



SYDNEY EASTERN CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

PANEL REFERENCE & DA NUMBER	PPSSEC-204 – DA/20/2021/A
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. The modification to the approved development is to allow for the provision of a lift overrun, fire stairs, balustrades, accessible toilet, and mechanical plant to the rooftop and minor change to floor levels of the 9-storey student housing building.
ADDRESS	177-197 Anzac Parade, Kensington 2033 The development site comprises six lots as follows: (3,541m ²). <ul style="list-style-type: none"> • 177 Anzac Parade (SP 15366) • 179-181 Anzac Parade (Lot 10 Section 7 DP 4761) • 183-185 Anzac Parade (Lot 11 Section 7 DP 4761) • 187 Anzac Parade (Lot A DP 410791) • 189 Anzac Parade (Lot B DP 410791) • 191-197 Anzac Parade (SP 19239)
APPLICANT	Christopher Croucamp (Urbis Pty Ltd) c/o Cedar Pacific and UniLodge
OWNER	Cedar Pacific Pty Ltd
MOD LODGEMENT DATE	24 May 2022
ORIGINAL DA (DETERMINATION DATE)	Demolition of existing structures on site and construction of 9 storey mixed use development comprising commercial ground level and 8 storeys above (student housing) boarding house comprising 604 rooms, basement parking comprising 5 car spaces, 126 bicycle spaces and 104 motorcycle spaces, accessible rooftop common garden, under awning signage, landscaping and associated works (3 December 2021 LEC).
APPLICATION TYPE	S4.56 Modification Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2 of Schedule 7 of the SEPP SRD: General Development over \$30million. Clause 2 of Schedule 6 of SEPP Planning Systems 2021: General Development over \$30million.
CIV	\$62,500,000 (including GST)

CLAUSE REQUESTS	4.6	N/A
KEY SEPP/LEP		<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (State and Regional Development) 2011.</i> • <i>State Environmental Planning Policy (Affordable Rental Housing 2009)</i> • <i>State Environmental Planning Policy (Planning Systems) 2021.</i> • <i>Randwick Local Environmental Plan 2012.</i> • <i>Randwick Development Control Plan – Section E6 Kensington and Kingsford Town Centres.</i>
SUBMISSIONS (KEY ISSUES IN SUBMISSIONS)		Nil (NA).
DOCUMENTS SUBMITTED FOR CONSIDERATION		<ul style="list-style-type: none"> • Architectural Plans <p><u>Original Floor Plans:</u></p> <ul style="list-style-type: none"> ○ Site – DA002 Rev F dated 22.03.22 ○ Floor Plan – Level 4 DA016 Rev R dated 22.03.22 ○ Floor Plan – Level 5 DA017 Rev R dated 22.03.22 ○ Floor Plan – Level 6 DA018 Rev Q dated 22.03.22 ○ Floor Plan – Level 7 DA019 Rev Q dated 22.03.22 ○ Floor Plan – Level 8 DA020 Rev Q dated 22.03.22 ○ Floor Plan – Roof plan DA021 Rev R dated 22.03.22 <p>Amended and additional:</p> <ul style="list-style-type: none"> ○ Floor plan – Roof plan comparison DA022 Rev C, dated 28.11.22 – superseded ○ <u>Floor plan – Roof plan comparison DA022 Rev D, dated 05.12.22</u> <p><u>Original Elevations and Sections:</u></p> <ul style="list-style-type: none"> ○ Elevations – Long DA031 Rev P dated 22.03.22 – superseded ○ Elevations – Long DA032 Rev Q dated 22.03.22 – superseded ○ Elevations – Short DA033 Rev A dated 22.03.22 – superseded ○ Elevations – Short DA034 Rev A dated 22.03.22 – superseded ○ Sections DA041 Rev P dated 22.03.22 ○ Sections DA042 Rev A dated 22.03.22 <p>Amended elevations:</p> <ul style="list-style-type: none"> ○ Elevations – Long DA031 Rev Q dated 05.12.21

	<ul style="list-style-type: none"> ○ Elevations – Long DA032 Rev Q dated 05.12.21 ○ Elevations – Short DA033 Rev B dated 05.12.21 ○ Elevations – Short DA034 Rev B dated 05.12.21
	<p><u>Additional diagrams:</u></p> <ul style="list-style-type: none"> ○ Shadow diagrams – Proposed DA058 Rev F & DA059 Rev A dated 22.03.22 – superseded ○ Perspective views DA060 Rev A dated 22.03.22 – superseded ○ Height limit diagram DA070 Rev H dated 22.03.22 – superseded <p>Additional diagrams</p> <ul style="list-style-type: none"> ○ Shadows difference between approved and originally proposed relates to the amended scheme Rev B superseded by Elevation shadow diagrams on No. 24 Roma Ave, and 113 Doncaster Avenue Rev A ○ Perspective diagrams relates to the amended roof layout Rev E and B showing Anzac and Roma Avenue perspectives. <ul style="list-style-type: none"> • Landscape Plans: <ul style="list-style-type: none"> ○ Landscape calculations Issue 20 dated 29 April 2022 ○ Softworks plan – Rooftop 405 Issue 20 dated April 2022 ○ Softworks plan – Rooftop 406 Issue 20 dated April 2022 <p>Additional and amended plans:</p> <ul style="list-style-type: none"> ○ Amended Landscape plans (Arcadia package pages 1 to 39) noting that Landscape Roof Top Plan on Page 22, Softworks plans – Rooftop 405 and 406 relate to the original mod proposal and therefore required to be amended via condition to be consistent with the amended roof top plan (<u>Floor plan – Roof plan comparison DA022 Rev D, dated 28.11.22</u>) which has increased setback of mechanical plant on western wings and replaced plant on north eastern corner with study area. <ul style="list-style-type: none"> • Other documents: <ul style="list-style-type: none"> ○ Report – Modification to building height (Urbis) ○ DDA Statement letter – dated 29 April 2022 <p>Additional letter to address TfNSW matters</p> <ul style="list-style-type: none"> ○ Design statement letter dated 29 March 2022 stating design of balconies and windows will satisfy TfNSW requirements that objects are not able to be thrown onto Anzac Parade transport corridor noting the following: <ul style="list-style-type: none"> ○ Level 4 terrace is non-trafficable ○ Level 9 roof terrace is setback 20m from corridor

	<ul style="list-style-type: none">Windows are awning windows openable to maximum of 125mm
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval - subject to conditions
SCHEDULED MEETING DATE	13 December 2022
PLAN VERSION/S	Original at lodgement at 24 May 2022 and amended plans at 3 December 2022
PREPARED BY	Louis Coorey
DATE OF REPORT	3 December 2022

1. EXECUTIVE SUMMARY

Council is in receipt of a modification application (PPSSEC-204) pursuant to Section 4.56 of the Environmental Planning and Assessment Act (as amended), seeking consent to modify ("A") Development Consent DA/20/2021.

The original development application was approved by the NSW Land and Environment Court on 3 December 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 *Sydney Eastern City Planning Panel* (SECPP) were the application not appealed in the Land and Environment Court. The original development with a capital investment value over \$30 million is defined as Regionally Significant General 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 (subsequently Schedule 6 of the new State Environmental Planning Policy (Planning Systems) 2021).

The original development application approved on 3 December 2021, the demolition of existing structures on site and construction of 9-storey mixed-use development comprising commercial ground level and 8 storeys above (student housing) boarding house comprising 604 rooms, basement parking comprising 5 car spaces, 126 bicycle spaces and 104 motorcycle spaces, accessible rooftop common garden, under awning signage, landscaping and associated works. The original consent approved a height variation for the lift overrun being 31.52m or 520mm over the 31m maximum HOB under the LEP.

The modification application seeks to increase height of the development by raising floor levels 4 to 8 by 200mm, and amended roof plan in relation to balustrades, mechanical plant screens, lift access, pergolas, fire stairs and accessible bathroom. The maximum height will be between 29.98m parapet at north-eastern corner and 34.42m for the lift overrun.

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. No submissions were received as a result of the notification process.

The application was referred to Council's Design Excellence Advisory Panel (DEAP) for comment who acknowledged changes were as a result of buildability matters, the communal roof terrace will be in high demand, recommending aggregation of planting into larger garden or arbor areas to contribute to the usability of the space, the inability or complexity in accessing balustrades for cleaning, the way screening and shade structures are perceived from the public realm. In response the applicant submitted amended plans on 2 occasions Rev C roof plan and subsequently Rev D roof plan and elevations plans showing:

- For the Anzac Parade frontage, increased setbacks for both balustrades, mechanical plant screens to match the balustrade height
- For the rear elevation facing Roma Avenue, increased setbacks and reduced

- height for mechanical plant screens
- Relocated mechanical plant to the southern end.

The application was also referred to Council's Landscape Officer, for comment who raised no objection to the proposed modifications.

The application was referred to external agencies including Sydney Airport, WaterNSW, and TfNSW most of whom raised no objection to the proposed development. TfNSW questioned whether the balconies and windows within 20m of the rail corridor along Anzac Parade were designed such that objects could not be thrown onto the rail corridor. The applicant submitted design statement indicating that the windows were awning windows limited to maximum opening of 125mm noting that the amendments sought to the balustrades in this application.

The key issues associated with the proposed modification application relate to:

- whether the additional height above that approved and further variation to the 31m maximum Height of Building (HOB) development standard will adequately satisfy the relevant matters for consideration under S4.15 of the Act and the original reasons for supporting the height of building (HOB) variations,
- whether the roof terrace level exhibits design excellence both in terms of its visual amenity as viewed from the public domain, and usability

In relation to height of building variation, it is considered that the amendments made to the proposal such as increased setback of balustrading and screening along the Anzac Parade and Roma Avenue aspects are pertinent in ensuring that the S4.56 modification application is supportable. In particular, the elements projecting most above the 31m maximum HOB standard are now limited to centrally located structures such as the lift and fire stair. The remaining structures such as screens and balustrades, the increased setbacks and reduced heights of screening further away from the perimeter ensure no unreasonable adverse amenity impacts on the neighbours or the streetscape character. It also means, that landscaped areas are now located between the balustrade and screens which will soften the impact of these structures and contribute to the character of the locality.

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.

1.1 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.

Provided by applicant:

Pictures 1 to 6 - Photographic Review of Surrounding Development



	<p>north-east of the site fronting Anzac Parade.</p> 
<p>Picture 3 – Unilodge @UNSW located north west of the site fronting Anzac Parade</p>	<p>Picture 4 – View looking across Anzac Parade towards the site with existing Unilodge in background</p>
	
<p>Picture 5 – View of Masonic Hall building located south of the site fronting Anzac Parade</p>	<p>Picture 6 – View looking north-west up Anzac Parade from the northern boundary of the site</p>

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

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

Level 04-08:

- 200mm increase floor to floor height of level 03 and 08 to allow for services.

Level Roof:

- Provide lift access and fire stair access to roof level.
- Provide higher 1.5m balustrades to permitter of roof level
- Provide mechanical plant areas with screens
- Provide trellises to roof terrace

Amended plans in response to matters raised include the following changes:

- Increased setback of balustrade from Anzac Parade envelope
- Increased setback of mechanical plant and screening from Anzac Parade and northern side boundary
- Increased landscaping within increased setbacks along Anzac Parade
- Reduced height and increased setbacks of screening for mechanical plant facing rear western boundary from 2.1 down to 1.5m
- Reduced height of screening to study nook seating areas along Anzac Parade to match balustrade height

Elevations and sections

- Updated finished floor level at levels 3 and 8 from 2.95m to 3.15 and overall parapet height by 400mm for buildability purposes at the key junctures of the podium/street wall and roof.
- Increased maximum height of development from RL31.52 to 34.42m

Proposed Changes to Conditions

As a result of the amended plans submitted with the modification application (dated 5.12.22), Condition 1 of the development consent is amended accordingly. Landscape plans received are also amended by condition of consent.

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

Table 1: Development Data

Feature	Approved Development	Proposed Modifications	Change
Land use	9-storey mixed use development comprising a commercial ground level and 8 storey boarding house (student accommodation)	9-storey mixed use development comprising a commercial ground level and 8 storey boarding house (student accommodation)	No change

Feature	Approved Development	Proposed Modifications	Change
Building Height	<ul style="list-style-type: none"> 30.37 metres (top of roof parapet) 31.02 metres (top of balustrade) 31.72 metres (top of lift overrun) 	<ul style="list-style-type: none"> 30.77 metres (top of roof parapet) 31.92 metres (top of balustrade) 34.42 metres (top of lift overrun) 33.37 metres (top of fire stair structure) 32.52 metres (top of plant enclosure) 	<ul style="list-style-type: none"> +0.40 metres (top of roof parapet) +0.90 metres (top of balustrade) +2.7 metres (top of lift overrun)
No. of Storeys	9 storeys	9 storeys	No change
No. of Student Rooms	604	604	No change
Gross Floor Area	14,946sqm	14,946sqm	No change –Slight increase sought under DA/20/2021/C
Car Parking Spaces	5 car spaces	5 car spaces	No change
Bicycle Parking Space	126 bicycle spaces	126 bicycle spaces	No change
Motorbike Parking Spaces	104 motorcycle spaces	104 motorcycle spaces	No change – reduction of 10 spaces sought under DA/20/2021/C
Landscaped Area	3,985sqm	3,985sqm	No change

2.2 Background

Details of Current Approval

Development Application DA/20/2021

The original development application was approved by the NSW Land and Environment Court on 3 December 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 deletion of one storey (level 9), revised layouts, increase motorbike spaces from 30 to 104, reduced car parking from 12 down to 5, increased setbacks from Anzac Parade and Pedestrian path to the south and the provision of community infrastructure works to the laneway, Anzac parade street planting and works, heritage seating, other public domain works and monetary contributions. The approved development was considered to be consistent with the relevant provisions of SEPP ARH, RLEP 2012 and the Part E6 of Randwick Development Control Plan Kensington and Kingsford Town Centres 2020. 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/20/2021/B and DA/20/2021/C

DA/20/2021/B

This modification application sought to delete condition 15A of the consent requiring skylights to be provided to the roof for boarding rooms below. This application has been withdrawn with the applicant seeking to in future submit documentation to comply with the condition of consent.

DA/20/2021/C

This modification application seeks to mostly alter the basement level of the approved development in order to accommodate an existing Council stormwater line, changes to the configuration of parking removing 10 motorcycle spaces, enlarged loading bay area, install a storm filter and minor change to ground level adjacent to the existing Council stormwater line.

Subject Modification Application

The subject modification application (DA/20/2021/A) was lodged on 24 May 2022. The application was externally referred to Water NSW, Sydney Airport Corporation, NSW Police and TfNSW. The application was internally referred to Council's Heritage Planner, 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
24 May 2022	Modification application lodged
27 May 2022	Referred to external agencies (CNR-40468) and internal departments of Council
2 June 2022	Exhibition of the application
20 June 2022	Referral to Randwick Design Excellence Advisory Panel (DEAP)
21 June 2022	TfNSW issued RFI requiring design to ensure no objects thrown from trafficable areas and habitable rooms within 20m of the transport corridor
22 June 2022	RFI issued seeking response to WaterNSW comments.
28 June 2022	RFI issued raising concerns with the balustrade setback from Anzac Parade and proximity of the trafficable area to the transport corridor

Date	Event
18 July 2022	RFI issued seeking response to DEAP comments.
21 July 2022	<p>Kick off Briefing of both subject S4.56 “A” as well as S4.56 “B” application noting the following key issues:</p> <ul style="list-style-type: none"> • Plant proximity to building edge. • Visual prominence of glass balustrade. • Landscaping of mechanical screening. • Skylights impact on common open space.
9 & 12 August 2022	<p>Applicant response to RFI issues:</p> <ul style="list-style-type: none"> • Increased setback of balustrade and landscaping to mechanical screens along Anzac Parade frontage. • Montage of pedestrian sightline from street level. (Note: shows comparison between approved and S4.56 as amended with increased setback of balustrade and screen – does not include trellis or screening for seating area which is shown in further 3-D image that is not at pedestrian sight line opposite). • 3 alternative skylight placement options (note applicant indicates intention to withdraw the S4.56 “B” PPSSEC-208 application. it is noted that the applicant has provided setbacks that roof space for the installation of skylights.)
29 August 2022	<p>Response provided by Applicant to DEAP comments:</p> <ul style="list-style-type: none"> • Table addressing DEAP concerns • Amended landscape plans <p>Note: The landscape plans are conditioned to be amended to incorporate latest amendments to the roof plan (Floor plan – Roof plan comparison DA022 Rev C, dated 28.11.22) identified as follows:</p> <ul style="list-style-type: none"> • Reduction in height of screens around study nooks to be consistent with height of balustrade. • Reduction in height of screens facing the Roma Avenue properties. • Increased setback of mechanical plant and screen from Anzac Parade parapet from nil approved to 2.2m and 4.6m
5 December 2022	Amended elevation and roof Rev D plan received 5 December 2022 identified as follows:

Date	Event
	<ul style="list-style-type: none"> • Reduction in height of screens around study nooks to be consistent with height of balustrade. • Reallocation of mechanical plant away from Anzac Parade frontage. • Reduction in height of screens facing the Roma Avenue properties. • Increased setback of mechanical plant and screen from Anzac Parade parapet from nil approved to 2.2m.

3. STATUTORY CONSIDERATIONS

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

3.1 Section 4.56 of the EP&A Act

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

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

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

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

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

The application originally approved a nine (9) storey mixed-use development comprising commercial premises and a boarding house with 604 boarding rooms. The current modification application seeks to modify the consent by way of providing a more easily accessible roof terrace which is acknowledged as providing good amenity for future occupants, by increasing the height mostly for lift (approved RL55.02 31.52m to RL57.92 or 34.42m) and fire stair access (RL33.37m) to the roof terrace, to address buildability or servicing requirements by providing areas for mechanical plant and equipment (32.52m – noting a reduction by 600mm down to 32.02m) and increased residential floor levels (4-8) by 2cm.

Quantitatively, the proposed modifications whilst increasing the height substantially over the maximum development standard is limited to small elements of built form that are predominately centrally located and or light weight structures setback from the parapet such that they do not represent adverse visual bulk or result in adverse impacts on the streetscape.

Overall, quantitatively, the approved built form whilst increased is remaining a 9-storey mixed-use development, 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 nine (9) 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 incorrect description of the development as a key node site was submitted, however this was rectified by informing the Secretariate of this error which was duly corrected.

- (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 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 standard for Floor Space Ratio pursuant to the SEPP ARH bonus floor area afforded to boarding houses.
- The proposal whilst exceeding the HOB development standard further will remain generally consistent with the approval envelope for a 9-storey building envelope noting that due to flooding level requirements the ground level is between 800mm and 1.4m above the adjacent ground levels offsetting somewhat the parapet which remain predominately below the maximum HOB standard and screening height that extend above the 31m maximum HOB standard are setback from the perimeter. The elements that extend further above the HOB development standard, are setback from the permitter mostly in centrally located within the site ensuring that visual bulk and overshadowing are not significant impacts.
- 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 noting the HOB exceedance and the Kensington and Kingsford DCP 2020 noting that it remains a 9-storey building 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.

The proposed modifications are 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.

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

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

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

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 not required to be 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.	NA
State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)	Division 3 – Boarding Houses	Y, The floor area remains compliant with the maximum permissible bonus under the SEPP ARH.
(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 <i>State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)</i>	NA

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (State and Regional Development) 2011	Clause 2 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011: General Development over \$30million.	Y
State Environmental Planning Policy (Planning Systems) 2021	Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: General Development over \$30million.	Y
LEP	<ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives • Clause 4.3 – Height of Buildings • Clause 4.4 – Floor Space Ratio • Clause 6.11 – Design Excellence • Clause 6.17 – Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres • Clause 6.18 - Affordable housing at Kensington and Kingsford town centres • Clause 6.19 - Non-residential floor space ratios at Kensington and Kingsford town centres • Clause 6.20 – Active Street frontages at Kensington and Kingsford town centres • Clause 6.21 – Design excellence at Kensington and Kingsford town centres 	Y for all except clause 4.3 which is further exceeded.
DCP	<ul style="list-style-type: none"> • Randwick Development Control Plan Part E6 - Kensington and Kingsford Town Centres <p>The proposed modifications don't result in substantial changes to the approved architectural form other than the roof terrace area, noting that the most prominent structures are centrally located with the roof form away from the site boundaries and parapets which remain predominately compliant with the building envelope envisaged under the K2K DCP 2020.</p>	Y -see discussion in key issues section of this report.

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

State Environmental Planning Policy – Building Sustainability Index BASIX– 2004 ('BASIX SEPP'). 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 for residential components of the scheme.

The original application was accompanied by a BASIX Certificate committing to environmentally sustainable measures and the modification application does not alter the conditions of consent incorporated in the original consent.

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

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

The development as sought to be modified and subsequently amended will remain consistent with the provisions of the SEPP ARH.

The proposed modifications as a result buildability and service requirements providing access to the roof terrace which is a key component of communal open space capable of received suitable levels of solar access will ensure consistency with the objectives of the SEPP ARH. The proposed modification application provides a series of communal areas for occupants of the development, and updated roof terrace areas considered to be appropriate for the site and use.

The development as sought to be modified remains consistent with the standards, with no changes sought to the size of student boarding rooms, facilities, manager requirements, solar access and parking provisions.

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)(a) which state that this policy does not apply to the original DA qualified as it was made, but not yet determined, on or before the commencement date of 26 November 2021.

- *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 initially raised concerns relating to the design of the balconies and window openings within close proximity to the transport corridor and light rail along Anzac parade. The applicant in response provided a design statement letter dated 29 March 2022 stating that objects are not able to be thrown onto Anzac Parade transport corridor based on the following design outcomes:

- o Level 4 terrace is non-trafficable
- o Level 9 roof terrace is setback 20m from corridor
- o Windows are awning windows openable to maximum of 125mm

TfNSW response contained in Attachment A to this report raises no objection to the modification application as amended.

- *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 site is located within the B2 Local Centre Zone pursuant to Clause 2.2 of 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.

The proposed modification application seeks an increase in height of the development at the roof level exceeding the maximum Height-of-Building (HOB) development standard, however the parapet height will largely remain compliant with the 31m HOB development standard and structures located substantially higher than the standard is setback from the envelope ensuring subservience to the architectural form of the development as a whole.

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 Kensington Town Centre.

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

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, where non-compliance occurs this is contained in the key issues section of this report.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	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 issue raised in submission has been considered and addressed in the report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest. – see discussion in key issues section of report.

3.3 Part 5 of the 2021 EP&A Regulation

The subject application was lodged on 19 November 2021. In accordance with the saving

provisions under Schedule 6 of the EP&A Regs 2021, the 2000 Regulation continues to apply to the application not the provisions of the EP&A Regs 2021. The subject application is consistent with the relevant provisions of the Environmental Planning and Assessment Regulations 2000.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The original development application was classified as:

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

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

The relevant authorities did not raise any objection to the proposed modifications, and the original conditions of consent imposed are to be retained.

Table 5: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for NSW (TfNSW)	<ul style="list-style-type: none"> • Section 138 of the Roads Act 1993 (non-integrated); • Clause 101 of the <i>State Environmental Planning Policy (Infrastructure) 2007</i>. 	See comments in earlier section of this report noting that Attachment A contains TfNSW comments indicating subject to satisfactory design of the balconies and openings within 20m of the transport corridor, no objection to the modification application.	Y
Roads and Maritime Services (RMS)		No objections to the proposed modifications	

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Sydney Airport	Clause 6.8 of RLEP 2012	The proposed height is approved, Sydney airport corporation (including CASA and ASA) has provided concurrence to the modification application contained in Attachment A to this report. Condition of consent (6) is amended accordingly.	Y
NSW Police	Randwick Council Referral Process	The application was referred to NSW Police, who raised no objections to the modification application.	Y
Water NSW	s90 of the Water Management Act 2000	Water NSW raised no objection to the proposed modifications. See attachment A to this report.	Y

4.2 Council Referrals

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

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Design Excellence Advisory Panel (DEAP)	The relevant matters raised are noted in the key issues section of this report and contained in Attached B.	Y
Landscape officer	No objections to the proposed modification application recommending amendment to relevant conditions provided in Attachment B to this report.	Y

4.3 Notification and Community Consultation

The modification application was notified in accordance with Council's Community Participation Plan from 2 June 2022 until 1 July 2022. The notification included the following:

- A sign placed on the site.
- Notification letters sent to adjoining and adjacent properties, and to previous

submitters and objectors.

- Notification on the Council's website.

The Council received a total of one (1) submission, 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
<p>Incorrect description of development site</p> <p>The site is incorrectly identified as a key node site.</p>	<p>The Secretariate was notified of the error, expeditiously removing reference to the site as a key node site.</p>

5. KEY ISSUES

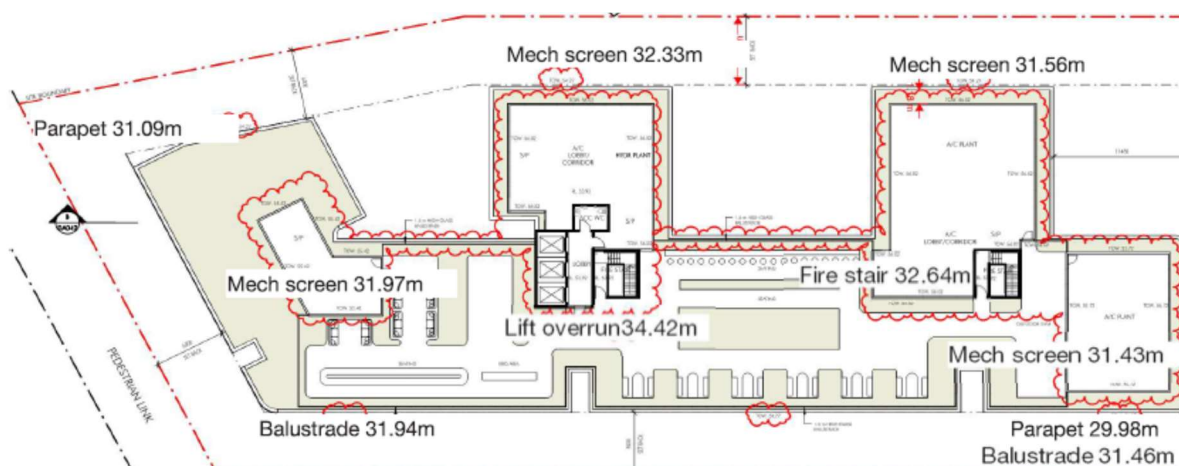
The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal:

5.1 Height of buildings

The site is under the DCP for the K2K Town Centres subject to a 4-storey street wall (16m) and 9-storey overall building envelope, noting that the LEP stipulates a 31m maximum Height of Building development standard.

The originally submitted application proposed the following height variations and shown in the image further below:

- Front elevation along Anzac Parade: 31.94m for the balustrade with a nil setback for the roof terrace, and 31.46m for the mechanical plant screens at the north-eastern end.
- Central components including the mechanical screens (31.97m) trellis, lift access and overrun (34.42m) and new fire stair (32.64m)
- Rear elevation: at the lower rear part of the site adjoining the rear boundary shared with properties facing Roma Avenue, the height of the screens has a height of between 31.09m and 32.33m.



Original proposed modification application noting height of mechanical screens at the rear being 31.56m, 32.33m and 31.09m for the parapet. The amended scheme reduces the height of the screens (31.56m and 32.33m) by a further 600mm resulting in compliance for the northern most wing (down to 30.96m) and the central wing down to 31.73m.

Following a preliminary assessment and briefing of the Panel, the applicant was advised that the increased height of the balustrades and variation to the standard required a more holistic approach to ensuring that the development as whole would be consistent with the design excellence DCP objectives, and the following HOB objectives in Clause 4.3 of the LEP 2012:

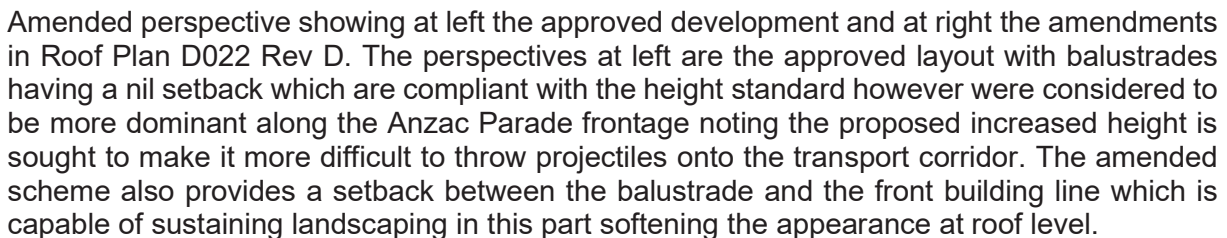
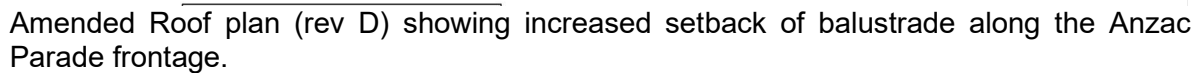
- (a) *to ensure that the size and scale of development is compatible with the desired future character of the locality,*
- (b) *to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
- (c) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

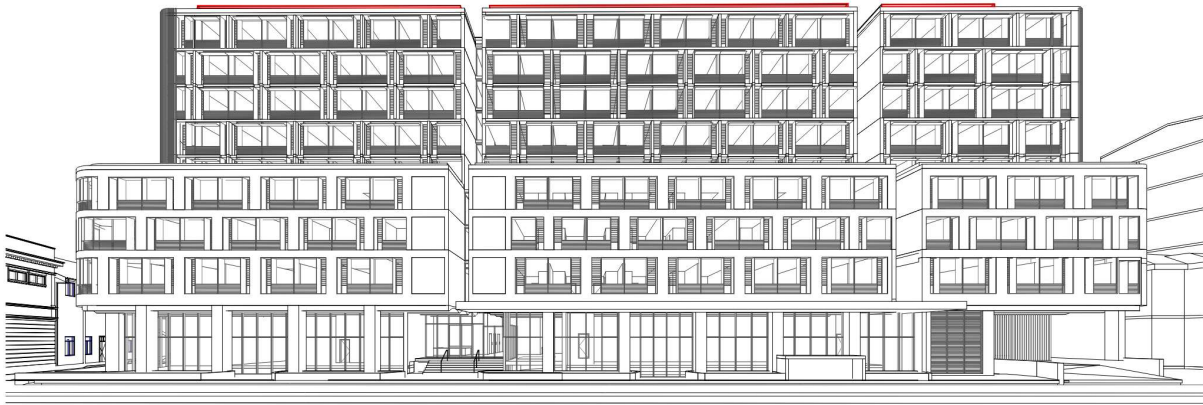
The applicant has resolved on two occasions to amend the scheme amending the roof terrace (in Rev C and subsequently in Rev D plans). The amendments are discussed in relation to the front, central and rear elements of the scheme as follows:

Front elevation along Anzac Parade

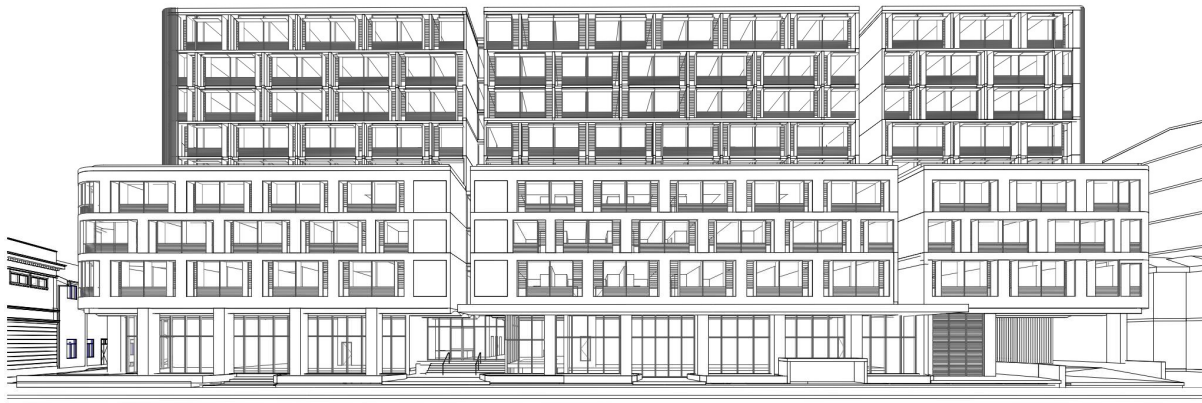
Increasing the front setback along Anzac Parade frontage from approved nil setbacks to 2.2m for balustrades, and study nook screens such that landscaping is now included between the proposed balustrades which have a non-compliant height which exceeds the 31m maximum HOB development standard and the compliant parapet height.

The inclusion of landscaping between the structures and parapet along Anzac Parade is considered to satisfy the design excellence and HOB objectives in the LEP.





① Perspective View From Anzac Parade - Approved



② Perspective View From Anzac Parade - Proposed

Amended perspective from the opposite side of Anzac parade showing the proposed balustrades will not be seen from this perspective.

Central elements

The central elements of the scheme relate to lift and fire stair structures that now provide more effective and efficient access to the communal open space roof terrace. The question of necessity is not questioned noting that in terms of future amenity, the Design Excellence Advisory Panel acknowledges the applicant's notion that the roof terrace is an integral component for the future occupant's amenity providing access to these areas for occupants and an area that is capable of received much greater levels of solar access than those areas at ground level. The remaining question is whether the proposed variation for these central components would still continue to satisfy the following objectives of the HOB LEP standard:

- ensures that the size and scale of development is compatible with the desired future character of the locality,
- ensures that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,
- ensures that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

The proposed variations for the lift overrun, and fire stair are considered to satisfy the above

objectives in relation to streetscape character as they are centrally located and will not be readily seen from the public domain noting the applicant has submitted the perspectives from both the Anzac Parade (See 3-D figure earlier) and Roma Avenue (see figure below).

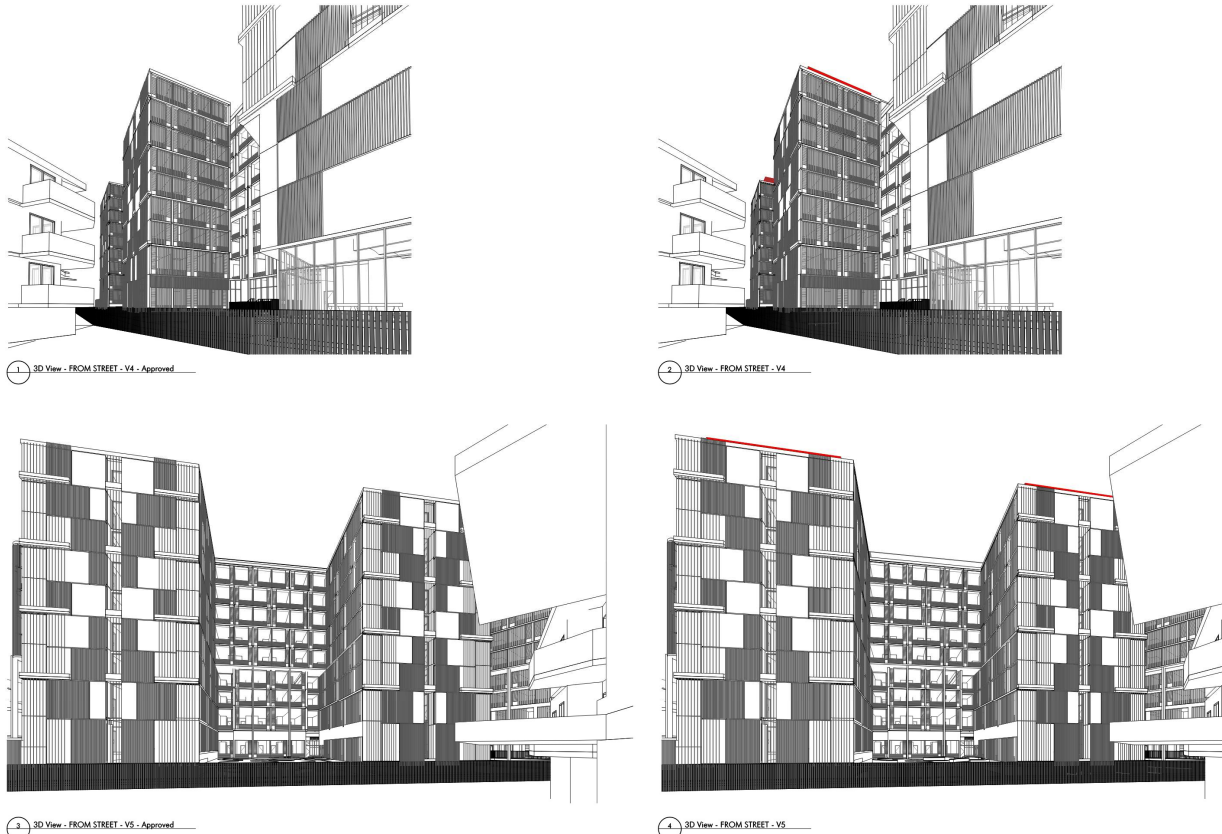
From the Roma Avenue, there will be an extremely limited view of the lift however this is limited to a very small sight line between No. 22 and 24 Roma Avenue, and around 65m away which is not considered to result in adverse visual bulk that would be incompatible with the character of the locality.

For the mechanical screens at the southern end of the development, the Rev D plans show a reduced setback from the building envelope however these screens remain setback between 4.6m and 5.2m from the parapet which is considered to ensure they remain subservient to the primary built form below. In addition, the line of sight of the Masonic Hall in the foreground is not considered to adversely impact the significance of this heritage item.

Screening mechanical plant at the rear

The applicant has amended their application by reducing the screen heights by 600mm from 2.1m down to 1.5m resulting in compliant heights for the screens at the northern most wing and also increased setbacks from the southern end of the parapet. The only element that continues to extend above the 31m maximum HOB development standard is the central screen which is 31.73m and 730mm above the HOB development standard.

The 3-D images below, show the superseded the Rev C plans shows that the 2.1m high screens without the setbacks, will be visible from the Roma Avenue perspectives. The perspectives for the revision D plans (further below) show that the reduced height as well as increased setbacks will ensure no view of the screens from these perspectives.



Perspectives from Roma Avenue. Left 3D images show the approved scheme and at right the proposed scheme with the red lines showing the small parts of the 2.1m high screens that can

be seen from Roma Avenue. Importantly, a 600mm reduced height down to 1.5m will further reduced the perceptibility of these screens from Roma Avenue.



Perspectives reflect the Revision D plans subject of assessment show that no part of the mechanical screens will be viewable.

Neighbour's amenity

The key HOB objective is to ensure that the neighbour's amenity in relation to visual bulk, overshadowing, privacy and views are suitably protected. An assessment is carried out as follows:

Visual bulk

The amended scheme showing increased setbacks and reduced heights is considered a substantially improvement to that which was originally submitted. The proposed modifications as amended are not considered to result in any appreciable adverse impacts in relation to visual bulk on the neighbouring or adjoining properties. Whilst it is acknowledged that the balustrade and screens can still be seen from the neighbouring and adjoining properties it is not considered that this represents an adverse impact and rather it is considered to achieve a better design outcome.

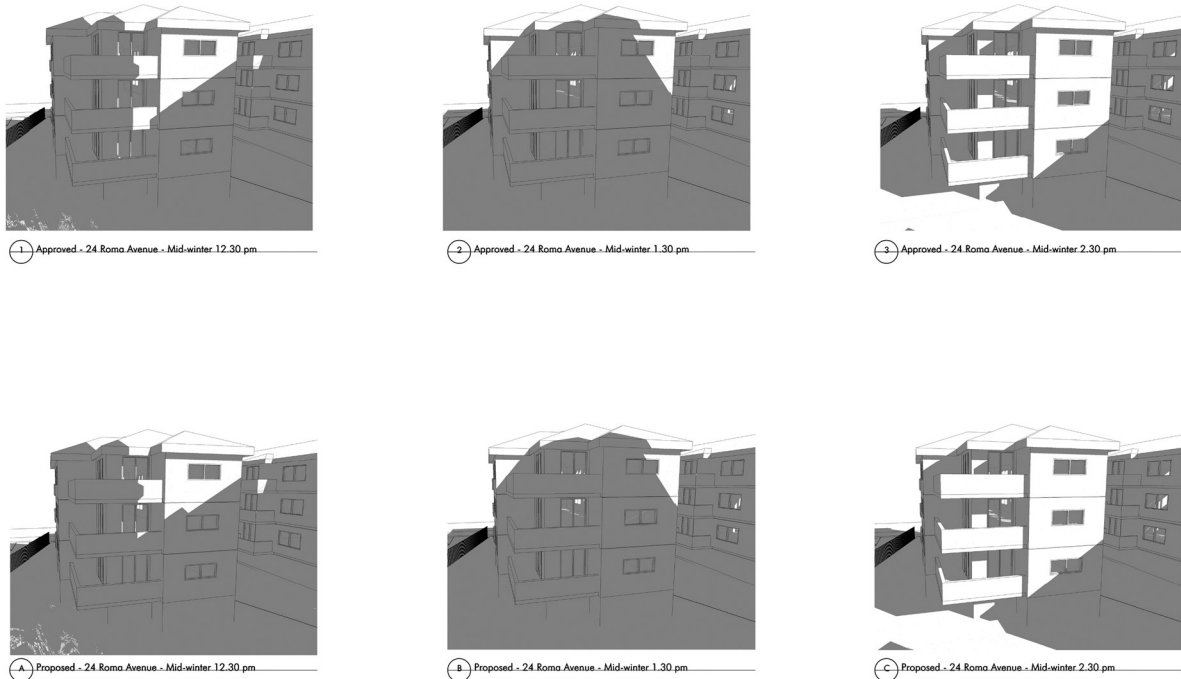
Overshadowing

The shadow diagrams (based on a superseded scheme) showed that additional overshadowing will occur to the surrounding neighbours noting the following:

- The majority of it falls well beyond the adjoining properties, and where the overshadowing is occurring over the neighbouring properties it is mostly cast over the roof of these buildings.

- Solar access will be retained to the majority of the neighbouring buildings roofs.
- There will be some additional overshadowing to No. 24 Roma Avenue and 113 Doncaster Avenue, however this is only minor increase, and it is considered that the reduction in screen height and increased setback would likely reduce this overshadowing.

The applicant submitted elevation shadow diagrams received by Council 5.12.22 showing that there will be no difference in shadow impact between the approved scheme and that proposed as part of this application as amended.



Approved (top row 12.30pm to 1.30pmn) and proposed shadow impact on No. 24 Roma Avenue



Approved (top row 12.30pm to 1.30pmn) and proposed shadow impact on No. 113 Doncaster Avenue

Privacy

The proposed roof layout inclusive of the management plan is considered to ensure the use of the roof terrace as amended will not result in adverse impacts on the amenity of neighbouring or adjoining properties.

Views

Views are not anticipated as being lost from the neighbouring properties noting that this site is the southernmost developable land in the Kensington Town Centre and the variations are limited in scope to specific small parts of the development being the lift overrun and fire stair.

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

5.2 Design Excellence

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

The proposed development involves 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.

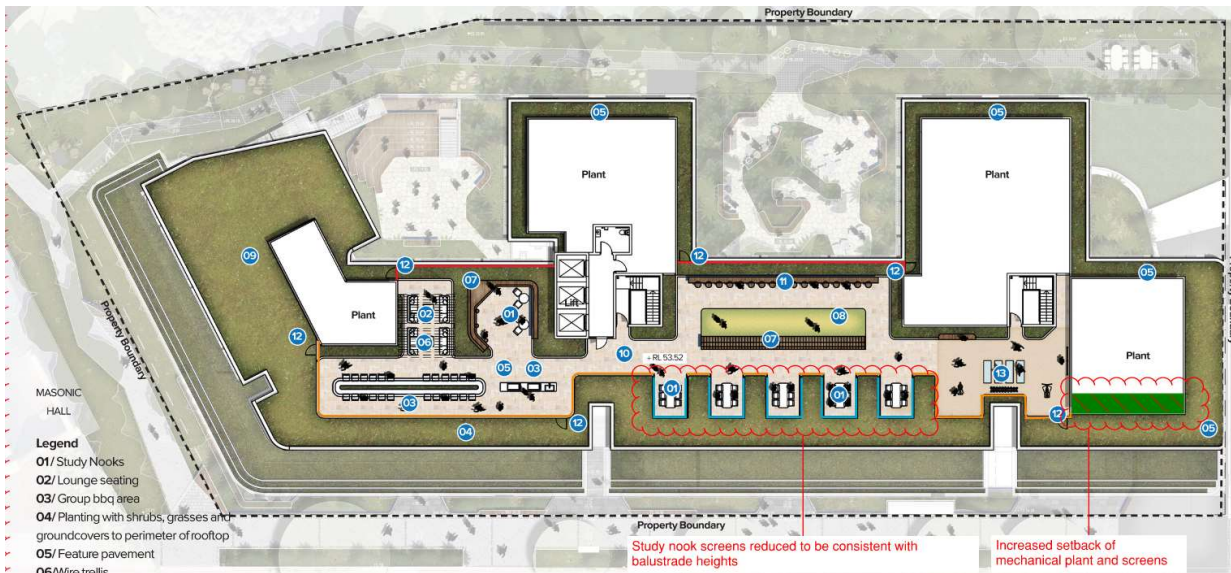
As such, the subject application was referred to Council's Design Excellence Advisory Panel ("DEAP") who considered the design and architectural merits of the proposal, and the proposed modifications in relation to design excellence.

The DEAP were generally supportive of the proposed changes, however some concerns with particular regards to the following, following which is the applicant's response and Assessment officer's comments:

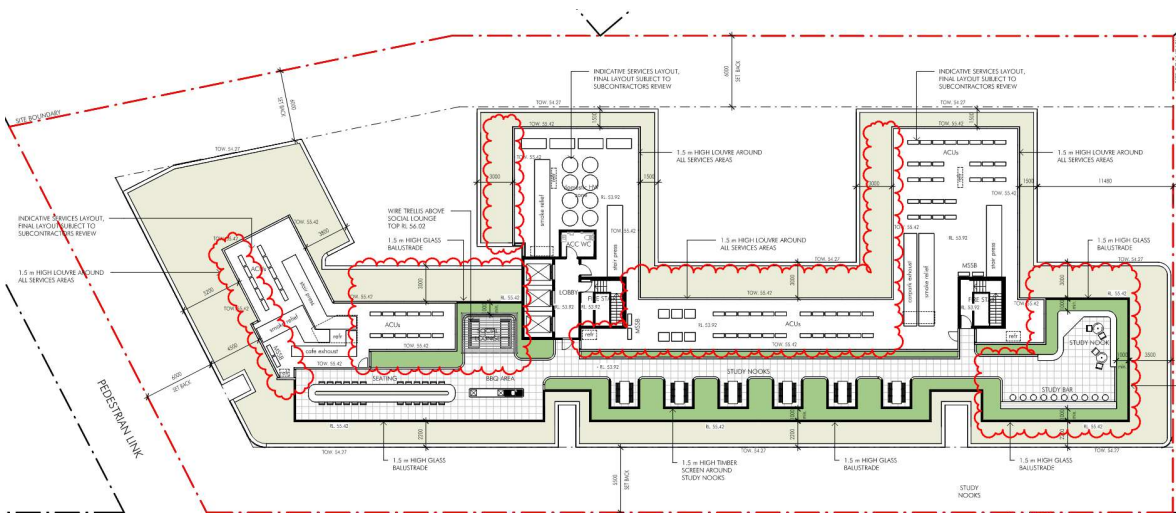
Focus should be on improving the amenity of the roof terrace.

- *DEAP comment: Detail of edge condition balustrade and perimeter planters near habitable space, to make the planting visually accessible and contributing to the nature of the space, instead of segregated from it. Detail of balustrade, including materiality, and impact (or not) on views from the roof terrace. Glazed balustrades are questionable in locations such as these, given the challenges of accessing them to clean them regularly, which they will require.*

Applicant response: Refer to Landscape Rooftop Plan and Landscape Rooftop Sections for Balustrade locations and Detail Sheet 502-503.



Amended landscape plan showing increased setback of screens noting screens to study nooks (blue lines) have subsequently been lowered and roof plant at the right of the image has been relocated further south and replaced with study area shown immediately below in the Rev D roof plan.



Amended roof terrace plan DA022 Rev D dated 5.12.22.

Assessment officer comment: The landscape roof plan and sections (arcadia package Issue 22), relates to a superseded scheme, different to the Rev C and Rev D roof plans (shown above). Council's landscape officer has reviewed the landscape and amended scheme and recommends that the landscape plans be amended to reflect the amended architectural plans. A further condition is included to require landscape plans to include as much landscaping as possible within the front setback along Anzac Parade.

- *The thin strips of planting around perimeter on the inaccessible roofs dedicated to plant rooms seem redundant, and likely to cause more maintenance issues, while providing no amenity. Their inaccessibility means that they will be difficult to maintain, which results in poor plant performance. Given the height of the building, these planting areas are unlikely to be seen from the street, further reducing their perceived utility. It is instead suggested that these planting areas be aggregated into large, more accessible areas, that directly impact on the roof terrace spaces. They could, for example, become garden and arbour areas that separate open roof terrace areas from the built-up plant room*

enclosures, increasing planting and space on the roof, while minimising the impact of those forms on the terrace spaces.

Applicant response: Planting around Plant Rooms on Rooftop significantly contribute to green facades of the building and additional landscape/green cover calculations required. Maintenance access gates have been provided with anchor point access for safety. Rooftops can only contribute to 30% of the total gross landscape calculation which we have provided along with over 100% of total gross landscape coverage.

Assessment officers' comment: Access gates have been provided to the landscaped areas noting that the landscaping is strategically provided around the perimeter of mechanical plant areas and between the balustrades and parapets along the Anzac Parade frontage and other parts of the site noting that condition 15A requires the provision of skylights to the scheme.

- *DEAP comment: The detail and materiality of the plant room protrusions needs to be illustrated, including how a reconfigured plant room layout might be seen from street level, and how the form and materials either are read from that distance, or recede into the skyscape. Rather than it being a question of these elements NOT being seen, the question to be answered is: when seen, what do they look like?*

Applicants' response: Refer Architects plans including additional perspectives provided from Roma Street and from Anzac Parade (directly opposite the site).

Assessment officer comment: The amended perspectives are shown in images earlier showing that the since amended scheme with reduced screen heights and increased setbacks would reduce the visual presence of the screens further.

- *DEAP comment: Shade roofs are indicated as part of the works, but it remains unclear exactly where these occur on the roof terrace. These should be understood and designed as essential pieces in the architecture of the roof terrace, as a series of active spaces that will attract substantial use, at all hours. Other elements to be incorporated into this spatial design are, as noted, the additional landscape areas, the masses and walls of circulation elements and plant room screening, and the perimeter planting and balustrades.*

Applicants' response: Arcadia package has updated to show only horizontal coverage on the rooftop are cable trellis for planting.

Assessment offices comment: The trellis is reduced in size from that shown in the Rev C plan and perspective diagrams with Rev D plans showing a smaller trellis over the social lounge.

- *DEAP comment: 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 Roof plan 9Rev D) and perspective diagrams have been submitted are considered to have satisfactorily addressed this matter.

DCP provisions

Built form

This section of the DCP refers to the three-dimensional appearance of the Town Centre including the function, aesthetic quality, shape, scale and configuration of individual buildings as well as their relationship to streets and the public domain.

The Controls focus on achieving an appropriate scale for new development so that buildings reinforce a coherent, harmonious, and appealing urban environment, and contribute to the enhancement of the public realm noting that Block controls in part B of the DCP incorporate built form controls which limit the subject site to 9 storey building.

An assessment of the proposed height is carried out against the objectives and controls under Section 6 of the DCP for the Kensington and Kingsford Town Centres which are stated as follows:

Objectives

- *To ensure built form is compatible with the desired future character of each centre in terms of building bulk, scale and massing*
- *To ensure coherent and orderly redevelopment of land and avoid isolation of sites*
- *To ensure development reinforces the urban structure and street hierarchy*
- *To ensure development responds to the existing siting, scale, form and character of heritage items, contributory buildings and adjoining properties*
- *To ensure taller buildings are vertically proportioned with a slender form to minimise building bulk*
- *To ensure street walls provide a human scale in the public realm*
- *To achieve a scale transition between buildings within Kensington and Kingsford town centres and surrounding residential areas to protect residential amenity; and*
- *To ensure that development does not unreasonably diminish sunlight and visual amenity to neighbouring properties and public spaces as well as communal spaces within the development site*
- *To ensure that the number of storeys in a development aligns with the maximum permissible height in metres in the RLEP allowing for generous floor to floor heights, reasonable level of internal amenity, adequate height to accommodate structures such as plant rooms or lift overruns above the roof and flexibility for future changes of use*
- *To allow adequate area between floors for the provision of services and noise attenuation*
- *To provide upper-level building setback controls to reinforce the desired scale of buildings, minimise overshadowing of the street and other buildings and create a cohesive streetscape environment.:*

Controls:

Building heights:

- iii) 31m for 9 storeys – does not comply see assessment further below.

Street walls:

- a) 4 storeys – complies noting that in some parts the development is over 16m and likely a result of require floor levels across the lower western rear parts of the site.

Assessment officers' comments: For the reasons outlined and discussed in the HOB and design excellence section of this report it is considered that the proposed modification application notably the Rev D plans and conditions imposed on the consent in relation to landscaping will ensure that the modified development will provide for a coherent and unifying design which continues to present an appropriate scale within the site and when viewed from neighbouring land and the public domain.

Level changes

Level 03 & 08:

The proposed increase in floor levels by 200mm at levels 03 and 08 are at key junctions being the podium street wall and at the roof as a result of construction, servicing and BCA requirements which the applicant states has become evident as the detailed construction design of the project has progressed.

The increased heights of these levels from 2.95m to 3.15m floor to floor heights is acceptable noting that the parapet heights along the Anzac Parade and Pedestrian pathway will be either below or at most 9cm above the 31m maximum HOB development standard, which is considered a negligible exceedance in terms of its perception of built form from the public domain. In addition it is not considered that there will be any significant or unreasonable adverse impacts on the adjoining or neighbouring land.

Level 8 (9th Storey):

The proposed lift and fire stair access points to the roof whilst substantially above the maximum height development standard are considered to not have any discernable difference in built form or presentation to Anzac Parade noting that they are setback well away from the Anzac Parade frontage.

Communal open space

The modification application seeks to provide for effective and efficient lift and fire stair access to the roof terrace area which is considered to be an area of open space that is identified by Council's Design Excellence Advisory Panel as providing for a high value area of communal open space for future occupants. The original approval whilst providing access to the roof terrace was limited to stair access limiting somewhat the equitable access to this area. Whilst the size of the communal area has decreased as a result of increased setbacks from the Anzac Parade frontage, was considered necessary in order to offset the abrupt change in materiality and increased balustrade and screening height from the main building below and to also provide for a landscaping to soften the built form. The resultant size and quality of open space is considered to remain of a high-quality servicing appropriately the mix of passive and active recreational needs of future occupants.

In view of the above, the proposed communal roof open space are considered to provide for high levels of amenity, achieve an acceptable streetscape outcome and will not result in any significant or unreasonable adverse impacts upon the streetscape or neighbouring properties.

6. CONCLUSION

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

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

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

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

7. RECOMMENDATION

It is recommended:

That the Sydney Eastern City Planning Panel, grants development consent under Section 4.56 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/20/2021/A to amend the development consent granted by the NSW Land and Environment Court, where the development will remain substantially the same as the development that was originally approved at 177-197 Anzac Parade, Kensington, in the following manner:

As a result of the amended plans submitted with the modification application (dated 05/12/22), Condition 1 of the development consent is amended accordingly. The modification plans incorporate the amendments required such as increased setbacks, reduction in height of screens for mechanical plant. It is noted that landscape condition amendments must also include amendments to the architectural plans.

- **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
DA002	E	Nettletontribe	20.10.21
DA011	Q	Nettletontribe	20.10.21
DA012	T	Nettletontribe	20.10.21
DA012 - SIGNAGE	S	Nettletontribe	24.09.21
DA12 – Material Clarification Mark Up	T	Nettletontribe	16.10.21
DA013	N	Nettletontribe	20.10.21
DA014	N	Nettletontribe	20.10.21
DA015	N	Nettletontribe	20.10.21
DA016	Q	Nettletontribe	20.10.21
DA016 SIGNAGE	P	Nettletontribe	24.09.21
DA017	Q	Nettletontribe	20.10.21
DA018	P	Nettletontribe	20.10.21
DA018 SIGNAGE	N	Nettletontribe	24/09.21
DA019	P	Nettletontribe	20.10.21
DA020	P	Nettletontribe	20.10.21
DA021	Q	Nettletontribe	20.10.21
DA031	N	Nettletontribe	20.10.21
DA031 SIGNAGE	M	Nettletontribe	24.09.21
DA032	P	Nettletontribe	20.10.21
DA032 SIGNAGE	N	Nettletontribe	24.09.21
DA32 – Material Clarification Mark Up	P	Nettletontribe	16.10.21
DA041	N	Nettletontribe	20.10.21
DA051	H	Nettletontribe	20.10.21
DA070	G	Nettletontribe	20.10.21
Landscape Calculations	Issue 18	Arcadia Landscape Architecture	13 October 2021
Cover Sheet 000	Issue 18		October 2021
Landscape Plan - Ground 100	Issue 18		October 2021
Softworks Plan – Ground 401	Issue 18		October 2021
Softworks Plan – Ground 402	Issue 18		October 2021
Softworks Plan – Ground 403	Issue 18		October2021
Softworks Plan – Ground 404	Issue 18		October 2021
Softworks Plan – Roof Top 405	Issue 18		October2021
Softworks Plan – Roof Top 406	Issue 18		October 2021
LANDSCAPE DETAILS 500 (2 Sheets)	Issue 18		October2021
Landscape Specifications	Issue 18		October 2021
Document		Dated	
BASIX Certificate No. 1250395M		22 October 2021	
DA Acoustic Assessment prepared by Acoustic Logic		27 September 2021	
Letter of Offer made by Cedar Pacific		16 September 2021	
Letter from Sydney Airport with Controlled Activity Approval		8 April 2021	
Wind Assessment Report prepared by MEL Consultants		21 December 2020	
Operational Waste Management Plan prepared by Elephants Foot Recycling Solutions		18 December 2020	

Green Travel Plan prepared by Transport and Traffic Planning Associates	December 2020
Operational Plan of Management prepared by UniLodge	December 2020
Construction and Demolition Waste Management Plan prepared by Elephants Foot Recycling Solutions	22 November 2020
Detailed (Stage 2) Site Investigation prepared by JK Environmental	30 July 2021
Remediation Action Plan prepared by JK Environmental	4 August 2021

EXCEPT where amended by:

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

<i>Plan No.</i>	<i>Rev No.</i>	<i>Drawn by</i>	<i>Dated</i>
Site – DA002	F	Nettletontribe	22.03.22
Floor Plan – Level 4 DA016	R	Nettletontribe	22.03.22
Floor Plan – Level 5 DA017	R	Nettletontribe	22.03.22
Floor Plan – Level 6 DA018	Q	Nettletontribe	22.03.22
Floor Plan – Level 7 DA019	Q	Nettletontribe	22.03.22
Floor Plan – Level 8 DA020	Q	Nettletontribe	22.03.22
Floor Plan – Roof Plan Comparison DA022	D	Nettletontribe	05.12.22
Elevations – Long DA031	Q	Nettletontribe	05.12.22
Elevations – Long DA032	R	Nettletontribe	05.12.22
Elevations – Short DA033	B	Nettletontribe	05.12.22
Elevations – Short DA034	B	Nettletontribe	05.12.22

- **Amend condition 6 to read:**

Sydney Airport Corporation/CASA and ASA Conditions

6. The development shall comply with any requirements of the letter from Flysafe Airspace Protection dated 21 October 2021 File reference: F22/1157-02 (CASA & ASA advice number YSSY-CA-641 and SACL).

In accordance with regulation 14, **I approve** the controlled activity for the intrusion of a building at 191-197 Anzac Parade, Kensington NSW into prescribed airspace for Sydney Airport to **a maximum height of 57.92 metres AHD**.

In making my decision, I have taken into consideration the opinions of the proponent, the Civil Aviation Safety Authority, Airservices Australia's advice number YSSY—CA-641 and SACL.

In accordance with regulation 14(1)(b), I impose the following conditions on my approval:

1. The building **must not exceed** a maximum height of **57.92 metres AHD, including all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.**

2. Separate approval must be sought under the Regulations for any equipment (e.g. 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 (e.g. cranes) be obtained prior to any commitment to construct.
3. 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-641.
4. On completion of construction of the building, the Proponent **must provide** SACL with the surveyed height of the building.
5. A separate assessment and approval under the Regulations **will be required** for any further addition to the height of the building (including the installation of antennas) as it will increase the penetration of the OLS.

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

- **Amend Condition 58 to read:**

58. Amended Landscape Plans

The Landscape Design Package by Arcadia, dated 11/08/21, as also amended by the dwg's 405-406, issue 20, dated April 2022, must be revised to now include and comply with the following additional requirements:

- a. Be amended where necessary so as to be consistent with the set of Amended Architectural Plans by Nettleton Tribe, dwg's DA002 - 070, various revisions, dated 22/03/22 and stamped received by Council on 24/05/22, including deletion of any structures from public property associated with a flood barrier/flood protection, with all amendments to be highlighted and notated for clarity.
- b. A Planting Plan showing the location of all new planting and existing trees to be retained, as well as a Plant Schedule listing all plants by botanic & common names, quantities/densities/spacings, pot sizes at the time of planting, size at maturity and any other details required.
- c. Construction details, materiality, sections, elevations and similar in order to clearly demonstrate how the balustrades will interact with the outdoor rooftop space and must allow unobstructed views across this entire area.
- d. Construction details of the wire trellis that has now be added above the social lounge in the southeast corner of the rooftop level.
- e. Details of how safe and compliant access will be provided for the servicing and maintenance of the perimeter rooftop planters, including anchor points and similar.

- f. Construction details of the elevated walkway shown for the common open space across the width of the rear boundary, including sections, finished levels, footings, materials, seating, hard-works and similar.
- g. A dense and lush selection and arrangement of planting for the 'Rainforest Walk' across the rear boundary, incorporating the use of native Tree Ferns, Palms and shade tolerant under-story type species, so as to cater to the future amenity needs of occupants, as well as to assist with screening, privacy and amenity with adjoining neighbours.
- h. Security/surveillance/lighting strategy, and any other elements deemed necessary for its safe use by future occupants.
- i. Maximises landscaping between the balustrades and building parapets where appropriate.

- **Amend Condition 133 to read:**

133. Landscaping

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 Design Package by Arcadia, dated 11/08/21, as also amended by the dwg's 405-406, issue 20, dated April 2022, as well as complying with any other relevant conditions of consent.

- **Add advisory condition:**

Transport for NSW:

A22 The details of design compliance with TfNSW conditions of consent (No. 8) in relation to the design of outdoor terrace, balconies, and external windows shall be submitted to TfNSW for compliance prior to a Construction certificate being issued for the development.

8. Attachments to report:

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