



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-186 – DA/373/2020/A
PROPOSAL	<p>S4.56 Modification Application of approved development (Scape Lachlan) to amend the development consent granted by the NSW Land and Environment Court, where the development will remain substantially the same as the development that was originally approved.</p> <p>S4.56 modification to court-approved design includes the following:</p> <ul style="list-style-type: none"> • Addition of a basement level accommodating 98 (37 car parking spaces approved), 106 (122 approved) motorcycle spaces and 114 (128 approved) bicycle spaces. • Reduce number of rooms by 32 from 507 down to 475 comprising 363 student rooms in Site A (Tower A) being a 18-storey tower (southern part of the site) and 112 (42 approved) key worker rooms in Site B (Tower B) containing a 9-storey Tower (at the northern part of the site). • Increased height associated with increased floor to floor heights from 2.95m to 2.96m for levels and extension of lift overrun height for Site A (Tower A) (from 60m (RL85.51) to 61.14m (RL86.65)) and for Site B (Tower B) (from 33.4m (RL59.10) to 33.86m (RL59.56)). • Removal of commercial lift. • Modification to landscape area and plant area on Level 9 (Site B/Tower B) and Level 18 (Site A/Tower A).
ADDRESS	<p>111-125 Anzac Parade and 112 Todman Avenue, Kensington. Comprises the following: Lot 3 DP3897, Lot 1 DP938380, Lot 4 DP655026, Lot A and B DP107256, Lot 1 DP956200 and Lot 2 DP344524.</p> <p>Site area: 2,945m².</p>
APPLICANT	Mr Luke Hickel - Scape Australia ATF Moore Park Trust
OWNER	Perpetual Trustee Company Limited
MOD LODGEMENT DATE	24 January 2022
ORIGINAL DA DETERMINATION	17 June 2021

DATE	
APPLICATION TYPE	S4.56 Modification Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2 of Schedule 7 of the SRD SEPP: General Development over \$30million. Clause 2 of Schedule 6 of SEPP Planning Systems 2021: General Development over \$30million.
CIV	\$90,113,104 (including GST)
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (State and Regional Development) 2011.</i> • <i>State Environmental Planning Policy (Affordable Rental Housing 2009)</i> • <i>State Environmental Planning Policy (Planning Systems) 2021.</i> • <i>Randwick Local Environmental Plan 2012.</i> • <i>Randwick Development Control Plan – Section E6 Kensington and Kingsford Town Centres.</i>
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	One (1), in objection to the proposal.
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Architectural Plans <p><u>Massing views:</u></p> <ul style="list-style-type: none"> ○ DA-0020 Rev. 38, dated 21.12.2021 ○ DA-0021 Rev. 38, dated 21.12.2021 ○ DA-0022 Rev. 38, dated 21.12.2021 ○ DA-0023 Rev. 38, dated 21.12.2021 <p><u>Floor Plans:</u></p> <ul style="list-style-type: none"> ○ Proposed Site Plan – DA-0102 Rev 38 dated 12/10/21 ○ Floor Plan B2 – DA-0208 Rev. 38, dated 21.12.2021 ○ Floor Plan B1 – DA-0209 Rev. 38, dated 21.12.2021 ○ Floor Plan G – DA-0210 Rev. 38, dated 21.12.2021 ○ Floor Plan L1 – DA-0211 Rev. 38, dated 21.12.2021 ○ Floor Plan L2 – DA-0212 Rev. 38, dated 21.12.2021 ○ Floor Plan L3 – DA-0213 Rev. 38, dated 21.12.2021 ○ Floor Plan L4 – DA-0214 Rev. 38, dated 21.12.2021 ○ Floor Plan L5 – DA-0215 Rev. 38, dated 21.12.2021 ○ Floor Plan L6 – DA-0216 Rev. 38, dated 21.12.2021 ○ Floor Plan L7 – DA-0217 Rev. 38, dated 21.12.2021 ○ Floor Plan L8 – DA-0218 Rev. 38, dated 21.12.2021

- Floor Plan L9 – DA-0219 Rev. 38, dated 21.12.2021
- Floor Plan L10 – DA-0220 Rev. 38, dated 21.12.2021
- Floor Plan L11 – DA-0221 Rev. 38, dated 21.12.2021
- Floor Plan L12 – DA-0222 Rev. 38, dated 21.12.2021
- Floor Plan L13 – DA-0223 Rev. 38, dated 21.12.2021
- Floor Plan L14 – DA-0224 Rev. 38, dated 21.12.2021
- Floor Plan L15 – DA-0225 Rev. 38, dated 21.12.2021
- Floor Plan L16 – DA-0226 Rev. 38, dated 21.12.2021
- Floor Plan L17 – DA-0227 Rev. 38, dated 21.12.2021
- Floor Plan L18 – DA-0228 Rev. 38, dated 21.12.2021
- Roof Plan – DA-0229 Rev. 38, dated 21.12.2021

Elevations and Sections:

- Elevations Sheet 1 (North) – DA-0501, Rev 38, dated 21.12.2021
- Elevations Sheet 2 (East) – DA-0502, Rev 38, dated 21.12.2021
- Elevations Sheet 3 (South) – DA-0503, Rev 38, dated 21.12.2021
- Elevations Sheet 4 (West) – DA-0504, Rev 38, dated 21.12.2021
- Sections Sheet 1 – DA-0601, Rev 38, dated 21.12.2021
- Sections Sheet 2 – DA-0602, Rev 38, dated 21.12.2021

Other diagrams:

- Signage Elevations – DA-0510, Rev 38, dated 21.12.2021
- External, materials and finishes, – DA-0520 Rev 38, dated 21.12.2021
- Details Plans – Innovation space – DA-1301 Rev 38 dated 21.12.2021
- Student Room types from DA-1401 to DA-1415 Rev 38 dated 21.12.2021
- Heritage to be retained – DA-1501 Rev 37 dated 16.12.2021
- Shadow Analysis – DA-3001 to DA-3002 Rev 38, dated 21.12.2021
- Solar point perspectives – DA-3004 to DA-3006 Rev 38, dated 21.12.2021
- Solar analysis – DA-3020 to DA-3024 Rev 38, dated 21.12.2021
- GFA Diagrams – DA-3104 to DA-3106 Rev 38, dated 21.12.2021

Amended: DA-3105 to DA-3106 Rev 11, dated 26.05.2022

- Perspective 1 to 3– DA-6001 to DA-6003 Rev 38

Landscape Plans (Appendix 5):

- Cover Sheet – LD-S4.56-000 Rev 1, dated 17.12.21
- Material & planting schedules - LD-S4.56-001 Rev 1, dated 17.12.21
- Ground plane & public domain - LD-S4.56-100 Rev 1,

	<p>dated 17.12.21</p> <ul style="list-style-type: none"> • Level 1 Landscape plan - LD-S4.56-110 Rev 1, dated 17.12.21 • Level 9 Landscape plan - LD-S4.56-120 Rev 1, dated 17.12.21. Roof of 9-storey tower B • Level 18 Landscape plan - LD-S4.56-130 Rev 1, dated 17.12.21. Roof of 18-storey tower A. • Western boundary treatment & green wall trellis system - LD-S4.56-300 Rev 1, dated 17.12.21 • Landscape outline specification & typical details - LD-S4.56-900 Rev 1, dated 17.12.21 <p>Other documents:</p> <ul style="list-style-type: none"> • S4.56 Modification Statement, dated 14 January 2022 • Schedule of Amendments dated 21.12.21 • Appendix 1: Development Consent • Appendix 2: Survey (4 Sheets) • Appendix 3 Development Schedule • Appendix 4 Schedule of Amendments • Appendix 5 Landscape Plans (itemised above) and Compliance Letter dated 17.12.21 • Appendix 6: Traffic Statement • Appendix 7: Ecologically Sustainable Development report • Appendix 8: BASIX Certificate (No. 1112090M_03) • Appendix 9: Geotechnical Statement • Appendix 10: Civil Engineering Plans and Statement
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	28 July 2022
PLAN VERSION/S	21.12.2021 Revision No 38
PREPARED BY	Louis Coorey
DATE OF REPORT	September 13, 2022

1. EXECUTIVE SUMMARY

Council is in receipt of a modification application pursuant to Section 4.56 of the Environmental Planning and Assessment Act (as amended), seeking consent to modify Development Consent DA/373/2020. The development is defined as Regionally Significant general development with a capital investment value over \$30 million, pursuant to Section 4.7, of the Environmental Planning and Assessment Act 1979 and schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011 (subsequently Schedule 6 of the new State Environmental Planning Policy (Planning Systems) 2021).

The original development application was approved by the NSW Land and Environment Court on 17 June 2021, after an agreement was reached between parties pursuant to s34 of the Land and Environment Court Act. Were the application not appealed in the Land and Environment Court, the consent authority for the original Development Application would have been Sydney Eastern City Planning Panel (SECPP).

The original development application approved the demolition of the existing structures and construction of a mixed-use development in two tower forms comprising a 9-storey Tower B in Site B (northern part of the site) and an eighteen (18) storey Tower A in Site A (southern part of the site). The development comprises basement parking (one level), ground and first floor level commercial/retail use and a boarding house to be used as student and key worker (42 rooms) accommodation comprising 507 boarding rooms, a roof-top pool, signage, public plaza, earthworks, landscaping, and associated works.

The modification seeks to amend the design to satisfy the operational demands of the approved development involving changes to the internal floor layouts, floor levels, increased number of key worker accommodation from 42 to 112 including reducing the number of rooms from 507 down to 475, additional basement level to accommodate increased number of parking spaces from 37 to 98, reduced bicycle and motorcycle parking, increased height predominately associated with the lift overrun extensions for the 18-storey tower in Site A and 9-storey tower in Site B and an overall reduction in GFA from 15,504sqm down to 15,391sqm (adjusted in amended GFA diagrams) and reduced FSR from 7.54:1 down 7.53:1.

This modification application is referred to Sydney Eastern City Planning Panel for determination in accordance with the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents* published on the NSW planning portal on 30 June 2020, which states that Section 4.56 modification applications are to be referred to the Panel for determination.

The Section 4.56 modification application was publicly notified to surrounding property owners and any previous objectors and advertised on Council's website with site notification attached to the subject site in accordance with Randwick Council Community Consultation Plan. A total of One (1) submission by way of objection to the proposal was received as a result of the notification process. The submission has been considered and addressed in the assessment of the subject application where applicable.

The key issues associated with the proposed modification relate to increased height and increased overshadowing noting also that the SECPP panel were particularly interested in whether the proposed modification application satisfies the S4.56 test for being substantially the same development.

The proposed changes, notably the increased heights are not considered to result in any adverse impacts upon the built or natural environment, nor unreasonably impact upon the

residential amenity of surrounding properties notably the adjacent lower density R3 medium density residential zone to the south-west.

The application was referred to Council's Design Excellence Advisory Panel for comment who generally accepted each of the amendments as minor/reasonable and not detrimental to the overall design intent and detail of the court-approved development. The application was also referred to Council's Development Engineer, Landscape Officer, Environmental Health Officer and Heritage Planner for comment and/or recommendation raising no objection to the proposed modifications.

The proposed changes are largely in response to the operational needs of the development, and the proposed modifications do not significantly alter the approved scheme.

It is considered that the development remains substantially the same development as a result of the proposed modifications in accordance with Section 4.56 of the Environmental Planning and Assessment Act (as amended), and the proposed amendment shall not alter the intent of the original development. It is noted that the development was approved with key worker accommodation and the increased excavation associated with the additional basement level does not alter the conditions of consent in relation to dewatering and the like.

In view of the above and assessment of the relevant matters for consideration under Section 4.15(1) and 4.56 of the EP&A Act, it is considered that the proposed modification can be supported, and the application is recommended for approval.

2. THE SITE AND LOCALITY

2.1 The Site

The Site is known as 111–125 Anzac Parade & 112 Todman Avenue, Kensington comprised of 7 allotments identified as development sites A and B shown in aerial cadastral and site plan images below.



Figure 1: Aerial cadastral view

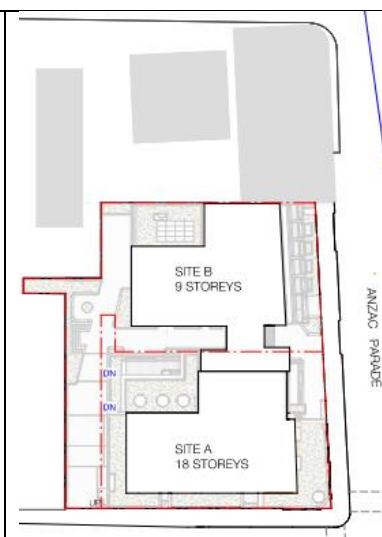


Figure 2: Development site plan view.

The sites in total have an area of 2,967m² with dimensions summarised as follows:

- 60.19m eastern boundary fronting Anzac Parade
- 52.25m southern boundary fronting Todman Avenue
- 42.065m northern boundary adjoining No. 105-109 Anzac Parade
- 42.245m western boundary adjoining empty site at No. 110 Todman Avenue

The site is zoned B2 Local Centre zone

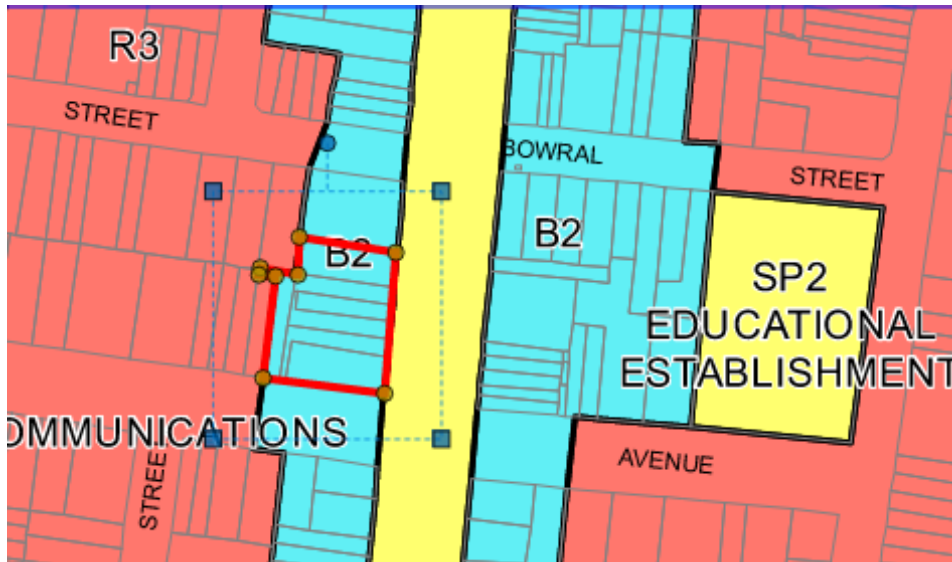


Figure 4: Extract from Land Zoning Map LZN_001 with subject site outlined in red.

The Site is one of four sites identified as “Strategic Node Sites” in the Todman Square Precinct as per the following Figure 5. The subject site is partly comprised of site “K3” and sites further to the north and west:



Figure 5: Key Site Identification (Extract from Figure 5b: Block Location map Kensington Town Centre)

2.2 The Locality

The surrounding development comprises a mixture of medium density residential development, including shop top housing situated within Zone B2 Local Centre pursuant to the provisions of Randwick Local Environmental Plan 2012. 17. The Site is located within the Kensington Town Centre which is characterised by medium density development, generally comprising ground floor retail and commercial uses and residential uses located on the upper levels. Apartment buildings are also identified in the Kensington Town Centres, generally ranging in height from five to seven storeys. The Site is located on a prominent corner fronting Todman Square within the Kensington Town Centre.

To the north of the Site is a seven-storey residential flat building including shop top terraces comprising restaurants, retail, and commercial uses. To the east of the Site consists of a shop top housing development fronting the eastern boundary of Anzac Parade which is listed as a contributory building pursuant to the Randwick Comprehensive Development Control Plan 2013. To the south of the Site is a petrol station and low and medium density residential development mainly comprising one, two and four storeys. To the west of the Site includes medium density residential flat buildings and dwellings ranging in height from single storey to four storeys.



Figure 6: An aerial photograph with the Subject Site (highlighted in yellow) and surrounding development.

3. THE PROPOSAL AND BACKGROUND

3.1 The Proposed Modification

The applicant seeks to modify the consent in the following way:

- Addition of a basement level accommodating 98 car parking spaces, 106 motorcycle spaces and 114 bicycle spaces
- Height modifications:
 - Site A (18-storey (Tower A)) lift overrun increases from 60m to 61.14m (RL 85.51

- to RL 86.65).
- Site B (9 storey (Tower B)) lift overrun increases from 33.4m to 33.86m (RL 59.10 to RL 59.56).
- Amendment to façade design to accommodate the amended internal layout
- Reduce the number of rooms from 507 down to 475 and increased number key worker rooms from 42 to 112 rooms in Tower B and 363 student rooms in Tower A.
- Reconfiguration of Tower A rooms to minimise overlooking to western neighbours.
- Elevations updated to reflect the reorientation of Tower A rooms
- New room types added to Tower B and northern portion of Tower A to include 1 bed and suites
- Tower B podium updated to reflect revised room layout
- Updated Finished Floor Levels (FFLs) to reflect increased floor to floor heights (from 2.95m to 2.96m).
- Core arrangement, lifts and fire stairs repositioned to match revised tower form.
- Modification to building internal layout to accommodate revised structure and core layouts.
- Relocation of gas meter from Anzac Parade to Todman Avenue.
- Removal of commercial lift.
- Amendment to the landscape design based on the changes to the Architectural Plans including modification to landscape area and plant area on Level 9 and 18.

3.2 Proposed Changes to Conditions and development data

Condition 1 of the development consent is sought to be amended according to the submitted plans. As part of the referral and concurrence process several conditions are amended and or added as shown in the recommendation section of this report. The following table identifies the development data of the approved and proposed modification application.

Table 1: Development Data

Control	Approved	Proposed
Site area	2,945m ² .	2,945m ² .
GFA	Total = 15,504m ²	Total = 15,391m ² (original submission: 15,336m ²) Note: Additional GFA to that originally provided is due to additional GFA behind the angled façade now being included)
	Site A – 10,483m ² Site B – 5,021m ² Non-residential – 1,599m ²	Site A – 10,471m ² Site B – 4,920m ² Non-residential – 1,529m ²
FSR (retail/residential)	Site A 7.54:1 Site B 3.19:1 Non-residential 1.15:1	Site A 7.53:1 Site B 3.12:1 Non-residential 1.10:1

Control	Approved	Proposed
Clause 4.6 Requests	Not required for a S4.56 modification application. Clause 6.17 (54m) and 6.21 (60m) of RLEP 2012 Clause 6.17 (31m) of RLEP 2012	See below.
No of Boarding Rooms	507 (42 Key worker rooms)	475 (112 Key worker rooms in Tower B)
No of Beds	571	523
Max Height	Tower A: 60m Tower B: 33.4m	Tower A: 61.14m Tower B: 33.86m
Car Parking spaces	37 car spaces (nil for students and 21 for key worker with 16 for retail and commercial). 1 for manager	98 car spaces (82 for key worker, and 15 for retail and commercial spaces). 1 for manager.
Motorcycle Parking spaces	122 spaces	106 spaces
Bicycle Parking	128 spaces	114 spaces

3.3 Background

Details of Current Approval

Development Application DA/373/2020

The original development application was approved by the NSW Land and Environment Court on 17 June 2021, after an agreement was reached between parties pursuant to s34 of the Land and Environment Court Act. As part of the Court process, the development was amended significantly with particular regards to the following:

- Tower A GFA decreases from 11,203m² to 10,571m²
- Tower B GFA increases from 4,703m² to 5,069m²
- Combined site GFA decreased from 15,906m² to 15,640m²
- Non-residential GFA removed from basement and Non-residential GFA increases from 1,405m² to 1,608m²
- Yield decreases from 610 Beds to 571 Beds
- Compliance with DCP setbacks achieved
- Building mass in 16m LEP height limit removed
- 4 Storey podium on Anzac Parade
- Building mass shifted from Western edge of site to the Eastern edge along Anzac Parade to reinforce the 9-storey street wall
- Level RL increased to accommodate 2.95m floor to floor heights
- Plaza on Anzac Parade removed
- Through site link repositioned further south on Site B

The approved development was considered to be consistent with the relevant provisions of SEPP ARH, RLEP 2012 and the Part E6 of Randwick Development Control Plan Kensington and Kingsford Town Centres 2020 which was adopted during the course of the court proceedings. The variations to the maximum height and FSR standards were supported by written clause 4.6 requests which was accepted by Council and the Court. The external appearance was considered to improve the amenity of the public domain, and the built form and proposed use was consistent with that envisaged by the planning controls and B2 Local Centre land zoning.

3.4 Application history

The subject modification application (DA/373/2020/A) was lodged on 24 January 2022. The application was externally referred to Water NSW, RMS, Transport NSW and Sydney Airport Corporation. The application was internally referred to Council's Heritage Planner, Landscape Officer, Environmental Health Officer, and Development Engineer Coordinator for comment and/or recommendations.

A chronology of the modification application since lodgement is outlined below in **Table 2** including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the Modification Application

Date	Event
24 January 2022	Modification application lodged
2 February 2022	Modification referred to external agencies
3 February 2022	Exhibition of the application
17 February 2022	Request for amended acoustic report
22 February 2022	Amended acoustic report submitted
2 April 2022	Referral to Randwick Design Excellence Advisory Panel
12 May 2022	Panel Kick-off briefing
20 June 2022	Referral to Randwick Design Excellence Advisory Panel
8 August 2022	Response provided by Applicant to DEAP comments
12 August 2022	Engineering comments provided

4. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.56 of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the 2021 EP&A Regulation (in this instance the EP&A Regs 2000 given the date the application was lodged and the savings provisions contained within the 2021 Regs) in relation to information requirements and notification. These matters are considered below.

4.1 Section 4.56 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.56 of the EP&A Act. The matters include the following:

- (a) *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) (s4.56(1)(a)), and*

To establish if development is substantially the same as what was granted consent, reference is made to the case of *Moto Projects (No.2) v North Sydney Council* [1999] NSW LEC 280, which provides the following judgement:

“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified.....

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development is granted).

The application originally approved a mixed-use development comprising commercial premises and a boarding house with 523 boarding rooms for students with 37 provided for key worker accommodation). The current modification application seeks to modify the consent by way of increasing the height mostly for lift overruns, reduce the total number of boarding rooms, increase the number of key worker accommodation, add a basement level (2 total) providing additional parking for key workers and increase residential floor levels by 1cm to address buildability or servicing requirements.

Quantitatively, the proposed modifications shall result in minor changes to the approved development, with a decrease to the overall Gross Floor Area, and the increase to the overall height of the development is largely centrally located within the floor plate of each building. The increased excavation for the additional basement is also not considered a major change noting that Council's Development Engineer does not recommend a change to the originally imposed conditions for dewatering.

Overall, quantitatively, the approved built form envelope is largely being retained, and it is considered that the proposed modifications do not result in a development that will

fundamentally alter the originally approved development.

The term “substantially” means “*essentially or materially having the same essence*”.

The intent of the proposed development remains the same as the approved development, providing a mixed-use development comprising commercial premises, and a boarding house of up to eighteen (18) storeys in height, and it is considered that the essence of the use for affordable housing which includes key workers which has been referenced in the judgement as a particular mix of uses that reflects the range of uses nominated in the zone, associated with which is the potential for employment on a site adjoining the light rail. Furthermore, the development as modified continues to fall within the scope of the original description, being construction of a mixed-use development comprising student and key worker accommodation, commercial premises and associated parking.

In view of the above, and the judgement in *Moto Projects (No.2) v North Sydney Council [1999] NSW LEC 280*, it is considered in this instance the fundamental characteristics and essence of the development would remain the same and as such the consent authority can be satisfied that the resultant development is considered to be substantially the same development as originally approved.

- (b) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, and*
 - (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 (s4.56(1)(b)), and*
- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person (s4.56(1)(c)), and*

The Section 4.56 modification application was publicly notified to surrounding property owners and to any previous submitters/objectors and advertised on Council’s website with site notification attached to the subject site in accordance with Randwick Council Community Participation Plan. One (1) submission by way of objection to the proposal was received as a result of the notification process.

- (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 (s4.56(1)(d)).*

The submission has been considered and addressed in the assessment of the subject application where applicable. Refer to Section 4 of this Report.

- (e) *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 (s4.56(1A)).*

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this report; and
- Reasons given by the consent authority for the grant of the consent that is sought to be modified – outlined below.

Reasons for Grant of Consent

The NSW Land and Environment Court granted consent to the original development on 17 June 2021 in response to an agreement between parties, pursuant to section 34 of the Land and Environment Court Act. During the course of the Court proceedings, the Applicant was granted leave to rely on amended plans. The amended plans are not appreciably different to that proposed in this modification application noting that it is sought to increase the height it does not do so to such an extent that it would present a vastly different scale to that originally approved, and the application also reduces the number of rooms, and overall GFA on site.

The proposed modification is not inconsistent with the reasons given in the judgement by the Court in that the proposed development remains generally consistent with the relevant planning 3-D dimensional controls and expectations for the site given the zoning and other planning controls for the site.

4.2 Section 4.15(1) of the EP&A Act

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.56(1A), which are of relevance to the application.

4.3 Section 4.15(1)(a) - Provisions of Environmental Planning Instruments,

The relevant provisions under s4.15(1)(a) are considered below.

Environmental planning instruments (s4.15(1)(a)(i))

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)*
- *State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *Randwick Local Environmental Plan 2012 (LEP)*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
BASIX SEPP	An amended BASIX Certificate was provided with the subject application (1115745M_03). Conditions of consent in relation to compliance with the BASIX provisions and required documentation are to be maintained within the development consent.	Y
State Environmental Planning Policy (Affordable Rental Housing) 2009	Division 3 – Boarding Houses	Y
(State Environmental Planning Policy (Housing) 2021)	Schedule 7A Transitional and savings provisions does not apply to a development consent issued prior to 26 November 2021.	NA
State Environmental Planning Policy (State and Regional Development) 2011	Clause 2 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011: General Development over \$30million.	Y
State Environmental Planning Policy (Planning Systems) 2021	Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: General Development over \$30million.	Y
LEP	<ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives • Clause 4.3 – Height of Buildings • Clause 4.4 – Floor Space Ratio • Clause 6.11 – Design Excellence • Clause 6.17 – Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres • Clause 6.18 - Affordable housing at Kensington and Kingsford town centres • Clause 6.19 - Non-residential floor space ratios at Kensington and Kingsford town centres • Clause 6.20 – Active Street frontages at Kensington and Kingsford town centres • Clause 6.21 – Design excellence at Kensington and Kingsford town centres 	N – 4.3 & 4.4
DCP	<ul style="list-style-type: none"> • Randwick Development Control Plan Part E6 - Kensington and Kingsford Town Centres <p>The proposed modifications do not result in any substantial changes to the approved architectural form, with the overall building envelope generally consistent with that approved and envisaged under the K2K DCP 2020.</p>	N

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

State Environmental Planning Policy – Building Sustainability Index BASIX– 2004 ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by a revised BASIX Certificate No.1112090M_03, dated 03 November 2021 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the retention of the relevant conditions of consent incorporated in the original consent.

- *State Environmental Planning Policy (Affordable Rental Housing) 2009 (Replaced by State Environmental Planning Policy (Housing) 2021 on 26 November 2021)*

The subject application is made pursuant to the SEPP (Affordable Rental Housing) 2009 (SEPP ARH). Clause 29 provides – Standards that cannot be used to refuse consent and Clause 30 provides - Standards for boarding houses.

Note: The current SEPP applying to boarding house development in NSW is the SEPP Housing 2021 which came into force on 26 November 2021. An assessment is not carried out against the current SEPP Housing due to Savings and transitional provisions pursuant to Clause 7A (1)(d) which state that this policy does not apply to a development consent granted on or before the commencement date. Therefore, the provisions under SEPP ARH apply to this DA.

The development as modified as a result of converting for more key worker accommodation and reducing the number of the boarding rooms from 507 down to 475 and providing additional car parking to service this change will remain consistent with the provisions of the SEPP ARH.

The development as sought to be modified remains consistent with the standards with particular regards to the size of boarding rooms, facilities, manager requirements, solar access and parking provisions.

- *State Environmental Planning Policy (State and Regional Development) 2011 (Replaced by State Environmental Planning Policy (Planning Systems) 2021 on 1 March 2022)*

The original development was general development with a capital investment value over \$30 million and was defined as Regionally Significant Development. Pursuant to Section 4.7, of the Environmental Planning and Assessment Act 1979 and Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011 (or subsequently Schedule 6 of the new State Environmental Planning Policy (Planning Systems) 2021). The consent authority for the Development Application would have been Sydney Eastern City Planning Panel (SECPP) were the application not appealed in the Land and Environment Court. In accordance with the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents* published on the NSW planning portal on 30 June 2020, section 4.56 modification applications are not identified as being an application in which Council can determine, and therefore the application is referred to Sydney Eastern City Planning Panel for determination.

- *State Environmental Planning Policy (Infrastructure) 2007 (Replaced by State*

Environmental Planning Policy (Transport and Infrastructure) 2021 on 1 March 2022)

The original development application was referred to Transport for NSW for concurrence pursuant to section 138 of the Roads Act 1993, and clause 86 of the ISEPP.

The proposed modifications are referred to TfNSW pursuant to S138 of the Roads Act and Clause 101 of the SEPP Infrastructure. TfNSW do not object to the proposed modifications subject to Council's consideration of imposing a condition in relation to the design of balconies, terraces and windows facing the light rail corridor and Anzac Parade such that any of these areas within 20 metres facing the rail corridor are designed - in accordance with Section 5.4 of the ASA standard T HR CI 12090 ST Airspace and External Developments version 1.0 – to prevent objects being dropped or thrown onto the rail corridor. TfNSW also recommended inclusion of additional conditions (Condition No. 2g and 13A) pertaining to the additional parking (traffic) with a view to encouraging utilisation of the public and active transport options available.

The Balconies within Tower B appear to be located within 20m of the light rail platform, therefore an appropriate condition (13A) is added requiring the submission of additional details to Council for approval prior to a construction certificate being issued for the consent.

TfNSW also requested that the formulation of the Green Travel Plan consider certain elements that will contribute to the use of public and alternative means of transport other than those requiring private vehicle movement. Condition 2d which required a GTP to reflect the approved development to consider specific matters with a view to encourage public and alternative means of transport.

- *Randwick Local Environmental Plan 2012*

The relevant local environmental plan applying to the site is the Randwick Local Environmental Plan 2012 ('the RLEP 2012'). The proposed development as modified remains consistent with the relevant aims and provisions of RLEP 2012, noting that the proposal for shop top housing (boarding house/student housing) is maintained and that the modified built form is largely consistent with the approved building envelope and architectural form.

The site is located within the B2 Local Centre Zone pursuant to Clause 2.2 of RLEP 2012. The proposed development comprises a mixed-use development incorporating commercial premises, and a boarding house. As noted, the subject modification application does not seek to change the approved use of the development for boarding house use which is permissible within the B2 zone.

The proposed development as modified also remains consistent with the objectives of the B2 zone serving the needs of people who live in, work in and visit the local area; encourage employment opportunities; maximises public transport, provides residential development that is well-integrated with, and supports the primary business function of, the zone; provides a high standard of urban design; and protects the amenity of surrounding residents. The proposal as modified is considered compatible with the desired future character of the Kensington Town Centre.

The matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') are considered in **Table 4** and where necessary in the key issues section further below.

Table 4: S4.15 Matters for Consideration

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(i) – Provisions of any environmental planning instrument	The proposed modifications are an ancillary component to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012 and SEPP's.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive K2K DCP 2020.
Section 4.15(1)(a) (iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the Regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013, K2K RDCP 2020 and RLEP 2012.</p> <p>Therefore, the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or	The issues raised in submission are considered and addressed in the report.

Section 4.15 'Matters for Consideration'	Comments
EP&A Regulation	
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

3.3 Part 5 of the 2021 EP&A Regulation

The subject application was lodged on 19 November 2021. In accordance with the saving provisions under Schedule 6 of the EP&A Regs 2021, the 2000 Regulation continues to apply to the application not the provisions of the 2021 Regs. The subject application is consistent with the relevant provisions of the Environmental Planning and Assessment Regulations 2000.

5 REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The original development application was classified as:

- Integrated Development (pursuant to s4.46 of the EP&A Act)
- Requiring concurrence/referral (pursuant to s4.13 of the EP&A Act)

Accordingly, the modification application was referred to various agencies for concurrence as required by the EP&A Act and Clause 109 of the 2021 EP&A Regulation and outlined in **Table 5**.

The relevant authorities did not raise any objection to the proposed modifications, and the recommended conditions of consent are imposed as recommended – Attachment A contains the comments and recommendations.

Table 5: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for NSW (TfNSW)	<ul style="list-style-type: none"> • Section 138 of the Roads Act 1993 (non-integrated); • Clause 101 of the <i>State Environmental Planning Policy (Infrastructure) 2007</i>. 	TfNSW reviewed the material and advised no objections to the proposed modification as it was considered to have a negligible impact to the	Y

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
		<p>surrounding classified road network.</p> <p>TfNSW did reiterate requirements to prevent objects being able to be thrown onto the light rail corridor from areas within 20m of the corridor. Condition 13A is added.</p> <p>TfNSW also recommended consideration of additional conditions to alleviate traffic and encourage use of public and active transport options. Condition 2d is amended.</p>	
Sydney Airport	Clause 6.8 of RLEP 2012	The proposed height is approved subject to the recommended conditions being imposed.	Y
Water NSW	s90 of the Water Management Act 2000	Water NSW raised no objection to the proposed modifications and advised that the GTA (condition 12) shall be amended as recommended.	Y

5.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined **Table 6**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Development Engineer	Council's Development Engineer Coordinator reviewed the proposed modifications and raised no objection to the proposal with regards to stormwater management, traffic and parking, and waste management. Conditions recommended are provided within Attachment B.	Y

Officer	Comments	Resolved
Landscape officer	No objections to the proposed modification application recommending amendment to relevant conditions provided within Attachment B.	Y
Environmental Health	The application was referred to Council's Environmental Health Officer who requested an amended acoustic report. Conditions recommended are provided within Attachment B.	Y
Heritage	Council's Heritage Officer reviewed the subject application and raised no objection to the proposal. Detailed comments are provided within Attachment B.	Y
Strategic	Council's Strategic Planning Urban Designer raised no objections to the proposed modification application.	Y

5.3 Notification and Community Consultation

The modification application was notified in accordance with Council's Community Participation Plan from 3 February 2022 until 17 February 2022. The notification included the following:

- A sign placed on the site.
- Notification letters sent to adjoining and adjacent properties, and to previous submitters and objectors.
- Notification on the Council's website.

The Council received a total of one (1) unique submission, and nil submissions in support of the proposal. The issues raised in these submissions are considered in **Table 7**.

Table 7: Community Submissions

Issue	Assessment Comments
<p>Parking and Traffic</p> <p>Parking is inadequate noting the change in use to provide for less student housing.</p>	<p>The subject application proposes an increase in parking provided on site to accommodate for the change in use of student housing into key worker accommodation. The increased number of parking spaces complies with the SEPP ARH provisions for parking. It is considered onerous to require more parking than that required under the</p>

Issue	Assessment Comments
	provisions.
<p>Parking permits</p> <p>If no additional parking is provided, then they should be excluded from the resident parking program.</p>	<p>Condition 164 and 165 in the original consent states that Council will not issue any residential parking permits to occupants/tenants of this development and future residents don't qualify for on-street parking permits respectively.</p>
<p>Electric vehicle charging stations</p> <p>2-3 electronic vehicle charging stations should be included for this development.</p>	<p>Condition 2h of the original consent requires provision of electronic vehicle charging points (20) in compliance with the DCP provisions.</p>

6 KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

6.1 Height of buildings

The site is subject to a split height provision, with the northern part of the site B comprising the 9-storey tower (B) at 111 to 113-115 Anzac Parade subject to a maximum height of 31m and the southern part of the site (Site A) comprising the 18-storey tower (A) subject to a 60m height limit under the LEP.

For Tower B, the original consent approved an exceedance of the maximum 31m height limit, with a height of 33.4m and this modification application seeks a further increase in height to 33.86m associated with the lift overrun extension.

For Tower A, the original consent approved a maximum height of 60m complying with the maximum height standard pursuant under clause 6.21 design excellence. This modification application seeks to extend above the maximum to 61.14m associated with the lift overrun extension.

The proposed height increases are considered to satisfy the LEP objectives and DCP provisions for built form for the following reasons:

- For both towers the height increases are located centrally within the floor plate noting that at the periphery or side elevations particularly those to the east facing Anzac parade and those to the west and south closest to nearby residential zones, the modification application maintains parapet heights that are generally consistent with that originally approved or at least compliant with the maximum envelope controls. For instance, for Tower A, the modification application along the western elevation seeks increased parapet heights of 460mm (RL81.90 to RL82.36) and 800mm (RL82.85 to RL83.65), remaining 1.85m and 3.14m below the 60m maximum height development

standard. For Tower B, the modification application relating to an infinity pool and deck which are only 2cm over the 31m height standard can only be considered a minor variation if at all.

- The lift overrun extensions for both towers are centrally located well away from street level along Todman Avenue, Anzac Parade and around 20m away from the nearest residential zone to the west ensuring no adverse visual amenity or overshadowing impacts on the streetscape or neighbouring properties.

Overall, the proposed modifications to the heights of the development are not considered to result in any unreasonable adverse impacts upon the built or natural environment, nor upon the residential amenity of surrounding properties ensuring consistency with the objectives of the height standards in the LEP.

6.2 Design Excellence

Clause 6.21 of RLEP 2012 requires the consent authority to be satisfied that the development exhibits design excellence.

The proposed development involves only minor changes to the external facades, noting that the subject application was referred to Council's Design Excellence Advisory Panel ("DEAP") who considered the design and architectural merits of the proposed modifications in relation to design excellence.

The DEAP were generally supportive of the proposed changes, however raised questions in regard to the following matters which are followed by the applicant's response:

- DEAP (Overshadowing): The Panel queried changes to height with particular reference to possible further overshadowing of the low-density R3 precinct to the west and south-west by extension of the Tower A roof plantroom (L.18) to align the western façade. The architects advised the meeting that there were no impacts, however this should be confirmed to Council with comparative shadow impact diagrams.

Applicant response: Shadow diagrams have been provided. As demonstrated in the Shadow Diagrams, there will be negligible increase in shadow from the plant room façade. Therefore, the proposed modification would not result in any adverse overshadowing impacts.

- DEAP (Waste arrangement): The Panel noted the proposed waste management strategy is yet to be resolved, and that adequate provisions for removal of waste must be provided for both options.

Applicant response: The waste management will be resolved during design development and will be undertaken in accordance with the conditions of consent.

- DEAP (daylight access to corridor): The Panel queried the split corridor arrangement to the northern wing typical floors of Tower A, noting the dog-leg corridor and a lack of access to natural light. It was suggested that this be further reviewed by the architects to determine how this could be remedied.

Applicant: It is noted that corridor arrangement is consistent with the approved scheme under the Section 34 agreement and no further amendment is proposed to the corridor arrangement.

- DEAP (lift service): The Panel noted the high number of "front doors" in Tower A and queried the level of lift service that is being provided. The applicant advised that this has been reviewed with consultant engineer and considered acceptable. Details of proposed service wait times should be provided to Council.

Applicant: Scape have engaged WSP as the vertical transport consultant for the project, the lift speeds and capacity have been designed to the relevant Australian Standards. Scape ensures in all of its developments that the lift speeds are over and above the minimum performance requirements.

- DEAP (Method of GFA): The Panel queried the modelling and method of measurement of GFA in relation to the angled/serrated GRC façade system on the south on Tower A. Further dimensions and detail should be provided to Council's satisfaction.

Applicant: The GFA diagrams and schedule have been updated to include the angled portion on the south of Tower A. The resultant FSR for Tower A is 7.53:1 with a GFA of 15,391sqm.

Assessment comments: The above matters are assessed as follows:

- Overshadowing: The additional overshadowing caused by the increased height is acceptable noting that it is caused by the plant room façade along the southern elevation of the 18-storey tower in Tower A which remains compliant with the 60m maximum height standard. The shadow diagrams provided by the applicant demonstrate this showing that the additional shadows at 10am, 11am and 1pm do not extend beyond that caused by a compliant 60m envelope.
- Waste arrangement: Requiring waste arrangement details as part of this modification application is not considered necessary as waste arrangement is the subject of specific conditions of consent requiring details to be submitted to Council prior to a Construction Certificate being issued for the development.
- Daylight access to corridors: Council concurs with the applicant's response.
- Lift service: The proposed deletion of the commercial lift in Tower B is considered acceptable noting that the lobby is now a shared lobby that's co located with the proposed 112 key worker rooms in Tower B. It is also noted that separate lift access to level 1 commercial and innovation space from a ground level lobby at the northwestern corner of the site.

In consideration of the DEAP comments, and the justification provided in relation to the concerns raised, it is considered that the proposed development is not an inappropriate arrangement and design response to the site and will generally satisfy the relevant objectives for design excellence in the LEP and the DCP.

6.3 Non-residential floor space

Clause 6.19 of the LEP requiring a minimum 1:1 floor space ratio of non-residential floor space within the Kensington town centre. The proposed decrease of ground level commercial space within Tower A whilst providing 0.276:1 and still not complying with the 1:1 minimum provision required for Site A (node site) it is still consistent with the approved outcome allowing for non-residential floor area to be spread across both Site A and B and also provides an overall FSR of 1.10:1 exceeding the 1:1 minimum required.

6.4 DCP provisions

6.4.1 Strategic node sites

The K3 site is identified as a strategic node site located at the north-western corner of Todman intersection in the Kensington Town Centre.

The modification application will continue to satisfy the objectives of the DCP namely providing greater numbers of key worker accommodation supporting and encouraging the growth of the precinct.

6.4.2 Internal Alterations

Commercial Premises

The proposed modifications to the retail spaces on the Ground Floor are a result of the amendments to the Community Hall entrance lobby, the provision of an additional accessible toilet, and revised waste and services locations. However, the retail areas shall be consistent with that approved under the original consent. The proposed modifications at the First-Floor levels generally involve the removal of internal areas to allow better flexibility of the use of the space, in which future fit-outs would be subject to a separate approval. The proposed area of the commercial space shall not alter as a result of the proposed changes.

Boarding Rooms and Communal Space

Modifications to the boarding rooms relate to the following:

- Tower B: rearrangement of rooms providing for larger and wider sized rooms
- Tower A: rearrangement of four single rooms at the south-western corner into two double cluster rooms with an outlook to the north and south improving amenity.
- Narrower living rooms (from level 2 to Level 8) at the junction between the two towers

The proposed changes will overall provide for more suitable levels of amenity for key workers and student accommodation noting that the overall GFA and size of the rooms will remain compliant with the provisions of the SEPP ARH.

The outdoor communal areas have also been reconfigured with a minor decrease to the communal indoor and outdoor areas, however the area provided has very good amenity for future occupants of both tower A and B.

In view of the above, the proposed internal amendments are not considered to result in any detrimental impacts upon the internal amenity of the development and shall remain consistent with the original approval.

7 CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act, the EP&A Regs 2000 and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

It is recommended that the application to modify the approved development be approved for the following reasons:

- The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.
- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013 and the K2K DCP 2020.
- The proposal is consistent with the specific objectives of the B2 Local Centre zone in that it shall contribute to the range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area; encourage employment opportunities; maximises public transport, provides residential development that is well-integrated with, and supports the primary business function of, the zone; provides a high standard of urban design; and protects the amenity of surrounding residents.

The application is recommended for approval subject to the following recommendations:

8 RECOMMENDATION

It is recommended:

That the Sydney Eastern City Planning Panel, grants development consent under Section 4.56 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/373/2020/A to amend the development consent granted by the NSW Land and Environment Court, where the development will remain substantially the same as the development that was originally approved at 111, 113-115, 117-119, 121-125 Anzac Parade and 112 Todman Avenue, Kensington, in the following manner:

- **Amend Condition 1 to read:**

Approved Plans & Supporting Documentation

1. The development must be implemented substantially in accordance with the plans and supporting documentation listed below:

<i>Plan No.</i>	<i>Rev No.</i>	<i>Drawn by</i>	<i>Dated</i>
0101	12	SJB Architects	9 March 2021
0102			
0209			
0210			
0211			
0212			
0213			
0214			
0215			
0216			
0217			
0218			
0219			
0220			

Plan No.	Rev No.	Drawn by	Dated
0221			
0222			
0223			
0224			
0225			
0226			
0227			
0228			
0229			
0501			
0502			
0503			
0504			
0510			
0601			
0602			
1401			
1402			
1403			
1404			
1405			
1406			
1407			
1408			
1409			
1410			
1411			
1501			
LD-S34-000	1	Landform Studios	9 March 2021
LD-S34-001			
LD-S34-100			
LD-S34-110			
LD-S34-120			
LD-S34-300			
LD-S34-900			

BASIX Certificate No.	Dated
1115745M_02	1 April 2021

EXCEPT where amended by:

- Council in red on the approved plans; and/or
- Other conditions of this consent; and/or
- the following Section 4.56 plans and supporting documents only in so far as they relate to the modifications highlighted on the Section 4.56 plans and detailed in the Section 4.56 application:

Plan No.	Drawn by	Dated
Architectural plans		

Plan No.	Drawn by	Dated
Proposed Site Plan – DA-0102 Rev 38	SJB Architects	12/10/21
Floor Plan B2 – DA-0208 Rev. 38		21.12.2021
Floor Plan B1 – DA-0209 Rev. 38		21.12.2021
Floor Plan G – DA-0210 Rev. 38		21.12.2021
Floor Plan L1 – DA-0211 Rev. 38		21.12.2021
Floor Plan L2 – DA-0212 Rev. 38		21.12.2021
Floor Plan L3 – DA-0213 Rev. 38		21.12.2021
Floor Plan L4 – DA-0214 Rev. 38		21.12.2021
Floor Plan L5 – DA-0215 Rev. 38		21.12.2021
Floor Plan L6 – DA-0216 Rev. 38		21.12.2021
Floor Plan L7 – DA-0217 Rev. 38		21.12.2021
Floor Plan L8 – DA-0218 Rev. 38		21.12.2021
Floor Plan L9 – DA-0219 Rev. 38		21.12.2021
Floor Plan L10 – DA-0220 Rev. 38		21.12.2021
Floor Plan L11 – DA-0221 Rev. 38		21.12.2021
Floor Plan L12 – DA-0222 Rev. 38		21.12.2021
Floor Plan L13 – DA-0223 Rev. 38		21.12.2021
Floor Plan L14 – DA-0224 Rev. 38		21.12.2021
Floor Plan L15 – DA-0225 Rev. 38		21.12.2021
Floor Plan L16 – DA-0226 Rev. 38		21.12.2021
Floor Plan L17 – DA-0227 Rev. 38		21.12.2021
Floor Plan L18 – DA-0228 Rev. 38		21.12.2021
Roof Plan – DA-0229 Rev. 38		21.12.2021
Elevations Sheet 1 (North) – DA-0501, Rev 38		21.12.2021
Elevations Sheet 2 (East) – DA-0502, Rev 38		21.12.2021
Elevations Sheet 3 (South) – DA-0503, Rev 38		21.12.2021
Elevations Sheet 4 (West) – DA-0504, Rev 38		21.12.2021
Sections Sheet 1 – DA-0601, Rev 38		21.12.2021
Sections Sheet 2 – DA-0602, Rev 38		21.12.2021
Signage Elevations – DA-0510, Rev 38		21.12.2021

Plan No.	Drawn by	Dated
External, materials and finishes – DA-0520 Rev 38		21.12.2021
<i>Landscape Plans</i>		
Cover Sheet – LD-S4.56-000 Rev 1	SJB Architects and Landform Studios	17.12.21
Material & planting schedules - LD-S4.56-001 Rev 1		17.12.21
Ground plane & public domain - LD-S4.56-100 Rev 1		17.12.21
Level 1 Landscape plan - LD-S4.56-110 Rev 1		17.12.21
Level 9 Landscape plan - LD-S4.56-120 Rev 1, Roof of 9-storey tower B		17.12.21
Level 18 Landscape plan - LD-S4.56-130 Rev 1, Roof of 18-storey tower A.		17.12.21
Western boundary treatment & green wall trellis system - LD-S4.56-300 Rev 1		17.12.21
Landscape outline specification & typical details - LD-S4.56-900 Rev 1		17.12.21
<i>BASIX Certificate No.</i>	<i>Dated</i>	
1115745M_03	21 December 2021	

• **Amend condition 2 g. to read:**

2. g. The Green Travel Plan prepared by Ason Group shall be amended to reflect the approved development and considerations in the formulation of the Green Travel Plan:
 - Objectives: GTP objectives that seek to reduce the proportion of single-occupant car travel by residents and visitors to and from the site and increase the mode share of public transport and active transport for the life of the development.
 - Reducing car parking: Reduce the amount of car parking for the proposed development – providing these car parking spaces will encourage more staff, residents and visitors to drive to and from the site rather than use public transport, and active modes.
 - Parking management strategy: The parking management strategy prioritises use by residents, workers and visitors on a need's basis, i.e., preference for parking for employees that are car-pooling. As well as reduced parking rates, preparing a comprehensive parking management plan is recommended in order to effectively manage the parking including, but not limited to, price, time, location of short/long term bays, unbundling parking, and sharing of parking spaces. There will also be a need to consider reviewing bicycle parking and end of trip facilities as part of the GTP in order to encourage mode shift to active modes, as well as a great

share of public transport. Consideration could also be given to hypothecating fees from car parking levies toward funding sustainable transport initiatives in the Green Travel Plan, such as by rewarding/incentivising residents, workers and visitors that travel to the site by public or active transport.

- **Mode Share targets:** Identify existing and provide future mode share targets for staff and patrons to use sustainable active and public transport travel to and from the site and identify and implement measures to achieve these mode shares. The aim of this mode share will be to reduce single occupancy car use and promote active and public transport use i.e., cycling, walking, buses, light rail/shuttle, and car-pooling etc. Please consult our website Travel Plan Toolkit and Travel Plan template for further information.
- **Responsibilities:** Identify the party or parties responsible for delivery and implementation of each element of the GTP throughout various stages of the development lifecycle, including for its ongoing implementation, monitoring and review.
- **Implementation Strategy:** A distinct Implementation Strategy within the GTP which provides an implementation plan of tasks and actions, including all of your proposed initiatives and incentives, timing and completion dates, communications tasks, and who will do the tasks; this will ensure the overall effectiveness of the GTP.
- **Funding and resourcing:** The GTP will need to be appropriately funded and otherwise resourced, by the proponent, including for any ongoing travel demand initiatives that will require resourcing. This should be covered in the GTP Implementation Strategy and Action Plan.
- **Data –** The GTP must monitor and measure the increase in public transport use within the GTP, which identify the travel behaviour of staff and visitors and residents to review the effectiveness of the program and to measure the effectiveness of the objectives and mode share targets of the GTP. This should be tailored to when there are future upgrades for transport. Data includes: An additional weekly report of patronage be included in the GTP using Opal data to and from the site. Data short term could include car-pooling numbers and numbers of shuttle trips with visitors and staff.
- **Monitoring and review:** Provision that the GTP is monitored and reviewed by the applicant to test its performance and efficiency, particularly relative to anticipated increased public transport and event patronage that has been suppressed due to COVID-19; and that evidence of this review is provided for TfNSW's consideration 12 months post-occupancy.
- **Travel Access Guide:** Including a high-quality Travel Access Guide (TAG) which provides information to staff, visitors and residents about how to travel to the site by sustainable transport modes. The TAG should:
 - o Provide an overall integrated network map for staff, visitors and residents to get to and from the site; this includes bus routes, light rail routes, cycling routes, train routes, taxi drop off and pick up points, and pick up and drop off locations for private vehicles at the site. Walking pathways should also be included.
 - o Provide information advising staff, visitors and residents that additional information about service routes and timetables for buses and trains is available on the Trip Planner at transportnsw.info/
 - o Provide promotion of end of trip facilities, including the new cycling infrastructure available, and update number and location of bike parking facilities and End of Trip facilities, and locate on TAG.
 - o For further helpful information - please check this link [How to Create a Travel Access Guide doc here](#).
- **Strategies and initiatives:** Identify strategies and initiatives that reduce the proportion of single occupant car travel to/from the site (including public and

active transport) and increase the use of public and active transport travel to the site. Suggestions for some additional incentives and initiatives include:

- o Providing pre-loaded opal cards for staff.
- o Providing staff that are committed to active travel e with subsidised panniers, backpacks, etc.
- o Improving wayfinding to End of Trip facilities.
- o Incorporating a role for a GTP sustainable travel champion that focuses on modelling the desired behaviour and positive communication around active and public transport.
- o Implementing a car-pooling scheme with guaranteed ride home. Online car sharing systems for staff, visitors and residents, operating across an entire precinct to maximise access to possible rides. This could include discounted membership of car share clubs.

The GTP shall be submitted to TfNSW prior to occupancy for approval, or within one month of occupancy if this timeline cannot be achieved.

- **Amend condition 2f to read:**

Environmental Health

1. f. *The Amended Acoustic Report prepared by Acoustic Logic titled: "Scape Lachlan, 111-125 Anzac Parade, Kensington - Noise Impact Assessment dated 22/02/2022 reference: 20200308.7" is to be complied with and forms part of this consent.*

- **Add condition 2k to read:**

Environmental Health

2. k. *The use and Operation of the Loading Dock is required to comply with the following as stipulated in the submitted acoustic report titled "Scape Lachlan, 111-125 Anzac Parade, Kensington - Noise Impact Assessment dated 22/02/2022 reference: 20200308.7":*
 - *No loading dock operation between 6pm – 7am Monday to Saturday or 6pm to 8am Sunday/Public holidays.*
 - *Garbage compacting can only be operated during the day (7am to 6pm Monday to Saturday, 8am to 6pm Sunday or Public Holidays).*
 - *Prominent notice shall be displayed within the loading dock to remind operators to minimise noise during loading and unloading activities*
 - *Floor finish of the loading dock should be of broom finish to avoid tyre squealing noise.*

- **Amend Condition 12 to read:**

Water NSW – General Terms of Approval

12. The General Terms of Approval from Water NSW provided in the letter dated 09 March 2022 shall be complied with as follows:

Dewatering

- GT0115-00001 Groundwater must only be pumped or extracted for the purpose of temporary construction dewatering at the site identified in the development application. For clarity, the purpose for which this approval is granted is only for dewatering that is required for the construction phase of the development and not for any dewatering that is required once construction is completed.
- GT0116-00001 Before any construction certificate is issued for any excavation under the development consent, the applicant must: 1. apply to WaterNSW for, and obtain, an approval under the Water Management Act 2000 or Water Act 1912, for any water supply works required by the development; and 2. notify WaterNSW of the programme for the dewatering activity to include the commencement and proposed completion date of the dewatering activity. Advisory Note: 3. An approval under the Water Management Act 2000 is required to construct and/or install the water supply works. For the avoidance of doubt, these General Terms of Approval do not represent any authorisation for the take of groundwater, nor do they constitute the grant or the indication of an intention to grant, any required Water Access Licence (WAL). A WAL is required to lawfully take more than 3ML of water per water year as part of the dewatering activity. 4. A water use approval may also be required, unless the use of the water is for a purpose for which a development consent is in force.
- GT0117-00001 A water access licence, for the relevant water source, must be obtained prior to extracting more than 3ML per water year of water as part of the construction dewatering activity. Advisory Notes: 1. This approval is not a water access licence. 2. A water year commences on 1 July each year. 3. This approval may contain an extraction limit which may also restrict the ability to take more than 3ML per water year without further information being provided to WaterNSW. 4. Note that certain water sources may be exempted from this requirement - see paragraph 17A, Schedule 4 of the Water Management (General) Regulation 2018.
- GT0118-00001 If no water access licence is obtained for the first 3ML / year (or less) of water extracted, then, in accordance with clause 21(6), Water Management (General) Regulation 2018, the applicant must: (a) record water taken for which the exemption is claimed, and (b) record the take of water not later than 24 hours after water is taken, and (c) make the record on WAL exemption form located on WaterNSW website "Record of groundwater take under exemption", and (d) keep the record for a period of 5 years, and (e) give the record to WaterNSW either via email to Customer.Helpdesk@waterNSW.com.au or post completed forms to - PO Box 398 Parramatta NSW 2124 (i) not later than 28 days after the end of the water year (being 30 June) in which the water was taken, or (ii) if WaterNSW directs the person in writing to give the record to WaterNSW on an earlier date, by that date.
- GT0119-00001 All extracted groundwater must be discharged from the site in accordance with Council requirements for stormwater drainage or in accordance with any applicable trade waste agreement.
- GT0120-00001 The design and construction of the building must prevent: (a) any take of groundwater, following the grant of an occupation certificate (and completion of construction of development), by making any below-ground levels that may be impacted by any water table fully watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation; (b) obstruction to groundwater flow, by using sufficient permanent drainage beneath and around the outside of the watertight structure to ensure that any groundwater mounding shall not be greater than 10 % above the pre-development level; and (c) any elevated water table from rising to within 1.0 m below the natural ground surface.
- GT0121-00001 Construction phase monitoring bore requirements GTA: a) A minimum of three monitoring bore locations are required at or around the subject property, unless otherwise agreed by WaterNSW. b) The location and number of proposed monitoring bores must be submitted for approval, to WaterNSW with the water supply work application. c) The monitoring bores must be installed and maintained as required by the water supply work approval. d) The monitoring bores must be protected from construction damage.

- GT0122-00001 Construction Phase Monitoring programme and content: a) A monitoring programme must be submitted, for approval, to WaterNSW with the water supply work application. The monitoring programme must, unless agreed otherwise in writing by WaterNSW, include matters set out in any Guide published by the NSW Department of Planning Industry and Environment in relation to groundwater investigations and monitoring. Where no Guide is current or published, the monitoring programme must include the following (unless otherwise agreed in writing by WaterNSW): i. Pre-application measurement requirements: The results of groundwater measurements on or around the site, with a minimum of 3 bore locations, over a minimum period of 3 months in the six months prior to the submission of the approval to WaterNSW. ii. Field measurements: Include provision for testing electrical conductivity; temperature; pH; redox potential and standing water level of the groundwater; iii. Water quality: Include a programme for water quality testing which includes testing for those analytes as required by WaterNSW; iv. QA: Include details of quality assurance and control v. Lab assurance: Include a requirement for the testing by National Association of Testing Authorities accredited laboratories. b) The applicant must comply with the monitoring programme as approved by WaterNSW for the duration of the water supply work approval (Approved Monitoring Programme)
- GT0123-00001 (a) Prior to the issuing of the occupation certificate, and following the completion of the dewatering activity, and any monitoring required under the Approved Monitoring Programme, the applicant must submit a completion report to WaterNSW. (b) The completion report must, unless agreed otherwise in writing by WaterNSW, include matters set out in any guideline published by the NSW Department of Planning Industry and Environment in relation to groundwater investigations and monitoring. Where no guideline is current or published, the completion report must include the following (unless otherwise agreed in writing by WaterNSW): 1) All results from the Approved Monitoring Programme; and 2) Any other information required on the WaterNSW completion report form as updated from time to time on the WaterNSW website. c) The completion report must be submitted using "Completion Report for Dewatering work form" located on WaterNSW website www.watnsw.com.au/customer-service/water-licensing/dewatering
- GT0150-00001 The extraction limit shall be set at a total of 3ML per water year (being from 1 July to 30 June). The applicant may apply to WaterNSW to increase the extraction limit under this condition. Any application to increase the extraction limit must be in writing and provide all information required for a hydrogeological assessment. Advisory note: Any application to increase the extraction limit should include the following: - Groundwater investigation report describing the groundwater conditions beneath and around the site and subsurface conceptualisation - Survey plan showing ground surface elevation across the site - Architectural drawings showing basement dimensions - Environmental site assessment report for any sites containing contaminated soil or groundwater (apart from acid sulphate soils (ASS)) - Laboratory test results for soil sampling testing for ASS - If ASS, details of proposed management and treatment of soil and groundwater. Testing and management should align with the NSW Acid Sulphate Soil Manual
- GT0151-00001 Any dewatering activity approved under this approval shall cease after a period of two (2) years from the date of this approval, unless otherwise agreed in writing by WaterNSW (Term of the dewatering approval). Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
- GT0152-00001 This approval must be surrendered after compliance with all conditions of this approval, and prior to the expiry of the Term of the dewatering approval, in condition GT0151-00001. Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
- GT0155-00001 The following construction phase monitoring requirements apply (Works Approval): a. The monitoring bores must be installed in accordance with the number and location shown, as modified by this approval, unless otherwise agreed in writing with WaterNSW. b. The applicant must comply with the monitoring programme as amended by this approval (Approved Monitoring Programme). c. The applicant must submit all results from the Approved Monitoring Programme, to WaterNSW, as part of the Completion Report

SCHEDULE 1

The plans and associated documentation listed in this schedule are referred to in general terms of approval (GTA) issued by WaterNSW for integrated development associated with DA/373/2020/A as provided by Council:

- Architectural Plans
- Geotechnical Report
- Modification Statement

- **Add condition 13A to read:**

TfNSW

- 13A. The outdoor terrace, balconies, external Windows facing and within 20 of the light rail corridor and Anzac Parade shall be designed having regard to restricting the throwing of objects from these areas onto the light rail corridor and Anzac Parade. The design shall have regard to Section 5.4 of the ASA standard T HR CI 12090 ST Airspace and External Developments version 1.0. Details shall be submitted to and approved by Council prior to a Construction Certificate being issued.

- **Amend Condition 14 to read:**

Sydney Airport

14. The following conditions from Sydney Airport provided in the letter dated 18 May 2021 shall be complied with as follows:

1. The building must not exceed a maximum height of **87.15 metres AHD, including all** lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.
2. Separate approval **must be sought** under the Regulations for any equipment (i.e., cranes) required to construct the building. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations. Therefore, it is advisable that approval to operate construction equipment (i.e., cranes) be obtained prior to any commitment to construct.
3. A separate assessment and approval under the Regulations **will be required** for any further addition to the height of the building (including the installation of antennas) as it will increase the penetration of the OLS.
4. The building **must be obstacle lit** by low intensity steady red lighting during the hours of darkness at the highest point of the building. Obstacle lights **must be arranged** as per section 9.31 of the Civil Aviation Safety Regulations 1998 — Part 139 (Aerodromes) Manual of Standards 2019 (the MOS). Characteristics for low intensity lights are stated in section 9.32 of the MOS.
5. The Proponent must advise the Airport at least two business days prior to the constructed height of the building reaching 64 metres AHD. From this date, the following lighting condition must be met at all times:
 - If at any time after the height of the building has reached 64 metres AHD, the crane(s) used to construct the building are removed and no other crane(s) are in place then the Proponent **must arrange** for the highest point of the building to be obstacle lit with a low intensity steady red lighting during the hours of darkness.
6. The Proponent **must ensure** obstacle lighting is maintained in serviceable condition and any outage immediately notified to SACL.
7. Following completion of the building, the Proponent **must advise** SACL, in writing:

- a) that the future owner(s)/manager(s) of the building have **been informed** of their **obligation to maintain** the obstacle lighting in accordance with conditions of this approval; and
 - b) the contact details of the person/position responsible for the maintenance of the obstacle lighting. These details must be reviewed regularly and kept up to date.
8. The Proponent must advise Airservices Australia at least three business days prior to the controlled activity commencing by emailing ifp@airservicesaustralia.com and quoting YSSY-CA-342 P3.
 9. On completion of construction of the building, the Proponent must provide SACL with a written report from a certified surveyor on the finished height of the building.

Breaches **of approval conditions** are subject to significant penalties under Sections 185 and 187 of the Act.

In accordance with regulation 16, the previous approval of 18 May 2021 is revoked as it is superseded by this approval.

- **Amend Condition 47 to read:**

47. A minimum of 98 car spaces shall be provided for this development. A plan showing the allocation of car spaces shall be submitted to the Principal Certifier with Construction Certificate 3. Car spaces shall be allocated in accordance with the following:
 - K2K DCP parking rate for business premises (1 space per 125m² for commercial premises and 1 space per 100m² for cafes).
 - 1 space for Boarding House management staff; and
 - K2K DCP parking rate for Key Workers (Boarding Houses) – 0.5 space per room (as per ARH SEPP)
 - K2K DCP parking rate for student accommodation – 0 space per room.

Construction Certificate 3 must demonstrate compliance with this requirement and Council must be provided with a copy of the car space allocation should Council not be the Principal Certifier.

- **Amend Condition 51 to read:**

51. *As the proposed basement levels may extend into the water table (or be affected by fluctuations of the water table), the following requirements apply:*
 - a. *The design and construction of the basement levels must preclude the need for dewatering after construction.*

That part of the development that may be impacted by the water table must include a waterproof retention system (i.e., a fully tanked structure)

with adequate provision for future fluctuations of water table levels. (It is recommended that a minimum allowance for a water table variation of at least +/-1.0 metre beyond any expected fluctuation be provided). The actual water table fluctuation and fluctuation safety margin must be determined by a suitably qualified professional.

- b. *Groundwater management systems shall be designed to transfer groundwater around, through or under the proposed development without a change in the range of the natural groundwater level fluctuations in the locality.*

Where an impediment to the natural flowpaths is created as a result of the nature of the construction methods utilised or the bulk of the below-ground structure, artificial drains such as perimeter drains and through drainage may be utilised. These systems may only be utilised where it can be demonstrated that the natural groundwater flow regime is restored both up-gradient and down-gradient of the site, without any adverse effects on surrounding property or infrastructure.

Groundwater management systems:

- *Are to be designed to be easily maintained.*
 - *Should have a design life of 100 years.*
- c. *The basement level/s of the building must be designed by a structural engineer who is qualified and experienced in the design of structures below a water table. Details of the proposed methods of managing groundwater, tanking and waterproofing must be submitted to and approved by the certifying authority, prior to issuing the **construction certificate**. A copy of the engineer's qualifications and experience must also be submitted to the Certifying Authority.*

In the event of the development being modified in a manner that changes building/structural loads or alters the basement design, a suitably qualified and experienced structural engineer must certify that the design of the basement remains adequate for the site conditions.

- **Amend condition 68 to read:**

Landscape Plans

68. Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the Landscape Plans submitted for the Construction Certificate are substantially consistent with the Amended Landscape Plans by Landform Studios, dwg's LD-S4.56-000 - 900, rev 1, dated 17/12/21, with both this statement and plans to then be submitted to, and be approved by, the Principal Certifier.

- **Delete condition 69.**

- **Amend condition 131 to read:**

Landscape Certification

131. Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the Amended Landscape Plans by Landform Studios, dwg's LD-S4.56-000 - 900, rev 1, dated 17/12/21, and any relevant conditions of consent.

- **Amend condition 155 to read:**

155. The maximum number of permanent residents shall be 507 residents (475 rooms and 1 onsite manager's room).

The following attachments are provided:

- Attachment A: External Referral Comments
- Attachment B: Internal Referral Comments