

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-285 – MOD/2023/0211
PROPOSAL	Application under Section 4.56 of the <i>Environmental Planning and Assessment Act 1979</i> to modify Land and Environment Court Determination DA/2021/0800 to alter the proposed public domain areas and public domain works on Edith Street, minor changes in floor level to the ground floor of the building fronting The Mews on Site A and internal layout changes and minor external modifications to the buildings on Site B including changes to the basement.
ADDRESS	73 & 67 Mary Street, 50 & 52 Edith Street & 43 Roberts Street ST PETERS Lot 100 in DP 1283113
APPLICANT	Perpetual Corporate Trust Limited
OWNER	Perpetual Corporate Trust Limited
DA LODGEMENT DATE	13/07/2023
APPLICATION TYPE	Section 4.56 – Modification by consent authorities of consents granted by the Court
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: Development that has a capital investment value of more than \$30 million.
CIV	\$137,400,000.00 (including GST)
KEY SEPP/LEP	Biodiversity and Conservation SEPP, SEPP 65, Inner West Local Environmental Plan 2022
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	Four (4)
DOCUMENTS SUBMITTED FOR CONSIDERATION	Plans, Arborist Reports/Statements, Contamination Statement
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	No

SCHEDULED MEETING DATE	5 March 2024
PLAN VERSION	24 May 2023
PREPARED BY	Ferdinand Dickel
DATE OF REPORT	20 February 2024

EXECUTIVE SUMMARY

Precinct 75 (the subject site) is located within the suburb of St Peters, approximately 5km southwest of the Sydney CBD, and 1.5km to the north of Sydney Airport. The site is approximately 15,247m² in size and, currently, supports 11 buildings, between 1 – 3 storeys in height which are used for light industrial and commercial uses, and five residential detached dwellings.

DA/2021/0800 was approved by the Land and Environment Court on 14 March 2023. The description of the approved DA is as follows:

site preparation, demolition, excavation, remediation works, construction of a mixed-use development comprising commercial/light industrial, build-to-rent residential housing and community facilities involving the construction of two levels of basement car parking, alterations and additions to existing buildings, construction of three new buildings, creation of new publicly accessible open space, new pedestrian connection to Roberts Street and a north-south shared zone between Mary and Edith Street.

The subject (Section 4.56) application to modify the development consent was lodged on 13 July 2023. The development, as approved and proposed to be modified, is for a 'mixed use development, comprising of commercial premises, light industry, community facilities and shop top housing (build-to-rent), which is permitted under the MU1 zoning of the site. Use of the site for residential flat buildings (build-to-rent housing) is permissible by virtue of Clause 2.5 of the *Inner West Local Environmental Plan 2022* as an additional permitted use.

The proposal seeks consent to modify DA/2021/0800 to alter the proposed public domain areas and public domain works on Edith Street, minor changes in floor level to the ground floor of the building fronting The Mews on Site A and internal layout changes and minor external modifications to the buildings on Site B including changes to the basement.

The site was historically used, by Taubmans, for manufacturing of paint, varnish manufacturing and drum washing. Historical data and documentation indicate the presence of chemical and chlorine sections in the factory and various Underground Storage Tanks.

The proposed modifications, in principle, do not result in significant changes to the approved development and there are generally no substantial concerns with the proposed modifications. However, it is sought to remove six (6) additional trees from within the public domain, along the Edith Street frontage, which is considered unsupportable as outlined in the body of this report.

The application was placed on public exhibition from 2 August 2023 until 1 September 2023 and four (4) submissions were received.

The application is referred to the Sydney Eastern City Planning Panel ('the Panel') as the development is *regionally significant development* pursuant to Section 2.19(1) and Clause 2 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the

development has a capital investment value of more than \$30 million. Accordingly, the Sydney Eastern City Planning Panel is the consent authority for the application.

A preliminary briefing was held with the Chair of the Panel on 26 September 2023 and a briefing with all Panel members was held on 28 November 2023 where key issues were discussed, including tree management and contamination. The key issues still associated with the proposal are:

Tree Management – Additional removal of trees

Following consideration of the matters for consideration under Section 4.56 and Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, the provisions of the relevant State Environmental Planning Policies, and the applicable Development Control Plan, the proposal is considered supportable, subject to recommended conditions included in Attachment A.

Subject to recommended conditions, the proposed modifications will not result in any adverse environmental impacts and is considered to be in the public interest.

It is recommended that, subject to amended conditions, the application to modify the DA consent is approved.

1. THE SITE AND LOCALITY

1.1 The Site

- The subject site (Precinct 75) has recently been consolidated from 6 separate allotments into a single lot.
- The site is approximately 15,247m² in size, and is irregular in shape.
- The site slopes approximately 7 metres downward from the northern end of its frontage at Edith Street to 67 Mary Street.
- Precinct 75, currently consists of 11 buildings, between 1 – 3 storeys in height which are used for light industrial and commercial uses, and five residential detached dwellings.
- Pedestrian and vehicular access to Precinct 75 is provided from Mary Street and Edith Street.
- The site was historically used, by Taubmans, for manufacturing of paint, varnish manufacturing and drum washing.
- Historical data and documentation submitted with the DA indicates the presence of chemical and chlorine sections in the factory and various Underground Storage Tanks.
- After being used by Taubmans, as outlined in the Site Audit report submitted with the DA, the site was used “for a range of uses such as motor manufactures / repairs, furniture manufacturing, wood working, yarn and cloth manufacturing, paper lamination, styrene moulding, sign writing, motor vehicle detailing, storage of metal spray equipment, forklift repair and servicing, manufacturing of fibre glass products, welding and wrought iron production, neon sign manufacturing and jewellery and casting manufacturing.

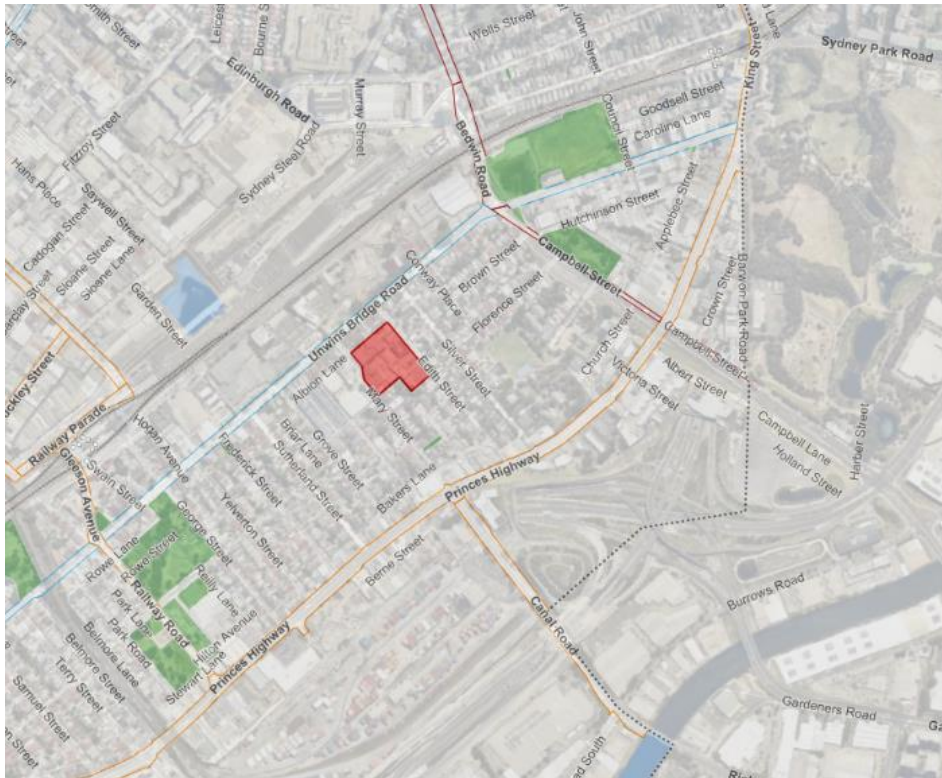


Figure 1: Location map (subject site highlighted in read)



Figure 2: Aerial (subject site highlighted in read)

1.2 The Locality

- The subject site (Precinct 75) is located within the suburb of St Peters.
- It is approximately 5km southwest of the Sydney CBD, and 1.5km to the north of Sydney Airport.
- Surrounding land uses consist of one and two storey dwellings houses and two-storey light industrial warehouse buildings across Mary Street.
- Sydney Park is located approximately 800 metres to the east.
- Marrickville Metro Shopping Centre is located approximately 600 metres to the north.
- The site is well serviced by public transport, about 600m away from Sydenham railway station and about 950m away from St Peters railway station.
- The site is also in close proximity to the newly opened M8 Motorway tunnel corridor.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent to modify Land and Environment Court Determination DA/2021/0800 to alter the proposed public domain areas and public domain works on Edith Street, minor changes in floor level to the ground floor of the building fronting The Mews on Site A and internal layout changes and minor external modifications to the buildings on Site B including changes to the basement.

Specifically, as outlined in the submitted Statement of Environmental Effects, the proposal involves:

Public Domain and Landscape

- Changes to ground levels within the public domain internal to the site including Makers Way, The Grove, The Commons and The Mews.
- Upgrades to Edith Street public domain including removal of trees 31, 32, 33, 34, 36, 37 and 39 (street trees) and replacement with more appropriate planting and new footpath.
- New off-lead dog area and pedestrian bridge above the overland flow area proposed within The Garden.
- Removal and replacement of 1x street-tree on Mary Street.
- Changes to pedestrian ramp and landscape planer configuration to the south-east of Building C, adjacent to 71 Mary Street.

Site A Buildings (non-residential)

- Changes to finished floor levels on Ground Level tenancies fronting The Mews.

Site B Buildings (residential)

- Material BKF3 added to schedule of materials and finishes.
- Material BKF 6 added to schedule of materials and finishes.
- Glazing system added schedule of materials and finishes.

Building 8

- Minor changes to Building 8 entrance on south eastern façade (Ground Level).
- Minor reconfiguration of Building 8 Ground Level BTR residential amenity spaces and services.

- Service riser included at Building 8 Level 5 pool deck.
- Awning added to Building 8 Level 5 outdoor dining area.
- Minor change to Building 8 Level 4 resident's gym layout and balcony interface.

Building A

- Minor changes to Building A adaptable apartment layout.
- Minor change to façade detailing of Building A Edith Street façade.
- Minor change to the glazing extent of operable windows on south-western façade of Building A.
- Reconfiguration of rooftop service risers.
- Building A rooftop water tank increased RL from 30.180 to 30.780.

Building B

- Reconfiguration of rooftop service risers.
- Minor internal apartment changes to Building B on Ground Level and Level 1.
- Minor change to façade detailing of Building B north eastern façade.
- Minor changes to the extent of glazing and operable windows on Building B north-eastern façade.
- Minor changes to extent of glazing and operable windows on south west façade of Building B.

Building C

- Extension of rooftop stair core.
- Minor reconfiguration of Building C entrance lobby and core.
- Building C core rationalised and apartments 11 and 1 replanned.
- Building C notch on north-eastern façade brought out (internal corridor increased).
- Additional structural column included at north western corner of Building C.
- Rationalisation of balconies on Building C south western façade.

Basement

- Minor internal changes to the basement layout including minor finished floor level changes, reconfiguration of loading/waste/storage/bicycle/lift access, inclusion of additional areas for building servicing.
- Rationalisation of basement footprint (pushing out notch to Edith Street boundary) and associated layout changes.

Other

- Increase in height of acoustic fence to the neighbours along Unwins Bridge Road within The Mews.
- Changes to proposed GFA.
- Relocation of grease arrestor.
- Minor changes to internal finished floor level of ground level tenancies.

The key development data is provided in **Table 1**.

Table 1: Development Data

Control	Approved	Proposal
Site area	15,247m2	
GFA	Non-residential: 16,011m2 (51%) Residential: 15,274m2 (49%) Total: 31,285m2	Non-residential: 15,871m2 (50.55%) Residential: 15,525m2 (49.44%) GFA Total: 31,396m2
FSR	2.05:1	2.06:1
No of apartments	206	206
Max Height	29 metres	29 metres
Deep soil area	1,101sqm (7.2% of site)	1,104sqm (7.2% of site)
Car Parking spaces	286	289

2.2 Background

The section 4.56 application was lodged on **13 July 2023**. A chronology of the application since lodgement is outlined in **Table 2**.

Table 2: Chronology of the application

Date	Event
2 August 2023	Exhibition of the application
21 July 2023	DA referred to external agencies
21 August 2023	Community Consultation Session held via MS Teams
26 September 2023	Preliminary Panel briefing
19 October 2023	Request for Information from Council to applicant via email
9 February 2024	The applicant emailed additional information to Council, which were subsequently uploaded to the NSW Planning Portal on 12 February 2024.

2.3 Site History

- In July 2020, Precinct 75 site was rezoned from IN2 Light Industrial to B4 Mixed Use.
- In November 2020, the Marrickville Development Control Plan 2011 was amended to establish site-specific controls for Precinct 75.
- Two development applications (DA/2021/0799 and DA/2021/0800 (proposed to be modified)), associated with regionally significant mixed use development were lodged on 3 September and 10 September 2021.
- DA/2021/0799 (Early Works DA) involves “demolition of specific buildings and specific works, removal of trees, site establishment of Stage 1 of the overall development, service and access works to an existing lane, and enabling works to allow some buildings to be continued to be used during construction”.
- DA/2021/0800 (Main Works DA) involves “specified site preparation, demolition, excavation and remediation works and staged redevelopment of the site into a mixed-use precinct comprising light industrial/commercial uses, build-to-rent housing (under Division 6A of the applicable, albeit now repealed, State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)) and community floor space. The specific works include new construction and/or refurbishment work on buildings, basement parking and open space areas, vehicular and pedestrian access paths, ancillary acoustic and utility works”.
- A Class 1 Appeal for deemed refusal of the DAs was made on 21 December 2021. The appeal was upheld, and a deferred commencement consent was granted for DA/2021/0800 on 14 March 2023. The appeal for DA/2021/0799 was also upheld and a consent granted on the same day.
- An operative consent was issued on 5 June 2023 for DA/2021/0800.
- On 29 September 2023, a subsequent Section 4.56 application was lodged to modify DA/2021/0800 to delete the tanking of the basement and amend the design to enable a drained basement. That application is currently under assessment.

3. STATUTORY CONSIDERATIONS

Section 4.56 of the *Environmental Planning and Assessment Act 1979 No 203* ('EP&A Act'). allows a consent authority to modify a development consent granted by the Court if:

- (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), and*
- (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, 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, and*
- (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.*

In considering the above:

- The proposed development is substantially the same development of which approval was granted noting:
 - The proposed modifications consist of minor design amendments and do not result in significant departures from the approved development.
 - Some of the proposed modifications are a direct response to conditions imposed on the DA consent.
 - The proposed modifications, subject to recommended conditions, will not result in adverse environmental impacts.
- The application was notified in accordance with Council's 'Community Engagement Strategy' to surrounding properties, and Council notified, or made attempts to notify, each person who made a submission to the development application proposed to be modified.
- Submissions received have been considered in the assessment as outlined in detail elsewhere in this report.

In accordance with Section 4.56(1A) of the EP&A Act:

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.

An agreement under s 34(3) of the *Land and Environment Court Act 1979* was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. The development, as proposed to be modified and outlined in detail below, is considered acceptable.

Further,

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.

These matters as are of relevance to the development application include the following:

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

- (h) any submissions made in accordance with this Act or the regulations,
 (i) the public interest.

These matters are further considered below.

It is noted that the proposal is considered to require concurrence/referral (s4.13), which are considered further in this report.

3.1 Environmental Planning Instruments, development control plan and the regulations

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

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

The following Environmental Planning Instruments are relevant to this application

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *Inner West Local Environmental Plan 2022*

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

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas	N
BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted.	Y
SEPP 65	<ul style="list-style-type: none"> • Clause 30(2) - Design Quality Principles - The proposal is consistent to the design quality principles. While the proposal is contrary to the ADG requirements for balconies for some of the residential units, this variation is considered acceptable as outlined elsewhere in this report. 	N
State Environmental Planning Policy	Chapter 2: State and Regional Development	Y

(Planning Systems) 2021	<ul style="list-style-type: none"> Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6. 	
SEPP (Resilience & Hazards)	<p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> Section 4.6 - Contamination and remediation has been considered in the Contamination Statement and the proposal is satisfactory subject to conditions imposed on the DA consent remaining in force. 	Y
<i>Inner West Local Environmental Plan 2022</i>	<ul style="list-style-type: none"> Clause 1.2 – Aims of Plan 	Y
	<ul style="list-style-type: none"> Clause 2.3 – Permissibility and zone objectives 	Y
	<ul style="list-style-type: none"> Clause 2.7 – Demolition 	Y
	<ul style="list-style-type: none"> Clause 4.3 – Height of buildings 	Y
	<ul style="list-style-type: none"> Clause 4.4 – Floor Space Ratio 	Y
	<ul style="list-style-type: none"> Clause 4.5 – Calculation of floor space ratio and site area 	Y
	<ul style="list-style-type: none"> Clause 6.1 – Acid sulfate soils 	Y
	<ul style="list-style-type: none"> Clause 6.2 – Earthworks 	Y
	<ul style="list-style-type: none"> Clause 6.3 – Stormwater management 	Y
	<ul style="list-style-type: none"> Clause 6.7 – Airspace operations 	Y
	<ul style="list-style-type: none"> Clause 6.8 – Development in areas subject to aircraft noise 	Y
	<ul style="list-style-type: none"> Clause 6.9 – Design excellence 	Y
	<ul style="list-style-type: none"> Clause 6.13 – Residential accommodation in Zones E1, E2 and MU1 	Y
	<ul style="list-style-type: none"> Clause 6.27 – 50–52 Edith Street, 67 and 73–83 Mary Street and 43 Roberts Street, St Peters 	Y
	<ul style="list-style-type: none"> Schedule 1 – Additional permitted uses (Clause 43) – Use of certain land at 50–52 Edith Street, 67 and 73–83 Mary Street and 43 Roberts Street, St Peters 	Y
Marrickville Development Control Plan 2011	Part 2.1 – Urban Design	Y
	Part 2.5 – Equity of Access and Mobility	Y
	Part 2.6 – Acoustic and Visual Privacy	Y
	Part 2.7 – Solar Access and Overshadowing	Y
	Part 2.10 – Parking	Y
	Part 2.20 – Tree Management	N
	Part 2.21 – Site Facilities and Waste Management	Y
	Part 2.24 – Contamination	Y

	Part 5 – Commercial and Mixed Use Development	Y
	Part 9.48 – Mary, Robert and Edith Street	Y

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2: Vegetation in non-rural areas

The provisions of Chapter 2 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* gives effect to the local tree preservation provisions of Marrickville Development Control Plan 2011 with the aim to

- (a) *to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) *to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

The application seeks additional removal of vegetation from Council land. The additional tree removal of trees along Edith Street is considered to be inconsistent with the aims of this SEPP, and the objectives and controls within Part 2.20 of the MDCP 2011, which is discussed in detail elsewhere in this report.

Given these non-compliances, the proposal is not considered to be consistent with the aims of this SEPP, nor the objectives and controls within Part 2.20 of the Marrickville Development Control Plan 2011, and it is recommended that tree protection and retention conditions imposed on the DA consent remain in force, which include that the trees proposed for removal are retained.

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

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

The application is accompanied by BASIX Certificate No.1192547M_09, prepared by Stantec Australia, dated 26 May 2023, committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

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

Condition 2(h) of the consent reads as follows:

Building C is to be amended to provide balcony layouts for the following apartments which have the minimum balcony areas and depths set out in the table to ADG 4E-1 Design Criteria 1: Apartments BC-2.06, BC-2.08, BC-3.04, BC-3.07, BC 3.09, BC-

4.04, BC-4.06, BC-4.08, BC-4.09, BC-5.04, BC-5.07, BC-5.09, BC-6.04, BC-6.06, BC-6.08, BC-6.09, BC-7.04, BC-7.07, and BC-7.09.

The majority of balconies to Building C have been amended to comply with the design criteria set out in the table within Objective 4E-1 of the ADG, and the condition of consent. However, the balconies to apartments 3.04, 4.04, 4.05, 5.04, 5.05, 6.04, 6.05, 7.04, and 7.05 do not comply with the guidance provided by the ADG in terms of minimum depth, which is 2 metres. This is considered acceptable in this instance noting that the non-compliances are minor (see table below). In addition, the splayed balcony edges, which are the reason for the non-compliance, reduce overshadowing impacts beyond the site. Further, out of 77 apartments within this building, 88% (or 68) of the apartments have compliant balconies.

Unit No.	Balcony size (in m ²)	Complies (Y/N)	Note
3.04	9	Y	While complying with the minimum required area prescribed under the ADG, some areas of the balcony do not have a minimum depth of 2 metres due to the splayed edges.
4.04	8	Y	
5.04	9	Y	
6.04	9	Y	
7.04	9	Y	
4.05	12	Y	8m ² when considering areas with minimum depth of 2 metres.
5.05	12	Y	Minimum depth is equal or greater than 2 metres.
6.05	12	Y	
7.05	12	Y	

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

Chapter 2: State and Regional Development

The proposal is regionally significant development pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is development that has a capital investment value of more than \$30 million. Accordingly, the Sydney Eastern City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021 ('the Resilience and Hazards SEPP')* were considered in the assessment of the development application and, subject to conditions imposed on the DA consent remaining in force, the site will be suitable for the proposed development and the proposal is consistent with this SEPP.

The subject application seeks consent to reduce the finished floor level of south-western portion of the basement 2 level by 770mm, and to increase the basement footprint towards Edith Street at the north-eastern corner. The additional excavation is minor and Council's Environmental Health Officer raised no concerns, noting that existing conditions of consent,

especially Condition 14 ('Review of Remedial Works Plan') are adequate to address any implications of the proposed additional excavation.

Inner West Local Environmental Plan 2022

The relevant local environmental plan applying to the site is the *Inner West Local Environmental Plan 2022* ('the LEP'). The aims of the LEP include

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles,*
- (b) to conserve and maintain the natural, built and cultural heritage of Inner West,*
- (c) to reduce community risk from and improve resilience to urban and natural hazards,*
- (d) to encourage walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes,*
- (e) to facilitate economic growth and employment opportunities within Inner West,*
- (f) to encourage diversity in housing to meet the needs of, and enhance amenity for, Inner West residents,*
- (g) to create a high quality urban place through the application of design excellence in all elements of the built environment and public domain,*
- (h) to prevent adverse social, economic and environmental impacts on the local character of Inner West,*
- (i) to prevent adverse social, economic and environmental impacts, including cumulative impacts.*

Subject to the retention of the trees discussed above, the modified proposal is consistent with these aims as the proposal:

- Promotes the use and development of land for arts and cultural activity,
- Demonstrates efficient and sustainable use of energy and resources,
- Will have no adverse impact to the natural, built and cultural heritage of the Inner West,
- Reduces community risk from urban and natural hazards,
- Increase density around surrounding transport nodes,
- Contributes to economic growth and provides employment opportunities within the Inner West,
- Provides housing to the community
- Enhances amenity for Inner West residents,
- Provides a high quality urban place, and
- Will not result in adverse social, economic and, subject to recommended conditions, environmental impacts on Inner West.

Zoning and Permissibility (Part 2)

The site is located within the MU1 Zone (Mixed Use Direction) pursuant to Clause 2.3 of the Inner West Local Environmental Plan. The proposal is permissible with consent in the zone (Figure 3) and consistent with the zone objectives.

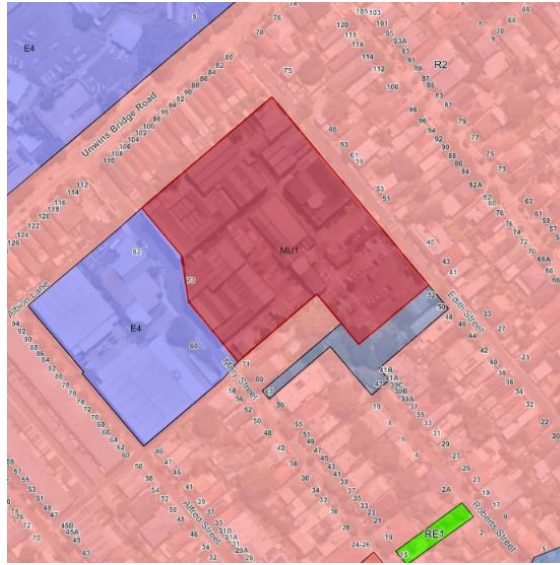


Figure 3: Zoning map (subject site highlighted in dark red)

No change is proposed to the approved uses on the site.

General Controls and Development Standards (Part 4 and 6)

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

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	29 metres	29 metres	Yes
FSR (CI 4.4(2))	2.15:1 (31,781m ²)	2.06:1 (31,396m ²)	Yes
Acid sulphate soils (CI 6.1)	Class 5	No works proposed that are likely to lower the watertable below 1m AHD and no works proposed below 5m AHD.	Yes
Earthworks (CI 6.2)	To ensure earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	The additional earthworks are minor and will not result in any adverse impacts subject to conditions imposed on the DA consent.	Yes

Stormwater Management (CI 6.3)	To minimise the impacts of stormwater	The proposed modifications will not result in additional impacts, subject to compliance with conditions imposed on the DA consent.	Yes
Airspace Operations (CI 6.7)	To protect airspace around airports.	The proposed modifications will not result in an increase in height that would affect the airspace.	Yes
Development in areas subject to aircraft noise (CI 6.8)	To assist in minimising the impact of aircraft noise To ensure land use and development do not hinder or have adverse impacts on the operation of the airport.	The proposed modifications have no ramifications and, subject to compliance with conditions imposed on the DA consent, the proposal is consistent with this clause.	Yes
Design Excellence (CI 6.9)	To ensure that development exhibits the highest standard of architectural and urban design.	The proposed modifications are minor and will not result in significant changes to the approved design. Council's Architectural Excellence and Design Review Panel raised no objections.	Yes
Residential accommodation in Zones E1, E2 and MU1 (CI 6.13)	Development is: <ul style="list-style-type: none"> • Is mixed use, • Will have an active street frontage, and • Is compatible with the desired character of the area. 	The proposed modifications will have no impact on the approved mix of uses and street activation, and the development remains compatible with the desired character of the area.	Yes
50–52 Edith Street, 67 and 73–83 Mary Street and 43 Roberts Street, St Peters (CI 6.27)	The development is consistent with this clause as more than 50% of the proposed floorspace is for non-residential uses and the proposal remains consistent With the site-specific DCP prepared for the site.		Yes

The proposal is considered to be generally consistent with the LEP.

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

The following Development Control Plan is relevant to this application:

- *Marrickville Development Control Plan 2011* ('the DCP')

The application has been assessed and the following provides a summary of the relevant provisions of the DCP.

Part of MDCP 2011	Proposal	Compliance
Part 2.1 – Urban Design	The proposed modifications to not result in substantial changes to the approved design and the development remains consistent with the relevant design principles.	Y
Part 2.5 – Equity of Access and Mobility	The proposed modification will improve wayfinding and accessibility.	Y
Part 2.6 – Acoustic and Visual Privacy	The proposal will not result in additional overlooking opportunities and conditions imposed on the DA consent adequately manage noise impacts from the development.	Y
Part 2.7 – Solar Access and Overshadowing	<p>Areas of public open space within the site (The Commons and The Gardens) continue to receive the required amount of solar access stipulated in the DCP, which is 2 hours between 9am and 3pm during the winter solstice to 50% of the areas.</p> <p>Additional overshadowing to surrounding properties is negligible and only caused by the new service risers to Building B.</p> <p>Additional overshadowing caused by the proposed awning to Building 8 will not result in adverse overshadowing; units within Building C will still receive ADG compliant solar access during mid-winter.</p>	Y
Part 2.10 – Parking	The proposal seeks to provide additional three car parking spaces within the basement; no change is proposed for motorcycle and bicycle parking spaces. Notwithstanding this, the expansion of the basement is not supported as result of the impacts to the trees on Edith Street, as such, the originally approved basement footprint is recommended to be retained	Y
Part 2.20 – Tree Management	See discussion below this table	N
Part 2.21 – Site Facilities and Waste Management	<p>A revised 'Operational Waste Management Plan' has been submitted with the application.</p> <p>Subject to conditions imposed on the DA consent, the proposal will remain compliant with this part of the DCP.</p>	Y
Part 2.24 – Contamination	See SEPP discussion above	Y

Part of MDCP 2011	Proposal	Compliance
Part 5 – Commercial and Mixed Use Development	The proposed modifications are minor and will not change compliance with regard to the controls and objectives of this part.	Y
Part 9.48 – Mary, Robert and Edith Street	<p>Consent is sought to amend the design of public open spaces without changing the location of these spaces.</p> <p>The proposal provides additional parking that is in excess of the DCP controls.</p> <p>External modifications to the approved buildings are minor and will not change compliance with building design nor built form controls.</p>	Y

Part 2.20 – Tree Management

As outlined elsewhere in this report, it is sought to remove an additional six (6) trees along the Edith Street frontage, which are conditioned to be retained and protected. The removal of the six (6) trees along the Edith Street frontage is inconsistent with the following controls within Part 2.20 of the DCP:

C13 All development proposals must be designed to maintain or improve the urban forest values of the site by minimising the impact on tree/s and planting replacement tree/s for tree/s that are proposed for removal. This requirement applies to Council owned trees as well as trees on private or other property and adjoining land.

C14 The design of buildings or alterations and additions to buildings must provide sufficient distance from existing trees (whether on the site or on adjoining land), in accordance with AS4970-Protection of trees on development sites (AS4970), to ensure the tree/s' practical retention. C14 The design of buildings or alterations and additions to buildings must provide sufficient distance from existing trees (whether on the site or on adjoining land), in accordance with AS4970-Protection of trees on development sites (AS4970), to ensure the tree/s' practical retention.

Council's Urban Forest Advisor and Arborist has reviewed the proposal and those comments are summarised as follows:

- No Arboricultural advice has been provided to justify the removal of the street trees (31, 32, 34, 36, 37 and 39) located on the Edith Street frontage.
- While the submitted documentation makes a number of assertions that the trees pose a risk to the general public and cars, no arboricultural evidence has been provided to substantiate this claim.
- The submitted information states that the above-mentioned trees need to be removed to facilitate improvements to the public domain such as a footpath, kerb and gutter renewal as well as road resurfacing, and that the trees have degraded the footpath in such a way that it is non-compliant and that they are trip hazards. However, if this was the case, and if the trees need to be removed to facilitate upgrade works, it is unclear why trees 35 and 38 are proposed to be retained as the proposed works will also impact them.

- While it is acknowledged that Condition 56 of the DA consent requires improvements to be made to the street, insufficient information has been submitted, demonstrating that the trees need to be removed to comply with this condition. In this regard, it is noted that Council's Civil Maintenance Team recently removed and reinstated the footpath and kerb and gutter without removing the trees. As such, the recent renewal works contradict those statements. Therefore, it is considered that the trees can be successfully retained whilst undertaking upgrade works to the public domain.
- The applicant states that the removal and replacement of the said trees with *Fraxinus griffithii* (Evergreen Ash) will provide a superior outcome for Edith Street. While this may be possible, it will most likely take 10 - 20 years before new trees provide the same level of amenity that the existing trees currently provide (if they survive).
- It is noted that the applicant has referenced a number of sections of Council's Street Tree Master Plan, these are largely irrelevant as this is a consideration for replacement planting where there are none, or trees were removed for operational requirements.
- Given the above, the application to remove the street trees along the Edith Street frontage is not supported at this time.
- With regard to the proposed replacement of the street tree identified as 40B, this is not considered to be required as Council recently planted new street trees in this area.
- With regard to the street tree identified as 1A on the Mary Street frontage, it is noted that this tree no longer exists and, hence, no objection is raised (a new tree in this location is identified on the tree planting schedule).

As a result of the above, the removal of the six (6) trees is not considered to be consistent with the following objectives within Part 2.20 of the DCP:

- O3 – As the proposal does not protect healthy and significant trees within the public domain and, hence, the development does not ensure that trees protected under this DCP (and under Chapter 2 of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*) have the opportunity to grow.
- O5 – As the proposed tree removal does not maintain the amenity of the Inner West Local Government Area through the preservation of appropriate trees and vegetation.

As such, it is recommended that existing tree protection and tree retention conditions imposed on the DA consent remain in force.

Note: While not stated in the submitted documentation, the applicant has advised that the tree removal is required to accommodate the proposed extension of the basement footprint towards Edith Street as this part of the basement is within the tree protection zone of these trees. Given that it is recommended to retain these trees, it is also recommended to delete the extension of the basement via condition.

The applicant also seeks the deletion of the following conditions, stating that the "Landscape DA Package provided...has been updated to reflect the requirements of Condition 2(a)(i)-(iii)":

2. Design Change Prior to the issue of the first Construction Certificate for the relevant phase (as described in conditions 7 and 8), the following details are to be submitted to and approved by the General Manager of Council and the approved plans are to be submitted to the Certifying Authority with the relevant construction certificate:

- a) An amended/updated version of the approved Landscape DA package prepared by Arcadia dated October 2022 showing:*
 - i. retention of Tree 43 and Tree 33 to be removed;*

- ii. *tree planting within The Grove to consist of 40% deciduous tree species with Lagerstroemia Indica, Crepe Myrtle preferred. The applicant must demonstrate that the nominated tree species can be accommodated in the planter beds and approved landscaped area;*
- iii. *the replacement of three (3) Blueberry Ash trees identified with a blue star in the below image with a deciduous Pyrus calleryana 'Capital' species; and*

With regard to condition 2(a)(i), no objections are raised as tree 33 has already been removed as it was dead, and Council's Arborist was supportive of removing tree 43 during the initial DA assessment.

Deletion of Condition 2(a)(ii) and 2(a)(iii) is supportable as the proposed tree planting schedule within The Grove now consists of 40% deciduous trees (*Lagerstroemia indica* 'Sioux' - Crepe Myrtle) and the planting schedule has been amended in accordance with condition 2(a)(iii).

(c) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- If demolition of a building proposed - provisions of AS 2601;

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are relevant to the proposal.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in conditions imposed on the DA consent.

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

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

Overall, subject to recommended conditions, the proposed modifications will not result in any, or substantial, changes with regard to its general context or setting. Further, the proposal will not result in additional impacts to traffic and parking and access to utilities.

Subject to conditions imposed on the DA consent, which will remain in force, the site will be remediated to be suitable for the proposed uses and the development will not result in undue amenity impacts to existing and future residents, workers and visitors.

Subject to tree protection and retention conditions, imposed on the DA consent, remaining in force, the proposal will not result in changes to the tree canopy.

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

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

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed modifications, and this has been demonstrated in the assessment of the application.

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

These submissions are considered in Section 5 of this report.

3.5 Section 4.15(1)(e) - Public interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal is in the public interest as it provides improvements to Precinct 75 and, subject to recommended conditions, the proposal will not result in adverse impacts to the environment.

The proposal is not contrary to the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

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

There are no issues arising from these referral requirements; conditions imposed on the DA consent will remain in force.

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Water NSW	<i>Water Management Act 2000</i> s90(2) water management work approval	Concurrence granted, subject to "The General Terms of Approval (IDAS1145000) issued on 25 August 2022, which were imposed on the DA consent.	Y
Referral/Consultation Agencies			
Water NSW	<i>Water Management Act 2000</i> s90(2) water management work approval	Concurrence granted, subject to "The General Terms of Approval (IDAS1145000) issued on 25 August 2022, which were imposed on the DA consent.	Y

4.2 Council Officer Referrals

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

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.	Y (conditions)
Building	Council's Building Surveyor reviewed the submitted information and advised that the proposed modifications would not negatively impact the ability to comply with the requirements of the NCC.	Y
Health	Council's Environmental Health Officer reviewed the submitted information and considered that there were no objections, given conditions imposed on the DA consent adequately manage contamination and amenity impacts.	Y
Waste	Council's Residential and Commercial waste Officers reviewed the submitted information and are generally supportive of the proposed modifications, subject to conditions imposed on the DA consent.	Y
Architectural Excellence and Design Review Panel (The Panel)	The Panel is generally supportive of the proposed modifications, including the non-compliance with the non-compliance with the prescribed ADG balcony sizes.	Y
Urban Forest	<p>As outlined elsewhere in this report, Council's Urban Forest Officer/Arborist has reviewed the submitted information, including the Arborist Reports, and does not support the removal of the trees fronting Edith Street to accommodate the extension of the basement footprint.</p> <p><u>Outcome:</u> Satisfactory, subject to conditions imposed on the DA consent remaining in force, particularly conditions relating to tree retention and protection.</p>	Yes (conditions)

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with Council's Community Engagement Strategy from 2 August 2023 until 1 September 2023. The notification included the following:

- Signs placed on the site;
- 348 notification letters sent to adjoining and adjacent properties, and persons who made a submission to the DA; and
- Notification on the Council's website.

The Council received a total of four (4) unique submissions, comprising four (4) objections; no submissions in favour of the proposal were received. The issues raised in these submissions are considered in Table 7.

Table 7: Community Submissions

Issue	No of submissions	Council Comments
Height of Acoustic Fence between Precinct 75 and no. 84 Unwins Bridge Road.	1	The submitted plans and elevations are consistent with the court approved plans with regard to the height of the "Trendwall" between Precinct 75 and no. 84 Unwins Bridge Road.
Increased traffic and parking demand	1	No intensification of the approved development is proposed and, as such, there will be no change to traffic generation and parking.
Increased noise and pollution	1	No intensification of the approved development is proposed, and conditions imposed on the DA consent will remain in force to ensure that the development will not result in undue amenity impacts.
Increased potential for crime and safety issues for residents and pets	1	No intensification of the approved development is proposed and the proposal, as approved and proposed to be modified includes Crime Prevention Through Environmental Design (CPTED) principles.
Impact on trees and reduction of trees and greenery	2	As outlined elsewhere in this report, the additional tree removal is not considered supportable and, subject to tree protection and retention conditions imposed on the DA consent remaining in force, the proposal will not reduce canopy cover nor the amount of existing and proposed trees.
Revised drawings to be submitted prior to CC (as outlined in condition 2 of the DA consent) that have to be approved by Council's General Manager	1	<p>It is only proposed to delete condition 2(a)(i)-(iii); other matters to be addressed in this condition are not subject of this application, which will need to be done prior to CC.</p> <p>As outlined above, the amended landscape plans are consistent with 2(a)(i)-(iii) and, as such, deletion is considered supportable.</p>

5. CONCLUSION

This Section 4.56 application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

Subject to retention of the six (6) trees fronting Edith Street, the proposed modifications will not result in undue impacts to the locality, amenity and environment and the site is suitable for the proposed modifications.

It is considered that the issues regarding tree removal have been resolved satisfactorily through recommended draft conditions at **Attachment A**.

6. RECOMMENDATION

That the Section 4.56 application (MOD/2023/0211) to modify Land and Environment Court Determination DA/2021/0800 to alter the proposed public domain areas and public domain works on Edith Street, minor changes in floor level to the ground floor of the building fronting The Mews on Site A and internal layout changes and minor external modifications to the buildings on Site B including changes to the basement at 73 & 67 Mary Street, 50 & 52 Edith Street & 43 Roberts Street, ST PETERS, be APPROVED, subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft amended conditions of consent
- Attachment B: Architectural Plans and Landscape Plans
- Attachment C: Arborist Reports/Statements
- Attachment D: Updated Contamination Statement
- Attachment E: Consent DA/2021/0799
- Attachment F: Consent DA/2021/0800