

Item 4.**Development Application: 107-109 Darlinghurst Road, Potts Point - D/2025/1026****File Number:** D/2025/1026**Summary****Date of submission:** 27 October 2025 (Amended plans received: 27 May & 21 August 2026).**Applicant:** Mr Peter McGregor**Architect/Designer:** McGregor Westlake Architecture**Owner:** Raben Footwear Pty Ltd**Planning consultant:** Daintry Associates Pty Ltd**Heritage consultant:** Zoltan Kovacs**Cost of works:** \$10,234,400.00**Zoning:** E1 - Local Centre

The mixed-use development is permissible with consent in the zone.

Proposal summary: Consent is sought for alterations and additions to an existing mixed-use building above Kings Cross Station, including construction of 2 additional levels.

The application principally proposes extension and upgrade of an existing backpacker accommodation, in addition to changes to several small-scale pocket retail tenancies within the street level arcade entrance to Kings Cross Station. The backpacker accommodation extends across 7 levels of the building as existing, including 3 basement levels. The DA proposes to add 2 additional levels atop of the existing building to extend the backpacker accommodation. New stair and lift access is also proposed.

The occupancy of the backpacker accommodation is proposed to increase from 94 guests as existing to 113 guests and a manager's room.

Proposed changes to the retail arcade entrance to Kings Cross Station involve reconfiguration of the retail tenancies and existing coffee cart tenancy within the arcade which is adjacent to Darlinghurst Road.

The application was notified and advertised for 28 days between 4 November 2025 and 3 December 2025. As a result, 4 submissions were received.

The objections received raise concerns with the proposed backpacker accommodation use and proposed entrance off Earl Street, anti-social behaviour associated with the use and amenity impacts overflowing onto the surrounding streets / public domain, and acoustic impacts from mechanical plant.

The proposed development is in breach of the maximum height of buildings and floor space ratio development standards applying to the site, pursuant to Clause 4.3 and Clause 4.4 of the Sydney Local Environmental Plan 2012, by 2.91% and 56.16% respectively.

The application is reported to the Local Planning Panel for determination as it represents a significant departure from the floor space ratio development standard applying to the site. The application therefore sits outside Council's delegation and is required to be determined by the Local Planning Panel in accordance with Schedule 3 of the Local Planning Panels Direction.

Summary recommendation: The development application is recommended for deferred commencement approval.

Development controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Transport and Infrastructure) 2021
- (iv) SEPP (Biodiversity and Conservation) 2021

Attachments:

- A. Recommended conditions of consent
- B. Selected drawings
- C. Clause 4.6 variation - Height of buildings
- D. Clause 4.6 variation - Floor space ratio
- E. Submissions

Recommendation

It is resolved that pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application Number D/2025/1026 subject to the conditions set out in Attachment A to the subject report.

Reasons for recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act 1979 in that, subject to the recommended conditions of consent, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Panel.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant has demonstrated that compliance with the height of buildings development standard in Clause 4.3 of the Sydney Local Environmental Plan 2012 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with the requirements of Clause 4.6(3) of the Sydney Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the E1 Local Centre zone and the height of buildings development standard.
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant has demonstrated that compliance with the floor space ratio development standard in Clause 4.4 of the Sydney Local Environmental Plan 2012 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with the requirements of Clause 4.6(3) of the Sydney Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the E1 Local Centre zone and the floor space ratio development standard.
- (D) The development is permissible with consent in the E1 - Local Centre zone and is consistent with the objectives of the zone.
- (E) The proposal has been assessed against the aims and objectives of the relevant planning controls including the Sydney Local Environmental Plan 2012, the Sydney Development Control Plan 2012, and the applicable Environmental Planning Instruments. Where non-compliances are proposed, they have been assessed in this

report as being acceptable in the circumstances of the case or can be resolved by the recommended conditions of consent.

- (F) The development will not detrimentally impact the heritage significance of the Potts Point Heritage Conservation Area.
- (G) The development is consistent with the character of the Kings Cross locality.
- (H) The proposed development demonstrates design excellence in accordance with the relevant provisions and matters for consideration in clause 6.21C of the Sydney Local Environmental Plan 2012.
- (I) The development, subject to conditions, will not unreasonably compromise the amenity of the surrounding area.
- (J) The development, subject to conditions, is in the public interest.

Background

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 identified in Schedule 3 of the Local Planning Panels Direction of 6 March 2024 as being within the following category:
 - Departure from development standards
2. The development application falls within the category of Departure from development standards as it involves development that contravenes a development standard imposed by an environmental planning instrument by more than 10%. Specifically, the proposal contravenes the floor space ratio development standard (Clause 4.4) imposed by the Sydney Local Environmental Plan 2012 by 56.16%.

Site and surrounding development

3. The site has a legal description of Lot 1 and Lot 5 in Deposited Plan 802224, and is commonly known as 107-109 Darlinghurst Road, Potts Point. It is irregular in shape with an area of approximately 259 square metres.
4. Lot 1 has a size of 239.1 square metres, a frontage of 9.25 metres to Darlinghurst Road and a rear aspect of 4.6 metres to Earl Place. Lot 1 is located on the north-western side of Darlinghurst Road and currently accommodates a 7-storey building which includes 3 storeys of basement. The existing building was previously used as backpacker accommodation, however has been vacant since the onset of the COVID-19 pandemic.
5. Lot 5 has a size of 19.1 square metres and contains fire escape stairs for the building.
6. The site is subdivided in stratum with Lot 2, Lot 3 and Lot 4 of Deposited Plan 802224 owned by the Transport Asset Holding of NSW and known as 109A Darlinghurst Road, Potts Point. Lot 2 contains the pedestrian arcade from Darlinghurst Road into Kings Cross Station, at the ground floor / part of the first-floor void area. These lot holdings are situated within the same site boundaries but are unaffected by the proposed development and the application does not propose any works or changes to these areas.
7. The site is burdened by a rights of footway easement through the site to Kings Cross Station. The terms of this easement allow for access from 6:00am to 12:00am midnight daily. The site benefits from an easement providing for fire escape access for users to Earl Street. There are existing windows on the north-western property boundary adjacent to 220 Victoria Street, and there is an existing easement which benefits the site for access to light and air for these windows. A stormwater easement also traverses the site.
8. Adjoining to the north is 99-105 Darlinghurst Road, which is a five-storey mixed use residential building with retail uses at ground floor.
9. To the east is the row of 3-storey properties on the opposite side of Darlinghurst Road, primarily containing retail/entertainment uses at ground level and shop-top housing or commercial space above.
10. To the south is 113 Darlinghurst Road, which is a twenty-storey residential flat building known as 'Omnia' (or 'Crest Apartments'), with retail uses on the ground level.

11. To the west is 214-220 Victoria Street, a twelve-storey residential flat building with the Victoria Street station access to Kings Cross Station at ground level.
12. The surrounding area is generally characterised by a mixture of land uses, primarily retail at ground floor and generally residential or commercial uses on upper levels.
13. The site is not identified as a heritage item but is located within the Potts Point heritage conservation area (Map reference C51). The site is identified as a detracting building within the heritage conservation area.
14. The site is located within the Kings Cross locality and is identified as being subject to flooding along road frontages.
15. Site visits were carried out on 20 November 2025 and 31 July 2027.
16. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site (in red outline) and surrounds



Figure 2: Front of the site (dashed red) viewed from Darlinghurst Road, looking west



Figure 3: Looking north along Darlinghurst Road (site dashed red)



Figure 4: Looking south-west along Darlinghurst Road (site indicated within red arrow)



Figure 5: Rear of the site (dashed red) viewed from Earl Street, looking south



Figure 6: Ground level retail arcade looking from Darlington Road towards Kings Cross Station entrance

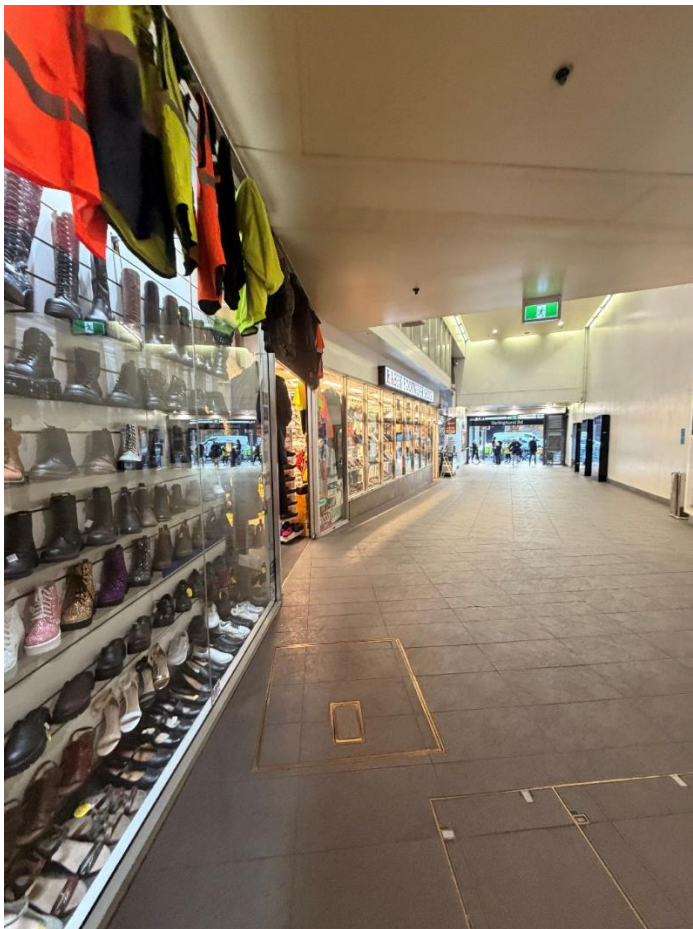


Figure 7: Ground level retail arcade looking from Kings Cross Train Station elevator towards Darlington Road



Figure 8: Existing basement level 2



Figure 9: Existing basement level 1

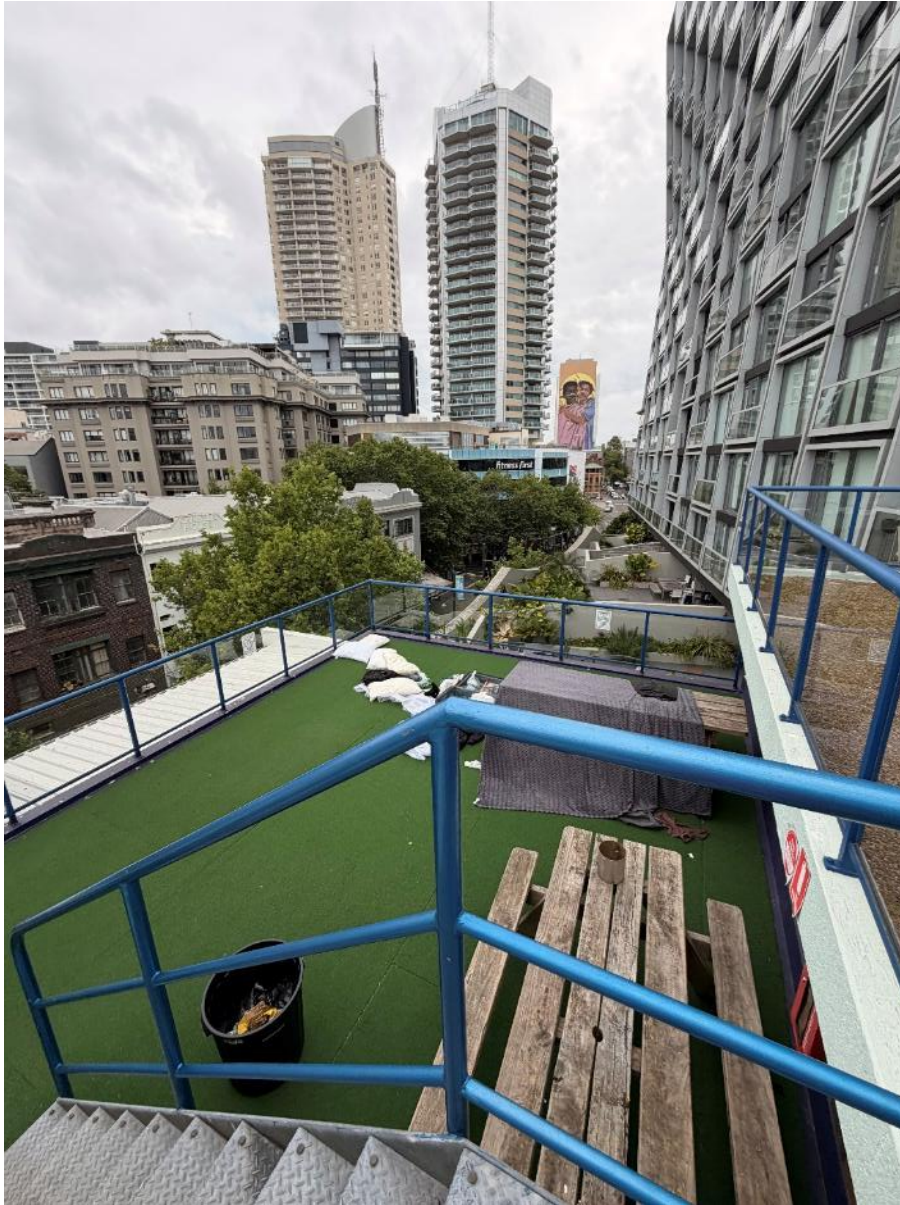


Figure 10: Eastern side of existing rooftop terrace at the front of the building looking south



Figure 11: Western side of existing rooftop terrace at the front of the building looking west

History relevant to the development application

Development applications

17. The following applications are relevant to the current proposal:

- **D/2022/1107** – Development consent was refused by the Local Planning Panel on 13 December 2023 for alterations and additions to an existing mixed use building, including two additional levels; consisting of a backpacker hostel accommodation split over 5 levels and several pocket retail tenancies within the street level arcade entrance to Kings Cross Station.

Under the refused scheme, although additional floor space was proposed, the occupancy of the backpacker accommodation was proposed to reduce from a maximum of 94 guest as existing to 91 guest and a manager's room.

The reasons for refusal of the previous DA were as follows:

- The proposal is in breach of the floor space ratio development standard applying to the site pursuant to Clause 4.4 of the Sydney Local Environmental Plan 2012 and the application fails to satisfy the provisions of Clause 4.6(3) of the Sydney Local Environmental Plan 2012 to justify contravention of the standard.
- The Clause 4.6 variation request is not supported as the proposal is inconsistent with the Floor Space Ratio development standard objectives of Clause 4.4 of the Sydney Local Environmental Plan 2012. The proposed variation of the development standard creates excessively bulk and massing, which will adversely impact upon the character of the locality, and adversely impacts upon the residential amenity of the locality by way of unacceptable overshadowing to adjoining properties.
- The applicant's written request to vary the Floor Space Ratio development standard fails to address the requirements of Clause 4.6(3) of the Sydney Local Environmental Plan 2012 as it does not accurately identify or address the Floor Space Ratio controls applying to the site or the zoning of the land.
- The proposal is in breach of the height of buildings development standard applying to the site pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012 and the application fails to satisfy the provisions of Clause 4.6(3) of the Sydney Local Environmental Plan 2012 to justify contravention of the standard.
- The applicant's written request to vary the Height of Buildings development standard fails to address the requirements of Clause 4.6(3) of the Sydney Local Environmental Plan 2012 as it does not accurately identify or address the zoning of the land.
- The proposed development causes unacceptable overshadowing of neighbouring residential properties, resulting in a non-compliance with the solar access provisions provided by Section 4.2.3.1 of the Sydney Development Control Plan 2012.
- The proposed development is in breach of the 4-storey street frontage height control applying to the site, pursuant to Section 4.2.1 of the Sydney Development Control Plan 2012.
- The design of the proposed development lacks cohesion, appears incongruous within the streetscape and fails to exhibit detailing appropriate to the building type and location, pursuant to the design excellence provisions established by Clause 6.21C(2)(a) the Sydney Local Environmental Plan 2012.

- The design of the proposed development, which exceeds the maximum height and floor space ratio standards, is of poor quality and fails to achieve the objectives of Division 4 Design Excellence of the Sydney Local Environmental Plan 2012, which is to deliver the highest standard of architectural, urban and landscape design.
- The development is considered unsatisfactory when assessed against the considerations contained in 6.21C (2) of the Sydney Local Environmental Plan 2012, particularly as it:
 - (i) does not demonstrate that a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved;
 - (ii) does not demonstrate that the form and external appearance of the proposed development will improve the quality and amenity of the public domain; and
 - (iii) will result in unacceptable overshadowing impacts to neighbouring properties.

Pre-development application advice (PDA/2024/72)

18. Pre-development application advice was sought by the applicant on 4 April 2024 in relation to a redesign for the previously refused development proposal under Development Application D/2022/1107. The architect for the previously refused scheme was James Burns Architect. Before seeking pre-DA advice for the revised scheme, the architect for the project was changed to McGregor Westlake Architecture.
19. In response, a site visit was undertaken and a meeting was held at Council offices on 29 April 2024 prior to Council issuing written advice on 22 May 2024 advising the following:
 - The continued use of the site as backpackers accommodation is supported. The proposal must be designed to respond to Section 4.2 and Section 4.4.8 of Sydney DCP 2012.
 - All operational matters should be detailed within a Plan of Management prepared in accordance with Schedule 3.2 of the Sydney DCP 2012.
 - The proposal presents a significant departure from the floor space ratio (FSR) control. The departure from the FSR development standard can be supported in principle by Council officers. Any future DA must be accompanied by a clause 4.6 variation request justifying the departure by clearly demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances, and there are sufficient environmental planning grounds to justify the contravention of the development standard.
 - The proposal also presents a minor departure to the height in metres control for the lift overrun. This departure is also supported in principle and should be accompanied by a clause 4.6 variation request as per the above.
 - The calculation of GFA and FSR on the GFA plans shall be revised to be in accordance with the definition of GFA in the Sydney LEP 2012.
 - An acoustic report should be submitted with any future development application to verify the acoustic performance of the building.

- Concerns remain with the proposal in relation to privacy and overlooking impacts, particularly considering the close proximity of the windows located on the north western elevation of the residential building at 99-105 Darlinghurst Road. Further treatment is required to these windows to address visual privacy.
- Any new windows on boundaries will be assessed carefully as part of any future DA, taking into account the uses of adjacent rooms within 220 Victoria Street, and noting that windows on boundaries cannot be protected in perpetuity.
- The modulation and materials proposed to the Earl Street elevation are supported in principle. However concerns are raised in relation to the proposed overhang of the solid portion of the building on levels 1 to 5 as this structure projects over Council owned land. As outlined in Schedule 4 of the Sydney DCP 2012, projections over or into public roads are accepted for balconies or bay windows if the projection extends not more than 450mm over the road/footpath alignment, comprises not more than 50% of any road frontage of the building at any level, is at least 3.2m above the footpath and at least 800mm from the face of the kerb. The proposed projection does not meet these requirements and is not supported.
- Further details are required with regard to the hydrant booster from a design and space perspective.
- The proposed level of demolition is supported, noting that the side walls and floors are proposed to be retained and new rear walls are built on top of existing retained rear walls. Structural drawings and certification supporting the proposed demolition and construction will be required as part of any DA.
- Justification is to be provided as to why the new front elevation walls are proposed across the front boundary, rather than entirely within the subject site.
- The proposed front fenestration proportions are compatible in the HCA. Consideration should be made to locating the balustrades at the glazing line rather than on the edge of the metal hood. The face brick finish to the front facade is also considered to be appropriate in the HCA. Detailed materials, finishes and colours should be submitted as part of any future DA, noting that full bricks should be used rather than brick slips, and glazing to the Darlinghurst Road facade is to be clear. Investigations should also be made as to whether an additional fire hydrant booster will be required to Darlinghurst Road.
- The Level 5 roof plan shows the communal open space setback approximately 3m from the front property boundary. The required balustrade must be integrated within the design of the top floor and shown on the relevant elevations, sections and perspectives.
- Information submitted demonstrates that the private open space areas of the Omnia building appears to achieve the required amount of solar access in accordance with the DCP and ADG. Information is to be provided as part of any future DA to assess the impacts of the proposed addition on the living room windows located on the north eastern elevation of the Omnia building.
- It is recommended that all communal areas proposed to be used by accommodation guests are located on floors that are accessible via the lift. Alternatively, a BCA Report outlining performance solutions must be submitted with any future DA.

- Any future DA must address waste storage and collection.
- All bicycle parking and end of trip facilities (such as lockers and showers for staff) should comply with DCP requirements and should be designed to comply to AS 2890.3:2015 standards for "Class B" parking facilities. Bicycle parking facilities appears to be accessed via stairs from the Earl Street lobby. The location of the bicycle parking should be reconsidered to provide better access to parking facilities, or clarification should be provided as to whether the facilities can be accessed via the lift. Loading servicing is proposed to be conducted from the kerb. Considering the scale of the development and its intended use, kerbside servicing may be acceptable.

Amendments

20. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 22 January 2026. Further details were requested with regard to the following:
- (a) the proposed maximum building height
 - (b) gross floor area calculations
 - (c) the provision of a Design Excellence Report
 - (d) contextual information in relation to the front elevation wall proposed across the front boundary to Darlinghurst Road
 - (e) details of easements for fire stair access and windows borrowing amenity across the north-western boundary
 - (f) additional shadow diagrams and assessment of solar access
 - (g) window operability
 - (h) staff numbers and staffing arrangements
 - (i) compliance with the provisions of Section 4.4.8.2 of the DCP which relate to backpackers accommodation
 - (j) total floor area for the purpose of calculating affordable housing contributions in accordance with Clause 7.13 of the Sydney LEP
 - (k) details of existing and proposed number of keys and beds, and detailed of both existing and proposed retail gross floor area for the purpose of calculating Section 7.11 development contributions
 - (l) details of new gross floor area for the purpose of calculating the applicable Housing and Productivity Contribution
 - (m) alignment of the services drawings and reports with the architectural drawings
 - (n) flooding, stormwater and levels details.

21. The following amendments were also requested:
- (a) Toilets that are separate from shower facilities are to be provided on each level where there are backpacker rooms. This is to ensure that residents have adequate access to toilets while showers are occupied / in use.
 - (b) A staff room is to be demonstrated on the plans.
 - (c) Consideration given to the provision of a waste collection area within the boundary of the property to allow for a wheel-in wheel-out waste collection service.
 - (d) Landscaping elements and a landscape plan to be provided for the communal roof terrace, including a safety review of roof terrace elements.
 - (e) Bollards showing outside property boundary on Earl Street to be located within the site boundaries.
22. The applicant responded to the request on 9 and 25 March 2026, and submitted the following information:
- (a) updated Statement of Environmental Effects providing the requested additional detail
 - (b) updated architectural drawings providing the requested additional detail and amendments, including a maximum height plane diagram, contextual information for neighbouring properties, additional shadow diagrams, and relocating the bollards in Earl Street to within the property boundaries. The proposed main entrance to the backpacker accommodation off Earl Street was also modified to accommodate a hydrant booster in this location
 - (c) updated Plan of Management providing the requested additional detail
 - (d) easement details
 - (e) a Design excellence report
 - (f) updated Clause 4.6 variation requests
 - (g) a Site flood assessment report
 - (h) updated access report
23. On 12 May 2026, following a review of the additional information and amendments submitted by the applicant, Council Officers requested that the roof form be redesigned to ensure adequate solar access is retained to the living room window of Unit 6-12 of the Omnia building at 113 Darlinghurst Road.
24. The applicant responded to this request on 27 May 2026 with updated architectural drawings (with the roof form amended) and shadow diagrams.
25. Further, on 23 May 2026, Council officers requested further changes to the proposal in relation to the following:
- (a) removing any encroachments onto neighbouring properties / lots under different land ownership

- (b) corrections to gross floor area calculations
 - (c) update to the clause 4.6 variation report for building height to reflect the change to the proposed building height
 - (d) corrections to total floor area calculations
 - (e) updates to the Plan of Management to address NSW Police recommendations for the proposal and how access via the entrance off the Sydney Trains pedestrian arcade to the Kings Cross Train Station will be managed
 - (f) update to flood report to include the recommended flood planning level for the lift at the lower lobby which goes to Basement 2 level, and details of any additional flood protection measures required to protect the lifts
26. The applicant responded on 21 August 2026 with the following:
- (a) updated architectural drawings removing encroachments onto neighbouring properties/lots under different ownership, relocating one of the fire stair egress doors to address CPTED concerns, and removing the accessible entrance and backpacker accommodation lobby at ground floor level adjacent to the Sydney Trains pedestrian arcade - this is instead proposed to be retained as a retail premises
 - (b) updated flood assessment report
 - (c) updated design excellence report
 - (d) updated stormwater drainage plan

Proposed development

27. The application seeks consent for alterations and additions to the existing mixed-use building above Kings Cross Train Station, including construction of two additional levels.
28. The application principally proposes an extension and upgrade of the existing backpacker accommodation, in addition to several small-scale pocket retail tenancies within the street level arcade entrance to Kings Cross Station.
29. The proposed scope of works consists of the following:

Extension and upgrade of backpacker accommodation

- construction of a two-storey addition atop of the existing building
- new communal roof terrace facing, but setback from, Darlinghurst Road
- upgrade of backpacker facilities across all levels, including new sleeping rooms, communal lounge/dining/kitchen areas, manager's office and sleeping room, reception, bathrooms and amenities. The maximum backpacker guest occupancy is increased from 94 guests to 113 guests

- changes to basement levels to provide a staff room, laundry room, waste/storage areas, a pump room, parking for 14 bicycles, bathrooms, lockers and amenities
- creation of an enlarged lightwell void from second floor extending up to roof level to improve amenity to sleeping rooms and circulation spaces
- the existing windows on the north-western site boundary are proposed to be enlarged, and new windows are proposed along this boundary on the new upper-level floors
- new stairs and lift access

Changes to Kings Cross Station entrance arcade

- no works are proposed within Stratum Lot 2 (being the pedestrian arcade connecting Darlinghurst Road and Kings Cross Station)
- reconfiguration of the retail tenancies accessible from the arcade
- retention of the existing coffee cart tenancy within the arcade adjacent to Darlinghurst Road
- demolition and reconstruction of part of the shopfront glazing at ground level within Lot 1 to enable changes to the shopfront glazing and reconfiguration of the retail tenancies and entrances.

Darlinghurst Road frontage

- demolition of existing facade, and construction of a new Saffron-coloured glazed brick facade to Darlinghurst Road
- new balustrades to the windows of the upper-levels fronting Darlinghurst Road
- retention of the existing fire stair entrance off Darlinghurst Road

Earl Street frontage

- demolition of existing facade, and construction of a new Saffron-coloured glazed brick and glass block facade to Earl Street
- a new main entrance to the backpacker accommodation off Earl Street
- new bollards are proposed in front of the Earl Street entrance, within the site boundaries
- a new kerb, gutter and pram ramp within the public domain is proposed at the end of Earl Street
- New fire stair ingress/egress doors to Earl Street, and infilling of the existing fire stair egress door to Lot 4 within Lot 1

30. Plans and elevations of the proposed development are provided below.

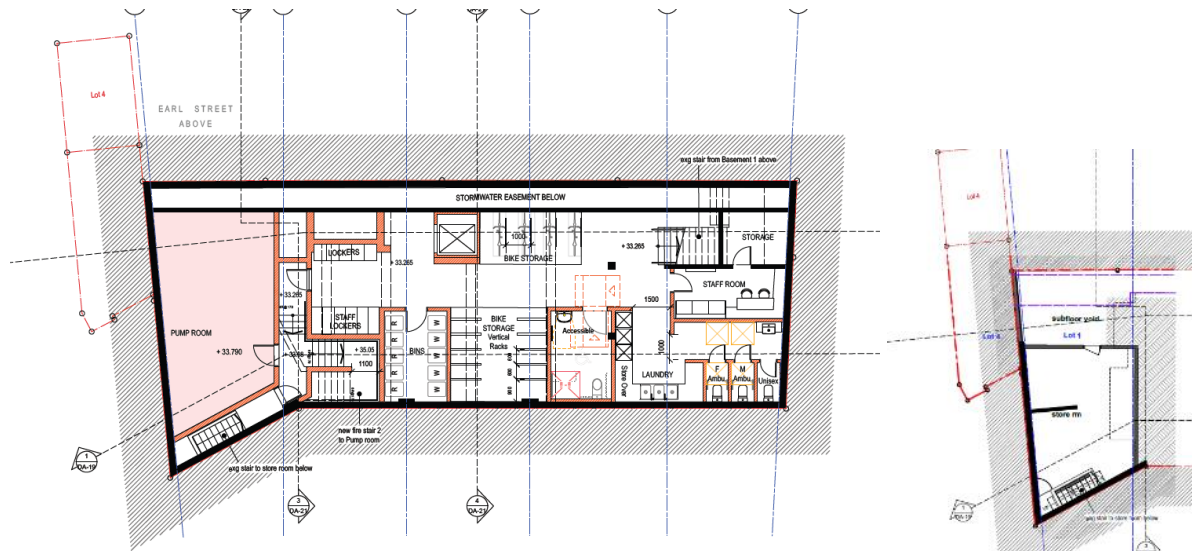


Figure 12: Proposed Basement Level 2 & 3 Floor Plans

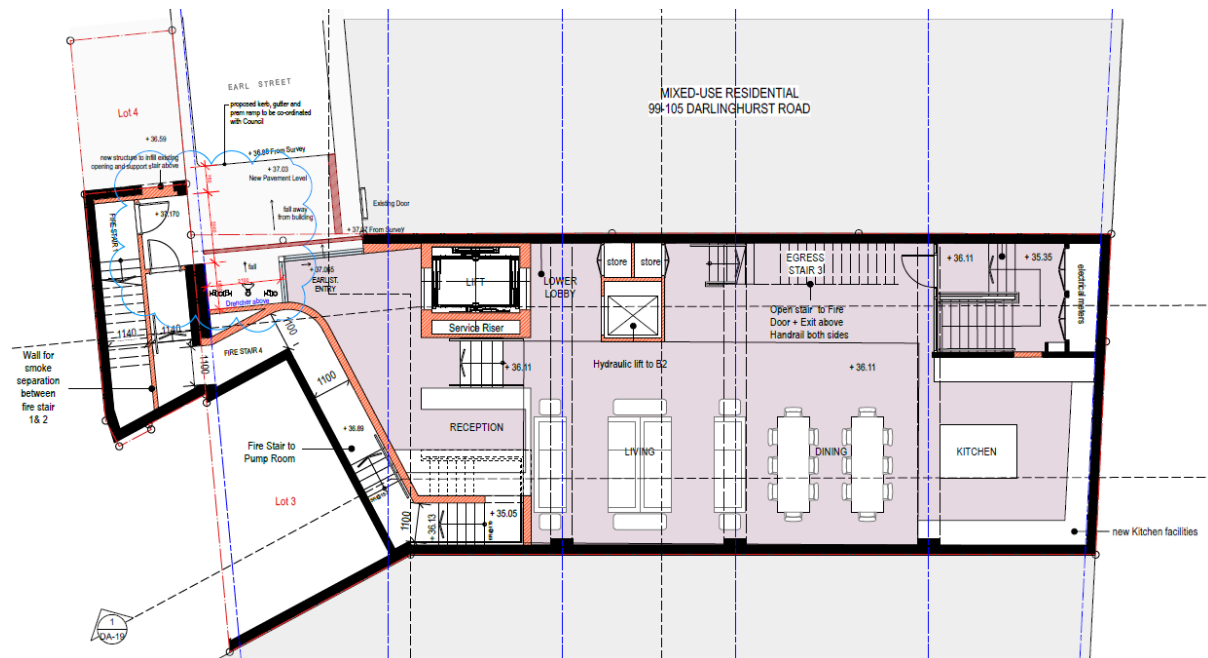


Figure 13: Proposed lower ground floor (Earl Street level) plan / Basement 1

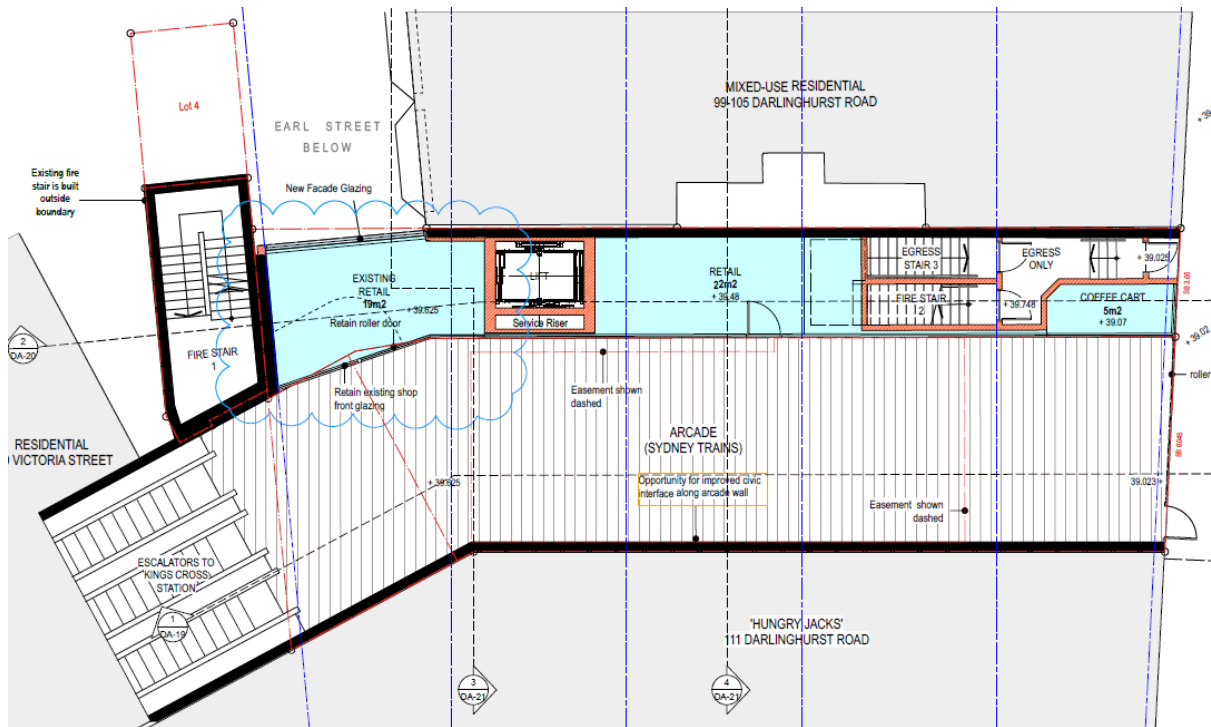


Figure 14: Proposed ground floor (Darlinghurst Road) plan

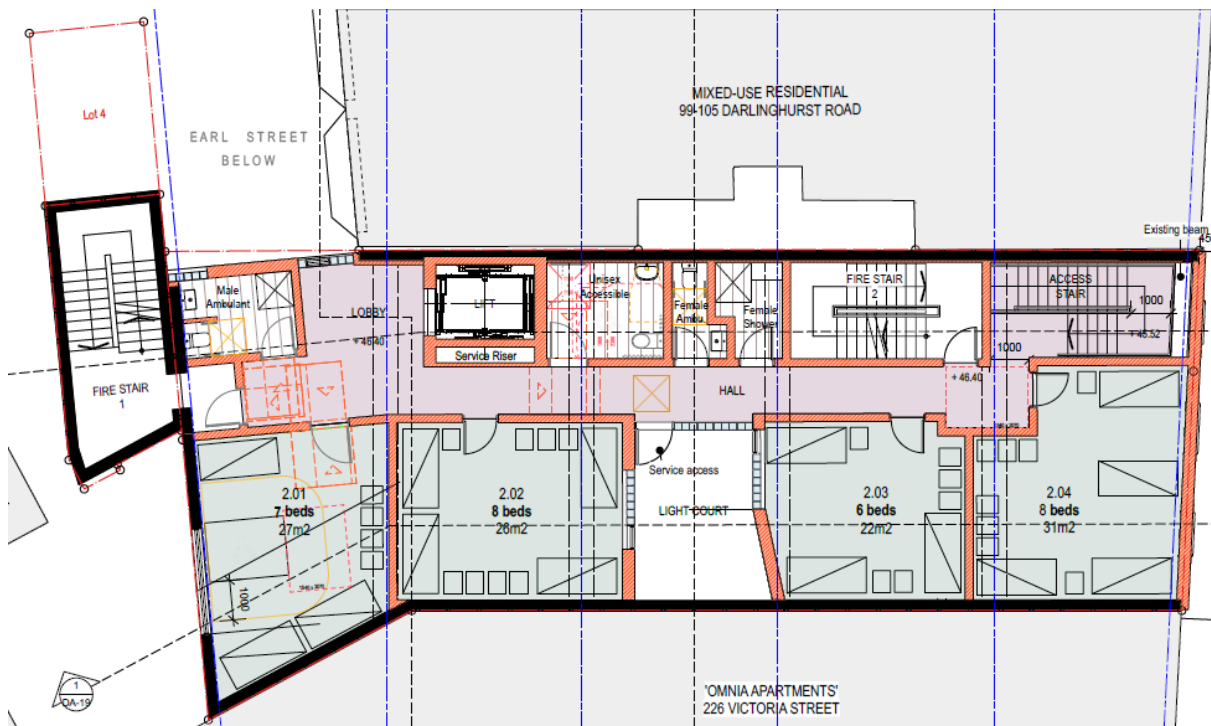


Figure 15: Proposed Level 2 plan

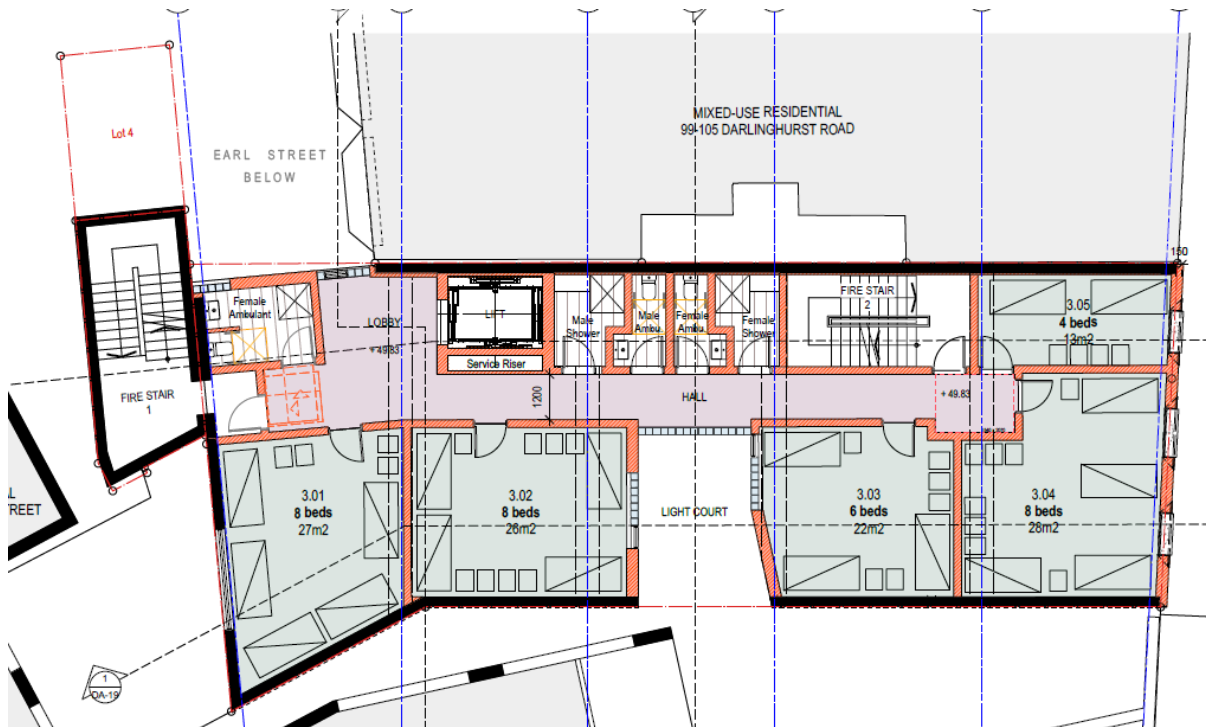


Figure 16: Proposed Level 3 plan

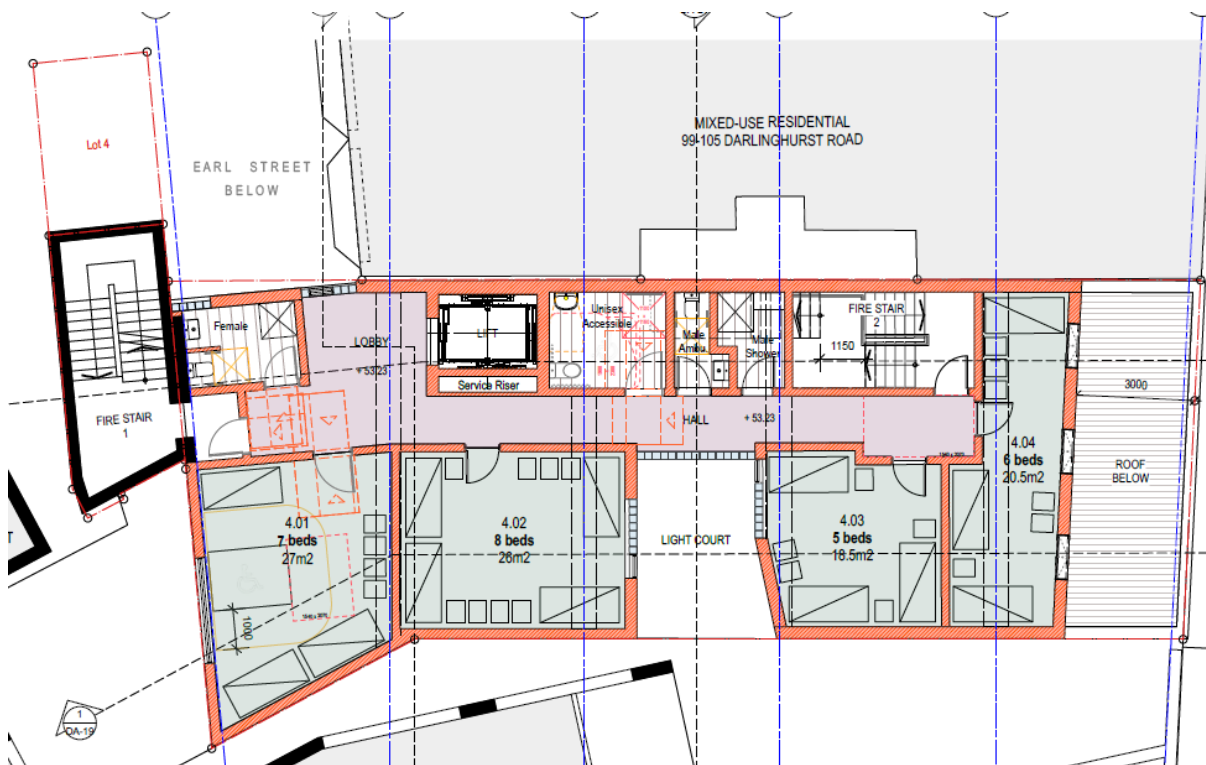


Figure 17: Proposed Level 4 plan

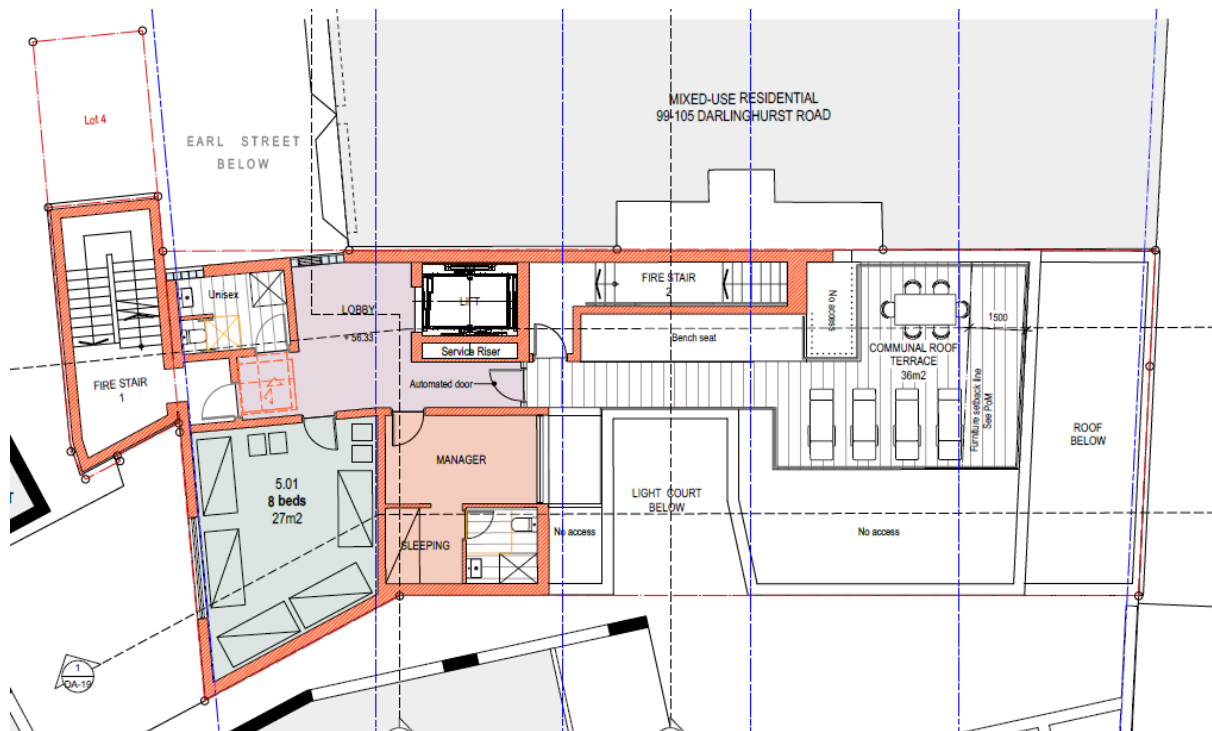


Figure 18: Proposed Level 5 plan



Figure 19: Proposed east elevation - Darlinghurst Road

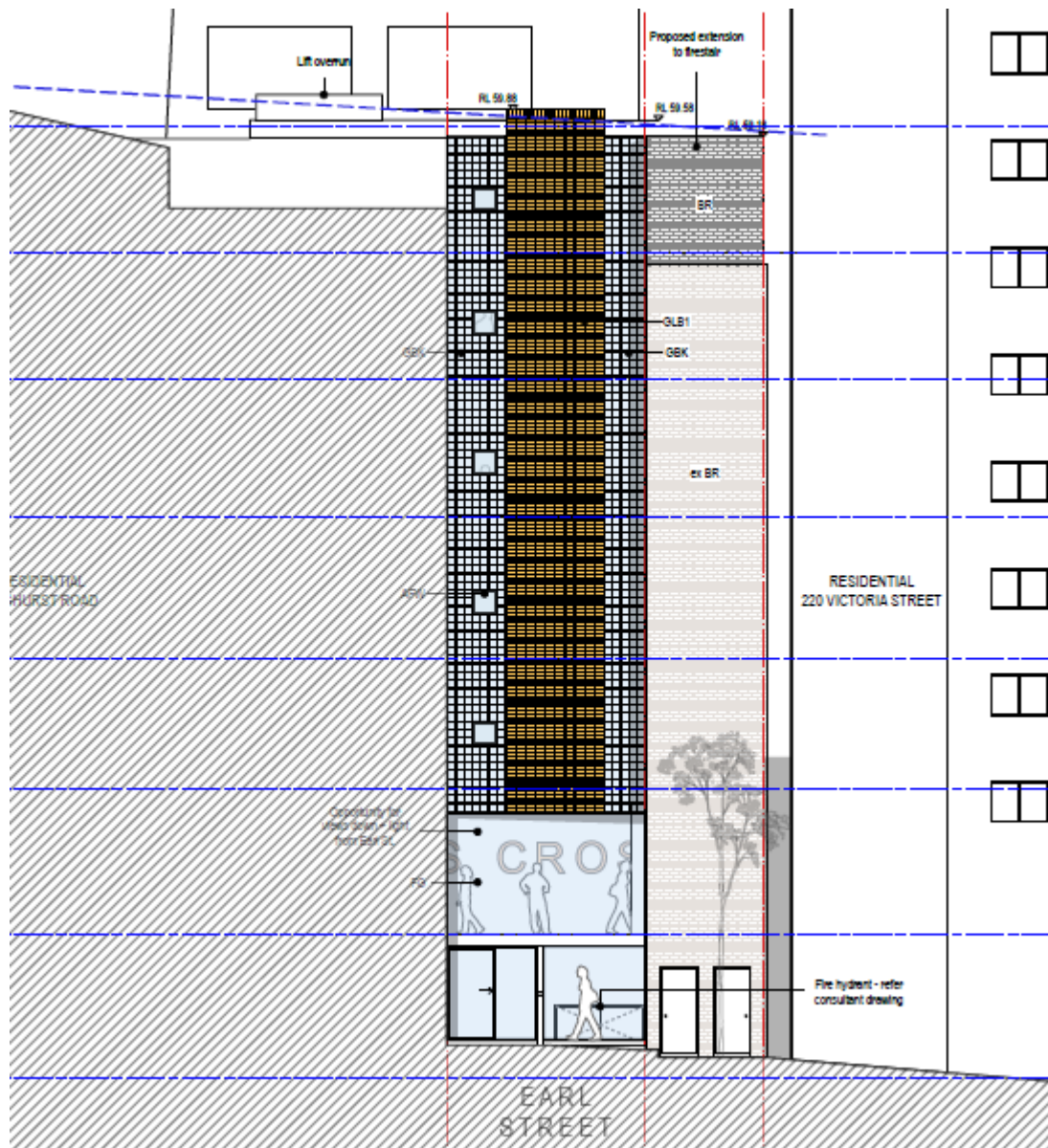


Figure 20: Proposed north elevation - Earl Street

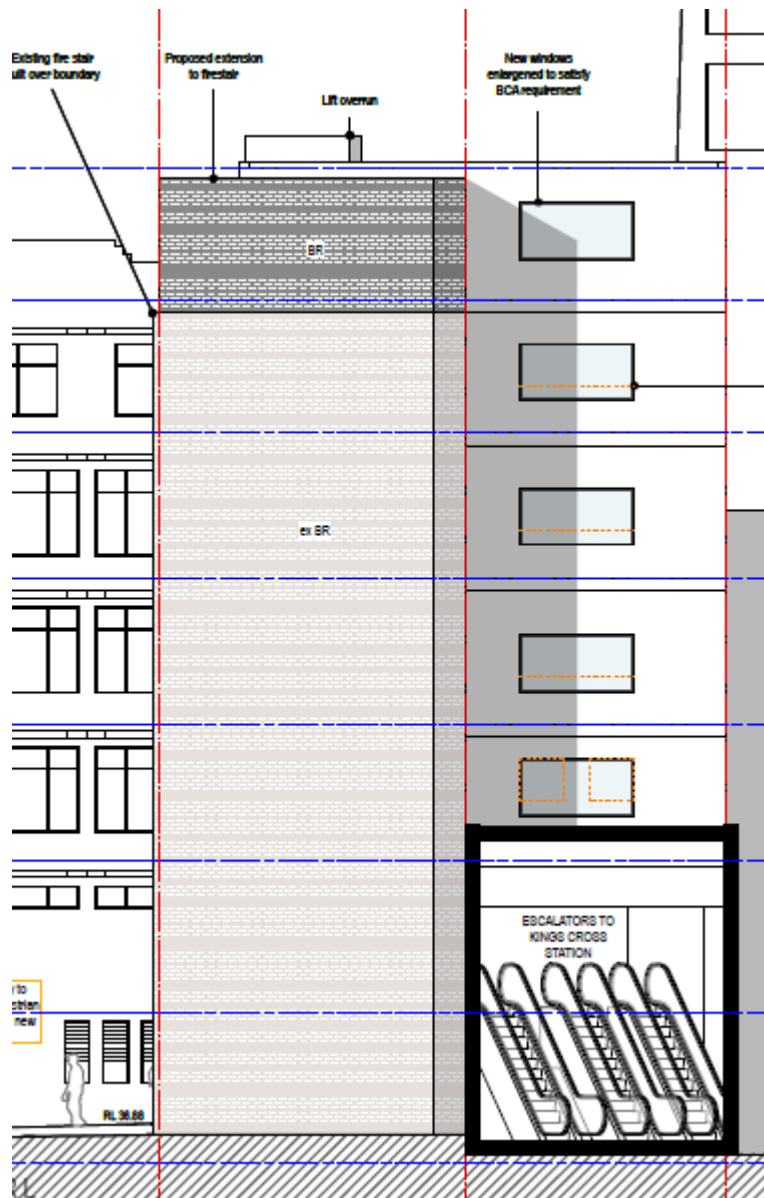


Figure 21: Proposed west elevation

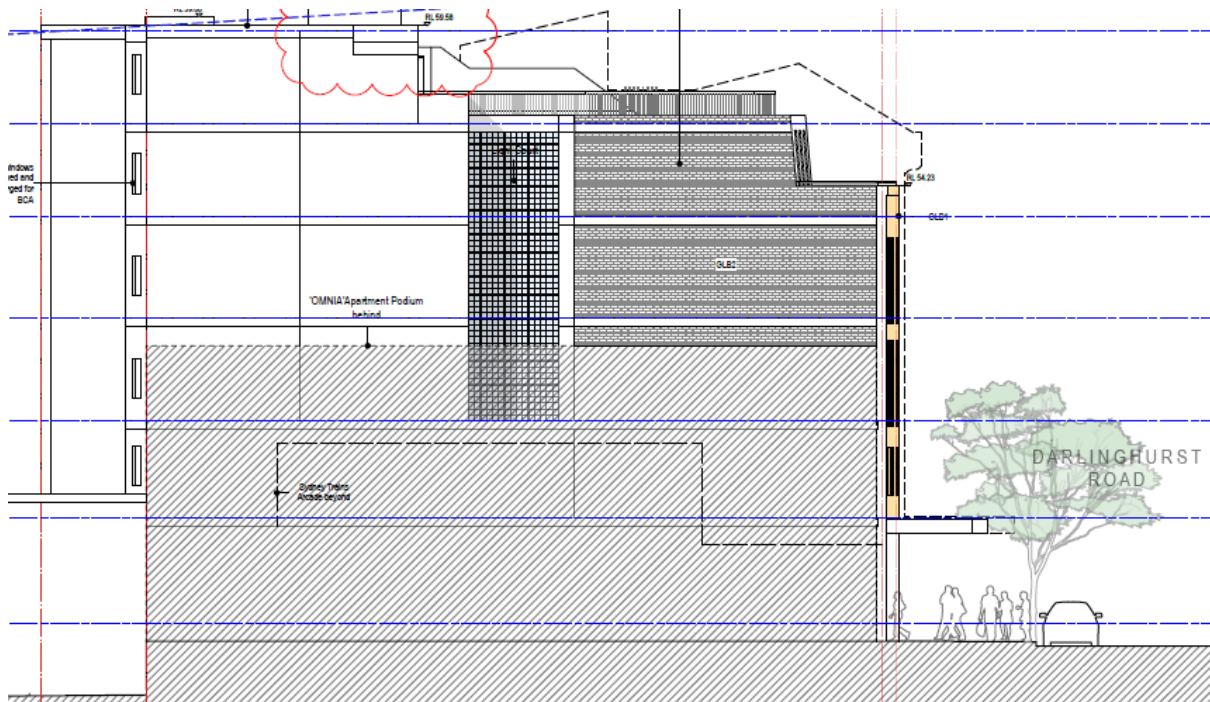


Figure 22: Proposed south elevation

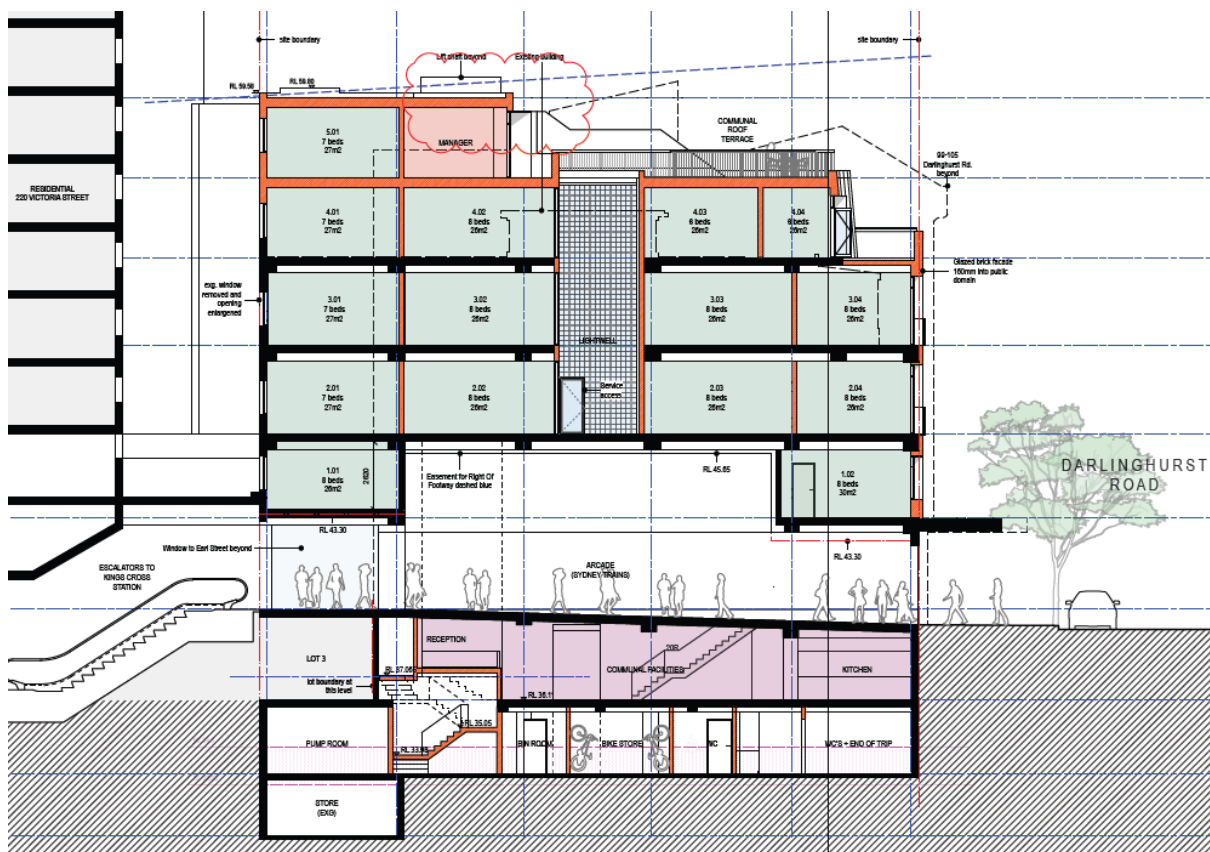


Figure 23: Proposed cross section through Sydney Trains pedestrian arcade

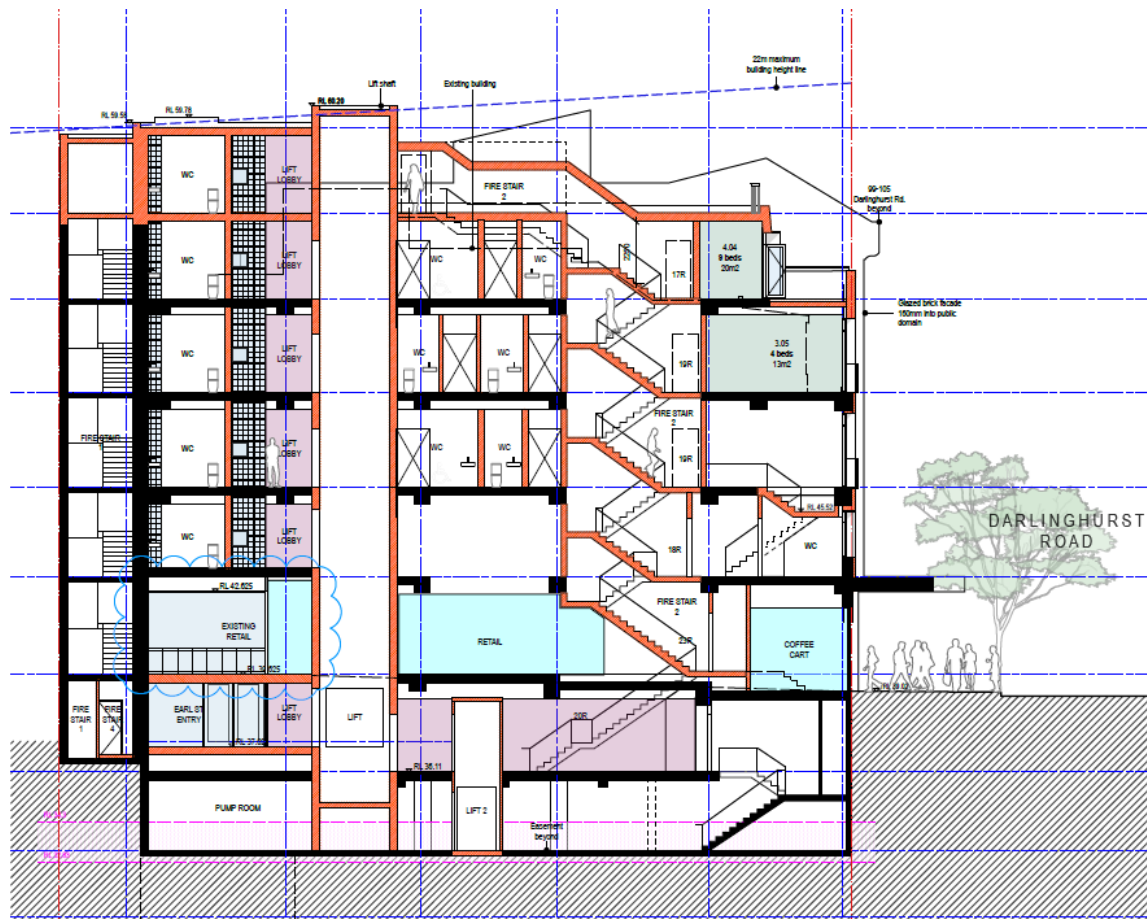


Figure 24: Proposed cross section

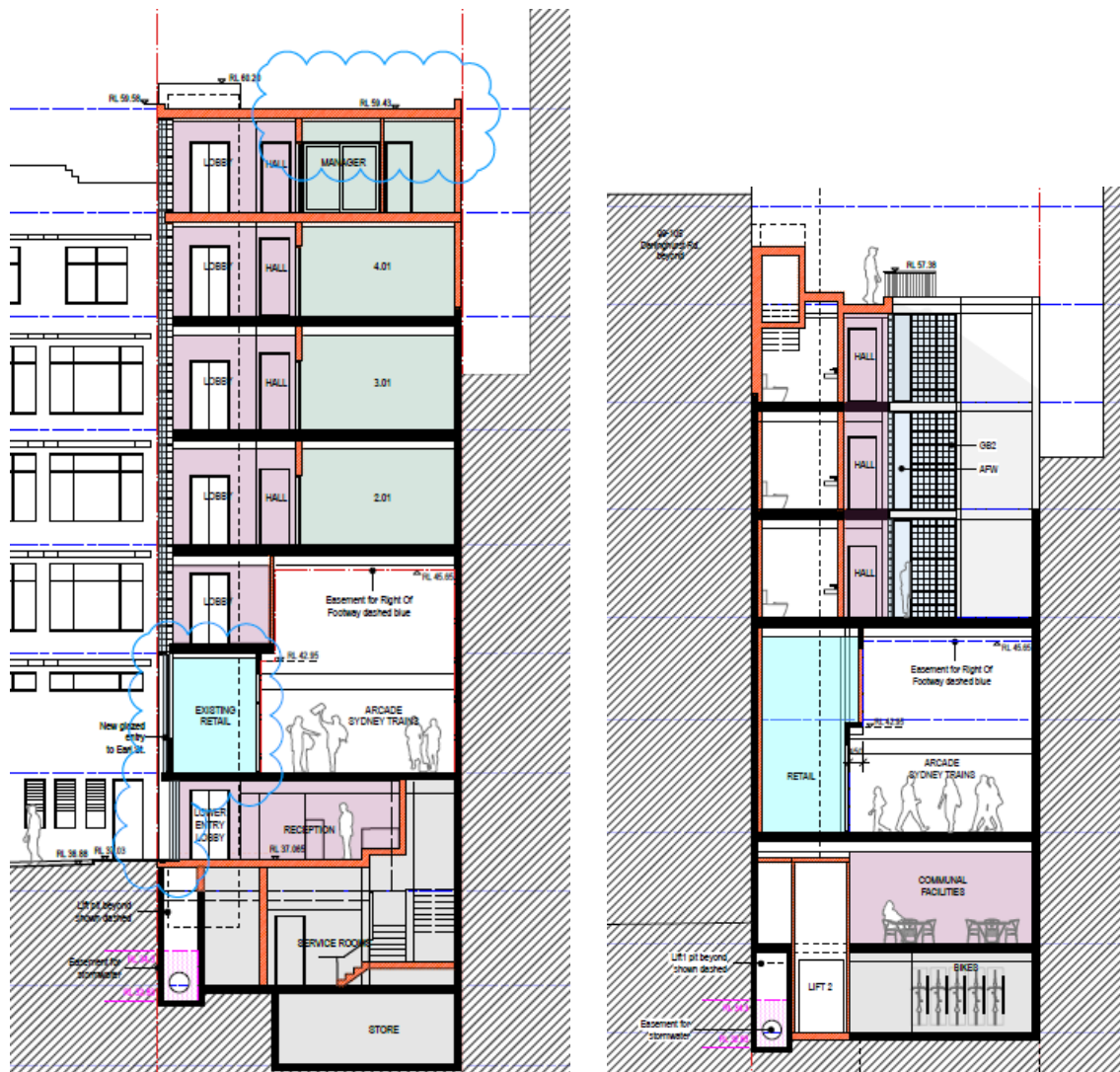


Figure 25: Proposed cross sections



Figure 26: Proposed photomontage as viewed from Darlinghurst Road



Figure 27: Proposed photomontage as viewed from Earl Street

Assessment

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

State Environmental Planning Policies

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors

Clause 2.99 – Excavation in, above, below or adjacent to rail corridors

33. Under Clause 2.99 of the SEPP, the consent authority must not grant consent to development to which this section applies without the concurrence of the rail authority for the rail corridor to which the development application relates. This section of the SEPP applies to development that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land within, below or above a rail corridor or within 25m of ground directly above an underground rail corridor.
34. As the application does not involve the penetration of ground, Clause 2.99 of the SEPP does not apply. In any regard, pursuant to subsection (5) of Clause 2.99, the consent authority may grant consent to development to which this section applies without the concurrence of the rail authority if 21 days have passed since the consent authority gave notice under subsection (2)(a) and the rail authority has not granted or refused to grant concurrence. Notice of the DA was given to Transport for NSW (Sydney Trains) in November 2025.
35. Sydney Trains have not commented on the merits of the proposal. It is noted that Sydney Trains provided concurrence to the previously refused scheme for the site (D/2022/1107) which is similar to the current proposal in its relationship to the rail corridor.

Clause 2.120 – Impact of road noise or vibration on non-road development

36. The site is adjacent to Darlinghurst Road which has an annual average daily traffic volume of more than 20,000 vehicles.
37. An acoustic report has been submitted with the application which considered Clause 2.120 of the SEPP, however it is noted that Clause 2.120 of the SEPP is not applicable given that the proposed development is for a type of tourist and visitor accommodation, and this clause of the SEPP only applies to development for the purposes of residential accommodation, a place of public worship, a hospital or an educational establishment or centre-based child care facility.

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

38. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
39. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

State Environmental Planning Policy (Sustainable Buildings) 2022 - Chapter 3 Standards for non-residential development

40. As per Clause 3.1 of the SEPP, Chapter 3 only applies to non-residential development that involves:
 - (a) The erection of a new building, if the development has an estimated development cost of \$5 million or more, or
 - (b) Alterations, enlargement or extension of an existing building, if the development has an estimated development cost of \$10 million or more.
41. The proposal involves alterations and enlargement of an existing building, however the submitted cost estimate report identifies an estimated development cost of \$9,304,000 for the proposal. As such, Chapter 3 of the SEPP which relates to non-residential development does not apply to the proposal.

Local Environmental Plans

Sydney Local Environmental Plan 2012

42. 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	The site is located in the E1 - Local Centre zone. The proposed development is defined as a mixed-use development containing backpacker accommodation and retail premises, and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Acceptable, Clause 4.6 supported.	A maximum building height of 22 metres is permitted. A height of 22.641 metres is proposed. The proposed development does not comply with the maximum height of buildings development standard. A variation to the height of buildings development standard in accordance with clause 4.6 has been submitted in response and is supported. Refer to further information under the 'Discussion' section.
4.4 Floor space ratio	Acceptable, Clause 4.6 supported.	The site is subject to two different floor space ratio controls of 2:1 and 3:1 which applies over different parts of the site. Using the different floor space ratios, the permitted gross floor area (GFA) across the entire site has been calculated to be 599.3 square metres. 935.9 square metres of GFA is proposed. The proposed development does not comply with the maximum floor space ratio development standard applying to the site. A variation to the floor space ratio development standard in accordance with clause 4.6 has been submitted in response and is supported. Refer to further information under the 'Discussion' section, including an assessment of compliance against each of the individual Floor Space Ratio controls.
4.6 Exceptions to development standards	Yes, refer to discussion section	As discussed above, Clause 4.6 variations have been submitted in response to the exceedance of the height of building and floor space ratio development standards and is supported. Refer to further information in the Discussion section

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site is located within the Potts Point heritage conservation area (C51) and the existing building is identified as 'detracting'. Council's heritage officer has raised no objection to the proposal. The proposed development will not have a detrimental impact on the heritage significance of the heritage conservation area.
5.21 Flood planning	Yes	The site is identified as being subject to flooding. The applicant submitted a flood assessment dated 25 March 2026 which has been reviewed by the City's Public Domain Unit who confirmed that the recommended flood planning levels are acceptable. Conditions of consent are recommended in Attachment A requiring compliance with the levels in the submitted flood assessment and requiring details of flood risk management measures to be submitted to and approved by the Accredited Certifier.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area. The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the

Provision	Compliance	Comment
		surrounding area and future occupants. The development therefore achieves design excellence.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	The proposed development involves alterations to an existing building that will result in the creation of more than 60 square metres of gross floor area that is intended to be used for a purpose other than residential accommodation, and therefore is subject to an affordable housing contribution. A condition requiring payment of an affordable housing contribution is included in the recommended conditions of consent in Attachment A.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Development Control Plan 2012

43. 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

44. The site is located within the Kings Cross locality. The proposed development is in keeping with the unique character and the design principles of the Kings Cross locality. Specifically:
- The proposal responds to and complements the Potts Point heritage conservation area.
 - The proposal maintains the built form structure of the neighbourhood.

- The proposal reinforces the urban form of Darlinghurst Road and provides upper-level setbacks from Darlinghurst Road to respect the existing street wall heights.
- The proposal will result in interesting development which references the socio-historic significance of Darlinghurst Road and supports community diversity and harmony.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	Conditions are included in Attachment A which will ensure that all new water fittings and fixtures such as shreds, water tap outlets, urinals and toilet cisterns are to be the highest Water Efficiency Labelling Scheme (WELS) star rating available at the time of development. Subject to these conditions, the development satisfies ecologically sustainable development requirements.
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under section 5.21 of the LEP above.
3.9 Heritage	Yes	The site is located within the Potts Point heritage conservation area (C51). The building is identified as a detracting building. The proposed development is consistent with the heritage character of the area. Council's heritage officer has raised no objection to the proposal.
3.11 Transport and Parking	Yes	The application proposes to allocate 14 bicycle parking spaces within the basement which meets the requirements of the DCP. Section 3.11.3 of the DCP requires that 1 personal locker be provided for each bike parking space, and 2 shower and change cubicles be provided for provision of 11 to 20 bike parking

Provision	Compliance	Comment
		spaces for non-residential uses. Lockers, one accessible bathroom, and separate individual male, female and unisex toilet facilities are provided on the Basement B2 level in proximity to the bike parking spaces. While these do not strictly meet the provisions of the DCP in relation to end of trip facilities for non-residential uses, it is acceptable given the nature of the non-residential use - being a backpackers accommodation, whereby additional lockers, and toilet and shower facilities are provided on the upper floors in association with the backpackers accommodation use. The application was referred to Council's Transport and Access Unit who raised no objection, subject to conditions which are included in Attachment A.
3.12 Accessible Design	Yes	The applicant has provided an access design review report which assesses the ability of the proposed building works to comply with the BCA. The accompanying access statement prepared by Jensen Hughes states that compliance with the relevant Australian access standards can be achieved. The application was referred to Council's Construction and Building Unit who raised no objection to approval of the development application, subject to recommended conditions of consent. On 21 August 2026, the proposal was amended to remove a proposed accessible entrance to the backpackers accommodation from the Sydney Trains pedestrian arcade. It is understood that this change was made to address concerns raised by Sydney Trains with regard to the use of the pedestrian arcade for an entrance to the backpackers accommodation, particularly given that the arcade is not open to the public on a 24-hour basis.

Provision	Compliance	Comment
		All aspects relating to performance solutions to address disability standards are required to be considered by the Certifying Authority prior to a Construction Certificate being issued for any consent. Council is satisfied that there are opportunities to provide an accessible entrance to the backpacker accommodation in the amended design which can be addressed at Construction Certificate stage.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	The application was referred to Council's Cleansing and Waste Unit who observed that the proposed waste arrangements for the backpacker accommodation are not ideal in relation to waste storage or collection of bins due to the limitation of Earl Street for waste collection and the number of bins that can be presented in the laneway for collection, the size of the waste storage area, and the required frequency of collection. A waste collection area within the boundary of the property was recommended to allow for a wheel-in wheel-out waste collection service. However, due to the provision of a fire hydrant booster at the Earl Street entrance to the backpacker's accommodation, such a waste holding area cannot be accommodated given the limited space available. Section 9 (Waste Management) of the Plan of Management confirms that bins will only be transferred to Earl Street immediately prior to collection and returned to the waste storage area as soon as practicable following servicing. Site staff will be responsible for the presentation and return of bins for collection, ensuring that bins will not be

Provision	Compliance	Comment
		stored on Earl Street for long periods of time to minimise any impacts on public amenity. This approach is acceptable given that there are limited alternatives. Council's Cleansing and Waste Unit has raised no objection to the proposed waste arrangements subject to conditions. Furthermore, the submitted waste management plan has used waste generated rates based on a lower previous usage, rather than current guideline rates. Council's Cleansing and Waste Unit has advised that this is acceptable in this instance given the preference to reduce the number of bins presented on the street for collection. The waste and recycling collection service for the proposed development will continue to be provided by a private waste contractor. The waste management plan has stated that the waste management for the retail premises / coffee cart, which are accessed from the ground level arcade, will not be impacted by the proposed development. A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.16 Signs and Advertisements	Yes	Signage is depicted on the drawings which appears uncoordinated with the Sydney Trains existing signage. Conditions of consent are recommended in Attachment A stating that no signage is approved under this DA and that a separate development application is to be submitted seeking approval for a signage strategy for the building.

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	Yes	The site is permitted a maximum building height of 6 storeys with a maximum street frontage height of 4 storeys. The proposed development is 6 storeys in height with a street frontage height of 4 storeys. Section 4.2.2.2 of the DCP requires a setback above the prescribed street frontage height is to be a minimum of 3m. The proposed upper two levels are setback 3m from the street wall along Darlinghurst Road, and as such the proposal complies with the street frontage height control.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	The proposed additional floors to the existing development achieve the minimum floor to ceiling height of 2.7m for habitable rooms in a mixed-use development for the additional floors proposed to the existing development. There are some minor shortfalls in the minimum floor to ceiling height under the DCP for habitable rooms on the existing floors of the development, and in respect of the minimum floor to floor height of 4.5m at ground floor. This is acceptable given that this is an existing situation, the floors/ceilings on these levels are proposed to be retained by the proposal, and the use of the site for retail / food and drink premises at ground floor and backpacker accommodation above is not proposed to change.
4.2.2 Building setbacks 4.2.2.2 Setbacks above the street frontage height	Yes	The proposal reinforces the areas desired future character by presenting a development which is consistent with the prescribed 4-storey street frontage height control applying to the site, and

Provision	Compliance	Comment
		the prescribed upper level setback as detailed below. Section 4.2.2.2 of the DCP requires a setback above the prescribed street frontage height is to be a minimum of 3m. The proposed upper two levels are setback 3m from the street wall along Darlinghurst Road, and as such the proposal complies with the street frontage height control.
4.2.3 Amenity		
4.2.3.1 Solar access	No, but acceptable	The proposed development is located to the north of a twenty-storey residential flat building known as 'Omnia' at 113 Darlinghurst Road. The DCP requires apartments within a development and neighbouring sites must achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June onto at least 1 square metres of living room windows and a minimum 50% of the required minimum area of private open space area. The applicant has provided shadow diagrams and view from the sun diagrams to facilitate assessment of overshadowing impacts. The submission demonstrates that the proposed development will create additional overshadowing to living room windows and private open space areas of some apartments within the Omnia Building, however the solar access impacts of the proposal are acceptable on balance. Refer to the further details provided under the sub-heading 'Overshadowing' in the 'Discussion' section below.

Provision	Compliance	Comment
4.2.3.2 Lightwells	Yes	The application proposes to create a lightwell void to improve light and amenity to bedrooms and areas of the backpacker accommodation. The lightwell is fully open to the sky. While it is the only source of daylight to the habitable rooms it adjoins, this is acceptable noting that the site is constrained by easements and comprises an existing building on a narrow, deep site which is built to the boundaries, limiting opportunities for daylight access to centrally located rooms. The drawings depict fixed windows to the internal lightwell and a reliance on mechanical ventilation. In this regard, it is not considered that the lightwell will generate undue noise impacts. Furthermore, the fixed windows are depicted as glass blocks which will which allow light into the rooms while minimising the opportunity for overlooking and visual privacy effects to the pedestrian arcade below.
4.2.3.6 Deep Soil	No, but acceptable	The proposed development provides no deep soil planting areas, however the non-compliance is acceptable in this instance as the site is fully occupied by the existing building which restricts opportunity for deep soil provision.
4.2.3.11 Acoustic privacy	Yes	The applicant has submitted an acoustic report with the application to assess the noise impacts of the backpacker accommodation impacting upon nearby residential receivers. The report indicates that appropriate controls can be incorporated into the building design to achieve a satisfactory accommodation environment, and that the development is capable of complying with relevant noise standards subject to detailed design for mechanical plant equipment at Construction Certificate stage and provided that the

Provision	Compliance	Comment
		recommendations as set out in the acoustic report are implemented. It is noted that the noise criteria set out in Section 4.2.3.11 of the DCP applies to residential buildings and serviced apartments only, which do not form part of the proposal. The submitted acoustic report has been reviewed by Council's Environmental Health Unit who have confirmed that the proposal can be supported subject to conditions requiring compliance with the acoustic report and certification of the acoustic design prior to issue of a relevant Construction Certificate. Additional conditions are also recommended in Attachment A requiring updates to the submitted Plan of Management, restricting the use and occupancy of the proposed rooftop area, including banning of amplified outdoor music, in order to minimise acoustic impacts of the space.

4.4 Other Development Types and Uses

4. 4.4.8 Visitor accommodation

Provision	Compliance	Comment
4.4.8.1 General	Yes	The design of the proposed backpacker accommodation use provides acceptable levels of health, safety, cleanliness, amenity and administration for guests. It is appropriately located with good public transport links being that it is situated above Kings Cross Station and a Plan of Management has been submitted which generally demonstrates that the use can operate without adversely impacting on the amenity of the surrounding locality. Notwithstanding, a condition of consent is recommended in Attachment A requiring the Plan of Management to be updated to address a number of additional matters related to CPTED,

Provision	Compliance	Comment
		use of the rooftop communal space and lighting.
4.4.8.4 Additional provisions for backpacker accommodation	Yes	The proposed sleeping rooms of the backpacker accommodation provide adequate space for the proposed number of guests and no single room will accommodate more than 8 guests, in compliance with DCP requirements. A condition is recommended in Attachment A to ensure this is complied with on an ongoing basis. The plans also demonstrate that a range of room sizes and bed types are provided, as per Section 4.4.8.4(2)(e). The plans demonstrate adequate storage for the proposed occupant capacity of the premises. Communal recreation areas are to be provided at a rate of 0.75 square metres per person based on the maximum number of guests. This equates to a minimum communal recreation area requirement of 84.75 square metres in this instance. The DCP further states that communal recreation areas are to be provided internally where possible, and that communal outdoor facilities should generally be no greater than 20% of the total communal recreation area, be designed and located to ensure noise impacts to surrounding property are minimised and the use should be restricted to before 10pm. The submitted plans indicate that an indoor communal recreation area of 74.9sqm and an outdoor rooftop communal area of 28.5sqm is proposed. This is not strictly consistent with the DCP provisions as the total minimum communal recreation area is not provided entirely indoors and the outdoor communal facilities exceed 20% of the total communal recreation area - resulting in approximately 38% of the total communal recreation area. While the DCP seeks for communal recreation areas to be indoor where possible and in

Provision	Compliance	Comment
		addition to outdoor space, in this case, it is considered appropriate for a balance of indoor and outdoor space to be provided for the following reasons: • The proposed redevelopment of the site will result in a significant upgrade and amenity improvements of an existing dilapidated building which already accommodates a backpackers accommodation. • The site is heavily constrained by easements and stratum lots under different ownership. • The indoor communal recreational area makes the best use of the space available and is designed to be a functional and usable space. The proposed rooftop space has been designed to minimise acoustic impacts upon nearby residential properties and the submitted Plan of Management restricts the use of the space to between 7am and 10pm in accordance with the provisions of the DCP. The submitted acoustic report includes further recommendations for the use of this space to mitigate acoustic impacts. A condition of consent is recommended in Attachment A for the Plan of Management to be updated to reflect the recommendations in the acoustic report. The proposed layout of the backpacker accommodation provides adequate kitchen/dining areas, bathrooms and laundry facilities. A manager's office and sleeping room is identified on the proposed Level 5 plan for a resident on-site manager. A staff room is also identified on the Basement 2 floor plan.

Section 6 – Specific Sites

6.2.12 Darlinghurst Road, Potts Point

Provision	Compliance	Comment
6.2.12.1 Land Use	Yes	Provision 6.1.12.1(2) states that a minimum of 50% of the total gross floor area for each development must be for uses other than residential accommodation or serviced apartments for all development where a significant addition of floor space, a substantial change in the building envelope or a substantial change in land use is proposed. Residential accommodation and serviced apartments are not proposed.
6.2.12.2 Urban grain and active street frontages	Yes	The proposed development reflects the existing pattern of building arrangement and subdivision of Darlinghurst Road. An entry to the upper levels and vertical circulation core is provided. The proposed redevelopment of the building will result in an individually distinctive architectural language and expression of floor levels. The ground floor retail tenancies are accessed from the Kings Cross Train Station pedestrian arcade, rather than off Darlinghurst Road directly, The existing coffee cart has a window out to both the pedestrian arcade and Darlinghurst Road. No self-contained lower ground or basement tenancies are proposed.
6.2.12.3 Architectural character, articulation and materials	Yes	The proposed facade elements and window openings above ground floor level on Darlinghurst Road are proposed to be vertically proportioned. The window openings above the existing awning are limited to between 20% and 40% of the facade wall area. The materials and architectural details proposed are at least equal in quality to

Provision	Compliance	Comment
		the highest quality found in neighbouring contributory buildings and include materials and design detailing similar to those used in surrounding buildings. The proposed roof form is considered acceptable.
6.2.12.4 Awnings	Yes	The existing footpath awning over Darlinghurst Road is to be retained by the proposal.
6.2.12.7 Access	Yes	There is currently no vehicular access to the site, and no vehicular access is proposed.

Schedule 4 - Projections over or into public roads

45. Schedule 4 of the DCP applies to projections over or into public roads and seeks to prescribe maximum limits for decoration or sun shading devices and balconies and bay windows to project over the road/footpath alignment. In the case of balconies and bay windows, the projection must not extend more than 450mm over the road/footpath alignment, not comprise more than 50% of the road frontage of the building at any level, and be at least 3.2m above the footpath and at least 800mm from the face of the kerb, and not result in adverse impacts on the amenity of adjoining property.
46. The proposed front elevation brickwork and windows in the front elevation extend 160mm over the front boundary above ground level. This encroachment is above the existing awning over the Darlinghurst Road footpath and is more than 3.2m above the footpath and more than 800mm from the face of the kerb. Furthermore, this element of the proposal will not result in adverse impacts on the amenity of adjoining property. The encroachment however comprises more than 50% of the road frontage of the building. On the request of Council, the applicant submitted contextual information to demonstrate the relationship of the proposed development with the as-built buildings on neighbouring properties - Refer to the images below.

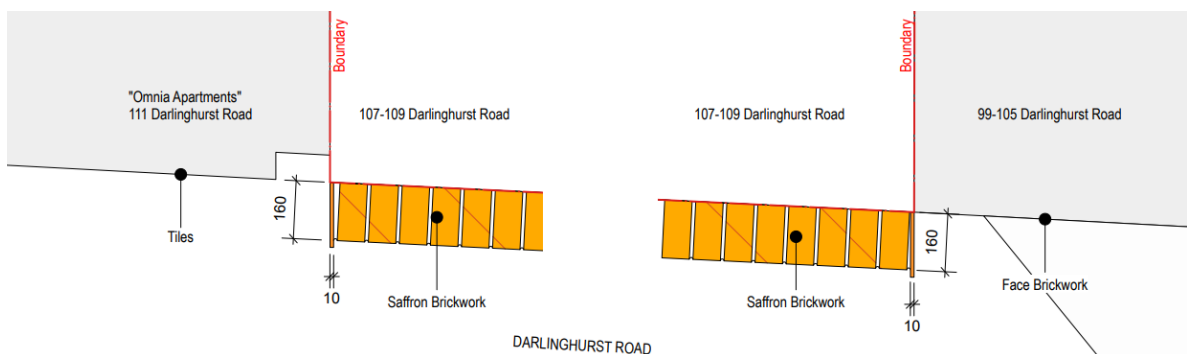


Figure 28: Contextual plan of projection over Darlinghurst Road



Figure 29: Contextual 3D perspective of projection over Darlinghurst Road site boundary

47. These contextual drawings indicate that the neighbouring property at 99-105 Darlinghurst Road also incorporates encroachments over the boundary above ground level of approximately 0.5m in depth. While these encroachments are not across the entirety of the boundary, it is clear that the minor encroachment for the proposed development of 160mm is not inconsistent with the surrounding development and will not pose any issue for the safe and efficient functioning of the public domain. In this regard, the proposed projection over front boundary is considered acceptable in this instance.

Discussion

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

48. The site is subject to two different floor space ratio controls with a maximum floor space ratio of 2:1 and 3:1 applying over different parts of the site, pursuant to Clause 4.4 of the Sydney Local Environmental Plan 2012.
49. The permitted gross floor area across the site as a whole has been calculated to be 599.3 square metres.
50. This is calculated on the basis that the 3:1 Floor Space Ratio control applies across 82.9 sqm of the site area - equating to a permissible gross floor area of 248.7 sqm on that portion of the site, whilst the 2:1 Floor Space Ratio control applies across 175.3 sqm of the site area - equating to a permissible gross floor area of 350.6 sqm on that portion of the site. This provides for a total permissible gross floor area of 599.3 sqm across the total site area of 258.2 sqm. By dividing the total permissible GFA by the total site area, a maximum Floor Space Ratio of 2:32:1 can be derived for the site.

51. The proposed development does not comply with the maximum floor space ratio development standard applying to the site as a combined floor space ratio of 3.60:1 or 935.9 sqm of gross floor area is proposed across the site as a whole, which represents a 56.16% variation to the development standard.
52. Alternatively, assessing compliance against each of the individual Floor Space Ratio controls which apply to the site:
 - The permissible gross floor area on the 2:1 portion of the site is 350.6 sqm; and
 - The permissible gross floor area on the 3:1 portion of the site is 248.7 sqm.
53. The application proposes 663.8 sqm of gross floor area on the 2:1 portion of the site - representing an 89.33 % variation to the 2:1 development standard.
54. The application proposes 272.1 sqm of gross floor area on the 3:1 portion of the site - representing a 9.41 % variation to the 3:1 development standard.
55. Pursuant to the requirements of section 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

56. The applicant seeks to justify the contravention of the floor space ratio development standard on the following basis:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicant submits that the objectives of the zone and development standard are achieved notwithstanding the non-compliance with the standard. The applicant's assessment against the objectives of the development standard is below:
 - (i) **Objective:** to provide sufficient floor space to meet anticipated development needs for the foreseeable future.

Applicant's comment: The proposal makes a modest contribution providing sufficient floor space to meet anticipated development needs for the foreseeable future.
 - (ii) **Objective:** to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.

Applicant's comment: The development successfully regulates the density of development, built form, land use intensity, and controls the generation of vehicle and pedestrian traffic.

- (iii) **Objective:** to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.

Applicant's comment: There is no significant intensity of development, and the modest increase capacity is commensurate with the capacity of existing and planned infrastructure.

- (iv) **Objective:** 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.

Applicant's comment: The modest additions reflect the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

- (ii) The applicant submits that, whilst the FSR exceptions already granted in the vicinity of the site do not amount to abandonment of the development standard, the FSR proposed nevertheless results in a bulk and scale that is subservient to larger buildings in the immediate vicinity and that is wholly consistent in its street wall heights of its northern neighbours.
 - (iii) The applicant submits that the prior consents in the locality inform the desired character and future streetscape and the proposal is consistent with these contemporary outcomes and consistent with the desired future character.
 - (iv) The applicant submits that it is unreasonable and unnecessary to require strict compliance with the development standard where there are no significant adverse impacts resulting from the variation, and where strict compliance would come with greater and more negative impacts in the redistribution of complying gross floor area, such as infilling the voids that were created to allow better internal amenity.
 - (v) The applicant submits that the burden placed on the future occupants of the development by requiring strict compliance with the development standard would be disproportionate to the non-existent or inconsequential adverse consequences attributable to the proposed non-compliant development.
 - (vi) The applicant submits that if strict compliance were required, it would undermine important statutory objectives that are relevant to the consideration of this matter, including the Objects of the EP&A Act and the Sydney LEP.
- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
- (i) The applicant submits that contravention of the standard is justified as a significant amount of the gross floor area is in the existing basement levels of the development and does not contribute to the bulk and scale of the building. Furthermore, the building also accommodates the Kings Cross Train Station entry which constitutes a large volume of area (in part a double height space) that would normally be developable but in this circumstance has been given over for the public good.

- (ii) The applicant submits that the bulk and scale of the proposed development is further attributable to the following:
 - a. Voids that provide for better internal amenity for the public users of the Railway Station concourse, in particular natural light that will enter the Railway Station concourse from the Earl Street elevation
 - b. Voids will allow natural light into the Railway Station concourse and provide views of Earl Street, significantly improving Crime Prevention Through Environmental Design (CPTED) for the area.
 - c. Voids that provide a significant improvement to the internal amenity of the building for occupants.
 - d. Voids that contribute to the activation and natural surveillance of the Earl Street elevation and access to the building from Earl Street and from the Railway Station concourse.
 - e. The lightwell and the articulation in the southern facade adjoining Omnia to mitigate solar access impacts and provide natural light and ventilation to the building.
- (iii) The applicant submits that the design benefits of the proposal, improvements in CPTED and improved amenity and design outcomes mitigate and offset the impacts of additional floor space.
- (iv) The applicant submits that the proposal is consistent with the objects of the EP&A Act.
- (v) The applicant submits that the proposal is consistent with the aims of the LEP, zone and development standard.
- (vi) The applicant submits that the proposal is contextually consistent with the contemporary buildings approved to the north, forming the desired future character within the immediate vicinity of the site.
- (vii) The applicant submits that the proposal is consistent with existing and desired future character of the area.
- (viii) The applicant submits that the proposed works will provide a BCA upgrade for the existing building.
- (ix) The applicant submits that there are a lack of any unacceptable amenity impacts, and that the key impacts relating to the development standard, being loss of views, loss of privacy, overshadowing or visual intrusion, have all been minimised by the design of the proposal including an increase in the eastern front setback and reduction in the bulk and scale of the upper western elements of the building (when compared to the previously refused scheme for the site).
- (x) The applicant submits that any reasonable development complying with the development standard will have similar, inevitable, and unavoidable impacts upon the southern neighbours that cannot be avoided without a loss of reasonable development potential for the site.
- (xi) The applicant submits that the proposal provides excellent amenity outcomes for future occupants.

57. Precondition to granting consent where a development standard has been contravened. Where a development standard has been contravened, development consent must not be granted unless the consent authority is satisfied that 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.
58. The applicant has demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard for the following reasons: As existing, 320.8 sqm of gross floor area is contained within the basement levels, as viewed from Darlinghurst Road, thereby not contributing to the overall bulk and scale of the development. Under the proposal, due to the reconfiguration of these floors, 241.6 sqm of gross floor area will remain within the basement levels.
59. The applicant's request to vary the floor space ratio development standard points to the fact that the existing building is already in breach of the standard as existing and therefore compliance with the standard is unreasonable.
60. Whilst it is accepted that it would be unreasonable for existing development on site to be reduced in order to achieve strict compliance with the standard, the application proposes a further variation of the standard beyond the existing breach (from 908.6 sqm / 3.52:1 FSR as existing to a proposed 935.9 sqm / 3.60:1 FSR) and therefore the objectives of the floor space ratio standard are a relevant consideration in determining whether the further variation can be supported.
61. The proposal is considered to be consistent with the objectives of the development standard. With regards to Objective (d) as the proposal is consistent with the desired character of the locality and minimises adverse impacts on the amenity of the locality. Specifically, a DCP-compliant 4-storey street wall height consistent with the development to the north is proposed and additional bulk is proposed to be introduced with a sufficient 3m setback from Darlinghurst Road. In this regard, the proposed additional floorspace has been distributed in a way that will not unreasonably impact upon the streetscape nor result in unacceptable bulk and scale. While the additional bulk and massing of the development will result in some additional overshadowing to the neighbouring residential apartments to the south, the solar access impacts are considered acceptable on balance as discussed under the 'Overshadowing impacts' subheading of the Discussion section below. Furthermore, the bulk and scale of the development is appropriate in the context of the development on surrounding sites and noting the site constraints with a narrow site width, easements burdening the site and the part of the ground floor accommodating the pedestrian arcade to the Kings Cross Train Station which have all constrained the distribution of floor space on the site.
62. Overall, the proposal is consistent with the objectives of the development standard.
63. The proposed floor space ratio variation will not materially contribute to unreasonable additional overshadowing to the neighbouring property to the south, as discussed in detail under the 'Overshadowing Impacts' subheading of the Discussion section below.
64. The new floor space and overall building design, including upper-level setbacks, are suitable to mitigate against any unreasonable environmental impacts associated with the proposed variation.

65. The proposed upper two levels are sufficiently setback from the street frontage, ensuring that are not highly visible from Darlinghurst Road. The proposed development achieves compliance with the street frontage height control applying to the site, pursuant to Section 4.2.1.1 of the Sydney Development Control Plan 2012.
66. The form and modulation of the additional floor space deliver an appropriate bulk and scale for the development on the site. Overall, the appearance of the proposal and the additional floor space will not adversely impact on the streetscape or the character of the heritage conservation area.
67. Noting the site's constraints in that it is a narrow site, burdened by easements, with the ground floor partially occupied by the pedestrian arcade to the Kings Cross Train Station, Council officers agree that any reasonable development complying with the development standard would have similar, inevitable impacts upon the neighbouring building to the south that cannot be avoided without a loss of reasonable development potential for the site.

Conclusion

68. For the reasons provided above the requested variation to the floor space ratio development standard is supported as the applicant has demonstrated the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012.

Clause 4.6 Request to Vary a Development Standard - Building Height

69. The site is subject to a maximum height of buildings control of 22 metres.
70. The proposed development has a maximum building height of 22.641 metres, representing a 2.91% variation of the height of buildings development standard applying to the site.

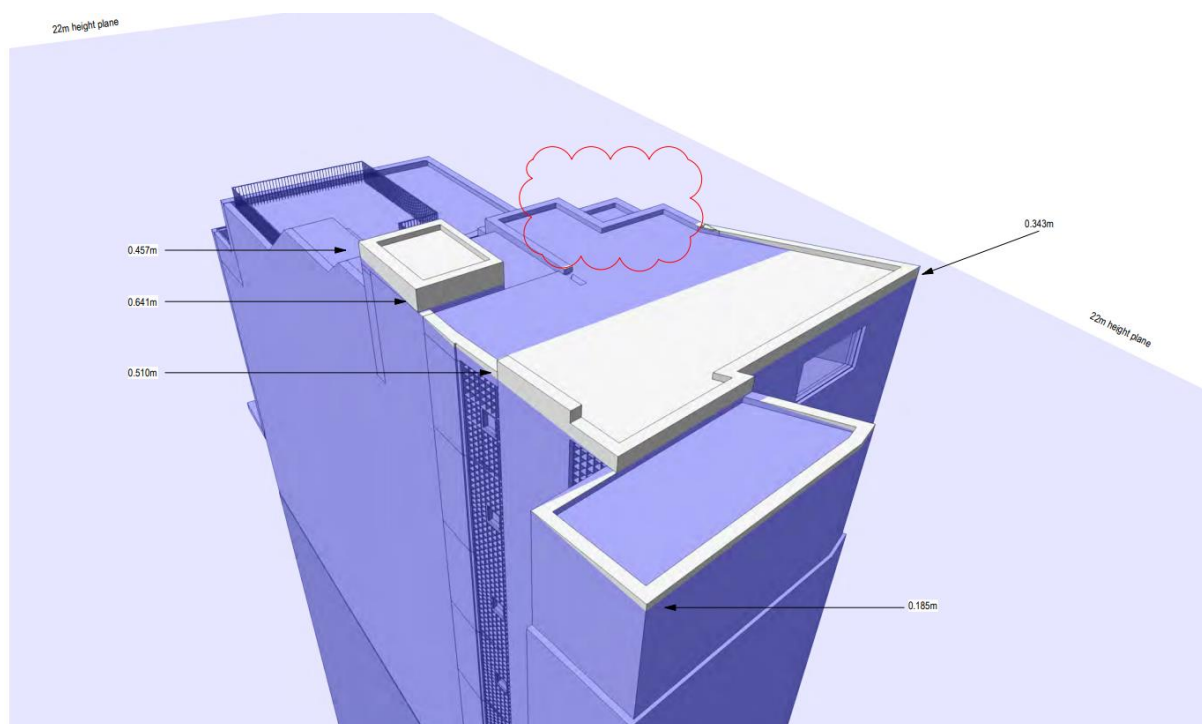


Figure 30: 3D perspective of the proposed development showing the 22m height plane

71. Pursuant to the requirements of section 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

72. The applicant seeks to justify the contravention of the building height development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicant submits that the objectives of the development standard are met notwithstanding non-compliance with the standard. The applicant's assessment against the relevant objectives of the development standard is below:
 - (i) **Objective:** to ensure the height of development is appropriate to the condition of the site and its context.

Applicant's comment: The Omnia building to the south dominates the immediate vicinity towering above the site and other neighbours. The exceedance is limited in its footprint and with the height to a maximum exceedance of 2.91%, the proposal is consistent with the site and its context.
 - (ii) **Objective:** to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.

Applicant's comment: There are no buildings of any heritage significance within the immediate vicinity of the site that would be adversely affected by the proposal.
 - (iii) **Objective:** to promote the sharing of views outside Central Sydney.

Applicant's comment: Larger and taller buildings within the locality take out views and the additional storey will not remove any iconic or significant views.
 - (ii) The applicant submits that, whilst the height of building exceptions already granted in the vicinity of the site do not amount to abandonment of the development standard, the building height proposed nevertheless is subservient to larger buildings in the immediate vicinity and that is wholly consistent in its street wall heights of its northern neighbours.
 - (iii) The applicant submits that the prior consents in the locality inform the desired character and future streetscape and the proposal is consistent with these contemporary outcomes and consistent with the desired future character.

- (iv) The applicant submits that it is unreasonable and unnecessary to require strict compliance with the development standard where there are no significant adverse impacts resulting from the variation.
 - (v) The applicant submits that the burden placed on the future occupants of the development by requiring strict compliance with the development standard would be disproportionate to the non-existent or inconsequential adverse consequences attributable to the proposed non-compliant development.
 - (vi) The applicant submits that if strict compliance were required, it would undermine important statutory objectives that are relevant to the consideration of this matter, including the Objects of the EP&A Act and the Sydney LEP.
- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
- (i) The applicant submits that the proposal is consistent with the objects of the EP&A Act.
 - (ii) The applicant submits that the proposal is consistent with the aims of the LEP, zone and development standard.
 - (iii) The applicant submits that the proposal is contextually consistent with the contemporary buildings approved to the north, forming the desired future character within the immediate vicinity of the site.
 - (iv) The applicant submits that the proposal is consistent with existing and desired future character of the area.
 - (v) The applicant submits that the proposed works will provide a BCA upgrade for the existing building.
 - (vi) The applicant submits that there are a lack of any unacceptable amenity impacts, and that the key impacts relating to the development standard, being loss of views, loss of privacy, overshadowing or visual intrusion, have all been minimised by the design of the proposal including an increase in the eastern front setback and reduction in the bulk and scale of the upper western elements of the building (when compared to the previously refused scheme for the site).
 - (vii) The applicant submits that any reasonable development complying with the development standard will have similar, inevitable, and unavoidable impacts upon the southern neighbours that cannot be avoided without a loss of reasonable development potential for the site.
 - (viii) The applicant submits that the variation to the standard can be supported as the bulk of the GFA is located within basement levels that does not add to the external height, shape, bulk of scale of the building. Further to this, the building also accommodates the Kings Cross Station entry, (in part a double height space) and so has a large volume of area that would normally be developable but in these exceptional circumstances are given over for the public good.

- (ix) The applicant submits that the proposal provides excellent amenity outcomes for future occupants.

Precondition to granting consent where a development standard has been contravened.

73. Where a development standard has been contravened, development consent must not be granted unless the consent authority is satisfied that 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. The applicant has demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard for the following reasons: The proposed building height is appropriate to the condition of the site and its context, noting that taller buildings exist in the immediate vicinity of the site. The proposal is therefore consistent with objective (a) of the development standard.
74. The proposal is compatible with the character of the streetscape and surrounding heritage conservation area, specifically noting that the proposed development achieves compliance with the street frontage height control applying to the site, pursuant to Section 4.2.1.1 of the Sydney DCP, and the proposed upper two levels are sufficiently setback from the street frontage, ensuring they are not highly visible from Darlinghurst Road. The proposal is therefore consistent with objective (b) of the development standard.
75. The proposal presents a high-quality built form and that the elements of the development in breach of the height control have a negligible impact upon the amenity of its surroundings and impact upon the streetscape.
76. The additional height will not result in the loss of view sharing, noting that there are numerous taller buildings in the immediate vicinity of the site and no iconic views are currently obtained over that part of the site where the building height exceedance is proposed. The proposal is therefore consistent with objective (c) of the development standard.
77. The proposed height variation does not materially contribute to additional shadowing that causes unreasonable overshadowing to the site or adjoining properties, as discussed in detail under the 'Overshadowing Impacts' subsection of the Discussion section below. While there is some additional overshadowing to the neighbouring property to the south, the elements of the development in breach of the height of buildings standard are generally not attributed to the site or adjoining properties.
78. Additionally, the overall bulk and massing of the development is acceptable, noting that a compliant street wall height to Darlinghurst Road is provided and the upper levels are sufficiently setback to mitigate the perceived bulk and scale of the proposal.
79. The proposed building height exceedance will not result in view loss given that taller buildings exist in the immediate vicinity of the site, and no iconic views are currently obtained over the location of the building height exceedance.
80. The proposed building height exceedance will not result in unacceptable privacy impacts as no windows are proposed within that portion of the building which exceeds the maximum building height standard.

81. Whilst a significant portion of the building's GFA is located within basement levels that do not add to the external height, shape, bulk or scale of the building, this is of limited relevance to the proposed variation to the height of buildings development standard.
82. Noting the site's constraints in that it is a narrow site, burdened by easements, with the ground floor partially occupied by the pedestrian arcade to the Kings Cross Train Station, Council officers agree that any reasonable development complying with the development standard would have similar, inevitable impacts upon the neighbouring building to the south that cannot be avoided without a loss of reasonable development potential for the site.

Conclusion

83. For the reasons provided above the requested variation to the height of buildings development standard is supported as the applicant has demonstrated written the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012.

Overshadowing

84. Section 4.2.3.1 of the DCP sets out solar access requirements for proposed apartments and neighbouring developments to ensure an acceptable level of residential amenity is achieved.
85. The DCP requires apartments within a development and neighbouring sites must achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June onto at least 1 square metres of living room windows and a minimum 50% of the required minimum area of private open space area.
86. The applicant has provided shadow diagrams and view from the sun diagrams to facilitate assessment of overshadowing impacts.
87. The proposed development is located to the north of a twenty-storey residential flat building known as 'Omnia' at 113 Darlinghurst Road. The original DA for the conversion of this building from a hotel to residential development gave approval for 139 apartments. A number of these have since received approval to be amalgamated.
88. The information provided by the applicant for the subject DA demonstrates that the proposed development will cause additional overshadowing to living room windows and private open space areas of some apartments within the Omnia building.
89. While some of the apartments affected by additional overshadowing will maintain compliant 2 hours' solar access, there are 2 apartments which are affected by additional overshadowing where solar access is constrained to less than 2 hours, resulting in a non-compliance with the provisions of the DCP. These are the living room window of Unit 4-12 and the private open space raised terrace area of Unit 3-03 on the podium Level 3 of the Omnia building.
90. Notwithstanding, while the NSW Apartment Design Guide does not apply directly to the assessment of this development under the Housing SEPP, the solar access criteria contained within the ADG provides a recognised benchmark for acceptable residential amenity for residential apartment development, and is therefore considered as a useful reference point when evaluating the impacts of the proposal.

91. The overshadowing impacts of the proposal on the living room window of Unit 4-12 and the private open space area of Unit 3-03 which are affected by additional overshadowing from the proposal, resulting in a non-compliance with the provisions of the DCP, are assessed below.

Overshadowing to living room window of unit 4-12

92. Unit 4-12 currently receives 2 hours' direct solar access to its north facing living room windows between 10am and 12 midday on 21 June.
93. The proposed development and additional two levels proposed atop of the existing building will block all direct sunlight to these living room windows currently receive between 9am and 3pm on 21 June resulting in a non-compliance with the provisions of the DCP.
94. Overshadowing impacts to this living room window are demonstrated by Figures 31-35 below, with the visible portion of the living room windows in question shown in red outline.

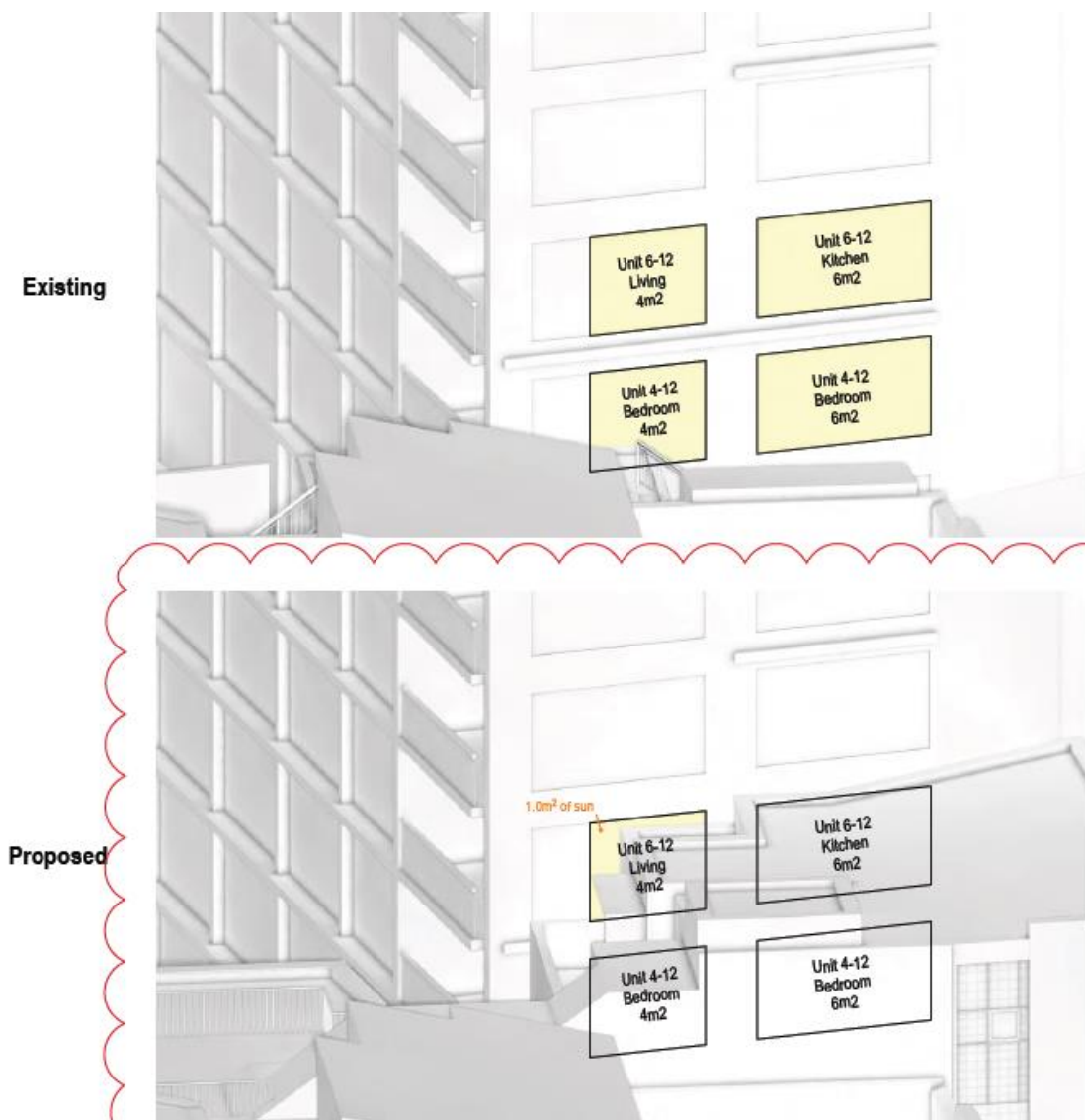


Figure 31: View from sun diagram at 9am, 21 June (Unit 4-12 living room window not visible)

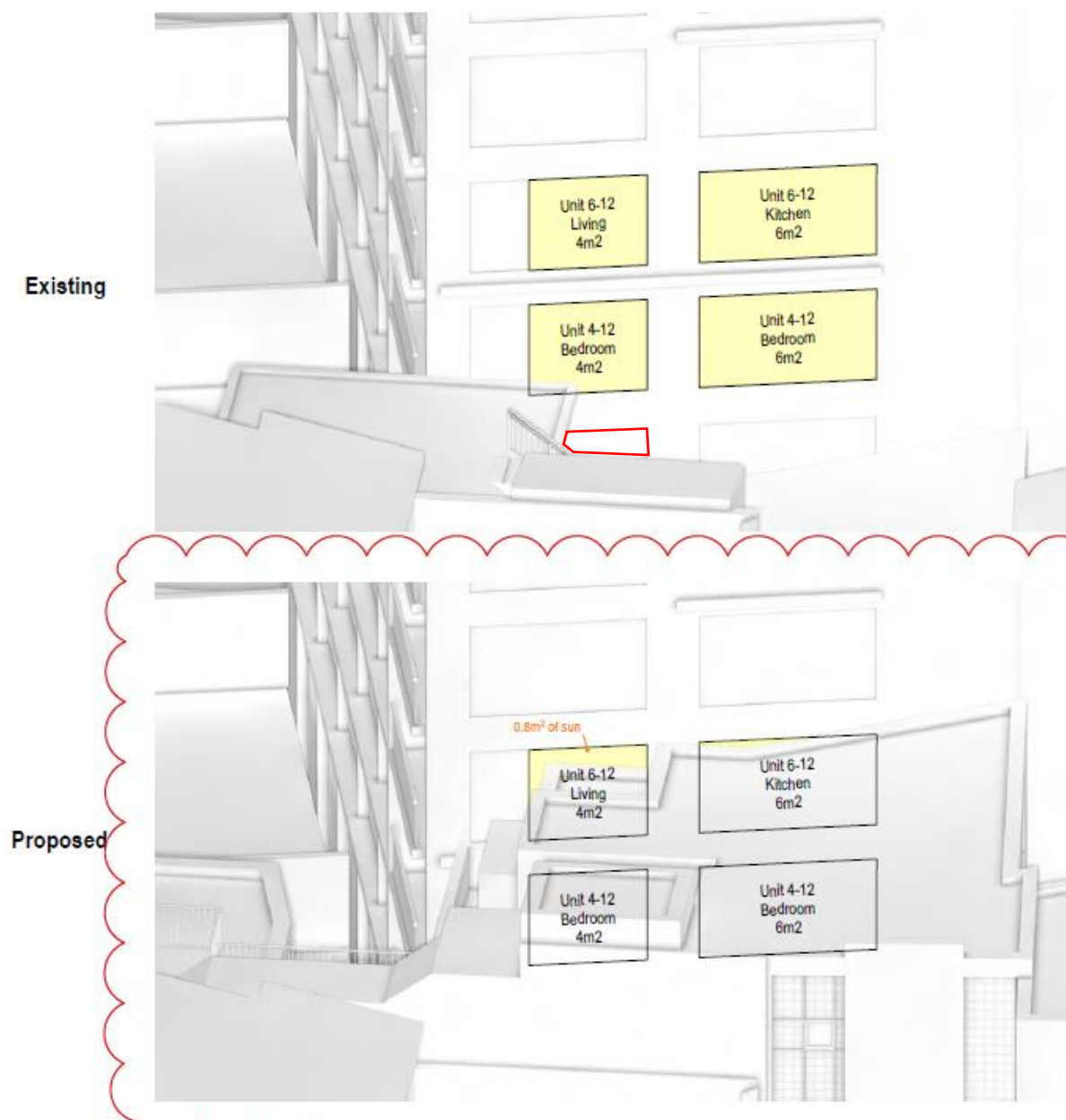


Figure 32: View from sun diagram at 10am, 21 June

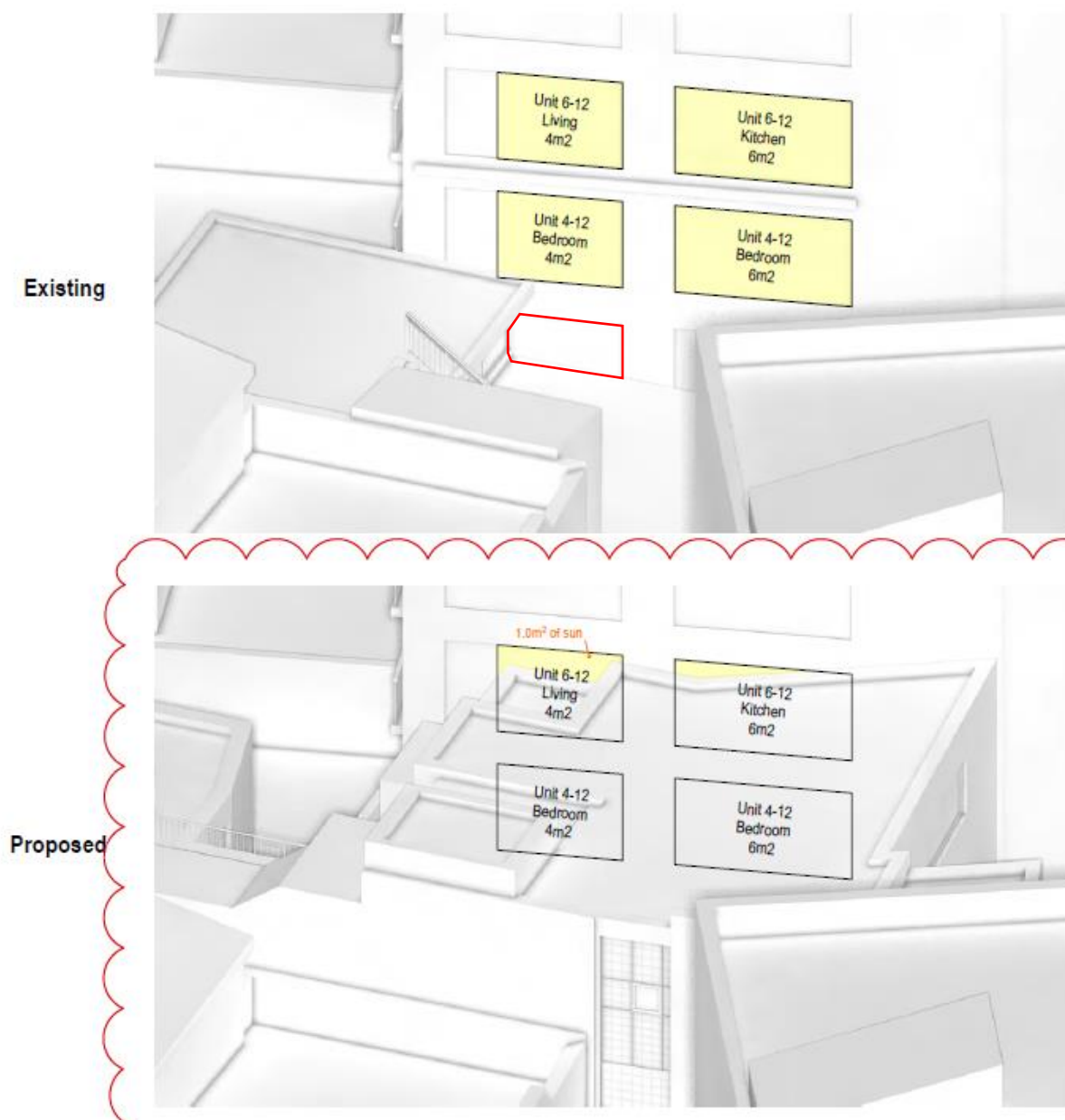


Figure 33: View from sun diagram at 11am, 21 June

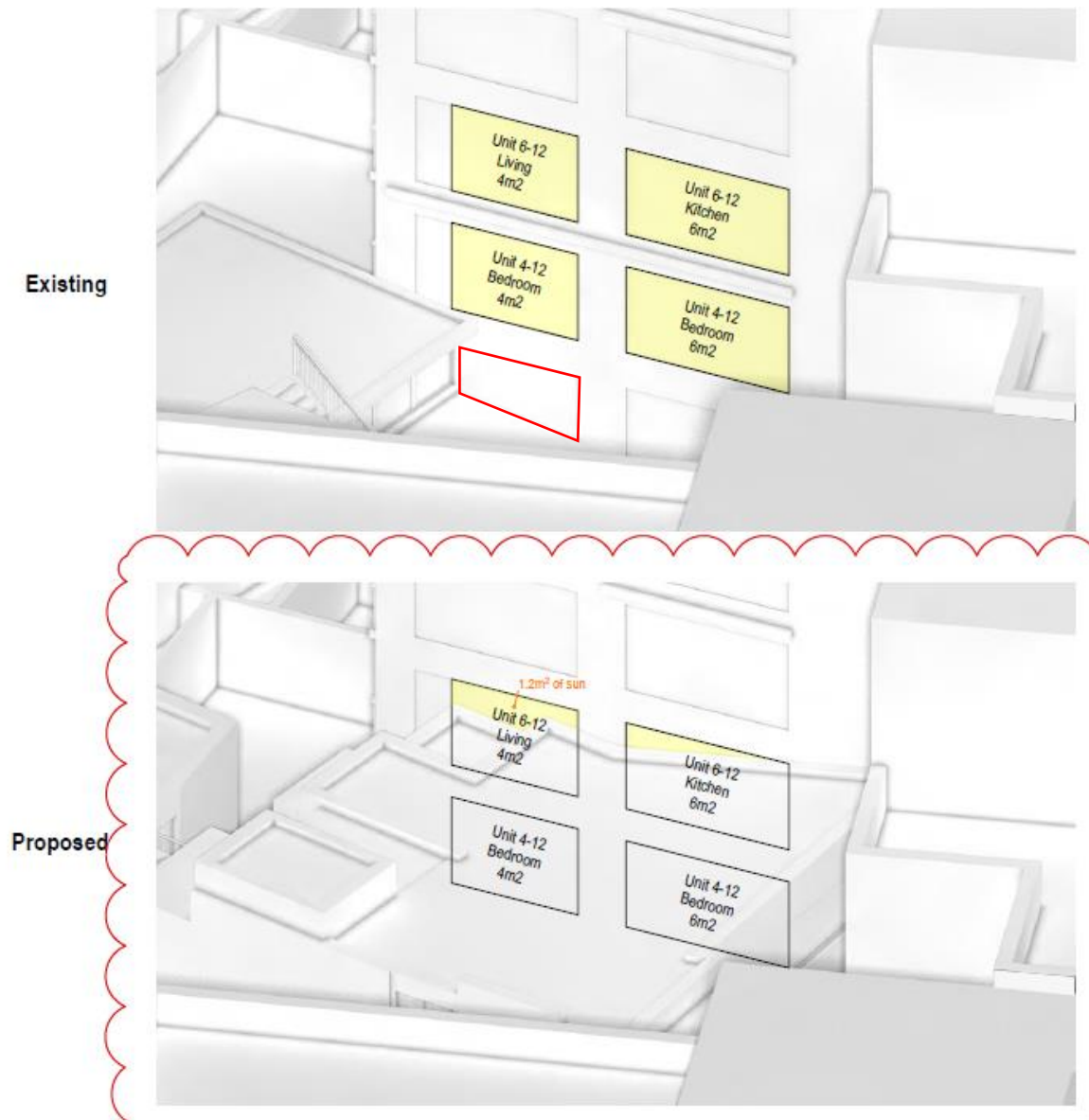


Figure 34: View from sun diagram at 12pm, 21 June

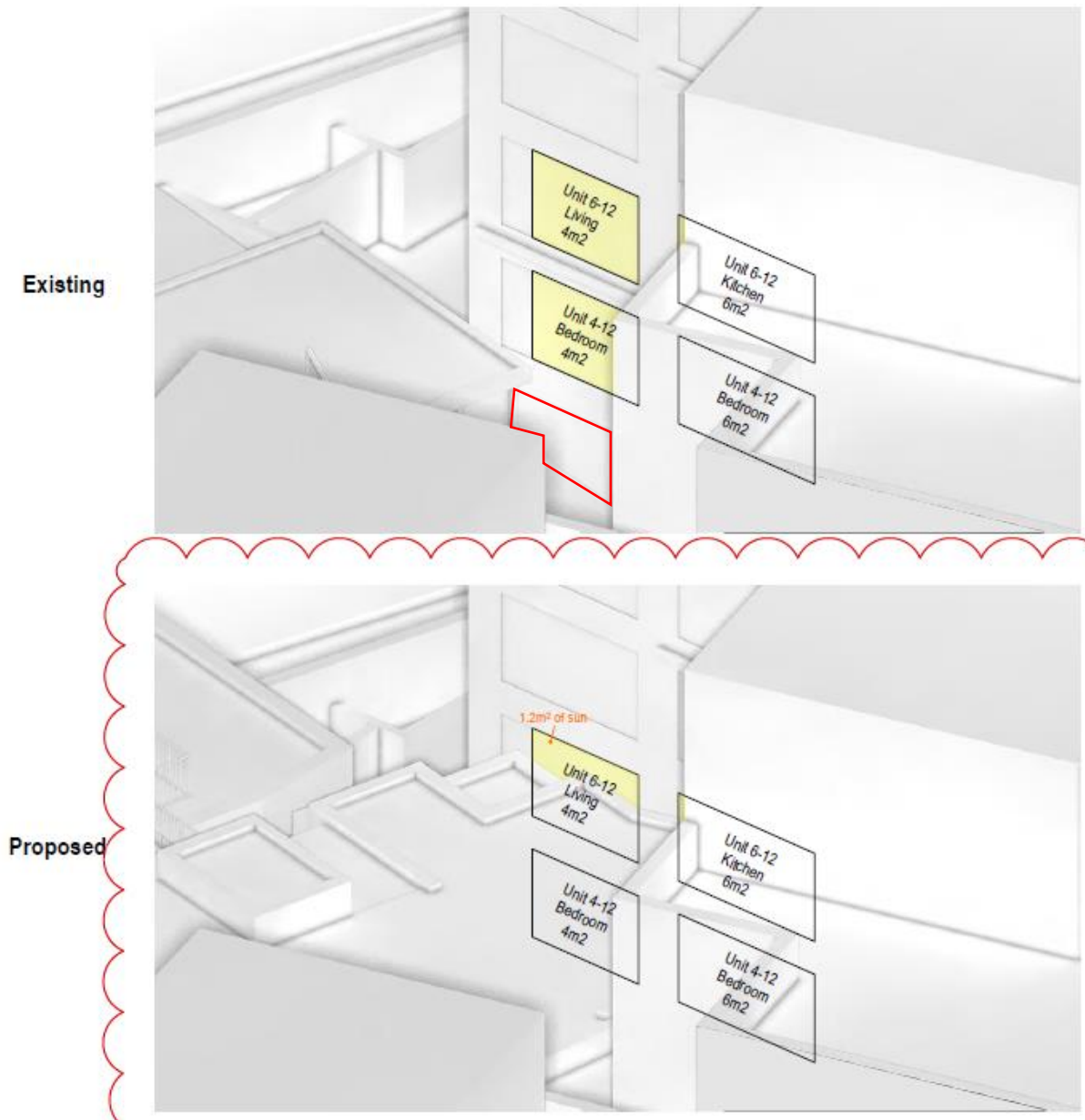


Figure 35: View from sun diagram at 1pm, 21 June

Overshadowing to private open space area of unit 3-03

95. The private open space terrace area of Unit 3-03 on the podium level of the Omnia building currently receives 2 hours' direct sunlight between 9am and 11am on 21 June.
96. As Unit 3-03 is a 2-bedroom apartment, the required minimum amount of private open space provision is 10 square metres in accordance with the provisions of Section 4.2.3.7(6) of the DCP and Objective 4E-1 of the NSW ADG.
97. Accordingly, the minimum solar access requirement to this terrace area is 2 hours' direct sunlight to at least 5 square metres, as this is 50% of the minimum required area pursuant to Section 4.2.3.1 of the Sydney DCP.

98. Whilst the applicant has not provided dimensions to measure existing solar access to this space, it is noted that the terrace measures 68 square metres and it is considered that the terrace will achieve the minimum 5 square metres' direct sunlight for at least 2 hours as existing.
99. The proposed development and additional two levels proposed atop of the existing building will block reduce direct sunlight to this private open space area from 9am to 1pm on 21 June, resulting in a non-compliance with the solar access requirements of the DCP.
100. Overshadowing impacts to the adjacent private open space terrace areas of the Omnia building are demonstrated by Figures 36-40 below, with the terraces of Unit 3-02 and Unit 3-03 highlighted in yellow, and any impacts directly attributed to the maximum building height exceedance highlighted in green.

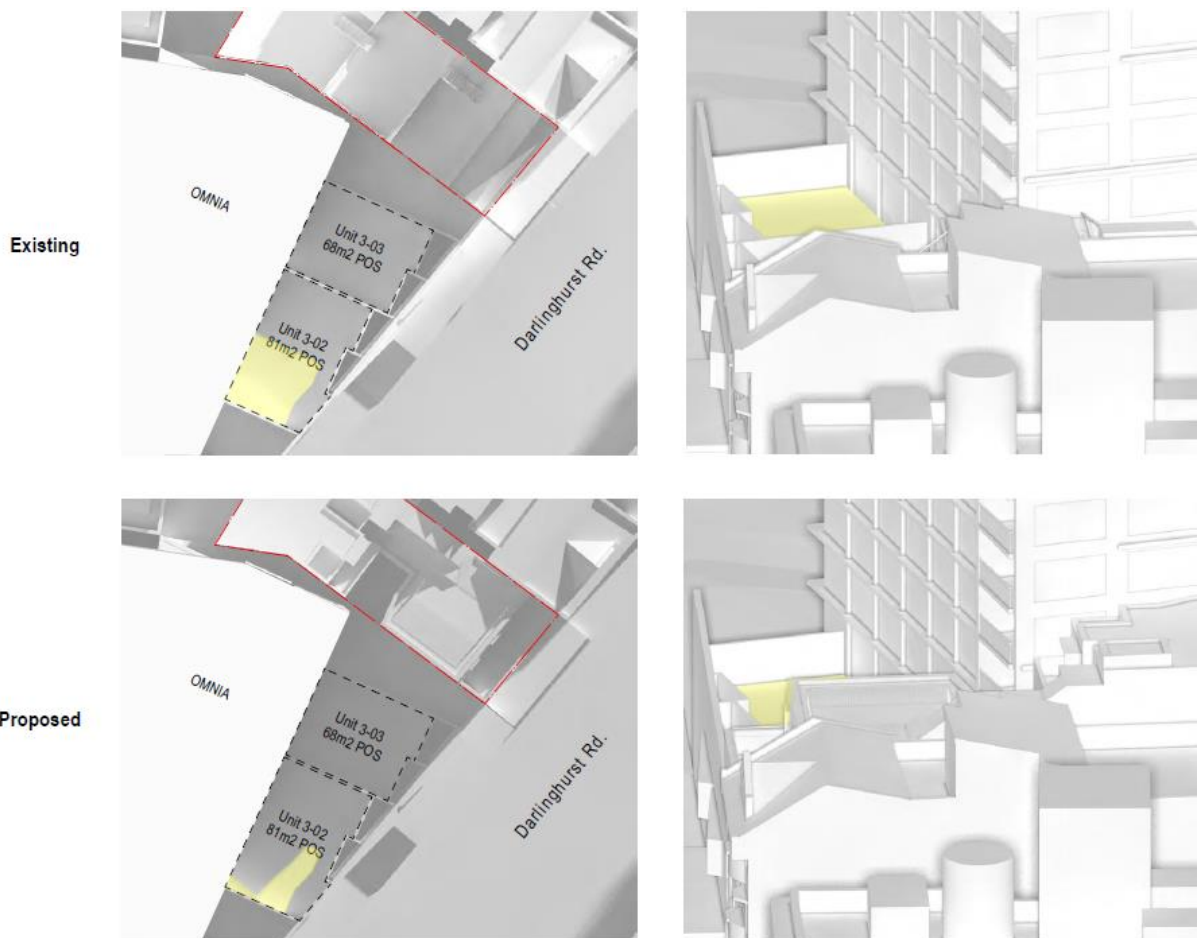


Figure 36: Plan and view from sun diagrams for private open space of Omnia building residential apartments at 9am, 21 June

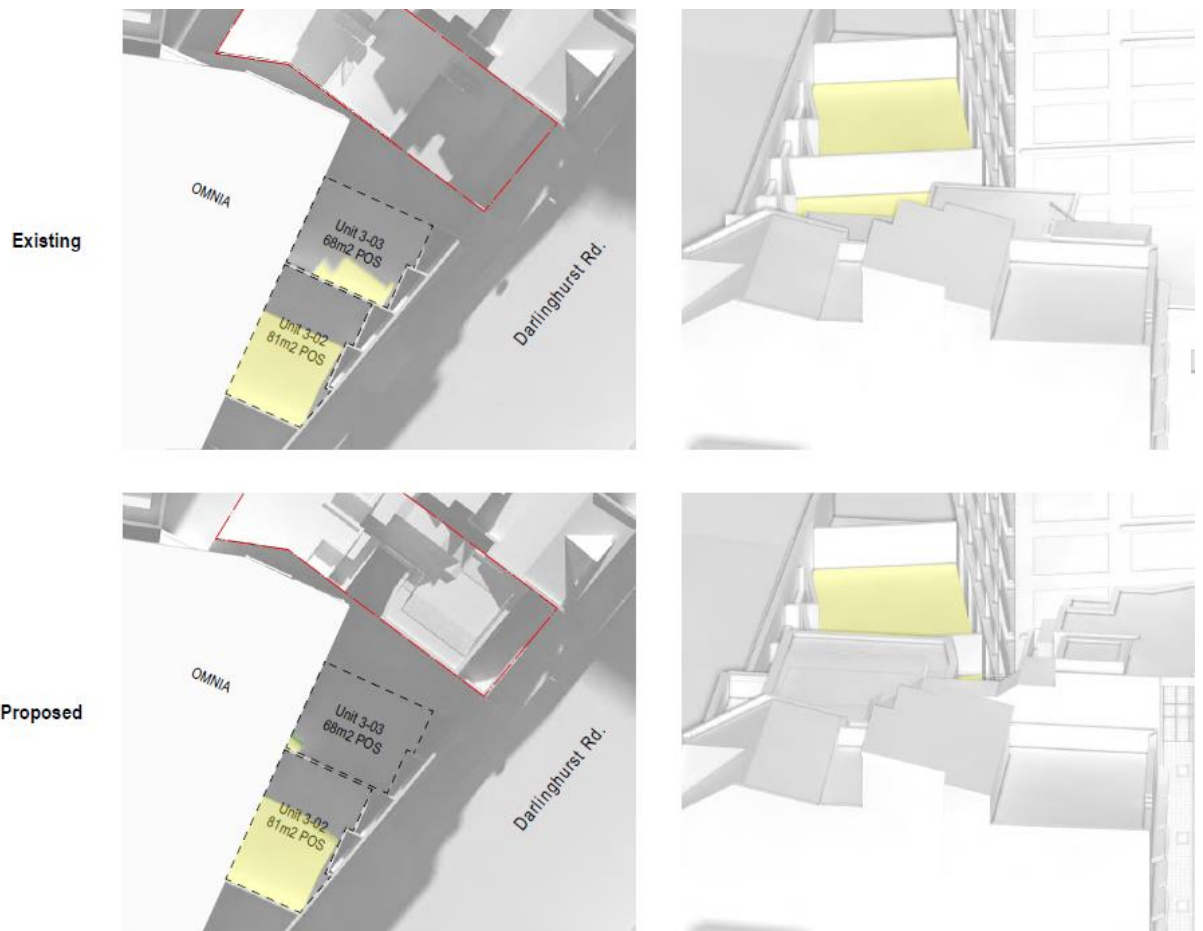


Figure 37: Plan and view from sun diagrams for private open space of Omnia building residential apartments at 10am, 21 June

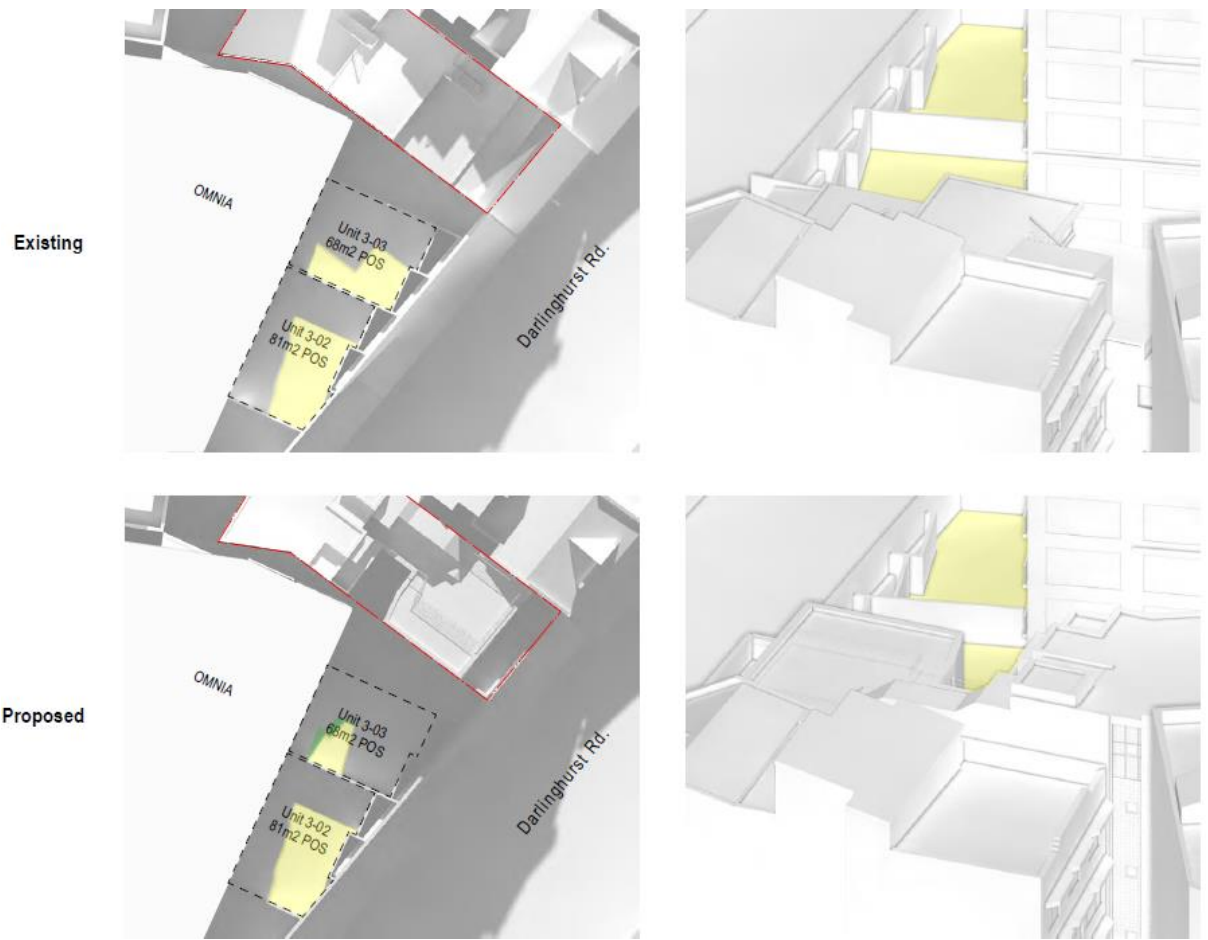


Figure 38: Plan and view from sun diagrams for private open space of Omnia building residential apartments at 11am, 21 June

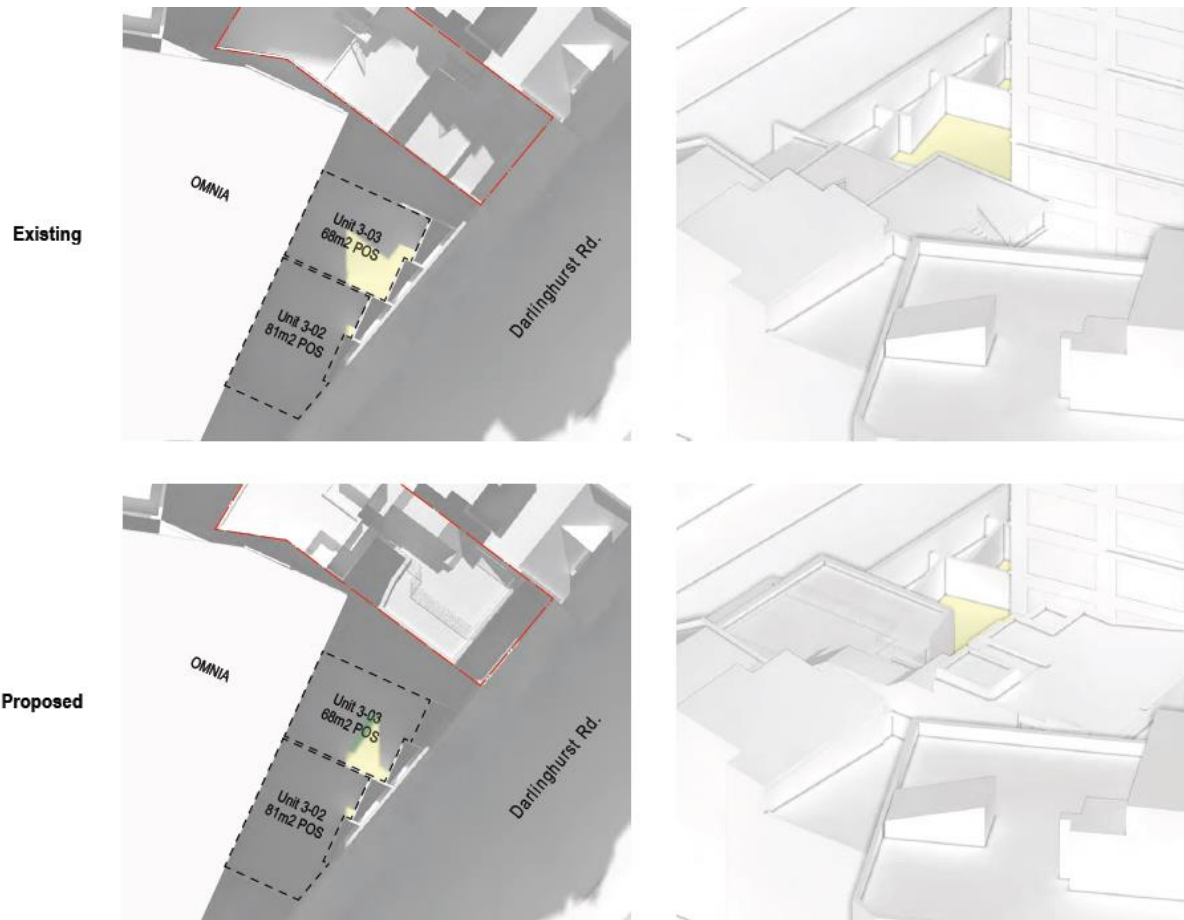


Figure 39: Plan and view from sun diagrams for private open space of Omnia building residential apartments at 12pm, 21 June

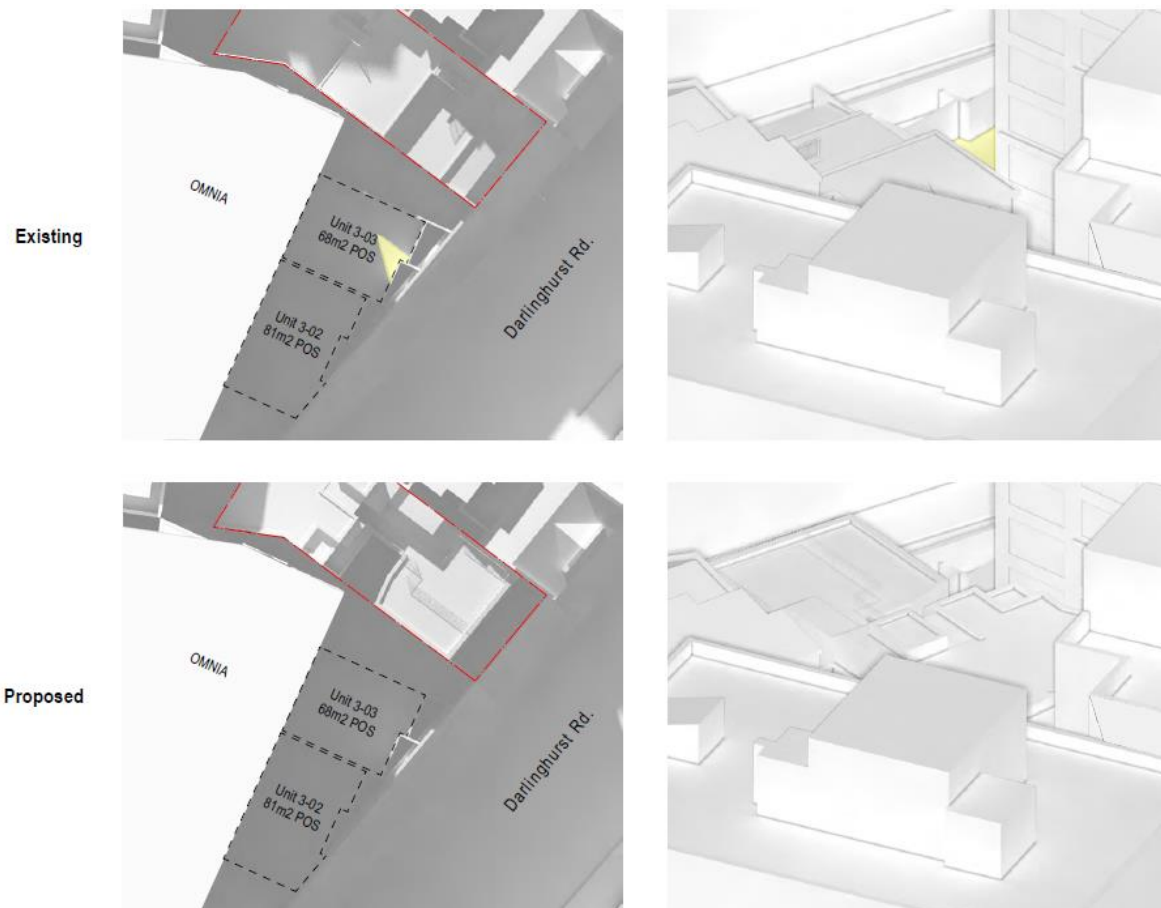


Figure 40: Plan and view from sun diagrams for private open space of Omnia building residential apartments at 1pm, 21 June

Summary of overshadowing impacts

101. A notation in the DCP confirms that Section 4.2.3.1 applies to at least 70% of apartments within a development.
102. In this regard, it is noted that the development consent for conversion of the former Crest Hotel into residential apartments (D/2015/331) - now known as the 'Omnia' building - permitted a non-compliance with the solar access provisions of the then Residential Flat Design Code. Only 65% of apartments within the approved development achieved 2 hours of direct sunlight to living room windows and only 66% of apartments within the building achieved 2 hours of direct sunlight to private open space areas at midwinter.
103. Accordingly, given the existing solar compliance of the Omnia building, the impact of any additional overshadowing could be considered more acute.
104. However, as stated above, the solar access criteria contained within the ADG provides a recognised benchmark for acceptable residential amenity for residential apartment development, and is therefore considered as a useful reference point when evaluating the impacts of the proposal.

105. Objective 4A-1 of the ADG states that private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9am and 3pm in midwinter. The design guidance for this objective further states that to maximise the benefit to residents of direct sunlight within private open spaces, a minimum of 1 sqm of direct sunlight, measured at 1m above floor level, is to be achieved for at least 15 minutes.
106. The shadow diagrams indicate that the private open space area for Unit 3-03 will continue to receive a minimum of 1sqm of direct sunlight for at least 15 minutes, for a minimum of 2 hours between 10am and 1pm in midwinter. This is compliant with the design guidance for solar access for residential apartment development in Objective 4A-1 of the ADG.
107. Additionally, the following is noted and considered relevant to the assessment of solar impacts on neighbouring development:
- (a) The proposed development is on a heavily constrained site, which is narrow in width and burdened by a number of easements, thereby constraining the site's development potential and impacting on how the site can be developed.
 - (b) The proposal is in a densely developed location and is directly to the north of an apartment building which has been converted from a hotel which would not have been subject to the same solar access requirements as residential apartment development.
 - (c) In relation to the living room window for Unit 4-12, this is a north-facing window which is approximately 0.7-1.5m from the northern site boundary shared with the subject site. Taking this into consideration as well as the constraints of the subject site, it is considered that solar access to this window would be challenging to retain by even a compliant development on the subject site. It is specifically noted that the building height exceedance does not result in the reduction in solar access to this window. In order to achieve compliant solar access to this window, a significant reduction in floor space would be required. While the proposal exceeds the maximum floor space ratio development standard, such a reduction in floor space is not considered reasonable in the circumstances of the case given the proportion of floor space that is currently provided in the basement levels of the subject site, the site constraints and that only a minor building height exceedance is proposed which does not result in the reduction in solar access to this window. Overall, the bulk and scale of the proposed development is consistent with the surrounding development. Furthermore, the living room of Unit 4-12 is dual aspect so it receives alternative access to daylight and sunlight through east-facing glazing.
 - (d) The proposal has incorporated upper-level setbacks and an appropriately-located light court to reduce the solar access impacts of the proposed development to the private open space area of Unit 3-03 as far as practicable.
 - (e) The private open space of Unit 3-03 of the Omnia building is located directly to the south of the subject site and proposed development. As such, any development of this site, including for a compliant development on the site, would likely result in overshadowing impacts to this terrace area.

- (f) Any overshadowing impacts directly attributable to the building height exceedance are minor and do not result in the non-compliance with the DCP solar access controls in relation to private open space or living room windows on the neighbouring property.

108. In light of the above, the solar access impacts to the private open space of Unit 3-03 and the living room window of Unit 4-12 are considered acceptable on balance.

Privacy

109. New windows are proposed along the Darlinghurst Road and Earl Street frontages, to the proposed central lightwell and along the north-western boundary adjoining the site at 220 Victoria Street. In relation to visual privacy impacts, the following comments are made:

- (a) A new façade with new windows is proposed to the Darlinghurst Road frontage. These provide passive surveillance over the street and do not enable overlooking into any sensitive uses due to the windows facing directly out towards the Darlinghurst Road carriageway.
- (b) A glazed façade to Earl Street is proposed. From Level 1 up, the glazed façade largely constitutes glass blocks with a small window from the lift lobby of each level proposed. The glass blocks will allow light in while minimising the potential for overlooking into the windows on the north-western elevation of the residential building at 99-105 Darlinghurst Road which are in close proximity to the Earl Street façade of the proposal. The small windows are acceptable due to their size, fixed design and location being within lift lobbies which are used intermittently for short periods of time while people move through the space as opposed to habitable rooms. This is an acceptable visual privacy outcome. A full clear glazed façade is proposed on Earl Street at ground and lower ground / basement 1 levels. This is acceptable as no full-height / eye-level windows are located at the corresponding levels of the adjacent residential building at 99-105 Darlinghurst Road, and as such, opportunities for overlooking will be limited.
- (c) A new centrally-located light court is proposed above the Kings Cross Train Station pedestrian arcade. Windows from hallways and bedrooms in the proposed development are proposed to this light court. These windows are depicted as fixed glass block windows, which will allow light in while minimising the potential for overlooking and adverse visual privacy impacts. The positioning of windows within the lightwell will also address visual privacy concerns within the proposal and to adjoining properties.

- (d) There are existing windows (to be widened / enlarged) and new windows proposed on the north-western property boundary adjacent to 220 Victoria Street which is occupied by a residential building. The City's surveyor has reviewed the proposal and the existing easements which relate to the site and has noted that these windows appear to receive adequate access to light and air through a benefitting easement, and that no provisions have been identified in the terms of the easement that impose height restrictions on the access to light and air provided by the easement. As such, there are no concerns with regard to these windows borrowing amenity over this boundary, noting that this is already an existing situation in part and is adequately protected. In relation to visual privacy impacts, it is noted that there are existing windows in the residential building at 220 Victoria Street adjacent to the windows of the proposed development on the Level 3, 4 and 5 roof plans. While the rooms that these windows belong to have not been identified in the application, they belong to a residential development, are located approximately 5.2m from the boundary windows and could be impacted by overlooking and privacy impacts. As such, a condition of consent is recommended in Attachment A requiring that privacy film be installed to a height of 1.6m for each of the boundary windows on to minimise the potential for unacceptable privacy impacts over the boundary.

110. In light of the above, it is considered that the visual privacy impacts of the proposal will be acceptable.

Earl Street Interface

111. The submitted architectural drawings include an annotation that states that a proposed kerb, gutter and pram ramp is to be co-ordinated with Council within the public domain at the Earl Street entrance to the proposed development.
112. Council's Public Domain Unit has reviewed the proposal in detail and notes that the proposed pram ramp at the Earl Street entry is not shown on the submitted plans and is not considered acceptable for the following reasons:
- The ramp and extended footpath would conflict with the existing stormwater kerb outlets servicing both the subject site and the neighbouring property.
 - The available space is insufficient to achieve the required design levels and compliant gradients for the site.

Notwithstanding, a condition requiring a Public Domain Plan to be submitted and approved by Council prior to the construction of any public domain works is recommended in Attachment A and if appropriate the above could be addressed as part of that condition.

Consultation

Internal referrals

113. 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) Safe City unit
 - (f) Surveyors
 - (g) Transport and Access unit
 - (h) Tree Management unit
 - (i) Landscaping unit
 - (j) Waste Management unit
114. The above-mentioned Council units advised that the proposal is generally acceptable and could be supported subject to conditions, with the exception of Council's Tree Management unit, Landscaping unit, Public Domain Unit and Safe City unit who requested additional information to complete their assessment.
115. Council's Landscaping unit raised concerns that the application does not include any landscaping elements and the applicant has not provided a Landscape Plan. Council's Tree Management unit recommended that the design be amended to allow for planting on structure (in the form of two planter bed areas with adequate soil volume) to achieve the required 15% tree canopy cover in accordance with Section 3.5.2 of the DCP. This information was not sought from the applicant as the site is already fully occupied by existing development and therefore tree planting and landscaping opportunities are severely limited.
116. Council's Landscaping unit recommended that a safety review be conducted of roof terrace elements, specifically the provision of loose furniture near building balustrades and the interface between the roof terrace and the sloping roof over the fire stairs. The applicant has made amendments and updated their Plan of Management to address these matters.
117. Council's Safe City unit raised concern about the use of Earl Street as the primary entry point for the backpackers accommodation as it is adjacent to sensitive land uses (residential apartments) and may encourage guests to congregate outside the premises, potentially resulting in noise impacts and reduced local amenity. Changes to the proposed entry point off Earl Street were not sought from the applicant as this element of the proposal is seeking to activate the rear laneway and the City supports the activation of rear laneways.
118. Council's Public Domain Unit indicated that the submitted stormwater concept drainage management plans have not adequately resolved the stormwater drainage servicing arrangement for the proposed development. A deferred commencement condition is therefore recommended in Attachment A stating that an updated stormwater drainage proposal shall be submitted to enable Council to assess the proposed stormwater drainage arrangements before the consent is to operate.

External referrals

NSW Police

119. The application was referred to NSW Police for comment.
120. A response was received raising no objections to the proposed development subject to the following considerations and implementation of appropriate CPTED-aligned improvements:
- strengthened access control for all guest floors, communal areas, and storage spaces
 - enhanced CCTV coverage and lighting throughout internal and external areas
 - clear signage outlining behavioural expectations, visitor rules, and safety information
 - regular maintenance and security checks to ensure all safety features remain functional
 - provision of guest information on e-bike safety and NSW road rules
 - ongoing communication with local police regarding incidents and emerging issues
 - operational practices that acknowledge the surrounding dense residential area, including measures to minimise noise, antisocial behaviour, and late-night disturbances
121. The applicant was requested to submit an updated Plan of Management which addresses the above matters, however this had not been received at the time of preparing this report. A condition requiring the Plan of Management to be updated to address these matters is included in Attachment A.

Sydney Trains

122. Whilst the application does not propose excavation, it does involve development above and adjacent to a rail corridor as the development is situated above Kings Cross Train Station. Accordingly, the application was referred to Transport for NSW (Sydney Trains) for comment.
123. Sydney Trains have not commented on the merits of the proposal, however in any regard, Sydney Trains provided concurrence to the previously refused scheme for the site (D/2022/1107) which is similar to the current proposal in its relationship to the rail corridor.
124. Concerns were however raised by Sydney Trains with regard to a requirement for landowners consent from the Transport Asset Manager of NSW (TAM). During the assessment of the application, the architectural drawings were amended to remove any encroachments onto lots owned by TAM. The amended architectural drawings have been reviewed by the City's surveyor to confirm this. Additionally, a condition of consent is recommended in Attachment A, specifying that no portion of the proposed structure shall encroach over adjoining land / lots in separate land ownership. On this basis, it is considered that landowners consent from TAM is not required to satisfy Clause 23 (1) of the Environmental Planning and Assessment Regulation 2021.

Advertising and notification

125. In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2025-2029, the proposed development was notified for a period of 28 days between 4 November 2025 and 3 December 2025. A total of 575 properties were notified and 4 submissions were received. During the assessment of this DA, amended plans were submitted to address Council comments and concerns. These amended drawings were not renotified as they were not considered to constitute any significant design changes, or create any new or increased environmental impacts.

126. The submissions raised the following issues:

- (a) **Issue:** Unacceptable concentration of backpackers accommodation within a 200m radius of the proposal.

Response: The proposal relates to alterations and additions to an existing backpacker accommodation, rather than the establishment of a new backpacker accommodation in this locality. Notwithstanding, there are no planning controls which limit the number of backpacker accommodation uses in the area, and the proposal is considered acceptable having regard to the applicable planning framework - namely the provisions of the Sydney LEP and DCP.

- (b) **Issue:** Lack of amenity on the premises resulting in backpackers congregating on the streets, and causing associated issues with ignoring alcohol free zones and leaving rubbish on the streets.

Response: Council has assessed the design of the premises against the provisions for backpackers accommodation in the Sydney DCP which seek to ensure that adequate onsite amenity is provided for guests. It is noted that the bedrooms, kitchen and laundry areas are all adequately sized for the proposed number of occupants/guests, and the total communal recreation area exceeds the minimum requirement for the number of guests accommodated onsite, when assessed against the provisions of the DCP. These areas are all of sizes and shapes that are functional for their purpose. There is insufficient evidence to indicate that the proposal would result in backpackers congregating on the streets. Compliance with alcohol restrictions in public areas is a matter for enforcement by the NSW Police. Notwithstanding, there is insufficient evidence to conclude that the proposal would result in unacceptable impacts in this regard. In regard to the concern about littering on the street, the waste management measures incorporated into the proposal have been assessed by Council and are considered acceptable. Furthermore, there is insufficient evidence to conclude that the proposal would result in unacceptable litter impacts on the surrounding streets.

- (c) **Issue:** Police inadequately resourced to manage the existing backpacker issues. The proposal will exacerbate issues.

Response: The existing backpacker accommodation on the site is a lawfully established use that is permissible in the zone. The proposal seeks consent for alterations and additions to the existing backpacker accommodation. Police resourcing is not a matter for consideration in the assessment of development applications under section 4.15 of the EP&A Act. NSW Police were notified of the proposal and invited to comment. Comments were received and a condition of consent is recommended in Attachment A, requiring the Plan of Management to be updated to address the NSW Police's concerns and recommendations. Subject to this condition, it is considered that the implementation of the Plan of Management will adequately address any potential issues that may arise as a result of the backpacker accommodation use.

- (d) **Issue:** The area requires hotel accommodation more than another backpackers accommodation.

Response: The existing building accommodates a backpackers accommodation, and the proposal seeks alterations and additions to this backpackers accommodation. This use is permissible in the E1 Local Centre zone, and the need or preference for an alternative land use is not a matter that outweighs the proposal's consistency with the applicable planning controls and objectives, nor is it a reason for refusal.

- (e) **Issue:** Backpackers have a significant number of bikes and motorcycles which are left on the street and in parking zones. The proposal will exacerbate this problem.

Response: The proposal includes adequate on-site bicycle parking in accordance with the provisions of the Sydney DCP. There is insufficient evidence to conclude that the proposal would result in significant adverse impacts arising from bicycle or motorcycle parking on surrounding streets. Should such issues occur, these may be addressed through parking, traffic management or compliance powers where appropriate.

- (f) **Issue:** Noise impacts associated with rooftop mechanical plant.

Response: While the specific details of the mechanical plant for the proposal are not yet known, the acoustic report submitted with the application has recommended noise amelioration treatments and noise control measures for mechanical plant to achieve the requirements of the City of Sydney's standard "Noise - Commercial Plant/Industrial Development" condition and the NSW EPA Noise Policy for Industry's intrusive and amenity criteria. The acoustic report concludes that it is feasible that noise emissions from the subject site can comply with these criteria, subject to detailed design at Construction Certificate stage. Council's Environmental Health Unit has reviewed the acoustic report and considers it acceptable. Appropriate noise conditions of consent have been recommended and included in Attachment A. Subject to the above, no unacceptable noise impacts associated with rooftop mechanical plant are expected to arise from the proposal.

- (g) **Issue:** Noise impacts associated with rooftop communal space.

Response: The acoustic report submitted with the application includes recommendations for managing and mitigating noise impacts on the rooftop communal space, such as limiting the number of people on the rooftop communal space to 14 at any one time, not allowing amplified music to be played on the rooftop at any time, not permitting parties on the rooftop, and limiting the hours of use from 7am to 10pm. Council's Environmental Health Unit has reviewed the acoustic report and considers it acceptable. Subject to the imposition of the recommended conditions of consent in Attachment A, the proposal is not expected to result in any unacceptable noise impacts associated with the rooftop communal space.

- (h) **Issue:** Potential sunlight limitations for neighbouring property.

Response: Impacts on solar access have been assessed in the Discussion section of this report and are considered acceptable.

- (i) **Issue:** Significant adverse amenity effects for nearby residents associated with the proposed relocation of the primary entrance, exit and reception of the backpackers accommodation to Earl Street and antisocial behaviour directly outside street level entrances.

Response: Council supports the proposed entrance to the premises on Earl Street. The submitted Plan of Management outlines how noise and anti-social behaviour is to be managed on the site. Potential impacts associated with patron behaviour are expected to be appropriately managed through the operation of the premises. An update to the Plan of Management to address a number of other matters is required by a recommended condition of consent in Attachment A, as is implementation of the Plan of Management during the ongoing operation of the premises once approved.

- (j) **Issue:** Backpackers accommodations operating without any after-hours supervision.

Response: The Plan of Management submitted with the application sets out that reception and cleaning staff will be rostered to ensure the premises is adequately supervised. Reception staff will be rostered on during operating hours, and a manager will be available 24/7 (either onsite or by mobile phone). In this regard, Council is satisfied that the backpackers accommodation will not be operating without any after-hours supervision. An update to the Plan of Management to address a number of other matters is required by a recommended condition of consent in Attachment A, as is implementation of the Plan of Management during the ongoing operation of the premises once approved.

- (k) **Issue:** The area immediately outside the proposed Earl Street entry being identified as a potential "square" on the architectural drawings, and how this would encourage congregation, loitering and late-night activity in Earl Street.

Response: While there is no public square outside the proposed Earl Street entry which forms part of the proposal, Council supports the proposed entrance to the premises on Earl Street and activation of this laneway. The proposal has been designed in accordance with CPTED principles in order to not create areas that encourage loitering and congregation in Earl Street. Potential impacts associated with guests congregating outside the premises have been considered and the proposal is not expected to result in unacceptable amenity impacts, subject to the recommended conditions of consent in Attachment A and the ongoing management of the premises.

Financial contributions

Contribution under Section 7.11 of the EP&A Act 1979

127. The City of Sydney Development Contributions Plan 2015 applies to the site. The development is subject to a section 7.11 local infrastructure contribution under this Plan.
128. A condition relating to this local infrastructure contribution has been included in the recommended conditions of consent. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

129. The site is located within the residual land affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of \$11,223.28 per square metre of total non-residential floor area [223.30] totalling \$25,061.58. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Housing and Productivity Contribution

130. The development is subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
131. The site is located with the Greater Sydney region, the development is a type of commercial development to which the Housing and Productivity Contribution applies, and the development is not of a type that is exempt from paying a contribution.
132. A condition relating to the Housing and Productivity Contribution has been included in the recommended conditions of consent.

Relevant legislation

133. Environmental Planning and Assessment Act 1979.

Conclusion

134. Approval is sought for alterations and additions to an existing mixed-use development above Kings Cross Train Station comprising ground floor retail tenancies and a backpackers accommodation, and including the construction of two additional levels.
135. The application has been assessed in accordance with section 4.15(1) of the Act and is considered satisfactory subject to the recommended conditions of consent at Attachment A.
136. The proposal has been assessed against the aims and objectives of the relevant planning controls including the Sydney Local Environmental Plan 2012, the Sydney Development Control Plan 2012, and the applicable Environmental Planning Instruments. Where non-compliances are proposed, they have been assessed in this report as being acceptable in the circumstances of the case or can be resolved by the recommended conditions of consent.
137. The proposal will achieve the principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future users of the site.
138. The proposed development demonstrates design excellence in accordance with the relevant provisions and matters for consideration in clause 6.21C of the Sydney Local Environmental Plan 2012.
139. Matters raised by internal and external referrals have been adequately addressed as discussed within this report.
140. The application was notified in accordance the requirements of the EP&A Regulations 2021 and the City's Community Engagement Strategy and Community Participation Plan 2025-2029. Issues raised in submissions have been addressed as discussed in this report.
141. The proposed development demonstrates a design that responds to the constraints of the site and will positively contribute to the desired future character of the Kings Cross locality.
142. Subject to the recommended conditions of consent in Attachment A, the proposed development is considered to be in the public interest and is recommended for deferred commencement approval.

ANDREW THOMAS

Executive Manager Planning and Development

Kerryanne Lewis, Senior Planner