

**Meeting Date:** Thursday 14 October 2021  
**Location:** Held remotely  
**Time:** 5.00pm

*City of Ryde Local Planning Panel Meetings will be recorded on audio tape for minute-taking purposes as authorised by the Local Government Act 1993. City of Ryde Local Planning Panel Meetings will also be webcast.*

## NOTICE OF BUSINESS

Item 1

Page

### DECLARATIONS OF INTEREST

### DEVELOPMENT APPLICATION

- 1 LDA2020/0435  
120-122 Bowden Street, Meadowbank  
Establishment of use and fitout to a licensed restaurant and café..... 3



## **DEVELOPMENT APPLICATION**

- 1 LDA2020/0435**  
**120-122 Bowden Street, Meadowbank**  
**Establishment of use and fitout to a licensed restaurant and café.**

**Report prepared by:** Senior Coordinator - Development Assessment

**Report approved by:** Manager - Development Assessment; Director - City Planning and Environment

**File Number:** GRP/09/6/12/1/2 - BP21/915

### **City of Ryde Local Planning Panel Report**

<b>DA Number</b>	LDA2020/0435
<b>Site Address</b>	120-122 Bowden Street, Meadowbank Lot 10 DP 1239999
<b>Ward</b>	Central Ward
<b>Zoning</b>	B4 Mixed Use
<b>Proposal</b>	Establishment of use and fitout to a licensed restaurant and café.
<b>Property Owners</b>	AIT Investment Group Pty Ltd
<b>Applicant</b>	Xs Espresso Mb Pty Ltd
<b>Report Author</b>	Madeline Thomas – Senior Coordinator Development Assessment
<b>Lodgement Date</b>	15 December 2020
<b>No. of Submissions</b>	Public Notification Period No. 1 = 52 submissions Public Notification Period No. 2 = 20 submissions
<b>Cost of Works</b>	\$501,000.00
<b>Reason for Referral to Local Planning Panel</b>	Contentious Development – development which receiving more than 10 submissions objecting to the development
<b>Recommendation</b>	Approval

**ITEM 1 (continued)**

<b>Attachments</b>	<ol style="list-style-type: none"><li>1. Draft conditions of consent</li><li>2. Plan of Management</li><li>3. Viva Energy comments</li><li>4. Plans submitted with the development application</li></ol>
--------------------	--

**1. Executive Summary**

The following report is an assessment of a development application for the use and fitout to a licensed restaurant and café.

The proposal was notified to owners of surrounding properties on two separate occasions, receiving a total of seventy-two (72) unique submissions during both the notification periods (52 submissions first notification period, 20 submissions second notification period) , all of which objected to the development. The issues raised in the submissions relate to the following:

- Concern of closing hours being beyond 9pm
- Operation of business would affect privacy and amenity of residents.
- Objection to outdoor dining due to noise at night
- Not enough parking in the area
- Light pollution
- Request for barrier between 120 and 146 Bowden Street as there is a drop onto the fire stairs at 146 Bowden Street
- Clean up of food and waste from the proposed use

This application is reported to the Ryde Local Planning Panel (RLPP) for determination as more than 10 unique submissions objecting to the development were received.

The proposal has undergone a significant reduction in the intensification of the proposed use since originally lodged. The application originally proposed seating capacity of 280 patrons and operating hours of 6am to 10pm (Monday to Thursday) and 6am to 12am (Friday to Sunday). The amended application reduced the patron capacity from 280 to 106 and amended the operating hours to 6am to 10pm (Monday to Friday) and 7am to 10pm (Saturdays and Sundays).

The amendments to the application have addressed issues raised with the application as lodged, including acoustic impact from the outdoor dining, the outdoor dining proposed within the Viva Energy pipeline easement and insufficient parking for the number of patrons proposed.

The proposal has been assessed in accordance with the relevant environmental planning instruments and local provisions in accordance with Section 4.15 of the Act. The proposal does not result in any significant adverse impacts upon neighbouring

### ITEM 1 (continued)

properties or the streetscape. The subject site is suitable for the proposed development.

For the reasons outlined above, the subject DA is recommended for approval, subject to conditions of consent.

## 2. The Site and Locality

The site is legally described as Lot 10 in DP 1239999 and has a street address of 120-122 Bowden Street, Meadowbank. The site is a rectangular-shaped allotment with an area of approximately 979m<sup>2</sup> with a frontage to Bowden Street of 59m. The building on the subject site has a floor area of 225m<sup>2</sup>, and was approved under the mixed use development that spans across 116-122 Bowden Street, Meadowbank.

The site is burdened by a Viva Energy “High Pressure” pipeline, that traverses the rear of the site between the existing building and the adjoining property at No. 146 Bowden Street.



**Figure 1:** Aerial photograph of the site in context (shaded in orange).

The subject site is surrounded to the north and east by the recently constructed residential flat buildings associated with the Shepherds Bay Concept Plan (Concept Approval MP06\_0216) for a mixed use development including residential, retail, commercial and community uses. Cafés in the area with opening hours at 6am include Bencino Café at 62 Constitution Road and Leaf Point Café at 121 Bowen Street.



**ITEM 1 (continued)**



**Figure 2:** The site as viewed from Bowden Road (from north west of site).



**Figure 3:** The site as viewed from Bowden Street (directly in front of site). This photo demonstrates the void between the restaurant and the cafe.



**Figure 4:** The site as viewed from corner of Bowden Street and Hedgeland Close. 146 is located on the right side of the photo.



**ITEM 1 (continued)**



**Figure 5:** The site as viewed from Hedgeland Close looking north. The Viva Energy “High Pressure” pipeline is located beneath the paved area in the middle of the photo.



**Figure 6:** Photograph of development on opposite side of Bowden Street.



**Figure 7:** Photograph of development to the north of the subject site.

## ITEM 1 (continued)

### 3. Background

The building on the subject site was constructed in accordance with LDA2015/0031, which approved a mixed use development comprising three residential flat buildings and the subject single storey commercial building.

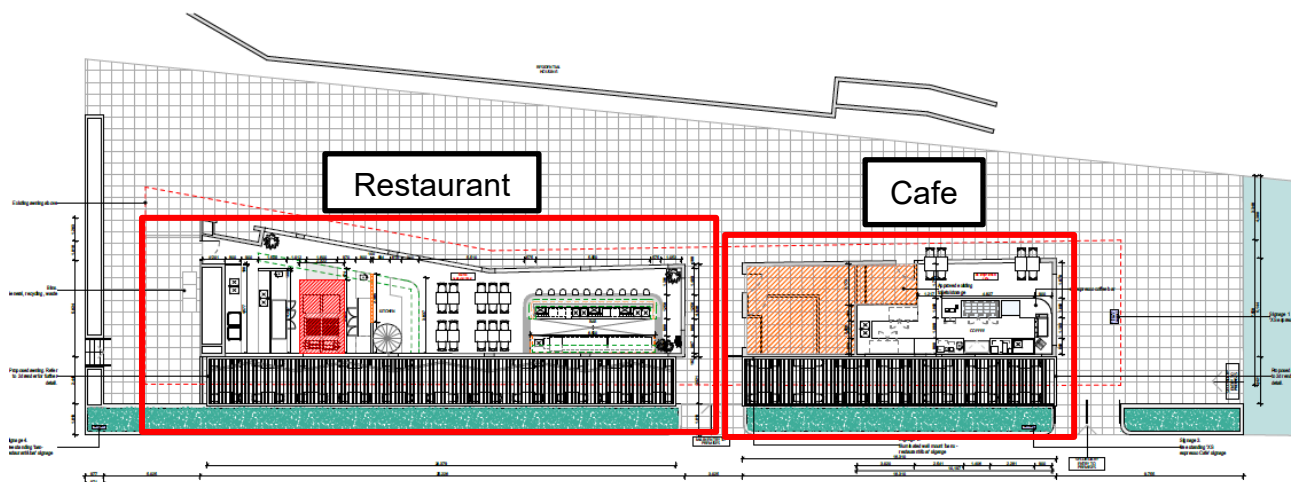
Condition 4 was imposed on LDA2015/0031 requiring the fitout and use of the single storey commercial building (i.e. subject building) to be subject to a future development application (see below).

**4. *Separate Development Consent.*** *The use of the single storey commercial building shall be the subject of a separate Development Application.*

### 5. The Proposal (as amended)

The proposal involves the change of use and fitout to a licensed restaurant and café. The application was originally lodged to accommodate 280 patrons, with operating hours of 6am to 10pm (Monday to Thursday) and 6am to 12am (Friday to Sunday). The application was amended to reduce the patron capacity from 280 to 106 and amended the operating hours to 6am to 10pm (Monday to Friday) and 7am to 10pm (Saturdays and Sundays).

The proposal does not relate to any external changes to the existing building (with the exception of the waste storage area and awning at the front of the site). It is noted that the architectural plans show four (4) signs. Due to issues raised with the design of these signs by Council, the applicant has advised Council that they no longer seek approval for signage, and any signage would be subject to a future development application. The existing building is all contained within one roof structure, but has an open void through the middle which effectively separates the building into two sections. The proposed café will be in the smaller section, and the proposed restaurant in the larger section of the building. The building contains existing toilets/storage areas which will be maintained as part of this development.



**Figure 8:** Location of the café and restaurant. The void separates the café and restaurant.

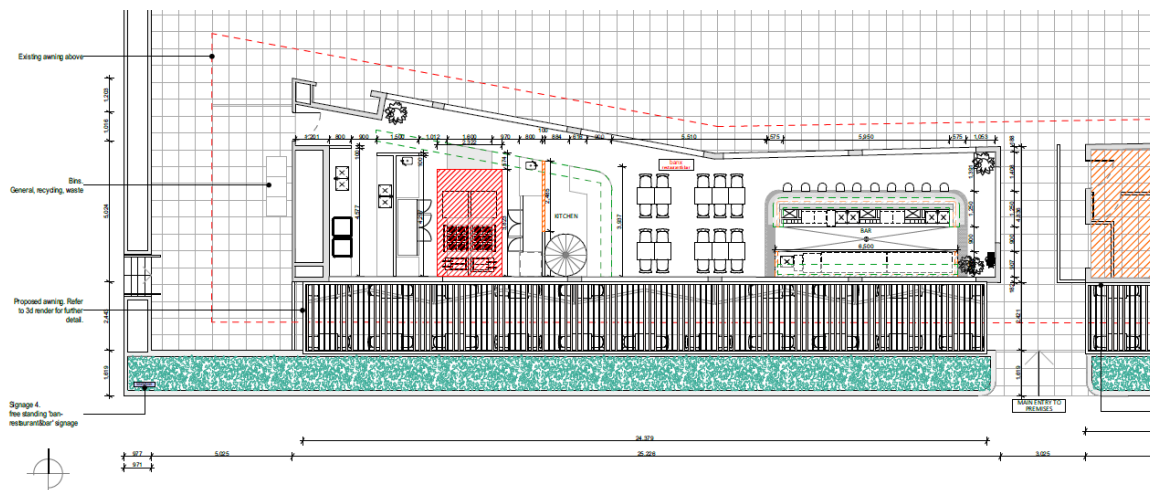


## ITEM 1 (continued)

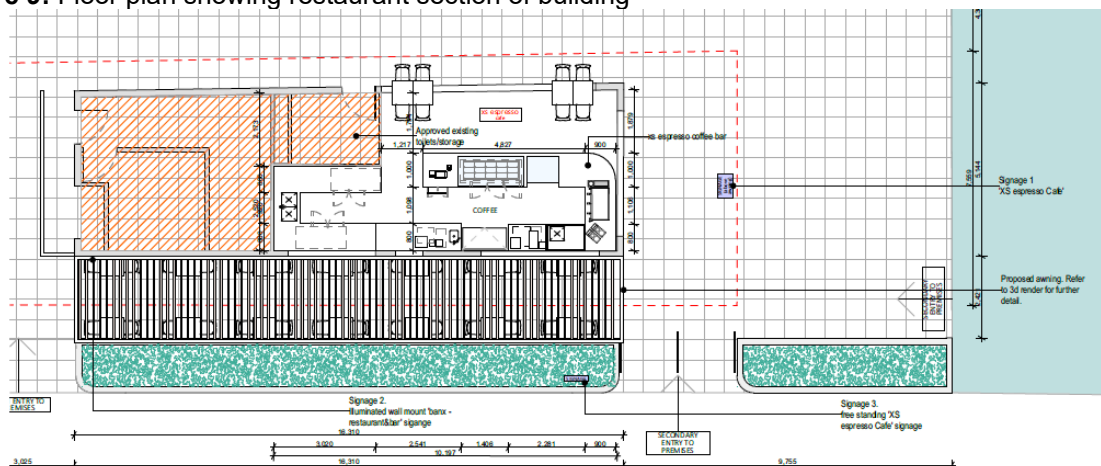
### Fit out of restaurant and café

The fitout of the café includes seating for eight people internally, and twenty eight (28) people in the outdoor dining section on the Bowden Street frontage. The café includes a coffee bar and small kitchen area (see **Figure 10** below).

The fitout of the restaurant includes a bar area and restaurant area with capacity to seat thirty people internally, and forty eight (48) in the outdoor dining section on the Bowden Street frontage. The restaurant is also fitted out with a large kitchen area with mechanical exhaust (see **Figure 9** below).



**Figure 9:** Floor plan showing restaurant section of building



**Figure 10:** Floor plan showing restaurant section of building

### Proposed operation of restaurant/café

#### *Patron numbers*

As discussed above, the maximum patron capacity is 106 people, with 38 inside the building and 68 people in the outdoor dining area.

## ITEM 1 (continued)

### Hours of operation

The proposed hours of operation are as follows:

The Banx (Restaurant/Bar)		XS Espresso (Café)	
Monday – Thursday	6am – 10pm	Monday – Friday	6am – 10pm
Friday	6am – 10pm	Saturday – Sunday	7am – 10pm
Saturday	7am – 10pm		
Sunday	7am – 10pm		

### Signage

The proposal originally included four (4) proposed signs, as follows:

	Location	Size	Material/Illumination
<b>Sign 1</b>	South Elevation (above awning)	1.5m (w) x 1.6m (h) 2.4m <sup>2</sup> area	External illuminated mirror brass
<b>Sign 2</b>	West elevation (below awning)	1.5m (w) x 0.85m (h) 1.28m <sup>2</sup> area	External illuminated mirror brass
<b>Sign 3</b>	West elevation (free standing sign)	0.8m (w) x 0.6 (h) 0.48m <sup>2</sup> area	Free standing sign, no illumination
<b>Sign 4</b>	West elevation (free standing sign)	0.8m (w) x 0.6m (h) 0.48m <sup>2</sup> area	Free standing sign, no illumination

Council raised issues with the design of these signs with the applicant, and the applicant has requested that the signage no longer form part of the application, as it will be amended and sought as a separate development application in the future. Conditions of consent (see **Condition 1(b)** and **Condition 4**) have been imposed that no signage is approved, despite the signage still being shown on the architectural plans.

## 6. Application History

15 December 2020	The subject DA was lodged.
12 January 2021 – 2 February 2021	The DA was notified to the owners of surrounding properties. In response, 52 submissions were received objecting to the development.

**ITEM 1 (continued)**

22 April 2021	<p>A request for information was sent to the applicant raising the following issues:</p> <ul style="list-style-type: none"> <li>• Proximity of Viva Energy Pipeline/Viva Energy easement, including concerns raised by Viva Energy that outdoor dining and structures were located within the easement</li> <li>• Request for Crime Prevention Report</li> <li>• Inadequate Waste Management Plan</li> <li>• Acoustic report supplied did not relate to proposed development</li> </ul>
27 May 2021	<p>The applicant submitted additional information, including:</p> <ul style="list-style-type: none"> <li>• Revised architectural plans removing outdoor dining within the Viva Energy pipeline easement</li> <li>• Crime Prevention report</li> <li>• Amended Plan of Management to reflect amended hours of operation</li> <li>• Amended Acoustic report</li> <li>• Amended Waste Management Plan</li> </ul>
23 June 2021	<p>A further request for information was sent to the applicant raising the following issues:</p> <ul style="list-style-type: none"> <li>• Inadequate testing details provided in Acoustic Report</li> <li>• Inadequate Waste Management Plan</li> <li>• Discrepancy with operation hours detailed in Plan of Management and Acoustic Report</li> </ul>
14 July 2021	<p>The applicant submitted additional information, including:</p> <ul style="list-style-type: none"> <li>• Revised Plan of Management</li> <li>• Revised Acoustic report (hours consistent with Plan of Management)</li> <li>• Additional information to supplement Waste Management Plan</li> </ul>

**7. Planning Assessment**

An assessment of the development in respect to Section 4.15 of the *Environmental Planning and Assessment Act 1979* is detailed below.

**7.1 State Environmental Planning Instruments**
**State Environmental Planning Policy No. 55 – Remediation of Land (SEPP55)**

**ITEM 1 (continued)**

The requirements of SEPP 55 apply to the subject site. In accordance with Clause 7 of SEPP55, Council must consider if the land is contaminated, if it is contaminated whether it is suitable for the proposed use and if it is not suitable, can it be remediated to a standard such that it will be made suitable for the proposed development.

During the assessment of LDA2015/0031, consideration of the suitability of the site and proposed commercial use was undertaken. Council assessed that the site was suitable for the commercial use. As such, further investigation is not warranted, and the site is suitable for the proposed café and restaurant.

**State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

The Vegetation SEPP commenced on 25 August 2017 and replaced clause 5.9 of RLEP 2014, which related to the preservation of trees and vegetation.

The objective of the Vegetation SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation.

The proposal does not involve any tree removal, as the construction works are limited to the internal fitout of the restaurant, café and associated signage. As such, the proposal is consistent with this SEPP.

**State Environmental Planning Policy (Infrastructure) 2007**

The site is adjacent to an easement for the for petroleum pipeline that is operated by Viva Energy. In accordance with Clause 66C of the above SEPP, the DA was referred to Viva Energy. The Consent authority must be satisfied that the potential safety risks to the integrity of the pipeline have been taken into consideration as well as any correspondence from the pipeline operator.

The original development was not supported by Viva Energy as the development proposed seating, awnings and structures within the easement that is not permitted by the terms of the easement. The amended plans have deleted all of the seating and structures. Viva Energy have confirmed that they now support the development subject to conditions being imposed as follows:

- Terms of the easement must be adhered to
- Before any works on site commences, a Dial Before You Dig must be completed and Viva Energy Surveillance contractor Freyssinet must be contacted to ensure no vehicles impact the pipeline. This includes fitout of the internal buildings, deliveries for the fitout and utility connections.

These matters have been included as conditions of consent (see conditions 13 and 24). Subject to these conditions, the risks associated with development and the integrity of the pipeline will be manageable.



**ITEM 1 (continued)****Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The aims of the SREP (deemed SEPP) are as follows:

- (a) *to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained—*
  - (i.) *as an outstanding natural asset, and*
  - (ii.) *as a public asset of national and heritage significance,*
- (b) *for existing and future generations,*
- (c) *to ensure a healthy, sustainable environment on land and water,*
- (d) *to achieve a high quality and ecologically sustainable urban environment,*
- (e) *to ensure a prosperous working harbour and an effective transport corridor,*
- (f) *to encourage a culturally rich and vibrant place for people,*
- (g) *to ensure accessibility to and along Sydney Harbour and its foreshores,*
- (h) *to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,*
- (i) *to provide a consolidated, simplified and updated legislative framework for future planning.*

Given the nature of the project and the location of the site from the Sydney Harbour/Parramatta River, there are no specific controls that directly apply to this proposal.

**7.2 Ryde Local Environmental Plan 2014 (RLEP 2014)**

The site is zoned B4 Mixed Use under the provisions of the Ryde Local Environmental Plan 2014 (RLEP 2014). The proposed use is defined as ‘food and drink premises’, which is defined as follows:

***food and drink premises*** means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) *a restaurant or cafe,*
- (b) *take away food and drink premises,*
- (c) *a pub,*
- (d) *a small bar.*

**Note—**

*Food and drink premises are a type of **retail premises**—see the definition of that term in this Dictionary.*

The proposed use is permissible with consent.

**Objectives for residential zones:**

The objectives of the B4 Mixed Use zone are as follows:

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

**ITEM 1 (continued)**

- *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.*

The proposed café and restaurant will provide a retail use that will provide food and drink services to surrounding residential developments. The proposed use is compatible with the surrounding residential land uses, as the applicant has demonstrated the proposed use will not have any unacceptable impact with respect to noise, traffic and parking.

**Clause 4.3 – Height of buildings**

The maximum building height applicable to the site is 15.5m.

The proposed development involves fitout works only and does not result in any external changes to the existing building, which is compliant with the applicable maximum building height.

**Clause 4.4 – Floor Space Ratio**

The maximum floor space ratio applicable to the site is 2:1.

The proposed development involves fitout works only and does not result in any change to the gross floor area of the existing building.

**7.3 Draft Environmental Planning Instruments****Draft Remediation of Land State Environmental Planning Policy**

The Draft SEPP is a relevant matter for consideration as it is an environmental planning instrument that has been placed on exhibition. The explanation of Intended Effects accompanying the draft SEPP advises:

*As part of the review of SEPP 55, preliminary stakeholder consultation was undertaken with Councils and industry. A key finding of this preliminary consultation was that although the provisions of SEPP 55 are generally effective, greater clarity is required on the circumstances when development consent is required for remediation work.*

The draft SEPP does not seek to change the requirement for consent authorities to consider land contamination in the assessment of development applications. Refer to conclusions made in relation to SEPP 55.

**ITEM 1 (continued)****Draft Environment State Environmental Planning Policy**

The draft Environment SEPP is being developed for the protection and management of our natural environment. It proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property. As the proposed development involves the fitout of an existing premises, it will not have any implications for this draft SEPP.

**7.4 Ryde Development Control Plan 2014 (RDCP 2014)**

The following sections of Ryde DCP 2014 are of relevance, being:

- Part 4.2 – Shepherd’s Bay, Meadowbank
- Part 9.3 – Car Parking

Part 4.2 – Shepherd’s Bay, Meadowbank

The objectives of Part 4.2 of the RDCP 2014 are as follows:

1. *encourage new development or the adaptive re-use of existing buildings containing a mix of residential, commercial and local retail;*
2. *describe the maximum scale, bulk and height of new buildings*
3. *facilitate convenient access between work, home and leisure;*
4. *create a place specifically designed for the enjoyment and use of pedestrians and cyclists;*
5. *provide for a high level of aesthetic amenity, particularly at street level;*
6. *recognise and reinforce the area’s topography, landscape setting and unique location on the Parramatta River foreshore;*
7. *facilitate uses and development that are compatible with, and complement, public use of the Parramatta River and its foreshores;*
8. *provide for safe, attractive and convenient public spaces that are well used;*
9. *preserve, protect and enhance elements of cultural and environmental significance*

The proposed development meets the objectives of Part 4.2 of the RDCP 2014, as the development:

- The proposal contributes to a mix of uses in the area, complementing the surrounding residential development.
- The proposed use has been designed to facilitate recreation for nearby residents.
- The proposed use is compatible with the public recreation areas along the waterfront.

There are no specific controls related to the proposed development within this section of the RDCP 2014. Consideration of setbacks, overall commercial use, landscaping

**ITEM 1 (continued)**

and built form were considered in the previous DA that approved the existing building on the site.

**Part 9.3 – Parking Controls**

The proposal does not include any off-street parking spaces dedicated to café/restaurant.

Section 2.1(c) of the RDCP 2014 states the following:

*(c) Where a change of use which, under this Part, would require the provision of a greater number of on-site parking spaces than the previous use, the amount of parking required will be the difference between the existing parking for the previous use and the amount of parking required for the proposed use.*

Consideration of the parking impact was given in the assessment of LDA2015/0031, which approved the existing building on the site, and it was assessed that no parking was required to be dedicated to the proposed commercial building. It was assessed that the café/restaurant would be ancillary to the residents of the development, would be frequented by existing parkland and foreshore foot traffic and was remote from the developments own parking area. For these reasons, the lack of dedicated parking for the proposed use was acceptable.

As previously mentioned in this report, the intention of the previous DA approved on the site in relation to the subject building was for the building to be used as a café/restaurant. A condition was imposed that a separate application be lodged for the fitout and use of the restaurant/café so that a full assessment of the impact of the impact on adjoining residential properties could be assessed with relation to outdoor dining.

The change of use from commercial to food and drink premises does not generate any additional parking requirements, and no additional floor space is proposed. Therefore, the parking arrangements for the proposed café/restaurant are satisfactory assessed against Part 9.3 of the RDCP 2014.

**7.5 Planning agreements or draft planning agreements**

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

**7.6 Any matters prescribed by the regulations****Environmental Planning and Assessment Regulation 2000**

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. Standard



**ITEM 1 (continued)**

conditions are recommended relating to compliance with BCA and Australian Standards.

**Building Code of Australia Upgrade – Clauses 93 and 94**

In accordance with Clause 93 and 94 of the Regulations 2000, the proposal will be required to provide adequate fire safety in accordance with the BCA (see **Conditions 5 and 31**).

**8. The likely impacts of the development****Acoustic Impact**

The hours of operation proposed are limited to between 6am and 10pm. The applicant has submitted an Acoustic Report that demonstrates the proposal will not result in audible noise to the habitable rooms of adjoining residential properties between the hours of 10pm and 7am, which is the industry accepted standard for protecting sleeping areas.

The Acoustic report has detailed the following recommendations:

*The noise emissions from the proposed venue have the potential to comply with the required criteria with the implementations of the following recommendations:*

- *The entry doors close automatically.*
- *Glazing for the windows to be upgraded to RW 30.*
- *Internal background music PA to be calibrated to have a maximum output of Lp 70 dBA when measured at the centre of the restaurant. A noise limiter to be installed to limit the overall output of the PA system to Lp 70 dBA*
- *External background music PA to be calibrated to have a maximum output of Lp 60 dBA when measured at 1m from the speaker. A noise limiter to be installed to limit the overall output of the PA system to Lp 60 dBA*
- *Outdoor seating operable from 7:00 am.*
- *All external doors and windows to be closed between 6:00 am to 7:00 am.*
- *Bottles not to be emptied between 10:00 pm to 7:00 am.*
- *No Live Bands or DJs in the form of amplified music.*
- *Waste to be collected during the daytime period only (7:00 am to 6:00 pm)*

**ITEM 1 (continued)**

With the adopted recommendations, no unacceptable impact will occur to adjoining residential properties as a result of the proposal. This has been concurred with the Council's Senior Environmental Health Officer. Conditions of consent have been imposed to ensure the proposed use operates in accordance with the Plan of Management and Acoustic report recommendations (see **Conditions 33, 37, 41, 44, 45, 46, 47, 48, 54, 55, 56, 57, 58 and 59**).

**Parking Impact**

The proposal does not include any off-street parking spaces dedicated to café/restaurant.

As previously mentioned in this report, the intention of the previous DA approved on the site in relation to the subject building was for the building to be used as a café/restaurant. A condition was imposed that a separate application be lodged for the fitout and use of the restaurant/café so that a full assessment of the impact on adjoining residential properties could be assessed.

It is noted that the original application indicated the café/restaurant would operate without parking. It was assessed that the café/restaurant would be ancillary to the residents of the development, would be frequented by existing parkland and foreshore foot traffic and was remote from the developments own parking area. For these reasons, the lack of dedicated parking for the proposed use was acceptable.

Subject to conditions of consent that the hardstand area surrounding the building (with the exception of the small strip at the front of the building facing Bowden Street) is not to be used for outdoor dining, the proposal will not have any unacceptable impact on the on-street parking demand in the area.

**9. Suitability of the site for the development**

The proposed development is considered to be a suitable development for the site, being permissible in the zone and consistent with the B4 Mixed Use zone objectives. As detailed earlier in this report, the development appropriately responds to the natural and built environmental assets and constraints of the site.

**10. The Public Interest**

The public interest is best serviced by the consistent application of the requirements of the relevant environmental planning instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised.

The proposal is consistent with the relevant planning provisions, would not significantly or unreasonably affect surrounding sites, and is consistent with the existing and desired future character of the local area.

The proposal is therefore not contrary to the public interest.

**ITEM 1 (continued)****11. Submissions**

In accordance with the Ryde Community Participation Plan, owners of surrounding properties were given notice of the application between 12 January 2021 and 2 February 2021. In response, fifty-two (52) submissions were received objecting to the development application, with the majority of the submissions received from the residents of the units in No. 146 and 143 Bowden Street. The submissions generally raised similar concerns, including the following:

- Noise generated from the proposed use and outdoor dining
- Patron numbers
- Insufficient parking
- Operating hours
- Impact of lighting on residential properties

As discussed earlier in this report, the application was amended to reduce the patron numbers, remove the majority of the outdoor dining, and reduce operating hours. The reduction in outdoor seating occurred over the Viva Energy pipeline and easement that runs along the rear of the building. This resulted in a reduction in seating from 280 persons to 106 persons.

The amended application was notified between 30 June 2021 and 15 July 2021. Twenty (20) submissions objecting to the amended application were received, raising similar concerns to the original application, as detailed below. It is noted the submissions were generally concentrated from the units at No. 143 and 146 Bowden Street.

- *Request that the outdoor dining should face Hedgeland Avenue, not Bowden Street.*

Assessing Officer comment:

The proposed outdoor dining within the Bowden Street setback, has the capacity to accommodate a maximum of 68 people. The hours of operation of the café/restaurant are limited to 6am to 10pm Monday to Friday, and 7am to 10pm Saturdays and Sundays. A condition of consent has been imposed that the outdoor dining is not to commence operation until 7am (see **Condition 40**).

When considering the acoustic impact of development on residential properties, the generally accepted criterion for providing adequate protection to sleeping areas is “inaudibility between the hours of 10pm and 7am”. The operating hours will ensure that the proposed use does not generate any noise between 10pm and 7am.

The hard paving at the front of the building facing Bowden Street is considered a suitable location for the outdoor dining area.

- *Concern of closing hours being beyond 9pm*

**ITEM 1 (continued)**Assessing Officer comment:

Concern has been raised that the hours of operation should not extend beyond 9pm due to the nearby residential properties. As discussed above, the generally accepted criterion for providing adequate protection to sleeping areas in residences is “inaudibility between 10pm and 7am”. The operation of the restaurant until 10pm will enable this criterion to be met.

Furthermore, the Plan of Management details that service of alcohol will cease 15 minutes prior to the 10pm, with all patrons being removed from the venue by the end of trading hours.

As such, the proposed operating hours are considered reasonable subject to the measures detailed in the Plan of Management being carried out. A condition of consent has been imposed that the premises is to operate in accordance with the Plan of Management (see **Condition 37**).

- *Operation of business would affect privacy and amenity of residents.*

Assessing Officer comment:

The proposal is located on the ground floor. Patrons of the café/restaurant will not be able to look into adjoining residential units due to the locality of the premises. It is noted that the adjoining property to the east (No. 146 Bowden Street) contains ground floor units that back on to the hard paving surrounding the existing building. Given this area is no longer proposed to accommodate any outdoor dining, views into these units are unlikely to occur. However, a condition of consent has been imposed that the windows on the northern elevation are to be treated with translucent film/glazing to ensure the courtyard areas of the ground floor units are afforded privacy from the patrons of the restaurant (see **Condition 1a**).

The acoustic impact of the proposed use of surrounding residents has been discussed above, and is not considered to be detrimental to nearby residents due to operating hours and location of outdoor dining.

- *Insufficient parking*

Assessing Officer comment:

The proposal provides no dedicated parking for the proposed use. Consideration of dedication of parking was considered during the assessment of the development application of the mixed use development LDA2015/0031 (i.e. three residential flat buildings and subject single storey commercial building). At the time, it was considered that the subject commercial use would be ancillary to the surrounding residential development, and the majority of patrons would be nearby residents and unlikely to drive to the premises.



**ITEM 1 (continued)**

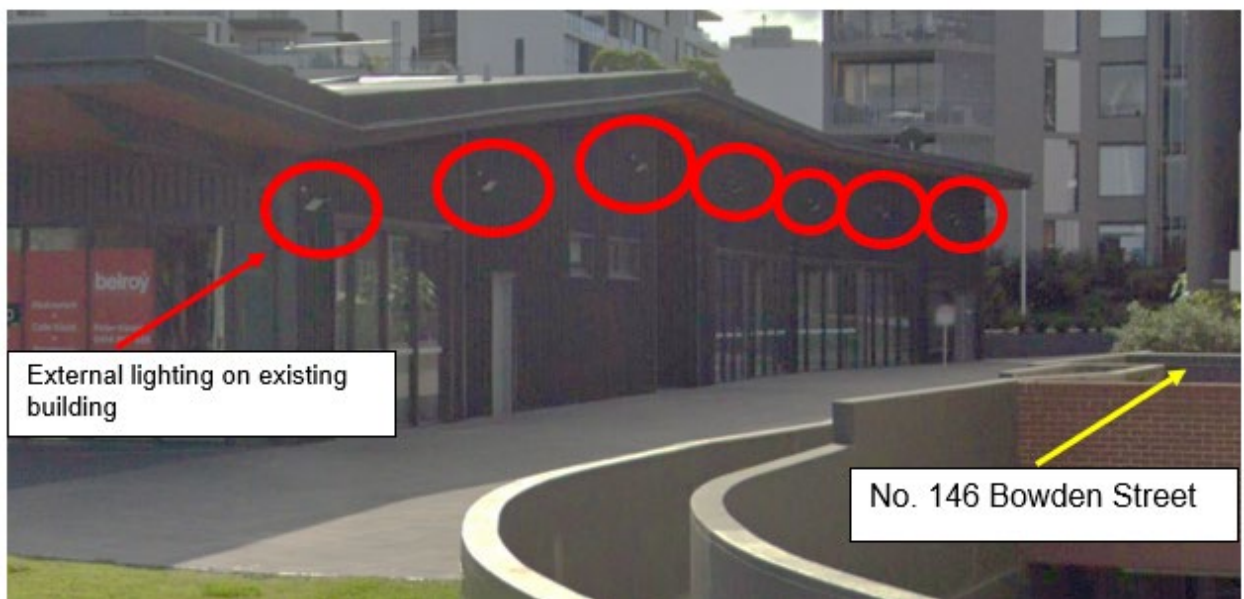
As such, the requirement for dedicated off-street parking is not required. The proposal will not have an unacceptable impact on the on-street parking demand in proximity of the site.

- *Light pollution*

Assessing Officer comment:

Concern has been raised by residents that the lights from the restaurant/café at night will affect the adjoining residential units at No. 146 Bowden Street. The residents complained that during the construction of the subject commercial building, lights from the construction site caused unacceptable light pollution into their bedrooms at night.

Given outdoor dining is not proposed on the eastern side of the existing building, and is limited to the Bowden Street side, external lighting is not considered necessary for this area. It is noted that the existing building contains external lighting on the eastern elevation of the building (see **Figure 10** below).



**Figure 10:** Photograph of existing building showing external lighting fixtures on eastern elevation

A condition of consent has been imposed that these lights are to be switched off by 10pm to ensure the external lights do not result in any unacceptable impact to the adjoining residential units (see **Condition 39**).

- *Request for barrier between 120 and 146 Bowden Street as there is a drop onto the fire stairs at 146 Bowden Street*

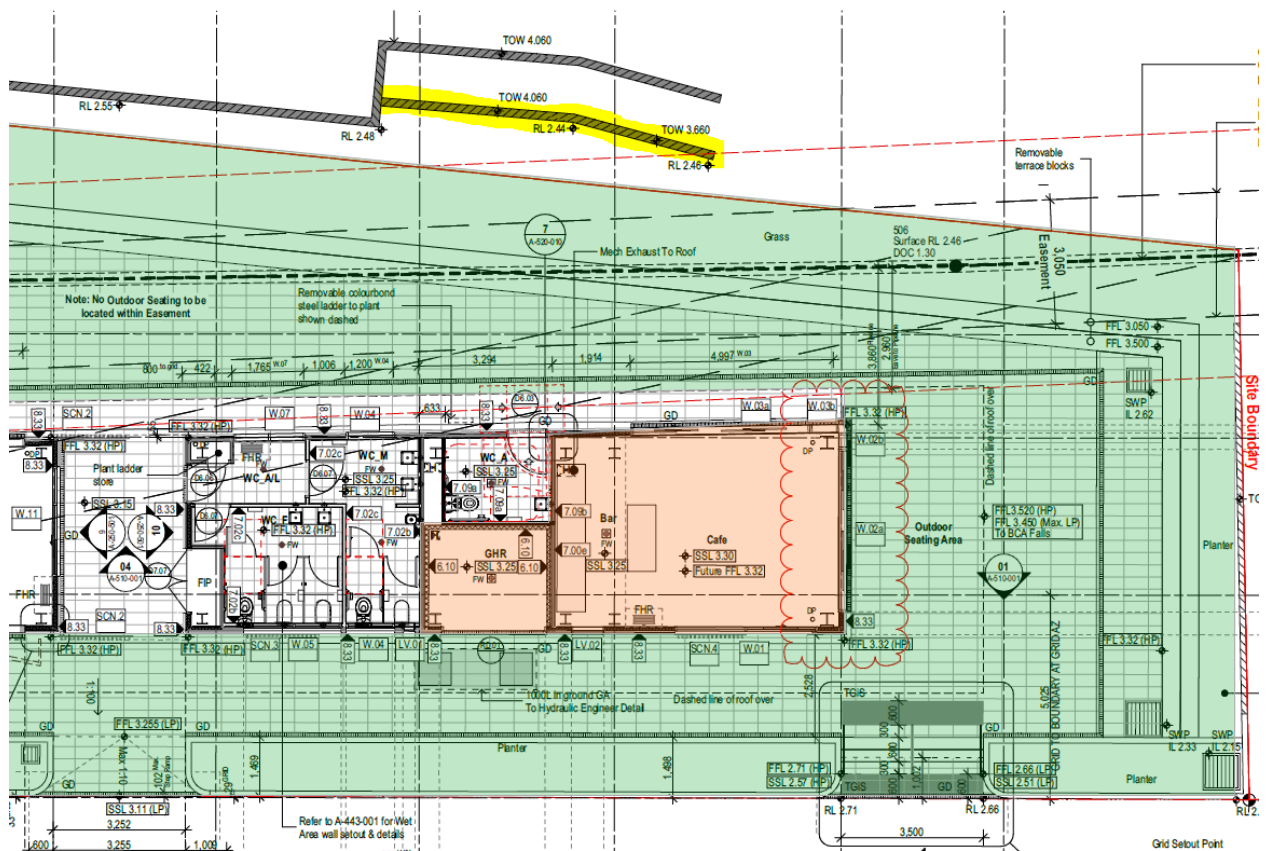
**ITEM 1 (continued)**



**Figure 11:** Photographs taken of fire stairs adjoining subject site on 146 Bowden Street

Assessing Officer comment:

The fire stairs and associated barriers are located entirely on the adjoining property at No. 146 Bowden Street, see **Figure 12** below.



**Figure 12:** Location of fire stairs in relation to proposed café/restaurant (existing wall highlighted in yellow)

**ITEM 1 (continued)**

The structure is entirely on No. 146 Bowden Street. Furthermore, given no outdoor dining is proposed in this area, and is restricted to the front of the site, a barrier is not warranted to facilitate the proposed development.

- *Clean up of food and waste*

Assessing Officer comment:

Some submissions raised concern that the waste generated from the café/restaurant, as well as its storage and collection, would adversely impact the surrounding residents. Council's Environmental Health Officer has reviewed the amended Waste Management Plan submitted by the applicant, and has assessed that acceptable waste management details have been provided to ensure the waste will be stored and collected without adversely impacting surrounding residential properties.

A condition of consent has also been imposed that the waste storage areas are to be maintained in a clean and tidy condition at all times (see **Conditions 49-53**).

**12. Referrals****External Referrals**Viva Energy

A referral was made to Viva Energy due to the proximity of the "High Pressure Pipeline" (and associated easement) running through the rear of the site. Viva Energy originally objected to the application due to the outdoor seating located within the easement area.

Outdoor seating has been removed from this area, and Viva Energy have raised no issues with the application as amended, subject to conditions of consent (see **Conditions 13 and 24**).

NSW Police

No objection has been raised by the NSW Police, subject to a condition of consent that the recommendations in the Crime Prevention Report and Plan of Management are implemented by the applicant. These conditions are imposed at **Conditions 37 and 38**.

**ITEM 1 (continued)****Internal Referrals**Senior Development Engineer

A referral has been made to Council's Senior Development Engineer, who has provided the below comments:

*The previous review noted the development proposed extensive outdoor area which extended the patron floor area of the development from the approved 225m<sup>2</sup> to 612m<sup>2</sup>.*

*As noted in the assessment of the Holdmark development (LDA2015/0031), the development originally proposed a café without parking. Given it was considered ancillary to the residents of the development, would be frequented by existing parkland and foreshore foot traffic and was remote from the developments own parking area – the lack of dedicated parking for the proposed use was accepted.*

*The submitted plans have removed the external seating from outdoor areas, maintaining only some internal seating and that along the street frontage. Whilst the extent of hardstand paving around the premises leaves some doubt this will be enforced, the paving was approved in the original consent and its removal would be onerous and cannot be undertaken on the assumption that the applicant does not comply with any consent issued.*

Recommendation

*There is no objection to the proposed development with respect to the internal engineering components subject to conditions of consent.*

Assessing Officer comment:

Conditions of consent have been recommended by Council's Senior Development Engineer at **Conditions 12 and 19**.

Environmental Health Officer

*The site is located within the Meadowbank unit complex, a high-density residential area. The initial proposal was for the business to have up to 280 patrons seated outside and operating up to 12:00am on Friday and Saturdays. City of Ryde received 72 submissions from neighbouring residents, largely objecting to this initial proposal.*

*The main objections to the proposal were due to concerns of the proposed 280 patrons being seated outdoors and the premises operating hours being till 12am on Friday and Saturdays. The proposal has been amended to operate on a reduced scale, with amended plans submitted to Council on 26 May 2021 detailing the changes.*



### ITEM 1 (continued)

*The current proposal is now for 38 patrons seated internally and 68 patrons seated externally on the Bowden Street side of the premises. Additionally, the proposal has sought the following reduced hours of operation:*

<b>The Banx (Restaurant/Bar)</b>		<b>XS Espresso (Café)</b>	
Monday – Thursday	6am – 10pm	Monday – Friday	6am – 10pm
Friday	6am – 10pm	Saturday – Sunday	7am – 10pm
Saturday	7am – 10pm		
Sunday	7am – 10pm		

*There have been 72 submissions to Council for the proposal. 52 of these submissions objected to the initial proposal, with the prevailing concern relating to the amount of outdoor seated patrons and the late operating hours. The applicant has alleviated these concerns, with the new proposed hours of operation ending no later than 10:00pm on Fridays and Saturdays. Additionally, the new proposed outdoor seating limit will be 68 seated patrons, down from 280.*

*Based on previous referrals, the public's submissions, as well as amended plans submitted to Council by the applicant on 14 July 2021, the below discussion will focus on acoustic concerns previously proposed by Council, and in what ways the Applicant has addressed these.*

#### Acoustics

*Rodney Stevens Acoustics Pty Ltd (RSA) has been engaged by the Applicant to prepare a noise impact assessment for the proposed licenced venue, Banx & XS Espresso, located at 120-122 Bowden Street, Meadowbank. The purpose of the report is to determine possible noise impacts on nearby sensitive receivers and provide acoustic control recommendations so that the proposed development may operate in an acoustically compliant manner in accordance with Council's requirements and Liquor and Gaming NSW licence requirements.*

*Previously Council identified several concerns that the report prepared by RSA did not consider or explicitly clarify. The applicant submitted amended plans on 14 July 2021 addressing these concerns, which are summarised below:*

#### Unattended Noise Monitoring

*Concerns were held regarding the location of the unattended noise monitoring to determine the background noise characteristic of the proposed developments surrounding area. This was because the location chosen was approximately 110 metres away from the proposed developments location.*

*RSA was requested to clarify that the location was suitable in determining an accurate representation of the background noise. In the amended plans submitted to Council on 14 July 2021, RSA confirmed the location was suitable on the grounds of other noise sources influencing readings, security issues for*

**ITEM 1 (continued)**

*noise monitoring equipment and gaining permission for access from residents and landowners.*

**Waste Collection**

*The original acoustic report prepared by RSA did not specify if consideration had been provided as to what extent the noise trigger levels would be exceeded by waste collection, especially during after-hours. The applicant was requested to provide confirmation what time waste collection is expected to occur, and if after hours, will this exceed noise trigger levels for any sensitive receivers.*

*The amended acoustic report prepared by RSA specified that the applicants Plan of Management is to be updated so that the development's waste collection is to occur during the daytime period only (7:00am and 6:00pm). If carried out during the daytime hours, noise trigger levels are not predicted to be exceeded.*

*In addition to this, concerns were held over the disposal of bottles during the development's operation, as such an activity could be reasonably assumed to exceed noise trigger levels. This is also in consideration that such an activity could reasonably be assumed to take place at the end of trade, which in this case would be during evening hours between 10:00pm and 7:00am.*

*In response, RSA in the amended acoustic report has recommended that bottles are not to be emptied between 10:00pm and 7:00am. This will mean that bottles will have to be emptied throughout operating hours, and never after hours in order for noise trigger levels to not be exceeded.*

**Other Operational Noise Concerns**

*Clarification was sought from the applicant regarding confirmation of operating hours for the proposed development. This was requested due to there being a discrepancy between the Plan of Management and the acoustic report submitted by the applicant on operating hours. The applicant has since amended this discrepancy in the amended plans submitted to Council on 14 July 2021 and confirmed that Friday and Saturday's end of trade will be 10:00pm.*

*In consideration of Banx XS Espresso beginning trade at 6am, coffee would be a popular product to be purchased by customers at this time. Coffee making can be loud with steam at high pressures and the emptying of compacted coffee beans from group heads. Council raised these concerns and sought clarification if the original acoustic report prepared by RSA considered if such an activity at that time of day would exceed noise triggers levels. The amended acoustic report confirms that any predicted noise calculations made by RSA take into account a coffee machine operating at normal conditions. This is based upon a previous measurement RSA has obtained from a similar café, with the coffee machine emitting a sound power level of Lw 61.*

**ITEM 1 (continued)**

*The original acoustic report prepared by RSA recommended that internal and external output of the PA is to be calibrated at 70dBa and 60dBa respectively. Council had concerns regarding how the PA system would be calibrated to ensure that the system does not exceed these levels internally and externally, and how it can be validated on an ongoing basis. In response, in the amended acoustic report prepared by RSA, it was recommended that a noise limiter will need to be installed to limit the overall output's of the internal and external speakers to their specified levels to not exceed noise trigger levels (70dBa and 60dBa respectively).*

**Conclusion**

*The proposal satisfies the requirements of Council's controls and can be supported, subject to standard and/or special conditions of consent.*

**Assessing Officer comment:**

Conditions of consent have been recommended by Council's Environmental Health Officer at **Conditions 20, 21, 22, 33, 34, 35, 36 and 42-59.**

**13. 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:

1. The proposal is consistent with the objectives of the B4 Mixed Use zone, and will contribute to the variety of uses in the surrounding mixed use area.
2. The proposal will not result in any unacceptable impact on adjoining properties. Appropriate operational measures have been detailed by the applicant and conditioned by Council to ensure the use of the site will be of minimal environmental impact.
3. Issues raised in the submission received in response to this application have been considered and addressed in the report. None of the issues raised warrant the refusal of the subject DA.
4. The proposal has addressed the constraints of the site, and it is considered the proposal is suitable for the site.
5. The proposal is not contrary to the public interest.

**ITEM 1 (continued)****14. Recommendation**

Pursuant to Section 4.6 of the Environmental Planning and Assessment Act, 1979, the following is recommended:

- A. That the Local Planning Panel grant consent to development application LDA2020/0435 for the change of use and fitout to licensed restaurant and café with associated signage at No. 120-122 Bowden Street, Meadowbank subject to the conditions of consent in **Attachment 1** of this report; and
- B. Those that have made a submission be advised of the decision.

**ATTACHMENTS**

- 1 Draft Conditions of Consent
- 2 Plan of Management
- 3 Viva Energy Comments
- 4 Architectural Plans - subject to copyright provisions

Report Prepared By:

**Madeline Thomas**  
**Senior Coordinator - Development Assessment**

Report Approved By:

**Sandra Bailey**  
**Manager - Development Assessment**

**Liz Coad**  
**Director - City Planning and Environment**

**ITEM 1 (continued)**

**ATTACHMENT 1**

**ATTACHMENT 1**

**Draft conditions of consent – 120 Bowden Street, Meadowbank**

**LDA2020/0435**

**GENERAL**

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

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

Document Description	Date	Plan No/Reference
Site Location	26/05/2021	DA4, Rev 2
Proposed plan (left side)	26/05/2021	DA7, Rev 2
Proposed plan (right side)	26/05/2021	DA8, Rev 2
Proposed elevation 1	26/05/2021	DA9, Rev 2
Proposed Elevation 2	26/05/2021	DA10, Rev 2
Proposed Elevation 3	26/05/2021	DA11, Rev 2
Proposed Elevation 4	26/05/2021	DA12, Rev 2
Proposed Elevation 5/Section	26/05/2021	DA13, Rev 2
Noise Impact Assessment	14/07/2021	R210334R1, Rev 1
Plan of Management	20/09/2021	-
Waste Management Plan	27/05/2021	-
Crime Risk Report prepared by City Plan	May 2021	#21-142, Revision 01

Prior to the issue of a **Construction Certificate**, the following amendments shall be made (as marked in red on the approved plans):

- (a) The glass windows and doors on the eastern elevation (i.e. facing 146 Bowden Street) are to be treated so that the glass is translucent.
- (b) The signage show on the architectural plans is to be removed.

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

2. **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.
3. **Energy Efficiency.** The fittings, fixtures and materials installed in association with the development (including but not limited to hot water systems, ceiling/roof insulation, shower heads, toilet cisterns and the like) shall comply with the



**ITEM 1 (continued)**

**ATTACHMENT 1**

requirements of Council's DCP. Details are to be noted on the plans submitted with the **Construction Certificate**.

4. **No signage approved.** The consent does not authorise the erection of any signs or advertising structures unless such signage is "exempt development".
5. **Fire Safety Matters/Changes in building use**
  - (a) A building in respect of which there is a change of building use must comply with the Category 1 fire safety provisions applicable to the proposed new use.  
  
NOTE: The obligation under this clause to comply with Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in the relevant development consent.
  - (b) This clause does not apply to the extent to which an exemption is in force under clause 187 and 188 in the Environmental Planning and Assessment Regulations 2000.
  - (c) In this case clause, "Category 1 fire safety provision" has the same meaning as it has in Clause 3 in the Environmental Planning and Assessment Regulations 2000 subject to any terms of any condition or requirement referred to in Clause 187(6) or 188(4).
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. **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.
9. **Public Utilities.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RMS, Council etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.
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

**ITEM 1 (continued)**

**ATTACHMENT 1**

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 (eg Telstra, Jemena, Ausgrid, etc), with all costs associated with this alteration to be borne by the applicant.
12. **Restoration.** Public areas must be maintained in a safe condition at all times. 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 Part 8.5 (*Public Civil Works*), to the satisfaction of Council.
13. **Viva Energy.** The submission of documentary evidence (permit/approval) of compliance with the requirements of Viva Energy with respect to all works being carried out in proximity of the Viva Energy Easement. The terms of the easement must be adhered to during construction and operation.

**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.

14. **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 **Construction Certificate**.
15. **Security deposit.** The Council must be provided with security for the purposes of section 80A(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the

**ITEM 1 (continued)**

**ATTACHMENT 1**

**Construction Certificate.** (category: other building with no delivery of bricks or concrete or machine excavation)

16. **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 **Construction Certificate**.
17. **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
  - b. Enforcement Levy
18. **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 **Construction Certificate**.
19. **Stormwater Management.** To ensure the management of stormwater runoff from the development is undertaken without impact to the subject site, neighbouring properties or receiving drainage system, stormwater runoff from the development shall be collected and piped by gravity flow to the existing drainage system in accordance with the requirements of Council's DCP 2014 Part 8.2 (Stormwater and Floodplain Management) and associated annexures.
20. **Installation of grease trap.** A grease trap must be installed if required by Sydney Water Corporation. The grease trap must be located outside the building or in a dedicated grease trap room and be readily accessible for servicing. Access through areas where exposed food is handled or stored or food contact equipment or packaging materials are handled or stored is not permitted.
21. **Provision for installation of kitchen exhaust systems.** Adequate provision must be made for the installation of kitchen exhaust systems to the proposed food premises.
22. **Shop fit-out plans – Design.** Detailed plans of all food preparation, beverage and waste storage areas shall be submitted to the principal certifying authority (PCA) prior to the issue of the construction certificate.

The fit-out of the food premises shall comply with:

- (a) Australian Standard AS4674-2004 - Design, Construction and Fit-out of Food Premises.
- (b) Food Safety Standards 3.2.3 Food Premises and Equipment
- (c) The cool rooms shall be provided with safety devices to comply with G1.2 of the BCA.

## ITEM 1 (continued)

## ATTACHMENT 1

If a Private Certifier is to be used, the final inspection shall be carried out by a suitably qualified person to ensure that food standards are met. Council's Environmental Health Officer may be engaged to carry out the required inspection for a prescribed fee.

## 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.

### 23. Site Sign

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.

- a. Any such sign must be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

### 24. Viva Energy. Before any works on site commences a Dial Before You Dig must be completed and Viva Energy Surveillance contractor Freyssinet must be contacted to ensure any works on site or any vehicles do not impact the pipeline.

- including fitout of internal buildings and
- deliveries for fitout)
- utility connections

### 25. Safety fencing. The site must be fenced prior to the commencement of construction, and throughout demolition and/or excavation and must comply with Safework NSW requirements and be a minimum of 1.8m in height.

## 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.

### 26. 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(4) of the *Environmental Planning and Assessment Regulation 2000*.

**ITEM 1 (continued)**

**ATTACHMENT 1**

27. **Noise from construction work.** All feasible and reasonable measures must be implemented to minimise the emission of noise from construction work.
28. **Construction materials.** All materials associated with construction must be retained within the site.
29. **Site Facilities**  
The following facilities must be provided on the site:  
(a) toilet facilities in accordance with Safework 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.
30. **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.

**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), 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.

31. **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.



**ITEM 1 (continued)**

**ATTACHMENT 1**

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.

32. **CCTV Cameras.** CCTV cameras to be installed. The cameras should include the entry area and within the tenancy. CCTV cameras should also cover any, lifts and the basement car parks, including the entry and exit points to the car park. Recordings should be made twenty four (24) hours a day seven (7) days a week.

As a minimum, CCTV cameras at entry and exit points to the premises **MUST** record footage of a nature and quality in which it can be used to identify a person recorded by the camera. All other cameras **MUST** record footage of a nature and quality in which it can be used to recognise a person recorded by the camera. The time and date must automatically be recorded on all recordings made whilst it is recording. All recordings are to be kept for a minimum period of thirty (30) days before they can be reused or destroyed.

If requested by police, the applicant is to archive any recording until such time as they are no longer required. Recordings are to be made in a common media format such as Windows Media Player or similar, or should be accompanied by applicable viewing software to enable viewing on any windows computer.

The CCTV control system should be located within a secured area of the premise and only accessible by authorised personnel. If the CCTV system is not operational, immediate steps are to be taken by the applicant to ensure that it is returned to a fully operational condition as soon as possible.

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

33. **Noise control measures.** All noise and vibration control measures nominated in the acoustical consultant's report prepared by Rodney Stevens Acoustics dated 14 July 2021 and any related project documentation must be implemented and adhered. This includes the recommendations within the subject report. All noise control measures identified in this report are to be completed prior to the issue of any Occupation Certificate.
34. **Registration of retail food business.** Prior to an Occupation Certificate being issued, the retail food business must submit a food business registration with Council.
35. **Certify fit-out complies with food safety standards.** Certification to be provided to the principal certifying authority (PCA), prior to occupation, that the fit-out of the food premises has been completed in accordance with plans complying with food safety standards prescribed under the Food Act 2003, and the requirements of Australian Standard AS 4674 - 2004.

**ITEM 1 (continued)**

**ATTACHMENT 1**

36. **Certify mechanical ventilation installation.** Adequate ventilation to work areas and other occupied enclosures shall be provided in accordance with the requirements of the Building Code of Australia. Where any system of mechanical ventilation is installed, certification that the system functions in accordance with Australian Standard AS/NZS 1668.2.2012 is to be provided to the certifying authority prior to occupation of the premises.

**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.

37. **Plan of Management.** The Plan of Management dated 20 September 2021 is to be adhered to at all time. No changes regarding the operation of the premises are to be made to the POM without the prior approval of Council.
38. **Crime Risk Report.** The recommendations within the Crime Risk Report prepared by City Plan dated May 2021 must be implemented during operation of the premises.
39. **External lighting on east elevation.** The external lights facing No. 146 Bowden Street on the eastern elevation are to be switched off from 10pm.
40. **Outdoor dining.** Outdoor dining is limited to the areas identified in the architectural plans to the west of the building. No approval is granted to outdoor dining on the remaining hard paved areas on the site.
41. **Hours of operation.** The hours of operation are to be restricted to:
- 6am to 10pm (Monday-Friday).
  - 7am to 10pm (Saturday and Sundays)
  - Outdoor dining is restricted to 7am to 10pm.
42. **Waste containers.** An adequate number of suitable waste containers must be kept on the premises for the storage of garbage and trade waste.
43. **Use is not to cause air impurities.** The operation of the premises is not to give rise to emissions of air impurities in contravention of the Protection of the Environment Operations Act 1997. Air emissions from the premises must not cause a nuisance from odours, nor be hazardous to human health or the environment.
44. **Use is not to cause offensive noise or vibration.** The use of the premises not giving rise to:
- (a) Transmission of unacceptable vibration to any place of different occupancy,
  - (b) A sound pressure level measured at any point on the boundary of any affected residential premises that exceeds the background noise level by more than 5 dB(A).

**ITEM 1 (continued)**

**ATTACHMENT 1**

45. **Noise and vibration from plant or equipment.** Unless otherwise provided in this Consent, the operation of any plant or equipment installed on the premises must not cause:
- (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at, or computed for, the most affected point, on or within the boundary of the most affected receiver. Modifying factor corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the *New South Wales Industrial Noise Policy* (EPA, 2000).
  - (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*.
  - (c) The transmission of vibration to any place of different occupancy.
46. **No 'offensive noise'.** Noise and vibration from the use and operation of any plant and equipment and/or building services associated with the premises shall not give rise to 'offensive noise' as defined by the Protection of the Environment Operations Act 1997.
47. **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.
48. **Noise Limits.** Notwithstanding compliance with any other noise conditions of this consent, noise from the premises or related activities must not be audible in any habitable room in any residential premises between the hours of 10pm and 7.00am.
49. **Storage of garbage and recyclable materials.** A separate room or area must be provided in a convenient location on the premises for the storage of garbage and recyclable materials.
50. **External garbage storage areas.** External areas used for the storage of garbage must be roofed and paved with concrete graded to a grated drain connected to the sewerage system. A hose cock must be provided adjacent to the garbage storage area to facilitate cleaning of the containers and storage area.
51. **Management of waste storage facilities.** All waste storage areas are to be maintained in a clean and tidy condition at all times. All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.
52. **Waste containers.** An adequate number of suitable waste containers must be kept on the premises for the storage of garbage and trade waste.
53. **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

**ITEM 1 (continued)**

**ATTACHMENT 1**

in the designated waste/recycling storage room(s) or area(s) between collection periods.

54. **Compliance with Acoustic Report.** All control measures nominated in the Acoustic Report No. R210334R1, dated 14 July 2021, prepared by Rodney Stevens Acoustic Consultants must be implemented.
55. **Noise Limiter.** A noise limiter shall be installed to the sound system used to play amplified music. The installed sound system must always be under the control of the noise limiter.
56. **No live music.** No live music or entertainment shall be provided at the premises.
57. **Noise to street.** There are to be no external speakers directly facing any nearby places of residence.
58. **Patron noise control.** The proprietors of the venue shall be responsible at all times for the orderly dispersal of patrons from the venue.
59. **Council may require acoustical consultant's report.** Upon receipt of a justified noise complaint, Council may require the submission of a report from an appropriately qualified acoustical consultant demonstrating compliance with the relevant noise and vibration criteria.
60. **Maximum number of persons.** A sign must be displayed in a prominent position in the building stating the maximum number of persons that are permitted in the building as specified in the development consent.  
  
The maximum number of persons permitted in the building is 38 persons, with 68 people permitted in the outdoor dining area.
61. **Delivery and loading/unloading – hours.** No deliveries, loading or unloading associated with the premises are to take place between the hours of 6pm and 7am on any day.

End of consent

**ITEM 1 (continued)**

**ATTACHMENT 2**

# POM – PLAN OF MANAGEMENT

Prepared for: banx + xs espresso

120 Bowden Street  
Meadowbank NSW 2114

Prepared By:  
**Rand Design Studio**

Phone: 0415 965 186  
Email: [rand@randdesignstudio.com.au](mailto:rand@randdesignstudio.com.au)



**ITEM 1 (continued)**

**ATTACHMENT 2**

2

**CONTENTS:**

- 1 INTRODUCTION
- 2 SITE AND LOCALITY DETAILS
- 3 USE OF THIS PLAN
- 4 TRADING HOURS
- 5 VENUE DETAIL
- 6 SIGNS
- 7 NOISE
- 8 SAFETY
- 9 AMENITY OF NEIGHBOURS
- 10 BEHAVIOUR OF PATRONS AND RESPONSIBLE SERVICE OF ALCOHOL
- 11 SECURITY
- 12 COMPLIANT HANDLING
- 13 DELIEVRY AND WASTE DISPOSAL
- 14 MAINTENANCE
- 15 REMOVAL OF LIQUOR PREMISES
- 16 HARM MINIMIZATIONS
- 17 FIRE AND SAFETY MEASURES
- 18 DISABLED ACCESS
- 19 PUBLIC TRANSPORT



**ITEM 1 (continued)**

**ATTACHMENT 2**

3

**1 INTRODUCTION**

The purposed of the Plan of Management is to establish performance criteria for various aspects of the operations of XS Espresso located at the ground floor, 120 Bowden Street, Meadowbank NSW 2114, as a licensed restaurant and café with the relevant matters listed under the Environmental Planning and Assessment Act, 1979, the Liquor Act, 2007 and relevant Regulations under that legislation.

The plan has been compiled according to the City of Ryde DCP 2014 – Late night trading management.

A copy of this plan and the on-premise license (to be applied for) shall be kept at the restaurant/café at all times and immediately produced for inspection upon request to Police or Council Officers.

**2 SITE AND LOCALITY DETAILS**

1. The primary use of the premises is as licensed restaurant/café
2. The premise is on ground level of converted mixed-use and has frontage to both Bowden Street and Hedgeland Cl. The area is classified, in the City of Ryde Environmental Local Plan, as a B4 Zone for mixed use development, therefore the additional of a licensed restaurant/café to the area would comply with the planning controls of council.
3. The venue will cater for 38 patrons seated internally and 68 patrons seated externally on Bowden Street
4. Waste storage area are contained within the premises, until transferred to the waste collection.
5. Operating hours are as follows;

The Banx (Restaurant/Bar)

Monday – Thursday	6am – 10pm
Friday	6am – 10pm
Saturday	7am – 10pm
Sunday	7am – 10pm

XS espresso (Café)

Monday – Friday	6am – 10pm
Sunday – Saturday	7am – 10pm

6. There are several cafes and restaurants near the premises, some of those within a 200m radius of the premises include:
  - *Fork and Spoon*  
Monday – Saturday: 6am to 4pm  
Sunday: 7am to 4pm
  - *Midori Sushi and Rolls*  
Monday: 8am to 3pm  
5.30pm to 8pm  
Tuesday: 12am to 9.30pm  
Wednesday – Saturday: 8am to 3pm  
5.30pm to 8pm

 **rend**  
DESIGN STUDIO

## ITEM 1 (continued)

## ATTACHMENT 2

4

- Sunday: 8am to 3pm
- *Bay Fitness*  
Monday – Thursday: 5.30am to 10pm  
Friday: 5.30am to 9pm  
Saturday: 8am to 5pm  
Sunday: 8am to 4pm
- *Italian Street Kitchen*  
Monday – Thursday: 11.30am to 9.30pm  
Friday: 11.30am to 10pm  
Saturday: 9am to 10pm  
Sunday: 9am to 9.30pm
- *Cedrus Lebanese Restaurant*  
Monday: Closed  
Tuesday – Sunday: 11am to 3pm  
5pm to 10pm

### 3 USE OF THIS PLAN

This plan is in place to ensure a safe environment for employees, guests and the surrounding community of Meadowbank.

All staff involved with the sale or supply of liquor or security shall be made familiar with this Plan of Management and the conditions of the Liquor License.

### 4 TRADING HOURS

The premise is a licensed restaurant/café. The proposed hours of operation are as follows:

<u>The Banx (Restaurant/Bar)</u>	
Monday – Thursday	6am – 10pm
Friday	6am – 10pm
Saturday	7am – 10pm
Sunday	7am – 10pm
<u>XS espresso (Café)</u>	
Monday – Friday	6am – 10pm
Sunday – Saturday	7am – 10pm

The sale of liquor will cease at least 15 minutes before the end of the trading hours, and all patrons will be removed from the Venue by the end of the trading hours.

### 5 VENUE DETAIL

- The venue has a maximum capacity of 38 patrons seated internal and 68 patrons seated externally on Bowden Street
- The venue will be smoke free environment



**ITEM 1 (continued)**

**ATTACHMENT 2**

5

- All essential services shall be certified annually and shall remain in good working order.

**6 SIGNS**

Signs required by the Liquor Act 2007 compliant with Fs3078 will be displayed and maintained in the appropriate areas. Additional signage will include the Smoking Prohibited within the 4 meter of the Venue and Please leave the venue quietly and consider the neighbors.

**7 NOISE**

The venue will have acoustic drapes installed across all the glass faced. These drapes will dampen the transfer of noise both within the venue, and externally to the neighbor's community.

No live music or entertainment will be hosted at the venue, further minimizing the transfer of noise.

Outdoor seating on Bowden Street will be provided and patrons will not be permitted to smoke within 4 meters of the venue, with appropriate signage displayed on the venue's door. Signage relating to leaving the venue quietly and considering neighbors will also be prominently displayed.

All reasonable measures will be taken to ensure that the venue does not impact adversely on the neighborhood.

Staff will be reasonable for asking patrons to leave the venue without disturbing the neighbors.

**8 SAFETY**

The premise is licensed restaurant/café, and as such it is not anticipated that there will be unruly behavior from patrons. The licensee/operators will take on board any recommendations from the relevant departments as a result of DA assessment.

The licensee shall install and maintain closed circuit TV cameras to provide surveillance of the interior/exterior of the restaurant and café as well as the entries and the vicinity of the premises immediately adjacent to the premises. Digital recording from the cameras shall be kept for 30 days and a copy shall be made available to the police or special inspector within 24 hours after receipt of a written request for access to them. Access shall be immediately granted to view the CCTV.

**9 AMENITY OF NEIGHBOURS**

- The licensee will take all reasonable measures to ensure that the behavior of staff and patrons when entering or leaving the licensed restaurant and café does not detrimentally affect the amenity of the neighborhood.



**ITEM 1 (continued)**

**ATTACHMENT 2**

6

- Staff are to monitor patrons particularly upon closure and provide a corrective advice to any patron acting in a manner that may disturb the quiet and good order of the neighborhood.
- The venue shall be conducted in such a manner as not to interfere with, or materially affect, the amenity of the neighborhood by reason of noise, vibration, smell, fumes, vapor, steam, soot, ash, dust, waste water, waste products, grit, oil, or otherwise.
- The licensee shall ensure that the immediate vicinity of the bar is kept clean and tidy.

**10 BEHAVIOUR OF PATRONS AND RESPONSIBLE SERVICE OF ALCOHOL**

The licensee shall take all reasonable steps to ensure that the licensed restaurant and café is exercised in accordance with the provision of the Liquor Act and any relevant Regulations; Policies for the responsible service of alcohol shall apply:

- One kitchen staff shall be available at all times to ensure operation of the kitchen during trading hours. Food will be served at all times during trading hours.
- All staff in the sale and supply of liquor and security personnel shall have completed and approved course in the Responsible Service of Alcohol.
- The licensee will maintain a register containing copies of the competency cards showing the satisfactory completion of the Responsible Service of Alcohol course undertaken by the licensee and all staff involved in the sale or supply of liquor or security. That register shall be made available for inspection requested by an NSW Police office or special inspector.
- The licensed restaurant staff required to have competency card must have that card on their person every single shift. Failure to produce a competency card for an office of the Office Liquor Gaming and Racing or the NSW Police Force will make you liable for a \$550 fine.
- The staff shall wear designated uniforms and tags and will not be allowed to drink on premises while on duty.
- The license shall not engage in any liquor promotion that is likely to promote irresponsible service of liquor. No shooters, slammers or bombs shall be sold or supplied on premises at any time. Full bottles of spirit will not be sold/supplied to patrons.
- The licensee will be active member of the 'local liquor accord'.
- The licensee shall take all reasonable steps to ensure that any person who is intoxicated shall be denied entry to the restaurant/café.
- The licensee will not permit intoxication or any indecent, violent or quarrelsome conduct by patrons in the restaurant/café. Any person causing such disturbance shall be refused service and asked to leave.

**11 SECURITY**

- For the purpose of the plan, the description, 'the vicinity of the premises' shall be the area immediately surrounding the entrance.
- The licensee shall install and maintain closed circuit TV cameras to provide surveillance of the interior of the restaurant/café as well as the entries and vicinity of the premises immediately adjacent to the premises,



**ITEM 1 (continued)**

**ATTACHMENT 2**

7

- Digital recording from the cameras shall be kept for 30 days and a copy shall be made available to the police or special inspector within 24 hours after receipt of a written request for access to them. Access shall be immediately granted to view the CCTV.
- Management will advise all the staff as the appropriate fire/emergency evacuation procedures.
- Advice to staff will be provided as to crowd management and control in emergencies.
- Adequate lighting in the premises will be maintained.
- It is not anticipated that there will be queuing outside the premises. For pre-booked gatherings, an indoor waiting area has been provided inside the venue. When the premises are at full capacity, big groups will be asked to leave.

**12 COMPLIANT HANDLING**

The licensee or manager shall ensure that details of the following are recorded in the venue's diary or incident register:

- Any incident involving violence or anti-social behavior occurring in the venue.
- Any person refused entry to, or turned out of the restaurant/café for being intoxicated, violent, quarrelsome or disorderly.
- Who smokes within an area of the venue that is a smoke-free area.
- Who uses, or has in his or her possession, while in the venue any substance suspected of being prohibited plant or prohibited drug, or
- Whose presence on the licensed premises renders the licensee liable to a penalty under the Liquor Act, eg: persons under the age of 18 years not in the company of a responsible adult.
- Any incident that result in a patron of the venue requiring medical assistance.
- Any incidents that occurred either in the venue or in the immediate vicinity which have involved the committing of a crime or required the intervention of staff.
- Any complaints made directly to the management or staff of the venue by residents or business people, about the operation of the venue or the behavior of its patrons, and
- Any visit by any NSW Police officers, OLGR special inspectors or Council officers noting their agencies or departments, reason for the visit and results of the visit.

The following details of complaints made to the restaurant/café are to be recorded in a diary incident register:

- Date and time of the incident that led to the complaint.
- Nature of the incident that led to the complaint.
- Address and contact details of the complainant.
- Any actions proposed to deal with the complaint, and the actions taken and the time and date when that was reported to the complainant.

Management is to provide a contact phone number on the venue's website and outside that residents or businesses can use to contact the licensee restaurant/café, in order to make a complaint. Any staff member answering such a call must do so in a polite, sympathetic, and courteous manner. Where possible, action shall be immediately taken to address any complaint so made, including follow-up action, such as returning the complainant's call to let the know what has done to address the concerns/complaints expressed.



**ITEM 1 (continued)**

**ATTACHMENT 2**

8

**13 DELIEVRY AND WASTE DISPOSAL**

All waste shall be stored in the designated garbage room for collection by Council designated collection operators.

This proposal promotes waste minimization with the following measures:

- Day to day waste shall be collected and stored within the tenancy. At the end of each day all waste shall be taken to the waste storage room behind the building, which will then be collected by Council collection operators.
- Waste separation facility: aluminum, steel, glass, plastics, food and organic waste.
- Recyclable waste will again be dispatched to the waste storage room on the ground level and will be segregated. Plastics, papers, etc. will be dispatched in the wheelie bins provided by Council.
- All works be carried out in accordance to AS4674. This will:
  - ✓ Ensure safe practices for storage, handling and collection of waste and recycling, and
  - ✓ Promote the principles of Ecological Sustainable Development through resource recovery and recycling leading to reduction in the consumption of finite natural resources; by encouraging recycling and maintaining allocated recycling bins for glass and paper.

**14 MAINTENANCE**

- The restaurant/café shall be kept in a clean and tidy condition and regularly maintained to the satisfaction of Council both internally and externally.
- The restaurant/café shall be cleaned daily before opening.
- The owner/manager will ensure that the entry and all areas of the premises are kept clean and free of litter at all times.
- All cleaning will be done using approved cleaning compounds, compliant with food and safety regulations.
- No garbage will be place on the street. The waste will be place inside the garbage room in bins and containers.

**15 REMOVAL OF LIQUOR PREMISES**

Liquor is not permitted to be removed from the restaurant/café.

**16 HARM MINIMIZATIONS**

The licensee and the venue employees will take all reasonable steps to prohibit any liquor promotion or activities that are likely to promote irresponsible service of alcohol. This is inclusive of such promotions or discounting of alcoholic drinks that could encourage the misuse or abuse (binge drinking or the excessive consumption) of liquor.

**ITEM 1 (continued)**

**ATTACHMENT 2**

9

The licensee will maintain a register, containing copies of certificates showing the satisfactory completion of Responsible Service of Alcohol courses undertaken by the venue personnel and security contractors and that register is to be made available for inspection on request from NSW police office or special inspector.

The licensee will, as a minimum, continually apply the house policies and practices on harm minimization and Responsible Service of Alcohol.

The house policy will be regularly updated to reflect any changes to legislations, industry standards and/or management policy. Liquor is available.

Low-Alcohol beer and non-alcoholic beverages will be available at all times when full strength liquor is available. The pricing structure of low-alcohol beverages will reflect the lower wholesale cost of those beverages.

Food shall be available whenever liquor is being consumed on the premises.

Coffee and tea will be available on request.

**17 FIRE AND SAFETY MEASURES**

The licensee shall ensure that all essential services installed in the restaurant/café and the CCTV systems are certified annually and shall ensure that they remain in good working order. In the event of any malfunctioning of any essential services or the CCTV system, the licensee shall ensure that it is rectified as quickly as is reasonably possible. A list of the telephone numbers of all relevant emergency agencies shall be kept near all telephones. All managers and other permanent staff shall be made aware of fire safety requirements and the procedures to be followed in the event of any emergency at the restaurant/café.

**18 DISABLED ACCESS**

The restaurant/café provided disabled access facilities within the premises.

**19 PUBLIC TRANSPORT**

Patrons can be advised if requested that there is public transport located on Bowden Street and the closest train stations being Meadowbank rail station on the main northern line.

ITEM 1 (continued)

ATTACHMENT 3



Ryde City Council  
TSO Assessment

By Email Letter: [mthomas@ryde.nsw.gov.au](mailto:mthomas@ryde.nsw.gov.au)

Dear Planning

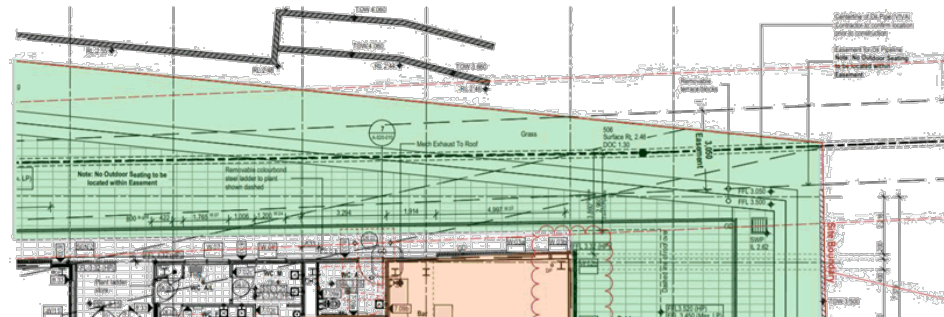
**LDA2020/0435 ("Application") Change of use and fitout to licensed restaurant and café with associated signage**

**Location: 120-122 Bowden St, Ryde ("Property")**

Viva Energy objects to fitout of the licensed restaurant and café submitted with application LDA2020/0435 for the property. However, we have no objection to the use of the property as a licensed restaurant and café.

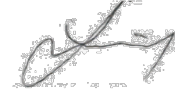
As per Australian Standard AS2885 Pipelines – Gas and Liquid Petroleum, a Safety Management Study (SMS) was completed by Viva Energy in consultation with and attendance by the property owner on 15/3/2019.

As per the architectural drawings submitted by the applicant (page 6) for LDA 2020/0435 that were included as part of the SMS there was to be no seating on the easement and also no awnings, structures or construction over the easement.



Registered easement on the property (AP602752), restricts any structure whether permanent or temporary from being placed on the easement unless approval is granted by the grantee. Viva Energy as the Grantee has given no such approval and subsequently objects to the application LDA 2020/0435 which contradicts the SMS and easement agreement. Placing the integrity of the pipeline at risk.

Yours Sincerely



Linda Busbridge  
Commercial Lead  
Viva Energy Australia Pty Ltd

Viva Energy Australia Pty Ltd – ABN 46 004 610 459

Viva Energy Australia, Level 16, 720 Bourke Street, Docklands, VIC 3008 T +61 3 8823 4444 [vivaenergy.com.au](http://vivaenergy.com.au)