

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSEC-193
DA Number	DA/288/2020/B
LGA	Randwick City Council
Proposed Development	S4.56 Modification Application of approved development 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.
Street Address	<ul style="list-style-type: none"> • 182-184 Anzac Parade, Kensington - Lot 1 DP 331408 • 186-188 Anzac Parade, Kensington - Lot 2 DP 331408 • 190 Anzac Parade, Kensington - Lot 1 DP 130297 • 157 Todman Avenue, Kensington - SP 45348
Applicant/Owner	Perpetual Trustee Company Limited as trustee of the Anzac Parade Trust
Date of DA lodgement	19 November 2021
Total number of Submissions	• Four (4)
Number of Unique Objections	• Four (4)
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	<p>Clause 2 of Schedule 7 of the SRD SEPP: General Development over \$30million.</p> <p>Clause 2 of Schedule 6 of SEPP Planning Systems 2021: General Development over \$30million.</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (State and Regional Development) 2011;</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>

List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Architectural Plans <ul style="list-style-type: none"> <u>Floor Plans</u> <ul style="list-style-type: none"> ○ SDoc – SK099 ○ SDoc – SK100 ○ SDoc – SK101 ○ SDoc – SK102 ○ SDoc – SK103 ○ SDoc – SK104 ○ SDoc – SK105 ○ SDoc – SK109 ○ SDoc – SK110 ○ SDoc – SK117 ○ SDoc – SK118 ○ SDoc – SK119 <u>Elevations and Sections</u> <ul style="list-style-type: none"> ○ SDoc – SK200 ○ SDoc – SK201 ○ SDoc – SK202 ○ SDoc – SK203 ○ SDoc – SK220 ○ SDoc – SK221 <u>Shadow Diagrams</u> <ul style="list-style-type: none"> ○ SDoc – SK500 ○ SDoc – SK501 ○ SDoc – SK502 • Landscape Plans <ul style="list-style-type: none"> ○ SDoc – LD-S.455-000 ○ SDoc – LD-S.455-001 ○ SDoc – LD-S.455-101 ○ SDoc – LD-S.455-110 ○ SDoc – LD-S.455-120 ○ SDoc – LD-S.455-130 ○ SDoc – LD-S.455-140 ○ SDoc – LD-S.455-150 ○ SDoc – LD-S.455-300 ○ SDoc – LD-S.455-303 ○ SDoc – LD-S.455-900 • SEE; • BASIX Certificate; • Landscape Compliance Letter; • Traffic Statement; • Applicant's Response to DEAP.
Clause 4.6 requests	N/A
Summary of key submissions	<ul style="list-style-type: none"> • Building Height • FSR • Design Excellence
Report prepared by	Angela Manahan
Report date	15 July 2022

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Yes**Clause 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not applicable**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Not applicable**Conditions**

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

No



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-193 – DA/288/2020/B
PROPOSAL	S4.56 Modification Application of approved development 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.
ADDRESS	Lot 1 DP 331408 [182-184 Anzac Parade] Lot 2 DP 331408 [186-188 Anzac Parade] Lot 1 DP 130297 [190 Anzac Parade] SP 45348 [157 Todman Avenue]
APPLICANT	Perpetual Trustee Company Limited as trustee of the Anzac Parade Trust
OWNER	Perpetual Trustee Company Limited as trustee of the Anzac Parade Trust
MOD LODGEMENT DATE	19 November 2021
ORIGINAL DA DETERMINATION DATE	29 June 2021
APPLICATION TYPE	Modification Application under Section 4.56
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	\$66,864,000 (excluding GST)
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	<ul style="list-style-type: none"> State Environmental Planning Policy (State and Regional Development) 2011; State Environmental Planning Policy (Planning Systems) 2021; Randwick Local Environmental Plan 2012; Randwick Development Control Plan – Section E6 Kensington and Kingsford Town Centres.
TOTAL & UNIQUE SUBMISSIONS KEY	Four (4), all in objection to the proposal.

ISSUES SUBMISSIONS	IN
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Architectural Plans <ul style="list-style-type: none"> <u>Floor Plans</u> <ul style="list-style-type: none"> ○ SDoc – SK099 ○ SDoc – SK100 ○ SDoc – SK101 ○ SDoc – SK102 ○ SDoc – SK103 ○ SDoc – SK104 ○ SDoc – SK105 ○ SDoc – SK109 ○ SDoc – SK110 ○ SDoc – SK117 ○ SDoc – SK118 ○ SDoc – SK119 <u>Elevations and Sections</u> <ul style="list-style-type: none"> ○ SDoc – SK200 ○ SDoc – SK201 ○ SDoc – SK202 ○ SDoc – SK203 ○ SDoc – SK220 ○ SDoc – SK221 <u>Shadow Diagrams</u> <ul style="list-style-type: none"> ○ SDoc – SK500 ○ SDoc – SK501 ○ SDoc – SK502 • Landscape Plans <ul style="list-style-type: none"> ○ SDoc – LD-S.455-000 ○ SDoc – LD-S.455-001 ○ SDoc – LD-S.455-101 ○ SDoc – LD-S.455-110 ○ SDoc – LD-S.455-120 ○ SDoc – LD-S.455-130 ○ SDoc – LD-S.455-140 ○ SDoc – LD-S.455-150 ○ SDoc – LD-S.455-300 ○ SDoc – LD-S.455-303 ○ SDoc – LD-S.455-900 • SEE; • BASIX Certificate; • Landscape Compliance Letter; • Traffic Statement; • Applicant's Response to DEAP.
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	N/A

SCHEDULED MEETING DATE	28 July 2022
PLAN VERSION	1 November 2021 Revision No E, F & G
PREPARED BY	Angela Manahan
DATE OF REPORT	15 July 2021

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/288/2020.

The original development application was approved by the NSW Land and Environment Court on 29 June 2021, after an agreement was reached between parties pursuant to s34 of the Land and Environment Court Act. The original development application approved the construction of a mixed-use development comprising a 308 room boarding house and commercial premises and associated parking at 182-190 Anzac Parade and 157 Todman Avenue, Kensington. The original application was approved subject to additional amendments in relation to the access to the Community Hall which requires measures to prevent unauthorised access, the removal of external access to sanitary facilities associated with the Community Hall, and an additional area for problem waste.

The modification seeks to amend the design to satisfy the operational demands of the approved development and involves changes to the internal floor layouts of the floor levels, façade changes, relocation of roof plant, roof cover for communal roof areas, increased floor-to-floor heights and updated external landscaping. The number of boarding rooms and occupancy of the development shall not alter as a result of the proposed modifications, and there shall be no change to the number of parking spaces including car, motorcycle and bicycle parking.

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.

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 four (4) submissions in objection to the proposal were received as a result of the notification process. The submissions have been considered and addressed in the assessment of the subject application where applicable.

The key issues associated with the proposed modification relate to non-compliance with building height and FSR, and design excellence in relation to the proposed façade changes.

The original application was approved with an exceedance of the maximum 60m height limit, with a height of 60.4m approved. The site is subject to a split FSR provision, with the site at 182-190 Anzac Parade permitting a FSR of 6:1 (inclusive of the ARH SEPP bonus) and the site at 157 Todman Avenue permitting a FSR of 4.8:1 (inclusive of the ARH SEPP bonus). A variation to the FSR for the site at 182-190 Anzac Parade of 6.71:1 was supported and approved, noting that the overall GFA of the development was less than that permitted across the entire site. The proposed development does not alter the maximum height approved by the Court which is maintained at 60.4m. The proposal also results in a minor height exceedance on the Todman Avenue site which is considered to be supportable in the circumstances. The proposed modifications shall result in a minor change to the FSR, with the FSR of 182-190 Anzac Parade proposing an increased FSR of 6.72:1 and the FSR of 157 Todman Avenue proposing a decreased FSR of 2.6:1 (2.64:1 approved), and the proposal shall result in a decrease to the overall GFA by approximately 4m². The proposed changes shall not result in any adverse impacts upon the built or natural environment, nor unreasonably impact upon the residential amenity of surrounding properties.

The application was referred to Council's Design Excellence Advisory Panel for comment and/or recommendation who advised that additional justification for the proposed façade changes, with particular regards to the inclusion of upturned arches, be provided and considered by Council. The application was also referred to Council's Development Engineer Coordinator, Environmental Health Officer and Heritage Planner for comment and/or recommendation who raised no objection to the proposed modifications.

The proposed changes are largely internal alterations and changes 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 shall remain substantially the same development as a result of the proposed modification 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.

In view of the above, and following consideration of the 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.

1. THE SITE AND LOCALITY

1.1 The Site

The site is known as 182-190 Anzac Parade and 157 Todman Avenue, Kensington and is comprised of the following allotments:

- (a) Lot 1 in DP331408 (182-184 Anzac Parade);
- (b) Lot 2 in DP331408 (186-188 Anzac Parade);
- (c) Lot 1 in DP130297 (190 Anzac Parade);
- (d) SP 45348 (157 Todman Avenue).

The site has a 45.765m wide frontage to Anzac Parade to the west, a 41.45m wide frontage to Todman Avenue to the north, and a partial frontage to Darling Lane to the south-east. The

site is regular in shape, being rectangular shaped, with a total site area of 1,879m². The site remains relatively flat from north to south and from east to west. The site at 182 Anzac Parade is occupied by a three-storey building comprising shop top housing and a ground floor retail use (Kensington Pharmacy). 186-168 Anzac Parade comprises of a three-storey walk up residential flat building with a brick garage at the rear of the property. 190 Anzac Parade comprises a two-storey residential building with vehicle access provided via Darling Lane, and 157 Todman Avenue comprises a four-storey residential flat building.

1.2 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. 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 (5) to seven (7) 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 two-storey shop top terrace comprising restaurants, retail and commercial uses. The building is listed as a contributory building pursuant to the Randwick Comprehensive Development Control Plan 2013. To the south of the Site consists of low-density residential buildings with retail and commercial shopfronts, mainly comprising one to two storeys. To the east of the Site consists of medium density residential flat buildings generally with three storeys. To the west of the Site includes a petrol station and low and medium density residential development. There is no prevailing architectural style within the locality with a mixture of architectural designs.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

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

Lower Ground

- Community hall updated with new lift at entry foyer. Sanitary facilities amended to be for
- Council usage only in accordance with Condition 2(g) of DA/288/2020;
- End of trip facilities layout and location updated;
- Carpark/motorcycle parking layout updated to address building service requirements;
- Bicycle parking layout updated;
- Bin store/retail bin store arrangement updated. New problem waste room added in accordance with Condition 2(e) of DA/288/2020;
- Plant room layout updated to address building service requirements;

Ground Level

- Community hall entry lobby updated with new lift at entry foyer with direct access to adjacent
- retail tenancy removed in accordance with Condition 3 of DA/288/2020;
- Food waste room and bin holding room arrangement updated to satisfy the requirements of the revised Waste Management Plan. Bulky waste store added;
- Airlock/ mailroom added at building entry with L00 - L02 communal stair deleted;
- Retail layout revised with accessible toilets added;

- Gas regulator, main switch room, mechanical plant & fire booster layout and location updated as per building service requirements;
- Fire stair layout updated, with a back of house corridor to the retail area introduced;
- External landscaping updated;

Level 1

- Fire stair layout updated;
- Wet area and cleaner's room updated;
- L00-L02 communal stair deleted;
- Food waste chute added;
- Canopy material updated to be solid;
- Future office fitout amended to be the subject of a separate Development Application;

Level 2

- Wet area location and layout updated;
- Communal area updated;
- Fire stair layout updated;
- External landscape updated;
- Staff toilet and cleaner's room added;
- Plant room added;

Levels 3-8

- DDA Studio layout updated to address access requirements;
- Twodio layouts updated;
- External landscaping updated;
- Façade pattern updated;
- Studio layouts updated;

Level 9

- DDA Studio layout updated to address access requirements;
- Twodio layouts updated;
- Studio layouts updated;
- External landscaping updated;
- Eastern façade adjacent to the gym updated;

Levels 10-16

- DDA Studio layout updated to address access requirements;
- Twodio layouts updated;
- Studio layouts updated;
- External landscaping updated;
- Façade updated;

Level 17

- Studio layout updated to allow new lift and stair to L18;
- New lift and stair to L18 added;
- 3wodio layouts updated;
- Studio layouts updated;
- External landscaping updated;
- Façade updated;

Level 18

- New lift and stair with internal communal area added;

- Roof top plant layout updated as per building service requirements;
- External landscaping updated;
- Accessible toilet layout and location updated;
- Fire stair updated;

Roof

- Roof extent updated to accommodate fire stair/ lift layout;
- Solar panels and supporting structure added;

Sections

- Level 00 - Level 01 floor to floor height increased due to loading bay ceiling clearance requirements;
- Level 01 - Level 02 floor to floor height increased due to L01 building service/ thermal insulation requirement and L02 lowered to satisfy waterproofing requirements;
- Level 08 - Level 09 floor to floor height increased due to L01 building service/ thermal insulation requirements and L02 lowered to satisfy waterproofing requirements;
- Level 17 - Level 18 floor to floor height increased due to L01 building service/ thermal insulation requirements and L02 lowered to satisfy waterproofing requirements;
- Roof ridge level updated accordingly;

Elevations

- Façade layout rationalized (all elevations);
- Louvre included and updated as per services requirements;
- L02 western elevation - screen added to satisfy Transport for NSW (TfNSW) requirements (development close to light rail);
- South elevation - L01 window shape and L02 framing updated; and
- Façade adjusted to accommodate internal layout amendments and increase in floor to floor heights.

Proposed Changes to Conditions

As a result of the amended plans submitted with the modification application, Condition 1 of the development consent is required to be modified to include the architectural drawings under the subject modification application. The modification plans also incorporate the amendments required under Conditions 2(e), 2(f) and Condition 3 of the development consent which, should the application be approved, conditions 2(e) and (f) can be deleted. See further comments in Key Issues regarding Condition 3. An additional condition of consent in relation to CPTED principals is recommended.

An additional condition of consent in response to the comments from Randwick Design Excellence Panel is also recommended as follows:

The window fenestration within the expressed podium façade bays are to be amended to be expressed as metal framing, not brick.

Development Data

Table 1: Development Data

Control	Approved	Proposed
Site area	1879m ²	1879m ²

GFA	Total = 12,578m ² Anzac Parade – 9,449m ² Todman Avenue – 1,239m ² Non-residential – 1,890m ²	Total = 12,574m ² Anzac Parade – 9,470m ² Todman Avenue – 1,220m ² Non-residential – 1,884m ²
FSR (retail/residential)	Anzac Parade 6.71:1 Todman Avenue 2.64:1 Non-residential 1.01:1	Anzac Parade 6.72:1 Todman Avenue 2.60:1 Non-residential 1:1
Clause 4.6 Requests	Yes – Clause 6.17 and 6.21 of RLEP 2012 Clause 6.17 and 6.21 of RLEP 2012	Maintenance of maximum height at 60.4m. 31.69m height to Todman Avenue. Increased variation to FSR at 182-190 Anzac Parade (6.72:1).
No of Boarding Rooms	308	308
No of Beds	365	365
Max Height	60.4m	60.4m
Car Parking spaces	15 car spaces	15 car spaces
Motorcycle Parking spaces	63 spaces	63 spaces
Bicycle Parking	95 spaces	95 spaces

2.2 Background

Details of Current Approval

Development Application DA/288/2020

The original development application was approved by the NSW Land and Environment Court on 29 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 a reduction to the number of storeys and overall built form, and the provision of community infrastructure on site. The approved development was considered to be consistent with the relevant provisions of ARH SEPP, 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 a written clause 4.6 request 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.

Modification Applications of DA/288/2020

A separate modification application was lodged concurrently with the subject application on 18 November 2021 (DA/288/2020/A). The application sought consent to delete the requirement in relation to the provision of an automated waste collection system at the site, arguing that it was unfeasible. After consultation with Council's external Waste Consultant it was determined that the localised automated waste system could be undertaken at the site.

The Applicant confirmed that the AWCS will be provided in accordance with Conditions 55 and 56 of the development consent and therefore modification application DA/288/2020/A was formally withdrawn on 9 June 2022. With regards to the AWCS, as a result of the consultation it is considered that the implementation of the AWCS shall not require fundamental changes to the Lower Ground and Ground floor levels as proposed under the subject application. The detailed design will be refined in collaboration with the manufacturer in due course once Council confirms the exact system and detailed specifications. It should be noted that should any significant changes be required to the floor plans as a result of the detailed design, then a further modification application may be required.

Subject Modification Application

The subject modification application (DA/288/2020/A) was lodged on 19 November 2021. The application was externally referred to NSW Police, Water NSW, and Sydney Airport Corporation. The application was internally referred to Council's Heritage Planner, 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
19 November 2021	Modification application lodged
25 November 2021	Exhibition of the application
22 November 2021	Modification referred to external agencies
26 May 2022	Panel Kick-off briefing
20 June 2022	Referral to Randwick Design Excellence Advisory Panel
28 June 2022	Response provided by Applicant in response to DEAP verbal comments at meeting on 20 June 2022.
15 July 2021	Acoustic Assessment submitted.

3. 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.

3.1 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 an eighteen (18) storey mixed-use development comprising commercial premises and a boarding house with 308 boarding rooms, accommodating a total of 365 beds. The current application seeks to modify the external facades of the building, reconfigure the internal floor layouts across the eighteen (18) levels, relocate and reconfigure the communal open space and plant at Level 18, the inclusion of solar panels, and amendments to floor to floor heights to address servicing requirements. The proposed modifications also incorporate internal alterations to the Community Hall and associated toilet facilities as required by the conditions of consent.

Quantitatively, the proposed modifications shall result in minor changes to the approved development, with a decrease to the overall Gross Floor Area of 4m², an increased to the height on the eastern side of the building by approximately 530mm, and no increase to the overall height of the development. There shall be no change to the number of boarding rooms or occupancy of the development as a result of the proposed modifications, nor is there any numerical change to the parking provisions. As such, the approved built form shall be largely retained and it is considered that the proposed modifications shall 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, a community hall and a boarding house of up to eighteen (18) storeys in height, and it is considered that the essence of the use is consistent with that approved. Furthermore, the development as modified continues to fall within the scope of the original description, being construction of a mixed use development comprising a 308 room boarding house and 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 Consultation Plan. A total of four (4) submissions in objection to the proposal were 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 submissions have 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 29 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 proposal the subject of the agreement was considered to be consistent with the relevant provisions as follows:

- The proposed development comprising commercial premises and a boarding house is a permissible use within the B2 Local Centre zone.
- The proposal exceeded the principal development standards in relation to height and Floor Space Ratio. An exception to the Height and FSR standards were sought pursuant to clause 4.6 of RLEP 2012. The clause 4.6 written requests were found to be well founded and supported.
- The proposal was considered to exhibit design excellence with a high standard of architectural design exhibited.
- Commercial spaces were provided at the Ground Floor level to ensure active street frontages in accordance with clause 6.20 of RLEP 2012.
- The proposal is consistent with the provisions of ARH SEPP with the exception of the FSR standard, which was supported. Furthermore, the built form is largely consistent with the provisions of RLEP 2012 and the Kensington and Kingsford DCP 2020 and therefore the proposal was determined to be consistent with the desired character of the area in accordance with clause 30A of the ARH SEPP.
- The proposal was consistent with the provision of part E6 of the Kensington and Kingsford DCP 2020, with particular regards to Part 3 - the desired future character, Part 4 - design excellence, Part 6 - built forms, and Part 8 - Laneway/Shared way zones.

The proposed modification is not inconsistent with the reasons for the decision on this consent in that the proposed development remains consistent with the relevant planning controls and expectations for the site given the zoning and other planning controls for the site.

3.2 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.

3.2.1 **Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations**

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

(a) 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*
- *State Environmental Planning Policy (Affordable Rental Housing) 2009*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *Randwick Local Environmental Plan 2012.*

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 (Preconditions in bold)

EPI	Matters for Consideration	Comply (Y/N)
BASIX SEPP	An amended BASIX Certificate was provided with the subject application. 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 (State Environmental Planning Policy (Housing) 2021)	Division 3 – Boarding Houses Chapter 3, Division 3, Part 3 – Co-living housing	Y
State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Planning Systems) 2021	Clause 2 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011: General Development over \$30million. 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
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 consistent with that approved and envisaged under the K2K DCP 2020.</p>	Y

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.1111436M_04, dated 08 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 proposed modifications do not alter the number or size of the boarding rooms, with reconfiguration of the rooms only. The communal spaces exceed that required under the ARH SEPP and are largely maintained, with an overall increase to the area of communal indoor and outdoor space. It is considered that the development as modified shall remain consistent with the provisions of the ARH SEPP.

Furthermore, it is considered that the development as modified shall remain consistent with the standards for co-living housing pursuant to clause 69 of the Housing SEPP, noting that several of the provisions are transferred over from the ARH SEPP with particular regards to the size of boarding rooms, facilities, manager requirements, solar access and parking provisions. It is noted that the provisions in relation to communal space are more onerous under the new Housing SEPP. While the proposal would result in a shortfall of the required communal indoor space, this is largely a result of the scale of the development which incorporates 308 boarding rooms. The proposed development provides a series of communal areas for occupants of the development, and external areas in excess of the minimum requirements, and the overall communal space provided it considered to be adequate for the development.

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 101 and clause 86 of the ISEPP.

The proposed modifications do not alter the number of boarding rooms or occupancy level, nor propose any modifications to the approved vehicular access and number of parking spaces (including car parking, motorcycle and bicycle). Additionally, there are no changes to the extent of excavation proposed, with the proposed modifications relating to internal alterations. The proposed modifications do not seek any changes to the conditions of consent imposed by Transport for NSW and as such, referral to TfNSW was not considered necessary in this instance.

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 shall remain consistent with the relevant provisions of RLEP 2012, noting that there is no change proposed to the use of the development and that the modified built form shall be largely consistent with the approved building envelope and architectural form. The proposal as modified remains consistent with the aims of RLEP 2012 as the proposal shall retain the mixed-use nature of the development which shall support the business use of the site, and the development is considered compatible with the desired future character of the Kensington Town Centre.

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, a community hall, and a boarding house. The subject modification application does not seek to change the approved use of the development which is permissible within the B2 zone. Furthermore, the proposed development as modified shall remain consistent with the objectives of the B2 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 matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') are considered in **Table 4**.

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 ARH SEPP.
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 'Matters for Consideration'	Comments
Section 4.15(1)(a)(iia) – 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	The site has been assessed as being suitable for the development in the original development consent. 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. Therefore the site remains suitable for the modified development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in submissions have been considered and addressed in the report.
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.

4. REFERRALS AND SUBMISSIONS

4.1 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 original conditions of consent imposed are to be retained.

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	<ul style="list-style-type: none"> Section 138 of the Roads Act 1993 (non-integrated); Clause 86 of the <i>State Environmental Planning Policy (Infrastructure) 2007</i>. 	Due to the nature of the proposed modifications, being internal changes and amendments to the facades, referral to TfNSW was not considered necessary in this instance. See comments under section 3.2.1 of the report.	N/A
Referral/Consultation Agencies			
Sydney Airport	Clause 6.8 of RLEP 2012	The proposed height is approved subject to the original recommended conditions being imposed.	Y
NSW Police	Randwick Council Referral Process	The application was referred to NSW Police, however the response related to the development as a new proposal, not a modification application. The response raised concerns regarding a lack of CPTED assessment, however this was provided in the original application and the proposed modifications are not considered to result in any additional considerations. Notwithstanding, NSW Police make a number of recommendations with regards to the proposed development which are not incorporated into the original consent. As such, it is recommended that the Police recommendations are adhered to and a condition of consent shall be imposed to this effect.	Y

Integrated Development (s4.46 of the EP&A Act)			
Water NSW	s90 of the Water Management Act 2000	Water NSW raised no objection to the proposed modifications and advised that the GTA are still current.	Y

4.2 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
Engineering	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.	Y
Environmental Health	The application was referred to Council's Environmental Health Officer who requested an updated acoustic report. At the time of finalising the assessment, the report had not been received. However, it is noted that the original consent included a condition for an updated report which demonstrated consistency with the relevant provisions under K2K DCP 2020, being condition 2(b) of the development consent. It is considered that the proposal modifications shall not generate any fundamental issues with regards to acoustic amenity, and in the absence of the updated acoustic report the maintenance of condition 2(b) shall not prevent the Panel from approving the application with regards to acoustic amenity.	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

4.3 Notification and Community Consultation

The modification application was notified in accordance with Council's Community Participation Plan from 25 November 2021 until 9 December 2021. 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 four (4) unique submissions, comprising four (4) objections and nil submissions in support of the proposal. The issues raised in these submissions are considered in **Table 7**.

The issues raised in the community submissions have been addressed in this report and where applicable in the recommendation in **Attachment A**.

Table 7: Community Submissions

Issue	No of submissions	Council Comments
Proposed Use Concerns regarding the use of the development as a boarding house and demographic, being transient and not long term residents. The development is not promoting individuals and families who will contribute to the community and rates. The boarding house shall not contribute to the community.	2	The subject application does not propose any change to the approved use of the development for the purpose of commercial premises and a boarding house/student accommodation. The B2 zone permits boarding houses within the zone, and the original application deemed that the proposed use was suitable for the site.
Building Height Concerns regarding increased building height and associated shadow and privacy impacts.	2	See Key Issues for further discussion.
Solar Access Concerns regarding overshadowing impacts from the proposed development.	2	The approved built form is largely retained with minor additional bulk at the roof level and a minor increase in height at the eastern side of the development. The overall approved height of the development shall not alter as a result of the proposed modifications. As discussed in the Key Issues section, the proposed height is not considered to result in any adverse

		impacts upon solar access to neighbouring properties, and the level of development is consistent with that anticipated for the site.
Parking and Traffic The revised parking layout does not resolve the inadequacy in parking spaces for the development. The proposed development shall exacerbate issues with regards to congestion and traffic.	2	The proposed modifications do not result in any change to the number of parking spaces, including car, motorcycle and bicycle parking. Additionally, there is no change to the vehicular access to the site which shall be maintained off Darling Lane. The proposed parking was deemed to be adequate in the original application.
Access to neighbouring properties Concerns regarding access to neighbouring properties during the all stages of the development.	1	The development consent includes several conditions in relation to Construction management to ensure that the proposed development shall not result in any unreasonable impacts upon surrounding properties during and that the site shall be appropriately managed during the construction phase. Access to neighbouring properties should not be impacted as a result of the proposed development. The original conditions of consent are to be retained.
Social Impacts The development shall not benefit the local community or residents, nor result in any positive amenity.	1	As discussed above, the proposed use as a boarding house is permitted within the B2 zone and the development was considered to be suitable for the site in the approval of the original application. The proposed modifications are minor in nature, being primarily internal changes and amendments in response to the operational and service needs of the development. The proposed development remains consistent with the built form and public domain areas anticipated for the site under the current planning controls, including the activation of the Anzac Parade and Todman Avenue streetfrontages through new retail and commercial premises, and thus is considered to result in a positive contribution to the area.

5. 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:

5.1 Building Height

The site is subject to two (2) height standards, with the site at 157 Todman Avenue subject to a lesser maximum height. Pursuant to the height of buildings map under clause 4.3, the subject site has a maximum permissible building height of 25m, with the site at 157 Todman Avenue having a maximum permissible building of 12m. However, clause 6.17 of RLEP 2012 states that despite clause 4.3, additional height provisions are permitted for the subject site if the development includes community infrastructure on the site. A letter of offer was submitted with the original development application in which the Applicant agreed to enter into a Voluntary Planning Agreement for the provisions of community infrastructure contributions at the site in accordance with the CIC Plan. As such, pursuant to clause 6.17, the maximum permitted height for the development is 54m, and 31m and 1m for the site at 157 Todman Avenue. The Alternative Building Heights Map is provided below:



Figure 1 – Alternative Building Heights Map pursuant to cl6.17 of RLEP 2012.

In addition to the alternative building heights under clause 6.17, clause 6.21 of RLEP 2012 permits an additional height of 6m on land identified as “Y2” if the development design is a winner of a competitive design process and exhibits design excellence. The original development undertook a competitive design process with the proposed design the winner of the competition, and therefore the applicable maximum height of the development is as follows:

- 182-190 Anzac Parade – 60m;
- 157 Todman Avenue – 31m and 1m in accordance with Figure 1 above.

The original development approved a variation to the 60m height standard, with a maximum height of 60.4m approved.

The proposed modifications do not result in any increase to the approved height of 60.4m, however as a result of the reconfiguration of Level 18 and the roof top structures, the extent of height breach is increased. The maximum height of the tower component shall be 60.4m to the central stair and service area roof. The following structures are also sited above the 60m height limit:

- Roof parapet the northern side which reaches a height of 60.12m;
- The solar panels to the southern side which reach a maximum height of 60.4m.

The proposed height breach is minor in nature, being 400mm and a variation of 0.6% to the standard. The proposed height is considered to remain consistent with the objectives of the height standards and is supported for the following reasons:

- The proposed development is compliant with the maximum number of storeys permitted on the site of eighteen (18) storeys in accordance with the built form controls under the K2K DCP 2020.
- The non-compliance relates to increased height over the access stairs and services, and the solar panels. The stairs provide access to the roof terrace on Level 18 which increases amenity for occupants, providing an outdoor area with good solar access. The proposed solar panels shall assist in achieving the 5 star green star rating and ensuring a sustainable development.
- The proposed roof structures are located within the centre of the roof, well setback from the building elevations, and shall not be readily visible from the public domain or adjoining properties. Due to the minor nature of the non-compliance, the proposed breach shall not result in any adverse visual bulk.
- Due to the generous setbacks provided for the roof top structures (which are in excess of 10m to south, 17m to the east, and 13m to the west) the proposed development shall not result in any unreasonable solar access impacts upon the adjoining properties, with any overshadowing impacts negligible. The proposed height breach shall not result in any unreasonable amenity impacts upon adjoining properties with regards to views and privacy.
- The proposed development displays a high standard of architectural design, materials and detailing, and the form and external appearance shall continue to contribute and improve the amenity of the public domain.

157 Todman Avenue

The proposed modifications result in a breach of the maximum 31m height applicable to the site at 157 Todman Avenue, proposing a maximum height of 31.23m to the roof and 31.69m to the roof top balustrade. The increased height for the eastern portion of the development primarily is in response to an increase in the floor to floor heights. The height non-compliance is limited to the roof parapet and the balustrade in association with the communal outdoor space at Level 09. Quantitatively the development shall breach the height by 0.7% and 2.2% respectively. The height variation is not considered to result in any discernible difference to the overall built form or result in any adverse impacts upon the amenity of surrounding properties in relation to solar access, views, privacy and visual bulk. Furthermore, the proposed building to the eastern side of the development is a maximum of nine (9) storeys with roof top communal open space which is compliant with the maximum number of storeys permitted under the K2K DCP 2020. The proposed breach is a result of the increased floor-

to-floor heights which allows services to be incorporated without unreasonably impacting the internal amenity of the development. In the absence of any detrimental impacts upon the public domain and adjoining properties, the proposed height breach is supported in this instance.

In view of the above, the proposed building height is considered to remain consistent with the objectives of the height standards and of the B2 zone, and therefore the proposed modifications are supported in this instance.

5.2 Floor Space Ratio

The site is subject to two (2) FSR standards, with a lesser FSR applicable to 157 Todman Avenue. Subject to clause 6.17 of RLEP 2012 and the bonus provisions under clause 29 of the ARH SEPP, the applicable FSR for the subject site is as follows:

- 182-190 Anzac Parade – 6:1;
- 157 Todman Avenue – 4.8:1.

A variation to the FSR for the site at 182-190 Anzac Parade was approved at 6.71:1, with the site at 157 Todman Avenue providing a compliant FSR of 2.64:1. In the original application, when considering the proposed FSR, consideration was given to the cumulative FSR and GFA applicable to the total site. In this regard, it is noted that the maximum GFA for the site (being the combined total of the permitted FSR at 6:1 and 4.8:1) is 10,710m² for the residential portion and an additional 1,879m² of GFA for the non-residential FSR, equating to a total permissible GFA of 12,589m². The approved development provided a GFA of 12,578m² which would comply with that permitted across the entire consolidated site. The distribution of the higher built form and increased FSR on Anzac Parade also allowed for the eastern side of the development at 157 Todman Avenue to be a lower scale and reduced built form which provided a transition to the residential properties to the east and minimised associated amenity impacts upon adjoining properties. Due to the reconfiguration of the floor levels, the proposal shall result in the FSR of the site at 182-190 Anzac Parade increasing to 6.72:1, however the FSR on the 157 Todman Avenue site shall be decreased to 2.6:1 and the overall GFA of the development shall be decreased by approximately 4m². The proposed GFA under the subject application shall be 12,574m² and therefore the proposal would remain consistent with the total FSR permitted for the site as a consolidated lot.

The proposed change to the FSR shall not alter the overall built form which shall be consistent with that approved. While the development breaches the FSR for a portion of the site, the overall GFA for the development is not considered to be excessive, particularly noting the minor increase from that approved on 182-190 Anzac Parade and the maintenance of the higher FSR on the Anzac Parade properties is considered to result in a better planning outcome. The proposed FSR, as modified, is not considered to result in any unreasonable impacts upon the residential amenity of surrounding properties, and the proposal shall remain consistent with the desired future character of the area which is considered to be determined by the current planning controls contained within the K2K DCP 2020. The non-residential FSR provision of 1:1 shall be retained. In view of the above, the variation is supported in this instance.

5.3 Design Excellence

Clause 6.11 of RLEP 2012 requires development to exhibit design excellence where the building will be at least 15m in height. The proposed development shall be greater than 15m in height, with a proposed maximum height of 60.4m. As such the provisions of clause 6.11 are applicable. Clause 6.21 of RLEP 2012 also requires the consent authority to be satisfied that the development exhibits design excellence.

The proposed development involves changes to the external facades, including changes to the materiality and the incorporation of new architectural design features. As such, the subject application was referred to Council's Design Excellence Advisory Panel ("DEAP") who considered the design and architectural merits of the proposal, and the proposed modifications in relation to design excellence.

The DEAP were generally supportive of the proposed changes, however raised concerns with regards to the changes to the podium building fenestration, with particular regards to the reversed arches that have been introduced. The Panel noted that they did not support the proposed reversed arches without a persuasive underlying rationale. The detailed DEAP comments can be found in Attachment A.

Further to the DEAP meeting on 20 June 2022, the Applicant provided a response to the concerns for Council's consideration. The design response from the Applicant's Architect summarised that following the approval of the development, further refinement of the composition of the podium design has been undertaken with particular regards to the eastern and southern elevation. The aim was to provide further consistency in the architectural expression. The windows to the commercial level at the southern end were redesigned and framed in a softer inverted arch expression similar to the expression used in both the northern and western facades. The introduction of the arched fenestration to the eastern façade provides increased glazing to the commercial space, increasing overall amenity. As such, the south and eastern elevation related to the first level commercial areas have been redesigned to create further consistency to the overall architectural language. The coherent approach will provide a well balanced podium expression to both the tower as well as the urban setting and laneway structures provided.

Essentially, the Applicant identified the key design considerations as follows:

- *The arched fenestrations to the south west corner and south east corner create a cohesive architectural language with the podium.*
- *The arched fenestration to the eastern facade provides increased glazing to the commercial space, increasing overall amenity.*
- *The projected brick patterning creates a granular texture that responds to the fine grain character of Kensington. The projected brick patterning is also used on the 9 storey tower, creating a cohesive expression between all facades.*
- *The curved fenestration and vertical brick pillars to the south west façade assist with screening the retail condensers positioned on the podium and provide further balance in the overall composition of this corner and overall elevation.*
- *The consistency of the façade expression and use of generous arches and inverted arches will provide a vibrant and dynamic back drop to the proposed laneways.*
- *The arched openings also reflect the arched language of the contributory facade of Scape Todman, creating a cohesive character to its neighbouring site.*

It is noted that the original approval incorporated reversed arches on the northern and western facades, albeit not as defined or prominent as the proposed modifications. The extension of the upturned arches in the eastern and southern elevations shall continue the architectural expression of this component of the development. The extension of the screening and

architectural form on the southern elevation is considered appropriate to screen the plant from the public domain.

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 design response to the site. Notwithstanding, the DEAP recommended that the window fenestration within the expressed podium façade bays be expressed as metal framing rather than the proposed brick. It is considered that this would better reflect the window treatment of the remainder of the podium and as such a condition of consent is recommended to incorporate this change. It is also recommended that the condition in relation to materials and colours be amended to ensure consistency with the proposed colour scheme under the modification. Subject to the above, it is considered that consent authority can be satisfied that the proposed development exhibits design excellence in accordance with the provisions of clause 6.11 and 6.21 of RLEP 2012.

5.4 Internal Alterations

Community Hall

Condition 2(g) and Condition 3 of the original development consent required amendments in relation to the community hall sited on the Lower Ground Floor level as follows:

- *The sanitary facilities adjacent to the Community Hall at lower ground floor level shall be modified to allow internal access from the Community Hall only. All external access to these facilities shall be deleted.*
- *Community Hall including the associated lobby/stairs and sanitary facilities at lower ground floor level and entry foyer/stairs at ground floor level shall be designated for Council usage only. Appropriate measures to prevent unauthorised access to and use of these areas by other parties shall be provided to and approved by Council's Manager Development Assessment prior to the issue of Occupation Certificate.*

The required amendments have been incorporated into the modifications, and therefore deletion/amendment of these conditions is sought. However, while the revised floor layout demonstrates that the community hall shall have direct access from a single entry foyer and that the sanitary facilities shall be accessible to the Community Hall only, it is noted that an internal access door is provided through the bicycle parking area. As such, it is recommended that Condition 3 of the development consent be retained, with additional details regarding the measures to ensure that unauthorised access is prevented to be provided prior to the issue of an Occupation Certificate.

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 approvals. 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 generally involve reconfiguration of the rooms including the relocation of bathrooms. The proposed changes shall not alter the overall GFA and size of the rooms which shall remain compliant with the provisions of the ARH SEPP. The outdoor

communal areas have also been reconfigured with a minor increase to the communal indoor and outdoor areas.

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.

6. 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:

7. 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/288/2020 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 182-190 Anzac Parade and 157 Todman Avenue, Kensington, in the following manner:

- **Amend Condition 1 to read:**

1. The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp:

<i>Plan No.</i>	<i>Rev No.</i>	<i>Drawn by</i>	<i>Dated</i>
SK001	F	Plus Architecture	19/04/2021
SK099	F	Plus Architecture	19/04/2021
SK100	F	Plus Architecture	19/04/2021
SK101	E	Plus Architecture	24/03/2021
SK102	E	Plus Architecture	24/03/2021
SK103	E	Plus Architecture	24/03/2021
SK104	E	Plus Architecture	24/03/2021
SK105	E	Plus Architecture	24/03/2021
SK109	D	Plus Architecture	19/04/2021
SK110	E	Plus Architecture	24/03/2021
SK118	E	Plus Architecture	24/03/2021
SK119	E	Plus Architecture	24/03/2021
SK200	F	Plus Architecture	19/04/2021
SK201	F	Plus Architecture	19/04/2021
SK202	F	Plus Architecture	19/04/2021
SK203	F	Plus Architecture	19/04/2021
SK220	F	Plus Architecture	19/04/2021
SK221	E	Plus Architecture	24/03/2021
SK600	D	Plus Architecture	19/03/2021
SK601	D	Plus Architecture	19/03/2021
SK602	D	Plus Architecture	19/03/2021
SK603	D	Plus Architecture	19/03/2021
SK605	D	Plus Architecture	19/03/2021
SK610	D	Plus Architecture	19/03/2021
SK611	D	Plus Architecture	19/03/2021
SK612	D	Plus Architecture	19/03/2021
SK613	D	Plus Architecture	19/03/2021
SK615	D	Plus Architecture	19/03/2021

SK620	D	Plus Architecture	19/03/2021
LD-S34-000	1	Landform Studios	19/03/2021
LD-S34-001	1	Landform Studios	19/03/2021
LD-S34-100	1	Landform Studios	19/03/2021
LD-S34-101	1	Landform Studios	19/03/2021
LD-S34-110	1	Landform Studios	19/03/2021
LD-S34-120	1	Landform Studios	19/03/2021
LD-S34-130	1	Landform Studios	19/03/2021
LD-S34-140	1	Landform Studios	19/03/2021
LD-S34-150	1	Landform Studios	19/03/2021
LD-S34-300	1	Landform Studios	19/03/2021
LD-S34-301	1	Landform Studios	19/03/2021
LD-S34-900	1	Landform Studios	19/03/2021

<i>BASIX Certificate No.</i>	<i>Dated</i>
1111436M_03	05 May 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:**

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
SK001, Revision G	Plus Architecture	01 November 2021	19 November 2021
SK099, Revision G	Plus Architecture	01 November 2021	19 November 2021
SK100, Revision G	Plus Architecture	01 November 2021	19 November 2021
SK101, Revision F	Plus Architecture	01 November 2021	19 November 2021
SK102, Revision F	Plus Architecture	01 November 2021	19 November 2021

SK103, Revision F	Plus Architecture	01 November 2021	19 November 2021
SK104, Revision F	Plus Architecture	01 November 2021	19 November 2021
SK105, Revision F	Plus Architecture	01 November 2021	19 November 2021
SK109, Revision E	Plus Architecture	01 November 2021	19 November 2021
SK110, Revision F	Plus Architecture	01 November 2021	19 November 2021
SK117, Revision A	Plus Architecture	01 November 2021	19 November 2021
SK118, Revision F	Plus Architecture	01 November 2021	19 November 2021
SK119, Revision F	Plus Architecture	01 November 2021	19 November 2021
SK200, Revision G	Plus Architecture	01 November 2021	19 November 2021
SK201, Revision G	Plus Architecture	01 November 2021	19 November 2021
SK202, Revision G	Plus Architecture	01 November 2021	19 November 2021
SK203, Revision G	Plus Architecture	01 November 2021	19 November 2021
SK220, Revision G	Plus Architecture	01 November 2021	19 November 2021
SK221, Revision G	Plus Architecture	01 November 2021	19 November 2021
LD-S.455-000, Revision 1	Landform Studios	03 November 2021	19 November 2021
LD-S.455-001, Revision 1	Landform Studios	03 November 2021	19 November 2021
LD-S.455-100, Revision 1	Landform Studios	03 November 2021	19 November 2021
LD-S.455-101, Revision 1	Landform Studios	03 November 2021	19 November 2021
LD-S.455-110, Revision 1	Landform Studios	03 November 2021	19 November 2021
LD-S.455-120,	Landform Studios	03 November 2021	19 November

Revision 1			2021
LD-S.455-130, Revision 1	Landform Studios	03 November 2021	19 November 2021
LD-S.455-140, Revision 1	Landform Studios	03 November 2021	19 November 2021
LD-S.455-150, Revision 1	Landform Studios	03 November 2021	19 November 2021
LD-S.455-300, Revision 1	Landform Studios	03 November 2021	19 November 2021
LD-S.455-303, Revision 1	Landform Studios	03 November 2021	19 November 2021
LD-S.455-900, Revision 1	Landform Studios	03 November 2021	19 November 2021

<i>BASIX Certificate No.</i>	<i>Dated</i>
1111436M_04	08 November 2021

- **Amend Condition 12 to read:**

12. The colours, materials and finishes of the external surfaces to the building, as presented in certified documentation and as compatible with the surrounding character of the built corridor are to be strictly adhered to. Details of any changes to the proposed colours, materials and textures are to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

- **Amend Condition 62 to read:**

62. 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 scheme submitted for the Construction Certificate is substantially consistent with the Landscape Plans by Landform Studios, dwg's **LD-S.455-000 - 900**, rev 1, **dated 03 November 2021**, with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.

- **Add Condition 2(f) to read:**

2. The approved plans and documents must be amended in accordance with the following requirements:
- f. The window fenestration within the expressed podium façade bays are to be amended to be expressed as metal framing, not brick.

- **Add Condition 4A to read:**

- 4A. The recommendations of NSW Police as detailed within the Crime Risk Assessment Report, Version: E&T:FSC:CMPU:2015, are to be incorporated into the Management Statement,. Documentation is to be provided to Council's Manager Development Assessment demonstrating compliance with the recommendations prior to the issue of an Occupation Certification.

- **Delete Condition 2(e) which reads:**

(e) A space for storage and sorting of problem waste such as E-waste, clothing, and hazardous waste shall be provided in accordance with the control under Section 22 – Sustainability of Part C of D of Kensington and Kingsford Development Control Plan.

- **Delete Condition 2(g) which reads:**

(g) The sanitary facilities adjacent to the Community Hall at lower ground floor level shall be modified to allow internal access from the Community Hall only. All external access to these facilities shall be deleted.

The following attachments are provided:

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