

**COUNCIL ASSESSMENT REPORT**  
SYDNEY EASTERN CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSEC-215 [DA/395/2022]
<b>PROPOSAL</b>	Integrated development for demolition of all structures on site, construction of new shop top housing development comprising four distinct buildings having 9 storey fronting Anzac Parade and 4 storey fronting Boronia Street with 2 basement levels for 243 parking spaces, ground level retail premises including a supermarket, a total of 195 dwellings including 6 affordable dwellings, communal open spaces, removal of trees, amalgamation of existing lots, associated site and landscape works (Variation to height of buildings) (Water NSW approval required).
<b>ADDRESS</b>	77-103 Anzac Parade and 59A-71 Boronia Street, Kensington Lot 2 DP 539543 [77-79 Anzac Parade] Lot A DP 345813 [81-85 Anzac Parade] Lot A DP 331643 [87 Anzac Parade] Lot's 1-2 DP 605231 [89 Anzac Parade & 67 Boronia Street] Lot B DP 953401 [91-93 Anzac Parade] Lot 22 DP 3917 [95 Anzac Parade] Lot 2 DP 221584 [97-99 Anzac Parade] Lot C DP 30406 [101 Anzac Parade] Lot D DP 30406 [103 Anzac Parade] Lot A DP 953401 [69-71 Boronia Street] Lot B DP 331643 [63 Boronia Street] Lot B DP 345813 [61 Boronia Street] Lot 1 DP 539543 [59A Boronia Street]
<b>APPLICANT</b>	Anson City Developments 1 (Australia) Pty Ltd
<b>OWNER</b>	Anson City Developments 1 (Australia) Pty Ltd
<b>DA LODGEMENT DATE</b>	4 August 2022
<b>APPLICATION TYPE</b>	Development Application (Integrated)
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : General Development over \$30million.
<b>CIV</b>	\$103,984,225.00 (including GST)
<b>CLAUSE 4.6 REQUESTS</b>	Clause 4.3, 4.3A(5) and 6.17 of RLEP 2012 (Building Height)

<p><b>KEY SEPP/LEP</b></p>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>• State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy (Industry and Employment) 2021</li> <li>• State Environmental Planning Policy (Planning Systems) 2021</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Planning Systems) 2021;</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021;</li> <li>• Randwick Local Environmental Plan 2012; and</li> <li>• Part E6 of Randwick Development Control Plan Kensington and Kingsford Town Centres 2020.</li> </ul>
<p><b>TOTAL &amp; UNIQUE SUBMISSIONS ISSUES SUBMISSIONS KEY IN</b></p>	<p>Six (6), including two (2) submission raising different concerns from the same property owner. Summary of issues outlined as follows:</p> <ul style="list-style-type: none"> <li>• Building separation to existing properties;</li> <li>• Overshadowing;</li> <li>• Visual privacy;</li> <li>• Acoustic privacy and impacts;</li> <li>• Loading dock impacts;</li> <li>• Bulk and scale;</li> <li>• The proximity of commercial uses;</li> <li>• View loss;</li> <li>• Loss of property value; and</li> <li>• Excavation, interface and site isolation impacts to the adjoining contributory heritage building.</li> </ul>
<p><b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b></p>	<ul style="list-style-type: none"> <li>• Architectural Plans (Combined DA Set - Updated Issue P1 to P19);</li> <li>• Landscape Plans (Rev. P4);</li> <li>• Statement of Environmental Effects and two response letters to Council's additional information requests;</li> <li>• SEPP 65 and Cross ventilation assessment;</li> <li>• Amended Clause 4.6 Variation (Building Height);</li> <li>• Traffic Impact Assessment and Green Travel Plan;</li> <li>• Site Contamination Assessment;</li> <li>• Arborist Report;</li> <li>• ESD NCC Section J, Green Star and BASIX Reports;</li> <li>• Reflectivity Assessment;</li> <li>• Acoustic Report;</li> <li>• Geotechnical Report;</li> <li>• Wind Impact Assessment;</li> <li>• Heritage Impact Statement and Addendum Response;</li> <li>• Basement Structural Design Statement;</li> </ul>

	<ul style="list-style-type: none"> <li>• Property valuation and record of offers to adjoining property owner;</li> <li>• Flood Management Report;</li> <li>• Fire Engineering Statement;</li> <li>• Access Report;</li> <li>• Retail (Supermarket) Design Statement;</li> <li>• Addendum Waste Management Report;</li> <li>• BCA Report; and</li> <li>• VPA Letter of Offer.</li> </ul>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	N/A
<b>RECOMMENDATION</b>	Approval (Deferred Commencement)
<b>DRAFT CONDITIONS TO APPLICANT</b>	N/A
<b>SCHEDULED MEETING DATE</b>	30 November 2023
<b>PLAN VERSION</b>	28 July 2023 Version P1 – P19
<b>PREPARED BY</b>	Ferdinando Macri
<b>DATE OF REPORT</b>	21 November 2023

## EXECUTIVE SUMMARY

The Development Application (DA/395/2022) seeks consent for the integrated development for demolition of all structures on site, construction of new shop top housing development comprising four distinct buildings having 9 storey fronting Anzac Parade and 4 storey fronting Boronia Street with 2 basement levels for 243 parking spaces, ground level retail premises including a 1,422m<sup>2</sup> supermarket tenancy and an indoor recreation facility, a total of 195 dwellings including 6 affordable dwellings, communal open spaces, removal of trees, amalgamation of existing lots, associated site and landscape works ('the proposal') at the subject site.

The site is located on the western side of Anzac Parade. The site comprises of fourteen (14) separate lots and is collectively known as 77-103 Anzac Parade and 59A-71 Boronia Street, Kensington with a total consolidated site area of 6,296m<sup>2</sup>. The consolidated site is occupied by a range of two storey commercial buildings, two storey shop top housing buildings, one and two storey dwelling houses and a three storey residential flat building. The site is directly adjoined to the south by 103A Anzac Parade, a former interwar bank that has been converted to residential accommodation and a home occupation business. The property is identified as a item of contributory heritage significance under Part E6 of the Randwick DCP. The site is an irregular shaped corner allotment with dual street frontages, including Anzac Parade to the east and Boronia Street and multiple vehicular access driveways to the west.

The site is located within the E2 Commercial Centre zone and the R3 Medium Density Residential Zone. The proposed development is permissible with consent, being defined as a shop top housing development comprising podium retail and commercial with residential accommodation above on Anzac Parade and Boronia Street frontages. The site is located in an area of transition from the high density and multi use buildings of the Kensington Town Centre as identified in Part E6 of the Randwick DCP 2013 (Kensington and Kingsford Town

Centres). As a result of this context, the proposal is surrounded by buildings typically ranging from two (4) to (7) Storeys, compared with the predominantly low to medium density residential development area which surrounds the site to the west (1-4 storeys).

The principal planning controls relevant to the proposal include State Environmental Planning 65 – Design Quality of Residential Flat Buildings, Randwick Local Environmental Plan 2012 ('RLEP 2012'), Randwick Comprehensive Development Control Plan 2013 ('RDCP') including Kensington and Kingsford Town Centres.

The application was referred to the following agencies for concurrence pursuant to Section 4.13 of the EP&A Act:

- An integrated referral to WaterNSW was sent and no concerns were raised subject to the implementation of recommended general terms of approval (GTAs).
- A referral to Transport for NSW pursuant to Section 2.97, 2.98 and 2.119(2) of the (Transport and Infrastructure) 2021, was sent and no objections raised subject to recommended conditions.
- A referral to Sydney Airport Corporation pursuant to clause 6.8 of RLEP 2012 was sent and no objections were raised by the authority.
- A referral to the Randwick Design Excellence Advisory Panel (DEAP) pursuant to clause 6.11 of the RLEP and the advice provided by the Panel has been satisfied through plan amendments and recommended consent conditions.
- A referral to Ausgrid pursuant to Section 2.48 of the SEPP Transport and Infrastructure 2021, and no objections were raised subject to recommended conditions.

The application was placed on public exhibition from 18 August 2022 to 15 September 2022, with a total of six (6) submissions received by way of objection. The submissions received raised issues relating to:

- building separation to existing properties;
- overshadowing;
- visual privacy;
- acoustic privacy and impacts;
- loading dock impacts;
- bulk and scale;
- the proximity of commercial uses;
- view loss;
- loss of property value; and
- excavation, interface and site isolation impacts to the adjoining contributory heritage building.

These issues are considered further in this report and have been addressed where relevant through plan amendments and consent conditions.

The Sydney Eastern City Planning Panel (SECPP) is the consent authority for the Development Application pursuant to Section 4.7, of the Environmental Planning and Assessment Act 1979 and Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021), as the development has a capital investment value over \$30 million and is defined as Regionally Significant Development.

A briefing was held with the SECPP on 13 April 2023 where key issues were discussed, including the non-compliances with the building height, site permeability, design excellence and consistency the DCP block controls and the incorporation of an automated waste collection system.

The key issues associated with the proposal included:

- *Design Excellence* – The proposal was referred to Council’s Design Excellence Advisory Panel who provided feedback with regards to the landscaping, ground floor activation, communal open space and the removal of subterranean and the contributory building interface. The applicant has provided amended plans to adequately address the areas of concern raised by the Panel, with remaining matters satisfied via consent conditions. It is considered that the proposed development is an appropriate response to the site and is consistent with the provisions of clause 6.11 of RLEP 2012 in relation to design excellence.
- *Building Height* – RLEP 2012 prescribes a maximum building height ranging from 9.5-31m for the subject site pursuant to clause 6.17, 4.3 and 4.3A. The proposal is seeking a maximum height of 36.1m (Anzac Parade) and 20.2m (Boronia Street) to the lift overrun, with roof top structures in relation to planter beds, stair access and plant enclosures also situated above the applicable height limit. The proposed variation primarily relates to the provision of a roof top terrace and the associated structures to provide additional amenity for occupants. Minor parapet breaches only result from the sloping topography of site along Boronia Street and to provided commercial ceiling heights to the Anzac Parade frontage at ground and Level 1. As such the proposal shall remain consistent with the maximum number of storeys permitted on the site of nine (9) to four (4) storeys. A Clause 4.6 variation request is provided with the application, and the variation is considered supportable.
- *Built Form* – The proposed development is generally consistent with the building envelope and street wall specified in Part E6 of the RDCP 2013. The building heights of 9 storeys to Anzac Parade and 4 storeys along Boronia Street accords with the block controls, except for a partial 5 storey breach resulting from site topography that does not result in appreciable amenity impacts along the southern boundary interface and has provided an increased setback above the minimum Block control requirement. Further, the proposed setbacks align with the intended transitions to all frontages except for minor podium and tower level encroachments (partial) related to façade articulation zones to street frontages and facades that incorporate limited glazing and non-habitable uses in accordance with ADG building separation guidance. Notwithstanding, the overall built form is largely consistent with the envelope envisaged for the site under Block 24 and the desired future character of the locality. Where non-compliances occur, the applicant has demonstrated that there shall be no adverse built or environmental impacts due to the alternate design and the deviations will provide better modulation of the building mass.
- *Site permeability* - The deviation from the building envelope under the DCP is primarily in relation to the provision of a supermarket and the recent LEP amendments, which removed the 1m building height limit that facilitated the north-south through site link. Notwithstanding, the southern portion of the development is provided with a landscaped buffer area of up to 3m in width to the lower density Duke Street properties. In addition, the northern through site link will continue to be provided as a covered retail arcade connection and includes a future boundary access point that aligns with the intended pedestrian link through the adjoining northern redevelopment site to Balfour Lane. As a result of the changes to the north-south link, the east-west pedestrian connection was also located more centrally within the site as the main pedestrian thoroughfare and in response to the substantial slope exhibited from Boronia Street to Anzac Parade adjacent to the northern site boundary,

The proposed configuration of both access links is supported, given these links will facilitate improved amenity for future occupants and will continue to satisfy the intent of the through site connections in accordance with the revisions under LEP Amendment No. 9. It is considered that the proposal has provided an appropriate response to site permeability in the amended design.

- *Site Isolation and Interface Impacts to Contributory Building* – The proposal has considered the potential for site isolation, interface and excavation impacts adjacent to the southern boundary contributory item at 103A Anzac Parade. The applicant has submitted written evidence of offers made to owner of the adjoining site in line with a market valuations and comparable development throughout the locality, noting the limitations associated with the development potential of an item identified with heritage significance and conservation value. Notwithstanding, in accordance with Clause 6, the applicant also submitted a schematic diagram demonstrating that the future independent redevelopment of the site would remain feasible. In order to address potential concerns for excavation, the application was accompanied by a geotechnical assessment and an addendum structural design statement that has certified that the proposed basement would adopt measures to preserve the integrity of the adjoining property.

The revised proposal was also reviewed by Council's Heritage Officer, who did not raise concern with the interface of the development subject to recommended conditions.

- *Solar Access and Overshadowing* – The proposal is generally consistent with the anticipated level of development under the Kensington and Kingsford RDCP 2020, noting the area is under transition, and the relevant amenity provisions within the DCP and it is anticipated that similar levels of solar access will be afforded to surrounding properties.

Other issues include the adequacy of the Acoustic Report and loading dock impacts, the Automated waste management system, and the minor parking rate deficiency. Amended documentation has been submitted over the course of assessment, which has been supported by Council's Development Engineer, Heritage Planner, Landscape Officer and Environmental Health Officer, subject to consent conditions.

Following consideration of the matters under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, RLEP 2012 and RDCP 2013 and K2K DCP 2020, the proposal as amended is considered suitable for the subject site.

A detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the EP&A Act has been undertaken, and DA/395/2022 is recommended for approval subject to the draft conditions attached to the report.

## **1. THE SITE AND LOCALITY**

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### **1.1 The Site**

The site is known as 77-103 Anzac Parade and 59A-71 Boronia Street, Kensington and is occupied by several historic and modern dwelling houses, residential flat and commercial buildings typical of the surrounding Kensington town centre context.

The site is comprised of the following fourteen (14) allotments:

- Lot 2 DP 539543 (77-79 Anzac Parade);
- Lot A DP 345813 (81-85 Anzac Parade);
- Lot A DP 331643 (87 Anzac Parade);
- Lot's 1-2 DP 605231 (89 Anzac Parade & 67 Boronia Street);
- Lot B DP 953401 (91-93 Anzac Parade);
- Lot 22 DP 3917 (95 Anzac Parade);
- Lot 2 DP 221584 (97-99 Anzac Parade);
- Lot C DP 30406 (101 Anzac Parade);
- Lot D DP 30406 (103 Anzac Parade);
- Lot A DP 953401 (69-71 Boronia Street);
- Lot B DP 331643 (63 Boronia Street);
- Lot B DP 345813 (61 Boronia Street); and
- Lot 1 DP 539543 (59A Boronia Street).

The site is an irregular shaped consolidation of allotments with a combined primary frontage of approximately 110m to Anzac Parade to the east, a secondary frontage of approximately 90m to the proposed rear vehicular access along Boronia Street to the west. The subject site has a total area of 6,296m<sup>2</sup>.

The site includes falls from north to south along both street frontages of approximately 5m along Boronia Street and 600mm with the Anzac Parade public domain. In addition, a significant crossfall is exhibited from Boronia Street to Anzac Parade, which ranges from 1.5m up to 6m at the northern edge of the development site. Currently occupying the Anzac Parade frontage are one to two storey commercial buildings and a single storey dwelling house. The remaining rear portion of the site to Boronia Street is accommodated by a mixture of at-grade commercial carparks, one and two storey dwelling houses and a three-storey residential flat building.



**Figure 1** – Subject site identified in green.



**Figure 2** – Image illustrating existing Anzac Parade commercial frontage.



**Figure 3** – Image illustrating existing (rear) Boronia Street frontage.

## 1.2 The Locality

The locality is predominantly characterised by a mix of medium to high density development reflective of the E2 Commercial Centre and R3 Medium Density Residential zoning. The surrounding development context is varied, consisting of a mixture of predominantly residential development forms.

The southern site boundary adjoins four (4) two storey semi-detached dwellings known as 1-7 Duke Street and a two storey former interwar period bank, which has been converted to a residential dwelling at 103A Anzac Parade. This former commercial building (103A Anzac Parade) on the corner of Anzac Parade and Duke Street is identified as a contributory item of heritage significance under Part E6 of the Randwick DCP (Kensington and Kingsford Town Centres). This corner allotment also includes a 3m wide right of way that facilitated pedestrian access to the former commercial arcade at the rear of the commercial buildings fronting Anzac Parade, as illustrated in **Figure 4** below. In addition, the below image depicts the alignment of existing commercial building with a nil rear setback to the side boundary of No. 1 Duke Street.



**Figure 4** – Image illustrating existing right of way and commercial building interface.

Further to the south on the opposite side of Duke Street is a 6 storey shop top housing on the corner of Anzac Parade, which reduces to a predominant height of 3 storeys for residential flat buildings on the southern edge of Duke Street. Further southward, approximately 60m from the proposal site is the Kensington Light Rail Station.

Adjoining the site to the north is a vacant allotment and a four storey commercial building adjacent to Anzac Parade. To the immediate north-west is a contemporary four storey residential flat building, known as 49-59 Boronia Street. This four storey scale is also prevalent amongst residential flat building development that is interspersed with single storey dwelling houses along the western side of Boronia Street.

The development to the east opposite Anzac Parade consists of historic two storey shop top housing forms.

## **2. THE PROPOSAL AND BACKGROUND**

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### **2.1 The Proposal**

Council is in receipt of a proposal seeking consent to an integrated development application for the demolition of all structures on site and construction of a new shop top housing development comprising four distinct buildings with nine storeys fronting Anzac Parade and part four to part five storeys fronting Boronia Street above ground level retail premises, a supermarket with an area of approximately 1,422sqm and two basement levels with 243 parking spaces accessed from Boronia Street. The proposal comprises a total of 195 apartments including 6 affordable dwellings, podium and roof terrace communal open spaces, amalgamation of existing lots, associated site and landscape works. Specifically, the proposal involves:

- Demolition of all existing buildings and removal of onsite vegetation;
- Site preparation works, bulk excavation and remediation;
- Construction and use of a Part 9 and 4-5 storey mixed use development, including:

- 195 apartments on Levels 1 to 9 across three 9 storey towers, a 3 to 8 storey cantilevered floor plate to Anzac Parade, along with two 4-5 storey buildings orientated to Boronia Street;
  - The provision of a DDA accessible and public east-west through site link from Anzac Parade to Boronia Street and a future northern boundary connection point that align with desired travel path to Balfour Lane through adjoining redevelopment sites;
  - Communal open space areas at the central courtyard podium Level 1 and communal rooftop terraces above the buildings on Boronia Street and Anzac Parade;
  - Ground level commercial, retail premises, an indoor recreation facility, a supermarket (1,422m<sup>2</sup>) and residential lobbies;
  - Two rear vehicular entrances with a supermarket loading access from the southern edge of the site and a central commercial and residential basement access for 243 parking spaces via Boronia Street;
  - Two basement levels containing carparking, service areas, bicycle storage, and plant facilities;
  - Six affordable housing dwellings designated for dedication in perpetuity on Level 1 of the Boronia Street buildings;
  - Rooftop access overruns and plant facilities; and
  - Several business identification signage zones at the ground level of retail tenancies along the Anzac Parade frontage;
- Associated landscape, community infrastructure, and public domain works; and
  - Extension and augmentation of physical infrastructure and utilities as required.



**Figure 5 – Roof Plan**



**Figure 6 – Perspective from Anzac Parade.**



**Figure 7 – Perspective from Boronia Street Pedestrian Link**

**Table 1: Development Data**

<b>Control</b>	<b>Proposal</b>
Site area	6,296m <sup>2</sup>
GFA	Total: 22,611m <sup>2</sup> Commercial: 3,379.2m <sup>2</sup> Residential: 19,231.8m <sup>2</sup>
FSR	Clause 6.19 (Alternative FSR) - 4:1 Applicable to land parcels fronting Anzac Parade.  Proposed: 3.8:1
Clause 4.6 Requests	Yes – Clause 4.3, 4.3A(5) and 6.17 (Building height)
No. of apartments	195 Apartments  (41x) 1 Bed (122x) 2 Bed (32x) 3 Bed
Max Height	Part 31m and 1m to Anzac Parade  Part 12m and 17m to Boronia Street – (Clause 4.3A permits up to 17m within southern portion when a supermarket is provided in the Kensington Centre).  Building A (Boronia south) - 17m required / proposed 17.8m parapet (4.7% variation) and 20.2m rooftop overrun structures (18.8%).  Building B (Boronia north) – 12m required / proposed 14m parapet (16.6% variation) and 17.3m rooftop overrun structures (44% variation).  Building C (Anzac south) – 31m required / proposed 31.95m parapet (3% variation) and 36.1m rooftop overrun structures (16.5% variation).  Building D (Anzac north) – Part 31 and 1m required / proposed 31.65m parapet (2% variation) and 35.61m rooftop overrun structures (14.9% variation) Substantial variation to part 1m height limit resulting from relocation of east-west through site link further to the south and more central to redevelopment.
Landscaped area	100% required under DCP. 70.8% proposed (4,458.1m <sup>2</sup> ).  Planting areas and adjacent to site boundaries and on-structure within the through site link, façade slots, private open space and communal open space level 1 podium and rooftop terraces.

Car Parking spaces	Total of 243 Carparking spaces provided including: <ul style="list-style-type: none"> <li>• 57 Commercial spaces</li> <li>• 186 Residential spaces (Incl. 29 visitor)</li> </ul>
Setbacks	<u>Podium</u> Anzac Parade: 1.5m Northern Boundary: Nil Southern Boundary: Nil – 9m  <u>Tower</u> Anzac Parade: 5.5m Boronia Street: 3m Northern Boundary: 3m Southern Boundary: Nil – 7m  <u>Internal Separation</u> Central courtyard: 12m

## 2.2 Background

A pre-lodgement development application PL/67/2021 was lodged in November 2021. The pre-DA proposed the demolition of existing buildings on the site and the construction of a development comprising 9 storey buildings to Anzac Parade and predominantly 4 storey buildings to Boronia Street. Meetings and a Design Excellence Advisory Panel (DEAP) were held that resulted in the relocation of the supermarket use and loading dock access away from the north-western corner of the site due to a land use prohibition over the R3 Medium Density residential zoning applicable to these allotments along Boronia Street. Deliberations were also held in relation to the design of through site links, subterranean apartments, and the location of the substation.

The development application was lodged on **4 August 2022**. A chronology of the development application since lodgement is outlined in the below table, including the Panel's involvement with the application.

**Table 2: Chronology of the DA**

Date	Event
<b>4 August 2022</b>	DA lodged
<b>5 August 2022</b>	DA referred to external agencies
<b>18 August 2022</b>	Exhibition of the application
<b>29 August 2022</b>	First Design Excellence Panel Meeting held, with concerns raised in terms of façade materiality and articulation, subterranean units, block plan consistency, built form reduction above through site link, interface improvements with adjoining contributory heritage item, service design and ground activation,

	review of 5 storey Boronia Street building envelope and floor plate depths.
<b>6 October 2022</b>	Kick off Panel briefing. Key issues discussed included the supermarket land use permissibility, the absence of a planning agreement offer letter, the status of the concurrent planning proposal height and FSR changes in the context of proposed breaches, through site link design, western podium separation to Duke Street properties, retail plaza design, non-compliant communal open space, DEAP concerns, street activation, dwelling mix, acoustic amenity, motorcycle parking, ADG compliance, absence of automated waste management system, flood planning and landscaping.
<b>1 December 2022</b>	First Request for Information from Council to applicant to address the matters raised at the DEAP and kick off panel briefing.
<b>13 April 2023</b>	Assessment briefing held with Panel to discuss applicant's revisions, including: <ul style="list-style-type: none"> <li>• the confirmation of supermarket permissibility;</li> <li>• the submission of a planning agreement offer letter;</li> <li>• justification for Clause 4.6 height variations;</li> <li>• amended materiality to address the contributory heritage building interface;</li> <li>• the increased 3m podium setback and landscaped buffer zone to 1 Duke Street;</li> <li>• the conversion of subterranean units to retail amenities and an indoor recreation facility;</li> <li>• the provision of a northern boundary through site link connection point to Balfour Lane as a part of the future redevelopment of site to the north of the subject proposal;</li> <li>• built form above the through site link reduced to a maximum of eight storeys;</li> <li>• additional overshadowing analysis;</li> <li>• the retention of a conventional waste system in contradiction to DCP requirements;</li> <li>• minor 4 space parking deficiency;</li> <li>• ADG solar access compliance; and</li> <li>• electric vehicle charging facilities.</li> </ul>
<b>28 April 2023</b>	Amended plans lodged as per the amendments outlined above during briefing discussions on April 13, under CI 38(1) of the <i>Environmental Planning and Assessment Regulation 2021</i> ('2021 EP&A Regulation').
<b>1 June 2023</b>	Second Request for Information from Council to applicant to address further amendments to the Clause 4.6 assessment, incorporation of public art treatments and green walls, privacy screens annotations on plans, dwelling mix compliance, retail accessibility, EV car

	spaces plan annotation, Level 1 ceiling height clearance, the incorporation of an automated waste management system and amendments to the planning agreement offer letter.
<b>9 August 2023</b>	<p>A second Design Excellence Panel meeting was held to review the amended plan submission from April. The panel were supportive of revisions made with final concerns related to:</p> <ul style="list-style-type: none"> <li>• the interface with the contributory item;</li> <li>• the further reduction of the building form above the east west link;</li> <li>• solar access limitations within the central courtyard;</li> <li>• further increase of onsite deep soil landscaping and the need for coordinated landscape plans;</li> <li>• refinement of communal open space;</li> <li>• solar panel not shown plans;</li> <li>• an inadequate green travel plan;</li> <li>• WSUD and rainwater harvesting systems not incorporated;</li> <li>• the lack of visitor bicycle parking at ground level and the refinement of residential lobby design to include landscaping;</li> <li>• the requirement for detailed public domain plans;</li> <li>• the elevation of the supermarket and retail tenancies above street level and the lack of outdoor dining zones shown on plans;</li> <li>• the limited natural light afforded to the retail arcade tenancies;</li> <li>• street activation and service dominance along the Boronia Street frontage;</li> <li>• waste management plan deficiencies and the lack of an automated waste management system;</li> <li>• the location of bicycle racks and basement storage appears to present safety risks;</li> <li>• housing diversity and dwelling mix; and</li> <li>• detailed material clarity and confirmation drainage systems will not be externally visible from public domain.</li> </ul>
<b>28 August 2023</b>	Amended plans lodged comprising revised Clause 4.6 assessment, provision of public art zone and additional climber landscaping to through site link and Boronia Street frontage, further dwelling mix amendments, EV car spaces show on plan set, Level 1 ceiling height increased, automated waste management concept plans provided and revised planning agreement offer letter.

## 2.3 Application History

A concurrent planning proposal was applicable to the subject development as a part of Randwick LEP 2012 amendment No. 9, which was recently gazetted by Parliamentary Council in early September. The proposal removed the 1m height restriction from the central portion of the site to reflect the modification the north-south through site link requirement to enable the provision of a supermarket floorplate and an interconnected back of house loading zone from Boronia Street. In addition, this planning proposal also deleted the 0.9:1 FSR control applicable to the R3 zone land parcels in the north-western corner of the site.

Over the course of the DA assessment, Council has issued the applicant with two RFI letters, which have resulted in the following plan amendments:

- Increased landscaped buffer and 3m podium planting zone southern site boundary through the reduction of the podium level and supermarket floor area.
- Removal of subterranean units from north-western corner on Boronia Street and the conversion of this area to retail back of house and an indoor recreation facility.
- The addition of two new rooftop communal open space and landscaped areas above both of the 9 storey towers fronting Anzac Parade and the increase of onsite landscaping to 70.8%.
- The provision of a future northern through site link connection point within the retail arcade to provide connectivity with the desired travel path to Balfour lane.
- The increase of floor to ceiling clearances on level 1 of the buildings fronting Anzac Parade to comply with the DCP minimum and enable future adaptability of apartments to facilitate a potential commercial use with a minor increase to the associated parapet height on the Anzac Parade.
- The reduction of the height of the cantilevered building envelope above the east-west through site link by one storey to provide for building height variation of the towers fronting Anzac Parade.
- The installation of operable screens to lower level balconies adjacent to Anzac Parade.
- Façade materiality updates and changes adjacent to the heritage contributory building at 103A Anzac Parade, including a public art zone on the southern elevation blank wall adjacent to intersection of Duke Street and Anzac Parade.
- Incorporation of opaque glazing, operable privacy screens and the recessing of habitable living rooms layouts within the southern and south western corner of the site that directly interface with the rear yards of lower density properties on Duke Street.
- Revisions to proposed dwelling mix to better align with DCP requirements.
- Incorporation of automated waste management system concept.

In addition, the following addendum documentation was submitted for Council assessment:

- Amended Architectural plans and design statement.
- Updated landscape plan package.
- Planning agreement offer letter.
- Revised Clause 4.6 Height variation request.
- Valuation report and evidence of offers made to adjoining property owner.
- Addendum heritage statement, acoustic report, ESD report, structural design statement, arborist report, waste report, solar access and cross ventilation assessment.

### 3. STATUTORY CONSIDERATIONS

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When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
  - (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered Integrated Development (s4.46) and development requiring concurrence/referral (s4.13).

#### 3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

##### (a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*

- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Randwick Local Environmental Plan 2012*

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

**Table 3: Summary of Applicable Environmental Planning Instruments**

<b>EPI</b>	<b>Matters for Consideration</b>	<b>Comply (Y/N)</b>
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas requires a permit to be granted by the Council for the clearing of vegetation in non-rural areas (such as City of Randwick). Consent for the removal of vegetation within the site is being sought under this DA.	Y
BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted.	Y
State Environmental Planning Policy (Industry and Employment) 2021	Chapter 3: Advertising and Signage <ul style="list-style-type: none"> <li>• Section 3.1 - objectives</li> <li>• Section 3.6 – granting consent to signage</li> <li>• Section 3.11(1) – matters for consideration</li> </ul> Schedule 5 – assessment criteria	Y
SEPP 65	<ul style="list-style-type: none"> <li>• Clause 30(2) - Design Quality Principles - The proposal is consistent with the design quality principles contained within Schedule 1 of SEPP 65 and consistent with the objectives of the ADG.</li> </ul>	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> <li>• Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises general development over \$30million.</li> </ul>	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> <li>• Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.</li> </ul>	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> <li>• Section 2.97 – Development adjacent to rail corridors</li> <li>• Section 2.98 – Excavation in, above, below or adjacent to rail corridors</li> <li>• Section 2.119(2) Impact of road noise or vibration on non-road development</li> </ul> Application reviewed by TfNSW and subsequently supported subject to consent conditions.	Y
Proposed Instruments	No compliance issues identified.	Y
Randwick LEP 2012	<ul style="list-style-type: none"> <li>• Clause 2.2 &amp; 2.3 – Permissibility and zone objectives</li> <li>• Clause 4.3 – Height of Buildings</li> </ul>	<b>N – Clause 4.6 (Height)</b>

	<ul style="list-style-type: none"> <li>• Clause 4.3A - Exceptions to height of buildings in Matraville and Kensington</li> <li>• Clause 4.4 – Floor Space Ratio</li> <li>• Clause 6.1 - Acid sulfate soils</li> <li>• Clause 6.2 Earthworks</li> <li>• Clause 6.4 - Stormwater Management</li> <li>• Clause 6.11 – Design Excellence</li> <li>• Clause 6.17 - Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres</li> <li>• Clause 6.18 - Affordable housing at Kensington and Kingsford town centres</li> <li>• Clause 6.26 - Affordable housing contributions for Kensington and Kingsford town centres</li> </ul>	
Randwick Development Control Plan Kensington and Kingsford Town Centres 2020	<ul style="list-style-type: none"> <li>• Part A – Design, Built form and Heritage</li> <li>• Part B - Block Controls</li> <li>• Part C – Internal and External Amenity</li> <li>• Part D – Public Domain</li> </ul>	Y (Merit assessment)

*State Environmental Planning Policy (Biodiversity and Conservation) 2021*

Chapter 2 of the Biodiversity SEPP is applicable to the proposed development. The proposed development requires the removal of twenty (23) trees within the development site to facilitate the proposed basement excavation. The loss of these tree emplacements will be suitably offset through the replanting of five new street and an approximate 70% landscaped area provision across the development. In addition, consent conditions shall be imposed to ensure trees identified for retention, or those within the public domain, can be safely retained. Council’s Landscape Officer raised no objection to the proposed tree removal subject to recommended conditions of consent. A detailed assessment of the proposed tree removal can be found in the referral comments section below.

As such, it is considered that the proposed development would remain consistent with the provisions of the Biodiversity and Conservation SEPP, noting the comments and justification above.

*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 BASIX Certificate 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 recommended conditions of consent.

*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*

The proposed development comprises a mixed-use development including two (2) 9 storey shop top housing buildings and two (2) 4-5 storey residential flat buildings, containing one hundred and ninety-five (195) dwellings, therefore SEPP 65 is applicable to the proposed development.

In accordance with Clause 28 of SEPP 65, the development was referred to Council's Design Excellence Advisory Panel ("DEAP") who assessed the development against the design quality principles of SEPP 65 on two occasions (refer to Attachment C). The DEAP advice was considered and amended plans provided to reflect the preferred design options of the development. A response and justification were also provided in relation to concerns raised by the Panel in relation to the deviations from the building envelope, potential amenity impacts upon neighbouring properties, the residential amenity of the proposed development and the provision an altered through site link and permeability configuration. The amended proposal and justification are considered to have satisfactorily addressed the DEAP comments, subject to conditions, and therefore re-referral to the Panel was not considered necessary in this instance. The amended development is assessed as being in accordance with the design quality principles of SEPP 65.

An assessment has also been carried out against the design criteria of the Apartment Design Guide ("ADG") (refer to Attachment B). In summary, the development complies with the majority of the design criteria with the exception of the building separation (with regards to visual privacy), deep soil and the depths of the open-plan living areas. The proposed variations are assessed as part of the Key Issues section or within the ADG compliance table and are supported as the development achieves the objectives of the criteria and the design guidance.

Clause 30 of SEPP 65 provides standards that cannot be used as grounds to refuse development consent, which include:

- (1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:
  - (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,

Assessment Officer comments:

Council's Development Engineer has advised that the minor deficiency of 4 car parking spaces from the required DCP rate is supported in the site context and will not result in appreciable locality impacts.

- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,

Assessment Officer comments:

The proposed development is compliant with the minimum internal areas specified by Part 4D of the ADG, with apartments typically exceeding the minimum requirements.

- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Assessment Officer comments:

The proposed development comprises a mixed-use development with retail and office premises on part of the Ground Floor level and residential dwellings above. An internal ceiling height of 5m is provided for the retail and the supermarket on the Ground Floor level of the Anzac Parade frontage. The First Floor level on Anzac Parade provides a floor-to-floor height of 3.75m which is adequate to accommodate a minimum internal ceiling height of 3.3m. Levels 02-08 on Anzac Parade and Levels 01-04 on Boronia Street provide floor-to-floor heights of 3.15m which is considered adequate to ensure minimum ceiling heights of 2.7m are provided.

- (2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:
- (a) the design quality principles, and
  - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

Assessment Officer comments:

Adequate regard has been given to the SEPP 65 design quality principles and the ADG design criteria as a design verification statement was submitted prepared by a registered architect stating that the design quality principles and ADG design criteria are generally achieved.

- (3) To remove doubt:
- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
  - (b) the design criteria specified in subclause (1) are standards to which section 4.15 (2) of the Act applies.

In view of the above, the proposed development is considered to be consistent with the provisions of SEPP 65 and the ADG, and development consent can be granted in this instance.

*State Environmental Planning Policy (Industry and Employment) 2021*

Chapter 3: Advertising and Signage

The provisions of chapter 3 have been considered in the assessment of the two (2) proposed building identification emplacements fronting Anzac Parade at the ground accommodation entrance and parapet levels. Under Section 3.6 - Granting of consent to signage, the consent authority must take into consideration the objectives of the chapter and the assessment criteria. The proposed building identification and entrance signs are considered to satisfy the Section 3.1 Objectives in accordance with the following provisions:

- the design is compatible with the desired amenity and visual character of the Kingsford centre and adequately offset from sensitive residential receivers by locating both signs to the main commercial frontage;
- the proposed configuration provides effective communication in suitable locations of the primary street frontage and adjacent to the pedestrian entrance and building parapet in accordance with surrounding development; and

- the proposed emplacements are typical of the design and finishes anticipated for mixed use development exhibited within the commercial locality.

An assessment against the Schedule 5 assessment criteria is outlined below.

**1 Character of the area**

The proposed ground level signage zones along the Anzac Parade frontage are not considered contrary to the existing or desired future character of the Kensington commercial centre and will facilitate building identification and wayfinding for the several retail and supermarket uses accommodated within the site.

**2 Special areas**

All sign zones are situated on the ground level façade of the Anzac Parade frontage to mitigate amenity impacts to surrounding residential receivers to the west of the site. All signs will comply with relevant Australian standards to regulate curfews and lighting levels as a consent condition.

**3 Views and vistas**

All signage zones will be affixed in a flush wall configuration to the lower level of the eastern building facade and will not protrude from building envelopes. As such, it is not considered that signage design would obscure views or dominate the skyline.

**4 Streetscape, setting or landscape**

The proposed scale of signs would remain in proportion to the proposed 9 storey mixed use building and have been rationalised to provide building identification and wayfinding information to the site's main street frontage. It is therefore not considered that the proposal will result in visual clutter or detract from the predominantly commercial nature of the immediate locality directly opposite each sign.

**5 Site and building**

The proposal has adequately integrated signage zones as a part of building facades design. Accordingly, the signage emplacements will not obstruct views to building features and are not considered excessive in size.

**6 Associated devices and logos with advertisements and advertising structures**

Retail business names and logos shown as a part of indicative identification signs.

**7 Illumination**

The proposed illumination can be conditioned to comply with relevant Australian standards for lighting levels and curfews.

**8 Safety**

Signs are located affixed to ground level façade in a flush wall configuration and would not obscure sight lines for motorists and pedestrians. In addition, all illumination components will comply with relevant standards to mitigate potential impacts for road safety via consent conditions.

*State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')*

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 5 of Schedule 6 of the Planning Systems SEPP as the proposal is for general development over \$30million. Accordingly, the Sydney Eastern

City Planning Panel (SECPP) is the consent authority for the application. The proposal is consistent with this Policy.

#### *State Environmental Planning Policy (Resilience and Hazards) 2021*

##### Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, Preliminary Site Investigation has been prepared for the site.

Council's Environmental Health Officers have reviewed the development application and it is considered that subject to the recommendations of the submitted reports and further onsite investigations, the site can be made suitable for its intended purpose. Relevant conditions of consent shall be imposed should the application be approved.

#### *State Environmental Planning Policy (Transport and Infrastructure) 2021*

The subject site is located adjacent to the light rail corridor and as such the proposed development requires an assessment and concurrence under Section 2.97 and 2.98 of the Transport and Infrastructure SEPP 2021. A response was received from TfNSW who granted their concurrence to the proposed works, subject to a series of conditions.

In addition, the proposal was also referred to the RMS for concurrence under Section 2.119(2) of the Transport and Infrastructure SEPP 2021 to assess road noise or vibration impacts on the development. In response, concurrence was granted to the redevelopment proposal, subject to consent conditions.

The proposal is considered to comply with the provisions of Infrastructure SEPP and Transport and Infrastructure SEPP 2021.

#### *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 aims of the RLEP 2012 include:

- (a) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to foster a liveable city that is accessible, safe and healthy with quality public spaces and attractive neighbourhoods and centres,*
- (b) *to support a diverse local economy and business and employment opportunities for the community,*
- (c) *to support efficient use of land, vibrant centres, integration of land use and transport, and an appropriate mix of uses,*
- (d) *to achieve a high standard of design in the private and public domain that enhances the quality of life of the community,*
- (e) *to promote sustainable transport, public transport use, walking and cycling,*

- (f) *to facilitate sustainable population and housing growth,*
- (g) *to encourage the provision of housing mix and tenure choice, including affordable and adaptable housing, that meets the needs of people of different ages and abilities in Randwick,*
- (h) *to promote the importance of ecological sustainability in the planning and development process,*
- (i) *to protect, enhance and promote the environmental qualities of Randwick,*
- (j) *to ensure the conservation of the environmental heritage, aesthetic and coastal character of Randwick,*
- (k) *to acknowledge and recognise the connection of Aboriginal people to the area and to protect, promote and facilitate the Aboriginal culture and heritage of Randwick,*
- (l) *to promote an equitable and inclusive social environment,*
- (m) *to promote opportunities for social, cultural and community activities.*

The proposal as amended and subject to recommended conditions is considered consistent with the aims of RLEP 2012 for the following reasons:

- The mixed-use nature of the development shall continue to support the business use of the site through the provision of new retail tenancies and a supermarket, while providing additional residential accommodation for students in accordance with Council's long term strategy.
- The development shall provide for affordable housing and community infrastructure to meet the needs of the community via Council's contributions framework and augmentation works in the immediate locality.
- The location of the site near public transport, including the light rail, shall promote *sustainable transport, public transport use, walking and cycling.*
- The proposal shall not result in any detrimental impacts upon the environmental heritage of the surrounding area, subject to recommended consent conditions to protect the adjoining contributory item during demolition / excavation and for podium materiality and design amendments.
- The proposal is considered compatible with the desired future character of the Kensington Town Centre.

#### *Zoning and Permissibility (Part 2)*

The site is located within the E2 Commercial Centre Zone and R3 Medium Density Residential Zone pursuant to Clause 2.2 of RLEP 2012.



**Figure 8:** Zoning map of the subject site and surrounds

The proposed development comprises a mixed-use development, incorporating podium level retail, indoor recreation and residential dwellings above in the form of 195 residential apartments. The subject site is zoned E2 Commercial Centre and R3 Medium Density Residential. The provision of commercial premises at lower levels with residential dwellings located above the ground floor of the building on Anzac Parade and residential flat buildings orientated from Boronia Street within the R3 zone. An overlay has also been provided to confirm that the supermarket is not situated within R3 portion of the site. As such, the proposal constitutes a mixed-use development comprising retail premises, a supermarket, indoor recreation facility and residential apartments, which is considered permissible with development consent as situated in each of the applicable zones.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

#### E2 Zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To enable residential development that is well-integrated with, and supports the primary business function of, the zone.
- To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.
- To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.
- To facilitate a safe public domain.

#### R3 Zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.
- To protect the amenity of residents.
- To encourage housing affordability.
- To enable small-scale business uses in existing commercial buildings.

The proposal is considered consistent with these zone objectives for the following reasons:

- The mixed-use nature of the development shall ensure a range of retail and business uses in the form of indoor recreation, retail, and office premises at the site, providing for employment opportunities.
- The proposed use also provides residential accommodation that is well-integrated with and compliments the business function of the zone.
- The upgrading of the public domain along all frontages and the proposed through site links provide an improved urban design outcome and pedestrian amenity.
- While it is acknowledged that the proposed development shall result in adverse amenity impacts upon the adjoining properties, the area is undergoing transition and the proposal is not inconsistent with a level of built form anticipated for the site. As such, the proposal is not considered to result in any unreasonable impacts upon the neighbouring residential properties.
- Further, the rear four storey scale is generally consistent with established development pattern of predominantly residential flat buildings to the north and western side of Boronia Street.
- The proposal ensures that the supermarket use is not located within the medium density portion of the site.
- The development includes the public dedication of 6 affordable housing apartments and ancillary carparking within the buildings on Boronia Street.

*General Controls and Development Standards (Part 2, 4, 5 and 6)*

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

The proposal does not comply with the development standards in Part 4 and Part 6 of RLEP 2012, being Clauses 4.3, 4.3A(5) and Clause 6.17 in relation to building height, accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum height development standards. Refer to Key issues section for assessment.

**Table 4: Consideration of the LEP Controls**

<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Comply</b>
Height of buildings (CI 4.3(2) & 4.3A	31 metres and 1 metre (Anzac Parade) pursuant to clause 6.17 and the provision of community infrastructure.	35.61m – 36.1m to the lift and plant overrun.	No

	Part 9.5 metres to 17 metres pursuant to clause 4.3 and 4.3A, subject to the provision of a supermarket within the Kensington Centre.	17.3m – 20.2m to lift and plant overrun.	
FSR (CI 4.4(2))	4:1 pursuant to clause 6.17 within Anzac Parade land parcels and the provision of community infrastructure.	3.8:1 or 19,579.6m <sup>2</sup> within Anzac Parade portion of the site.  3.59:1 overall – 22,611m <sup>2</sup>	Yes
Heritage (CI 5.10)	The site is not mapped as a heritage item or within a conservation area. Notwithstanding, the site adjoins at item of contributory heritage significance (103A Anzac Parade) under Part E6 of Council's DCP. existing traditional shopfronts are identified as a contributory built form element.	Council's Heritage Officer reviewed and supported the proposal subject to consent conditions. Noting protection measures have been secured during demolition and excavation along with further design refinements to the podium façade, the amenity impacts to the adjacent heritage item are consistent with the envelopes envisaged under the Kensington and Kingsford Block control plan.	Yes, subject to conditions.
Flood Planning (CI. 5.21)	Localised flooding impacts mapped along both street frontages.	Proposed pedestrian entrances, driveways and floor levels have been reviewed and supported by Council's Development Engineer.	Yes
Acid sulphate soils (CI 6.1)	Mapped - Class 5	Site not subject to acid sulphate soils.	Yes
Earthworks (CI 6.2)	Consideration of the impacts to drainage patterns, soil stability, future use and redevelopment, the quality of onsite fill, amenity to adjoining properties, disturbance of relics and any measures proposed to avoid,	The applicant has submitted a geotechnical report, a preliminary site investigation and an addendum structural design statement with details of the proposed excavation methodology in support of the two-level basement excavation footprint. The proposal was reviewed by WaterNSW, who issued general terms of	Yes, subject to conditions

	<p>minimise or mitigate the impacts of the development.</p>	<p>approval and did not raise concerns in relation to the proposal.</p> <p>Further, concerns were not raised by Council's Development Engineer regarding drainage patterns, the proposed basement carpark is ancillary to the orderly development of the site in line with Council's controls and the submitted contamination assessment has noted that the site can be made suitable for the proposed use with protection measures for the removal of fill included in the consent. In addition, the site is not mapped within a conservation area or archaeological zone and as such standard conditions for the implementation of an unexpected finds protocol have been included as a part of the consent.</p> <p>Subject to recommended construction management conditions and protections measures no concern is raised in relation to the proposed bulk excavation works.</p>	
<p>Stormwater Management (CI 6.4)</p>	<p>Development designed to manage stormwater and avoid adverse impacts of stormwater run off.</p>	<p>Council's Development Engineer has reviewed the stormwater concept and supported the proposed configuration subject to conditions, should the application be approved.</p>	<p>Yes</p>
<p>Design Excellence (CI 6.11)</p>	<p>For buildings at least 15m in height, design excellence must be exhibited.</p>	<p>The proposal is considered to exhibit design excellence. See Key Issues for further comment and Attachment C for summary of Panel comments.</p>	<p>Yes</p>
<p>Community infrastructure height of buildings and floor space at Kensington</p>	<p>Alternative building height and FSR where the development includes community</p>	<p>A letter of offer has been provided to enter into a VPA for the provision of CIC by way of works-in-kind.</p>	<p>Yes</p>

and Kingsford town centres (CI 6.17)	infrastructure on the site.		
Affordable housing at Kensington and Kingsford town centres (CI 6.18 & 6.26)	A contribution for affordable housing equating to 3% of the total floor area of the development intended for residential purpose. Note: Application lodged prior to contribution rate increase in August 2022.	A letter of offer has been provided to enter into a VPA for the provision of affordable housing via an equivalent monetary contribution.	Yes

The proposal is considered generally consistent with the LEP.

#### *Clause 4.6 Request*

#### *The Development Standard to be varied and extent of the variation*

The proposal seeks to vary the following development standards contained within the Randwick Local Environmental Plan 2012 (RLEP 2012):

<b>Clause</b>	<b>Development Standard</b>	<b>Proposal</b>	<b>Proposed variation</b>	<b>Proposed variation (%)</b>
CI 4.3 & 4.3A(5) Building height (max)	12m	17.3m	5.3m	44.16%
	17m	20.2m	3.2m	18.82%
CI 6.17: Building height (max)	31m	36.1m	5.1m	16.45%
		35.61m	4.61m	14.87%
	1m	35.61m	34.61m	Technical non-compliance.

The maximum height of the proposed development shall be 36.1m above the existing ground level to the lift overrun from Anzac Parade and 20.2m to lift overrun from Boronia Street. The following structures are also situated above the relevant height limit:

- Enclosed access stairs to the roof terrace and plant facilities (to a maximum height of 34.25m – Anzac Pde / 18.7m – Boronia St);
- Raised roof terrace planter beds (to a maximum height of 32.94m – Anzac Pde / 17m – Boronia St);
- Partial parapet breach (to a maximum height of 31.65 - 31.95m Anzac Pde / 14 – 17.8m Boronia St), resulting from site topography; and
- Noted that a technical non-compliance occurs with the 1m height limit mapped within the northern portion of the site to facilitate an east-west pedestrian link.

#### *Preconditions to be satisfied*

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power the ability

to grant development consent for a development that contravenes the development standard subject to conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to CI 4.6(4)(a) – this includes matters under CI 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (CI 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to CI 4.6(b) – concurrence of the Planning Secretary.

These matters are considered below for the proposed development having regard to the applicant's Clause 4.6 request.

**Has the applicant's written request adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?**

The applicant's written request seeks to justify the contravention of the height of buildings development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify the request because the relevant objectives of the standard are still achieved.

The objectives of the height of buildings standard are set out in Clause 4.3 (1) of RLEP 2012 with the objectives of the alternative building height set out in Clause 6.17.

The objectives of clause 4.3 are as follows:

- (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.*

**Assessing officer's comment (59A to 63 Boronia St – Northern Building):**

The Applicant argues that the provisions of the K2K DCP and RLEP 2012 identify the desired future character to consist of high-density, mixed-use development with a greater built form to that which exists in the current streetscape. The proposal only seeks to vary the height standard to deliver a 4 storey residential flat building and an additional area of communal open space on the roof. The proposed four storey scale is consistent with existing development along Boronia Street, including the directly adjoining development at 49-59 Boronia Street.

The variation relates to the associated roof structures, being the lift, planter beds and stairs as well as plant facilities and a partial parapet breach. In part the variation particularly to the parapet results from the topography of Boronia Street, which exhibits a fall of approximately 5.7m from north to south and conflicts with the need to provide a floor plate without internal level changes.

The development is not within a conservation area nor identified as a heritage item. The closest heritage items are considerably distanced from the proposal site and as such there

are no impacts identified for the significance of these items. In addition, the site is directly adjoining to the southern boundary by a former interwar bank, known as 103A Anzac Parade, Kensington. The property has been converted to a 3 storey residential dwelling and is identified as a building of contributory significance to the Kensington Town Centre under Part E6 of the Randwick DCP. The applicant has revised the façade materiality to improve the interface with the contributory building and Council's Heritage Planner has also sought further design amendments to podium detailing and articulation, prior to the release of a construction certificate. Council's Heritage planner has raised no objection to the proposed development subject to recommended conditions related to minor design amendments and the protection of the building during all phases of redevelopment.

Notwithstanding, the subject northern building on Boronia Street is not in the vicinity of the contributory building and the property was considered in recommended incentive height and block controls for the proposal. As such, the scheme does not result in any additional environmental impacts compared with a DCP compliant envelope.

The proposed area of non-compliance shall not give rise to additional amenity impacts beyond a fully compliant development. In this regard, the proposed roof top structures and partial parapet breach shall not result in any unreasonable impacts upon adjoining properties in relation to visual bulk, privacy, overshadowing and views, noting the maximum height is centred along the proposed through site link and compliance is maintained with the required ADG building separation and window offsetting between apartments. Each of the units impacted to the southern Boronia Street building are also afforded with dual aspect either to the western Boronia Street frontage or the eastern internal courtyard to maintain adequate solar access.

The objectives of clause 6.17 are as follows:

- (a) to allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is also provided,*
- (b) to ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,*
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.*

Assessment Officer's comments (77-103 Anzac Parade Buildings):

Community Infrastructure shall be provided on site via a Voluntary Planning Agreement. A letter of offer has been provided in which the applicant agrees to enter into a VPA. A deferred commencement condition shall be imposed for the VPA to be finalised and endorsed by Council before the consent becomes operative.

The height variation, including to the 1m through site link height limit results from the requirement to reposition the access connection from Anzac Parade to Boronia Street further to the south and the accommodation a supermarket use as a part of the development. The proposed realignment has been informed by the required floor area, ceiling height and servicing requirements required under Clause 4.3A to support a supermarket use. The encroachment into the 1m zone does not compromise site permeability. Noting that a central east-west connection shall be provided from Boronia Street to Anzac Parade, with a reduced site crossfall and less stairs / ramps being required to deal with the level change when compared to the previous alignment closer to the northern site boundary. In addition, a future northern connection point has also been secured at the end of the retail arcade to align with the intended pedestrian link terminating at Balfour Lane. It is therefore considered that the intent of site permeability and through site connections are achieved despite the height

encroachments along Anzac Parade and the required community infrastructure envisioned in the block controls will be delivered in the proposal.

Further, the proposed southern portion of the link has accommodated a 3m podium setback to provide additional built form separation to the Duke Street properties and address privacy interface concerns.

The maximum number of nine storeys above a four storey podium is consistent with DCP block controls and reflects the desired future character of the Kensington town centre. The proposed maximum variation of 16% corresponds with the lift overrun and rooftop services. The provision of the communal open space (COS) on the roof shall ensure that additional COS is provided for occupants through the utilisation of the available roof space to increase the diversity of recreational offerings and facilities afforded to tenants. The location of the roof top structures shall ensure that they are not readily visible from the public domain or adjoining residential properties, and the nine storey nature of the development is consistent with the desired future character of the area. The setback of the structures shall also not give rise to any unreasonable amenity impacts upon surrounding properties, including comparative overshadowing impacts to the Duke Street Plaza or the adjoining contributory item at 103A Anzac Parade further to the south.

Lower floor levels have also been moderated to address flood concerns at ground level, provide for supermarket ceiling clearances and the 3.3m ceiling clearance required to the first floor level in accordance with the DCP, which will enable future commercial adaptive reuse.

The proposed development complies with the FSR specified for the site, which permits a higher density in response to the site locational context, the proximity to public transport and the incorporated supermarket use. The proposed roof top structures do not contribute to any additional GFA, and therefore does not increase the density of the development, and the land use and level of development is considered consistent with that anticipated for the site and the capacity of infrastructure within the immediate locality.

The objectives of Clause 4.3A are:

- (a) to provide for building heights that establish the appropriate height for street frontages, buildings or groups of buildings,*
- (b) to achieve well-proportioned buildings with articulated design and massing,*
- (c) to achieve a transition between higher buildings in town centres and the height of buildings behind the centres on local streets,*
- (d) to ensure that development can occur on a variety of lot sizes,*
- (e) to achieve design excellence.*

Assessment Officer's comments (65 to 71 Boronia St – Northern Building):

Similar to the Clause 4.3 assessment above. The Applicant states that the maximum height breach is related to the sloping site topography along Boronia Street, which includes a fall of 5.7m along the public domain. The proposal is a predominantly four storey built form when viewed from the adjoining street perspective and is consistent with the scale envisioned in the DCP block control and existing residential flat buildings within the immediate streetscape. The proposal will continue to provide a transition from the taller buildings on Anzac Parade to the medium density residential context on Boronia Street.

The Applicant states that the proposal has incorporated a well-articulated façade design and varied materiality to reduce the mass of the development. The proposed non-compliance and

The proposed structures are well setback from the outer building alignment and shall not be visually prominent from the public domain and shall appear as a compliant building height when viewed from the street perspective. The proposal is consistent with the maximum number of storeys, with the roof area providing for additional amenity and accommodating essential building services. The proposed non-compliance is not considered contrary to design excellence principles and shall not result in appreciable amenity impacts in terms of overshadowing, privacy, or noise. Noting that the proposed southern façade to the lower density properties on Duke Street has incorporated limited glazing, which will be conditioned with privacy measures. Further, the extent of the parapet height breach is generally consistent with the overshadowing impacts anticipated by the block controls and desired future character of the site.

In conclusion, the applicant's written request has adequately demonstrated that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case.

**Has the applicant's written request adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard?**

The applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the height development standard as follows:

- The non-compliant height and roof top areas have demonstrated consistency with the objectives of the development standard and the E2 / R3 zone.
- The roof top terrace and associated structures provides for an additional communal open space area for occupants, responds adequately to site topography and the environmental context.
- The proposed non-compliance does not result in any adverse environmental planning impacts.

Assessing officer's comment:

The communal roof terrace will provide increased amenity for occupants with negligible impacts upon adjoining properties and the public domain. The minor partial breaches to the parapet height are also not readily perceptible from the public domain and the proposal will continue to provide for a compliant storey height on Anzac Parade and Boronia Street. In addition, the proposal also provides for a complaint site permeability, retail ceiling clearances and a supermarket land use that limits the availability of communal open space at lower levels and the provision of the roof terraces are considered warranted in the circumstances of the site. As such, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

**Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?**

In order to determine whether the proposal will be in the public interest, an assessment against the objectives of the height of buildings standard and E2 / R3 zones is undertaken.

As discussed under the zoning and permissibility heading of the report, the proposal is considered consistent with the objectives of the E2 / R3 zone, and as outlined above, the proposed development is also found to be consistent with the objectives of clause 4.3, clause 4.3A and clause 6.17 in relation to building height, and therefore the development will be in the public interest.

## Concurrence of the Secretary

In assuming the concurrence of the Secretary of the Department of Planning and Environment the matters in Clause 4.6(5) have been considered:

*Does contravention of the development standard raise any matter of significance for state or regional environmental planning?*

The proposed development and variation from the development standard does not raise any matters of significance for state or regional environmental planning.

*Is there public benefit from maintaining the development standard?*

The variation of the maximum height of buildings standard will allow for the orderly use of the site and there is a no public benefit in maintaining the development standard in this instance.

## Conclusion

Based on the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the height of buildings development standard.

### (b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

The proposal is not inconsistent with any proposed instruments.

### (c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Randwick Development Control Plan 2013* ('the DCP')
- *Randwick Kensington and Kingsford Town Centres DCP 2020* ("K2K DCP 2020")

The DCP provides guidance for development applications (DAs) to supplement the provisions of the Randwick Local Environmental Plan (RLEP). The K2K DCP 2020 has specific controls applicable to the proposed development at the subject site, including a building envelope for the site.

The areas of non-compliance with the DCPs are considered in further detail under the Key Issues section of the report and the Attachment B compliance table. The assessment concludes that the variations are supported on merit in this instance.

## Contributions

### S7.12 Contributions

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *S7.12 Development Contributions Plan: Kensington and Kingsford Town Centres 2019*

This Contributions Plan has been considered and applied accordingly.

## Affordable Housing Contributions and Community Infrastructure Contributions

As detailed below, additional contributions are applicable in relation to affordable housing and community infrastructure in accordance with clause 6.17 of RLEP 2012, the Community Infrastructure Plan for the Kensington and Kingsford town centres, and the Kensington and Kingsford Town Centres affordable housing plan. Appropriate conditions of consent are recommended for the delivery of community infrastructure and affordable housing.

### **(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act**

#### Community Infrastructure

The letter of offer is required to be made to Council to satisfy the provisions of Council's Community Infrastructure Contributions Plan which provides for the delivery of infrastructure through the means of a Voluntary Planning Agreement. The proposed development seeks to benefit from the alternative height and floor space ratio provisions applicable by providing community infrastructure contributions in accordance with the provisions of clause 6.17 of Randwick Local Environmental Plan 2012.

The letter of offer confirms the Applicant's offer to Council to enter into a VPA to provide the community infrastructure. Should the application be approved, the letter of offer would form the basis of a deferred commencement condition requiring a formal Voluntary Planning Agreement to be publicly exhibited and subsequently agreed to by Council. Further, the infrastructure items in the letters of offer would be subject of further detail in terms of scope, design and specification. Should it become apparent that the works are not feasible or cannot be conducted at a reasonable cost to the applicant, or if Council requires a superior standard of works than proposed by the Applicant, then an equivalent monetary payment is to be made. The CIC for this development would be approximately \$2,065,594.50.

#### Affordable Housing

The Kensington and Kingsford Town Centres affordable housing plan aims to ensure that lower income households continue to live and work locally within Randwick LGA, to facilitate a socially diverse and inclusive community; and to support the economic functions of the Randwick Education and Health Strategic Centre. The letter of offer contains the affordable housing contributions which will also be subject to applicable conditions in the consent.

The calculation of the number of affordable housing dwellings dedicated to Council is determined at a rate of 3% of the proposed total residential floor area, which is approximately 18,333.6m<sup>2</sup>. This equates to a required dedication area of 550m<sup>2</sup>, which shall be provided by the applicant through the transfer of six apartments and five associated parking spaces, prior to the issue of an occupation certificate.

#### Section 7.12 Development Contributions

The Plan applies to development on land that is subject to a development consent or a complying development certificate within the Kensington and Kingsford town centres. A condition requiring the applicant to pay a levy based on the proposed cost of carrying out the development (i.e. 2.5% levy for cost of development greater than \$250,000) has been included within the development consent.

The total cost of development is \$103,984,225.00 and the applicable Section 7.12 contributions levy to be paid to Council would be \$2,599,605.63 as a monetary contribution.

The proposal is consistent with the required Planning Agreement as discussed in this report.

### **(e) Section 4.15(1)(a)(iv) - Provisions of Regulations**

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. The relevant provisions have been addressed through conditions of consent, including considerations related to the demolition of existing structures and the Section 62 consideration of fire safety.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

### **3.2 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. It is noted that the proposal will also deliver public domain improvements and augmentation of infrastructure adjacent to the site. In addition, no concerns were raised by service providers as a part of their review. The anticipated impacts to the road network are consistent with the parking rates recommended in the DCP for residential and commercial uses, along with housing targets for the Kensington town centre in the vicinity of sustainable transport options in accordance with the submitted green travel plan initiatives. In addition, measures will be secured to manage traffic, noise and vibration impacts during the construction phase as a part of the development consent. Concerns for contamination related to the previous history of the site have been addressed via consent conditions recommended by Council's Environmental Health team to secure the implementation of safety protocols and further site testing after the demolition of existing structures.

The proposed development is consistent with the dominant mixed use character in the locality and the desired future character for development anticipated by the Kensington and Kingsford DCP 2020. The scheme includes a provision of commercial facilities within the podium to facilitate additional retail, commercial and indoor recreation uses within the Kensington centre, including a supermarket in accordance with the requirements of Clause 4.3A in the Randwick LEP 2012 and shall increase the onsite provision of commercial offerings available to the community.

The proposed scale, massing, internal site links, and form is generally consistent with the block and building envelope controls of the DCP. The amended scheme has improved the building separation afforded to the lower density properties in Duke Street, when compared with the original design and the existing commercial buildings on the site. The resultant amenity impacts in terms of comparative visual bulk, solar access and privacy are considered consistent with the incentive height and FSR controls under 6.17 and 6.18 of the Randwick LEP 2012. The development has incorporated a consistent interface with the adjoining heritage contributory building as envisioned under the DCP block controls and no concerns were raised by Council's Heritage Planner, subject to conditions requiring design refinement.

The proposal is not considered to result in detrimental social or economic impacts on the locality.

Accordingly, it is not anticipated that the proposal will not result in any significant adverse impacts in the locality as outlined above.

### 3.3 Section 4.15(1)(c) - Suitability of the site

The site is in proximity to local services and public transport, with the Kensington light rail stop, recreational parklands and services located within walking distance. The site has sufficient area to accommodate the proposed land use and associated structures and is in keeping with the high density residential and commercial nature of the immediate Kensington locality. Therefore, the site is considered suitable for the proposed development.

### 3.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in **Section 5** of this report.

### 3.5 Section 4.15(1)(e) - 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. The scheme is consistent with the controls identified for increased density and height under the Kensington and Kingsford DCP 2020. The proposal includes the implementation of ESD measures and compliance with relevant provisions under BASIX, Section J of the NCC and the Green Star rating system. On balance, the proposal is considered in the public interest.

## 4. REFERRALS AND SUBMISSIONS

### 4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for concurrence and referral as required by the EP&A Act and outlined below in **Table 5**.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

**Table 5: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>			
Transport for NSW	Section 2.98(3) - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The proposal involves the excavation of ground to a depth of at least 2m below ground level (existing) on land within, below or above a rail corridor.  Concurrence has been granted.	Y
RMS	Section 2.119(2) - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	For the assessment of road noise or vibration impacts on the development.  Concurrence has been granted.	Y

Referral/Consultation Agencies			
Ausgrid	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	No objection raised by authority in relation to electrical infrastructure.	Y
Transport for NSW	Section 2.97 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development land that is in or adjacent to a rail corridor.	The proposal is adjacent to Eastern Suburbs Light Rail and Kensington Light Rail Stop on Anzac Parade.  Proposal supported subject to conditions.	Y
Sydney Airport Corporation	Clause 6.8 of the Randwick Local Environmental Plan, s186 of the Airports Act 1996 and Regulation 8 of the Airports (Protection of Airspace) Regulations 1996	Proposal includes a height, which penetrates the prescribed airspace of Sydney Airport.  Controlled activity approval issued, subject to conditions.	Y
Design Review Panel	CI 6.11 – RLEP  Advice of the Design Review Panel ('DRP')	The advice of the DRP has been considered in the proposal and is further discussed in the referral Section and the Key Issues section of this report. All concerns raised by the Panel in relation to landscaping, communal open space, the removal of subterranean units, the reduction of the built form above the through site link, façade materiality and street activation have been addressed via plan revisions.	Y
Integrated Development (S 4.46 of the EP&A Act)			
WaterNSW	Section 89 of the Water Management Act 2000 Section 90 of the Water Management Act 2000	WaterNSW has issued concurrence to the proposed development subject to general terms of approval.	Y

#### 4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

**Table 6: Consideration of Council Referrals**

Officer	Comments	Resolved
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Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan, flooding reports, carparking provision, waste management plan and considered that there were no objections subject to conditions.	Y (Conditions)
Building	Council's Building Surveyor reviewed the submitted BCA assessment report and Fire Engineering Statement and concurred with the recommended design specifications. Conditions were also recommended for inclusion within the consent.	Y (Conditions)
Health	Revised information sought in relation to contamination and acoustic compliance as a part of Council's RFI. The addendum documentation was reviewed and supported by Council's Health Officer, subject to consent conditions.	Y (Conditions)
Strategic Planning	Additional information sought in relation to supermarket design, through site link access, insufficient landscaping, the contributory building interface, street activation and tree removal, which has been addressed in revised documentation. Confirmation was also provided in relation to the concurrent zoning changes to remove the R3 mapped FSR and the central through site link 1m height restriction.	Y
Heritage	Heritage Council's Heritage Officer reviewed the submitted Heritage Impact Statement ('HIS') prepared for the applicant and concurred with the conclusion of the HIS that there would not be any adverse impacts on heritage values arising from the proposal, subject to further condition amendments. Including design refinements to the built form adjacent to the contributory building, condition reports of neighbouring buildings, further detail of the public art installation, and the submission of further structural documentation to support the proposed excavation works adjacent to the contributory building. A standard archaeological finds conditions were also included within the consent.	Y (conditions)
Landscaping	Council's Landscaping Officer has reviewed the proposal and did not raise concerns with the addendum arborist report, subject to conditions requiring new street tree emplacements, minor revisions to the landscape design and tree protection measures.	Y (conditions)

### 4.3 Community Consultation

The proposal was notified in accordance with Council's Community Participation Plan from 18 August 2022 until 15 September 2022. The notification included the following:

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

The Council received a total of 6 unique submissions, which were all in objection of the

proposal, including 2 submissions from an adjoining property owner that raised different concerns in relation to the development. The issues raised in these submissions are considered in **Table 7** below.

**Table 7: Community Submissions**

Issue	No of submissions	Council Comments
<p><b>Solar access and overshadowing</b> Impact to adjoining properties.</p>	4	<p>The proposed development shall result in additional overshadowing impacts upon the adjoining properties, with regards to the residential properties to the west and south. See Key Issues for further discussion, noting that the proposed envelope is generally consistent with incentive height and block plan anticipated under the Kensington to Kingsford DCP and that solar access will be retained in the afternoon for lower density properties. The minor variation of 800mm and 650mm to southern buildings parapets does not result in an appreciable overshadowing increase to adjoining properties and will remain generally consistent with the impacts anticipated under the block controls.</p>
<p><b>Building Separation</b> Interface with lower density properties, greater setbacks and a reduced built form.</p>	3	<p>The proposed design is generally consistent with the setbacks and storey heights anticipated in the DCP Block 24 masterplan. Minor variations in the southern and south-western corner of the site have been addressed in floor plate design by recessing habitable living areas, providing reduced glazing and operable façade privacy screens. A 3m landscape buffer has been incorporated via plan amendments and is an improvement on the current interface with existing commercial buildings directly adjoining the rear yard of No. 1 Duke Street.</p> <p>In addition, further privacy measures will also be incorporated as consent conditions to further restrict potential overlooking of adjoining lower density properties along the southern site interface. Refer to Key issues section below for further discussion.</p>
<p><b>Acoustic privacy and loading dock impacts</b></p>	3	<p>The proposal has been reviewed by Council's Environmental Health officer. No concerns were raised in terms of loading dock impacts based on the review of an addendum acoustic assessment and conditions were recommended to ensure curfews are applied to the prevent the use of the loading dock during sensitive hours.</p>
<p><b>Visual privacy impacts</b> Insufficient information on</p>	3	<p>The development has been designed with minimal habitable windows and glazing along the northern and southern boundary interface. In addition, balconies and living rooms have been recessed within the floor plate in the south western corner of the site to meet</p>

proposed privacy measures		habitable separation distance requirements and treated with operable privacy screens to improve the interface with lower density properties. An increased landscape buffer has also been provided around the rear yards of these properties and conditions have been recommended to ensure 1.6m glazing treatments are incorporated to the southern elevation of the Boronia Street residential flat building with potentially sensitive sight lines to adjoining properties.
<b>Bulk and scale</b>	2	The proposal will retain the predominantly four storey presentation to Boronia Street and the nine storey presentation to the Anzac Parade frontage in accordance with the DCP block plan controls. In addition, a clause 4.6 written request has been submitted for the contravention of the height standard, which is supported, noting that this solely relates to a minor breach of the parapet height and communal open space structures with limited impact and visibility as they are inset from the façade edge. There are no additional floors or FSR being sought above the height limit and as such it is considered that the proposed bulk and scale is in keeping with the desired future character of the site. Refer to Key Issues and Clause 4.6 assessment for further detail.
<b>The proximity of commercial uses to adjoining residential properties.</b>	1	Concerns were raised that the inclusion of commercial development would be inconsistent with the K2K block plan. However, ground level retail activation to the Anzac Parade frontage is a supported outcome. In addition, the proposed supermarket is mapped in the proposed location under Clause 4.3A, which is a long standing provision of the Randwick LEP 2012 that intends to address service shortages in the Kensington town centre. Accordingly, it is considered that the proposed mixed use development is consistent with the aims, objectives and permissibility requirements of the LEP.
<b>View Loss</b>	1	The site is not identified within a scenic protection area or in the vicinity of a protected view corridor. The proposed building envelopes are generally consistent with the DCP block plans and desired future character of the Kensington town centre.
<b>Excavation, interface, and site isolation impacts to the adjoining contributory heritage building</b>	2	The applicant has submitted a property valuation and evidence of offers to demonstrate attempts had been made to consolidate the adjoining contributory building as a part of the redevelopment site. Additional information was also provided through façade materiality amendments, the inclusion of a public art zone and a basement structural design statement.  Council's Heritage officer has reviewed the proposal and not raised concern, subject to consent conditions

		requiring design refinements to the built form adjacent to the contributory building, condition reports of neighbouring buildings, further detail of the public art installation, and the submission of further structural documentation to support the proposed excavation works. Further, standard consent conditions for the support of adjoining land, dilapidations reports and WaterNSW's general terms of approval have also been incorporated to ensure the appropriate management of bulk excavation works.
<b>Loss of property values</b>	1	This is not a matter for consideration under Section 4.15 of the Act.
<b>Request for rear vehicular access easement to service Duke Street properties</b>	1	This is not a matter for consideration under Section 4.15 of the Act.

## 5. KEY ISSUES

The key issues with the proposed development are in relation to non-compliance with the maximum building height, deviations from the K2K DCP block controls and building separation requirements, the contributory building interface and potential site isolation, amenity impacts upon neighbouring properties and the provision of an automated waste management system. Despite the non-compliances, it is considered that the proposed development is not inconsistent with the relevant provisions and objectives of the RLEP 2012, RDCP 2013, and the applicable zoning of the site.

### 5.1 Design Excellence

Clause 6.11 of RLEP 2012 requires development to exhibit design excellence where the building will be at least 15m in height. The proposed development shall be greater than 15m in height, with a proposed maximum height of 36.1m. As such, the provisions of clause 6.11 are applicable.

In view of the above, the subject application was referred to Council's Design Excellence Advisory Panel ("DEAP") who considered the design and architectural merits of the proposal in relation to design excellence on two occasions during the course. See **Appendix C** for detailed comments from the DEAP.

Notwithstanding the Panel's support regarding the architectural design and elevations, with regards to the Anzac Parade frontage, additional concerns were raised by the DEAP which were addressed via plan amendments. These amendments included a one storey height reduction to the cantilevered building form above the east-west through site link and enable variation to the 9 storey building height along the Anzac Parade frontage. Additionally, revisions were made to convert the subterranean units in the northern corner of the Boronia Street frontage into a servicing area for retail tenancies and an indoor recreation facility.

The provision of onsite landscaping and communal open space was also increased during the assessment in accordance with the recommendation of the Panel, through the inclusion of two new roof terraces above the 9 storey residential buildings fronting Anzac Parade, which improved equitable access to recreational amenity areas for future occupants. Additional landscaping features were also included along Boronia Street frontage to improve the street wall interface and assist in screening services from the public domain. A response to each of the remaining matters at the second design review panel is outlined below.

- *The interface with the contributory item at the southern boundary.*

Council's Heritage Planner has also reviewed the proposed interface and recommended a consent condition to address podium design revisions in terms of articulation, fenestration, and materiality.

- *The further reduction of the building form above the east west link.*

A reduction to overall height from 3 to 8 storeys was provided in previous design amendments and it is noted that the proposal will retain compliance with the required 4:1 FSR applicable to Anzac Parade frontage. The subject building form also includes an increased street setback when compared with the adjoining towers to assist in reducing perceived visual bulk from the streetscape perspective. Accordingly, any further reduction is not considered warranted in the context of DCP block controls and the anticipated 9 storey development scale.

- *Solar access limitations within the central courtyard.*

The proposed courtyard complies with the required 12m ADG building separation requirement and is orientated to capture northern solar access, particularly during the midday period.

- *Further increase of onsite deep soil landscaping and the need for coordinated landscape plans and refinement of communal open space.*

Amended plans and a detailed landscaping package were submitted to address the deficiencies identified by the Panel and further increase the nexus of onsite landscaping to 70.8%. Additional landscaping will also be secured within residential lobbies via consent conditions.

- *Rooftop solar panel not annotated on plans in accordance with ESD report commitments.*

Agreed, solar panel plan revisions to be secured via consent conditions.

- *Submitted green travel plan (GTP) has provided inadequate detail;*

Agreed, final GTP will be required as a consent condition prior to site occupation.

- *WSUD and rainwater harvesting systems not incorporated in submitted design.*

Standard consent condition included for final stormwater design to include WSUD provisions.

- *The lack of visitor bicycle parking at ground level and the refinement of residential lobby design to include landscaping.*

As above, visitor bicycle storage racks to be provided within lobbies via conditioned plan amendments.

- *Proposal has not included detailed public domain plans.*

Noted, however these embellishment plans will be negotiated as a part of the voluntary planning agreement and the works in kind associated with the community infrastructure contribution.

- *Poor design of elevated supermarket and retail tenancies finished floors above street level and the lack of outdoor dining zones shown on plans.*

The proposed elevated floor levels are required to address localised flooding affection along the Anzac Parade frontage. The proposed pedestrian entrance design was reviewed and supported by Council's Development Engineer to prevent flood water infiltration. Further, the subject application is only for the cold shell use of these retail spaces, which could support future outdoor dining zones within the compliant podium setback to Anzac Parade or the outer edge of the through site link as a part of future individual fit out applications.

- *Limited natural light afforded to the northern retail arcade tenancies.*

Noted, however generous ceiling clearances are afforded to the open arcade and the provision of skylights above the link is constrained by the need to integrate communal open space and canopy tree planting within the podium courtyard.

- *Street activation and service dominance along the Boronia Street frontage.*

Additional landscaping planter features and climbing plants incorporated in amended plans and landscape package to screen services from the streetscape.

- *Waste management plan deficiencies and the lack of an automated waste management system.*

Addendum waste management plan and concept automated waste system provided for Council assessment. Condition also recommended by Council's Development Engineer requiring the adoption of an automated system.

- *The location of bicycle racks and basement storage appears to present safety risks.*

Basement plans have been reviewed by Building Compliance and Development Engineering. No concerns were raised subject to consent conditions requiring compliance with relevant Australian Standards and the NCC.

- *Housing diversity and dwelling mix compliance.*

Further amendments made via revised plans to increase the nexus of 1 and 3 bed apartments to better align with the 20% minimum requirement, with 21% 1 bed apartments and 18% 3 bed apartments provided in the final scheme.

- *Detailed material clarity and confirmation drainage systems will not be externally visible from public domain.*

Schedule of materials and finishes to be submitted for Council review via consent condition.

Assessment of the proposed built form against the provisions of Clause 6 (Built Form) and the Block 24 building envelope are considered in detail further below. In consideration of the DEAP comments, and the plan amendments made to address the concerns raised, it is considered that the proposed development is an appropriate design response to the site. The DEAP were generally supportive of the application apart from amendments noted above, which shall be satisfied through the implementation of consent conditions for minor plan revisions. As such, it is considered that Council can be satisfied that the proposed development exhibits design excellence in accordance with the provisions of clause 6.11 of RLEP 2012.

## 5.2 Building Height

- Clause 4.3 (Height of Buildings) of RLEP 2012
- Clause 6.17 (Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres) of RLEP 2012
- Clause 6.1 (Built Form) of K2K DCP 2020

Pursuant to the height of buildings map under clause 4.3, the subject site has a maximum permissible building height ranging from 9.5m to 25m. However, clause 6.17 of RLEP 2012 states that despite clause 4.3, additional height provisions are permitted for the subject site if the development includes community infrastructure on the site. A letter of offer has been submitted in which the Applicant agrees to enter into a Voluntary Planning Agreement for the provisions of community infrastructure contributions at the site in accordance with the CIC Plan. As such, pursuant to clause 6.17, the maximum permitted height for the development is 31m along Anzac Parade. In addition, the proposal also benefits from a 17m height limit within the southern portion of the Boronia Street frontage when a supermarket forms a part of the redevelopment under Clause 4.3A(5) of the Randwick LEP 2012.

The maximum height of the proposed development shall be 36.1m above the existing ground level to the lift overrun. The following structures are also situated above the applicable height limits:

- Enclosed access stairs to the roof terrace and plant facilities (to a maximum height of 34.25m – Anzac Pde / 18.7m – Boronia St);
- Raised roof terrace planter beds (to a maximum height of 32.94m – Anzac Pde / 17m – Boronia St);
- Partial parapet breach (to a maximum height of 31.65 - 31.95m Anzac Pde / 14 – 17.8m Boronia St), resulting from site topography; and
- Noted that a technical non-compliance occurs with the 1m height limit mapped within the northern portion of the site to facilitate an east-west pedestrian link.

As such the proposed development is numerically non-compliant with the development standards under clause 4.3, clause 4.3A and clause 6.17 of RLEP 2012, with the proposal sited a maximum of approximately 5m above the maximum height limit. Quantitatively, the Applicant seeks to vary the development standard by approximately

14 - 44% and a Clause 4.6 exception to vary the development standard is required. See assessment of Clause 4.6 in relation to the contravention of the maximum height in the above LEP section.

The proposed development is a maximum of nine (9) storeys and four (4) storeys in accordance with the provisions of clause 6.1(b) in relation to building height, with the proposed height breach relating the site topography, partial parapet exceedances and roof top structures. The proposed structures are primarily to provide access to the roof which includes a roof terrace the provides additional communal open space for the development and further plant facilities that cannot be accommodated on lower levels due to the requirement to provide a full-scale supermarket use and ground level street activation as a part of the podium.

It is considered that the proposed structures on the roof provide additional amenity for the occupants without comprising the amenity of the neighbouring properties or public domain, noting that the proposed roof top structures shall not be readily visible from the wider public domain given the setbacks of the structures from the tower curtain wall. A detailed assessment of the contravention of the height has been undertaken in accordance with the provisions of clause 4.6 and the proposed height is supported in this instance.

### **5.3 Built Form**

#### *Site Permeability*

Under Part B of the E6 DCP, the Block 24 specifies the provision of an east-west through site link between Anzac Parade and Boronia Street and a north south connection from Duke Street to Balfour Lane. The deviation from the building envelope under the DCP is primarily in relation to the provision of a supermarket and the recent LEP amendments, which removed the 1m building height limit to facilitate the north-south through site link.

Notwithstanding, the southern portion of the development is provided with a landscaped buffer area of up to 3m in width to the lower density Duke Street properties. In addition, the northern through site link will continue to be provided as a covered retail arcade connection and includes a future boundary access point that aligns with the intended pedestrian link through the adjoining northern redevelopment site to Balfour Lane. As a result of the changes to the north-south link, the east-west pedestrian connection was also located more centrally within the site as the main pedestrian thoroughfare and in response to the substantial slope exhibited from Boronia Street to Anzac Parade adjacent to the northern site boundary,

The proposed configuration of both access links is supported, given these links will facilitate improved amenity for future occupants and will continue to satisfy the intent of the through site connections in accordance with the revisions under LEP Amendment No. 9. It is considered that the proposal has provided an appropriate response to site permeability in the amended design.

#### *Storey Height to Boronia Street*

The proposal results in a partial variation to the required 4 storey building envelope required in Block 24 masterplan and Clause 6.1 of the K2K DCP adjacent to the Boronia Street frontage. The subject variation is a partial building height breach from

four (4) to five (5) storeys related to the southern building along the Boronia Street frontage. The proposed variation is supported due to the site slope towards the southern boundary and to provide for the supermarket loading dock access at ground level that is screened from the public domain. Further, the proposed partial breach is not considered to result in appreciable amenity impacts in terms of overshadowing, visual bulk or privacy (subject to recommended window glazing treatments) to surrounding development or from the public domain where it will continue to present as a predominantly four storey development. It should also be noted that the building has been sited 7m – 9m from the boundary, which exceeds the minimum 6m setback control required by the block plan.

Accordingly, it is considered that the proposed built form is compatible with the desired future character of the Kingsford centre and generally consistent with the urban structure anticipated under Clause 6.1.

*Building setbacks*

The provisions of clause 6.1 specify that the building setbacks should be consistent with the setbacks illustrated in the block controls under Part B of the K2K DCP 2020.

Eastern Setback (Anzac Parade)

The subject site is identified as being within Block 24 of the block by block controls. The site plan for Block 24 requires a 1.5m setback to Anzac Parade for the first four (4) levels, and a 5.5m setback for upper levels 4-8. The proposed development provides a compliant minimum setback on lower levels and predominantly complies with the 5.5m requirement, except for minor 200mm encroachments zones that are supported to provide façade depth and articulation from the Anzac Parade streetscape.

The remaining building setbacks for Block 24 are considered below:

Northern setback

<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
3m up to Level 4 and 6m from Level 4 to 8.	Nil setback to Ground level and 3m from Level 1 to 8.	No

The proposal has reduced the ground level setback due to site topography and the 6m level changes associated with providing an at grade 3m wide midblock connection along the northern boundary interface. Accordingly, the proposed area has been enclosed with a blank wall to facilitate additional retail floorspace and a residential circulation access path for residents above. Noting the feasibility concerns with establishing a secondary through site link the proposed configuration is supported, given that the central northern connection point will be retained and secured via an easement.

In addition, the proposed tower setback has been reduced from 6m to 3m along this boundary interface through the implementation of limited glazing, privacy screens and orientating habitable windows away from the neighbouring future development

site to the north. Each of the apartments within the northern edge of the site are afforded dual aspect and primary solar access from the eastern and western façade and are not reliant on this subject façade for solar access, which would be further compromised after the redevelopment of the neighbouring vacant site. The provision of a 3m tower setback is supported, given the subject visual privacy, façade design and site context.

Southern setback and Internal Separation (Duke Street Properties and 103A Anzac)

<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
Southern elevation of Boronia Street building – 6m	7m – 9m	Complies.
Southern elevation of Anzac Parade building to 103A Anzac Parade - Nil	Nil	Complies.
Internal Separation between towers – 12m	12m	Complies.
Western elevation to Duke Street – 6m up to Level 4 / 7 to 9m flexible zone from Level 4 to 8	3m to Level 1 6m Level 2 to Level 8	Partial, refer to discussion below.

The south western corner of the site is required to provide a 6m podium setback up to level 4 and the includes a flexible zone ranging from a 7 to 9m tower setback from No. 1 Duke Street. During the assessment the Level 1 podium setback was increased from a nil boundary alignment to a 3m landscape buffer interface to address potential visual bulk and podium overlooking concerns raised by Council at the RFI stage. This will improve the built form transition when compared with the separation currently afforded at lower levels by the existing Anzac Parade commercial buildings proposed for demolition and provide an entire landscaped edge to the lower density Duke Street properties.

In addition, the floor layout of the tower levels has been provided with a configuration that locates non-habitable studies and bedrooms to the edge of the 6m floor plate, with habitable living rooms recessed with a compliant 9m setback. The proposed balcony along this interface has been treated with operable privacy screens to assist in mitigating sight lines and the perception of overlooking within the flexible tower zone. It is considered that the proposed floor plates have been configured to restrict potentially sensitive sight lines, incorporate non-habitable uses adjacent to the outer building envelope and orientate habitable windows away from adjoining lower density properties in support of the proposed setback alignment.

The tower floor depth is also compliant with 22m requirements and will retain a consistent 9 storey building height as envisaged under the block controls. The

proposed setback is not considered to result in a scale that is incompatible with the desired future character for the locality or excessive amenity impacts in terms of visual privacy or adverse visual outcomes. In view of the above, the proposal can be seen to be consistent with the objectives of the control and the variation is supported in this instance.

Western setback (Boronia Street)

Required	Proposed	Compliance
3m	2.7m – 3m for façade detailing and fins projections.	Yes, minor façade articulation.

Minor encroachments on Level 1 related to landscape planter overhang, which will provide screening of plant facilities and façade articulation design elements. The proposed minor variations are not anticipated to result in additional amenity impacts and will improve the presentation of the development from the public domain. As such, the proposed setback configuration is considered acceptable on balance, given the high levels of façade modulation incorporated.

*Building Depth*

Clause 6.1 specifies a maximum building depth of 22m for residential development fronting Anzac Parade. The proposed development shall have a building depth ranging from 20-21m, which will remain below the control maximum. The overall depth is also consistent with the building envelope identified in the Block 24 control, noting that a flexible tower zone is afforded at rear of the Anzac Parade built form alignment.

*Block by Block Controls – Block K6 (Clause 10.3 of Part B of K2K DCP 2020)*

Part B of the K2K DCP 2020 provides detailed building envelopes for development along the Kensington and Kingsford Centres. The block by block controls are broken up into individual blocks that are anticipated to be amalgamated or developed in conjunction with each other. The subject site is contained within Block 24. The building envelope stipulated by Block 24 can be seen in **Figure 9** below:



**Figure 9 – Block 24 Building Envelope**

Clause 10.3 requires development to be consistent with the relevant block envelopes including heights, setbacks, street walls, mid-block links and laneways. As discussed within the report, the proposed development is largely consistent with the building envelope specified under Block 24. The subject site comprises the southern nine (9) and four (4) storey portion of Block 24, with the remaining four (4) sites to the north also subject to a nine (9) storey height limit excluded from the proposal for separate redevelopment.

The desired future character of Block 24 aims to deliver a nine (9) storey built form, with a four (4) storey street wall and transition zone to Boronia Street. The proposal is generally consistent with the parameters established under the Block controls, except for the building height variation, the relocation and reconfiguration of through site links, the inclusion of a cantilevered built form above the east-west pedestrian connection and setback breaches.

The deviations from the building envelope with regards to setbacks, through site links, the cantilevered building envelope and overall building height have been considered in detail under the relevant headings and are warranted in this instance. Furthermore, the proposal is largely consistent with the provisions of SEPP 65 and the K2K DCP to ensuring that no unreasonable privacy impacts and overshadowing impacts shall occur.

The proposal complies with the maximum FSR permitted for the site and despite the height non-compliance provides a nine (9) and predominantly four (4) storey built form in accordance with the maximum number of storeys to ensure that the bulk and scale of the development is not excessive. It is considered that the Applicant has demonstrated that the proposed envelope is an appropriate response to the site.

## 5.4 Solar Access

Concerns have been raised in submissions regarding overshadowing from the proposed development to the adjoining properties, with regards to the properties to the south of the site.

The submitted shadow diagrams demonstrate that these adjoining properties to the south will retain a generally consistent overshadowing outcome, given the minor variation to parapet heights in the southern portion of the redevelopment. In addition, solar access will continue to be afforded to each of these properties in the afternoon period.

While the proposed development breaches the maximum height, the non-complaint communal open space and plant facility structures are well setback from the edge of the building floorplate and shall not contribute to any discernible overshadowing impacts and is comparable with a compliant proposal. It is considered that the resultant overshadowing is a result of the high density nature of the development, in which any compliant four (4) to nine (9) storey building would result in some degree of overshadowing impact.

The concerns raised in submissions have been considered in the context of the anticipated level of development under the Kensington and Kingsford RDCP 2020, noting the area is under transition, and the relevant amenity provisions within the DCP. As such, the proposed development is not considered to result in any unreasonable impacts upon the adjoining properties with regards to solar access.

## 5.5 Acoustic Impacts due to supermarket loading dock

Concerns were raised in the submissions relating to potential acoustic impacts associated with the loading dock access from Boronia Street, which traverses the rear boundary of the adjoining Duke Street properties. The updated acoustic report was reviewed by Council's Environmental Health Officer, who did not raise concern in relation to the operation of the loading, subject to the implementation of acoustic mitigation measure identified in the acoustic report. In addition, a consent condition has been recommended to limit the use of the loading dock by heavy vehicles during sensitive time periods and potential sleep disturbance hours.

## 5.6 Waste Management and Car Parking

Concerns were raised by the Council's Development Engineer and the Randwick Design Excellence Advisory Panel in relation to the implementation of a conventional waste management system as a part of the original scheme. In response, the applicant has amended their design to incorporate a conceptual automated waste management storage rooms and transfer chutes. Accordingly, the design of the final system will be secured via a consent condition to ensure compliance with the *Design and Implementation Guidelines for automated waste collection systems November 2022*.

Council's Development Engineer has reviewed the proposed 243 space basement and not raised concerns in relation to the proposed internal layout and design. A minor 4 car spaces deficiency was identified against Council's DCP rate and supported on merit as the proposed variation to visitor parking was not considered to result in a

significant change to on street space availability or result in substantial secondary parking impacts.

## 6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations 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.

The proposed development provides a high density mixed-use development ranging from four (4) to nine (9) storeys in height, consistent with that anticipated under Part E6 of the Randwick DCP 2013 and relevant standards contained within RLEP 2012. The proposed development results in a variation to the maximum building height, however is consistent with the maximum number of storeys permitted for the site, with the height breach predominantly in relation to roof top structures not contributing to any additional floor space.

Further, the proposal only deviates from the specified building envelope under the block controls to provide an additional communal roof terrace, a cantilevered built form that complies with the FSR and is secondary to scale of the main mixed use building forms and the relocation of through site link connections. As a result, the proposed scheme will continue to provide a design outcome that is generally in keeping with the visual bulk and environmental impacts anticipated under Part E6 of the Randwick DCP 2013 and the future desired character for the Kensington town centre.

The overall architectural design of the development has addressed the matters raised by Council's Design Excellence Advisory Panel through plan amendments and recommended consent conditions. As discussed in detail within the report, the proposal is not considered to result in any unreasonable impacts upon the residential amenity of surrounding and neighbouring properties and as such the development is supported in this instance. The proposal satisfies the relevant objectives contained within RLEP 2012 and the relevant requirements of RDCP 2013 and under Part E6 of the Randwick DCP 2013 and is consistent with the development standards required by SEPP 65.

It is considered that the key issues as outlined in Section 6 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

## 7. RECOMMENDATION

That the Development Application DA/395/2022 for the integrated development for demolition of all structures on site, construction of new shop top housing development comprising four distinct buildings having 9 storey fronting Anzac Parade and 4 storey fronting Boronia Street with 2 basement levels for 243 parking spaces, ground level retail premises including a supermarket, a total of 195 dwellings including 6 affordable dwellings, communal open spaces, removal of trees, amalgamation of existing lots, associated site and landscape works (Variation to height of buildings) (Water NSW approval required) at 77-103 Anzac Parade and 59A-71 Boronia Street Kensington be APPROVED pursuant to Section 4.16(1)(a) or (b) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at **Attachment A**.

The following attachments are provided:

- **Attachment A:** Draft Conditions of consent
- **Attachment B:** Tables of Compliance
- **Attachment C:** External Referral Comments
- **Attachment D:** Internal Referral Comments
- **Attachment E:** Architectural Plans
- **Attachment F:** Clause 4.6 Request