



Land and Environment Court

New South Wales

Case Name:	Cedar Pacific 1 Pty Ltd as trustee for the Cedar Pacific Kensington Trust v Randwick City Council
Medium Neutral Citation:	[2021] NSWLEC 1744
Hearing Date(s):	Conciliation conference on 18 August, 9 September, 1 and 29 October 2021
Date of Orders:	3 December 2021
Decision Date:	3 December 2021
Jurisdiction:	Class 1
Before:	Horton C
Decision:	See orders at [64]
Catchwords:	DEVELOPMENT APPLICATION – mixed use development – affordable rental housing – community infrastructure contributions – conciliation conference – agreement between parties – orders
Legislation Cited:	Environmental Planning and Assessment Act 1979, ss 4.16, 8.7, 8.15 Environmental Planning and Assessment Regulation 2000, cl 55 Land and Environment Court Act 1979, s 34 Randwick Local Environmental Plan 2012, ss 4.3, 4.6, 5.10, 5.21, 6.2, 6.4, 6.8, 6.10, 6.11, 6.17, 6.18, 6.20 State Environmental Planning Policy (Affordable Rental Housing) 2009, cll 29, 30, 30A State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy No 55 – Remediation of Land, cl 7 State Environmental Planning Policy No 64 – Advertising and Signage State Environmental Planning Policy (State and

Regional Development) 2011, cl 20, sch 7

Cases Cited: Initial Action Pty Ltd v Woollahra Municipal Council
[2018] NSWLEC 118

Texts Cited: Randwick Comprehensive Development Control Plan
2013

Category: Principal judgment

Parties: Cedar Pacific 1 Pty Ltd as trustee for the Cedar Pacific
Kensington Trust (Applicant)
Randwick City Council (Respondent)

Representation: Counsel:
F Rourke (Solicitor) (Applicant)
J Corradini-Bird (Solicitor) (Respondent)

Solicitors:
Allens (Applicant)
Marsdens Law Group (Respondent)

File Number(s): 2021/82260

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JUDGMENT

- 1 **COMMISSIONER:** This class 1 appeal concerns a development application brought before the Court under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) following the deemed refusal by the Sydney Eastern City Planning Panel on behalf of Randwick City Council (the Respondent) of Development Application No. DA/20/2021 seeking consent for the construction of a 10-storey mixed use development comprising three ground floor retail tenancies, café and a boarding house to be used for student accommodation containing 597 rooms (accommodating 693 beds), communal facilities and rooftop open space above basement car parking containing 12 car parking spaces for staff, 30 motorcycle parking spaces and 122 bicycle parking spaces with associated site landscaping and civil works at 177-197 Anzac Parade, Kensington (the site).
- 2 It is helpful at this point to describe that the site comprises six lots of land, that are allocated to two sites, described as follows:

- SP 15366, known as 177 Anzac Parade;
 - Lot 10 in Section 7, DP 4761, known as 179-181 Anzac Parade;
 - Lot 11 in Section 7, DP 4761, known as 183-185 Anzac Parade;
 - Lot A in DP 410791, known as 187 Anzac Parade;
 - Lot B n DP 410791, known as 189 Anzac Parade; and
 - SP 19239, known as 191-197 Anzac Parade.
- 3 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 18 August 2021, and at which I presided.
 - 4 The proceedings commenced on Microsoft Teams and leave was granted for a number of public submissions to be heard, after which the parties continued conciliation discussions.
 - 5 At the conciliation conference, the parties reached in-principle agreement on a number of matters in contention, subject to the resolution of certain issues which the parties' advised me were capable of resolution. I adjourned the conference to allow the parties to continue to resolve those matters.
 - 6 On 1 October 2021, I further adjourned the conciliation conference to allow the Respondent to notify affected residents. On 27 October 2021, parties sought a further extension to finalise the terms of the agreement that was filed with the Court on 4 November 2021 in accordance with s 34(10) of the LEC Act. This decision involved the Court upholding the appeal and granting conditional development consent to the development application.
 - 7 Relevantly, cl 20 of the State Environmental Planning Policy (State and Regional Development) 2011 provides for development specified in Schedule 7 to be declared regionally significant development for which the Sydney Eastern City Planning Panel functions as consent authority, pursuant to s 4.5(b) of the EPA Act.
 - 8 The Sydney Eastern City Planning Panel, as the relevant consent authority, has provided its agreement to the Applicant amending its application in accordance with cl 55(1) of the EPA Regulation, and to the agreement between the parties.

- 9 The parties ask me to approve their decision as set out in the s 34 agreement before the Court. In general terms, the agreement approves the development subject to amended plans that were prepared by the applicant, and noting that the final detail of the works and plans are specified in the agreed conditions of development consent annexed to the s 34 agreement.
- 10 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application. There are jurisdictional prerequisites that must be satisfied before this function can be exercised.
- 11 The parties identified the jurisdictional prerequisites of relevance in these proceedings including the provisions of the following environmental planning instruments:
- Randwick Local Environmental Plan 2012 (RLEP);
 - State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP);
 - State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55);
 - State Environmental Planning Policy (Infrastructure) 2007; and
 - State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- 12 I am satisfied that the jurisdictional preconditions identified by the parties have been achieved for the reasons that follow.
- 13 The site is located within the B2 Local Centre zone pursuant to the RLEP, in which the uses proposed by the development application are permitted with consent, and wherein the objectives of the zone are as follows:
- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
 - To encourage employment opportunities in accessible locations.
 - To maximise public transport patronage and encourage walking and cycling.
 - To enable residential development that is well-integrated with, and supports the primary business function of, the zone.

- To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.
- To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.
- To facilitate a safe public domain.

14 The proposed development exceeds the height of buildings development standard shown on the Height of Buildings Map at cl 4.3(2) of the RLEP, and the floor space ratio (FSR) standard shown on the Alternative Building Heights Map at cl 6.17(4)(b) of the RLEP.

15 Relevantly, cl 6.17 of the RLEP also provides objectives and standards in respect of building height and floor space ratio, in the following terms:

(1) The objectives of this clause are as follows—

- (a) to allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is also provided,
- (b) to ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.

(2) Despite clauses 4.3 and 4.4, the consent authority may consent to development on a site that results in additional building height or additional floor space, or both, in accordance with subclause (4) if the development includes community infrastructure on the site.

(3) In deciding whether to grant development consent, the consent authority must—

- (a) be satisfied that the development is consistent with the objectives of this clause, and
- (b) be satisfied that the community infrastructure is reasonably necessary at Kensington and Kingsford town centres, and
- (c) take into account the nature of the community infrastructure and its value to the Kensington and Kingsford town centres community.

(4) Under subclause (2), a building on land in any of the areas identified on—

- (a) the Alternative Building Heights Map—is eligible for an amount of additional building height determined by the consent authority but no more than that which may be achieved by applying the maximum height specified in relation to that area, and
- (b) the Alternative Floor Space Ratio Map—is eligible for an amount of additional floor space determined by the consent authority but no more than that which may be achieved by applying the maximum floor space ratio specified in relation to that area.

- 16 The Applicant relies on a written request, prepared by Urbis in accordance with cl 4.6 of the RLEP, that identifies the maximum permissible height of buildings of 25m nominated at cl 4.3(2) of the RLEP. However, the Applicant seeks to take the benefit of the alternative building height at cl 6.17(2) of the RLEP which permits a height of 31m where the development includes community infrastructure on the site.
- 17 Relevantly to the written request is a proposal to enter into a Voluntary Planning Agreement that is set out in a letter of offer dated 16 September 2021, including Annexures A and B ('the proposed VPA'), and which is consistent with the Kensington and Kingsford Town Centres Community Infrastructure Contributions that, in my view, satisfies cl 6.17(3) of the RLEP as to the necessity and value of the community infrastructure proposed by the development.
- 18 The letter of offer has been accepted by the Respondent, and deferred commencement conditions are proposed at Conditions A1 and A2 for the parties to enter into such an agreement prior to the operation of the consent.
- 19 Accordingly, a height of 31m applies to the site.
- 20 The proposed development exceeds this height as follows:
- Top of roof structure: 30.02m;
 - To of lift overrun: 31.52m.
- 21 As shown by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("*Initial Action*"), for the Court to have the power to grant development consent for a development that contravenes a development standard, cl 4.6(4)(a) requires that the Court be satisfied that:
- (1) The proposed development will be consistent with the objectives of the particular standard in question (cl 4.6(4)(a)(ii));
 - (2) The proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii));
 - (3) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)); and

- (4) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)).
- 22 The Court must form two positive opinions of satisfaction under cl 4.6(4)(a) to enliven the power of the Court to grant development consent (*Initial Action* at [14]). I must be satisfied that:
- (1) the Applicant's written request has adequately addressed the matters required to be demonstrated by subcl (3); and
 - (2) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objective of the zone in which the development is proposed to be carried out.

The height standard is exceeded

- 23 The written request asserts that compliance with the development standard at subcl 6.17(2) and 6.17(4) of the RLEP is unreasonable or unnecessary because the objectives of the standard at cl 4.3 are achieved notwithstanding the non-compliance.
- 24 The objectives of the height standard at cl 4.3 of the RLEP are as follows:
- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,
 - (b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,
 - (c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.
- 25 I accept the grounds on which the written request asserts the objectives are achieved, for the following reasons:
- Consistency with the desired future character of the Kensington town centre is demonstrated by substantial consistency with the 3-dimensional 'block control' contained in Part E of the Randwick Comprehensive Development Control Plan 2013 ('the RCDCP'), and because the exceedance does not intensify the built form and scale of the proposed development.
 - I accept the scale and setback of the podium, and the works proposed in the proposed VPA to enhance the pedestrian accessway, are respectful in scale and character to the heritage-listed Masonic Hall building located to the east of the site.

- The particular location and nature of the exceedance, being at the top of the roof structure and lift overrun, will not adversely impact on surrounding residential properties.
- 26 I also accept that the written request demonstrates there are sufficient environmental planning grounds to justify the contravention of the height standards on such a limited a portion of the site. In particular I note the general consistency of the proposed development in the location of the exceedance with the 3-dimensional form of block control contained in the RCDCP but for the portion of the exceedance in height that is otherwise available on the site, if differently located. The particular location of the exceedance at the lift overrun is well set back from the rooftop parapet and so will not be visible from the public domain in the vicinity of the site, and will not result in additional overshadowing or privacy impacts.
- 27 I am satisfied that the written request adequately addresses those matters required of it in accordance with cl 4.6(4)(a) of the RLEP, and I accept and am satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the height standard, and the objectives of the B2 zone. In arriving at this conclusion, I note the particular mix of uses proposed on the site reflects the range of uses nominated in the zone, associated with which is the potential for employment on a site adjoining the light rail, and where use of public transport, and cycling are encouraged by the provision of motorcycle and bicycle parking spaces. I also accept that the development well integrates residential uses with non-residential space on the site, comprising three retail tenancies, that facilitate a high standard of urban design and pedestrian amenity at the ground floor.
- 28 On this basis, I am satisfied in respect of those matters required of the Court at cl 4.6(4)(a)(ii) of the RLEP and I consider the numerical height exceedance to be minor and within the terms of the Secretary's concurrence to satisfy cl 4.6(5) of the RLEP.

Accommodation for a boarding house manager is not provided

- 29 The Applicant relies upon a written request prepared by Urbis in accordance with cl 4.6 of the RLEP and dated 24 December 2020 that seeks to vary the requirement for an onsite boarding manager on the basis that sufficient

management procedures are proposed to satisfy the underlying objectives of the standard at cl 30 of the ARH SEPP.

- 30 Those management procedures are premised on the assertion that while the development is a boarding house under the terms of the ARH SEPP, the profile of the residents varies from a conventional boarding house. The underlying objective of the standard is instead achieved by providing residents with 24 hour/7 day a week support in addition to weekday office hours during which time a member of staff will be onsite, the appointment of five 'Residential Advisors' to act as 'live-in' liaison officers between residents and the operators of the development, and appointment of a Maintenance Manager with regular maintenance and cleaning of all communal areas.
- 31 The Applicant also sets out similar grounds that it asserts are sufficient environmental planning grounds to justify the contravening of the standard at cl 30(1)(e), noting the Resident Handbook, presence of staff or live in Residential Advisors, the operation of a complaints register and Plan of Management as safeguards to resident and community wellbeing.
- 32 Additionally, the Applicant relies upon electronic card access as a means to facilitate a safe public domain that is an objective of development in the zone.
- 33 For the reasons set out in the written request, and summarised above, I am satisfied that the request to vary the standard at cl 30(1)(e) of the ARH SEPP should be upheld. In arriving at this state of satisfaction I accept there will be a physical presence on site at all times by a person or persons fulfilling the role of boarding house manager, assisted by regular maintenance, cleaning and the like.

The required number of motorcycle parking spaces is varied

- 34 The Applicant also relies upon a written request prepared by Urbis dated 24 September 2021 seeking to vary the development standard at cl 30(1)(h) of the ARH SEPP as the proposal includes parking for 104 motorcycles, which is a shortfall of 17 spaces.
- 35 I accept the proposed development achieves the underlying objective of the standard because it is for student housing associated with the university of

New South Wales located close by, to which residents may walk, cycle, or travel by bus or light rail. I also accept that the number of bicycle parking spaces achieves the standard at cl 30(1)(h), and that a Green Travel Plan has been prepared with the development application to promote non-car travel modes.

- 36 Accordingly, I am satisfied that the written request to vary the development standard at cl 30(1)(h) of the ARH SEPP adequately addresses those matters at cl 4.6(3) of the RLEP, is in the public interest and does not raise any matter of significance pursuant to cl 4.6(5) of the RLEP.

The provisions of the Randwick Local Environmental Plan 2012 are considered

- 37 The site is subject to a maximum permissible floor space ratio (FSR) of 4.8:1 when the development standards at cl 6.17 of the RLEP, and cl 29(1)(c) of the ARH SEPP are considered. The FSR proposed by the development is 4.21:1.
- 38 The site is located immediately to the west of the Masonic Temple, and is located opposite the Doncaster Hotel. Both sites are identified at Schedule 5 of the RLEP for their heritage significance, as is the Racecourse Heritage Conservation Area. As such, the provisions of cl 5.10 of the RLEP apply. On the basis of the conclusions and recommendations contained in the Statement of Heritage Impact prepared by Extent Heritage Advisors, dated August 2021, supported by the statement contained in the letter of the same author dated 24 September 2021, I consider the impacts on the heritage items and conservation area to be acceptable.
- 39 The site is identified as being located within the Kensington-Centennial Park catchment that is subject to a Floodplain Risk Management Study and Plan, according to the Flood Investigation Report prepared by Acor Consultants dated 18 December 2020. Clause 5.21 of the RLEP requires satisfaction of certain matters at subcl (2) prior to the grant of consent, subject to considering those matters at subcl (3). The flood mitigation measures set out in Supplementary Flooding Advice prepared by Acor Consultants dated 24 September 2021 that are depicted on amended plans filed 27 October 2021 satisfy me that the development is consistent with those matters at subcl (2), as do conditions 37-47 of the agreed conditions of consent at Annexure A.

- 40 On the basis of the Geotechnical Investigation prepared by JK Geotechnics dated 7 December 2020, and the agreed conditions of consent, I am satisfied that the proposed earthworks and excavation will not have a detrimental impact on the soil stability of the amenity of the neighbouring uses or the adjacent light rail infrastructure, and I consider those matters at cl 6.2(3) of the RLEP to be appropriately addressed.
- 41 Relatedly, for the reasons set out at [30] and [31], and considering the flood mapping prepared by Acor Consultants I am also satisfied that the impacts of urban stormwater are minimised as required by cl 6.4(3) of the RLEP.
- 42 I consider the conditions of consent at Condition 6, being conditions referable to those advised by Sydney Airport, satisfy the requirements of cl 6.8 of the RLEP in respect of airspace operations.
- 43 On the basis of conditions of consent and general terms of approval from authorities in respect of public utilities (condition 56 and 75), water (conditions 64), electricity (condition 21), sewage (condition 126), stormwater drainage (conditions 44-46, 93 and 99), and suitable vehicular access (conditions 38-39 and 123), I am satisfied that adequate arrangements have been made to make essential services available for the site when required in accordance with cl 6.10 of the RLEP.
- 44 On the basis of the Concept Design Report prepared by Nettletontribe dated 18 December 2020, and the amendments agreed upon between the parties that are set out in the schedule of amendments dated 20 October 2021, to which I have had regard, I am satisfied that those matters set out at cl 6.11(4) of the RLEP have been addressed and the development exhibits design excellence.
- 45 Condition 109 of the agreed conditions of consent provides for a contribution equivalent to the affordable housing levy contribution to be imposed in accordance with cl 6.18 of the RLEP, and I am satisfied that the monetary contribution is calculated in accordance with the Kensington and Kingsford Town Centres Affordable Housing Plan (subcl (5)).
- 46 Consent for the erection of a building on land to which the Active Frontages provision at cl 6.20 of the RLEP applies must not be granted unless the

consent authority is satisfied that all premises on the ground floor of the building facing the street are to be used for the purposes of commercial premises after the erection of the building. On the basis of the architectural plan at Drawing DA012 (Rev T), I am satisfied that the overwhelming proportion of the street frontage is active, and that the frontage otherwise allocated to building services and fire egress should not preclude the grant of consent.

State Environmental Planning Policy (Affordable Rental Housing) 2009

- 47 As the development the subject of the development application is for boarding house development, the provisions of the ARH SEPP apply.
- 48 Clause 29 of the ARH SEPP contains standards that, if met, cannot be used to refuse consent and I am satisfied that the standards are met, except for building height that is the subject of written requests considered at [23 [Ref88741079](#)]-[28 [Ref88741094](#)].
- 49 Clause 30 of the ARH SEPP contains standards that must be achieved as a pre-requisite to the grant of consent. I am satisfied that the standards at subcl (1) have been achieved, with the exception of subcl (1)(e) requiring a boarding room or on site dwelling for a boarding house manager, that is considered at [29 [Ref88741113](#)]-[33 [Ref88741140](#)], and subcl (1)(h) requiring one motorcycle parking space for every 5 boarding rooms, considered at [34 [Ref88741157](#)]-[36 [Ref88741174](#)].
- 50 Clause 30A of the ARH SEPP requires the character of the local area to be taken into consideration prior to the grant of consent. The Kensington and Kingsford Town Centres are clearly the focus of significant change intended to be delivered through planning amendments adopted in 2020 and reflected in development standards at cl 6.17-6.21 of the RLEP, and relevant to 'Block 20' in Part E of the RCDGP. On the basis of the transition in character for which provision is made in the planning framework, I am satisfied that the proposed development is, or will be, compatible with the future character that is distinct from the existing character evident in the local area today.

State Environmental Planning Policy (Infrastructure) 2007

- 51 As the proposed development requires excavation adjacent to the Sydney Light Rail Corridor, written notice of the application was provided to Transport for NSW (TfNSW) as the rail authority in accordance with cl 85 and 86 of State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP). I note that TfNSW has provided concurrence, and the conditions in respect of which appear at Condition 8 of the agreed conditions of consent at Annexure A.
- 52 As vehicular access is proposed from the site to Anzac Parade, which is a classified road, cl 101 of the Infrastructure SEPP requires the Court, at subcl (2)(i)(b) to be satisfied that the safety, efficiency and ongoing operation of Anzac Parade will not be adversely affected and, at subcl (2)(c), the development is of a type that is not sensitive to traffic noise or vehicle emissions. I am assisted by the Traffic and Parking Impact Assessment prepared by TTPA dated December 2020, and the further assessments by the same author dated 11 August 2021, and 25 September 2021 in forming an opinion of satisfaction that the operation of Anzac Parade will not be impeded.
- 53 In particular, I note the swept path analysis at Appendix B of the letter prepared by TTPA dated 11 August 2021, and further swept path analysis and signage appended to the letter prepared by TTPA dated 25 September 2021 in considering the accessibility of the site and the potential traffic safety, road congestion or parking implications of the development in accordance with cl 104(3) of the Infrastructure SEPP.
- 54 I am also assisted by the conclusions at p 32 of the DA Acoustic Assessment prepared by Acoustic Logic dated 27 September 2021 that operation noise emissions and external noise ingress will be within acceptable levels, subject to recommendations that I find at Conditions 30-32 of the agreed conditions of consent at Annexure A and so I am relevantly satisfied.
- 55 Relatedly, on the basis of the DA Acoustic Assessment, I am also satisfied that the acoustic levels in any bedroom, and in other areas of the proposed development, other than a garage, kitchen, bathroom or hallway, will comply with the levels set out at cl 102(3)(a) and (b) of the Infrastructure SEPP

- 56 Next, on the basis of the Air Quality Assessment prepared by Northstar, dated 16 December 2020, I am satisfied that the development is appropriately located and designed, and includes measures, to ameliorate potential vehicle emissions arising from Anzac Parade in accordance with cl 101(2)(i)(c).

State Environmental Planning Policy No 55 – Remediation of land

- 57 Clause 7 of the State Environmental Planning Policy No 55—Remediation of Land requires a consent authority to consider whether the land is contaminated and requires remediation. On the basis of the Detailed (Stage 2) Site Investigation dated 30 July 2021, prepared by JK Environments and the conclusions reached in the Remediation Action Plan of the same author dated 4 August 2021, I am satisfied that the site can be made suitable for the proposed development, subject to implementing a Remediation Action Plan.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

- 58 I am satisfied that the application is accompanied by a BASIX certificate (Cert No. 1250395M), prepared by Waterman AHW (Vic) Pty Ltd dated 22 October 2021 in accordance with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and the Environmental Planning and Assessment Regulation 2000.

State Environmental Planning Policy No 64 – Advertising and Signage

- 59 Signage is proposed to be affixed to the building, and cl 8 of the State Environmental Planning Policy No 64 – Advertising and Signage (SEPP 64) precludes the grant of consent for signage unless that signage is consistent with the objectives of SEPP 64 at cl 3, and satisfies the assessment criteria specified in Schedule 1 of SEPP 64.
- 60 I accept the assessment that appears on pp 52-54 of the Statement of Environmental Effects prepared by Urbis dated 24 December 2021 against the objectives of SEPP 64, and the matters for consideration in Schedule 1. I also note the Signage Brand Guidelines prepared by the Applicant that specify the signage type and location and I am satisfied that the matters at cl 8 of SEPP 64 are addressed.

Conclusion

- 61 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 62 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.

Orders

- 63 The Court notes that:
- (1) The Sydney Eastern City Planning Panel as the relevant consent authority has agreed, under cl 55 of the Environmental Planning and Assessment Regulation 2000, to the Applicant amending Development Application No. DA/20/2021 (*Amended DA*).
 - (2) The Applicant uploaded the documents comprising the Amended DA on the NSW planning portal on 26 October 2021.
 - (3) The Applicant filed the documents comprising the Amended DA with the Court on 27 October 2021.
- 64 The Court orders that:
- (1) The Applicant's written request to vary the height of building standard in clause 6.17 of the Randwick Local Environmental Plan 2012, prepared by Urbis dated 24 September 2021 is upheld.
 - (2) The Applicant's written request to vary the standard for an on-site manager in clause 30(1)(e) of the State Environmental Planning Policy (Affordable Rental Housing) 2009, prepared by Urbis dated 24 December 2020, is upheld.
 - (3) The Applicant's written request to vary the standard for motorbike parking spaces in clause 30(1)(h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009, prepared by Urbis dated 24 September 2021, is upheld.
 - (4) The Applicant is to pay the Respondent's costs thrown away in the agreed amount of \$20,000.00 pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979* within 21 days of these orders being made by the Court.
 - (5) The appeal is upheld.
 - (6) Development application No. DA/20/2021, as amended, for construction of a nine storey mixed use development comprising basement car parking, ground floor retail premises, a boarding house to be used for student accommodation containing 604 rooms, erection of building and

tenancy signage and associated landscaping and civil works at 177-197 Anzac Parade, and the road reserve on the Anzac Parade frontage, Kensington, is approved subject to the conditions contained at Annexure 'A'.

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T Horton

Commissioner of the Court

Annexure A (1519462,

pdf)<http://www.caselaw.nsw.gov.au/asset/17d7e7ef47ee5319ec1b74f9.pdf>

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