

## COUNCIL ASSESSMENT REPORT

### SYDNEY EASTERN CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSEC-362 – MOD/2025/0010
<b>PROPOSAL</b>	Application under Section 4.56 application of the <i>Environmental Planning and Assessment Act 1979</i> to Modified Land and Environment Court Determination DA/2021/0800 dated 27 June 2024, modification involves additional demolition to Building 7; new construction and internal and external design changes to Building 7; reconfiguration and external changes to Buildings 1, 2 and 6; addition roof top fire stair access to Buildings A, B and C; basement layout reconfiguration; changes to levels and landscaping across the site; increase to internal floor to ceiling heights for residential buildings and other changes to apartment designs; amendments to Building 8 to address structural requirements; amendments to conditions of consent and other minor internal and external changes
<b>ADDRESS</b>	73 & 67 Mary Street, 50 & 52 Edith Street & 43 Roberts Street ST PETERS Lot 100 in DP 1283113
<b>APPLICANT</b>	The Trustee for P75 Investment Unit Trust
<b>OWNER</b>	Perpetual Corporate Trust Limited
<b>DA LODGEMENT DATE</b>	23/01/2025
<b>APPLICATION TYPE</b>	Section 4.56 – Modification by consent authorities of consents granted by the Court
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	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 the development has a capital investment value of more than \$30 million.
<b>CIV</b>	\$174,545,211.00 (excluding GST)
<b>KEY SEPP/LEP</b>	Biodiversity and Conservation SEPP, Housing SEPP, Inner West Local Environmental Plan 2022
<b>TOTAL &amp; UNIQUE SUBMISSIONS ISSUES SUBMISSIONS</b>	Ten (10)
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	Architectural Plans, Landscape Plans, Stormwater Drainage Plans

<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>SCHEDULED MEETING DATE</b>	14 August 2024
<b>PREPARED BY</b>	Ferdinand Dickel
<b>DATE OF REPORT</b>	31 July 2025

## 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 15,247m<sup>2</sup> in size and supported 11 buildings, between 1 – 3 storeys in height, which were 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 23 January 2025. 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 for various modifications to DA/2021/0800. The major changes are summarised as follows:

- Amendments of building entrances and lobbies of Buildings 1, 2, 6, and 7
- Change to levels and landscaping across the site
- Changes to residential apartment design
- Introduction of windows to the eastern façade of Building 6
- Increase in floor-to-floor heights and overall building heights for all residential buildings
- Reduction of gross floor area
- Amendments to various buildings to improve accessibility
- Additional retention of elements of Buildings 1 and 2
- Full demolition and reconstruction of Building 7
- Changes to façade design
- Amendments to the wording of conditions

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.

The application was placed on public exhibition from 4 February until 6 March 2025, and from 17 April until 22 May 2025. Ten (10) 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 briefing with the Panel members was held on 1 May 2025 where key issues were discussed, including stormwater management, increased building height, additional demolition, and issues raised in submissions, which are the key issues with the application.

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**

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### **1.1 The Site**

- The subject site (Precinct 75) has recently been consolidated from 6 separate allotments into a single lot (Figure 1).
- The site is approximately 15,247m<sup>2</sup> 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 consisted of 11 buildings, between 1 – 3 storeys in height which were used for light industrial and commercial uses, and five residential detached dwellings.
- Demolition and construction works are underway
- 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.

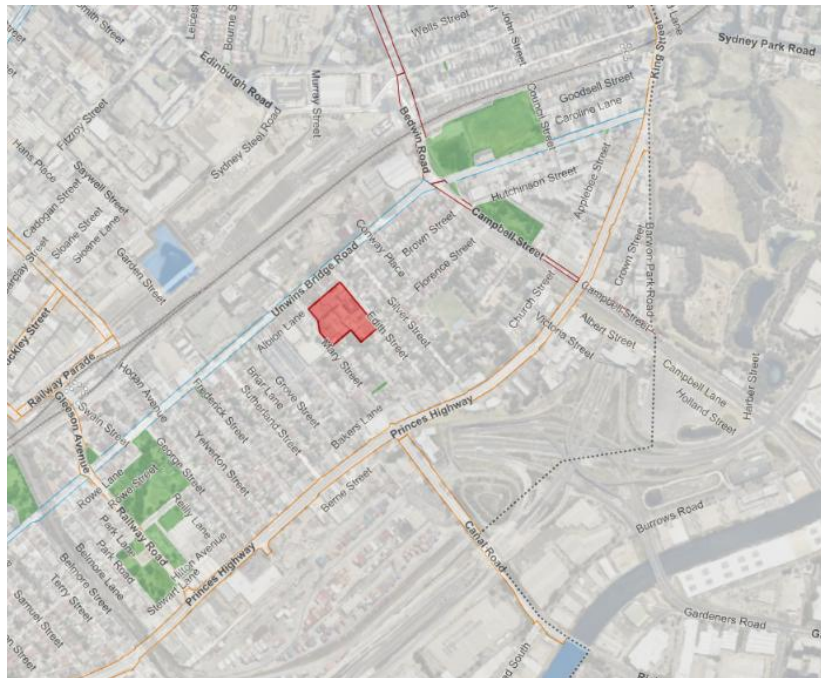


Figure 1: Location map (subject site highlighted in red)



Figure 2: Aerial (subject site, prior to demolition highlighted in red)

## 1.2 The Locality

- 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

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### 2.1 The Proposal

The proposal seeks consent to modify Land and Environment Court Determination DA/2021/0800. Specifically, as outlined in the submitted Statement of Environmental Effects, the proposal involves:

- Rationalisation of all building entrances and lobbies/tenant hubs of Buildings 1, 2, 6, and 7 to be centred around Makers Way for better connectivity and wayfinding.
- Rationalisation of the basement design to consolidate various parking uses across the two basement levels (same overall number of parking spaces).
- Minor change to levels and landscaping across the site for coordination between engineering and design requirements, as well as to enable improved amenity and usability of the podium and landscaping spaces, including the addition of a water fountain and splitting of the dog park to allow separation of small and large dogs.
- Addition of fire stair access to the rooftops of Building A, B and C for safe maintenance access (previously only maintenance hatches were provided with ladder access).
- Minor changes to residential apartment design to allow for better constructability and resident amenity.
- Amendments to the amenities of Building 8 and incorporation of structural design and safety requirements for the pool.
- Introduction of windows to the eastern façade of Building 6 to improve natural lighting.
- Replacement of Building 1 internal fire stair with new external fire stair. •
- Increase in floor-to-floor heights for all residential buildings to accommodate required head heights, insulation and servicing to achieve the requirements of the Apartment Design Guide.
- Additional amendments to various buildings to improve accessibility, site connectivity and buildability, including additional retention of Buildings 1 and 2 structure compared to the approved scheme.
- Additional demolition and sympathetic reconstruction of Building 7, and the pedestrian bridges between Buildings 1 and 2, due to their poor existing state and structural concerns.
- Refinements to the Buildings 1, 6 and 7 external façade screening to enable improved outlook and sunlight penetration.
- Amendments to the wording of conditions of consent including removal of DA-40 series drawings from the consent as they were intended for information only.
- Attachment G provides a more detailed list of proposed modifications.

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

**Table 1: Development Data**

<b>Control</b>	<b>Approved</b>	<b>Proposal</b>
Site area	15,247m <sup>2</sup>	
GFA	Non-residential: 15,871m <sup>2</sup> (50.55%) Residential: 15,525m <sup>2</sup> (49.44%) GFA Total: 31,396m <sup>2</sup>	<b>Non-residential: 15,644m<sup>2</sup> (50.26%) Residential: 15,484m<sup>2</sup> (49.74%) Total: 31,128m<sup>2</sup></b>
FSR	2.06:1	<b>2.05:1</b>
No of apartments	206	<b>206</b>
Max Height	29 metres	<b>30.74 metres</b>
Deep soil area	1,104sqm (7.2% of site)	<b>1,104sqm (7.2% of site)</b>
Car Parking spaces	286	<b>289</b>

## 2.2 Background

The section 4.56 application was lodged on **23 January 2025**. A chronology of the application since lodgement is outlined in **Table 2**.

**Table 2: Chronology of the application**

<b>Date</b>	<b>Event</b>
<b>28 January 2025</b>	DA referred to external agencies
<b>4 February 2025</b>	Exhibition of the application until 6 March 2025
<b>19 February 2025</b>	Community Consultation Session held via MS Teams
<b>25 February 2025</b>	Referral meeting with Council's Architectural Excellence Design & Review Panel (AEDRP)

Date	Event
	<p>Note: The applicant introduced additional and/or amended modifications to the application during the meeting.</p> <p>Following the AEDRP meeting, Council discussed with the applicant amending the proposal, including additional design modifications, and to submit a complete and revised set of information to allow a comprehensive assessment of the proposed modifications. Council also requested additional information responding to matters raised by Council's Development Engineer about stormwater drainage.</p>
<b>24 March 2025</b>	Council met with the applicant to discuss the additional modifications and information required to enable a comprehensive assessment of the proposed modifications.
<b>28 March 2025</b>	The applicant submitted a revised set of architectural drawings and an updated SEE.
<b>1 April 2025</b>	The applicant submitted updated stormwater drainage information.
<b>17 April 2025</b>	Exhibition of the application until 22 May 2025
<b>11 July 2025</b>	<p>Council requested additional information to address the following issues:</p> <ul style="list-style-type: none"> <li>• Stormwater drainage</li> <li>• Removal of groundwater treatment plant</li> <li>• Solar access and cross ventilation of proposed apartments</li> <li>• Raised levels within dog park</li> <li>• Clarification on proposed deletion of DA-40 series Architectural Plans</li> <li>• Clarification on deletion of condition 121 (solar panels)</li> <li>• Visual privacy impacts due to proposed roof top terrace and removal of screening to Building 1</li> </ul>
<b>21 July 2025</b>	<p>The applicant submitted amended architectural, landscape and stormwater plans, and additional information in response to issues raised by Council and the community.</p> <p>As discussed in this report, the amended stormwater plans are considered adequate and have addressed concerns raised by the community and Council.</p>

## 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 6 March 2024, a Section 4.56 application approved to modify DA/2021/0800 to modify 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.
- On 27 June 2024, a Section 4.56 application approved to modify 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.
- On 9 July 2024, a Section 4.56 application approved to modify DA/2021/0799 to amendment 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 approved modifications to tree conditions of the Main Works DA (DA/2021/0800).
- On 13 June 2025, a Section 4.56 application was lodged to modify approved condition 86 relating to construction hours for DA/2021/0800.
- A State Significant Development Application (SSD-82639959) has been lodged with the Department of Planning, Housing and Infrastructure (the Department) for

*Mixed-use development comprising residential apartments (BTR), affordable housing and commercial. Amendment to an existing consent to increase the approved dwellings from 205 to approximately 400 and convert some commercial uses to residential*

According to the Department's Major Projects Site, the SSD is currently at the Environmental Impact Statement stage.

### 3. STATUTORY CONSIDERATIONS

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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 design amendments and do not result in significant departures from the approved development.
  - The nature of the development, being a mixed-use development with residential, retail, commercial, and light industrial uses, does not change.
  - The overall bulk, scale and envelopes of the buildings are consistent with the approved development. Where refinements have been made to the building envelope (such as fire stair access and increases to floor-to-floor height), these are required for serviceability or to meet the relevant statutory requirement.
  - 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.*

The DA was approved by the NSW Land and Environment Court (LEC). While specific reasons for granting the consent were not given in the judgement, the judgement noted that the development displays design excellence and that the development aligns well with the site

specific provisions in the LEP and DCP, particularly providing housing diversity through a mix of dwelling types and (promoting) affordable housing that adequately minimises impacts to lower density surrounding. Additionally, the judgement notes that the development provides well designed public amenity, which is still provided under the modified scheme.

As such, the development, as proposed to be modified, is not inconsistent with the reasons for granting consent to the DA.

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**

<b>EPI</b>	<b>Matters for Consideration</b>	<b>Comply (Y/N)</b>
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<p>Chapter 2: Vegetation in non-rural areas</p> <p>The application does not propose additional tree removal. Deletion of trees to be protected during works from Condition 25 (Tree Protection) only refers to trees that are located outside the subject site's boundary that have already been removed by other unrelated parties to the development.</p>	N/A
State Environmental Planning Policy (Sustainable Buildings) 2022	Updated BASIX and NatHERS Certificates have been provided	Y
State Environmental Planning Policy (Housing) 2021	<p><b>Chapter 3: Diverse Housing</b></p> <ul style="list-style-type: none"><li>• Part 4 – Built-to-rent: No change proposed with regard to the provisions of Part 4 of this SEPP</li></ul> <p><b>Chapter 4: Design of residential apartment development</b></p> <ul style="list-style-type: none"><li>• Section 146 – A statement by the qualified designer has been submitted with the application and the application was referred to Council's Architectural Excellence and Design Review Panel (AEDRP). The AEDRP provided comments and is generally supportive of the proposed modifications.</li><li>• Section 147 – The development remains consistent with the design principles for residential apartment development set out in Schedule 9 of this SEPP. The development generally remains compliant with the Apartment Design Guide (ADG), which is discussed in detail further below. Advice from the AEDRP has been considered in the assessment of the application.</li></ul>	Y

EPI	Matters for Consideration	Comply (Y/N)
	<ul style="list-style-type: none"> <li>Section 148 – No change proposed or required to car parking and the proposal complies with the minimum internal areas and ceiling heights prescribed in the ADG.</li> </ul>	
State Environmental Planning Policy (Planning Systems) 2021	<b>Chapter 2: State and Regional Development</b> <ul style="list-style-type: none"> <li>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6.</li> </ul>	Y
SEPP (Resilience & Hazards)	<p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> <li>Section 4.6 - The proposed amendments have no implications on suitability of the site with regards to contamination. The findings of the Detailed Site Investigation and Remedial Works Plan already approved, and existing conditions of consent remain valid for the site.</li> </ul> <p>The proposed change to Condition 89 (see Attachment A) is supported as it is only proposed to stage the timing of submitting the Section A Site Audit Statement and Site Audit Report for the already approved staging of the development.</p>	Y
<i>Inner West Local Environmental Plan 2022</i>	1. Clause 1.2 – Aims of Plan	Y
	2. Clause 2.3 – Permissibility and zone objectives	Y
	3. Clause 2.7 – Demolition	Y
	4. Clause 4.3 – Height of buildings	N
	5. Clause 4.4 – Floor Space Ratio	Y
	6. Clause 4.5 – Calculation of floor space ratio and site area	Y
	7. Clause 6.1 – Acid sulfate soils	Y
	8. Clause 6.2 – Earthworks	Y
	9. Clause 6.3 – Stormwater management	Y
	10. Clause 6.7 – Airspace operations	Y
	11. Clause 6.8 – Development in areas subject to aircraft noise	Y
	12. Clause 6.9 – Design excellence	Y
	13. Clause 6.13 – Residential accommodation in Zones E1, E2 and MU1	Y
	14. Clause 6.27 – 50–52 Edith Street, 67 and 73–83 Mary Street and 43 Roberts Street, St Peters	N

EPI	Matters for Consideration	Comply (Y/N)
	15. 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	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	N

Consideration of the relevant SEPPs is outlined below.

#### *State Environmental Planning Policy (Sustainable Buildings) 2022*

*State Environmental Planning Policy (Sustainable Buildings) 2022* 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\_11, prepared by Ingreco Consulting, dated 6 December 2024, committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the SEPP. The proposal is consistent with the SEPP subject to the recommended conditions of consent.

#### *State Environmental Planning Policy (Housing) 2021*

It is sought to increase the height of residential buildings to achieve compliance with the minimum ceiling heights prescribed under the ADG. No change to the approved number of units is proposed and car parking numbers are unchanged – it is only sought to reconfigure the basement layouts.

Section 147(1)(b) of this SEPP requires consideration of the provisions within the ADG. Section 147(3) outlines that “a consent authority [does not need] to require compliance with design criteria specified in the Apartment Design Guide”.

The development generally remains consistent with the provisions of the ADG; however, results in changes to cross ventilation and solar access.

### Solar access

Chapter 4A of the ADG prescribes that:

1. *Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter*
2. *A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter*

The table below shows the approved and proposed solar access of apartments – changes are highlighted in yellow.

Building	Number of apartments receiving compliant solar access		Number of apartments receiving no solar access	
	Approved	Proposed	Approved	Proposed
Building A	50/50 units – 100%	50/50 units – 100%	0/50 units – 0%	0/50 units – 0%
Building B	24/41 units – 58.5%	24/41 units – 58.5%	2/41 units – 4.9%	6/41 units – 14.6%
Building C	50/78 units – 64.1%	50/78 units – 64.1%	10/78 units – 13%	10/78 units – 13%
Building 8	20/36 units – 55.6%	20/36 units – 55.6%	4/36 units – 11%	6/36 units – 16.6%
<b>Total</b>	<b>144/205 units – 70.2%</b>	<b>144/205 units – 70.2%</b>	<b>16/205 units – 7.8%</b>	<b>22/205 units – 10.7%</b>

No change is proposed with regard to number of units receiving solar access as required. While the number of apartments with no solar access in Building 8 has increased, it still complies with the ADG. While Building 8 results in a non-compliance as more than 15% of the apartments receive no solar access, the non-compliance is considered marginal. Additionally, when considering all apartments within the site, the development complies as more than 70% of apartments (i.e., 70.2%) receive the required solar access and less than 15% (i.e., 10.7%) of apartments do not receive solar access. As such, the proposal is considered acceptable.

### Cross ventilation

Chapter 4B of the ADG prescribes that “At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building”. The table below shows the approved and proposed cross ventilation of apartments – changes are highlighted in yellow.

Building	Number of apartments cross ventilated	
	Approved	Proposed
Building A	39/50 units – 78%	42/50 units – 84%
Building B	34/41 units – 83%	37/41 units 90%
Building C	40/78 units – 51%	34/78 units – 43%
Building 8	12/36 units – 33%	12/36 units – 33%
<b>Total</b>	<b>125/205 units – 61%</b>	<b>125/205 units – 61%</b>

As shown in the table above, no change proposed to cross ventilation within Building 8. While less apartments in Building C are cross ventilated, cross ventilation in Buildings A and B is improved and, overall, the same number of apartments are naturally cross ventilated. As such, the proposal is considered acceptable.

## *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 other Section 4.56 applications. 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.

## *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 as it:

- 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.

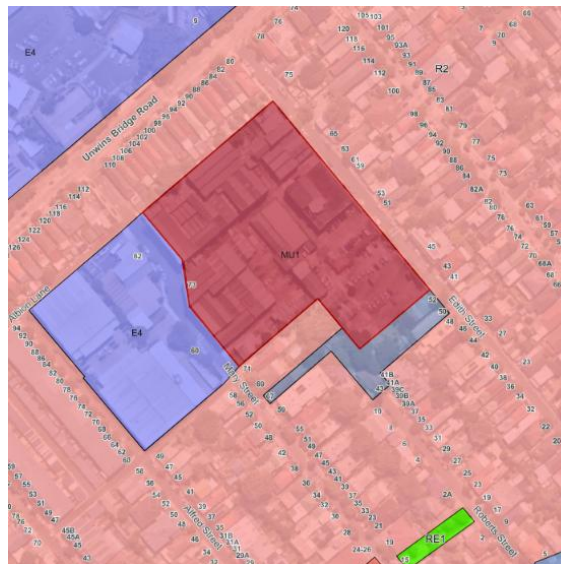


Figure 3: Zoning map (subject site highlighted in dark red)

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))	The site is subject to various maximum building heights – refer	Minor breaches are proposed – refer to discussion below this table	No

Control	Requirement	Proposal	Comply
	to discussion below this table		
FSR (CI 4.4(2))	2.15:1 (31,781m <sup>2</sup> )	2.05:1 (31,128m <sup>2</sup> )	Yes
Exceptions to development standards (CI 4.6)	N/A	N/A	N/A
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 17 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 as recommended to be modified	Yes
Airspace Operations (CI 6.7)	To protect airspace around airports.	The proposed increase in height will not adversely 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	The modified development remains consistent with this clause. Council's Architectural Excellence	Yes

Control	Requirement	Proposal	Comply
	architectural and urban design.	and Design Review Panel supports the proposal and raised no concerns.	
Residential accommodation in Zones E1, E2 and MU1 (CI 6.13)	Development is: <ul style="list-style-type: none"> <li>Is mixed use,</li> <li>Will have an active street frontage, and</li> <li>Is compatible with the desired character of the area.</li> </ul>	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)	<ul style="list-style-type: none"> <li>More than 50% of the proposed floorspace is for non-residential uses</li> <li>The proposal results in minor breaches with the maximum height of buildings (refer to discussion below this table)</li> <li>The proposal remains consistent with the site-specific DCP prepared for the site as discussed elsewhere in this report</li> </ul>		No

### **Consideration of non-compliances**

#### **CI 4.3(2)- Height of buildings (HOB) and CI 6.27(4)**

Figure 3 shows the various maximum building heights across the site.



Figure 3: Maximum building heights across the subject site. Source: intramaps

Clause 6.276(4) prescribes:

*Development consent must not be granted to development that results in a building on part of the subject land exceeding the maximum height shown for that part on the [Height of Buildings Map](#) unless—*

- the development is within 1m of a part of the subject land that is subject, under clause 4.3, to a greater maximum building height, and*
- the development does not result in that greater maximum building height being exceeded, and*
- the development does not result in unreasonable massing or amenity impacts to the surrounding area.*

Figure 4 shows the approved and proposed building envelopes and height limits across the site. Breaches with the maximum height are shown in yellow and white. The highest breach occurs at Building C, which is 1.02 metres.



Figure 4: Approved and proposed building envelopes and height limits. Source: Cox Architecture

The proposed modification is not required to formally submit a written request to vary a development standard having regard to the decision within *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163 that states that Section 96 (now Section 4.55) is a:

*‘free-standing provision’, meaning that “a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application.*

Similarly, CI 6.27(4) only applies where “development consent” is being granted. Section 4.56(1C) of the *Environmental Planning and Assessment Act 1979* provides that:

*The modification of a development consent in accordance with this section is taken **not to be the granting of development consent** [emphasis added] under this Part....*

As such, the determination of this modification application does not fall within the scope of CI 6.27(4) of the IWLEP 2022 and, therefore, the clause does not prohibit approval of a modification application even though there is a breach with CI 6.27(4).

As shown in the Figure 4, the breach with the HOB development standards and CI 6.27(4) is minor. Additionally, the development remains consistent with the objectives of CI 4.3 and 6.27 as follows:

- The modified height of buildings is similar and compatible with the character of the approved development,
- The additional heights are not considered to result in undue impacts on local amenity,
- The transition between different building heights on the site is largely retained,
- Provision of employment and service opportunities on the subject site are retained,

- The development will not have a detrimental impact on the character and environmental quality of the surrounding area.

The addition of fire stair access to the rooftops of Building A, B and C, which breach the height controls are localised and will not be discernible from the public domain. The increase in height of the buildings will also be largely imperceptible when viewed from the public domain and, as discussed elsewhere in this report, the development is not considered to result in unacceptable overshadowing impacts.

As such, the proposal is considered to be generally consistent with the IWLEP 2022.

#### **(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	Subject to recommended conditions, the proposal will not result in additional overlooking opportunities and conditions imposed on the DA consent adequately manage noise impacts from the development.  Additional comments are provided in Section 4.3 of this report.	Y (condition)
Part 2.7 – Solar Access and Overshadowing	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.  While additional overshadowing occurs because of increased building heights, as demonstrated in the submitted shadow diagrams and sun eye views, additional overshadowing to surrounding sites is marginal.	Y
Part 2.10 – Parking	Only layout changes proposed.	Y
Part 2.20 – Tree Management	See discussion below this table	N

Part of MDCP 2011	Proposal	Compliance
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 5 – Commercial and Mixed Use Development	The proposed modifications 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>Amendments to built form are minor considering the approved design and there is no change to housing mix and adaptable housing.</p> <p>Changes to waste management and parking are minor and conditions imposed on the DA consent will remain in force to manage waste. The number of approved car parking spaces are retained – modification to conditions are recommended to reflect the amended layout.</p> <p>There will be no change to the Edith Street and Mary Street public domain, signage or public art strategy.</p> <p>Additional demolition works are proposed, which is contrary to the controls, which is discussed below this table.</p>	N

#### Part 2.6 – Visual and Acoustic Privacy

The relocation of existing windows generally raises no issues as there will be no new visual privacy impacts. The upper-level windows to the north-western elevation of Building 7 have a sill height of more than 1.6 metres above finished floor level. The external staircase to this elevation of Building 7 is decorative only – the existing staircase (proposed to be demolished) was accessible. As such, there will be less visual privacy impacts compared to the approved development from this element.

The terrace on Level 4 to Building 1 has been removed. However, it is still proposed to delete parts of the approved screen to the Building 1 elevation facing Unwins Bridge Road. The removal of this screen to levels 4-6 towards the Edith Street side (highlighted in green in Figure 5) is considered supportable as the roof below will provide screening to properties along Unwins Bridge Road (Figure 6).

However, the removal of the screen shown in yellow in Figure 5 is not considered supportable as there will be direct sightlines into adjoining properties. A condition is included in attachment A, requiring this screen to be carried down to level 4 as shown in yellow in Figure 6.

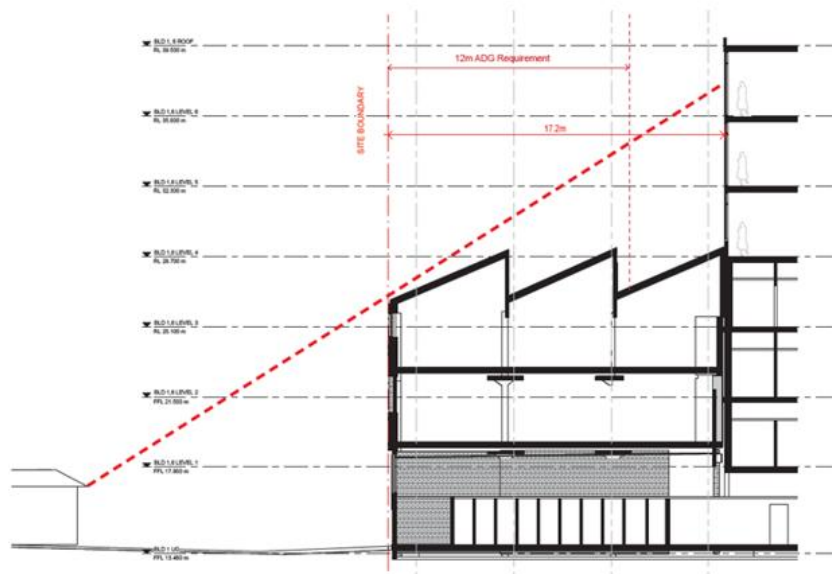


Figure 5: Sightlines into adjoining properties along Unwins Bridge Road. Source: Ethos Urban



Figure 6: Building 1/6 elevation facing Unwins Bridge Road. Source: Cox Architecture

The proposed change to Condition 2(j) does not result in any privacy impacts as it is only proposed to replace privacy louvers with frosted glazing.

### Part 9.48 – Mary, Robert and Edith Street

Section 08 of Part 9.48 DCP 2011 prescribes that certain existing building fabric should be retained (Figure 7). Control C8 of this part outlines that

*The buildings built to the street, including parts of Buildings 1, 2, 6, 7 & 8 and house at 67 Mary Street have landmark qualities, within their immediate streetscape context, and are to be retained and adaptively reused.*

Except the demolition of Building 7, additional demolition works and alterations to these buildings are generally minor in nature and support improved access and usability of tenancies. Replacement of fibre cement sheeting with metal cladding for Buildings 8 and C external fabric as considered suitable as it will ensure better longevity.

Additional retention of existing building fabric of Buildings 1 and 2 is also proposed, including more retention of the existing sawtooth roof of Building 2. This will result in the retention of more existing warehouse fabric than the approved scheme, resulting in improvements and additional retention of the existing character of the site.

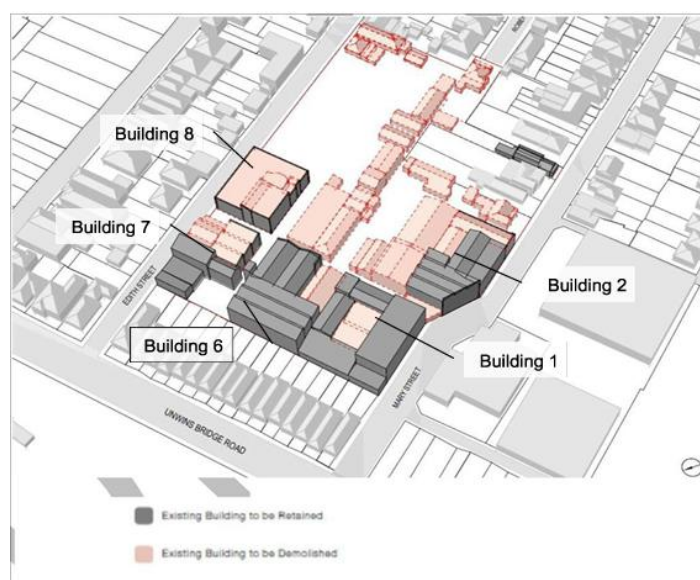
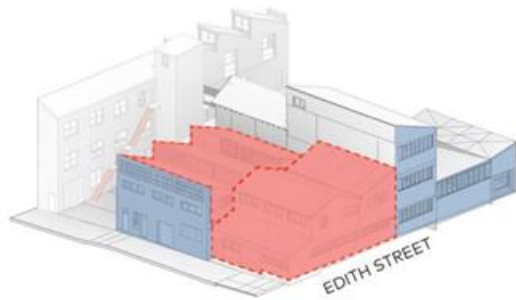
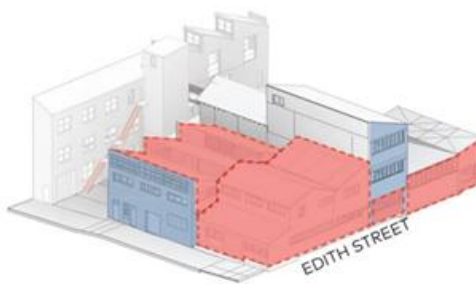


Figure 7: Building and building parts to be retained. Source: MDCP 2011 - Part 9.48

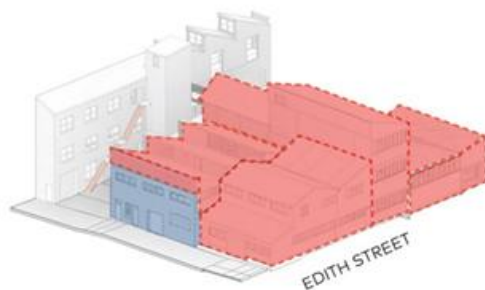
Figure 8 shows a comparison of the DCP prescribed fabric retention, approved demolition, additionally proposed demolition and reconstruction of Building 7.



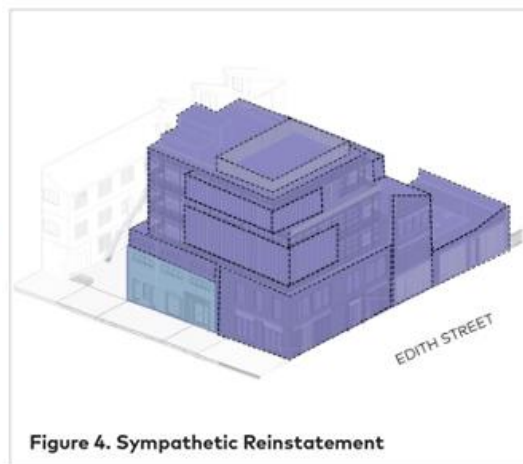
**Figure 1. DCP Prescribed Demolition**



**Figure 2. Approved Demolition**



**Figure 3. Expanded Demolition**



**Figure 4. Sympathetic Reinstatement**

**Legend**

- Existing Building
- Demolished
- New building elements

*Figure 8: Comparative visualisation of extent of Building 7 demolition and reconstruction (sub-figures 1-4). Source: Cox Architecture*

The proposed demolition is contrary to the controls within Part 9.48 MDCP 2011. Objective O1 of this part outlines that Building 7 should be retained to maintain the “the site’s existing industrial heritage character and sense of place” (p. 9).

The applicant submitted several reports, justifying the demolition of the existing building, which are summarised below:

- A Building Code of Australia (BCA) assessment report has been submitted that outlines that the existing Building 7 does not comply with several provisions within the BCA, including existing combustible polycarbonate wall cladding.
- A Façade Assessment for the existing Building 7 has been provided that outlines that substantial modifications to all façade and roofing systems would be required to meet current building standards. Additionally, the report outlines that significant degradation and corrosion of primary and secondary support structure was observed, which would require significant upgrade works to meet current building and construction standards.
- The submitted Structural Assessment report for Building 7 also recommends demolition of this building, noting that it is in poor state.

While the demolition of this building is contrary to C8, the proposed demolition is considered supportable for the following reasons:

- The submitted reports provide a reasonable justification for the demolition.
- The AEDRP supports the findings in these reports and the design of the new building.
- Council's Heritage Specialist supports this part of the proposal. The site is not listed as a heritage item and not within a Heritage Conservation Area.
- The proposed new Building 7 is similar in scale and design as the existing Building 7; hence, the industrial character and sense of place is maintained. The proposal also includes "Heritage interpretation", such as reconstruction of the external (decorative) staircase.

Given the above, the statement by the applicant that "full replacement to the majority of the external structural framing systems, façade systems and roofing ... is not considered viable, and the building should be rebuilt" is considered supportable.

The development will not result in changes to the approved site layout and the proposed modifications will improve wayfinding and access to buildings along Makers Wasy.

### **(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 undue impacts to local amenity, traffic and parking and access to utilities.

Subject to conditions imposed on the DA consent, which will remain in force, and amendments to conditions as recommended, 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 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
Sydney Airport Corporation	<i>Inner West Local Environmental Plan 2022</i> Cl 6.7 – Airspace operations	Concurrence granted subject to conditions	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	<p>Council's Engineering Officer reviewed the submitted and revised stormwater drainage design and information. After initial concerns about additional overland and nuisance flows, they consider that the amended stormwater design will not result in additional impacts compared with the approved development.</p> <p>The previously removed OSD tank has been reinstated, and an additional grated pit and pipe system is proposed as requested by Council's Development Engineer.</p> <p>Conditions of consent imposed on the DA consent will remain in force and are recommended to be amended to reflect the revised information.</p> <p>The overland flow path along the eastern boundary is a formalisation of an existing flow path that was approved as part of the original Development Application. This path functions only during extreme storm events, when ponding in Edith Street overtops the footpath. Such occurrences are very rare (i.e. 1-in-100-year storm events or greater).</p> <p>As this overland flow path accommodates existing flows, no additional stormwater will be directed to Roberts Street. Furthermore, the stormwater plans have been amended to ensure that both the pocket park and the overland flow path drain internally to the on-site detention (OSD) stormwater system during minor storm events, rather than discharging to Roberts Street.</p> <p>No objections are raised with regard to the changes to the basement layout and amendment to Condition 2(g), reflecting this change.</p> <p>The proposed change to Condition 109 (No weep holes) is supported as this condition is not intended to apply to weep holes in new brick walls of buildings, which are a requirement under the National Construction Code. This condition is only intended to prevent seepage water from raised planters or retaining walls located on the boundary from discharging groundwater across the footpath, which the condition, as amended, satisfies.</p>	Y (conditions)
Building	Council's Building Surveyor reviewed the submitted information and advised that the proposed modifications would	Y

Officer	Comments	Resolved
	not negatively impact the ability to comply with the requirements of the NCC.	
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.	Y
Urban Forest	<p>Council's Arborist initially raised concerns about additional planting of palm trees across the site as they were in conflict to the location of other trees. Additionally, concerns were raised about changing the approved planting along Makers Way from inground planting to pots.</p> <p>These elements have been removed from the proposal and there are no objections to the generally minor amendments to landscaping across the site.</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 4 February until 6 March 2025, and from 17 April until 22 May 2025. The notification included the following:

- Signs placed on the site;
- 352 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 ten (10) unique submissions, all by way of objection; 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
Increased building height, particularly of Building A and	3	The proposed increase in height is proposed to accommodate the prescribed ceiling heights, while providing required insulation and servicing.

Issue	No of submissions	Council Comments
Building 6 – visual bulk impacts to adjoining site		<p>While the maximum height of Buildings A, B, and 6 is increased by 1.2 metres or more, the building separation to adjoining sites is generally substantial and retained as approved. As outlined in this report, the development generally complies with the maximum allowable height, except some minor variations – Buildings B and 6 comply and only the roof top access stairs to Building A breach the maximum building height control.</p> <p>A height increase of 60mm is proposed for the ground level of Buildings A and B. A height increase of 310mm (Building A) and 360mm (Building B) for level 2 is proposed. The adjustments to Building A and B are considered relatively minor. The stepped design to the south-west elevation is retained as well as the approved building separation, which is 6 metres for levels 1 and 2. As such, it is considered that the increase in height will not result in discernible amenity impacts to adjoining sites.</p>
Usage and restriction of commercial car spaces	1	<p>No change is proposed with regard to approved car parking numbers and timing arrangements. The proposal only seeks layout changes to the basement levels.</p> <p>As such, this concern cannot be considered under this application.</p>
Stormwater and nuisance flows/flooding impacting adjoining sites	4	<ul style="list-style-type: none"> <li>• Detailed stormwater modelling has been undertaken to support the proposed redevelopment. Council's Development Engineer raised concerns with the initially proposed modifications, which included the removal of one on-site-detention tank and changes to levels that could have results in changed flows and adverse impacts to adjoining sites.</li> <li>• Council's Development Engineer reviewed the amended stormwater drainage design, and considers them to have addressed these concerns, noting that conditions of consent imposed on the DA consent will remain in force and are recommended to be amended to reflect the revised information.</li> <li>• The overland flow path along the eastern boundary is a formalisation of an existing flow path that was approved as part of the original Development Application. This path functions only during extreme storm events, when ponding in Edith Street overtops the footpath. Such</li> </ul>

Issue	No of submissions	Council Comments
		<p>occurrences are very rare (i.e. 1-in-100-year storm events or greater).</p> <ul style="list-style-type: none"> <li>As this overland flow path accommodates existing flows, no additional stormwater will be directed to Roberts Street. Furthermore, the stormwater plans have been amended to ensure that both the pocket park and the overland flow path drain internally to the on-site detention (OSD) stormwater system during minor storm events, rather than discharging to Roberts Street.</li> </ul>
Excessive tree planting (number and height of trees)	1	The trees referenced in the submission do not form part of the subject application (i.e., they are already approved).
Restriction of right of way	1	The formalised existing right of way access for 49 Mary Street remains and is consistent with the existing approval.
<p>Visual and acoustic privacy impacts:</p> <ul style="list-style-type: none"> <li>Roof top terrace to Building 7</li> <li>Reinstatement of external stairs to Building 7</li> <li>Windows to north-west elevation to Building 7</li> <li>Reconfiguration and windows to buildings 1,2, and 6</li> </ul>	4	<ul style="list-style-type: none"> <li>The initially proposed roof top terrace to Building 7 has been removed from the proposal.</li> <li>The external stairs to Building 7 are decorative only and not accessible. As such, there will be no visual privacy impacts.</li> <li>Windows to the north-west elevation of Building 7 have a sill height of more than 1.8 metres above finished floor level and are not considered to result in adverse visual privacy impacts. The sill height also complies with visual privacy controls within Part 2.7 of the MDCP 2011.</li> </ul>
Council's Community Information Session did not mention all aspects of the proposal, including the terrace to Building 7	1	<p>Given the extent and number of proposed modifications, Council's Community Information Session could not identify all proposed changes to the development.</p> <p>As outlined above, the roof top terrace to Building 7 has been deleted from the proposal.</p>
Condition of existing fabric of Building 6	1	The existing exterior glazing for Building 6 will be replaced with new fire-rating glazing.

Issue	No of submissions	Council Comments
Inconsistency within the architectural drawings (Building 7 roof top terrace and planting)	1	The plans have been amended since the submission was lodged, removing any reference to the roof top terrace and planting.

#### 4.4 Other matters – changes to conditions

##### Change to Conditions 2, 39, 40, and 51

These conditions currently require documentation to be submitted to, and approved by, the General Manager of Council. It is proposed that the reference to the "General Manager" be removed, while retaining reference to "Council" as the approving authority. This amendment is considered appropriate, as Council remains the relevant statutory authority for the development.

In practice, documentation submitted to satisfy such conditions is typically reviewed by Council's authorised officers or representatives with relevant expertise. The existing requirement for the General Manager's direct approval is considered unnecessarily burdensome, as the General Manager relies on expert advice to make such determinations. Removing this requirement is expected to streamline the process without compromising the integrity of Council's assessment or decision-making responsibilities.

##### Change to Condition 121

To improve the efficiency, it is proposed to amend Condition 121 to allow solar panels to have a maximum pitch and angle of up to 15 degrees instead of having the same pitch and angle as the roof plane below.

The development generally provides for flat roofs at most locations. The applicant notes that "It is not standard practice for solar panels to be installed with flat panel mounts, as this would result in the accumulation of debris and poor performance of the solar panel". While this concern is acknowledged, a 15-degree pitch/angle will result in the solar panels being visible from the public domain and the architectural plans do not depict what the visual impact to the public domain would be.

To address the applicant's concerns, particularly with regard to accumulation of debris, it is considered that a pitch/angle of 5 degrees is sufficient, which is reflected in Attachment A.

## 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 amendments to conditions shown in Attachment A, the proposed modifications will not result in undue impacts to the locality, amenity and environment and the site is suitable for the proposed modifications.

## **6. RECOMMENDATION**

That the Section 4.56 application (MOD/2025/0010) to modify Land and Environment Court Determination DA/2021/0800 dated 27 June 2024, for additional demolition to Building 7; new construction and internal and external design changes to Building 7; reconfiguration and external changes to Buildings 1, 2 and 6; addition roof top fire stair access to Buildings A, B and C; basement layout reconfiguration; changes to levels and landscaping across the site; increase to internal floor to ceiling heights for residential buildings and other changes to apartment designs; amendments to Building 8 to address structural requirements; amendments to conditions of consent and other minor internal and external changes 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: Landscape Plans
- Attachment D: Stormwater Plans and Report
- Attachment E: Consent DA/2021/0800 as modified
- Attachment F: Consent DA/2021/0800 as modified
- Attachment G: Modification schedule