



## SYDNEY EASTERN CITY PLANNING PANEL

### COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSEC-267 – DA/20/2021/D
<b>PROPOSAL</b>	<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 original architectural plans including the basement, ground, and upper floor plans to facilitate minor internal design changes.</p>
<b>ADDRESS</b>	<p>177-197 Anzac Parade, Kensington 2033</p> <p>The development site (3,541m<sup>2</sup>) comprises six lots as follows:</p> <ul style="list-style-type: none"> <li>• 177 Anzac Parade (SP 15366)</li> <li>• 179-181 Anzac Parade (Lot 10 Section 7 DP 4761)</li> <li>• 183-185 Anzac Parade (Lot 11 Section 7 DP 4761)</li> <li>• 187 Anzac Parade (Lot A DP 410791)</li> <li>• 189 Anzac Parade (Lot B DP 410791)</li> <li>• 191-197 Anzac Parade (SP 19239)</li> </ul>
<b>APPLICANT</b>	Taylah Brito (Urbis Pty Ltd) c/o Cedar Pacific and UniLodge
<b>OWNER</b>	Cedar Pacific Pty Ltd
<b>MOD LODGEMENT DATE</b>	8 February 2023
<b>ORIGINAL DA (DETERMINATION DATE)</b>	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).
<b>APPLICATION TYPE</b>	S4.56 Modification Application

<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 2 of Schedule 7 of the SEPP SRD: General Development over \$30million. Clause 2 of Schedule 6 of SEPP Planning Systems 2021: General Development over \$30million.
<b>CIV</b>	\$63,409,745.10 (including GST)
<b>CLAUSE 4.6 REQUESTS</b>	N/A
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policy (State and Regional Development) 2011.</i></li> <li>• <i>State Environmental Planning Policy (Affordable Rental Housing 2009)</i></li> <li>• <i>State Environmental Planning Policy (Planning Systems) 2021.</i></li> <li>• <i>Randwick Local Environmental Plan 2012.</i></li> <li>• <i>Randwick Development Control Plan – Section E6 Kensington and Kingsford Town Centres.</i></li> </ul>
<b>SUBMISSIONS</b>	Nil
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<ul style="list-style-type: none"> <li>• Amended Architectural Plans</li> <li>• Revised Cost Estimate</li> <li>• Updated BASIX certificate</li> </ul>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)</b>	N/A
<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	N/A
<b>SCHEDULED MEETING DATE</b>	20 April 2023
<b>PLAN VERSION/S</b>	Original plan set at lodgement dated 30 January 2023
<b>PREPARED BY</b>	Ferdinando Macri
<b>DATE OF REPORT</b>	4 April, 2023

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## 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 ("D") 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. If the application were 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 current approval relates to 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 comprised 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 compliant FSR of 4.224:1 (14,958sqm) below the 4.8:1 LEP maximum, a height of building (HOB) variation for the lift overrun to RL31.52 or 520mm over the 31m LEP maximum HOB 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 to predominantly alter the internal layout of the approved development, resulting the reduction to 590 boarding rooms, an increase of 331 GFA and minor amendments to façade recesses centrally within the site. The scope of amendments will predominantly retain the approved built form outcome, improve internal amenity for future occupants and assist in reducing the endorsed motorcycle parking shortfall. There are no changes proposed to the approved building height or revisions to assessment compliance matters.

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 Participation Plan. No submissions were received during the notification process. The application was also referred to Council's Development Engineer for comment and/or recommendation, who raised no objection to the proposed modifications.

The development remains substantially the same development, 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 for a 9-storey mixed use and student accommodation building.

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

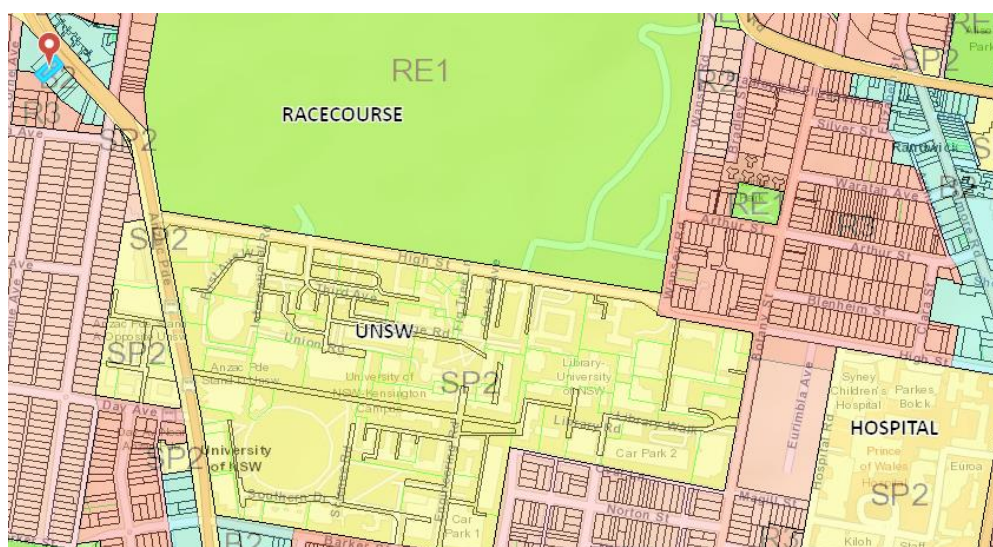
The development site comprises 6 lots covering 177-197 Anzac Parade, Kensington 2033.

The site has an area of 3,541m<sup>2</sup>, 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 the proximity of 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.

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## 3. THE PROPOSAL AND BACKGROUND

### 3.1 The Proposed Modification

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

#### Basement

- Minor increase to courtyard height from RL 19.15 to RL 19.30 (+150mm).
- Internal reconfiguration of common area to relocate student accommodation amenities, remove the art studio and end of trip facilities and provide a yoga studio. The proposed changes increase the habitable GFA within the basement area by 53m<sup>2</sup>.
- Internal reconfiguration of bicycle and motorcycle parking areas, waste and plant facilities.
- Relocation of circulation stairwell.

#### Ground Level

- Internal reconfiguration of reception, access corridors and staff areas.
- Internal reconfiguration of (1x) student accommodation unit with adjoining waste area.
- Conversion of group study rooms to common area.
- Provision of new entrance stair to eastern elevation.
- Northern elevation entrance stair landing lowered from RL 23.70 to RL 23.60 (-100mm).
- Relocation of internal circulation stairwell and deletion of external courtyard stair access.
- New stormwater filter in south-eastern corner of the site.
- Relocation of hydrant booster.
- Amendment of service access, retail unit and substations in north- western corner of the site.

#### Levels 1 to 8

- Internal reconfiguration of student accommodation levels resulting in the net reduction of units from 604 to 590, through the consolidation to twin share rooms, the amendment of circulation cores and the provision of additional study and common living areas on each floor.
- Infill of building recesses resulting in the increased GFA of 331m<sup>2</sup>.
- Façade modulation of curved envelope design and recesses. Amendments to materiality and glazing design.

#### Proposed Changes to Conditions

- **Condition 1** of the development consent is amended to reflect the amended floor plans, elevations and BASIX certificate submitted under the subject modification proposal.
- **Condition 15** of the development consent is revised to reflect the revised cost estimate and associated contribution levy.

- **Condition 16** of the development consent is amended to reflect the revised residential floor area and associated K2K Community infrastructure contribution.
- **Condition 109** of the development consent is updated to reflect the revised residential floor area required to calculate K2K Affordable Housing contribution.

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

**Table 1: Development Data**

<b>Feature</b>	<b>Approved Development</b>	<b>Proposed Modifications</b>	<b>Change</b>
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"> <li>▪ 30.37 metres (top of roof parapet)</li> <li>▪ 31.02 metres (top of balustrade)</li> <li>▪ 31.72 metres (top of lift overrun)</li> </ul>	<ul style="list-style-type: none"> <li>▪ 30.37 metres (top of roof parapet)</li> <li>▪ 31.02 metres (top of balustrade)</li> <li>▪ 31.72 metres (top of lift overrun)</li> </ul>	No Change
No. of Storeys	9 storeys	9 storeys	No change
No. of Student Rooms	604	590	Reduction of 14 rooms
Gross Floor Area/FSR 4:1 permitted 4.8:1 permitted under SEPP ARH.	14,958sqm (4.224:1)	15,289sqm (4.318:1)	An additional 331sqm within the existing basement footprint and Levels 1 to 8 through internal reconfiguration and external façade amendments.
Car Parking Spaces	5 car spaces	5 car spaces	No change
Bicycle Parking	126 bicycle spaces	126 bicycle spaces	No change



Space			
<b>Motorbike Parking Spaces</b>  <b>118 required under SEPP ARH revised due to room reduction</b>	<b>94 motorcycle spaces (27 space shortfall approved by SECPP Modification C)</b>	<b>94 motorcycle spaces (24 space shortfall under subject modification)</b>	<b>Minor improvement</b>
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 through the 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 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 executed and registered on title.

#### Modification Applications

#### DA/20/2021/A

A previous modification application was lodged on 19 November 2021 (DA/20/2021/A) and was also considered by the Panel. This application sought to 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 changes to floor levels of the 9-storey student accommodation building. Amended plans 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 was approved on 13 December 2022.

DA/20/2021/B

This modification application was lodged on 22 June 2022 and sought to delete condition 15A of the consent requiring skylights to be provided to the roof for boarding rooms below. This application was withdrawn on 6 December 2022, with the applicant seeking to submit future documentation to comply with the condition of consent.

DA/20/2021/C

This modification application was lodged on 27 September 2022 to amend the basement envelope and protect Council's stormwater culvert. This application was approved on 13 December 2022.

**Subject Modification Application**

The subject modification application (DA/20/2021/D) was lodged on 8 February 2023. The application was internally referred to Council's Development Engineer for comment and 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
<b>8 February 2023</b>	Modification application lodged.
<b>10 February 2023</b>	Referred to internal departments of Council – Development Engineer.
<b>16 February 2023 – 16 March 2023</b>	Exhibition of the application.
<b>28 February 2023 – 17 March 2023</b>	RFI's issued for amended cost estimate and BASIX certificate.
<b>9 March 2023 - 5 April 2023</b>	Response provided by Applicant to RFI providing amended cost estimate and BASIX certificate.

## 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 internal configuration of the basement and upper floor levels, resulting in the reduction of boarding rooms to 590 and the increase of GFA by 331sqm.

Quantitatively, the proposed reconfiguration of the basement and residential accommodation levels result in minor changes to the approved development, with undiscernible difference of 14 less boarding rooms and a 331sqm increase in overall Gross Floor Area due to the amendment of communal basement areas, the consolidation of smaller boarding rooms, the reduction of plant facilities and the partial infill of building recesses centrally within the site, in a manner that does not alter approved building setbacks. Accordingly, the proposed modification will retain compliance with the FSR maximum and K2K DCP building envelope controls.

The approved built form is predominantly 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 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 Participation Plan. Nil (0) submissions by way of objection to the proposal were received during 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(1)(a)).*

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. During 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.

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 minor internal and external reconfiguration of the development and will not detrimentally alter any compliance matters endorsed in the original proposal.

## 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(1)(a), 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 was provided in support of the amendments to residential accommodation and included in the revisions to Condition 1.	Y
State Environmental Planning Policy (Affordable Rental Housing) 2009  (State Environmental Planning Policy (Housing) 2021)	<p>Division 3 – Boarding Houses</p> <p>30 Standards for boarding houses</p> <p>(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following—</p> <p>...</p> <p>(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."</p> <p>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>.</p>	<p>N, however proposed reduction in boarding rooms will decrease shortfall approved in DA/20/2021/C.</p> <p>N/A</p>
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
LEP	<ul style="list-style-type: none"> <li>• Clause 2.3 – Permissibility and zone objectives</li> <li>• Clause 4.3 – Height of Buildings</li> <li>• Clause 4.4 – Floor Space Ratio</li> <li>• Clause 6.11 – Design Excellence</li> <li>• Clause 6.17 – Community infrastructure height of buildings and floor space at Kensington</li> </ul>	Y, no change to levels of compliance, noting that proposed FSR increase to 4.318:1 will retain compliance with the 4.8:1 site

EPI	Matters for Consideration	Comply (Y/N)
	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	maximum.
DCP	• Randwick Development Control Plan Part E6 - Kensington and Kingsford Town Centres  The proposed modifications do not result in any changes to the approved architectural form except for minor façade amendments to reflect revised internal configurations.	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 modification application is accompanied by a revised BASIX Certificate committing to environmentally sustainable measures and the consent conditions have been amended to incorporate the revised document.

- *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 states 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 the subject modification DA.

The development as modified will remain generally consistent with the provisions of the SEPP ARH and reduce the extent of the approved variation to motorcycle parking

development standard in clause 30(1h) of the SEPP.

- *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.

- *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; maximise 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**

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
Section 4.15(1)(a)(i) – Provisions of any environmental planning instrument	The proposed modifications are predominantly internal or related to minor façade amendments centrally within the site and does not significantly alter the building envelope of 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	The proposed amendment increases the residential floor area and as such the K2K Community Infrastructure Contribution and Affordable Housing Contribution have been amended accordingly.
Section 4.15(1)(a)(iv) – Provisions of the Regulations	The relevant clauses of the Regulations have been satisfied, including the amendment of the contribution levy under condition 15 to reflect the revised cost estimate.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>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.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	Not applicable.

Section 4.15 Consideration'	'Matters for	Comments
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 in the public interest.

### 3.3 Part 5 of the 2021 EP&A Regulation

The subject application was lodged on 8 February 2023. In accordance with the saving provisions under Schedule 6 of the EP&A Regs 2021, the 2000 Regulation continues to apply to the application instead of 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 Council Referrals

The modification application was referred to Development Engineering 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 reviewed the proposed modifications and raised no objection to the proposal with regards to stormwater management, traffic and parking, and waste management. No amendments were required to existing conditions.	Y

### 5.2 Notification and Community Consultation

The modification application was notified in accordance with Council's Community Participation Plan from 16 February 2023 until 16 March 2023. 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.

In response, Council received no submissions.

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## 6. KEY ISSUES

The proposed reduction in student accommodation units to provide larger units and additional communal areas does not result in any amendment of previous assessment considerations and will generally improve the amenity afforded to future occupants when compared with the original scheme. It is noted that the reduction of boarding rooms will also decrease the corresponding demand and shortfall for motorcycle parking pursuant to Clause 30(1)(h) of SEPP ARH, which was approved under DA/20/2021/C.

In addition, the proposed increase to GFA (+331sqm) resulting from internal reconfiguration of the basement and the infill of central recesses and service areas on student accommodation floors will retain compliance with the FSR maximum of 4.8:1 and does not alter compliance with the Kingsford to Kensington Town Centre DCP setback requirements.

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## 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 assessment 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:

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## 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/20/2021/D 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 floor and elevation plans submitted with the modification application, Condition 1 of the development consent is amended to reflect the modification plans and documents listed below.

- **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:

<b>Plan No.</b>	<b>Rev No.</b>	<b>Drawn by</b>	<b>Dated</b>
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

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

### EXCEPT where amended by:

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

<b>Plan No.</b>	<b>Rev No.</b>	<b>Drawn by</b>	<b>Dated</b>
Site – DA002	F	Nettletontribe	22.03.22
Floor Plan – Level 4 DA016	R	Nettletontribe	22.03.22
Floor Plan – Level 5 DA017	R	Nettletontribe	22.03.22
Floor Plan – Level 6 DA018	Q	Nettletontribe	22.03.22
Floor Plan – Level 7 DA019	Q	Nettletontribe	22.03.22
Floor Plan – Level 8 DA020	Q	Nettletontribe	22.03.22

Floor Plan – Roof Plan Comparison DA022	D	Nettletontribe	05.12.22
Elevations – Long DA031	Q	Nettletontribe	05.12.22
Elevations – Long DA032	R	Nettletontribe	05.12.22
Elevations – Short DA033	B	Nettletontribe	05.12.22
Elevations – Short DA034	B	Nettletontribe	05.12.22

**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:

<b>Plan No.</b>	<b>Rev No.</b>	<b>Drawn by</b>	<b>Dated</b>
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

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

<b>Plan No.</b>	<b>Rev No.</b>	<b>Drawn by</b>	<b>Dated</b>
DA011 Basement Plan 1	S	Nettletontribe	30.01.23
DA012 Floor Plan – Ground	W	Nettletontribe	30.01.23
DA013 Floor Plan – Level 1	P	Nettletontribe	30.01.23
DA014 Floor Plan – Level 2	P	Nettletontribe	30.01.23
DA015 Floor Plan – Level 3	P	Nettletontribe	30.01.23
DA016 Floor Plan – Level 4	S	Nettletontribe	30.01.23
DA017 Floor Plan – Level 5	S	Nettletontribe	30.01.23
DA018 Floor Plan – Level 6	R	Nettletontribe	30.01.23
DA019 Floor Plan – Level 7	R	Nettletontribe	30.01.23
DA020 Floor Plan – Level 8	R	Nettletontribe	30.01.23
DA031 Elevations – Long	R	Nettletontribe	30.01.23
DA032 Elevations – Long	S	Nettletontribe	30.01.23
DA033 Elevations – Short	C	Nettletontribe	30.01.23
DA034 Elevations – Short	C	Nettletontribe	30.01.23

<b>Document</b>	<b>Dated</b>
BASIX Certificate No. 1383296M	4 April 2023

- **Amend Condition 15 to read:**

**Kensington and Kingsford Town Centre Section 7.12 Development Contributions**

15. In accordance with the Kensington and Kingsford Town Centre Development Contributions Plan 2019, based on the development cost of ~~\$62,500,000.00~~ **\$63,409,745.10** (incl GST) a s7.12 levy of ~~\$1,562,500.00~~ **\$1,585,243.63** (excl GST) must be paid to Council.



The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6999 or 1300 722 542 for the indexed contribution amount prior to payment.

To calculate the indexed levy, the following formula must be used:

$$IDC = ODC \times CP2/CP1$$

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment

CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.

- **Amend Condition 16 to read:**

**Kensington and Kingsford Town Centre Community Infrastructure Contributions**

16. In accordance Clause 6.17 (Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres) of the RLEP 2012, a monetary community infrastructure contribution (CIC) of ~~\$1,417,400.00~~ **\$1,424,050.00** must be paid to Council, comprising on site works along the Anzac Parade frontage to an estimated value of \$270,000.00 and a monetary contribution of ~~\$1,147,400.00~~ **\$1,154,050.00**.

The CIC is calculated at \$475.00 x per square metre of additional residential floor area above the maximum building height plane allowable under cl 4.3 of the RLEP.

The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development.

- **Amend Condition 109 to read:**

**Kensington and Kingsford Town Centre Affordable Housing Contribution**

109. An affordable housing contribution is required to be paid to Council. The amount of the contribution is calculated in accordance with Clause 6.18 of the RLEP 2012, the Kensington and Kingsford Town Centres Affordable Housing Plan adopted by the Council on 10 December 2019.

Payment of this contribution shall made be prior to the issue of the Occupation Certificate.

The contribution rate is to be indexed twice a year, being the first day of January and July, with reference to the most recently published median strata dwelling price in Randwick City LGA, as detailed in the NSW Government Rent and Sales Report, Table: Sales Price – Greater Metropolitan Region – Strata. Please contact Council on telephone 9093 6999 or 1300 722 542 for the indexed contribution rate prior to payment.

**Note: The calculation will be based on the residential floor area of 14,887m<sup>2</sup> approved in DA/20/2021/D.**

## 9. Attachments to report:

- Nil