

Section 4.55(1A) PLANNING STATEMENT



Modification Application LDA2023/0137

127-131 Bowden Street Meadowbank
Lot 2 DP577650 and Lots 6 and 7 DP14964



March 2024

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1. Introduction

This Planning Statement is prepared in support of a Section 4.55(1A) an application to Ryde City Council.

The application proposes to modify Development Consent LDA2023/0137, issued on 13 December 2023 for “Change of use of the existing first floor level commercial space to an indoor recreation (Gym), operating 24 hours a day, 7 days a week and associated signage.”

The subject application is minor in nature, being a modification involving minor environmental impact, pursuant to S4.55(1A) of the *Environmental Planning and Assessment Act, 1979*. It is proposed to modify conditions 1 and 1(a) of the consent to facilitate a single business identification sign on the front façade of the building.

This purpose of this planning statement is to:

- describe the proposed modification;
- review the applicable environmental planning instruments and likely impacts; and
- satisfy the statutory requirements of Section 4.55.

This planning statement demonstrates that the modification results in substantially the same development for which consent was originally granted and does not result in any unreasonable environmental impacts over and above that which were originally approved. The application satisfies all relevant statutory requirements and is therefore recommended for approval.

2. Site and Surroundings

The land is described as Lot 2 DP577650 and Lots 6 and 7 DP14964 (No. 127-131) Bowden Street Meadowbank. The land contains a two-storey commercial building with undercroft parking. The building is currently vacant. The building is set back some 10 metres from the Bowden Street frontage, and approximately 1 metre from the side boundary to Underdale Lane.

Residential apartment buildings are located adjacent to the northern and western boundaries of the site. Residential apartments are also located on the eastern side of Bowden Street (south of Nancarrow Avenue) and southern side of Underdale Lane. Commercial/industrial premises are located on the eastern side of Bowden Street (north of Nancarrow Avenue).

Figure 1: Satellite Image Source: NSW SIX Maps



Figure 2: 127-131 Bowden Street Meadowbank (Subject Site)



3. Approved Development

Development Consent No LDA2023/0137 was issued on 13 December 2023 for:

“Change of use of the existing first floor level commercial space to an indoor recreation (Gym), operating 24 hours a day, 7 days week and associated signage.”

4. Proposed Modification

4.1 Proposed Modification S4.55(1A)

It is proposed to affix an illuminated business identification sign to the front façade of the building, with dimensions of 1.2 x 12 metres.

(i) It is proposed to amend Condition 1 as shown in red text in the following table:

Document Description	Date	Plan No/Reference
Architectural Plans		
Proposed Plan Level 1, prepared by Exist Architects	29/05/23	TP03 (Rev 2)
Car parking shown on the: Existing Conditions Ground Floor, prepared by A Three Design Management	12/05/23	TP01 (Rev 1)
Signage Details, prepared by Bankstown Signarama	February 2024	SF001
Specialist Reports		
Acoustical Report, prepared by Koikas Acoustics Pty Ltd	4th September 2023	Project No. 5839
Traffic and Parking Assessment, prepared by Transport and Traffic Planning Associates	October 2023	Ref: 23094
Site Specific Noise Management Plan, prepared by Snap Fitness 24/7	12/05/2023	127-131 Bowden Street, Meadowbank
Plan of Management, prepared by Snap Fitness 24/7	12/05/2023	127-131 Bowden Street, Meadowbank

(ii) It is proposed to delete Condition 1(a) and replace with the following condition:

“1(a) Signage is limited to one illuminated sign on the Bowden Street façade of the building with maximum dimensions of 1.2m high and 12m wide. Illumination is to be internal to the sign only and is to be dimmable to achieve minimal light disturbance to nearby residential buildings. No other signage is permitted.”

4.2 Justification

It is understood that Condition 1(a) was applied to the consent as the requirements in Section 9.1 of the Ryde DCP limit the size of flush wall signs to 5m².

It is submitted that a merit assessment of the site and the surroundings would support a larger sign as proposed. A number of facts are relevant to underpin the merit assessment as follows:

- The site is located centrally within the MU1 Mixed Use zone;
- The building is a purpose-designed commercial building;
- The building is set back some 10 metres from the Bowden Street frontage;
- There are a number of other commercial and industrial properties within the immediate locality; and
- There are three street-lights around the intersection of Bowden Street and Nancarrow Avenue.

The objectives of the MU1 Mixed Use zone are:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*
- *To promote strong links between Macquarie University and research institutions and businesses in the Macquarie Park corridor.*

It is apparent that the objectives are highly biased towards commercial development. Indeed, only one of the six objectives can be related to the relationship between commercial development and residential use, ie to minimise conflict between land uses within the zone.

It is submitted that provision of a well-designed, illuminated business identification sign as proposed will satisfy all of the relevant objectives of the zone.

Clause 3.2.2 of Section 9.1 of the Ryde DCP sets out the maximum extent of signage permitted in Business zones. The zone was converted by the standard instrument from B4 Business. The DCP has no criteria for mixed use zones, therefore it is appropriate to apply the business zone requirements of the DCP. The following applies to two or more storey buildings in business zones:

- a. Maximum Sign Area – The total area of signs to be erected on a building (this includes all elevations) should not exceed 1.5 m² per 1 metre of frontage of the property to the street.*

Assessment: The property has a frontage to Bowden Street of some 48 metres. Therefore the maximum sign area is 72m². The proposed business identification sign is 14.4m² which is only 20% of the maximum permissible, and is therefore compliant.

- b. Front Elevation – All signage above the ground floor or awning level of a building must relate to the activity or use of the building at the first floor level. The maximum area of signs above the ground floor or awning level on the front elevation should not exceed 15% of the area of the elevation situated at that level.*

Assessment: The business identification sign is to be located on the first floor of the building, which is the same level to be used for the business. The first floor elevation is approximately 141m². At 14.4m², the proposed business identification sign comprises an area of only 10% of the relevant façade area and is compliant.

The assessment criteria for signs are set out in clause

- c. Side and Rear Elevations – The maximum area of signs on side or rear walls should not exceed 15% of the area of each elevation visible from a public place. Where there is a break in any elevation the maximum coverage should apply to each part of that elevation.*

Assessment: No other signs are proposed. Therefore, the proposal is compliant.

Clause 4.0 of the DCP sets out definitions and requirements for different signage. A flush wall sign is a sign attached or painted on the wall of a building and projecting horizontally no more than 300mm. The maximum area is specified as 5 square metres. This is in conflict with the much larger sign area permitted in business zones in Clause 3.2.2.

To compound the conflicts within the DCP, it is noted that a number of sign types in the table to clause 4.0 are not limited to a maximum area.

The assessment criteria are listed in clause 5 of the DCP. The criteria are reproduced below with commentary relating to the proposed business identification sign.

5.1 Character of the Area

- 1. Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?*

Assessment: The area is zoned MU1 Mixed Use. The land use in the immediate vicinity reflects this zone with a mix of residential flat buildings, industrial and commercial development. It is considered that the proposed business identification sign would be compatible with both the existing and desired future character of the locality

- 2. Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?*

Assessment: It is unknown whether the Council has a particular theme for advertising in this locality. However, the sign is consistent with the DCP requirements for Business zones.

5.2 Special Areas

- 1. Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?*

Assessment: No. None of these areas are located in proximity to the site.

5.3 Views and Vistas

- 1. Does the proposal obscure or compromise important views?*

Assessment: No. The business identification sign is simply affixed to the façade of the existing building.

- 2. Does the proposal dominate the skyline and reduce the quality of vistas?*

Assessment: No. It does not intrude into the skyline.

3. Does the proposal respect the viewing rights of other advertisers?

Assessment: Yes. No other advertisers are affected. The proposal is for a business identification sign only.

5.4 Streetscape, Setting or Landscape

1. Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?

Assessment: It considered that the sign is an appropriate scale and form in the setting and streetscape. This demonstrated in Figure 3 below.

Figure 3: Photomontage

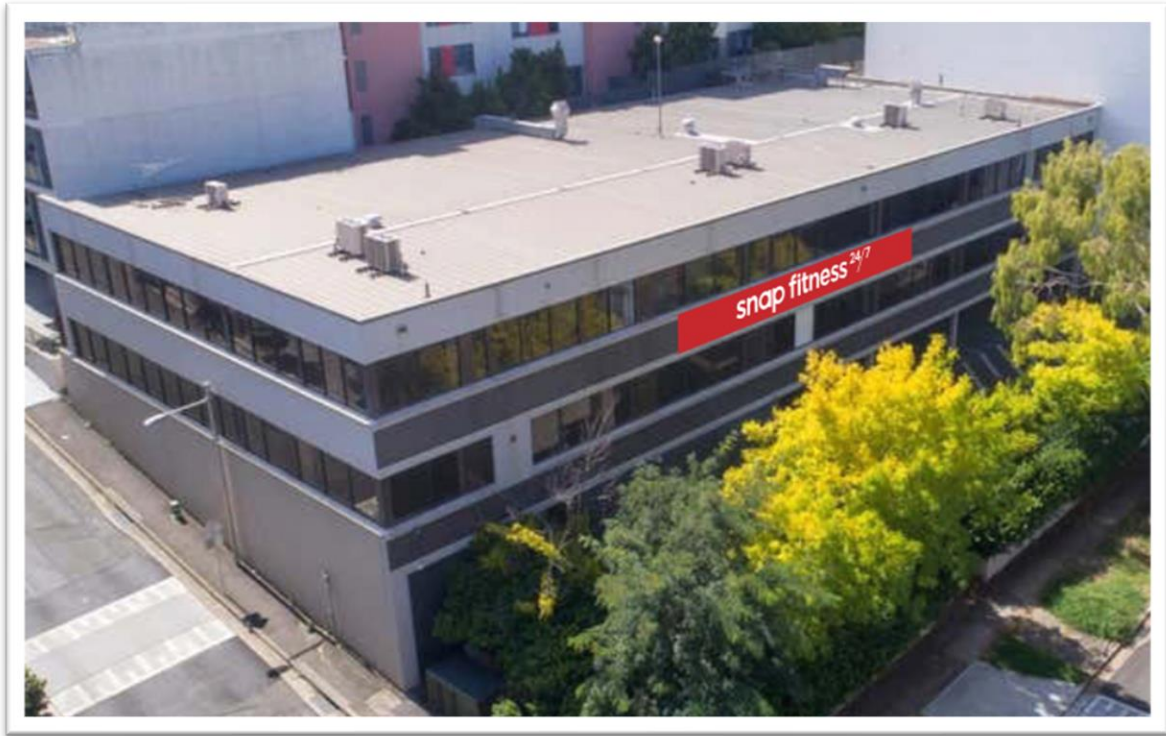


Figure 4, and the following figures showing surrounding development demonstrate that the proposed business identification sign is acceptable in terms of scale in form.

It can be clearly seen in Figure 8 that the building on the subject site is set back a further 5 metres than the adjoining building to the north and is separated by a blank wall.

Figure 4: View from Bowden Street

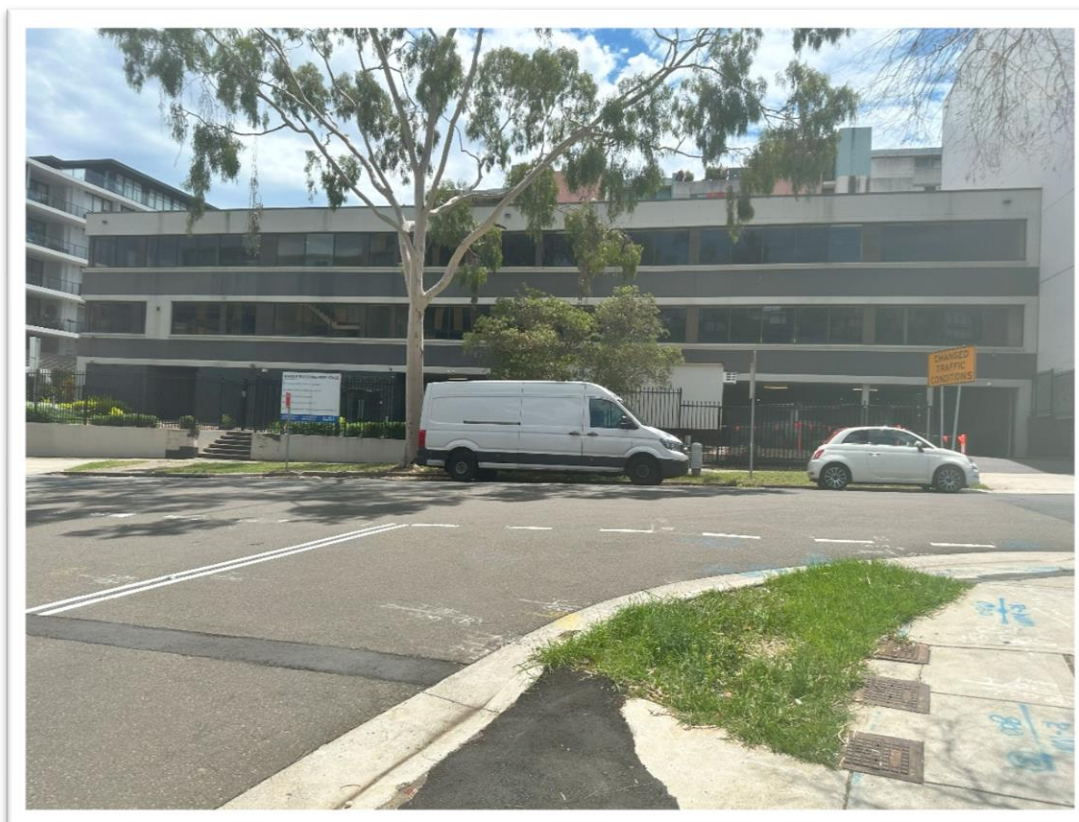


Figure 5: View to north-east from subject site

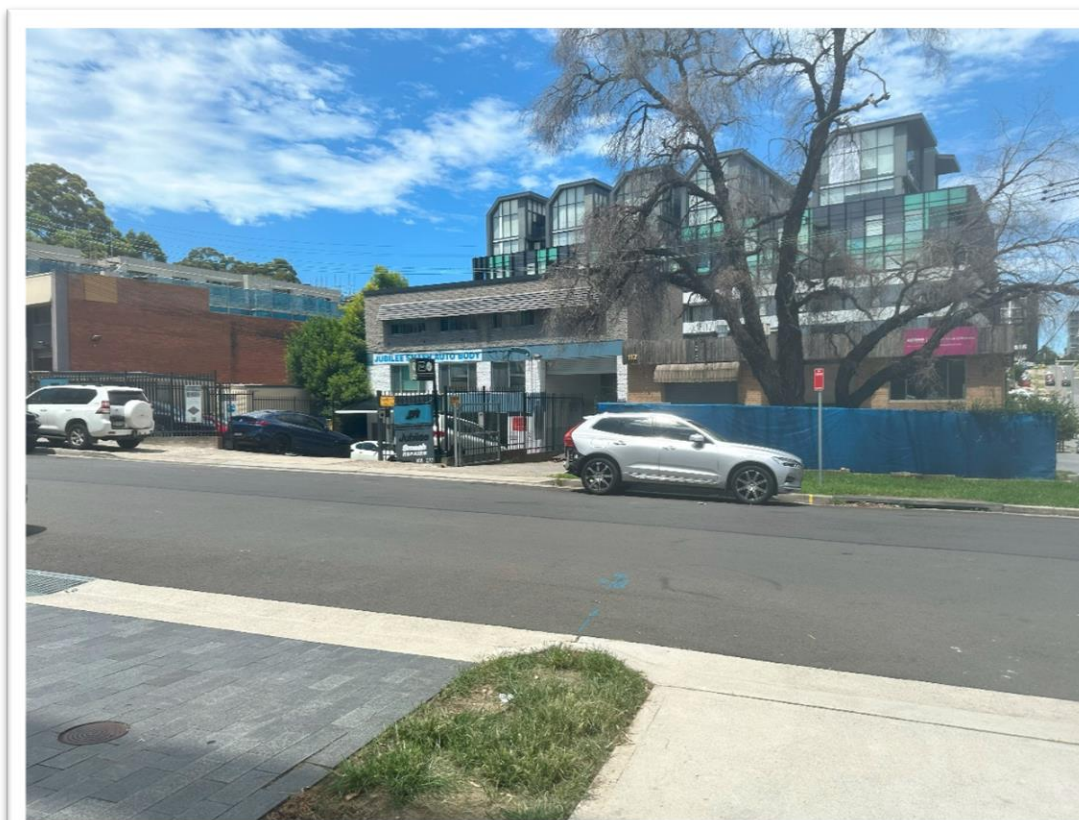


Figure 6: View east from subject site along Nancarrow Avenue



Figure 7: View south along Bowden Street, with subject site in right foreground.



Figure 8: View along Bowden Street, with subject site to left and residential flat buildings to the north of the subject site



2. *Does the proposal contribute to the visual interest of the streetscape, setting or landscape?*

Assessment: In my view, the proposed business identification sign will contribute to the visual interest of the streetscape.

3. *Does the proposal reduce clutter by rationalising and simplifying existing advertising?*

Assessment: Yes. This is a large building and only one sign is proposed.

5.5 Site and Building

1. *Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?*

Assessment: Yes. The sign represents only 14.4% of the available first floor façade. The length of the sign is approximately 25% of the building facade and lot frontage. It is concluded that the size of the proposed business identification sign is compatible with the scale, proportion and other characteristics of the site and the building.

2. *Does the proposal respect important features of the site or building, or both?*

Assessment: There are no identified important features. Notwithstanding, the proposed business identification sign is designed to integrate with the architectural style of the building.

3. *Does the proposal show innovation and imagination in its relationship to the site or building, or both?*

Assessment: Yes, refer to comment above.

5.6 Associated Devices and Logos with Signage and Advertising Structures

1. *Have any safety devices, platforms, lighting devices or logos been designed as an integral part*

of the signage or structure on which it is to be displayed?

Assessment: There are no such platforms or devices.

5.7 Illumination

1. Would illumination result in unacceptable glare?

Assessment: No. The business identification sign is illuminated from within the light box and is controlled by a dimmer. The sign is located on the façade of the building which is set back some 10 metres from the Bowden Street frontage of the site. The purpose of the sign is to identify the business from the street. It is not required to be visible from other locations and therefore will produce a low light level without glare.

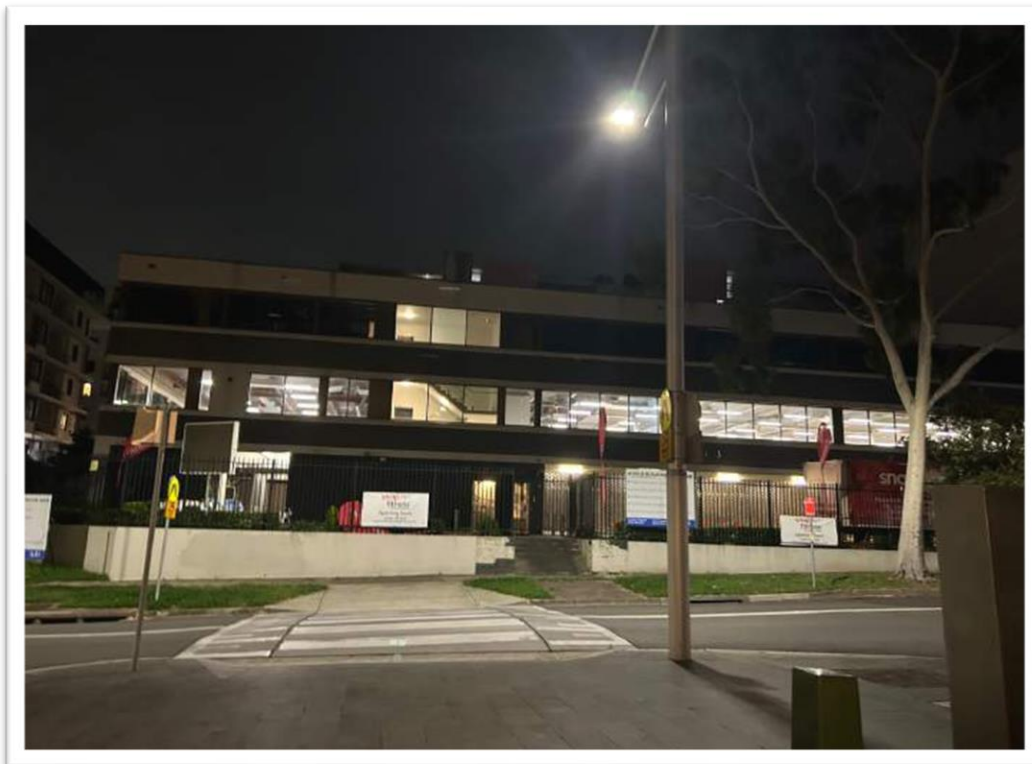
2. Would illumination affect safety for pedestrians, vehicles or aircraft?

Assessment: No.

3. Would illumination detract from the amenity of any residence or other form of accommodation?

Assessment: No. The nearest residence with visual connection to the sign is located a distance of some 38 metres from the sign. It is noted that intersection of Bowden Street and Nancarrow Avenue (and the adjacent pedestrian crossing has three street lights), which in combination, create a highly illuminated environment which is in close proximity to the subject sign. Image 7 below clearly demonstrates that illumination of the proposed business identification sign would have minimal impacts on night time light levels.

Figure 7: Night Image – View of subject premises from eastern side of Bowden Street



Included with this application is a report which measures the lux level of other light sources in the immediate vicinity. This report clearly demonstrates that there is a high level of lighting already existing in the locality. In my opinion the proposed illumination will not detract from the amenity of any residence in the immediate locality.

4. *Can the intensity of the illumination be adjusted, if necessary?*

Assessment: Yes. Included with this application is a letter from the sign manufacturer confirming that the illumination will be controlled by a dimmer so that any lux level can be achieved. In this regard, Council may wish to include a condition which specifies the maximum lux level.

5. *Is the illumination subject to a curfew?*

Assessment: This not proposed. It is considered unnecessary due to the existing high light levels in the immediate vicinity of the site.

5. Statutory Planning Framework

5.1 Section 4.55(1A) Modification

Section 4.55(1A) of the EP&A Act permits modifications to a development consent involving minimal environmental impact.

*(1A) **Modifications involving minimal environmental impact** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

In response to (a), Council can be satisfied that the potential environmental impacts of the proposed modifications are minimal. The proposed modifications do not involve any change to the approved development-other than the inclusion of an illuminated business identification sign. It is therefore appropriate to characterise the proposed modification as having minimal environmental impact.

In response to (b), the focus of the 'substantially the same' test is on how the 'development' as modified relates to the development as originally approved (see *Scrap Realty v Botany Bay City Council* [2008] NSWLEC 333 at [16]).

To satisfy the test, the modified development is required to be 'essentially' or 'materially' the same essence as the approved development (see *Moto Developments (No 2) v North Sydney Council* [1999] NSWLEC 280 at [55]; *Vacik v Penrith City Council* [1992] NSWLEC 8).

To identify if the proposal as modified is 'essentially' or 'materially' the same, a qualitative and quantitative comparative analysis (see *Davi Development v Leichardt Council* [2007] NSWLEC 106) of the development elements (not the circumstances of the giving of the

development consent) or the resulting impacts is to be undertaken (see *Arrage v Inner West Council* [2019] NSWLEC 85 at [24]-[29]).

It should be noted that even if elements of the modifications are significant in their own way, the proposed modified development may still be substantially the same (see *Tyagrah Holdings v Byron Bay Shire Council* [2008] NSWLEC 1420 at [12]).

Accordingly, it is our opinion that the proposed modification to the approved development is not considered to change the essential features of the approved development. The proposed modification constitutes substantially the same development space and there is no change in the use or operation of the premises.

5.2 Section 4.55(3) Matters for Consideration

Section 4.55(3) provides:

“In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.”

5.3 Reasons for Grant of Consent

There are no published reasons for the grant of consent. However, it appears that the reason was to comply with the Development Control Plan definition of flush wall sign.

In my submission, one can take a broader view of Chapter 9 of the DCP, rather than simply focusing on the flush wall sign definition. When the objectives of the controls and the specific circumstances of the site are taken into account (as detailed in this submission), it is open to Council to form a different view.

5.4 Section 4.15(1)(a)(i) – Environmental Planning Instruments

The following environmental planning instruments apply to the modification.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 – Advertising and signage applies to the modification. Pursuant to clause 3.2 the sign is a “business identification sign”, which is defined in the Standard Instrument as:

business identification sign means a sign—

(a) that indicates—

- (i) the name of the person or business, and
- (ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and

(b) that may include the address of the premises or place and a logo or other symbol that identifies the business, but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

Clause 3.6 of the SEPP provides:

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied—

(a) *that the signage is consistent with the objectives of this Chapter as set out in section 3.1(1)(a), and*

(b) *that the signage the subject of the application satisfies the assessment criteria specified in Schedule 5.*

It is submitted that the proposal satisfies the objectives of Chapter 3 of the SEPP. The assessment criteria from Schedule 5 are almost identical to those contained within the Council's DCP. Those matters are assessed in detail in Section 4.2 of this planning statement.

It is concluded that the proposal satisfies the relevant requirements of the SEPP.

Ryde Local Environmental Plan 2014

The proposal is consistent with the provisions of Ryde Local Environmental Plan 2014.

5.5 Section 4.15(1)(a)(ii) – Draft Environmental Planning Instruments

There are no draft environmental planning instruments.

5.6 Section 4.15(1)(a)(iii) – Development Control Plan

The City of Ryde Development Control Plan applies to the development. The relevant chapter for this application is Chapter 9 – Signage. A detailed review of the provisions of this chapter is contained within the preceding “Justification” section of this report.

It is considered that the proposal satisfies the objectives of the signage chapter of the DCP and has been assessed against the criteria contained in Chapter 9. The Objectives are reproduced below with comments relating to the proposal:

1. *To provide guidelines for the erection and display of signage and advertising structures.*

Comment: The DCP provides various guidelines.

2. *To maintain a balance between the established built form and character of the streetscape and commercial need to advertise goods and services.*

Comment: The proposal is for a business identification sign which identifies a local gym, which will largely patronised by residents in the locality. It is considered that the proposed sign will add to the existing streetscape and character in a positive way.

3. *To ensure that signage and advertising structures erected or displayed do not intrude into and detrimentally affect the visual amenity of the area.*

Comment: As detailed in the assessment, it is considered that the proposed sign will not intrude into or detrimentally affect the visual amenity of the area.

4. *To ensure that signage and advertising structures erected or displayed are compatible with the architectural style and size of the building and are compatible with the adjoining built environment.*

Comment: As detailed in the assessment, it is considered that the proposed business identification sign makes a positive contribution to the architectural style and size of the building, and is compatible with the adjoining built environment.

5. *To prevent visual clutter through the proliferation of signage and advertising structures by encouraging fewer more effective signs.*

Comment: The proposal is for a single and effective business identification sign.

6. *To ensure that signage does not disrupt vehicular or pedestrian flows.*

Comment: The proposed sign will not interrupt vehicular or pedestrian flows.

7. *To ensure the distinctive urban character and amenity of the City of Ryde is maintained.*

Comment: It is considered that the proposed business identification sign is an appropriate response to the urban character and amenity of the City.

Table 2 of the Ryde Community Participation Plan indicates that written notification is required for s4.55(1A) modifications.

5.7 Section 4.15(1)(a)(iia) – Planning Agreements

There are no planning agreements in place or proposed in respect of the development.

5.8 Section 4.15(1)(a)(iv) – Matters Prescribed by the Regulations

Clause 100 (1) of the Environmental Planning Assessment Regulation, 2021 sets out the requirements for the content of an application for modification. The following responses are provided:

- (a) The applicant is Montgomery Planning Solutions, PO Box 4250 Shellharbour NSW 2529.
- (b) The development is described as “Change of use of the existing first floor level commercial space to an indoor recreation (Gym), operating 24 hours a day, 7 days a week and associated signage.”
- (c) The land on which the development will be carried out is known as 127-131 Bowden Street Meadowbank. The legal description is Lot 2 DP577650 and Lots 6 and 7 DP14964.
- (d) The modification proposes to erect an illuminated business identification sign. The required details are contained within paragraph 4.1 of this planning statement.
- (e) The modification is intended to have another effect specified in the application:
- (f) The impacts of the modification are expected to be minor, as detailed in this planning statement.
- (g) The modified development will remain substantially the same as the development originally approved.
- (h) Not relevant to the application.
- (i) The consent of the owner is attached to this application.
- (j) The modification is not made to the Court or the consent authority under section 4.56 of the Act.

5.9 Section 4.15(1)(b) – Likely Impacts of the Development

The proposal will not result in adverse impacts upon the natural or built environment. As detailed in this planning statement, the provision of an illuminated business identification sign is unlikely to create any adverse impacts in terms of nearby residents. The sign is designed to complement and integrate with the architectural style of the building and the use of the building will remain as approved. The modification will not result in additional adverse impacts in relation to overshadowing, noise, traffic impacts or view loss.

The proposed modification will have no adverse social and economic impacts given the approved development will remain as approved.

5.10. Section 4.15(1)(c) – Suitability of the Site

The suitability for the site for the development was established by the granting of the original development consent. With the proposed modification, the approved development still complies with the relevant provisions contained within the various applicable SEPPs, LEP, and DCP. Furthermore, the proposed modification does not generate any additional impacts beyond those approved.

5.11. Section 4.15(1)(e) – Public Interest

Pursuant to case law of *Ex Gratia P/L v Dungog Council* ([2005] NSWLEC 148), the question that needs to be answered is “Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development?”

Given the nature of the modification, it is our opinion that there would be no public interest issues that would arise that would reasonably prevent approval to the application being issued.

6. Conclusion

This planning statement demonstrates that the modification results in substantially the same development for which consent was originally granted and does not result in any unreasonable environmental impacts over and above that which were originally approved.

The application satisfies all relevant statutory requirements and is therefore recommended for approval.

