

**Item 5.****Development Application: 86-90 Bay Street, Ultimo - D/2026/136**

File Number: D/2026/136

**Summary****Date of Submission:** 17 February 2026.**Applicant:** Urbis**Architect:** Fitzpatrick & Partners**Developer:** HBB Property**Owner:** The Owners - Strata Plan No 21479**Planning and Heritage Consultant:** Urbis**Design Advisory Panel (Residential Subcommittee):** The application was referred to the City's Design Advisory Panel Residential Subcommittee on 7 April 2026. The Panel did not support the development proposal.**Cost of Works:** \$45,461,997**Zoning:** The site is zoned MU1 - Mixed Use under the Sydney Local Environmental Plan 2012. The proposed mixed-use development provides for residential accommodation (co-living housing) and commercial premises (retail). Both are permissible with consent in the zone.**Proposal Summary:** The application seeks approval for the demolition of an existing 4 storey commercial office building and for the construction of an 8-9 storey mixed use building containing co-living housing (137 units) above a ground floor retail tenancy.

A partial basement level is proposed, containing plant rooms, bicycle and car parking and a communal laundry. A communal courtyard and communal living area are proposed at the ground level. Additional outdoor and indoor communal spaces are proposed at a Level 6 terrace.

The development departs from two development standards by more than 10%. As such, the development application is referred to the Local Planning Panel for determination.

The proposal seeks to vary the Clause 4.3 Height of Buildings development standard by 34% (7.45 metres) due to the upper level of the building exceeding the 22 metre SLEP 2012 envelope.

The proposal seeks to vary the Clause 4.4 Floor Space Ratio development standard by 64% (1,770sqm), proposing a FSR of 4.5:1 where the control allows for 2.75:1 inclusive of a 10% bonus for affordable housing under the Housing SEPP 2021.

The City's Design Advisory Panel Residential Subcommittee considered the application on 7 April 2026. The Panel provided advice that they did not support the development proposal for a number of key reasons. Primarily, they are of the view that the development fails to provide high amenity for future residents of the site and neighbouring sites.

For the reasons set out in the report below, the applicant has failed to justify that in this instance, compliance with the relevant development standards is unreasonable and unnecessary, nor that there are sufficient environmental planning grounds to justify contravening the standards. As such, it is recommended the Local Planning Panel reject the variations requested and refuse the application.

The application was notified for 21 days between 18 February 2026 and 12 March 2026. A total of 1,167 properties were notified and no submissions were received.

The proposal fails to respond appropriately to surrounding development and fails to provide a desirable built form within the Mountain Street Locality.

The development fails to achieve the aims of the Sydney Local Environmental Plan 2012 and provides a standard of architectural design that fails to exhibit design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012.

**Summary Recommendation:** This proposal is recommended for refusal.

**Development Controls:** Environmental Planning and Assessment Act 1979 and associated Regulation 2021;

State Environmental Planning Policy (Housing) 2021;

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land;

State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Transport and Infrastructure 2021);

State Environmental Planning Policy (Sustainable Buildings) 2022 (SEPP Sustainable Buildings 2022);

Sydney Local Environmental Plan 2012 (SLEP 2012);

Sydney Development Control Plan 2012 (SDCP 2012);

Sydney Landscape Code Volume 2: All Developments Except for Single Dwellings 2012;

City of Sydney Interim Floodplain Management Policy 2023;

City of Sydney Guidelines for Waste Management in New Developments;

City of Sydney Public Art Policy 2011 and City of Sydney Public Art Strategy 2011; and

City of Sydney Community Engagement Strategy and Participation Plan 2024.

**Attachments:**

- A. Selected Drawings
- B. Clause 4.6 Statement - Height of Buildings
- C. Clause 4.6 Statement - Floor Space Ratio
- D. Clause 4.6 Statement - Building Separation (ADG)

## Recommendation

It is resolved that consent be refused for Development Application Number D/2026/136.

## Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) The application fails to sufficiently justify that compliance with the Height of Buildings and Floor Space Ratio development standards is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify departures from the standards, with consideration of Clause 4.6(3) of the Sydney Local Environmental Plan 2012.
- (B) The proposal is contrary to the relevant Aims of the Sydney Local Environmental Plan 2012, which are to enhance the amenity and quality of life of local communities (Aim (h)), to achieve a high quality urban form by ensuring that new development exhibits design excellence and reflects the existing or desired future character of particular localities (Aim (j)).
- (C) The development fails to exhibit design excellence pursuant to clause 6.21C of the Sydney Local Environmental Plan 2012 for the following reasons:
  - (i) the development fails to provide a high standard of architectural design, materials and detailing appropriate to the building type and location, contrary to Clause 6.21C(2)(a) and fails to provide a building with a suitable bulk, massing and modulation, contrary to Clause 6.21C(2)(d)(v);
  - (ii) the development fails to demonstrate acceptable environmental impacts, including sustainable design, solar access, visual and acoustic privacy, contrary to Clause 6.21C(2)(d)(vii);
  - (iii) the development has failed to demonstrate the principles of ecologically sustainable development can be achieved and fails to provide excellence and integration of landscape design, contrary to Clause 6.21C(2)(d)(viii) and 6.21C(2)(d)(xiii); and
  - (iv) the development provides bike parking in an area that is difficult to access and has failed to demonstrate adequate pedestrian, cycle, vehicular and service access and circulation requirements, contrary to Clause 6.21C(2)(d)(ix).
- (D) The proposed development offers an unsatisfactory level of residential amenity and is inconsistent with the Building Separation measures of the NSW Apartment Design Guide, which is a consideration in accordance with the State Environmental Planning Policy (Housing) 2021.

- (E) The development fails to respond to a key design principle for the Mountain Street locality, which is that buildings should respond to more generous floor to ceiling heights where they are provided by neighbouring buildings. In providing insufficient ceiling heights, the application fails to satisfy a key objective of the MU1 Mixed Use zone, which is to encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- (F) The application does not adequately address flood risk and does not demonstrate the proposal incorporates appropriate measures to manage risk to life in the event of a flood under clause 5.21 of the Sydney Local Environmental Plan 2012.
- (G) In failing to provide bike parking in an area that is convenient to access, the application is contrary to the provisions of Section 3.11.3 of the Sydney Development Control Plan 2012 relating to bike parking and associated facilities.
- (H) The proposed entry from St Barnabus Street and laundry location present poor design in relation to safety with a lack of passive surveillance. A manager's office is not shown on architectural drawings lodged with the application. The application is therefore contrary to the relevant, adopted controls for co-living housing at Section 4.4.1.6 and 4.4.1.7 7 of the Sydney Development Control Plan 2012.
- (I) The application does not adequately provide for consolidated heating and cooling infrastructure and does not provide letterboxes, contrary to the requirements for residential and mixed use developments in the Sydney Development Control Plan 2012.

## Background

### The Reason the Application is Reported to the Local Planning Panel

1. The application is reported to the Local Planning Panel for determination as it is development proposing Departures from Development Standards, as per Schedule 3 of the Local Planning Panels Direction of 3 March 2024.
2. The development application falls within the category of Departure from Development Standard as
  - (a) the proposal seeks to vary the Clause 4.3 height of buildings development standard by 34% and
  - (b) the proposal seeks to vary the Clause 4.4 floor space ratio development standard by 64%

### The Site and Surrounding Development

3. The site is identified as SP21479 and is located at 86-90 Bay Street, Ultimo. It is located on the eastern side of Bay Street between Smail Street to the north and Broadway to the south. The site has a primary frontage of 18.3m to Bay Street, a side secondary frontage of 18.3m to St Barnabas Street and a site area of 1,011sqm.
4. Footpath levels along Bay Street fall from south to north by approximately 800mm. There is a level difference between the Bay Street and St Barnabas Street frontages of approximately 3.5m. This results in a partial basement beneath the site and the presentation of an additional storey at St Barnabas Street.
5. Surrounding development includes a mixture of land uses that are commercial and residential in character. These include
  - (a) to the north at 76-84 Bay Street, Ultimo: a heritage listed four storey commercial building known as the Reader's Digest Building
  - (b) to the north-east at 1-3 Smail Street, on the opposite side of St Barnabus Street: a former warehouse building, which is currently being developed as co-living housing
  - (c) to the south and east at 185-211 Broadway is located the ' Uni Lodge' building, which is the heritage listed former Grace Brothers Homewares building approved containing student accommodation over ground floor retail tenancies
  - (d) to the west, on the other side of the street at 121 Bay Street, Glebe: the multi storey Broadway shopping centre complex
6. The site is located within the Mountain Street Locality. It contains a 1960s era commercial office building that is identified as a detracting building within the Mountain Street Heritage Conservation Area. The site is identified as being subject to flooding at the Bay Street boundary.
7. A site visit was carried out on 2 March 2026. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Bay Street, looking east



Figure 3: Site viewed from Bay Street, looking south-east



Figure 4: Site (dashed line) viewed from St Barnabus Street, looking south-west



Figure 5: Ground level foyer, remnant original offices and basement parking area

## History Relevant to the Development Application

### Development Applications

8. The following applications are relevant to the current proposal:
- (a) D/2023/445 – Development consent was granted by the Local Planning Panel on 11 October 2023 for the redevelopment of the site for a six storey commercial building including a ground floor retail tenancy.
  - (b) PDA/2025/187: on 22 October 2025, Council's officers provided pre-lodgement advice in relation to a scheme that is similar to the subject development application. Whilst the applicant has responded positively to some of the issues raised in the pre-lodgement advice, the following key issues remain:
    - (i) Advice was provided that additional height beyond that approved under development consent D/2023/445 was not supported.
    - (ii) Noting a new building is proposed, ceiling heights should be increased for commercial and residential floors to meet SDCP 2012 minimums. Rooms should be widened to meet draft SDCP 2012 widths (3.5m) and beds should be able to be easily accessed from the end and at least one side as a minimum.
    - (iii) The courtyard is small in relation to the density and building height, and is fully overshadowed during winter. The courtyard amenity would be improved with setbacks to the upper levels and balconies removed on upper floors (fifth storey and up) to deliver more daylight to the courtyard.
    - (iv) The Level 6 communal living area does not receive 3 hours of sun in winter between 9:00am and 3:00pm. Design changes should be made to ensure compliance with the sun access control.
    - (v) Planting needs to be carefully considered to ensure that species will thrive in this shaded environment. The courtyard should be fully irrigated, and documented in any future DA. Landscape planting on ground floor will need the slab capacity to carry the appropriate soil volume.

- (c) D/2024/984 - Neighbouring site 1-3 Smail Street, Ultimo (north-east of the subject site): On 3 April 2025, the Central Sydney Planning Committee granted consent for alterations to a warehouse building to provide co-living housing (167 units).

### **Compliance Action**

- 9. The site is not subject to any ongoing compliance actions.

### **Amendments**

- 10. Noting the proposal does not address key issues identified in advice provided prior to lodgement, amendments were not requested during assessment.

### **Proposed Development**

- 11. The application seeks consent for the demolition of an existing 4 storey commercial office building and for the construction of a new 8 storey building containing a 137 unit co-living housing development including car parking and a ground floor retail tenancy.
- 12. The various levels of the building are proposed to contain:
  - (a) basement: waste storage rooms, substation, parking for three service vehicles, two car share spaces and one accessible space, plant rooms, bike parking, laundry and store rooms;
  - (b) ground level: retail tenancy facing Bay Street, internal common area, external landscaped communal courtyard, 9 x residential units and services;
  - (c) Levels 1-5: 21 x residential units and services;
  - (d) Level 6: internal common area, external communal terrace, 11 x residential units;
  - (e) Level 7: 12 x residential units, services and non-trafficable green roof; and
  - (f) Roof: solar panels, air-conditioning condensers and lift overruns.
- 13. Plans and elevations of the proposed development are provided below.

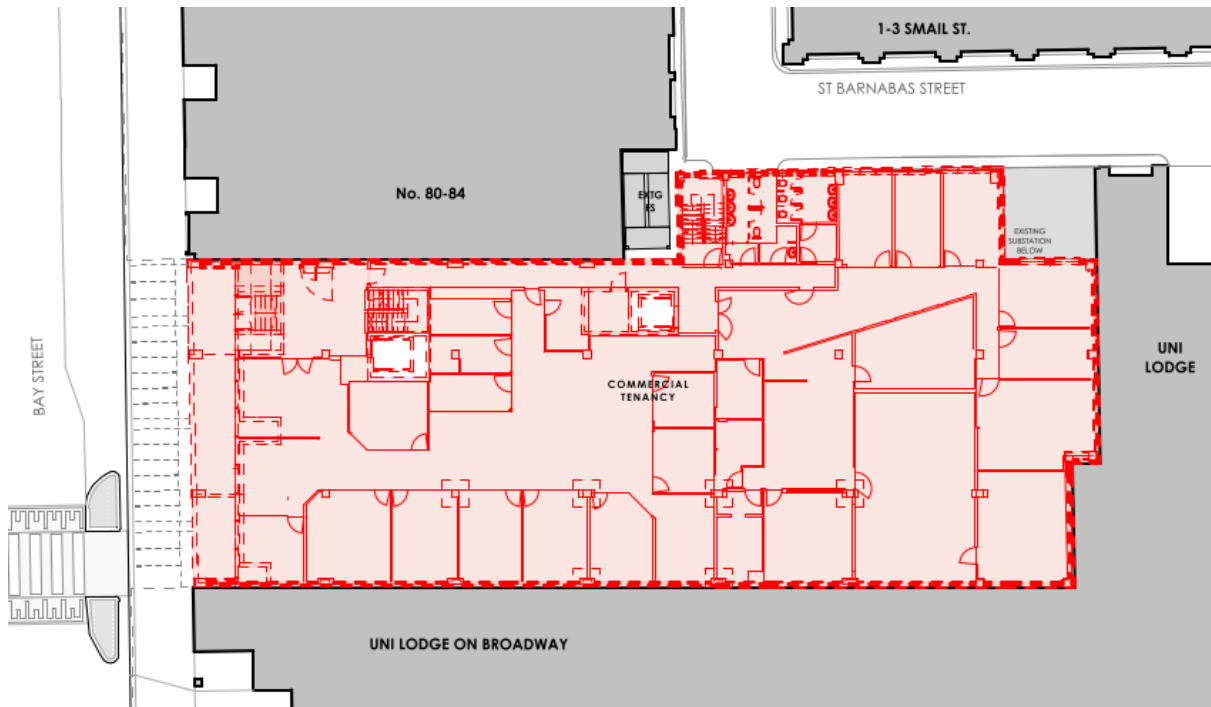


Figure 6: Ground level demolition plan (all site structures proposed to be demolished)

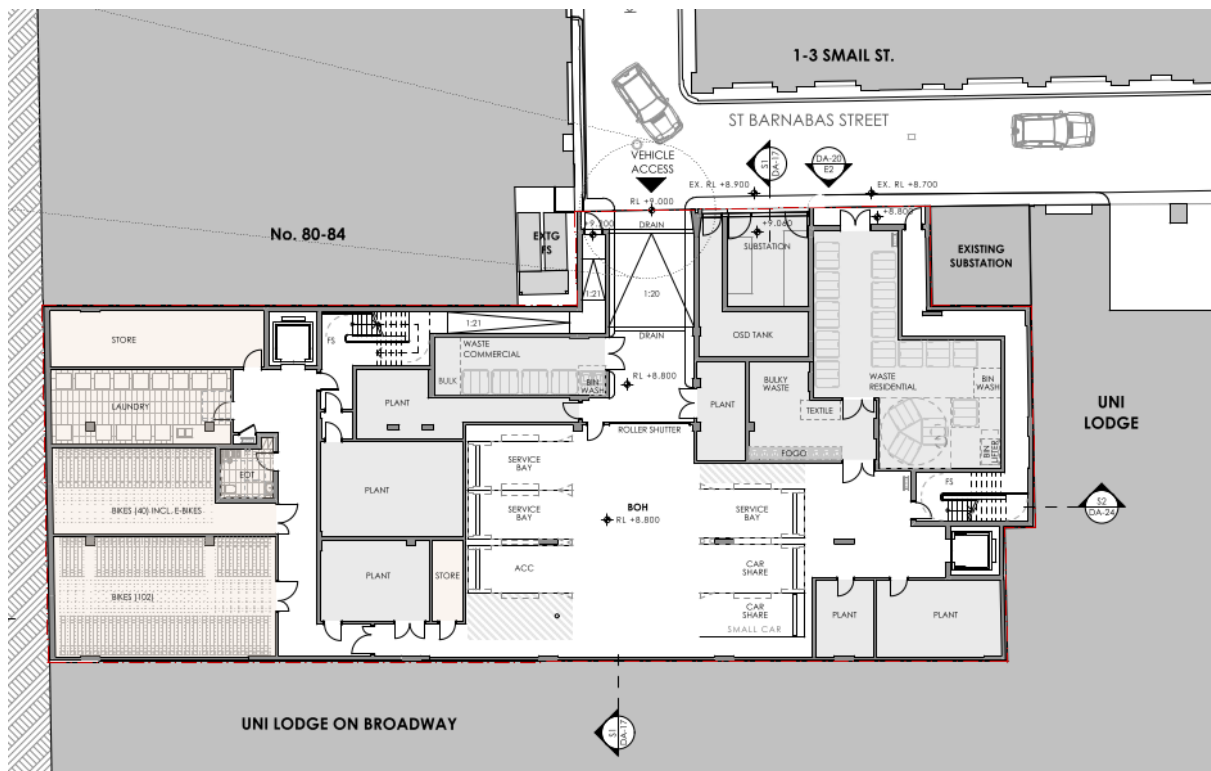


Figure 7: Basement/lower ground floor plan

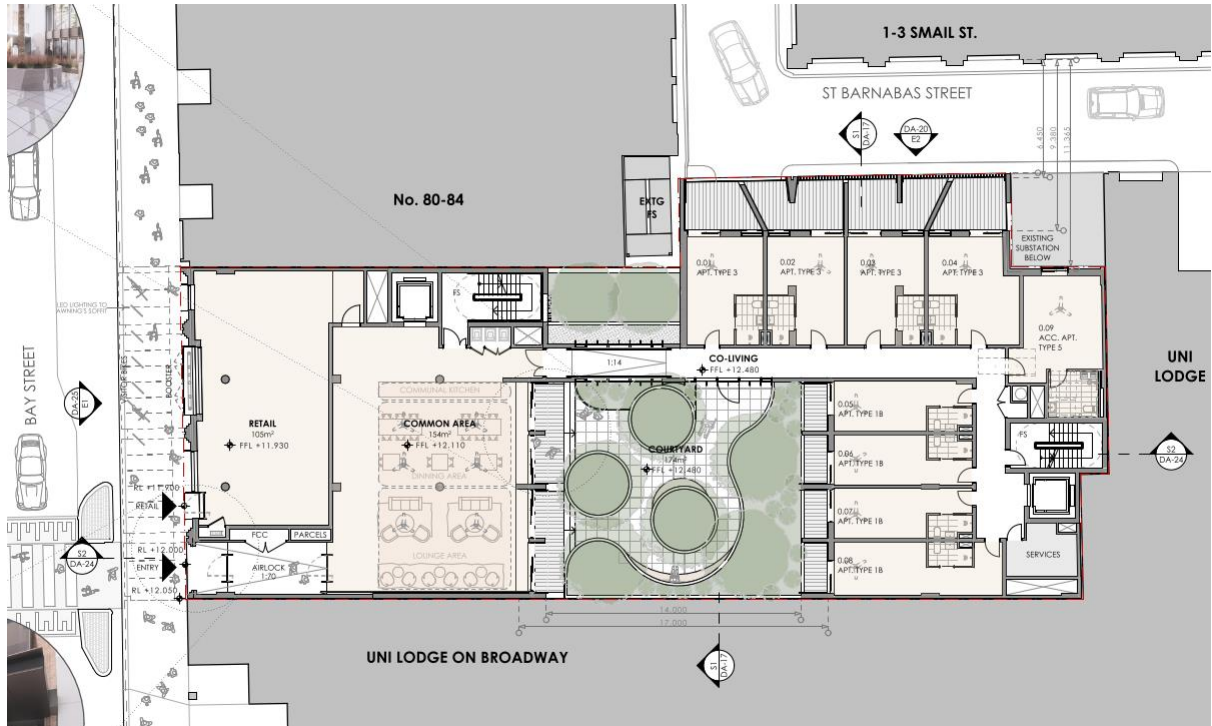


Figure 8: Ground floor plan

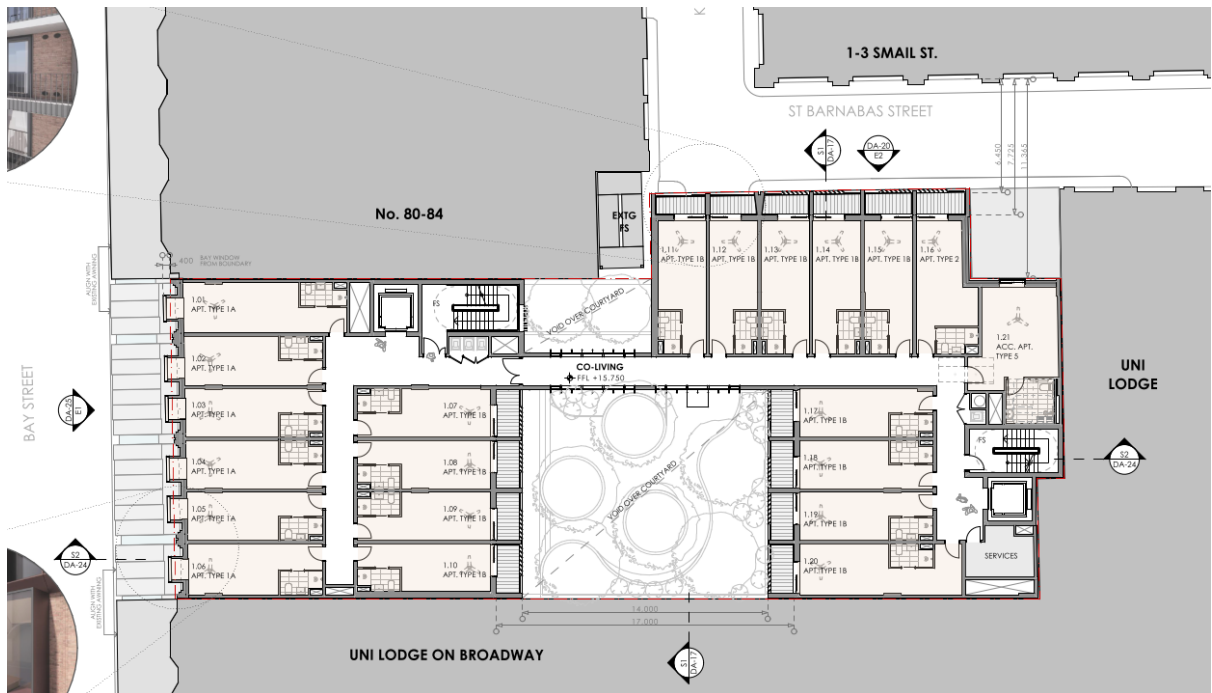


Figure 9: Level 1 floor plan

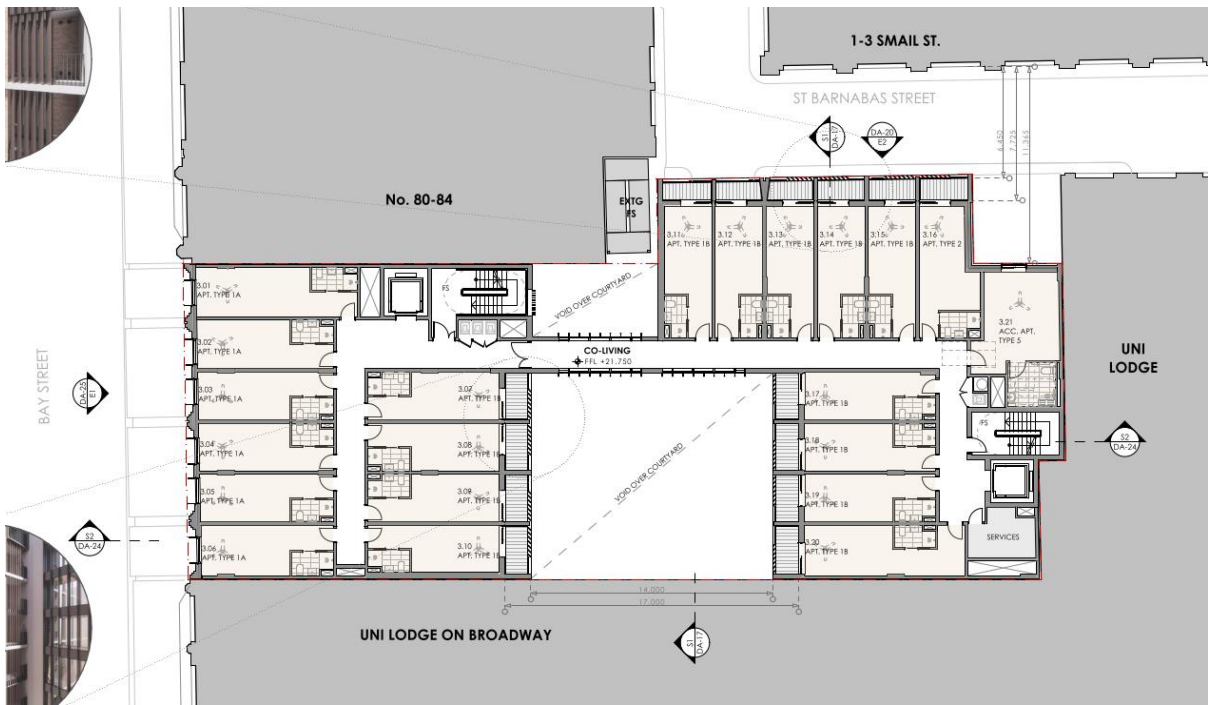


Figure 10: Level 2-5 floor plan

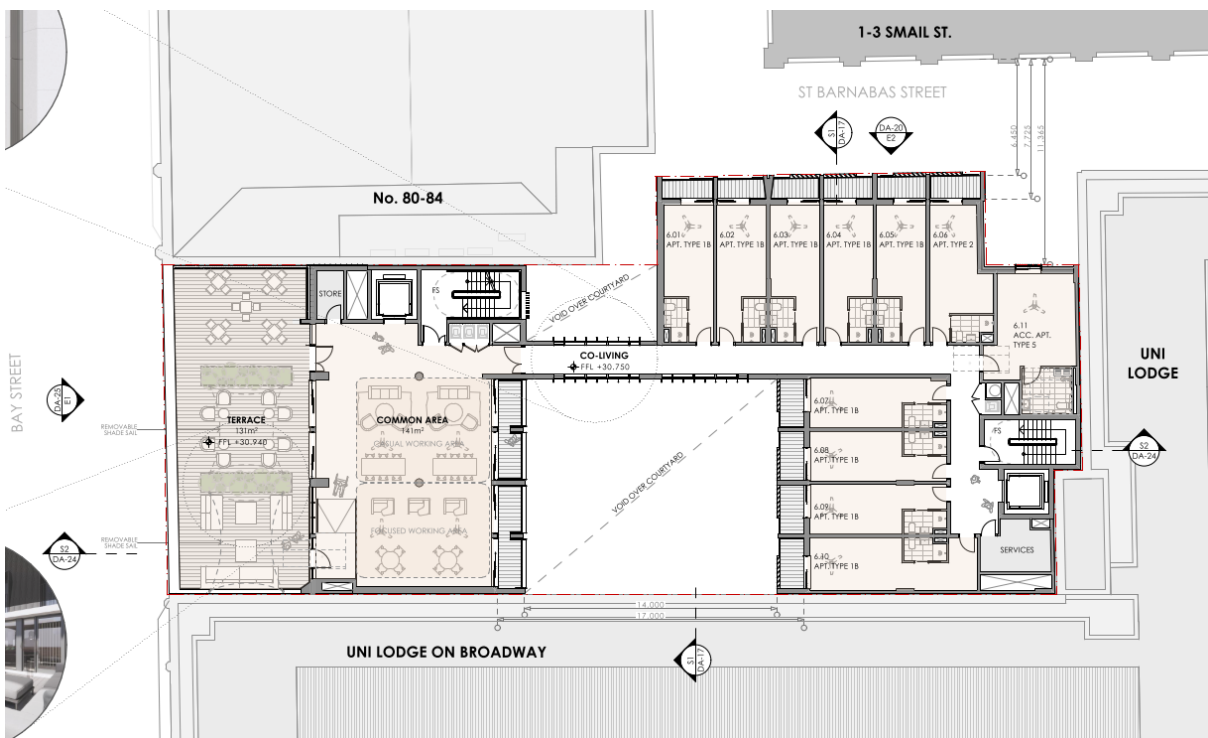


Figure 11: Level 6 floor plan

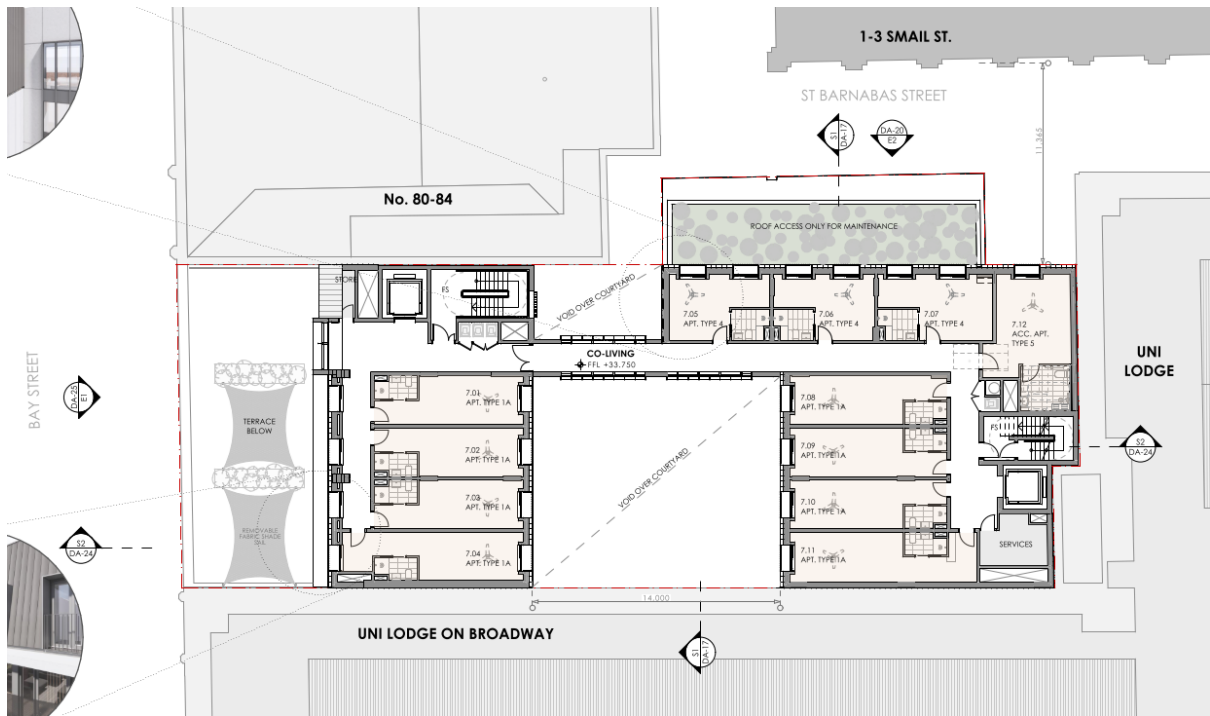


Figure 12: Level 7 floor plan

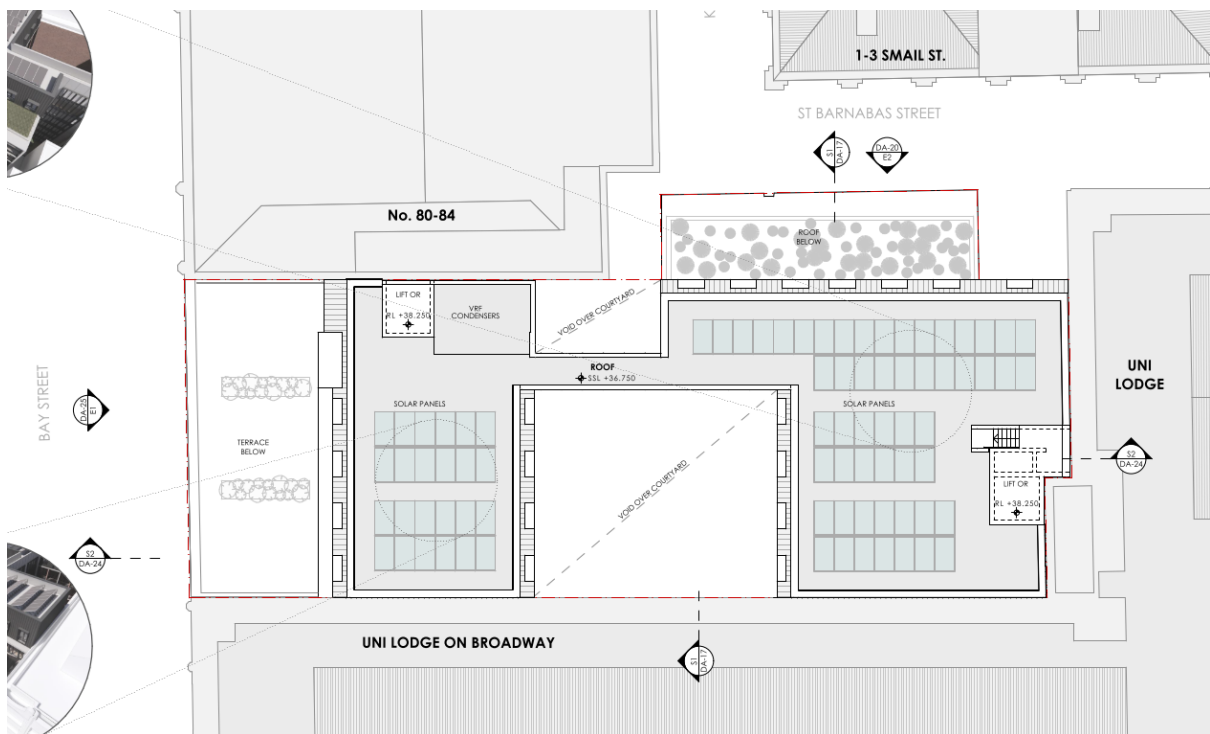


Figure 13: Roof plan

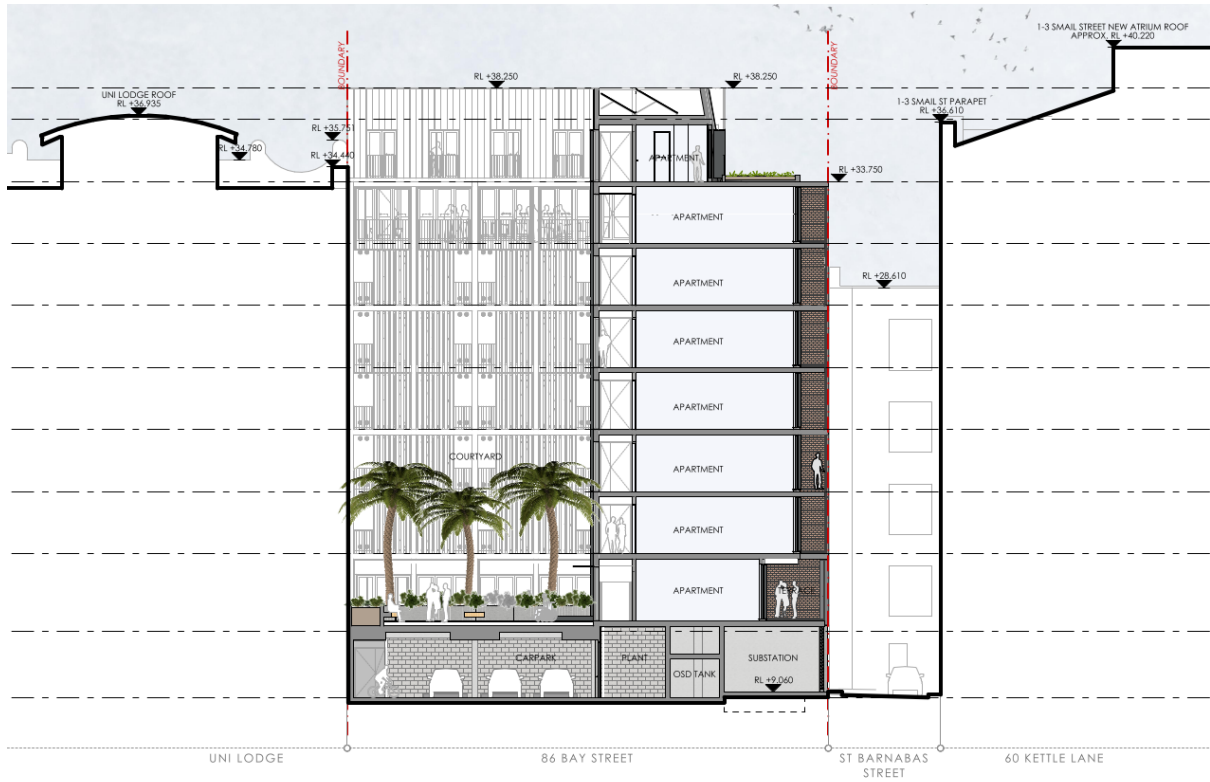


Figure 14: North-South section plan

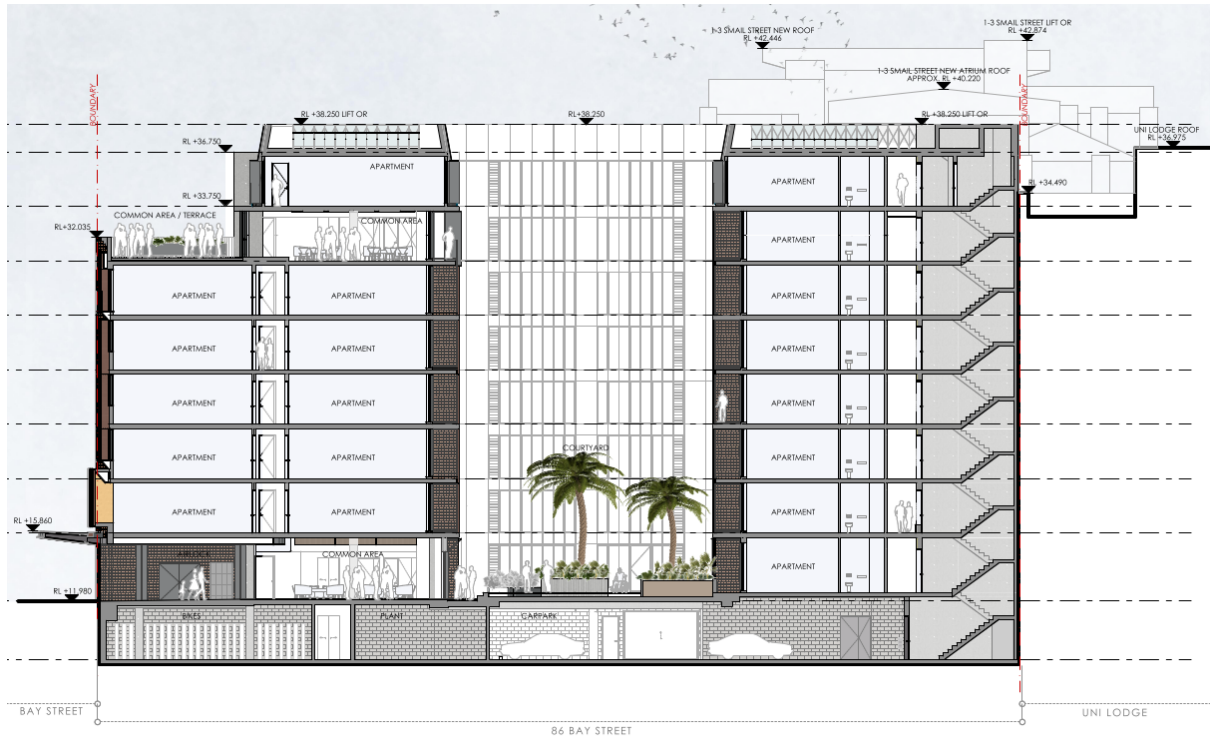


Figure 15: East-West section plan



Figure 16: West elevation plan (Bay Street)



Figure 17: North elevation plan and materials (St Barnabus Street)



Figure 18: Materials (Bay Street)

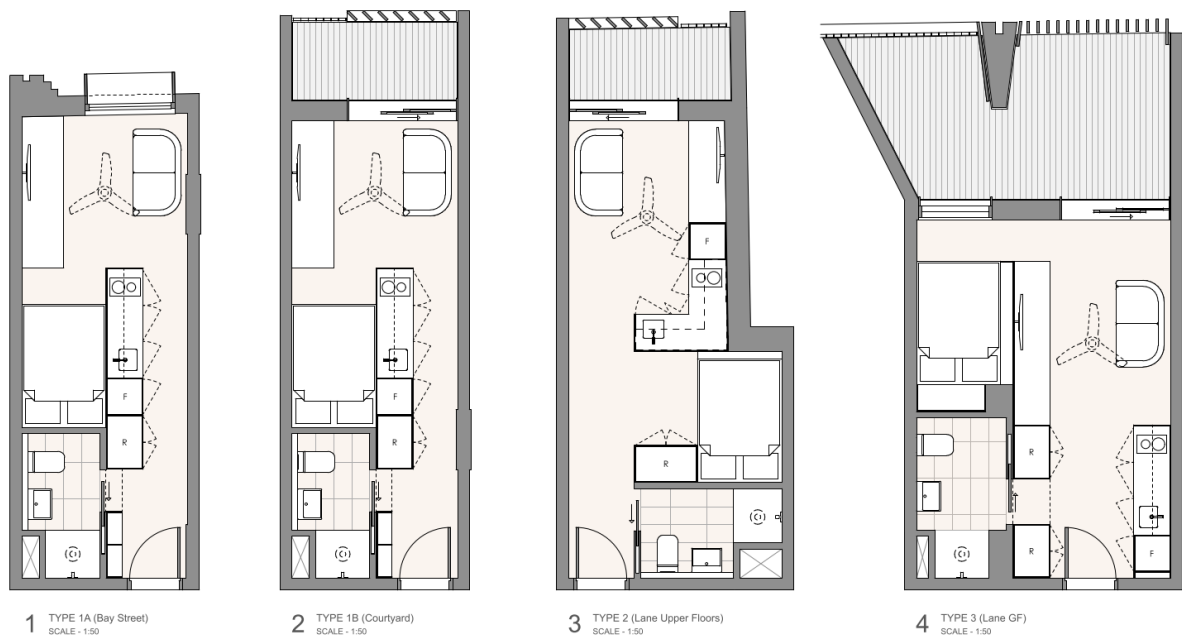


Figure 19: Apartment layout plan

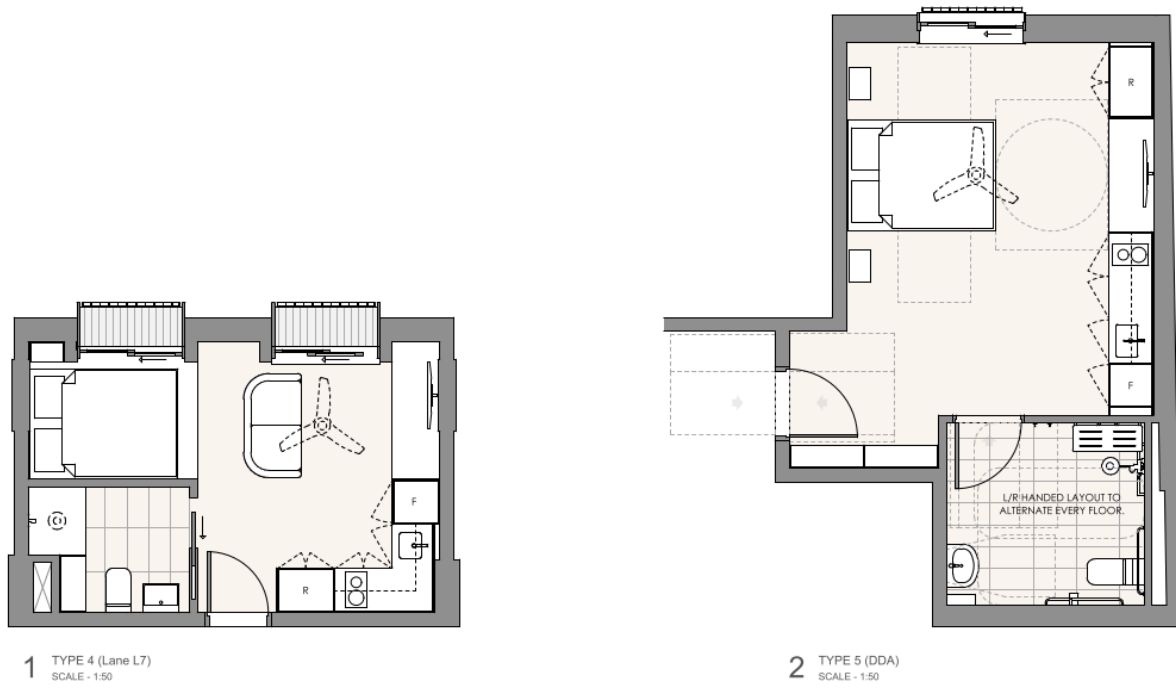


Figure 20: Apartment layout plan (alternative)

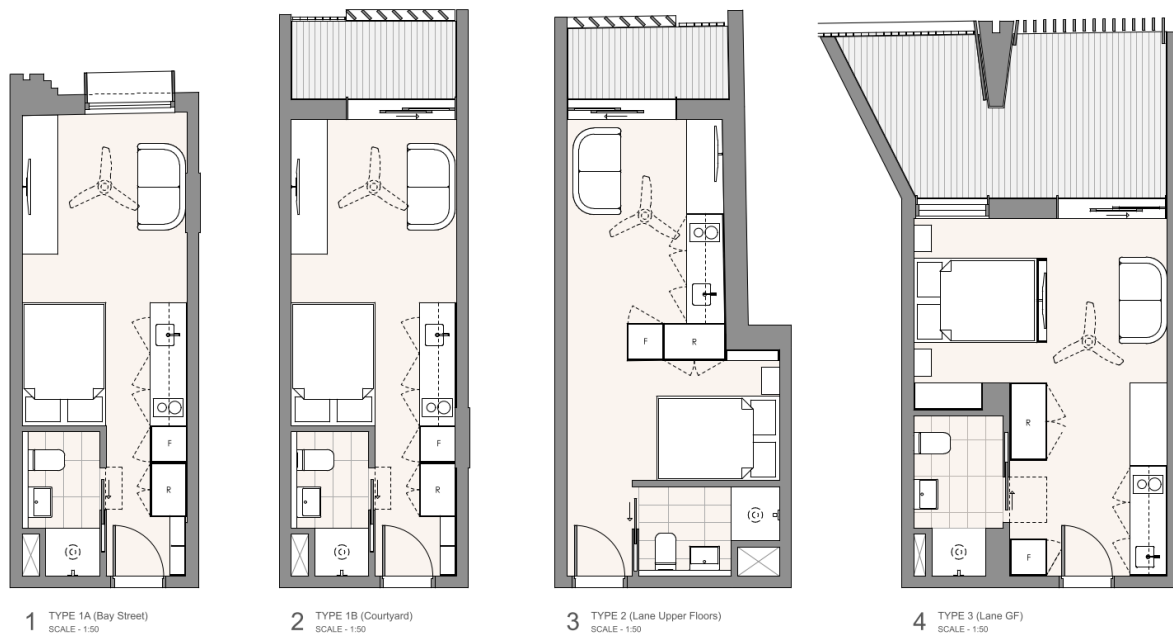


Figure 21: Apartment layout plan (alternative)



**Figure 22:** Proposed photomontage

### **Assessment**

14. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

### **Design Advisory Panel Residential Subcommittee (DAPRS)**

15. The application was referred to Council's Design Advisory Panel Residential Subcommittee (DAPRS) on 7 April 2026.
16. An overview of the issues raised by DAPRS is provided below:
  - (a) The proposal exceeds the height and FSR controls resulting in an overdevelopment of the site with reduced amenity for residents.
  - (b) Minimum building separation distances under the Housing SEPP should be met. The proposed staggered privacy screens and window arrangements are not appropriate.
  - (c) The ground floor ceiling height is insufficient and should be increased to a minimum of 4.5m, particularly to support the amenity of the communal space. Apartment floor-to-floor heights should be minimum 3.6m at Level 1 and 3.2m for levels above.

- (d) The current ground level courtyard functions as an atrium, with adjacent rooms reliant on it for light and ventilation. Its size should be increased and an opening provided to the laneway (St Barnabus Street) to increase light, air movement, and dissipate sound transmission.
- (e) The courtyard is undersized relative to the building's density and height and is fully overshadowed in winter. This limits daylight to lower levels, therefore the proposed additional height is not supported.
- (f) Courtyard amenity should be improved by adjusting the size and layout to provide increased access to natural light and air. Currently all bathroom, kitchen, and air conditioning vents exhaust directly into this tall, narrow space.
- (g) The ground-level courtyard should be designed for 'soil on structure' without the need for high planter bed walls. The courtyard should primarily function as a landscaped garden for outlook and privacy to ground level rooms. The courtyard should be fully irrigated with irrigation tanks.
- (h) The roof top west-facing communal deck appears undersized for the building population, particularly given the privacy and amenity issues of the internal courtyard. The potential for additional communal open space at the rooftop should be investigated with raised PV panels designed to provide shade structures.
- (i) Minimum room widths should be 3.5m, in accordance with Council's Draft DCP, improving adaptability, amenity, and long-term resilience. Beds should be accessible from the end and at least one side. While the architects noted that layouts are indicative only, this reinforces the need for wider, more flexible room dimensions.
- (j) Impact sound insulation must be provided where concrete floors are proposed without ceilings below as the acoustic report does not address this issue. Sections should clearly identify all exposed slabs and proposed dropped ceilings, which must align with the fixed furniture layouts.
- (k) Balcony set-downs should be provided to eliminate the step up and improve waterproofing.
- (l) In-room air-conditioning units are not supported. A centralised rooftop system is preferred to reduce heat load in the courtyard and mitigate urban heat impacts. Spatial requirements for rooftop plant equipment should be clearly defined.
- (m) Maintenance access to the northern Level 7 planted rooftop should be resolved.
- (n) Detailed design of acoustic trickle vents (Level 1 Bay Street windows) should be provided for review. Sun studies for the Bay Street façade are also required, to determine the amount of sunshading required to minimise afternoon summer solar exposure.
- (o) Ceiling fans should be provided in all apartments and clearly shown in DA drawings.
- (p) Relocation of the laundry from the basement should be considered to improve amenity. Communal laundry facilities should be located adjacent to shared spaces and have access to natural light.

## State Environmental Planning Policies

### State Environmental Planning Policy (Housing) 2021

17. Consideration has been given to a number of guiding principles in Chapter 1 of the SEPP (Housing) 2021, against which the proposed development performs poorly. These include:
- (a) Principle (c): the proposed development fails to provide residents with a reasonable level of amenity, with regard for small room sizes, a compromised courtyard at the centre of the site and compromised privacy outcomes caused by proximity to approved neighbouring co-living housing development; and
  - (b) Principle (f): the proposed co-living housing fails to reflect and enhance its locality as it proposes inadequate ceiling heights and unacceptable proximity to approved neighbouring co-living housing development on the opposite side of St Barnabus Street.

## Chapter 3 Diverse Housing

### Part 3 Co-living housing

#### Clause 68 – Non-discretionary development standards

18. In accordance with Clause 68 of the SEPP (Housing) 2021, non-compliance with the following standards may be used as reasons to refuse consent for co-living housing.
19. For clarity, this section of the SEPP (Housing) 2021 is intended to identify development standards that if complied with, prevent the consent authority from requiring more onerous standards.
20. An assessment of the proposed co-living housing against each standard is provided in the table below.

Provision	Compliance	Comment
<p><b>Density and scale expressed as floor space ratio</b></p> <p>A floor space ratio that does not exceed the maximum permissible floor space ratio for residential accommodation on the land.</p> <p>In addition, an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing.</p>	No	<p>The proposal is permitted a maximum FSR (including a bonus 10%) of 2.75:1 (2,780sqm).</p> <p>This is based on a maximum permissible FSR of 2.5:1 (2,528sqm) in accordance with Clause 4.4 of SLEP 2012 and an additional 10% of the maximum permissible FSR as the site is located within the MU1 Mixed Use zone and additional GFA is proposed only for the purpose of co-living.</p> <p>The application proposes a floor space ratio of 4.5:1 (4,550sqm) and does not comply with the maximum permitted FSR.</p>

Provision	Compliance	Comment
<p><b>Communal living area</b></p> <p>A total of at least 30sqm of communal living area plus at least a further 2msq for each private room in excess of 6 private rooms and minimum dimensions of 3m for each communal living area.</p>	Yes	<p>For a total of 137 rooms, an area of 292sqm is required. 295sqm is provided, including 154sqm at the ground level and 141sqm at level 6.</p> <p>The ground level communal area has low amenity due to low ceiling heights being provided and low natural light penetration from the courtyard and Bay Street.</p>
<p><b>Communal open space</b></p> <p>Communal open spaces with a total area of at least 20% of the site area, and each with minimum dimensions of 3m.</p>	Yes	<p>20% of the site equates to an area of 201sqm. A total area of 305sqm is provided, including 174sqm in the ground level courtyard and 131sqm on the level 6 terrace.</p> <p>Whilst the minimum quantum of communal open space is provided, the ground level courtyard is assessed as providing low amenity for future residents.</p> <p>The courtyard is surrounded by 8 storeys of structure and has impractical dimensions, less than 3m due to raised planter beds. See discussion section below.</p>
<p><b>Parking</b></p> <p>Unless a relevant planning instrument specifies a lower number, 0.2 parking spaces for each private room for development on land in an accessible area.</p>	Yes	<p>Part 7, Division 1 of SLEP 2012 does not set out a minimum or maximum number of car spaces for co-living accommodation.</p> <p>The proposed development proposes parking for three service vehicles, two car share spaces and one accessible space, plant rooms, bike parking, laundry and store rooms.</p>
<p><b>Landscaping</b></p> <p>In R2 and R3 zones the minimum landscaping requirements for multi dwelling housing under relevant planning instruments, and in R4 zone the minimum landscaping requirements for</p>	N/A	<p>The site is not located within an R2 Low Density Residential, R3 Medium Density Residential, or R4 High Density Residential zone.</p>

Provision	Compliance	Comment
residential flat buildings under a relevant planning instrument		

21. The proposed development does not comply with relevant provisions of clause 68 and is recommended for refusal.

#### **Clauses 69(1) – Standards for co-living housing**

22. Clause 69(1) states development consent must not be granted unless the consent authority is satisfied of the following matters.
23. An assessment of the proposed co-living housing against each standard is provided in the table below.

Provision	Compliance	Comment
1(a) No private room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25sqm and less than 12sqm for a single occupancy or 16sqm otherwise.	Yes	All rooms are provided with private kitchen and bathroom facilities. When these are excluded, the larger private rooms do not exceed 25sqm in area.  All rooms are proposed to be single occupancy and are provided living areas of greater than 12sqm when private kitchen and bathroom facilities are excluded.
1(b) The minimum lot size for co-living housing must not be less than 800sqm.	Yes	The site area is 1,011sqm.
1(c) in the R2 zone or equivalent, the co-living housing will not contain more than 12 private rooms and will be in an accessible area.	N/A	The site is not within an R2 Low Density Residential or equivalent zone.
1(d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space	No	The SEE and plan of management lodged with the application refer to a manager's office being provided on the ground floor. However, this is not shown on architectural drawings.
(1e) for co-living in a business zone no part of the ground floor that fronts a street is to be used for residential purposes unless another environmental	Yes	A retail tenancy is proposed against the Bay Street frontage.

Provision	Compliance	Comment
planning instrument permits the use		
1(f) adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant	Yes	All rooms are provided with private kitchen and bathroom facilities. A communal laundry is proposed within the partial basement level.
1(g) each private room will be used by no more than 2 occupants	Yes	All rooms are proposed to be single occupancy.
1(h) the co-living housing will include adequate bicycle and motorcycle parking spaces.	Yes	142 bike parking spaces are proposed, providing one space per unit and additional visitor and staff parking.

#### Clauses 69(2) – Standards for co-living housing

24. Clause 69(2) states development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether the following matters have been satisfied.
25. An assessment of the proposed co-living housing against each standard is provided in the table below.

Provision	Compliance	Comment
2(a) in R2 or R3 zones the front, side and rear setbacks are no less than those required for multi dwelling housing in another relevant planning instrument, and in R4 zone, no less than those required for residential flat buildings under a relevant planning instrument.	N/A	The site is not located within the specified R2 Low Density Residential, R3 Medium Density Residential, or R4 High Density Residential zones.
2(b) if the co-living has at least 3 storeys the building complies with the minimum building separation distances in the Apartment Design Guide.	No	<p>The development proposes a new co-living housing building with north-facing balconies proposed on the boundary, within 6.4m of south-facing windows for co-living units within 1-3 Small Street (across St Barnabus Street).</p> <p>The development fails to satisfy the aims of section 2F of the ADG, which are to ensure new development is appropriately scaled to support the</p>

Provision	Compliance	Comment
		<p>desired future character with appropriate massing and spaces between buildings and to provide high residential amenity for residents of both buildings, including visual and acoustic privacy, sunlight, daylight access and an outlook.</p> <p>A statement addressing the provisions of Clause 4.6 of SLEP 2012 was lodged with the application, justifying the departure from the development standard. See discussion section below.</p>
2(c) at least 3 hours of solar access must be provided between 9.00am and 3.00pm at mid-winter in at least one communal living area.	No	The communal living area at level 6 will receive two hours of solar access between 1:00pm and 3.00pm at mid-winter. The ground level communal living area receives no solar access at the winter solstice.
2(f) the design of the building must be compatible with the desirable elements of the character of the local area. If within an area undergoing transition, the design of the building must be compatible with the desired future character of the precinct.	No	<p>The building does not provide adequate ceiling heights and fails to provide for future mixed commercial uses.</p> <p>Further, as outlined above, the proposed development fails to provide adequate separation distances between co-living housing developments</p>

26. Clause 70 provides that development consent must not be granted for the subdivision of the co-living housing. Notwithstanding this, the application is recommended for refusal.

### **Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments**

27. The site is located within the Blackwattle Bay catchment which is a designated hydrological catchment of Sydney Harbour. The development is subject to the provisions of the SEPP, which requires the Sydney Harbour Catchment Planning Principles be considered in the carrying out of development within the catchment.
28. The proposal is not anticipated to have any adverse impacts on stormwater quality and runoff from the site. Notwithstanding this, the application is recommended for refusal.

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

29. The aims of this Policy are as follows—
- (a) to encourage the design and delivery of sustainable buildings,
  - (b) to ensure consistent assessment of the sustainability of buildings,

- (c) to record accurate data about the sustainability of buildings, to enable improvements to be monitored,
  - (d) to monitor the embodied emissions of materials used in construction of buildings,
  - (e) to minimise the consumption of energy,
  - (f) to reduce greenhouse gas emissions,
  - (g) to minimise the consumption of mains-supplied potable water,
  - (h) to ensure good thermal performance of buildings.
30. The application includes design features such as electrification, passive design in line with Section J of the BCA/NCC, water storage and energy efficient systems.

### **Chapter 2 Standards for residential development - BASIX**

31. A BASIX Certificate is not required for the subject development. The Environmental Planning and Assessment Regulation 2021 define a "BASIX building" as a building containing at least 1 dwelling but not including co-living housing that accommodates more than 12 residents, or that has a gross floor area exceeding 300 square metres.
32. The development contains some retail component and has responded to the provisions of Chapter 3 of the SEPP, which applies to non-residential development involving the erection of a new building with an estimated development cost of \$5 million.
33. Council's ESD specialist has advised that insufficient information was lodged with the application to complete their assessment. Details have been provided in an outdated format, and whilst water harvesting has been highlighted within ESD reporting, a water tank is not shown for irrigation.

### **State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land**

34. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
35. The proposed works include excavation for a lower ground floor slab and partially deeper excavation zones for lift pits and a substation. No remediation works are proposed.
36. Documents lodged with the application include a preliminary site investigation and detailed site investigation. These conclude the site has a low risk of contaminants being present including fill material, asbestos and lead paint residue.
37. The reports, which have been reviewed by Council's health and building specialists, conclude the site is suitable for proposed residential and commercial land uses, and do not require further investigation.

### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

38. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

**Clause 2.48 Determination of development applications – other development**

39. The application is subject to Clause 2.48 of the SEPP as the development will be carried out immediately adjacent to an electricity substation.
40. As such, the application was referred to Ausgrid for a period of 21 days. No response was received.

**Local Environmental Plans****Sydney Local Environmental Plan 2012**

41. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

**Part 2 Permitted or prohibited development**

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The site is zoned MU1 - Mixed Use. The proposed mixed-use development provides for residential accommodation (co-living housing) and commercial premises (retail), which are permissible with consent in the zone.</p> <p>Despite this, the application fails to satisfy a key objective of the MU1 Mixed Use zone, which is to encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</p> <p>This is on the basis low ceilings are proposed at the ground level of the building where a future commercial tenancy is proposed. The low ceilings will limit daylight access and do not allow for flexible (future) uses of the tenancy. See discussion below - SDCP 2012 discussion.</p>

**Part 4 Principal development standards**

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 22m is permitted.</p> <p>The applicant states the proposed development has a maximum height above existing ground levels of RL 29.45m to the top of the lift overrun and RL 29.12m to the building parapet,</p>

Provision	Compliance	Comment
		<p>exceeding the development standard by 7.45m (34%).</p> <p>Council's assessing officers are of the view the building will exceed this height, noting a services report lodged with the application refers to a higher lift overrun being required.</p> <p>This results in a building with a maximum building height of approximately RL 30.25m, exceeding the development standard by 8.25m (38%).</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>The site is subject to a maximum Floor Space Ratio (FSR) development standard of 2.75:1 (2,781sqm), inclusive of a 10% bonus component in accordance with the SEPP (Housing) 2021.</p> <p>The applicant seeks consent for a development with a FSR of 4.5:1 (4,550sqm), exceeding the control by 64% (1,770sqm).</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	No	<p>The proposed development seeks to vary two non-discretionary development standards prescribed under Clauses 4.3 and 4.4 of SLEP 2012 (height of buildings and FSR).</p> <p>The applicant has not sufficiently justified the requested variations to the relevant clauses and the application is recommended for refusal. See further details in the 'Discussion' section below.</p> <p>The applicant has provided a third request, per clause 4.6 of SLEP 2012, to vary a development standard provided in</p>

Provision	Compliance	Comment
		<p>Clause 69(2) of the SEPP (Housing) 2021 (minimum building separation distances specified in the Apartment Design Guide).</p> <p>Council's officers are of the view that the third Clause 4.6 request is not required. However, consideration has been given to the substance of the Clause 4.6 request. See discussion section below.</p>

### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Partial compliance	<p>The subject building is listed as a detracting item within the Mountain Street heritage conservation area. During a site visit, it was observed that some remnant, original 1960s offices are still in place. Notwithstanding this, the site is listed as a detracting building in Council's SDCP 2012 maps.</p> <p>Two heritage listed buildings adjoin the northern and southern boundaries, including the Reader's Digest Building (76-84 Bay Street, Ultimo) and the former Grace Brothers Homewares building (185-211 Broadway).</p> <p>Council's heritage officer raises no major concerns regarding the proposal to demolish the existing site building, however requested additional information in relation to the protection of the existing footings of the neighbouring heritage items.</p> <p>No further information has been requested during assessment on the basis the application is recommended for refusal.</p>
5.21 Flood planning	No	<p>A flood assessment report lodged with the application has been reviewed by Council's specialists.</p>

Provision	Compliance	Comment
		<p>They advise the report fails to meet the City's standards as it has not been based on site-specific hydraulic modelling.</p> <p>The report does not demonstrate the driveway crossing and internal ramp to the below ground car park level have been designed to comply with required 'belowground car park outside floodplain' levels, which must be at a minimum of 0.3 m above the surrounding surface along St Barnabas Street.</p>

#### Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21C Design excellence 6.21D Competitive design process	No  Acceptable	<p>The proposed development fails to demonstrate design excellence as required by Clause 6.21C and is recommended for refusal. See further details in the 'Discussion' section below.</p> <p>Changes to Clause 6.21D of SLEP 2012 have been adopted by Council and are in the process of being gazetted by Parliamentary Counsel.</p> <p>The changes have the effect of increasing the relevant height from 25m to 35m, above which development consent must not be granted unless a competitive design process has been held in relation to the proposed development.</p>

## Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
Other land uses	Yes	Division 1 of SLEP 2012 does not provide a maximum number of car parking spaces for co-living housing.  The proposed development includes parking for three service vehicles, two car share spaces and one accessible space.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	The application is recommended for refusal. Notwithstanding this, it would be subject to a contribution for the purpose of affordable housing if it were to be approved.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is Class 5 land and is immediately adjacent to Class 2 land. Council's health and building specialist has not recommended any conditions requiring the preparation of an Acid Sulfate Soils Management Plan.
7.20 Development requiring or authorising preparation of a development control plan	Acceptable	Changes to Clause 7.20 of SLEP 2012 are have been adopted by Council and are in the process of being gazetted by Parliamentary Counsel.  As per changes to Clause 6.21D above, the changes have the effect of increasing the relevant height from 25m to 35m, above which development consent must not be granted unless a development control plan has been prepared for the land.
7.26 Public art	No	Public art is proposed for the development. Council's specialist has indicated additional information would be required to support the application.  Notwithstanding this, the application is recommended for refusal and no

Provision	Compliance	Comment
		additional information has been requested prior to reporting the matter to the Local Planning Panel.

## Development Control Plans

### Sydney Development Control Plan 2012

42. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

#### Section 2 – Locality Statements

43. The site is located within the Mountain Street locality. The proposed development provides a commercial use at the ground level, which is appropriate.
44. Notwithstanding this, the proposed development scheme fails to respond to a key design principle for the locality, which is that buildings should respond to the floor to ceiling heights of neighbouring heritage buildings, the proportion of their bays and the design of horizontal elements.
45. Neighbouring heritage buildings provide higher ceiling heights at the ground level (4m+), allowing for adaptability of commercial uses where the proposal includes a proposal for 3m ceiling heights. This also affects the residential amenity of a proposed communal area behind the retail space.
46. Council's specialists and Design Advisory Panel (Residential Subcommittee) do not agree with the applicant's justification for the lower ceilings, which are that they are a response to the datums established by adjacent heritage buildings. Changes could be made to increase the ground level ceiling heights without significantly impacting their interaction with neighbouring buildings visually.

#### Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements 3.1.5 Public art	Yes	Council's specialists advise that a preliminary public art strategy lodged with the application is generally acceptable, subject to minor changes. No amendments have been requested during assessment as the application is recommended for refusal.
3.2. Defining the Public Domain 3.2.3 Active frontages	Yes	Whilst not a requirement of the SDCP 2012 Active frontages map, the development provides an active frontage at the Bay Street frontage.

Provision	Compliance	Comment
		Similarly, whilst not a requirement of the SDCP 2012 Footpath Awnings and Colonnades map, the development provides a footpath awning at the Bay Street frontage.
3.3 Design Excellence and Competitive Design Processes	No	See discussion above in SLEP 2012 section.
3.5 Urban Ecology 3.5.2 Urban vegetation	No	<p>The proposed development does not involve the removal of any trees.</p> <p>The provisions of section 3.5.2 specify that at least 15% canopy coverage of the site must be provided within 10 years from the completion of works.</p> <p>The proposal does not include any significant tree planting although the ground level courtyard proposes the use of tree ferns.</p> <p>Council's Design Advisory Panel (Residential Subcommittee) has provided advice that the landscaped space within the ground courtyard should be constructed with landscaped plantings at grade (requiring deeper basements to provide soil volume) rather than as raised planter beds. The raised planter beds currently provided divide the ground level space by dividing the space into small spaces.</p> <p>The courtyard comprises an area of approximately 145sqm and if planted with canopy trees at grade, would comprise 14% of the site area.</p>
3.6 Ecologically Sustainable Development	Yes	Refer to SEPP (Sustainable Buildings) and discussion section.
3.7 Water and Flood Management	No	The site is identified as being on flood prone land. See discussion under section 7.15 above.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The proposal does not include subdivision.
3.9 Heritage	No	See comments above.

Provision	Compliance	Comment
3.11 Transport and Parking	Partial compliance	<p>The quantum of bike parking provided meets the minimum specified by SDCP 2012. However, the partial basement has been designed to give priority to centralised plant rooms over bike storage rooms, which are located deep in the basement area.</p> <p>To access bike storage rooms from St Barnabus Street, riders would be required to go through two roller shutters and three sets of swinging doors, effectively discouraging bike use.</p> <p>Noting up to 140 bikes will be stored in the partial basement, the provision of only one small lift from the Bay Street entry would further discourage bike use.</p>
3.12 Accessible Design	Yes	The proposed development is generally designed to provide equitable and accessible access.
3.13 Social and Environmental Responsibilities	Yes	The proposed development is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	If approval were recommended, conditions would be applied to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Yes	The premises is located within a City Living late night management area. The tenant of a proposed retail premises within the site is not specified.
3.16 Signage and Advertising	Yes	If approval were recommended, conditions would be applied requiring the preparation of a signage strategy for the site.

## Section 4 – Development Types

## 4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No	<p>The site is permitted a maximum building height of 5 storeys. No street frontage height is specified by the SDCP 2012 map.</p> <p>The proposed development is 8 storeys as viewed from Bay Street and 9 storeys as viewed from St Barnabus Street and does not comply.</p> <p>The development provides decreased residential amenity for future occupants of the subject site and a site to the north, and fails to satisfy the objective of the clause, which is to reinforce the future neighbourhood character.</p> <p>See discussion section below.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	<p>The proposed development does not achieve the minimum floor to floor heights specified by SDCP 2012 and in not doing so, fails to satisfy the objective of the clause, which is to promote daylight access into the building interior and contribute to the flexible future use of the building.</p> <p>See discussion section below.</p>
4.2.2 Building setbacks	No	<p>The proposed development extends to all site boundaries, consistent with the existing site condition. This presents issues in relation to building separation and visual privacy.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	No	<p>As discussed above, insufficient solar access is provided to a Level 6 communal area.</p>

Provision	Compliance	Comment
4.2.3.2 Lightwells	No	<p>The central courtyard also constitutes a lightwell in that it provides light and ventilation for residential units.</p> <p>SDCP 2012 outlines that while daylight may be provided by a lightwell, it should be consistent with the minimum building separation distances between units (section 2F of the ADG). It should not be the only source of daylight to a habitable room and should provide a reasonable outlook. It should not be co-located with exposed services.</p> <p>As outlined below in the Issues section, the proposed lightwell fails to provide sufficient residential amenity with regard for separation distances required by the ADG minimums.</p> <p>It should also be noted that air-conditioning units are proposed within the lightwell, directly ventilating into the lightwell and resulting in impacts in relation to heat and noise.</p>
4.2.3.3 Internal common areas	No	Refer to discussion below - co-living housing section.
4.2.3.4 Design features to manage solar access	No	No details are provided in relation to west-facing co-living room windows and whether fixed shading devices will be required.
4.2.3.5 Landscaping	No	<p>Landscape plans lodged with the application show the ground level courtyard provides raised planter beds that subdivide the space without providing useful areas for socialising.</p> <p>A roof terrace at Level 6 provides no significant landscaping contribution and is undersized noting the minor contribution of the ground level area.</p> <p>A green roof is proposed at the northern edge of the building at Level 7 of the building. No parapet is provided,</p>

Provision	Compliance	Comment
		<p>meaning ropes and anchor points will be required for its maintenance.</p> <p>Architectural drawings lodged with the application do not provide for water tanks required for irrigation of landscape.</p>
4.2.3.6 Deep Soil	Acceptable	<p>10% of the site (101sqm) is required to be dedicated deep soil area with minimum dimensions of 3m, under SDCP 2012 controls.</p> <p>The existing commercial office building occupies the entire site and provides no capacity for deep soil. This is consistent with neighbouring sites within the Mountain Street locality.</p> <p>If approval were to be recommended, it would be possible to support a development that provides no additional deep soil, noting the basement level provides required services and waste management areas.</p>
<p>4.2.3.7 Private open space and balconies</p> <p>4.2.3.8 Common open space</p> <p>4.2.3.9 Ventilation</p> <p>4.2.3.10 Outlook</p>	No	<p>Refer to section 4.4.1 discussion below - Draft DCP Controls for Co-living housing.</p> <p>The amenity of proposed balconies is diminished by deck levels being raised above internal floor heights.</p>
4.2.3.11 Acoustic privacy	No	<p>Co-living rooms are located close to approved development to the north of the site. Rooms facing the internal courtyard are compromised by noise from communal areas and by services and air-conditioning units exhausting into the courtyard.</p>
4.2.3.12 Flexible housing and dwelling mix	Yes	<p>Refer to section 4.4.1 discussion below - Draft DCP Controls for Co-living housing.</p>
4.2.3.14 Apartments with setback bedrooms	Yes	<p>All rooms are single aspect.</p>

Provision	Compliance	Comment
4.2.4 Fine grain, architectural diversity and articulation	Yes	The building has an acceptable presentation to Bay Street.
4.2.6 Waste and recycling Management	No	Refer to comments above.
4.2.7 Heating and cooling infrastructure	No	All dwellings are proposed to have individual air-conditioning units, contrary to the control that specifies heating and cooling infrastructure is to be consolidated into a centralised location.
4.2.8 Letterboxes	No	No letterboxes are provided within the lobby of the building although a parcel area is shown. A condition could be applied in the event the application were recommended for approval.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	Future uses of a proposed retail space could be subject to conditions were recommended for approval.

#### 4.4 Other Development Types and Uses

##### 4.4.1 Boarding houses and student accommodation and Draft DCP Controls for Co-living housing

47. Following the public exhibition of documents, Council's Central Sydney Planning Committee (CSPC) resolved on 19 June 2025 to adopt 'housekeeping' amendments to SLEP2012 and SDCP 2012. The adopted changes to SLEP 2012 are currently with the Department of Planning Housing and Infrastructure for review and are expected to be published in the short term. The changes to SDCP 2012 will take effect alongside the 'housekeeping' amendments to SLEP 2012 and have been considered as a guide to assessment.
48. The table below includes an assessment of the application against the provisions of Section 4.4.1 of SDCP 2012 relating to co-living housing, inclusive of adopted 'housekeeping' amendments that are soon to be published.
49. In summary, the development includes co-living rooms throughout the development that are assessed as providing low amenity with consideration of room dimensions, access to natural light, visual and acoustic privacy.

Provision	Compliance	Comment
4.4.1.1 Subdivision	Yes	The application does not propose subdivision.
4.4.1.2 Private rooms	No	<p>All rooms are intended to be single occupancy, not exceeding 2 adult residents. Room areas are consistent with the minimum and maximum areas, which are reflective of SEPP (Housing) 2021.</p> <p>Indicative room plans show kitchens provided with dimensions of 2.9sqm including 600mm clear space. Bathrooms exceed 2.1sqm including 0.8sqm for a shower.</p> <p>The majority of rooms have minimum dimensions of 2.7m, and do not meet the minimum 3.5m specified. The dimensions do not allow for furniture layouts that are suitable, with beds accessible from only one end.</p> <p>Wardrobe spaces are undersized (0.8sqm), not meeting the required 1.5sqm, noting some storage is able to be provided in TV cabinets.</p> <p>Rooms are provided with access to natural light from windows although as outlined below, louvres for privacy reduce natural light into rooms and some ground level rooms will have low amenity.</p> <p>Ceiling fans are provided in all rooms and ceiling heights of 2.7m can be provided.</p> <p>The provisions specify that 30 % of all private rooms (41 rooms) are to have access to private open space with a minimum area of 4sqm in the form of a balcony or terrace area.</p> <p>80 rooms are provided with balconies (58%). However, only 4 rooms (3%) have balconies exceeding 4sqm. The remainder have balconies with areas of approximately 3.3sqm.</p>
4.4.1.2 Communal kitchen, bathroom, laundry and drying areas	Yes	<p>A communal kitchen is provided at the ground level.</p> <p>Laundry facilities are provided, consisting of 14 locations for automatic</p>

Provision	Compliance	Comment
		<p>washing machines and domestic dryers (28 if double stacked).</p> <p>This exceeds the requirements for 137 residents, which would be 11 (one per 12 residents), which could indicate more than 137 residents can be accommodated. Concerns are raised in relation to safety and passive surveillance around the laundry area. See discussion below.</p>
4.4.1.3 Communal living areas	No	<p>The development provides two areas for communal living and satisfies the minimum, including 292sqm at the ground level and 295sqm at Level 6.</p> <p>Concerns are raised that the ground level area has low amenity due to insufficient ceiling heights and natural light. See discussion below.</p> <p>As above, the Level 6 communal area receives 2 hours' solar access between 9:00am and 3:00pm and the ground level area receives no solar access.</p>
4.4.1.4 Communal open spaces		<p>The control specifies that communal open space should be provided, equating to 20% of the site area (201sqm).</p> <p>The development provides communal open space at the ground level (174sqm) and at the Level 6 terrace (131sqm), equating to 30% of the site area.</p> <p>While meeting the minimum dimensions, concerns are raised that the ground level area has low amenity with raised planter beds preventing useable area for residents.</p> <p>As such, the Level 6 terrace provides the only useful space, equating to approximately 17% of site area.</p>
4.4.1.5 Bathroom, laundry and drying facilities	Yes	<p>The DCP requires more one 5kg capacity automatic washing machine and one domestic dryer for every 12 residents. 14 of each may be provided if double stacked within the basement laundry.</p>

Provision	Compliance	Comment
		Notwithstanding this, the location of the laundry
4.4.1.6 Amenity, safety and privacy 4.4.1.6 Managing local amenity impacts	No	<p>For the reasons outlined in this report, the proposed development provides low residential amenity for future residents and those of approved development on a neighbouring site to the north.</p> <p>Drawings do not show a roller shutter at the entry from St Barnabus Street, which if not provided, would provide a deep area of private space that is accessible to the public and would provide for antisocial behaviour and possible ambush points for residents.</p> <p>The location of the laundry close to this location and in an area without passive surveillance is a concern in relation to safety.</p> <p>The adopted SDCP 2012 controls for co-living housing include a section stating that for development of 3 storeys or greater, the building is to comply with the minimum building separation distances specified in the NSW Government's Apartment Design Guide. This issue is addressed below.</p>
4.4.1.7 Plan of Management	No	A plan of management was lodged with the application. It states a manager's office is provided as a first point of contact for residences during the hours of 8am to 5pm, however as above, the manager's space is not shown on architectural drawings.

## Discussion

### Clause 4.6 Request to Vary a Development Standard - Height of Buildings

50. In accordance with Clause 4.3 of SLEP 2012, the site is subject to a maximum Height of Buildings development standard of 22m.
51. The applicant states the proposed development has a maximum height above existing ground levels of RL 29.45m to the top of the lift overrun and RL 29.12m to the building parapet, exceeding the development standard by 7.45m (34%).



- (b) The applicant considers the proposal to be consistent with objective (a) of the height of buildings standard, which is to ensure the height of development is appropriate to the condition of the site and its context, and to ensure an appropriate height transition between new development and heritage items. In particular that:
- (i) the development has been purposefully sited, with higher elements located to the east, setback 8m from the street boundary. This ensures the Bay Street elevation is compliant and contextually appropriate when viewed from the public domain;
  - (ii) the building to the north of the site is 0.97m higher than the proposed building, and the 185 Bay Street building to the south is 2.31m lower than the proposed building. As such, the development is 'filling of the gap', creating a balanced and improved sightline;
  - (iii) the western side of Bay Street contains commercial buildings that are taller than the proposed building. Additionally, these buildings are consistent with the 0m setback along the street, resulting a greater bulk and scale impact than the proposed building which has a setback of 8m on Level 7 and a punched in windows as part of the built form. As such the existing building does not currently read in context with the surrounding area and the proposed height will provide a conclusively more appropriate built form outcome;
  - (iv) there will be an acceptable overshadowing impact and negligible adverse impacts to the surrounding area because of the proposed development. The largest shadow is proposed to only take up 4.8% of the communal rooftop area at 3:00pm at 185 Bay Street (Uni Lodge); and
  - (v) an analysis of the surrounding context demonstrates that the height of the existing building (compliant) creates an unsightly gap in the high density area. As such, the surrounding buildings almost all exceed the 22m height of building control, representing the changing needs of the community and outdated nature of the development standard. The proposed building seeks to close the gap between the Readers Digest and 185 Bay Street (Uni Lodge student accommodation) improving the consistency of context within the streetscape.
- (c) The applicant considers the proposal to be consistent with objective (b) of the height of buildings standard, which is to ensure an appropriate height transition between new development and heritage items. In particular:
- (i) the proposed development will assist in creating a more appropriate transition of 'old' and 'new' and overall improve the compatibility and consistency along the Bay Street streetscape;
  - (ii) the built form responds to the adjoining heritage buildings to the north and south of the site by proposing a matching 0m setback along Bay Street (to level 5) and the installation of a continuous stepped down awning at level 1. The proposed awning will reflect the existing heritage expression appropriately across the frontage from Broadway to Smail Street;

- (iii) the built form responds to the heritage items along the Bay Street frontage by proposing a landscaped terrace at Level 6 and pulling back the bulk of the development from this edge by 8m. This setback allows for the adjoining heritage items to remain prominent along the frontage, soften views to the items and minimise overshadowing;
  - (iv) the development is further managed by reflecting appropriate materials and colours that are evident within the HCA and its federation warehouse style heritage buildings. The proposed building includes pilasters which vertically modulate the façade and respond to the rhythm of façade detailing along Bay Street; and
  - (v) the highest point of the building is largely due to the slope of the site. The lift overrun is centrally located from the northern and southern boundaries on the site and well set back from the more heritage streetscape to the west.
- (d) The applicant considers the proposal to be consistent with objective (c) of the height of buildings standard, which is to promote the sharing of views outside Central Sydney. In particular:
- (i) due to the heights of the surrounding buildings, the site topography and site location the site currently does not benefit from any district views or views of significance. The site provides an aspect onto Bay Street, Broadway Shopping Centre to the west and along Kettle Lane to the north;
  - (ii) the proposed development will not adversely impact key views from the public domain to important public spaces and will not impact views from neighbouring buildings;
  - (iii) the proposed building is set back 5m along the northern façade at Level 7 and 8m at Level 6 along the Bay Street façade which minimise bulk and scale visual impacts from the neighbouring properties; and
  - (iv) this objective has limited relevance to the site given the substantial distance of the site from Central Sydney and height being contextually comparable to adjoining developments. The proposed maximum 29.45m in height does not obstruct any views to Central Sydney.
- (e) The applicant considers the proposal to be acceptable on the basis there are sufficient environmental planning grounds to justify contravention of the standard. In particular:

*Visual Impact*

- (i) Whilst a significant portion of the site sits well below the height limit, the highest point of the building has been positioned appropriately to align with the lower ground level points at the rear of the site. From an urban design and heritage perspective, the building height on Bay Street has been purposely designed to take cues from the heritage items to the north and south. The building setback allows for an upper level terrace that provides increased amenity to the building's occupants. The elements in exceedance of the control, including the 1.5m parapet screen the rooftop plant, solar panels, the lift core, a green roof, and 12 apartments.

- (ii) These exceedances assist in creating a high quality and complete design for the building that leads to a more cohesive streetscape height plane that is in line with the adjoining heritage listed developments to the north and south of the site and following the streets natural topography.
- (iii) The current building is detracting from the heritage conservation area. The proposed building design has been carefully considered to be consistent with the existing character of the adjoining buildings along Bay Street and heritage conservation area.
- (iv) A building height plane diagram has been prepared, (Figure 24 above), demonstrating the non-compliances facing the sites frontage are significantly setback from the site boundaries.
- (v) Buildings along the western frontage of Bay Street from Broadway to Greek Street exceed the proposed building height at the site. The cross fall of the site has an 800mm drop and a 3m fall at the rear of St Barnabas Street. Reflective of the slope of the land, the proposed height is balanced and consistent with sites to the north, east, south and west.

#### *Loss of Privacy*

- (vi) The non-compliant elements of the building are limited to the upper portion of the building, at the rear of the site and have been designed to maintain the privacy of adjacent buildings, as well as the relationship between the two adjoining buildings. If strict compliance with the maximum building height were to be enforced, the privacy impact on neighbouring properties would remain largely unchanged due to the tight footprint. Mitigation measures for building separation include reducing glazing, offsetting apartments where necessary and introducing breezeways and screening.

#### *Solar Access*

- (vii) The proposed form above the height control is consistent with the height of 1-3 Smail Street and 185 Bay Street. The built form of the proposed at the upper levels are pulled back by 5m from St Barnabas Street and 8m from Bay Street, minimising potential bulk and scale impacts.
- (viii) The building elements that are proposed to exceed the height limit do not cause any adverse additional overshadowing to neighbouring properties or the public domain. Although additional shadowing will fall onto the 185 Bay Street rooftop the most significant shadows will be cast at 3pm and will only take up a 4.8% of the area which is considered minimal.

#### *View Loss*

- (ix) The proposed development's non-compliance with the height limit will not result in any significant loss of views or outlook compared to a compliant building. Importantly, neighbouring properties or the public domain do not currently enjoy any significant views across the subject site due to nature of the streetscape. Despite the additional height of the proposed buildings, the development remains consistent with this objective.

*Design Excellence and Urban Design*

- (x) The City of Sydney is encouraging the activation and greening of rooftops, through a draft Planning Proposal, and as such the proposed development provides spaces for informal seating and landscaping this contributes to this policy position without any undue impacts. This draft policy is allowing some flexibility of maximum building height controls to accommodate green roofs and ancillary structures as part of communal open space.
- (xi) The proposal results in a built form that responds positively to the surrounding urban context, particularly the development immediately to the west which is the dominating building form in the immediate context. From the street, the proposed development presents as an 8-storey building consistent with the existing character of the locality and immediate development.
- (xii) The roof top solar panels, plant and lift overruns are a fundamental component to the proper functioning of the residential building. The proposed development has made provision for the parapet to meet the height of these elements to block them from public view and provide clean sightlines.
- (xiii) Level 7 comprises 12 apartments (incl. 1 accessible apartment) which ensures the feasibility of the project and in turn greater housing provision in the area. As level 7 has been pulled back by 5m, the apartments on the northern facade have views to the green roof below.

*Precedent Study*

- (xiv) The applicant provides a precedent study of development approved by Council including the previous consent (D/2023/445), stating these have successfully demonstrated merit for variance against the development standard.

Precondition to granting consent where a development standard has been contravened

- 55. Development consent must not be granted unless the consent authority is satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard.
- 56. The applicant has not adequately demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances, given the overbearing impact of the building on the residential amenity of approved co-living housing to the north of the site (within 1-3 Smail Street).
- 57. The development proposes ceiling heights that are insufficient to provide for high residential amenity within the site and that are not suitable for proposed retail uses at the ground level. Further, lift overruns have not been suitably modelled in architectural drawings. Providing for these elements would result in a building that is even higher than that proposed.
- 58. In this regard, the design of the proposal fails to satisfy objective (a) of the height of building development standard, which is to ensure the height of development is appropriate to the condition of the site and its context.

## Conclusion

59. For the reasons provided above the requested variation to the height of buildings development standard is not supported as the applicant has not demonstrated the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012.

**Clause 4.6 Request to Vary a Development Standard - Floor Space Ratio**

60. The site is subject to a maximum Floor Space Ratio (FSR) standard of 2.75:1 (2,781sqm of gross floor area), inclusive of a 10% bonus component in accordance with the SEPP (Housing) 2021.
61. The applicant seeks consent for a development with a FSR of 4.5:1 (4,550sqm), exceeding the floor space ratio development standard by 64% (1,770sqm).
62. Pursuant to the requirements of Regulation 35B of the Environmental Planning and Assessment Regulation 2021, the application has been accompanied by a document setting out the grounds on which the applicant seeks to demonstrate:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - (b) that there are sufficient environmental planning grounds to justify contravening the standard;

## Applicant's Regulation 35B document

63. The applicant seeks to justify the contravention of the FSR standard for the reasons set out below.
- (a) The applicant considers the proposal to be consistent with objective (a) of the FSR standard, which is to provide sufficient floor space to meet anticipated development needs for the foreseeable future. In particular:
    - (i) The strategic context of the site encourages greater housing supply, which is diverse, affordable and has access to jobs, services and public transport. The proposal utilises the existing building footprint and provides 137 co-living apartments with retail at the ground floor, and an end of journey facility on the lower ground floor.
  - (b) The applicant considers the proposal to be consistent with objective (b) of the FSR standard, which is to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic. In particular:
    - (i) the proposed design is consistent with the prevailing and emerging character of developments of a similar scale within the locality. The proposed alterations and additions to the existing commercial building complement the heritage significance of the existing building and the character of the Heritage Conservation Area;
    - (ii) the proposed built form is in keeping within the density and surrounding context of surrounding development within the Mountain Street Heritage conservation area and adjoining heritage items;

- (iii) the proposal will result in a reduction in vehicle traffic noting the proposal seeks to reduce the current car parking provision. The proposed development provides one accessible car park and 3 car share spaces thereby significantly reducing the number of private car spaces within the building. Further, the proposal seeks to incorporate 156 bicycle spaces;
  - (iv) the site is well serviced by nearby buses and within walking distance to metro, heavy rail, and light rail services to most of Greater Sydney. The proposal would result in increased pedestrian traffic to this part of Ultimo which is considered a positive for the area and local businesses;
  - (v) the built form exhibits a high level of amenity as the design includes a biophilic designed open air courtyard that runs through the centre of the building. The central courtyard provides the apartments located around the core access to natural light and improved ventilation. An additional common area and communal open space on level 6 increases the residential amenity to the 137 apartments and residents.
- (c) The applicant considers the proposal to be consistent with objective (c) of the FSR standard, which is to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure. In particular:
- (i) the location in a dense urban area means the site is well serviced from existing utility and social/community infrastructure. Despite that, the proposed development provides 295sqm of communal living. The proposal exceeds the 20% provision of communal open space, by providing 305sqm;
  - (ii) the proposed development is in line with the capacity of existing and planned infrastructure for the locality. Future occupants will have low impact on the road infrastructure as the existing site is highly accessible being well serviced by public transport, existing utility and social/community infrastructure(d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality;
  - (iii) the proposal positively responds and complements the heritage conservation area character by removing a detracting element in the HCA and providing a building form and character that is complementary to the Bay Street streetscape;
  - (iv) the proposed FSR variation responds to and reinforces the scale of a number of buildings in the immediate context, including 1-3 Smail Street and 185 Bay Street resulting in acceptable additional bulk and scale;
  - (v) as the proposed is setback at different levels, the potential visual impact is minimised. Additionally, the proposal fills the existing and detracting gap between the two adjoining heritage buildings, resulting in a coherent sightline along Bay Street;

- (vi) there will be an acceptable overshadowing impact and negligible adverse impacts to the surrounding area as a result of the proposed development. The largest shadow is proposed to only take up 4.8% of the communal rooftop area at 3PM at 185 Bay Street. At other times, the shadowing will be significantly reduced down to 2.8;
  - (vii) the Bay Street façade aligns with the character of the heritage conservation area with the design of its Bay windows at level 2 and vertical pilasters throughout;
  - (viii) the ground floor façade has no setback to reflect the alignments of adjoining properties and broader Bay Street. The development proposes a stepped down awning along Bay Street in line with the sloping street and surrounding buildings;
  - (ix) the building façade has a grid like pattern tying in with its immediate heritage surroundings of federation style warehouses with brick masonry walls. The proposed building incorporates brick as its primary material used and detailed modular frames with pigmented zinc, and red reveals throughout; and
  - (x) the built form is proposed to be lower than the parapet by 1.5m. The height of the parapet is proposed to screen the solar panels, plant and lift core to result in a consolidated view from the street.
- (d) The applicant considers the proposal to be acceptable on the basis there are sufficient environmental planning grounds to justify contravention of the standard. In particular:
- (i) the FSR variation provides a development that can provide alternative options to the private residential market and can therefore provide a diversity of housing choice, affordability, and opportunities catering to the demographics of the locality. This aligns with the aims of the Housing SEPP to facilitate the effective delivery of new well-located housing;
  - (ii) the proposed development aims to remove a detracting item within the heritage conservation area which is considered supportable from a heritage outcome;
  - (iii) the proposed development lessens the traffic and parking impact at the site, whilst contributing positively to the housing needs of the community. The design is carefully considered to be consistent with the future character of the area, as demonstrated by compliance with the objectives of the MU1 zone;
  - (iv) significant amounts of landscaped and communal open spaces are provided to enhance the amenity for residents of the site;
  - (v) the development forms a consistent character with adjoining heritage buildings along Bay Street by use of contextual materials and design inclusive of a continuous stepped down awning. The development therefore forms part of a broader character area and is suitable in context of the heritage conservation area within which it is located; and

- (vi) potential solar impacts to the neighbouring residential amenity are minimal. At the worst case scenario the overshadowing will be 4.8% at 3:00pm to the rooftop at 185 Bay Street.

*Precedent Study*

- (vii) The applicant provides a precedent study of development approved by Council including the previous consent (D/2023/445), stating these have successfully demonstrated merit for variance against the development standard.
- (viii) The applicant states the prescribed FSR for the area has been consistently varied in this immediate precinct given the established built form character associated with its gentrification. In particular, FSR and height of building standard variations have been approved as part of additions or for new development for immediately surrounding sites.

Precondition to granting consent where a development standard has been contravened

- 64. Development consent must not be granted unless the consent authority is satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard.
- 65. The applicant has failed to adequately demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances, given the compromised residential amenity provided for the future occupants within the subject site and neighbouring approved co-living housing development to the north (1-3 Smail Street).
- 66. The development proposes residential accommodation with balconies located within 6.4m of windows for approved co-living housing development to the north in locations that fail to satisfy the minimum separation distances established by the Apartment Design Guide (see Clause 4.6 discussion below). Measures proposed to mitigate visual privacy concerns result in residential rooms with low natural light as windows are located behind fixed louvres.
- 67. The proposed density is reflective of a development that will provide low amenity for future residents. In this regard, the proposal fails to satisfy objective (d) of the standard, which is to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

Conclusion

- 68. For the reasons provided above the requested variation to the floor space ratio development standard is not supported as the applicant has not demonstrated the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012.

**Clause 4.6 Request to Vary a Development Standard - Building Separation (Section 2F of the Apartment Design Guide - ADG)**

- 69. The applicant has provided a request, per section 4.6 of SLEP 2012, to vary a development standard at section 69(2)(b) of the SEPP (Housing) 2021. The standard at section 69(2)(b) requires the building to comply with the minimum building separation distances specified in the Apartment Design Guide.

70. Despite a 4.6 request being lodged with the application, Council's officers are of the view that the request would not necessarily be required. This is on the basis the provisions within section 69(2) of the Housing SEPP are not development standards (as opposed to the provisions in section 69(1) which are).
71. The minimum building separation distance requirements specified in section 69(2)(b) of the ADG are required to be considered. However, where they are not met, no Clause 4.6 request is required. As such, the suitability and substance of the applicant's Clause 4.6 request have been considered as a guide to assessment rather than as a strict requirement.
72. Section 2F of the ADG requires that the minimum separation distances for habitable rooms and balconies must be 18m for buildings with a height of five to eight storeys. The proposed co-living development has a height of eight storeys, excluding a 'partial' basement level which presents as an additional storey as viewed from St Barnabus Street.
73. North-facing balconies are proposed on the northern boundary at St Barnabus Street. The balconies are located within 6.4m of the south-facing windows for units within an approved co-living housing development at 1-3 Smail Street (Figure 25 below). Within the development, proposed eastern and western balconies are separated by approximately 14m, which constitutes a non-compliance of 4m (22%).
74. St Barnabus Street is approximately 6m wide. To comply with the standard, north-facing balconies of the development are required to be setback by 6m from the northern property boundary. This measurement consists of 3m (as measured from the centreline of St Barnabus Street, which is 6m wide) and an additional 6m to provide for the minimum 9m site 'shared' contribution required by the standard - half of 18m.

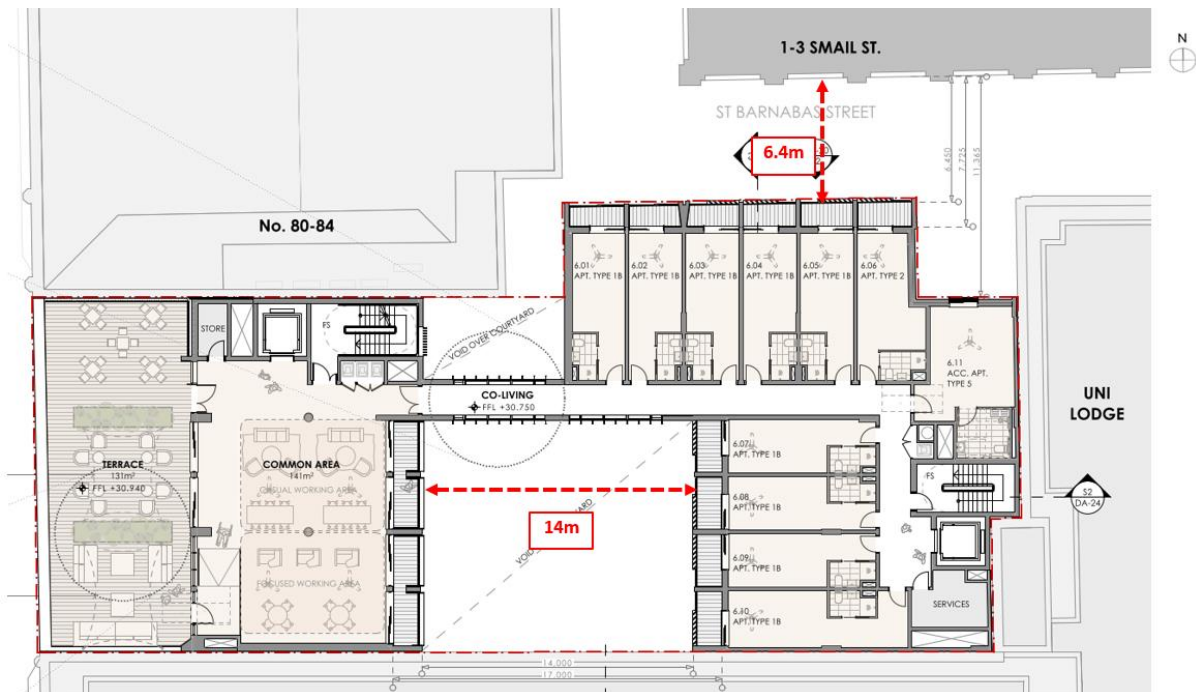


Figure 24: Separation distances between approved co-living housing to the north (6.4m to 1-3 Smail Street) and within the central courtyard (14m).

75. The applicant seeks to justify the contravention of the Building Separation development standard on the following basis:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the aims of the development standard are achieved notwithstanding the non-compliance.
  - (b) With regard for the first aim of section 2F of the ADG, which is to ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings:
    - (i) the strategic context of the site and context encourages greater housing supply, that is diverse, affordable and is located with access to jobs, services and public transport. The proposal utilises the existing building footprint and provides 137 co-living apartments with retail at the ground floor, and an end of trip facility on the lower ground floor;
    - (ii) the distribution of mass has been purposefully sited, with recessed top floor and higher elements located to the east, ensuring the Bay Street elevation when viewed from the public domain is compliant and contextually appropriate;
    - (iii) the massing has been pulled back from the north and the west on the upper levels to reduce potential bulk and scale impacts to the streetscape and adjoining developments and provide as much space between buildings to the north as possible, and solar access to the west; and
    - (iv) the ADG requires a 12m separation for buildings up to 4 storeys and 18m for 5 to 8 storeys. The proposed courtyard provides an increased distance for the first 4 floors and for the last 4 floors offers 14m between balconies and 17m between glazed faces. Along the northern face of the building, the proposal is constrained to provide 6m of building separation only. Strict compliance with the Housing SEPP would negate the redevelopment of the site for housing purposes.
  - (c) With regard for the second aim of section 2F of the ADG, which is to assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook:
    - (i) externally, by providing a street façade built to the boundary on St Barnabas with recessed balconies screened by a brick breezeway provides robust privacy to and from the northern property at 1-3 Smail Street. To further mitigate, glazed areas have been reduced to 2/3 of the room's overall width and the breezeway to the full extent of the glazed areas;

- (ii) internally, as the site is within a dense urban environment with obstructed natural light to the south and east and reduced existing separation to the north, the creation of an internal courtyard open to the weather provides a biophilic design principles. This courtyard approach allows for natural light and air into the units. A minor non compliance internally does not reduce the internal amenity. Further mitigation measures (against the non compliance) have been incorporated to the last 4 levels of offsetting the rooms on each side of the courtyard, reducing the glazing and adding in a fixed screen. This ensures privacy is maintained and a good level of amenity if also resulting. Internally, if a complaint building setbacks were proposed, this would involve the removal of the internal balconies which is viewed as a sub standard outcome; and
  - (iii) The proposed setbacks provide a green roof at level 7 and a landscaped level 6 terrace. These outdoor spaces minimise additional bulk and scale, increase building separation where possible and improve visual and acoustic amenity (level 6 terrace is along Bay Street façade not adjoining neighbours).
- (d) With regard for the third aim of section 2F of the ADG, which is to provide suitable areas for communal open spaces, deep soil zones and landscaping:
- (i) the building footprint tightly fits within a dense urban area of Ultimo and is surrounded by existing developments that reduce access to natural light. The built form however has responded to this setting through the inclusion of communal open space via the internal courtyard that is open to the sky allowing natural light and ventilation into the development and on the level 6 terrace. In accordance with the open space provision under the Housing SEPP, the proposal seeks consent for a total of 4.5% of landscaping (not including the green roof) across the site, 35m<sup>2</sup> in the courtyard and 11m<sup>2</sup> on level 6. This level of open space is compliant.
- (e) That there are sufficient environmental planning grounds to justify contravention of the standard:
- (i) By implementing mitigation measures where the proposal does not comply with the numerical building separation guidelines in the Apartment Design Guideline, the co-living housing development will provide alternative options to the private residential market and therefore provide a diversity of housing choice, affordability, and opportunities catering to the demographics of the locality. This aligns with the aims of the Housing SEPP to facilitate the effective delivery of new well-located housing.
  - (ii) The proposed development aims to remove a detracting item within the heritage conservation area which is considered supportable from a heritage outcome.
  - (iii) The proposed development lessens the traffic and parking impact at the site, whilst contributing positively to the housing needs of the community. The design is carefully considered to be consistent with the future character of the area, as demonstrated by compliance with the objectives of the MU1 zone.
  - (iv) Significant amounts of landscaped and communal open spaces are provided to enhance the amenity for residents of the site.

- (v) The development forms a consistent character with adjoining heritage buildings along Bay Street by use of contextual materials and design inclusive of a continuous stepped down awning. The development therefore forms part of a broader character area and is suitable in context of the heritage conservation area within which it is located.
- (vi) The Apartment Design Guidelines for Building Separation are unreasonable to comply with at the site due to the highly dense area and tight footprint. Specifically, to the northern neighbours at 1-3 Smail Street. Compliance with the Building Separation guidelines would make the proposal unfeasible, so considering this the new co-living scheme is built with recessed balconies screened by a brick breezeway offering robust privacy to and from the property across the street. To further mitigate the issue the glazed areas have been reduced to 2/3 of the room's overall width and the breezeway to full extent of the glazed areas. Therefore, the potential privacy impacts are mitigated to an acceptable level.
- (vii) The creation of an internal courtyard allows the residents to enjoy a high level of residential amenity whilst living in a dense, central location. The courtyard provides residents with access to high quality open space. As the courtyard is open to the weather and is designed with biophilic design principles natural light and air will be able to penetrate the units.

Precondition to granting consent where a development standard has been contravened

- 76. In accordance with Section 69(2)(b) of SEPP (Housing) 2021, development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether the building will comply with the minimum building separation distances specified in the Apartment Design Guide.
- 77. The applicant has failed to adequately demonstrate that the building separation distances proposed are appropriate, given the compromised residential amenity provided for the future occupants within the subject site and neighbouring approved co-living housing development to the north (1-3 Smail Street).
- 78. Balconies are proposed within 6.4m of south-facing windows for approved co-living units within 1-3 Smail Street and within 14m in the central courtyard of the development. The proximity of proposed units to approved units within the adjoining site results in low residential amenity, including lack of visual and acoustic privacy and low daylight access.
- 79. Measures proposed to mitigate the above impacts include installing fixed louvres across doors and windows, however these results in rooms with no outlook and with severely compromised access to natural light, requiring lights to be on at all times of the day.
- 80. The lack of building separation results in a development that will provide low residential amenity for future residents. In this regard, the proposal fails to satisfy the objectives, which are to ensure new development is scaled to support the desired future character with appropriate massing and spaces between buildings, and to provide residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook.

## Conclusion

81. For the reasons provided above and noting a Section 4.6 request is not required, the requested variation to the Building Separation (Section 2F of the Apartment Design Guide - ADG) development standard has failed to demonstrate the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012 when used as a guide to assessment.

## Design Excellence

82. The provisions of section 6.21C of SLEP 2012 state that development consent must not be granted to development unless, in the opinion of the consent authority, the proposed development exhibits design excellence.
83. The development provides low residential amenity for future residents of the subject site with regard for low ceiling heights for ground level communal spaces, insufficient room widths and insufficient separation distances between co-living housing units, both within the site and externally to the site for approved units at 1-3 Smail Street.
84. The amenity of rooms is compromised with regard for their width, noting 122 rooms (89%) have a width of 2.7m, less than the 3.5m specified by adopted SDCP 2012 controls. Beds are shown as being only accessible from one end and not from the side. While layouts are indicative only, this reinforces the need for wider, more flexible room dimensions.
85. Proposed units at the ground and lower levels of the site will not receive any direct sunlight for most of the year as they are surrounded by eight storeys of structure. Reflected natural light may be available within the courtyard, however landscape plantings further reduce the ability for these units to achieve high amenity. Further, all bathroom, kitchen, and air conditioning vents exhaust directly into this tall narrow space.
86. In addition, units are located within close proximity to communal areas and subject to noise from communal areas in the internal courtyard. The amenity of units is compromised by windows having no outlooks other than to the reverse side of fixed angled louvres that are designed to prevent overlooking of opposite windows. It is noted that there is no set down rather a step-up to balconies and exposed ceilings that are not detailed.
87. For the above reasons, the development fails to satisfy objective (a) of Clause 6.21C, which is to provide a high standard of architectural design, materials and detailing appropriate to the building type and location.
88. With regard for its proximity to approved co-living housing units in 1-3 Smail Street, the development fails to provide suitable building massing and modulation, as required by Clauses 6.21C(2)(a) and 6.21C(2)(d)(v). The development fails to deliver suitable outcomes with regard for solar access, visual and acoustic privacy and noise, as required by Clause 6.21C(2) d)(vii) of SLEP 2012.
89. The ground level courtyard has been designed with raised planter beds rather than with planting at grade. The planter beds divide the space into small spaces that are not useful for communal activities (Figure 26 below). As such the Level 6 terrace would be expected to carry much of the communal open space burden of the development.

90. The space is undersized for 137 units. Further, water harvesting and reuse is proposed, however no tanks are shown for irrigation with only an OSD tank provided. As such, the design fails to satisfy Clause 6.21(2)(d)(xiii) with regard for excellence and integration of landscape design.

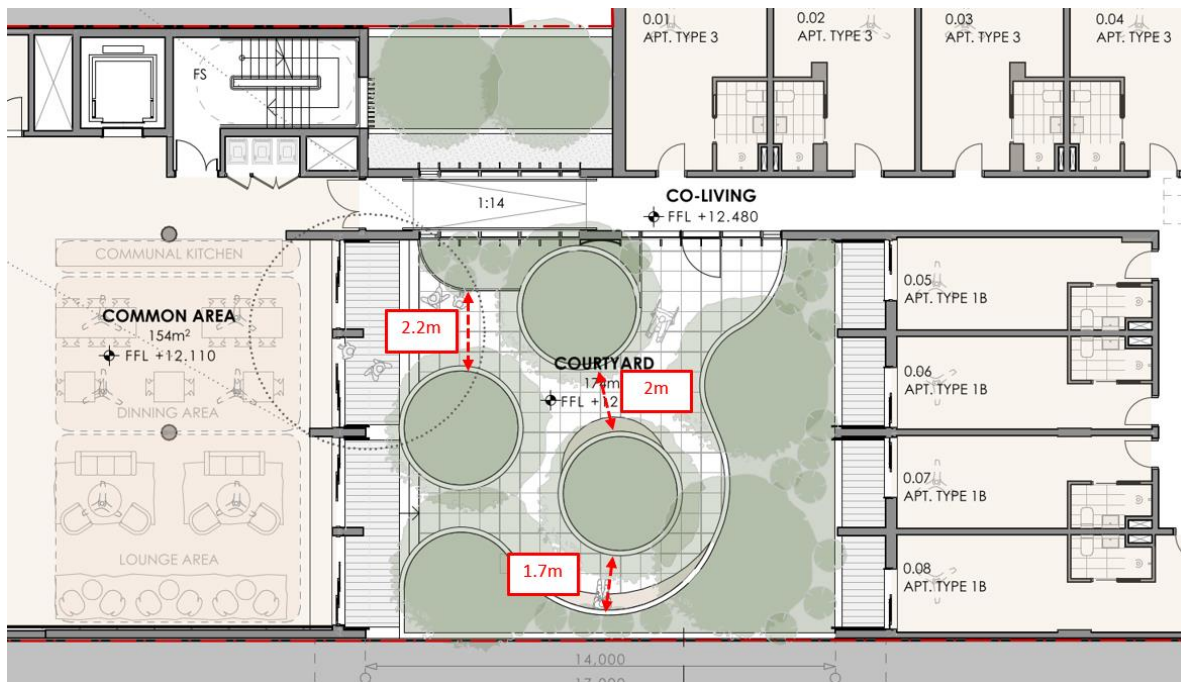


Figure 25: Raised planter beds limit useful spaces within the ground level communal courtyard.

### Waste servicing

91. The operational waste management plan lodged with the application (OWMP) states that Council will be engaged to collect residential general waste, recycling and food and organic waste (FOGO), twice weekly.
92. Whilst the collection of residential waste from St Barnabas Street can be supported on the basis 10.6m trucks can access St Barnabas Street, the proposal to collect waste streams twice weekly is not supported.
93. The applicant has not demonstrated there is sufficient space for the storage of waste bins sufficient for once weekly collection from the site for general waste and recycling streams, and twice weekly collection of food scraps. Further, it has not been demonstrated the maximum 30m travel distances have been provided for (for FOGO bins), in accordance with the City's Guidelines.
94. As such, the application has failed to demonstrate the development can comply with the relevant provisions of section 3.11.13 of SDCP 2012 - Design and location of waste collection points and loading areas.

### Design Advisory Panel Residential Subcommittee advice

95. As discussed above, the proposal was discussed with the City's Design Advisory Panel (Residential Subcommittee) on 7 April 2026. The Subcommittee found the proposal to be unsatisfactory on a number of grounds.

## Consultation

### Internal Referrals

96. The application was discussed with Council's
- (a) Building Services Unit
  - (b) Environmental Health Unit
  - (c) Heritage and Urban Design Unit
  - (d) Public Domain Unit
  - (e) Transport and Access Unit
  - (f) Tree Management Unit
  - (g) Waste Management Unit
97. Issues raised by Council's specialists are discussed above in this report.

### External Referrals

#### Ausgrid

98. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment. No response was received.

#### Water NSW

99. Pursuant to Section 78 of the Sydney Water Act 1994, the application was referred to the Sydney Water Corporation for comment. A response was received that no objection was raised to recommended conditions of consent.

### Advertising and Notification

100. In accordance with the Community Engagement Strategy and Community Participation Plan 2025–2029, the application was notified for 21 days between 18 February 2026 and 12 March 2026. A total of 1,167 properties were notified and no submissions were received.

### Financial Contributions

#### Contribution under Section 7.11 of the EP&A Act 1979

101. If approval were to be recommended, the development would be subject to a section 7.11 local infrastructure contribution under the Plan.

#### Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

102. The site is located within the Residual Lands affordable housing contribution area.

103. The application is not recommended for approval, however a condition of consent could be imposed requiring payment of the condition if the application was considered for approval.

### **Housing and Productivity Contribution**

104. The application is not recommended for approval, however a condition of consent could be imposed requiring payment of a Housing and Productivity Contribution if the application was considered for approval.

### **Relevant Legislation**

105. Environmental Planning and Assessment Act 1979.
106. Sydney Water Act 1994
107. Water Management Act 2000

### **Conclusion**

108. The application fails to satisfy key Height and Floor Space Ratio development standards and provisions of the Sydney Local Environmental Plan 2012, the Sydney Development Control Plan 2012, and the relevant State Environmental Planning Policy (Housing) 2021.
109. With consideration of the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012, the application fails to sufficiently justify requested variations from the Height of Buildings and Floor Space Ratio development standards provided by the Sydney Local Environmental Plan 2012. Further, Council's assessing officers consider the development to be inconsistent with the minimum building separation distances specified in the Apartment Design Guide, as enlivened by the State Environmental Planning Policy (Housing) 2021.
110. The proposal seeks to greatly exceed the maximum development floor space available under the City's floor space ratio development standard and by the State Environmental Planning Policy (Housing) 2021, to the detriment of residential amenity within the site and neighbouring sites.
111. The overdevelopment of the site is demonstrated by non-compliance with residential amenity measures of the NSW Apartment Design Guide, activated by the State Environmental Planning Policy (Housing) 2021 and the Sydney Development Control Plan 2012, including solar access, ceiling heights, room widths and visual privacy measures.
112. The development provides low residential amenity for future residents of the subject site and neighbouring site with regard for low ceiling heights for ground level communal spaces, insufficient room widths, low access to natural light and insufficient separation distances between co-living housing units. Landscaped areas have been designed with little useful communal area and no irrigation tanks are provided for irrigation. Accordingly, the proposal cannot be considered to satisfy the Aims of the Sydney LEP 2012 or to exhibit design excellence in accordance with Clause 6.21C of the Sydney LEP 2012.

113. The City's Design Advisory Panel Residential Subcommittee raised substantial concerns regarding residential amenity and design quality that were communicated to the applicant prior to lodgement of the application. These concerns remain unresolved. The proposed development would have significant impacts on approved co-living housing units located on neighbouring properties in relation to visual and acoustic privacy and would provide low residential amenity for future residents within the development.
114. For these reasons, the proposed is recommended for refusal.

**NICOLA REEVE**

Acting Executive Manager Planning and Development

Adrian McKeown, Senior Planner