



31 August 2018

**Independent Planning Commission Statement of Reasons
Modification 3 to Concept Approval Stage A, Shepherds Bay (MP 09_0216 MOD3)**

1. INTRODUCTION

The Independent Planning Commission

1. The Independent Planning Commission of New South Wales (the **Commission**) is a New South Wales Government agency, established under section 2.7 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. The Commission is not subject to the direction or control of the Minister for Planning (the **Minister**), except in relation to the procedure of the Commission and any directions authorised to be given to the Commission under the EP&A Act.
2. The members of the Commission are appointed by the Minister. Each member of the Commission has expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, soil or agricultural science, hydro-geology, mining or petroleum development, traffic and transport, law, engineering, tourism, or government and public administration. One member of the Commission is appointed as the chairperson. At present, the chairperson of the Commission is Professor Mary O’Kane.
3. The functions of the Commission are set out in section 2.9 of the EP&A Act. These functions include to:
 - determine State significant development applications where there is significant opposition from the community;
 - conduct public hearings for development applications and other planning and development matters where requested to do so by the Minister or the Greater Sydney Commission; and
 - provide independent expert advice on any planning and development matter, when requested by the Minister or Secretary of the Department of Planning and Environment (the **Department**).

Reason for determination by the Commission

4. Rothesay Avenue Developments Pty Limited (the **proponent**) seeks to modify the approved Shepherd’s Bay Foreshore, Meadowbank and Ryde Concept Plan (the **Concept Plan**) at Shepherds Bay Foreshore, Meadowbank and Ryde in the Ryde Local Government Area.
5. The Commission will determine the proponent’s modification application in accordance with the Minister’s delegation dated 14 September 2011. This is because:
 - The project was classified as a major project under Part 3A of the EP&A Act because it constituted development for the purpose of a residential, commercial or retail project under the former provisions of clause 13 of Schedule 1 of the *State*

Environmental Planning Policy (Major Development) 2005 and has a capital investment value over \$100 million. It is a transitional Part 3A project under Schedule 2 of the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. The ability to modify transitional Part 3A projects under section 75W of the EP&A Act is being discontinued; however, as the request for this modification application was made before 1 March 2018, the provisions of Schedule 2 continue to apply; and

- the Department received more than 25 submissions from the public objecting to the modification application and a submission from Ryde City Council (Council) objecting to the modification application.
6. Professor Mary O’Kane, - as chairperson of the Commission, nominated Mr Gordon Kirkby (Chair), Professor Richard Mackay, AM and Ms Ilona Millar to constitute the Commission to determine the proponent’s modification application.

1.1 Site and Locality

7. The Concept Plan comprises nine stages. Stage A of the Concept Plan is located approximately 10km east of the Parramatta CBD and 14km north-west of the Sydney CBD. Stage A is located at 155-157 Church Street, Ryde.
8. The site that is the subject of the modification application has a total area of approximately 3,906m², with street frontages to Church Street, Well Street, Parsonage Street and The Loop Road. The site comprises five separate allotments, Lots 13, 14 & 15 DP 738232, Lot 7 DP 809282, and Lot 100 DP 851723 and is zoned B4 Mixed Use pursuant to the Ryde Local Environmental Plan 2014.

Figure 1 – Site context



Source: Department of Planning and Environment’s Assessment Report

1.2 Background to Modification Application and Project approval history

8. The Concept Plan was submitted by the proponent to the Department and was approved by the then New South Wales Planning Assessment Commission, subject to conditions, on 6 March 2013. The Concept Plan was modified on two occasions, with the then New South Wales Planning Assessment Commission approving the modifications, with amendments on 16 October 2014 and 16 January 2016 respectively.
9. Development consents were issued by the Joint Regional Planning Panel for stages 2 and 3 (20 October 2015), Stages 4 and 5 (18 September 2015), 6 and 7 (15 December 2015), and Stages 8 and 9 (15 December 2015).
10. An outline of approval and modification processes for the Meadowbank Employment Area is provided in section 1.3 of the Department's assessment report.

1.3 Summary of the Modification Application

11. The modification application before the Commission for determination proposes to amend the Concept Plan to:
 - increase the commercial, retail or community use gross floor area (**GFA**) by 1,300m²; and
 - introduce 42 serviced apartments as an allowable commercial use for Stage A. (the **modification application**)

This represents a reduction in scale from the modification originally sought by the proponent (see Section 2 below).

1.4 Need for Project

12. The modification application identified that the, *“inclusion of serviced apartments as an additional land use remains part of the preferred project. It is a logical land use given the high degree of amenity in the immediate vicinity of Stage A, and the site's proximity to related land uses such as commercial premises' in Macquarie Park.”*

2. THE DEPARTMENT'S CONSIDERATION OF THE MODIFICATION APPLICATION

13. On 8 December 2017, the Department received the modification application and associated environmental impact assessment (**EIS**) from the proponent. The modification application set out the justification for the request and provided an assessment of the likely impacts associated with amending the approved building envelope and allowable commercial uses.
14. The modification application, as originally submitted, sought approval for the following:
 - increase the height of the building envelope from 10 to 15 storeys;
 - Increase the gross floor area by 3,000m²; and,
 - Introduce serviced apartments as a use to the site.
15. The Department publicly exhibited the EIS from 7 February 2018 until 8 March 2018. The Department received a total of 217 submissions during the exhibition period, including five from public authorities, 197 public submissions in the form of objections and 15 public submission in support of the modification application.
16. A breakdown of the matters raised and the percentage of submissions attributed to these matters is provided in Table 1.

Table 1 – Issues raised in community submissions

Issue	Proportion of submissions of objection
Objections	
Adverse traffic and parking impact	70%
Inappropriate height and scale / out of character	45%
The Commission's decision is still valid and should be final	38%
Adverse impact on social infrastructure	36%
Overdevelopment / adverse increase in density	31%
Serviced apartments are residential accommodation and therefore exceed the dwelling cap	25%
Insufficient open space	24%
Sets a development precedent	23%
Insufficient public benefit	16%
Overshadowing of surrounding dwellings and Parramatta foreshore	11%
Adverse environmental impact	10%

Source: Department of Planning and Environment's Assessment Report

17. In response to the submissions made in respect of the modification application, the proponent lodged a Response to Submissions (**RtS**) report on 21 May 2018. The RtS included a Preferred Project Report, dated 14 May 2018, which amended the Stage A modification. The revised project amended the modification application by reducing the:
- height of the building envelope by five stories (from 15 to 10), such that the building would remain at the currently approved height;
 - requested additional ground floor area by 1700m² (from 3,000 m² to 1,300 m²); and
 - indicative number of serviced apartments by 40 (from 82 to 42 serviced apartments).
18. The RtS, including the Preferred Project Report, was made publicly available on the Department's website and was provided to key government authorities for comment. Submissions from Ryde City Council, the Heritage Council and Transport for NSW supported the reduction of the building height, with Ryde City Council reiterating its comments regarding financial viability of the development being used to justify the modification of height controls established in the Concept Plan, the inclusion of serviced apartments and traffic generation from its previous submission.
19. The Department proceeded to prepare an assessment report, dated 12 July 2018, in respect of the modification application, as amended by the Preferred Project Report (the **Department's assessment report**).

Statutory Context

20. The Department's assessment report identified that the modification application was made before 1 March 2018, allowing the provisions of Schedule 2 (clause 3) (Savings, Transitional and Other Provisions) to apply. Consequently, the Department's assessment report was prepared in accordance with the requirements of Part 3A and associated regulations, and the consent authority may approve or disapprove the carrying out of the project under section 75W of the EP&A Act.
21. The Department's assessment report considered the ability of the Department, or other approval authority, to modify the Concept Plan. The Department assessment report stated that:
- "Section 75W provides for the modification the Minister's approval including revoking or varying a condition of the approval or imposing an additional condition on the approval. The Minister's approval for a modification is not required if the project as modified will be*

consistent with the existing approval. However, in this instance the proposal seeks to introduce a new use on the site, increase non-residential GFA and modify specific requirements of the approval and therefore requires further assessment and approval"

22. The Department's assessment report also stated that:

"The Department is satisfied the proposed modification are within the scope of section 75W of the EP&A Act, and the proposal does not constitute a new application."

The Department's assessment report for the modification application

23. The Department's assessment report identified car parking and traffic impacts and the inclusion of serviced apartments and the associated changes to GFA as the key assessment issues for this modification. Broadly, the report concludes that the Department:

- *"supports the introduction of service apartment use to the site and the associated increase of 1300 m² GFA is minor in nature and would not have adverse amenity impacts"; and finds*
- *"[t]he modification results in a reduction in traffic generation when compared to the original approval. Car parking would be provided in accordance with the site-wide car parking limit."*

24. The Department identified that is it *"also satisfied the proposal would not have an adverse impact on social infrastructure, provides for sufficient open space and the approved public benefits remain appropriate and proportionate."*

3. THE COMMISSION'S MEETINGS

25. As part of its assessment, the Commission met with the Department, the proponent, Ryde City Council, and conducted a public meeting. Transcripts of each of these meetings are available on the Commission's website.

26. On 16 August 2018, the Commission independently inspected the Stage A project site to become familiar with the locality and adjacent land uses.

3.1 Meeting with the Department

27. On 16 August 2018, the Department met with the Commission to discuss the modification application. Matters discussed at the meeting included the Department's assessment report, traffic impacts and the inclusion of serviced apartments in the Concept Plan.

3.2 Meeting with City of Ryde Council

28. On 16 August 2018, the Commission met with City of Ryde Council to discuss the modification application. Matters discussed at the meeting included the Department's assessment report, traffic impacts and the inclusion of serviced apartments in the Concept Plan, particularly Council's concern that once approved as serviced apartments, they remain as that use and not convert to residential accommodation.

3.3 Meeting with the Proponent

29. On 17 August 2018, the Commission met with the proponent to discuss the modification application. Matters discussed at the meeting included the history of the Concept Plan, the modification application and community concerns raised at the public meeting, including traffic impacts, road safety, the location of the community centre and the inclusion of serviced apartments in the Concept Plan.

3.4 Public Meeting

30. On 16 August 2018, the Commission held a public meeting at Club Ryde, 728 Victoria Road, Ryde to hear the public's views on the modification application. The Commission received requests to speak from three people, with all registered speakers electing to speak at the meeting. Two unregistered speakers were provided the opportunity to speak on the day of the meeting. A list of speakers and the transcript from the public meeting are available on the Commission's website. Written comments from speakers who presented at the public meeting and comments received by the Commission after the public meeting are also available on the Commission's website. A transcript of the public meeting is available to view on the Commission's website.
31. An opportunity to lodge written comments was afforded until seven days following the public meeting. The Commission received nine written comments. All comments are available on the Commission's website.

4. THE COMMISSION'S CONSIDERATION

Material Considered by the Commission

32. In determining this application, the Commission has carefully considered the following material (the **Material**):
- the modification application;
 - the *Request to Modify a Major Project or Concept Project*, dated 8 December 2017;
 - *Environmental Assessment Modification 3 to Concept Approval MP09_216 Stage A, Shepherds Bay*, including all appendices, dated 8 December 2017;
 - the Department's assessment report for *Major Project Assessment: Concept Plan and Stage 1 Project Application at the Shepherd's Bay Foreshore, Meadowbank and Ryde (MP09_0216 and MP09_0219)*, including all appendices, dated 7 December 2012;
 - the Planning Assessment Commission's determination report for *Concept Plan and Project Application for Stage 1 for Mixed use Development at Shepherds Bay, Meadowbank (MP09_0216 and MP09_0219)*, including all appendices dated 6 March 2013;
 - the Department's assessment report for *Modification Request: Concept plan and Stage 1 Project Application at Shepherds Bay Foreshore, Meadowbank and Ryde MP09_0216 MOD1 and MP09_0219 MOD1*, including all appendices, dated 14 August 2014;
 - the Planning Assessment Commission's determination report for *Modification Request: Concept plan and Stage 1 Project Application at Shepherds Bay Foreshore, Meadowbank and Ryde MP09_0216 MOD1 and MP09_0219 MOD1*, including all appendices, dated 24 October 2014;
 - the Department's assessment report for *Modification Request: Concept Plan at Shepherds Bay Foreshore, Meadowbank and Ryde MP09_0216 MOD2*, including all appendices, dated 11 November 2016;
 - The Planning Assessment Commission determination report for *Modification Request – Concept Plan, Meadowbank (MP09_0216 MOD 2)*, including all appendices, dated 16 January 2017;
 - Government Authority submissions on the modification application:
 - The City of Ryde's submissions dated 9 March 2018 and 28 June 2018;
 - Transport for NSW submissions dated 23 February 2018 and 14 June 2018;
 - Sydney Water's submission, undated;

- NSW Office of Environment and Heritage, Heritage Division submissions dated
- 20 February 2018 and 13 June 2018; and
- The NSW Roads and Maritime Services (**RMS**) submission dated 8 June 2018.
- the Response to Submissions and appendices, dated 14 May 2018;
- all submissions made to the Department in respect of the proposed modification during the public exhibition of the modification application, the RtS, and up to the publication of the Assessment Report;
- information provided to the Commission at its meetings with the Department on 16 August 2018;
- the Department's assessment report, dated 12 July 2018;
- information discussed with the Commission at its meeting with the Department on 16 August 2018 and provided in the transcript published on the Commission's website;
- information discussed with the Commission at its meeting with City of Ryde Council on 16 August 2018 and provided in the transcript published on the Commission's website;
- information discussed with the Commission at its meeting with the proponent on 17 August 2018 provided in the transcript published on the Commission's website, plus information provided at that meeting, including a traffic impact summary, written correspondence from RMS dated, 8 August 2016, and Design Integrity Panel meeting summaries;
- oral submissions made by the five speakers at the public meeting and the nine written submissions received subsequently; and
- the public interest.

4.1 Consideration under Section 75W of the EP&A Act

Public and Council comments

33. The Commission heard concerns from Ryde City Council and speakers at the public meeting and received written comments regarding the proposed modification. These concerns included:
- the impacts from ongoing development in the locality, including to visual amenity, traffic and road safety;
 - the risk of the proponent undertaking further modifications to convert the serviced apartments to residential apartments;
 - the impacts to social and public infrastructure and amenity, including the lack of the required community centre;
 - current developments not complying with *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development & accompanying Residential Flat Design Code / Apartment Design Guide (SEPP 65)*; and
 - the lack of endorsement of the development as a whole and the modification application by the Design Integrity Panel (**DIP**).
34. The Commission also heard from Ryde City Council, which, in relation to the serviced apartment use, stated during its meeting with the Commission on 16 August 2018:
- “We understand the functions they would serve in that precinct, noting that, you know, Homebush across the way, Macquarie Park up the way, as well – there is a need for serviced apartments as a mix within our local government area – we acknowledge that and accept that.”*

Department's consideration

35. The Department's first assessment of the Concept Plan, contained in *Major Project Assessment: Concept Plan and Stage 1 Project Application at the Shepherd's Bay Foreshore, Meadowbank and Ryde (MP09_0216 and MP09_0219)*, dated 7 December 2012, considered the consistency of the Concept Plan, including Stage A, with the objects of the EP&A Act. This report concluded the Concept Plan was consistent with the objects of the EP&A Act, in that:

- *the benefits provided by the proposal, including the contribution to the housing stock within a highly accessible location, in close proximity to public transport, services, facilities and employment opportunities;*
- *the renewal of a former industrial precinct for mixed use development achieves orderly and economic use and development of the site;*
- *provision of a substantial area of publicly accessible open space including through site linkages to the waterfront achieves provision of land for public purposes; and*
- *the proposed mix of apartment sizes and types will provide a range of housing options for future residents of varying income levels and household size."*

36. The Department's first assessment of the Concept Plan, contained in *Major Project Assessment: Concept Plan and Stage 1 Project Application at the Shepherd's Bay Foreshore, Meadowbank and Ryde (MP09_0216 and MP09_0219)*, dated 7 December 2012 considered the consistency of the Concept Plan, including Stage A, with the principles of ecologically sustainable development (**ESD**) and concluded that: *"The department considers that the proposal represents a sustainable use of the site, as it proposes a mix of residential, retail and commercial uses within an established urban area with good access to public transport, amenities, services and employment."*

37. The Department's first assessment of the Concept Plan, contained in *Major Project Assessment: Concept Plan and Stage 1 Project Application at the Shepherd's Bay Foreshore, Meadowbank and Ryde (MP09_0216 and MP09_0219)*, dated 7 December 2012 stated that: *"the proposal will deliver public benefits including road and stormwater infrastructure upgrades; provision of publicly accessible open space areas and through site links of benefit to the wider community"*.

38. The Department's assessment report for the modification application concluded: *"when considered in the context of the overall Concept Approval (10,000m² and 2,033 dwellings, an increase of 1,300m² non-residential GFA is minor in nature and the existing public benefits remain sufficient. In addition, the additional GFA will result in a commensurate increase in section 94 contributions towards improvements within the locality"*.

Commission's consideration

39. The Commission accepts the conclusion of the Department on this matter, as set out in paragraphs 20 - 22. In the Commission's view, the proposed changes are within the scope of section 75W as it applies to the development, and therefore the request to modify may be considered under section 75W.

40. In determining the public interest merits of the proposed modification, the Commission has had regard to the objects of the EP&A Act. The Commission is satisfied with the Department's considerations that the modification is consistent with the objects of the EP&A Act, including the principles of ESD, as discussed in paragraphs 35 and 36.

41. The Commission has taken into account the Material and accepts the Department's conclusion, as set out in paragraphs 37 and 38, that the proposed increase of 1,300m² in non-residential GFA is minor in nature in the context of the overall Concept Approval, and that the modification application will continue to provide a public benefit consistent with the Concept Plan. The Commission also accepts Council's statements that the provision of serviced apartments into the mix of available accommodation will address a need within the local government area.
42. The Commission also finds that the modification application, as discussed below, is unlikely to increase impacts from the development and reduce the previously identified public benefits.
43. On balance, the Commission finds that the modification application, if approved, is in the public interest particularly having regard to the following:
- meets the requirements of section 75W of the EP&A Act, as set out in paragraphs 20 - 22;
 - is consistent with the objects of the EP&A Act, including the principles of ecologically sustainable development, as set out in paragraphs 35 and 36;
 - is an orderly economic use and development of land, as set out in paragraphs 41 and 42, and will continue to provide a sufficient public benefit as set out in paragraphs 37 and 38; and
 - would allow for additional financial contributions to Council in accordance with council's Section 94 requirements, as set out in paragraph 38.

4.2 Introduction of serviced apartments

44. The Commission heard concerns at the public meeting and in written submissions in relation to inclusion of serviced apartments in the Concept Plan, the proposal to increase the commercial, retail or community use GFA cap to accommodate this use and the lack of certainty that serviced apartments established under the commercial, retail or community use GFA cap would not be converted to residential dwellings at some point in the future.

Proponent's consideration

45. In identifying the role that serviced apartments would serve in relation to the development of Stage A, the proponent stated in its RtS that the:
- "inclusion of serviced apartments as an additional land use remains part of the preferred project. It is a logical land use given the high degree of amenity in the immediate vicinity of Stage A, and the site's proximity to related land uses such as commercial premises' in Macquarie Park.*

Including serviced apartments as an additional land use for Stage A will occupy what is effectively vacant space in the Mod 2 PAC approved Stage A envelope. As detailed earlier, this is largely because the PAC approved Stage A envelope will not be occupied entirely by the remaining forty-two (42) dwellings of the 2,033 dwelling cap, and commercial/retail floor space in addition to what is already proposed in Stage A is not a viable use."

46. The proponent's RtS supported the increase in the commercial, retail or community use GFA and stated:

"In order to accommodate the serviced apartments as proposed, and due to already or pending approvals within the Concept Approval precinct area which include commercial floor space, the existing commercial floor space cap prescribed by Condition A5(1) in Schedule 2 of the Concept Approval, needs to be increased by 1,300m² (i.e. from 10,000m² to 11,300m²). Whilst the commercial floor space would be increased, it does not represent a significant further intensification of the Stage A site itself, or the precinct generally. This is because the additional permitted land use simply occupies the building envelope already provided for by the Mod 2 PAC approved Stage A envelope."

Department's consideration

47. The Department's assessment report stated that the Department:

"accepts the Proponent's categorisation of the serviced apartments as non-residential floor space for tourists or visitors and in this context the Department does not consider it reasonable that they should be subject to the dwelling cap."

48. The Department's assessment report concluded that:

- *"serviced apartments are permissible with consent within the B4 Mixed Use Zone";*
- *"the indicative drawings show the inclusion of the serviced apartments within Stage A would not adversely impact on other uses within the building or the surrounding area";*
- *"the indicative drawings show a future building is capable of including serviced apartments which achieve an appropriate standard of amenity"; and*
- *"[t]here are no amendments to the number of residential dwellings".*

49. The Department's assessment report concluded that the increase in commercial, retail or community use GFA by 1300m² to accommodate the serviced apartments was minor in nature and was acceptable as:

- *"it would be wholly contained within the approved Stage A building envelope and therefore would not have any additional amenity impacts in terms of overlooking, overshadowing or loss of views";*
- *Additional contributions will be made in accordance with council's Section 94 requirements"; and*
- *The future building within Stage A building envelope is required to achieve design excellence in accordance with FEAR 1."*

Commission's consideration

50. The Commission acknowledges the community's concern regarding the presence of serviced apartments as a commercial use within the Stage A development building envelope.

51. The Commission recognises that the identified impacts, and associated assessment and consideration of these impacts, has focussed on the increased GFA being utilised for serviced apartments, or other commercial use. The Commission recognises that the identified impacts and merit of this increase in GFA would likely be materially different if the proposed increase was allocated to a residential use.

52. The Commission recognises that while the proponent is capable under NSW planning law of seeking a modification to this use, the impacts and merits of this change would

likely be significantly different from what has been considered as part of Commission's consideration and determination for this modification application and would warrant separate consideration.

53. The Commission accepts the Departments findings, as set out in paragraphs 47 - 48, that it is appropriate to consider the serviced apartments as a commercial floor space and to exclude them from the residential dwelling cap.
54. The Commission accepts the Departments findings, as set out in paragraph 49, that the proposed increase in commercial, retail or community use GFA would be wholly contained within the approved building envelope and would not significantly change the approved impacts of the current Concept Plan.
55. The Commission finds that:
 - for the reasons set out in paragraph 53, the inclusion of serviced apartments is a reasonable commercial use floor space within the Stage A building envelope and should accordingly be allowed under the commercial, retail or community use GFA cap; and
 - for the reasons set out in paragraph 54, the proposed 1,300 m² increase in commercial, retail or community use GFA in the Stage A building envelope will not change the building envelope or significantly increase impacts already assessed and approved under the Concept Plan.

4.3 Traffic generation and car parking

Public comments

56. The Commission heard concerns at the public meeting and in written submissions in relation to impact of traffic generated as a result of the modification application, including the safety of the access on Church Street for service vehicle, and the adequacy of car parking provisions and the flow on impact this would have on existing car parking spaces near the project site.

Proponent's consideration

57. The proponent's RtS stated that:

"the preferred project simply adopts the already PAC approved Mod 2 Stage A envelope, traffic impacts are reduced, compared to the originally proposed Mod 3 15- storey scheme. This is confirmed in the revised Traffic Impact Assessment, prepared by Road Delay Solution, attached to this correspondence."
58. The proponent's *Section 75W Traffic Impact Assessment RtS*, dated May 2018 and included as part of the RtS, identified that the use of commercial, retail or community use GFA for serviced apartments was modelled to contribute fewer 'AM Peak Hour' trips and 'PM Peak Hour' trips, both 17 vehicles per hour (vph) than other commercial uses, such as the proposed specialty shops, both 113 vph, and supermarket, both 293 vph.
59. The proponent's RtS stated that parking availability and impacts are consistent with the approved impacts in the Concept Plan and that 353 spaces remain under the approved parking space cap, of which only 296 are predicted to be utilised as part of the development of Stage A.

60. The proponent stated during its meeting with the Commission on 17 August 2018 that the access lane from Church Street has been assessed as part of Concept Plan and that, as detailed in the correspondence from RMS dated 8 August 2016, the RMS *“provides ‘in-principle’ approval to the proposed access on Church Street for service vehicle access only”*.

Department’s consideration

61. With regard to modification application’s impact on traffic the Department’s assessment report stated that:

- *“the RMS published updated traffic generation rates for high density development developments (2013 Rates). The 2013 Rates are based on surveys undertaken in 2010 across the Sydney Metropolitan area (and regional NSW) and indicate a reduction in traffic generation over the previous 10 years.”*
- *“The traffic generated by the proposal (based on the 2013 Rates) is less than the traffic generation predicted by the Concept Approval (2001 Rates) in the worst case weekday peak”; and*
- that Transport for New South Wales did not raise any objection to the modification application.

62. With regard to modification application’s impact on parking the Department’s assessment report stated that:

- the Concept Plan considered *“the impact of 2,976 (indicative) car parking spaces and concluded the proposal would have acceptable traffic impacts on the local and regional road network subject to ... road network improvements.”*; and
- the modification application *“does not propose to amend the site-wide car parking cap and the Department notes the indicative development includes 296 car parking spaces, which is 57 spaces less than the maximum for the site.”*

63. The Department’s assessment report concluded that *“[t]he modification results in a reduction in traffic generation when compared to the original approval”* and that *“[c]ar parking would be provided in accordance with the site-wide car parking limit”*.

Commission’s Consideration

64. The Commission acknowledges the community concern regarding the construction and operation of access on Church Street for service vehicle and the broad concern of Council and the community regarding traffic impacts.

65. The Commission recognises, as set out in paragraph 60, RMS’ ‘in-principle’ approval of access on Church Street for service vehicle and acknowledges that further assessment of the detailed design of the access on Church Street for service vehicle will be included as part a future development application process for the Stage A site.

66. The Commission recognises that the 2001 RMS traffic generation data used to model the traffic impacts for the original concept plan development, was updated in 2013 to reflect more accurately the traffic generation patterns in high density areas. The updated traffic generation rates are lower than those used in the original assessment and as a result the development is expected to generate less traffic overall.

67. The Commission also recognises that the required road network upgrades identified in section 5.2 of the Department's assessment report have been incorporated into the Concept Plan as part of *Modification Request: Concept plan and Stage 1 Project Application at Shepherds Bay Foreshore, Meadowbank and Ryde MP09_0216 MOD1 and MP09_0219 MOD1*.
68. The Commission recognises the findings of the *Section 75W Traffic Impact Assessment RtS*, as set out in paragraph 58, that the inclusion of serviced apartments as part of the commercial, retail or community use GFA cap is likely to generate less traffic, including during AM and PM peaks, than other commercial or retail uses.
69. The Commission accepts the Department's findings, as set out in paragraphs 61 - 63, that the traffic and parking impacts from the modification application are likely to be consistent, or reduced, from the traffic and parking impacts considered as part of the Concept Plan.
70. The Commission finds that:
- for the reasons set out in paragraphs 66 - 68, the traffic impacts are acceptable and unlikely to increase because the expected traffic generation is expected to decrease and has been appropriately managed through the required road upgrades; and
 - for the reason set out in paragraph 69, the parking impacts are acceptable because no increase to the approved car parking space cap is being proposed as part of the modification application.

4.4 Social amenity and infrastructure

Public comments

71. The Commission heard concerns at the public meeting and in written submissions in relation to the increased pressure being placed on public amenity and infrastructure from the high level of development in the locality. This included views regarding the current over use of the nearby Foreshore Park and current lack of a community facility, as required under the conditions of consent for the Concept Plan.

Proponent's consideration

72. The proponent's EIS stated that the overall development of Stage A would:
- "provide significant social benefits to the community, through the conversion of what is underutilised space and inconsistent with the transitioning character of Shepherds Bay, to a high quality mixed used development that demonstrates design excellence and improves local identity. The proposal will improve the presentation of the site, by providing a contemporary building that provides increased passive surveillance of all the street frontages, particularly to Parsonage Street. Further, the provision of a publicly accessible plaza will promote a shared use of space and accommodate a variety of publicly oriented activities."*
73. The proponent's RtS stated that the modification application would be unlikely to:
- "represent a significant further intensification of the Stage A site itself, or the precinct generally. This is because the additional permitted land use simply occupies the building envelope already provided for by the Mod 2 PAC approved Stage A envelope. Further,*

the intensity of use from serviced apartments is notably less than either residential or retail uses in respect of traffic generation.”

74. With regard to the community facility, as required by Schedule 3 – Future Environmental Assessment Requirements 18 of the Concept Plan consent, the proponent confirmed during the meeting with the Commission on 17 August 2018 that community centre had been included as part of Stage 2-3 development. The proponent further confirmed that the community centre had been constructed and was ready for use, pending certification.

Department's consideration

75. The Department's assessment report stated that the modification application would not have an adverse impact on social infrastructure and open space as:

- *“the proposal would not have an adverse impact on social infrastructure, beyond what was approved as the modification would not exceed the dwelling cap for the site”; and*
- *“the approved Stage A building envelope includes the provision of a new 27 m wide open space within the western half of the site, and the indicative drawings show this space as being a landscaped plaza.”*

76. The Department's assessment report concluded that *“the proposal would not have an adverse impact on social infrastructure, provides for sufficient open space and the approved public benefits remain appropriate and proportionate.”*

77. The Department's assessment report has included a proposed condition within the modification instrument which would amend the Schedule 3 – Future Environmental Assessment Requirements to require:

“Future development application(s) for Stage A shall include the provision of a publicly accessible open space / plaza, which shall be completed prior to the issue of the first Occupation Certificate.”

Commission's Consideration

78. The Commission acknowledges the community's concern regarding the increased pressure and usage on social amenity and infrastructure in the locality, including the uncertainty associated with the provision of the required community centre.

79. The Commission notes that the provision of a community centre is already part of the conditions of consent for the Concept Plan, as set out in Schedule 3 – Future Environmental Assessment Requirements 18 for the Concept Plan approval. Additionally, the Commission notes, as set out in paragraph 74, that the community centre has been constructed as part of Stage 2-3 development.

80. The Commission accepts the Department's conclusions, as set out in paragraphs 75 and 76, that the impacts to social infrastructure are consistent with what has already been considered and approved as part of the Concept Plan and the modification application will not significantly change these impacts.

81. The Commission finds that impacts to social amenity are acceptable because:

- As set out in paragraph 80, the modification application will not result in a level of development beyond what was considered and approved as part of the Concept Plan;

- social amenity, including the provision of the required community centre as set out in paragraphs 79 and 80, will be maintained;
- the modification application provides for an increase in public space, as set out in paragraph 77; and
- The proposed serviced apartment use is not likely to generate additional demand for use of public infrastructure.

4.5 Community Concerns beyond the scope of the application

82. The Commission heard concerns at the public meeting and in written submissions, in relation to a number of matters that are beyond the scope for consideration for this modification application. These concerns include lack of endorsement by the DIP and the compliance of the detailed design of the developed stages the Meadowbank Employment Area with SEPP 65 and the Apartment Design Guide (**ADG**).

Proponent's consideration

83. The proponent did not undertake a detailed assessment of the concept development against SEPP 65 or the ADG through its EIS or RtS. The proponent did advise during its meeting with the Commission on 17 August 2018 that, in its opinion, future residential development within the proposed building envelopes are capable of SEPP 65 and ADG compliance.

84. The proponent's RtS stated that prior to being amended the modification application *"included endorsement from the Design Integrity Panel (DIP). We are currently liaising with the DIP to seek their endorsement of the modified scheme (i.e. the 10-storey scheme)"*

85. Following its meeting with the Commission on 17 August 2018, the proponent provided the Commission with the signed Design Integrity Panel meeting summary, dated 6 June 2018, which stated:
"The DIP confirmed that the integrity of the original design competition winning scheme would be retained, albeit at a lower scale. The DIP further noted that it would not require a further review for the purposes of the current S75W application, and that it would revisit the scheme as part of any DA."

Department's Consideration

86. The Department's assessment report stated:

- *"notes that the proposal relates to a Concept Plan only and future DA(s) will be submitted to Council for the detailed design and use of the buildings within the building envelopes. Future DAs would be also required to include an assessment of noise impacts and propose mitigation measures where necessary."*; and
- *"the modification includes an assessment of the proposal and indicative floor plan layouts against the aims and objectives of SEPP 65 and the relevant amenity criteria within the ADG and concludes future developments would achieve an appropriate standard of residential amenity."*

87. The Department's assessment report concluded *"future DAs would be capable of providing for a building which achieve[s] and acceptable standard of residential amenity for future residents in accordance with the ADG."*

Commission's consideration

88. The Commission acknowledges the community concern regarding compliance with SEPP 65 and the ADG and the potential for adverse impacts to the residential amenity of dwellings built as part of the Concept Plan.
89. The Commission notes the statements and information provided by the proponent, as set out in paragraphs 83 - 85.
90. The Commission accepts the Department's conclusions, as set out in paragraphs 86 and 87. The Commission finds that the modification application seeks to amend the Concept Plan in relation to the development of Stage A, and the detailed design elements for each stage of the development are more appropriately managed through the consideration of a future detailed development application which may be lodged for the site.

5. THE COMMISSION'S FINDINGS AND DETERMINATION

91. The Commission has carefully considered the Material before it.
92. The Commission finds that:
- as set out in paragraph 53 - 55, the inclusion of serviced apartments as a commercial use outside of the residential dwelling cap is reasonable and the increase in commercial, retail or community GFA is acceptable as it would not significantly change the building envelope and associated impacts;
 - as set out in paragraph 70 and 81 respectively, the impacts to traffic and social amenity associated with the modification application are unlikely to be significantly increased from the approved level of impact; and
 - the proposed conditions of consent are adequate to manage impacts from the modification application; and
 - for the reasons set out in paragraph 43, the modification application is in the public interest.
93. For the reasons outlined above, the Commission has decided to grant consent to the modification application.
94. The reasons for the Decision are given in this Statement of Reasons for Decision dated 31 August 2018.



Gordon Kirkby (Chair)
Member of the Commission



Prof Richard Mackay, AM
Member of the Commission



Ilona Millar
Member of the Commission