



SYDNEY EASTERN CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

PANEL REFERENCE & DA NUMBER	PPSSEC-240 – DA/20/2021/C
PROPOSAL	<p>S4.56 Modification Application of approved development to amend the development consent granted by the NSW Land and Environment Court, where the development will remain substantially the same as the development that was originally approved.</p> <p>The modification sought to the approved development is to amend the basement design to protect Council's stormwater culvert resulting in loss of 10 motorcycle parking spaces, provide a larger loading and service bay area, partially alter ground levels and new storm filter (subject of amended ground level plan).</p>
ADDRESS	<p>177-197 Anzac Parade, Kensington 2033</p> <p>The development site comprises six lots as follows: (3,541m²).</p> <ul style="list-style-type: none"> • 177 Anzac Parade (SP 15366) • 179-181 Anzac Parade (Lot 10 Section 7 DP 4761) • 183-185 Anzac Parade (Lot 11 Section 7 DP 4761) • 187 Anzac Parade (Lot A DP 410791) • 189 Anzac Parade (Lot B DP 410791) • 191-197 Anzac Parade (SP 19239)
APPLICANT	Christopher Croucamp (Urbis Pty Ltd) c/o Cedar Pacific and UniLodge
OWNER	Cedar Pacific Pty Ltd
MOD LODGEMENT DATE	27 September 2022
ORIGINAL DA (DETERMINATION DATE)	Demolition of existing structures on site and construction of 9 storey mixed use development comprising commercial ground level and 8 storeys above (student housing) boarding house comprising 604 rooms, basement parking comprising 5 car spaces, 126 bicycle spaces and 104 motorcycle spaces, accessible rooftop common garden, under awning signage, landscaping and associated works (3 December 2021 LEC).
APPLICATION TYPE	S4.56 Modification Application

REGIONALLY SIGNIFICANT CRITERIA	<p>Clause 2 of Schedule 7 of the SEPP SRD: General Development over \$30million.</p> <p>Clause 2 of Schedule 6 of SEPP Planning Systems 2021: General Development over \$30million.</p>
CIV	\$62,500,000 (including GST)
CLAUSE REQUESTS 4.6	N/A
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (State and Regional Development) 2011.</i> • <i>State Environmental Planning Policy (Affordable Rental Housing 2009)</i> • <i>State Environmental Planning Policy (Planning Systems) 2021.</i> • <i>Randwick Local Environmental Plan 2012.</i> • <i>Randwick Development Control Plan – Section E6 Kensington and Kingsford Town Centres.</i>
SUBMISSIONS	Nil.
DOCUMENTS SUBMITTED OR CONSIDERATION F	<ul style="list-style-type: none"> • Architectural Plans <p><u>Floor Plans:</u></p> <ul style="list-style-type: none"> ○ Basement 1 Plan – DA011 Rev R, dated 07.07.22 ○ Floor plan – Ground – DA012 Rev U, dated 07.07.22 ○ Amended: Floor plan -Ground – DA012 Rev V, dated 23.11.22 <p><u>Sections:</u></p> <ul style="list-style-type: none"> ○ Sections – DA044 Rev A, dated 07.07.22 <p><u>Other diagrams:</u></p> <ul style="list-style-type: none"> ○ GFA calculations – DA051 Rev J, dated 07.07.22 <ul style="list-style-type: none"> • <u>Civil Engineering Package:</u> <ul style="list-style-type: none"> ○ General notes – 001 Rev 01, dated 15/07/2022 ○ Engineering plan Sheet 1 of 2 – 010 Rev 01, dated 01/07/2022 ○ Engineering plan Sheet 2 of 2 – 011 Rev 01, dated 01/07/2022 ○ Sediment and Erosion Control plan – 060 Rev 01, dated 15/07/2022 ○ Sediment and Erosion Control details - 061 Rev 01, dated 15/07/2022 ○ Stormwater details sheet 1 of 4 - 080 Rev 01, dated 15/07/2022

	<ul style="list-style-type: none"> Stormwater details sheet 2 of 4 - 081 Rev 01, dated 15/07/2022 Stormwater details sheet 3 of 4 - 082 Rev 01, dated 15/07/2022 Stormwater details sheet 4 of 4 - 083 Rev 01, dated 15/07/2022 Music catchment plan – 100 Rev 01, dated 15/07/2022 <p>Other documents:</p> <ul style="list-style-type: none"> Modification to Basement Layout report, dated 23 August 2022. Application form.
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	28 July 2022
PLAN VERSION/S	Original at lodgement and amended ground floor plan on 25 November 2022
PREPARED BY	Louis Coorey
DATE OF REPORT	November 25, 2022

1. EXECUTIVE SUMMARY

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

The original development application was approved on 3 December 2021 by the NSW Land and Environment Court, after an agreement was reached between parties pursuant to s34 of the Land and Environment Court (LEC) Act noting that were the application not appealed in the LEC, the consent authority would have been *Sydney Eastern City Planning Panel* (SECPP) as it has a capital investment value over \$30 million and defined as Regionally Significant General Development, pursuant to Section 4.7, of the Environmental Planning and Assessment Act 1979 and Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011 (subsequently Schedule 6 of the new State Environmental Planning Policy (Planning Systems) 2021).

The approved is for the demolition of existing structures on site and construction of 9-storey mixed use development comprising commercial ground level and 8 storeys above (student housing) boarding house. The boarding house comprises 604 rooms, basement parking for 5 car spaces, 104 motorcycle spaces and 126 bicycle spaces. The development contains basement, ground and roof common areas, landscaping and associated works. The original consent approved a height of building (HOB) variation for the lift overrun to RL31.52 or 520mm over the 31m maximum HOB under the LEP and a 17-motorcycle space shortfall to the 126 spaces development standard for boarding houses under the SEPP ARH.

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

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

The Section 4.56 modification application was publicly notified to surrounding property owners, and previous objectors and advertised on Council's website with site notification attached to the subject site in accordance with Randwick Council Community Consultation Plan. No submissions were received as a result of the notification process. The application was also referred to Council's Development Engineer, and Heritage Planner for comment and/or recommendation who raised no objection to the proposed modifications.

The key issues associated with the proposed modification application relate to whether the increased shortfall in motorcycle parking (10 additional to the 17 existing) is evaluated as acceptable and whether it erodes the reasons for approval of the original shortfall.

In short, the further reduction of motorcycle parking is evaluated as generally appropriate however it is considered that subject to provision of additional bicycle parking at grade to offset partially loss of motorcycle parking will not erode the original reasons. The relevant reasoning is the highly accessible nature of student accommodation, it is regularly serviced by bus and light rail public transportation, it is close to University of NSW, it has a conditioned

commitment to green travel, and Council's preference is that the location of the stormwater culvert be retained noting other pipe infrastructure in the locality may conflict with any relocated line.

The development remains substantially the same development as a result of the proposed modification in accordance with Section 4.56 of the Environmental Planning and Assessment Act (as amended), and the proposed amendment shall not alter the intent of the original development.

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

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

2. THE SITE AND LOCALITY

2.1 The Site

The development site is comprising 6 lots covering 177-197 Anzac Parade, Kensington 2033

The site has an area of 3,541m², with a north-eastern front boundary of 81.68m to Anzac Parade, a north-western boundary of 40.2m abutting No. 173-175 Anzac Parade, a south-eastern boundary of 36.575m abutting a pedestrian path from Anzac Parade to Roma Avenue, and a rear boundary of (60.955m + 28.205m) 99.16m abutting residential flat buildings fronting Roma Avenue. The site has a cross fall of around 1m from north to south.

2.2 The Locality

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

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

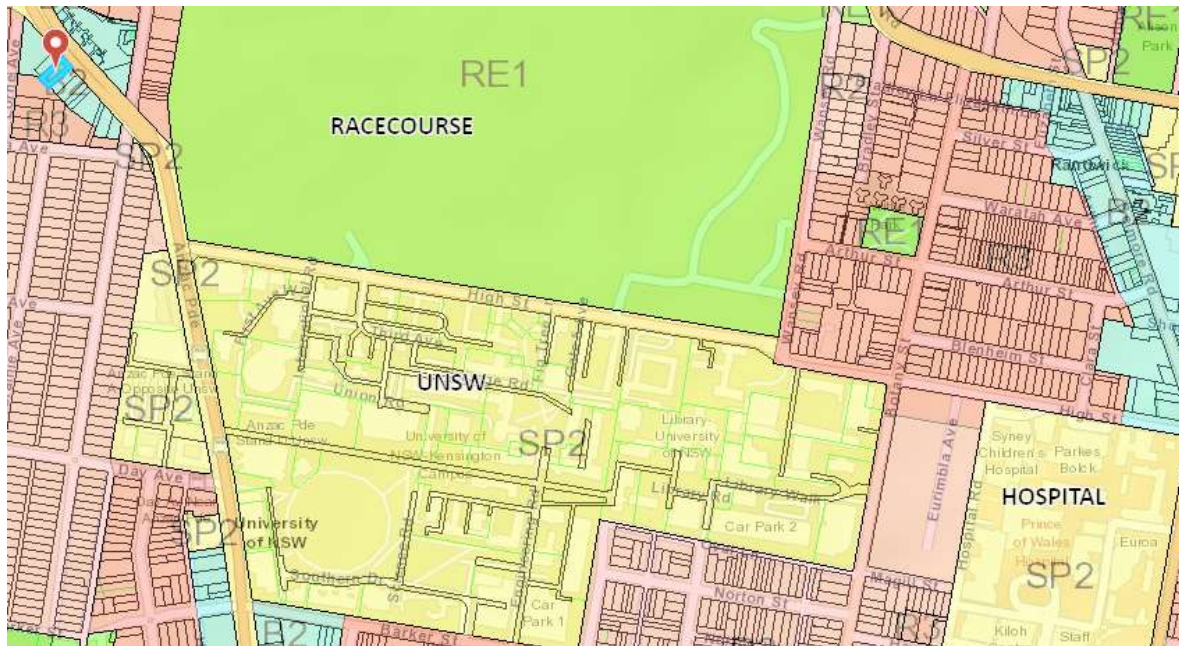


Figure 1: Aerial view of site and surrounding area including shading identifying the zones of surrounding.

3. THE PROPOSAL AND BACKGROUND

3.1 The Proposed Modification

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

Basement

- Truncation of basement at the south-eastern corner of the site to retain stormwater culvert
- Rearranged basement layout parking resulting in shortfall of 10 motorcycle spaces
- Enlarged loading bay area following consultation with TfNSW to improve safety and accessibility

Ground Level

- New storm filter in south-western corner of the site
- Reduced ground level by 10cm from RL23.70 to RL23.80 in front of and within part of ground level commercial café tenancy.

Proposed Changes to Conditions

Condition 1 of the development consent is amended as a result of the amended ground level plan submitted showing the location of the storm filter (plan no. DA012 Rev V, dated 23.11.22), including the basement plan (plan no. DA011 Rev R, dated 07.07.22) originally submitted with the modification application but not amended.

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

Table 1: Development Data

Feature	Approved Development	Proposed Modifications	Change
Land use	9-storey mixed use development comprising a commercial ground level and 8 storey boarding house (student accommodation)	9-storey mixed use development comprising a commercial ground level and 8 storey boarding house (student accommodation)	No change
Height of Building (HOB) 31m development standard	<ul style="list-style-type: none"> 30.37 metres (top of roof parapet) 31.02 metres (top of balustrade) 31.72 metres (top of lift overrun) 	<ul style="list-style-type: none"> 30.37 metres (top of roof parapet) 31.02 metres (top of balustrade) 31.72 metres (top of lift overrun) 	No Change
No. of Storeys	9 storeys	9 storeys	No change
No. of Student Rooms	604	604	No change
Gross Floor Area/FSR 4:1 permitted 4.8:1 permitted under SEPP ARH.	14,946sqm (4.22:1)	14,958sqm (4.224:1)	An additional 12sqm within the existing basement footprint.
Car Parking Spaces	5 car spaces	5 car spaces	No change
Bicycle Parking Space	126 bicycle spaces	126 bicycle spaces	No change
Motorbike Parking Spaces 126 required under SEPP ARH	104 motorcycle spaces (17 space shortfall). LEC orders approved Clause 4.6 variation.	94 motorcycle spaces (27 space shortfall)	Reduction of 10 spaces
Landscaped Area	3,985sqm	3,985sqm	No change

Ref: Applicant's statement (Key data has been reviewed).

3.2 Background

Details of Current Approval

Development Application DA/20/2021

The original development application was approved by the NSW Land and Environment Court on 3 December 2021, after an agreement was reached between parties pursuant to s34 of the Land and Environment Court Act. As part of the Court process, the development was amended with particular regards deletion of one storey (level 9), revised layouts, increase motorbike spaces from 30 to 104, reduced car parking from 12 down to 5, increased setbacks from Anzac Parade and Pedestrian path to the south and the provision of community infrastructure works to the laneway, Anzac parade street planting and works, heritage seating, other public domain works and monetary contributions. The approved development was considered to be consistent with the relevant provisions of SEPP ARH, RLEP 2012 and the Part E6 of Randwick Development Control Plan Kensington and Kingsford Town Centres 2020. In compliance with provisions in Clause 6.17 and 6.18 relating to provision of community infrastructure and affordable housing, a Planning Agreement has been approved.

Modification Applications of DA/20/2021/A and DA/20/2021/B

DA/20/2021/A

A separate modification application lodged previous to this application on 19 November 2021 (DA/20/2021/A). The application is the subject of consideration by the Panel. This application seeks allow for the provision of lift access to the roof communal open space, lift overrun, fire stairs, balustrades, accessible toilet, and mechanical plant to the rooftop and minor change to floor levels of the 9-storey student housing building. Amended plans have incorporated additional setbacks of balustrades and mechanical screens from Anzac Parade to ensure that the modification application would not result in any unreasonable adverse impacts on the visual amenity of the streetscape. The applicant also reduced the height and impact of screening at the rear facing the Roma Street properties ensuring no unreasonable additional adverse impacts on their visual amenity or overshadowing. This application is recommended for approval.

DA/20/2021/B

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

Subject Modification Application

The subject modification application (DA/20/2021/C) was lodged on 27 September 2022. The application was externally referred to Water NSW. The application was internally referred to Council's Heritage Planner, and Development Engineer for comment and/or recommendations.

A chronology of the modification application since lodgement is outlined below in **Table 2** including the Panel's involvement (briefings etc) with the application:

Table 2: Chronology of the Modification Application

Date	Event
-------------	--------------

27 September 2022	Modification application lodged
29 September 2022	Referred to internal departments of Council – Development Engineer and Heritage Planner
6 October 2022 – 3 November 2022	Exhibition of the application
1 November 2022	Referred to Water NSW (CNR-47619)
15 November 2022	Panel Kick-off briefing – record
16 November 2022	Record of briefing published on Planning Panels website and attached in Appendix of this report
17 November 2022	RFI issued for amended seeking clarification of SK138 requirements, location of storm filter and maneuverability into the accessible space when the closest service delivery space is occupied.
25 November 2022	Response provided by Applicant to RFI providing amended ground level plan, SK138 plan subject to consultation with TfNSW for loading bay design and access to accessible space can be managed via Plan of Management (PoM).

4. STATUTORY CONSIDERATIONS

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

4.1 Section 4.56 of the EP&A Act

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

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

To establish if development is substantially the same as what was granted consent, reference

is made to the case of *Moto Projects (No.2) v North Sydney Council [1999] NSW LEC 280*, which provides the following judgement:

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

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

The application originally approved a nine (9) storey mixed-use development comprising commercial premises and a boarding house with 604 boarding rooms. The current modification application seeks to modify the basement level and minor amendments to a portion of the ground level café and access ramp, and new storm filter.

Quantitatively, the proposed modifications to retain the stormwater culvert result in minor changes to the approved development, with undiscernible difference of 12sqm increase in overall Gross Floor Area as a result of including the GFA of bicycle spaces included as GFA now replacing motorcycle spaces which are not included in GFA. The reduction 10 motorcycle spaces from 104 down to 94 spaces provides around 74.6% of the 126 motorcycle spaces required under the SEPP ARH. The proposed reduction represents an 11% increased variation of the approved.

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

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

The intent of the proposed development remains the same as the approved development, providing a mixed-use development comprising commercial premises, and a boarding house used as student accommodation within a built form of up to nine (9) storeys in height, and it is considered that the essence of the use is consistent with that approved. Furthermore, the development as modified continues to fall within the scope of the original description, being construction of a mixed-use development comprising student accommodation, commercial premises and associated parking.

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

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

modification by sending written notice to the last address known to the consent authority of the objector or other person (s4.56(1)(c)), and

The Section 4.56 modification application was publicly notified to surrounding property owners and to any previous submitters/objectors and advertised on Council's website with site notification attached to the subject site in accordance with Randwick Council Community Consultation Plan. Nil (0) submissions by way of objection to the proposal were received as a result of the notification process.

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

Not applicable.

- (e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (s4.56(1A)).*

The matters required to be considered include:

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

Reasons for Grant of Consent

The NSW Land and Environment Court granted consent to the original development on 3 December 2021 in response to an agreement between parties, pursuant to section 34 of the Land and Environment Court Act which were conducted under without prejudice conditions on Conciliation conference on 18 August, 9 September, 1 and 29 October 2021. During the course of the proceedings, the Applicant was granted leave to rely on amended plans whereby the jurisdictional prerequisites identified by the parties were considered to have been satisfied. The amendments made during the conciliation which are considered key matters and reasons for the approval are identified as follows:

- The proposed development comprising commercial premises and a boarding house for student accommodation are a permissible use within the B2 Local Centre zone.
- The proposal complies with the principal development standard in relation to Floor Space Ratio.
- The proposal exceeded the Height of buildings development standard however the submitted clause 4.6 was considered to have satisfied the relevant objectives of the standard and the zone, noting that a storey of the development had been deleted from the development providing a 9-storey development that complied with the K2K DCP envelope provisions.
- The proposal exhibited design excellence with a high standard of architectural design.
- The proposal was consistent with the provisions of SEPP ARH noting the built form remained largely consistent with the provisions of RLEP 2012 and the Kensington and Kingsford DCP 2020 and therefore the consistent with the desired character of

the area in accordance with clause 30A of the SEPP ARH.

- The developments setbacks notably from Anzac Parade were increased to be consistent with the setback requirements in part E6 of the Kensington and Kingsford DCP 2020.
- The 104 motorcycle spaces increased from 30 originally proposed whilst short of the 126 required under clause 30(1h) of the SEPP ARH, is justified by the arguments provided for in the Clause 4.6 noting paragraphs 35 and 36 of the orders state as follows:

“35 The proposed development achieves the underlying objective of the standard because it is for student housing associated with the university of New South Wales located close by, to which residents may walk, cycle, or travel by bus or light rail. I also accept that the number of bicycle parking spaces achieves the standard at cl 30(1)(h), and that a Green Travel Plan has been prepared with the development application to promote non-car travel modes.

36. Accordingly, I am satisfied that the written request to vary the development standard at cl 30(1)(h) of the ARH SEPP adequately addresses those matters at cl 4.6(3) of the RLEP, is in the public interest and does not raise any matter of significance pursuant to cl 4.6(5) of the RLEP.”

The modification application does not alter appreciably any external elements of the scheme that would hinder the ongoing attainment of the relevant objectives or standards achieved by the orders issued by the LEC. The modification application relates to the provision of motorcycle parking and consideration needs to be given to both the provision under clause 30(1h) of SEPP ARH and whether the modification applications further reduction in motorcycle parking erodes the reasons for finding the clause 4.6 exception to the standard well founded. This is discussed in Development Engineers referral comments and the key issues section of this report.

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

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

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

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

(a) **Environmental planning instruments (s4.15(1)(a)(i))**

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)*
- *State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *Randwick Local Environmental Plan 2012 (LEP)*

A summary of the key matters for consideration arising from these State Environmental

Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
BASIX SEPP	An amended BASIX Certificate is not required to be provided noting the amendments relates to class 5/6, 7 & 10 elements of the scheme and not residential components. Conditions of consent in relation to compliance with the BASIX provisions and required documentation are to be maintained within the development consent.	NA
State Environmental Planning Policy (Affordable Rental Housing) 2009	Division 3 – Boarding Houses 30 Standards for boarding houses (1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following— ... (h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms."	N, see key issues section of this report.
(State Environmental Planning Policy (Housing) 2021)	Schedule 7A Transitional and savings provisions does not apply SEPP Housing 2021 to a development consent made but not determined prior to commencement date (26 November 2021). Applicable policy is therefore the <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> .	NA
State Environmental Planning Policy (State and Regional Development) 2011	Clause 2 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011: The original development is defined as General Development with a capital investment value over \$30million.	Y
State Environmental Planning Policy (Planning Systems) 2021	Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: The original development is defined as General Development with a capital investment value over \$30million.	Y

EPI	Matters for Consideration	Comply (Y/N)
LEP	<ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives • Clause 4.3 – Height of Buildings • Clause 4.4 – Floor Space Ratio • Clause 6.11 – Design Excellence • Clause 6.17 – Community infrastructure height of buildings and floor space at Kensington and Kingsford towncentres • Clause 6.18 - Affordable housing at Kensington and Kingsford town centres • Clause 6.19 - Non-residential floor space ratios at Kensington and Kingsford town centres • Clause 6.20 – Active Street frontages at Kensington and Kingsford town centres • Clause 6.21 – Design excellence at Kensington and Kingsford town centres 	Y, no change to levels of compliance.
DCP	<ul style="list-style-type: none"> • Randwick Development Control Plan Part E6 - Kensington and Kingsford Town Centres <p>The proposed modifications do not result in any changes to the approved architectural form other than the ground levels of part of the café and in front of it.</p>	Y

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

State Environmental Planning Policy – Building Sustainability Index BASIX– 2004 ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development for residential components of the scheme.

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

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

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

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

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

The development as modified will remain generally consistent with the provisions of the SEPP ARH except for the seeking of a further variation to the motorcycle parking development standard in clause 30(1h) of the SEPP. See discussion under key issues section of this report.

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

The original development is Regionally Significant Development more specifically general development as it has a capital investment value over \$30 million which is pursuant to Section 4.7, of the Environmental Planning and Assessment Act 1979 and Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011 (or subsequently Schedule 6 of the new State Environmental Planning Policy (Planning Systems) 2021).

The consent authority for the original Development Application would have been Sydney Eastern City Planning Panel (SECPP) were the application not appealed in the Land and Environment Court.

For this S4.56 modification application, the SECPP is the determining authority in accordance with the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents* published on the NSW planning portal on 30 June 2020.

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

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

The proposed modifications are not required to be referred to TfNSW pursuant to S138 of the Roads Act and Clause 101 of the SEPP Infrastructure. The proposed modifications do not seek any changes to the conditions of consent imposed by Transport for NSW noting that TfNSW originally raised concerns with the small size and capacity of the loading bay in providing adequate capacity for trade, service and removalist vehicles, which are sought to be increased in area and incorporated into this modification application (see SK138). TfNSW also identified the need to limit the impact of private vehicle movements to and from the site and that the conditioned requirement for a Green Travel plan would assist in encouraging use of public transport.

- *Randwick Local Environmental Plan 2012*

The relevant local environmental plan applying to the site is the Randwick Local Environmental Plan 2012 ('the RLEP 2012'). The proposed development as modified remains consistent with the relevant aims and provisions of RLEP 2012, noting that the proposal for shop top housing (student housing) is maintained and that the built form is not appreciably altered.

The site is located within the B2 Local Centre Zone pursuant to Clause 2.2 of RLEP 2012. As noted above, the subject modification application does not seek to change the approved use of the development which is permissible within the B2 zone.

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

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

Table 4: S4.15 Matters for Consideration

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(i) – Provisions of any environmental planning instrument	The proposed modifications are an ancillary component to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012 and ARH SEPP.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive K2K DCP 2020.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(c) – The suitability of the site for the development	The site has been assessed as being suitable for the development in the original development consent. The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013, K2K RDCP 2020 and RLEP 2012. Therefore, the site remains suitable for the modified development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	Not applicable.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

3.3 Part 5 of the 2021 EP&A Regulation

The subject application was lodged on 19 November 2021. In accordance with the saving provisions under Schedule 6 of the EP&A Regs 2021, the 2000 Regulation continues to apply to the application not the provisions of the EP&A Regs 2021. The subject application is consistent with the relevant provisions of the Environmental Planning and Assessment Regulations 2000.

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The original development application was classified as:

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

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

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

Table 5: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Water NSW	s90 of the Water Management Act 2000	Water NSW raised no objection to the proposed modifications subject to no amendment to the GTA.	Y, Councils Development engineer advised no change to the GTA.

5.2 Council Referrals

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

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Development Engineer Coordinator reviewed the proposed modifications and raised no objection to the proposal with regards to stormwater management, traffic and parking, and waste management. Conditions recommended are provided within Attachment B.	Y
Heritage	Council's Heritage Officer reviewed the subject application and raised no objection to the proposal. Detailed comments are provided within Attachment B.	Y

5.3 Notification and Community Consultation

The modification application was notified in accordance with Council's Community Participation Plan from 6 October 2022 until 3 November 2022. The notification included the following:

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

The Council received no submissions.

6. KEY ISSUES

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

6.1 Motorcycle parking

Clause 30(1)(h) of SEPP ARH sets out the following relevant standards for boarding houses:
30 Standards for boarding houses

(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following—

...

(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms."

The development application contains 604 rooms, which requires the provision of 126 motorcycle spaces pursuant to section 30(1)(h) of SEPP ARH.

The original approved development provides for 104 motorcycle spaces which fell short of the 126 spaces required pursuant to section 30(1)(h) of SEPP ARH. The LEC orders accepted the shortfall or exception to the development standard provided for in the Clause 4.6 noting paragraphs 35 and 36 of the orders state as follows:

"35 The proposed development achieves the underlying objective of the standard because it is for student housing associated with the university of New South Wales located close by, to which residents may walk, cycle, or travel by bus or light rail. I also accept that the number of bicycle parking spaces achieves the standard at cl 30(1)(h), and that a Green Travel Plan has been prepared with the development application to promote non-car travel modes.

36. Accordingly, I am satisfied that the written request to vary the development standard at cl 30(1)(h) of the ARH SEPP adequately addresses those matters at cl 4.6(3) of the RLEP, is in the public interest and does not raise any matter of significance pursuant to cl 4.6(5) of the RLEP."

Whilst a clause 4.6 submission is not required for modification applications, consideration is given to relevant matters for consideration under clause 4.15 of the Act and whether the reasons provided by the Court in justification of the shortfall are eroded by the further reduction in motorcycle parking to the site as required by clause 4.56(1) of the Act.

The modification application results in a further motorcycle parking shortfall of 10 spaces, which is equivalent to an 8% increased shortfall and a total shortfall of 25.4% of the 126 motorcycle spaces required for a 604 boarding house development. The reduction of 104 spaces down to 94 spaces remains substantial and it is considered that it will adequately service the student accommodation for the following reasons:

- The key reason for the reduction of motorcycle parking is due to the need to truncate the basement to enable retention of the stormwater culvert - a key infrastructure - noting Council's development engineer indicates whilst it is possible to relocate or divert the stormwater culvert, it is not Council's preference as there is other pipe infrastructure in the locality that may conflict with any relocated line. The addition of service and delivery spaces also responsible for reduction in motorcycle parking is supported noting that TfNSW originally raised concerns with the small size and capacity of the loading bay in providing adequate capacity for trade, service and removalist vehicles – the subject of condition of consent in the original determination.
- The site remains a student accommodation, acknowledged by the court and not disputed here, generally places a lesser demand on private vehicle use than that

associated with boarding houses.

- Council's controls provide a strong emphasis on encouraging environmentally sustainable transport opportunities in particular in localities where public transport infrastructure is frequented, and facilities and services are available to meet the day-to-day needs of the residents. Clause 1.2(2)(c) and (e) of the Randwick Local Environmental Plan 2012 specifies the aims of the plan are; 'To support efficient use of land, vibrant centres, integration of land use and transport, and an appropriate mix of uses', and 'To promote sustainable transport, public transport use, walking and cycling'. The proposed development satisfies the aims of the plan in that the subject site is located within a 145-metre walking distance to the UNSW and around 1km from the Hospital. The site is also in very close proximity to regular public transport bus services along Anzac Parade and the light rail stop. These services commute within the Sydney Metropolitan Area on a regular basis and by definition the subject site is considered to be within an 'accessible area' as per the State Environment Planning Policy for Affordable Rental Housing 2009. In addition to this, a condition is included requiring additional bicycle parking be provided at ground level to assist in offsetting the further loss of motorcycle spaces. Further, the sites location immediately adjacent to a range of retail business, entertainment and community uses make it a preferable option to endorse more environmentally sustainable forms of transport.

In view of the above, the proposed retention of culvert and reduction of motorcycle parking are considered will not result in any significant or unreasonable adverse impacts upon the locality.

7. CONCLUSION

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

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

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

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

8. RECOMMENDATION

It is recommended:

That the Sydney Eastern City Planning Panel, grants development consent under Section 4.56 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/311/2020/B to amend the development consent granted by the NSW Land and Environment Court, where the development will remain substantially the same as the development that was originally approved at 177-197 Anzac Parade, Kensington, in the following manner:

As a result of the amended ground level plan submitted with the modification application, Condition 1 of the development consent is amended accordingly inclusive of those originally submitted with the application but not amended such as the basement plan.

- **Amend Condition 1 to read:**

Approved Plans & Supporting Documentation

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

Plan No.	Rev No.	Drawn by	Dated
DA002	E	Nettletontribe	20.10.21
DA011	Q	Nettletontribe	20.10.21
DA012	T	Nettletontribe	20.10.21
DA012 - SIGNAGE	S	Nettletontribe	24.09.21
DA12 – Material Clarification Mark Up	T	Nettletontribe	16.10.21
DA013	N	Nettletontribe	20.10.21
DA014	N	Nettletontribe	20.10.21
DA015	N	Nettletontribe	20.10.21
DA016	Q	Nettletontribe	20.10.21
DA016 SIGNAGE	P	Nettletontribe	24.09.21
DA017	Q	Nettletontribe	20.10.21
DA018	P	Nettletontribe	20.10.21
DA018 SIGNAGE	N	Nettletontribe	24/09.21
DA019	P	Nettletontribe	20.10.21
DA020	P	Nettletontribe	20.10.21
DA021	Q	Nettletontribe	20.10.21
DA031	N	Nettletontribe	20.10.21
DA031 SIGNAGE	M	Nettletontribe	24.09.21
DA032	P	Nettletontribe	20.10.21
DA032 SIGNAGE	N	Nettletontribe	24.09.21
DA32 – Material Clarification Mark Up	P	Nettletontribe	16.10.21
DA041	N	Nettletontribe	20.10.21
DA051	H	Nettletontribe	20.10.21
DA070	G	Nettletontribe	20.10.21

Landscape Calculations	Issue 18	Arcadia Landscape Architecture	13 October 2021
Cover Sheet 000	Issue 18	Arcadia Landscape Architecture	October 2021
Landscape Plan - Ground 100	Issue 18	Arcadia Landscape Architecture	October 2021
Softworks Plan – Ground 401	Issue 18	Arcadia Landscape Architecture	October 2021
Softworks Plan – Ground 402	Issue 18	Arcadia Landscape Architecture	October 2021
Softworks Plan – Ground 403	Issue 18	Arcadia Landscape Architecture	October 2021
Softworks Plan – Ground 404	Issue 18	Arcadia Landscape Architecture	October 2021
Softworks Plan – Roof Top 405	Issue 18	Arcadia Landscape Architecture	October 2021
Softworks Plan – Roof Top 406	Issue 18	Arcadia Landscape Architecture	October 2021
LANDSCAPE DETAILS 500 (2 Sheets)	Issue 18	Arcadia Landscape Architecture	October 2021
Landscape Specifications	Issue 18	Arcadia Landscape Architecture	October 2021

Document	Dated
BASIX Certificate No. 1250395M	22 October 2021
DA Acoustic Assessment prepared by Acoustic Logic	27 September 2021
Letter of Offer made by Cedar Pacific	16 September 2021
Letter from Sydney Airport with Controlled Activity Approval	8 April 2021
Wind Assessment Report prepared by MEL Consultants	21 December 2020
Operational Waste Management Plan prepared by Elephants Foot Recycling Solutions	18 December 2020
Green Travel Plan prepared by Transport and Traffic Planning Associates	December 2020
Operational Plan of Management prepared by UniLodge	December 2020
Construction and Demolition Waste Management Plan prepared by Elephants Foot Recycling Solutions	22 November 2020
Detailed (Stage 2) Site Investigation prepared by JK Environmental	30 July 2021
Remediation Action Plan prepared by JK Environmental	4 August 2021

EXCEPT where amended by:

- Council in red on the approved plans; and/or
- Other conditions of this consent; and/or

- the following Section 4.56 “C” plans and supporting documents only in so far as they relate to the modifications highlighted on the Section 4.56 “C” plans and detailed in the Section 4.56 “C” application:

<i>Plan No.</i>	<i>Rev No.</i>	<i>Drawn by</i>	<i>Dated</i>
DA011 Floor level basement	R	Nettletontribe	07.07.22
DA012 Floor level ground	V	Nettletontribe	23.11.22
DA044 Sections	A	Nettletontribe	07.07.22
DA051 GFA calculations	J	Nettletontribe	07.07.22

- **Amend Condition 47b) to read:**

2. d). At least 10 bicycle spaces shall be provided at grade at ground level behind the building line for use by occupants and visitors. Details of the additional bicycle spaces shall be submitted to Council’s Manager of Development Assessment for approval prior to a Construction Certificate being issued for the development.

- **Amend Condition 47b) to read:**

47. b) The stormwater must be discharged (by Gravity) either
 - i. Directly into the underground Drainage System in Anzac Parade via new and/or existing kerb inlet pits subject to the approval of Transport f NSW
 - ii. To a suitably designed infiltration system, (subject to confirmation from a suitably qualified geotechnical/hydraulic engineer that the site is suitable for infiltration in consideration of the flooding and geotechnical characteristics).
 - iii. Directly into Council’s underground drainage system located within the adjacent Council drainage reserve

- **Add the following Development Engineer condition:**

- 132D. The applicant shall meet the full cost to create a 2.5m wide drainage easement in favour of Council over the existing Council culvert in the south-east corner of the property

NOTES

- The terms of the drainage easement are to be to the satisfaction of Council’s Development Engineers
- There shall be no structural elements of the development encroaching into the new drainage easement.
- The easement shall be registered on the title of the property prior to the issuing of an occupation certificate with evidence of registration provided to the satisfaction of Council.

Any enquires on the above matter shall be directed to Council’s Development Engineer on 9093-6881 or the Development Engineering Coordinator on 9093-6924.

- **Add the following Development Engineer operational condition:**

173. Use of the southernmost “short term service space” is not permitted when the accessible carspace is being occupied.

9. Attachments to report:

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