



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	[PPSSEC-409] – DA/414/2020/B
PROPOSAL	S4.56 Modification Application of approved development to amend the development consent granted by the NSW Land and Environment Court, where the development will remain substantially the same as the development that was originally approved. The modification sought to approved development is to replace approved mechanical stackers with standard car spaces and internal re-configuration.
ADDRESS	172 – 180 Anzac Parade and 116R Todman Avenue, Kensington 2033. Lot A and B DP443852, Lot 1 DP 101928, Lot 1 DP 939269, Lot 1 DP 100295, Lot 1 DP561709, Lots 1 and 2 DP 1131969
APPLICANT	Willowtree Planning Pty Ltd
OWNER	Perpetual Trustee Company Limited
MOD LODGEMENT DATE	27 June 2025
ORIGINAL DA DETERMINATION DATE	Integrated Development Application for demolition of existing structures and construction of an 18 storey mixed-use development comprising basement, ground / first floor commercial, a boarding house comprising 175 boarding rooms with a manager's room and communal facilities. Application determined 17 June 2021 - LEC.
APPLICATION TYPE	Modification Application under Section 4.56
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : <i>Development that has an estimated development cost of more than \$30 million.</i>
CIV	\$35,302,215.00 (excluding GST)
CLAUSE 4.6 REQUESTS	N/A.
KEY SEPP/LEP	<i>State Environmental Planning Policy (Planning Systems) 2021.</i> <i>State Environmental Planning Policy (Housing) 2021.</i> <i>Randwick Local Environmental Plan 2012.</i> <i>Randwick Development Control Plan 2013.</i>

	<i>Randwick Development Control Plan – Section E6 Kensington and Kingsford Town Centres.</i>
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	Two (2)
DOCUMENTS SUBMITTED FOR CONSIDERATION	- Statement of Environmental Effects prepared by WILLOWTREE PLANNING dated June 2025 - Site Plans (Basement, Ground Floor and Level 1) (AR - B20-B1-00, AR-B2-00-00, & AR-B20-01-00) prepared by Bayley Ward Architects dated 03 June 2025 - Traffic Impact Statement prepared by Traffix – dated June 2025.
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A.
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	12 August 2025
PLAN VERSION	Plan set - Revision 3.
PREPARED BY	Joseph Edmonds
DATE OF REPORT	5 August 2025

EXECUTIVE SUMMARY

Council is in receipt of a modification application pursuant to Section 4.56 of the Environmental Planning and Assessment Act (as amended), seeking consent to modify (“B”) Development Consent DA/414/2020.

The original development application was approved on 17 June 2021 by the NSW Land and Environment Court, after an agreement was reached between parties pursuant to s34 of the Land and Environment Court (LEC) Act noting that if the application was not appealed in the LEC, the consent authority would have been the *Sydney Eastern City Planning Panel* (SECPP) as it has a capital investment value over \$30 million and is defined as Regionally Significant Development, pursuant to Section 4.7, of the Environmental Planning and Assessment Act 1979 and Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021.

The original approval comprises the demolition of existing structures and construction of an 18-storey mixed-use development comprising basement parking, ground and first floor commercial, with a 14 storey (student accommodation) boarding house and communal facilities above. The boarding house comprises 175 rooms, basement parking for 10 car spaces, 36 motorcycle spaces and 36 bicycle spaces. The original consent approved a height of building (HOB) 58.2m below the 60m maximum, an overall FSR of 5.99:1 (6:1 control maximum) and a non-

residential FSR of 1:1 that complied with relevant LEP development standards.

DA/414/2020/A (approved on 18 April 2023) provided approval for increased height, façade changes and internal reconfiguration.

This modification application (DA/414/2020/B) (Section 4.56 of the Act) is referred to Sydney Eastern City Planning Panel for determination in accordance with the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents* published on the NSW planning portal on 30 June 2020, which states that Section 4.56 modification applications are to be referred to the Panel for determination.

This modification seeks to replace approved mechanical stackers with conventional car spaces and undertake minor internal reconfiguration works from the basement to level 1 of the development.

The Section 4.56 modification application was publicly notified to surrounding property owners, and previous objectors and advertised on Council's website with site notification attached to the subject site in accordance with the Randwick Council Community Consultation Plan. Two (2) submissions by way of objection were received during the notification process. The application was also referred to Council's Development Engineer and Building Surveyor, who raised no objection to the proposed modifications subject to design refinements and amended consent conditions.

The key considerations were the internal reconfiguration of the basement to provide 10 car parking spaces, by removing the 5 car stackers. The size of the car parking spaces and the access to these spaces was reviewed by Council's Development Engineer to confirm compliance with relevant standards. In addition, the minor reduction to the non-residential floor area at level 1 is also supported on the basis of an improved building access and parking configuration.

The development remains substantially the same as a result of the proposed modification in accordance with Section 4.56 of the Environmental Planning and Assessment Act (as amended), and the proposed amendment shall not alter the intent of the original development.

The proposed changes do not result in any unreasonable adverse impacts upon the built or natural environment, nor unreasonably impact upon the residential amenity of surrounding properties.

In view of the above and assessment of the relevant matters for consideration under Section 4.15(1) and 4.56 of the EP&A Act, it is considered that the proposed modification can be supported, and the application is recommended for approval.

1. THE SITE AND LOCALITY

1.1 The Site

The site is located on the corner of Anzac Parade and Todman Avenue, Kensington and consists of the following properties (refer Figure 1):

- 172 – 180 Anzac Parade – 2 storey shop top housing developments fronting Anzac Parade.
- 116R Todman Avenue – a reserve front Todman Avenue.

Table 1: Existing properties within the subject site		
Legal Description	Address	Description
Lot A DP3443852	172 Anzac Parade	Two-storey brick building with weatherboard addition located to the rear.
Lot B DP443852	174 Anzac Parade	Two-storey brick building with timber balcony awning to the rear.
Lot 1 DP101928	176 Anzac Parade	Two storey brick building and single storey brick addition to the rear.
Lot 1 DP939269	178 Anzac Parade	Two storey brick building and single storey brick addition to the rear.
Lot 1 DP 100295	180 Anzac Parade	Two storey brick building and single storey addition to the rear.
Lot 1 DP 561709 Lots 1 & 2 DP 1131969	116R Todman Avenue	Hard stand right of way which provides access to the developments located at 172-180 Anzac Parade.

The site is located on the eastern side of Anzac Parade. The site has an overall area of 1024m², with a frontage to Anzac Parade of 27.755m, to Todman Avenue of 36.885m. The sites currently have vehicular access along the right of way identified as 116R Todman Avenue.

The Anzac Parade frontage, north – south is flat, with a fall of approximately 0.1m. The site slopes upwards from Anzac Parade (west) to the rear (east) by approximately 1m in the middle of the site.

The site is not within a Heritage Conservation Area or adjacent to any Heritage Items.

The site is currently under construction, undertaking the development approved by DA/414/2020 (as modified).



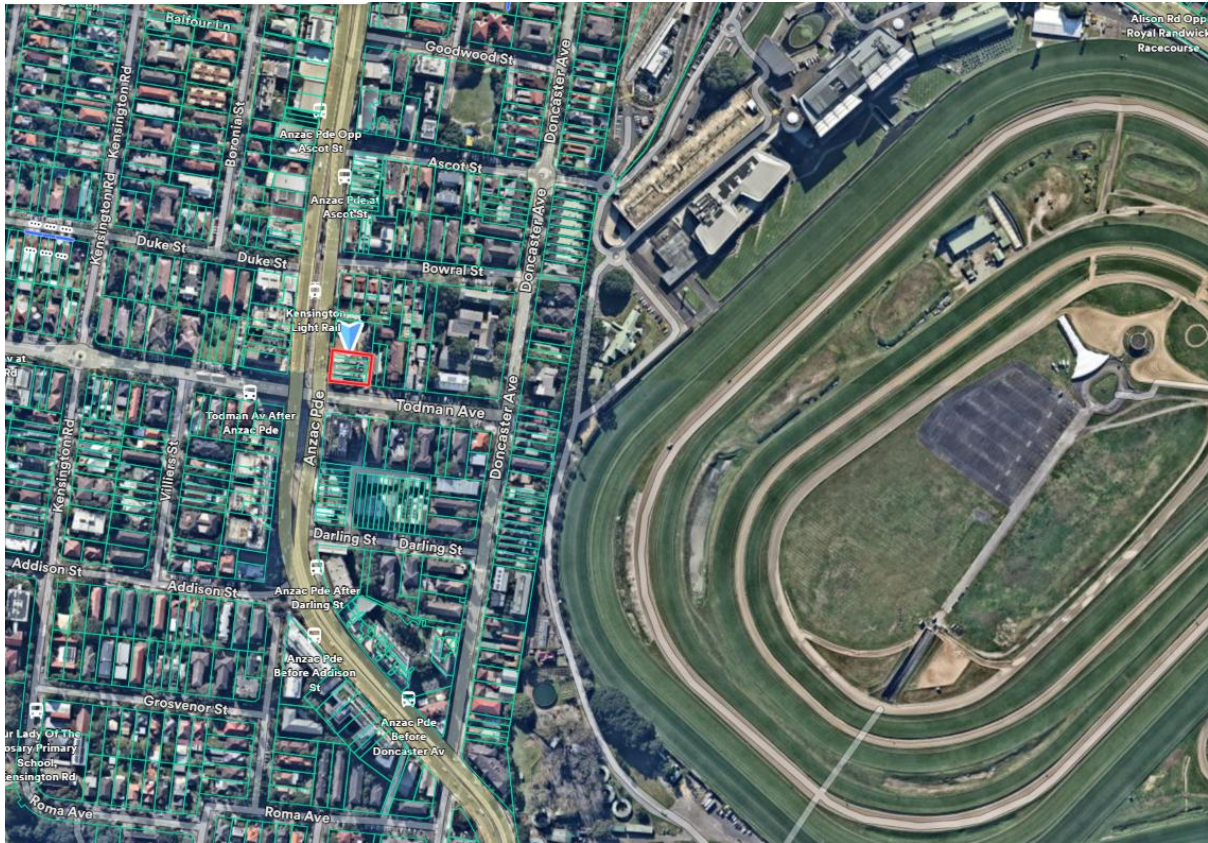


Figure 2: Aerial view of the site and surrounding area (Source: NearMap 2025)

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

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

Proposed changes (internal):

- Deletion of the approved mechanical car stackers and replacement with standard carparking spaces (as shown in the comparison in Figures 3 and 4 below);
- Reconfiguration and reduction in the size of the service areas within the basement;
- Relocation of the car lift and commercial/retail lift locations;
- Relocation of the commercial waste area; and
- Reconfiguration of the Retail 2 area and relocation of the fire control room.

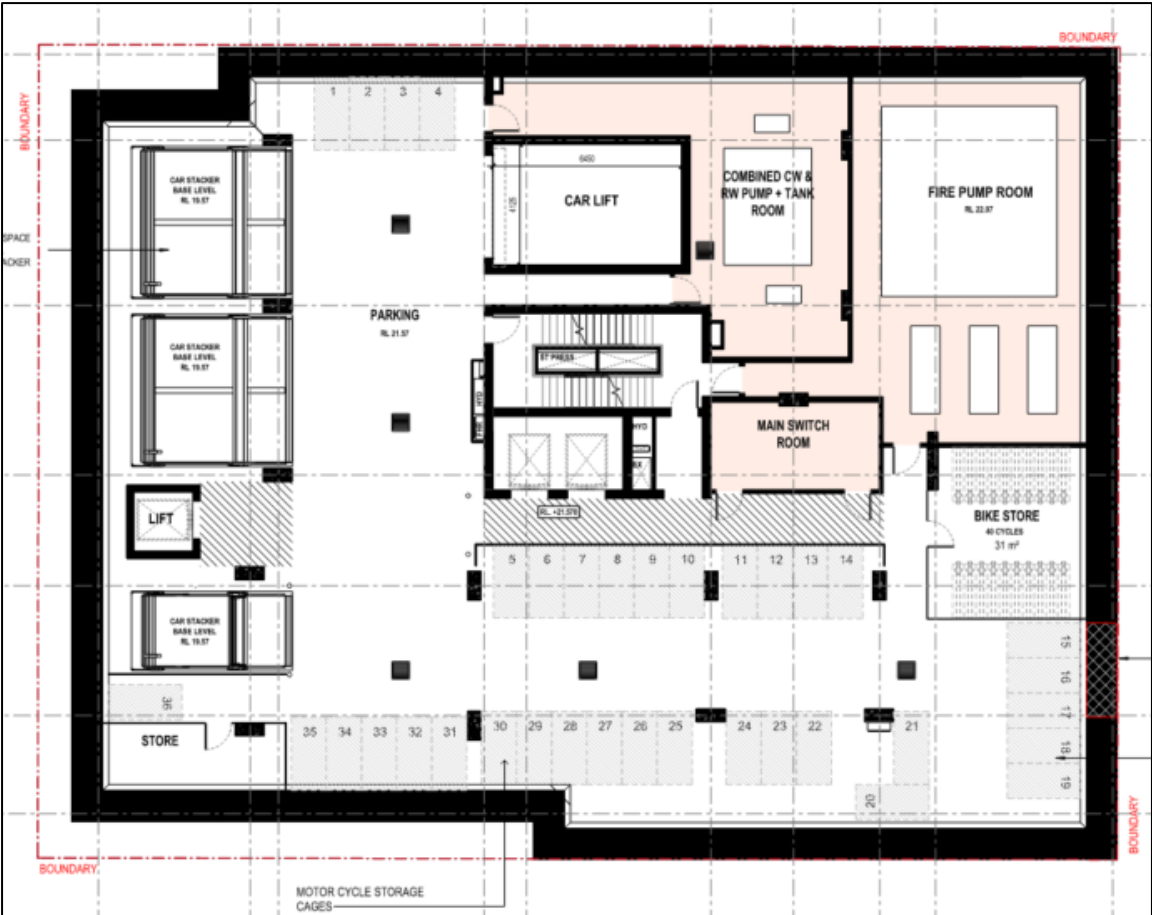


Figure 3: Approved Basement Floor Plan (Source: DA/414/2020/A)

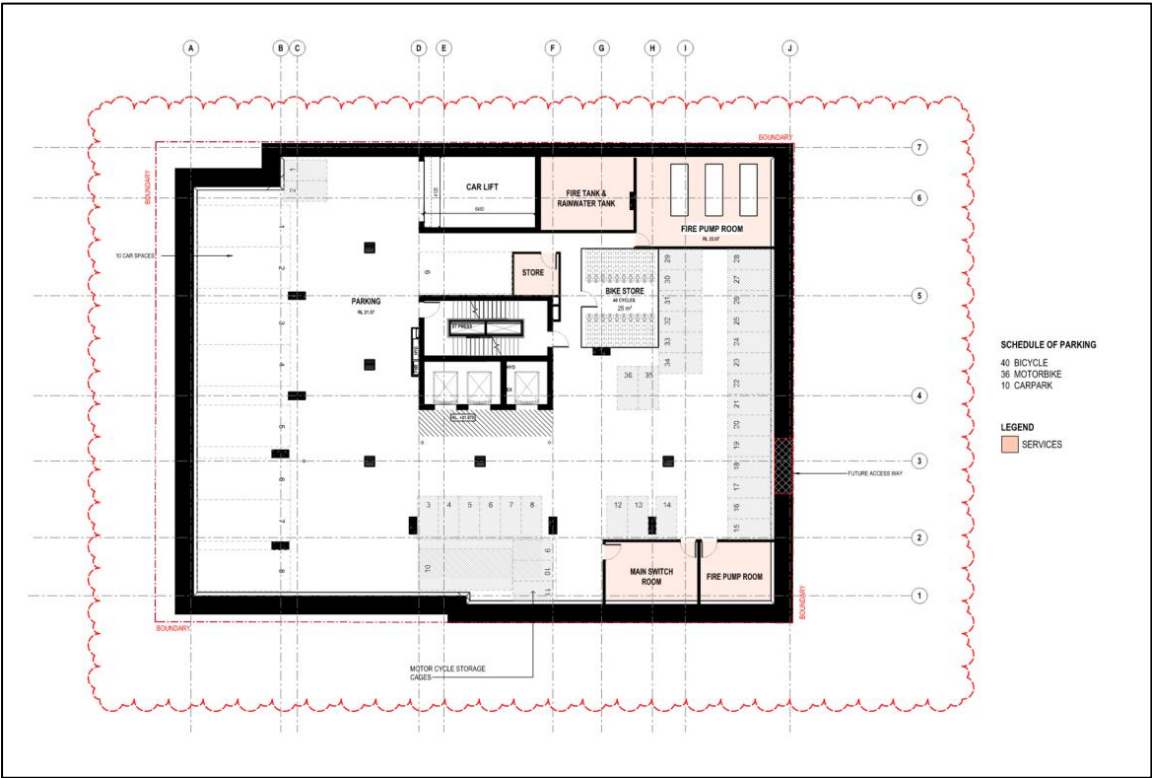


Figure 4: Proposed Basement Plan (Source: Applicant)



Figure 5: Proposed changes to ground floor plan (Source: Applicant)

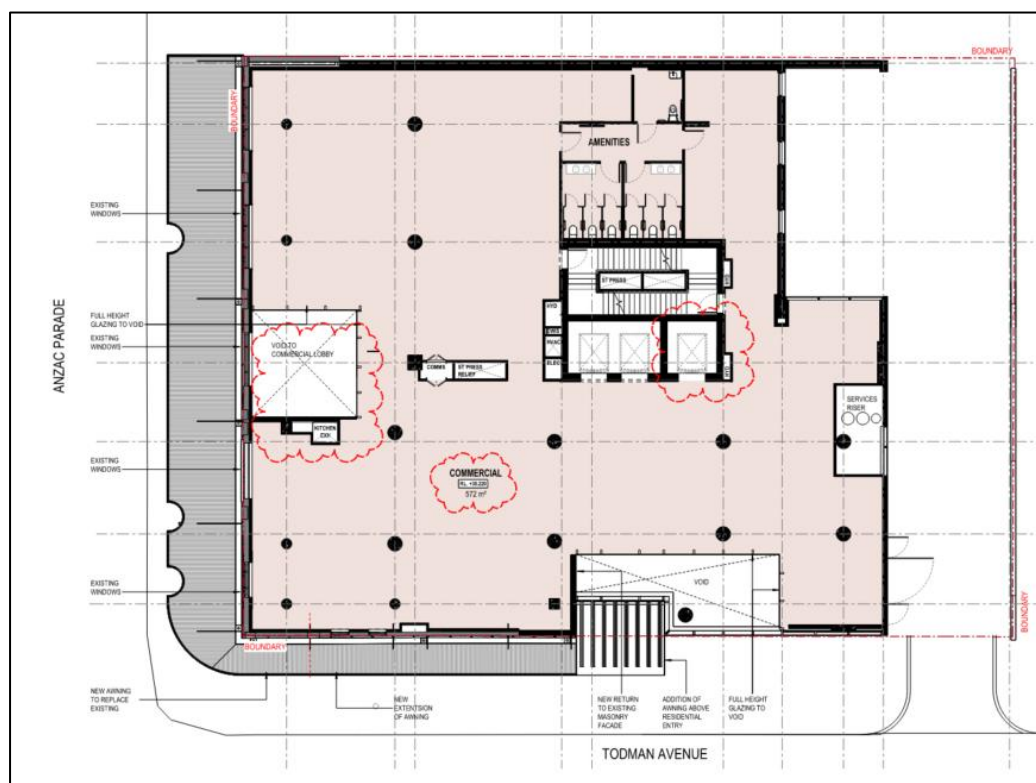


Figure 6: Proposed changes to First Floor Plan (Source: Applicant)

*Proposed Changes to Conditions***Table 1: Proposed Changes to Conditions**

Condition No	Condition requirements	Change Proposed	Reason for Change
1	Approved plans and documents	Modify architectural plans	Modify to update plans to reflect proposed modification
34	Car Stacker design details	Deletion of condition	Removal of car stackers
49	Car Stacker design	Deletion of condition	Removal of car stackers
50	To ensure car parking is in accordance with the approved plans	Amendment of wording	To reflect the amended plans
137	Certification that the car stacker was installed to manufacturers specification and operational requirements.	Deletion of condition	Removal of car stackers

*Development Data***Table 2: Development Data**

Control	Approved Development	Proposal	Change
Site area: 1024m ²			
GFA 5:1 permitted 6:1 permitted under SEPP ARH.	6,143m ² (5.99:1) 6,146m ² (6:1) – Mod A approval.	6,146m ² (6:1)	No change from Mod.
FSR (Non-residential) 1:1 Required	1024sqm (1:1) – Original DA 937sqm (0.915:1) – Mod A approval.	936.13m ²	Reduction of 0.87m ² – suitably justified in the key issues section.
Clause 4.6 Requests		No changes resulting in non-compliance with development standards.	N/A.
No of beds	203	203	No change

No of Boarding Rooms	175	175	No change.
Max Height	RL 85.3 AHD	RL 85.3 AHD	No change
Communal area	653m ²	653m ²	No change
Car Parking spaces	10 spaces	10 spaces	No change
Motorcycle Parking	36 spaces	36 spaces	No change
Bicycle Parking	40 spaces	40 spaces	No change

2.2 Background

Details of Previous Approvals

Development Application DA/414/2020

The original development application was approved by the NSW Land and Environment Court on 17 June 2021, after an agreement was reached between parties pursuant to s34 of the Land and Environment Court Act. As part of the Court process, the development was required to provide for onsite parking and futureproof a potential north-south laneway along the driveway and a basement connection to prevent the site isolation of 118-120 Todman Avenue adjacent to the rear (eastern) boundary.

The approved development was considered consistent with the relevant provisions of the SEPP ARH, the RLEP 2012 and Part E6 of Randwick Development Control Plan Kensington and Kingsford Town Centres 2020. In compliance with the provisions of Clause 6.17 and 6.18 relating to delivery of community infrastructure and affordable housing, a Planning Agreement has also been executed to satisfy deferred commencement conditions.

Development Application DA/414/2020/A

Section 4.56 Modification to approved development including increased height, façade changes and internal reconfiguration.

Subject Application DA/414/2020/B

The proposed modification application was lodged on **27 June 2025**. A chronology of the modification application since lodgement is outlined below in **Table 3** including the Panel's involvement (briefings, deferrals etc) with the application:

Table 3: Chronology of the Modification Application

Date	Event
27 June 2025	Modification application lodged
2 July 2025	Referred to internal Council Development Engineer
10 July 2025	Exhibition of the application

12 August 2025	Panel Determination briefing
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No formal request for further information was issued. However, Council required the applicant to update their Estimated Development Cost Report to meet the requirements of Part 1, Section 6 of the EP & A Regulation 2021.

3. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.56 of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the 2021 EP&A Regulation in relation to information requirements and notification. These matters are considered below.

3.1 Section 4.56 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) (s4.56(1)(a)), and*

In order to establish if development is substantially the same as what was granted consent, reference is made to the case of *Moto Projects (No.2) v North Sydney Council [1999] NSW LEC 280*, which provides the following judgement:

“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified.....

....The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development is granted)

The changes proposed to the approved development primarily involve deletion of the car stackers and reconfiguration to accommodate the same number of car spaces without the stackers. All works are internal and will result in the same car parking spaces.

The following is also noted:

- The development retains the approved land uses as a mixed use development comprising a boarding house and commercial uses with basement carpark,

- The function, form, operations, and importantly, public perception of the Subject Site, as a mixed use development comprising a boarding house with commercial uses, remains largely unchanged, with the modifications retaining the original intent of the development as approved.

Therefore, the development is substantially the same.

- (b) *it has notified the application in accordance with—*
(i) the regulations, if the regulations so require, and
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.56(1)(b)), and
- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person (s4.56(1)(c)), and*

The Section 4.56 modification application was publicly notified to surrounding property owners and to any previous submitters/objectors and advertised on Council's website with site notification attached to the subject site in accordance with Randwick Council Community Consultation Plan. Two (2) submissions by way of objection to the proposal were received during the notification process.

- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be (s4.56(1)(d)).*

Submissions have been considered as a part of the assessment. Refer to **Section 4.3** below for the summary of issues raised and Council's response.

- (e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (s4.56(1A)).*

The matters required to be considered include:

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

Reasons for Grant of Consent

The NSW Land and Environment Court granted consent to the original development on 17 June 2021 in response to an agreement between parties, pursuant to section 34 of the Land and Environment Court Act. During these proceedings, the Applicant was granted leave to

rely on amended plans whereby the jurisdictional prerequisites identified by the parties were considered to have been satisfied. The amendments made during the conciliation which are considered key matters and reasons for the approval are identified as follows:

- The proposed development comprising commercial premises and a boarding house for student accommodation are a permissible use within the B2 Local Centre zone.
- The proposal has complied with the community infrastructure preconditions to enable the additional height and FSR permitted under Clause 6.17 of the Randwick LEP 2012. The proposal was considered to reflect the desired character of the localities in which they are allowed and minimises adverse impacts on the amenity of those localities, and where the intensity of development is commensurate with the capacity of existing and planned infrastructure.
- The requirements of Clause 6.21 of the Randwick LEP 2012 were addressed by the submitted statement and the development exhibits design excellence. The proposal will comply with the height and FSR bonuses afforded by Design Excellence provisions and the SEPP ARH.
- The area of non-residential floor space in the development, expressed at 1:1, is consistent with the Non-Residential Floor Space Ratio Map at cl 6.19(2) of the RLEP 2012.
- The effect of the proposed development on the contributory buildings and heritage items was considered acceptable, in accordance with cl 5.10(4) of the RLEP. In particular, the agreement of the heritage experts as to the manner for contributory buildings to be integrated into the development, and the requirement for certain schedules and plans to be prepared in accordance with conditions.
- The proposed earthworks and excavation will not have a detrimental impact on the soil stability or the amenity of the neighbouring uses or the adjacent light rail infrastructure, and it was considered those matters at cl 6.2(3) of the RLEP to be appropriately addressed.
- Flood hazards satisfied in accordance with the matters at subcl. 6.3(3)(a)-(e) of the RLEP.
- The proposed development will incorporate appropriate measures to manage stormwater in accordance with cl 6.4 of the RLEP.
- The agreed conditions of consent at Condition 7, being conditions advised by Sydney Airport, to satisfy the requirements of cl 6.8 of the RLEP in respect of airspace operations.
- Adequate arrangements have been made to make essential services available for the site when required in accordance with cl 6.10 of the RLEP.
- A contribution equivalent to the affordable housing levy contribution is imposed and is calculated in accordance with the Kensington and Kingsford Town Centres Affordable Housing Plan (subcl. (5)).
- As per the Active Frontages provision at cl 6.20 of the RLEP, the overwhelming proportion of the street frontage is active, and that the frontage otherwise allocated to building services and fire egress should not preclude the grant of consent.
- The proposal was consistent with the provisions of SEPP ARH noting the built form remained largely consistent with the provisions of RLEP 2012 and the Kensington and Kingsford DCP 2020 (K2 Site) and therefore is consistent with the desired character of the area in accordance with clause 30A of the SEPP ARH.

The modification application does not alter any external elements. The proposed changes retain the approved parking rates. The proposal is consistent with the reasons for which consent was originally granted.

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

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.56(1A)], 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),*
- 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.*

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 (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Randwick Local Environmental Plan 2012 LEP;*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

Table 4: Summary of Applicable State Environmental Planning Policies (Preconditions in bold)

EPI	Matters for Consideration	Comply (Y/N)
BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted. The proposed changes to the development do not require a new BASIX.	Y
State Environmental Planning Policy (Housing) 2021	The original development application was approved under the Affordable Rental Housing (ARH) SEPP. As per the explanation below, the subject modification must be considered under the ARH SEPP	N/A.
State Environmental Planning Policy (Affordable Rental Housing) 2009	Division 3 – Boarding Houses 30 Standards for boarding houses (1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following— ...(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms	Y, the proposal does not reduce the quantity of parking.
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 as it comprises development that has an estimated cost of more than \$30 million.	Y
LEP	• Clause 2.3 – Permissibility and zone objectives • Clause 6.19 – Non-Residential floor space ratios at Kensington and Kingsford town centres.	N (acceptable on merit) – non-residential floor area.
DCP	• Randwick Development Control Plan Part E6 - Kensington and Kingsford Town Centres The proposal retains 10 car parking spaces.	Y

State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Housing) 2021 (Housing SEPP) commenced on 26 November 2021. The Housing SEPP consolidated five (5) housing-related SEPPs into one document. The State Environmental Planning Policy (Affordable Rental Housing) 2009 (the ARH SEPP) was one such SEPP which was incorporated into the Housing SEPP.

The original Development Consent was granted prior to the commencement of the Housing SEPP and was approved under the ARH SEPP. This included classification of some of the development as a “boarding house” under the ARH SEPP. The Housing SEPP has been amended a number of times since it came into force, with the most recent amendment made on 12 August 2022.

Schedule 7A of the Housing SEPP contains savings and transitional provisions. Clause 2 of Schedule 7A reads as follows:

- (1) This Policy does not apply to the following matters—
- (a) a development application made, but not yet determined, on or before the commencement date,
 - (b) a concept development application made, but not yet determined, on or before the commencement date,
 - (c) a staged development application made subsequent to a concept development application approval granted on or before the commencement date,
 - (d) a development consent granted on or before the commencement date,**
 - (da) an application to modify a development consent granted after the commencement date, if it relates to a development application made, but not determined, on or before the commencement date...

(2) The provisions of a repealed instrument, as in force immediately before the repeal of the repealed instrument, continue to apply to a matter referred to in subsection (1).

Clause 2(1)(d) states that the Housing SEPP does not apply to a “development consent granted on or before the commencement date”. The commencement date is the date on which the Housing SEPP commenced and is 26 November 2021. It is noted that a “development consent” includes a development consent as modified.

Section 4.56(1C) of the EP&A Act states as follows in relation to modification applications:

- (1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

Therefore, Clause 2(1)(d) means that any modification of the Development Consent must be assessed under the ARH SEPP. This is because clause 2(d) relates to development consents which have already been granted and, in our view, include the modification of such consents. Clause 2 specifies that the provisions of a repealed instrument (in this case, the ARH SEPP) continue to apply to the Original Consent.

It is further noted that Clause 2(1)(da) was inserted into the Housing SEPP in August 2022 to provide further clarity on the savings provisions and relates to modifications to development applications which were made, but not determined, prior to 26 November 2021 (and so would be assessed under the now repealed SEPPs) to be modified and also assessed under the now repealed SEPPs. An explanation of the amendment to add Clause 2(1)(da) into the Savings and Transitional provisions is included on the Department of Planning, Housing and Infrastructure (DPHI) website. The website gives the following reason for amending the savings provision to include Clause 2(1)(da):

“Amending the savings provisions to save modification applications, where the original consent was granted under a repealed instrument, after the commencement of the Housing SEPP. This will ensure that modification applications are determined under the same EPI that applied to the original proposal.”

It is clear from the above that the intent of the savings provisions is to ensure that S4.56 applications to consents issued under the ARH SEPP continue to be assessed under the same EPI that applied to the Original Consent (the ARH SEPP).

The proposal, as modified, would not vary compliance with the relevant provisions of the ARH SEPP.

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

Chapter 2: State and Regional Development

The original development is Regionally Significant Development with a capital investment value over \$30 million pursuant to Section 4.7, of the Environmental Planning and Assessment Act 1979 and Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021).

The consent authority for the original Development Application would have been Sydney Eastern City Planning Panel (SECPP) were the application not appealed in the Land and Environment Court.

For this S4.56 modification application, the SECPP is the determining authority in accordance with the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents* published on the NSW planning portal on 30 June 2020.

Randwick Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the *Randwick Local Environmental Plan 2012* ('the LEP'). The proposed development as modified remains consistent with the relevant aims and provisions of RLEP 2012, noting that the proposal for mixed use development (student housing) is maintained, and the external built form is not altered.

The site is located within the B2 Local Centre Zone pursuant to Clause 2.2 of RLEP 2012. As noted above, the subject modification application does not seek to change the approved use of the development which is permissible within the B2 zone.

The proposed development as modified also remains consistent with the objectives of the B2 zone serving the needs of people who live in, work and visit the local area; encourage employment opportunities; maximise public transport, provides residential development that is well-integrated with, and supports the primary business function of, the zone; provides a high standard of urban design; and protects the amenity of surrounding residents. The proposal as modified is considered compatible with the desired future character of the Kingsford Town Centre

The matters outlined in Section 4.15(1) of the *Environmental Planning and*

Assessment Act 1979 ('EP&A Act') are considered in **Table 4**.

Table 4: S4.15 Matters for Consideration

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(i) – Provisions of any environmental planning instrument	The proposed modifications comprise internal reconfigurations to the approved development, which will remain substantially the same. The development remains consistent with the general aims, objectives, and applicable development standards of the RLEP 2012 and Housing SEPP. An assessment of the non-residential FSR reduction has been undertaken and is considered acceptable on merit. Refer to detailed assessment in key issues section below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive K2K DCP 2020, as outlined in the above sections.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Nil.
Section 4.15(1)(a)(iv) – Provisions of the Regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(c) – The suitability of the site for the development	The site has been assessed as being suitable for the development in the original development consent. The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013, K2K RDCP 2020 and RLEP 2012. Accordingly, the site remains suitable for the modified development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	Submission have considered as a part of the assessment in Section 4.3 below.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered the public interest.

3.3 Part 5 of the 2021 EP&A Regulation

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 7** below.

Table 5: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by Willowtree Planning (NSW) PTY LTD with the consent of the owner of the land.	Y
Form approved by Planning Secretary and on portal (CI 99).	The application has been provided in accordance with the Regulation.	Y
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Y
Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Y

Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Y
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Whether to correct a minor error, mis-description or miscalculation, or some other effect (CI 100(1)(e))	The proposed modification is to modify the original consent under Section 4.56 to allow reconfiguration of parking spaces and is not to correct a minor error, misdescription or miscalculation.	Y
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification given there are no changes to the external building form or features. Only minor changes (reconfiguration) are proposed to the internal layout of the basement, ground floor and level 1. Any other impacts were considered in the original proposal, which was supported by Council.	Y
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y
Owner's consent (CI 100(1)(i))	An undertaking has been provided on the Portal.	Y
Whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56) (CI 100(1)(j)).	This Application is made to the consent authority pursuant to Section 4.56(1) of the EP&A Act.	Y
BASIX Certificate (CI 100(3))	The proposed modification does not involve revisions to BASIX components of the development and an updated BASIX Certificate is not required.	N/A
Qualified designer statement for residential apartment development (CI 102)	The proposed modification does not involve residential apartment development, and a qualified designer statement is not required .	N/A
Notification and exhibition requirements (CII 105-112)	Refer to Section 4.3 of this report.	Y
Notification of concurrence authorities and approval bodies (CI 109) (to be undertaken by Council)	The modification application is not required to be referred to the relevant concurrence and approval bodies as outlined in Section 4.1 of this Report.	N/A

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The modification application was not required to be referred to external agencies due to the limited internal nature of the proposed modifications.

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 6: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the Revised Architectural Plans and Traffic Impact Assessment and considered the revised parking arrangement and subsequent reconfigurations in the basement. Outcome: Satisfactory subject to deletion and amendment of conditions.	Y
Building Compliance	Recommended consent conditions to manage changes to services within basement.	Y

4.3 Notification and Community Consultation

The modification application was notified in accordance with the Council's Community Participation Plan from 10 July 2025 until 24 July 2025. The notification included the following:

- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (a rough estimate of the number of letters sent);
- Notification on the Council's website.

The Council received a total of two (2) unique submissions, comprising two (2) objections and zero (0) submissions in support of the proposal. The issues raised in these submissions are considered in **Table 10**.

The issues raised in the community submissions have been addressed in this report and in the recommended conditions of consent in **Attachment A**.

Table 7: Community Submissions

Issue	No of submissions	Council Comments
Car Parking	2	The application proposes the same number of car parking spaces as the original approval. There is no

Submissions raised concern the development will reduce approved car parking in the development.		reduction in car parking, simply a reconfiguration (removal of car stackers and addition of car parking spaces throughout the basement to compensate for removing the car stackers) Council's Development Engineer has reviewed the proposal and raises no objections to the proposed car parking (and motorcycle and bike parking) arrangement. Outcome: This issue has been misinterpreted by the objector. There is no reduction in carparking.
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5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

Reconfiguration of Car Parking

Councils' Development Engineer reviewed the reconfiguration of the car parking arrangement and provided the following assessment comments:

The proposed modification seeks to replace approved mechanical stackers with standard carspaces. The number of parking spaces is to remain at 10 as a result of the modification. Development Engineering supports this proposed modification as it significantly decreases the dependency on mechanical devices while still providing the same number of carspaces.

Parking space 8 does not comply with 1m setback from the basement wall required for blind isles under Australian Standard 2890.1:2004. Development Engineering has undertaken a swept path analysis of the space and due to the large parking isle width of over 7m (min 5.8m required) adjacent this compensates for the non-compliance and vehicles are able to satisfactorily maneuver in and out of the carspace. Development Engineering therefore has no objections on parking.

Therefore, this reconfiguration is considered appropriate.

Non-Residential Floor Area

There has been reconfiguration in the basement that doesn't affect the overall GFA of the development and. Development engineering is satisfied with the revised configuration.

At ground floor the removal of the lift in the commercial and retail lobby adds 6.43m² to the Non-Residential FSR, the removal of some services adjoining the lift added 0.7m² of Non-Residential GFA to the lobby (this area is also extended slightly to provide access to the relocated lift).

The commercial waste room (on the ground floor) has been reduced by 4m². The commercial floor (level 1) has been reduced in GFA by 4m² adjacent to the existing

residential core.

Overall, this results in a very slight reduction in GFA compared to the Mod. $6.43\text{m}^2 + 0.7\text{m}^2 = 7.13\text{m}^2$ (additional non-residential FSR) compared to 8m^2 (reduced non-residential FSR), which equates to an overall reduction of 0.87m^2 of non-residential FSR.



Figure 7: Proposed location of lift resulting in slight loss of Non-residential FSR (Source: Applicant)

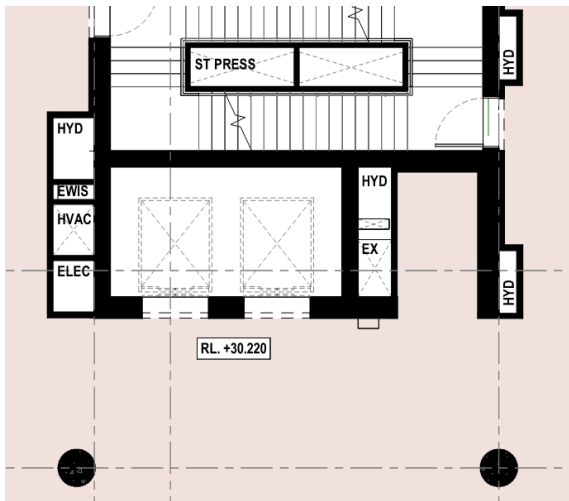


Figure 8: Previous approval (DA/414/2020/A) - location of additional non-residential FSR (Source: DA/414/2020/A)

Legal Framework for variations

It is noted that the proposed modification is not captured by the provisions of Clause 4.6 of the Randwick LEP.

A clause 4.6 submission is not required for modification applications, consideration is given to relevant matters under clause 4.15 of the Act and whether the reasons for approval provided by the Court are eroded by the reduction in non-residential FSR as required by clause 4.56(1) of the Act.

As shown in Figures 7 and 8, the changes resulting in a loss of non-residential FSR are suitably justified because this floor space was low value (enclosed by three walls) and difficult to use as a commercial 'A' grade floor area. The proposed changes at ground floor increase the provision and usability of non-residential FSR spaces, whereas this reduction is considered appropriate, and the re-location of this lift will facilitate an appropriate outcome.

The reduction is less than 1m² and therefore, is not considered to erode the previous approvals.

6. CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

It is considered that the key issues as outlined in Section 5 are suitably justified.

7. RECOMMENDATION

It is recommended:

- That the Modification Application DA/414/2020/B for *Modification to approved development to replace approved mechanical stackers with standard car spaces and internal re-configuration* at 172 – 180 Anzac Parade and 116R Todman Avenue, Kensington be APPROVED pursuant to 4.56(1) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A; and
- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

As per the following:

- **Amend Condition 1 to read:**

Approved Plans & Supporting Documentation

1. The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

<i>Plan No.</i>	<i>Rev No.</i>	<i>Drawn by</i>	<i>Dated</i>
AR-A10-10-00	G	BVN	24/03/2021
AR-B20-00-00	U	BVN	20/04/2021
AR-B20-01-00	R	BVN	20/04/2021
AR-B20-02-00	Q	BVN	20/04/2021
AR-B20-03-00	M	BVN	24/03/2021

AR-B20-04-00	N	BVN	24/03/2021
AR-B20-08-00	N	BVN	24/03/2021
AR-B20-09-00	K	BVN	24/03/2021
AR-B20-14-00	G	BVN	24/03/2021
AR-B20-17-00	J	BVN	24/03/2021
AR-B20-18-00	N	BVN	24/03/2021
AR-B20-B1-00	Q	BVN	19/04/2021
AR-U10-00-00	J	BVN	19/04/2021
AR-C10-AA-00	M	BVN	24/03/2021
AR-C10-BB-00	O	BVN	19/04/2021
AR-C10-CC-00	O	BVN	07/04/2021
AR-C10-DD-00	N	BVN	24/03/2021
AR-C20-CC-00	D	BVN	07/04/2021
AR-C20-DD-00	D	BVN	07/04/2021
AR-D10-AA-01	K	BVN	24/03/2021
AR-D10-BB-01	K	BVN	24/03/2021
AR-E10XX-XX	B	BVN	24/03/2021
AR-E10-AA-00	D	BVN	24/03/2021
AR-E10-BB-00	D	BVN	24/03/2021
AR-E10-CC-00	C	BVN	24/03/2021
AR-E20-10-00	A	BVN	24/03/2021
LD-S34-000	1	Landform Studios	26/03/2021
LD-S34-100 (Materials & Planting Schedules)	1	Landform Studios	26/03/2021
LD-S34-100 (Landscape Plan Ground Plane & Public Domain)	1	Landform Studios	25/03/2021
LD-S34-100 (Level 2 Landscape Plan & Green Roof)	1	Landform Studios	25/03/2021
LD-S34-120	1	Landform Studios	25/03/2021
LD-S34-130	1	Landform Studios	25/03/2021
LD-S34-140	1	Landform Studios	25/03/2021
LD-S34-150	1	Landform Studios	25/03/2021

LD-S34-300	1	Landform Studios	25/03/2021
LD-S34-900	1	Landform Studios	25/03/2021

<i>BASIX Certificate No.</i>	<i>Dated</i>
1121323M_02	04/05/2021

EXCEPT where amended by:

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

<i>Plan No.</i>	<i>Rev No.</i>	<i>Drawn by</i>	<i>Dated</i>
AR-B20-00-00	2	Bayley Ward	13/03/2023
AR-B20-01-00	2	Bayley Ward	13/03/2023
AR-B20-02-00	2	Bayley Ward	13/03/2023
AR-B20-03-00	1	Bayley Ward	05/10/2022
AR-B20-04-00	1	Bayley Ward	05/10/2022
AR-B20-08-00	1	Bayley Ward	05/10/2022
AR-B20-09-00	1	Bayley Ward	05/10/2022
AR-B20-17-00	1	Bayley Ward	05/10/2022
AR-B20-18-00	1	Bayley Ward	05/10/2022
AR-B20-B1-00	1	Bayley Ward	05/10/2022
AR-C10-AA-00	2	Bayley Ward	13/03/2023
AR-C10-BB-00	1	Bayley Ward	05/10/2022
AR-C10-CC-00	2	Bayley Ward	17/02/2022
AR-C10-DD-00	2	Bayley Ward	17/02/2022
AR-C20-CC-00	2	Bayley Ward	13/03/2023
AR-C20-DD-01	2	Bayley Ward	13/03/2023
AR-D10-AA-01	2	Bayley Ward	17/02/2022
AR-D10-BB-01	1	Bayley Ward	05/10/2022
AR-D10-01-00	1	Bayley Ward	13/03/2023
AR-E10 XX-XX	1	Bayley Ward	05/10/2022
AR-E10-AA-00	1	Bayley Ward	05/10/2022

AR-E10-BB-00	1	Bayley Ward	05/10/2022
AR-E10-CC-01	1	Bayley Ward	05/10/2022
AR-E20-10-00	1	Bayley Ward	05/10/2022

<i>BASIX Certificate No.</i>	<i>Dated</i>
1121323M_04	01/08/2022

EXCEPT where amended by:

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

<i>Plan No.</i>	<i>Rev No.</i>	<i>Drawn by</i>	<i>Dated</i>
AR-B20-B1-00	2	Bayley Ward	03/06/2025
AR-B20-00-00	3	Bayley Ward	03/06/2025
AR-B20-01-00	3	Bayley Ward	03/06/2025

- **AMEND CONDITION 3**

6. Bicycle Parking should be provided in accordance with AS2890.3, **the bicycle parking must retain 40 spaces.**

- **DELETE CONDITION 34:**

- ~~34. Prior to Construction Certificate 2 being issued the applicant must submit to Council for approval, and have approved, full design details, specifications and an operation management plan for the proposed Car Stacker System. The applicant is advised to liaise with Council's Development Engineer to obtain Council's requirements for the Car Stacker system.~~

- **DELETE CONDITION 49:**

- ~~49. The Construction Certificate 2 plans must include full design details and specifications of the Council approved Car Stacker System.~~

- **DELETE CONDITION 137:**

~~137. Prior to issuing an Occupation Certificate the applicant must provide to the Principal Certifier certification from a suitably qualified engineer / consultant that the Car Stacker System has been installed to the manufacturer's specification and operational requirements. A copy of the certification must be provided to Council.~~

- **AMEND CONDITION 50 to Read:**

50. Car parking, motorcycle parking and bicycle parking shall be provided in accordance with Drawing Number AR-B20-B1-00 **Revision 1 2, dated 05/10/2022 03/06/2025**. The Construction Certificate plans must demonstrate compliance with this requirement.

PRIOR TO CONSTRUCTION CERTIFICATE 2

39A. An amended BCA Report must be provided to demonstrate prior to CC2 that the reconfigured Fire Pump Room's, Fire Tank & Rainwater Tank Room, Main Switch Room and Storeroom comply with the BCA. Any reconfiguration of these rooms must not reduce the carparking, motorcycle parking or bicycle parking.