

**City of Ryde
Local Planning Panel Report**

DA Number	APL2022/0004
Site Address	3 Porter Street & 105 Church Street Ryde NSW 2112 SP 100700
Zoning	B4 Mixed Use zone
Proposal	Section 8.3 review of determination LDA2021/0296 for the fitout and use of the redundant plant area for the purposes of storage and distribution of goods
Property Owners	HLWZ Developments Pty Ltd
Applicant	Eun Seo, Eun Seo Architects Pty Ltd
Report Author	Tyson Ek-Moller, Consultant Planner
Lodgement Date	14/09/2022
Notification No. of Submissions	Two (2) submissions were received
Cost of Works	\$252,005.00
Reason for Referral to LPP	<ul style="list-style-type: none"> • Departure from development standards – contravention of the floor space ratio development standards by more than 10% - <i>Schedule 1, Part 3 of Local Planning Panels Direction</i> • LDA2021/0296 was originally determined by the Panel
Recommendation	Approval
Attachments	Attachment 1 – Recommended consent conditions Attachment 2 – LEP and DCP Compliance Tables Attachment 3 – Plans submitted with the application Attachment 4 – Section 8.3 Review Covering Letter Attachment 5 – Clause 4.6 Written Variation Request Attachment 6 – Legal advice submitted by Applicant

1. Executive Summary

The subject application (APL2022/0004) at 3 Porter Street, Ryde (SP 100700) seeks consent for alterations to an existing basement level and a change of use of a plant room to a warehouse and distribution premises. The application has been lodged pursuant to Section 8.3 of the *Environmental Planning and Assessment Act 1979* (the Act), to review the refusal of Development Application LDA2021/0296, which was refused by the Ryde Local Planning Panel (RLPP) on 11 August 2022.

In accordance with Sections 8.3 (Application for and conduct of review) and 9.1 (Directions by the Minister) of the Act, this application is reported to the RLPP for determination for two reasons. Firstly, as the development proposes a departure from a development standard in excess of 10%. The proposal seeks a variation to the floor space ratio (FSR) development standard; such a variation is a result of the change of use of the plant room, and not a result of external changes to the building. A written variation request pursuant to clause 4.6 of *Ryde Local Environmental Plan 2014* (RLEP 2014) has been submitted as part of the application, and the proposed variation is supported.

Secondly, pursuant to Section 8.3(5) of the Act, the review of a determination or decision made by a local planning panel is to also be conducted by the panel. As LDA2021/0296 was refused by the RLPP, the RLPP panel must also determine the subject application.

The subject application was notified from 20 September 2022 to 7 October 2022. Two (2) submissions were received, one (1) of which objected to the proposal. Concerns raised related to traffic and parking impacts.

Aside from the aforementioned FSR variation and technical DCP non-compliances relating to commercial levels and the submission of a site analysis plan, the proposal is otherwise consistent with the standards, controls, and associated objectives of the RLEP 2014 and Ryde Development Control Plan 2014 (RDCP 2014).

The Application, which sought consent for a 'local distribution premises' was refused for being a prohibited development as was not a permitted use within the B4 Mixed Use zone and concerns related to the amenity of workers (sunlight and ventilation) due to the subterranean nature of the site. The proposal has changed the proposed use to a 'warehouse or distribution centre', which is a permitted land use. The proposal has been amended to provide further openings and has been supported by a Building Code of Australia statement confirming the proposal will satisfy the light and ventilation requirements.

The applicant has also submitted a legal opinion confirming that 'warehouse or distribution centre' is a permitted landuse within B4 Mixed Use zone. Council's legal team peer reviewed the legal opinion and concurred with its findings.

The subject site is considered to be suitable for the proposed development and approval is not considered to be contrary to the public interest. For such reasons, it is a recommendation of this report that the determination be changed, and the subject application is recommended for approval.

2. The Site and Locality

The subject site comprises of a single allotment; due to the site having two street frontages, it has addresses of 3 Porter Street, Ryde and 105 Church Street, Ryde and is legally described as Strata Plan 100700.

The northwest frontage of the site adjoins Porter Street and its southeast frontage adjoins Church Street. Both side boundaries adjoin multi-unit residential allotments. The site has an area of 3,281.1m² and contains a gentle north-to-south fall towards Church Street. As a result of that fall, the southeast elevation of Basement Level 1 is exposed to the Church Street frontage.



Figure 1: An aerial photo of the subject site (denoted by red boundaries) and surrounding sites.
Source: Nearmap, 3 April 2022



Figure 2: A photo of the subject site as viewed from within the Porter St road reserve.
Source: CPS, 27 April 2022



Figure 3: Streetscape photo of site as viewed from southeast side of Church St. The red border is area subject of **figures 4 & 5**. Source: CPS, 27 April 2022



Figure 4: Adjacent to main pedestrian access point from Church St looking to northeast side boundary. Image shows base of northeast-most corner of Church St frontage, which is also the only external frontage of proposal. Location from which **Figure 5** was taken is on the upper right side of the image. Source: CPS, 27 April 2022



Figure 5: Photo taken adjacent to northeast side boundary looking southwest. Image shows base of northeast-most corner of the Church St frontage. Location from which **Figure 4** was taken is on the left side of the image. Source: CPS, 27 April 2022

Development on the site consists of two residential flat buildings in addition to three basement levels containing car parking and building plant facilities, as approved by Development Consent no. LDA2015/0406 (as modified). The two buildings are separated by a large communal area within the centre of the site; the building on the southeast side of this space (i.e. the building addressing Church Street) is a seven-storey structure (**figure 3**), while the building on the northwest side of the communal area (i.e. the building addressing Porter Street) contains six residential levels in addition to a rooftop level containing communal open space areas and associated access arrangements (**figure 2**). Areas within both road frontages are landscaped. The part of the site containing the proposed development is currently vacant, and is being used as storage. (**figure 6**).

Sites adjoining both side boundaries and on the northwest side of Church Street more generally (i.e. between Ryde Wharf and Junction Street) contains predominantly high-density residential development that consist of large (i.e. six-to-seven storey) residential flat buildings with some ground floor commercial premises. Development on sites on the southeast (i.e. opposite) side of Church Street and further to the northeast and northwest (i.e. on the northeast side of Junction Street and northwest side of Belmore Street) consists predominantly of low-density residential development, such as dwellings houses, semi-detached dual occupancies and isolated multi-dwelling housing developments. Notable exceptions to the aforementioned development types include a large Council operations centre and a school (Meadowbank Public School), which are located approximately 120 metres northwest of the subject site.

The subject site is located within a B4 Mixed Use zone; the southeast boundary adjoins a SP2 Infrastructure (Classified Road) zone, while all other boundaries adjoin B4-zoned sites. The nearest R2 zone boundaries are to the southeast (i.e. opposite) side of Church Street and the northeast side of Junction Street to the north.

The site is mapped as being affected by Class 5 Acid Sulphate Soils and being within the Meadowbank Urban Village Centre, however the site is not otherwise mapped as being affected by any local hazards or affectations. The site does not contain a heritage item and is not within a Heritage Conservation Area (HCA); it is however mapped as being in close proximity to a site containing a local heritage item (identified by Schedule 5 of RLEP 2014 as item no. 57 (“Crowle Home” (house)), which is located approximately 15 metres northwest of the subject site, diagonally opposite the site’s Porter Street frontage.



Figure 6: Approved plant area (subject of application). Office areas are to be located within centre & lower left of image. Storage/commercial area is to be located within centre/upper-right of image. Daily delivery loading area is to be located within upper left side of image. Source: CPS, 27 April 2022

3. The Proposal

The proposed development includes a change of use of a plant room within Basement Level 1 to a warehouse or distribution centre. The area of the site which is the subject of the proposal was formerly approved as a plant area. The plant equipment within this area is no longer required as a result of:

- The deletion of water storage tanks for firefighting requirements (this based on applicant's engineer report was undertaken as a result of Sydney Water works within the local area),
- Changes to the pump room layout and the relocation/redesign of onsite plant equipment (e.g. hot water services, air conditioning condensers, placement of the OSD tank within the front setback, etc.), and
- Relocation of ventilation plant rooms closer to building cores and service risers.

This part of the site has subsequently been left vacant and as indicated by **Figure 6**, is currently being used for the storage of miscellaneous items. The applicant has therefore proposed the change of use, as submitted information indicates that the affected area will not be used for existing or future mechanical services.

The proposed change of use also includes building works to facilitate an internal fitout for the proposed use. The fitout includes a storage room with an area of 150.4m² and dedicated toilet facilities (including an accessible toilet) towards the rear of the proposed tenancy, offices at the front of the proposed tenancy and a dedicated loading bay for smaller daily deliveries.

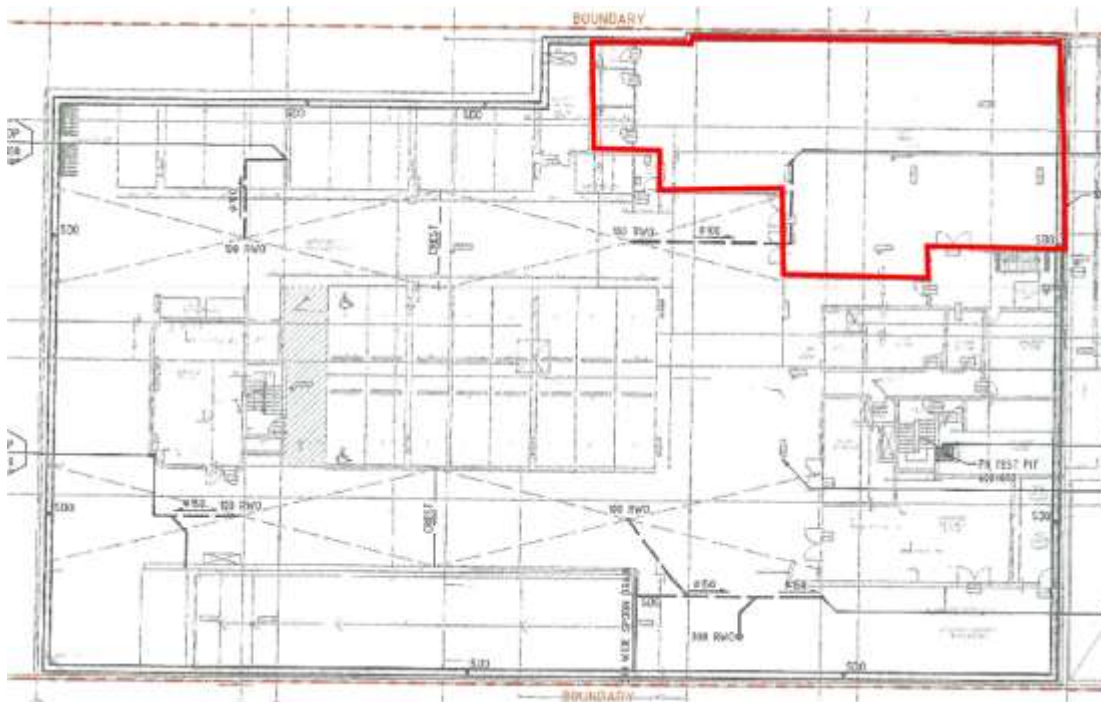


Figure 7: An extract of the basement level one plans approved by Section 4.55(1A) Modification Application no. MOD2018/0202; the area outlined by the red border denotes the area (excluding car parking) that is the subject of this DA.

Source: Sparks + Partners, 9 July 2018, modified by CPS

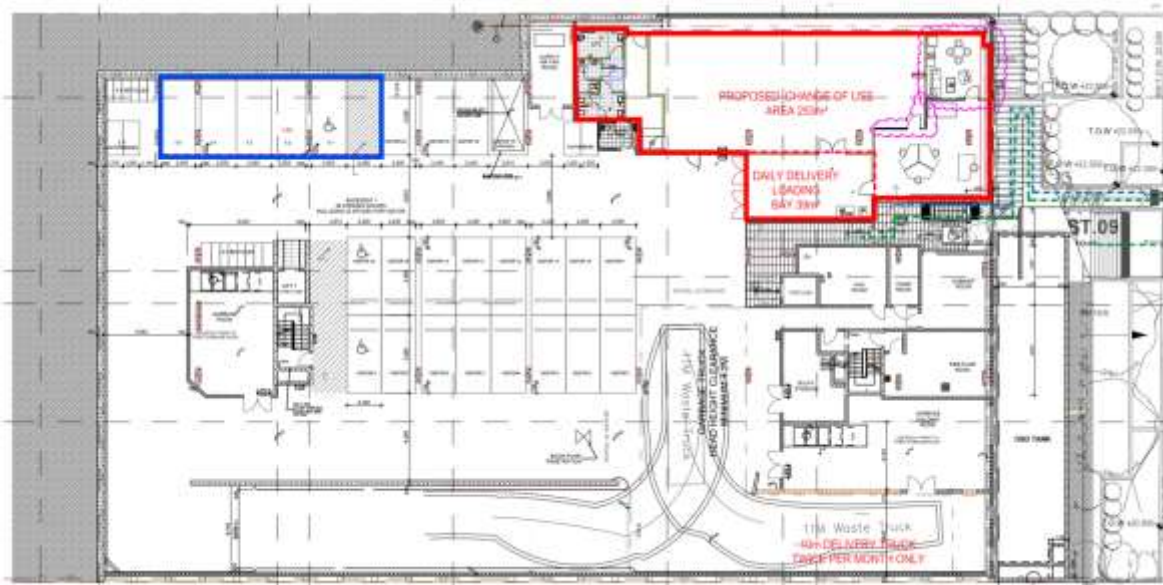


Figure 8: An extract of the proposed Basement Level 1 plan, which shows the locations of both the proposed development (denoted by the red border) and allocated car parking (denoted by the blue border).
Source: Eun Seo Architects Pty Ltd, 4 April 2022 (Modified by CPS, 1 November 2022)

Five (5) visitor car parking spaces (including one (1) accessible space) within Basement Level 1 are to be allocated to the proposed use. The spaces to be allocated to the proposal are owned by the owners of the site, and come from an oversupply of parking provided by the as-approved residential flat building (i.e. existing resident and visitor parking spaces will not be reallocated to the proposed use).

A maximum of five (5) staff are proposed at any one time, which includes three full-time staff, one (1) part-time staff member that is to be employed during busy periods and one (1) subcontracted truck driver. As an online shopping business, visitors and/or customers will not attend the site. Orders will be received and shipped daily, utilising vans that will park within the proposed daily delivery bay. It is proposed for larger trucks to undertake twice-monthly deliveries; these will utilise a shared delivery bay within the southern-most corner of Basement Level 1. Onsite manufacturing is not proposed.

Waste generated by the proposed development will be internally stored within an allocated space within the daily loading bay area. Waste collection will utilise communal waste management vehicle facilities, and collections will be arranged at times that do not conflict with other waste collection/heavy vehicle movements.

The proposed hours of operation are 8:30am to 5:00pm, Monday to Friday.

Aside from modifications to an external window on the southeast elevation of Basement Level 1 (to provide both openable windows and a louvred vent for ventilation purposes), additional external building works and signage are not proposed.

4. Background

4.1 Site history:

15 December 2014	Development Application no. LDA2014/0570 withdrawn. The application proposed the demolition of dwellings and structures. Construction of 6 storey residential flat building comprising 51 residential units, two levels of basement car parking for 66 cars and landscaping.
14 March 2016	Development Application no. LDA2015/0406 approved by the Joint Regional Planning Panel (JRPP) for the demolition of existing buildings and construction of two residential flat buildings. Building A will be 6 storeys facing Porter Street and Building B will be 8 storeys facing Church Street. The development will comprise of 106 apartments and 135 car parking spaces over two and a half basement levels. The application was submitted under <i>State Environmental Planning Policy - Affordable Rental Housing 2009</i> .
12 December 2017	Section 4.55(1A) Modification Application no. MOD2017/0197 approved. The modifications include enlargement of Basement Level 3, changes to the layout of the basements and provision of a ramp to Church Street.
10 August 2018	Section 4.55(1A) Modification Application no. MOD2018/0156 approved. The modifications include the provision of a lift overrun on both buildings and increasing the height of building A by 450mm.
13 December 2018	Section 4.55(1A) Modification Application no. MOD2018/0202 approved. The modifications include a 40mm movement of building A to provide an easement, deletion of high windows and louvres to Building A, the deletion of a planter box to court yard facade, the provision of privacy screens to levels 4 & 5, deletion of glass louvres and provision of a metal screen, changes to external materials and relocation of an Onsite Stormwater Detention (OSD) tank.
16 December 2019	Section 4.55(1A) Modification Application no. MOD2019/0184 approved. The modifications proposed modifications to the timing of public domain works for the occupation certificate.
11 August 2022	<p>Development Application no. LDA2021/0296 refused by the RLPP. The application proposed a change of use and alteration to basement level B1 to a local distribution centre.</p> <p>The reasons for refusal by the RLPP are as follows:</p> <ol style="list-style-type: none"> 1. <i>The proposed development is prohibited in the B4 Mixed Use zone under Ryde Local Environmental Plan 2014 (LEP 2014) as the proposed development does not satisfy the definition of a "local distribution centre" in the Dictionary to LEP 2014.</i> 2. <i>The proposed development does not establish that safe and healthy working conditions have been provided for future employees given the subterranean nature of the site and the lack of ventilation and sunlight.</i>

4.2 Application history:

14 September 2022	Subject development application lodged.
17 October 2022	A request for additional information sent to the applicant. The requested information sought is summarised as follows: <ul style="list-style-type: none"> • Missing documentation, including a written variation request for the proposed FSR variation. • Insufficient information regarding the permissibility of the proposal. • Clarification regarding details within the submitted Business Management Plan.
24 October 2022	Meeting held with the applicant to clarify the details of additional information being sought.
31 October 2022	Amended and additional information submitted to Council.

5. Planning Assessment

5.1 Environmental Planning and Assessment Act, 1979

Objects of EP&A Act

Section 1.3 of the Act contains the following relevant objects:

1.3 Objects of Act (cf previous s 5)

- (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,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (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 proposal achieves the objectives. Both the proposed development and use promotes the orderly and economic use of the site, promotes appropriate design and amenity of the built environment in addition to the health and wellbeing of occupants both within the site and the surrounding area. The proposal is therefore consistent with relevant objects of the Act.

Review of application

An assessment of Section 8.3 (Application for and conduct of review) of the Act is as follows:

Section 8.3 Application for and conduct of review	Assessment comment:
(1) <i>An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.</i>	The applicant has submitted the subject Section 8.3 application for a review of Development Application LDA2021/0296, which was refused by the RLPP on 11 August 2022.
(2) <i>A determination or decision cannot be reviewed under this Division—</i> (a) <i>after the period within which any appeal may be made to the Court has expired if no appeal was made, or</i> (b) <i>after the Court has disposed of an appeal against the determination or decision.</i>	Pursuant to Section 8.10(1)(a) of the Act, the decision must be reviewed within six months of the determination of the application (i.e. the decision must be reviewed by 11 February 2023).
(3) <i>In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.</i>	Elements of the proposal have been amended for this review. This includes modifying the original description of the development from a “local distribution premises” to a warehouse or distribution centre” and the provision of internal windows and modification to the external window. This planning assessment has found that the amended application is ‘substantially the same development’ as that proposed by Development Application LDA2021/0296. Refer to the planning assessment below for further assessment.
(4) <i>The review of a determination or decision made by a delegate of a council is to be conducted—</i> (a) <i>by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or</i> (b) <i>by another delegate of the council who is not subordinate to the delegate who made the determination or decision.</i>	Not applicable, with regard to S8.3(5) of the Act.
(5) <i>The review of a determination or decision made by a local planning panel is also to be conducted by the panel.</i>	Development Application LDA2021/0296 was determined by the RLPP. The subject review is to be determined by the RLPP.
(6) <i>The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.</i>	As above.
(7) <i>The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.</i>	As above.

<p>(8) <i>The review of a determination or decision made by the Independent Planning Commission is also to be conducted by the Commission.</i></p>	<p>As above.</p>
<p>(9) <i>The review of a determination or decision made by a delegate of the Minister (other than the Independent Planning Commission) is to be conducted by the Independent Planning Commission or by another delegate of the Minister who is not subordinate to the delegate who made the determination or decision.</i></p>	<p>As above.</p>
<p>Section 8.4 Outcome of review</p>	
<p><i>After conducting its review of a determination or decision, the consent authority may confirm or change the determination or decision.</i></p>	<p>As a consequence of the review, it is recommended that the decision to refuse LDA2021/0296 be changed to approval.</p>
<p>Section 8.5 Miscellaneous provisions relating to reviews</p>	
<p>(1) <i>The regulations may make provision for or with respect to reviews under this Division, including—</i> <i>a) specifying the person or body with whom applications for reviews are to be lodged and by whom applications for reviews and the results of reviews are to be notified, and</i> <i>setting the period within which reviews must be finalised, and</i> <i>b) declaring that a failure to finalise a review within that time is taken to be a confirmation of the determination or decision subject to review.</i></p>	<p>The application was notified in accordance with the Ryde Community Participation Plan between 20 September 2022 to 7 October 2022. As a result, a total of two (2) submissions were received.</p> <p>The application was determined on 11 August 2022.</p> <p>The lapsing date for the period is therefore 10 February 2022 as per subclause 8.10(1)(a).</p>
<p>(2) <i>The functions of a consent authority in relation to a matter subject to review under this Division are the same as the functions in connection with the original application or determination.</i></p>	<p>The development application was refused by the RLPP. The subject review is being determined by the RLPP, with alternate panel members to that of the original panel.</p>
<p>(3) <i>If a decision to reject an application for development consent is changed on review, the application is taken to have been lodged on the date the decision is made on the review.</i></p>	<p>Noted.</p>
<p>(4) <i>If a determination is changed on review, the changed determination replaces the earlier determination on the date the decision made on the review is registered on the NSW planning portal.</i></p>	<p>The determination is recommended to be changed.</p>
<p>(5) <i>Notice of a decision on a review to grant or vary development consent is to specify the date from which the consent (or the consent as varied) operates.</i></p>	<p>The notice of determination will include a specified date.</p>
<p>(6) <i>A decision after the conduct of a review is taken for all purposes to be the decision of the consent authority.</i></p>	<p>Noted.</p>
<p>(7) <i>If on a review of a determination the consent authority grants development consent or varies the conditions of a development consent, the consent authority is entitled (with the consent of the applicant and without prejudice to costs) to have an appeal against the determination made by the applicant to the Court under this Part withdrawn at any time prior to the determination of that appeal.</i></p>	<p>Noted.</p>

Assessment of Section 8.3(3)

Pursuant to Section 8.3(3) of the Act, where amendments to the proposal have been made for the purpose of this review, the consent authority is to consider whether the proposal (as modified) is 'substantially the same development' as that proposed by the application that is to be reviewed.

With regard to relevant caselaw, including the court judgement by Justice Bignold established in the *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289*, this planning assessment has found that the development – if modified as proposed – will be substantially the same as that which was originally approved.

Quantitatively, the subject application does not seek to alter the development as proposed by Development Application LDA2021/0296; this includes development parameters including (but not limited to), proposed Gross Floor Area (GFA) and FSR, number of staff, number of allocated car parking spaces and operating hours.

From a qualitative perspective, the proposed amendments relate to minor physical changes that includes additional internal windows (which separate the office and storage areas) and small changes to an external window (however the size of the window opening will not be altered). Qualitative changes also include a change to the proposed land-use definition from a 'local distribution premises' to a 'warehouse or distribution centre'; the RLEP 2014 definitions for these land uses are as follows:

- **local distribution premises** means a building or place used for the storage or handling of items (whether goods or materials) pending their delivery to people and businesses in the local area, but from which no retail sales are made.
- **warehouse or distribution centre** means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made, but does not include local distribution premises.

As demonstrated above, the only notable difference between those two land use definitions is the area within which deliveries may occur. For local distribution premises, deliveries are to occur to people or businesses within the 'local area', however no such limitation applies to warehouse or distribution centres. The difference in area to which deliveries will be made from the site will not be discernible with regard to everyday activities such as deliveries and dispatches to/from the site, the frequency of waste collection, the number of staff in attendance and/or the hours of operation.

As such, the subject application's change to the proposed land use definition is considered to be substantially the same as that which was previously proposed.

The proposed modifications will therefore not significantly alter the previous development application, from both quantitative and qualitative perspectives. The subject application, as currently modified, is therefore considered to be substantially the same as the development for which consent was originally granted

5.1 Environmental Planning Instruments

Instrument	Proposal	Compliance
State Environmental Planning Policy (Resilience and Hazards) 2021		
Chapter 2 Coastal management		
Does not apply, as the site is not located within a coastal zone.		
Chapter 4 Remediation of land		
<p>The object of this Chapter is to provide for a Statewide planning approach to the remediation of contaminated land.</p> <p>The aims are to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.</p>	<p>With regard to Chapter 4 (Remediation of Land), clause 4.6(1) requires Council to consider whether the site is contaminated, and if so whether it is suitable for the proposed development purpose.</p> <p>The subject site has been used for residential purposes for an extended period of time. Further, the determination of Development Consent no. LDA2014/0570 found that there was no significant contamination risk and that the site was suitable for residential development. As an internal change of use, the proposal will also not include any ground disturbance and subsequent potential for contamination. As such, further site investigations are not warranted in this case.</p>	Yes
State Environmental Planning Policy No. 65 — Design Quality of Residential Apartment Development		
<p>This Policy aims to improve the design quality of residential flat development in NSW and provides an assessment framework, the Apartment Design Guide (ADG), for assessing 'good design'.</p>	<p>With regard to clause 4(1), whilst the proposal seeks works to a residential flat building captured by clause 4(1)(b) and 4(1)(c), the works do not consist of any of the following forms of development listed within clause 4(1)(a):</p> <ul style="list-style-type: none"> (i) the erection of a new building, (ii) the substantial redevelopment or the substantial refurbishment of an existing building, and (iii) the conversion of an existing building. <p>Given that the proposal will not substantially alter the layout of Basement Level B1 and will not result in changes to the exterior of the building, the objectives of the SEPP and associated provisions within the Apartment Design Guide (ADG) will not be offended by the proposal, in particular Parts 3J (bicycle and car parking), 4H (Acoustic Privacy) and 4S (Mixed Use).</p>	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021		

<p>The objectives for Development with a frontage to classified road Clause 2.118(1) are as follows:</p> <p>(a) to ensure that new development does not comprise the effective and ongoing operation and function of classified roads, and</p> <p>(b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.</p>	<p>Existing vehicular access arrangements to the site via Porter Street will remain unchanged. The proposal will subsequently have no impacts on the adjoining classified road, and the provisions of clause 2.118 will therefore be satisfied.</p>	<p>Yes</p>
<p>Clause 2.119(1)(a) the impact of road noise or vibration on non road development as the proposal is for residential accommodation (dwelling).</p>	<p>Clause 2.119 does not apply to the site, as the proposed use is not one specified by cl. 2.119(1).</p>	<p>N/A</p>
<p>(1) This section applies to development specified in Column 1 of the Table to Schedule 3 that involves—</p> <p>(a) new premises of the relevant size or capacity, or</p> <p>(b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity</p>	<p>The scale of the proposal and associated traffic movements do not meet the threshold that would necessitate a referral to Transport for New South Wales (TfNSW) pursuant to clause 2.121 (Traffic-generating development) and Schedule 3 of the SEPP.</p>	<p>N/A</p>
<p>State Environmental Planning Policy (Industry and Employment) 2021</p>		
<p>The provisions of the SEPP are not applicable to this application, as signage is not proposed.</p>		
<p>State Environmental Planning Policy (Biodiversity and Conservation) 2021</p>		
<p>Chapter 10 Sydney Harbour Catchment</p>		
<p>This Plan applies to the whole of the Ryde Local Government Area. The aims of the Plan are to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole.</p>	<p>With regard to Part 10.2 (Planning principles) within Chapter 10 (Sydney Harbour Catchment) of the SEPP, the proposal is capable of satisfying the relevant objectives and planning principles of the SEPP, in that the development will have no adverse impacts on aquatic environments and local water quality.</p> <p>The site is located outside areas mapped as foreshore, and strategic foreshore sites and coastal environment and use areas; the provisions of Parts 10.3 and 10.4 of the SEPP therefore do not apply to this proposal.</p>	<p>N/A</p>

Ryde Local Environmental Plan 2014 (RLEP 2014)

The subject site is located within a B4 Mixed Use zone under the provisions of the RLEP 2014.

Development Application no. LDA2021/0296 previously defined the use of the proposed development as a 'local distribution premises', however the subject review application has changed the proposed use to a 'warehouse or distribution premises', which is defined by the RLEP 2014 as follows:

warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made, but does not include local distribution premises.

The wording of this land use definition was changed on 30 June 2022 (i.e. during the assessment of LDA2021/0296). While the current wording of the 'warehouse or distribution premises' land use definition specifically excludes 'local distribution premises', when Development Application no. LDA2021/0296 was lodged, a 'local distribution premises' was identified by the RLEP 2014 as being a type of 'warehouse or distribution premises'.

The change to the proposed land use is in response to the first of two reasons issued by the RLPP for the refusal of LDA2021/0296, which for reference is as follows:

1. *The proposed development is prohibited in the B4 Mixed Use zone under Ryde Local Environmental Plan 2014 (LEP 2014) as the proposed development does not satisfy the definition of a "local distribution centre" in the Dictionary to LEP 2014.*

It is agreed with both the applicant's submitted Statement of Environmental Effects and legal advice (see Attachment 6) that the proposal is consistent with the 'warehouse or distribution centre' land use definition for the following reasons:

- The layout of the proposed development will result in most of the floor space being dedicated to the storage and/or handling of goods prior to their sale,
- No retail sales are proposed on the site (noting that in the event of approval, conditions are recommended that will both prohibit the on-site sale of goods and/or customers attending the site to purchase/collect goods), and
- It is not proposed to limit deliveries of goods to people and/or businesses within the local area.

With regard to Section 8.3 of the Act, the proposed change to the land use definition is considered to be substantially the same as that previously proposed.

A 'warehouse or distribution centre' is a permissible land use within the B4 zone under RLEP 2014.

The objectives of the B4 mixed use zone, and a planning response to each are as follows:

- *To provide a mixture of compatible land uses.*

The nature of the proposed use is considered to be practical for the site and the locality more broadly. The proposal is to be incorporated into a basement level of the building with minimal external changes, therefore the proposed works will have no impact upon the visual character of the area. Subject to conditions relating to ongoing operations, the proposed use will not adversely affect surrounding residences and their amenity. Further, the proposal includes the provision of sufficient parking, noting that the site is located within a highly accessible area with regards to public and active transport.

As the proposed change of use will not adversely affect local amenity or character and will not result in land-use conflict with the predominantly residential area, it is considered to be compatible within the locality.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

As considered within the assessment of objectives within cl. 4.4 of the RLEP 2014, the site is located within a highly accessible area with regards to public and active transport. While sufficient parking is to be provided, the location of the site will also promote access by employees to the site by alternative means (i.e. public transport, walking and/or cycling).

- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*

The site is not located within Macquarie University. The objective is therefore not relevant to the proposal.

- *To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.*

The site is not located within the Macquarie Park corridor. The objective is therefore not relevant to the proposal.

The following table provides a summary of the key provisions that apply to the proposal:

Clause	Proposal	Compliance
4.3 Height of Buildings		
21.5 metres	No change; the proposed works are to be internalised.	N/A

4.4 Floor Space Ratio		
2:1 (6,562.2m ²)	<p>Site area: 3,281.1m²</p> <p>FSR approved by Consent no. LDA2015/0406 (as modified): 2.32:1 (7,606m²)</p> <p>Required FSR 2:1 (6562.2m²)</p> <p>Proposed FSR: 2.41:1 (7,927.1m²)</p> <p>Refer to the assessment of the proposed FSR variation below.</p>	No
4.6 Exceptions to development standards		
<p>(1) The objectives of this clause are as follows—</p> <p>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	<p>A written variation request has been submitted with the subject application. The proposal has a FSR 2.41:1 and represents a 20.8% contravention of the standard.</p> <p>Refer to the detailed assessment below.</p>	Yes
5.10 Heritage Conservation		
<p>(1) The objectives of this clause are as follows—</p> <p>(a) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</p> <p>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views,</p> <p>(c) To conserve archaeological sites,</p> <p>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance</p>	<p>The site does not contain a heritage item and is not within a heritage conservation area. The site is however in close proximity to a heritage item (Item no. 57 (“Crowle Home” (house)), 8 Junction Street Ryde, approximately 15 metres northwest of the subject site.</p> <p>The proposed works are to be internalised within Basement Level 1; the plant room that is to be changed by the use is also oriented towards the southeast frontage (i.e. on the road frontage that faces away from the heritage item). There will subsequently be no impact on the adjoining heritage item.</p> <p>As no excavation is proposed to occur, matters regarding indigenous heritage are not relevant to this proposal.</p>	Yes
6.1 Acid Sulfate Soils		
<p>(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.</p>	<p>The site is affected by Class 5 acid sulphate soils. No excavation and subsequent ground disturbance is proposed, therefore an acid sulfate soils management plan is not required.</p>	Yes
6.4 Stormwater Management		
<p>(1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.</p>	<p>The proposed works will not affect existing stormwater runoff. No changes are proposed that will affect the layout or operation of previously-approved onsite stormwater infrastructure.</p>	Yes

Clause 4.4 Floor Space Ratio

The development contravenes cl. 4.4(2) of the RLEP 2014 which establishes a 2:1 FSR (i.e. a maximum Gross Floor Area (GFA) of 6,562.2m²) upon the site. Development Consent no. LDA2015/0406 (as modified) approved the existing development on the site with an FSR of 2.32:1 (i.e. a GFA of 7,606m²), as it relied upon the FSR uplift available pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009.

The proposal seeks to change the approved plant room to a warehouse or distribution centre (refer to **Figure 7** and **Figure 8**), therefore most parts of the area affected by this proposal (previously excluded from the GFA calculations in accordance with the LEP definition for 'gross floor area') are required to be included as GFA. The total GFA and FSR of the site will subsequently be increased to 2.41:1 and 7,927.1m² respectively.

The provisions of *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) do not apply to this application, as pursuant to cl. 16(1) Division 16 (In-fill Affordable Housing) only applies to residential development. Although the existing building was approved as in-fill affordable housing and subsequently relied upon the associated FSR bonuses, as no residential development is proposed the 2:1 FSR standard imposed by cl. 4.4(2) of the LEP applies.

The proposed 2.41:1 FSR of the development constitutes a 20.8% variation to cl. 4.4(2) of the RLEP 2014. Consideration of the proposed FSR variation is contained within the assessment of cl. 4.6 of the RLEP 2014 below.

Consideration has been given to the implications of the proposed development by increasing the GFA, with regard to Development Consent LDA2015/0406. Specifically, consent Condition 4 reads as follows:

3. **Affordable housing restriction- SEPP Affordable Rental Housing.** *No less than 32% of the gross floor area (2433.9m²) and nominated on Cover Sheet, dated 28 January 2016 Issue B, of the approved development must be dedicated as Affordable Housing within the meaning of State Environmental Planning Policy (Affordable Rental Housing) (AHSEPP) 2009.*
4.
 - (a) *The following must be complied with for 10 years from the date of the issue of the occupation certificate for the approved development:*
 - (i) *the apartments that comprise of 32% of the gross floor area of the approved development identified to be used for the purposes of affordable housing must be used for the purposes of affordable housing, and*
 - (ii) *all accommodation that is used for affordable housing must be managed by a registered community housing provider.*
 - (b) *A registered surveyor shall confirm in writing that the nominated affordable rental component comprise no less than 32% of the gross floor area of the approved development, and*

- (c) *A restriction must be registered, before the date of the issue of any occupation certificate for the development, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met.*

If the proposal is to be strata subdivided, upon registration of a strata plan, the restriction may be placed on the title of each strata allotment for which the apartment is nominated as affordable housing in lieu of the restriction applying to the overall development site.

The subject application proposes to increase the total GFA/FSR of the site, however the 2,433.9m² GFA of affordable housing (as specified by condition 4 above) is to remain unaltered. The applicant has provided legal advice to confirm that the proposal will not affect compliance related to the allocation of approved affordable housing on the site.

The requirements of Development Consent LDA2015/0406 will continue to be satisfied, as the plans approved by LDA2015/0406 (nor the proportion/GFA of affordable housing as identified on those plans) will not be altered.

Clause 4.6 Exceptions to Development Standards

The development contravenes Clause 4.4(2) of RLEP 2014, which established a maximum FSR of 2:1 (a GFA of 6,562.2m²). The application proposes a GFA/FSR of 2.398:1 (7,867.64m²), and as such does not comply with the development standard.

Clause 4.6 of the RLEP 2014 provides flexibility in the application of planning controls by allowing Council to approve a development application that does not comply with a development standard where it can be demonstrated that flexibility in the particular circumstances achieve a better outcome for and from development.

Several key Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached. The key findings and directions of each of these matters are outlined in the following discussion.

The decision of Justice Lloyd in *Winten v North Sydney Council* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated.

These principles for assessment and determination of applications to vary development standards are relevant and include:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?

- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- Is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case?, and
- Is the objection well founded?

The decision of Justice Preston in *Wehbe V Pittwater [2007] NSW LEC 827* expanded on the above and established the five-part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following questions:

- Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives?
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?
- Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?
- Is the “*zoning of particular land*” unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land? Consequently, compliance with that development standard is unnecessary and unreasonable.

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, it was found that an application under clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

- Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP; and
- That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs.

The applicant has submitted a written Clause 4.6 request (prepared by ABC Planning, dated October 2022 and included as Attachment 5) to vary the development standard. This assessment of cl. 4.6 identifies a different breach, however this is a result of the defined use and inclusion of four (4) parking spaces within the calculation made by Council.

While the site is subject to a 2:1 FSR pursuant to clause 4.4(2) of the RLEP 2014, the lodgement and approval of Development Consent LDA2014/0570 (which approved the existing residential flat buildings and associated basement levels on the site) was

undertaken pursuant to the provisions of the now repealed *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP), which enabled the development to be approved with an FSR of 2.32:1. Under that approval and subsequent modifications, the Basement Level 1 plant room that is the subject of this DA was excluded from FSR calculations, as that area did not constitute 'gross floor area', which for reference is defined by the RLEP 2014 as follows:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- (d) but excludes—
- (e) any area for common vertical circulation, such as lifts and stairs, and
- (f) any basement—
- (g) storage, and
- (h) vehicular access, loading areas, garbage and services, and
- (i) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (j) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (k) any space used for the loading or unloading of goods (including access to it), and
- (l) terraces and balconies with outer walls less than 1.4 metres high, and
- (m) voids above a floor at the level of a storey or storey above.

The approved plant room was excluded from the calculation of gross floor area, pursuant to (i) contained within the definition of gross floor area. The proposed change of use of the plant room to a warehouse or distribution centre (refer to **Figure 7** and **Figure 8**) will result in this area being changed to a space that is not excluded from the definition of 'gross floor area'. The development also includes reliance upon five (5) car parking spaces, despite the DCP requiring that only one (1) parking space be provided (based on the DCP rates of one space/300m² of GFA); the proposal therefore includes four (4) additional spaces for the use that are not excluded by part (j) of the GFA definition. This constitutes a technical non-compliance. While the application does not propose to increase the physical area of Basement Level 1, the proposal will result in a 4.8% increase to the total GFA, with the proposed FSR subsequently constituting a 20.8% variation to the FSR development standard prescribed by cl. 4.4(2) of the RLEP 2014.

An assessment of the relevant provisions of Clause 4.6 is as follows:

- Clause 4.6(3)(a) - Is compliance unreasonable or unnecessary in the circumstances of the case?
- Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?

The written request provides the reasons why compliance with the standard is unreasonable and/or unnecessary, with selected excerpts shown below:

Unreasonable and unnecessary

- *The proposed FSR non-compliance is minor (58sqm; 0.76%).*
- *The proposed additional FSR is located wholly within the approved building envelope. The bulk and scale of the development will therefore remain as approved.*
- *The proposed additional FSR is located wholly within the approved building envelope. The proposal will not alter the building envelope, i.e. the height and setbacks of the building. The bulk and scale of the development will therefore remain as approved.*
- *The proposed increase in FSR will not be discernible from the adjoining properties or the streetscape.*
- *The proposed premises will activate this area of the site and result in a more efficient use of the space.*
- *It is reiterated that the proposal will not change the existing built form on the site. Therefore there the proposal will not result in any unreasonable amenity impacts to neighbouring properties in terms of overshadowing, visual bulk, privacy or views. The proposed premises will have minimal noise impacts, noting that the proposed hours of operation will be from 8.30am to 5.00pm Monday to Friday and that there will be no customers or visitors to the premises. Refer to the Acoustic Report prepared by Koikas submitted with this DA.*
- *Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning...*

Assessment Officer's Comments: It is agreed that the amount of additional gross floor area is minor and is located within the as-approved building envelope. The proposed breach of the FSR development standard will also both, not alter the height, bulk and scale of the existing building and will not be discernible from the surrounding. Further, the proposal will not have any impacts on amenity in terms of visual impact (refer to **figure 3**), visual privacy, solar access or views. The proposal will activate a space within the site that would otherwise not be occupied by a habitable use. The increase in GFA and FSR is therefore technical in nature.

The objectives of both the FSR standard and the B4 Mixed Use zone are met; refer to the assessment of environmental planning grounds below for an assessment of relevant objectives. As such, the applicant has demonstrated that the compliance with the development standard would be unreasonable and unnecessary.

Environmental planning grounds

The justification in the applicant's request and Assessment Officer's comments are below:

- *The existing FSR of 2.32:1 is not compliant. The proposal is only requesting an additional FSR of 0.07:1 above that approved (i.e. proposed FSR of 2.39:1).*

- *The proposed additional FSR is located wholly within the approved building envelope. The proposal will not alter the building envelope, i.e. the height and setbacks of the building. The bulk and scale of the development will therefore remain as approved.*
- *The proposed increase in FSR will not be discernible from the adjoining properties or the streetscape.*
- *The proposed premises will activate this area of the site and result in a more efficient use of the space.*
- *It is reiterated that the proposal will not change the existing built form on the site. Therefore there the proposal will not result in any unreasonable amenity impacts to neighbouring properties in terms of overshadowing, visual bulk, privacy or views. The proposed premises will have minimal noise impacts, noting that the proposed hours of operation will be from 8.30am to 5.00pm Monday to Friday and that there will be no customers or visitors to the premises.*
- *Despite the building FSR non-compliance, the proposal achieves the objectives of the development standard and the B4 Mixed Use zone.*

Assessment Officer's Comments: The proposed use will be internalised within the existing development, with the only proposed external changes relating to a single external window (the installation of a louvre and openable windows for ventilation purposes); as shown earlier within **figure 3**, the external appearance of the proposal as a result of this change will not be discernible from the public domain.

The proposed use of the space will result in a more efficient use of the site and better activation of the lower parts of the building. Further, no adverse impacts with regard to visual privacy, solar access, visual amenity and views will arise from the proposed variation to the FSR standard.

Despite the proposed FSR variation, the proposal is also capable of satisfying the objectives of both the B4 Mixed Use zone and clause 4.4 of the RLEP 2014, as is detailed within this planning assessment.

With regard to the above, there are sufficient environmental grounds to justify the proposed variation to the floor space ratio development standard.

Is the proposal in the public interest?

Pursuant to clause 4.6(4)(ii), a development will be in the public interest if it is consistent with the objectives of the development standard and also the zone objectives in which the particular development is carried out. This planning assessment has already considered the objectives of the B4 Mixed Use zone above, however for reference these are replicated as follows:

Objective	Planning response
To provide a mixture of compatible land uses	<p>The nature of the proposed use is considered to be practical for the site and the locality more broadly. The proposal is to be incorporated into a basement level of the building with minimal external changes, therefore the proposed works will have no impact upon the visual character of the area. Subject to conditions relating to ongoing operations, the proposed use will not adversely affect surrounding residences and their amenity. Further, the proposal includes the provision of sufficient parking, noting that the site is located within a highly accessible area with regards to public and active transport.</p> <p>As the proposed change of use will not adversely affect local amenity or character and will not result in land-use conflict with the predominantly residential area, it is considered to be compatible within the locality.</p>
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	As considered within the assessment of objectives within cl. 4.4 of the RLEP 2014, the site is located within a highly accessible area with regards to public and active transport. While sufficient parking is to be provided, the location of the site will also promote access by employees to the site by alternative means (i.e. public transport, walking and/or cycling).
To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.	The site is not located within Macquarie University. The objective is therefore not relevant to the proposal.
To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.	The site is not located within the Macquarie Park corridor. The objective is therefore not relevant to the proposal.

With regard to the above, the objectives of the B4 zone are satisfied by the proposal. Further, the objectives of clause 4.4 and a response to each are as follows:

(a) to provide effective control over the bulk of future development,

Planning Assessment:

As the proposed use and associated works will be located entirely within the existing building envelope, the bulk and scale of the existing development will be maintained. The proposal will therefore not offend the objective, which seeks to control the bulk and scale of future development within the surrounding locality and the LGA more broadly.

(b) to allow appropriate levels of development for specific areas,

Planning Assessment:

The setbacks, height, bulk and scale of the existing development will not be affected by the proposal. The utilisation of a lower part of the building for the proposed use is also consistent with other development within the surrounding area, noting that some surrounding developments within the Meadowbank centre provide for commercial uses within the lowest levels of predominantly residential buildings. The proposed level of development is therefore considered to be appropriate within this area.

- (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.*

Planning Assessment:

The subject site is mapped by the RLEP 2014 as being located within a Centre, being the 'Meadowbank Urban Village' (refer to **figure 9**).



Figure 9: An extract of the RLEP 2014 Centres map. The subject site is outlined by the yellow border.
Source: legislation.nsw.gov.au, 2022

The location of the proposed use would be consolidated with existing high-density residential development, and is also located in close proximity to public transport services and infrastructure, which includes:

- Bus stops in close proximity to the site within Church and Belmore Streets that service high frequency routes including the 533, 524, 518, 410, 458 and 507 service,
- Meadowbank railway station, which (aside from being accessed by the aforementioned 507 bus route), is approximately a one kilometre walk from the site, and
- Meadowbank ferry wharf, which is approximately a 1.1 kilometre walk from the site.

By occupying an underutilised part of the site, the proposed business is capable of being consolidated with existing high-density residential development on the site. By being located in close proximity to public transport infrastructure, it is also consistent with the objective in that it is capable of enabling employee access via alternative and sustainable means.

Summary

The applicant has submitted a Clause 4.6 written request that seeks to justify contravention of the FSR development standard pursuant to Clause 4.4(2) of the RLEP 2014. Pursuant to Clause 4.6(3)(a) of RLEP 2014, the written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, as required by Clause 4.6(3)(b).

Pursuant to Clause 4.6(4)(a)(i) of RLEP 2014, the assessment has concluded that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development will not be contrary to the public interest because of consistency with the objectives of the FSR development standard and the B4 Mixed Use zone.

The concurrence of the Planning Secretary is not required. Circular PS 08-003 issued on 9 May 2008 informed Council that it may assume the Director-General's concurrence for exceptions to development standards.

Accordingly, the proposal variation is supported.

5.2 Draft Environmental Planning Instruments

There are no draft Environmental Planning Instruments that are relevant to this proposal.

5.3 Development Control Plans

Ryde Development Control Plan 2014 (RDCP 2014)

The proposal is subject to the provisions of the following parts of RDCP2014:

- Part 4.2 Shepard's Bay, Meadowbank
- Part 7.1 Energy Smart, Water Wise
- Part 7.2: Waste Minimisation and Management
- Part 9.3: Parking Controls

Relevant non-compliances identified in the compliance tables are assessed and discussed in more detail below.

Part 4.2 – Shepard's Bay, Meadowbank

Section 3.1 – Site Analysis

A site analysis plan has not been provided. While non-compliant, the provision of such a plan is not considered to be necessary given the context of the proposal (i.e. internal alterations within the basement area of a developed site to facilitate a commercial use with only minor external building works).

Further, the site's context with regard to major considerations (such as nearby heritage items) is addressed elsewhere within submitted documents (e.g. the Statement of Environmental Effects); other considerations such as pedestrian and cycle connectivity are not fundamental to the proposal, while the future built form of the surrounding area is unlikely to significantly change in the medium-to-long term, noting that most surrounding sites within the precinct have been redeveloped.

The lack of a site analysis plan is therefore considered to be acceptable in this specific instance.

Section 4.1 Developments and the Public Domain - 4.1.1 Mixed-Use Development

Control 'e' encourages commercial uses at the level immediately above street level, including but not confined to, professional and commercial offices, services such as dry cleaners, newsagency, and leisure uses such as a gym, places of worship or meeting rooms.

The location of the proposed warehouse or distribution centre is within Basement Level 1; while this level is generally not above that of Church Street (and is therefore technically non-compliant), the existing levels above are already occupied by residential development (including affordable housing).

Due to the sloped topography of the site however, the southeast frontage of Basement Level 1 is located at a level that is close to that of Church Street. The nature of the use does not involve access by members of the public; unlike commercial uses like those referred to by the control (which generally require frontages at/above street level in order to both advertise their presence to passing traffic and enable access to such premises from the adjoining street), the proposed use therefore does not require a prominent frontage directly above the streetscape.

The proposed variation to the control is therefore considered to be acceptable and supportable on merit.

Part 9.3 – Parking Controls

The development application LDA2015/406 included 2.5 levels of basement parking including 132 parking spaces. The development included 99 residential apartments (25 x 1 bedroom, 60 x 2 bedroom and 5 x 3 bedroom). Part 9.3 of RDCP 2014 specifies the following rates for high density (residential flat buildings) for residential development:

- 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

The development required a minimum of 105 spaces and maximum of 136 spaces. The parking provided was compliant and within the upper limit of required parking. The development was required to provide 20 visitor parking spaces and provided for 112 residential spaces.

The development was redesigned under MOD2017/197 to include three levels of basement in addition to three extra parking spaces. The approved modification resulted in 115 residential spaces and 20 visitor spaces (i.e. a total of 135 car parking spaces) which complied with the control requirement.

The approved Strata Certificate 319/2019 created 105 lots. The strata plan identified car parking spaces 100 – 105 as not being allocated to a specific residential apartment. These

spaces are therefore proposed to be utilised by the proposed warehouse or distribution centre.

As proposed, development on the site will comprise the following car parking allocation:

- 110 residential spaces
- 20 visitor parking space
- 5 spaces for the proposed warehouse or distribution centre
- Total 135 spaces.

The residential parking allocation therefore exceeds the minimum requirement of 105 spaces.

Part 9.3 of Council's Development Control Plan (DCP 2014) specifies that one 1 space per 300m² of GFA be provided for warehouse/distribution centre. The proposed reassignment of five (5) resident spaces for use by the future occupants of the warehouse or distribution centre and exceeds the minimum parking requirement. Whilst this does not externally alter the basement layout, it does result in a technical non-compliance with the FSR by definition of including excess parking. There are no merit concerns with the proposed arrangement and use of five (5) parking spaces for the premises.

5.4 Planning agreements or draft planning agreements

The application is not the subject of any planning agreements or draft planning agreements.

5.5 Section 7.12 Fixed Rate Levy (Section 7.12) Development Contributions Plan 2020

The Section 7.12 Development Contributions Plan 2020 (Fixed Rate Plan) commenced on 1 July 2020 and applies to non-residential development outside of Macquarie Park with a construction value of greater than \$350,000.

The proposed works are valued at \$252,005.00. Pursuant to Section 2.4 of the Development Contributions Plan, development contributions are therefore not warranted for this particular proposal.

5.6 Any matters prescribed by the regulations

The Regulation underpins the day-to-day operation of the NSW planning system. The Regulation guides the processes, plans, public consultation, impact assessment and decisions made by local councils, the Department of Planning and others.

The matters for consideration contained within *Environmental Planning and Assessment Regulation 2021* are capable of being satisfied by conditions of consent where they apply. The proposal has been supported by a BCA letter confirming the proposal will satisfy the ventilation and light requirements for workers.

6. The Likely Impacts of the Development

Built impacts

Impacts on the built environment have already been discussed throughout this report. The works are to be mostly internalised within the existing residential development; the only proposed external change to the building relates to a single window on the southeast elevation of the Basement 1 level, which is not visible from the public domain. Such works will not alter the existing setbacks, height, bulk, scale and external finishes of the building, and as such the proposal will not result in adverse nor unacceptable impacts that are inconsistent with surrounding high density residential development.

Natural impacts

Due to the lack of impact upon the built environment, works associated with the proposal will not give rise to adverse impacts on the natural environment and associated amenity (i.e. visual privacy, view loss and overshadowing). Subject to conditions, the proposed use will also not result in impacts (i.e. noise, vibration, excessive hours of operation, etc.) that will adversely affect residential amenity and the natural environment. As the works are to be internalised within the building footprint, the proposal will not adversely affect the natural environment (i.e. reduction of landscaped areas, tree removal, etc.).

Social and economic impacts

The proposal will enable the change of use of an underutilised part of the existing residential development. The proposal is therefore considered to be an efficient use of existing development and will provide for additional employment opportunities within the local area. Further, the proposal will not reduce the number of approved affordable dwellings on the site, the amenity of those dwellings nor the functionality of the site. The proposal will subsequently not give rise to adverse social and economic impacts.

7. Suitability of the Site for the Development

The site is zoned B4 Mixed Use. The proposal is for a change of use of a basement-level plant room to a warehouse or distribution centre within an existing residential flat building and associated works. The proposed land use is permissible. The assessment has demonstrated the proposal is consistent with the statutory requirements and policy controls. The proposal results in a contravention of the FSR development standard, however such a variation has been supported by a satisfactory Clause 4.6 written variation request. The assessment demonstrates the proposal will not result in any significant adverse impacts upon residences within the subject site and the surrounding area, nor the existing and desired future character of the surrounding area.

The onsite parking facilities provided by the original development also enables the sufficient allocation of parking facilities to the proposed use.

With regard to the refusal of Development Application no. LDA2021/0296, the second reason for refusal provided by the LPP is as follows:

2. *The proposed development does not establish that safe and healthy working conditions have been provided for future employees given the subterranean nature of the site and the lack of ventilation and sunlight.*

In response to such concerns, the plans for this application were amended to include:

- An openable window on the southeast elevation of Basement Level 1, and
- An internal wall separating the proposed office and storage areas has been changed to include glazed windows to enable further natural light penetration into the building.

There are no development standards or controls within the RLEP 2014 or RDCP 2014 that apply to the amenity of workers within developments like the one being proposed. Further, information accompanying the subject application also includes a response from a Building Code of Australia (BCA) consultant advising that the proposal exceeds BCA requirements that relate to natural light and room ventilation requirements. The amenity of the proposed development is therefore considered to be sufficient; further, as adequate facilities (e.g. toilets, parking, etc.) are to be provided for staff, the site is considered to be suitable for workers within the proposed development if approved.

The proposal is an appropriate land use and form of development as demonstrated within this assessment report, and is therefore considered to be suitable for the site.

8. The Public Interest

The public interest is best served by the consistent application of the requirements of relevant Environmental Planning Instruments and by Council ensuring that any adverse effects on the subject site, the surrounding area and the natural and built environments are minimised. The proposal has been assessed against the relevant planning instruments and is considered to be acceptable. The proposal seeks a variation to cl. 4.4 of the RLEP 2014 and has been supported by a satisfactory Clause 4.6 written variation. The proposal will not result in any significant nor adverse impacts upon existing development on the subject site, adjoining properties or the surrounding area more broadly. On this basis, the proposal is not considered to raise any issues that would be contrary to the public interest.

9. Submissions

In accordance with the Ryde Community Participation Plan (CPP), the proposal was notified to owners and occupiers of surrounding properties (including residences within the residential flat buildings above the proposed development) between 20 September 2022 and 7 October 2022.

Two (2) submissions were received by Council during this notification period.

One submission objected to the proposed development; the second did not object but sought clarification on a number of matters.

Paraphrased summaries of the matters raised within the submissions are provided below, followed by a comment from the assessing planner:

A. Traffic and parking

Currently Junction street and Porter street are busy enough. Both streets are narrow and also do not have enough roadside parking spaces. The proposal would cause more issues.

Comment: Submitted information indicates that proposed truck movements will be limited to twice a month, and the timing of truck arrival will be arranged so that they do not conflict with peak times and waste collection times; this will be subject to conditions in the event of approval. Daily dispatches will be undertaken using a commercial van. With regard to the small number of employees onsite, only a small number (i.e. five) of additional vehicular movements will occur on a daily basis. As such, the small number of additional vehicle movements will not have a discernible impact upon the capacity of the local road network

B. BCA report referencing

Figure one on page six of the BCA compliance report is out of date. It does not account for the amendment where the allocated parking was originally proposed to use visitor parking but has subsequently relocated to residential spaces. It is assumed that this does not impact the BCA compliance report.

Comment: Without further detail, it is assumed that reference is made to the BCA Compliance Assessment Report, prepared by Building Code Clarity, dated 25 January 2022. This report accompanied an additional information package for LDA2021/0296, and has been resubmitted with this application (in addition to an addendum dated 25 August 2022 which relates to ventilation and natural light access). Amendments made to the plans (both as part of LDA2021/0296 and the subject application) relocate parking allocated to the proposal from the centre to the northwest side of the Basement Level 1 carpark; the relocation of these parking spaces will not affect BCA compliance.

C. Car parking references

The amended architectural plans highlight six car parks but the application refers to five. The architectural plans contain an asterisk indicating that six spaces are to be utilised for five parking spaces and one shared zone. It is unclear what the purpose of the shared zone is.

Comment: The plans indicate that six excess residential car parking spaces are to be allocated to the proposed development to provide for five car parking spaces (including one accessible space) and a shared zone. The shared zone is required adjacent to the proposed accessible space so that persons with disabilities that require use of the accessible space have sufficient space to enter and exit their vehicles.

10. Referrals

Note: Conditions contained within the referrals are not replicated, as these form part of the conditions contained within Appendix 1.

Development Engineer

The submitted Traffic Report (by Motion Engineers, Reference Number: N216471A [Version 1c], Dated October 2022) has presented an analysis of parking demand based on the relevant uses and floor area. The minimum parking level required by the proposal is 1 space as per DCP requirement. The development allocates six (6) of the 2-bed unit parking spaces to the proposed business with 5 of these spaces as off-street parking spaces and one (1) parking spaces as one (1) shared area for the accessible parking space.

The modification development application on this site (MOD2017/0197) approved 80 parking spaces for 2-bed units which exceeds the maximum DCP requirement but greater than the minimum DCP required parking number that the minimum parking number is 63 and the maximum number is 83 for 2-bed units. Therefore allocating 6 residential parking spaces to the proposed development is found to be an acceptable arrangement.

In addition, the proposed business conducts online trade only with all products shipped by courier from the site once a day. As such, no onsite public customer parking is required.

Environmental Health

Note: Council's Senior Environmental Health Coordinator has reviewed the subject application. In correspondence dated 23 November 2022, they confirmed that the Environmental Health commentary provided for the assessment of LDA2021/0296 is still current, and that the comments and conditions provided for LDA2021/0296 (dated 10 May 2022) are to be utilised. For reference, those earlier comments are replicated below.

PROPOSAL

Change of use and alteration to basement level B1 to distribution centre for a small online shopping business.

DISCUSSION

The Development Application seeks approval to alter the level 1 basement at 3 Porter Street Ryde and change its use from a plant room to distribution centre for a small online shopping business. The existing site contains a 6-storey residential flat building comprising of 99 residential units and 3 levels of basement car park. This DA has been previously assessed in late 2021 where planning requested further information, including an acoustic report. Acoustic report has now been prepared and finds that the operation will not interfere unreasonably with the local amenity.

Business Operational Plan/SEE

- *The business will take up 64m² office space and 154m² commercial space for product storage;*
- *Proposed operating hours are 8:30am-5:00pm;*
- *5 staff employed;*
- *Trucks to deliver products twice a month between 2-3pm;*
- *Product distribution to occur Monday-Friday 3:30pm via delivery van;*
- *No forklifts/heavy machinery; and*
- *Mechanical ventilation required for office, storage and toilets spaces (A/C to office).*

Acoustics

An acoustic report has been prepared by 'Koikas Acoustics Pty Ltd, dated 7 April 2022'. It is understood that unattended noise monitoring was undertaken between 3-9 May 2017, along with attended monitoring at two locations on 2 May 2017 between 5:15-5:30pm and 3 May 2018 between 6:00-6:15pm. Whilst the noise readings are from 5 years ago, the acoustic environment does not appear to have changed significantly in this time to change the conclusions drawn in this report. The report discusses traffic, mechanical plant and operational noise intrusions.

Traffic noise intrusions have been considered for the proposed office space associated with the distribution business. An internal noise criterion of 50dB has been adopted for the proposed office in line with the AS2107-2016 recommendation of 50dB or below for retail spaces. The internal noise levels in the office space were calculated at 43dB and therefore fall within the internal noise criteria. Accordingly, no further mitigation measures are required.

Mechanical plant for the site is identified as a supply fan, outside fan and AC unit for the office spaces. The noise from mechanical plant has been assessed at 4 nearby sensitive receivers (refer to figure 3 below). The sound power levels of the plant equipment were assessed and calculated to comply with the Noise Policy for Industry (NPI) criteria at all nearby receivers subject to the implementation of the recommendations detailed under section 6.5.3 of the report.

The report also assesses the cumulative noise impact from the operation of the business on the nearby sensitive receivers, identified primarily as Unit B02 (directly above Basement 1) as well as all other units above. This assessment includes consideration of noise emissions from vehicle movements, loading and unloading activities, mechanical plant and bimonthly deliveries made by small ridged trucks with a sound power of 95dB. Whilst all noise sources have been identified, the cumulative sound power levels are not provided; although it's noted that the concrete slab separating the Unit B02 and basement 1 is approximately 415-500mm thick and has a weighted sound reduction index of Rw69. Given the insulation performance of the slab and the low risk activities propose by the business (no forklifts/large machinery/trading hours) it is unlikely that internal noise transfer will be an issue. Non-standard condition to adopt a background +0 criteria for the receivers affected by an internal noise pathway during the day and inaudibility during night-time to be applied.

The insulation performance of the building, day time trading hours, delivery times being between 2-3pm and all other recommendation/mitigation measures provided in the report lead the EHU to believe the noise intrusion from use of the B1 carpark as a small scale distribution facility will not interfere unreasonably on the nearby sensitive receivers. The site is therefore suitable for the proposed use.

CONCLUSION

The proposal is considered SATISFACTORY subject to standard and non-standard conditions being applied.

Heritage

The original proposal was previously referred to Council’s Heritage Advisor for comment and the application was considered to have no adverse impact on the heritage significance of Crowle House at 8 Junction Street. The modifications proposed as part of the Section 8.3 review are also unlikely to have any adverse impact on this heritage item. For reference, those earlier comments are as follows:

DESCRIPTION OF SITE & CONTEXT

The site is located to the south-east of the heritage listed Crowle home (see details below). The recent development on the subject site is within a context of similar recent mixed-use multi-storey developments along the south-eastern side of Porter Street. There is a pedestrian/driveway with gates on the opposite side of Porter Street, but the Crowle home itself is not visible from Porter Street, due to recent development in the vicinity of the Crowle home.

HERITAGE STATUS & SIGNIFICANCE OF THE SITE

The subject site is not heritage listed and not within any heritage conservation area, however it is in the vicinity of the heritage listed “Crowle home” with the listing details of Crowle home and the heritage context of the site outlined in Figure 4 below.

Table 1: Heritage listing details for from LEP

Locality	Item name	Address	Property Description	Significance	Item no.
Ryde	“Crowle home” (house)	8 Junction Street	Lot 1 DP921633; Lot 11, DP 51349	Local	57

Heritage planning controls relating to the site are contained in Section 5.10 of the Ryde LEP 2014.

THE PROPOSAL

The proposed works are to undertake alterations to an existing basement and change of use of a plant room to a commercial premises on the site at 3-5 Porter Street & 105-107 Church Street, Ryde, which is a recent mixed-used multi-storey building.

HERITAGE ASSESSMENT OF THE PROPOSAL

The proposed works are considered to have no adverse impact on the heritage significance of the heritage item in the vicinity.

11. CONCLUSION

After consideration of the development against section 4.15 of the *Environmental Planning and Assessment Act 1979* and the relevant statutory and policy provisions, the proposal is 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 proposal is a permissible land use and is consistent with the objectives for B4 zoned land.
- The proposal has been supported by a satisfactory Clause 4.6 written variation to Clause 4.4(2) which demonstrates compliance is both unreasonable and unnecessary and has provided sufficient environmental planning grounds to support the variation.
- The proposal will not result in any significant, adverse nor unreasonable impacts upon adjoining properties or the public domain.
- The proposal is not contrary to the public interest.

12. RECOMMENDATION

A. THAT the Ryde Local Planning Panel accepts that the Clause 4.6 written request to vary the floor space ratio development standard (Clause 4.4(2)) in the RLEP 2014 has adequately addressed the matters in subclause (4) and will be in the public interest as it is consistent with the objectives of the development standard within Clause 4.4 and the objectives of the B4 Mixed Use Zone of the RLEP 2014.

B. THAT the Ryde Local Planning Panel, as the consent authority, change the determination to **approve** Section 8.3 Review Application no. APL2022/0004, for the review of the determination of LDA2021/0296 for the fitout and use of the redundant plant area for the purposes of a warehouse or distribution centre at 3 Porter Street, Ryde, subject to the draft conditions contained within Attachment 1.

ATTACHMENTS

1. Conditions of Consent
2. RLEP 2014 and RDCP 2014 Tables of Compliance
3. Architectural Plans
4. Section 8.3 Review Covering Letter
5. Clause 4.6 Written Variation Request
6. Legal advice submitted by the Applicant

Report prepared by:

Tyson Ek-Moller
Consultant Planner

Report approved by:

Sohail Faridy
Senior Coordinator Development Assessment

Sandra Bailey
Executive Manager City Development

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 in accordance with the following plans (stamped approved by Council) and the recommendations and requirements of the following support documents.

Document Description	Plan No./ Reference	Date
Cover Sheet	Eun Seo Architects, Drawing no. A-000, Rev. C	24.10.2022
GFA & FSR Calculation & Parking Space	Eun Seo Architects, Drawing no. A-001, Rev. D	24.10.2022
Site Plan	Eun Seo Architects, Drawing no. A-100, Rev. E	30.08.2022
Floor Plan	Eun Seo Architects, Drawing no. A101, Rev. C	30.08.2022
External Elevations	Eun Seo Architects, Drawing no. A-200, Rev. B	30.08.2022
Section A	Eun Seo Architects, Drawing no. A-201, Rev. B	30.08.2022
Mechanical Ventilation and Air Conditioning	Bruce Worthington, ref. MSK210809	---
Access Assessment Report	Building Code Clarity, Ref. J1019-Access-r3	28.10.2022
Acoustical Report	Koikas Acoustics, Ref. 3418R20211222Im3-5PorterSt&105-107ChurchStRyde_DAv5, Version V5	26.10.2022
BCA Compliance Assessment Report	Building Code Clarity, Ref. J1019-BCA-r3	25.01.2022
BCA Section J Deemed to Satisfy Compliance Report	Eco Certificates Pty Ltd, Ref. EC 4061-DTS	26.10.2022
Business Operation Plan	Eun Seo Architects, Rev. 05	24.10.2022
Operational Waste Management Plan	Waste Audit and Consultancy Services	October 2022

2. **Inconsistency between documents.** In the event of any inconsistencies between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail.
3. **Building Code of Australia** - All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.
4. **Signage – not approved** - Despite any notation on the plans, this consent does not authorise the erection of any signs or advertising structures. Separate approval must be obtained from Council for any additional signs, unless such signage is 'exempt development'.

5. **Security Grilles** - This consent does not authorise the erection of any security grilles, shutters or the like on external windows on the southeast elevation of the building. Separate approval must be obtained for any such works.
6. **Hours of work.** Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.
7. **Illumination of public place** - Any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
8. **Development to be within site boundaries** - The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties.
9. **Public space** - The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.
10. **Design and Construction Standards.** All engineering plans and work inside the property shall be carried out in accordance with the requirements of the relevant Australian Standard. All Public Domain works or modification to Council infrastructure which may be located inside the property boundary, must be undertaken in accordance with Council's DCP Part 8.5 (Public Civil Works) and Part 8.2 (Stormwater and Floodplain Management), except otherwise as amended by conditions of this consent.
11. **Service Alterations.** All services or utilities required to be altered in order to complete the development works are to be undertaken in accordance with the requirements of the relevant service provider (e.g. Telstra, Jemena, Ausgrid, etc), with all costs associated with this alteration to be borne by the applicant.
12. **Works on Public Roads** – Any works performed in, on or over a public road reserve pursuant to this consent must be carried out in accordance with this consent and with the Road Opening Permit issued by Council as required under Sections 138 and 139 of the *Roads Act 1993*.
13. **Public areas and restoration works** - Public areas must be maintained in a safe condition at all times. If required, restoration of disturbed road and footway areas for the purpose of connection to public utilities, including repairs of damaged infrastructure as a result of the construction works associated with this development site, shall be undertaken by the Applicant in accordance with Council's standards and specifications, and DCP 2014 Part 8.5 *Public Civil Works*, to the satisfaction of Council. Council's standards and specifications are available on the Council website.
14. **Compliance with Acoustic Report** - All control measures nominated in the Acoustic Report No. 3418R20211222lm3-5PorterSt&105-107ChurchStRyde_DAv5, dated 26 October 2022, prepared by Koikas Acoustics must be implemented.
15. **Duty to Notify Pollution Incidents** - Council being the 'appropriate regulatory authority' must be notified immediately of any pollution incident where material harm to the environment is caused or threatened. This duty extends to persons carrying

on an activity, employers and employees, contractors and the occupier of the premises where the incident occurs.

16. **Waste collection point for commercial waste** - The commercial waste must be collected from the loading dock located inside the building.

DEMOLITION

The following conditions are imposed to ensure compliance with relevant legislation and Australian Standards, and to ensure that the amenity of the neighbourhood is protected.

A Construction Certificate is not required for Demolition.

17. **Provision of contact details/neighbour notification.** At least 7 days before any demolition work commences:
- (a) Council must be notified of the following particulars:
 - (i) The name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - (ii) The date the work is due to commence and the expected completion date
 - (b) A written notice must be placed in the letter box of each residential apartment within the site identified as 3 Porter Street and 105 Church Street, Ryde (i SP 100700).
18. **Compliance with Australian Standards.** All demolition work is to be carried out in accordance with the requirements of the relevant Australian Standard(s).
19. **Asbestos.** Where asbestos is present during demolition work, the work must be carried out in accordance with the guidelines for asbestos work published by WorkCover New South Wales.
20. **Asbestos – disposal.** Any asbestos wastes must be disposed of at a landfill facility licensed by the New South Wales Environmental Protection Authority to receive that waste. Copies of the disposal dockets must be retained by the person performing the work for at least 3 years and be submitted to Council on request.
21. **Waste management plan.** Demolition material must be managed in accordance with the approved waste management plan.
22. **Disposal of demolition waste.** All demolition waste must be transported to a facility or place that can lawfully be used as a waste facility for those wastes.

PRIOR TO CONSTRUCTION CERTIFICATE

A Construction Certificate must be obtained from a Principal Certifying Authority to carry out the relevant building works approved under this consent. All conditions in this Section of the consent must be complied with before a Construction Certificate can be issued.

Council Officers can provide these services and further information can be obtained from Council's Customer Service Centre on 9952 8222.

Unless an alternative approval authority is specified (eg Council or government agency) the Principal Certifying Authority is responsible for determining compliance with the conditions in this Section of the consent.

Details of compliance with the conditions, including plans, supporting documents or other written evidence must be submitted to the Principal Certifying Authority.

23. **Compliance with Australian Standards** - The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifying Authority prior to the issue of the relevant **Construction Certificate**.
24. **Structural Certification** - The applicant must engage a qualified practising structural engineer to provide structural certification in accordance with relevant BCA requirements prior to the release of the relevant **Construction Certificate**.
25. **Fees** - The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:
 - (a) Infrastructure Restoration and Administration Fee
26. **Long Service Levy** - Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the relevant **Construction Certificate**.
27. **Access for people with disabilities (commercial)**. Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that access for people with disabilities from the public domain and all car parking areas on site to all tenancies within the building is provided. Consideration must be given to the means of dignified and equitable access. Compliant access provisions for people with disabilities shall be clearly shown on the plans submitted with the Construction Certificate. All details shall be provided to the Certifier prior to the issue of a Construction Certificate. All details shall be prepared in consideration of the Disability Discrimination Act and the relevant provisions of AS1428.1, AS1428.2, AS1428.4 and AS 1735.12.
28. **Vehicle Access and Parking**. All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Offstreet Parking standards).
29. **Mechanical Ventilation Details** - Details of all proposed mechanical ventilation systems, and alterations to any existing systems, must be submitted to Council or an accredited private certifier with the application for the **Construction Certificate**.

Such details must include:

- (a) Plans and specifications of the mechanical ventilation systems;
- (b) A site survey plan showing the location of all proposed air intakes exhaust outlets and cooling towers, and any existing cooling towers, air intakes, exhaust outlets and natural ventilation openings in the vicinity; and
- (c) A certificate from a professional mechanical services engineer certifying that the mechanical ventilation systems will comply with the *Building Code of Australia* and setting out the basis on which the certificate is given and the extent to which the certifier has relied upon relevant specifications, rules, codes of practice or other publications.

30. **Fresh air intake vents** - All fresh air intake vents must be located in a position that is free from contamination and at least 6 metres from any exhaust air discharge vent or cooling tower discharge.
31. **Exhaust air discharge vents** - All exhaust air discharge vents must be designed and located so that no nuisance or danger to health will be created.
32. **Water efficient fixtures:** Where new or replacement fittings are required, where applicable are to include water efficient 4 star dual flush toilets, 4 star taps and 3 star urinals, bathroom and kitchen taps shall be fitted with aerators.
33. **Construction Noise Management Plan (demolition & construction)** - A construction noise management plan must be prepared by a suitably qualified and experienced noise expert in accordance with the noise management levels in EPA's Interim Construction Noise Guideline and accompany the application for a Construction Certificate. The Certifying Authority must be satisfied the Construction Noise Management Plan will minimise noise impacts on the community during the construction of the development.

The Construction Noise Management Plan must include:

- (a) hours of construction
- (b) Identification of nearby residences and other sensitive land uses.
- (c) Assessment of expected noise impacts.
- (d) describe the measures to be implemented to manage high noise generating works such as piling, in close proximity to sensitive receivers
- (e) include strategies that have been developed with the community for managing high noise generating works.
- (f) Community Consultation and the methods that will be implemented for the whole project to liaise with affected community members to advise on and respond to noise related complaints and disputes.
- (g) include a complaints management system that would be implemented for the duration of the construction
- (h) include a program to monitor and report on the impacts and environmental performance of the development

PRIOR TO COMMENCEMENT OF CONSTRUCTION

Prior to the commencement of any demolition, excavation, or building work the following conditions in this Part of the Consent must be satisfied, and all relevant requirements complied with at all times during the operation of this consent.

34. **Site Sign**
 - (a) A sign must be erected in a prominent position on site, prior to the commencement of construction:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work,
 - (ii) showing the name of the principal contractor (if any) or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

- (b) Any such sign must be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- 35. **Safety fencing** - The area that is subject to development must be fenced prior to the commencement of construction, and throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
- 36. **Work Zones and Permits.** Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane.

DURING CONSTRUCTION

Unless otherwise specified, the following conditions in this Part of the consent must be complied with at all times during the construction period. Where applicable, the requirements under previous Parts of the consent must be implemented and maintained at all times during the construction period.

- 37. **Critical stage inspections** - The person having the benefit of this consent is required to notify the Principal Certifying Authority during construction to ensure that the critical stage inspections are undertaken, as required under clause 162A of the *Environmental Planning and Assessment Regulation 2000*. (Note: this condition does not relate to the staging of construction certificates or occupation certificates).
- 38. **Construction materials** - All materials associated with construction must be retained within the site.
- 39. **Site Facilities**
The following facilities must be provided on the site:
 - (a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
 - (b) a garbage receptacle for food scraps and papers, with a tight-fitting lid.
- 40. **Site maintenance**
The applicant must ensure that:
 - (a) approved sediment and erosion control measures are installed and maintained during the construction period;
 - (b) building materials and equipment are stored wholly within the work site unless an approval to store them elsewhere is held;
 - (c) the site is clear of waste and debris at the completion of the works.
- 41. **Storage and removal of wastes** - All demolition and construction wastes must be stored in an environmentally acceptable manner and be removed from the site at frequent intervals.
- 42. **General requirements for liquid and solid waste** - Liquid and solid wastes generated on the site shall be collected, transported and disposed of in accordance with the *Protection of the Environment Operations (Waste) Regulation 2005* and in accordance with DECC the Environmental Guidelines Assessment, Classification

and Management of Liquid and Non-Liquid Wastes (1999). NSW EPA Waste Classification Guidelines

43. **Hazardous/intractable waste disposal** - Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of SafeWork NSW and the EPA, and with the provisions of:
 - (a) *Work Health and Safety Act 2011*
 - (b) *NSW Protection Of the Environment Operations Act 1997* (NSW) and
 - (c) *NSW Department of Environment and Climate Change Environmental Guidelines*; *NSW EPA Waste Classification Guidelines*
44. **Contaminated waste to licensed EPA landfill** - Any contamination material to be removed from the site shall be disposed of to an EPA licensed landfill.
45. **Waste data maintained** - A Waste Data file is to be maintained, recording building/demolition contractor's details and waste disposal receipts/dockets for any demolition or construction wastes from the site. These records must be retained and made available to Council on request.

PRIOR TO OCCUPATION CERTIFICATE

An Occupation Certificate must be obtained from a Principal Certifying Authority prior to commencement of occupation of any part of the development, or prior to the commencement of a change of use of a building.

Prior to issue, the Principal Certifying Authority must ensure that all works are completed in compliance with the approved construction certificate plans and all conditions of this Development Consent.

Unless an alternative approval authority is specified (eg Council or government agency) for matters other than those set out in clause 161 of the *Environmental Planning and Assessment Regulation 2000*, the Principal Certifying Authority is responsible for determining compliance with conditions in this Part of the consent. Details to demonstrate compliance with all conditions, including plans, documentation, or other written evidence must be submitted to the Principal Certifying Authority.

46. **Fire safety matters** - At the completion of all works, a Fire Safety Certificate must be prepared, which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Each year the Owners must send to the Council and the Fire and Rescue NSW an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

47. **Road opening permit – compliance document** - The submission of documentary evidence to Council of compliance with all matters that are required by any Road Opening Permit issued by Council under Section 139 of the *Roads Act 1993* in

relation to works approved by this consent, prior to the issue of the **Occupation Certificate**).

48. **Disabled Access.** Prior to occupation of the relevant stage of the development, a suitably qualified access consultant is to certify that the development complies with Australian Standard 1428 and the Building Code of Australia.
49. **Sydney Water – Section 73** - A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to “Water Servicing Coordinator” under “Developing Your Land” or telephone 13 20 92 for assistance.

Following application, a “Notice of Requirements” will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

50. **Certification of Mechanical Ventilation Work** - Where any mechanical ventilation systems have been installed or altered, a certificate from a professional mechanical services engineer certifying that the systems comply with the approved plans and specifications must be submitted to the Principal Certifying Authority before the issue of an **Occupation Certificate**.
51. **All works/methods/procedures/control measures** - Prior to the issue of an occupation certificate (Interim or Final) written certification from a suitably qualified person(s) shall be submitted to the Principal Certifying Authority and Council, stating that all works/methods/procedures/control measures approved by Council in the following report has been completed:
 - (a) Acoustic Report No. 3418R20211222Im3-5PorterSt&105-107ChurchStRyde_DAv5, dated 26 October 2022, prepared by Koikas Acoustics
52. **Noise Limits** - Noise generated at the premises must not exceed the noise limits specified in the Acoustic Report No. 3418R20211222Im3-5PorterSt&105-107ChurchStRyde_DAv5, dated 26 October 2022, prepared by Koikas Acoustics submitted with the development application.
53. **Onsite car parking** – Prior to the issue of the **Occupation Certificate**, five (5) car onsite parking spaces (including one (1) accessible space) are to be allocated to the site as indicated on the plans approved by this consent.

OPERATIONAL CONDITIONS

The conditions in this Part of the consent relate to the on-going operation of the development and shall be complied with at all times.

54. **Operational management plan** - The operation of the site is to be undertaken in accordance with the Business Operation Plan approved by this consent. If/where this document is inconsistent with the requirements of this consent, then the Business Operation Plan is to be amended to address any such inconsistency.
55. **Onsite car parking** – Five (5) car onsite parking spaces (including one (1) accessible space) are to be allocated to the approved use at all times, as indicated on the plans approved by this consent.
- All employees associated with the approved business are to utilise allocated spaces, and are not to use resident spaces (including resident visitor spaces) at any time.
56. **Hours of operation** – Approved hours of operation are limited to 8:30am to 5:00pm, Monday to Friday. All deliveries and dispatches are to occur within these approved hours of operation.
57. **Number of employees** – A maximum of five (5) employees are to be on the site at any one time.
58. **No customer access** – Access to the site by customers is not permitted at any time.
59. **No retail sales** – No sales necessitating access to the site by customers is permitted at any time (i.e. all sales are to be online, app, postal and/or phone-based only).
60. **No customer collection** – No onsite collection of products sold by the onsite business (including 'click and collect' type services) is permitted.
61. **Deliveries and dispatches** – All deliveries to, and dispatches from, the site are to utilise the approved loading bay and onsite shared truck bay (as prescribed by the approved Business Operation Plan). Delivery vehicles associated with the approved use are not to use resident spaces (including resident visitor spaces) at any time.
62. **Onsite manufacturing** – Onsite manufacture of products is not permitted by this consent.
63. **Council may require acoustical consultant's report** – Upon receipt of a justified customer request, Council may require the submission of an acoustic report from an appropriately qualified acoustical consultant demonstrating compliance with the relevant noise and vibration criteria.
64. **Noise from mechanical equipment** - The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.
65. **Receivers affected by operational noise through internal pathways** - The noise emitted from the development, including vehicle movements, loading and unloading activities, mechanical plant and patron noise must not interfere unreasonably with the residential receivers of the building and must comply with the criteria of:
- (a) Background +5dB(A) between 7am-10pm; and
 - (b) Be inaudible between 10pm-7am.
66. **Management of waste storage facilities** - All waste storage areas are to be maintained in a clean and tidy condition at all times.

67. **Storage and disposal of wastes** - All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.
68. **Waste containers** - An adequate number of suitable waste containers must be kept on the premises for the storage of garbage and trade waste.
69. **Storage of bins between collection periods** - Between collection periods, all waste/recyclable materials generated on site must be kept in enclosed bins with securely fitting lids so the contents are not able to leak or overflow. Bins must be stored in the designated waste/recycling storage room(s) or area(s) between collection periods.

Compliance Assessment

LDA No:	APL2022/0004
Date Plans Rec'd	14 October 2022 (Amended 1 November 2022)
Address:	3 Porter Street, Ryde
Proposal as lodged:	Section 8.3 review of determination LDA2021/0296 for the fitout and use of the redundant plant area for the purposes of storage and distribution of goods
Constraints Identified:	Class 5 Acid Sulphate Soils Heritage – In proximity to mapped local heritage item

COMPLIANCE CHECK

RYDE LEP 2014	PROPOSAL	COMPLIANCE
4.3(2) Height • 21.5m	No change; the proposed works are to be internalised.	Yes
4.4(2) FSR • 2:1	Site area: 3,281.1m ² FSR approved by Development Consent no. LDA2015/0406 (as modified): 2.32:1 (7,606m ²) Proposed FSR: 2.41:1 (7,727.1 ²) Refer to the planning report for an assessment of this variation.	No
4.6 Exceptions to development standards	A written variation request has been submitted with the subject application. Refer to the planning report for an assessment of the written variation request.	Yes
5.10 Heritage Conservation	The site does not contain a heritage item and is not within a heritage conservation area. The site is however in close proximity to a heritage item (Item no. 57 ("Crowle Home" (house)), 8 Junction Street	Yes

Attachment 2 - LEP & DCP Compliance Tables

	<p>Ryde, approximately 15 metres northwest of the subject site.</p> <p>The proposed works are to be internalised within Basement Level 1; the plant room that is to be changed by the proposal is also oriented towards the southeast frontage (i.e. on the road frontage that faces away from the heritage item). There will subsequently be no impact on the adjoining heritage item.</p> <p>As no excavation is proposed to occur, matters regarding indigenous heritage are not relevant to this proposal.</p>	
6.1 Acid sulfate soils	The site is affected by Class 5 acid sulphate soils. No excavation and subsequent ground disturbance is proposed, therefore an acid sulphate soils management plan is not required.	Yes
6.2 Earthworks	None proposed.	N/A
6.3 Flood Planning	The subject site is not flood affected.	N/A
6.4 Stormwater Management	The proposed works will not affect existing stormwater runoff. No changes are proposed that will affect the layout or operation of previously-approved onsite stormwater infrastructure.	Yes

DCP 2014	Proposed	Compliance
Part 4.2 – Shepherd’s Bay, Meadowbank		
2.0 Desired Character		
2.2 Desired Future Character		
1. The vision for Shepherd’s Bay, Meadowbank is to create a higher density transit-orientated neighbourhood, providing for a mix of	The proposal is consistent with the desired character of the Shepard’s Bay Area. The proposal will:	Yes

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
<p>residential and commercial/retail uses.</p> <p>2. Excellent transport infrastructure will provide a high level of access and mobility, ensuring efficient connections from the east to west and north to south.</p> <p>3. Shared zones and dedicated pedestrian and cycle ways will encourage walking and cycling whilst connecting green open spaces and transport nodes to create a high quality public domain for residents and visitors.</p> <p>4. New mixed use development will integrate with surrounding neighbourhoods and buildings, ensuring that the bulk and scale of new buildings is sensitive to the foreshore location and maximises the view potential towards the Parramatta River and surrounding regions.</p> <p>5. Commercial and retail development will be concentrated around Meadowbank Station and along Church Street, whilst residential development will dominate between these employment nodes.</p> <p>6. An improved public domain that provides an improved level of amenity that allows for higher densities across the area.</p>	<ul style="list-style-type: none"> • Allow for a mix of residential and commercial activity, • Facilitate the concentration of commercial development on Church Street, • Locate the proposed use in close proximity to a range of public transport options (i.e. bus services and Meadowbank Station), • Be integrated within the area in a manner that does not affect building bulk and scale nor views of the surrounding area (both from private sites and the public domain), • Will have no adverse impact on streetscape appearance and character, and • Will allow for an increase in development density without adversely affecting local residential amenity. 	
3.1 - Site Analysis		
<p>a. Must be submitted with any development application for building works;</p>	<p>A site analysis plan has not been provided. While noncompliant, the provision of such a plan is not considered to be necessary given the context of the proposal (i.e. Internal alterations within the basement area of a developed site to</p>	<p>No</p>

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
	facilitate a commercial use without external building works).	
<p>b. Should address the performance criteria, design solutions and controls set out in this Part.</p> <p>Note: The level of detail will depend on the size of the proposed development, with minor work requiring less information.</p> <p>The level of detail should be clarified with Council's Environment and Planning Group;</p>	As above.	N/A
<p>c. Should indicate the relationship of the site/development to the following:</p> <ul style="list-style-type: none"> i. the public open spaces (or public domain) like parks, streets and verges; ii. its context including other buildings; iii. pedestrian and cycle connectivity, both along the edges and where appropriate through the site; iv. heritage items where applicable; and v. the future built form of the area and the precinct. 	<p>As above, also noting that:</p> <ul style="list-style-type: none"> • The site's context with major considerations (such as nearby heritage items) is addressed elsewhere within submitted documents (e.g. the Statement of Environmental Effects), • As the site and adjoining sites are fully developed, pedestrian and cycle connectivity will not be altered, and • The future built form of the surrounding area is unlikely to significantly change in the medium-to-long term, noting that most surrounding sites within the precinct have been redeveloped. 	N/A
<p>d. Should include plans, sketches, photographs and supporting written information; and</p>	As above.	N/A

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
e. Must indicate how the analysis has influenced the proposed design.	As above, noting that the proposal is to occupy an existing basement area, and that a site analysis would have no influence on the placement of the proposed development.	N/A
4.0 - General Development Controls		
4.1 Developments and the Public Domain		
4.1.1 Mixed-Use Development		
Mixed-use development will comprise either: a. a combination of medium and high density residential development with compatible employment related activity; or	The proposal will retain existing high-density residential development on existing residential. The proposed warehouse or distribution centre is to be an employment-related activity, the scale of which is considered to be compatible with the development context of the site.	Yes
b. compatible employment related activities including: i. restaurants and cafés; ii. small scale retail establishments such as convenience stores and news agencies up to 2000m ² ; iii. small commercial offices and studios such as real estate agencies offices; iv. professional suites such as doctors suites; and v. home offices.	The use is not one specified within the control, however the land use is one that was only introduced in late 2021 (i.e. the use was introduced after the controls within the DCP were established). The scale and nature of the proposed use and its public domain presentation (i.e. with the offices and staff facilities to be located at the front of the site, adjacent to the Church Street frontage) will be consistent with that of a commercial office or studio.	Yes
c. Home office accommodation is allowed throughout the area.	The proposal is not a home-office-type use.	N/A
d. Retail developments, restaurants and cafés are to be generally located at street level.	The proposed use does not constitute a retail or hospitality-type business.	N/A
e. Commercial uses are encouraged at the level immediately above street	The location of the proposed warehouse or distribution centre is within Basement Level	No

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
<p>level, including but not confined to, professional and commercial offices, services such as dry cleaners, newsagency, and leisure uses such as a gym, places of worship or meeting rooms.</p>	<p>1. While the part of this level to contain the proposed use is not above that of Church Street (and is therefore technically noncompliant).</p> <p>It is not possible for existing levels above top accommodate the use, as they are already occupied by residential development.</p> <p>Further, due to the sloped topography of the site, this level (and the associated southeast frontage) is located at a level that is close to that of Church Street. The nature of the use does not involve access by members of the public, therefore a prominent frontage directly above the streetscape is not required in this instance.</p>	
<p>f. Ground floor apartments are to be of flexible design to facilitate change of use and ensure privacy for occupants.</p>		<p>N/A</p>
<p>g. Where upper levels of development are used for either commercial or residential activity, the amenity of both uses must not conflict or be compromised by other uses in the development.</p>	<p>As demonstrated by submitted information (the recommendations of which will be subject to conditions in the event of approval), the nature of the proposed use and its associated operations (i.e. hours of operation, number of employees, etc.) will not adversely affect dwellings within levels above. The residential uses of upper levels will also not adversely affect the operations of the proposed use.</p>	<p>Yes</p>
<p>h. Private living spaces and communal or public spaces should be clearly identified and defined.</p>	<p>No changes are proposed in this regard.</p>	<p>N/A</p>

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
<p>i. Pedestrian entry to the residential control of mixed-use developments should be</p> <ul style="list-style-type: none"> i. separated from entry to other land uses in the building(s); and ii. have a clear address and presentation to the street. 	<p>The existing development provides for a common entry/foyer from the Church Street Frontage to Basement Level 1. While an existing doorway from the common foyer is to be utilised to provide pedestrian access, separate access to the proposed use is to also be provided from the Basement Level 1 carpark area.</p>	<p>Yes</p>
<p>j. Active streetscapes will be encouraged by the use of outdoor restaurant seating, whether on private or public land. Refer to Council's Outdoor Dining Policy.</p>	<p>Not applicable.</p>	<p>N/A</p>
<p>k. New large scale warehousing is not appropriate in the area.</p>	<p>The proposal is not considered to constitute large-scale warehousing, with regard to:</p> <ul style="list-style-type: none"> • The physical size of the proposed use, and • The scale of the proposed operations (i.e. operating hours, numbers of staff, vehicular movements, etc.). 	<p>Yes</p>
<p>l. The Church Street frontage should be used for commercial uses with residential uses setback at 12m and fronting Porter Street.</p>	<p>Not applicable.</p>	<p>N/A</p>
<p>4.1.2 Public Domain, Access and Pedestrian/Cyclist Amenity</p>		
<p>a. The achievement of maximum heights and density is contingent on meeting the public domain provisions of this plan and all public domain items being provided by the proponent.</p>	<p>Not applicable.</p>	<p>N/A</p>
<p>b. New developments must be provided with a minimum of one barrier free access point to the main entry.</p>	<p>Barrier free access point will continue to be provided from the Church Street frontage.</p>	<p>Yes</p>

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
c. Publicly accessible pedestrian and cycle ways must be provided through large sites. (even if not envisioned by this plan) (refer to Figure 4.2.03).	Not applicable.	N/A
d. New pedestrian and cycleway access points, gradients and linkages are to be designed to be fully accessible by all.	Not applicable.	N/A
e. New commercial development should provide facilities, including showers, bike lockers etc, to encourage walking and cycling to work – refer to Part 9.3 - Parking.	While shower facilities are not provided, there is sufficient space for bike storage within the site and bathroom space for employees to change if necessary.	Yes
f. New roads, shared ways, pedestrian and cycle paths shall be provided in accordance with Figure 4.2.03.		N/A
g. Constitution Road, Faraday Lane and Porter Street (see Figure 4.2.03, Figure 4.2.04, Figure 4.2.04a, Figure 4.2.04b, Figure 4.2.05, Figure 4.2.06 and Figure 4.2.07) are to be widened.		N/A
h. The design of new roads, shared ways footpaths and cycle paths shall be in accordance with Figure 4.2.03, Figure 4.2.04, Figure 4.2.04a, Figure 4.2.04b, Figure 4.2.05, Figure 4.2.06 and Figure 4.2.07.		N/A
i. Shared pedestrian links, cycle ways, public roads and lanes are to be of a high standard and treated in a way which indicates their shared status. The selection of paving, street furniture, lighting, bollards, signage and paving should		N/A

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
<p>complement the existing upgrade works to Shepherds Bay (refer to the Ryde Public Domain Technical Manual).</p>		
<p>j. The design and location of vehicle access to developments should minimise conflicts between pedestrian and vehicles on footpaths, particularly along high volume pedestrian streets.</p>	<p>The existing vehicular access point to the site is to be retained. Traffic generation by the proposal (particularly heavy vehicles) will not significantly increase beyond that already associated with the site, therefore the use will not notably increase potential vehicular/pedestrian conflict. There are already line markings at the driveway entry point to the site alerting other carpark users to be aware of trucks).</p>	<p>Yes</p>
<p>k. Service vehicle access is to be combined with parking access and limited to a maximum of one access point per building.</p>	<p>The proposal will utilise the existing vehicular access point to the site.</p>	<p>N/A</p>
<p>l. Wherever practicable, vehicle access is to be a single crossing, perpendicular to the kerb alignment.</p>	<p>As above.</p>	<p>N/A</p>
<p>m. Vehicle access ramps parallel to the street frontage will not be permitted.</p>	<p>As above.</p>	<p>N/A</p>
<p>n. Vehicle entries are to have high quality finishes to walls and ceiling as well as high standard detailing. No service ducts or pipes are to be visible from the street.</p>	<p>As above.</p>	<p>N/A</p>
<p>o. The ground floor of all development is to be flush with the street footpath for the predominant level of the street frontage and at the main entry to the building.</p>	<p>Existing ground floor levels will remain unchanged.</p>	<p>N/A</p>

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
p. Recesses for roller doors and fire escapes are to be wide and shallow to provide for personal security. Narrow, deep recesses are to be avoided.	Not proposed.	Yes
q. Pedestrian links must be a minimum width of 3.5 m, clear of buildings and open 24 hours a day. Pedestrian links identified in Figure 4.2.03 must be dedicated to Council.		N/A
r. Developments must be setback from the corner on blocks with poor site lines. The setback distance will be at the discretion of Council.		N/A
s. The Rothsay Avenue to Bowden Street pedestrian link must be a minimum width of 6m.		N/A
4.1.7 Safety		
a. Public spaces need to be designed to meet Crime Prevention Through Environmental Design (CPTED) principles (DUAP 2001).	Noted. Parts of the site that are already capable of being accessed by members of the public will not be altered, however the occupation of a part of the site that is presently unused will enable better active and passive surveillance of the public approach to the Basement Level 1 access point from Church Street.	Yes
b. Open sightlines and landscaping needs to be provided that allows for high levels of public surveillance by residents and visitors.	Existing external sightlines from the development are to be retained, noting that additional sightlines will be provided to the public approach to the Basement Level 1 access point from Church Street, as a result of an unused part of the site being occupied by the proposed use.	Yes

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
<p>c. Lighting is to be provided to all pedestrian ways, building entries, corridors, laundries, lifts, stairwells, driveways and car parks to ensure a high level of safety and security for residents and visitors at night. Further, external lighting including street lighting if necessary (in accordance with pedestrian lighting AS1158 is to be provided which makes visible potential hiding spots at night.</p>	<p>External lighting is not proposed.</p>	<p>N/A</p>
<p>d. Entrances to public open spaces will need to encourage pedestrian use and establish clear sightlines to improve visual security</p>	<p>The existing layout of the entrance from the Church Street frontage to Basement Level 1 will remain unchanged. Visual security will however be improved through increased surveillance of this entry as a result of an unused part of the site being occupied by the proposed use.</p>	<p>Yes</p>
<p>e. The design of public domains must not result in dead ends or similar design outcomes.</p>	<p>The proposal will not alter the design of the public domain.</p>	<p>N/A</p>
<p>4.3 - Ecological Sustainability</p>		
<p>4.4.2. Noise and Vibration Attenuation</p>		
<p>Commercial and industrial</p>		
<p>a. Church Street has been identified as a commercial strip to provide a buffer between Church Street and residential uses along Porter Street.</p>	<p>Noted.</p>	<p>-</p>
<p>b. The use of a premises, and any plant, equipment and building services associated with a premises must not:</p> <p>i. create an offensive noise as defined by the <i>Protection of the Environment Operations Act 1997</i>; and</p>	<p>The proposal will not result in in adverse noise impacts on the locality.</p> <p>The applicant has submitted an acoustic assessment (prepared by Koikas Acoustics, dated 26 October 2022). This application was</p>	<p>Yes</p>

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
<p>ii. add significantly to the background noise experienced in a locality.</p>	<p>also referred to Council's Environmental Health Officer (EHO) for comment. The EHO confirmed that comments previously provided still apply to this application; in summary, those comments found that:</p> <p><i>"The insulation performance of the building, day time trading hours, delivery times being between 2-3pm and all other recommendation/mitigation measures provided in the report lead the EHU to believe the noise intrusion from use of the B1 carpark as a small scale distribution facility will not interfere unreasonably on the nearby sensitive receivers. The site is therefore suitable for the proposed use."</i></p> <p>Conditions have been recommended in the event of approval to ensure that the operational use of the site will not result in adverse acoustic impacts.</p>	
<p>c. At Council's discretion, if there is any doubt over whether these requirements can be achieved, a statement of compliance from a qualified acoustic consultant may be required.</p>	<p>As above (an acoustic assessment has been submitted and assessed).</p>	<p>Yes</p>
<p>d. Machinery and activities, including construction work, that are likely to generate offensive noise must be adequately sound-proofed in accordance with the <i>Protection of the Environment Operations Act 1997</i> prior to occupation of the premises.</p>	<p>As above.</p>	<p>Yes</p>
<p>e. Development must have regard to "Interim Guidelines</p>	<p>Noted.</p>	<p>-</p>

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
for Development Near Busy Road and Rail Corridors” NSW Planning & Infrastructure.		
f. Where development adjoins residential development, the use of mechanical plant equipment and building services will be restricted and must have acoustic insulation.	See above for comments regarding acoustic considerations. Recommendations have been made by the submitted acoustic assessment report regarding the design of plant equipment; the insulation performance of the slab is also such that internal noise transfer is also unlikely.	Yes
g. Loading and unloading facilities must not be located immediately adjacent to residential development.	The proposal seeks to utilise both the existing shared loading bay within Basement Level B1 and a segregated loading bay for smaller dispatches. The locations of these areas are not adjacent to residential development.	Yes
h. Retail premises must limit any spruiking and the playing of amplified music or messages so as not to disturb the amenity of other public and private places.		N/A
i. Air conditioning ducts shall not be situated adjacent to residential development.	Complies.	Yes
j. Where development is situated adjacent to residential development, working hours shall generally be restricted to 7 am to 6 pm Monday to Friday and 8 am to 1 pm on Saturday, and nil on Sundays or public holidays. Activities in operation outside these hours must demonstrate that there will be	The proposed hours of operation are 8:30am to 5:00pm, Monday to Friday.	Yes

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
no detrimental impact to residential amenity.		
k. Driveways, access ramps, landscaping and public infrastructure are permissible within overland flow paths.	Not applicable.	N/A
4.4 Parking Access and Loading		
a. All new buildings are required to provide on-site loading and unloading facilities. Buildings on Church Street will be accessed from Porter Street. This is to be addressed in Staged development applications for these sites.	All vehicular access will continue to occur via the Porter Street driveway crossover.	Yes
b. Loading docks shall be located in such a position that vehicles do not stand on any public road, footway, laneway or service road and vehicles entering and leaving the site move in a forward direction.	The proposal seeks to utilise existing and proposed facilities within Basement Level B1, which is located within the site. The design of the carpark already permits forward vehicular access and egress, noting that it is designed to cater for 11-metre-long waste recovery vehicles.	Yes
c. Loading docks that extend more than 7.5 metres into a building, mechanical ventilation might be required.	Not applicable. The proposed loading bay for smaller vehicles, whilst exceeding 7.5 metres in length, will be capable of being ventilated via doorways and proposed ventilation measures.	N/A
5.0 - Precinct Specific Development Controls		
5.4 Precinct 4 – Church Street		
a. New development in this precinct is to respond to, and consider views from, the Parramatta River.	The location and levels of the proposed change of use will have no impact on views.	Yes
b. Retain all existing mature trees that add to the high quality of the area.	Being internalised within Basement Level 1, the proposal will not affect landscaped areas and trees.	N/A

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
c. New commercial buildings in this precinct are to have a maximum depth from window to core of 12 metres to ensure adequate natural light and ventilation.	The proposal is not for a new commercial building.	N/A
d. For retail ground floor areas larger footprints are allowable. Retail development is to be limited to showrooms. Supermarkets are not permitted.	The site is not for a retail premises.	N/A
e. Development must take into account the hostile environment and accordingly provide acoustic treatment, such as high performance glazing/double-glazing, for buildings fronting Church Street.	To comply where required (noting that the use is not for residential purposes).	Yes
f. The building adjoining the southern boundary of Hayes Reserve should take advantage of the northerly aspect and provide visual surveillance of pedestrians utilising Hayes Reserve.		N/A
g. Due to the traffic volume on Church Street, vehicular access will be from Porter Street for buildings fronting Church Street.	All vehicular access will continue to occur via the existing Porter Street driveway crossover.	Yes
h. Low native shrubs should be provided within all setbacks with the selection of species discusses with Council.	Being internalised within Basement Level 1, the proposal will not affect landscaped areas and associated trees.	N/A
i. Low signage relating to the use of the building is permitted within the Church Street setback.	Signage is not proposed.	N/A

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
j. Council seeks contributions from developers along Church Street for the upgrade of the public domain on the opposite side of the street.	Noted.	-
k. Residential development must be setback at least 12m from Church Street.	No change is proposed to existing building setbacks.	N/A
Part 7.1 - Energy Smart, Water Wise		
2.4 New Shops, Industrial and Commercial Premises (including those Contained in a Mixed-use Development).		
a. The total anticipated energy consumption for the base building is no greater than 450 Mega Joules/ annum/metre square [MJ/am ²] (commercial) and 900 Mega Joules/annum/metre square [MJ/am ²] (retail).	Noted.	-
b. Any hot water system/s installed as part of a development or as a replacement must consider the most efficient option available to minimise greenhouse gas emissions (see diagram below as a guide).	The applicant has advised that selection of any water systems will occur as part of the design development stage prior to the issue of a Construction Certificate, and will be undertaken in accordance with the submitted Section J report.	Yes
c. Any products installed as part of a development or as a replacement that are regulated for energy efficiency under the Australian Standards for Products and/or Minimum Energy Performance Standards (MEPS) must achieve a Minimum energy rating of 4.5 stars.	As above.	Yes
d. Water Efficient Fixtures: where new or replacement fittings are required, Shower heads shall be at least 3 star rated water efficient 4 star dual flush toilets, 4 star taps (for all taps	To be imposed as a condition of consent prior to the issue of a Construction Certificate (noting that this does not apply to shower heads, as none are proposed).	Yes

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
<p>other than bath outlets and garden taps) and 3 star urinals, bathroom and kitchen taps shall be fitted with aerators; and water closets shall have a dual flush cistern.</p>		
<p>e. The installation of energy efficient lighting, motion detectors and dimmers where appropriate are encouraged.</p>	<p>Noted.</p>	<p>-</p>
<p>f. Any products installed as part of a development or as a replacement that are regulated for water efficiency under Water Efficiency Labelling and Standards (WELS) Scheme must obtain a Minimum WELS rating of 4.5 stars. Products that carry a star water label and are regulated under WELS include clothes washing machines and dishwashers. The water star rating as well as date of purchase of the product should be visible on the product at all times. The Federal Governments WELS website has a comprehensive list of efficient appliances based on star ratings. http://www.waterrating.gov.au.</p>	<p>Noted.</p>	<p>-</p>
Part 7.2 - Waste Minimisation & Management		
<p>Submission of a Waste Management Plan in accordance with Part 7.2 of DCP 2014.</p>	<p>The applicant has submitted a Waste Management Plan (prepared by Waste Audit and Consultancy Services, dated October 2022) in accordance with Part 7.2 of DCP 2014.</p> <p>The WMP proposes the internal storage of waste within the proposed internalised loading bay, and waste removal will be undertaken separately to existing</p>	<p>Yes</p>

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
	<p>residential waste collection utilising a private waste contractor; in the event of approval, a condition will be recommended that will require the use to comply with the requirements of the WMP.</p> <p>The use will therefore not affect existing and approved waste collection activities at the site.</p>	
Part 9.2 - Access for People with Disabilities		
<p>Accessible path required from the street to the front door, where the level of land permits.</p>	<p>Accessible paths of travel to the proposed warehouse or distribution centre are obtainable via existing accessible entrance paths (including appropriately-graded pathways and lifts).</p>	<p>Yes</p>
Part 9.3 – Parking Controls		
2.0 Parking Required in Respect of Specific Uses		
<p>Residential Development - High Density (Residential Flat Buildings)</p> <ul style="list-style-type: none"> • 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 	<p>Note: While the proposal will not alter the number of residences within the development, it will alter the number of residential spaces allocated for residential purposes. 135 spaces are currently provided; the rates below are based on a reduction of 6 spaces for the proposed use (noting that the reallocation of car parking is to include five spaces for parking and one space to provide a shared zone for the accessible space).</p> <p>Existing dwellings:</p> <ul style="list-style-type: none"> • 1 bedroom: 27 • 2 bedrooms: 67 • 3 bedrooms: 5 <p>Required parking:</p> <ul style="list-style-type: none"> • 1 bedroom: 16.2-27 • 2 bedrooms: 60.3-80.4 	<p>Yes</p>

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
	<ul style="list-style-type: none"> • 3 bedrooms: 7-8 • Visitor: 19.8 (rounded to 20) • Total: 103.3-135.4 <p>Proposed number of residential/visitor spaces: 129</p>	
<p>Warehouse or Distribution Centre</p> <ul style="list-style-type: none"> • 1 space / 300 m² GFA 	<p>Proposed total floor area of premises: 266.1m²</p> <p>Required number of car parking spaces: 0.9 (rounded up to 1)</p> <p>Proposed number of car parking spaces: 5 (including 1 accessible space).</p>	Yes
<p>2.4 New Shops, Industrial and Commercial Premises (including those Contained in a Mixed-use Development).</p>		
<p>a. Where a development comprises two or more different land uses, parking provisions will be assessed as the sum of the requirements in s2.0 for each component of the mixed-use development. Calculations shall include an appropriate proportion of any common or administrative areas.</p>	Noted.	-
<p>b. Where the main usage periods for components of mixed-use development do not coincide, Council may consider a reduction in the required parking. In this case, the parking requirement will be based on whichever of the components generates the greatest parking requirement. The onus will be on the proponent to satisfy Council that the uses will not be operated concurrently.</p>	<p>As parking spaces for the proposed warehouse or distribution centre will be permanently allocated to that use, the proposal does not seek to share car parking spaces. Facilities for large truck deliveries are to be shared. Large truck movements are to be limited to twice per month; it is proposed that the loading bay management plan will be attained from the building's strata manager each month, so that delivery times can be arranged in order to prevent</p>	N/A

Attachment 2 - LEP & DCP Compliance Tables

DCP 2014	Proposed	Compliance
	conflict with other vehicles (e.g. waste collection vehicles) using the loading facilities.	

DEVELOPMENT APPLICATION CHANGE OF USE FROM PLANT ROOM TO WAREHOUSE/ DISTRIBUTION PREMISES

PROJECT ADDRESS: 3 PORTER ST RYDE NSW 2112

Fit out and use of the redundant plant area on the north-eastern part of Basement 1 for the purposes of an online sales business distribution centre and warehouse (with ancillary office space and no on-site customer walk-in retail sales)

DRAWINGS

NO.	DRAWING NAME	REVISION
A000	COVER SHEET	C
A001	GFA & PARKING SPACE	D
A100	SITE PLAN	E
A101	FLOOR PLAN	C
A200	ELEVATIONS	B
A201	SECTION A	B

GENERAL NOTES:

- THESE DRAWINGS SHALL BE READ IN CONJUNCTION WITH ALL CONSULTANT'S DRAWINGS AND SPECIFICATION.
- ALL DIMENSIONS SHOWN SHALL BE VERIFIED BY BUILDER ON SITE.
- ALL DUCTS SIZE TO BE CONFIRMED BY SERVICES ENGINEER.
- ALL SERVICES REFER TO CONSULTANT AND ENGINEER'S DETAIL AND SPECIFICATION
- REFER TO CIVIL ENGINEER'S DRAWINGS FOR SURFACE WATER DRAINAGE DETAILS
- REFER TO CIVIL ENGINEER'S DRAWINGS FOR DRIVEWAY CROSSOVER AND COUNCIL'S FOOTPATH DETAIL.
- ALL WORK SHALL COMPLY WITH THE REQUIREMENT OF THE BUILDING CODE OF AUSTRALIA.
- SILT/ SEDIMENT CONTROL MEASURES TO BE IN PLACE PRIOR EXCAVATION OR CONSTRUCTION WORK.
- ALL EXIT DOORS AND DOORS IN THE PATH OF TRAVEL TO EXITS ARE TO BE CAPABLE OF BEING OPERATED AT ALL TIMES FROM THE SIDE FACING A PERSON SEEKING EGRESS FROM THE BUILDING WITH A SINGLE HANDED DOWNWARD ACTION OR PUSHING ACTION ON A SINGLE DEVICE WITHOUT THE USE OF A KEY AND LOCATED BETWEEN 900mm AND 1200mm ABOVE THE FLOOR LEVEL IN ACCORDANCE WITH CLAUSE D2.21 OF THE BUILDING CODE OF AUSTRALIA.
- FIRE INDICES OF MATERIALS, LININGS AND SURFACE FINISHES TO COMPLY WITH SPECIFICATION C1.10 OF THE BUILDING CODE OF AUSTRALIA.
- PORTABLE FIRE EXTINGUISHERS TO COMPLY WITH AS-2444. PROVIDE 2A40B(E) DRY CHEMICAL FIRE EXTINGUISHER ADJACENT TO EACH ELECTRICAL SWITCHBOARD, PLANT ROOM, KITCHEN AND TEA AREA.
- LIFT SHAFT TO BE AS1735.11 COMPLIANT WITH MINIMUM FRL OF -/60/-
- LIFT INDICATOR PANELS >35000MM² IN AREA, IN THE WALL OF THE LIFT SHAFT MUST BE BACK BY CONSTRUCTION HAVING AN FRL OF A MINIMUM -/60/30/
- LIFT IS TO BE SUITABLE DIMENSIONS TO ACCOMMODATE A STRETCHER
- DO NOT USE LIFT IF THERE IS FIRE SIGNAGE TO LIFT CALL BUTTONS
- LIFTS ARE TO HAVE SUITABLE FIRE SERVICE CONTROLS
- SMOKE ENCLOSING CONSTRUCTION TO ELECTRICAL DISTRIBUTION BOARDS
- ALL DOORS ACCESSING THE RESIDENTIAL UNITS WILL BE SELF-CLOSING
- THE BUILDING IS REQUIRED TO BE PROVIDED WITH
 1. AS.3786 COMPLIANT SMOKE DETECTION AND ALARM SYSTEM TO ALL RESIDENTIAL UNITS
 2. PUBLIC CORRIDORS ARE TO BE FITTED WITH AN AS.1670.1 COMPLIANT SMOKE DETECTION AND ALARM SYSTEM
 3. CAR PARK AREA IS TO BE SERVICED BY AN AS.1670.1 COMPLIANT SMOKE DETECTION AND ALARM SYSTEM
 4. CAR PARK EXHAUST SYSTEM WILL CONTINUE TO OPERATE IN THE EVENT OF A FIRE AS PER THE REQUIREMENTS OF BCA TABLE E2.2a AND THE RESPECTIVE PROVISIONS OF AS.1668.1
- EXIT SIGNS AND EMERGENCY LIGHTS TO COMPLY WITH AS-2293.1 (2005)
- FIRE HYDRANT & FIRE HOSE REEL INSTALLATIONS TO COMPLY WITH AS-2419 & AS-2441.
- FOR EXTERNAL LEVELS, STORMWATER DRAINAGE AND ALL GENERAL CIVIL DETAILS, REFER TO RELEVANT STRUCTURAL & CIVIL ENGINEER'S DETAILS
- WATERPROOFING TO WALLS AND FLOORS TO WET AREAS TO BE PROVIDED WHERE REQUIRED BY CLAUSE F1.7 IN ACCORDANCE WITH AS-3740.
- ALL GLAZING TO COMPLY WITH AS2047 AND AS1288 (2006)
- PROVIDE WEATHERPROOF SEALANT TO JOINTS BETWEEN UNDERSIDE OF CONCRETE SLAB AND BLOCKWALL, PROVIDE FIRE RATED SEALANT TO FIRE RATED AREAS.
- ALL EXTERNAL STEELWORK EXPOSED TO THE WEATHER SHALL BE HOT DIP GALVANISED UNLESS NOTED OTHERWISE.
- VERIFY ALL DIMENSIONS / SETOUT DIMENSIONS ON SITE PRIOR TO CONSTRUCTION.
- GRADE FLOOR FINISHES TO FLOOR WASTE WHERE REQUIRED.
- MECHANICAL VENTILATION SYSTEM TO COMPLY WITH AS-1668.2 AND AS-3666. EXHAUST AIR OUTLETS NOT TO BE LOCATED CLOSER THAN 6m TO FRESH AIR INLETS.
- FOR ALL DRAINAGE PITS, FALLS ETC. REFER TO ENGR'S DETAILS.
- LINEMARK ALL CAR SPACES.
- NO SLIP NOSING TO STAY TO ALL STAIRS, TO COMPLY WITH AUSTRALIAN STANDARDS.
- ALL TILES OF WET AREAS TO BE NON SLIP TILES.
- SARKING TO HAVE A FLAMMABILITY INDEX OF NOTE GREATER THAN 5 AND TO COMPLY WITH AS/NZS 4200 PARTS 1 & 2 - 1994
- ALL FLEXIBLE DUCTING IS TO COMPLY WITH AS.4254
- METAL ROOFING IS TO COMPLY WITH AS.1562.1
- FIRE DOOR - DO NOT OBSTRUCT - DO NOT KEEP OPEN
- SIGNAGE TO DOORS TO FIRE ISOLATED STAIRS
- IF GROUND FLOOR LOBBY ENTRY DOORS CONSIST OF GLASS DOORS, SIDELIGHTS OR OTHER GLAZING THAT CAN BE MISTAKEN FOR AN OPENING/PATH OF TRAVEL, THEY ARE TO BE PROVIDED WITH TRANSOMS, CHAR RAIL, OR THE LIKE, OR MINIMUM 75MM WIDE STRIP FOR THE FULL WIDTH OF THE PANEL LOCATED 900 TO 1000MM ABOVE FLOOR LEVEL. THE STRIP IS TO BE OF A CONTRASTING COLOUR TO THE FLOOR/GROUND LEVEL WITHIN 2M OF THE GLAZING. NOTE THAT THIS MAY REQUIRE DIFFERENT COLOURS ON OPPOSING SIDE OF THE GLASS.
- FACILITIES ARE TO BE PROVIDED FOR THE CLEANING OF EXTERNAL WINDOWS IN ACCORDANCE WITH THE OCCUPATIONAL HEALTH AND SAFETY ACT 2000
- EXTERNAL WINDOWS ARE TO BE AS.2047 COMPLIANT
- EXTERNAL DOORS ARE TO BE PROVIDED WITH WEATHER SEALS
- MISCELLANEOUS EXHAUST FANS ARE TO BE PROVIDED WITH SELF CLOSING DAMPERS
- AC CONDENSERS TO BE LOCATED IN BASEMENT AREA

THE BUILDING WORKS TO COMPLY WITH THE FOLLOWING PROVISIONS OF THE BCA:

- CLAUSE B1.4 - MATERIALS & FORMS OF CONSTRUCTION
- SPEC. C1.1 - FIRE RESISTING CONSTRUCTION
- SPEC.C1.10 - FIRE HAZARD PROPERTIES
- SPEC. C1.11 - PERFORMANCE OF EXTERNAL WALL IN A FIRE
- CLAUSE C2.6 - VERTICAL SEPARATION OF OPENINGS IN EXTERNAL WALLS
- CLAUSE C2.12 - SEPARATION OF EQUIPMENT
- CLAUSE C2.13 - ELECTRICITY SUPPLY SYSTEM
- CLAUSE C3.4 - ACCEPTABLE METHODS OF PROTECTION (OF OPENINGS)
- CLAUSE C3.8 - OPENINGS IN FIRE ISOLATES EXITS
- CLAUSE C3.15 - OPENINGS FOR SERVICE INSTALLATIONS
- SPEC. C3.15 - PENETRATION OF WALLS, FLOORS AND CEILINGS BY SERVICES
- CLAUSE D1.10 - DISCHARGE FROM EXITS
- CLAUSE D2.7 - INSTALLATIONS IN EXITS AND PATHS OF TRAVEL
- CLAUSE D2.13 - GOINGS AND RISERS
- CLAUSE D2.14 - LANDINGS
- CLAUSE D2.15 - THRESHOLDS
- CLAUSE D2.16 - BALUSTRADES
- CLAUSE D2.17 - HANDRAILS
- CLAUSES D2.21 - OPERATION OF LATCH
- CLAUSE D2.23 - SIGN ON DOORS
- CLAUSE D2.24 - PROTECTION OF OPENABLE WINDOWS
- CLAUSE D3.2 - GENERAL BUILDING ACCESS REQUIREMENTS
- CLAUSE D3.3 - PARTS OF A BUILDING TO BE ACCESSIBLE
- CLAUSE D3.6 - IDENTIFICATION OF ACCESSIBLE FACILITIES, SERVICES AND FEATURES
- CLAUSE D3.8 - TACTILE INDICATORS
- CLAUSE E1.3 - FIRE HYDRANTS
- CLAUSE E1.4 - FIRE HOSE REEL
- CLAUSE E3.1 - LIFT INSTALLATIONS
- CLAUSE E3.6 - PASSENGER LIFT
- CLAUSE E3.7 - FIRE SERVICE CONTROLS
- CLAUSE F1.7 - WATERPROOFING OF WET AREAS
- CLAUSE F1.9/F1.10 - DAMP PROOFING
- CLAUSE F2.5 - CONSTRUCTION OF SANITARY COMPARTMENTS
- PART F4 - LIGHTING AND VENTILATION
- CLAUSE F5.4 - SOUND INSULATION OF FLOORS
- CLAUSE F5.5 - SOUND INSULATION OF WALLS
- CLAUSE F5.6 - SOUND INSULATION OF SERVICES
- CLAUSE F5.7 - SOUND INSULATION OF PUMPS
- PART J1 - BUILDING FABRIC
- PART J3 - BUILDING SEALING
- PART J5 - AIR-CONDITIONING AND VENTILATION SYSTEMS
- PART J6 - ARTIFICIAL LIGHTING & POWER
- PART J7 - HEATED WATER SUPPLY AND SWIMMING POOL AND SPA POOL PLANT

ALL DIMENSION ARE INDICATIVE. DIMENSION TO BE CHECK ON SITE.

DEVELOPMENT APPLICATION

REV.	DESCRIPTION	DATE	REV.	DESCRIPTION	DATE	Client	Architect	Address	North Point	Drawing Title	Scale	N/A	Date			
A	ISSUED FOR DA SUBMISSION	16.08.2021				HLWZ DEVELOPMENT PTY LTD	EUN SEO ARCHITECTS PTY LTD ACN 651 607 224 eun.s@eunarchitects.com.au mobile +61 430 160 032 EUN KYUNG SEO REGISTERED ARCHITECT reg no.10563	SUITE 1/ 3-5 PORTER ST& 105-107 CHURCH ST RYDE		COVER SHEET						
B	ISSUED FOR DA SUBMISSION	27.01.2022														
C	ISSUED FOR S8.2 REVIEW OF DETERMINATION	24.10.2022														
											Drawing No. A-000 Revision C					
											Cad file path. Y:_LJ122 - 3-5 PORTER ST., KENT HU PROJECT					

PROPOSAL

PROPOSED AREA SUMMARY

ROOM NAME	AREA (m ²)
OFFICE (inc staff room 17.5m ²)	64m ²
STORAGE	150.4m ²
TOILET & HALL	37.6m ²
TOTAL AREA	253m ² (including partition wall)

GFA & FSR CALCULATION	
SITE AREA	3,281.1m ²
TOTAL DA APPROVED GFA	7,606.m ²
PROPOSED WAREHOUSE/DISTRIBUTION PREMISES GFA	253.m ²
TOTAL GFA	7,859.m ²
total FSR	2.39:1

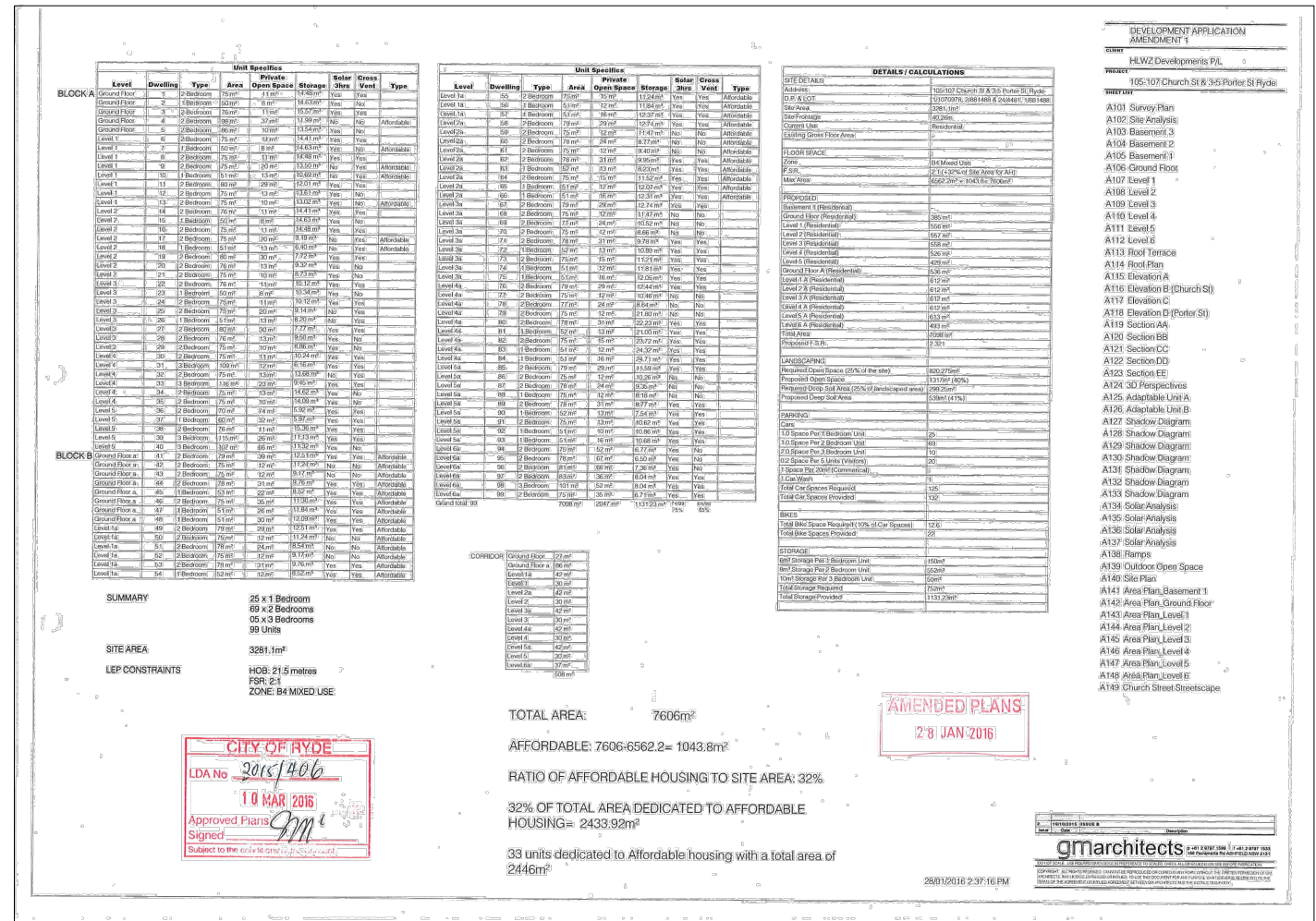
PARKING SPACE REQUIREMENT SUMMARY

PARKING REQUIRED SPACE	DRAWING NAME
WAREHOUSE/ DISTRIBUTION PREMISES	253m ²
DCP REQUIREMENT 1 SPACE / 300m ² for Distribution centre	0.5 SPACE REQUIRED
DCP REQUIREMENT 1 SPACE / 40m ² for office	1.6 SPACE REQUIRED
REQUIRED ACCESSIBLE	1
PROVIDED	5 (including 1 accessible) Change from spare parking space

category	DCP	number of unit	Minimum	Maximum	provided in DA	provided in S96	Proposed distribution
1 bed	0.6-1 space	25	15	25	25	25	unchanged
2 bed	0.9-1.2 space	69	62.1	82.8	69	80	74
3 bed	1.4-1.6 spaces	5	7	8	10	10	unchanged
visitors	1/ 5 dwelling		14	20	20	20	20
car wash bay			1	1	1	(including in visitor)	(including in visitor)
Warehouse/ distribution premises	1 space/300m ² office- 1space/ 40m ²		3				5
Total Provided		99	101.1	135.8	132	135	134

*6 spaces are utilised to 5 parking space + 1 sharing zone

DA 2015_406 APPROVED GFA & PARKING SPACE



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DEVELOPMENT APPLICATION

REV.	DESCRIPTION	DATE	REV.	DESCRIPTION	DATE	Client	Architect	Address	North Point	Drawing Title	Scale	N/A	Date
P1	PRELIMINARY ISSUE FOR REVIEW	13/12/2021				HLWZ DEVELOPMENT PTY LTD	EUN SEO ARCHITECTS PTY LTD ACN 651 607 224 eun.s@eunarchitects.com.au mobile +61 430 160 032 EUN KYUNG SEO REGISTERED ARCHITECT reg no.10563	SUITE 1/ 3-5 PORTER ST & 105-107 CHURCH ST RYDE		GFA & FSR CALCULATION & PARKING SPACE	N/A		Date
P2	PRELIMINARY ISSUE FOR REVIEW	13/12/2021											
A	ISSUE FOR POST DA SUBMISSION	13/12/2021											
B	ISSUE FOR POST DA SUBMISSION_AMENDED	04/04/2022											
C	ISSUE FOR POST DA SUBMISSION_parking space table	21/07/2022											
D	ISSUED FOR S8.2 REVIEW OF DETERMINATION	24/10/2022											

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Address

North Point

Drawing Title

Scale

Date

SUITE 1/ 3-5 PORTER ST &
105-107 CHURCH ST
RYDE



GFA & FSR CALCULATION & PARKING SPACE

Drawn by E.S

Check by E.S

Drawing No. A-001

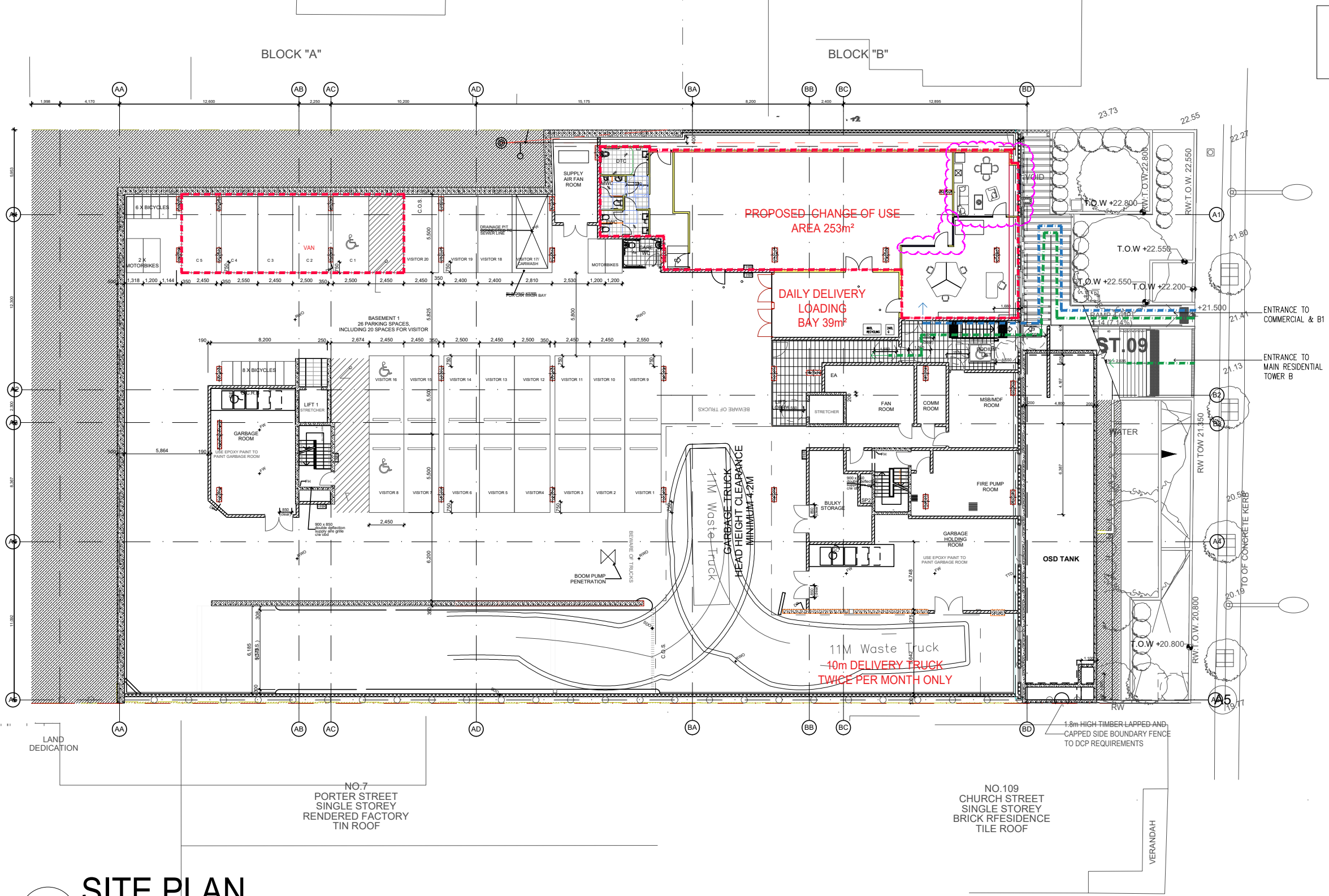
Revision D

Cad file path.

Y:\LJ12 - 3-5 PORTER ST - KENT HU PROJECT

24.70

PORTER STREET



LEGEND	
---	PROPOSED COMMERCIAL BOUNDARY
---	COMMERCIAL ACCESS PATH
---	RESIDENTIAL ACCESS PATH

CHURCH STREET

SITE PLAN

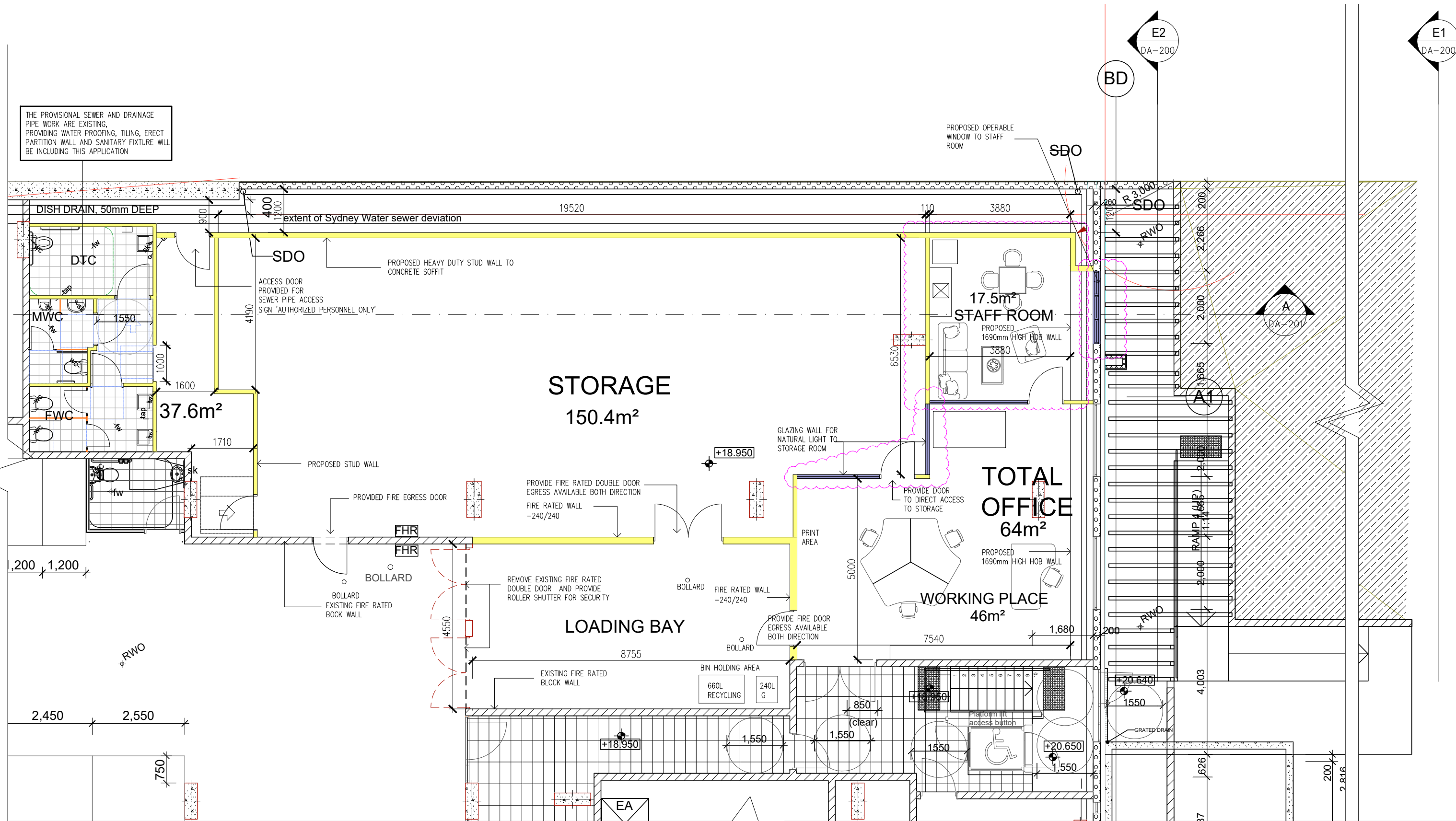
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DEVELOPMENT APPLICATION

REV.	DESCRIPTION	DATE	REV.	DESCRIPTION	DATE	Client	Architect	Address	North Point	Drawing Title	Scale	Date						
P1	ISSUED FOR COORDINATION	02.08.2021				HLWZ DEVELOPMENT PTY LTD EUN SEO ARCHITECTS ACN 651 607 224 eun.s@eunarchitects.com.au mobile +61 430 160 032 EUN KYUNG SEO REGISTERED ARCHITECT reg no.10563	EUN SEO ARCHITECTS PTY LTD This drawing is protected by copyright. Reproduction or publication of the whole or part of the drawing without a license of the owner of the copyright is an infringement of copyright. Do not scale drawings. Verify all dimension on site. Report any discrepancies in documents to Architect.	SUITE 1/ 3-5 PORTER ST& 105-107 CHURCH ST RYDE		SITE PLAN	1:150 @A1, 1:300@A3	Date						
A	ISSUED FOR DA SUBMISSION	16.08.2021																
P2	ISSUED FOR COORDINATION	02.12.2021																
B	ISSUED FOR POST DA SUBMISSION	24.01.2022																
C	ISSUED FOR POST DA SUBMISSION 2	04.04.2022																
D	ISSUED FOR POST DA SUBMISSION -PARKING LOCATION	21/07/2022																
E	ISSUED FOR REVIEW OF DETERMINATION	30/08/2022																

Drawn by	E.S	Check by	E.S
Drawing No.	A-100	Revision	E
Cad file path. Y:\LJ122 - 3-5 PORTER ST., KENT HU PROJECT			

THE PROVISIONAL SEWER AND DRAINAGE PIPE WORK ARE EXISTING, PROVIDING WATER PROOFING, TILING, ERECT PARTITION WALL AND SANITARY FIXTURE WILL BE INCLUDING THIS APPLICATION



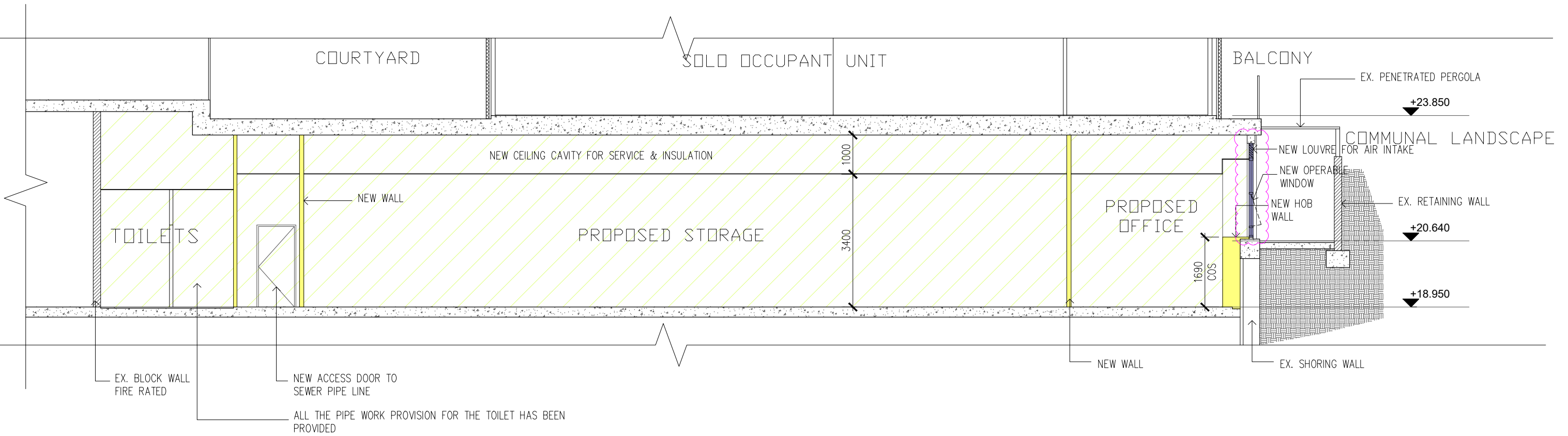
FLOOR PLAN

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DEVELOPMENT APPLICATION

REV.	DESCRIPTION	DATE	REV.	DESCRIPTION	DATE	Client	Architect	Address	North Point	Drawing Title	Scale	Date
P1	ISSUED FOR CLIENT REVIEW	08.07.2021				HLWZ DEVELOPMENT PTY LTD	EUN SEO ARCHITECTS PTY LTD ACN 651 607 224 eun.s@eunarchitects.com.au mobile +61 430 160 032 EUN KYUNG SEO REGISTERED ARCHITECT reg no.10563	SUITE 1/ 3-5 PORTER ST & 105-107 CHURCH ST RYDE		FLOOR PLAN	Scale 1:50 @A1	Date
P2	ISSUED FOR COORDINATION	02.08.2021										
A	ISSUED FOR DA SUBMISSION	16.08.2021										
P3	ISSUED FOR COORDINATION	02.12.2021										
B	ISSUED FOR POST DA SUBMISSION	24.01.2022										
P4	ISSUED FOR REVIEW	23.08.2022										
C	ISSUED FOR REVIEW OF DETERMINATION	30.08.2022										

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 Drawing No. A101
 Check by E.S
 Revision C
 Cad file path:
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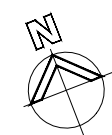


SECTION A

 PROPOSED COMMERCIAL AREA

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DEVELOPMENT APPLICATION

REV.	DESCRIPTION	DATE	REV.	DESCRIPTION	DATE	Client	Architect	Address	North Point	Drawing Title	Scale	Date
P1	ISSUED FOR COORDINATION	02.08.2021				HLWZ DEVELOPMENT PTY LTD	EUN SEO ARCHITECTS ACN 651 607 224 eun.s@eunarchitects.com.au mobile +61 430 160 032 EUN KYUNG SEO REGISTERED ARCHITECT reg no.10563	SUITE 1/ 3-5 PORTER ST& 105-107 CHURCH ST RYDE		SECTION A	1:50 @A1, 1:100@A3	
A	ISSUED FOR DA SUBMISSION	16.08.2021			Drawn by E.S						Check by E.S	
B	ISSUED FOR REVIEW OF DETERMINATION	30.08.2022			Drawing No. A-201						Revision B	
											Cad file path. Y:\LJ122 - 3-5 PORTER ST., KENT HU PROJECT	



29 October 2022

The General Manager
City of Ryde
Locked Bay 2069
North Ryde NSW 1670

Attention: Shannon Butler
Council Reference: LDA2021/0296

Dear Shannon,

SECTION 8.3 REVIEW
Proposed Development at 3 Porter Street, Ryde (LDA2021/0296)

A Development Application (DA) was lodged at Council on 30 August 2021 for “*Change of use and alteration to basement level B1 to commercial premises*” at 3 Porter Street, Ryde (LDA2021/0296).

LDA2021/0296 was refused by the Panel on 11 August 2022 for the following reasons:

PANEL CONSIDERATIONS AND DECISION

The Panel visited the site and considered the matters listed at item 6, the material listed at item 7, and the material presented at meetings and briefings listed at item 8 in Schedule 1.

DEVELOPMENT APPLICATION

The Panel determined to **refuse** the development application as described in Schedule 1, pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979* for the following reasons:

1. The proposed development is prohibited in the B4 Mixed Use zone under Ryde Local Environmental Plan 2014 (LEP 2014) as the proposed development does not satisfy the definition of a “local distribution centre” in the Dictionary to LEP 2014.
2. The proposed development does not establish that safe and healthy working conditions have been provided for future employees given the subterranean nature of the site and the lack of ventilation and sunlight.

The decision was unanimous



The following information has been prepared and submitted to Council for consideration. This approach meets the requirements of Section 8.2(1)(a) and Section 8.3 of the Environmental Planning and Assessment Act 1979.

- S8.3 Review SEE prepared by ABC Planning dated October 2022
- Clause 4.6 Variation for FSR non-compliance prepared by ABC Planning dated October 2022 (in **Attachment 1** of SEE)
- Survey Plan prepared by Veris dated 13 August 2019
- Business Operation Plan prepared by Eun Seo Architects dated 24 October 2022
- BCA Report prepared by Building Code Clarity dated 25 January 2022
- BCA Advice prepared by Building Code Clarity dated 25 August 2022
- Legal Advice in regard to permissibility of the proposed use prepared by Dentons dated 28 October 2022
- Legal Advice in regard to the proposed FSR prepared by Dentons dated 26 October 2022
- Section J Report prepared by Eco Certificates dated 26 October 2022
- Acoustic Report prepared by Koikas dated 26 October 2022
- Hydraulic Engineer Letter prepared by Scott Collis Consulting dated 7 December 2021
- Mechanical Services Ventilation Letter prepared by Bruce Worthington dated 3 December 2021
- Operational Waste Management Plan prepared by Waste Audit dated October 2022
- Traffic and Parking Impact Statement prepared by Motion Traffic Engineers dated October 2022
- Letter prepared by HLWZ Development justifying existing excess of parking dated 21 July 2022
- Access Report prepared by Building Code Clarity dated 28 October 2022

This above submitted information address the reasons for refusal in relation to the previous application as follows:

- 1. The proposed development is prohibited in the B4 Mixed Use zone under Ryde Local Environmental Plan 2014 (RLEP 2014) as the proposed development does not satisfy the definition of a “local distribution centre” in the Dictionary to LEP 2014.**

The proposal description is updated to:



“Fit out and use of the redundant plant area in the north-eastern part of Basement 1 for the purposes of an online sales business distribution centre and warehouse (with ancillary office space and no on-site customer walk-in retail sales)”

RLEP 2014 defines a warehouse or distribution centre as follows:

warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made, but does not include local distribution premises.

The use is a type of commercial premises, as a warehouse/ distribution centre which is permissible with consent in the B4 zone. However, if it is considered that the proposed use does not fall within this definition, the proposed use is still permissible as an innominate use within the B4 Mixed Use zone of the RLEP.

Legal Advice prepared by Dentons dated 28 October 2022 submitted with this application states that that:

“Warehouse or distribution centre is a permissible use in the B4 zone. It is not a listed permitted use, however in the zone, uses which are permitted with consent include the listed uses, and “any other development not specified in items 2 or 4”. The use is not specified in items 2 or 4 in the zoning table (cl2.3 and zoning table in Ryde Local Environmental Plan 2014 (RLEP)).

However, if it is considered that the proposal does not fall within this definition, the proposed use is still permissible as an innominate use within the B4 – Mixed Use zone of the RLEP in which the Site is situated, for the reasons set out below.

The proposed use is a type of commercial premises, being for purposes of an “online sales business distribution centre and warehouse”. The use is an innominate permissible use. . . .

The use as proposed is permissible within the zone as it is neither prohibited nor permitted without consent pursuant to items 2 or 4 of the Land Use Table of the RLEP. The use of the Premises for the purpose of “online sales business distribution centre and warehouse” is therefore development that is capable of being approved under the Council’s local planning controls.”

Refer to the extract of the Land Use Table of RLEP 2014 for the B4 Mixed Use zone below:

Objectives of zone

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *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 within the Macquarie Park corridor.*

2 Permitted without consent

Home occupations

3 Permitted with consent

Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Seniors housing; Shop top housing; Tank-based aquaculture; Waste or resource transfer stations; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Animal boarding or training establishments; Biosolids treatment facilities; Camping grounds; Caravan parks; Depots; Eco-tourist facilities; Farm buildings; General industries; Heavy industrial storage establishments; Heavy industries; Home occupations (sex services); Industrial training facilities; Pond-based aquaculture; Resource recovery facilities; Sewage treatment plants; Sex services premises; Signage; Vehicle body repair workshops; Vehicle repair stations; Waste disposal facilities; Water recycling facilities; Water supply systems

As outlined in the Legal Advice prepared by Dentons dated 28 October 2022 submitted with this application, *“the proposed use achieves the objectives of the B4 Zone as it provides for a mixture of compatible land uses. The use of the excess plant room area as a distribution centre and warehouse for an online sales business, without providing on-site walk-in retail, will encourage integration of suitable business, office, and residential uses to meet the objectives of the B4 Zone”.*



2. The proposed development does not establish that safe and healthy working conditions have been provided for future employees given the subterranean nature of the site and the lack of ventilation and sunlight.

The accompanying plans have been updated to improve staff facilities and amenity for the staff in terms of ventilation and natural light.

A 17.5m² staff room has been provided with a kitchen facility, sink, microwave, fridge and seating furniture. The staff room has been provided with an operable window for natural daylight and ventilation.

The existing fixed window will provide natural daylight to the office room.

A glazing wall is provided between the storage room and the office room to allow natural light to filter through from the office room to the store room for the employees undertaking package and delivery work in the storage room.

The accompanying BCA Advice prepared by Building Code Clarity dated 25 August 2022 states the following:

“The establishment of a minimum level for the safety, health, amenity is the purpose of the National Construction Code (NCC), issued by the Australian Building Codes Board. Volume 1 of the NCC is the Building Code of Australia (BCA), which is applicable to Class 2-9 buildings and is therefore applicable to the proposed works.

The design of the proposed tenancy has been reviewed against the deemed-to-satisfy provisions of the BCA and was found to be readily capable of compliance with the relevant BCA provisions. A clause-by-clause assessment of the proposal is detailed in BCA report no. J1019-BCA-3, dated 25th January 2022, prepared by Building Code Clarity Pty Ltd.

In relation to the specific concerns raised by the Panel, regarding ventilation and sunlight, the attached table provides a comparison of the level of compliance achieved by the updated architectural design, versus the minimum BCA requirement.”

An extract of the Natural Light and Ventilation Compliance Summary table prepared by Building Code Clarity is provided below:

Concern	BCA requirement	Area	Proposed design	Level of compliance with the BCA
Provision of natural light (BCA Clause F4.1)	Natural light is not required for Class 5 office or Class 7b storage use. Note: Natural light is only required in Class 1, 2, 3, 4, 9a, 9c and some Class 9b buildings. The minimum requirement in these classifications is generally for an aggregate light transmitting area of not less than 10% of the floor area of the room.	Staff Room	Natural light is provided by windows with a light transmitting area in excess of 10% of the floor area of the room (15%).	Significantly exceeds BCA requirement
		Office	Natural light is provided by windows with a light transmitting area in excess of 10% of the floor area of the room (17%).	Significantly exceeds BCA requirement
		Storage	Glazing in wall between Office and Storage Room will provide some borrowed light to the storage area.	Exceeds BCA requirement
Ventilation of rooms (BCA Clauses F4.5 & F4.6)	A room must have– <ul style="list-style-type: none"> Natural Ventilation complying with Clause F4.6; OR <ul style="list-style-type: none"> a Mechanical Ventilation or Air-Conditioning System complying with AS 1668.2. Note: Where natural ventilation is the only method of ventilation, it must consist of openings with an aggregate area of not less than 5% of the floor area of the room.	Staff Room	Direct natural ventilation is proposed to the Staff Room via openable windows with a ventilation area in excess of 5% of the floor area of the room (5.6%).	Significantly exceeds BCA requirement
		Office	Mechanical ventilation or an air-conditioning system complying with AS 1668.2.	Satisfies BCA requirement
		Storage	Mechanical ventilation or an air-conditioning system complying with AS 1668.2.	Satisfies BCA requirement

As shown in the table above the proposal satisfies and significantly exceeds the level of compliance required by the BCA in terms of natural light and ventilation.

The amended proposal therefore provides sufficient natural light and ventilation in addition to artificial light and mechanical ventilation to improve amenity for employees.

Conclusion

It is considered that the proposal has been amended to address the reasons for refusal. This letter and the accompanying legal advice demonstrate that the updated proposal description is permissible in the B4 Mixed Use zone and complies with the relevant objectives of the B4 Zone.

The plans have been updated to improve staff facilities and amenity for the staff in terms of ventilation and natural light. The accompanying BCA advice demonstrates that the proposal satisfies and significantly exceeds the level of compliance required by the BCA in terms of natural light and ventilation.

The proposal is considered to be in the public interest as it complies with the relevant aims, objectives and development standards of the applicable environmental planning instruments and the objectives and development controls of the associated development control plan. The proposal will not result in any unreasonable impacts on the environment or surrounding amenity. The proposal will not result in adverse impacts on the health and safety of occupants of the building or staff.



If you require any additional information or clarification of any of the above matters, please do not hesitate to contact the undersigned.

A handwritten signature in black ink, appearing to read 'Anthony Betros'.

Anthony Betros

Director, ABC Planning P/L
anthony@abcplan.com.au

APPENDIX 1

AMENDED CLAUSE 4.6 TO CLAUSE 4.4 OF RYDE LEP 2014 EXCEPTIONS TO DEVELOPMENT STANDARDS – **FSR VARIATION**

Fit out and use of the redundant plant area in the north-eastern part of Basement 1 for the purposes of an online sales business distribution centre and warehouse (with ancillary office space and no on-site customer walk-in retail sales)

3 Porter Street, Ryde

SUBMITTED TO

RYDE CITY COUNCIL

PREPARED BY

ABC PLANNING PTY LTD

October 2022

RYDE LEP 2014 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application for the fit out and use of the redundant plant area in the north-eastern part of Basement 1 for the purposes of an online sales business distribution centre and warehouse (with ancillary office space and no on-site customer walk-in retail sales) at 3 to 5 Porter Street and 105-107 Church Street, Ryde.

Clause 4.6 of the Ryde LEP 2014 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734*, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Director-General has been obtained.*

(5) *In deciding whether to grant concurrence, the Director-General must consider:*

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Development Standard to be Varied

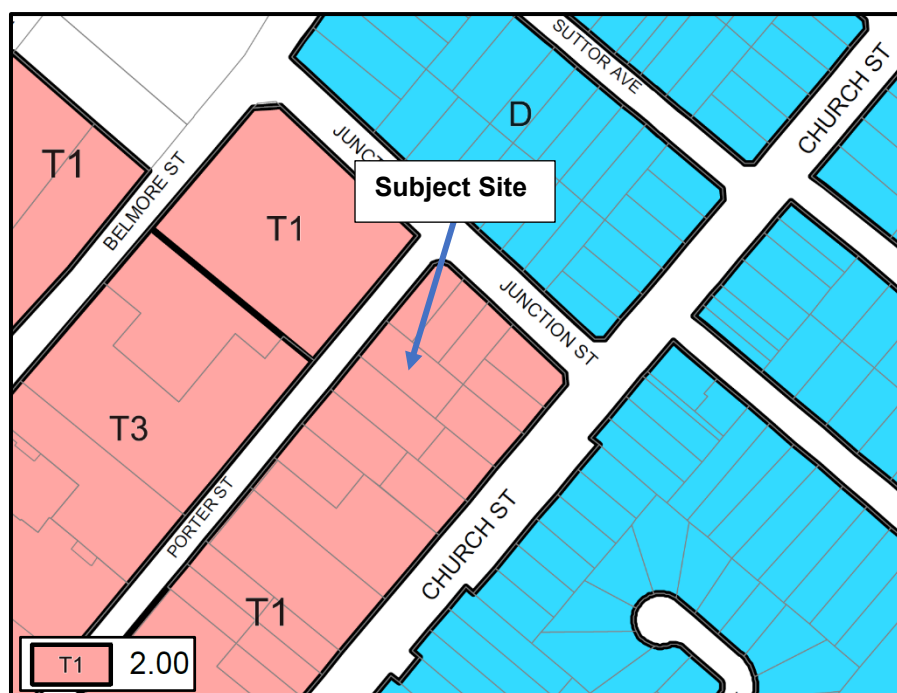


Figure 21: FSR Map

Clause 4.4 of Ryde LEP 2014 stipulates a FSR control of 2:1 for the subject site. The site has an area of 3,281.1m².

It is noted that the approved development (as modified) on the site benefitted from provisions within *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP) to obtain a greater FSR of 2.32:1. The subject application is however not lodged pursuant to the provisions of the ARH SEPP, therefore the proposal is assessed in accordance with the FSR standard of 2:1 imposed by the RLEP 2014.

The proposed FSR is 2.39:1 (GFA: 7,859m²), which does not comply with the FSR control of 2:1 (GFA: 6,562.2m²).

The proposal represents a 19.76% (1,296.8m²) variation to the FSR development standard.

Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Assessment: It is considered that strict compliance with the development standard for FSR on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The extent of the proposed variation has been confirmed by Dentons law firm. Refer to accompanying letter from Dentons dated 26 October 2022.
- The existing approved FSR of 2.32:1 is not compliant. The proposal is only requesting an additional FSR of 0.07:1 above that approved (i.e. proposed FSR of 2.39:1).
- The proposed additional FSR is located wholly within the approved building envelope. The proposal will not alter the building envelope, i.e. the height and setbacks of the building. The bulk and scale of the development will therefore remain as approved.
- The proposed increase in FSR will not be discernible from the adjoining properties or the streetscape.
- The proposed premises will activate this area of the site and result in a more efficient use of the space.
- It is reiterated that the proposal will not change the existing built form on the site. Therefore there the proposal will not result in any unreasonable amenity impacts to neighbouring properties in terms of overshadowing, visual bulk, privacy or views. The proposed premises will have minimal noise impacts, noting that the proposed hours of operation will be from 8.30am to 5.00pm Monday to Friday and that there will be no customers or visitors to the premises. Refer to the Acoustic Report prepared by Koikas submitted with this application.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the FSR standard in the LEP	
Objectives	Assessment
<i>(a) to provide effective control over the bulk of future development,</i>	The proposed additional FSR is located wholly within the approved building envelope. The bulk and scale of the development will therefore remain as approved.
<i>(b) to allow appropriate levels of development for specific areas,</i>	As mentioned above, the proposed additional FSR is located wholly within the approved building envelope. The bulk and scale of the development will therefore remain as approved. The proposed premises will activate this area of the site and result in a more efficient use of the space.
<i>(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.</i>	The site is located in the Meadowbank Urban Village. This proposal includes the fit out and use of the redundant plant area in the north-eastern part of Basement 1 for the purposes of an online sales business distribution centre and warehouse (with ancillary office space and no on-site customer walk-in retail sales). Converting the redundant plant room to a distribution

premises is considered to be a more sustainable use of the space.

The proposal will result in a combination of high density residential development with a compatible employment related activity.

The proposed premises will utilise the existing vehicle access and egress via Porter Street.

Meadowbank Train Station is located 1km (13 minute walking distance) to the northwest of the subject site. Refer to the extract of the map below.

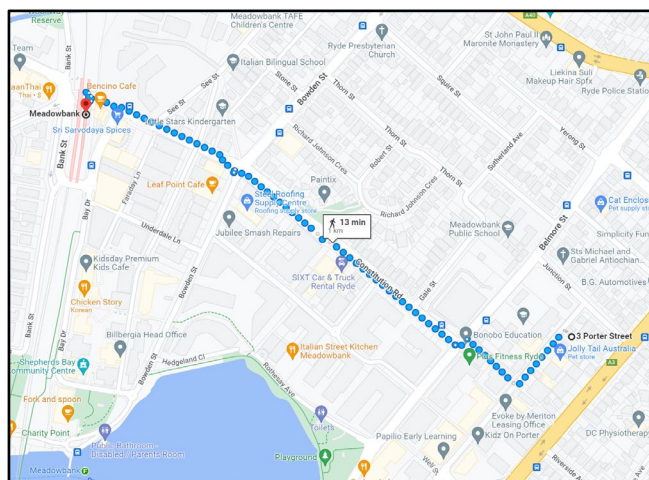


Figure 22: Meadowbank Train Station is located 1km (13 minute walking distance) to the northwest of the subject site (Source: Google Maps, 2022)

The Traffic and Parking Impact Statement prepared by Motion Traffic Engineers states the following in regard to public transport:

“The nearest bus stop to the proposed commercial development site is 190 metres away on northeast bound on Church Street and 280 metres away on northwest bound on Belmore Street. This bus stop is serviced by bus route 410,458, 533 and 507 which provide transport to the suburbs including Burwood, Strathfield, Olympic Park, Hurstville, and City Hyde Park. Figure 5a and 5b presents the bus route in relation to the site.

Meadowbank Train Station is located 1,000 metres away from the development site which is frequently serviced by Sydney Trains T9 Northern Line Services.

Overall, the site has excellent access to public transport.”

Refer to the extracts below of the bus route maps provided in the Traffic and Parking Impact Statement prepared by Motion Traffic Engineers submitted with this application.

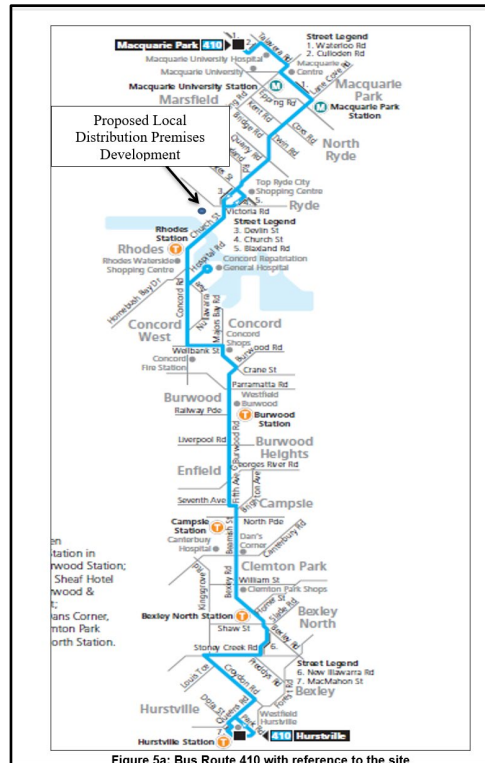


Figure 5a- Bus Route 410 with reference to the site

Figure 23: Bus Route 410 with reference to the subject site

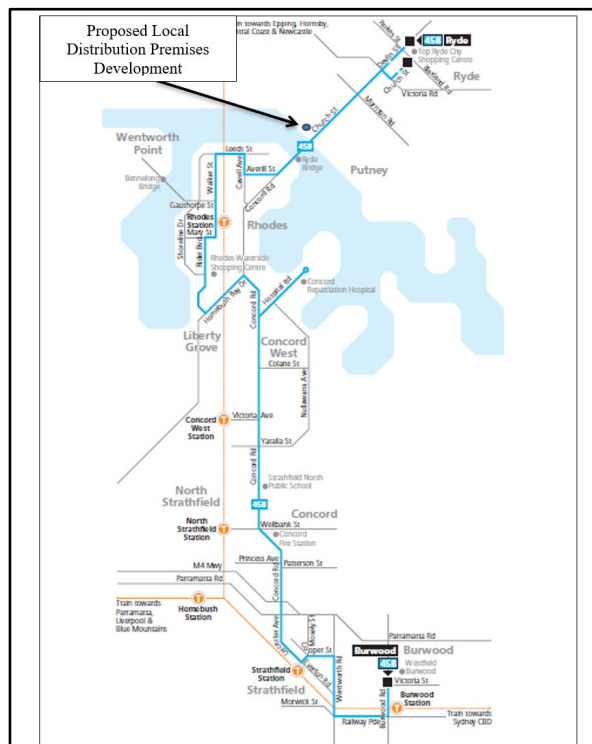


Figure 24: Bus Route 458 with reference to the subject site

Consistency with the objectives of the B4 Mixed Use	
Objectives	Assessment
<ul style="list-style-type: none"> To provide a mixture of compatible land uses. 	<p>The proposed use achieves the objectives of the B4 Zone as it provides for a mixture of compatible land uses between residential and for the purpose of storage and distribution. The use of the excess plant room area for a storage and distribution of goods business will encourage integration of suitable business, office and residential uses to meet the objectives of the B4 Zone.</p>
<ul style="list-style-type: none"> To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. 	<p>The subject site is located in an accessible location.</p> <p>As discussed above, Meadowbank Train Station is located 1km (13 minute walking distance) to the northwest of the subject site. Refer to the extract of the map above.</p> <p>The Traffic and Parking Impact Statement prepared by Motion Traffic Engineers states the following in regard to public transport:</p> <p><i>“The nearest bus stop to the proposed commercial development site is 190 metres away on northeast bound on Church Street and 280 metres away on northwest bound on Belmore Street. This bus stop is serviced by bus route 410,458, 533 and 507 which provide transport to the suburbs including Burwood, Strathfield, Olympic Park, Hurstville, and City Hyde Park. Figure 5a and 5b presents the bus route in relation to the site.</i></p> <p><i>Meadowbank Train Station is located 1,000 metres away from the development site which is frequently serviced by Sydney Trains T9 Northern Line Services.</i></p> <p><i>Overall, the site has excellent access to public transport.”</i></p> <p>Refer to the extracts above of the bus route maps provided in the Traffic and Parking Impact Statement prepared by Motion Traffic Engineers.</p> <p>The proposal will therefore result in a mixed use building within an accessible location that will maximise public transport patronage and encourage walking and cycling.</p>
<ul style="list-style-type: none"> To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities. 	<p>Not applicable. The subject site is not located in close proximity to the Macquarie University.</p>

<ul style="list-style-type: none"> • <i>To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.</i> 	<p>Not applicable. The subject site is not located in close proximity to the Macquarie University.</p>
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Based on the above assessment, it is considered that strict compliance with the LEP FSR standard is unreasonable and unnecessary in this instance.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard

Assessment: It is considered that there are sufficient environmental planning grounds to justify varying the FSR development standard, which include:

- The extent of the proposed variation has been confirmed by Dentons law firm. Refer to accompanying letter from Dentons dated 26 October 2022.
- The existing approved FSR of 2.32:1 is not compliant. The proposal is only requesting an additional FSR of 0.07:1 above that approved (i.e. proposed FSR of 2.39:1).
- The proposed additional FSR is located wholly within the approved building envelope. The proposal will not alter the building envelope, i.e. the height and setbacks of the building. The bulk and scale of the development will therefore remain as approved.
- The proposed increase in FSR will not be discernible from the adjoining properties or the streetscape.
- The proposed premises will activate this area of the site and result in a more efficient use of the space.
- It is reiterated that the proposal will not change the existing built form on the site. Therefore there the proposal will not result in any unreasonable amenity impacts to neighbouring properties in terms of overshadowing, visual bulk, privacy or views. The proposed premises will have minimal noise impacts, noting that the proposed hours of operation will be from 8.30am to 5.00pm Monday to Friday and that there will be no customers or visitors to the premises. Refer to the Acoustic Report prepared by Koikas submitted with this application.
- Despite the building FSR non-compliance, the proposal achieves the objectives of the development standard and the B4 Mixed Use zone.

On the above basis, it is considered that there are sufficient environmental grounds to permit the FSR variation in this instance.

Other Matters for Consideration

4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Assessment: The above assessment demonstrates that the proposed FSR satisfies the objectives of the FSR standard and the B4 Mixed Use zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the minor FSR variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

Assessment: The proposed FSR variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed additional FSR is located wholly within the approved building envelope. The proposal will not alter the building envelope, i.e. the height and setbacks of the building. The bulk and scale of the development will therefore remain as approved.

The proposed FSR is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional densities near transport and established services.

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: There are not considered to be any additional matters to consider beyond those discussed above

Generally as to concurrence, for the reasons outlined above – and particularly having regard to the site specific nature of this clause 4.6 variation request – there is nothing about this proposed FSR variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development standard on this site. There are no other relevant matters requested to be taken into consideration before granting concurrence.

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 3 Porter Street, Ryde and is requested to be looked upon favourably by the consent authority.

26 October 2022

Tianjin Hu
Director
HLWZ Development Pty Ltd
25 Milton Avenue
EASTWOOD NSW 2122

Attention C/O Forte Management Pty Ltd

Our ref: J Wauchope/42032373

Dear Mr Hu

Development application LDA2021/0296
Property: 3-5 Porter St, Ryde

We refer to development application LDA 2021/0296 (**Development Application**) for a change of use of a portion of the existing building at 3-5 Porter Street and 105-107 Church St, Ryde (**Site**). You have asked us to provide a letter to be provided to Council with the development application, setting out the reasons why the development application is permissible.

In our opinion the Development application is permissible with consent, subject to Council being satisfied as to the clause 4.6 submission in relation to variation from the floor space ratio (**FSR**) development standard, for the reasons set out below.

Development application

1. The Development Application proposes to convert an existing (unused) basement plant room, within an existing residential apartment building to a commercial use of “warehouse or distribution centre”. The premises are proposed to be used for an online sales business distribution centre and warehouse for products ordered online (with ancillary office space) and there will be no onsite customer walk-in retail sales (**Premises**).
2. The use is a type of commercial premises, as a warehouse/ distribution centre which is permissible with consent in the B4 zone (cl2.3 and zoning table to Ryde Local Environmental Plan (**RLEP**)). However, if it is considered that the proposed use does not fall within this definition, the proposed use is still permissible as an innominate use within the B4 Mixed Use zone of the RLEP.
3. The area of the proposed use is 253sqm, is described in an amended Statement of Environmental Effects submitted in January 2022 (**Amended SEE**) to have components of

office space (64sqm); commercial product storage space (150.4sqm); and toilet facilities (37.6sqm).

4. As a consequence of the change of use, the area of the premises will clearly fall within the definition of gross floor area in RLEP (see definitions of Gross Floor Area, Dictionary to cl1.4 RLEP). This will result in an increase in the total GFA for the development, and a consequential increase in the FSR for the development.
5. We are instructed that the conversion of the plant room to a commercial use as an online sales business distribution centre and warehouse will result in an overall FSR for the development of 2.39:1.

Existing development and existing consent

6. Development consent DA2015/0406 (the Existing Consent for the development on the Site) was granted for demolition of existing buildings and the construction of 2 residential flat buildings (99 apartments, 33 of which are to be affordable dwellings) at the Site. We are instructed that the development has been completed, and occupation certificates issued.
7. The development application for the Existing Consent relied on *State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)* for additional floor space above the maximum specified in the Ryde LEP. The approved development incorporates affordable housing pursuant to the consent.
8. A FSR control of 2:1 applies to the land under RLEP. A development with an FSR of 2.32:1 was approved in the Existing Consent.
9. We understand that in the development application for the Existing Consent, the area the subject of the current development application was excluded from the calculation of gross floor area (**GFA**) (because it did not fall within the definition of floor area).
10. We are instructed that in compliance with conditions of consent for the Existing Consent, apartments in the development have been dedicated as affordable rental housing managed by a social housing organisation. We understand that equates to 2433.9 sqm of the Site dedicated as affordable rental housing.
11. Condition 4 in the Existing Consent provides:

No less than 32% of the gross floor area (2433.9m²) and nominated on Cover Sheet, dated 28 January 2016 Issue B, of the approved development must be dedicated as Affordable Housing within the meaning of State Environmental Planning Policy (Affordable Rental Housing) (AHSEPP) 2009.

(a) The following must be complied with for 10 years from the date of the issue of the occupation certificate for the approved development:

(i) the apartments that comprise of 32% of the gross floor area of the approved development identified to be used for the purposes of affordable housing must be used for the purposes of affordable housing, and

(ii) all accommodation that is used for affordable housing must be managed by a registered community housing provider.

(b) A registered surveyor shall confirm in writing that the nominated affordable rental component comprise no less than 32% of the gross floor area of the approved development, and

(c) A restriction must be registered, before the date of the issue of any occupation certificate for the development, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met. If the proposal is to be

strata subdivided, upon registration of a strata plan, the restriction may be placed on the title of each strata allotment for which the apartment is nominated as affordable housing in lieu of the restriction applying to the overall development site.

12. We are instructed that each component of Condition 4 has been complied with. Specifically, in terms of provision of affordable housing that means:
- (a) No less than 32% of the gross floor area that is nominated on the drawing specified has been dedicated as affordable rental housing;
 - (b) The apartments that comprise 32% of the GFA of the approved development, identified as affordable housing, are being used as affordable housing managed by a community housing provider.

The current development application

13. In our opinion, as those conditions have been satisfied (and the ongoing requirement will continue to be satisfied), the separate application for a change of use of part of the building may clearly be approved, for the following reasons:
- (a) Although the current development application will cause the existing development to exceed the maximum FSR under the RLEP, that is a matter which can be the subject of consideration in a submission under clause 4.6 RLEP;
 - (b) The current development application is not made pursuant to nor does it rely on *SEPP ARH* (as it then was). Council would be in error if it were to recalculate the FSR of the whole development pursuant to *SEPP ARH* (or the current *SEPP Housing*), because that *SEPP* does not apply to this development application;
 - (c) The conditions of consent regarding the provision of affordable housing in the Existing Consent have been complied with in respect of the development approved under the Existing Consent;
 - (d) Approval of the current development application clearly will not cause the development to be in conflict with or in breach of condition 4 of the consent, because the numeric requirements in that condition are referable only to the *approved development* – that is, they are referable to the nominated affordable housing set out in the approved plans and that approved development. The current development application does not change the identified affordable housing shown on those plans.
14. We note there is no impact to built form arising from the development application, so to the extent that GFA and FSR controls seek to control the built form and its impacts, this application does not contribute to any greater impact. With respect to the FSR exceedance, Council must have regard to the clause 4.6 submission lodged with the application, and if satisfied, may approve the application.
15. For these reasons the development application can clearly be approved.

Yours sincerely



Jodie Wauchope
Partner
Dentons Australia