

COUNCIL ADDENDUM ASSESSMENT REPORT

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"> • <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>
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	Five (5), all in objection to the proposal.

DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Council Assessment Report, dated 15 July 2022 • DRP Response Podium Design Revision 02, dated 21/09/2022 • Amended Architectural Plans
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	27 September 2022
PLAN VERSION	1 November 2021 Revision No E, F & G
PREPARED BY	Angela Manahan
DATE OF REPORT	23 September 2022

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 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.

At the Panel determination meeting on 28 July 2022, the Panel raised concerns regarding the design changes to the podium facades and deferred the determination of the matter to allow the Applicant an opportunity to provide amendments to the architectural presentation of the building, and for Council to seek comment from their Urban Design Expert regarding the design excellence of the development, as modified.

This addendum report is supplementary to the original modification assessment report, dated 15 July 2022, and addresses the reasons for the deferral and additional information/amended plans received.

It is considered that the proposal, as amended, addresses the design concerns of both the Panel and Council's Urban Design Consultant to ensure that the approved development shall continue to exhibit design excellence in accordance with clause 6.11 and 6.20 of RLEP 2012,

and that the proposed modifications do not contradict the reasons for granting the original consent.

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 subject to the amended plans, the proposed modification can be supported, and the application is recommended for approval.

1. THE PROPOSAL AND BACKGROUND

1.1 The Proposal

As a result of the concerns raised by the Panel and the formal comments from Council's Urban Design Consultant, further amendments were made to the proposed development with regards to refinement of the podium facades. The proposed modifications as detailed in the original assessment report are still sought, and the proposed architectural changes to the facades shall not impact upon those modifications detailed.

Furthermore, the additional changes to the facades shall not impact upon any further changes to conditions from those specified in the original assessment report, with the exception of condition 1 which shall be modified to include the approved architectural drawings based on the Panels determination, should the application be approved.

Notwithstanding, since the submission of the original assessment report, Council's Environmental Health Officer has completed the assessment of the submitted Acoustic report and recommended an additional condition to be incorporated into the modified consent. Detailed comments and the recommended condition are discussed in the Key Issues section below.

1.2 Background

A determination meeting was held with the Panel on 28 July 2022. At the determination meeting, the Panel resolved to defer the determination of the application in order to give the Applicant the opportunity to provide amendments to the architectural presentation of the building, with particular regards to public domain of the western and northern elevations. Additionally, in consideration of the circumstances of the original s34 approval which heavily relied on the proposal exhibiting and demonstrating design excellence, the Panel also sought the proposal to be referred to Council's Urban Design Expert for comment on the urban design elevation presentations.

2. KEY ISSUES

In addition to those identified in the original assessment report, the following key issues are relevant to the assessment of this application:

2.1 Design Excellence

At its meeting on 28 July 2022, the Panel deferred the determination of this matter for the following reasons:

“to give the applicant the opportunity to provide amendments to the architectural presentation of the building, in particular from the public domain of the western and northern elevations.

The Panel in its determination must have regard to the reasons stated for the original approval and the Section 34 Agreement carefully considered the urban design and the plans were amended as a consequence. The Panel notes the Court in the judgment also referred to cl.6.7 of the RLEP which requires that ‘the development must exhibit design excellence’ to benefit from the additional height, and that this requirement was satisfied by the approved plans.”

The Panel also requested that the final selection of materials, finishes and colours be provided prior to the determination of the modification application.

Additionally, with regards to the amended proposal as requested above, the Panel sought to allow Council to seek expert comments on the urban design elevation presentations and provide a supplementary report to the panel.

The Applicant provided a façade comparison study on 12 August 2022 which detailed the original approved elevations, the originally submitted modified elevations (subject of the SECPP meeting on 28 July 2022), and amended elevations which softened the proposed upturned arches in response to the Panel’s comments and concerns.

In accordance with the reasons for deferral by the Panel, the amended proposal was submitted to Council’s Urban Design Consultant who acted as the expert in the court proceedings of the original application for comment and/or recommendation. Council’s Urban Design Consultant reviewed the proposed modifications and considered the final approved DA for this site (achieved through the S34 process within the Land and Environment Court). It was noted that much of the modifications are housekeeping issues which are normal and expected as an application moves from a DA to a construction certificate application, however some concerns were raised which in the opinion of the Urban Designer could adversely impact the approved DA and reduce the design quality and ‘excellence’ as defined by the LEP. As such, Council’s Urban Design Consultant raised the following concerns for further consideration:

Articulation and façade design treatment

The west elevation shows that the solidity of the base (as it came up to the tower) has been eroded and its now tokenistic, plus the upper podium blades towards 192 Anzac Pde no longer wrap around the corner but substituted with a more solid element of greater extent to the south. Together they weaken the elegance of the podium. Added to this is the addition of additional curved elements to the south and east. These elements replace a strong solid base to the east with a slot window expression that provided a necessary contrast and relief to the podium from the more expressive curves. The additional upward curves plus infilling part of it with ‘hit and miss bricks’ creates a composition that is not as successful. I also note that the visual ‘waist’ created by the inset glazing to the podium just below the tower has also been lost which impacts the tower and podium relationships.

Tower windows have been amended and now have a far less pleasing proportion- previously were they narrower with a stronger vertical proportion and now are square and far less appealing. I consider this change reduces the design quality and appearance of the tower and should not be supported.

As can be seen from the above there are significant changes in the podium and tower appearance (although they are described as minor in the documentation. Cumulatively they have the potential to be significant and to really reduce the quality of the tower and podium expression. It is always notable when an applicant does not provide ‘as approved’ and ‘modification’ photomontages from a series of views to show how the modifications impact the quality and articulation of the approved tower facade.

Council's Urban Design Consultant also raised concerns regarding the relocation of the plant and communal open space on Level 18, noting the plant is located to the eastern side with a lesser setback, and whether this would result in any additional visual impacts as viewed from the public domain or any additional adverse impacts in terms of massing or overshadowing. It was noted that the lack of montages makes this difficult to assess.

Concerns were also raised regarding amenity issues with regards to level 02 which now shows solid wall elements in front of B02. The solid wall has the potential to reduce amenity to that room and its open space. The edge of the podium also seems to now be infilled on level 02 rather than defining the tower. This results in level 03 having the corner infilled.

In response to the concerns raised by Council's Urban Designer, the elevations were amended further and additional information provided in the form of comparison photomontages and an updated facades comparison.

Council Assessment Officer comments:

Articulation and façade design treatment

In order to address the concerns raised by Council's Urban Designer the following amendments and/or responses have been provided by the Applicant:

- The southern brick upstand on the Western Elevation has been removed and masonry detail is as per approved DA has been reinstated. Furthermore, the masonry upstand to the central portion of the Western Elevation has been rationalised to provide adequate solar and view amenity to the Level 2 studios and in balance has now been widened to the communal portion of the façade to achieve a greater solidity per the approved DA. We believe these changes adequately maintain the solidity and intent which was originally approved.
- With regards to the slot windows, 2 options have been provided for both the Eastern and Southern Facades, one of which maintains the original slot window expressions to Level 1, for the consideration of the Panel and whether the original window should be maintained.
- All hit and miss bricks have been removed and the masonry detailing intended to not depart from the approved DA.
- Outlined amendments should now address the distinction between podium and tower.
- In the attached we have provided further updates to address these concerns while also working with the constraints of needing to maintain adequate solar amenity to the rooms affected. The vertical and horizontal architectural features have been maintained or reinstated to achieve the rhythmic articulation of the façade.
- The items in relation to the amenity concerns and issues with level 02 and 03 have also been addressed in the amended elevations.

Furthermore, the photomontages demonstrate that the solar panels would be marginally visible above the roof parapet as viewed from the wider public domain area as approaching the site from the east, however the roof-top plant would not be readily visible. The minor visual impact of the solar panels is not considered to detract from the overall design of the building and shall not be readily apparent as viewed from the surrounding areas. The solar panels assist with achieving the green star rating and ensuring the ongoing sustainability of the development.

It is considered that the Applicant has adequately addressed the design concerns raised by Council's Urban Design Consultant through the amended proposal and the submission of the photomontages which demonstrates that the proposed development shall continue to exhibit

design excellence. Two (2) options are provided within the Podium Design Revision pack with regards to the window composition on the eastern and southern facades to allow the Panel to determine whether the original window shape would be more desirable, which can be incorporated into the conditions of consent if sought. The amended proposal is considered to be more sympathetic to the original design intent of the approved development, with the podium section maintaining its strong architectural form.

During the Panel deliberations, the Panel requested that the final schedule of colours, materials and finishes be approved at this stage, rather than the imposition of condition 12 which requires the colours and materials to be approved by Council prior to the issue of a Construction Certificate. The proposed colour scheme provided with the modification application involved minor changes to the colours and materials which were largely consistent with that approved. The modified colour schedule was supported by Council's Design Excellence Advisory Panel, and no concerns were raised by Council's Urban Design Consultant regarding the overall colours and materials of the development. The updated facades do not alter the colour and material scheme previously submitted which is to be retained in the amended proposal. As the proposed colours and materials shall be considered as part of the subject application, deletion of condition 12 of the development consent is recommended.

2.2 Acoustic Assessment

As part of the assessment of the modification application, an acoustic report was requested by Council's Environmental Health Officer, however the acoustic report was not submitted prior to the finalisation of the original assessment report ahead of the determination meeting on 28 July 2022. The Acoustic report was submitted by the Applicant on 25 July 2022. As a result of the deferral of the matter, Council's Environmental Health Officer has had the opportunity to review the submitted acoustic report. The EHO advised that the acoustic report does not raise any fundamental issues, however did note an error in the report in that it referred to meeting the requirements of condition 2(a) of the original development consent where the report should be in relation to condition 2(b) which reads:

2. *The approval of the plans and documents must be amended in accordance with the following requirements:.....*
 - b. *The acoustic report, dated 3 June 2020, Revision 1 and prepared by Acoustic Logic shall be amended to reflect the approved development and to demonstrate compliance with the controls under Section 14 – Acoustic Privacy of Part C of Kensington and Kingsford Development Control Plan."*

As such, condition 2(b) shall be retained to ensure the amended report is provided. However, Council's EHO did recommend an additional operational condition as follows:

140(a)

A further Acoustic Report may be requested following receipt of a noise complaint which a Council authorised officer reasonably believes requires further acoustic analysis, investigation and assessment. This acoustic report (if requested) is to be prepared by a suitably qualified and experienced consultant in acoustics and may be requested from time to time to assess and report on noise being emitted from the use and operation of the development and demonstrate or confirm if the relevant provisions of the *Protection of the Environment Operations Act 1997* and the noise criteria and requirements contained in this consent have been satisfied (including any relevant approved acoustic report and recommendations).

The above condition has been provided in the draft amended modification consent.

2.3 Community Consultation

A total of four (4) unique submissions in objection to the proposed modifications were received by Council as a result of the notification of the modification application which are addressed in detail within the original modification assessment report.

In response to the scheduling of the determination meeting on 28 July 2022, a late submission was received from the owners of 120 Todman Avenue for consideration by the Panel ahead of the determination of the application. The late submission has therefore been addressed in this addendum report for the assistance of the Panel.

The submission raises the following concerns:

- Voluntary Planning Agreement
 - Concerns that the community infrastructure has not be dedicated.
 - Compliance with clause 6.17 in relation to the public infrastructure not being dedicated.
 - Concerns regarding public access to the pedestrian link.
- Use of the pedestrian link by vehicles for turning.
- Location of loading and unloading for retail premises.
- Concerns regarding ADG separation and the block controls under the RDCP which were amended from the exhibition of the draft DCP.
- The proposal was subject to an Architectural Competition in accordance with clause 6.21 of RLEP 2012 and a design integrity assessment should be submitted.

It is noted that the concerns raised in the submission are primarily in relation to development as a whole rather than the proposed modifications specifically. The proposal as modified retains the eastern and southern pedestrian links, with the changes to the pedestrian link and public domain minor in nature. The draft VPA in relation to the subject application was reported to Council at its ordinary meeting of 23 August 2022. The draft VPA was publicly notified pursuant to s7.5(1) of the EP&A Act. The Council assessment report notes that the approved development incorporates laneways along the entire eastern and southern side of the site in accordance with Council's DCP and that public access is provided through an easement on title. At the meeting of 23 August 2022 Council resolved the following:

- a) *agree to enter into the Voluntary Planning Agreement in Attachment 1 pursuant to Section 7.5 of the Environmental Planning and Assessment Act 1979; and*
- b) *authorise the General Manager to make minor drafting changes to the draft Voluntary Planning Agreement as required, prior to its execution.*

The southern community link provides vehicular access to the site and it was the intention that this area would be utilised by vehicles turning, manoeuvring, loading and the like as demonstrated on the original approved plans. There shall be no change to the vehicular access as a result of the proposed modifications.

It is noted that the block controls adopted by Council were amended through the process of the drafting of the new Kensington and Kingsford RDCP 2020 and therefore the K1 block control as exhibited varies from that which was adopted. The proposed development is consistent with the building envelope specified for the K1 site under the DCP, and there shall be no change to the setbacks of the approved building as a result of the proposed modifications. Privacy and visual bulk impacts have been considered in the assessment of the subject modification application and it is considered that there shall be no unreasonable impacts upon the adjoining or neighbouring properties in this regard.

The architectural form and merit of the approved development shall be largely retained, with the proposed modifications primarily in relation to architectural changes to the podium facades. The application has been reviewed by Council's Design Excellence Advisory Panel and external Urban Design Consultant for assessment of design excellence. The proposed changes are relatively minor in nature with the overall visual amenity of the building consistent with that approved and as such a design integrity assessment was not considered warranted or necessary in this instance. The design excellence of the proposal in accordance with clause 6.11 and 6.21 of RLEP 2012 is discussed in detail in the key issues section of the original assessment and the addendum report.

3. CONCLUSION

The Applicant has amended the proposal to address concerns raised by the Panel and Council's Urban Designer, and has adequately addressed the reasons for deferral of the matter at the Panel meeting of 28 July 2022. It is considered that the outstanding key issues as outlined in section 2 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions. It is considered that the proposal, as amended, shall ensure that the approved development exhibits design excellence in accordance with clause 6.11 and 6.20 of RLEP 2012, and that the proposed modifications do not contradict the reasons for granting the original consent.

4. RECOMMENDATION

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 accordance with the recommendation of the original modification assessment report, dated 15 July 2022, subject to the following amendments:

- Update to Condition 1 to reflect amended plans.
- Deletion of Condition 12 in relation to colours, materials and finishes.
- Addition of Condition 140a which reads:

A further Acoustic Report may be requested following receipt of a noise complaint which a Council authorised officer reasonably believes requires further acoustic analysis, investigation and assessment. This acoustic report (if requested) is to be prepared by a suitably qualified and experienced consultant in acoustics and may be requested from time to time to assess and report on noise being emitted from the use and operation of the development and demonstrate or confirm if the relevant provisions of the Protection of the Environment Operations Act 1997 and the noise criteria and requirements contained in this consent have been satisfied (including any relevant approved acoustic report and recommendations).