p>Plant rooms and communal space are located on the roof level of each of the buildings.</p> <p>The site is opposite a rail corridor and in the original application an Acoustic Assessment Report, prepared by Acoustic, Vibration &amp; Noise P/L was submitted with the original proposal.</p> <p>This report looked at rail noise intrusion, mechanical plant, car park mechanical ventilation and roller door noise, plus noise assessment of the proposed boarding house.</p> <p>The report provides recommendations for building improvements to enable the development to be capable of complying with all relevant acoustic criteria through means of standard acoustic treatment and management. The acoustic treatment and management methods suggested in this report include:</p> <ul style="list-style-type: none"> <li>• Glazing – laminated or double glazing</li> <li>• Windows and doors with acoustic seals</li> <li>• Acoustic assessment of all proposed mechanical plants and equipment preparation of a Mechanical Services Plans once approval is granted.</li> <li>• External air conditioning units to be acoustically enclosed or</li> </ul>	<p>Yes</p>															

	<p>set away by more than 3m from any boundary.</p> <ul style="list-style-type: none"> <li>• Preparation of PoM for the boarding house. An amended PoM has been submitted listing the relevant requirements recommended in the Acoustic Report.</li> </ul> <p>The report concludes that if constructed as recommended in plans and specifications, including the acoustic recommendations in the report, will meet the required noise reduction levels as required by Clause 87 of 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". LDA 2020/0199 imposed Conditions 78, 100, 176, 176A &amp; 211 requiring compliance with Acoustic requirements.</p> <p>Council's Environmental Health Officer was advised of the amendments to the roof area with plant room shown and have advised that the submitted report with the parent application was satisfactory in terms of acoustic from future plant rooms. In addition, it is recommended that additional acoustic conditions be imposed to cover the acoustic aspects of the rooftop plants – <b>Conditions 257, 258 &amp; 259</b> have been imposed. With the imposition of the additional conditions, Council's Environmental Health are satisfied with the proposed plant rooms.</p>	
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**Table 1:** ADG Table.



**Figure 3:** Plan view of windows incorporating privacy screens to the reconfigured 'blinker windows'.

### 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 will continue to deliver 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.

The approved development allowed for a floor-to-floor height of 3.1m which is now deemed insufficient for construction and therefore it is proposed to increase the floor-to-floor heights to facilitate the delivery of 2.7m floor to ceiling in habitable rooms in accordance with the ADG and as required by the National Construction Code (NCC).

A floor-to-floor height of 3.165m is proposed in order to accommodate the necessary habitable space, ceilings, service zone, structural zone and slab and floor build up, as follow:

Floor to floor for habitable rooms increased from 3.1m to:

- Levels 1,2,3 & 5 are 3.165m. This allows for additional space for services, reticulation and insulation to achieve a 5 star Green Star rating.
- Level 4 has an increased height of 3.2m, this allows for balcony slab required for service reticulation and insulation.
- Level 6 increase of 3.24m. Additional space for slab thickness at roof level due to structural loading of roof terraces.

Notably, the increase height to the lift overruns is a product of the increased floor to floor heights below, as well as input from specialist lift contractors who have advised on the minimum lift overrun height required on the site.

Building	Max permitted under RLEP 2014	Approved LDA 2020/0199	Approved Variation	Proposed max height	Proposed Variation
A	18.5m(northern) 21.5m (southern)	25.8m RL49.78	7.3m (39%)	27.03m RL51.07	8.59m (46.4%)
B	21.5m	26.4m RL49.78	4.9m (23%)	27.63m RL 51.07	6.19m (28.7%)
C	18.5m(northern) 21.5m (southern)	24.56m RL49.78	6.06m(33%)	25.76m RL51.07	7.35m (39.7%)
D	21.5m	25.87m RL 49.78	4.37m (20%)	27.1m RL 51.07	5.6m (26.3%)

The proposed modifications will result in a consistent increase in height of 1.29m resulting in a maximum variation of 8.53m (46.4%). The approved development had a maximum variation of 7.3m (39.7%).

In accordance with *Gann & Anor v Sutherland Shire Council [2008]*, where the Court held that despite a Clause 4.6 variation not being required, Section 4.56 of the EP&A

Act still requires the consent authority to take into consideration those matters referred to in Section 4.15 of the EPA Act, including the objectives of the development standard.

The objectives of Height Clause 4.3 are:

**(a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development.**

The applicant has provided the following comments to address the objective:

*“The proposed development will continue to be compatible with the size of the subject site and its surrounding built and natural environment. The additional height proposed is a result of the increase floor to floor heights to ensure the delivery of a 2.7m floor to ceiling height within habitable rooms during construction. This allows for both the development to achieve compliance with the NCC and ensure apartments are provided with appropriate floor to ceiling heights, a standard for amenity. The increase in height is relatively minor, compared to the scale of the approved development, and the extent of the height breach approved on the site, and will not impact the character of the approved built form or relationship to the prevailing character of surrounding development.*

*Furthermore, the maximum height increase of 1.29m is limited to where the lift overruns are located. The lift overruns are located centrally within the site and therefore the impact of their height increase will be negligible to those surrounding properties, particularly to the east. Notably, the increase height to the lift overruns is a product of the increased floor to floor heights below, as well as input from specialist lift contractors who have advised on the minimum lift overrun height required on the site.*

*The proposed modification maintains the scale of development, being 6 or 7 storeys in height, which is in keeping with the scale and height of other recently constructed high density developments in the locality. This includes developments throughout the precinct and directly adjacent sites to the south and west, which also benefitted from height of building breaches.*

*Overall, the additional height will not create an overdevelopment of the site and will not be at odds with other built form in the locality. Despite the breach in building height, the development will continue to sit comfortably into the site and, as with the approved development, the use of articulation and breaking up the built form by increasing the height – resulting in the breach – will actually reduce the overall appearance of bulk of the development when viewed from the street and surrounds.”*

#### Planning Comment

It is agreed that the increase in height will not result in a development that is out of character with the surrounding area.



The area has undergone significant redevelopment in recent years, evolving into a mixed-use area. Neighbouring sites to the east and south comprise of residential flat buildings and mixed used developments of 6 and 7 storey buildings.

The increase in height will not result in an additional storey or significantly add to the bulk and scale of the development to render the development out of character with the area.

Therefore, despite the non-compliance, objective (a) is achieved.

***(b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area.***

The applicant has provided the following comments to address the objective:

*“Despite the height non-compliance, the proposed development will not give rise to significant adverse overshadowing impacts on neighbouring properties, over and above those created by the approved development.*

*Due to the orientation of the site, the approved development, inclusive of the approved height breach, resulted in a degree of overshadowing to a number north-facing windows of apartments at Nos. 21-24 Railway Road property to the south) and Nos. 15-17 Angas Street (property to south east), and west-facing windows of apartments at Nos. 3-13 Angas Street (property opposite to the east). However, as demonstrated by the accompanying shadow diagrams, the level of overshadowing caused by the proposed modification will be nominal and will not give rise to additional significant adverse impacts on apartments within those neighbouring developments above what was approved.*

*Specifically, the extent of additional overshadowing is generally cast onto the roof form of the neighbouring properties or to the street and is an evidently minor impact when compared to the approved development.*

*Where additional overshadowing is cast onto the openings or balcony of the adjoining properties, as shown in the elevational shadow diagrams, this is limited and will not adversely impact the quantum of solar gain of those properties as approved. Importantly, the extent of additional shadows will not impact any new openings or balconies on the adjoining properties in addition to what was approved, given the minor extent of additional shadowing created. It follows that the extent of the additional overshadowing to openings or balconies will not adversely impact the amenity or liveability of the neighbouring residential accommodation and is considered acceptable.*

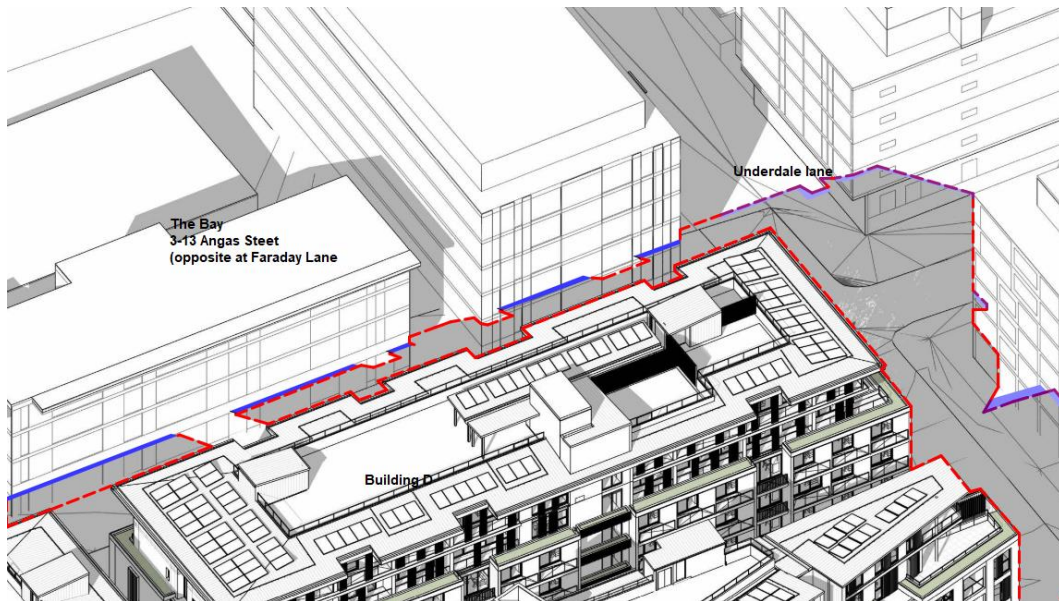
*Additionally, the proposed development, as modified, continues to be of a scale and form that is characteristic of the high-density streetscape within the precinct and is compatible with other developments in the locality. The proposed modifications will not significantly alter the general appearance of the site and wider streetscape and continues to provide a high-quality development that exhibits design excellence.”*

### Planning Comment

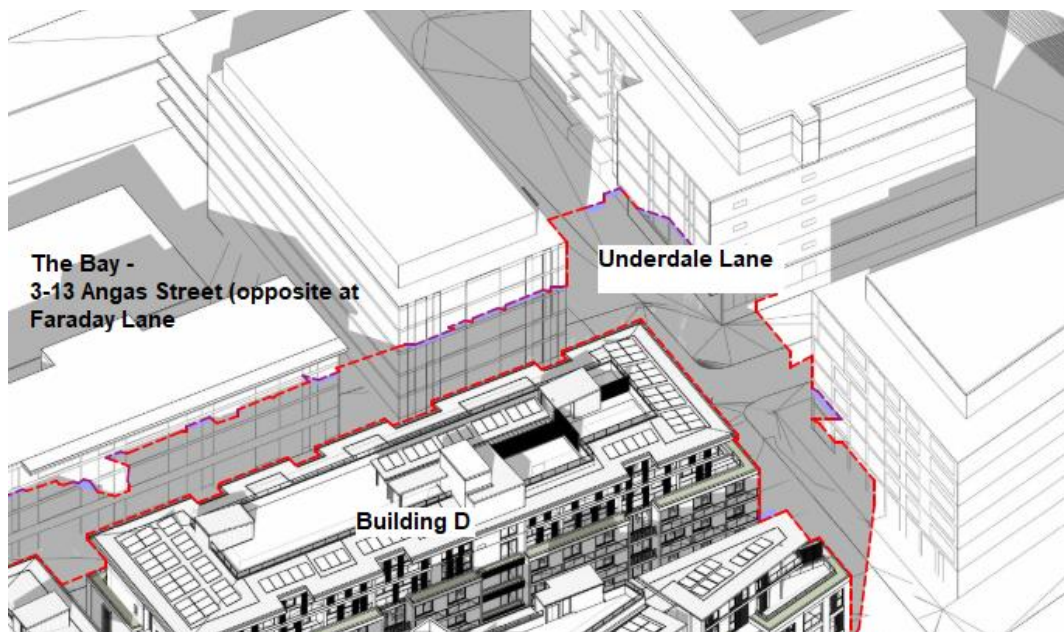
Shadow diagrams have been submitted which illustrate that the buildings along Angas Street to the east of the subject site are not impacted by any shadowing caused by the proposed modifications until 1pm during midwinter.

The approved development will not cast shadow on the buildings opposite in Faraday Lane and Angas Street until 1pm, see **Figures 4 to 7** below illustrating the shadows cast from 1pm to 4pm.

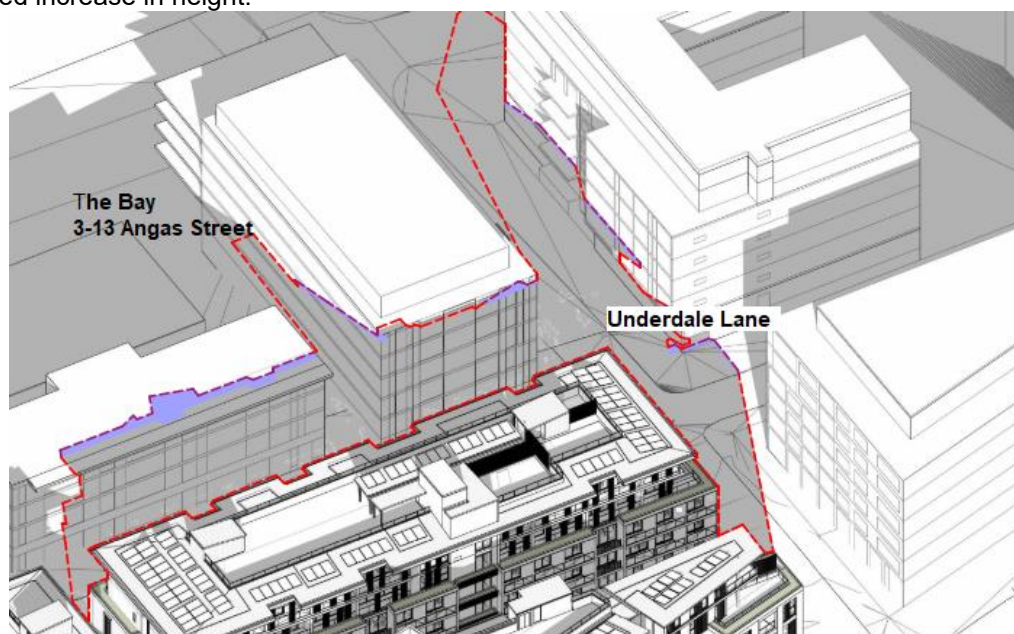
The additional shadow to the buildings in Underdale Lane is relatively minor.



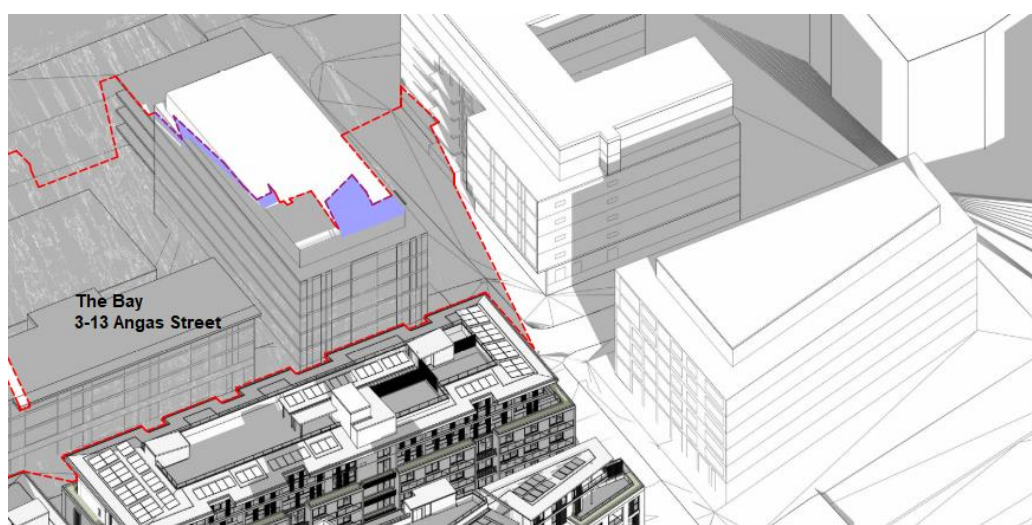
**Figure 4:** June 21 – 1pm. Shadow cast onto building opposite at Faraday Lane, onto the development known as The Bay (3-13 Angas Street) and to the buildings at Underdale Lane. The purple outline is the additional shadow cast from the proposed increase in height.



**Figure 5:** June 21 – 2pm. Shadow cast onto building opposite at Faraday Lane, onto the development known as The Bay (3-13 Angas Street). The purple outline is the additional shadow cast from the proposed increase in height.



**Figure 6:** June 21 – 3pm. Shadow cast onto building opposite at Faraday Lane, onto the development known as The Bay (3-13 Angas Street). The purple outline is the additional shadow cast from the proposed increase in height.



**Figure 7:** June 21 – 4pm. Shadow cast onto building opposite at Faraday Lane, onto the development known as The Bay (3-13 Angas Street). The purple outline is the additional shadow cast from the proposed increase in height.

From 2pm, the extent of additional shadowing caused by the proposal is relatively minor, and by 3pm the additional shadow is on the roof, as shown by the purple shading in the shadow diagrams. 'The Bay' will not receive any additional overshadowing from the proposal until 1pm, with the extent of shadow caused by the modification having negligible impacts on the amenity of those apartments.

Therefore, despite the non-compliance, objective (b) is achieved.

**(c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure.**

The applicant has provided the following comments to address the objective:

*“The proposal continues to provide a large-scale development on a site consisting of 16 smaller lots. This provides a development of a scale and type that is consistent with other developments in the Shepherd’s Bay, Meadowbank precinct and that is encouraged by the planning controls that apply to the site.*

*The development provides a significant uplift in housing and employment generation on the site, in a location with excellent access to public transport. As such, it will encourage sustainable modes of transport and demonstrate a truly transit-oriented development that is encouraged in the precinct. Furthermore, the development provides a compatible mix of residential and non-residential uses on the site.”*

**Planning Comment**

It is agreed that the proposal will provide for a mixed-use development near a transport-oriented site. The increase in height will not alter this.

**(d) to minimise the impact of development on the amenity of surrounding properties.**

The applicant has provided the following comments to address the objective:

*“The proposed height breach does not result in any unreasonable adverse amenity impacts on neighbouring properties. The development will continue to provide compliant building setbacks and separation in accordance with the ADG and RDCP 2014 requirements.*

*Consequently, the height breach is relatively minor and will not introduce any visual or acoustic privacy impacts above what was approved. Furthermore, as set out under Objective (c) above, the level of overshadowing caused by the additional height breach is minor and considered to be reasonable and in accordance with what is anticipated by the building envelope controls that apply to the site.*

*Notably, and consistent with the original development, the increased height as a result of the breach has allowed floor space to be concentrated into the four residential building elements rather than spread across the entire frontages of the site. Opportunities for private and public views through the site are enhanced by the height breach which has enabled the built form to be broken up, providing physical gaps in the development, both from north to south and east to west through the site.”*

**Planning Comment**

It is agreed that the increase in height is not considered to have significant adverse impact to surrounding properties as to warrant refusal.



The overshadowing caused by the additional height has been discussed above and is acceptable as the number of apartments able to achieve the required solar access will not decrease from what was approved and the increase in overshadowing is relatively minor and apartments will still be able to receive the same amount of solar access as approved.

Privacy and acoustic impacts are not exacerbated by the proposed increase in height.

Therefore, despite the non-compliance, objective (d) is achieved.

**(e) to emphasise road frontages along road corridors.**

The applicant has provided the following comments to address the objective:

*“The additional height proposed will not impact how the development, as approved, responds to the road frontages. The additional height proposed will not impact the essence of the approved development which is four distinct residential buildings over a ground floor comprising commercial/retail uses. The development will continue to follow the alignment of surrounding roads, with level access provided from both Railway and Constitution Roads to emphasise these road frontages. The form of the development will continue to follow these road alignments, with the approved building setbacks retained.*

*Therefore, despite the non-compliance, objective (e) is achieved.”*

Planning Comment

Agreed.

**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 proposed under this modification application will create a non-compliance with the maximum FSR permitted equating to a variation of 3% or a FSR of 2.91:1.

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**

Council Development Engineer has reviewed the amended stormwater plans and have amended applicable conditions accordingly.

**Ryde Development Control Plan 2014**

## Part 4.2 – Shepherds Bay Meadowbank

The modification will alter the building height, internal layout of the apartments and the building rooftop.

Clause	Proposed	Compliance
<b>4.2.1 Height</b>		
<p>The maximum building height is to comply with the heights shown in Ryde Local Environmental Plan 2014 Height of Buildings Map. Buildings must comply with the maximum number of stories shown in Figure 4.2.10.</p> <p>The ground floor height shall be 4m floor to floor regardless of use.</p> <p>Retail and commercial uses at ground floor are to have floor levels contiguous with finished footpath levels. On sloping sites, the levels must be contiguous at entries.</p>	<p>The DCP prescribed a maximum no of storeys for the site – being 6 storeys for the majority of the site (where the height is 21.5m) and 5 storeys for northern portion of the site where the height is 18m.</p> <p>The proposal exceeds the height and number of storeys, being 6 and 7 storeys. No additional storeys are added through this modification.</p> <p>4.7m</p> <p>Entries to commercial uses and the public pedestrian walkway are level with the footpath on Railway and Constitution Roads.</p>	<p><b>No</b> See discussion above. Height variation approved LDA2020/0199</p> <p>Yes</p> <p>Yes</p>
<b>4.2.2 Setbacks</b>		
<p>Setbacks must be consistent with the setback map (see Figure 4.2.12): - zero setback along Railway Road and Constitution Road - 4m setback along Underdale Road and Faraday Lane.</p> <p>Development in the vicinity of the station to have no setback at ground level (i.e. built to the lot boundary).</p>	<p>Nil boundary setback along Railway Road and for section of Constitution Road.</p> <p>On the corner of Railway Road and Constitution Road, a public plaza is proposed resulting in a setback of between 6.5m to nil along Constitution Road.</p> <p>The increase setback to Constitution Road to create a new plaza is a positive response to the existing station plaza on the western side of Railway Road and is supported.</p>	<p><b>No</b> –for the corner of Railway Road and Constitution Road - variation acceptable, approved in LDA2020/0199</p>
<b>4.2.3 Roof Form</b>		
<p>Buildings below RL 15 must have articulated roofs, as they will be viewed from buildings above. Articulated roofs refer to well-designed roof zones with landscaping, useable areas and/or richly detailed roofs made of high-quality materials.</p>	<p>The proposed building is not below RL 15.</p> <p>Despite this, articulation on the rooftop is provided through the provision of a communal open space area.</p>	<p>Yes</p>
<b>4.2.5 Private and Communal Open Space</b>		
<p>a. Private open space with sunlight access, ventilation and privacy shall be provided for apartments in accordance with SEPP 65.</p>	<p>Refer to the ADG Assessment.</p>	<p>Yes</p>

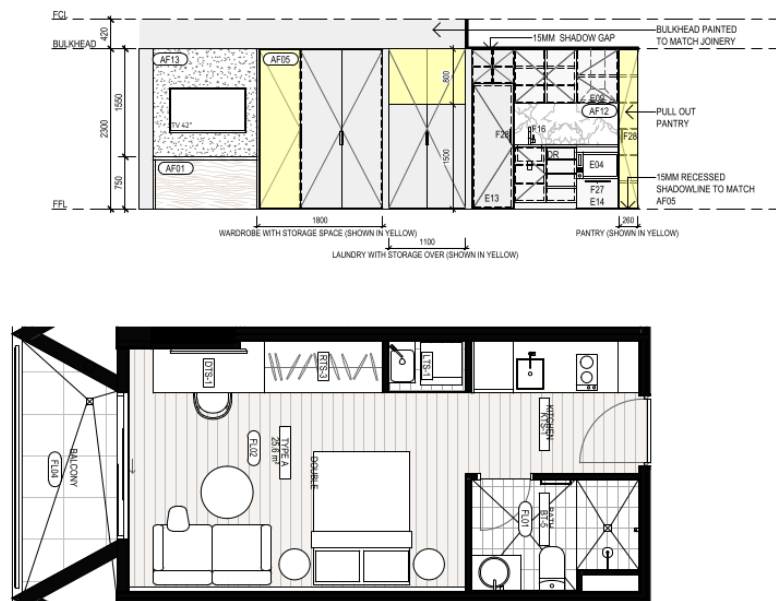
## Part 3.5 – Boarding Houses

No changes are proposed to Building D (Boarding House) in terms of the physical building form.

The original approval and Mod2024/005 approved a laundry area in Basement 2 with 17 washers/dryers for use by the residents of the boarding house. It is now proposed to delete the laundry area in Basement 2 and provide each boarding room with its own washer/dryer.

Clause 3.6 (d) of the DCP states that, where it is proposed to provide additional facilities in the boarding room (i.e. a laundry) it must be 1.1m<sup>2</sup> and comprise a wash tub and a washing machine.

The proposal can comply with the above and has provided a wash tub and washer/dryer in each room with wardrobe/storage space provided, as shown in the **Figure 8** below.



**Figure 8:** Plan and elevation showing typical boarding room with a tub, washer/dryer and storage area.

Accordingly, **Condition 133** requiring laundry facilities (number of washing and sinks to be provided) to be provided for the boarding house can be deleted and replaced with requirement to comply with Clause 3.6(d) - ) it must be 1.1m<sup>2</sup> and comprise a wash tub and a washing machine.

## Part 7.2 Waste Minimisation and Management

The proposal provides a loading bay within the site on the ground floor level (in the basement car park) with access from Constitution Road.



Separate residential, boarding and commercial waste storage facilities (including bulky waste storage) are proposed, and Council's Waste Management Section has reviewed the amended proposal and has raised no objections, subject to conditions.

### **Part 9.3 – Parking Controls**

N/A - No changes to the parking number or access.

### **Section 7.11 Contribution**

The Section 7.11 Contributions was paid on 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 MOD2024/0005.

The development is considered satisfactory in terms of environmental impacts.

## **6 SUITABILITY OF THE SITE**

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**

#### Transport for NSW

Transport for NSW (TfNSW) does not require the imposition of any additional conditions in relation to the subject modification application.

All conditions and comments issued by TfNSW in response to the previous application (LDA2020/0199) remain applicable.

### **Internal**

#### City Infrastructure (Public Domain)

The amended architectural plans are considered to satisfy the 1.2m clearance stratum between the footpath FFL and top of the basement slab within Faraday Lane.

All existing Public Domain conditions issued as per the Court issued judgment for LDA2020/199 are maintained.

#### City Infrastructure (Waste)

Changes to the waste collection area have been reviewed by Council's Waste Officer and with imposition of **Condition 1B** to amend the design, no objections are raised subject to amended and additional conditions. **Conditions 58, 126, 208, 209, 126A, 130A, 130B, 130C, 133A & 233A.**

#### Environmental Health

Council's Environmental Health Officer has advised that existing acoustic conditions and the imposition of **Conditions 257, 258 & 259**, to ensure amenity to surrounding properties are maintained, the roof top services are acceptable.

#### Drainage Engineer:

Council's Drainage Engineer has reviewed the amended stormwater plans and has advised that subject to additional conditions, no objections to the proposed modifications. Condition 112 is to be deleted due to new conditions being imposed to reflect the amended plans. **Conditions 112A, 112B, 112C, 112D, 142A, 142B, 163A, 191A, 194A, 196A & 197A.**

#### Development Engineer:

No objections subject to amendment to **Conditions 109 & 166.**

## **8 PUBLIC NOTIFICATION & SUBMISSIONS**

In accordance with Council's Community Participation Plan, the application was publicly exhibited between 18 September 2024 to 4 October 2024 the same properties and objectors as those notified under LDA2022/0199.

The closing date for submission was extended to 6 November 2024 to allow sufficient time to make a submission due to difficulties in viewing the plans on Council's website.

As a result of the public exhibition, seven (7) submissions were received, one (1) in support and 6 in objection of the application.

The submissions raise the following issues:

- ***Increase in height will block sunlight, reduce natural light and sunshine. The shadow diagrams shown in the Statement of Environmental Effects indicate that, in winter months, buildings C and D of the proposed development would cast afternoon shadows from 2pm on windows and balconies of most***

***apartments in blocks 1, 5 and 6 of The Bay. The scale, bulk and height of the proposed development will cause an obstruction to the solar benefits to all residents in blocks 1, 5 and 6 of The Bay which is much needed in the winter months.***

- ***Concerns proposed increase in height of the buildings and the gross violation of my privacy and all of the other residents in blocks 1, 5 and 6 of The Bay that would be overlooked by occupants in apartments and the rooftops of buildings C and D in the proposed development across Faraday Lane***

#### Comment

The proposed height increase is necessary to satisfy both the Apartment Design Guide and National Construction Code Buildability Requirements. The applicant has submitted a section plan showing the increase in floor-to-floor height of 3.165m in order to accommodate the necessary habitable space, ceilings, service zone, structural zone and slab and floor build up. Also, it should be noted that a floor to floor of 3.2m is rapidly emerging as the industry standard.

The increase in height is also due to increase in the lift overruns. The increase is due to design development with the lift suppliers. The lift overruns are located centrally within the site and therefore the impact of their height increase will be negligible to those surrounding properties, particularly to the east, to the adjoining property opposite in Faraday Lane.

The shadow diagrams, as previously illustrated in **Figures 4 to 7** above, show that the properties to the east ('The Bay') will not be impacted by any shadowing caused by the proposed modifications until 1pm during midwinter, where this additional shadowing is minor and will not have any significant reduction in the amount of solar access received by surrounding properties.

From 2pm, the extent of additional shadowing caused by the proposal is minor, as shown by the purple shading in the shadow diagram. The extent of shadowing caused by the proposal will not cast shadows on 'most' apartments in the adjoining residential block and will only impact a select few apartments on the upper floor of 'The Bay' at 2pm, with additional shadowing at 3pm falling entirely over the roof form only. Overall, the development to the east known as 'The Bay' will not receive any additional overshadowing from the proposal until 1pm, with the extent of shadow caused by the modification having negligible impacts on the amenity of those apartments.

With regards to overlooking, the proposal maintains the approved building setbacks and separation distance to all site boundaries and therefore will not alter the privacy relationship between the site and adjoining sites. The original DA approved communal open space on the rooftop areas and the setbacks and separation are not altered. The separation distance provided to the buildings across Faraday Lane is increased by the Faraday Lane carriageway, noting this separation distance is as approved and the increase in building height does not result in any non-compliances with the separation requirements. The proposal will not alter the number or location of windows and openings at the elevation to Faraday Lane and the proposed height increase will not create any unreasonable instances of overlooking or direct sightlines.

- ***Loss of Views - The proposed increase in height of the buildings would seem to encroach on The Bay appearing to be almost twice the height across Faraday Lane which have a lower ground level. This disparity in building scales and character is clearly shown in file NP03 - NE elevation from Constitution Road, in the Development Application. This is highly objectional as I have paid a premium for my property to currently enjoy uninterrupted views to the west over the existing one and two-storey warehouses along Faraday Lane, towards the Parramatta River, Parramatta CBD, and as far as the Blue Mountains. These views will be completely lost if buildings C and D in the proposed development are built to the scale resulting in the devaluation of my property also.***

#### Comment

The development has been approved by LDA2020/0199 and any redevelopment of 1-20 Railway Road & 50 Constitution Road to replace the existing one and two storey warehouses, to the maximum height would block the outlook to the west enjoyed by the site opposite.

This modification increases the height of the buildings by 0.540m, and this increase is not considered to have a significant impact on any existing views. Where the height increase extends to 1.29m this is limited to the lift overruns which are located centrally within the site. The maximum building height on the site is concentrated towards the middle of the site away from Faraday Lane.

Furthermore, the buildings fronting Faraday Lane within 'The Bay' are a maximum of 5 storeys in height. As such, any views over the subject site would be impacted by the approved development on the site, and the minor height increase proposed will not have an adverse impact on those views.

- ***The proposed development is grossly "out of character" in relation to the neighbourhood.***

The proposal modifications are not considered to significantly change the overall streetscape appearance, building setbacks, architectural styles, landscape area, built form and private open spaces.

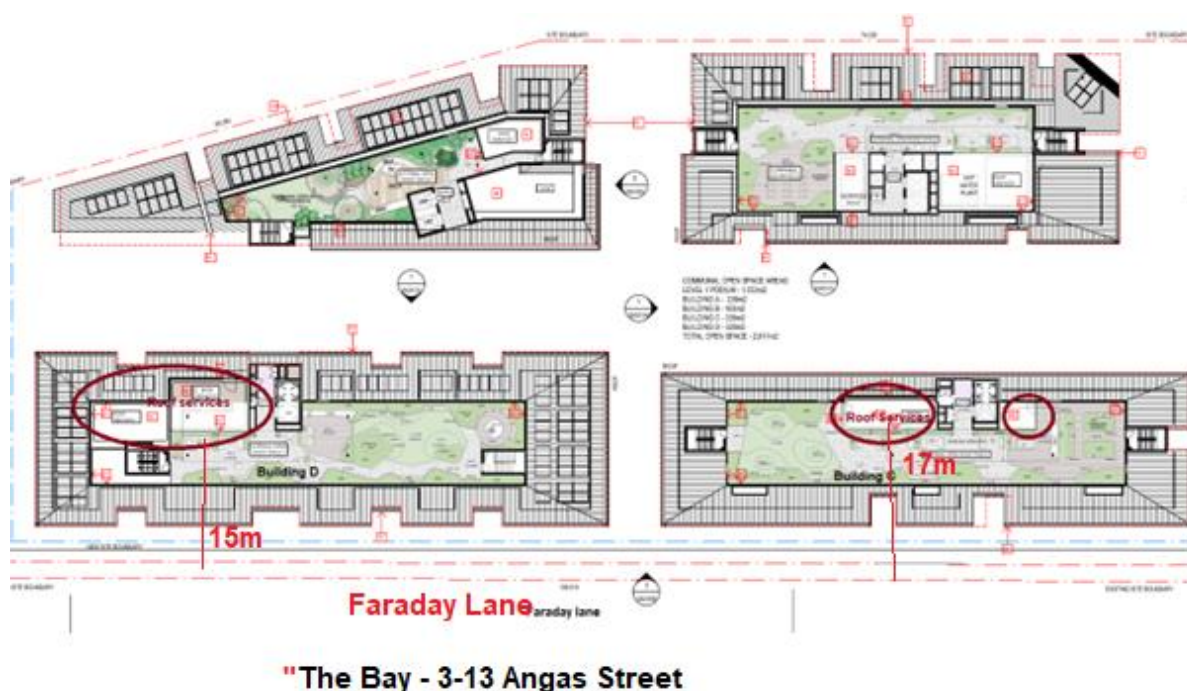
With regard to building height the bulk of the development will only increase in height by 540mm which is not considered to significantly change the character of the development, as approved.

- ***Decreased open space.***

The modifications to the apartment layout are contained within the building footprint. The plant/service rooms on the roof within the communal open space will result in loss of some COS however overall, the development will still comply with the required ADG guideline for COS. The development will have a total COS of 2,611m<sup>2</sup>, which is over the maximum required of 1,943m<sup>2</sup>.

- **Impacts from the roof plants/services – odour and noise. Services should be enclosed and located entire within the building structure to reduce amenity impacts. It is expected that an updated acoustic report that looks at the impacts of the closest residential receiver from the adjoining residential units at 3-13 Angas Street to be carried out to demonstrate that are no adverse amenity noise impacts and a post occupation acoustic report should be requested (and a copy to be provided to the strata body of 3-13 Angas Street).**

The roof services on Buildings C & D (Buildings opposite 3 to 13 Angas Street) are located away from the adjoining property opposite, setback approximately 15 to 17m from the existing site boundary and further separated from the adjoining site by Faraday Lane, as illustrated in **Figure 9** below.



**Figure 9** – Location of the roof services on the buildings opposite Faraday Lane (facing The Bay at 3-13 Angas Street).

In the parent DA for the development, the submitted Acoustic Report looked at future mechanical services for the site and “*recommended an acoustic assessment of all proposed Mechanical Plant & Equipment once the development has been approved and Mechanical Services Plans have been prepared.*”

*In general, for the operation of the building mechanical plant and equipment to meet the noise criteria listed in Section 8 of this report, we recommend that all new external air-conditioning units are to be acoustically enclosed or set away by more than 3.0m from any boundary.”*

The proposed services are setback more than 3m from the site boundaries and **Conditions 78, 176 and 211** have been imposed in the original approval (and which remain applicable) which require compliance with the Acoustic Report. Council’s

Environmental Health Officer has advised existing condition 237, (reproduced below) **Condition 237 - Noise and Vibration from Plant or Equipment** will ensure that the amenity to adjoining properties are protected.

**237. Noise and vibration from plant or equipment** - *Unless otherwise provided in this Consent, the operation of any plant or equipment installed on the premises must not cause:*

- (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at, or computed for, the most affected point, on or within the boundary of the most affected receiver. Modifying factor corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the Noise Policy for Industry (EPA, 2017).*
- (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2000 Acoustics – Recommended design sound levels and reverberation times for building interiors.*
- (c) The transmission of vibration to any place of different occupancy.*

*(Reason: To protect the amenity of the neighbourhood).*

In addition, **Conditions 257, 258 & 259** have also been imposed requiring:

- Noise attenuation measures implemented so that noise emitted does not exceed 5dB(A) above the background noise level when measured on or within any other residential property boundary.
- Upon receipt of a justified complaint in relation to noise pollution emanating from the premises, an acoustical assessment is to be carried out in accordance with the requirements of the NSW Environmental Protection Authorities - Noise Policy for Industry and provide recommendations to mitigate the emission of offensive noise from the premises.
- Within 3 months of completion a post commissioning report must be produced by an acoustic consultant with suitable technical qualifications and experience, consistent with the technical eligibility criteria for membership to the Australian Acoustical Society (AAS) or Association of Australasian Acoustic Consultants (AAAC). The post commissioning report must consider the principles of the Noise Policy for Industry and assess the noise generated within a habitable room of the nearest sensitive receivers and any other required location.

Should the Body Corporate of 3 to 13 Angas Street wish to contain a copy of the report they are able to access the report under The Government Information (Public Access) Act.

- ***Consideration under State Environmental Planning Policy (Housing) 2021 (20)(3)? Any further increases to Floor Space Ratio or height is unlikely to be compatible with desirable elements of the character of the local area as the original development application was already a very generous approval by the Land Environment Court.***

The approved development was considered to address the requirements of SEPP (Affordable Rental Housing) 2009 which continues to apply to the site in accordance with the savings provisions within Schedule 7A of the Housing SEPP.

The proposal was reviewed by the Urban Design Review Panel who have reviewed the modifications against the principles of the Housing SEPP. The Panel considered the proposal and believed the changes did not result in a “*material change to the approved form*” hence their support of the modifications:

- *The Modification maintains the broad built form, bulk and scale of the existing approved DA. Minor amendments that reflect changes to the internal configuration of a number of apartment layouts are evident, but bring no material change to the approved building forms. These changes are supported by the Panel.*
- *More significant, the Modification seeks to increase typical floor to floor levels sufficient to ensure that the requirements of the ADG (2.7m floor to ceiling height) and NCC requirements for waterproofing, slab setdowns and insulation can be achieved.*
- *Subject to Council being satisfied that any additional off-site overshadowing impacts are acceptable, the Panel supports the proposed increase in building height.*

In offering this support the Panel also notes:

- *3.2m floor to floor is rapidly emerging as the industry standard for a typical repeating plan. The Modification seeks consent for floor-to-floor heights of 3.165m, which may be technically feasible with a high degree of structural and services integration. An additional 35mm per floor is unlikely to be perceptible from public vantage points and may simplify construction methodologies.*
- ***Whilst a Clause 4.6 is not required, the SEE provided by the applicant had not provided justification that would warrant a development to approved that breaches these standards. Little justification why height increase is necessary - floor to floor height of 3100mm is sufficient in achieve the requirements of the ADG and the applicant had not provided any evidence on why the 3100mm floor to floor height cannot meet the 2.7 metre requirement and there is also no evidence on why an extra 1.534 metres in height is required.***

***Secondly, it was already a very generous approval for the original development application in regard to the breaches of maximum building height, the originally approved development is already greater in height than the surrounding properties as it exceeds the 21.5 metre maximum height that is applicable to the subject site and the surrounding properties. The justification in the SEE that describes the proposed development will not impact the character of the approved built form or relationship to the prevailing character of surrounding development is a failure to consider the accumulative impacts from the proposed changes (height and FSR) and a clear misunderstanding of the built form in the surrounding properties.***



***Approving this variation (FSR) creates a very dangerous precedent, that an applicant will get a building envelope approval through the courts, using FSR compliance (that results from bonus) as a major reasoning to get an otherwise out-of-character building envelope, then get the FSR that they always wanted in the first place.***

The UDRP has advised that 3.2m floor to floor is rapidly emerging as the industry standard given the structural and services required. The extra height of 1.29m is for the lift overrun and as a result of the further refinement to try to reduce the height, the lift overrun has been reduced by 300mm, to 1.29m. When excluding the lift overruns, the overall increase in building height is only 540mm (Note: Levels 1,2,3 & 5 are 3.165m. This allows for additional space for service reticulation and insulation to achieve a 5-star Green Star rating. Level 4 has an increased height of 3.2m, this allows for balcony slab required for service reticulation and insulation and Level 6 increase of 3.24m. Additional space for slab thickness at roof level due to structural loading of roof terraces).

The applicant has advised that the proposed building height and lift overrun height increase is a product of detailed design development with contractors and engineers who have advised on the minimum requirements to ensure buildability. Without the proposed height increase the approved development on the site cannot be constructed to meet the standard requirements.

The approved development by the L& E Court was satisfied that the contravention in height was consistent with the objectives of the zone and the standard.

Commissioner J Gray states *“that the breach allows for building mass to be centred above the buildings to enable significant setbacks at the intersection of Railway Road and Constitution Road to provide a plaza area and for the built form of the development to be broken up as four distinct residential towers. The approximate volume of the plaza area and the setbacks is equivalent to one storey across buildings A and B. I am also satisfied that the written request demonstrates that compliance with the standard is unreasonable and unnecessary given that the proposal is consistent with the objectives of the standard notwithstanding the non-compliance, and as there is no impact caused by the breach of the standard”*.

The bulk and scale were considered acceptable for the site and locality with no adverse impacts. The proposed height increase, which is at its maximum within the middle of the site, is not considered to result in such a significant increase across the whole site as to change the streetscape character of the site.

The additional GFA proposed is located entirely within the approved building footprint and is not a result of nor does it relate to the height increase. The internal changes to the apartment layout are considered an improvement to amenity for the future residents. The UDRP note that the modifications maintain the broad built form, bulk and scale and that the internal configuration of the apartments bring no material change to the approved building forms. Notably, the extent of the GFA non-compliance will not be perceptible from the public domain.

With regards to setting a precedent, each application is assessed on its own merit and in this instead, the proposed modifications are not considered to significantly alter the bulk or scale, character or essence of the development and can be supported by Council.

## **9 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 height and floor space objectives under RLEP 2014.
- The variations proposed to the floor space ratio and building height do not unreasonably add to the bulk and scale of the approved development, and do not exacerbate impact on the amenity of neighbouring private and public property.
- 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 commercial and residential uses within proximity to public transport and educational facilities and will support the growth of the local community.

## **RECOMMENDATION**

That MOD2024/0191 to modify the consent for Local Development Application No. LDA2020/0199 on land at 1 to 20 Railway Road, and 50 Constitution Road, Meadowbank be approved subject to the condition in **Attachment 2**.