

COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-374 - MOD/2025/0165
PROPOSAL	Section 4.55(2) Modification to DA201800505, dated 2/09/2020, modification involves amendments to previously approved buildings and surrounds including changes to building heights and envelopes, changes to the basement layout and extent, changes to landscaping and vehicle access, redesign of the floor plans and internal layouts and other internal and external alterations, and changes in the mix of Independent Living Units and Residential Aged Care throughout the new buildings, the Novitiate Building and the Ann Walsh Building
ADDRESS	Lot 1/DP1116995 – 2B West Street, Lewisham
APPLICANT	Catholic Healthcare c/o Mecone Group Pty Ltd
OWNER	Catholic Healthcare
MOD LODGEMENT DATE	28 May 2025
ORIGINAL DA DETERMINATION DATE	2 September 2020
APPLICATION TYPE	Modification Application under Section 4.55(2)
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 the development has a capital investment value of more than \$30 million
CIV	\$214,762,227 (excluding GST)
KEY SEPP/LEP	Housing for Seniors with a <i>Disability SEPP</i> ; <i>Housing SEPP</i> ; <i>Inner West LEP 2022</i>
TOTAL & UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS	One (1)
DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural and Landscape Plans
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not applicable

RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	2 April 2026
PLAN VERSION	Revision I, dated 16 January 2026
PREPARED BY	Katerina Lianos
DATE OF REPORT	25 March 2026

EXECUTIVE SUMMARY

The site is part of a larger precinct that is under the ownership of various Catholic Church entities. 2C West Street is under the ownership of the Trustees of St Vincent De Paul Society. 3 Thomas Street is under ownership of the Trustees of the Roman Catholic Church for the Archdiocese of Sydney.

DA201800505 was granted consent by the Sydney Eastern City Planning Panel ('the Panel') on 2 September 2020 for: alterations and additions to the Anne Walsh and Noviate buildings to change the use to Independent Living Units, demolish an existing Aged Care Hostel and construct a Residential Aged Care Facility and Independent Living Units.

Subsequently, MOD/2024/0221 was determined by Council under delegation on 6 November 2024, the modifications involving amendments to the approved staging plan and changes to various conditions to reflect the amended staging plan.

A Construction Certificate (CC) pursuant to the Consent was issued on 22 July 2025, with the physical commencement of works occurring on 30 July 2025.

The proposed modification involves amendments to previously approved buildings and surrounds, including changes to building heights and envelopes, changes to the basement layout and extent, changes to landscaping and vehicle access, redesign of the floor plans and internal layouts and other internal and external alterations, and changes in the mix of Independent Living Units and Residential Aged Care throughout the new buildings, the Noviate Building and the Ann Walsh Building.

The proposed modification is considered to satisfy the substantially the same development test required by Section 4.55 of the EP&A Act.

The application was placed on public exhibition from 10 June 2025 to 8 August 2025, with one (1) submission received. The submission raised issues relating to pedestrian safety with respect to the traffic and waste management of the site. These issues are considered further in this report.

The application is referred to 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 proposed modification satisfies the criteria to be considered by the Panel in the Instruction issued pursuant to Clause 275(2) of the *EP&A Regulation 2021* (formerly CI 123BA of the *Regulation 2000*).

Subject to recommended conditions, the proposed modifications will not result in unacceptable 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 site area is 12,068sqm (1.207ha)
- The site is currently occupied by the Lewisham Aged Care which is owned by the Catholic Healthcare and is a stand-alone facility. The site incorporates a complex of buildings including:
 - Ann Walsh Building: a 3-storey building which is currently unoccupied and was a former out patient building.
 - Former Novitiate building: a 5-storey building with a central courtyard and is used as an aged care facility with 46 standard rooms and 5 shared rooms with common bathroom facilities.
 - Aged care hostel: incorporates a series of 2 storey buildings providing age care accommodation for 40 residents.
- The site has a frontage to West Street of approximately 189m that curves with the street corner.
- The southern boundary has a length of 76.76m and adjoins the railway corridor and a footpath connecting West Street to Thomas Street and Lewisham Station.
- The remaining boundaries dog-leg the rear of the site for a length of approximately 220.3m and adjoin land owned by Catholic Church entities, including Catholic schools land.
- Pedestrian access to the site is achieved from West Street and vehicular access to the site is achieved via Charles O'Neil Way, to the west.
- The site is well serviced by public transport with bus services provided on West Street, adjacent the site. Lewisham Station is also located within 200m of the site.

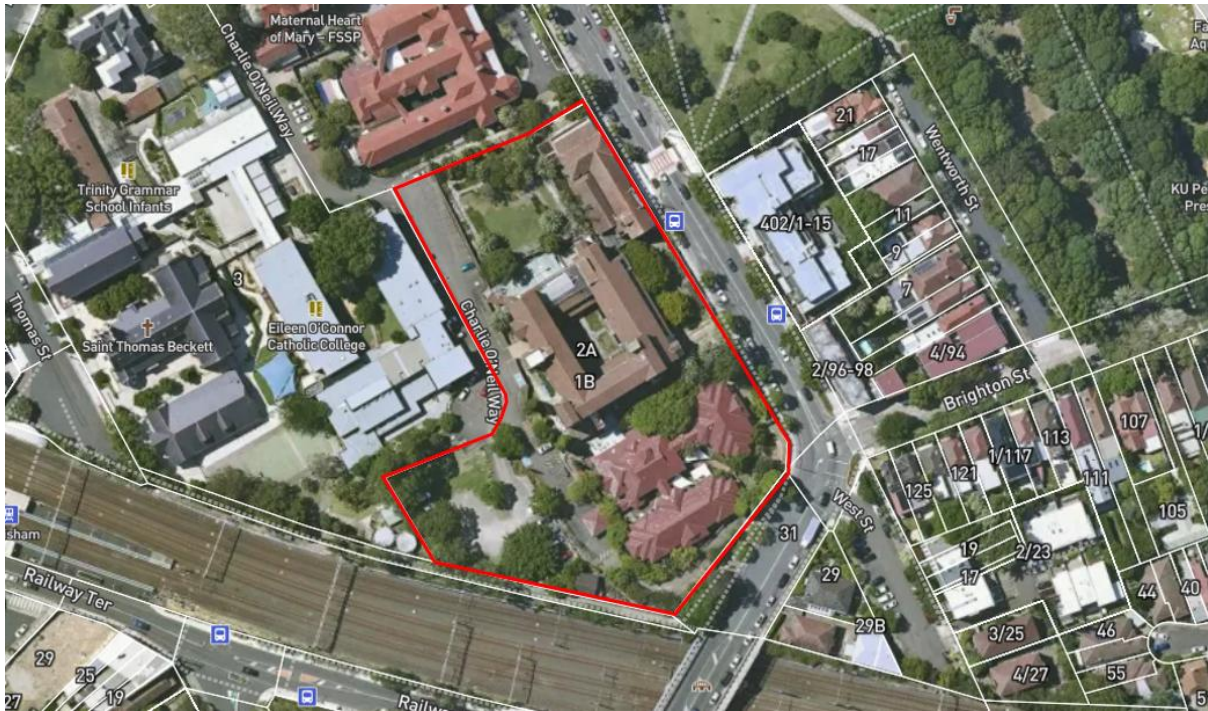


Figure1: Site context aerial, site outlined in red

1.2 The Locality

- The surrounding land uses include an outdoor recreational facility, an educational establishment, place of public worship, community facilities, dwelling houses, attached dwellings, and residential flat buildings.
- The site is listed as item of environmental heritage under Schedule 5 of the *Inner West Local Environment Plan 2022* (I1181) and is located adjacent to the Petersham North Heritage Conservation Area.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

- Ann Walsh Building
 - Internal alterations to approved Independent Living Units (ILUs) to support 2- and 3-bedroom ILUs
 - Adjust landscape wall adjacent to Ann Walsh building
 - Reinstate existing door to the north of Ann Walsh building
- Novitiate Building
 - Alterations and additions to support Residential Aged Care (RAC) units from approved ILU use, returning the building back to its current use
 - Novitiate courtyard garden levels increased and layout updated
 - Roof screening added to plant above Novitiate Building
 - Remove roof terrace, reinstate roof for Novitiate
 - Novitiate external stair to the north-east fire egress stair added
 - Add two additional balcony terrace levels for Novitiate overlooking piazza
- New Buildings 1 and 2

- Amendments to tower design to accommodate mix of 1, 2 and 3 bedroom ILUs and reduction in RACs
- Minor alteration to orientation of tower buildings to accommodate improved ADG solar and natural ventilation outcomes and reduced number of apartments within railway protection zone
- Reduce podium height from RL45.1m to RL35.2m
- Increase tower heights from RL60.8m (9 storeys) to RL62.2m (10 storeys)
- Relocate smoke exhausts from the piazza to Building 1 – Level 1 terrace
- Reduce substation to single kiosk in east garden, additional substation provided toward West Street bridge
- Adjust substation position in the East Garden to improve accessibility and access pathways
- BLD 1 - southern apartment layouts amended to remove dogleg
- Reorganise roof plant for service requirements
- New Building 3
 - Minor alteration to orientation of tower buildings to accommodate improved ADG solar and natural ventilation outcomes
 - Introduction of lower ground floor and retail use, that better addresses and connects to street and wider community
 - Locate fire booster to the west street frontage of Building 3
 - Reconfigure pool plant layout to accommodate services, with adjacent landscape adjusted to allow larger pool plant
 - Swap an Activities Room and RAC unit in Novitiate
- Basement
 - Alterations to basement to accommodate modifications to Buildings 1, 2 and 3 and support revised parking requirements
 - Basement 1 and 2 western pile walls reconfigured to be clear of substation easement
- Communal Open Space / deep soil
 - Amendment to podium level communal open space (COS) and ground floor level to accommodate improved and more substantial COS and deep soil area
 - Piazza landscaping layouts redesigned based on DRP comments
- Various administrative amendments to address:
 - Physical amendments.
 - Conditional amendments now addressed by amended design
 - Staging for Construction Certificates.

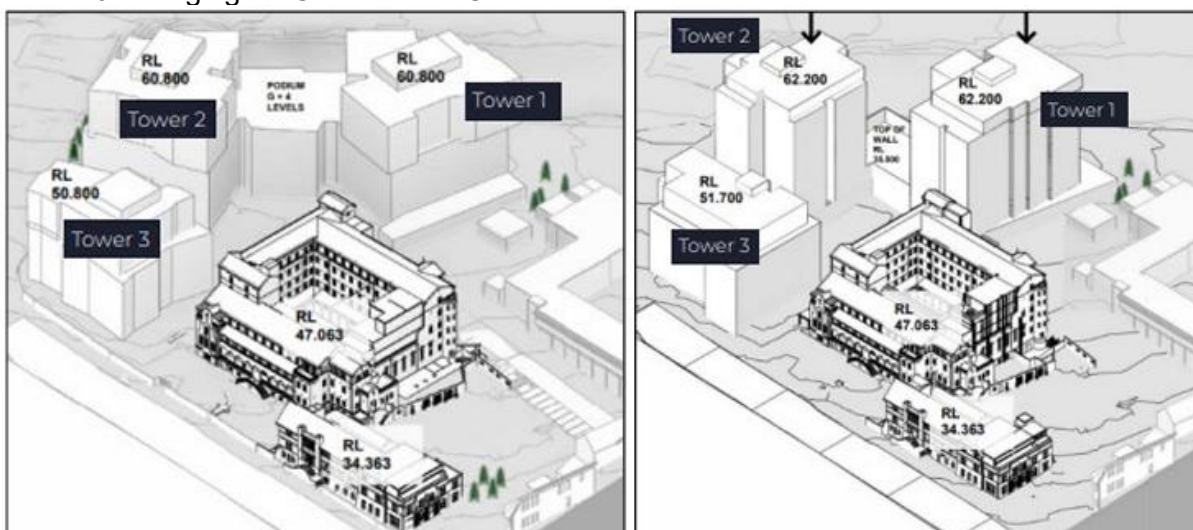


Figure2: Perspective of the approved scheme and the proposed scheme (noting that the configuration of the piazza area has since been amended)

Development Data

Table 1: Development Data

Control	Approved	Proposed
Site area	12,068sqm	12,068sqm
Height (Storeys)	Ann Walsh Building RL 34.4m (3)	Ann Walsh Building RL 34.4m (3)
	Novitiate RL 46.7m (6)	Novitiate RL 46.7m (6)
	Building 1 RL 60.8m (9)	Building 1 RL 62.2m (10)
	Building 2 RL 60.8m (9)	Building 2 RL 62.2m (10)
	Building 3 RL 50.8m (7)	Building 3 RL 51.7m (7)
GFA	26,819sqm*	27,170sqm*
FSR	2.22:1	2.25:1
No of units	144 RAC beds 118 ILUs 1 bed = 34 2 beds = 57 3 beds = 27	59 RAC beds 130 ILUs 1 bed = 16 2 beds = 68 3 beds = 46
Communal Open Space**	3,785sqm (27% of site area)	5,156sqm (41.5% of site area)
Landscape planting and useable space	5,762sqm (47% of site area)	6,127sqm (50% of site area)
Deep Soil	2,188sqm (18% of site area)	1,947sqm (16% of site area)
Car Parking spaces	183	220
Solar Access	63% of ILUs across the entire site, including existing heritage buildings, achieve at least 2 hours of sunlight between 9am and 3pm.	74% of ILUs across the entire site, including existing heritage buildings, achieve at least 2 hours of sunlight between 9am and 3pm.
Natural Ventilation	76% of ILUS across the entire site, including existing heritage buildings are cross ventilated.	88% of ILUS across the entire site, including existing heritage buildings are cross ventilated.
*1,180m² was missed from Novitiate Building in GFA calculations under original approval resulting in a total GFA 25,639m². This has been corrected in the table above to reflect the actual GFA approved. **Previous calculations in the original approval showed inconsistency in the calculation of communal open space with the inclusion of some landscape and communal areas. To ensure like for like comparison, additional areas have been included in the calculation.		

Table 2: Unit Mix – Approved Vs Proposed

Building	Approved	Proposed
Ann Walsh Building	12 ILU (11x 1 bed, 1x 2 bed)	6 ILU (4x 2 bed+s, 2x 3 bed+s)
Novitiate Building	34 ILU (18x 1 bed, 14x 2 bed, 2x 3 bed)	59 RAC
Building 1	144 RAC	51 ILU (8x 1 bed, 24x 2 bed, 19x 3 bed)
Building 2	44 ILU (4x 1 bed, 25x 2 bed, 15x 3 bed)	43 ILU (16 x 2 bed, 16 x 2 bed+s, 11x 3 bed)
Building 3	28 ILU (1x 1 bed, 17x 2 bed, 10x 3 bed)	30 ILU (4x 1 bed, 4x 1 bed+s, 8x 2 bed, 14x 3 bed)
Total	144 RAC 34 ILU (1 bed) 57 ILU (2 bed) 27 ILU (3 bed)	59 RAC 16 ILU (1 bed & 1 bed+s) 68 ILU (2 bed & 2 bed+s) 46 ILU (3 bed & 3 bed+s)
Total Units	144 RAC Units 118 ILU Units 262 Total Units	59 RAC Units 130 ILU Units 189 Total Units
Total Beds	144 RAC Beds 229 ILU Beds 373 Total Beds	59 RAC Beds 290 ILU Beds 349 Total Beds
Note: 'bed+s' denotes dwellings which include a separate study space		

Table 3: Ancillary Uses and Amenities

Building	Approved	Proposed
Chapel	Novitiate and Building 2	Novitiate
Recreational (Game Room, Activity Area, Art, Library, Multifunctional room, Pool, Cinema, Day Respite)	Novitiate, and Building 1 and 2	Building 1 and 2
Health (physio, hair salon, Gym, Consult)	Building 1 and 2	Building 1 and 2

Building	Approved	Proposed
Retail / food and drink premises	Building 1 and 2	Building 3

2.2 Background

Pre-lodgement meeting was held on 18 July 2024, 10 September 2024, and 29 November 2024 prior to the lodgement of the application where various issues were discussed. A summary of the key issues is outlined below:

- Substantially the same test
- Architectural design
- Heritage
- Traffic and parking
- Tree management
- Contamination
- Waste management

The proposed modification application was lodged on 28 May 2025. A chronology of the modification application since lodgement is outlined below in **Table 4**:

Table 4: Chronology of the Modification Application

Date	Event
28 May 2025	Modification application lodged
10 May 2025 – 8 August 2025	Exhibition of the application
30 May 2025	Modification referred to external agencies, this includes Heritage NSW, Roads and Maritime, Water NSW and Sydney Trains, Sydney Water
6 August 2025	Referral meeting with Council's Architectural Excellence Design & Review Panel (AEDRP)
9 September 2025	Additional information from applicant in response to Council's email RFI request dated 21 August 2025: • Revised landscape plans • Circulation plan • Façade materiality details • Halgan 4,000 L grease arrestor detail • Catholic Healthcare Letter - Architectural Excellence and Design Review Panel • Environmental Health Response
21 October 2025	Additional information from applicant in response to Council's email RFI request dated 22 September 2025: • Amended architectural plans • Revised acoustic report
18 December 2026	Referral meeting with Council's Architectural Excellence Design & Review Panel (AEDRP)

Date	Event
2 December 2025	Additional information from applicant in response to Council's email RFI request dated 19 November 2025: • Amended architectural plans • Revised landscape report • Access statement • Heritage statement – Cloister Garden • Historical Archaeological Assessment and Research Design
19 January 2025	Additional information from applicant in response to Council's AEDRP meeting held on 18 December 2025: • Amended Architectural Plans dated 16.01.2026 • Revised Landscape Plans – Revision H • Preliminary Facade Detail Sketches dated 16.01.2026
23 March 2026	Comments received from Council's City Architect confirming the proposal satisfies the design excellence requirements of Clause 6.9 of the <i>IWLEP 2022</i> .
25 March 2026	Clarification provided by the application confirming the intended amendments to Condition 21 and 22.

2.3 Site History

- DA201800505 was granted by Sydney Eastern City Planning Panel ('the Panel') on 2 September 2020 for: Alterations and additions to the Anne Walsh and Noviate buildings to change the use to Independent Living Units, demolish an existing Aged Care Hostel and construct a Residential Aged Care Facility and Independent Living Units.
- MOD/2024/0221 was determined by Council under delegation on 6 November 2024, the modifications involved amendments to the approved staging plan and changes to various conditions to reflect the amended staging plan.
- A construction certificate (CC) pursuant to the Consent was issued on 22 July 2025, with the physical commencement of works occurring on 30 July 2025. The works undertaken include alterations to the Ann Walsh Building, specifically the removal of an existing doorway and the construction of a new fire rated wall. These works do not form part of the current proposal.

3. STATUTORY CONSIDERATIONS

When considering a Modification of consent application under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'), the consent authority must take into consideration the following matters:

3.1 Section 4.55 of the *Environmental Planning & Assessment Act 1979*

- (a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) (s4.55(2)(a)), and*

The applicant has provided the following justification to demonstrate the application is substantially the same as approved, this is as follows:

In considering the 'substantially the same' test, reference is made to recent case law established in Canterbury-Bankstown Council v Realize Architecture [2024] NSWLEC 31 (Realize).

In Realize, the NSW Land and Environment Court has clarified that a holistic and balanced approach is required in considering whether the two developments (original and modified) are substantially the same.

Chief Justice Preston held that the 'substantially the same test' requires a consent authority to undertake three steps:

- 1. Finding the primary facts - identifying the respects in which the originally approved development is proposed to be modified (e.g. height, FSR, bulk, scale, etc.)*
- 2. Interpreting the law - interpreting the words and phrases of the 'substantially the same' test in s.4.55/4.56 of the EPA Act as to their meaning.*
- 3. Categorising the facts as found - consent authorities to assign 'relative significance or weight to the different facts and a balancing of the facts, as weighted'.*

An assessment against the three steps above for the proposal are provided below:

1. Primary facts

As established in Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280 (Moto Projects), a comparison of the changes of the modified application to the original consent may include an appreciation of qualitative and quantitative differences.

An appreciation of the qualitative and quantitative differences between the original development and proposed modifications is provided below.

Qualitative

- The proposed use remains for the purpose of seniors accommodation with a mix of RACs and ILUs, and ancillary land uses, consistent with the original approval.*
- The site layout and master planning for existing and new buildings remains unchanged including vehicle access, open space area and landscaped areas.*
- Proposed building envelopes are substantially located within the approved building envelopes.*
- No change in the number of basement levels is proposed.*
- Proposed retail space maintained, though relocated closer to the West Street frontage.*

Quantitative

- A minor increase in GFA of 351sqm, an increase of approximately 1.3%.*

- A slight increase to the tower heights – approximately 0.9m in tower three, and 1.4m in towers one and two.
- A reduction in podium height by approximately 15m.
- The number of ILUs has increased from 118 to 130 and the number of RACs has decreased from 144 to 59.
- Car parking numbers have increased from 183 to 220, an increase of 20%.
- Slight decrease in deep soil from 2,188sqm (18% of site area) to 1,947sqm (16% of site area).
- An increase communal open space from 3,785sqm to 5,156sqm

2. Interpreting the Law

Section 4.55(2)(a) of the EP&A Act states:

(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent 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 consent was originally granted and before that consent as originally granted was modified (if at all),

Whilst comparative exercises established in other case law such as Moto Projects can be instructive in identifying differences between the original and proposed modification, it does not displace the substantially the same test under Section 4.55(2)(a), nor is it statutorily required.

One of the notable findings in Realize is that although quantitative differences may appear significant in isolation, the focus of the test is to take a holistic and balanced approach of qualitative similarities as well.

Chief Justice Preston provides at [26] in Realize that:

“the comparison required by s 4.55(2)(a) remains a holistic one of the two developments being compared – the modified development and the originally approved development. The opinion of satisfaction that s 4.55(2)(a) requires is that the two developments being compared are substantially the same development, not that either the quantitative features or the qualitative features of the two developments are substantially the same.”

(emphasis added)

3. Categorising the Facts

The proposed modifications are substantially the same with the original development application for the following reasons:

Land Use

The proposed modifications maintain the approved land use as ‘seniors housing’ as defined under the Seniors SEPP, supporting a mix of ILU, RAC and ancillary land uses. No new land uses from those approved under the original DA are proposed within the modification application.

Building Envelope

Building 1, 2 and 3 are predominantly located within the building footprints and envelope as previously approved.

Whilst slightly taller and incorporating changes to the orientation and layout, and bulk and scale, when viewed from surrounding streets, is visually alike to that previously approved and, in some respects, improved from the approved outcome.

Regarding the internal design, the proposed modification maintains a 6-unit (Building 1), 5-unit (Building 2) and 3-unit (Building 3) floor plates, 2 lifts and scissor stairs across both typical floor plans with a more flexible balcony design also accommodated in the modification. The top floor levels of each building have also been recessed to reduce its apparent visibility when viewed from the street.

While the podium level has decreased from 7 storeys to 1 storey, it responds to urban design panel comments (RFI 24 July 2019) which stated three separate and independent buildings would constitute a better architectural outcome... This connection should be removed or significantly reduced in order to reduce the apparent bulk and scale of the new development and to provide improved architectural legibility. Consequently, the proposed podium level better aligns with the design advice of the urban design panel at the time of assessment.

Consequently, the building envelope of the proposed modification is substantially the same as previously approved.

Intensity of use

The proposal results in a nominal increase in GFA of 1.3% resulting in an FSR of 2.25 (originally approved as 2.22:1).

Whilst it is noted that the total number of units has decreased from 262 to 189 as a result of the change in the mix of ILUs and RACs, the proposal maintains a similar bed count of 349 representing a minor decrease of 6% from the 373 approved bed count.

Noting the nominal increase in GFA, and slight decrease total bed numbers, the density and intensity of use of site is considered to remain substantially the same as previously approved.

Car Parking and Traffic Generation

The number of car parking spaces has increased in response to the increase in ILU units. Notwithstanding, the proposal maintains two (2) basement levels and on-grade parking as previously approved.

As identified in the Traffic Report, traffic impacts associated with the proposed modification will result in a net reduction of 9 vehicle trips per hour. Consequently, the proposal will maintain acceptable traffic outcomes as previously approved with no external network improvements required.

As the additional car parking numbers are predominantly located below ground, not visible from the street or public domain, and the traffic conditions being similar when approved, the provision of car parking remains substantially the same as approved.

Landscaping, Deep Soil and Communal Open Space

The site layout and master planning for the proposed modification remains substantially unchanged as previously approved with landscape, deep soil and communal open space areas principally located in the:

- *North Garden,*
- *East Garden,*
- *Novitiate Courtyard,*
- *Village Centre/Central Piazza, and*
- *Podium level.*

Area calculations within the North Garden, East Garden and Novitiate Courtyard remain unchanged from the original approval with improvements to the Village Centre/Central Piazza and Podium level resulting as part of the proposed modification application. Notwithstanding, the landscape, deep soil and communal open space areas remain substantially the same as previously approved.

Furthermore, the proposed modification complies with the minimum area calculations for landscape, deep soil and communal open space within the Seniors Living SEPP, ADG and DCP.

Council concurs with the applicant's justification in that 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, seniors accommodation with ground floor retail, does not change. Additionally, the intensity of the use is akin to that approved
- The overall bulk, scale and envelopes of the buildings are generally consistent with the approved development
- Where refinements have been made to the building envelope, such as the increase in basement parking, relocation of the retail premises, minor increase in GFA and reduction in podium heights; these are required to improve the presentation of the buildings to the various streetscapes and improve the internal amenity/accessibility within the site.

- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and*

No objections were received from the external agencies, this being Sydney Water, Water NSW, Heritage NSW, Sydney Trains and Ausgrid. The general terms of approval (GTA) are required to be amended to reflect the modified proposal. Refer to Section 4 of this Report.

- (c) *it has notified the application in accordance with—*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)), and*

The application was required to be notified in accordance with Council's Community Engagement Strategy 2025-2029 between 10 May 2025 – 8 August 2025.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be (Section 4.55(2)(d)).*

The modification application was notified between 10 May 2025 – 8 August 2025 and one (1) submission was received. The issues raised in these submissions are considered in Section 4 of this report.

- (e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).*

The matters required to be considered include:

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

Reasons for Grant of Consent In addition, in accordance with section 4.55(3) of the EP&A Act,

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

In consideration of Section 4.55(3) of the *EP&A Act 1979* the Sydney Eastern City Planning Panel granted consent to the original development in a notice of determination dated 2 September 2020. The reasons outlined in the Statement of reasons for this decision included the following:

- The Panel deferred consideration of this matter on 27 May 2020 to resolve a number of critical issues, these were subsequently addressed to the satisfaction of Councils assessment team. The panel also accepted the amendments with the following comments:
 - The Panel notes that the development does not achieve the minimum deemed to satisfy landscape area requirements of Clause 48 and Clause 50 of SEPP "Seniors Living". The quantum of shortfall is 3322 sqm which is significant. The Panel acknowledges the heritage constraints of the site and the location of public open space close to the site. The Panel is aware of a Site Compatibility Certificate which indicates a possible yield for the site. The Panel is also aware of an apparent inconsistency in landscape expectations for social housing providers versus private developments under the SEPP where provision of 30% of the site area would be required for a private ILU development as opposed to 35 sqm per dwelling for a social housing development of the same form. In the case of the subject proposal 36.2% of the site is landscaped area.
 - In respect of merit, the Panel accepts the quality and form of the landscape area provided notwithstanding the reduced quantum of landscaped space. In the circumstances of this site, its location and heritage significance the Panel

- accepts the reduced quantum of provision.
- The Panel considers further amendments are required to address the impacts on the Novitiate Building and proposes an additional condition.
- The Panel noted some residual inconsistencies between the landscape drawings and the architectural drawings as well as the stormwater drawings and determined that conditions are required to ensure the landscape drawings prevail, particularly in relation to the fence detail in front of the Novitiate Building and in relation to the setback treatment of Building 3 to West Street where the current drainage diagrams indicate conflict between the drainage infrastructure and proposed landscape treatment and the architectural plans indicate a terrace to units B3.00.04 that is also in conflict. Further, the Panel determined that the exposed basement wall should be lowered for that part adjoining West Street and a transitional planter bed incorporated upon it in order to improve the public/private landscape interface with consequential reduction of the area of the terraces to adjoining units.

It is considered that the modified proposal has taken into account the aforementioned reasons that the original development consent was granted and is consistent with these reasons and planning controls and expectations for the site.

3.2 Section 4.15(1) of the *EP&A Act 1979*

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

These matters include the following, which are considered in detail below:

- (a) *the provisions of—*
 - (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),*
- (b) *that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

3.2.1 **Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations**

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

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

The following Environmental Planning Instruments are relevant to this application

- *State Environmental Planning Policy (Housing) 2021,*
- *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004,*
- *State Environmental Planning Policy (Resilience and Hazards) 2021,*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021,*
- *State Environmental Planning Policy (Sustainable Buildings) 2022,*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021,*
- *State Environmental Planning Policy (Industry and Employment) 2021, and*
- *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 5** and considered in more detail below.

Table 5: Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6.	Y
State Environmental Planning Policy (Housing) 2021	The approved development was made under the provisions of the Seniors SEPP. Whilst the SEPP has since been repealed, savings and transitional provisions contained within Schedule 7A Clause 2(1) of State Environmental Planning Policy (Housing) 2021 have the effect that the Seniors SEPP continues to apply to an application to modify a development consent which was granted on or before 26 November 2021.	Y
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	A Site Compatibility Certificate was issued over the site in accordance with Clause 25(4)(a) of the Seniors Living SEPP. As the SCC was only relevant to enliven the power to grant consent to the original DA, the SCC is not required to be current at the time of any modification application and has no continuing relevance following the grant of the consent.	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land 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.	Y

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure - Section 2.99(4) Excavation in, above, below or adjacent to rail corridors (TfNSW – Sydney trains) - Section 2.48 Development likely to affect an electricity transmission or distribution network (Ausgrid) Sydney Trains and Ausgrid support the proposal.	Y
State Environmental Planning Policy (Sustainable Buildings) 2022	Updated BASIX Certificate has been provided.	Y
State Environmental Planning Policy (Industry and Employment) 2021	Chapter 3 The proposed modification maintains the same signage identified in the original approval.	Y
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 6: Bushland in Urban Areas An addendum to the Biodiversity Development Assessment Report (BDAR) Addendum has been provided.	Y
Inner West Local Environmental Plan 2022	Clause 1.2 - Aims of the Plan	Y
	Clause 2.3 - Zone objectives and Land Use Table	Y
	Clause 2.5 - Additional permitted uses for land	Y
	Clause 2.7 - Demolition	Y
	Clause 5.4 - Controls relating to miscellaneous permissible uses	Y
	Clause 5.7 - Development below mean high water mark	Y
	Clause 5.10 - Heritage Conservation	N
	Clause 6.1- Earthworks	Y
	Clause 6.4 - Terrestrial biodiversity	Y
	Clause 6.5 - Development in areas subject to aircraft noise	Y
	Clause 6.6 - Airspace operations	Y
Marrickville Development Control Plan 2011	Part 2.1 – Urban Design	Y
	Part 2.3 – Site and Context Analysis	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 2.8 – Social Impact	Y
	Part 2.9 – Community Safety	Y
	Part 2.10 – Parking	Y

EPI	Matters for Consideration	Comply (Y/N)
	Part 2.11 – Fencing	Y
	Part 2.12 – Signs and Advertising	Y
	Part 2.13 – Biodiversity	Y
	Part 2.17 – Water Sensitive Urban Design	Y
	Part 2.18 – Landscaping and Open Space	Y
	Part 2.20 – Tree Management	Y
	Part 2.21 – Site Facilities and Waste Management	Y
	Part 2.24 – Contaminated Land	Y
	Part 2.25 – Stormwater Management	Y
	Part 8 – Heritage	Y
	Part 9 – Strategic Context	Y

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

Chapter 2: State and Regional Development

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

State Environmental Planning Policy (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.1795209M prepared by Aspire Sustainability Consulting Pty Ltd dated 13 May 2025 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the SEPP subject to the recommended conditions of consent.

State Environmental Planning Policy (Housing for Seniors with a Disability) 2004

The approved development was made under the provisions of the Seniors SEPP. Whilst the SEPP has since been repealed, savings and transitional provisions contained within Schedule 7A Clause 2(1) of State Environmental Planning Policy (Housing) 2021 have the effect that the Seniors SEPP continues to apply to an application to modify a development consent which was granted on or before 26 November 2021. The controls relevant to the proposal are considered in **Table 6** below

Table 6: Housing for Seniors with a Disability SEPP assessment comparison table

Clause	Approved	Proposed
Part 2 Site related requirements		
26 Location and access to facilities	The approved scheme was supported by written evidence demonstrating that residence will have access to the services described within clause 26(1). The site has access to bus services along west street that provide access to the services within the CBD that meet the requirements of Clause 26.	Proposal complies with requirements and remains substantially the same as the approved scheme.
28 Water and sewer	As indicated by the survey plan, the site is serviced by water and sewer services.	Proposal complies with requirements and remains substantially the same as the approved scheme.
29 Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply	Having regard to Clause 25(5)(b)(i), (iii) and (v) of the SEPP together with the planning principle within <i>Project Venture Developments Pty Ltd v Pittwater Council</i> [2005] NSWLEC 191, The approved scheme is considered to be compatible with the surrounding land use noting the natural environment, services and infrastructure and the bulk, built form, character and scale compared to other buildings.	Proposal complies with requirements and remains substantially the same as the approved scheme.
Part 3 Design requirements		
30 Site analysis	The documents submitted with the approved scheme were sufficient for Council to conclude that the applicant has taken into account the site analysis.	A site analysis has been prepared which complies with all requirements.
31 Design of in-fill self-care housing	The Seniors Living Policy: Urban Design Guideline for Infill Development was considered; however these guidelines are primarily designed for small scale infill development and is of limited utility on the subject site	Not applicable.
32 Design of residential development	The approved scheme has satisfied the design principles.	The proposal has been considered in the context of the urban design principles within Part and demonstrates the applicable design principles, subject to recommended conditions requiring the Novitiate garden to remain at grade. Refer to Heritage discussion within the <i>IWLEP 2022</i> below.
33 Neighbourhood amenity and streetscape	The approved scheme has been considered in the context of the locations current character and desired future character. The buildings contribute to the quality and identity of the area. Additionally, the development retains, compliments and sensitively harmonizes with the heritage listed buildings in the vicinity. The approved scheme maintained reasonable residential amenity and appropriate residential character by:	The proposal has been assessed against the existing and desired future character of the area and is considered to positively contribute to the locality's identity. The reconfiguration of Buildings 1, 2 and 3 allows for improved amenity outcomes for the residents in addition to compliance with the ADG requirements. Furthermore, the proposal complements and integrates sensitively with nearby heritage-listed buildings within the site and is therefore acceptable.

Clause	Approved	Proposed
	• Providing appropriate setbacks to reduce the apparent visual bulk and overshadowing; • Providing a built form and siting that relates to the sites form by locating the new buildings in an appropriate part of the site; • The building height at the street frontage are compatible with the adjacent development; and • The amenity impacts have been minimized as the buildings are located away from residential properties. The front setback of the building 3 was setback less than the setback of the Ann Walsh building but further forward than the Novitiate Building. The setback is in sympathy with the existing building line. The tree planting was in sympathy with the surrounding streetscape. Within the context of the amended plans, the proposal maintains, where reasonable, major existing trees. No buildings were located within a riparian zone.	
34 Visual and acoustic privacy	The approved scheme maintains a level of separation from other residential development that allows separation to be achieved by distance. Additionally, it was unlikely to cause significant noise issues to the surrounding residents.	Acceptable noise levels in the bedrooms are capable of being achieved subject to the incorporation of recommendations detailed in the Acoustic Report provided.
35 Solar access and design for climate	The juxtaposition of the approved scheme to the surrounding residential development is such that solar access to adjoining properties is not an issue. The site planning of the proposed made practical use of natural ventilation; solar heating and lighting by locating living areas in a northerly direction were possible.	The proposal provides enhanced solar access for ILUs. RACs located in Novitiate building will maintain suitable solar access consistent with what is currently achieved for the building.
36 Stormwater	The approved scheme used appropriate mechanisms to manage storm water runoff.	The stormwater management has been revised to reflect the current proposal and has been designed to ensure appropriate stormwater management throughout the site.
37 Crime prevention	The approved scheme provided for a suitable design to encourage crime prevention.	The proposal is substantially the same as the approved scheme, and therefore, has been designed to encourage crime prevention.
38 Accessibility	The approved scheme provided acceptable pedestrian links and environment for pedestrians and motorists.	The accessibility and permeability within the site remains substantially the same as the approved scheme and therefore is acceptable. The piazza area adjacent to Buildings 1, 2 and 3 has been improved to

Clause	Approved	Proposed																		
		provide a greater distinction between pedestrian and vehicular movement.																		
39 Waste management	The approved scheme provided appropriate waste facilities that maximize recycling.	The waste management for the site has been updated to reflect the revised scheme in compliance with the waste management requirements.																		
Part 4 Development standards to be complied with																				
40 Development standards—minimum sizes and building height	The approved scheme complied with the site area requirements with an area of 12,068m ² . Additionally, a site frontage of 123m complied with the minimum frontage requirements.	The site area remains the same as approved.																		
Part 5 Development on land adjoining land zoned primarily for urban purposes																				
44 Availability of facilities and services	Facilities and services were located within an acceptable distance from the site, noting the access to public transport to local centers.	The proposal is substantially the same as the approved scheme, therefore.																		
Part 7 Development standards that cannot be used as grounds to refuse consent																				
47 Part does not apply to certain development applications relating to heritage affected land	While the site is subject to local heritage listing with the <i>Marrickville LEP 2011</i> , being Item I63, the site is not listed on the State Heritage Register under the <i>Heritage Act 1977</i> and does not have an interim heritage order.	No change to existing site condition.																		
48 Standards that cannot be used to refuse development consent for residential care facilities parking	The approved scheme exceeded the standards that cannot be used to refuse development consent for height, density and scale and as a result these must be considered in the context of the local controls. The landscape area and parking provided for the residential care facilities was consistent with the development standards that cannot be used to refuse development consent and as a result the local controls are not relevant. <table border="1"> <thead> <tr> <th>Type</th><th>Requirement</th><th>Provided</th></tr> </thead> <tbody> <tr> <td>Landscaped area</td><td>25m² per bed (3600m²)</td><td>4373m²</td></tr> <tr> <td colspan="3">Parking</td></tr> <tr> <td>Residents/visitors RACF</td><td>14</td><td>38</td></tr> <tr> <td>Staff</td><td>24</td><td>24</td></tr> <tr> <td>Ambulance</td><td>1</td><td>1</td></tr> </tbody> </table>	Type	Requirement	Provided	Landscaped area	25m ² per bed (3600m ²)	4373m ²	Parking			Residents/visitors RACF	14	38	Staff	24	24	Ambulance	1	1	The site is not subject to a maximum height of building control or FSR, notwithstanding this the proposal is substantially the same as the approved scheme. The proposal provides for 59 RACs requiring a total minimum landscape area of 1,475sqm. The provision of 6,127sqm landscape planting and useable space is consistent with this provision and exceeds that originally approved. Given the proposal seeks to reduce the number of RACs, the car parking spaces have subsequently been amended accordingly to the following in compliance with the prescribed parking rate requirements: <u>RAC Beds:</u> Required: 6 space (1 space per 10 beds) Provided: 6 spaces <u>RAC Staff:</u> Required: 13 (1 space per 2 staff) Provided: 18 spaces <u>Ambulance:</u> Required 1 bay Provided: 1 bay
Type	Requirement	Provided																		
Landscaped area	25m ² per bed (3600m ²)	4373m ²																		
Parking																				
Residents/visitors RACF	14	38																		
Staff	24	24																		
Ambulance	1	1																		

Clause	Approved	Proposed												
50 Standards that cannot be used to refuse development consent for self-contained dwellings	The approved scheme exceeded the standards that cannot be used to refuse a development consent for height, density and scale, solar access and private open space, as a result these must be considered in the context of the local controls. The landscape area, deep soil and parking provided for the residential care facilities was consistent with the development standards that cannot be used to refuse development consent and as a result the local controls are not relevant. <table border="1"> <thead> <tr> <th>Type</th><th>Requirement</th><th>Provided</th></tr> </thead> <tbody> <tr> <td>Landscape area</td><td>(35m² per ILU) (4095 m²)</td><td>4373m²</td></tr> <tr> <td>Deep soil zones</td><td>15% of site area</td><td>18.1%</td></tr> <tr> <td>Parking</td><td>27</td><td>117</td></tr> </tbody> </table>	Type	Requirement	Provided	Landscape area	(35m ² per ILU) (4095 m ²)	4373m ²	Deep soil zones	15% of site area	18.1%	Parking	27	117	The site is not subject to a maximum height of building control or FSR, notwithstanding this the proposal is substantially the same as the approved scheme. The proposal provides the following: • 50% (6,127sqm) of the site is used for landscaped planting and usable space • 16% of site is used as deep soil zones. • 74% of the ILUs demonstrate compliance with the ADG requirements for solar access, this being 2hrs of sunlight between 9am and 3pm, including the existing heritage buildings • The POS areas/balconies demonstrate compliance with the minimum balcony width and depth requirements • The total number of parking spaces has increased by 37 spaces, increasing from 183 spaces under the original DA, to 220 spaces
Type	Requirement	Provided												
Landscape area	(35m ² per ILU) (4095 m ²)	4373m ²												
Deep soil zones	15% of site area	18.1%												
Parking	27	117												
Chapter 4 Miscellaneous														
55 Residential care facilities for seniors required to have fire sprinkler systems	The approved scheme provided an appropriate sprinkler system. At CC stage, the certifying authority will examine the fire safety requirements.	The proposal is capable of compliance. Details to be verified at CC stage of works.												
Schedule 3 Standards concerning accessibility and useability for hostels and self-contained dwellings	The approved scheme complied with the wheelchair access requirements. The private car spaces are capable of accommodating the requirements. The application includes a report from an accredited Access consultant that details that The remainder of the requirements within this Schedule 3 will need to be confirmed at construction certificate stage. A condition of consent is recommended requiring details to be provided demonstrating compliance with the Schedule 3 Standards prior to the issue of a construction certificate.	The proposal is capable of compliance. Details to be verified at CC stage of works.												

State Environmental Planning Policy (Housing) 2021

The development is subject to the requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) as the proposal is for a mixed-use development (containing residential aged care facilities and other seniors housing being independent living units) with a residential accommodation component that meets the requirements of Clause 4 of SEPP 65. The controls relevant to the proposal are considered in **Table 7** below

Table 7: Apartment Design Guide assessment comparison table

Section	Approved	Proposed
2F Building separation/3F Visual privacy Up to 4 storeys (approximately 12m): • 12m between habitable rooms/balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms Five to eight storeys (approximately 25m): • 18m between habitable rooms/balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms Nine storeys and above (greater than 25m): • 24m between habitable rooms/balconies • 18m between habitable and non-habitable rooms • 12m between non-habitable rooms At the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m	The setback distances for Building 1 from the rear and side boundaries were non-compliant with the numerical requirements. These were deemed acceptable as given the site's Special Use zoning it would not be expected that any future development on the surrounding sites would result in privacy impacts. Additionally, the level of building separation between buildings on the site was largely consistent with the numeric requirements for separation. The numerical variations were deemed acceptable as the proposal was consistent with objectives 3F-1 and 3F-2 of the ADG and acceptable on merit	The setback distances for Building 1, 2 and 3 seek to vary the numerical setback requirements to the rear and side boundaries. Similarly to the approved scheme, these setbacks are deemed acceptable given the site's Special Use zoning, and it would not be expected that any future development on the surrounding sites would result in any unacceptable adverse visual privacy impacts as they are to overlook a railway corridor and West Street. The numerical variations are deemed acceptable as the proposal is consistent with objectives 3F-1 and 3F-2 of the ADG and acceptable on merit
3D Communal and public open space 25% of the subject site with 50% of direct sunlight for minimum 2hrs between 9am and 3pm.	The approved scheme provided for 27% communal open space. Solar access was provided to beyond 50% of the communal open space areas for the required times 18.1% deep soil zones were provided as part of the approved scheme consistent with the numeric requirements.	Proposal provides 41% of site area as communal open space and achieves a minimum of 50% direct solar access to principal useable parts for a minimum of 2 hours consistent with the original approval.
3J Bicycle and car parking	The approved scheme provided car parking to satisfy the requirements of the Seniors SEPP.	The proposal satisfies minimum parking requirements in accordance

Section	Approved	Proposed
Minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less		with the MDCP 2011 and Seniors SEPP.
4A Solar and daylight access - Minimum 70% of living rooms and POS areas are to receive min 2hrs of direct sunlight between 9am and 3pm at mid winter. - In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter - Max 15% of units receive no direct sunlight between 9 am and 3 pm at mid winter	The approved scheme did not comply with the requirements for solar access due to the adaptive reuse of the heritage building. Excluding the ILU's located within the historic buildings, the approved scheme complied. The solar compliance for building 1, 2 and 3 was 78%. Whilst the solar compliance for the Ann Walsh Building is 42% and for the Novitiate Building 38%. Given the nature of the adaptive reuse, it was considered unreasonable to require compliance with the solar access and day light access requirements and this would require significant works to the heritage fabric of the heritage buildings. Therefore, the approved scheme was acceptable on its merits.	74% of ILUs across the entire site, including existing heritage buildings, achieve at least 2 hours of sunlight between 9am and 3pm. It is noted that this is an improvement on the original DA which achieved 63% of ILUs achieving at least 2 hours of sunlight between 9am and 3pm.
4B Natural ventilation Min 60% of units naturally cross ventilated	The approved scheme included a compliant level of cross ventilation, being 76% of ILU's. The depth of the ILU's does not exceed 18m from the glass line	88% of ILUs across the entire site, including existing heritage building are cross ventilated. This is an improvement on the original DA where 76% of ILUs achieved cross ventilated across the site
4F Common circulation and spaces Max 8 units off a circulation core on a single level	The approved scheme largely complied with the requirements for room areas with the exception of the NV.01.01 and NV.01.02 which are non-compliant with the bedroom size requirement, in order to preserve important aspects of the heritage character of the building. Given the nature of the adaptive reuse, was considered to be unreasonable to require compliance in this circumstance, therefore these variances were acceptable on merit.	The maximum number of ILUs off a circulation core is 6. Two lifts are provided to Buildings 1, 2 and 3 and 1 lift provided to the Ann Walsh building which has 6 ILUs.

Section	Approved	Proposed
4D Apartment size and layout • Studio: 35sqm • 1 Bed: 50sqm • 2 Bed: 70sqm • 3 Bed: 90sqm	The approved scheme complied with the apartment size requirements	ILUs satisfy minimum room dimensions.
4C Ceiling heights • Habitable rooms: 2.7m • Non habitable rooms: 2.4m • Mixed use areas: 3.3m for ground and first floor	The approved scheme had compliant ceiling heights with the exception of lower ground floor of the Novitiate Building. This space was to be used as a community space and would be for a habitable use with a ceiling height of 2.2m-2.4m. This section of the Novitiate Building is of very high historic significance, and is the ceiling height of the existing building, therefore a variance to the numerical requirements was deemed acceptable.	The floor-to-floor heights for all new buildings comply with the minimum height requirements. The ceiling heights to the heritage listed building remain non-compliant with the numerical requirements, however, for heritage reasons, no amendments to the internal fabric is supported. Therefore similar to the approved scheme, the variances to the ceiling heights of the heritage listed buildings is deemed acceptable on its merits.
4E Private open space and balconies • Studio: 4sqm • 1 Bed: 8sqm with min 2m depth • 2 Bed: 10sqm with min 2m depth • 3 Bed: 12sqm with min 2.4m depth	The approved scheme was compliant with minimum balcony requirements with the exception of 10 units located within the adaptive reuse heritage listed buildings. The variances to the numerical requirements were deemed acceptable as compliance would result in adverse impacts to the impact to the heritage values of the site. It was also noted that approved scheme included significant COS areas which will provide for the needs of the residents that will enhance the residential amenity well beyond the requirements of the ADG.	All primary balconies achieve the minimum area requirements.
4G Storage • Studio: 4m³ • 1 Bed: 6sqm³ • 2 Bed: 8sqm³ • 3 Bed: 10sqm³	At least 50% of the required storage were located within the apartment.	Adequate storage is provided in each apartment with additional storage areas provided on ground level.

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. The aims of the LEP include the following:

(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 design change conditions to protect the environmental heritage of the Novitiate Building, 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,
- Increases 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 zoned SP2 Infrastructure (Community Facilities) under the *MLEP 2011*. The *MLEP 2013* defines the development as:

“seniors housing means a building or place that is—

(a) a residential care facility, or

(b) a hostel within the meaning of clause 12 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, or

(c) a group of self-contained dwellings, or

(d) a combination of any of the buildings or places referred to in paragraphs (a)–(c), and that is, or is intended to be, used permanently for—

(e) seniors or people who have a disability, or

(f) people who live in the same household with seniors or people who have a disability, or

(g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place, but does not include a hospital.

Note: Seniors housing is a type of residential accommodation—see the definition of that term in this Dictionary.”

The proposed development would ordinarily be prohibited within the zone if not for Clause 15 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* as it is residential accommodation and cannot fit within the definition of community facilities.

The objectives of the SP2 – Infrastructure zone are:

- *“To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*
- *To protect and provide for land used for community purposes.”*

It is noted that a Site Compatibility Certificate has been issued and this has considered that the site is suitable for development of this type.

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

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 8** below.

Table 8: Consideration of the IWLEP 2022 Controls

Control	Approved	Proposal	Comply
Heritage (Cl 5.10)	The site is listed as item of environmental heritage under the Marrickville Local Environment Plan 2011 (l63) and is located adjacent to the Petersham North Heritage Conservation Area. The approved scheme was acceptable as it did not result in adverse impacts on the heritage values of the site, subject to conditions imposed.	The proposal is generally acceptable from a heritage perspective subject to recommended conditions requiring the Novitiate garden to remain at grade. Refer to Section Heritage discussion within the report below.	Yes, subject to recommended conditions
Earthworks (Cl. 6.2)	The approved scheme was supported by a geotechnical report, therefore it was considered that the works would not result in an adverse impact on soil drainage patterns and soil stability in the locality.	The proposal maintains two levels of basement car parking, consistent with the original application, albeit with some amendments. Notwithstanding, the proposal is considered to remain consistent with original	Yes

	Th approved scheme was also supported by a DSI which concluded that the level of excavation proposed was unlikely to affect the amenity of the surrounding properties.	approval as previously approved.	
6.4 Terrestrial biodiversity	The approved scheme was supported by a Biodiversity Development Assessment Report that was reviewed by Councils Urban Ecology team. Subject to the recommended conditions, the proposed development satisfies the requirements of this Clause	Design considerations concerned with terrestrial biodiversity are consistent with approved scheme.	Yes
6.5 Development in areas subject to aircraft noise	The site is located within the 20-25 ANEF contour. Conditions of consent were recommended that require noise control features to address the applicable Australian Standards.	Modified proposal will not alter compliance with this requirement	Yes
Clause 6.9 Design excellence	The approved scheme demonstrated the nine design quality principles relating to context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics	The original DA was referred to the Council's Architectural Excellence Panel and determined to be acceptable in terms of urban design principles. The modified proposal has been carefully considered to ensure the design principles and identity of the approved development have been maintained whilst achieving improvements in the design in line with this clause. This includes: • Improved compliance with ADG design criteria (notably solar and cross ventilation). • Improve communal open space, deep soil and landscape planting outcome. • Improved amenity for residents including a reduction in the number of residents within 25m of railway corridor.	Yes, see discussion below

Consideration of non-compliances

Clause 5.10 Heritage Conservation

The Site, is part of a listed heritage item; Former Petersham Cemetery Archaeological site, at Part of 2B West Street, part of 3 Thomas Street, part of pedestrian walkway between Thomas Street and West Street on the northern side of the railway line and part of West Street, Lewisham and part of the Former Lewisham Hospital, Convent and grounds, including interiors, at 1 Thomas Street and 2B and 2C West Street. The site is opposite the Petersham North HCA (C79).

With the exception of the changes to the internal courtyard known as 'Cloister Gardens' within the Novitiate Building, the proposed development has an acceptable impact on the heritage values of the site.

The proposal seeks to raise the levels of the internal courtyard so that the levels subsequently match the levels of the cloisters surrounding the courtyard. These amendments are to allow for a seamless transition and accessibility throughout the central courtyard and cloisters, noting that the Novitiate Building is to occupy the residential aged care residents (inclusive of dementia patients). The proposal includes a Statement of Opinion prepared by Accessible Building Solutions, dated 14 November to justify this position.

The HIS provided with the application ranks the significance of the Cloister Garden as high, specifically it refers to the recommendation made in Volume 1: Lewisham Aged Care, Thomas Street/West Street, Lewisham, Heritage Assessment and Conservation Development Strategy and states:

"The heritage recommendations in the site assessment (Volume 1) recommended that no new structures be built in the heritage gardens or cloister..."

Council is not supportive of the raising of the internal courtyard, as it will have a high impact on the significance of the heritage item. The sunken garden forms part of the of the historical significance of the item, and the proposed raising of the levels will detract from its significance. It is noted that this advice has been consistently provided to the applicant in the Pre-DA advice (PDA/2024/0072), the original DA and to this current proposal.

Given the above, the raising of the levels for Cloister Garden is not supported, and therefore, it is recommended that existing levels be retained in situ, and the inclusion of a free standing gently graded ramp providing continued access down into the Cloister Gardens be included instead. A condition is included in the recommendation to address this.

Clause 6.9 Design excellence

The application was reviewed by the Architectural Excellence Design Review Panel (AEDRP) on 6 August and 18 December 2025 and Councils City Architect. The AEDRP provided the following comments in relation to the proposal:

- The overall approach to site planning, massing, building separation, and architectural form outcomes is generally supported.
- The proposal results in a series of positive site planning changes, mainly associated with the improved arrangement of new building elements and their arrangement aligning with the existing heritage buildings and the site's inherent orthogonal site planning.

- The amended proposal provides an improved interface with the railway corridor by splitting the southern building into separate elements.
- The visual impact analysis provided from the train station and the surrounding streets was reviewed by the Panel and found to be acceptable.
- The Panel supports the level of separation achieved between pedestrian and vehicular movements when compared to the existing approval and earlier versions reviewed by the Panel.
- The Panel supports the level of separation achieved between pedestrian and vehicular movements, in particular for the new arrival piazza adjacent to Buildings 1, 2 and 3 when compared to the existing approval and earlier versions reviewed by the Panel.

The following items remain outstanding from the AEDRP, these are addressed in **Table 9** below.

Table 9: Consideration of the IWLEP 2022 Controls

Outstanding AEDRP Item	Response/amendments
The pedestrian entry from West Street, and any other public access points, should be barrier-free to achieve universal access, while the pedestrian paths are legible allowing intuitive wayfinding and comfortable movement.	The proposal maintains a 1:14 ramp from West Street to the site, north of the new internal road (East Garden), which is largely consistent with the original approval. A new pedestrian access has now been included in the modification application within the new colonnade (south of new internal road) which is provided in addition to the accessible ramp access. The applicant has indicated that efforts to achieve a barrier-free universal access ramp were investigated within the new colonnade however this could not be achieved due to the existing ground levels. Notwithstanding, universal access is maintained consistent with the original approval and ensures safe, convenient, and inclusive access for all users, including those with mobility requirements
It is encouraged that the location of the two kiosk substations in the east garden addressing west street are reconsidered as their location is imposing.	The east garden kiosk has been reduced from two kiosks to one, noting that this is consistent with the approved scheme. The materiality of the kiosk is within a brick wall so as not to detract from the novitiate building. A new kiosk location has been identified between Buildings 2 and 3 along the West Street Boundary. This location was identified to be most appropriate by the applicant in consultation with Ausgrid for the proposed development considering the following: • Its proximity to the existing substation kiosk (currently located in proposed pool location), • Ensure technical feasibility by avoiding voltage drop from existing network supplies. • Access from West Street, and

Outstanding AEDRP Item	Response/amendments
	To accommodate the revised substation location, a single street tree will be required for removal as identified in the revised landscape plan to enable suitable access to the site with an amended arborist report to be provided to support the removal. To offset the impacts associated with the street tree removal, replacement street tree planting (1:1) is proposed as well as public domain improvements to the subject garden bed is proposed. Conditions are included in the recommendation for two replacement street trees to be planted to offset the loss of the existing street tree to be removed. Additionally, to ensure that the newly planted street trees remain viable a security deposit condition has also been included.
Revised pedestrian networks to provide an appropriate balance between conserving the heritage character of the gardens and facilitating intuitive, universal access.	The primary movement and circulation throughout the site aims to connect residents via accessible pathways that are immersed within the landscape. The primary paths provide separation between pedestrians and vehicles to promote a sense of comfort and safety throughout. The path network has been re-designed to minimise 1:14 ramps throughout the heritage gardens where appropriate to improve equitable access.
A revised scheme to encourage multiple uses at the ground level by differing ages. Additionally, seating and other opportunities for social interaction between residents should be investigated and incorporated as part of the revised scheme.	There are a variety of uses intended for the ground plane. These range for seating areas for individuals and groups, flexible dining opportunities, BBQ area to promote social interaction for residents and families
Encourages ambitious tree canopy targets	The proposal provides for 18% tree canopy coverage which substantially exceeds the approved tree canopy coverage of 8%.
A revised scheme to improve the flexibility and permeability throughout the piazza area.	The revised piazza layout is simplified in design to support more flexible movement between buildings and minimise the need for elevated constructed planters wherever feasible. In areas where planter beds remain, trees will be securely anchored to withstand strong winds and provide shade throughout the year. Additionally, the piazza space provides a clear distinction between pedestrian and vehicular activity compared the approved scheme.
The cumulative impacts to the north garden resulting from the configuration of accessible 1:14 ramps, tactile indicators, handrails, wheel guards and signage, which will work against the heritage values of the garden. The proposed heritage impacts resulting from the access from the eastern to northern garden need to be reduced	The revised design and relocation of substation have allowed a re-design of the accessible ramp network and reduction of 1:14 ramps throughout. Additionally, the proposal has been designed to preserve the heritage significance of the buildings of the site whilst sensitively incorporating the accessibility design requirements commensurate with the use of the site.
Consider a revised scheme to minimise the long connecting pathway wrapping around the east of the Novitiate Building.	Providing an accessible path network which is separated from vehicle traffic is a key design feature for the project. The primary circulation

Outstanding AEDRP Item	Response/amendments
	path connects all of the landscaped areas and offers seating opportunities and moments of reflection with the various garden areas. A secondary informal path of travel along Charles O' Neill Way has been provided for direct access from the Piazza to the Eastern Garden. This pathway is consistent with the original approval with the inclusion of bollards and lighting to improve safety.
Clarify how the existing building will be protected from the raised garden bed, including details resolving potential rising damp and maintenance issues, in order to properly understand the proposal.	The applicant proposes a retaining wall be constructed around the perimeter of the raised courtyard where it meets the building's perimeter wall. Metal grates will be incorporated along this interface to mitigate potential rising damp and to facilitate ongoing maintenance access. Notwithstanding this, the raised garden bed within the Novitiate building is not supported on heritage grounds as it diminishes a key heritage component of the site and a condition is included in the recommendation requiring its deletion.
Consider a revised scheme that encourages further development of the architectural design in terms of construction methodology, materials, finishes, junctions and proportions, with stronger contextual cues potentially being drawn from the Novitiate Building. Opportunities should also be explored to incorporate planting on new structures to soften the architecture.	The proposed materials and finishes retain a masonry-based architectural expression while introducing a refined and more contextually appropriate material palette to better respond to the heritage character of the site and its surroundings. The modified scheme incorporates earth-toned materials, including brickwork at the ground level, to reinforce compatibility with the heritage context and strengthen the streetscape interface. Recessive materials are proposed to the upper levels to reduce the perceived bulk and scale of the building when viewed from the public domain. Additional façade articulation and detailing has been introduced to provide depth and modulation, resulting in an improved contextual response while maintaining a contemporary architectural expression that remains subordinate to the heritage setting. A lower podium element with a green roof reinforces the landscaped character of the site and improves integration with the existing green streetscape, softening the interface with the public domain. The modified scheme achieves a similar streetscape outcome to the approved DA, while delivering improved built-form articulation and increased vegetation at the public interface. Overall, the revised materials and finishes result in a high-quality architectural outcome with an improved contextual fit, enhancing the visual quality and amenity of the public domain.

Outstanding AEDRP Item	Response/amendments
Consider a revised scheme that encourages sustainability targets to exceed the BASIX requirements	Solar roof panels are proposed on the roofs of the ILU buildings, contributing to on-site renewable energy generation and supporting sustainable building operations. In addition, electric vehicle (EV) charging facilities are provided within the basement levels, enabling convenient charging access for residents and users while promoting the adoption of electric mobility.
Refine the living areas to Apartments C106, C107, C204, C205, C304, C305, C404, C405, C504, C505, C604, C605, C704, C705 in Building to remove the 'dog-leg' design.	Revised and updated the apartment layouts have been provided, specifically removing the previously proposed doglegged entry sequence. This adjustment improves the clarity and efficiency of the entry experience, resulting in a more direct and functional apartment layout.
Include details of the throw screens to balconies on the southern elevation plans	The throw screens that are highlighted in blue are to be constructed using glass louvres, providing both functional screening and a visually lightweight appearance while allowing for ventilation and controlled transparency. It is noted that the final design of the screens is subject to the requirements of Sydney Trains and will be further developed and detailed during the design development phase following the determination.
Consider alternative material finishes other than brick bases	The proposed brickworks are sympathetic to, and consistent with, the surrounding heritage buildings in both colour and laying pattern and is therefore acceptable.
The Panel notes that the column bases with FC sheeting over concrete will need to be protected to avoid cracking or bruising. Off-form concrete may be considered as a more durable and 'honest' alternative.	The column bases within Building 3 will be finished in exposed concrete to provide a durable surface to withstand incidental impact from vehicles. This treatment has been adopted to reduce the risk of damage resulting from accidental contact by cars and to minimise ongoing maintenance requirements.

In considering whether the development exhibits design excellence in accordance with Clause 6.9, Council's City Architect has reviewed the amended design and considers that the proposal is deemed acceptable, - these matters are addressed in **Table 10** below.

Table 10: Design Excellence consideration requirements of Clause 6.9 of the IWLEP 2022

Clause	Comment
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	Amendments have been made to adopt the recommendations of the AEDRP. Whilst substantially the same as the approved scheme, the proposal is deemed acceptable for the purposes of this clause to be of high standard of architectural design.
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	The proposal is similar in scale and bulk to the approved scheme. The form and external appearance will remain substantially the same as approved from the public domain. Therefore, the proposal is deemed acceptable with respect to this clause.
(c) whether the development detrimentally impacts on view corridors and landmarks,	The proposal is of a similar scale to the approved scheme, as such it is not likely that the

Clause	Comment
	development will result in adverse impacts on view corridors and landmarks. Therefore, the proposal is deemed acceptable with respect to this clause.
(d) whether the development detrimentally impacts on land protected by solar access controls established in the relevant development control plan,	The proposal provides adequate solar access amenity in accordance with the appropriate EPI's. Therefore, the proposal is deemed acceptable with respect to this clause.
(e) the requirements of the relevant development control plan,	The proposal satisfies the relevant requirements of the MDCP 2011, in terms of urban design and built form. Therefore, the proposal is deemed acceptable with respect to this clause.
(f) how the development addresses the following matters—	
(i) the suitability of the land for development,	The proposed land use mix is consistent with the approved scheme and is therefore deemed acceptable.
(ii) existing and proposed uses and use mix,	
(iii) heritage issues and streetscape constraints,	With the exception of Cloister Gardens within the Novitiate Building, the proposal has considered the heritage and streetscape constraints for the site, including the presentation to the railway corridor. The proposal is substantially the same as approved and demonstrates the appropriate design principles with respect to the surrounding context. Therefore, the proposal is deemed acceptable with respect to this clause.
(iv) the relationship of the development with other existing or proposed development on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,	Similar to the approved scheme, the bulk of the development is located to the rear and side boundaries of the site, as such the proposal will not result in adverse impacts to the streetscape and neighbouring properties in terms of height, bulk, scale, visual and acoustic privacy. The proposal seeks to maintain and preserve the existing heritage listed buildings and gardens at the front of the site. It is also noted that the permeability within the site has improved. Therefore, the proposal is deemed acceptable with respect to this clause.
(v) bulk, massing and modulation of buildings,	
(vi) street frontage heights,	
(vii) environmental impacts, including sustainable design, overshadowing, wind and reflectivity and visual and acoustic privacy,	Similarly to the approved scheme, the setback proposed are deemed acceptable given the Special Use zoning. Additionally, it would not be expected that any future development on the surrounding sites will result in adverse visual privacy impacts as they are adjacent to the railway corridor and West Street.
(viii) the achievement of the principles of ecologically sustainable development,	The proposed tree removals and new plantings are supported as it will create an improved village centre space which results in a better landscaping outcome. There are no identified development impacts on neighbouring properties. Therefore, the proposal is deemed acceptable with respect to this clause.
(ix) pedestrian, cycle, vehicular and service access, circulation and requirements, including the permeability of any pedestrian network,	The internal legibility within the site has improved since the previously approved scheme, noting that there is now a clearer distinction between the vehicular and pedestrian movements within the

Clause	Comment
	piazza area. Additionally, there is improved connectivity between the ground floor amenities of building 1, 2 and 3 to the remainder of the site via Charles O'Neill Way. Therefore, the proposal is deemed acceptable with respect to this clause.
(x) the impact on, and proposed improvements to, the public domain, including landscape design,	The proposal includes landscaped areas and deep soil planting consistent with the approved scheme. Therefore, the proposal is deemed acceptable with respect to this clause
(xi) the relationship of the development with the street and building frontage.	The overall bulk, scale and envelopes of the buildings are generally consistent with the approved scheme. Therefore, the proposal is deemed acceptable with respect to this clause.

Having regard to the above, the proposal as modified is considered to be generally consistent with the provisions of Clause 6.9 of *MLEP 2011*.

(b) Provisions of any Development Control Plan (s4.15(1)(a)(iii))

The following Development Control Plan is relevant to this application:

- *Marrickville Development Control Plan 2011 (MDCP)*

Council has considered the matters contained within the MDCP, these are addressed in **Table 11** below.

Table 11: Consideration requirements of the MDCP

Part of the MDCP 2011	Proposal	Compliance
Part 2.1 – Urban Design	The proposal does not result in substantial changes to the approved design, and the development remains consistent with the relevant design principles.	Y
Part 2.3 – Site and Context Analysis	The proposal does not result in substantial changes to the approved design, and the development remains consistent with the context area.	Y
Part 2.5 – Equity of Access and Mobility	The proposed modification will improve wayfinding and accessibility.	Y
Part 2.6 – Acoustic and Visual Privacy	The proposal will not result in additional overlooking opportunities and conditions imposed on the DA consent adequately manage noise impacts within the development.	Y
Part 2.7 – Solar Access and Overshadowing	The communal areas as well as the continue to receive the required amount of solar access stipulated in the SEPP, which is 2 hours between 9am and 3pm during the winter solstice to 50% of the areas.	Y
Part 2.8 – Social Impact	The proposal does not result in substantial changes to the approved design, and the development remains consistent with social impacts to the area. .	Y
Part 2.9 – Community Safety	The proposal does not result in substantial changes to the approved design, and the development will maintain community safety within the precinct and streetscape interface.	Y

Part 2.10 – Parking	The proposal seeks to provide additional car parking in compliance with the requirements to reflect the change in unit mix. The proposed development includes 130 ILUs and provides for 181 car parks which satisfies the minimum parking requirements.	Y
Part 2.11 – Fencing	No changes are proposed to the fencing at the streetscape interface as approved.	Y
Part 2.12 – Signs and Advertising	No changes are proposed to the signage as approved.	Y
Part 2.13 – Biodiversity	The proposal does not result in substantial changes to the approved design, and the development remains consistent with the biodiversity preservation requirements for the area.	Y
Part 2.17 – Water Sensitive Urban Design	The proposal does not result in substantial changes to the approved design, and the development remains consistent with the water management requirements for the area.	Y
Part 2.18 – Landscaping and Open Space	The proposed landscape plan enhances the landscape environment and will continue to protect the existing heritage gardens to the north and east and to preserve the landscaping character of the area while providing safe and direct pedestrian and vehicle access and sense of place as previously approved.	Y
Part 2.20 – Tree Management	The proposed development generally maintains and enhances the urban forest values through tree retention and replacement tree planting. It is proposed to offset the impacts associated with the street tree removal, replacement street tree planting (1:1) is proposed as well as public domain improvements to the subject garden bed. Council's Tree Assessment Officer has reviewed the amendments proposed, including the <i>Addendum to Report No. 2B/WES/AIA/D, dated 2nd July 2020</i> prepared by <i>tree iQ</i> and dated 8 September 2025. It is noted that the addendum has not been updated to reflect the proposed installation of an additional electrical kiosk on the SE corner of the site - West St frontage. This proposed installation appears to require the removal of one street tree - <i>Plumaria acutifolia</i> (Frangipani) and some shrubbery inside the boundary. No arboricultural grounds to support removal have been provided and as such, it is not supported by the Tree Assessment Officer however, it is understood that the nominated location is the only one available. Notwithstanding this, it is recommended that the two replacement street trees are to be planted to offset the loss of the existing street tree. Additionally, to ensure that the newly planted street trees remain viable a security deposit condition has also been recommended. No justification has been provided to support the removal of trees 43, 45, 47, 50, 51, 53, 54, 58, 81, 101 – 107 and therefore, these trees are recommended to be retained.	Y

	Regarding tree 62, its proposed location has not been shown on the updated landscape plans. In addition, as per the requirements of the addendum to the arboricultural report, a transplant method statement has not been provided. Therefore, its removal is not supported, however, as per the original approval this tree can be relocated if required, and this is already incorporated in the approved scheme/conditions. conditioned. Regarding tree 35, the comments provided by the applicant are in conflict with their Arborist's advice - the Arborist has indicated that the tree is in good health. No justification has been provided to suggest that the tree needs to be removed. Therefore, its removal is not supported by Council's Tree Assessment Officer. however, this tree can be relocated if required, and this is recommended to be conditioned. The proposed replacement canopy trees do not satisfy the minimum height requirements of the condition (9); the replacement trees must attain a minimum mature height of 12 metres. <i>Corymbia maculata variegata</i> 'Ribbons of Hope' is not a suitable replacement species. Therefore condition 9 is to be retained in its entirety. Finally, whilst not ideal, it is noted that 10 <i>Elaeocarpus reticulatas</i> have been substituted for <i>Buckinghamia celsissima</i> (Ivory Curl Flower).	
Part 2.21 – Site Facilities and Waste Management	The proposal does not result in substantial changes to the approved design, and the development remains consistent with the waste management requirements for the area.	Y
Part 2.24 – Contaminated Land	The proposal does not result in substantial changes to the approved design, and the development remains consistent with the contamination requirements under the SEPP.	Y
Part 2.25 – Stormwater Management	The proposal does not result in substantial changes to the approved design, and the development remains consistent with the stormwater management requirements for the area.	Y
Part 8 – Heritage	With the exception of the changes to the internal courtyard known as 'Cloister Gardens' within the Novitiate Building which are not supported and conditioned accordingly, the proposed development has an acceptable impact on the heritage values of the site.	Y, conditioned
Part 9 – Strategic Context	The proposal is consistent with the desired future character as expressed within Part 9.1.2 of the MDCP 2011. Subject to condition, the proposal protects and conserves the heritage-listed, contributory and period buildings and provides a sympathetic restoration. The proposal is acceptable in the streetscape and reinforces the public domain. The proposed development has considered the impacts on biodiversity. The proposed development preserves	Y

	the residential character of the precinct and provides for an appropriate level of off-street car parking.. The proposal development provides for a connectivity with active transport and maintains an appropriate level of street activation.	
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(c) Provisions of Regulations (s4.15(1)(a)(iv))

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 the recommended draft conditions (where necessary).

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

The likely impacts of the 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.

3.2.3 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

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

The submission that has been received is considered in Section 4.3 of this report.

3.2.5 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 the seniors housing facilities 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 12**. There are no issues arising from these referral requirements; conditions imposed on the DA consent will remain in force.

Table 12: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for NSW (TfNSW)	Section 2.99 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)	Rejected and delegated to Sydney Trains	Y
Sydney Trains	Section 2.98(2) and 2.99 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP).	Concurrence granted. It was noted that all existing all existing TfNSW (as Rail Authority) conditions and comments applied to the previous application MOD/2024/0221 are still applicable. Given this, the referral has indirectly not supported the modification and/or deletion of Conditions 32, 36, 37, 38, 43, 44, 46 and 47 which refer to the original conditions imposed by Sydney trains.	Y
Heritage NSW	Local Environmental Plan, CI 5.10 EP&A Regulation 2021, s38 (Amendment of development application)	Conditions provided.	Y
Referral/Consultation Agencies			
Sydney Airport	CI 6.7 of Inner West LEP 2022	No objection.	Y

	s.183 Airports Act - Notification of decision under Reg 15A (2) of the Airports (Protection of Airspace) Reg's 19		
Ausgrid	SEPP (Transport and Infrastructure) 2021, s2.48	No objection.	Y
Integrated Development (s4.46 of the EP&A Act)			
Water NSW	Water Management Act 2000 s90(2) water management work approval	General terms of approval provided.	Y
Sydney Water	Sydney Water Act 1994 S78 + Integrated - Sydney Water Act 1994	No objection, subject to A Section 73 being conditioned.	Y

4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined **Table 9**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 13: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Acceptable. Revised conditions are required to reflect the updated stormwater plans and car parking schedule.	Y
Building	Acceptable. An access report has been submitted for compliance for accessibility for the buildings . BCA report and recommendations made with the supporting documentation for performance solutions for non- compliances. .	Y
Health	Acceptable. Revised acoustic report provided, revised conditions are to reflect the new report.	Y
Waste	Acceptable. The proposal does not result in substantial changes to the approved design, and the development remains consistent with the waste management requirements for the area.	Y
Urban Forest	Council's <u>Tree Assessment Officer</u> has reviewed the amendments proposed, including the <i>Addendum to Report No. 2B/WES/AIA/D, dated 2nd July 2020</i> prepared by tree iQ and dated 8 September 2025. It is noted that the addendum has not been updated to reflect the proposed installation of an additional electrical kiosk on the SE corner of the site - West St frontage. This proposed installation appears to require the removal of one street tree - <i>Plumaria acutifolia</i> (Frangipani) and some shrubbery inside the boundary. No arboricultural grounds to support removal have been provided and while not supported, , it is understood that the nominated location is the only one available. Therefore, it is recommended that the two replacement street trees are to be planted to offset the loss of the existing street tree. Additionally,	Y, conditioned

	to ensure that the newly planted street trees remain viable a security deposit condition has also been recommended. No justification has been provided to support the removal of trees 43, 45, 47, 50, 51, 53, 54, 58, 81, 101 - 107 and therefore, must be retained. Regarding tree 62, its proposed location has not been shown on the updated landscape plans. In addition, as per the requirements of the addendum to the arboricultural report, a transplant method statement has not been provided. Therefore, its removal is not supported, however, as per the approved scheme, this tree can be relocated if required, and tis conditioned in the original approval. Regarding tree 35, the comments provided by the applicant are in conflict with their Arborist's advice - the Arborist has indicated that the tree is in good health. No justification has been provided to suggest that the tree needs to be removed. Therefore, its removal is not supported however, , this tree can be relocated if required, and this is recommended to be conditioned accordingly. The proposed replacement canopy trees do not satisfy the minimum height requirements of the condition (9); the replacement trees must attain a minimum mature height of 12 metres. <i>Corymbia maculata variegata</i> 'Ribbons of Hope' is not a suitable replacement species. Therefore condition 9 is to be retained in its entirety. Finally, whilst not ideal, it is noted that 10 <i>Elaeocarpus reticulatas</i> have been substituted for <i>Buckinghamia celsissima</i> (Ivory Curl Flower).	
Heritage	Acceptable, subject to compliance with recommended design change conditions requiring the retention of the existing levels of the Cloister Gardens within the Novitiate Building. Should step-free access to the garden area be provided, a single ramp graded of 1:14 with handrails can be provided. Noting they are to be installed with minimal intervention to the building or garden area of the Novitiate Building ie. they may be removed in the future without damaging the garden or building element. This is to ensure that the heritage significance of the gardens is maintained.	Y, conditioned

4.3 Notification and Community Consultation

The proposal was notified in accordance with Council's Community Engagement Strategy 2025-2029 between 10 May 2025 - 8 August 2025. The notification included the following:

- Signs placed on the site;
- 1251 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 one submission, comprising 1 objection, The issue raised is considered in **Table 14**.

Table 14: Community Submissions

Issue	No of submissions	Council Comments
Pedestrian safety within the traffic and waste management paths, specifically within the ROW	1	The proposal does not result in substantial changes to the approved design, as such the traffic and waste management remains consistent with approved scheme.

5. Other Matters – change to conditions

Consent Condition	Reason for change
2A. Security Deposit - Parks or Street Tree	A new security deposit condition is recommended to ensure that the newly planted street trees remain viable.
3. Documents Related to the Consent	To reflect physical amendments to development consent as part of modification application
4. Novitiate Building	Amend condition as design changes (a), (b) and (c) have now been satisfied as part of the modification application. Additional condition has been included requiring the retention of the existing levels of the Cloister Gardens within the Novitiate Building
5. Conflict between the Plans – West Street	Condition to be deleted as design changes have now been satisfied as part of the modification application.
6. Conflict between the Plans – Fencing	Condition to be deleted as design changes have now been satisfied as part of the modification application.
7. Setbacks from Ground Floor Terraces and Balustrade – Building 3	Condition to be deleted as design changes have now been satisfied as part of the modification application.
9. Design Change – Landscape Plans	The deletion of this condition is not supported as the proposed replacement tree canopy planting does not satisfy the minimum height requirements, as such this condition is to remain in its entirety. No justification has been provided to support the removal of trees 43, 45, 47, 50, 51, 53, 54, 58, 81, 101 - 107 and therefore, must be retained.
9A. Tree Planting in the Public Domain	A new condition is recommended for two replacement street trees to be planted to offset the loss of the existing street tree

Consent Condition	Reason for change
	to be removed.
10. Car Parking	Modified to reflect proposed modifications, including references to the parking for the ILUs facilities, visitor parking for the RAC facility.
11. Water for NSW	Condition to be amended to reflect revised GTAs.
21. Trees to be protected.	Condition amended to reflect revised scope of trees to be protected as detailed in Arborist report addendum dated report provided dated 8 September 2025 as well as Council's recommendations as discussed in the MDCP table and Council referral parts within Section 3.2.1(b) of this assessment report.
22. Works to Trees	Condition amended to reflect revised scope of trees to be protected as detailed in Arborist report addendum dated report provided dated 8 September 2025 as well as Council's recommendations as discussed in the MDCP table and Council referral parts within Section 3.2.1(b) of this assessment report.
32. Sydney Trains – Scaffolding	The applicant requested this condition be modified to clarify when approval is required for scaffolding works facing rail corridor. The Sydney Trains concurrence advised that all conditions and comments relating to the previous application are to remain, therefore this condition shall retained as is.
36. Sydney Trains – Electrolysis Risk	The applicant has requested this condition be modified to clarify timing of Electrolysis Risk report to be prepared. The Sydney Trains concurrence advised that all conditions and comments relating to the previous application are to remain, therefore this condition is be retained as is.
37. Sydney Trains – Screening	The applicant requested this condition be modified to reflect design modifications included within amended plans. The Sydney Trains concurrence advised that all conditions and comments relating to the previous application are to remain, therefore this condition is be retained as is.
38. Sydney Trains – Lights and Signs	The applicant has requested this condition be modified to clarify when written consent is required noting the staging of development. The Sydney Trains concurrence advised that all conditions and comments relating to the previous application are to remain, therefore this condition is be retained as is.
43. Sydney Trains – Landscaping	The applicant has requested this condition be deleted as modified Landscape Plans show only existing trees and vegetation along rail corridor with no new landscaping proposed. Refer to Landscape Plan and planting schedule detail.

Consent Condition	Reason for change
	The Sydney Trains concurrence advised that all conditions and comments relating to the previous application are to remain, therefore this condition is be retained as is.
44. Sydney Trains – Risk Assessment/Management Plan	The applicant has requested this condition be modified to reflect staging of the proposed development. The Sydney Trains concurrence advised that all conditions and comments relating to the previous application are to remain, therefore this condition is be retained as is.
46. Sydney Trains – Bond	The applicant has requested this condition be removed as land directly adjoins Council land and not Sydney Trains Corridor. As such, Bond should not be required in this instance. The Sydney Trains concurrence advised that all conditions and comments relating to the previous application are to remain, therefore this condition is be retained as is.
47. Sydney Trains – Joint Inspections Prior to Commencement	The applicant has requested this condition be amended to condition to confirm timing for post lodgment approval activities. The Sydney Trains concurrence advised that all conditions and comments relating to the previous application are to remain, therefore this condition is be retained as is.
76. Stormwater Plans	Condition has been amended to reflect revised stormwater management plan.
81. Tree Transplant Method Statement	Condition has been amended to reflect the recommendations of Council's Urban Forest assessment of the proposal, this being to include Tree 35.
87. Density and Layout of Plants	Condition to be deleted as design changes have now been satisfied as part of the current application.
89. Height of Raised Garden Beds	Modified condition to reflect amendments in Landscape Plan.
96. Visitor Bicycle Parking	Conditions are to be deleted as design changes have now been satisfied as part of modification application, with Condition 10 to be amended to include reference to the bicycle spaces.
97. Construction Hours	The application requested that the construction hours to be modified to reflect similar hours in the locality, namely that at 27 Railway Terrace (DA201500333). The constructions hours as imposed are consistent with the standard construction hours imposed for Class 2-9 buildings. Therefore, this condition is to be retained. Any changes for one off events (such as concrete pours etc) can be done by way of separate application to Council.
100. Tree works	Condition amended to reflect revised scope.

Consent Condition	Reason for change
102. Tree works	Condition amended to reflect revised scope.

6. CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act 1979 and the EP&A Regulation 2021 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 recommended conditions.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

7. RECOMMENDATION

It is recommended:

That the Sydney Eastern City Planning Panel exercising its functions as the consent authority pursuant to s4.55(2) of the *Environmental Planning and Assessment Act 1979*, grant consent to application No MOD/2025/0165, which seeks to modify Determination DA201800505, dated 2 September 2020. The modification seeks changes to building heights and envelopes, changes to the basement layout and extent, changes to landscaping and vehicle access, redesign of the floor plans and internal layouts and other internal and external alterations, and changes in the mix of Independent Living Units and Residential Aged Care throughout the new buildings, the Novitiate Building and the Ann Walsh Building subject to the draft conditions of consent attached to this report at Attachment A

The following attachments are provided

- Attachment A: Draft Conditions of consent
- Attachment B: Architectural Plans
- Attachment C: Landscape Plans
- Attachment D: Stormwater Plans
- Attachment E: Consent DA201800505 as modified
- Attachment F: Stamped Architectural and Landscape Plans