

## Item 2.

### Post Exhibition – Draft Sydney Development Control Plan 2012 – Darlinghurst Road, Potts Point

File No: X018038

#### Summary

Sustainable Sydney 2030 envisions an engaging and innovative global city comprised of equitable, liveable and resilient communities with good access to local services, amenities and employment opportunities. The City of Sydney's villages and their thriving main streets play an important economic and social role in the inner city. They create a local centre that provides jobs, community facilities, opportunities for creative and cultural uses and entertainment, leisure and public open space, and services for the day to day needs of residents and visitors alike. Streets like Darlinghurst Road and their local economies allow people to live, meet, shop, play, learn and work.

Darlinghurst Road is Potts Point's high street. It features a variety of retail and commercial uses, bars, cafes and restaurants, health services, community facilities and tourist and visitor accommodation and is used by residents, workers and visitors. Previously recognised as a popular late night trading precinct, the area is undergoing a period of incremental change. Interest in residential development in the area is increasing due to improving amenity, changes to licensing regulations and other market factors.

The proposed site-specific Development Control Plan seeks to ensure that the special character, heritage and main street function of Darlinghurst Road is protected into the future through good design outcomes for new development. The Development Control Plan achieves this by protecting a proportion of non-residential uses, enabling appropriate residential development conserving the distinctive cultural and architectural character of Darlinghurst Road through a series of land use and design guidance developed specifically for the area.

The Development Control Plan is being prepared in two stages. The stages are area related and are based on different levels of investigation into the character and built form of Darlinghurst Road.

Stage 1, which is the subject of this report, is made up of two components:

- (a) General provisions for Darlinghurst Road from Bayswater Road to Macleay Street precinct; and
- (b) Specific built form controls for the Bourbon site at 18-32A Darlinghurst Road.

Stage 2, which has commenced, will be the subject of a separate report and will provide built form controls for the remainder of the street. A map of the precinct (outlined in red) and the site (outlined in blue) is at Figure 1.

Investigation for the first stage has been completed. This includes a heritage assessment, urban design study, Design Advisory Panel advice, and community and landowner consultation sessions. The general and site-specific provisions contained in the draft DCP are the result of this research.

Investigation for the second stage is underway. This work will recommend specific built form controls for the remaining precinct (outlined in red in Figure 1). The draft Development Control Plan will be revised accordingly and the results of this work will be reported to Council.

On 10 September 2018, Council resolved to exhibit the Draft Development Control Plan - Darlinghurst Road, Potts Point (draft DCP). A copy of the resolution of Council is at Attachment B. This report describes the exhibition outcomes and recommends Council approve the controls with some minor changes. The controls recommended for adoption are at Attachment A.

The Draft DCP was exhibited from 19 September to 8 November 2018. One hundred and three (103) submissions were received from a range of submitters, including 89 submissions from local residents, two submissions from community interest groups and 12 submissions from or on behalf of landowners in the area.

Issues raised include building heights, land use mix, heritage, local character, transport and vehicular access, local social issues, the building envelope for 18-32A Darlinghurst Road, amenity, public domain and process. These are discussed in the body of the report and a full summary is at Attachment C.

A number of changes have been made to the draft DCP, in response to submissions and further review by staff.

This report recommends that Council approve the revised Draft DCP at Attachment A. Key changes to the DCP include:

- Changes to the land use mix provision. The provision provides greater flexibility for development that achieves full compliance with amenity requirements, where non-residential uses are only required at the ground and first floor.
- Changes to how much of the Commodore at 30-30B Darlinghurst Road is required to be retained. Previously, the draft DCP required the whole building to be retained for heritage conservation. The control has been amended so that the form, external fabric and floor levels of the building are to be conserved to a depth of at least 8m. This is to ensure the facade is retained and continues to contribute to the streetscape and Heritage Conservation Area, as well as contributing to the variety of development on the 18-32A Darlinghurst Road block.
- Clarification of the tenancy size provision. Existing ground floor tenancies that are larger than 300sqm are not required to be reduced in size. The provision only applies to new tenancies at street level. The control does not apply to tenancies or part-tenancies on other levels. This allows flexibility for existing commercial tenancies in buildings with heritage significance. It also allows larger tenancies at upper and lower ground levels, whilst ensuring development achieves fine grain at street level.
- Changes to the built form and setbacks provision to allow greater flexibility. The provisions have been modified so that setbacks are determined by the requirement to minimise overshadowing to surrounding buildings.

The report also notes the City is undertaking further investigation into the Darlinghurst Road precinct to further refine the site-specific DCP, with further detailed built form provisions for the rest of the street to be developed. The second stage of the heritage assessment for the high street is currently underway with the urban design study for the rest of the area to follow shortly. This ongoing work will provide the public with further opportunities to review proposed planning controls and to provide Council with feedback.

## Recommendation

It is resolved that:

- (A) Council note the matters raised in response to the public exhibition and public authority consultation of Draft Sydney Development Control Plan 2012 - Darlinghurst Road, Potts Point;
- (B) Council approve the revised Draft Sydney Development Control Plan 2012 - Darlinghurst Road, Potts Point as shown at Attachment A to the subject report;
- (C) authority be delegated to the Chief Executive Officer to make any minor variations to Draft Sydney Development Control Plan 2012 - Darlinghurst Road, Potts Point to correct drafting errors prior to the finalisation of the site specific Development Control Plan; and
- (D) Council note that the current review of planning controls for Darlinghurst Road does not contemplate increasing the height and floor space ratio controls in Sydney Local Environmental Plan 2012 and that Division 3.4 of the Environmental Planning and Assessment Act 1979 provides landowners the opportunity to submit a request to prepare a planning proposal to amend the height and floor space ratio controls for Council's consideration.

## Attachments

- Attachment A.** Draft Sydney Development Control Plan 2012 - Darlinghurst Road, Potts Point (Note: a summary of DCP amendments is included in this attachment).
- Attachment B.** Resolution of Council - 17 September 2018.
- Attachment C.** Draft Sydney Development Control Plan 2012 - Darlinghurst Road, Potts Point - Summary of Submissions.
- Attachment D.** Landowners Consultation Report.

## Background

1. The purpose of this report is to seek Council approval of Draft Sydney Development Control Plan 2012 - Darlinghurst Road, Potts Point (draft DCP) at Attachment A. It is noted that the draft DCP has recommended amendments following public exhibition and consideration of submissions.
2. Council approved the draft DCP for public exhibition on 17 September 2018. The draft DCP was exhibited from 19 September to 8 November 2018. The Council resolution for the draft DCP is at Attachment B.
3. The draft DCP is the result of a withdrawn development application lodged for a mixed use building at 18-32A Darlinghurst Road. In response to the non-compliant DA, on 19 February 2018, Council resolved to commission an urban design study and heritage assessment and involve the City's Design Advisory Panel in a full review of the current planning controls. Community consultation centring on a workshop and survey was also carried out in mid-2018 and with landowners in February 2019.
4. The exhibition of a planning proposal related to the draft DCP was also approved by Council on 17 September 2018 and by the Central Sydney Planning Committee (CSPC) on 13 September 2018. The planning proposal seeks the heritage listing of 1 Elizabeth Bay Road, Potts Point, 22-24 Darlinghurst Road, Potts Point and 32-32A Darlinghurst Road. The planning proposal received gateway determination from the Department of Planning on 26 October 2018 and is currently on public exhibition. The exhibition period is due to close on 25 March 2019. The planning proposal is progressing on a different timeline due to the requirement for a request for a Gateway determination.
5. In response to the exhibition of the draft DCP, the City received 103 submissions made up of 89 individual resident submissions, 12 submissions from local landowners and their representatives, and two submissions from local interest groups. A summary of all submissions and the City's response is at Attachment C. Key issues are discussed later in this report.
6. A number of changes are recommended to the draft DCP which respond to submissions and further internal review. These changes are discussed in this report.

## Site and context

7. The Darlinghurst Road precinct encompasses 49 properties.
8. The DCP is being prepared in two stages. The stages are area related and are based on different levels of investigation into the character and built form of Darlinghurst Road.
9. Stage 1, which is the subject of this report, is made up of two components:
  - (a) General provisions for Darlinghurst Road from Bayswater Road to Macleay Street; and
  - (b) Specific built form controls for the Bourbon site at 18-32A Darlinghurst Road.
10. Stage 2, which has commenced and will be the subject of a separate report, will provide built form controls for the remainder of the street. A map of the precinct (outlined in red) and the site (outlined in blue) is at Figure 1.

11. Investigation for the first stage has been completed. This includes a heritage assessment, urban design study, Design Advisory Panel advice, and community and landowner consultation sessions. The general and site-specific provisions contained in the draft DCP are the result of this research.
12. Investigation for the second stage is underway. This work will recommend specific built form controls for the remaining precinct (outlined in red in Figure 1). The draft DCP will be revised accordingly and the results of this work will be reported to Council.



**Figure 1:** Darlinghurst Road precinct outlined in red with 18-32A Darlinghurst Road outlined in blue.



**Figure 2:** Aerial image and site location of 18-32A Darlinghurst Road

13. Darlinghurst Road is zoned B2 - Local centre and is the primary business, service and entertainment area for the surrounding residential community. The precinct is characterised by mostly small scale, fine grain commercial buildings of around 3 to 4 storeys interspersed with some larger sites and taller buildings. These include The Bourbon, The Empire, Wintergarden, Kings Cross Library and most significantly, the development known as 'Omnia', located at the intersection of Darlinghurst Road, Bayswater Road and Victoria Street. Surrounding development is mixed in scale and form, varying from two storey Victorian terraces to multi-storey residential flat buildings.

#### **Exhibited controls - draft DCP**

14. The DCP seeks to maintain the vibrant, active nature of the street, and to ensure that new development respects and responds to the existing built form of Darlinghurst Road through the use of appropriate materials and architectural articulation, heritage conservation, street wall heights and upper level setbacks, and improvements to the public domain. This is also consistent with the objectives of the B2 - Local centre zone which applies to all of the City's village high streets. The controls include:

- (a) A land use mix provision that stipulates a minimum of 50% of floor space must consist of non-residential uses;
- (b) Urban grain and active street frontage provisions that are consistent with the existing subdivision pattern of Darlinghurst Road, the individually distinctive architectural language of buildings, maximum ground floor tenancy sizes and widths, and other tenancy frontage requirements;
- (c) Architectural character provisions relating to building facades, openings, materials, awnings and parapets;
- (d) Access, public domain, and residential amenity; and
- (e) Specific provisions for 18-32A Darlinghurst Road, including heritage conservation, built form and setbacks, urban grain, and a design excellence strategy for development of the site.

### **Public exhibition**

- 15. The draft DCP was exhibited from 19 September to 8 November 2018.
- 16. Relevant documents were made available on the 'Sydney Your Say' website and at the Kings Cross Neighbourhood Service Centre. The City sent over 12,000 letters to landowners and residents to notify them of the public exhibition. Letters were sent to all property owners within the precinct affected by the draft DCP.
- 17. The exhibition was also advertised in the Sydney Morning Herald and the Wentworth Courier, and through the City's website and the 'Sydney Your Say' e-newsletter. City of Sydney staff also attended the weekly markets in Fitzroy Gardens to publicise the exhibition of the draft DCP.
- 18. A total of 103 submissions were received. These comprise 89 individual submissions, 12 submissions from local landowners and their representatives, and two submissions from local interest groups.
- 19. Issues raised in submissions and the City's response are summarised at Attachment C, with discussion of key issues below.

### **Landowner engagement**

- 20. Of the 103 submissions received by the City, 12 were made by or on behalf of landowners within the Darlinghurst Road precinct. Issues most commonly raised by these stakeholders include the land use mix, residential development and redevelopment, Macleay Street, social issues, consultation process, the restrictive nature of the controls and the changing character of Kings Cross.
- 21. At their request, a meeting was held between City of Sydney staff and local landowners on 22 November 2018 to discuss the Darlinghurst Road draft DCP, the consultation process and the concerns raised in submissions. In response to this feedback, the City held an engagement workshop with Darlinghurst Road landowners on 26 February 2019. Twelve landowners and their representatives attended the workshop. An online survey based on local character issues and questions was also re-opened which targeted landowners between 6 February and 5 March 2019. The consultation followed the same format as the July 2018 workshop and survey conducted with the wider community. A report on the landowners consultation is at Attachment D.

22. The issues discussed on the day were generally consistent with those raised in the landowners' submissions. The key issues emerging from the consultation are:
- (a) Concerns regarding overly prescriptive DCP controls;
  - (b) Social issues and prevalence of drug use, specifically identifying the Medically Supervised Injecting Centre as an issue;
  - (c) Commercial vacancies along Darlinghurst Road and a lack of people and vitality, causing the area to feel boring, unsafe and unattractive;
  - (d) The Omnia building as a positive change for the area, and a precedent for future development;
  - (e) A desire to see much taller 'iconic' buildings along Darlinghurst Road;
  - (f) A willingness to preserve some heritage facades and buildings within the locality; and
  - (g) A strong preference for more residential dwellings for Darlinghurst Road.
23. Council is continuing work on the remaining street blocks for the second stage of the Darlinghurst Road DCP. The work involves a heritage assessment to consider potential heritage listings and an urban design study to develop specific setback and built form controls. Stage two of the draft DCP will be reported to Council when complete and then publicly exhibited. Feedback provided from landowners through the exhibition and consultation will help inform stage two of the DCP.
24. Through the consultation and submissions, a number of landowners raised the desire for additional height and density along Darlinghurst Road. They noted that additional residential development was needed to revitalise Darlinghurst Road, that the scale and form of development along Macleay Street (up to 12-15 storeys) provided a good model for future development and that redevelopment could provide through site links, publically accessible private open space and other public benefits.
25. The urban design study and draft DCP respond to Council's resolution from 19 February 2018. Council resolved to 'commission an urban design study to identify design principles for the site, including an indicative design strategy to provide an illustration of how good design can achieve better outcomes within the current controls' [emphasis added]. The resolution also noted that the proposed development for the Bourbon site exceeded the height control and was of 'a scale and building morphology that does not fit within the context of the heritage conservation area in and around Kings Cross.' Therefore the urban design study does not contemplate increasing the height and floor space ratio controls under Sydney Local Environmental Plan 2012. Under Division 3.4 of the Environmental Planning and Assessment Act 1979 proponents may request Council prepare a planning proposal to change the controls in the LEP. The City would then be required to consider the strategic and environmental merit of any request.

### Key issues raised

26. A review of the draft DCP was undertaken following submissions and further internal consideration. A summary of the key issues and recommended changes to the draft DCP are discussed below. The changes to the draft DCP are shown in Attachment A, with new text underlined and deleted text as strikethrough. All other issues raised are discussed in detail in the summary of submissions at Attachment C.

**Residential development**

27. A number of submissions by residents and landowners raise the quantity of residential development as a key issue. Some submitters wrote in support of higher residential density and more apartments, whilst others opposed increased population due to adverse impacts such as reduced amenity, increased congestion and erosion of quality of life.
28. Submitters in support of additional residential development generally identify the proximity of Darlinghurst Road to Kings Cross train station and the Sydney CBD, as well as the positive impacts that bringing more people into the area would have on Darlinghurst Road as reasons for increasing the quantity of residential uses.
29. Darlinghurst Road is located within the B2 Local Centre zone. It is the high street for the surrounding high density residential communities. Its role is to provide the services, shops, community facilities in an accessible and attractive location for the community and visitors. Although Kings Cross has played a broader role as a night time centre, it is undergoing a period of change and the community has expressed a strong desire to retain elements of Darlinghurst Road's existing character. The desired future character centres on the area being an attractive retail and commercial main street that provides a balance and diversity of activities and experiences. This is proposed to be achieved through the protection of heritage buildings, the preservation of a quantum of non-residential floor space, and through design guidelines that ensure new development is varied, is of a human scale, and is highly detailed.
30. The draft DCP does not preclude residential uses within the Darlinghurst Road precinct. Rather, the DCP seeks to preserve a proportion of commercial floor space to provide local services, businesses, office space, food and drink and employment opportunities for both residents and visitors. This approach is consistent with the objectives of the B2 zone.

**Land use**

31. Clause 6.2.12.1 of the draft DCP stipulates that in the B2 zone, a minimum of 50% of the total gross floor area for each development must be for uses other than residential accommodation or tourist and visitor accommodation.
32. Submissions by and on behalf of landowners are critical of the proposed land use provision. They cite a current oversupply of commercial floor space in the area and Potts Point's historically residential nature as reasons for deleting the control, or substantially decreasing the amount of non-residential floor space required by the control. It was also submitted that the land use control would result in previously residential floor space becoming commercial floor space when a property is redeveloped.
33. The provisions and intent of the draft DCP are consistent with the objectives of the precinct's B2 Local Centre zoning. The objectives of the B2 zone are:
  - (a) To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area;
  - (b) Encourage employment opportunities in accessible locations;
  - (c) Maximise public transport patronage and encourage walking and cycling; and
  - (d) Allow appropriate residential uses so as to support the vitality of local centres.

34. The DCP will allow an appropriate combination of residential and non-residential development in order to achieve the objectives of the business zone. This means providing a balance of residential uses that support Darlinghurst Road's predominantly commercial role in order to continue its function as a high street, and to ensure the surrounding community has an accessible and diverse local centre.
35. This objective is supported by data gathered in the 2007, 2012, and 2017 Floor Space Employment Survey (FES). The data indicates that the area is dominated by buildings that are primarily commercial in nature, where 82% of floor space in Darlinghurst Road is occupied by non-residential uses. The proposed 50% land use control represents a reduction in the proportion of existing commercial floor space.
36. It is expected that future demand for commercial floor space on Darlinghurst Road will still continue to grow from a high base over the next two decades, driven partly by moderate population growth in the area. Australian Bureau of Statistics data indicates an increase in the number of jobs in the Potts Point-Woolloomooloo area, up from 11,500 in 2011 to 15,000 in 2016.
37. Potts Point and Woolloomooloo also have a high proportion of local workers who are also local residents, at 15%, which is higher than other comparable centres such as Newtown, Surry Hills, Redfern and Pyrmont. These indicators point to a continued increase in the demand for commercial floor space in the area, which the DCP seeks to cater for.
38. The land use control is also consistent with the objectives of the Eastern City District Plan, which outlines principles for centres. The Plan states that additional housing within close proximity of transport is desirable, however housing should not compromise a centre's primary role to provide goods and services and the opportunity for the centre's employment function to grow and change over time. Being one of Australia's most dense residential areas, there is considerable housing in close proximity to transport and the centre and it's essential that space for local business, services and shops is retained. This is so that it can continue to adapt and respond to community and visitor needs.
39. The significant loss of floor space for businesses, services and shops would have a negative impact on the high density local community. It would likely force people to travel greater distances and take more trips, reduce the amenity and activity in the area and encourage private vehicle rather walking, cycling and public transport travel.
40. In response to the submissions and upon further internal review, it is recommended that the land use mix provision be amended to allow for additional flexibility for fully compliant, high quality development. The recommended changes are:
  - (a) The DCP now considers tourist and visitor accommodation (except for serviced apartments) a non-residential use which can contribute to the 50% requirement;
  - (b) It may be considered acceptable for non-residential uses to be located on the ground and first floor only where residential accommodation achieves full compliance with amenity requirements; and
  - (c) If a site is being redeveloped, it may retain its existing quantum of residential floor space (that is, quantity of residential floor space in square metres) provided the amenity requirements can be met.

41. It has been noted that where the combined proportion of residential accommodation and tourist and visitor accommodation exceed 50% of the total GFA of a site (either existing or proposed), compliance with setbacks, modulation, and overshadowing requirements may not be feasible. In this instance, variation from the provision will not be considered acceptable.
42. A submission made by a landowner proposes an alternative scheme for 18-32A Darlinghurst Road to that detailed in the draft DCP. The submission demonstrates that a development that complies with the relevant height, FSR, and amenity controls under SEPP 65 can be achieved with a higher proportion of residential use to commercial use than the scheme outlined in the DCP. It is noted that the proposed scheme has a mix of 62% residential to 38% commercial uses across ground and first floors and is largely comprised of split-level apartments.
43. The scheme achieves solar access and cross-ventilation requirements whilst providing a greater proportion of residential floor space on what is a constrained site. However, building designs featuring split level apartments rarely progress at development application stage due to what is argued to be market demands. If a future application does not include split level apartments and cannot meet the amenity requirements, the 50% non-residential floor space requirement will need to be achieved. The abovementioned changes to the provisions are considered to provide adequate flexibility in the land use mix while still achieving the strategic intent for the local centre.

#### ***Medically supervised injecting centre***

44. Several submissions raised the Kings Cross medically supervised injecting centre as a point of concern, citing unsociable behaviour and other negative impacts such as creating an unsafe environment. These matters are outside the scope of the DCP.

#### ***Macleay Street***

45. Macleay Street was described as a pleasant and liveable area with medium rise apartments, a mix of old and new buildings. Several submissions recommended Darlinghurst Road be developed similarly to improve Kings Cross.
46. Macleay Street is located within the Potts Point locality area, which is distinct from Kings Cross. Most of Macleay Street is within a B4 – Mixed Use zone which is intended to provide a mixture of suitable uses that support the viability of nearby centres, such as Darlinghurst Road.
47. Macleay Street provides a handful of small scale commercial uses in an otherwise predominantly residential area. The east side of Macleay Street also features a variety of mid-rise interwar apartment buildings and some high-rise development along the ridge ranging from 8 to 21 storeys, which is unique to that part of Potts Point and different to the predominant four storey scale of Darlinghurst Road.
48. Darlinghurst Road serves as a vital local centre to Potts Point. As detailed above in discussion under 'residential development' and 'land use', the DCP seeks to ensure development in Kings Cross continues to activate the high street through appropriate building design and land uses.
49. Encouraging development similar to Macleay Street on Darlinghurst Road would not achieve the strategic objectives of the B2 – Local Centre zone, would result in the loss of a local, accessible commercial centre which would negatively affect the community, businesses and visitors and is not in keeping with the community's expectations or desires for the future character of Darlinghurst Road.

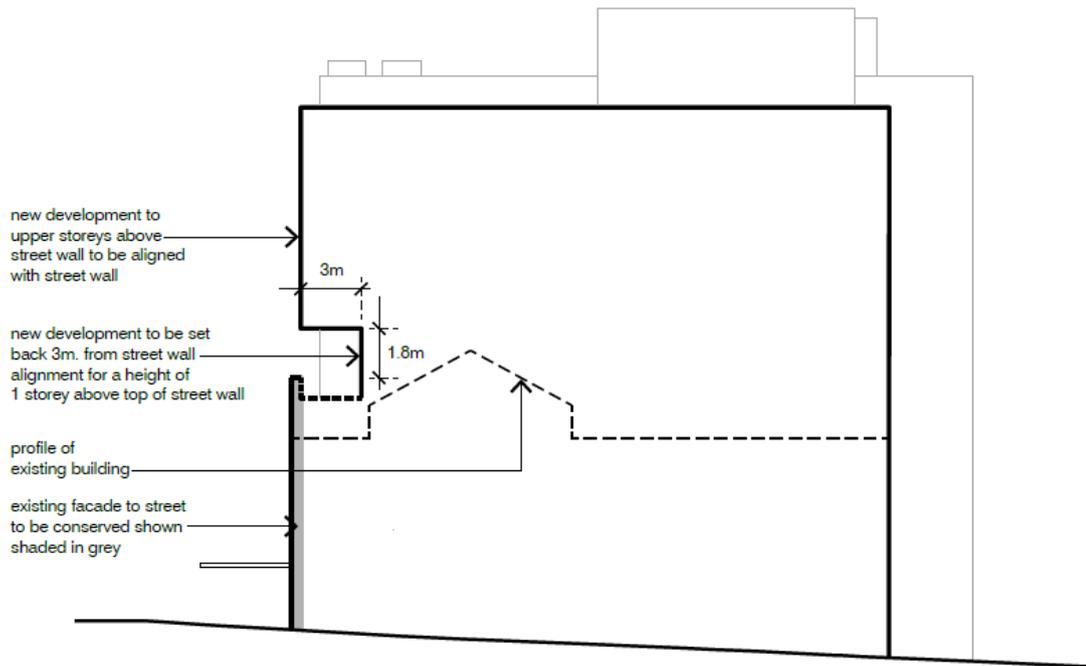
**Building height**

50. Building height is one of the most common issues identified by submitters and has been raised by local residents, landowners, and community groups alike. Views vary greatly, from those who believe the area is already overdeveloped and no additional height should be considered, to those who believe Darlinghurst Road should see more mixed use buildings of 12-15 storeys, or even taller.
51. The site-specific DCP cannot and does not seek to change or increase any of the existing height controls specified in the LEP and Council's resolution from February 2018 required consideration of design outcomes within the existing controls. Any changes to the existing height controls would require a planning proposal to amend height controls in the LEP.
52. The existing LEP controls allow for mid-rise development along Darlinghurst Road through a maximum building height of 22m or around 6 storeys. Darlinghurst Road is also within a heritage conservation area under the LEP with the intent to conserve the built form and fabric of the area.
53. The existing height controls in the LEP are considered appropriate. Darlinghurst Road serves an important commercial, service and transport function in Potts Point. Contextually appropriate redevelopment is possible under the controls and will assist the City in achieving broader planning targets, is in keeping with the area's heritage character and ensures the bulk and scale of new development transitions to surrounding mid and low-scale housing stock. The existing height controls generally allow solar access to surrounding residential development that provides reasonable amenity.

**Heritage**

54. Residents and community groups are concerned that the proposed controls ignore the heritage values of Darlinghurst Road, do not protect local heritage fabric and that the proposed controls for 18-32A Darlinghurst Road will result in development that is not compatible with the existing streetscape, and potentially, facadism. Of particular concern is the proposed height of the Lowestoft building at 18-20 Darlinghurst Road and the amenity impacts this may have on Kingsley Hall at 1A Elizabeth Bay Road, to the north, as well as the retention of The Empire in full.
55. The proposed controls focus considerably on the heritage significance and values of Darlinghurst Road. The City of Sydney has recommended the heritage listing of three items including Kingsley Hall, the facade of The Bourbon, and the site of The Empire (for social significance) based on the heritage assessment of the street block consultation in July 2018. The results of the survey and workshop carried out by Council indicate that local residents and visitors to Kings Cross highly value the heritage aesthetic and character of Darlinghurst Road.
56. The DCP will ensure future development is sympathetic to and in keeping with Darlinghurst Road's unique character through architectural articulation and materials controls, urban grain provisions, the retention of heritage significant facades and building elements at The Bourbon (22-24 Darlinghurst Road), Lowestoft (18-20 Darlinghurst Road) and the Commodore (30-30B Darlinghurst Road) and specific built form controls for 18-32A Darlinghurst Road.

57. Listing of the Bourbon is limited to the facade and front rooms due to the fact that much of the internal fabric has been substantially altered and is now of very little heritage value. Similarly, the retention of the first 8m of the Commodore which is identified as a contributory building in SDCP 2012 ensures its contribution to the heritage area is retained, as its contribution is in its streetscape presence, primarily through its Darlinghurst Road facade.
58. The height of the Lowestoft building at 18-20 Darlinghurst Road is outside the scope of the subject proposal and cannot be changed by the DCP. The 30m height limit allows for a 10 storey building. The Lowestoft is adjacent to a 10 storey art deco flat building at 1A Elizabeth Bay Road, known as Kingsley Hall. The existing height control for the Lowestoft responds to the height of Kingsley Hall to the north. The proposed provisions in the draft DCP show how appropriately designed development at 18-32A Darlinghurst Road can preserve amenity to Kingsley Hall by protecting the light well to the south of the building.
59. A heritage assessment of the Empire demonstrates it has considerable social significance, which is supported through the consultation. The heritage significance of the Empire stems primarily from the community's connection to its former use as the Les Girls nightclub, rather than its physical fabric which has been substantially modified over time and is not recognised for its aesthetic value. The draft DCP proposes to allow the building to be demolished under clause 6.2.12.8. The controls then require any new building to interpret the significance of the site as the original Les Girls venue through architectural interpretation of the building's curved corner form, floor and parapet levels, ground floor awning, first and second floor balconies and the corner sign reading 'Les Girls'. The recommendations of the report have been considered by the City's Design Advisory Panel, an urban design study, and City urban design and heritage staff.
60. Submissions on behalf of landowners raise concerns about the heritage listing of The Empire. The submissions identify inconsistencies between the draft heritage inventory sheets of the planning proposal which indicate the existing building should be retained for its heritage significant fabric, and the proposed draft DCP controls which permit demolition of the building on site. Landowners are also concerned about the proposal to retain the entirety of The Commodore at 30-30B Darlinghurst Road, and the requirement for a 3m setback above the Lowestoft.
61. The draft heritage inventory sheets for The Empire are being progressed with the heritage planning proposal and will be updated when the planning proposal is reported back to Council to note that the significance is related to the social associations rather than the physical fabric and that demolition is possible.
62. Recommended changes to the DCP no longer require the full retention of The Commodore at 30-30B Darlinghurst Road. The control has been modified to require the retention of the front of the building to a depth of 8m, to ensure the facade is retained and continues to contribute to the streetscape and Heritage Conservation Area, as well as contributing to the variety of development on the 18-32A Darlinghurst Road block.
63. The requirement for a 3m setback requirement above the Lowestoft in Clause 6.2.12.8(2) relates only to the level immediately above the existing building. Development above can be built to street alignment as shown in Figure 4 in the DCP, which has been updated for clarity and is shown below (Figure 3). This is the minimal setback possible to differentiate between the existing building and new development above. No change to the control is recommended.

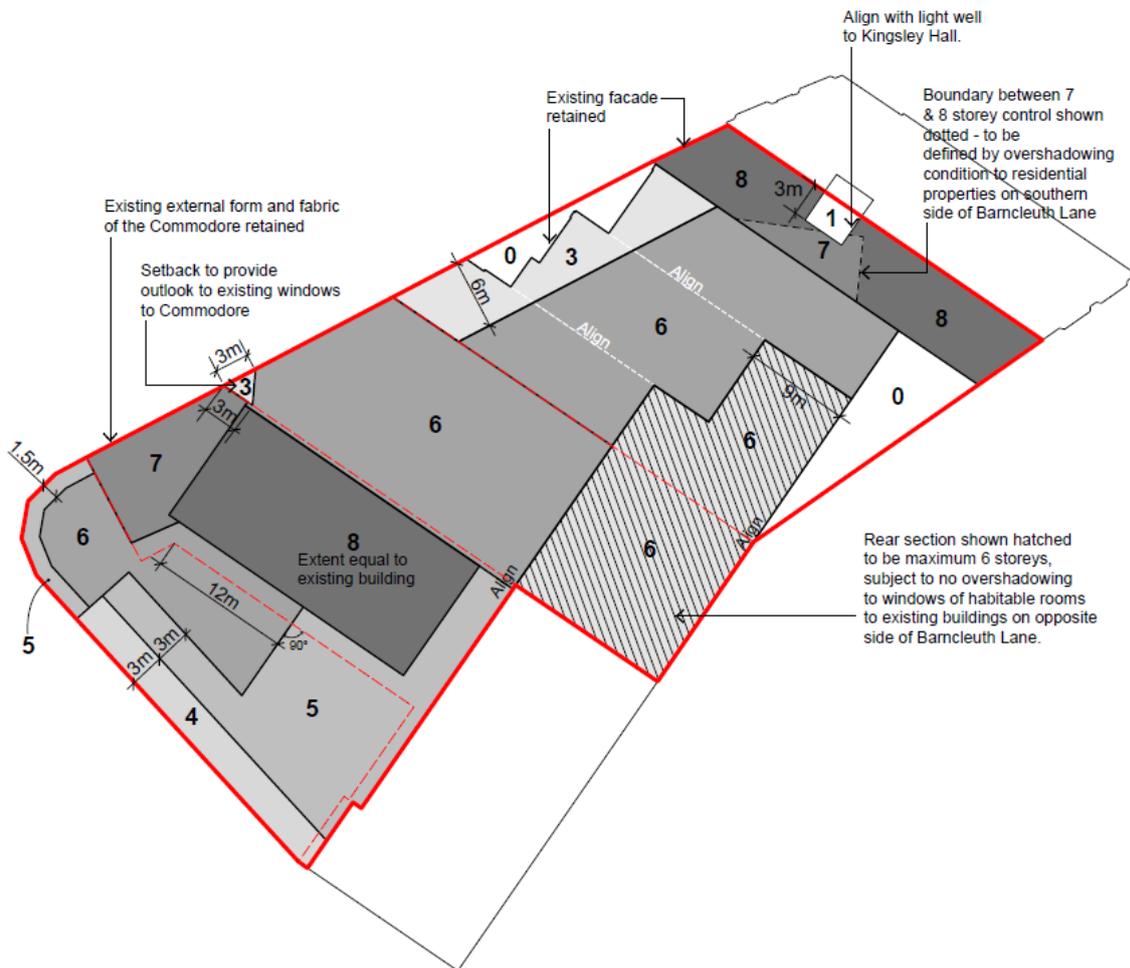


**Figure 3:** 3m setback above 18-20 Darlinghurst Road for height of 1 storey above top of street wall, built to street alignment above

### ***Building envelope for 18-32A Darlinghurst Road and amenity impacts***

64. Several submissions raise issues with the proposed building envelope and reference scheme for 18-32A Darlinghurst Road. Residents objected on the grounds that the proposed scheme would result in reduced amenity to surrounding properties. The landowner objected on the basis that the envelope and its setbacks were too prescriptive, did not allow for creative design and did not allow floor space to be arranged in the most efficient or effective manner.
65. The reference scheme for 18-32A Darlinghurst Road contained in the draft DCP has been designed to comply with the height, FSR and solar access controls for the site. The reference scheme is only an example of how floor space can be distributed and how buildings could be designed. The EPA Act requires any DCP to be applied with flexibility which enables an alternative scheme that complies with the relevant height, FSR, solar access and acoustic and visual privacy controls to be put forward and assessed.
66. After further consideration, and in response to concerns raised by landowners, changes to Clause 6.2.12.9 Built form and setbacks are recommended to explain the intent of the setbacks and the control has been modified so that side and rear setbacks are determined by preservation of solar access to properties on Roslyn Street and Barncleuth Lane. Figure 6a is also updated to reflect these changes.

- 67. The provisions contain a 6m setback above the Bourbon façade which runs parallel to the boundary. The 6m requirement varies from heritage advice and has been reduced to provide greater flexibility for the built form and architecture and enable residential development to comply with amenity requirements whilst still respecting the heritage significant fabric below. The side setbacks to the Empire allow the reinterpretation of the original building form and protect solar access to properties on Roslyn Street. No changes are proposed to the Bourbon and Empire setbacks.
- 68. Minor changes have been made to Clause 6.2.12.9 Built form and setbacks and Figure 6a. The changes allow development to vary the setbacks prescribed by the control when development minimises overshadowing to buildings on the south side of Barncleuth Lane and is consistent with the requirements of the ADG, as shown below at Figure 4.



**Figure 4:** Revised built form and setbacks diagram. The diagram reflects changes to the rear setback control, which are based on solar access requirements.

**Prescriptive controls, urban grain controls**

- 69. Submitters are concerned the Draft DCP is too prescriptive and this would restrict innovative and creative architectural design that could make positive contribution to Darlinghurst Road and its urban environment. This is a key issue raised in submissions made by landowners in particular.

70. Council's resolution to develop design guidelines for Darlinghurst Road from February 2018 identified significant concerns related to the grain and architecture of the development application for the Bourbon site, specifically:
- (iii) lacks the frequency and graciousness of the ground floor lobbies found throughout the area;
  - (iv) has large retail footprints at ground level, destroying the fine-grain retail pattern that exists along Darlinghurst Road;
  - (vi) has an unsatisfactory interface with Barncleuth Lane, particularly the lack of activation and amenity, and the dominance of loading and serviced functions; and
  - (vii) provides an undesirable site amalgamation that will detrimentally affect the character of the area's streets and lanes due to the significant inactive frontage required by loading dock areas, and access and egress for car parks and fire stairs;
71. The Draft DCP was developed through community consultation, a heritage assessment, an extensive urban design study, and in consultation with the City's Design Advisory Panel. It is clear that Darlinghurst Road's fine urban grain, sense of community, heritage (both built and socio-cultural) and mix of building styles are of particular value as they significantly contribute to the area's local character.
72. The draft DCP features a variety of urban grain, active frontage, architectural character and articulation and public domain provisions. The provisions seek to ensure development along Darlinghurst Road is sympathetic to and consistent with the existing architectural and heritage character of the area.
73. The draft DCP provides guidelines for future development that are consistent with what the community values and would like to see. The controls are also consistent with advice provided by the City's Design Advisory Panel and address the concerns raised by the Council. The provisions encourage facades that are predominantly masonry rather than glazed, windows that reflect the existing pattern of openings on the street and restrict large, glazed projecting buildings that are not in keeping with buildings in the area.
74. The provisions also require development to feature fine grain retail tenancies that support small business, as well as separate entrances and circulation cores for separate and distinctive buildings rather than monotonous additions or street block-sized building with only one lobby. The requirement of the EPA Act to apply DCP controls with flexibility means that alternative designs and can be proposed and approved where they meet the objectives of the provisions.

### ***Changing character of Kings Cross***

75. Submitters raise the issue of the changing character of Kings Cross. Residents, landowners and community groups described various changes in the area. Some submitters note that people used to come to Kings Cross looking for entertainment, bars, nightclubs and live music but this is no longer the case. Some people identified the sex industry and other local issues, such as a prevalence of drug use, as continuing to detract from the area and make it feel unsafe. One submission suggested major new shopping centres and more apartments are what Darlinghurst Road needs.

76. That Kings Cross is undergoing a period of change is clear. In response, Council has undertaken considerable research, analysis and community consultation to identify and capture the valued qualities of Darlinghurst Road and what is important to retain or change through the planning system as Darlinghurst Road continues to evolve. The draft DCP will manage this change and guide the land use and architectural form and character of development.
77. With regard to major shopping centres on Darlinghurst Road, through consultation the community told the City they value the fine urban grain of Darlinghurst Road. This includes smaller shops, a diversity of businesses and services, and detailed architectural facades. The DCP encourages a mix of business and residential uses that are in keeping with the community's desired future character.

#### ***Floor Space Employment Survey data***

78. Submissions raise concerns with Floor space Employment Survey (FES) data used in the urban design study, stating data was inaccurate and shouldn't be relied on.
79. The FES is used to show trends in floor space use and employment across an area and over time. It aggregates data across an area and is not intended to be an analysis of specific individual properties. In analysing the floor space and use along Darlinghurst Road the urban design study used preliminary FES data from the 2017 survey. The final floor space and employment survey data has been reviewed. Aggregated across the Darlinghurst Road precinct, the FES continues to show a high proportion of the allowable floor space is used for non-residential purposes which reflects the local centre role and is different to the precincts to the south and north, which are more mixed use. It also shows the amount of non-residential floor space has generally remained constant over the last 10 years except for two large hotel conversions.

### **Key Implications**

#### **Strategic Alignment - Eastern City District Plan**

80. The District Plans set out how the Greater Sydney Region Plan applies to local areas. The City of Sydney is in the Eastern City District. The draft Eastern City District Plan includes 20 year targets for housing and jobs, specifically:
  - (a) a short term (5 years) housing target of 18,300 dwellings to be delivered in the City of Sydney;
  - (b) a 2036 target for 157,500 dwellings for the district, with the City of Sydney target to be developed with community and State government contribution; and
  - (c) a 2036 lower end 'baseline' target for 662,000 jobs and an upper end 'higher' aspirational target of 732,000 jobs, respectively.
81. The district plan sets priorities and actions for "Liveability", "Productivity" and "Sustainability", which will directly inform the planning, growth and development of Sydney over the next 20 years.

82. The draft DCP supports the targets for the Eastern City District. At a local scale, the draft DCP satisfies the objective of a 30-minute city, as it will ensure access to local employment opportunities, retail shops and public open space areas. Darlinghurst Road is within the District Plan's Harbour CBD strategic centre and the draft DCP's retention of space for services and businesses is consistent with Action 24(b) to strengthen the competitiveness and vibrancy of the Harbour CBD by 'providing residential development without compromising commercial development.' The DCP allows for an appropriate level of residential development that will contribute to the City achieving its housing targets.
83. This draft DCP responds to the priorities and actions of the District Plan by providing a land use mix that protects retail and commercial floor space and facilitates an appropriate amount of residential development that will support the vitality of the B2 Local Centre zone. It will also contribute towards the creation and renewal of a great place, as well as provide a well-designed built environment, social infrastructure and opportunity, fine grain urban form, and enhanced local walking and cycling connections. A variety of design and activation requirements are included in the DCP, together with measures that seek to retain and enhance the unique character of the area and improve the streetscape and amenity.

### **Strategic Alignment - Sustainable Sydney 2030 Vision**

84. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. The draft DCP is aligned with the following strategic directions and objectives:
- (a) Direction 1 - A Globally Competitive and Innovative City - the proposed controls are designed to ensure the city maintains its critical economic role and continues to provide opportunities for business, workers, residents, visitors and the wider Sydney community.
  - (b) Direction 3 - Integrated Transport for a Connected City - future development along Darlinghurst Road will benefit from current transport services. The area is well located within walking and cycling distance of the Sydney CBD, approximately 1.6km to the west of Potts Point. Kings Cross train station provides regular train services. Bus services also operating along Bayswater Road and Darlinghurst Road, with destinations that include the City, Millers Point and Walsh Bay, and Chatswood.
  - (c) Direction 6 - Vibrant Local Communities and Economies - the proposed controls intend to ensure new development on Darlinghurst Road sustains and enhances the local economy, and continues to provide high quality facilities and services for the existing community, future residents, workers, and visitors.
  - (d) Direction 7 - A Cultural and Creative City - the proposed controls support the cultural life and diversity of Potts Point through the retention and promotion of uses with social and historic significance as well as allowing for night-time and creative uses.
  - (e) Direction 9 - Sustainable Development, Renewal, and Design - the proposed planning controls are based on principles for sustainable development, including ensuring that built form delivers high levels of amenity for future residents. The design excellence provisions of Sydney LEP 2012 will continue to apply to the site, ensuring a high quality architectural outcome.

**Social / Cultural / Community**

85. The Draft DCP responds to issues and concerns identified and raised by the local community. It establishes controls that aim to maintain the commercial character of the precinct, as well as facilitate future commercial uses to continue to service the local community and visitors alike.

**Economic**

86. The continued provision of non-residential uses within the Darlinghurst Road precinct is integral to preserving the diverse, vibrant character and commercial nature of the precinct.

**Relevant Legislation**

87. Environmental Planning and Assessment Act 1979.
88. Environmental Planning and Assessment Regulation 2000.

**Public Consultation**

89. The draft DCP was publicly exhibited from 19 September until 8 November 2018, which exceeds the 28 day requirement set by the Environmental Planning and Assessment Act 1979. Exhibition documents were made available for viewing on the City of Sydney website, with select documents available at the One Stop Shop at Town Hall House and the Kings Cross Neighbourhood Service Centre.
90. Written notification was distributed to residents and landowners in the area, which provided information on how to view the relevant documentation. Over 12,000 letters were distributed to owners and occupants in Potts Point. Council also invited local landowners to meet to discuss the DCP and sent out over 300 invitations to the landowner consultation workshop held in February 2019.
91. A community engagement workshop was held with local landowners on 26 February 2019. The consultation report is at Attachment D.

**GRAHAM JAHN, AM**

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