

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-299 – MOD/2023/0326
PROPOSAL	Section 4.56 application to modify Land and Environment Court Determination DA/2021/0800 to delete the tanking of the basement and amend the design to enable a drained basement, and changes to conditions, including to amend the staging and timing of delivery of art studio, substation, and public domain works.
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	29/09/2023
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	Five (5) submissions in total, four (4) unique Key issues: <ul style="list-style-type: none"> • Ground and stormwater water treatment, and discharge • Noise • Vehicular and pedestrian traffic management during construction • Management and staging of project
DOCUMENTS SUBMITTED FOR CONSIDERATION	Plans
RECOMMENDATION	Approval

DRAFT CONDITIONS TO APPLICANT	NO
SCHEDULED MEETING DATE	26 June 2024
PLAN VERSION	9 February 2024 Rev 8 31 August 2023 Rev 3
PREPARED BY	Cox Architecture
DATE OF REPORT	12 June 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 29 September 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 basement design from a tanked to a drained basement, and changes to conditions of consent imposed on the DA consent, including to amend the staging and timing of delivery of art studio, substation, and public domain works.

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, subject to recommended conditions, raise no substantial concerns.

The application was placed on public exhibition from 15 November 2023 until 15 December 2023, and between 7 May 2024 until 4 June 2024; a total of five (5) submissions (four (4) unique) 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 briefing was held with the members of the Panel on 25 January 2024 where key issues were discussed, including contamination and groundwater treatment and discharge. The key issues associated with the proposal are:

Contamination, and
Groundwater treatment and discharge

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.

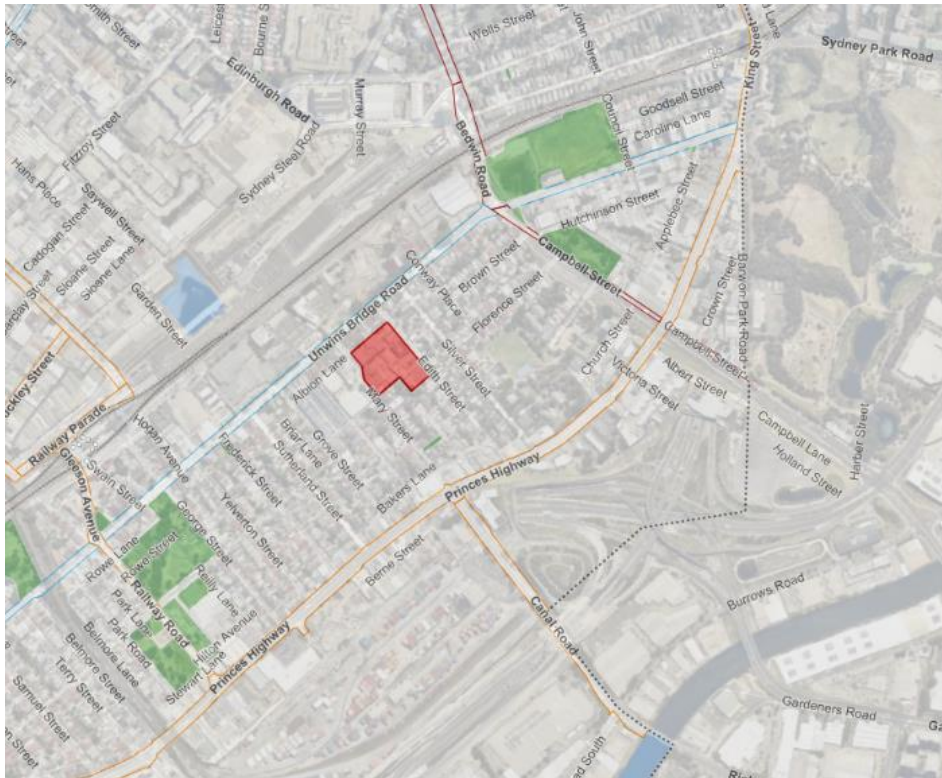


Figure 1: Location map (subject site highlighted in read)



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 delete the tanking of the basement and amend the design to enable a drained basement, and changes to conditions, including to amend the staging and timing of delivery of art studio, substation, and public domain works.

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

- Amend the design of the shared basement to enable a drained basement design, as opposed to a fully watertight basement as currently approved.
- Adjust construction staging to ensure the Council Art Studio and Substation are constructed in Stage 1.
- Amend the Staging Plan to reflect delivery of the Council Artist's Studio and the Substation in Building 7 during Stage 1.
- Amend the wording of conditions 7 and 8 to allow for construction phases to be undertaken concurrently, if required, instead of sequentially.
- Amend the wording of conditions of consent to ensure the above changes are reflected in the consent and to correct an error in parking numbers.
- Amend the cost of development referenced in the development description to match the current design.

No changes are proposed to the key development data, which is provided in **Table 1**.

Table 1: Development Data

Control	
Site area	15,247m ²
GFA	Non-residential: 15,871m² (50.55%) Residential: 15,525m² (49.44%) GFA Total: 31,396m²

FSR	2.06:1
No of apartments	206
Max Height	29 metres
Deep soil area	1,104sqm (7.2% of site)
Car Parking spaces	289

2.2 Background

The section 4.56 application was lodged on **29 September 2023**. A chronology of the application since lodgement is outlined in **Table 2**.

Table 2: Chronology of the DA

Date	Event
15 November 2023	Exhibition of the application
9 October 2023	DA referred to external agencies
6 December 2023	Community Consultation Session held via MS Teams
25 January 2024	Panel briefing
24 January 2024 25 January 2024 1 February 2024	Request for Information from Council to applicant
15 March 2024	<ul style="list-style-type: none"> • Response to Council's request for information provided; and • Amending of application to include changes to additional conditions that were imposed on the DA consent
7 May 2024	Exhibition of the application
4 June 2024	Updated owner's consent submitted as ownership of the subject site has changed.

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 13 July 2023, a Section 4.56 application was lodged 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. This application was approved by the Panel on 6 March 2024.
- On 2 May 2024, a Section 4.56 application was lodged to modify DA/2021/0799 to amend conditions relating to the timing of construction stages and delivery of temporary and permanent public domain works and amendments to conditions relating to tree management to reflect the recently approved modifications to tree conditions of the Main Works DA (DA/2021/0800). This application is still 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 relatively minor design amendments and do not result in significant departures from the approved development.
 - 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) *that apply to the land to which the development application relates,*
- (g) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (h) *the suitability of the site for the development,*
- (i) *any submissions made in accordance with this Act or the regulations,*
- (j) *the public interest.*

These matters are further considered below.

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

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

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

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

The following Environmental Planning Instruments are relevant to this application

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (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 (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6. 	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> • Section 4.6 - Contamination and remediation has been considered and the proposal, subject to recommended conditions, is satisfactory. 	Y
Inner West Local Environmental Plan 2022	• Clause 1.2 – Aims of Plan	Y
	• Clause 2.3 – Permissibility and zone objectives	Y
	• Clause 2.7 – Demolition	Y
	• Clause 6.1 – Acid sulfate soils	Y
	• Clause 6.2 – Earthworks	Y
	• Clause 6.3 – Stormwater management	Y

	• Clause 6.27 – 50–52 Edith Street, 67 and 73–83 Mary Street and 43 Roberts Street, St Peters	Y
	• 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 2.6 – Acoustic and Visual Privacy	Y
	Part 2.10 – Parking	Y
	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 (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, and/or subject to recommended conditions, the site will remain suitable for the proposed development and the proposal is consistent with this SEPP.

The subject application seeks consent to modify the Main Works DA to permit the design and construction of the basement structures of the development as a 'drained basement' instead of the 'fully watertight basement' that is currently required by conditions imposed on the Main Works DA.

The design of the drained basement will comprise perimeter spoon drains to the northern, eastern, and southern facades of the exterior basement wall, and introduction of a plenum space to the western façade and a water filtration plant room, which is required to filter groundwater ingress under the proposed drained basement design.

Advice was sought from Council's internal Environmental Health Officer, Development Engineer, and an external Environmental Scientist to provide feedback on the proposed basement design and whether the drained basement design would cause any additional risk to human health or the environment. Based on the original and additional information provided

by the applicant, subject to recommended conditions, it is considered that it is technically feasible and practical for a drained basement to be designed so that the human health risks to occupiers and users of the basements and the ground floor levels of the building are low and acceptable.

While it is considered that there will be a significant increase in the predicted groundwater inflow rates to external walls and floor of the basement to the inflow rates applied in the 'Human Health and Environmental Risk Assessment, Precinct 75 Development, St Peters NSW', prepared by WSP Golder and dated July 2022 (HHERA), it is considered that Condition 50 imposed on the DA consent provides a mechanism whereby both the design of the basement and revisions to the HHERA, if deemed to be required, would be undertaken and subsequently be subject to review and acceptance by the NSW EPA Site Auditor. As such, this condition provides a suitable mechanism for ensuring appropriate assessment of human health risk regardless of the type of basement design.

Sydney Water and Water SW raised no objections to amending the basement design and Water NSW provided amended GTAs.

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 recommended conditions, 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 LEP. No change is proposed to the approved use and the proposal is and remains permissible with consent in the zone (Figure 3), and the development is consistent with the zone objectives.

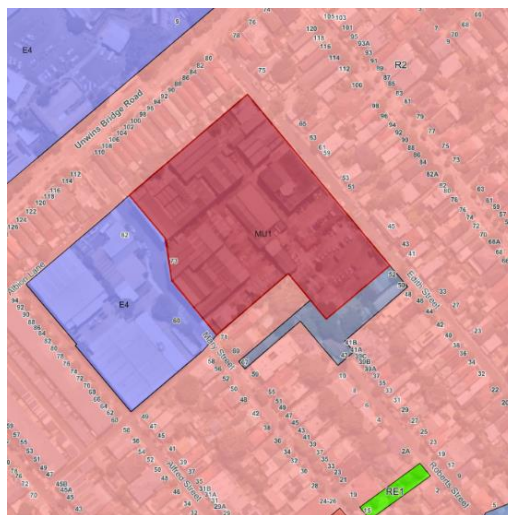


Figure 3: Zoning map (subject site highlighted in dark red)

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

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

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	29 metres	29 metres – no change	Yes – no change
FSR (CI 4.4(2))	2.15:1 (31,781m ²)	2.06:1 (31,396m ²)	Yes – no change
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.	Any additional earthworks are minor and, subject to conditions, will not result in any adverse impacts.	Yes
Stormwater Management (CI 6.3)	To minimise the impacts of stormwater	The proposed modifications will have no adverse impacts, subject to compliance with conditions of consent.	Yes
Airspace Operations (CI 6.7)	To protect airspace around airports.	The proposed modifications will not result in an increase in height.	Yes – no change
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 – no change
Design Excellence (CI 6.9)	To ensure that development exhibits the highest standard of architectural and urban design.	The proposed modifications will not result in any changes.	Yes – no change
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 – no change
50–52 Edith Street, 67 and 73–83 Mary Street and 43 Roberts Street, St Peters (CI 6.27)	The development remains 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 – no change

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 2.6 – Acoustic and Visual Privacy	Conditions imposed on the DA consent adequately manage noise impacts from the development.	Y
Part 2.10 – Parking	No change is proposed to on-site parking. The proposed changes to condition 47(a) are minor and will not adversely impact traffic management during construction, noting that a detailed Construction Traffic Management Plan must be submitted and approved by Council prior to works commencing.	Y
Part 2.21 – Site Facilities and Waste Management	Subject to conditions imposed on the DA consent, the proposal will remain compliant with this part of the DCP.	Y
Part 2.24 – Contamination	See SEPP discussion above	Y

(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 impacts to human health or the environmental. 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, and amended conditions included in Attachment A, 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.

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 the environment and 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, subject to recommended conditions, the proposal will not result in any adverse impacts to human health or 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 comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

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 amended "General Terms of Approval (S4551152120), issued on 20 December 2023, which have been included in Attachment A.	Y
Referral/Consultation Agencies			
Water NSW	<i>Water Management Act 2000</i> s90(2) water management work approval	Concurrence granted, subject to amended "General Terms of Approval (S4551152120), issued on 20 December 2023, which have been included in Attachment A.	Y
Sydney Water	<i>Sydney Water Act 1994</i> s78	No additional comments to approved DA provided.	Y
Integrated Development (S 4.46 of the EP&A Act)			
Water NSW	<i>Water Management Act 2000</i> s90(2) water management work approval	Concurrence granted, subject to amended "General Terms of Approval (S4551152120), issued on 20 December 2023, which have been included in Attachment A.	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, information regarding groundwater treatment and disposal, and changes to conditions concerned with traffic management and considered that there were no objections subject to conditions.	Y (conditions)
Health	Council's Environmental Health Officer and an external Environmental Scientist reviewed the submitted information and considered that the proposed modifications are feasible and practical, subject to recommended conditions and conditions imposed on the DA consent remaining in force to adequately manage contamination and amenity impacts.	Y (conditions)

The outstanding issues raised by Council officers are considered elsewhere in this report.

4.3 Community Consultation

The proposal was notified in accordance with Council's Community Engagement Strategy

from 15 November 2023 until 15 December 2023, and from 7 May 2024 until 4 June 2024. The notification included the following:

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

Council received a total of five (5) submissions (four (4) of them unique) comprising four (4) objections. The issues raised in these submissions are considered in **Table 7**.

Table 7: Community Submissions

Issue	No of submissions	Council Comments
Contamination, basement design and discharge of groundwater	3	<p>As outlined in detail elsewhere in this report, means of groundwater discharge are subject to separate approvals from Sydney Water or Water NSW, which need to be obtained post-consent.</p> <p>The proposed basement design and water treatment are considered to be feasible, subject to conditions, and the proposal will not result in any adverse additional impacts to human health or the environment, subject to conditions imposed on the DA consent and subject to amended conditions as outlined in Attachment A.</p>
Storage of wastewater and potential to provide breeding grounds for (e.g.,) mosquitos	2	<p>The proposed water filtration plant and pump/filters are proposed to be enclosed within the basement.</p> <p>As such, these rooms will not provide breeding grounds.</p>
Noise impacts from pumping equipment	1	Pumping equipment is proposed to be located within the basement and existing conditions of consent limit noise impacts to residents from any mechanical equipment.
Nuisance flows to adjoining sites	1	<p>Council's Development Engineer has reviewed the proposal and raised no concerns regarding the amended stormwater design.</p> <p>Conditions of consent are in place to ensure that there will be no nuisance flows to surrounding sites nor the public domain.</p>
Ownership of the site	1	Ownership of the site has recently changed
Vehicular and pedestrian access and safety	1	Council's Development Engineer raised no concerns about changes to conditions of consent and the amended conditions are considered to adequately

		<p>manage traffic impacts and safety during all stages of the development.</p> <p>A 'Construction Traffic Management Plan – Detailed' will still need to be submitted to the General Manager of Council for approval prior to any works commencing.</p>
Changes to staging of development	1	<p>The proposed changes to the staging of the development allow for the issue of a single Construction Certificate rather than issuing a Construction Certificate for each stage.</p> <p>The proposed changes to the staging of the development are considered minor and will allow for a faster completion of the development, which, overall, could reduce adverse impacts.</p>

5. CHANGES TO CONDITIONS

Proposed changes to conditions are discussed below:

Condition 1 (Documents related to the consent)

Proposed changes to Condition 1, to amend the referenced basement plans, are required to ensure that the conditions of consent refer to the correct documents relating to the development as proposed to be modified. To ensure that the changed basement design will not result in any additional adverse impacts, in addition to the proposed changes to this condition, it is recommended that the 'Groundwater Treatment System' and the 'Basement Drainage Concept Plans' are referenced as outlined in Attachment A.

Amending the 'Staging Diagrams' is required so that these are consistent with Condition 6 of the DA consent, which requires that the construction of 'Council's Artist's Studio in Building 7' is part of 'Main Works Stage 1'.

Condition 6 (Construction Staging)

The substation in Building 7 is proposed to be constructed as part of the Stage 1 works. Condition 6 imposed on the DA consent requires that 'Council Artist's Studio in Building 7' is constructed as part of 'Main Works Stage 1'. To add the construction of the substation in Building 7 will not result in any undue impacts and is sensible, given that it is on the same level and within the same building as the Artist's Studio.

Condition 7 (Main Works Stage 1) & Condition 8 (Commencement of Main Works Stage 2)

It is only proposed to allow construction of multiple phases within each stage; it is not proposed to allow simultaneous construction of Stage 1 and Stage 2. This will provide flexibility and would allow concurrency of works within each Stage. It is considered that this modification will not result in undue impacts to surrounding sites or the public domain and it is agreed that this would allow for the construction to be completed "in an efficient, timely and more seamless manner, reducing construction-related impacts for nearby residents" as outlined in the submitted Statement of Environmental Effects.

Condition 17 (Car Parking)

The proposed modifications to condition 17 have already been implemented as part of the consent issued under MOD/2023/0211.

Condition 33 (Construction site access) & Condition 37 (Stormwater Drainage and Road Works – Certification) & Condition 40 (Continued use of premises during early works)

The changes proposed to these conditions (as outlined in the submitted SEE) refer to conditions imposed on the 'Early Works DA', which cannot be amended under the subject application.

A separate application has been lodged with Council, which, at the time of finalising this report, is under assessment.

Condition 47(a) (Pre-conditions to occupation)

The applicant notes that "Demolition of 43 Roberts Street would be required to accommodate vehicular access to the temporary car park from Roberts Street". It is proposed that this condition refers to the Construction Traffic Management Plan that needs to be submitted to, and approved by, Council rather than the 'Construction Traffic Impact Assessment' referenced in Condition 1. Council's Development Engineer raised no concerns and this change is not considered to result in any adverse impacts to surrounding sites, the public domain, nor management of the development also noting that the required 15 car spaces will need to be provided on site regardless of the rewording of this condition.

Condition 63 (Structural and Geotechnical Report) & Condition 110 (Basement/Retaining Wall Signoff – Major Development)

The proposed changes to these conditions are required to reflect the proposed modification to the basement design (i.e., changing the design from a tanked to a drained basement).

Condition 138 (Water NSW GTAs)

The applicant requested that Condition 138 be modified to reference the GTAs provided by Water NSW as part of the DA consent (dated 30 August 2022). Water NSW provided amended GTAs, and it is recommended to amend this condition to only reference the amended GTAs.

Changes to GTAs provided by Water NSW as part of the DA consent

Water NSW provided a new set of GTAs and requested that these are "included in their entirety in" a development consent. It is noted that these GTAs do not constitute an approval under the *Water Management Act 2000* and that the development consent holder must apply to Water NSW for a Water Supply Work approval after consent has been issued by Council and before the commencement of any work or activity.

GTA0115-00001 and GTA0120-00001 have been "removed" by Water NSW as proposed by the applicant. The proposed change to GTA0117-00001 (to delete the reference to

construction dewatering activity) has not been adopted by Water NSW and it is recommended that the amended GTAs replace the initially provided GTAs as provided by Water NSW.

Change to Cost of Development shown on the consent

The applicant submitted a cost report that indicates that the development has a cost of \$137,400,000. The current consent indicates a cost of \$144,900,000 and the applicant seeks to amend the consent reflecting this change, which has been included in Attachment A.

6. CONCLUSION

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

Subject to amending GTAs provided by Sydney Water and subject to conditions provided in Attachment A, it is considered that issues regarding groundwater treatment and discharge have been resolved satisfactorily and other proposed changes to conditions will not result in any adverse impacts to surrounding sites, the environment or human health.

7. RECOMMENDATION

That the Section 4.56 application (MOD/2023/0326) to modify Land and Environment Court Determination DA/2021/0800 to delete the tanking of the basement and amend the design to enable a drained basement, and changes to conditions, including to amend the staging and timing of delivery of art studio, substation, and public domain works 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
- Attachment C: Conceptual Design of a Treatment System for Extracted Water in a Drained Basement
- Attachment D: Consent DA/2021/0799
- Attachment E: Consent DA/2021/0800 (as modified under MOD/2023/0211)