



SYDNEY EASTERN CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

PANEL REFERENCE & DA NUMBER	PPSSEC-202 – DA/311/2020/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	391 Anzac Parade, Kingsford 2032 Lot 1 DP 1278672. Note: The above address and lot number are new identifiers of the site representing the historical multiple addresses and lots that previously made up the development site (1,912.17m ²). ex
APPLICANT	Mr Adam Rogic (Scape) - Scape Australia ATF Kingsford Trust
OWNER	Perpetual Trustee Company Limited
MOD LODGEMENT DATE	19 November 2021
ORIGINAL DA DETERMINATION DATE	7 June 2021
APPLICATION TYPE	S4.56 Modification Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2 of Schedule 7 of the SRD SEPP: General Development over \$30million. Clause 2 of Schedule 6 of SEPP Planning Systems 2021: General Development over \$30million.
CIV	\$72,368,103 (including GST)
CLAUSE REQUESTS 4.6	N/A
KEY SEPP/LEP	<ul style="list-style-type: none"> State Environmental Planning Policy (State and Regional Development) 2011. State Environmental Planning Policy (Affordable Rental Housing 2009) State Environmental Planning Policy (Planning Systems) 2021. Randwick Local Environmental Plan 2012.

	<ul style="list-style-type: none"> <i>Randwick Development Control Plan – Section E6 Kensington and Kingsford Town Centres.</i>
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	One (1), objection to the proposal.
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> Architectural Plans <p><u>Floor Plans:</u></p> <ul style="list-style-type: none"> ○ Cover – DA-00-0000 Rev 12, dated 29/10/21 Amended Cover DA-11-0000 Rev 13, dated 26/07/22 ○ Location – DA-00-0100 Rev 8 dated 12/10/21 ○ Site – DA-00-0200 Rev 4 dated 12/10/21 ○ Basement – DA-10-0900 Rev 16 dated 5/11/21 ○ Ground floor – DA-10-1000 Rev 17, dated 29/10/21 ○ Level 01 – DA-10-1100 Rev 13, dated 29/10/21 ○ Amended Level 01-DA-10-1100 Rev 14, dated 26/07/22 ○ Level 02- DA-10-1200 Rev 14, dated 29/10/21 ○ Amended Level 02- DA-10-1200 Rev 15, dated 26/07/22 ○ Level 03 – DA-10-1300 Rev 13, dated 29/10/21 ○ Amended Level 03 – DA-10-1300 Rev 12, dated 26/07/22 ○ Level 04 -14 - DA-10-1400 Rev 11, dated 29/10/21 Amended Level 04 -14 - DA-10-1400 Rev 12, dated 26/07/22 ○ Level 15 – DA-10-2500 Rev 2, dated 29/10/21 ○ Roof – DA-10-2700 Rev 10, dated 12/10/21 <p><u>Elevations and Sections:</u></p> <ul style="list-style-type: none"> ○ North-east elevation Anzac Parade– DA-20-1000 Rev 11, dated 12/10/21 ○ Amended Anzac Parade Elevation North-east - DA-20-1000 Rev 12, dated 26/07/22 ○ Bunnerong Road South-west elevation – DA-20-2000 Rev 11, dated 12/10/21 ○ Amended Bunnerong Road Elevation South-west– DA-20-2000 Rev 12, dated 26/07/22 ○ Bunnerong Road Elevation 2 West – DA-20-2001 Rev 2, dated 25/10/21 ○ South elevation (Shared way) – DA-20-3000 Rev 11, dated 12/10/21 ○ Amended South elevation (Shared way) –

	<p>DA-20-3000 Rev 12, dated 26/07/22</p> <ul style="list-style-type: none"> ○ Section A-A – DA-30-1000 Rev 11, dated 12/10/21 ○ Amended Section A-A – DA-30-1000 Rev 12, dated 26/07/22 ○ Section B-B – DA-30-2000 Rev 10, dated 12/10/21 <p><u>Other diagrams:</u></p> <ul style="list-style-type: none"> ○ Façade Materials – DA-40-0100 Rev 5, dated 12/10/21 ○ Area – GFA new mix option – DA-90-0020 Rev 12, dated 29/10/21 ○ Suneye diagrams – DA-93-0100 Rev 9, dated 15/10/21 ○ Shadow diagrams – DA-93-0300 Rev 9, dated 15/10/21 <p><u>Landscape Plans:</u></p> <ul style="list-style-type: none"> • Cover Sheet – LD-S4.55-000 1, dated 28.10.21 • Material & planting schedules - LD-S4.55-001 1, dated 28.10.21 • Ground plane & public domain - LD-S4.55-100 1, dated 28.10.21 • Level 1 Landscape plan - LD-S4.55-110 1, dated 28.10.21 • Level 2 Landscape plan - LD-S4.55-120 1, dated 28.10.21 • Level 3 Landscape plan - LD-S4.55-130 1, dated 28.10.21 • Level 17 Rooftop - LD-S4.55-140 1, dated 28.10.21 • Eastern boundary treatment & green wall system - LD-S4.55-300 1, dated 28.10.21 • Landscape outline specification & typical details - LD-S4.55-900 1, dated 28.10.21 • Landscape compliance <p><u>Other documents:</u></p> <ul style="list-style-type: none"> • Appendix 2: Survey • Statement of Environmental Effects (SEE) • Landscape Compliance Letter • Ecologically Sustainable Development report and BASIX Certificate (No. 1112090M_03) • Traffic Statement
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Approval

DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	29 September 2022
PLAN VERSION/S	Original at lodgement and amended plans at 26 July 2022
PREPARED BY	Louis Coorey
DATE OF REPORT	September 8, 2022

1. EXECUTIVE SUMMARY

Council is in receipt of a modification application pursuant to Section 4.56 of the Environmental Planning and Assessment Act (as amended), seeking consent to modify ("B") Development Consent DA/311/2020.

The original development application was approved by the NSW Land and Environment Court on 7 June 2021, after an agreement was reached between parties pursuant to s34 of the Land and Environment Court Act. The consent authority for the original Development Application would have been the Sydney Eastern City Planning Panel (SECPP) had the application not been appealed in the Land and Environment Court. The original development is defined as Regionally Significant general development with a capital investment value over \$30 million, pursuant to Section 4.7, of the Environmental Planning and Assessment Act 1979 and Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011 (or subsequently Schedule 6 of the new State Environmental Planning Policy (Planning Systems) 2021).

The original development application approved the construction of a 16-storey mixed use development comprising ground first and second floor commercial spaces (1:1 ratio) and a boarding house comprising 360 boarding rooms (400 beds – total 6:1 FSR – 20% bonus FSR afforded at time under the SEPP ARH), 641.1 sqm communal space, 16 car spaces (12 via stacker, 2 standard and 2 disabled), 88 motorcycle spaces and 96 bicycle spaces.

The modification seeks to amend the design to satisfy the operational demands of the approved development involving changes to the internal floor layouts, floor levels and façade.

The façade changes to fenestration and materials mostly occur at the ground level up to the podium with minor change to the framing colour for the tower above. It should be noted that colours and materials are the subject of a condition of consent requiring additional details to be submitted for approval prior to a construction certificate being issued for the development.

The proposed layout changes include reallocation of uses at level 1 to provide commercial space only, at level 2 to provide communal space for boarding house lodgers, at Level 15 provide additional communal open space as well as hydraulic lift access to roof above (level 16), and at Level 16 Roof level, amended layout and adding roof covering over some areas.

The floor level changes are mostly minor, and the overall height of the building is reduced by 7cm from RL80.27 down to RL80.20. The number of boarding rooms is also reduced by 5 rooms from 360 down to 355 as a result of changes to level 2 and 15. No change to the number of car/motorcycle/bicycle spaces is proposed.

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

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

The application was referred to Council's Design Excellence Advisory Panel for comment and/or recommendation who recommended that the interface of the building at Anzac Parade footpath level should be fully accessible and visually connected with the public domain noting that this relates to the lowering of the ground level relative to the higher footpath levels. The applicant addressed this issue and submitted amended plans (dated 26 July 2022) that raised the ceiling height of Ground Level by 500mm to ensure visual connectivity is maintained with the public domain rather than the somewhat stunted appearance of ground level relative to the higher pedestrian footpath level.

The application was also referred to Council's Development Engineer, Landscape Officer, Environmental Health Officer and Heritage Planner for review and comment and no objections were raised in response to the proposed modifications.

The key issues associated with the proposed modification relate to design excellence in relation to the proposed façade changes and lowering of the ground level relative to the footpath level.

The modification application reduces the approved FSR from 6.0:1 down to 5.98:1 associated with the Level 15 open space replacing floor area continuing compliance with the 0.6:1 standard that applies (inclusive of the SEPP ARH 20% bonus). The overall height of the building is reduced down to RL80.20 between 54.27m and 56.35m above the adjacent footpath levels maintaining compliance with the 60m maximum height of buildings development standard and Sydney Airports conditioned (8) maximum of RL80.27 in the original consent.

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 remains 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.

The proposed changes do not result in any adverse impacts upon the built or natural environment, nor unreasonably impact upon the residential amenity of surrounding properties.

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

2. THE SITE AND LOCALITY

2.1 The Site

The site is known as 391 Anzac Parade, in Kingsford legally identified as Lot 1 DP 1278672. The site is triangular shaped with a north-eastern frontage of around 50m to Anzac Parade and south-western frontage of around 68m to Bunnerong Road with a total site area of 1,912.17m².

The site is triangular with a 20m curved apex at the northern end of the site, a 50m north-eastern frontage to Anzac Parade, a 68m north-western frontage to Bunnerong Road and 53m southern boundary neighbouring properties. The site has a cross fall of around 2m from

north to south. No. 19 Bunnerong Road and No. 399 Anzac Parade, to the south of the site, are 2 properties owned and operated as a religious site by Trustees Church of Christ Kingsford (Church Site).

2.2 The Locality

The surrounding development comprises a mixture of medium density residential development, including shop top housing situated within Zone B2 Local Centre pursuant to the provisions of Randwick Local Environmental Plan 2012. The Site is located within the Kingsford Town Centre which is characterised by commercial uses and a mix of ground floor retail including restaurants and convenience stores with residential above. Redevelopment located along Anzac Parade and Gardeners Road is in transition due to the light rail infrastructure which has resulted in densification. There is no prevailing architectural style within the locality with a mixture of architectural designs.

To the south-west of the site on the opposite side of Bunnerong Road is Daceyville Garden Conservation Area (C1) comprising a number of heritage items including the Dacey Gardens Reserve & Substation (Item 76) within the Bayside Council Local Government Area.

The site is within proximity to The University of New South Wales (UNSW) and approximately 900m to the Randwick Health precinct (Prince of Wales Hospital: Royal Hospital for Women & Sydney Children's Hospital). An aerial photograph with the Subject Site (highlighted in yellow) and surrounding development is provided below at Figure 1 below.



Figure 1: Aerial view of site and surrounding area including shading identifying the zones of surrounding.

3. THE PROPOSAL AND BACKGROUND

3.1 The Proposed Modifications

3.1.1 Basement

- Rearranged basement layout parking, and plant areas updated to address building service requirements
- Reconfigured lift and lobby layouts for all levels
- Relocated fire stair position for all levels above

3.1.2 Ground Level

- Relocate residential lobby to Bunnerong Road entrance from Anzac Parade.
- Retail tenancies size and layout revised providing a long tenancy along Anzac Parade frontage and entry at apex
- Bulk waste room and retail waste area added
- Accessible toilets for male and females added replacing single AC toilet
- Substation access relocated to south-west corner
- Amended: Increased floor to ceiling height by 100mm to RL30.12 from RL30.02 original approved and instead of the S4.56 original proposed 400mm reduction from RL30.02 down to RL29.62.

3.1.3 Level 01

- Dedicated commercial space/s relocating communal indoor space to level 02 above
- New plant room
- Amended: increase floor level by 500mm from that originally proposed to negate lowering of the ground level and stunted appearance of ground level from the wider public domain.

3.1.4 Level 02:

- Dedicated communal indoor and open space around apex removing commercial space
- 7 boarding rooms, reduced from 9 approved retaining 1x managers room, 2 x accessible rooms, 2 x type A1, 2 x Type B1 rooms.
- Internal layout to include theatre, office, WC and laundry
- Communal outdoor space around apex replacing landscaped planter
- Landscaped planter at south-east side fronting Anzac parade replaces outdoor deck associated with deleted gym
- Amended: Reduced floor to ceiling height of communal indoor space from 4.55m down to 3.64m.

3.1.5 Level 03 (residential):

- Replace slab weather cover over level 02 communal open space below with awning/pergola

3.1.6 Level 04-14:

- Minor reconfiguration of room position relating to adjusted of fire stair at northern end of Bunnerong Road and adjusted of accessible room at southern end.

3.1.7 Level 15:

- Remove 2 rooms at south-western side facing Bunnerong Road to accommodate open space, hydraulic lift, and stair access to roof level above.

3.1.8 Level Roof:

- Reconfigured layout providing for additional BBQ area, and open-air cinema,
- Remove standard lift access relying on hydraulic lift access from level 15
- Additional landscape planter area at south-western corner of open-air plant (cinema)
- Relocated perimeter planters away from building envelope

3.1.9 Elevations and sections

- Reduced ground level to provide equivalent variation to ground level responding to the variance at the northern and southern end of the site.
- Increased first floor level – see ground level change
- Updated finished floor levels for levels 3-15 from 2.95m to 2.96m
- Amended materials and treatment from ground to podium level
- Façade layout rationalized (all elevations) Note: original consent subject of condition 12 of consent requiring details to be submitted to Council for approval. The main variation in this S4.56 application relates to the changes above ground at the podium level and minor adjustment to residential levels above where window framing for the apex component is updated and the use of bronze brush metal framing is rationalised being retained for the stepped in curved elements over levels 3 to 16 otherwise replaced with monument matt black finish which is consistent with the framing across the majority of the scheme.
- Roof ridge level reduced down from RL80.27 to RL80.20

3.2 Proposed Changes to Conditions

As a result of the amended plans submitted with the modification application (dated 26/07/21), Condition 1 of the development consent is amended accordingly including those originally submitted with the modification application but not amended. It is noted that condition 2a and 4. can also be deleted noting that an amended acoustic report and building management statement (or a Plan of Management) were submitted and assessed by Council's Environmental Health Officer recommending amendment to and additional conditions of

consent (See Recommendation section of this report and Attachment B).

3.3 Development Data: Approved and proposed are shown in Table 1

Table 1: Development Data

Control	Approved	Proposed
Site area	1,912.17m ² .	1,912.17m ² .
GFA	Total = 11,473.05m ²	Total = 11,431.82m ²
Non-residential GFA	1,913.83m ²	1,912.93m ²
FSR (Residential/ Non-residential)	Residential 6:1 Non-residential 1:1	5.98:1 Non-residential 1:1
Clause 4.6 Requests		None
No of Boarding Rooms	360	355
No of Beds	400	395
Max Height	RL80.27 AHD	RL80.20 AHD (7cm lower)
Communal space	641.18m ²	824.85m ²
Car Parking spaces	16 car spaces	No change - 16 car spaces (including 12 car stacker bays, 2 standard bays with electric charge points and 2 accessible spaces)
Motorcycle Parking spaces	88 spaces	No change
Bicycle Parking	96 spaces	No change

3.4 Background

Details of Current Approval

Development Application DA/311/2020

The original development application was approved by the NSW Land and Environment Court on 24 April 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 with particular regards to a reduction to the number of storeys and overall built form, and the provision of community infrastructure on site by way of Anzac Parade/Gardeners Road intersection, footpaths and public realm works. 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. In compliance with provisions in Clause 6.17 and 6.18 relating to provision of community infrastructure and affordable housing, a Planning Agreement has been approved.

Modification Applications of DA/311/2020/A

A separate modification application was lodged concurrently with the subject application on 19 November 2021 (DA/311/2020/A). The application sought consent to delete the conditional requirements 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 the relevant Conditions (50, 51 and 52) of the development consent and therefore modification application DA/311/2020/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 Basement 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.

Subject Modification Application history

The subject modification application (DA/311/2020/B) 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, Strategic Planner and Development Engineer and Landscape Officer 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	Referred to external agencies (CNR-32010) and internal departments of Council
01 February 2022	Referral to Randwick Design Excellence Advisory Panel
02 February 2022	RFI issued for amended Acoustic report and Plan of Management (PoM)
18 May 2022	Response provided by Applicant to DEAP comments 22 February 2022.
30 June 2022	Panel Kick-off briefing

18 July 2022	Amended Acoustic report
28 July 2022	Amended Photomontages and architectural plans submitted.
15 August 2022	PoM submitted

4. STATUTORY CONSIDERATIONS

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

4.1 Section 4.56 of the EP&A Act

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

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) (s4.56(1)(a)), and*

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

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

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

The application originally approved an seventeen (17) storey mixed-use development comprising commercial premises and a boarding house with 360 boarding rooms (400 beds). The current modification application seeks to modify the external facades of the building at the lower podium levels, reduce the number of boarding rooms down to 355 accommodating a total of 395 beds, reconfigure the internal floor layouts across ground, levels and roof level, dedicate level 1 as commercial space and level 2 as communal indoor space

and amendments to floor-to-floor heights to address buildability or servicing requirements. There is no numerical change to the parking provisions

Quantitatively, the proposed modifications shall result in minor changes to the approved development, with a decrease to the overall Gross Floor Area as a result of including open space at level 15, and no increase to the overall height of the development which remains well below the maximum permitted under the LEP and below the OLS limits.

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

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

The intent of the proposed development remains the same as the approved development, providing a mixed-use development comprising commercial premises, and a boarding house of up to seventeen (17) 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 student accommodation, commercial premises and associated parking.

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

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

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

- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be (s4.56(1)(d)).*

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

- (e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section*

4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (s4.56(1A)).

The matters required to be considered include:

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

Reasons for Grant of Consent

The NSW Land and Environment Court granted consent to the original development on 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 agreed statement on jurisdictional prerequisites was attached to the conditions of consent the subject of the S34 agreement and the proposed modification is considered to be consistent with the agreed statement as follows:

- The proposed development comprising commercial premises and a boarding house is a permissible use within the B2 Local Centre zone.
- The proposal continues to comply with the principal development standards in relation to height and Floor Space Ratio.
- The proposal continues to exhibit design excellence with a high standard of architectural design exhibited.
- The proposal is consistent with the provisions of SEPP ARH noting the built form remains largely consistent with the provisions of RLEP 2012 and the Kensington and Kingsford DCP 2020 and therefore the proposal as sought to be modified is consistent with the desired character of the area in accordance with clause 30A of the SEPP ARH.
- Commercial spaces continue to be provided at the Ground Floor level to ensure active street frontages in accordance with clause 6.20 of RLEP 2012.
- The proposal as sought to be modified continues to be 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.

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

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

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

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

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

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

Table 3: Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
BASIX SEPP	An amended BASIX Certificate was provided with the subject application. Conditions of consent in relation to compliance with the BASIX provisions and required documentation are to be maintained within the development consent.	Y
State Environmental Planning Policy (Affordable Rental Housing) 2009	Division 3 – Boarding Houses	Y
(State Environmental Planning Policy (Housing) 2021)	Schedule 7A Transitional and savings provisions does not apply SEPP housing 2021 to a development consent issued prior to 26 November 2021. Applicable policy is therefore the State Environmental Planning Policy (Affordable Rental Housing) 2009	NA
State Environmental Planning Policy (State and Regional Development) 2011	Clause 2 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011: General Development over \$30million.	Y
State Environmental Planning Policy (Planning Systems) 2021	Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: General Development over \$30million.	Y

EPI	Matters for Consideration	Comply (Y/N)
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 	Y
DCP	<p>Randwick Development Control Plan Part E6 - Kensington and Kingsford Town Centres</p> <p>The proposed modifications do not result in any substantial changes to the approved architectural form other than the podium material design, 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.1112090M_03, dated 03 November 2021 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the retention of the relevant conditions of consent incorporated in the original consent. It is further noted that the application is also accompanied by a ESD report which aims for higher levels of sustainable development.

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

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

Note: The current SEPP applying to boarding house development in NSW is the SEPP Housing 2021 which came into force on 26 November 2021. An assessment is not carried out

against the current SEPP Housing due to Savings and transitional provisions pursuant to Clause 7A (1)(d) which state that this policy does not apply to a development consent granted on or before the commencement date. Therefore, the provisions under SEPP ARH apply to this DA.

The development as modified will remain consistent with the provisions of the SEPP ARH. The proposed modifications as a result reconfiguration of level 2 and level 15 reduce the number of the boarding rooms from 360 down to 355 and an overall increase to the area of communal indoor and outdoor space which exceeds the minimum required under the SEPP ARH.

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

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

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

- *State Environmental Planning Policy (Infrastructure) 2007 (Replaced by State Environmental Planning Policy (Transport and Infrastructure) 2021 on 1 March 2022)*

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

The proposed modifications were referred to TfNSW pursuant to S138 of the Roads Act and Clause 101 of the SEPP Infrastructure. The proposed modifications do not seek any changes to the conditions of consent imposed by Transport for NSW who do not object to the proposed modifications. TfNSW also reiterated its suggested condition for Council's consideration noting that it wasn't clear from the submitted information whether the outdoor terrace balconies (podium and roof), external windows facing the light rail corridor and Anzac Parade are designed - in accordance with Section 5.4 of the ASA standard T HR CI 12090 ST Airspace and External Developments version 1.0 – such that, within 20 metres facing the rail corridor, that objects are prevented from being dropped or thrown onto the rail corridor from balconies, windows and other external features (e.g. roof terraces and external fire escapes). The podium level appears to be located around 21m from the light rail line. As this is not conclusive an advisory condition note is included reiterating the TfNSW recommendation.

- *Randwick Local Environmental Plan 2012*

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

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

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

The matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') are considered in **Table 4**.

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(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.

Section 4.15 'Matters for Consideration'	Comments
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 submission are 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.

4.4 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 EP&A Regs 2021. The subject application is consistent with the relevant provisions of the Environmental Planning and Assessment Regulations 2000.

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The original development application was classified as:

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

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

The relevant authorities did not raise any objection to the proposed modifications, and the 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)			
Roads and Maritime Services (inclusive of Transport NSW)	<ul style="list-style-type: none"> Section 138 of the Roads Act 1993 (non-integrated); Clause 101 of the <i>State Environmental Planning Policy (Infrastructure) 2007</i>. 	<p>TfNSW reviewed the material and advised no objections to the proposed modification as it was considered to have a negligible impact to the surrounding classified road network.</p> <p>TfNSW did indicate preference for a condition that for any part of the development within 20m of the light rail corridor, that by design it prevents objects being able to be thrown onto the light rail corridor (see Attachment B). An Advisory note A19 is included in the recommendation.</p>	Y
Sydney Airport	Clause 6.8 of RLEP 2012	The proposed height is approved, Sydney airport corporation has commented on the proposed modification application (see Attachment A) and condition 8 of consent of the consent is amended accordingly.	Y
NSW Police	Randwick Council Referral Process	The application was referred to NSW Police, who raised no objections to the proposed modification application.	Y

5.2 Council Referrals

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

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
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. Conditions recommended are provided within Attachment B.	Y
Landscape officer	No objections to the proposed modification application recommending amendment to relevant condition. Conditions recommended are provided within Attachment B.	
Environmental Health	The application was referred to Council's Environmental Health Officer who requested an updated acoustic report and Plan of Management (PoM) or building management statement as referred to in condition of the original consent. Conditions recommended are provided within Attachment B.	Y
Heritage	Council's Heritage Officer reviewed the subject application and raised no objection to the proposal. Detailed comments are provided within Attachment B.	Y
Strategic	Council's Strategic planning section raised concerns with the lowering of the ground level at the apex of the site. The applicant amended their application providing a higher ceiling height.	Y
Bayside Council	The application was referred to Bayside Council and no comments were received. It is not considered that the modification application will detract from or impact on the significance of the nearby Dacey Gardens.	No response

5.3 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 two (2) unique submissions, and nil submissions in support of the proposal. The issues raised in the submission are considered in **Table 7**.

Table 7: Community Submissions

Issue	Council Comments
Proposed height Concern the proposed height does not fit in with the area.	The subject application proposes a reduction in the height of the development noting also that the approved height is below that permitted under the LEP.
Number of boarding rooms Concern the proposed number of boarding rooms is not appropriate.	The subject application proposes a reduction in the number of boarding rooms noting that the configuration and layout to the boarding rooms is not appreciably changing under this application.

6. KEY ISSUES

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

6.1 Design Excellence

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

The proposed development involves changes to the external facades, including changes to the materiality and the incorporation of amended architectural design features largely up to podium level with limited changes to the colour of materials for the tower above and layout of the development as approved and proposed.

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 some concerns with particular regards to the following:

Retail level interface with Anzac Pde footpath

DEAP: The Panel queried the interface of the building at Anzac Pde footpath level. Grade changes should be minimised, fully accessible and visually connected with the public domain. Location of entries should be aligned with access points where possible. The curved indent appears to be a remnant from the previous layout and is inconsistent with the new proposal.

Applicant: The grade changes were reduced from the previous scheme due to flood level freeboard requirements (the lobby freeboard requirements now on Bunnerong Road). Lowering the level reduces level differences at the south-eastern corner of the site and brings level street access closer to the middle of the retail frontage for better DDA access

to the site. The 'curved indent' architecturally ties the podium language with the tower above and provides an important visual break in the length of the tower and podium facades, improving the proportions of the project, and strengthening the connection to the scale of the existing adjacent context.

Assessment officer comment: Amended plans have been submitted which seek to address the above matter. See further below additional comments under DCP provisions: Strategic node sites.

Treatment of southern laneway

Proposal: Changes to plant and equipment (location of booster and substation now off Bunnerong Road), gas meter off laneway.

DEAP: The Panel notes that the southern laneway is designated as a pedestrian link. Whilst acknowledging that the laneway is an appropriate location for vehicular access to the building, fire exits and utility service provisions, the Panel is concerned about character, activation and safety within this space.

Further information should be provided in relation to property interface to southern edge of thoroughfare, and how this is going to be integrated with the laneway. Bollards were mentioned to foster the idea of it being a shared space, however no detail was provided about how this would be managed whilst maintaining vehicular access

For safety and amenity reasons, laneway light fittings, furniture and finishes should be of high public domain quality. To mitigate its potentially utilitarian, un-activated character, the two corner retail spaces should incorporate full height glazing and openings out to visually (and physically) engage with the laneway. The booster valves and substation access/ventilation located on the Bunnerong Rd. corner is not acceptable and needs to be relocated or ensure this critical location is free of this infrastructure and visually connected into the retail space.

Applicant: Treatment of the southern interface was dealt with and resolved during the Section 34 Conference at DA stage. This resolution included the incorporation of a minor extension of paving on the southeastern interface with the Church site link and adequate fencing/landscaping as outlined in the approved documentation. No amendments have been made to booster valve and substation access. A retractable boom gate or bollard will be provided to one side of the laneway as outlined in ... planning agreement with Council.

Assessment officer comment: The applicant response is considered appropriate noting that the southern elevation (shown below) shows substantial glazing for the two corner shopfronts at either end of the laneway contributing to both the amenity and casual surveillance of the laneway. Whilst the booster and substations are moving from further along Bunnerong Road to the corner of the southern laneway it is not considered fatal to the application noting appropriate retail frontage is provided on either side of the relocated lobby space to the Bunnerong Road frontage. It is further considered that the laneway is largely secondary to the Anzac Parade and Bunnerong Road frontages.

Street awnings and landscaping

DEAP: The street awnings should be continuous for the full length of the thoroughfare. The delivery of viable landscaped areas within this area is also questioned, given the extent of the basement footprint below, and the limited areas indicated for planting -

noting the plans show opportunities for tree planting, but this isn't represented in the sections/elevations.

Applicant: The landscaping is generally in accordance with the approved DA documentation and the existing trees within the public domain on the corner will be maintained.

Assessment officer: The application has been referred to Council's Landscape officer who raises no objections to the proposed landscaping on site recommending conditions of consent be amended accordingly.

Overall, in consideration of the DEAP comments, and the justification provided in relation to the concerns raised, it is considered that the majority of matters raised relate to approved aspects of the development and the key matter relating to the retail level interface with the public domain at the apex of the site being resolved by way of amended plans raising the ground level ceiling height.

- Non-residential floor space

Clause 6.19 of the LEP requires a minimum 1:1 floor space ratio of non-residential floor space within the Kingsford town centre. The proposed dedication of levels 1 as commercial continues to comply with the provision by providing 1,1912.93m² of commercial space over ground and level 1 for the site area which has an area of 1912.17m².

6.2 DCP provisions

- Strategic node sites

The Kingsford Triangle site is identified as a strategic node site located at the southern end of the Kingsford Town Centre. The subject site occupies a prominent location at the convergence of key streets establishing a gateway to the Town Centre that is iconic, well connected and activated.

The proposal shows a lower ground level slab and the applicant stating that the intent of the level change is to reduce the level differences between the retail space and the street level, which improves DDA access to the site. This is consistent to our previous response to the DEAP comment, which is provided below:

The grade changes were reduced from the previous scheme due to flood level freeboard requirements (the lobby freeboard requirements now on Bunnerong Road). Lowering the level reduces level differences at the south-eastern corner of the site and brings level street access closer to the middle of the retail frontage for better DDA access to the site.

It is acknowledged that the applicants proposed grade changes are driven to a large extent to both minimise cut and fill across the site and also provide DDA access at the middle to a part of the site located in close proximity to the Kingsford Light Rail terminus via the northern signalised crossing. However, Council and notably the DEAP raise concerns that the lowering of ground level would appear inordinately sunken into the ground (or proportionally stunted to the podium levels of the building). This change at the northern "apex" part of the building being the key junction point of the building facing the Anzac Parade and Gardeners Road intersection is considered to be less visually connected with the plaza public domain.

Council advised the applicant of the above concerns and recommended that the visual

interface of ground level could be improved by increasing ground level ceiling height, by reallocating what was considered to be excessive 4.55m floor height at level 2 communal indoor space to the ground level ceiling. The applicant submitted amended plans dated 26 July 2022 noting the following:

- *Ground floor retail height has increased 500mm to counter the 500mm decrease in the ground floor slab*
- *Floor to floor levels of Level 1 and 2 have been reduced by a total of 500mm as requested*
- *There has been a further 200mm decrease in floor levels across all levels with all rooms continue to achieve 2.7m floor to ceiling height*
- *The parapet height and overall building height will remain unchanged*



Overall, the amended plans are considered to be of a more appropriate visual connection between ground level and public place at the apex of the site.

- **Materials and finishes**

The proposal primarily seeks to alter the podium design, materials and finishes noting that a record of briefing of the SECPP panel on 14 July 2022, identified as key issues the *Presentation of the development to the public domain and Sustainability of the materials, requesting side by side photomontages of the development.*

The photomontages are provided as follows from the amended documentation received by Council and original approved development consent. Further below is a comparison of the eastern elevation facing Anzac Parade.

	
<p>Proposed: Shows a darker finish for the metal framing for the curved northern end of the building.</p>	<p>Approved: Shows a lighter bronze finish for framing.</p>

Elevations: Side by side of the elevations to Anzac Parade is provided as follows:

	
<p>Proposed:</p>	<p>Approved:</p>

At the outset, the original approval did not approve the colours, materials and finishes schedule, instead requiring by condition 12 the submission to and approval of colours, materials and finishes by Council's Manager of Development assessment prior to obtaining a construction certificate 3.

An assessment of the proposed colours and material schedule is carried out against the objectives and controls under Section 17 of the DCP for the Kensington and Kingsford Town Centres which relate both to the presentation of the building as well as sustainability of materials used in the scheme:

Objectives

- To encourage a coherent and unifying streetscape
- To ensure building materials and finishes complement and enhance the streetscape character of each centre

- *To ensure high quality, contemporary building materials are adopted for new development.*

Controls

- a) *External walls are to be constructed of high quality and durable materials and finishes. Materials that may be subject to corrosion, susceptible to degradation or high maintenance costs are to be avoided*
- b) *Architectural treatment of street facades is to clearly define a base, middle and top sections of a building so as to divide the mass of the building*
- c) *A combination of finishes, colours and materials are to be used to articulate building facades*
- d) *Design windows that can be cleaned from inside the building; and*
- e) *For sites adjoining heritage and contributory buildings, materials and finishes are to allow for their clear interpretation.*

Assessment comments:

Having regard to the relevant objectives and controls the following assessment comments are made:

- The submitted ESD report identifies in terms of sustainability the following:
 - The use of durable low maintenance material, renewable materials, and mechanical fittings instead of adhesives or glues will be targeted in design and master specification and therefore subject to approval at a later stage noting that condition 2f of the original consent requires the submission of an amended ESD report that reflects the approved development.
 - A green star (GS) rating will be applied to:
 - Use of materials containing low embodied energy content meaning they will be manufactured with reduced energy processes,
 - Use of a percentage of materials that are locally sourced,
 - Use of materials that are salvageable and recyclable,
 - Use of at least 95% of timber that is either certified by a Green Building Council of Australia (GBCA) approved certifier or from a reused source,
 - Use of at least 95% of predominately low volatile organic compound emitting materials (paint, glues, sealants and carpets) minimising indoor pollutants.
- The proposed as sought to be modified continues to divide its mass provide a clearly defined base, middle and top section of the building noting also that the curved vertical component setback behind the main envelope provides visual interest between the apex to the north and the tower behind.
- The DEAP accepted and did not make further comment in relation to the changes to fenestration and materials including flattened curve on northern part of the ground floor retail façade.
- No objections have been raised by Heritage planner relating to the nearby heritage items in Dacey Gardens or by Bayside Council who have been notified of the proposed development.
- In relation to the use of a combination of materials used, the colour and material schedule (plan No. DA-40-0100 Revision 5) submitted with this modification

application, shows the materials being used are predominately the same however there appears to be more bronze finishes being used for the podium and less being used for the tower and apex components noting the following:

- Podium: The main changes to the podium show a greater mix of colours for the louvre finishes incorporating more bronze finished metal work instead of the predominately document monument colour (a greyish black colour).
- Tower: The main changes for the tower component show less use of bronze finish for the metal components for Vertical façade screening, horizontal spandrel awnings (at each of the floor levels) and vertical framing in general.

The color and materials schedule (plan No. DA-40-0100 Revision 5) is considered acceptable having regard to the above objectives and controls noting that the apex component contains narrower vertical framing for the windows providing a distinct form for the most prominent part of the development at the Anzac Parade and Gardeners Road intersection. The reduced use of bronze finishes is also acceptable noting that the curved indented portions fronting Bunnerong Road provides further mix of materials separating the apex from the tower behind.

Given the above, it is recommended that condition 12 be deleted.

6.3 Layout alterations

Commercial Premises, Communal indoor and outdoor Space and Boarding Rooms

Ground level:

The proposed modifications to the retail spaces on the Ground Floor are a result of the amendments to the entrance lobby moving from Anzac Parade to the Bunnerong Road, the provision of an additional accessible separate female and male toilets, and revised retail waste, services and loading bay sizes and locations. The retail areas are generally consistent with that approved under the original consent noting that a full frontage retail space is provided along the Anzac Parade frontage contributing to its vibrancy.

Level 01:

The proposed modifications at level 01 dedicating the whole of the floor level to commercial space is considered more efficient use of space ensuring clear separation between residential and commercial patronage.

Level 02:

The proposed modification at level 02 in dedicating the whole floor level for boarding house uses comprising dedicated indoor and outdoor communal areas, non-trafficable landscaped areas and an outlook towards the Anzac Parade boulevard and Dacey Gardens will provide for improved amenity for future lodgers.

Level 15:

The proposed roof access point at Level 15 is considered minor showing no discernable difference in built form or presentation to Bunnerong Road. It is noted that with the additional access space at Level 15 there is an overall reduction in number of boarding rooms on site.

Boarding rooms:

Modifications to the boarding rooms generally relate to the swapping the position of the boarding room adjacent to the curvature of the building at the Bunnerong Road frontage with a fire stair. The proposed changes don't not alter the envelope of the building.

Communal indoor space

The proposed dedication of level 2 for communal indoor space containing 824.85m² continues to comply with the 493.75m² minimum are required for 395 occupants (1.25m² per occupant) under Section 26 of the DCP for the Kensington and Kingsford Town Centre.

Communal open space

The outdoor communal areas at level 02 have been noted. The proposed reconfiguration of the roofs communal open space and plant areas is considered a more efficient use of space from that originally approved and provides a more amenable outlook towards the north to the Anzac Parade boulevard and to the west to Dacey Gardens.

In view of the above, the proposed internal amendments are considered to result in improved amenity of the development and will not result in any significant or unreasonable adverse impacts upon the streetscape or neighbouring properties.

7. CONCLUSION

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

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

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

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

8. RECOMMENDATION

It is recommended:

That the Sydney Eastern City Planning Panel, grants development consent under Section 4.56 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/311/2020/B 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 391 Anzac Parade, Kingsford, in the following manner:

As a result of the amended plans submitted with the modification application (dated 26/07/21), Condition 1 of the development consent is amended accordingly inclusive of those originally submitted with the application but not amended such as the basement plan. The modification plans also incorporate the amendments required under Conditions 2(e) e-waste of the development consent which, should the application be approved, condition 2(e) can be deleted. It is noted that condition 2a and 4. can also be amended noting that an amended acoustic report and building management statement were submitted and assessed by Council's Environmental Health officer recommending additional conditions of consent be added (noted as conditions: Acoustic conditions 30A & 30B, & 60A, and operational environmental amenity conditions 163A, 163B, & 163C.

- **Amend Condition 1 to read:**

Approved Plans & Supporting Documentation

1. The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

Plan No.	Rev No.	Drawn by	Dated
DA-00-0000	9	PTW	11/03/2021
DA-00-0200	3	PTW	18/02/2021
DA-10-0900	13	PTW	26/03/2021
DA-10-1000	15	PTW	06/04/2021
DA-10-1100	11	PTW	26/03/2021
DA-10-1200	11	PTW	26/03/2021
DA-10-1300	10	PTW	03/03/2021
DA-10-1400	9	PTW	18/02/2021
DA-10-2700	9	PTW	18/02/2021
DA-20-1000	10	PTW	03/03/2021
DA-20-2000	10	PTW	03/03/2021
DA-20-2001	1	PTW	03/03/2021
DA-20-3000	10	PTW	03/03/2021
DA-20-6000	2	PTW	11/03/2021
DA-30-1000	10	PTW	26/03/2021
DA-30-2000	9	PTW	26/03/2021
DA-50-0101	2	PTW	18/02/2021

Plan No.	Rev No.	Drawn by	Dated
DA-50-0102	2	PTW	18/02/2021
DA-50-0103	2	PTW	18/02/2021
DA-50-0104	2	PTW	18/02/2021
DA-50-0105	2	PTW	18/02/2021
DA-50-0106	2	PTW	18/02/2021
DA-50-0107	2	PTW	18/02/2021
Landscape Plans			
LD-S34-000	2	Landform Studios	26/03/2021
LD-S34-001	2	Landform Studios	26/03/2021
LD-S34-100	2	Landform Studios	26/03/2021
LD-S34-110	1	Landform Studios	12/03/2021
LD-S34-120	1	Landform Studios	12/03/2021
LD-S34-130	1	Landform Studios	12/03/2021
LD-S34-140	1	Landform Studios	12/03/2021
LD-S34-300	1	Landform Studios	12/03/2021
LD-S34-900	1	Landform Studios	12/03/2021

BASIX Certificate No.	Dated
1112090M_02	14 April 2021

1.1. 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 “B” plans and supporting documents only in so far as they relate to the modifications highlighted on the Section 4.56 “B” plans and detailed in the Section 4.56 “B” application:

Plan No.	Rev No.	Drawn by	Dated
DA-11-0000	13	PTW Architects	26/07/22
DA-10-0900	16	PTW Architects	5/11/21
DA-10-1000	17	PTW Architects	29/10/21
DA-10-1100	14	PTW Architects	26/07/22

Plan No.	R e v N o.	Drawn by	Dated
DA-10-1200	1 5	PTW Architects	26/07/22
DA-10-1300	1 2	PTW Architects	26/07/22
DA-10-1400	1 2	PTW Architects	26/07/22
DA-10-2500	2	PTW Architects	29/10/21
DA-10-2700	1 0	PTW Architects	12/10/21
DA-20-1000	1 2	PTW Architects	26/07/22
DA-20-2000	1 2	PTW Architects	26/07/22
DA-20-3000	1 2	PTW Architects	26/07/22
DA-30-1000	1 2	PTW Architects	26/07/22
DA-40-0100	5	PTW Architects	12/10/21
Landscape Plans			
LD-S4.55-000	1	Landform Studios	28.10.21
LD-S4.55-001	1	Landform Studios	28.10.21
LD-S4.55-100	1	Landform Studios	28.10.21
LD-S4.55-110	1	Landform Studios	28.10.21
LD-S4.55-120	1	Landform Studios	28.10.21
LD-S4.55-130	1	Landform Studios	28.10.21
LD-S4.55-140	1	Landform Studios	28.10.21
LD-S4.55-300	1	Landform Studios	28.10.21
LD-S4.55-900	1	Landform Studios	28.10.21

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

2. **Motorcycle space deletion**
 - g. The end motorcycle space adjacent to carstacker 1 and closest to the parking aisle shall be deleted as it intrudes into the parking aisle resulting in a non-compliance with AS 2890.1 and restricting access into car stackers 5 & 6.

- **Amend condition 8 to read:**

Sydney Airport Conditions

8. The conditions from Sydney Airport shall be complied with as follows:

In accordance with regulation 14(1)(b), the following conditions are imposed:

1. The building **must not exceed** a maximum height of **80.27 metres AHD**, **this includes all** lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.
2. The building **must be obstacle lit** by low intensity steady red lighting during the hours of darkness at the highest point of the building. Obstacle lights are to be arranged to ensure the building can be observed in a 360-degree radius as per Chapter 9 Division 3 of the Civil Aviation Safety Regulations 1998 Manual of Standards - Part 139 Aerodromes (the MOS). Characteristics for low intensity lights are stated in Section 9.32 of the MOS.
3. If at any time after the height of the building has reached 51 metres AHD, the crane(s) used to construct the building are removed and no other crane(s) are in place then the Proponent **must arrange** for the highest point of the building to be obstacle lit with low intensity steady red lighting during the hours of darkness. The obstacle lights **must be arranged** to ensure the lighting can be observed in a 360-degree radius as per Chapter 9 Division 4 of the MOS.
4. The Proponent must ensure obstacle lighting is maintained in serviceable condition and any outage immediately notified to SACL.
5. The obstacle lighting **must incorporate** an alarm system that will provide remote monitoring to notify the person responsible for their maintenance. The designated person **must be available** 24 hours per day, 7 days per week. Action must be taken to repair the obstacle lighting within 12 hours of the light not operating. The contact details of the person responsible for the monitoring of the obstacle lighting must be sent to Sydney Airport, and will be kept up to date. In the event of the obstacle lighting being inoperable, the person responsible for the maintenance of the obstacle lighting **must immediately** contact the Sydney Airport Airfield Operations Supervisor on 0419 278 208 or 02 9667 9824. Once the obstacle lighting is again working, the person responsible for the maintenance of the obstacle lighting **must notify** the Sydney Airport Airfield Operations Supervisor.
6. Following completion of the building, the Proponent must advise SACL, in writing:
 - a) that the future owner(s)/manager(s) of the building have been informed of their **obligation to maintain** the obstacle lighting in accordance with conditions of this approval; and
 - b) the contact details of the person/position responsible for the maintenance of the obstacle lighting.
7. Separate approval must be sought under the Regulations for any equipment (i.e., cranes) required to construct the building. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations. Therefore, it is advisable that

approval to operate construction equipment (i.e. cranes) be obtained prior to any commitment to construct.

8. The Proponent **must advise** Airservices Australia at least three business days prior to the controlled activity commencing by emailing <ifp@airservicesaustralia.com> and quoting YSSY-CA-343.
9. On completion of construction of the building, the Proponent must provide the SACL airfield design manager with a written report from a certified surveyor on the finished height of the building.

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

- **Amend condition 27 to read:**

27. A report/correspondence prepared by a suitably qualified and experienced consultant in acoustics shall be submitted to Councils Manager Development Assessments and accepted prior to a construction certificate 3 being issued for the development, which demonstrates that noise and vibration emissions from the development will satisfy the relevant provisions of the
 - a. *Protection of the Environment Operations Act 1997*,
 - b. NSW Environmental Protection Authority (NSW EPA); Noise Policy for Industry and relevant Guidelines, and
 - c. The adopted Council K2K DCP and development control measures as set out in Section 14 Acoustic Privacy and Section 26 Student Accommodation, and
 - d. relevant conditions of consent (including any relevant approved acoustic report and recommendations), and
 - e. Australian Standard AS2107:2016 "Acoustics - Recommended design sound levels and reverberation times for building interiors"
 - f. **Department of Planning Development Near Rail Corridor and Busy Roads – Interim Guideline.**

The assessment and report must include all relevant fixed and operational noise sources and satisfy the requirements as detailed in the relevant DCP.

- **Amend Condition 50 to read:**

50. **Provision for Automated Waste Collection System**
Plans submitted for the Construction Certificate shall make provision for installation of an Automated Waste Collection System (AWCS) including but not be limited to:
 - A space is to be set aside/identified adjacent to the internal laneway or Bunnerong Road for a future connection point to enable collection by a designated Council Collection Vehicle.

The final collection point for the Automated Waste Collection system has not been approved as part of this consent. This will be subject to the

concurrence and approval (in writing) of Council's Coordinator of Strategic Waste prior to the issuing of a construction certificate.

- Appropriate space for associated Tanks & Pipe infrastructure to the collection point.
- Appropriate space for bulky waste that cannot be accommodated by the AWCS shall be provided adjacent to loading bay amounting to a minimum of 20m³.

Confirmation of the above and other requirements shall be obtained by a suitably qualified AWCS Waste consultant to the satisfaction of the Principal Certifier.

- **Amend Condition 58 to read:**

Amended Landscape Plans

58. 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 Amended Landscape Plans by Landform Studios, dwg no LD-S4.55 – 000 – 900, rev 1, dated 28/10/21, with both this statement and plans to then be submitted to, and be approved by, the Principal Certifier.

- **Add condition 60A to read:**

- 60A. Noise from the development must not cause an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and must satisfy the project amenity/intrusiveness noise level or the maximum noise level as detailed in the NSW EPA Noise Policy for Industry 2017 (NPfI) and conditions of this development consent.

The design and construction recommendations in the acoustic report prepared by Acoustic Logic (Document 20200304.7/1407A/R0/RF) dated 14 July 2022 shall be included in the construction certificate.

A report prepared by a qualified Acoustic Consultant, which provides details of compliance with the abovementioned criteria, must be provided to the Council and the Certifier for the development and any recommendations and requirements are to be included in the Construction Certificate accordingly.

- **Amend Condition 125 to read:**

Landscape Certification

125. Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the Amended Landscape Plans by Landform Studios, dwg no LD-S4.55 – 000 – 900, rev 1, dated 28/10/21 as well as any relevant conditions of consent.

- **Delete Condition 12 which reads:**

External Colours, Materials & Finishes

12. The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing Construction Certificate 3 for the development.

- **Amend condition 152 to read:**

Occupancy and Management

152. The maximum permanent resident occupancy shall be 395 residents (355 rooms and 1 on-site managers room).

- **Add the following Environmental Health operational conditions:**

- 157A. The Management Statement prepared by Scape Australia Management dated April 2020 V0.1 shall be implemented at all times.

- 157B. No music is permitted in outdoor areas.

- 157C. Outdoor terraces are to be closed between 10:00pm – 7:00am.

- **Add advisory condition:**

Transport for NSW:

- A19 Should the outdoor terrace area, balconies and external windows within 20 metres facing Anzac Parade light rail corridor. It is advised that measures are required to prevent objects being dropped or thrown onto the rail corridor from balconies, windows and other external features (e.g., roof terraces and external fire escapes). Any variation to the design of outdoor terrace, balconies, external Windows facing the light rail corridor and Anzac Parade in accordance with Section 5.4 of the ASA standard T HR CI 12090 ST Airspace and External Developments version 1.0, may require a further modification application.

Attachments to report:

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