



4 March 2019

Pemulwuy Project, Redfern
Pemulwuy Concept Approval (MP 06_0101 MOD2), Pemulwuy Project Approval (MP11_0093 MOD1), State Significant Development Application (SSD 8135)

1. INTRODUCTION

1. On 16 October 2018, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning and Environment (**Department**) a report on the concurrent assessment of:
 - a State significant development (SSD) application for a student accommodation building within Precinct 3 of the Pemulwuy Precinct (SSD application);
 - a section 75W modification application to the Pemulwuy concept plan approval (concept approval modification); and
 - a section 4.55(1A) modification application to the Pemulwuy project approval (project approval modification),from Deicorp Ltd (**Applicant**) at 77-123 Eveleigh Street, Redfern (**Applications**).
2. The Commission is the consent authority in respect of the SSD application under section 4.5(a) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP). This is because:
 - the student accommodation constitutes SSD under section 4.36 of the EP&A Act as it is development on a Redfern-Waterloo Site with a capital investment value (CIV) in excess of \$10 million within the terms of Clause 8(1)(b) and Clause 2(g) in Schedule 2 of SRD SEPP; and
 - the Department received more than 25 submissions from the public objecting to the application.
3. The concept approval modification is a transitional Part 3A project under clause 2 of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (**Transitional Regulation**). The Commission is the consent authority in respect of such transitional Part 3A projects under the Minister for Planning's delegation of that function to the former Planning Assessment Commission by instrument of delegation dated 14 September 2011. Given that the Commission is to be taken to be the same legal entity as the Planning Assessment Commission, pursuant to clause 7 of the Transitional Regulation, the Commission is the consent authority for the concept approval modification. This is because the Department received more than 25 submissions from the public objecting to the concept approval modification.
4. The project approval modification was declared a SSD application by the Department on 7 June 2018. The project approval modification only received a submission from Council and two submissions from government agencies. As a result, the Commission is not the consent authority under section 4.5(a) of the EP&A Act. The Department has advised that given the interrelationships between the Applications, it has referred the declared SSD application to the Commission under the Minister's delegation dated 14 September 2011. The Commission has power to approve the project approval

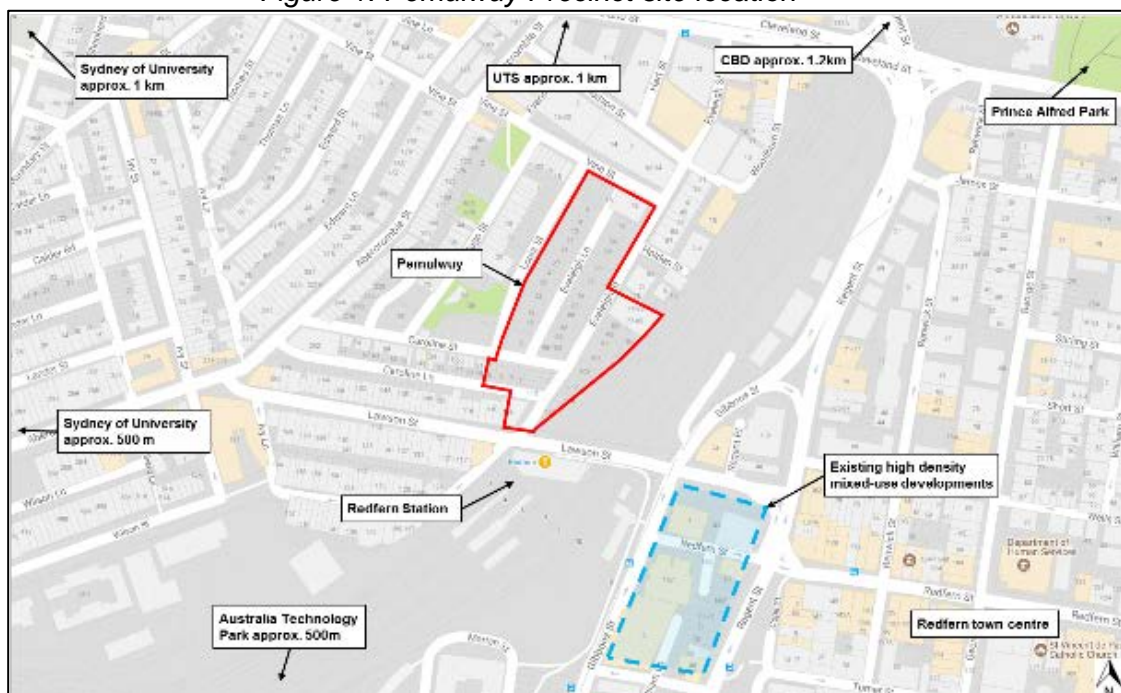
modification in accordance with the Minister's delegation dated 14 September 2011.

5. Professor Mary O'Kane AC, Chair of the Commission, nominated Soo-Tee Cheong (Chair), Ilona Millar, and Dr Peter Williams to constitute the Commission determining the Applications.

1.1 Site and locality

6. The Pemulwuy Precinct is located approximately 1.2 kilometres (km) south-west of the Sydney Central Business District (CBD) and to the north of Redfern Station. The site has a total area of approximately 10.37 hectares (ha) and is bound by Lawson Street to the south, Louis Street to the west, Vine Street to the north and Eveleigh Street and the railway corridor to the east (See *Figure 1*).
7. The site incorporates a parcel of land known as 'The Block', which has a strong connection to and importance for Aboriginal and Torres Strait Islander (ATSI) people. Historically, the majority of the site contained several 2-storey residential terraces, administered by the Aboriginal Housing Company (AHC), providing affordable residential accommodation to the ATSI community. Most buildings on the site were demolished between 1990 and 2004 and now the site is largely vacant, comprising grassed areas secured with chain-link fencing and hoardings. A 2-storey gym building remains on the site at the corner of Vine and Eveleigh Streets.

Figure 1: Pemulwuy Precinct site location



Source: Department of Planning and Environment's Assessment Report

8. The site is well located to the nearby University of Sydney and University of Technology Sydney (UTS), which are within approximately 1km from the site. The site does not contain any heritage listed items. However, it is located opposite Redfern Station, which is listed on the State Heritage Register and is also a heritage item under *State Environmental Planning Policy (State Significant Precincts) 2005 (SSP SEPP)*. The site is also located east of the Darlington conservation area and west of the

Redfern Estate conservation area (on the opposite side of the railway corridor) as defined by the *Sydney Local Environmental Plan 2012* (SLEP).

9. An existing brick wall containing Aboriginal art is located along the rail corridor at the southern end of Precinct 3 and along Lawson Street on the bridge over the railway corridor.
10. To the south-east of the site, on the opposite side of the railway corridor and Redfern Station, are five high density mixed-use developments.

1.2 Background to the Applications

11. Concept approval was granted in 2009 for a mixed-use development on the site comprising residential, student, retail and community uses. The concept approval is divided into three precincts (See *Figure 2*), separated by Eveleigh Street and Caroline Street, comprising:
 - Precinct 1: residential and retail uses
 - Precinct 2: retail / commercial and childcare uses
 - Precinct 3: student accommodation, art gallery and commercial uses.

Figure 2: Aerial view of the site showing the site, the three Pemulwuy Precinct boundaries and the surrounding site context



Source: Department of Planning and Environment's Assessment Report

12. On 21 December 2012, the Deputy Director-General approved a Part 3A project application (MP 11_0093) for:
 - construction of:
 - 2 to 6-storey buildings within Precinct 1
 - a 3-storey building within Precinct 2
 - 3 to 8-storey building within Precinct 3

- 17,370 m² of gross floor area (GFA) comprising:
 - 12,730 m² of residential GFA, including:
 - o 36 townhouses and 26 apartments within Precinct 1
 - o 42 student housing units (2-bed, 4-bed and 6-bed cluster units) providing 154 beds within Precinct 3
 - 2,610 m² of community GFA, including a gym, child care centre (60 places) and offices
 - 2,655 m² of retail/commercial GFA
 - 485 m² cultural GFA comprising a gallery
 - basement car park for 115 vehicles, including 10 accessible spaces within Precinct 1
 - eight ground level car parking spaces on the northern side of Caroline Street
 - landscaping and public domain improvement works.
13. While the modifications to the concept approval and project approval relate to all three precincts, the SSD application relates only to Precinct 3.
14. No construction works have commenced on Precincts 1, 2 or 3.

1.3 Summary of the Applications

15. The Applications before the Commission for determination seek approval for:

Modifications to the concept approval (MP 06_0101 MOD 2)

- modifications to the Precinct 3 building envelope in the concept approval to increase height, floor space ratio (FSR), GFA, student accommodation beds, delete the land-bridge, dedicate open space to City of Sydney (Council) and reconfigure uses;

State Significant development application – Precinct 3 (SSD 8135)

- SSD consent for the construction of a 3 to 24-storey student accommodation building within Precinct 3 providing 596 student beds, student amenities, open space, landscaping and public domain works, bicycle parking, loading dock and services; and

Modifications to the project approval (MP 11_0093 MOD 1)

- modifications to the project approval to delete Precinct 3 buildings / works, the land-bridge and delete/amend related conditions, replace the Precinct 1 retail with gallery use and amend the public domain works and landscaping.

16. The Applications would provide 62 dwellings in Precinct 1 designed to provide affordable housing for the local ATSI community, and 110 subsidised beds in the student accommodation in Precinct 3 for ATSI students.

1.4 Applicant's Approach to the Applications

17. The Applicant states in its Environmental Impact Statement (EIS), dated September 2017, that the Applications will:
- provide the critical mass of development required to enable the AHC to complete the entire Project, i.e. all of the development in Precincts 1, 2 and 3, in an

- economically viable manner and achieve the AHC's core objectives;
- facilitate the economic use and development of the land;
- provide a suitable mix of uses that satisfy the needs of the local ATSI community; and
- satisfy the increased demand for purpose-built student housing in this area.

2. THE DEPARTMENT'S CONSIDERATION OF THE APPLICATIONS

2.1 Key steps in Department's consideration of the Applications

18. The concept approval modification and SSD application were publicly exhibited between 14 September 2017 and 27 October 2017. The Department received a submission from Council, eight submissions from government agencies and 183 public submissions. Following the exhibition of the applications, the Department placed copies of all submissions received on its website and requested the Applicant to provide a response to the issues raised.
19. The key issues raised in the submissions include height and scale, visual impact, design and heritage impact, density and land use, overshadowing, traffic and car parking, footpath capacity, noise and social/cultural impacts.
20. On 10 May 2018, the Applicant provided a Response to Submissions Preferred Project Report (**RtS**), which includes the following amendments to the concept approval modification and SSD application:
 - commitment to dedicate open space in Precinct 1 to Council;
 - reconfiguration of student rooms and amenities throughout the building and associated amendments to the building's facades;
 - reconfiguration of lower ground level services and provision of a gym;
 - increase bicycle parking spaces (from 180 to 184 spaces) in the Precinct 3 building;
 - installation of louvres to the Level 2 outdoor plant room of the Precinct 3 building;
 - deletion of the Level 17 courtyard in the Precinct 3 building;
 - deletion of the on-street vehicle drop-off zone in front of the Precinct 3 building;
 - provision of decorative gravel roofs to flat roofs at Level 8 and 18 of the Precinct 3 building;
 - replacement of retail use within Precinct 1 with gallery use; and
 - installation of a wind screen at Level 21 of the Precinct 3 building.
21. The Department received a submission from Council and six submissions from government agencies in response to the Applicant's RtS. No public were received.
22. The project approval modification was submitted after the concept approval modification and SSD application and was notified between 13 July 2018 and 20 July 2018. The Department received a submission from Council and two submissions from government agencies suggesting conditions relating to the railway corridor and affordable housing and public domain contributions.
23. The Applicant established a Design Review Panel (DRP) to provide independent expert design advice throughout the design evolution of the project.

24. The Government Architect NSW (GANSW) has confirmed it supports the establishment and involvement of a DRP and its ongoing involvement in the project following determination.
25. The DRP comprises the following three architects / urban design experts, including a representative of the GANSW:
 - Olivia Hyde / Dillon Kombumerri (NSW Government Architect);
 - Tony Caro, Tony Caro Architecture; and
 - Kim Crestani, Order Architects.
26. The DRP met on six occasions being on 24 January, 13 and 27 February, 21 March and 10 April 2017 and on 12 March 2018 where the design of the Precinct 3 building was discussed. The DRP has given its support to the proposed design of the Precinct 3 building.

2.2 The Department's assessment report

27. The Department's assessment report, dated November 2018, identified the key impacts associated with these Applications as:

Modifications to the concept approval (MP 06_0101 MOD 2)

- Density – including an increase of 9,555 m² GFA, 1.11:1 FSR and 442 student beds;
- Precinct 3 envelope and urban design – including an increase in height from 16 to 24-storeys;
- Public open space and the land-bridge – including an additional 438 m² of open space dedicated to Council;
- Impact on adjoining residential amenity – including overshadowing, private views and privacy; and
- Non-residential land uses.

State Significant development application – Precinct 3 (SSD 8135)

- Consistency with the concept approval;
- Design quality – including design excellence, building design and materiality and heritage impacts;
- Traffic, parking and servicing – including pedestrian traffic and bicycle parking;
- Student accommodation amenity and management – including operational management and noise;
- Contributions and public benefits;
- Construction impacts; and
- Social / cultural impact.

Modifications to the project approval (MP 11_0093 MOD 1)

- Deletion of approved buildings & works relating to Precinct 3, including land-bridge and associated conditions;
- Public domain;
- Gallery space;
- Public art strategy (Condition C10);
- Open space easement (Condition E13); and
- Contributions (Condition E16 and E17).

28. In its assessment report, the Department concludes that:

Concept Approval modification and SSD

- The increase in height of the Precinct 3 building envelope by 16-storeys (from 8 to 24-storeys) would have acceptable built form and heritage impacts, is consistent with similar developments around Redfern Station and the strategic vision for the area;
- The increase in density within Precinct 3 is supported as it provides additional student accommodation, is served by public transport, close to educational institutions and will increase the vibrancy of the Pemulwuy Precinct;
- The provision of student accommodation has strategic merit and is consistent with directions and actions in the Greater Sydney Region Plan, Eastern District Plan and Central to Eveleigh Urban Transformation Strategy;
- The development would not have an adverse impact on amenity in terms of overshadowing, overlooking, impact on views;
- The proposal would not result in adverse traffic or car parking impacts and would not generate additional pedestrian movements that would exceed footpath capacity surrounding the site;
- The deletion of the land bridge over the railway corridor facilitates the retention of the culturally significant Aboriginal art walls, which represents a significant public and cultural benefit that outweighs the creation of new views into the site and compensates for the minor reduction of open space (80 m²);
- There are public benefits, including the 110 subsidised student rooms (18% of total rooms) for Aboriginal Torres Strait Island students, dedication of public open space and public art; and
- The proposal would not have an adverse social or cultural impact.

Project Approval modification

- The modification of the project approval to delete the approved Precinct 3 and revise Precinct 1 and 2 public domain works is supported;
- The amendments to land uses, including the relocation of the gallery from Precinct 3 to 1 is acceptable as the Pemulwuy Precinct would continue to be provided with sufficient services/facilities;
- In addition, the deletion of the land-bridge allows for the retention of culturally significant Aboriginal art-walls, the amendments to open space is minor in nature and the increase in the amount of open space dedication to Council is supported; and
- The amendments to the project approval conditions are administrative in nature and acceptable.

29. The Department considers the impacts of all three applications are acceptable and/or can be appropriately mitigated through the implementation of the recommended conditions of consent.

3. THE COMMISSION'S MEETINGS AND SITE VISIT

30. As part of its project determination, the Commission met separately with the Department, Council and the Applicant, convened a public meeting and undertook a site inspection.

3.1 Meeting with the Department

31. On 13 November 2018, the Commission met with the Department to discuss its assessment report. A transcript of the meeting was made available on the Commission's website on 16 November 2018.

3.2 Meeting with City of Sydney Council

32. On 13 November 2018, the Commission met with City of Sydney Council to discuss the Department's assessment report and Council's position with regards to the Applications. A transcript of the meeting was made available on the Commission's website on 16 November 2018.

3.3 Meeting with the Applicant

33. On 13 November 2018, the Commission met with the Applicant and the AHC to discuss the Department's assessment report and the Applicant's position with regards to the Applications. A transcript of the meeting was made available on the Commission's website on 16 November 2018.

3.4 Site inspection

34. On 13 November 2018, the Commission conducted an inspection of the site and surrounding area. Notes of this site inspection were made available on the Commission's website on 26 November 2018.

3.5 Public meeting

35. To hear the community's views on the Applications, the Commission held a public meeting at Rydges Sydney Central, 28 Albion Street, Surry Hills on 15 November 2018. The Commission heard from nine speakers and a transcript of the public meeting was made available on the Commission's website. A copy of the meeting transcript and material tendered at the public meeting was made available on the Commission's website on 16 November 2018.
36. An opportunity to lodge any written comments was afforded until 7 days following the public meeting. On 16 November 2018, the Commission extended the deadline for written comments by a further 7 days due to the level of community interest in the Applications. The Commission received a further 73 comments. All comments are available on the Commission's website.
37. In summary, the main issues of concern included:
 - pedestrian, traffic and car parking issues;
 - the impact of the height of the student accommodation on the character of the area;
 - the need for more affordable housing for the Aboriginal and Torres Strait Islander community;
 - overshadowing impacts;
 - noise impacts; and
 - social and cultural impacts, including appropriate use of the site, given its significance to Aboriginal and Torres Strait Islander people.

4. ADDITIONAL INFORMATION

38. On 8 November 2018, the Commission requested from the Applicant:
- a copy of the plans for the Concept Plan approval before it was modified; and
 - drawings of the land bridge that is proposed to be deleted from the concept and project approval.

This information was provided to the Commission on 8 November 2018.

39. On 9 November 2018, the Commission requested from the Applicant:
- an explanation for the purpose for the original land bridge design;
 - details of the Gymnasium design and a comparison to the existing 2-storey gym building; and
 - clarification of how issues raised by the UrbanGrowth NSW Development Corporation (as stated on page 38 of the Department's report) have been addressed.

This information was provided to the Commission on 12 November 2018.

40. At its meeting with the Commission on 13 November 2018, Council provided the Commission with comments on the Department's conditions of consent. On 16 November 2018, the Commission requested a response from the Department on Council's comments and also requested clarification of whether the SSD application required a BASIX certificate. The Department provided a response to the Commission on 26 November 2018. In its response, the Department also noted that the Commonwealth Department of Infrastructure, Regional Development and Cities had approved an application for the development to penetrate the airspace and provided amended conditions of consent accordingly.

41. On 16 November 2018, the Commission requested from the Applicant:
- justification regarding the amount of communal space proposed for the student accommodation in Precinct 3; and
 - clarification of whether the AHC needs to be registered as an affordable housing provider to deliver the 62 affordable housing dwellings in Precinct 1.

This information was provided to the Commission on 23 November 2018.

42. On 29 November 2018, the Commission requested from the Applicant:
- revisions to Precinct 3 to create additional communal living space within the student accommodation in Precinct 3, on floors 8, 12 and 15, by reducing a bedroom on each of these floors; and
 - confirmation of whether the AHC considers that it may fit within the definition of a social housing provider under Affordable Rental Housing SEPP 2009.

This information was provided to the Commission on 30 November 2018.

43. On 3 December 2018, the Commission requested from the Department:
- confirmation of whether the Department considers that the AHC may fit within the definition of a social housing provider under Affordable Rental Housing SEPP 2009.

This information was provided to the Commission on 5 December 2018.

44. On 21 December 2018, the Commission requested that the Applicant provide a BASIX certificate for the student accommodation.

This information was provided to the Commission on 21 December 2018.

45. On 9 January 2019, the Commission requested that the Applicant provide clarification of the staging of construction of Precincts 1, 2 and 3.

This information was provided to the Commission on 10 January 2018.

46. All of the above information has been uploaded to the Commission's website.

5. THE COMMISSION'S CONSIDERATION

5.1 Material considered by the Commission

47. In this determination, the Commission has carefully considered the following material **(Material)**:
- the Applicant's Environmental Assessment & Environmental Impact Statement and attachments, prepared by Ludvik & Associates Pty Ltd, dated September 2017
 - the Applicant's Response to Submissions Preferred Project Report and attachments, prepared by Ludvik & Associates Pty Ltd, dated May 2018
 - letter titled 'Pemulwuy Project, Redfern' and attachments, prepared by Deicorp, dated 10 July 2018;
 - letter titled 'Pemulwuy Project, Redfern Modification of Project Approval MP11_0093' and attachments, prepared by Ludvik & Associates Pty Ltd, dated 10 July 2018;
 - the Applicant's Supplementary Information:
 - Email from Greg Colbran, dated 12 July 2018 and revised plan;
 - Response Letter - AHC LETTER_ Affordable Accommodation, dated 15 February 2018;
 - Response Letter - AHC Letter_ Reduction in Gallery size, dated 5 July 2018;
 - Response Letter - Detailed Facade Sections, dated 13 April 2018;
 - Response Letter - Operational Management Plan, dated June 2017;
 - Response Letter Update_ External Complaints Process, dated February 2017;
 - Response Letter Update_ Resident Complaints Process, dated February 2017;
 - Response Letter Update_ Revised Architectural Drawing, dated June 2010;
 - Response Letter, dated 10 July 2018; and
 - Updated Overshadowing Diagrams DA851-010-040_ 04_09_18, dated 4 September 2018.
 - the Department's assessment report, Modifying Instruments and Development Consent, dated 16 October 2018;
 - all submissions made to the Department in respect of the proposed modification applications and SSD during the public exhibition of the EIS and up to the publication of the Department's assessment report;

- information provided to the Commission at its meetings with the Department, Council and the Applicant on 13 November 2018;
- the visual observations made by the Commission at the site inspection on 13 November 2018;
- oral submissions made by the nine speakers at the public meeting on 15 November 2018 and the 73 written comments received after the public meeting;
- additional information provided by the Department, Council and the Applicant, outlined in section 4 above.

Mandatory / Relevant considerations

48. The following are the mandatory / relevant matters for consideration:
- relevant environmental planning instruments, development control plans and planning agreements;
 - the matters in section 4.15(1) of the EP&A Act;
 - the matters in section 4.55(1A) of the EP&A Act; and
 - objects of the EP&A Act.

These matters are considered below.

49. While the Commission has considered all matters raised by the public, the Applicant, Council and the Department as outlined in paragraph 47, the key matters considered by the Commission in this Statement of Reasons are:
- relevant environmental planning instruments (EPIs);
 - applicable guidance;
 - density;
 - Precinct 3 envelope and urban design;
 - public open space and the land-bridge;
 - impact on adjoining residential amenity;
 - design quality;
 - traffic, parking and pedestrian safety;
 - student accommodation amenity and management;
 - public benefits and developer contributions;
 - social / cultural impact; and
 - the public interest.

5.2 Relevant Environmental Planning Instruments (EPIs)

50. The Applicant's EIS and the Department's assessment report (Appendix C) provide consideration and assessment of the EPIs that apply to the project. They state that the following EPIs apply to the SSD application, concept approval modification and project approval modification:
- State Environmental Planning Policy (State & Regional Development) 2011 (SRD SEPP)
 - State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)
 - State Environmental Planning Policy (State Significant Precincts) 2005 (SSP SEPP)
 - State Environmental Planning Policy (Urban Renewal) 2010 (Urban Renewal SEPP)

- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
 - Draft Remediation of Land State Environmental Planning Policy
 - Redfern-Waterloo Authority Contributions Plan 2006 (RWAC Plan)
 - Redfern-Waterloo Affordable Housing Contributions Plan 2006 (RWAHC Plan).
51. The Department considers that the Applications are consistent with the above EPIs. The Commission has reviewed the EPIs listed above and finds that they apply to the Applications.
52. The Commission notes that the Department considers that *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP) does not apply to the SSD application as the site is not located within an equivalent zone, as per clause 26 of the ARH SEPP. In addition, in accordance with clause 11 of the SRD SEPP, the Department also considers that the City of Sydney Development Control Plan 2012 (SDCP 2012) does not apply to SSD.
53. Notwithstanding, in the absence of planning controls guiding the internal design/layout of student accommodation on the site, the Department considers that,
“the ARH SEPP and SDCP 2012 provide useful guidelines to inform the assessment of the SSD application and that the application adequately meets the requirements of these documents”.
54. The Commission agrees with the Department and finds that the Applications would be consistent with the EPIs and documents outlined in paragraphs 50 and 52.

Region and District Plans

55. The Commission notes that the Applications site is located within the Eastern Harbour City area of the Greater Sydney Commission’s (GSC) *Greater Sydney Region Plan* (Region Plan).
56. The Department states in its assessment report that
“the proposal is consistent with the Region Plan, as it supports productivity through the growth in jobs and student accommodation within the Harbour City. In doing so, it supports integrating land use and transport contributing to a walkable ‘30-minute city’ and through an increase in student accommodation within a highly accessible part of the Harbour City.”
57. The Commission notes that the Applications site is also located within the Eastern City District area and the Applications are consistent with the objectives of the Eastern City District Plan (District Plan), as they will:
- *“provide services and social infrastructure (Planning Priority E3);*
 - *provide student housing to increase housing supply, choice and affordability (Planning Priority E5);*
 - *contribute to a stronger and more competitive Harbour CBD (Planning Priority E7);*
 - *deliver integrated land use and transport planning and a ‘30-minute city’ (Planning Priority E10); and*
 - *provide public and private open spaces and increase the urban tree canopy (Planning Priorities E17 and E18)”*
58. The Commission agrees with the Department and finds that the Applications would be consistent with the objectives of applicable Region and District Plans.

5.3 Applicable Guidance

Central to Eveleigh Urban Transformation Strategy (CEUTS)

59. The Commission acknowledges that the CEUTS is a strategic document guiding district and local planning and renewal within the immediate area of the site.
60. The Department notes in its assessment report that the Pemulwuy Precinct is located adjacent to the CEUTS core boundary (within its 'area of influence'), directly adjoins the north-western boundary of the CEUTS Redfern Station Precinct and is therefore a relevant consideration in the assessment of the Applications.
61. The Department considers that,
"The proposal supports the CEUTS ambition and vision by providing new student accommodation, public open space and public art within the Pemulwuy Precinct"
62. The Department notes that the CEUTS contains a vision and 10 'key moves', which make up a framework for the future delivery of housing growth alongside better public transport, new parks and community facilities. The Department considers that the project will contribute to several 'key moves' and will be consistent with design principles of the CEUTS.
63. The Commission considers the CEUTS to be applicable guidance in its consideration of the Applications and accepts the Department's finding that the Applications will be consistent with the CEUTS, as outlined in paragraphs 61 and 62.

5.4 Modifications to the concept approval (MP 06_0101 MOD 2)

Density

Public Comments

64. The Commission heard concerns at the public meeting and through written comments regarding the proposed increase in density on the site, in particular in Precinct 3, and the appropriateness and intensity/proportion of student accommodation on the site.

Applicant's consideration

65. The modification seeks to increase the density of student accommodation by 9,555 m² of GFA, 1.11:1 of FSR and an additional 442 beds. In its EIS, the Applicant states that the increased development density is appropriate within a strategic planning and urban design context as,
*"The site's location, in immediate proximity and linked to a major transportation hub, universities, other tertiary education institutions, the Sydney CBD and the Australian Technology Park, lends itself to increased growth and density. . .
. . . Within this future context of increased development density, the site provides an opportunity for a transitional change in height and density to the wider precinct, particularly as the proposed redevelopment of Redfern Station is likely to further improve public transport connections and support future density"*

Department's Consideration

66. The Department states in its assessment report that, despite proposing to intensify the student accommodation use, the modification to the concept approval remains consistent with the use envisaged under the concept approval, and that it is satisfied that this use is appropriate for the site.
67. The Department also considers that, *“the site can accommodate a greater density than established by the concept approval, noting the following changes since the original approval:*
- *the need to accommodate additional housing for the current and projected population of Sydney, which is estimated to grow from 4.7 million to 6.4 million by 2036;*
 - *a decline in housing affordability and a need to relieve pressure/demand on existing housing stock;*
 - *changes in the housing market, with an increased demand for diversity of housing types and sizes, including student accommodation;*
 - *release of a revised metropolitan planning framework in the Region Plan and the Eastern District Plan that encourages higher densities in accessible areas; and*
 - *the release of the CEUTS, which is an important strategic document guiding district and local planning and renewal within the immediate area of the site”*
68. In light of the above, the Department states that it supports the increase in student accommodation on the site.

Commission's Consideration

69. Based on the Material, the Commission accepts the Applicant's position, outlined in paragraph 65, that the site's location would lend itself to increased development and density, and finds that the increased density would be appropriate as it would be in accordance with the strategic planning objectives for the area, under the Greater Sydney Region Plan, Eastern City District Plan and CEUTS.
70. The Commission also accepts the Department's position, outlined in paragraph 66, that the modification to the concept approval remains consistent with the use envisaged under the concept approval.

Precinct 3 envelope and urban design

Public and Council Comments

71. The Commission heard concerns at the public meeting and through written comments regarding the urban design and heritage impacts of the modification on the character of the area, in particular from the increased height and scale of the proposed building envelope in Precinct 3.
72. In its submission to the Department, Council raised concern about the visual impacts of the building bulk on the area immediately west of the railway corridor and noted that the increase in height is significant when compared to the concept approval. Council noted in its meeting with the Commission that it considered the context of the site to be different to that of nearby tall buildings in the area.

Applicant's Consideration

73. In its EIS, the Applicant states that,
"The overall building mass on the site has been determined within the emerging context of development surrounding the Station, where existing and proposed new developments to the south and east continue to redefine the area's skyline.
- This context has informed the placement of the taller mass of the building to the south to cluster with the suite of taller buildings surrounding the Station and the extent and presence of taller buildings anticipated to occur over time under plans such as the UTS, the Metro Strategy and the District Plan"*
74. The Applicant's Urban Context Report, prepared by Grimshaw Architects, states that,
". . .the scheme for Pemulwuy including the Col James Student Accommodation provides an appropriate transition from the station and its proposed growth, to the surrounding terraced housing."
75. The Applicant's EIS notes that the only heritage item identified in the vicinity of the site is the Redfern Railway Station building on the southern side of Lawson Street. Land to the west of Louis Street is located in the Darlington Heritage Conservation Area identified on the Heritage Map associated with Sydney LEP 2012.
76. The Applicant's Heritage Impact Assessment, prepared by NBRIS + Partners Pty Ltd, concludes that,
"the proposed development generally complies with the heritage controls applicable to the site and does not unacceptably or adversely affect the identified heritage significance of the Redfern Station Booking Office or the larger Redfern Railway Station group."

Department's Consideration

77. In its assessment report, the Department acknowledges that the Pemulwuy Precinct does not currently contain tall buildings and there are currently no tall buildings in this locality on the western side of the railway corridor. However, the Department notes that on the eastern side of the railway corridor, approximately 100 m to the south-east of the site, there are four existing (and one proposed) 18-storey high density mixed use developments. The Reduced Levels (RLs) of these developments range from 88.20 to 99.02, which are similar to that of the proposed student accommodation of 96.57.
78. The Department considers the proposed modified Precinct 3 building envelope is acceptable as,
- *"the DRP and GA NSW support the proposal and raised no concern about the height or scale of building envelopes and Council did not object to the proposal;*
 - *the tallest built form element (24-storeys) is centrally located within the site and appropriately transitions to neighbouring developments, including stepping down;*
 - *it is consistent with the future vision for the area established in the CEUTS, which encourages the regeneration of the area around Redfern Station and the creation of high density neighbourhoods;*
 - *despite being on the western side of the railway corridor, the proposal forms part of a cluster of existing tall buildings around Redfern Station and would therefore integrate appropriately into the current urban context;*

- *it provides for a recognisable marker or 'gateway' which emphasises the entrance to the Precinct;*
 - *it includes building separation distances between Precinct 1 and 3 consistent with the immediate surrounding area; and*
 - *it is capable of accommodating a building which is modulated, articulated and achieves a high standard of design”*
79. The Department also considers the proposed building envelopes would not have an adverse impact on the heritage significance or setting of Redfern Station or the nearby Darlington and Redfern Estate conservation areas as:
- *“the SHR listing of the station does not attribute significance to views of the station building into the surrounding locality;*
 - *the building envelope is located on the opposite side of Lawson Street, north of the station, and would not interrupt views towards it along Lawson Street, Eveleigh Street and Eveleigh Lane;*
 - *the area surrounding the station and conservation areas has been identified within the CEUTS for regeneration, including the development of new high-density neighbourhoods;*
 - *the narrow widths of roads together with the density of terrace housing within the conservation areas limits views from the conservation area to the site and the proposed student accommodation building envelope;*
 - *the future building within the building envelope is a modern design and would not attempt to mimic or distort the significance of surrounding heritage items;*
 - *the setting of the station has already been significantly altered by modern high-density developments in close proximity and the proposal would not result in any additional adverse visual / setting impacts beyond what already exists; and*
 - *the DRP and GANSW did not raise any concern about the height/scale of the development and stated the proposal would not have an adverse impact on Redfern Station”*
80. The Department concluded that,
- “the building envelope is acceptable and would not have adverse built form, visual or heritage impacts. In addition, the building envelope complements the existing and future urban context and character of the Precinct”*

Commission’s Consideration

81. The Commission acknowledges the concerns raised by the public and Council with regards to the increased height, urban design and heritage impacts of the concept approval modifications.
82. The Commission notes that the Pemulwuy Precinct is located adjacent to the CEUTS core boundary and directly adjoins the north-western boundary of the CEUTS Redfern Station Precinct. The Commission also notes that ‘key moves’ under the CEUTS include the regeneration of the area around Redfern Station and the creation of high-density neighbourhoods.
83. The Commission notes that the Applicant has proposed a building mass which it considers has been determined by the emerging context of development surrounding Redfern Station, as noted in paragraph 73.

84. The Commission accepts the Department's position, outlined in paragraph 80, that the building envelope complements the existing and future urban context and character of the Precinct.
85. The Commission notes that the DRP and GA NSW were generally supportive of the linear built form and also support an increase of the maximum building height from 16 storeys to 24 storeys. The Commission also notes that the DRP supports the concept approval modification as they consider it reflects the continuing changes within the surrounding neighbourhood and the existing high-rise development east of the railway corridor.
86. Based on the Material, the Commission finds that the concept approval modifications would not have an adverse impact on the built form and heritage of the area as they:
 - present an appropriate transition to the surrounding terraces and train station, with the greatest bulk centrally located within the building envelope;
 - would not represent an inappropriate feature in the context of the area;
 - are consistent with the strategic planning objectives for the area; and
 - would not mimic or distort the significance of surrounding heritage items.

Public open space and the land-bridge

Public and Council Comments

87. The Commission notes that concerns have been raised in public submissions to the Department that the concept approval modification provides insufficient open space.
88. After its meeting with the Commission on 13 November 2018, Council provided an additional recommendation relating to Condition E12 and the dedication of public open space. Council recommended that a Planning Agreement be entered into to finalise the details of dedication, but should the Commission be minded to accept the Department's recommendation that dedication be by condition, then Council should have the approval role in Condition E12.

Applicant's Consideration

89. The Applicant has stated that the dedication of an additional net 438 m² (to give an overall dedication of 1,138 m²) of public open space to Council as a result of the Applications is a significant public benefit.
90. The Applicant advises in its RtS the purpose of the land-bridge was to increase views into the site from Lawson Street and it was not intended to be public open space. In addition, the Applicant notes that the retention of the existing Aboriginal art-wall is of higher social and cultural value than the provision of the land-bridge.
91. The Applicant states the dedication of open space can be appropriately secured by the proposed Statement of Commitments and conditions and a Planning Agreement is therefore not necessary.
92. The DRP has advised it supports the deletion of the land-bridge as this facilitates the retention and refurbishment of the Aboriginal art wall murals, which are culturally significant to the local Aboriginal community. This is discussed further in section 5.5 below.

Department's Consideration

93. The Department states in its assessment report that an 80 m² reduction of public open space at the southern tip of Precinct 3 is acceptable as:
- *“(it) is minor in the context of the overall provision of public open space (1,138 m²) and the public open space remains proportionate to the size, inner city location and density of the development*
 - *the student accommodation building is capable of accommodating communal open spaces at various levels throughout the building (as shown within SSD 8135) and therefore the development would not generate much demand for further public open space”*
94. The Department states in its assessment report that,
“the site-wide dedication of open space and provision of public art was secured by condition rather than a planning agreement for Precincts 1 and 2 (and 3 as originally approved) under the project approval (MP 11_0093). The Department considers, given this established approach for the remainder of the site, securing the public open space and public art within the proposed Precinct 3 by condition is appropriate”
95. However, in response to Council's recommendation outlined in paragraph 88 above, the Department stated that,
“securing the public open space and public art through condition, rather than a planning agreement, is an established approach for the site.

Notwithstanding, the Department has no objection to the evidence for Condition E8 being submitted to the satisfaction to Council”

Commission's Consideration

96. Based on the Material, the Commission finds that the amount of public open space provision is sufficient as it represents a 438 m² net increase and the deletion of the land bridge is appropriate as it will result in the retention of a culturally significant Aboriginal art-wall. The Commission also accepts Council's recommendation outlined in paragraph 88 and amends Condition B8 accordingly.

Impact on adjoining residential amenity

Public and Council Comments

97. The Commission heard concerns at the public meeting and received written comments regarding the impact of the proposed building envelope on adjoining residential amenity in terms of overshadowing and noise. Comments referred to the potential for significant overshadowing of Eveleigh, Caroline and Louis Streets during the summer and winter months, and the potential impacts from noise generated by residents of the student accommodation.

Applicant's Consideration

98. The Applicant's shadow diagrams, outlined in their Architectural Plans, indicate that the proposed development will not have any unreasonable or undue effect on the level of overshadowing for residents of surrounding properties.

99. The Applicant's Operational Management Plan (OMP), prepared by Atira Student Living (Atira), confirmed the student accommodation would be operated by Atira, which has experience managing student accommodation facilities. The OMP includes 'house rules' for residents of the student accommodation with expectations on behaviour, and a resident and external complaints process.

Department's Consideration

100. The Department states in its assessment report that the proposed 24-storey building envelope will result in a notable increase in overshadowing when compared to the approved 8-storey building envelope which would result in the following overshadowing at mid-winter:
- the railway corridor south and east of the site at various times between 9 am and 3 pm
 - the lower levels of 1 Lawson Square and 74 Lawson Square between 2 pm and 3 pm in mid-winter.
101. The Department concludes that it is satisfied the likely additional overshadowing impacts are acceptable, noting:
- *“almost all of the additional shadow created by the increase in the height of Precinct 3 would be cast over the railway corridor between 9 am and 3 pm;*
 - *there are no overshadowing impacts on existing residential properties to the north, south and west;*
 - *neighbouring residential properties to the east would continue to receive between five and six hours of direct sunlight during mid-winter, with the lower levels of 1 Lawson Square being overshadowed by approximately 1 additional hour (2 pm to 3 pm) during mid-winter; and*
 - *there is no overshadowing of public open space within Precinct 1 and 2 and only minor overshadowing of the public open space within Precinct 3 (between 9 am and 10 am in mid-winter)”*
102. The Department considers in its assessment report that, subject to appropriate management through the OMP, the future use of the site for student accommodation will not have an unreasonable impact on the locality in terms of noise and behaviour of the residents of the building.
103. To further strengthen the OMP mitigation measures and ensure the development does not have adverse noise impacts on surrounding residents, the Department has recommended conditions:
- *“limiting the maximum noise emissions arising from the general use, operation and plant;*
 - *limiting the capacity of the Level 21 roof terrace to a maximum of 50 persons at any one time;*
 - *limiting the roof terrace hours of use to 7 am to 10 pm Monday to Saturday and 8 am to 9 pm Sunday and public holidays;*
 - *limiting the use of the rooftop terrace to residents within the student accommodation building and their guests;*
 - *prohibiting amplified noise/music on the roof terrace;*
 - *requiring the installation of signs and operational management requiring occupants to leave the premises quietly; and*

- *updating the OMP so it is consistent with the above changes”*

Commission’s Consideration

104. The Commission acknowledges that the increased height of the tallest building in Precinct 3 from 8 to 24-storeys will have the impact of increasing overshadowing. However, the Commission accepts the Department’s position, outlined in paragraph 100, that almost all of the additional shadow created by the increase in the height of Precinct 3 would be cast over the railway corridor between 9 am and 3 pm.
105. The Commission acknowledges community concerns regarding the potential noise generated by the student accommodation. The Commission is satisfied that appropriate management of the student accommodation through the Applicant’s OMP and the Department’s recommended conditions will limit noise impacts on neighbouring residential properties.
106. Based on the Material, the Commission finds that there will be no adverse impact on the amenity of adjoining residential properties from overshadowing, for the reasons outlined in paragraph 101, and that there are appropriate mitigation measures proposed to limit noise impacts on neighbouring residential properties.

5.5 State Significant development application – Precinct 3 (SSD 8135)

Design quality

Public and Council Comments

107. The Commission notes that the Department received concerns in public submissions that the SSD application does not achieve design excellence. The Department states in its assessment report that Council did not raise any concerns with the design of the detailed building.
108. At its meeting with the Commission, Council noted that the Department’s assessment report had not addressed the requirement of lodgement of a BASIX certificate for the student accommodation. Council cited and provided the Commission with a Land and Environment Court judgment (*SHMH Properties Australia Pty Ltd v City of Sydney Council* [2018] NSWLEC 66) as evidence in its consideration that a BASIX certificate was required, and that this requirement could be outlined in a deferred commencement condition.

Department’s Consideration

109. The Department in its assessment report considers that the Applicant has established an appropriate design excellence process and concludes that the application exhibits design excellence as:
 - *“the GANSW supports the design excellence strategy, including the establishment of a DRP;*
 - *the DRP supports the overall scale, density and height of the proposal;*
 - *the building’s overall design, shape and form and use of materials will provide a distinct building and the proposal will make a positive contribution to the existing cluster of tall buildings to the east;*
 - *the development provides public open space and art designed to reflect the*

cultural Aboriginal significance of the site;

- *the proposal provides appropriate activation and landscaping at ground floor level and will provide a high quality public domain;*
- *the proposal is contained wholly within the proposed concept plan building envelope and would have no additional impact on views, overshadowing and privacy beyond what has already be assessed; and*
- *the design implements a variety of environmentally sustainable measures to achieve ESD and the Department has recommended a condition requiring the Applicant strive to achieving additional improvements to sustainability.”*

110. With regards to the requirement to lodge a BASIX certificate for the development, the Commission sought comment from the Department on this matter. In its response dated 26 November 2018 the Department agreed that, *“the proposed development is a ‘BASIX affected development’ requiring a BASIX certificate. The Commission may therefore consider including a deferred commencement condition to SSD 8135.”*

Applicant’s Consideration

111. The Applicant states in its EIS that the development achieves design excellence by:

- *“responding to its existing and future contextual setting;*
- *peeling back the building from the Lawson Street edge to create an urban square, responding to the public realm with the creation of Pemulwuy as the “Meeting Place” and celebrating the corner and gateway to this precinct;*
- *providing a high level of visual interest as a result of its articulated and modulated facades and the palette of materials and finishes to be used in its construction;*
- *creating an attractive and interesting architectural built form and contributing positively to existing and future character of development surrounding Redfern Station;*
- *respecting and maintaining an appropriate relationship with surrounding development by reducing building height along Eveleigh Street and creating a desirable streetscape element;*
- *providing a well-resolved internal design to create a high level of amenity for its future occupants in terms of both accommodation and communal facilities;*
- *achieving a high level of ecological sustainability, with 79% of the accommodation rooms receiving solar access for at least 2 hours;*
- *designing building height to increase solar access and daylight within the development and surrounding areas; and*
- *providing the higher built form adjacent to the rail corridor and away from the residents to the west.”*

112. The Applicant informed the Commission that it possessed a BASIX certificate for the student accommodation and provided it to the Commission on 21 December 2018.

Commission’s Consideration

113. Based on the Material, the Commission accepts the Department’s and Applicant’s considerations in paragraphs 109 and 111 and finds that the SSD application achieves design excellence as,

- it has been appropriately designed through a design excellence process;
- it has a design that is appropriate in scale, density and height given its location adjoining the railway corridor, and is consistent with the emerging urban context of the area surrounding Redfern Station; and
- it incorporates environmentally sustainable measures.

114. The Commission accepted Council's and the Department's considerations in paragraphs 108 and 110 that a BASIX certificate for the student accommodation was required but acknowledges that this has been lodged by the Applicant and no further requirement for this certificate is needed.

Traffic, parking and pedestrian safety

Public Comments

115. The Commission heard concerns at the public meeting and through written submissions regarding the impacts of the increased building envelope in Precinct 3 on traffic and car parking, in particular:

- the lack of on-street car parking provision for the student accommodation;
- insufficient current footpath capacity in the area during the morning and evening and irregularities with the Applicant's footpath capacity study methodology, including the timing of the study; and
- increased traffic generation and subsequent congestion in the area.

Applicant's Consideration

116. The Applicant's Traffic and Parking Impact Assessment (TPIA), prepared by Barker Ryan Stewart, states that,
"the provision of no on-site car parking is appropriate for the site's proposed land-use and is consistent with City of Sydney's aim to minimise parking numbers, encouraging sustainable transport methods and to address inner-city congestion by minimising the amount of vehicular traffic generated from developments."

117. The Applicant also considers that the proposed development will not have any adverse impacts to the operation or safety of the surrounding road network and is unlikely to generate any private vehicle traffic at all.

118. The Applicant's assessment concludes that,
"the subject site is suitable for the proposed student housing development in relation to the impact of traffic, vehicle access, parking and safety considerations. The development is considered to have negligible effect on the operating outcome and the level of service of the surrounding transport network."

119. With regards to footpath capacity and pedestrian amenity, the Applicant's EIS states that,
"The development and surrounding public domain have been designed to establish a high standard of pedestrian amenity and safety."

120. The Applicant's Footpath Capacity Study (FCS), prepared by Barker Ryan Stewart, acknowledges that the south side of Lawson Street is the single component of the surrounding footpath network that is identified as operating outside acceptable thresholds, but states that this will not be exacerbated by the proposed development.

121. The Applicant's TPIA concludes that,
"the subject site is suitable for the proposed student housing development in relation to the impact of pedestrian traffic and safety considerations."

Department's Consideration

122. The Department states in its assessment report that it is satisfied the proposed development, being primarily for student accommodation and located opposite Redfern Station, will not adversely impact on the existing road network conditions, and notes that the absence of any allocated on-site car parking spaces will limit traffic numbers generated by the proposed development.
123. The Department considers no on-site car parking spaces being provided for Precinct 3 is appropriate as:
- *"the site is close to a number of tertiary education facilities and shops and services within the Redfern town centre;*
 - *the site is opposite Redfern Station and within close proximity to a number of key bus services which provide connections to other major centres and tertiary educational facilities;*
 - *the development includes 184 bicycle parking spaces and a bicycle route passes in front of the site along Eveleigh Street;*
 - *the surrounding streets include car parking restrictions, which are controlled and monitored by the Council and prevent long-term car parking. The Department also recommends a condition confirming future occupants are ineligible to obtain an on-street parking permit;*
 - *the Regional and District Plans encourage a reduction in car dependency and the use of alternative modes of transport; and*
 - *car parking was previously removed from Precinct 3 (as part of the determination of MOD1) in response to Council's concerns."*
124. The Department states that the SSD application would not cause an exceedance in comfort levels for pedestrian routes along Eveleigh, Caroline, Louis and Vine Streets and the northern footpath of Lawson Street, and would not result in additional pedestrian movements along the southern side of Lawson Street, which is already congested.
125. The Department considers the SSD application would not have an unacceptable impact on the comfort levels of pedestrian routes within 100 m of the site as:
- *"the FCS has demonstrated the proposal would not overload existing footpaths;*
 - *the project approval includes the formalisation of a shared / pedestrian priority zone along Eveleigh and Caroline Streets at the entrance of the Precinct and outside the main entrance to the student accommodation building. This informally enlarges the footpaths at the most trafficked point of the site and will prevent the creation of a congestion pinch-point;*
 - *due to the irregularity of tertiary class scheduling it is highly unlikely the majority of the 596 students will have classes during the morning peak period. In this regard the FCS prediction (80% of the 596 students) is a conservative scenario;*
 - *the FCS does not factor in students choosing to ride bicycles rather than walk. If cyclists were included this would further reduce the number of pedestrian trips / impact; and*

- *as the southern footpath of Lawson Street is shown to be already congested, it is likely pedestrians would use the northern footpath or seek alternative routes.”*

Commission’s Consideration

126. Based on the Material, the Commission finds that the SSD application would not adversely impact traffic, parking and pedestrian safety as,
- no on-site car parking provision is proposed;
 - the SSD application would not cause an exceedance in comfort levels for pedestrian routes along Eveleigh, Caroline, Louis and Vine Streets and the northern footpath of Lawson Street, and would not exacerbate an already congested footpath on the southern side of Lawson Street; and
 - sufficient bike parking will be made available to residents of the student accommodation.

Student accommodation amenity and management

Public and Council Comments

127. The Commission heard concerns at the public meeting and through written submissions regarding student accommodation amenity, including the amount of internal communal space for students. This was considered to have a subsequent potential effect on pedestrian flows in the area due the need for students to find mingling space outside of the accommodation.
128. At its meeting with the Commission, Council raised concerns over noise impacts on residents of the student accommodation from road and rail traffic and stated that any increase in communal facilities within the student accommodation would be an improvement in student amenity.

Applicant’s Consideration

129. The Applicant’s EIS states that the design strategy for the development achieves a desirable urban design outcome by providing a well-resolved internal design to create a high level of amenity for its future occupants in terms of both student accommodation and communal facilities. In addition, the Applicant states that the current SSD application significantly improves the extent and orientation of communal open space within the development.
130. With regards to road and rail traffic noise impacts on residents of the student accommodation, the Applicant’s Acoustic and Vibration Assessment (AAVA), prepared by Koikas Acoustics Pty Ltd, states that,
“Road and rail traffic noise levels can be satisfactorily reduced such that indoor noise levels are acceptable in accordance with ISEPP requirements and City of Sydney Council guidelines, provided that suitable thickness and types of glass windows are installed.”
131. The Applicant’s EIS states that the AAVA specifies a number of attenuation measures, which when implemented, will ensure that the internal amenity criteria of the ISEPP will be achieved. It also states that the development is to be consistent with RMSs’ *Development Near Rail Corridors and Busy Roads - Interim Guideline, 2006*.

132. The Applicant's EIS concludes that, *"students will enjoy a satisfactory acoustic environment."*

Department's Consideration

133. The Department acknowledges in its assessment report that the ARH SEPP and SDCP 2012 do not apply to the site. However, in the absence of planning guidelines for the internal design/layout of student accommodation, the Department has considered the ARH SEPP and SDCP 2012 as guides to inform the consideration of the amenity of student accommodation. The Department has assessed the SSD application against the requirements of the ARH SEPP and SDCP 2012 and considers it to adequately meet the internal space, amenity, open space and layout requirements of the ARH SEPP and the SDCP 2012.

Commission's Consideration

134. The Commission acknowledges Council's concern regarding the impact of adjacent road and rail noise on the residents of the student accommodation but is satisfied that these noise levels can be reduced to acceptable levels under the ISEPP requirements and City of Sydney guidelines.
135. The Commission requested that the Applicant provide further communal facilities on floors 8, 12 and 15. On 30 November, the Applicant provided amended plans reflecting these additional communal facilities. The Commission notes that this has resulted in the increase of 57 m² of communal indoor space in the student accommodation.
136. Based on the Material, the Commission finds that the SSD application would not adversely impact on student amenity or the amenity of neighbouring residential properties as:
- there is now sufficient communal space proposed within the building; and
 - road and rail noise impacts on residents of the student accommodation can be mitigated.

Public benefits and developer contributions

137. The Commission received concerns in written comments regarding the public benefits of the Applications, in particular the AHC's intention to build 62 affordable housing dwellings in Precinct 1. The Commission also heard support for these dwellings at the public meeting.
138. Council in its submission to the Department suggested that, *"the proposal makes available 20 percent of approved rooms as 'affordable student accommodation' (at a reduced rental rate) within the Precinct 3 proposal for the use of Aboriginal and Torres Strait Islander and or other disadvantaged students, to assist in achieving the core objectives of the Pemulwuy Project to deliver affordable housing to Aboriginal and Torres Strait Islander communities."*

Applicant's Consideration

139. In its email to the Commission on 7 December 2018, the Applicant stated that there

is a current agreement between the AHC and the student accommodation provider to provide 110 beds for subsidised student housing, which would represent 18 per cent of the overall provision. The Applicant disputed Council's request, outlined in paragraph 138 above, to make available 20 per cent of approved rooms as affordable student accommodation.

140. The Applicant states in its RtS that *"the benefits to the ATSI community resulting from modifying the development in Precinct 3 to facilitate the development of the entire Project in a single self-funded development is very much in the public interest as it:*
- will produce these benefits without the need for Government funding or subsidisation; and*
 - will deliver the Project to the ATSI community without financial burden to future generations and maintain its long-term financial independence."*
141. The Applicant's RtS also states that,
"The primary purpose of the proposal is to facilitate the construction of 62 affordable dwellings for the ATSI community which has a value of some \$28 million. The proposal, therefore, facilitates the construction of affordable housing with a value well in excess of the affordable housing contribution required."

Department's Consideration

142. The Department states in its assessment report that the Applications would provide the following public benefits:
- "110 of the 596 student beds (18%) made available to ATSI students;*
 - dedication of the 150 m² public open space at the southern end of Precinct 3 to Council (Precinct-wide open space dedication to Council increased by 438 m²); and*
 - provision of three art works within the public domain and on the façade of the Precinct 3 building, which form part of the Precinct-wide public art strategy providing eight art works."*
143. The Department also states that the Applicant seeks an exemption from the payment of all contributions, asserting the development of the Pemulwuy Precinct includes affordable housing and public domain improvements to a value in excess of the contribution requirements, as summarised below:
- provision of 62 affordable housing dwellings within Precinct 1 for the ATSI community valued at \$28 million; and*
 - provision of Precinct-wide public domain works (including footpaths, landscaping, street lighting and furniture) and provision of a child care facility valued at \$3.5 million.*
144. The Department has raised concerns that insufficient information/costings have been provided at to adequately consider the proposed exemptions to the contribution payments under the RWAC Plan and RWAHC Plan, in particular:
- "there is currently no restriction on title guaranteeing the 62 dwellings in Precinct 1 being provided as affordable housing*
 - AHC is not yet registered as a community housing provider and a housing provider has not been nominated*
 - the application does not include a quantity surveyor's report confirming the cost of the proposal public domain works."*

145. Notwithstanding, the Department concludes that,
“the proposed public benefits, together with the already approved public benefits within the broader Pemulwuy Precinct (affordable housing, gallery, open space and public domain improvements) would ensure the development provides appropriate benefits for existing and future communities.”
146. To address the concerns outlined in paragraph 144, the Department has recommended conditions requiring:
- *“provision of subsidised student accommodation, open space and public art in accordance with the Applicant’s public benefit offer; and*
 - *the payment of the RWC Plan and RWAHC Plan contributions or alternatively:*
 - *confirmation that a restriction has been registered on title for Precinct 1 requiring the provision of 62 dwellings within Precinct 1 as affordable housing and confirmation of a housing provider prior to the issue of an Occupation Certificate*
 - *confirmation of the provision of public domain works to a value of at least \$1,436,126.40 prior to the issue of a Construction Certificate.”*

Commission’s Consideration

147. Based on the Material, the Commission finds that the SSD application will deliver public benefits as it would provide:
- 110 subsidised beds in student accommodation for ATSI students;
 - 62 affordable housing dwellings in Precinct 1 for the ATSI community; and
 - additional art works within the public domain.
148. The Commission is satisfied with the dedication of land for open space to Council (988m²) and preparation of a public arts strategy as offered by the Applicant in order to satisfy its Statement of Commitments under MP06_0101. The proposed dedication of open space to Council is not provided for by the RWAC Plan and the Commission understands from the Applicant that such dedication is to be made in addition to any payment required by the RWAC Plan. Under section 7.13(2) of the EP&A Act, the Commission may impose a condition requiring payment of a development contribution even though it is not authorised (or of a kind allowed) by, or is not determined in accordance with, a contributions plan. Before determining to impose the condition requiring the dedication of land to Council as offered by the Applicant, the Commission has had regard to the terms of the RWAC Plan as required by section 7.13(2)(b). In the circumstances, the Commission considers that such dedication is appropriate to be made for the following reasons:
- the dedication forms part of the approved Concept Plan applicable to the whole site;
 - the dedication ameliorates impacts of the development and ensures the ongoing public access to the Pemulwuy Precinct generally with a view to ensuring its vitality; and
 - the RWAC Plan does not expressly provide for the dedication of any particular land but provides for essential works in the Redfern-Waterloo area only. The proposed dedication would augment and enhance the public works otherwise provided for by the RWAC Plan.

149. The Commission has amended Condition E4 of the SSD 8135 consent and E16 of the MP 11_0093 MOD 1 consent to ensure the provision of the 62 affordable housing dwellings outlined in paragraph 147. The Commission notes that, as the consent authority, it has the power to impose an affordable housing condition under the *Redfern-Waterloo Authority Act 2004*, that the relevant sections of that Act are saved and operational, and operate despite (or in lieu) of the power under section 7.32 of the Act as it applies to the Pemulwuy Applications land.

Social / cultural impact

Public Comments

150. The Commission heard concerns at the public meeting and received written comments regarding the social and cultural impacts of the Applications on the local community and Aboriginal cultural heritage, in particular,
- the imposition of the Applications on Aboriginal culture and heritage, including strong divergent views on the future use of the site;
 - the impact of student accommodation being introduced to the area;
 - the Applications' failure to house the Aboriginal people that were once housed on The Block (Precinct 1 of Pemulwuy development); and
 - the loss of a Redfern as a culturally diverse suburb that is unique to Australia.
151. The Commission also notes that the Department received concerns in public submissions about the lack of a proportionate increase of affordable housing.

Applicant's Consideration

152. The Applicant's Social Impact Assessment (SIA), prepared by Urban Advisers, relates only to the potential impacts of the proposed student accommodation development in Precinct 3. With regards to the Applications' social impact on the community, the SIA states that,
- "While recognising that there is always potential for large scale developments, such as the Pemulwuy project, to contribute to a loss of social ties and disruption to established social patterns, the original approval for the Pemulwuy development (as modified) remains in place."*
- and
- "While some in the community are opposed to the Pemulwuy development, the proposed development is broadly consistent with the urban renewal goals for the area."*
153. The SIA notes that the site is located in an area with high demand for student and affordable housing and that the supply of student accommodation in the area is increasing. However, the SIA states that,
- "...the current supply is inadequate for demand. The proposed development will assist the market to meet this demand."*
154. The SIA identifies that a social benefit of providing this student accommodation is that it will attract students to the area who will spend in the local area, which will support local businesses.
155. The SIA acknowledges that the Aboriginal community has strong connections to the site and its heritage. In response, the SIA states that,
- "The proposed development will make viable, the delivery of 62 affordable*

dwellings for Aboriginal people. The proposed development will not substantially alter the impact of the Pemulwuy development on the neighbourhood, from that of the approved development.”

156. The Applicant confirmed in its correspondence to the Commission dated 10 January 2019 that the construction of the 62 affordable housing dwellings in Precinct 1 would commence immediately following any approval of the Applications.
157. The Applicant’s EIS considers the social and cultural significance of the existing Aboriginal art wall along Eveleigh and Lawson Streets. The Commission notes that the Applicant has deleted the proposed ‘land bridge’ in favour of retaining the Aboriginal art wall. The Applicant’s EIS states that,
“The art wall is to be integrated as a key element of the public art framework that explores themes of connection to country, culture and people and its artwork is to be updated by the original artist and retained as a ‘living canvas’ reflecting the local values and culture.”
158. The Applicant’s SIA concludes that,
“Overall the social benefits of the proposed redevelopment have been found to outweigh any potential negative impacts. Especially given that all anticipated negative impacts as a result of the proposed development can be mitigated to a satisfactory degree through imposition of development consent conditions and/or implementation of a quality community engagement plan and good on-site management practices.”

Department’s Consideration

159. The Department states in its assessment report that,
“The site, and the wider Pemulwuy Precinct, is of significance to the Aboriginal community. However, as it is currently vacant it does not make efficient use of the land to provide housing for the community”
160. The Department notes that the DRP has confirmed it supports the integration of art into the building and open spaces and the preparation of a public art strategy for the Precinct, which engages with relevant Aboriginal stakeholders. In addition, the Department notes the DRP’s position that,
“...the proposal includes appropriate interpretation strategy for site history and local Aboriginal community and continues the advancement of Aboriginal people through self-determination and economic independence.”
161. The Department notes that the Applicant has stated the development of Precinct 3 will provide an income for the AHC, which will contribute towards the delivery and ongoing maintenance of affordable housing for the ATSI community within the Precinct 1.
162. As noted in paragraph 28 above, the Department’s assessment report states that,
“The deletion of the land bridge over the railway corridor facilitates the retention of the culturally significant Aboriginal art walls, which represents a significant public and cultural benefit that outweighs the creation of new views into the site and compensates for the minor reduction of open space (80 m²).”
163. The Department concludes that the student accommodation would have a positive social and cultural impact as,

- *“the concept approval allows for the provision of student accommodation within Precinct 3, and the proposal, although intensified, is consistent with the concept approval;*
- *the proposal includes a public art strategy including the provision of six interpretive artworks on buildings and within the public domain that draw on and reinforce Aboriginal culture;*
- *the wider proposal includes the provision of an Aboriginal art gallery which will promote Aboriginal artists and culture, which is being provided consistent with the requirements of the future occupiers;*
- *110 of the 596 student beds (18%) would be subsidised for ATSI students;*
- *the proposal provides for appropriate public benefits; and*
- *the site will remain under Aboriginal ownership / control.”*

Commission’s Consideration

164. The Commission acknowledges the cultural significance of the development site to the local ATSI community. The Commission also acknowledges the community’s concerns raised at the public meeting regarding the need to ensure continued housing for ATSI people within the development site and the potential social impacts of the student accommodation proposed in Precinct 3.
165. The Commission notes the Applicant’s finding in paragraph 155 that the proposed development will not substantially alter the impact of the Pemulwuy development on the neighbourhood, from that of the approved development.
166. The Commission notes that the Pemulwuy Precinct site currently consists of vacant parcels of land and accepts the Department’s finding in paragraph 159 that it does not make efficient use of the land to provide housing for the community. The Commission considers that the proposed development provides an opportunity for urban renewal to respond to the area’s emerging urban context.
167. The Commission acknowledges the Applicant’s attempt to provide a social benefit to the ATSI community by proposing to replace the previous housing that once stood with 62 affordable housing dwellings within Precinct 1 for the ATSI community. The Commission also accepts that the development of the student accommodation will provide an income for the AHC, to contribute towards the delivery and ongoing maintenance of this affordable housing.
168. Concerns were raised by the public that these affordable dwellings were unlikely to be developed by the Applicant. The Commission considers that the provision of these dwellings will be an important social benefit for the ATSI community. As mentioned in paragraph 149 above, the Commission has amended Condition E4 of the SSD 8135 and E16 of the MP 11_0093 MOD 1 to ensure the provision of these dwellings.
169. In addition, the Commission also notes that Condition 24 of the Statement of Commitments states that the construction of Precincts 1, 2 and 3 will be carried out concurrently. As noted in paragraph 156, the Applicant confirmed to the Commission that the construction of the 62 affordable housing dwellings in Precinct 1 would commence immediately following any approval of the Applications.
170. The Commission acknowledges that 110 beds of the student accommodation will be subsidised for ATSI students and considers this to be another important social

benefit to the ATSI community. The Commission is satisfied with the Department's recommended condition requiring the provision of these units. At its meeting with the Commission on 13 November 2018, the Applicant explained that if not all of the 110 beds in Precinct 3 were accommodated by ATSI students then they would be made available for the open student rental market. This was confirmed by the Department in correspondence dated 26 November 2018. The Applicant also informed the Commission at the meeting of 13 November 2018 that if demand from ATSI students exceeded the 110 beds provided, then additional units would be made available to ATSI students.

171. The Commission acknowledges the cultural significance of the Aboriginal art wall along Eveleigh and Lawson Streets and accepts the Department's consideration in paragraph 162 that the deletion of the proposed land bridge will result in the retention of this art wall and provide a cultural benefit.
172. Based on the Material, the Commission finds that the development of student accommodation in Precinct 3, at the density proposed under MP 06_0101 MOD 2, would not have adverse social or cultural impacts as it would,
 - contribute towards the delivery and ongoing maintenance of 62 affordable housing dwellings within the Precinct 1;
 - provide 110 subsidised beds for ATSI students in Precinct 3; and
 - retain culturally significant Aboriginal art.

5.6 Modifications to the project approval (MP 11_0093 MOD 1)

173. The Commission notes that its consideration of the matters within this modification application, including the deletion of the land bridge and the contributions conditions, is contained in sections 5.4 and 5.5 above.

5.7 The public interest

174. In determining the public interest merits of the Applications, the Commission has had regard to the objects of the EP&A Act.
175. A relevant object of the EP&A Act to the Applications is the facilitation of Ecologically Sustainable Development (ESD). The Commission notes that section 6(2) of the Protection of the Environment Operations Act (POEO) Act 1997 states that ESD requires the effective integration of social, economic and environmental considerations in its decision-making, and that ESD can be achieved through the implementation of:
 - (a) the precautionary principle;
 - (b) inter-generational equity;
 - (c) conservation of biological diversity and ecological integrity; and
 - (d) improved valuation, pricing and incentive mechanisms.

Applicant's Consideration

176. The Commission notes that the Applicant has not provided an outline of its considerations against the objects of the EP&A Act in its EIS, though it does provide some consideration of ESD.

177. The Applicant states in its EIS that the student accommodation in Precinct 3 *“has been designed to accord with ecologically sustainable development best practice:*
- *to be energy efficient;*
 - *to optimise solar access to the building;*
 - *to decrease total energy use in the building through a reduction in heat loss and energy consumption for the purposes of heating and cooling; and*
 - *to reduce the level of attributed greenhouse gas emissions and natural resource consumption.”*

Department’s Consideration

178. The Department has outlined its considerations against the objects of the EP&A Act in Table 7 of its assessment report. The Department has not outlined any inconsistencies with the objects of the EP&A Act.
179. The Department states in its assessment report that it has considered the Applications in relation to the principles of ESD and that, in particular, the precautionary and intergenerational equity principles have been applied in the decision-making process by a thorough assessment of the environmental impacts of the Applications.
180. The Department concludes that,
“Overall, the proposal is generally consistent with ESD principles and the Department is satisfied the proposed sustainability initiatives will encourage ESD, in accordance with the objects of the EP&A Act. However, the Department considers the development could be designed to achieve a higher Green Star rating and recommends a condition requiring the Applicant to explore the potential for increasing the minimum Green Star rating (Green Star Design and As-Built V.1 tool).”

Commission’s Consideration

181. Under section 1.3 of the EP&A Act, the Commission considers the relevant objects to the Applications are:
- a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources;
 - b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;
 - c) to promote the orderly and economic use and development of land;
 - d) to promote the delivery and maintenance of affordable housing;
 - e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats;
 - f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage);
 - g) to promote good design and amenity of the built environment;
 - h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants;
 - i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and
 - j) to provide increased opportunity for community participation in environmental planning and assessment.

182. In relation to the consideration of the Applications' impacts against the relevant objects of the EP&A Act, the Commission finds that the Applications demonstrate consistency with the objects of the EP&A Act as they:
- will present no significant adverse social or cultural impacts and be consistent with the principles of ESD outlined in paragraph 175;
 - will provide public benefits, such as subsidised student accommodation for ATSI students; and public domain improvements;
 - will deliver 62 affordable housing dwellings;
 - will not mimic or distort the significance of surrounding heritage items;
 - will retain culturally significant Aboriginal art walls;
 - will achieve design excellence; and
 - will provide appropriate management of the student accommodation.
183. The Commission is satisfied with the Department's considerations that there are no inconsistencies with the objects of the EP&A Act, as discussed in paragraph 178 above.
184. The Commission notes that the requirement for a BASIX certificate to be lodged for the student accommodation was investigated and found that this certificate was required. The Commission further notes that the Applicant has since lodged a BASIX certificate, which confirmed that the student accommodation will meet the NSW government's requirements for sustainability if it is built in accordance with the commitments of the certificate.
185. The Commission finds that the Applications are in the public interest because:
- they demonstrate consistency with the objects of the EP&A Act; and
 - are generally consistent with the ESD principles under the POEO Act.

6. CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

186. The Commission has carefully considered the Material before it.
187. Based on the Material, the Commission finds that the Applications,
- would be consistent with the objectives of applicable Region and District Plans;
 - would be consistent with the CEUTS;
 - remain consistent with the use envisaged under the concept approval;
 - would not have an adverse impact on the built form and heritage of the area;
 - have a sufficient amount of public open space provision;
 - will not create adverse impacts on the amenity of adjoining residential properties;
 - achieve design excellence;
 - would not adversely impact traffic, parking and pedestrian safety;
 - would not adversely impact on student amenity or the amenity of neighbouring residential properties;
 - will deliver public benefits;
 - would not have unacceptable adverse social or cultural impacts, as it would provide 62 dwellings as affordable housing for the local ATSI community and 110 subsidised beds in the student accommodation for ATSI students.;
 - are consistent with the objects of the EP&A Act; and

- are in the public interest.

188. For the reasons outlined in paragraph 187 above, the Commission determines to approve the Applications, subject to conditions.

189. The reasons for the Decision are given in this Statement of Reasons for Decision dated 1 March 2019.



Soo-Tee Cheong (Chair)
Member of the Commission



Ilona Millar
Member of the Commission



Dr Peter Williams
Member of the Commission