

Item 4.**Development Application: 18-32A Darlinghurst Road, Potts Point - D/2020/916****File No.:** D/2020/916**Summary****Date of Submission:** 11 September 2020

Amended plans and information was submitted in November and December 2020 and in February, April, May and June 2021

Applicant: Hamptons Property Services Pty Ltd**Architect:** Tonkin Zulaikha Greer Architects and Panov Scott Architects**Developer:** Piccadilly Hotel Operations Trust Pty Ltd**Owner:** Piccadilly Freehold Pty Ltd**Planning Consultant:** Hamptons Property Services Pty Ltd**Heritage Consultant:** Tonkin Zulaikha Greer Architects**DAP:** 12 November 2020**Cost of Works:** \$65,444,808**Zoning:** The site is located in the B2 Local Centre zone. The proposed land uses, being retail premises, pub, medical centre, hotel or motel accommodation, and residential flat building, are permissible with consent in the zone.**Proposal Summary:** Development approval is sought for alterations and additions, demolition works, and construction of a mixed use development with basement, including a medical centre, retail tenancies, two pub tenancies (with hours of operation of 24 hours, Mondays to Sundays inclusive), hotel accommodation, and 52 residential apartments.

The application is referred to the Central Sydney Planning Committee as the cost of works exceeds \$50 million dollars.

The proposed development is also Integrated Development under the Water Management Act 2000, requiring approval of Water NSW.

The proposal was the subject of a Competitive Design Process. The development was amended following comments from the Design Advisory Panel and to address community concerns. The amendments ensure that impacts to neighbouring properties are minimised, ensure sufficient amenity for the future residents of the site, and reinstate elements of the competition winning scheme which contribute to the achievement of design excellence.

The development was publicly notified for 28 days between 21 September and 20 October 2020. 126 submissions were received, with 13 in support and 113 objecting to the proposal.

The key issues raised in the submissions included impacts to the heritage significance of the site, the height of the proposal, amenity impacts to neighbouring residential uses, impacts to the neighbouring building Kingsley Hall, and impacts during construction.

The proposed development is compliant with the permitted floor space ratio (FSR) control under Sydney Local Environmental Plan 2012 (Sydney LEP 2012). The development exceeds the permitted height of buildings standard by between 6.5% (1.95m) and 28.9% (6.37m). This variation is subject to a clause 4.6 variation request which is supported.

The development is generally consistent with the Apartment Design Guide (ADG). 71% of the apartments are naturally cross ventilated. The development achieves 69.2% consistency with the objective of the solar access requirement to living rooms. Whilst marginally less than the 70% target, the development optimises solar access within the site constraints. Overall, the development provides acceptable amenity for the future residents and acceptable amenity impacts on neighbouring developments.

The development provides for retention of significant heritage fabric and an appropriate heritage outcome. The facades are highly modulated resulting in a fine grain development meeting the site-specific requirements of the Sydney DCP 2012. Overall, the development achieves design excellence.

Subject to the recommended conditions, as detailed in the report and Attachment A, the proposed development is acceptable and generally compliant with the planning controls for the site.

Summary Recommendation: The development application is recommended for deferred commencement approval, subject to the conditions set out in Attachment A to the subject report.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) Water Management Act 2000
- (iii) State Environmental Planning Policy No 55 - Remediation of Land
- (iv) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development
- (v) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (vi) State Environmental Planning Policy (Infrastructure) 2007
- (vii) Sydney Local Environmental Plan 2012
- (viii) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Building Height
- D. Perspectives

Recommendation

It is resolved that:

- (A) the variation requested to height of buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2020/916 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for deferred commencement approval for the following reasons:

- (A) The development complies with the objectives of the B2 Local Centre zone pursuant to the Sydney Local Environment Plan 2012.
- (B) The development is consistent with the permitted floor space ratio pursuant to clauses 4.4 and 6.21 of Sydney Local Environmental Plan 2012.
- (C) Based upon the material available to the Committee at the time of determining this application, the Committee is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required under clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B2 Local Centre zone and the height of buildings development standard.
- (D) The development demonstrates design excellence pursuant to clause 6.21 of Sydney Local Environmental Plan 2012.
- (E) The development is generally consistent with the Design Quality Principles and the objectives of the Apartment Design Guide as per the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development.
- (F) The development is consistent with the objectives of the Sydney Development Control Plan 2012.

Background

The Site

1. The development application is for 18-20 Darlinghurst Road, 22-28 Darlinghurst Road, 30-30B Darlinghurst Road and 32-32A Darlinghurst Road, Potts Point. The subject sites are located at the northern end of Darlinghurst Road at the junction of Macleay Street. An aerial photograph of the sites is included in Figure 1 below.



Figure 1: Aerial view of the site and surrounds

2. The collective site, known as 18-32A Darlinghurst Road, Potts Point is irregular in shape with area of approximately 2,517sqm. It has a primary street frontage of 70m to Darlinghurst Road and secondary street frontages of 40m to Roslyn Street and 45m to Barnacleuth Lane. The site is located close to the intersection of Darlinghurst Road and Macleay Street. Levels on the site fall by approximately 2m from Darlinghurst Road towards Barnacleuth Lane.

3. The site comprises four lots which contain:
 - 18-20 Darlinghurst Road (Lowestoft) with a legal description of Lot 2, DP 182505 containing a 3 storey building accommodating a pharmacy, medical centre and other commercial uses.
 - 22-28 Darlinghurst Road (The Bourbon Hotel and Radnor) with a legal description of Lot 1, DP 1097710 contains a 3 storey pub 'The Bourbon Hotel', with ground floor bottle shop, including the former Swans Club. The Bourbon is formerly a group of terraces, altered and re-purposed over time.
 - 30-30B Darlinghurst Road (The Commodore) with a legal description of Lot 1, DP 214079 contains an 8 storey building approved for use as hotel accommodation, with two ground floor retail tenancies.
 - 32-32A Darlinghurst Road (The Empire Hotel) with a legal description of Lot 1 DP 510235, contains a 3 storey pub 'The Empire Hotel' with basement level. The Empire is a modernist style building with a curved corner built in 1961/62. It once housed Les Girls, Carousel Lounge and the Palladium nightclubs.
4. The site contains two local heritage items and two other contributory buildings within the Potts Point heritage conservation area (C51). The heritage items are described as follows:
 - The Bourbon Hotel (but only the facade of the Hotel to a depth of 8m from the front facade) (I2290)
 - The site of the Empire Hotel (excluding buildings and other structures) (I2291)
The Empire is listed for its social significance to ensure it is recognised for its status as a socio-cultural institution (particularly to the LGBTQI+ community).
5. There are three existing street trees (Plane trees) on the Darlinghurst Road frontage.

Surrounding Development

6. Darlinghurst Road is a main road, servicing vehicular and pedestrian traffic. The precinct is characterised by mostly smaller scale, fine grain commercial buildings of around 3 to 4 storeys interspersed with some larger sites and higher buildings. Surrounding development is mixed in scale and form, varying from two storey Victorian terraces to multi-storey residential flat buildings.
7. Barncleuth Lane is a one-way laneway with the direction of travel south-west bound and has parking on the north-western side of the lane. Parking is not permitted between 8.30am and 6pm Monday to Friday and between 8.30am and 12.30pm Saturday.
8. Adjacent to the site to the north-east of the site is Kingsley Hall (1A Elizabeth Bay Road). The site is a heritage item 'Kingsley Hall including interior' (I12289). It is a 10 storey inter war flat building with a ground floor food and drink premises.
9. To the south-east of the site, on the opposite side of Barncleuth Lane are a number of residential flat buildings ranging from 4 storeys to 7 storeys in height.

10. To the south of the site and located within the same block is a 4 storey hotel known as the Lido Suites at 2 Roslyn Street.
11. Fitzroy Gardens are located to the north of the site on the eastern side of Macleay Street and the Kings Cross Police station is located further to the north-east.
12. A site visit was carried out on 4 November and 23 December 2020.
13. Photos of the site and surrounds are provided below:



Figure 2: Site viewed from the corner of Darlinghurst Road and Macleay Street



Figure 3: The Empire viewed from Darlinghurst Road



Figure 4: The Commodore viewed from Darlinghurst Road



Figure 5: The Radnor (formerly the Swans club) viewed from Darlinghurst Road



Figure 6: The Bourbon viewed from Darlinghurst Road



Figure 7: The Lowestoft viewed from Darlinghurst Road



Figure 8: Neighbouring site, Kingsley Hall viewed from Fitzroy Gardens



Figure 9: The Empire viewed from Roslyn Street



Figure 10: Neighbouring site, Lido Suites viewed from Roslyn Street



Figure 11: The rear of the Radnor viewed from Barncleuth Lane



Figure 12: The rear of the Bourbon viewed from Barncleuth Lane



Figure 13: Rear of the site looking west along Barncleuth Lane, with Kinsley Hall in the foreground



Figure 14: Looking west at the residential flat buildings on the opposite side of Barncleuth Lane



Figure 15: Looking up at the residential flat building on the bend of Barncleuth Lane



Figure 16: Looking north-east from Roslyn Street at the residential flat buildings on the opposite side of Barncleuth Lane

History Relevant to the Development Application

Development Applications

14. The following applications are relevant to the collective site:

- **D/2017/1705** – A development application was submitted in 2017, which was later withdrawn. The application proposed demolition of existing structures except for the northern and western facades of 30-30B Darlinghurst Road and construction of a mixed-use development including basement levels, comprising ground floor retail premises and two licensed premises and 83 residential apartments.



Figure 17: Front elevation of the development application D/2017/1705 which was withdrawn

15. The following applications are relevant to 18-20 Darlinghurst Road (The Lowestoft):

- **D/2014/63** – Development consent was granted on 25 March 2014 for change of use of Level 1 to a medical centre, internal fitout and alterations including a stair lift to the entrance.
- **D/2013/659** – Development consent was granted on 2 July 2013 for change of use of Level 2 to a yoga studio.
- **D/2011/1111** – Development consent was granted on 10 October 2011 for restoration and alterations of facade facing Darlinghurst Road. Alterations to rear facade facing Barnacleuth Lane. Alterations of interiors of existing upper level office space.
- **D/2005/619** – Development consent was granted on 28 June for fitout of ground floor as pharmacy, new glazing, entry doors and display to shopfront, alterations to internal stairs. Use first and second floors as commercial offices.

16. The following applications are relevant to 22-28 Darlinghurst Road (The Bourbon/The Radnor):
- **D/2017/1667** – Development consent was granted on 3 April 2018 for use of the ground floor terrace fronting Darlinghurst Road associated with the licensed 'Bourbon Hotel'. Condition 1 restricts the hours of operation to between 10am and 10pm Monday to Sunday, with a 5 year trial for 24 hours.
 - **D/2007/1599** – Development consent was granted on 24 December 2007 for extension of hours of operation for the Aussie Rules Club to between 7am and 4am the following day, 7 days, with a 5 year trial period until 6am.
 - **U96/00157** – Development consent was granted on 26 June 1996 for to use the ground floor of 22 Darlinghurst Road as a hotel/bistro on a 24 hour daily basis in conjunction with 24-28 Darlinghurst Road.
 - **U94/00635** – Development consent was granted on 19 October 1994 for to extend the hours of operation of the "Bourbon and Beefsteak Bar" to 24 hours daily, seven days a week.
 - **U91/00013** – Development consent was granted on 26 June 1991 to operate the premises at 24-28 Darlinghurst Road as a hotel.
17. The following applications are relevant to 30-30B Darlinghurst Road (The Commodore):
- **P/2016/910** – A Complying Development Certificate was issued on 13 April 2016 to paint and patch hotel rooms and new floor coverings, new fire door to sole occupancy units and updated smoke detection and alarm on first floor.
 - **D/2005/1819/E** – Development consent was granted on 1 December 2005 for Replacement of shopfront and internal shop fitout of kebab shop. The hours of operation are approved between 6am and 2am the following day, Monday to Sundays, with a trial period until 4am having lapsed on 8 August 2016.
 - **D/2004/1656** – Development consent was granted on 29 March 2005 to use rear of existing newsagency (Shop 1) as internet access shop and signage.
 - **D2003/00617** – Development consent was granted on 8 December 2003 for refurbishment of the ground and upper 7 floors of the existing hotel premises including new fitout, upgrade disabled access and provision of fire services and new fire stairs at the rear. Council's records indicate that this development did not proceed.
 - **U01/00808** – Development consent was granted on 12 December 2001 for change of use to a mixed business open 24 hours, seven days and associated signage.
 - **D/2000/1067** – Development consent was granted on 6 June 2001 for conversion of existing motel to a backpacker's hostel. An Occupation Certificate was issued in 2005.

- **U96/00068** – Development consent was granted on 1 March 1996 for use of ground floor shop as a newsagency 24 hours per day, seven days a week.
18. The following applications are relevant to 32-32A Darlinghurst Road (The Empire):
- **D/2014/1068** – Development consent was granted on 24 June 2015 by the Land and Environment Court for alterations and additions to the Empire Hotel. Condition 3 restricts the hours of operation of the first and second floor outdoor terraces to between 7.00am and 10.00pm Monday to Sunday, with a 1 year trial until 1.00am.
 - **D/2010/1617** – Development consent was granted on 20 December 2010 for new gaming room and café on the ground floor of the Empire Hotel. Condition 2 permits hours of operation of 24 hours daily.
 - **D/2004/142** – Development consent was granted on 1 September 2004 for alterations and additions to three shop tenancies. Condition 4 permitted hours of operation of the hotel extension (sports bar) between 8am and 12 midnight daily. The consent was modified to permit 24 hours' operation, 7 days per week on a one-year trial period.
 - **U99/01319** – Development consent was granted on 22 March 2000 for alterations and additions to an existing nightclub to include a 24 hour licensed hotel.

Planning Proposal and Site Specific DCP

19. Following the withdrawal of the development application (D/2017/1705) in 2017 for a mixed use building on the subject site at 18-32A Darlinghurst Road, a planning proposal and site specific DCP controls were developed for the site.
20. In response to anticipated future development, on 19 February 2018, Council resolved to commission an urban design study and heritage assessment and involved 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.
21. The draft DCP was exhibited from September to November 2018 with the site-specific DCP coming into force in April 2019. The site-specific Development Control Plan controls 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. These include:
- (a) general provisions for Darlinghurst Road from Bayswater Road to Macleay Street precinct and
 - (b) specific built form controls for the subject site at 18-32A Darlinghurst Road.

22. The heritage assessment investigated which properties on the block bounded by Darlinghurst Road, Barncleuth Square, Barncleuth Lane and Roslyn Street should be considered for heritage listing. The heritage assessment recommended the heritage listing of three items for local significance, including Kingsley Hall at 1A Elizabeth Bay Road, the facade of The Bourbon at 22-24 Darlinghurst Road and the site of The Empire at 32-32A Darlinghurst Road for social significance only. The draft planning proposal for the heritage listing was exhibited from December 2018 to March 2019. An amendment to the Sydney LEP came into force in November 2019.
23. There was extensive community consultation for LEP and DCP amendments relating to the site including an online survey, community workshop and landowner workshop.
24. The application is assessed against the site specific DCP controls under Section 6 of the DCP in the sections below.

Competitive Design Process

25. The Sydney LEP 2012 and Sydney DCP 2012 required a competitive design process to be undertaken for the subject development. This competition was held between October and December 2019.
26. The competition panel selected the design by Tonkin Zulaikha Greer Architects and Panov Scott Architects as the scheme with the most potential to achieve design excellence.
27. The selection panel report identified elements of the scheme which should be retained, and elements which require further design resolution. These are discussed in more detail under the heading 'Design Excellence' in the issues section below.

Pre-DA consultation

28. Two pre-DA meetings were held between Council's planning and heritage staff and the applicant after the design competition and prior to lodgement of the subject development application.

Amendments

29. Following a preliminary assessment of the proposed development by Council Officers including input from the Design Advisory Panel (DAP), a request for additional and amendments was sent to the applicant.
30. The applicant responded to the request by providing amended plans and additional supporting information. Overall, the amendments addressed the issues raised and the scheme retains the quality of the competition winning proposal.
31. Amendments include:
 - (a) replanning of the residential levels resulting in a reduction in the number of residential apartments from 54 to 52
 - (b) relocating the gaming room, from the Darlinghurst Road frontage to the rear, and replacing it with a retail tenancy

- (c) increasing the depth of the lightwell adjacent within the Lowestoft to 1.35m
 - (d) reducing the height of the Lowestoft building by 620mm
 - (e) providing additional privacy measures facing Barncleuth Lane and between buildings on the site
 - (f) increasing the rear setback of the Commodore to 3.6m
 - (g) providing plenums to allow natural ventilation to noise affected apartments
 - (h) providing additional detail on the heritage conservation drawings and
 - (i) replanning the layouts of adaptable apartments.
32. Additional information was also provided to address a number of issues including:
- (a) solar access and overshadowing
 - (b) acoustics
 - (c) landscape maintenance
 - (d) flood planning levels
 - (e) levels and gradients of the street
 - (f) traffic management
 - (g) wind effects
 - (h) construction management
 - (i) construction noise and vibration
 - (j) site contamination
 - (k) geotechnical investigation and
 - (l) plans of management for the pubs and hotel accommodation.

Proposed Development

33. The amended application seeks consent for the following:
- (a) retention of the following existing fabric:
 - (i) facade of the Lowestoft
 - (ii) facade and chimney of the Bourbon
 - (iii) the front wing of the Commodore; and
 - (iv) existing substation

- (b) demolition of remaining structures
 - (c) excavation for four basement levels
 - (d) construction of a new mixed-use development, comprising six distinct building forms, with:
 - (i) a maximum height of 31.95 metres (RL 71.005)
 - (ii) a gross floor area of 9,242 square metres
 - (iii) fifty-two (52) residential apartments to upper levels
 - (iv) hotel accommodation with 59 rooms across the first floor and part of the second floor level
 - (v) two pubs 'The Bourbon' and 'The Empire' with shared kitchen, toilet and sanitary facilities
 - (vi) medical centre within the basement level
 - (vii) four retail tenancies at ground level
 - (viii) a loading dock at ground level
 - (ix) a four level basement with vehicular access from Barncleuth Lane, including:
 - i. 80 car parking spaces
 - ii. 54 bicycle parking spaces and associated end of journey facilities and
 - iii. two car share parking spaces
 - (x) a publicly accessible through-site link connecting Darlinghurst Road to Barncleuth Lane and
 - (xi) two public art installations.
34. Operational aspects of the hotel accommodation include:
- (a) at least 1 manager on site at all times
 - (b) a maximum capacity for 118 hotel guests and
 - (c) a maximum stay of 90 days per guest.
35. Operational aspects of the pub 'The Bourbon' include:
- (a) indoor hours of operation of 24 hours per day, 7 days
 - (b) outdoor hours of operation between 10am and 12 midnight
 - (c) maximum capacity of 200 indoors

- (d) maximum capacity of 82 outdoors with a portion being within the site boundaries and the remainder on the public footway;
 - (e) all windows and doors closed between 12 midnight and 6am and
 - (f) no patrons seated within the through-site link between 10pm and 12 midnight.
36. Operational aspects of the pub 'The Empire' include:
- (a) hours of operation of 24 hours per day, 7 days
 - (b) maximum capacity of 230 indoors
 - (c) maximum capacity of 8 outdoors with a portion being within the site boundaries and the remainder on the public footway
 - (d) all windows and doors closed between 12 midnight and 6am and
 - (e) the openable windows to have a maximum area of 18 square metres.
37. The retail tenancies are to be subject to separate development applications which would be lodged once an operator is confirmed.
38. The Darlinghurst Road elevation and photomontages of the proposed development are provided below.
39. The full set of architectural drawings are provided in Attachment B.

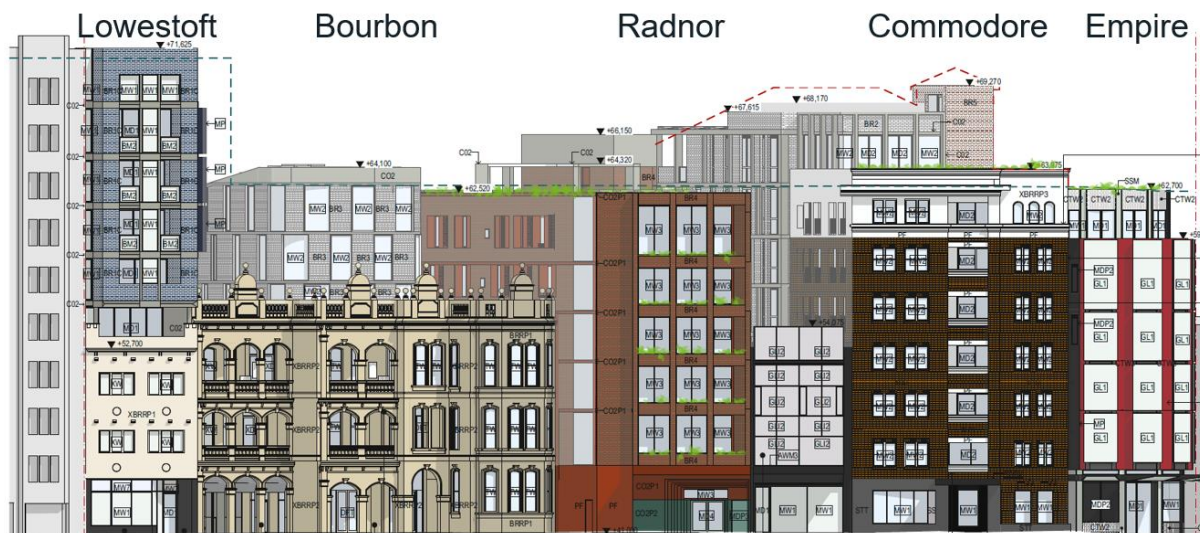


Figure 18: Proposed Darlinghurst Road elevation



Figure 19: Proposed photomontage as viewed from Fitzroy Gardens



Figure 20: Proposed photomontage as viewed from the corner of Darlinghurst Road and the Empire



Figure 21: Photomontage of the rear of the through-site link as viewed from Barncleuth Lane

Assessment

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

Water Management Act 2000

41. The proposed development is integrated development under the Environmental Planning and Assessment Act 1979. This is because excavation for the development will likely encounter ground water, and therefore a Water Supply approval is required under the Water Management Act 2000.
42. As such, the application and submissions were sent to Water NSW. Water NSW provided General Terms of Approvals (GTAs) on 11 November 2020. The GTAs are included at Schedule 3 of the recommended conditions, at Attachment A.

State Environmental Planning Policies

State Environmental Planning Policy No 55 - Remediation of Land

43. The aim of State Environmental Planning Policy (SEPP) No 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
44. The following information was submitted in support of the development application:
 - (a) Preliminary Site Investigation (PSI) prepared by Aargus dated 20 August 2020
 - (b) Detailed Site Investigation (DSI) prepared by Foundation Earth Sciences dated 14 January 2021
 - (c) Remediation Action Plan (RAP) prepared by Foundation Earth Sciences dated 7 May 2021
 - (d) Site Audit Report (SAR) prepared by Harwood Environmental Consultants dated 17 May 2021, and
 - (e) Site Audit Statement (SAS) prepared by Harwood Environmental Consultants dated 18 May 2021.
45. Site investigations have identified contaminants on the site including heavy metals, Polycyclic Aromatic Hydrocarbons (PAHs), Volatile Organic Compounds (VOCs).
46. A Remediation Action Plan (RAP) relating to the site, accompanied by a Site Audit Statement was submitted with the development application. The RAP proposes the excavation and offsite disposal of materials, as follows:
 - (a) hazardous materials assessment conducted on the structures to be fully or partly demolished prior to any partial demolition
 - (b) excavation of impacted soils transported to a licensed landfill facility and
 - (c) classification and disposal of contaminated soils by a licensed transport to approved/licensed offsite, waste facilities.
47. The Site Audit Statement confirms the above approach is appropriate.
48. The Council's Health Unit reviewed the information provided and recommends conditions of consent to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.
49. The Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development

50. The aim of State Environmental Planning Policy (SEPP) 65 is to improve the design quality of residential apartment development in New South Wales.
51. SEPP 65 applies to this application. It requires the consent authority take into consideration advice from a design review panel, the design quality of the development when evaluated in accordance with the design quality principles, and the Apartment Design Guide.
52. The applicant has submitted a design verification statement and SEPP 65 design report prepared by Tonkin Zulaikha Greer, in association with their emerging architect partners Panov Scott, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement is deemed to satisfy Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000.
53. An assessment of the proposal against the design quality is provided as follows:

- a. **Principle 1: Context and Neighbourhood Character**

The development, as proposed, is suitable for its context and surrounding neighbourhood character. It meets the desired future character as expressed in the Sydney DCP 2012 for the Kings Cross Locality and the site-specific controls. The development provides a fine grain response that is appropriate for Darlinghurst Road. The development responds appropriately to the heritage items and contributory buildings on site, and the adjoining heritage item subject to recommended conditions.

- b. **Principle 2: Built Form and Scale**

The proposed form and scale are consistent with the site-specific planning controls in the Sydney DCP 2012. The building heights are consistent with the site-specific controls of the DCP and the breach of the LEP height does not result in any unreasonable overshadowing or other physical impacts on neighbouring properties. The design provides a series of thin, small footprint buildings which breaks up the massing across the site. The facades are highly articulated with deep recesses that contribute to improved amenity for the residents. The new space that separates the new buildings creates breathing space and better spatial outlook to a number of the existing dwellings that face Barncluth Lane.

- c. **Principle 3: Density**

The proposed density is compliant with the FSR controls for the site and is suitable for the context, which has access to existing public transport networks, whilst providing a high level of amenity for the future residents of the site.

d. **Principle 4: Sustainability**

The development provides for large numbers of apartments achieving access to sunlight (87%) and natural cross ventilation (71%). The facade and skylights have been designed to optimise the winter sun and protect against the summer sun.

e. **Principle 5: Landscape**

The proposal optimises the useability of landscaped spaces, with planted podiums, active rooftops and green walls, whilst providing a through-site link at ground level.

f. **Principle 6: Amenity**

The development provides for a good level of amenity. There are some numeric non-compliances with solar access, but these are acceptable in the context of the site. The development still meets the objective of the ADG and optimises solar access to the development. The proposal provides the required setbacks within the site and between adjacent developments and the public domain.

g. **Principle 7: Safety**

The development provides for clear legible entries and good passive surveillance of the through site links. The communal areas are easily accessible, well-lit and clearly defined to optimise safety.

h. **Principle 8: Housing Diversity and Social Interaction**

The development provides for a mix of one bedroom, two bedroom and three-bedroom apartments throughout the complex. The apartment types provide for flexible and practical uses and are suitable to a broad range of people. The development also provides for a variety of communal spaces enabling use for a diverse range of functions.

i. **Principle 9: Aesthetics**

The design of the buildings are well interesting, distinctive and well resolved, and integrate with the existing heritage fabric, whilst also using distinct individual designs for each building that incorporate high quality materials.

54. The development is acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). These controls are generally replicated within the apartment design controls under the Sydney Development Control Plan 2012. Consequently, compliance with the SEPP generally implies compliance with Council's own controls. A detailed assessment of the proposal against the ADG is provided below.

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Partial compliance	Proposed building depths of the residential levels are less than 12m, except for where the Empire and Commodore buildings join. The building depths for these buildings are subject to existing site constraints and are satisfactory in this context.

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> 12m between habitable rooms / balconies 9m between habitable and non-habitable rooms 6m between non-habitable rooms <p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> 18m between habitable rooms / balconies 12m between habitable and non-habitable rooms 9m between non-habitable rooms 	Assessed as acceptable	<p>The buildings have been designed with building separation ranging between 6m and 7.4m.</p> <p>The more open/habitable face of the buildings are to the north-east facing side of the Commodore, Radnor and Bourbon buildings, with limited openings to the south-western sides of the buildings, opposite. The Lowestoft has been designed with angled windows to ensure that direct overlooking does not occur.</p> <p>The design ensures that the aims of the building separation provisions are satisfied, including to assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access, and outlook to new residents and existing neighbours.</p> <p>In relation to building separation to residential buildings on the opposite side of Barncleuth Lane, the ADG specifies that where applying separation to buildings on adjoining sites half the minimum separation distance should be applied. In this case, this is measured to the mid-point of the lane.</p> <p>This would require a 6m building separation to the mid-point of the lane, which the Bourbon and the upper levels of the Radnor comply with.</p>

		The Lowestoft, and the dwelling on Level 2 of the Radnor do not comply as they are built to the boundary. These setbacks are consistent with the site-specific controls under the DCP. In these instances, privacy measures have been incorporated into the design to minimise the amenity impacts in these locations, and in this context, the proposal is acceptable.
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3B Orientation	Compliance	Comment
Overshadowing of neighbouring properties is minimised during mid-winter	Assessed as acceptable	The overshadowing impacts of the proposal are discussed under the discussion heading below.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Assessed as acceptable	12.6% (317 sqm) of the site is usable communal open space located on roof terraces, and an additional 8.8% (221 sqm) of the site is non-trafficable open space, including landscaped green roofs. This is acceptable given that the site is located within a dense urban environment, and in close proximity to other public open space such as Fitzroy Gardens.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	The development offers a number of communal open space areas at roof level, which all receive at least 50% direct sunlight at midwinter.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6m.	Assessed as acceptable	There is no deep soil consistent with the existing site conditions and deep soil is not required under the site specific DCP controls. Notwithstanding, the development incorporates a number of landscaped roof areas which allow for substantial planting.

3F Visual Privacy	Compliance	Comment
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none">• 6m between habitable rooms / balconies• 3m between non-habitable rooms <p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none">• 9m between habitable rooms / balconies• 4.5m between non-habitable rooms	Assessed as acceptable	Adequate privacy measures have been provided to the apartments where the separation distances to the boundary are not achieved. This ensures satisfactory privacy through design measures such as offsetting windows and with the incorporation of privacy screens.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Assessed as acceptable	<p>69.2% (36 of 52 apartments) of the living rooms of apartments achieve the minimum level of solar access at midwinter. This is a good result and is acceptable.</p> <p>Of these 36 apartments there are 24 that receive 2 hours of direct sunlight to their private open space, 7 that do not have private open space, and 5 that receive less than 2 hours of direct sunlight to their private open space. This represents 46.1% of apartments receiving 2 hours of direct sunlight to private open space. This is acceptable within the dense site constraints as the proposal has met the objective of the ADG provision to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p>
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	13% (7/52) of apartments do not receive direct sun between 9am and 3pm at midwinter.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Partial compliance	<p>All habitable rooms are capable of being naturally ventilated.</p> <p>One apartment (B2.1), located within the Bourbon building, is unable to achieve natural ventilation simultaneously with acoustic amenity. Whilst all habitable rooms within the apartment have windows, this apartment is reliant on mechanical ventilation whilst maintaining simultaneous acoustic amenity. Due to heritage constraints, it was not possible for this apartment to be passively ventilated, as done with other noise affected apartments.</p>
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	71% of apartments are naturally cross ventilated.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	The overall apartment depths are generally less than 18m glass line to glass line.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	A minimum floor to ceiling height of 2.7m is proposed for habitable rooms.
Non-habitable rooms: 2.4m	Yes	A minimum floor to ceiling height of 2.7m is proposed for non-habitable rooms. This floor to ceiling height typically may reduce to 2.4m when the final location of services is known.
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.	Yes	A floor to ceiling height of 2.7m is provided across both levels of two-storey apartments within the Empire building.

4C Ceiling Heights	Compliance	Comment
<p>If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.</p>	Partial compliance	<p>The floor to ceiling heights of all ground floor levels exceed 3.3m.</p> <p>The first floor levels have the following floor to ceiling heights:</p> <p>Lowestoft - 3.1m</p> <p>Bourbon - 3.9m</p> <p>Radnor - 4m</p> <p>Commodore - 2.7m</p> <p>Empire - 3m</p> <p>The first floor ceiling heights for the Lowestoft, Bourbon and Commodore are set by the existing heritage fabric of these buildings, and the Empire is reliant on connection to the Commodore through a shared lift. The non-compliances are considered to be acceptable in the highly constrained site context and requirements under the planning proposal to keep certain facades and minimising building envelopes to reduce impacts to neighbours</p>

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p>	Yes	All apartments meet the minimum unit sizes.

4D Apartment Size and Layout	Compliance	Comment
A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.		
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	Every habitable room has access to a window with a minimum glass area of 10% of the floor area of the room.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	All habitable rooms are compliant with this depth requirement.
8m maximum depth for open plan layouts.	Yes	All living spaces are less than 8m deep.
Minimum area for bedrooms (excluding wardrobes): <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² Minimum dimension of any bedroom is 3m (excluding wardrobes).	Yes	All bedrooms are consistent with the minimum dimensions.
Living and living/dining rooms minimum widths: <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	Yes	All living rooms are consistent with the minimum widths.

4E Private Open Space and Balconies	Compliance	Comment
<p>One bed apartments are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m² with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m² with a minimum depth of 2.4m.</p>	Assessed as acceptable	<p>The amended application has 7 apartments that are not provided with a private open space area.</p> <p>At lodgement, there were 12 apartments that were provided without a private open space area. The Design Advisory Panel advised that more apartments should be provided with private open space areas consistent with the design competition scheme.</p> <p>The application was amended to ensure that the number of apartments without a private open space area was consistent with the design competition scheme, which is acceptable. All apartments have access to roof top communal open space areas.</p>

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	There are less than 8 apartments accessed off each core.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	No windows open onto common circulation spaces.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	Each core has access to daylight and natural ventilation.

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> 1 bed: 6m³ 2 bed: 8m³ 3 bed: 10m³ <p>(Minimum 50% storage area located within unit)</p>	Yes	Each apartment is provided with sufficient storage.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	<p>The site is adjacent to Darlinghurst Road, and is subject to both traffic and entertainment noise.</p> <p>The proposal has been designed to minimise these noise impacts by locating residential uses at the second level and above, orientating the majority of apartments away from the noisy environment, and by providing plenums to noise affected apartments to ensure that natural ventilation can be achieved whilst maintaining acoustic amenity.</p>

State Environmental Planning Policy (Affordable Rental Housing) 2009

55. Part 3 of the Affordable Housing SEPP deals with the retention of existing affordable housing and applies to the Sydney region.
56. Part 3 only applies to boarding houses or residential flat buildings that were lawfully used as low rental dwellings 5 years before the development application was lodged.
57. Concerns were raised in submissions that the development will result in the loss of affordable housing within the Commodore (30-30B Darlinghurst Road). Council's records indicate the Commodore is approved as a backpackers hostel under U00/01067 and it is not a low-rental residential building as defined under Clause 47(1). Therefore Part 3 does not apply.

58. Conditions requiring contributions for the loss of affordable housing can only be imposed on development applications which are subject to Part 3. As the site is not applicable under Part 3 it is not possible to impose conditions requiring contributions for the loss of affordable housing.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

59. A BASIX Certificate has been submitted with the development application.
60. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Infrastructure) 2007

61. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.
62. The application is subject to Clause 45 of the SEPP. As such, the application was referred to Ausgrid and Ausgrid provided conditions. These conditions are recommended to be included and are at Attachment A.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

63. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
64. 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 SREP are not applicable to the proposed development. The development is consistent with the controls contained within the deemed SEPP.

Local Environmental Plans

Sydney Local Environmental Plan 2012

65. 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 B2 Local CentreB2 Local Centre zone. The proposed development is defined as retail premises, pub, medical centre, hotel or motel accommodation, and residential flat building and are all 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	No	<p>A maximum building height of 30m is permitted for 18-20 Darlinghurst Road (The Lowestoft) and a maximum building height of 22m is permitted for 22-28, 30-30B and 32-32A Darlinghurst Road.</p> <p>The following heights are proposed:</p> <p>(a) 31.95m for 18-20 Darlinghurst Road (The Lowestoft)</p> <p>(b) 25m for 22-28 Darlinghurst Road (The Bourbon)</p> <p>(c) 25.15m for 22-28 Darlinghurst Road (The Radnor)</p> <p>(d) 28.37m for 30-30B Darlinghurst Road (The Commodore)</p> <p>(e) 23.55m for 32-32A Darlinghurst Road (The Empire)</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.</p> <p>The additional height is recommended to be supported and this is discussed further in the issues section below.</p>

Provision	Compliance	Comment
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 3.5:1 is permitted for the site as per clause 4.4 of Sydney LEP 2012.</p> <p>An additional 0.35:1 FSR is also permitted in clause 6.21(7)(b) of Sydney LEP 2012. This is because the subject development is a 'building demonstrating design excellence' as the building was the winner of a competitive design process and as such is eligible for an additional 10% floor space.</p> <p>Overall an FSR of 3.85:1 is permitted. An FSR of 3.67:1 is proposed.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3 height of buildings. A Clause 4.6 variation request has been submitted with the application.</p> <p>This is discussed further in the issues section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>Part of the site at 22-28 Darlinghurst Road is a locally listed heritage item pursuant to Schedule 5 of Sydney LEP 2012 (item number I2290), being the Bourbon Hotel (but only the facade of the Hotel to a depth of 8m from the front facade).</p> <p>The site at 32-32A Darlinghurst Road is a locally listed heritage item pursuant to Schedule 5 of Sydney LEP 2012 (item number I2291), being the site of the Empire Hotel (excluding buildings and other structures)</p> <p>The site is located within the Potts Point heritage conservation area (C51).</p>

		<p>The site is adjacent to a locally listed heritage item at 1A Elizabeth Bay Road (item number I2289), being Kingsley Hall including interior.</p> <p>The proposed development will not have detrimental impacts on the heritage significance of the heritage conservation area or the heritage items. The proposed development is acceptable. This is discussed further in the issues section below.</p>
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Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	The proposed development demonstrates design excellence as per clause 6.21 of Sydney LEP 2012. The proposal is the result of a competitive design process, in accordance with the City of Sydney's Competitive Design Policy. The development seeks to rely on clause 6.21(7)(b) for an additional 10% FSR. This is discussed further in the issues section below.
Division 5 Site specific provisions		
6.22 - 6.53 Site Specific Provisions	N/A	The site is not subject to site specific LEP controls.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Conditioned to comply	<p>The site is in the area marked category B under clause 7.5 of the Sydney LEP 2012. A maximum of 37 residential car parking spaces are permitted and 40 residential car spaces are proposed.</p> <p>A maximum of 7 visitor spaces are permitted and 3 are proposed.</p>

Provision	Compliance	Comment
		In accordance with Clause 7.3 and Clause 4.6(8) the number of parking spaces must not exceed maximum control. Therefore a condition is recommended requiring the number of residential spaces to be reduced to 37, and the number of residential visitor spaces to increase to 6.
7.7 Retail premises	Yes	The site is in the area marked category F under clause 7.7 of the Sydney LEP 2012. A maximum of 23 retail car parking spaces are permitted and 17 spaces are proposed.
7.9 Other land uses (1) Serviced apartments and hotel or motel accommodation (4) Health consulting rooms and medical centres	Yes	A maximum of 15 car parking spaces for the hotel accommodation are permitted and 14 are proposed. A maximum of 26 car parking spaces for the medical centre are permitted and 8 are proposed.
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.
7.15 Flood planning	Yes	The application proposes development at or below the flood planning level. In accordance with the City's Interim Floodplain Management Policy a finished floor level of 0.3m above the surrounding ground is required. The proposed development complies with this requirement.
7.16 Airspace operations	N/A	The proposed development does not penetrate the Obstacle Limitation Surface for Sydney Airport. As such this clause is not applicable.
7.20 Development requiring or authorising preparation of a development control plan	Yes	A site specific DCP was prepared for this site. The controls are addressed in section 6 below.

Development Control Plans

Sydney Development Control Plan 2012

66. 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

67. 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. It will provide a fine grain, varied and high quality architectural character. A mix of land uses are provided including both daytime and night time retail uses. The development responds appropriately to the heritage items and contributory buildings. The proposal enhances the pedestrian network through the provision of a through site link.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements		
3.1.2.2 Through site links	Yes	<p>A 6.8m wide through-site link is provided through the Bourbon between Darlinghurst Road and Barncleuth Lane.</p> <p>The through-site link is open to the sky beyond the retained building fabric of the Bourbon.</p> <p>Active uses and residential lobbies are accessed via the through-site link.</p> <p>A condition is recommended that the through-site link is an easement for public access on title.</p>
3.1.5 Public art	Yes	<p>A preliminary public art plan has been provided which has been reviewed by Council's Public Art team and is acceptable. This proposes public art in the at the corner of Darlinghurst Road and Roslyn Street and at the end of the through-site link adjacent to Barncleuth Lane.</p> <p>A condition requiring final details and installation of the art works is recommended.</p>

Provision	Compliance	Comment
3.2 Defining the public domain		
3.2.1.1 Sunlight to publicly accessible spaces	Yes	The proposal will not overshadow Fitzroy Gardens.
3.2.2 Addressing the street and public domain	Yes	The residential entries are clearly defined. The through site link will provide improved access and permeability.
3.2.3 Active frontages	Yes	Active frontages are provided to Darlinghurst Road and Roslyn Street.
3.2.4 Footpath awnings	Yes	<p>Awnings are proposed in locations identified by Section 6 of the DCP.</p> <p>Conditions are recommended to ensure that the awnings have a 3.2m vertical clearance between the footpath and the underside of the awning, and so that the awning to the Radnor retail tenancy has sufficient clearance from the existing street tree.</p>
3.2.6 Wind effects	Yes	A wind effects report was submitted with the application, and the measures identified in the report have been incorporated into the proposal.
3.2.7 Reflectivity	Yes	A condition is recommended that visible light reflectivity from building materials used on the facade of the building does not exceed 20%.
3.3 Design Excellence and Competitive Design Processes	Yes	The subject development underwent a competitive design process in accordance with the City of Sydney's Competitive Design Policy.
3.5 Urban Ecology	Yes	<p>There are no trees on the site. The proposed development does not involve the removal of any street trees and will not have an adverse impact on the local urban ecology.</p> <p>Green roofs and green walls are proposed.</p>

Provision	Compliance	Comment
3.6 Ecologically Sustainable Development	Yes	<p>Photovoltaic solar panels are to be provided at the rooftops.</p> <p>The proposal satisfies BASIX and environmental requirements.</p>
3.7 Water and Flood Management	Yes	<p>The application proposes development at or below the flood planning level. In accordance with the City's Interim Floodplain Management Policy a finished floor level of 0.3m above the surrounding ground is required. The proposed development complies with this requirement.</p> <p>Relevant conditions are recommended relating to stormwater management.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The development requires lot consolidation. The lot consolidation will not compromise the heritage significance of the site.</p> <p>The application was referred to Council's Specialist Surveyor, who supported the proposal, subject to surveying conditions of consent.</p>
3.9 Heritage		
3.9.1 Heritage impact statements	Yes	<p>A Heritage Impact Statement (HIS) was submitted as and it was prepared by a suitably qualified heritage consultant following the HNSW guidelines. The HIS has addressed relevant matters required by the provision.</p>
3.9.5 Heritage items	Yes	<p>The site-specific provisions under part 6 of the DCP outline the works permitted to the heritage items. The proposal includes the anticipated level of demolition as well as conservation works to the retained building facades of the Bourbon. The reconstruction of the southern bay of the Bourbon, to replace the 1950s addition, results in a positive heritage outcome.</p>

Provision	Compliance	Comment
		<p>The heritage interpretation strategy is provided but it is conceptual at this stage and a condition is recommended that further detailed information must be provided.</p> <p>The site is adjacent to a heritage item at 1A Elizabeth Bay Road (Kingsley Hall). The proposal was amended to reduce the height of the addition to the Lowestoft building to ensure that the prominence of Kingsley Hall remains.</p>
3.9.6 Heritage conservation areas	Yes	<p>The new development is designed to respect the heritage conservation area and the neighbouring buildings. The new buildings complement the existing character but are modern and not replicas. The building form is compatible with the anticipated and existing built form and urban pattern. The proposal maintains a fine grain pattern as required by DCP.</p>
3.9.7 Contributory buildings	Yes	<p>The amount of demolition proposed for the contributory buildings (The Lowestoft and The Commodore) is in keeping with the amount anticipated under the DCP. The principal facades will be retained and conserved with clear separation and setbacks between the facades and new buildings to maintain the building forms. The development incorporates the fine grain pattern of the contributory buildings on site. The proposal is evidently modern yet sympathetic to the heritage significance of the buildings as it has included appropriate solid to void ratios, vertically proportioned fenestration, appropriate uses and high quality materials with sympathetic colours.</p>

Provision	Compliance	Comment
3.9.8 Neutral and appropriate infill buildings	Yes	The existing building fabric of The Empire is identified as neutral and its demolition is anticipated under the DCP. The replacement building is considered a good interpretation of the social and historical significance of the Empire Hotel and its historic and socially significant association with 'Les Girls' cabaret. In addition to the interpretation as part of the building design, there is a condition recommended requiring public art on the corner of the Empire building, as well as a Heritage Interpretation Plan.
3.9.10 Building materials for heritage items and buildings within heritage conservation areas	Yes	The proposed materiality of the existing buildings is generally maintained and enhanced. The new materials are modern and sympathetic in their quality colours and finishes.
3.9.11 Conservation of public domain features in heritage conservation areas	Yes	Features like stone kerbing, guttering and paving will be retained along Barncleuth Lane and Darlinghurst Road. The existing cast iron letterbox on the Darlinghurst Road footpath will be retained. The Commodore building awning has a connector that was used by the trams that will be conserved and retained.
3.9.12 Reduction of rising damp and salt attack in buildings constructed prior to 1920	Yes	A condition is recommended to ensure the reduction of rising damp and salt attack.
3.9.13 Excavation in the vicinity of heritage items and in heritage conservation areas	Yes	<p>The application proposes excavation associated with the four basement levels. The basement has been designed so that excavation does not occur under the existing building fabric that is being retained.</p> <p>A condition is recommended requiring a protection strategy detailing how the neighbouring heritage item (Kingsley Hall) will be protected and stabilised during the construction process.</p>

Provision	Compliance	Comment
3.9.14 Heritage inventory assessment reports	Yes	The proposal is generally consistent with the recommendations of the heritage inventory assessment report.
3.11 Transport and Parking	Yes	<p>Vehicle access is provided from Barncleuth Lane in the location required by the site specific DCP controls.</p> <p>The development proposes compliant parking numbers, as per clauses 7.5, 7.7 and 7.9 of the Sydney LEP 2012.</p> <p>There are also two (2) car share spaces proposed, which is consistent with section 3.11.2 of Sydney DCP 2012.</p> <p>The proposal includes 54 residential bike parking spaces, 6 residential visitor bike parking spaces, 11 employee bike parking spaces 16 visitor bike parking spaces for the retail uses. Conditions are recommended to ensure the proposed bike parking complies with the Australian Standards and Sydney DCP 2012.</p> <p>Conditions are recommended that require a Transport Access Guide be prepared.</p>
3.12 Accessible Design	Yes	<p>The development is able to comply with the relevant Australian Standards and BCA.</p> <p>15% of the total dwellings are adaptable.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p> <p>The application does not propose a type of development that requires a Social Impact Assessment Report under the DCP criteria.</p>

Provision	Compliance	Comment
3.14 Waste	Yes	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.
3.15 Late Night Trading Management	Yes	<p>The application proposes two pubs, which are to operate under the existing liquor licenses for 'The Bourbon' and 'The Empire', and in the same locations as the existing pubs, although are smaller in size. Both pubs have existing indoor hours of operation of 24 hours unrestricted daily. The application proposes indoor hours of operation of 24 hours per day and hours of operation for outdoor seating areas between 10am and 12 midnight.</p> <p>These are defined as Category A premises located within a Late Night Management area which permit indoor hours of 6.00am to 12.00 midnight, with extended hours of 24 hours per day, and outdoor hours of 10.00am to 10.00pm with extended hours until 1.00am the following day.</p> <p>The proposed hours of operation are consistent with the DCP requirements and a condition is recommended that restricts indoor hours to 6.00am to 12.00 midnight, with a trial period of 24 hours, and outdoor hours of 10.00am and 10.00pm, with a trial period until 12.00 midnight. The existing premises are not subject to a trial period, however it is considered appropriate that a one year trial period for extended hours is imposed due to the significant redevelopment of the site that introduces residential uses. The trial periods will allow the operator to demonstrate good management under the new context of the site.</p>

Provision	Compliance	Comment
		<p>An acoustic report has been submitted with the application which determines that with implementation of the recommended noise management controls that noise from the premises can be controlled to levels that satisfy the recommended assessment criteria.</p> <p>A Plan of Management has been submitted for each premises that generally satisfies the requirements of the DCP for Category A premises. A condition is recommended that the Plan of Management be updated to ensure consistency with all conditions of consent.</p>
3.16 Signage and Advertising	Able to comply	<p>The signage strategy provided is insufficient and contains only a plan and elevations, without any descriptions to guide the design of the signage, such as design intent, percentage of area that can be covered, and materials, colours, and finishes.</p> <p>A condition is recommended requiring the provision of a detailed signage strategy.</p>

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	This is discussed under section 6 below.
4.2.2 Building setbacks	Yes	This is discussed under section 6 below.

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.5 Landscaping	Yes	The submitted landscape plan has been reviewed by Council's Landscape Assessment Officer and is acceptable, subject to a condition requiring a further detailed plan be provided prior to obtaining a construction certificate.
4.2.3.6 Deep Soil	No	This is addressed in the ADG compliance table above.
4.2.3.8 Common open space	Partial compliance	This is addressed in the ADG compliance table above.
4.2.3.10 Outlook	Yes	All apartments are provided with a pleasant outlook which include green walls and architectural features.
4.2.3.11 Acoustic privacy	Yes	It has been demonstrated that the proposal is capable of satisfying the relevant acoustic criteria.
4.2.3.12 Flexible housing and dwelling mix	Yes	The proposal includes 15 x one-bedroom (29%), 32 x two-bedroom (61%) and 5 x three-bedroom (10%) apartments.
4.2.6 Waste and recycling Management	Yes	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.
4.2.7 Heating and cooling infrastructure	Yes	<p>The applicant has advised that heating and cooling infrastructure will be located within the basement.</p> <p>A condition is recommended that this be shown within the basement levels.</p>
4.2.8 Letterboxes	Yes	The letterboxes are provided within the lobby of the buildings.

4.4 Other Development Types and Uses

4.4.8 Visitor accommodation

Provision	Compliance	Comment
4.4.8.1(1) No common access ways with adjoining properties	Yes	The hotel accommodation is self-contained and does have common access ways with adjoining properties.
4.4.8.1(2) Site Manager	Yes	<p>Beds for 118 persons are proposed and the DCP requires a site manager to be on-site when guests have access to the premises (i.e. 24-hours) for any hotel with 20 guests or more.</p> <p>A condition is recommended that a hotel manager be on site 24-hours per day.</p>
4.4.8.1(3) Safety	Yes	Sleeping rooms do not contain triple bunks or cooking facilities.
4.4.8.1(4) Partitions	Yes	Each room contains one double-bed and internal partitions are not required.
4.4.8.1(5) Toilet and shower facilities	Yes	Each room is provided with toilet and shower facilities that are appropriately screened for privacy.
4.4.8.1(6) Plan of Management	Yes	<p>A Plan of Management (POM) has been submitted.</p> <p>A condition is recommended that the POM be updated to reflect all relevant conditions of consent and to ensure that the use is operated in accordance with the POM.</p>
4.4.8.3(1) Maximum number of persons accommodated in a bedroom	Yes	All rooms exceed 11sqm for 2 guests that stay more than 28 days.
4.4.8.3(2) Maximum permitted length of stay	Yes	The Plan of Management outlines that the maximum permitted stay will be 3 months, which complies with the DCP.

Provision	Compliance	Comment
4.4.8.3(3) Accommodation of more than 28 consecutive days	Yes	The Plan of Management outlines that no more than two adults and one child are permitted per room where accommodation is provided more than 28 consecutive days.
4.4.8.3(4) Storage facilities	Yes	Storage facilities are shown in each room. A condition is recommended requiring a minimum of 0.6 cubic metres of storage per person in each room.
4.4.8.3(5) Kitchenettes	Yes	Kitchenettes are not provided in rooms.

Section 6 – Specific Sites

Provision	Compliance	Comment
6.2.12 Darlinghurst Road, Potts Point		
6.2.12.1 Land use	Partial compliance	<p>No residential accommodation or serviced apartments are proposed at ground and first floor levels except for entrances, lobbies and service facilities, in accordance with the DCP.</p> <p>The DCP requires a minimum of 50% of the total gross floor area (GFA) for uses other than residential accommodation or serviced apartments, or that the proportion of residential accommodation may exceed 50% if development achieves full compliance with the Apartment Design Guide design criteria relating to solar access, cross-ventilation and visual and acoustic privacy requirements, and all other provisions of this section of the DCP.</p> <p>A total of 61.6% of GFA is proposed for residential use, which is greater than 50%.</p> <p>Non-residential uses have been positioned in the lower amenity parts of the building including the ground floor and first floor levels and the second floor level of the Empire, which has a south-western aspect.</p>

Provision	Compliance	Comment
		<p>The proposed land use mix is acceptable as the proposal delivers high quality residential apartments that are not compromised by the constraints of the site, and as the proposal is generally compliant with the relevant requirements of the ADG and DCP, and where minor numerical non-compliances occur that the objectives of those provisions are met.</p>
<p>6.2.12.2 Urban grain and active street frontages</p>	<p>Partial compliance</p>	<p>The proposed development reflects the existing pattern of building arrangement and subdivision and maintains the urban grain of Darlinghurst Road.</p> <p>Individual entries to upper levels and vertical circulation cores are provided for each existing building.</p> <p>Each building is provided with an individually distinctive architectural language.</p> <p>The average width of new street level tenancies is 5.8m which is a minor variation to the maximum average of 5m required by the DCP. The pub tenancies exceed 8m, which is acceptable as these are based on existing tenancy layouts.</p> <p>The Bourbon and Empire tenancies exceed 300sqm in size. The other tenancies at street level do not exceed a maximum floor area of 300sqm.</p> <p>Each ground floor tenancy has its own entry from Darlinghurst Road or Roslyn Street.</p> <p>The medical centre within the basement tenancy has its own separate and direct street access from Roslyn Street.</p> <p>The ground floor tenancies and foyers support an active street frontage and achieve a large proportion of glazing where that is appropriate in the context of the heritage facades.</p>

Provision	Compliance	Comment
		Ground level tenancies have at least 35% of their area at the level of the footpath.
6.2.12.3 Architectural character, articulation and materials	Yes	<p>The building facades are characterised by vertical proportions over the full height of the buildings.</p> <p>Facade elements and window openings above ground level are vertically proportioned.</p> <p>Window openings above the awning level are generally limited to between 20 and 40% of the facade.</p> <p>The materials are equal to the highest quality found in neighbouring contributory buildings.</p>
6.2.12.4 Awnings	Yes	Awnings are discussed under section 6.2.12.14 below.
6.2.12.5 Public domain	Yes	The site maintains the existing retail and pub uses at ground level opposite Fitzroy Gardens.
6.2.12.6 Amenity of residential development	Yes	<p>The provision identifies that where the construction of balconies is limited by heritage and adaptive reuse constraints that Juliet balconies or bay windows may be appropriate, subject to the provision of other amenity benefits. The application proposes that 45 of the 52 apartments have a balcony, and 7 without a balcony. It is noted that the design that was subject to the competitive design process scheme also had 7 apartments with no balcony. This is considered to be acceptable and is consistent with the provision of the DCP.</p> <p>Balconies are recessed and generally have solid balustrades of the same materiality as the facade construction along the Darlinghurst Road facade.</p>

Provision	Compliance	Comment
6.2.12.7 Access	Yes	Access is discussed under 6.2.12.13 below.
Provisions - 18-32A Darlinghurst Road		
6.2.12.8 Heritage conservation	Yes	A detailed assessment of the site-specific heritage controls is provided under the 'discussion' heading below.
6.2.12.9 Built form and setbacks	Partial compliance	<p>The proposal is consistent with the maximum building envelopes, except for an extension of the 6 storey portion of the Empire towards the south eastern boundary. This increase in the building envelope is considered to result in an acceptable streetscape and amenity outcome.</p> <p>The proposal is consistent with the nominated setbacks of the DCP, except for a non-compliance with the 3m setback adjacent to the light well to Kingsley Hall. This is discussed further under the 'discussion' heading below.</p>
6.2.12.10 Urban grain	Partial compliance	A detailed assessment of the site-specific urban grain controls is provided under the 'discussion' heading below.
6.2.12.11 Architectural character and articulation	Yes	<p>The proposed structural bays generally follow the width of the existing structural bays of the Lowestoft and Bourbon.</p> <p>The new development at the Radnor responds to the vertical proportions, floor levels and architectural elements of the facade of the Commodore.</p>
6.2.12.12 Public domain	Yes	<p>The publicly accessible open space at Darlinghurst Road provides the opportunity for outdoor dining.</p> <p>The proposal provides a publicly accessible open space area adjacent to Barncleuth Lane larger than required by the DCP, which includes landscaping and public art and connects directly through to Darlinghurst Road via the through-site link.</p>

Provision	Compliance	Comment
6.2.12.13 Access	Yes	<p>Vehicular access is provided in one location at the rear and does not impact upon the active frontages of the site.</p> <p>The majority of building services are provided at the rear to minimise the visual impact to Darlinghurst Road.</p>
6.2.12.14 Awnings	Yes	The proposed awnings are generally consistent with the DCP.
6.2.12.15 Design excellence strategy	Yes	<p>A competitive design process was undertaken for the site.</p> <p>The DCP specifies that any additional floor space that may be awarded in relation to any competitive design process as per clause 6.21(7) of the Sydney LEP 2012 is to be located at lower ground level (basement).</p> <p>The application is subject to an FSR of 3.5:1 and a 10% bonus of 0.35:1</p> <p>The application proposes an FSR of 0.27:1 (701.36sqm) at lower ground floor and basement levels, and an FSR of 3.39:1 over the rest of the development. Therefore, no bonus floor space is sought above the lower ground floor and basement levels.</p>
6.2.12.16 Satisfaction of Clause 7.20(4) under Sydney LEP 2012	Yes	This section of the DCP, along with Sections 3.2, 3.6 and 4.2 of the DCP satisfy the requirements for a site specific DCP under clause 7.20(4) of the Sydney LEP 2012.

Discussion

Height

68. The site is subject to a maximum building height control of 30m for 18-20 Darlinghurst Road (The Lowestoft) and 22m for 22-28, 30-30B and 32-32A Darlinghurst Road.
69. The application proposes the following heights:
- (a) 31.95m (6.5% variation) for 18-20 Darlinghurst Road (The Lowestoft)

- (b) 23.135m (5.1% variation) for projecting windows of 18-20 Darlinghurst Road (The Lowestoft) that project over the 22m height control of 22-28 Darlinghurst Road
 - (c) 25m (13.6% variation) for 22-28 Darlinghurst Road (The Bourbon)
 - (d) 25.15m (14.3% variation) for 22-28 Darlinghurst Road (The Radnor)
 - (e) 28.37m (28.9% variation) for 30-30B Darlinghurst Road (The Commodore) and
 - (f) 23.55m (7% variation) for 32-32A Darlinghurst Road (The Empire).
70. It is noted that the proposal is generally compliant with the height in storeys controls specified under the site specific DCP provisions. It is also noted that the site-specific controls allow the Commodore building to be rebuilt to the existing height, even though this would result in the building significantly exceeding the 22m LEP height limit for that part of the site. The DCP controls relating to building height, as well as the proposed building heights are shown in the figures below. Sections are shown below showing the height control in green.

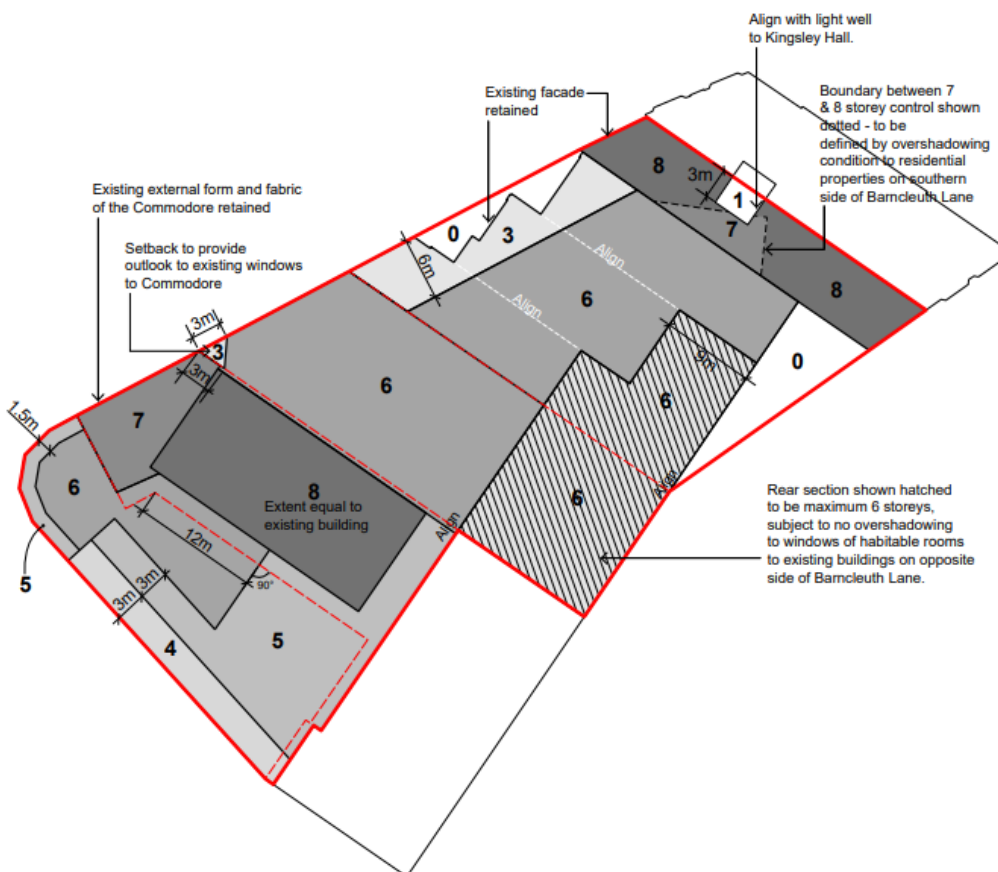


Figure 22: Site specific height and setback controls from the DCP

Figure 6.77
Indicative
axonometric of the
building heights
and setbacks plan
(viewed from the
west)

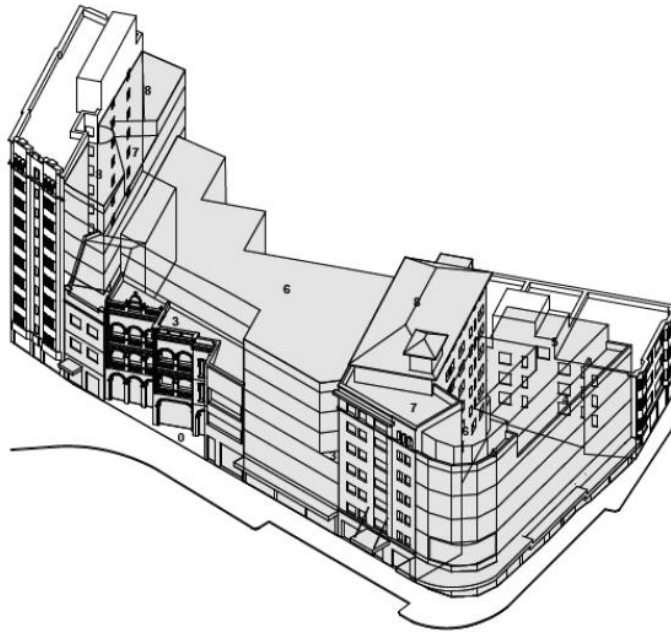


Figure 21: Site specific height and setback controls from the DCP



Figure 24: Proposed heights



Figure 25: A section as viewed from Barncleuth Lane

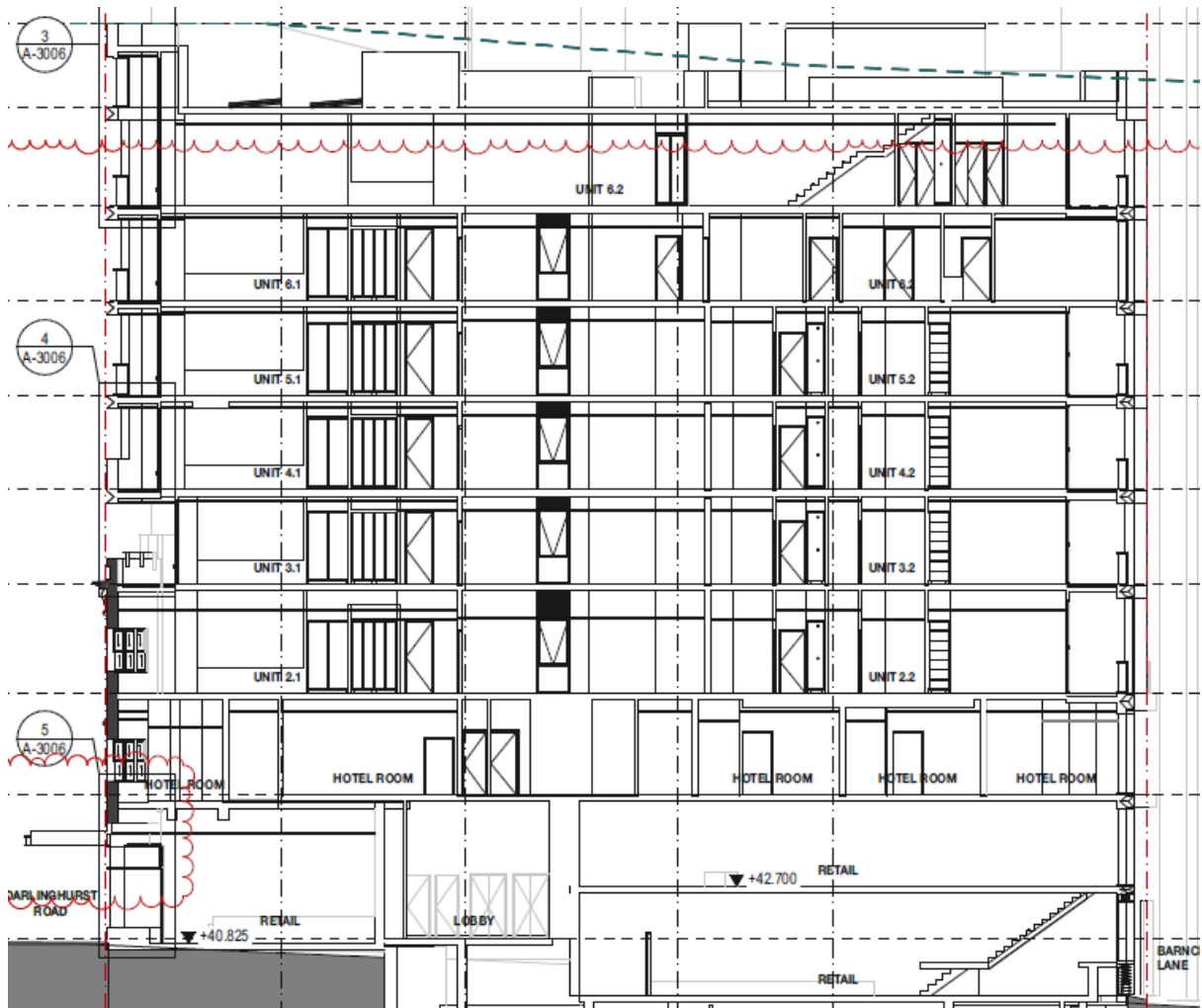


Figure 26: A section of the Lowestoft showing the areas of non-compliance above the 30m control



Figure 27: A section of the Bourbon showing the areas of non-compliance above the 22m control

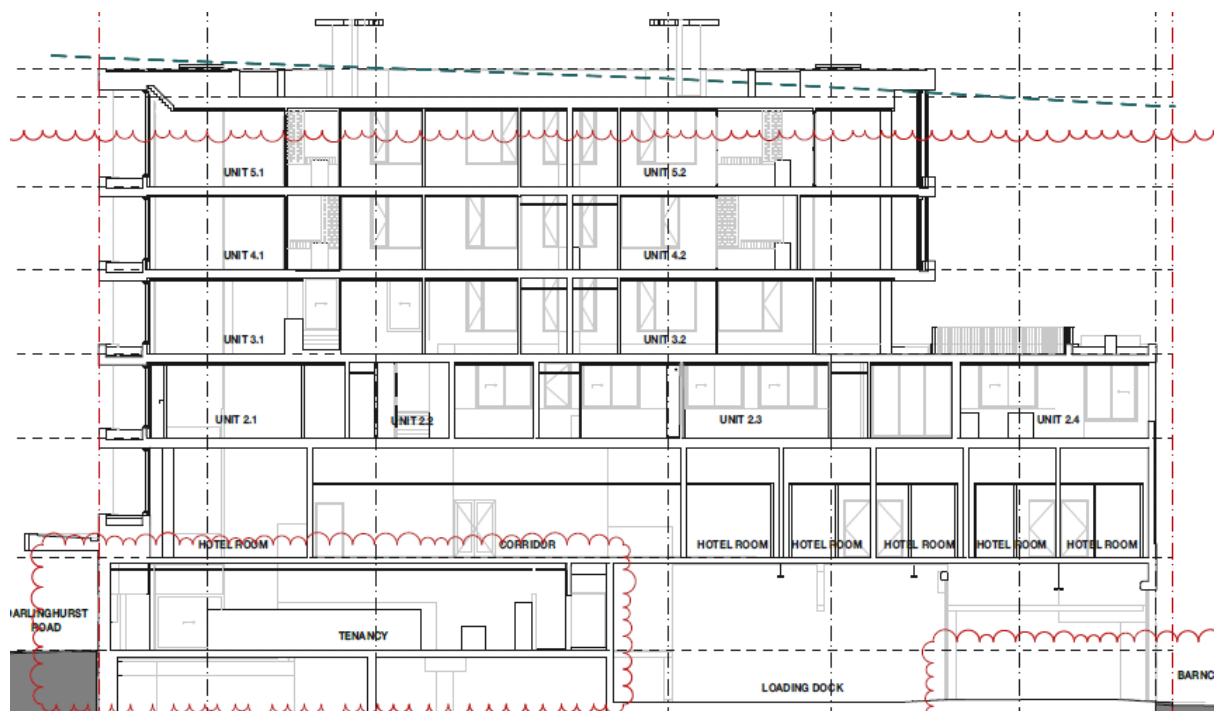


Figure 28: A section of the Radnor showing the areas of non-compliance above the 22m control



Figure 29: A section of the Commodore showing the areas of non-compliance above the 22m control

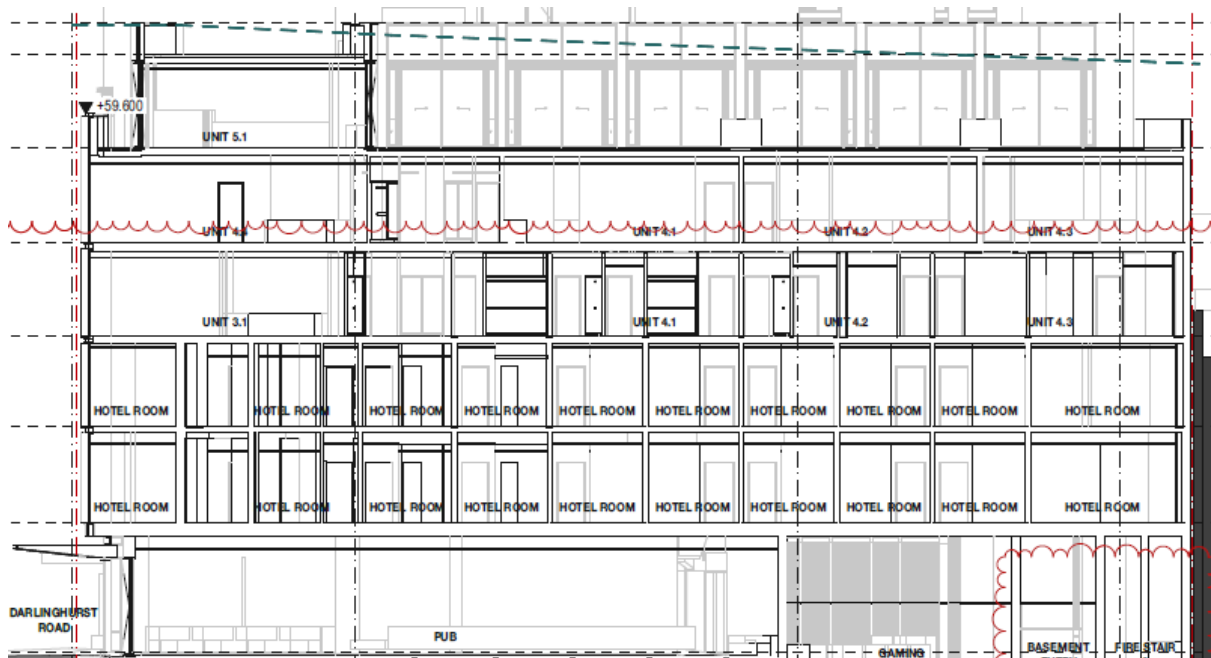


Figure 20: A section of the Empire showing the areas of non-compliance above the 22m control

Clause 4.6 Request to Vary a Development Standard

71. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the height development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard
 - (c) The proposed development will be consistent with the objectives of the zone and
 - (d) The proposed development will be consistent with the objectives of the standard.
72. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - i. Compliance with the objectives of the development standard are achieved, notwithstanding non-compliance with the standard
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - i. The proposal satisfies the objectives of the B2 Local Centre zone and the objectives of the building height standards.
 - ii. The proposal provides diversity of uses.
 - iii. The height variations deliver a superior architectural and urban design outcome across the site, then if a more uniform and compliant building was provided.
 - iv. The non-compliant sections of the building will not be out of context with the streetscape and surrounding built form and are well recessed and do not contribute to any distinguishable bulk, scale or density.
 - v. The non-compliance facilitates both short and long term accommodation at the density envisaged under the planning controls, and does not result in adverse environmental impacts, particularly in terms of bulk, scale and overshadowing.
 - vi. The proposal, including the non-compliant parts of the building are of high-quality design.
 - vii. The site specific DCP controls have been utilised to introduce a form and scale of development that is massaged within the confines and constraints of the site.

- viii. The proposed outcome provides a streetscape presentation providing complimentary relationship with adjoining properties.
 - (c) The proposed development will be consistent with the objectives of the B2 Local Centre zone:
 - i. The proposal involves a mixed-use development that provides a range of facilities and services that cater for the needs to the community.
 - ii. The proposal will provide increased employment opportunities during construction and through the operation of the premises.
 - iii. The proposed development provides a range of uses within close proximity to public transport facilities, as well as on-site bicycle parking.
 - iv. The on-site residential population will support the vitality of the local centre.
 - (d) The proposed development will be consistent with the objectives of the height of buildings standard:
 - i. It responds to the height of the existing heritage items and contributory buildings which are to be retained in part.
 - ii. It responds and transitions to the adjoining heritage item Kingsley Hall.
 - iii. It maintains a variable height across the site, which is characteristic of the built form along Darlinghurst Road.
 - iv. It creates a transition to the residential development to the south, and minimises visual, overshadowing and amenity impacts to these apartments.
 - v. The proposed height does not result in any impacts to existing views enjoyed within the vicinity of the site.
- 73. Development consent must not be granted unless the consent authority is satisfied that:
 - (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being 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; and
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

74. The applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)(a) and (b) of Sydney LEP 2012. As such, the requirement of clause 4.6(4)(a)(i) of Sydney LEP 2012 is met.
75. As per clause 4.6(4)(a)(ii) of the Sydney LEP 2012, the proposed development is also in the public interest because it is consistent with the objectives of the height of buildings standard and the objectives of the B2 Local Centre zone. That is:
- (a) The height of the development is considered appropriate to the condition of the site. The height, when considered with the proposed setbacks and building form, allows for an appropriate relationship with the heritage items on site, adjacent to the site, and the surrounding heritage conservation area.
 - (b) The height of the development does not unreasonably compromise views or outlook.
 - (c) The height of the building is storeys and the setting of the building is generally compliant with the site specific DCP controls. The built form envelopes and number of storeys is set by the DCP.
 - (d) The proposed development includes a mix of compatible land uses, as set out in site specific planning controls for the site. The development includes residential and a variety of non-residential uses, which will activate the street and the proposed through site link.
 - (e) The site is located 150m from the Kings Cross railway station and close to multiple bus stops. The location and accessibility and the connection between the public domain and the subject development creates a highly permeable access arrangement which promotes pedestrian movement.
76. For the reasons provided above the requested variation to the height of buildings standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of buildings standard and the B2 Local CentreB2 Local CentreB2 Local Centre zone.

Heritage

77. Section 6.2.12.8 of the Sydney DCP 2012 outlines the site-specific heritage controls that apply to the site, and an assessment against these controls is provided below. The DCP diagram showing the heritage fabric to be retained is provided below.

Figure 6.75
Axonometric
illustration of
heritage and
contributory fabric
to be retained

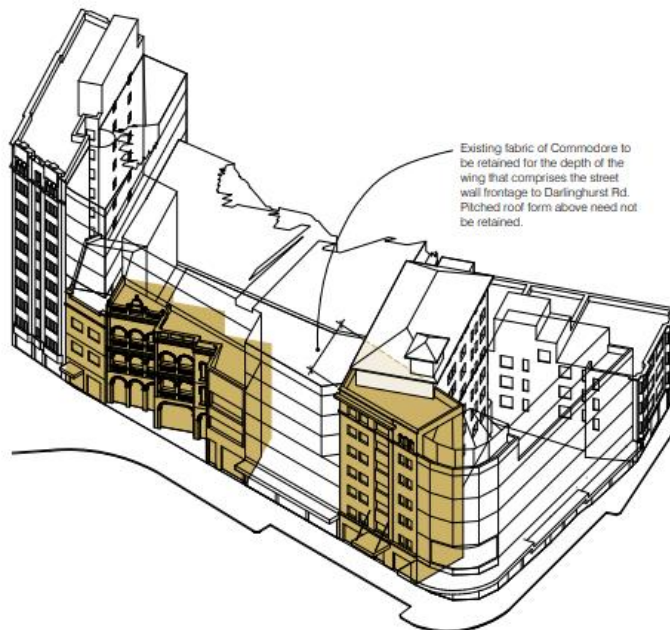


Figure 31: Heritage fabric to be retained as required by the DCP

Relationship with Kingsley Hall

78. The design of the Lowestoft is compatible with the Inter War art deco character of Kingsley Hall at 1A Elizabeth Bay Road through height, scale, materials and detail. The proposal was amended to reduce the height at the front of the Lowestoft by 620mm to maintain the prominence of Kingsley Hall. The brick facade treatment to the Lowestoft is a response to Kingsley Hall brick facade but use of contrasting colour will help clearly distinguish the two built forms. The proposed detailing is not mimicking the historic brick detailing on Kingsley Hall but provides a modern interpretation of a brick facade with punched vertical openings. The niche with full height glazing at the interface between the buildings will help to retain the prominence and visibility of the western corner of Kingsley Hall.

The Lowestoft

79. The existing facade of the Lowestoft is preserved in accordance with the DCP. The DCP permits the new levels of the Lowestoft to be built to the street alignment but requires a setback between the existing facade and new levels. A setback is provided, and ranges between 3.9m and 1m, which is a minor variation to the 3m setback requirement of the DCP.

The Bourbon

80. All significant building fabric within the first 8m of the front facades of the Bourbon is retained, with the ground floor additions removed and designed as an extension of the footpath. The reconstruction of the southern bay of the Bourbon, to replace the 1950s addition, results in a positive heritage outcome.

The Commodore

81. The form, external fabric, and floor levels of the Commodore are conserved for a depth of the wing that comprises the street wall frontage to Darlinghurst Road.

The Empire

82. In accordance with the DCP the existing built form of the Empire is demolished, with the new building designed to interpret the social and historical significance of the site as the original 'Les Girls' venue through an architectural interpretation of the building between 1962-1980s. The design includes the curved corner form similar to that of the existing Empire, ground level awning, the provision of public art, and locates a food and drink premises (pub) at ground level. The proposal appropriately interprets the social and historical significance of the original Les Girls venue.

Urban Grain

83. Section 6.2.12.10 of the Sydney DCP 2012 outlines the site-specific controls relating to urban grain.
84. The DCP requires that five distinct buildings are to be provided, each with their own street-level entry, core, architectural language and expression. The proposal provides six buildings which are distinguished by their distinct architectural language and materiality. This is demonstrated in the figures below.
85. The DCP required nine ground level tenancy entries and four entry foyers to upper levels fronting onto Darlinghurst Road. The application provides six retail tenancies and two entry foyers to Darlinghurst Road, with a further two entry foyers accessed via the through site link. This is acceptable because it is consistent with the number of retail tenancies already on site, and as the provision of the through-site link removes the opportunity for further retail frontages but provides an overall benefit to the site.

Figure 6.80

The block is to be composed of 5 distinct buildings, each with their own street-level entry, core, architectural language and expression

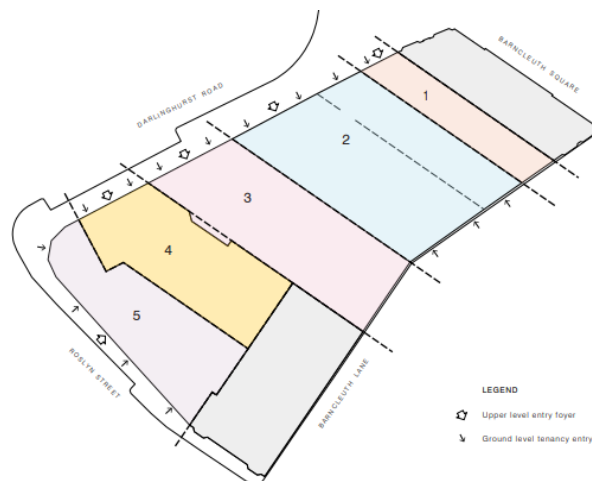


Figure 32: Site specific DCP control outlining how the block is to be composed of distinct building forms

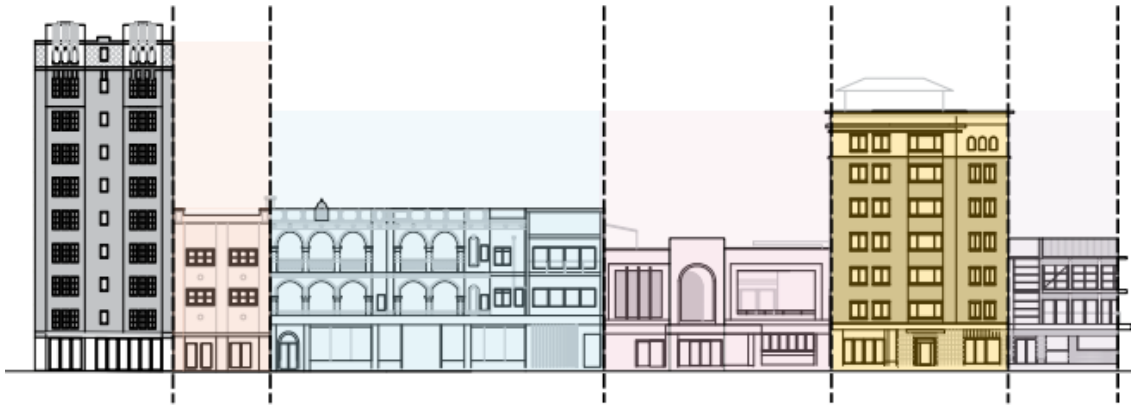


Figure 33: Site specific DCP controls requiring distinct building forms



Figure 34: The proposed Darlinghurst Road elevation demonstrating compliance with the urban grain controls.

Design Excellence

86. The proposed development is considered to demonstrate design excellence in accordance with clause 6.21 of Sydney LEP 2012.
87. The development underwent a competitive design process in accordance with clause 6.21(5) of Sydney LEP 2012. The competitive design process was held in accordance with the City of Sydney Competitive Design Policy.
88. The competition panel selected the design by Tonkin Zulaikha Greer Architects and Panov Scott Architects as the scheme with the most potential to achieve design excellence. The selection panel report identified elements of the scheme which should be retained or further refined. The proposal has retained the key elements of the competition scheme and provided further refinement where requested.
89. The Design Advisory Panel were presented with the application, as originally lodged, on 12 November 2020. The Panel noted that the City had developed a sound framework for Darlinghurst Road in relation to the site specific DCP controls. The Panel were supportive of the through site link and found that the proposed building heights were acceptable.

90. Concerns were raised that the scheme had departed from the competition scheme in some areas, including the loss of private open space to some apartments, and the location of the gaming room. It was also advised that further resolution was required in relating to achieving natural ventilation while meeting acoustic performance criteria. Amended plans have been submitted which have addressed these issues.
91. The amended plans have addressed the fundamental issues of the scheme. A design modification condition is recommended to ensure that further design refinements identified by Council's Urban Design specialist are addressed. These conditions relate to the detailed design of the ground floor doors and shopfront of the Radnor building, ventilation plenums, privacy screens, rooftop plant, and street awnings.

Impacts to Kingsley Hall

92. A number of submissions were received relating to the impacts of the adjoining residential flat building, Kingsley Hall at 1A Elizabeth Bay Road, which adjoins the site to the north-east. The concerns raised include impacts to the windows of apartments within the lightwell, the blocking of windows on the side boundary wall, structural impacts, and the impact that the development will have on ventilation hoods on the south-western facade of Kingsley Hall. Each of these issues is discussed in further detail below.



Figure 35: A view of the south-western side of Kingsley Hall, including its lightwell

Impacts to Kingsley Hall Lightwell

93. The lightwell to Kingsley Hall provides two windows to the living room and kitchen of one apartment per level for the upper four storeys, as well as a window to the corridor. A typical floor plan of an apartment adjacent to the lightwell is provided below.
94. Photographs of windows to the lightwell from one of these apartments, as well as a photograph of the view from the window are provided. It is noted that these views are district views, and not iconic views, borrowed directly across the subject site, and will be lost with any built form that is compliant with the planning controls, which is consistent with the Tenacity Planning Principal.
95. The site specific DCP requires a 3m wide setback that aligns with the light well of Kingsley Hall.
96. The application as lodged proposed a 900mm wide setback. The application was amended to increase the width of the setback by 50% to 1.35m, by providing a smaller lift model within the building. This is shown in Figure 36 below.

97. The applicant advised that they were unable to provide a wider setback for the following reasons:
- (a) The site that contains the Lowestoft is narrow in width (6.2m) which limits the options for the design of the building.
 - (b) The lift and corridor would not be able to be located opposite the lightwell if a 3m setback was provided. The lift cannot be located adjacent to the boundary wall due to 1m wide shoring located adjacent the boundary at basement level.
 - (c) Due to the requirements for fire stair pressurisation and relief risers, including other service cupboards and risers.
98. As shown in the typical floor plan below, the windows to the lightwell are not the sole windows to the living rooms of these apartments, as they also have windows on the north eastern side of Kingsley Hall. Due to this layout, it is considered that sufficient amenity will be maintained within these apartments and the non-compliance with the setback control is acceptable.



Figure 36: A typical floor plan of a unit layout at the front of Kingsley Hall, and adjacent to the lightwell



Figure 47: A view from inside apartment 84, Level 8 of Kingsley Hall to the living room and kitchen windows of the lightwell



Figure 38: The view out of the lightwell of apartment 84, Level 8 of Kingsley Hall windows



Figure 39: A view towards the primary living room windows on the north eastern side

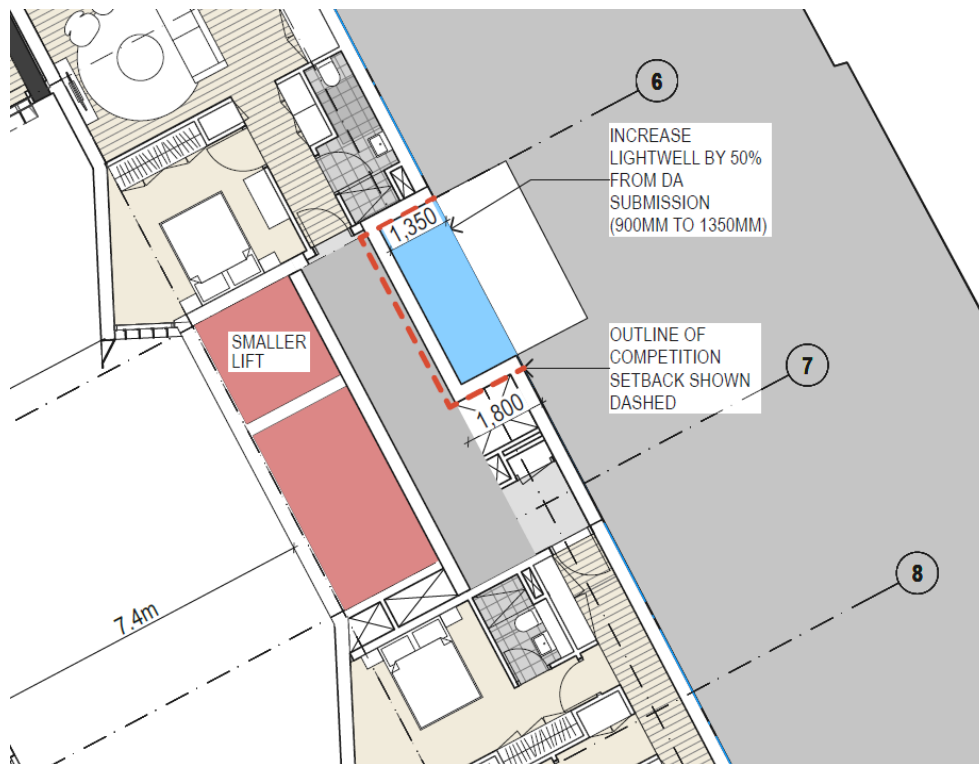


Figure 40: A floor plan showing the lightwell and amended proposal increasing the setback to 1.35m

Structural impacts

99. Concerns were raised with the structural impacts to Kingsley Hall, particularly from excavation of the basement levels.
100. The applicant provided additional information throughout the course of the assessment including a site-specific Geotechnical Report.
101. The proposal was reviewed by Council's heritage specialists who advised that the proposed basement level is acceptable subject to a condition that requires a protection strategy to be submitted to Council prior to the issue of a Construction Certificate. The protection strategy is to detail how the proposed works will ensure that Kingsley Hall is to be suitably protected and stabilised during the construction process. The condition also requires an updated Geotechnical report to be provided that investigates the location and depth of the footings of Kingsley Hall.

Impacts to windows on the side boundary

102. The windows located on the side boundary of Kingsley Hall are to the common corridor and fire stairs. These windows are not protected by an easement.
103. The windows will be blocked by any development within a compliant building envelope and the blocking of these windows is acceptable in the context.



Figure 41: Fixed window on the side boundary, as viewed from the corridor of Kingsley Hall



Figure 42: Fixed window on the side boundary as viewed from the stairs of Kingsley Hall

Ventilation hoods at Kingsley Hall facing the subject site

104. Concerns were raised that the ventilation hoods on the south-western boundary wall of Kingsley Hall will be required to be removed due to the construction of the Lowestoft development. A photograph which shows the hoods as viewed from street level is provided below.
105. In relation to the ventilation hoods the following facts are noted:
- (a) The ventilation hoods are attached to Kingsley Hall at 1A Elizabeth Bay Road.
 - (b) Kingsley Hall is built right up to the boundary with the subject site, and the hoods project over the boundary.
 - (c) The hoods appear to have been in place since the building was constructed in 1929.
 - (d) The 1920s plans for Kingsley Hall on Council's file do not show the hoods.
 - (e) There are no other records on Council's file that indicate that the hoods were approved.
 - (f) There is no easement registered on the title of the property that provides legal entitlement for the hoods to encroach over the boundary.

106. Council requested that the applicant address the issue of the ventilation hoods, including to setback the building to retain the hoods, with an additional 50mm gap provided. The applicant chose not to setback the building, and instead provided legal advice that advised that the removal of the hoods could be dealt with as a private property matter between the two parties. This advice also indicated that they would be able to pursue the removal of the hoods under the Encroachment of Buildings Act 1922. The applicant's legal advice also stated that owner's consent of the adjoining property owner was not required for the removal of the ventilation hoods, however the City is concerned that the removal of the hoods would necessitate work outside of the subject site, which would require owners' consent.
107. The applicant's position is noted, and it is considered appropriate to allow this private property matter to be resolved separately to this development application. A deferred commencement condition is recommended that requires evidence to be provided to demonstrate that owner's consent of the neighbour has been provided for the removal of the ventilation hoods, or an order has been obtained for the removal of the ventilation hoods under the Encroachment of Buildings Act 1922.
108. It is noted that if the private property matter is not able to be resolved in favour of the applicant then they may be required to submit a Section 4.55 application to Council at a later date that modified their development so that the hoods could be retained.



Figure 43: Kingsley Hall, with the existing Lowestoft building in the foreground, as viewed from Barnacleuth Lane

Overshadowing and Privacy Impacts - Barncleuth Lane

109. There are 5 apartment buildings located on the opposite side of Barncleuth Lane. The figure below provides an elevation of these apartment buildings as viewed from Barncleuth Lane.
110. Section 3B of the Apartment Design Guide requires the overshadowing of neighbouring properties to be minimised at midwinter. Detailed shadow diagrams and analysis was provided to demonstrate the overshadowing impacts of the proposal.
111. There are no additional overshadowing impacts at midwinter to 1 Ward Avenue, 3 Ward Avenue or 11 Ward Avenue. Impacts to 5-7 and 9 Ward Avenue are discussed below.

5-7 Ward Avenue

112. Of the 15 apartments facing Barncleuth Lane, 7 retain the current level of solar access, 5 have reduced levels of solar access but maintain more than 2 hours, and 3 have their solar access reduced below 2 hours (apartments 312, 313, 413).
113. Apartment 312, located on the third storey, currently receives solar access between 11.30am and 12.45pm (1h 15min), which will be reduced to between 11.30am and 12.00pm (30min) and will also receive additional solar access between 2.30pm and 2.45pm (15min).
114. Apartment 313, located on the third storey, currently receives solar access between 12.30pm and 12.45pm (15min) which will be eliminated.
115. Apartment 413, located on the fourth storey, currently receives solar access between 11.45am and 2.30pm (2h 45 min), which will be reduced to between 11.45am and 1.00pm (1h 15min).

9 Ward Avenue

116. Of the 9 apartments facing Barncleuth Lane, 5 retain the current level of solar access, 3 have reduced levels of solar access but maintain more than 2 hours, and 1 has its solar access reduced below 2 hours (apartment 25).
117. Apartment 25, located on the third storey currently received direct solar access between 10.45am and 2pm (3h 15min) at midwinter, and this will be reduced to between 10.45am and 12pm (1h 15min).
118. These apartments would also be impacted by any proposal that was consistent with the built form controls of the site specific DCP. The buildings have been designed to minimise overshadowing impacts through their setbacks, orientation and building form. Therefore, the proposal is acceptable.

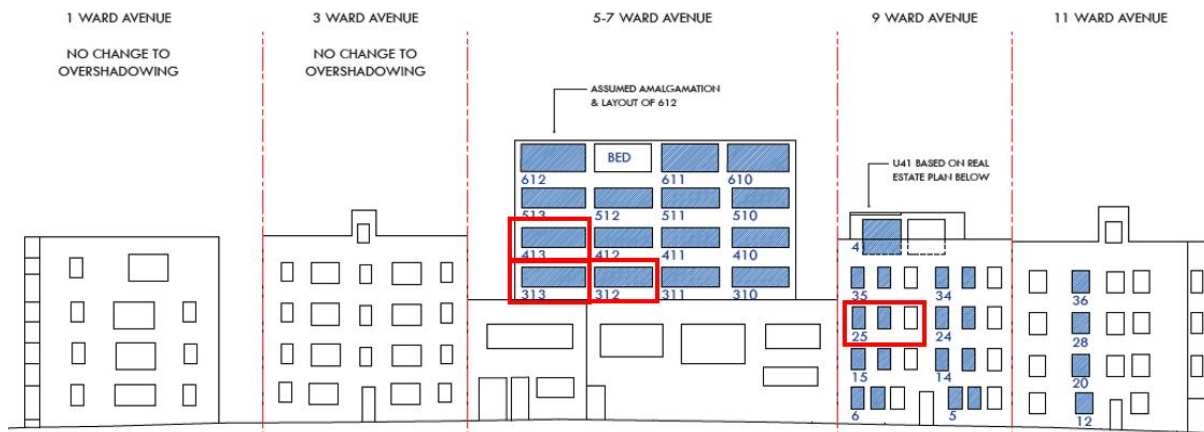


Figure 44: Elevation of all residential flat buildings facing Barncleuth Lane. The apartments with solar access reduced to below two hours shown in red, and living rooms shown in blue.

119. The proposal was amended to provide additional measures to maintain privacy to the apartments located on the opposite side of Barncleuth Lane. An elevation and sections are provided in the figures below.
120. The Radnor provides hit and miss brickwork to the one windows of the hotel level, and fixed privacy screens to the lower level or residential development. The upper residential levels are provided with a minimum of 13.5m setback to the neighbouring residential development, which is considered to be acceptable.
121. The Bourbon provides a setback of 12m between the hotel and neighbouring residential development. There is a setback of 11.2m between the lower residential apartment and the neighbouring residential development, with translucent glazing to a height of 1.6m from finished floor level. The translucent glazing is considered to be insufficient given that these are bifold windows which can be opened, and therefore a design modification condition is recommended that requires a fixed privacy screen to be provided.
122. The Lowestoft provides fixed privacy screens to the upper level of retail and the hotel level, as well as privacy screens and translucent glazing to the balustrades of the lower two levels of residential apartments. This is considered to be acceptable.

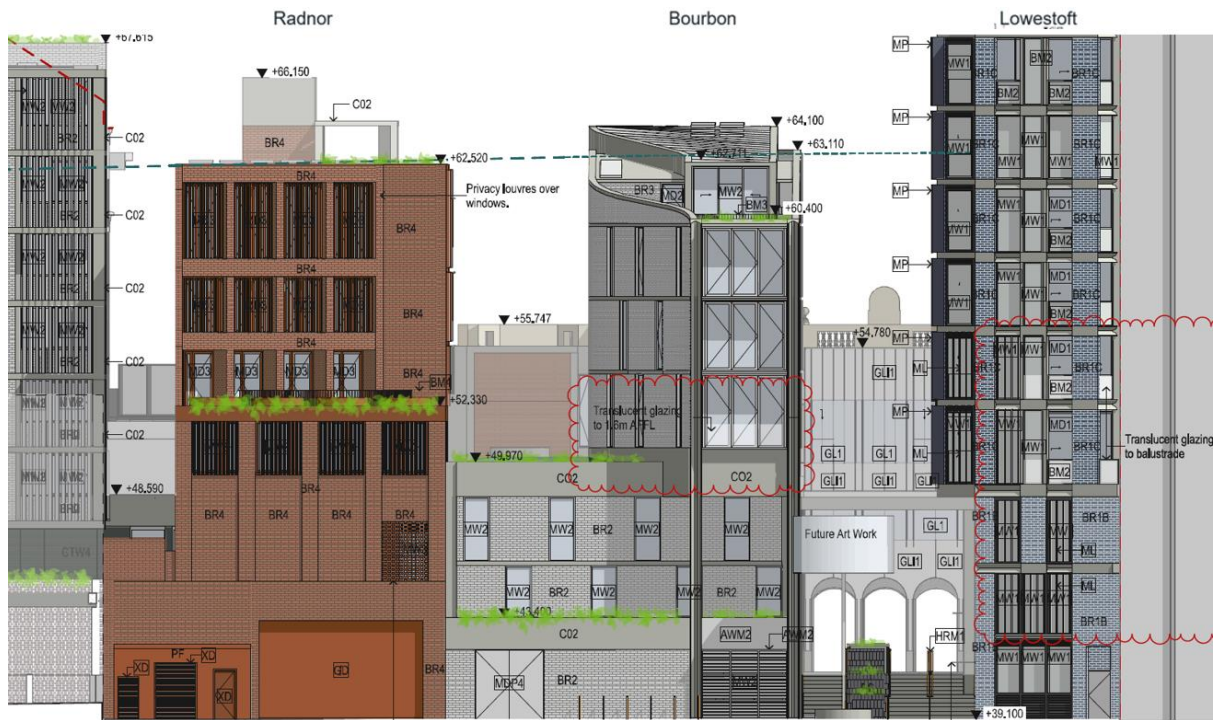


Figure 45: The Barncleuth Lane elevation of the development

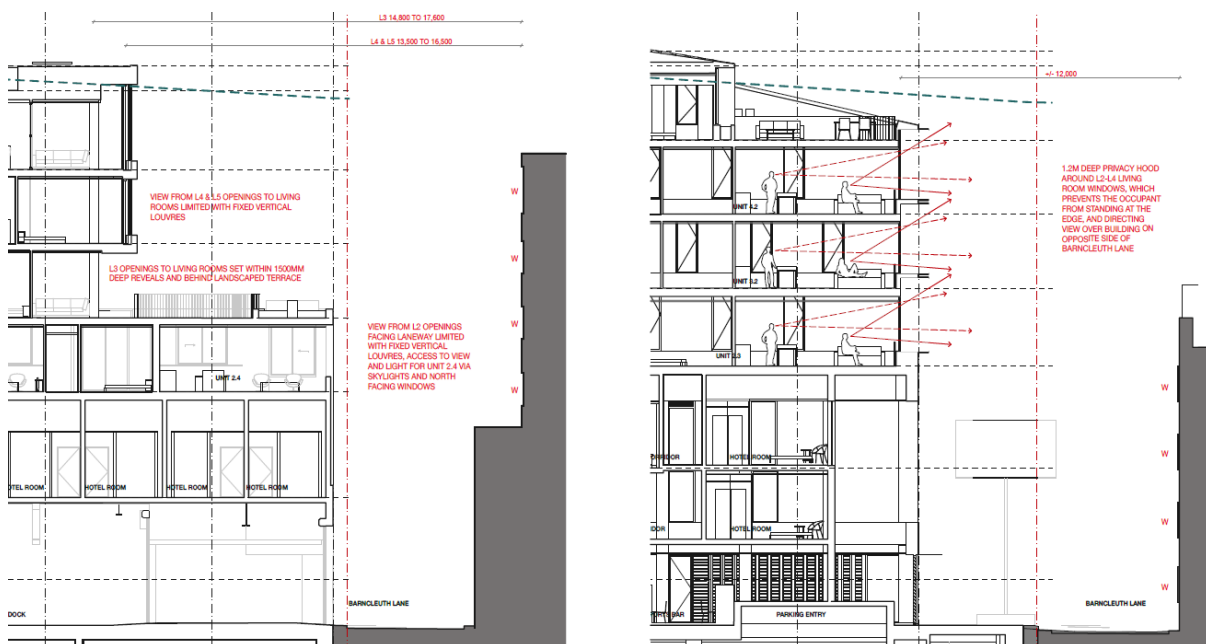


Figure 46: Sections showing the relationship between the Radnor (left) and Bourbon (right) with apartments on the opposite side of Barncleuth Lane

Consultation

Internal Referrals

123. The application was discussed with the following:

- (a) Council's Building Services Unit
- (b) Construction Liaison Coordinator
- (c) Environmental Health Unit
- (d) Environmental Advisor
- (e) Licenced Premises Unit
- (f) Heritage and Urban Design Unit
- (g) Landscape Specialists
- (h) Model Makers
- (i) Public Art Unit
- (j) Public Domain Unit
- (k) Safe City Unit
- (l) Surveyors
- (m) Transport and Access Unit
- (n) Tree Management Unit and
- (o) Waste Management Unit.

The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Recommended Conditions of Consent.

External Referrals

Ausgrid

124. Pursuant to Section 45 of the SEPP (Infrastructure) 2007, the application was referred to Ausgrid for comment.

125. A response was received raising no objections to the proposed development, subject to conditions

NSW Police

126. The application was referred to NSW Police for comment.

127. No response was received.

Water NSW

128. Pursuant to Section 90(2) of the Water Management Act 2000, the application was referred to Water NSW for concurrence.

129. Copies of public submissions made to the City of Sydney during the notification period were forwarded to Water NSW on 27 October 2020.

130. General Terms of Approval were issued by Water NSW on 11 November 2020 and have been included in the schedules within the recommended conditions of consent.

Advertising and Notification

131. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 28 days between 21 September and 20 October 2020. A total of 1,896 properties were notified and 126 submissions were received, with 13 in support and 113 objecting to the proposal. Two petitions objecting to the development were also received, one with 519 signatures, and the other with 595 signatures.

132. The submissions raised the following issues:

- Issue: Impact to the heritage significance of the neighbouring heritage item, Kingsley Hall, particularly through the works to the Lowestoft. The Heritage Impact Statement is inadequate in relation to the assessment of potential impact to Kingsley Hall.

Response: As discussed under the 'discussion' heading above, the proposal has been reviewed by Council's Heritage specialists and it is considered that the proposed works will not result in an adverse impact to the heritage significance of Kingsley Hall.

- Issue: The amenity impacts to Kingsley Hall through the loss of daylight, air flow, and views.

Response: It is considered that the amenity impacts to Kingsley Hall are not unreasonable, as discussed under the 'discussion' heading above.

- Issue: The proposal will impact upon the 17 windows and more than 80 air vents on the southern facade of Kingsley Hall, and the 19 windows within the light well. The application incorrectly refers to the 'blank facade' of Kingsley Hall.

Response: The impacts to the windows and air vents (ventilation hoods) is considered under the 'discussion' heading above.

- Issue: The heritage facade of Kingsley Hall will be sensitive to ground movement that may occur due to the four storey basement excavation. There is no confirmation that the existing footings of Kingsley Hall are tied to the columns, which increases the risk of building movement. Any excavation and associated shoring wall works adjacent to Kingsley Hall will inevitably lead to a degree of vertical and lateral ground movement below the existing footings. The movement will likely lead to cracking of the brick facade walls and finishes and potential damage to the services such as sewer, stormwater and electrical. A structural report should be provided with the development application.

Response: The proposal has been reviewed by Council's Heritage Specialists and appropriate conditions are recommended to ensure that the proposed demolition, excavation and construction works do not impact upon Kingsley Hall. A condition is recommended that requires a protection strategy to be submitted to Council prior to the issue of a Construction Certificate. The protection strategy is to detail how the proposed works will ensure that Kingsley Hall is to be suitably protected and stabilised during the construction process. The condition also requires an updated Geotechnical report to be provided that investigates the location and depth of the footings of Kingsley Hall.

- Issue: The blocking of air vents and enclosure of the lightwell will impact upon the fire-rating certification for Kingsley Hall, which is partly based upon the flow of air along the corridors during a fire alarm. In a fire a fan will start that will draw air from the corridors and stair well to the outside. The proposal will impede this procedure and negate the Fire Order to Kingsley Hall.

Response: The proposal is required to comply with BCA requirements relating the fire rating of the new building. Any compliance issues with fire-rating certification of the neighbouring buildings are a private matter to be dealt with by the neighbouring property. The ventilation hoods are discussed in detail above under the 'discussion' heading.

- Issue: The proposal will obstruct views to the south from kitchens and living areas of Apartments 54-94 in Kingsley Hall.

Response: These are district views, rather than iconic views, from windows immediately adjacent the side boundary. They would be blocked by any compliant building envelope. Therefore, the proposal is consistent with the Tenacity view loss planning principle.

- Issue: The proposal will result in increased noise impact.

Response: Council's Health Specialists have reviewed the submitted acoustic report and advised that the proposal is capable of complying with the relevant acoustic criteria subject to conditions.

- Issue: The proposed one-way vehicle movement and use of traffic lights and timed movements will result in a backup of vehicles along Barncleuth Lane. Barncleuth Lane cannot accommodate the additional traffic impacts including waste collection.

Response: The site is located adjacent to a one-way section of Barncleuth Lane and this is the only vehicle entry within this part of the lane, with approximately 40m back to Barncleuth Square. To minimise the impact upon the laneway network, the signal system proposes to prioritise entering vehicles, with exiting vehicles to queue within the site boundaries. The impacts upon the surrounding traffic network are not unreasonable.

- Issue: The documentation incorrectly identifies Barncleuth Lane as a two-way street.

Response: It is noted that Barncleuth Lane is a one-way street, and the assessment of the application has been carried out on that basis.

- Issue: The extent of the proposed basement is unnecessary due to the availability of public transport.

Response: The number of car parking spaces proposed is compliant with the maximum number of car parking spaces permitted under the Sydney LEP 2012.

- Issue: The proposed development understates how many vehicle movements will be generated, with only 30 per day.

Response: The submitted traffic report states that up to 30 vehicle movements will be generated by the development within one hour during peak hour.

- Issue: Lack of service vehicle parking.

Response: Council's Transport Planner has advised that the loading dock for a medium-rigid vehicle and an additional service vehicle space for a B99 vehicle are sufficient.

- Issue: The Geotechnical Report is based on information from studies 500m and 650m away and is not sufficient to assess the impacts from excavation.

Response: A site specific Geotechnical report was provided during the assessment. This has been reviewed and appropriate conditions have been recommended relating to excavation.

- Issue: The Lowestoft building should not be demolished. The Lowestoft addition should be relocated to be behind the Bourbon to ensure Kingsley Hall is not impacted.

Response: The façade of the Lowestoft is retained in accordance with the site specific DCP requirements. The site-specific controls also permit a multi-storey building on site, as proposed.

- Issue: The proposal will result in additional overshadowing impacts to dwellings on the opposite side of Barncleuth Lane.

Response: As discussed under the 'discussion' heading, the proposed overshadowing impacts have been assessed and are considered to be acceptable.

- Issue: The proposal will result in the loss of privacy and outlook to dwellings on the opposite side of Barncleuth Lane.

Response: The proposal was amended to provide additional privacy measures to protect the amenity of residents on the opposite side of Barncleuth Lane. Additional privacy conditions are also recommended, as discussed under the 'discussion' heading.

- Issue: The height of the proposed development is out of scale with the area.

Response: Parts of the development exceed the height controls. These non-compliances are subject of a Clause 4.6 variation request which is supported. A detailed review of the building height is discussed under the 'discussion' heading. Notwithstanding the non-compliances the overall built form of the development is considered to be an appropriate contextual fit and consistent with the objectives of the site specific DCP controls.

- Issue: The proposed external materials are not acceptable.

Response: The proposed materials are considered to be high quality and appropriate.

- Issue: The use of cladding may be a fire risk.

Response: Conditions are recommended to ensure that cladding is compliant with the requirements of the Building Code of Australia, and that no building products that are banned, or products that are subject to a ban if used in a particular way, under the Building Products (Safety) Act 2017 are to be used in the construction of the development.

- Issue: The proposal will impact on views from 123-125 MacLeay Street towards Paddington.

Response: These are district views, rather than iconic views, and would be impacted by any compliant building envelope. Therefore, the proposal is consistent with the Tenacity view loss planning principle.

- Issue: The development when constructed should not accommodate Air BnB.

Response: There is hotel accommodation proposed for the site. The residential accommodation will be subject to any legislative restrictions relating to short term letting.

- Issue: The new development should be iconic and of high quality.

Response: The proposed development is considered to be of high quality. The proposal is a result of the winning scheme of a design competition process and is consistent with site specific controls that seek to achieve high quality development across the site.

- Issue: Approval of this development will create an unfortunate precedent.

Response: The site is subject to site specific planning controls. Any future development of other sites will be subject to an assessment of the planning controls that apply.

- Issue: The development should achieve community benefits through the provision of public art and heritage interpretation.

Response: Public art and heritage interpretation are proposed. Appropriate conditions have been recommended relating to the Public Art and Heritage Interpretation Plan.

- Issue: The introduction of two large licensed premises will detract from the amenity of the area and inconsistent with the lock out laws that were imposed on the area previously.

Response: The two proposed pubs are in the same location as the two existing pubs, although are smaller in size.

- Issue: The proposed 24-hour pubs will negatively impact on the surrounding properties.

Response: The proposed pubs are in the same location as the two existing 24-hour pubs on the site, however conditions have been recommended to ensure that late night trading hours are subject to a trial period, to ensure that the premises are well managed.

- Issue: There is an undue focus on gaming machines

Response: The provision of gaming machines is not able to be restricted through the development application process. The proposal was amended to relocate a gaming room from the Darlinghurst Road facade to the rear of the site, so that an active street frontage would be maintained to Darlinghurst Road.

- Issue: The proposal should include affordable housing.

Response: The site is not subject to planning controls that require the provision of affordable housing.

- Issue: The proposal ignores the previous public consultation in relation to the site.

Response: Previous public consultation was considered in the planning proposal and development of the site-specific planning controls that apply to the site.

- Issue: The proposal will damage the vibrancy of the locality and the 'village feel' of the area.

Response: The proposal provides active street frontages and has been designed with an appropriate urban grain, as discussed under the 'discussion' heading above.

- Issue: The Empire Hotel should be preserved.

Response: The planning controls permit the demolition of the existing building fabric, but that the design of the Empire is subject to a number of controls to ensure that the significance of the site is retained. This is discussed further under the 'discussion' heading.

- Issue: The proposal will overshadow the adjacent public domain.

Response: There are planning controls that require overshadowing impacts to publicly accessible open spaces be minimised, however this control does not relate to streets or laneways. The proposal will not overshadow Fitzroy Gardens which is located to the north of the site.

- Issue: The proposal removes low cost housing.

Response: As discussed under the 'Affordable Rental Housing SEPP' section of the report, the Commodore has existing approval as hotel accommodation and therefore the proposal does not result in the loss of affordable housing.

- Issue: The proposed apartments receive inadequate cross ventilation.

Response: The Apartment Design Guide requires that 60% of apartments are provided with cross ventilation. The proposal achieves 71% are provided with cross ventilation.

- Issue: The proposed apartments receive inadequate solar access.

Response: The Apartment Design Guide requires that 70% of apartments are provided with 2 hours of solar access at midwinter. The proposal achieves 69.2% which is considered to be acceptable.

- Issue: The solar access report shows no lessening of sunlight hours but does not account for loss of daylight i.e. diffuse light from the sky.

Response: There are no planning controls preventing the loss of daylight to neighbouring dwellings.

- Issue: The proposal detracts from the heritage significance of the area.

Response: The proposed design is considered to be compatible with the heritage conservation area.

- Issue: The amalgamation of sites will impact upon the heritage conservation area.

Response: The proposal has been considered by Council's Heritage Specialists who consider that due to the fine grain design that the consolidation of lots will not impact upon the heritage significance of the conservation area.

- Issue: The retention of the existing facades is tokenism.

Response: The retention of the existing building fabric was determined during the development of the site-specific planning controls, as well as through detailed site inspections carried out by Council's Heritage Specialist as part of the DA assessment.

- Issue: The proposed public art is of poor quality and won't be recognised by passers-by.

Response: A preliminary public art plan was provided which identified locations for the proposed art. A condition is recommended requiring public art to be further developed in consultation with the City's Public Art team.

- Issue: The proposal will result in a wind tunnelling effect.

Response: A wind effects report was submitted, and the proposal was amended to incorporate recommendations from the report.

- Issue: The proposed has poor ESD outcomes.

Response: The proposal has been reviewed by Council's Environmental Advisor and provides an acceptable ESD outcome.

- Issue: The proposal provides no deep soil planting.

Response: Deep soil planting is not considered necessary for this site.

- Issue: There should be no signage on the buildings which would distract motorists and pedestrians.

Response: A condition is recommended requiring a signage strategy is to be submitted, and further applications submitted for any signage.

- Issue: The proposal does not address potential glare impacts.

Response: A condition is recommended to ensure that any reflectivity is consistent with council's controls.

- Issue: It is unclear what fill materials and asbestos are located on site.

Response: Additional information relating to site contamination was submitted, as discussed under SEPP 55 above, it is considered that the site can be made suitable for the proposed use. A number of conditions are recommended relating to site contamination and the safe removal of any asbestos on site.

- Issue: Impact on the local business community through noise, dust, vehicle movements, parking, vibration, loss of foot traffic during construction, pedestrian safety.

Response: The applicant provided additional information relating to construction management, and construction noise and vibration. A number of conditions are recommended to ensure that the construction impacts of the proposal are minimised, and to address the issues of noise and vibration, dust, and construction traffic.

- Issue: Impact on residential use during construction due to noise, dust, vibration, and construction traffic impacts.

Response: The applicant provided additional information relating to construction management, and construction noise and vibration. A number of conditions are recommended to ensure that the construction impacts of the proposal are minimised, and to address the issues of noise and vibration, dust, and construction traffic.

- Issue: Barncleuth Lane is not suitable for construction access.

Response: A number of conditions are recommended relating to construction, including the provision of a Construction Traffic Management Plan, to ensure that vehicle access to the site is managed appropriately.

- Issue: Council must enforce construction regulation measures.

Response: Council's Construction Regulation team are able to enforcement action where appropriate in relation to construction.

- Issue: The construction process will reduce parking in the area.

Response: A number of conditions are recommended to ensure that the construction impacts of the proposal are minimised, including the provision of a Construction Traffic Management Plan.

- Issue: Impact on street trees during construction.

Response: A number of conditions are recommended to ensure that the construction impacts of the proposal are minimised, including relating to the protection of street trees.

- Issue: Impact upon infrastructure such as sewerage and internet capabilities. Sewerage and internet facilities in the area should be upgraded.

Response: Conditions are recommended requiring a Sydney Water certificate to be provided, and related to telecommunications in new developments

- Issue: The DA should be conditioned so that surrounding commercial tenancies in Roslyn Street, Darlinghurst Road and Macleay Street are double glazed with air-conditioning installed.

Response: A number of conditions are recommended to ensure that the construction impacts of the proposal are minimised. A development application condition is unable to be imposed requiring works to other sites.

- Issue: Current rat management isn't sufficient.

Response: A condition is recommended requiring a rodent treatment program prior to demolition and excavation.

- Issue: No building works should be completed over the weekends due to impact upon businesses including the Kings Cross Markets.

Response: A number of conditions are recommended to ensure that the construction impacts of the proposal are minimised. Council's policy permits work on Saturdays between 7.30am and 3.30pm, with no work on Sundays or public holidays.

- Issue: A Social Impact Study should be provided.

Response: The proposal is not for a type of development that requires a Social Impact Assessment Report to be provided under Section 3.13.3 of the Sydney DCP 2012.

- Issue: The proposal is inconsistent with the relevant planning controls for the site.

Response: Compliance with all the relevant planning controls is outlined in detail above.

- Issue: The proposed cost of works has been manipulated so that the cost exceeds the \$50 million threshold.

Response: The estimated cost of development has been peer reviewed by a QS Consultant who have advised the estimated cost is a fair and reasonable estimate for the proposed development.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

133. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

134. Credits have been applied for the most recent approved uses of the site.

135. The following monetary contribution is required towards the cost of public amenities:

(a) Open Space	\$720,342.77
(b) Community Facilities	\$238,532.99
(c) Traffic and Transport	\$15,346.89
(d) Stormwater and Drainage	\$0.00
Total:	\$974,222.65

136. A condition relating to this development 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.

Relevant Legislation

137. Environmental Planning and Assessment Act 1979.

Conclusion

138. The redevelopment seeks alterations and additions, demolition works, and construction of a mixed use development with basement, including a medical centre, retail tenancies, two pub tenancies (with hours of operation of 24 hours, Mondays to Sundays inclusive), hotel accommodation, and 52 residential apartments.
139. The development was amended following comments from the Design Advisory Panel and to address community concerns. The amendments ensure that impacts to neighbouring properties are minimised, ensure sufficient amenity for the future residents of the site, and reinstate elements of the competition winning scheme which contribute to the achievement of design excellence.
140. The proposed development is compliant with the permitted floor space ratio (FSR) control under Sydney Local Environmental Plan 2012 (Sydney LEP 2012). The development exceeds the height development standard by 6.5% to 28.9%. This variation is supported via a clause 4.6 variation request.
141. The development is generally compliant with the Apartment Design Guide (ADG), including 71% of the apartments being naturally cross ventilated. The development also optimises solar access. Overall, the development is considered to provide acceptable amenity for the future residents and acceptable amenity impacts on neighbouring developments.
142. The development provides for retention of significant heritage fabric and an appropriate heritage outcome. The facades are highly modulated resulting in a fine grain development meeting the site-specific requirements of the Sydney DCP 2012. Overall, the development is considered to achieve design excellence.
143. Subject to the implementation of conditions, as detailed in the report and Attachment A, it is considered that the proposed development is acceptable and generally compliant with the planning controls for the site.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Matthew Girvan, Senior Planner