

Item 3.**Development Application: 349 Liverpool Street, Darlinghurst - D/2022/831**

File No.: D/2022/831

Summary**Date of Submission:** 19 August 2022, amended 31 March 2023**Applicant:** Toohey Miller**Architect:** Woods Bagot**Developer:** Toohey Miller**Owner:** The Owners - Strata Plan No 14759**Planning Consultant:** Ethos Urban**Heritage Consultant:** Urbis**DAPRS:** 1 November 2022**Cost of Works:** \$27,965,613**Zoning:** R1 General Residential

The proposed development is for a residential flat building, which is permissible with consent in the zone under the Sydney Local Environmental Plan 2012

Proposal Summary: The application seeks development consent for the demolition of the existing residential flat building, tree removal, excavation and construction of a new residential flat building with 8 storeys, three basement levels, 15 car parking spaces, 14 apartments, rooftop communal and private open space, and associated landscape works including new tree plantings.

The application is referred to the Local Planning Panel for determination as the proposal involves development to which State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development applies and is more than four storeys in height.

It is also referred because it is contentious development, due to the receipt of more than 25 unique submissions made in objection to the proposal.

The proposed height of development exceeds the maximum height of buildings development standard of 22 metres under Clause 4.3 of the Sydney Local Environmental Plan 2012 by 2.2 metres, or 10 per cent.

A written request to vary the height of buildings standard has been submitted with the application in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012. The variation request is not supported in this instance, which is discussed in further detail in this assessment report.

The proposed development has a floor space ratio (FSR) of 2.94:1, which complies with the maximum FSR development standard of 3:1 for the site under Clause 4.4 of the Sydney Local Environmental Plan 2012.

The application was notified between 2 September 2022 and 1 October 2022 in accordance with the City of Sydney Community Participation Plan. A total of 625 properties were notified and 86 submissions were received by the City in response, with 66 submissions in opposition to the proposal and 20 in support.

The submissions in objection raised concerns in relation to height, heritage, setbacks, separation, overshadowing, ventilation, outlook and views, visual and acoustic privacy, property value, adaptive reuse, profiteering, excavation, wind, parking, traffic, access, dust, noise and vibration, architectural design and insufficient information.

The application was reviewed by the Design Advisory Panel Residential Subcommittee (DAPRS) on 1 November 2022.

The panel provided feedback which concluded that the original application did not exhibit design excellence, and raised concerns in relation to separation, outlook, ventilation, daylight, acoustic and visual privacy, light spill, setbacks, communal open space, deep soil provision, car park design, access, building expression, excavation, dwelling mix, and materials.

An assessment of the application by Council staff identified concerns relating to height, setbacks and separation, building expression, amenity, apartment design, landscape design, roof design, overshadowing, heritage conservation, contamination, tree management, waste management, flooding, stormwater, driveway design, access, public art and survey information.

These concerns were communicated in writing to the applicant on 7 February 2023.

The application was amended on 31 March 2023, addressing some of the issues outlined above, however other matters were not fully resolved and, following an assessment of the amended application, correspondence was sent to the applicant on 31 August 2023, reiterating a range of the concerns outlined above.

No formal response to the correspondence has been received from the applicant.

The proposal is inconsistent with the requirements and objectives of the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and the Apartment Design Guide, the Sydney Local Environmental Plan 2012, and the Sydney Development Control Plan 2012 in terms of building height, setbacks, amenity, and design.

The proposed development does not exhibit design excellence pursuant to Clause 6.21C of the Sydney Local Environmental Plan 2012, due to its height, bulk and scale, minimal boundary setbacks, and associated environmental impacts. It will result in a new building on the site which is not of a scale and nature in keeping with or appropriately respectful the character of the locality, adjoining heritage items and streetscape.

The unacceptable built form represents a poor outcome for the subject site, given that it results in detrimental impacts on the significance of the surrounding heritage conservation area, and adverse amenity impacts to surrounding properties, in terms of inadequate building separation, view loss, visual and acoustic privacy, solar access and overshadowing.

Insufficient information has been provided with the application relating to view impact assessment, contamination, overshadowing, geotechnical and structural assessment.

The proposed development does not achieve compliance with a key development standard, design excellence provisions, comprises an overdevelopment of the subject site, and is not consistent with the desired future character of the area. As such, it is recommended for refusal.

Summary Recommendation: This proposal is recommended for refusal.

- Development Controls:**
- (i) Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021
 - (ii) Roads Act 1993 and Roads Regulation 2018
 - (iii) Sydney Water Act 1994 and Sydney Water Regulation 2017
 - (iv) State Environmental Planning Policy No 65— Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG)
 - (v) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)
 - (vi) State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)
 - (vii) State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) and the Managing Land Contamination Planning Guidelines SEPP 55—Remediation of Land (SEPP 55 Guidelines)
 - (viii) State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)
 - (ix) Sydney Local Environmental Plan (Sydney LEP 2012)
 - (x) Sydney Development Control Plan (Sydney DCP 2012)
 - (xi) Sydney Landscape Code Volume 2: All Development Except for Single Dwellings
 - (xii) City of Sydney Interim Floodplain Management Policy
 - (xiii) City of Sydney Guidelines for Waste Management in New Developments
 - (xiv) City of Sydney Development Contributions Plan 2015
 - (xv) City of Sydney Affordable Housing Program 2020
 - (xvi) City of Sydney Community Participation Plan

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request - Height of Buildings
- C. Design Advisory Panel Residential Subcommittee Advice Sheet

Recommendation

It is resolved that consent be refused for Development Application Number D/2022/831 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

Inappropriate building height and inadequate Clause 4.6 variation request

- (A) The written Clause 4.6 variation request has not adequately demonstrated that compliance with the 'height of building' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening the development standard.

Furthermore, the proposal exceeds the maximum height in storeys and street frontage height in storeys and does not reinforce the existing or future neighbourhood character of the locality.

As such, the proposed development is contrary to and fails to satisfy:

- (a) the following provisions of the Sydney Local Environmental Plan 2012:
- (i) Clause 1.2(2), including the aims at (h), (j) and (k);
 - (ii) Clause 4.3(1), including the objectives at (a), (b), (c) and (d);
 - (iii) Clause 4.3(2);
 - (iv) Clause 4.6(1), including the objectives at (a) and (b); and
 - (v) Clause 4.6(3) and (4);
- (b) Schedule 1 of the of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, including principles 1, 2 and 9; and
- (c) the following provisions of the Sydney Development Control Plan 2012:
- (i) Section 1.3 including the aims at (a) and (b);
 - (ii) Section 2.4.12 including the principles at (a) and (b); and
 - (iii) Section 4.2.1.1 including the objective at (a) and provisions at (1), (2), (3) and (5).

Failure to exhibit design excellence

- (B) The proposed development does not exhibit design excellence, as it:

- (a) fails to deliver a high standard of architectural design appropriate for the location and does not provide sufficient detail of the proposed materiality;
- (b) has a form and external appearance that will detract from the quality and amenity of the public domain;
- (c) provides an inappropriate contextual response to the streetscape to Liverpool Street, Darley Place and the surrounding heritage conservation area;
- (d) detrimentally impacts views from neighbouring private properties; and
- (e) fails to integrate high-quality landscape design.

As such, the proposed development is contrary to and fails to satisfy:

- (a) the following provisions of the Sydney Local Environmental Plan 2012:
 - (i) Clause 1.2(2) including the aims at parts (h), (j), and (k);
 - (ii) Clause 6.21 including the objective of the clause; and
 - (iii) Clause 6.21C(2) including the matters for consideration at parts (a), (b), (c) and (d);
- (b) Schedule 1 of the of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, including principles 1, 2, 5 and 9;
- (c) Objectives 4M-1, 4X-1 and 4X-3 of the Apartment Design Guide, including the relevant design guidance; and
- (d) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Section 2.4.12 including the principles at (a) and (b); and
 - (ii) Section 3.2.2 including the objective at (b).

Unacceptable impacts on significance of adjoining and nearby heritage items and the surrounding heritage conservation area

- (C) The proposed development will have a detrimental effect on the heritage significance of adjoining and nearby heritage items and the Oxford Street and Victoria Street heritage conservation area, as:
 - (a) The height of the proposal results in unacceptable impacts on the significance of the heritage item at 1 Darley Place, Darlinghurst, the contributory building at 355-357 Liverpool Street, Darlinghurst, and results in an uncomfortable fit in the streetscape adjacent to the heritage item at 347 Liverpool Street, Darlinghurst.
 - (b) The proposed excavation will likely result in archaeological impacts and a historical archaeological impact assessment and research design report has not been provided.
 - (c) No structural information, detailed geotechnical information or safe construction methodology has been provided, nor has any investigation been made into the location of the footings of the adjoining buildings.

- (d) The proposed excavation for a basement has no setback from the eastern and western boundaries of the site, and the risk of damage or undermining of adjoining buildings in the absence of this information is significant.
- (e) The proposed height and building expression compete with the prominence of the adjoining heritage item at 347 Liverpool Street, Darlinghurst, and is inconsistent with the other existing development in the streetscape to Liverpool Street and Darley Place.
- (f) The proposed materials schedule is insufficiently detailed and no details of the materials, design and details of the services on the Liverpool Street frontage have been provided.
- (g) The silhouettes of the original terraces that existed on the site before the existing residential flat building was constructed are highly visible from the public domain along Liverpool Street and are significant. The proposal blocks views so that it will not be appreciated in the round.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (a) the following provisions of the Sydney Local Environmental Plan 2012:
 - (i) Clause 1.2(2) including the aim at part (k);
 - (ii) Clause 5.10(1) including the objectives at parts (a), (b) and (c) of the clause;
 - (iii) Clause 5.10(4); and
 - (iv) Clause 6.21C(2)(d)(iii); and
- (b) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Section 1.3 including the aims at (a), (b) and (f);
 - (ii) Section 2.4.12 including the principles at (a) and (b);
 - (iii) Section 3.9 including the objectives at (a) and (b);
 - (iv) Section 3.9.5 including the objective at (a) and the provisions at (3) and (4);
 - (v) Section 3.9.6 including the provisions at (1) and (2);
 - (vi) Section 3.9.9 including the provision at (1);
 - (vii) Section 3.9.10 including the provision at (4); and
 - (viii) Section 3.9.13 including the provisions at (1) and (2).

Unacceptable amenity impacts to surrounding properties

- (D) The proposed development results in, and does not clearly detail and address impacts on the amenity of the occupants of surrounding properties in terms of:
- (a) inadequate building separation and setbacks between the proposed development and surrounding buildings, and its height, bulk, scale and massing;
 - (b) view sharing and view loss from adjacent private properties, loss of outlook, visual and acoustic privacy, and overshadowing impacts; and
 - (c) provision of sufficient information with the application relating to the amenity impacts identified above.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (a) Schedule 1 of the of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, including principles 2 and 6;
- (b) Objectives 3B-2, 3F-1, 3F-2, and 4H-1 of the Apartment Design Guide, including the relevant design criteria and design guidance;
- (c) the following provisions of the Sydney Local Environmental Plan 2012:
 - (i) Clause 1.2(2) including the aims at parts (h) and (l); and
 - (ii) Clause 6.21C(2) including the matters for consideration at (c) and (d)(vii);
- (d) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Section 4.2.3 including the objective at (a); and
 - (ii) Section 4.2.3.10 including the provision at (2); and
- (e) the planning principle established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

Unacceptable residential flat building design

- (E) The proposed design of the residential flat building makes unsatisfactory provision for, or does not clearly demonstrate:
- (a) adequate sustainability measures, including appropriate sun shading and operability to the northern facade and updated BASIX and NatHERS certification;
 - (b) adequate area, design quality and amenity of communal open spaces;
 - (c) appropriate private open space locations;
 - (d) an acceptable level of visual privacy can be achieved for residential apartments;
 - (e) acoustic privacy and natural ventilation can be achieved concurrently, and that the proposed location of the lift core directly to bedrooms is appropriate;

- (f) appropriately designed waste management and storage facilities; and
- (g) appropriately located bicycle parking facilities.

As such, the proposed development is contrary to and fails to satisfy:

- (a) Section 27 of the Environmental Planning and Assessment Regulation, 2021 relating to the submission of BASIX information;
- (b) Schedule 1 of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, including principles 4, 6, and 8;
- (c) Objectives 3C-1, 3D-1, 3D-2, 4A-3, 4B-1, 4B-3, 4E-2, 4H-1, 4L-2, 4N-2, 4N-3, 4U-2, 4U-3, 4W-1 and 4W-2 of the Apartment Design Guide, including the relevant design criteria and design guidance;
- (d) Section 6 of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- (e) Clause 6.21C(2)(d)(vii) and (viii) of the Sydney Local Environmental Plan 2012; and
- (f) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Section 3.11 including the objective at (b) and (d);
 - (ii) Section 3.11.3 including the provision at (4);
 - (iii) Section 3.11.13 including the provisions at (1) and (2);
 - (iv) Section 3.14 including the objective at (c);
 - (v) Sections 3.14.1 and 3.14.3 including the provisions at (1) and (4);
 - (vi) Section 4.2.3 including the objective at (a);
 - (vii) Section 4.2.3.8 including the provisions at (1), (4), (5), (6) and (7);
 - (viii) Section 4.2.3.11 including the provision at (7);
 - (ix) Section 4.2.6 including the objectives at (b) and (c); and
 - (x) Sections 4.2.6.1 and 4.2.6.2, including the provisions at (1), (2) and (3).

Unacceptable landscape design and deep soil provision

- (F) The proposed development does not demonstrate:
 - (a) that 15 per cent canopy cover can be achieved at 10 years post-completion;
 - (b) that excellence and integration of landscape design has been achieved;
 - (c) that the landscape design can be appropriately maintained into the future; and

- (d) that a sufficient area of consolidated, unencumbered deep soil has been provided.

As such, the proposed development is contrary to and fails to satisfy:

- (a) Schedule 1 of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, including principles 4 and 5;
- (b) Objectives 3E-1, 4O-1, 4P-1, 4P-2 and 4X-2 of the Apartment Design Guide, including the relevant design criteria and guidance;
- (c) Clause 6.21C(2)(d)(xiii) of the Sydney Local Environmental Plan 2012;
- (d) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Section 3.5.2 including the objective at part (a) and the provision at (2);
 - (ii) Section 4.2.3 including the provision at (a);
 - (iii) Section 4.2.3.5 including the provisions at (1) and (3); and
 - (iv) Section 4.2.3.6 including the provision at (1); and
- (e) the City of Sydney's 'Sydney Landscape Code Volume 2: All Development Except for Single Dwellings', including the relevant guidelines for landscape design and deep soil provision.

Unacceptable likely impacts and site unsuitable for the development

- (G) It has not been demonstrated that the proposed development has satisfactorily addressed:
 - (a) that the land can be made suitable in accordance with State Environmental Planning Policy (Resilience and Hazards) 2021 for the purpose of the proposed development;
 - (b) that flood and stormwater management risks have been fully detailed and managed;
 - (c) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. These include, but are not limited to, impacts relating to construction management; and
 - (d) the suitability of the site for the development.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (a) Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act, 1979;
- (b) Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 and the Managing Land Contamination Planning Guidelines SEPP 55—Remediation of Land; and

- (c) the following provisions of the Sydney Development Control Plan 2012:
 - (i) Clause 5.21 including the objective at (1) and the matters for consideration at (2);
 - (ii) Section 3.7 including objectives (a) through (f) inclusive;
 - (iii) Section 3.7.1 including the provisions at (1) through (4) inclusive;
 - (iv) Section 3.7.2 including the provisions at (5) through (15) inclusive; and
 - (v) Section 3.17 including the objective at (a) and the provision at (1).

Not in the public interest

- (H) It has not been demonstrated that the proposed development has satisfactorily addressed the public interest.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (a) Section 4.15(1)(e) of the Environmental Planning and Assessment Act, 1979.

Background

The Site and Surrounding Development

2. The site has a legal description of Lot B in Deposited Plan 443865, which was strata subdivided into Lots 1 to 24 in Strata Plan 14759 in 1979, and is commonly known as 349 Liverpool Street, Darlinghurst. It is irregular in shape, with an area of approximately 682.9 square metres. It has a primary street frontage of 18.35 metres to Liverpool Street and a secondary lane frontage of 6.97 metres to Darley Place.
3. The site is located on the southern side of Liverpool Street, midblock between the intersection of Darley Street and Liverpool Street to the east, and the intersection of Forbes Street and Liverpool Street to the west. Levels on the site fall from the centre of the site to the north to Liverpool Street by approximately 2.3 metres, and to the south to Darley Place by approximately 0.73 metres.
4. The site is occupied by a five storey residential flat building of masonry construction, known as 'Lynton' and constructed circa 1970, which contains 24 apartments and has 17 at grade car parking spaces accessed via a driveway from Darley Place. Pedestrian access to the site is provided from Liverpool Street via a set of stairs.
5. The site is largely covered in paving and concrete hardstand areas, with two bottlebrush trees located on the eastern boundary in the front yard of the site, and other minor landscape elements comprising shrubs and planters along the side boundaries and in the rear yard.
6. The site is not a heritage item but is identified on the Heritage Map in the Sydney LEP 2012 as being located within the Oxford Street and Victoria Street heritage conservation area (Map reference C12). The site is identified as a detracting building on the Building Contributions Map in the Sydney DCP 2012. It is also identified as being located within the Darlinghurst West locality in Section 2.4.12 of the Sydney DCP 2012 and is subject to flooding along its frontage to Darley Place.
7. The surrounding area is characterised by a mixture of land uses, primarily being residential accommodation comprising residential flat buildings and dwelling houses, with some commercial premises evident.
8. Adjoining the site directly to the west is a part 7, part 8 storey interwar residential flat building known as 'Mont Clair' at 347 Liverpool Street, Darlinghurst. This building is identified as a heritage item of local significance on the Heritage Map and in Schedule 5 of the Sydney LEP 2012 (Item Number I368) and is described as 'Flat building "Mont Clair" including interior and front fence'.
9. Further to the west are a row of three 2 storey Victorian residential terraces at 341, 343 and 345 Liverpool Street, Darlinghurst, which are also identified as a heritage item of local significance in the Sydney LEP 2012 (Item Number I367) and is described as a 'Terrace group including interiors and front fencing'.
10. At the western end of the block, located at the south-eastern corner of the intersection of Liverpool Street and Forbes Street, is a pair of 3 storey Victorian terraces comprising a residential flat building at 337-339 Liverpool Street, Darlinghurst. These buildings are identified as heritage items of local significance in the Sydney LEP 2012 (Item Numbers I365 and I366) and are described as a 'Terrace group (337 Liverpool Street) including interiors and front fence' and 'Terrace house (339 Liverpool Street) including interior and front fencing' respectively.

11. Adjoining the site directly to the east is a 3 storey boarding house known as 'The Patteson', which comprises two Victorian terraces consolidated into a single building circa 1926 with an inter-war facade. This building is not a heritage item but is identified as a contributory building on the Building Contributions Map in the Sydney DCP 2012.
12. At the eastern end of the block, located at the south-western corner of the intersection of Liverpool Street and Darley Street, is a part 6, part 7 storey interwar residential flat building at 5 Darley Street, Darlinghurst. This building is identified as a heritage item of local significance in the Sydney LEP 2012 (Item Number I275) and is described as a 'Flat building "Ballina Flats" including interior'.
13. Immediately to the south of the site is a single storey Victorian dwelling house at 1 Darley Place, Darlinghurst. This building is identified as a heritage item of local significance in the Sydney LEP 2012 (Item Number I268) and is described as a 'Cottage including interior'.
14. To the south-west of the site are three 2 storey Victorian terrace houses at 2-3 and 4 Darley Place, Darlinghurst, which have been amalgamated into a single dwelling house, with pedestrian access to Darley Place to the east and vehicle access to Mont Clair Lane to the west. These buildings are identified as heritage items of local significance in the Sydney LEP 2012 (Item Numbers I269 and I270) and are described as a 'Semi-detached house group including interiors' and 'Semi-detached house including interior'.
15. To the south of the site, on the opposite side of Darley Place, is a single storey Victorian dwelling house at 5 Darley Place, Darlinghurst. This building is identified as a heritage item of local significance in the Sydney LEP 2012 (Item Number I271) and is described as a 'Cottage "Ashley Cottage" including interior'.
16. To the south-east of the site, on the opposite side of Darley Place and on the south-western corner of the intersection of Darley Place and Darley Street, is a 2 storey Victorian dwelling house at 7 Darley Street, Darlinghurst. This building is not a heritage item but is identified as a contributory building on the Building Contributions Map in the Sydney DCP 2012.
17. To the north of the site, beneath the surface of Liverpool Street, is a subterranean sewer tunnel which is identified as a heritage item of State significance on the State Heritage Register (Item Number 01623) and is described as the 'Bondi Ocean Outfall Sewer'.
18. On the northern side of Liverpool Street, directly opposite the site, is a 3 storey free-standing Victorian mansion at 278 Liverpool Street, Darlinghurst, which is used as a commercial art gallery trading as the 'Robin Gibson Gallery'. This building is identified as a heritage item of local significance in the Sydney LEP 2012 (Item Number I358) and is described as a 'Former house "Hilton" including interior and front fence'.
19. To the north-west of the site, on the opposite side of Liverpool Street at the north-eastern corner of the intersection of Liverpool Street and Forbes Street, is a large part 2 and part 3 storey inter-war church building of sandstone masonry construction at 262 Liverpool Street, Darlinghurst, which is currently used as office premises. This building is identified as a heritage item of local significance in the Sydney LEP 2012 (Item Number I357) and is described as the 'First Church of Christ Scientist including interior'.

20. To the north-east of the site, on the opposite side of Liverpool Street at the north-western corner of the intersection of Liverpool Street and Darley Street, is a 3 storey Federation residential flat building at 280 Liverpool Street, Darlinghurst. This building is identified as a heritage item of local significance in the Sydney LEP 2012 (Item Number I359) and is described as a 'Flat building "Alexandra Flats" including interior and street fencing'.
21. Site inspection visits were carried out on 16 September 2022 and 13 October 2022.
22. Photographs of the subject site and surroundings are reproduced in the figures provided below.

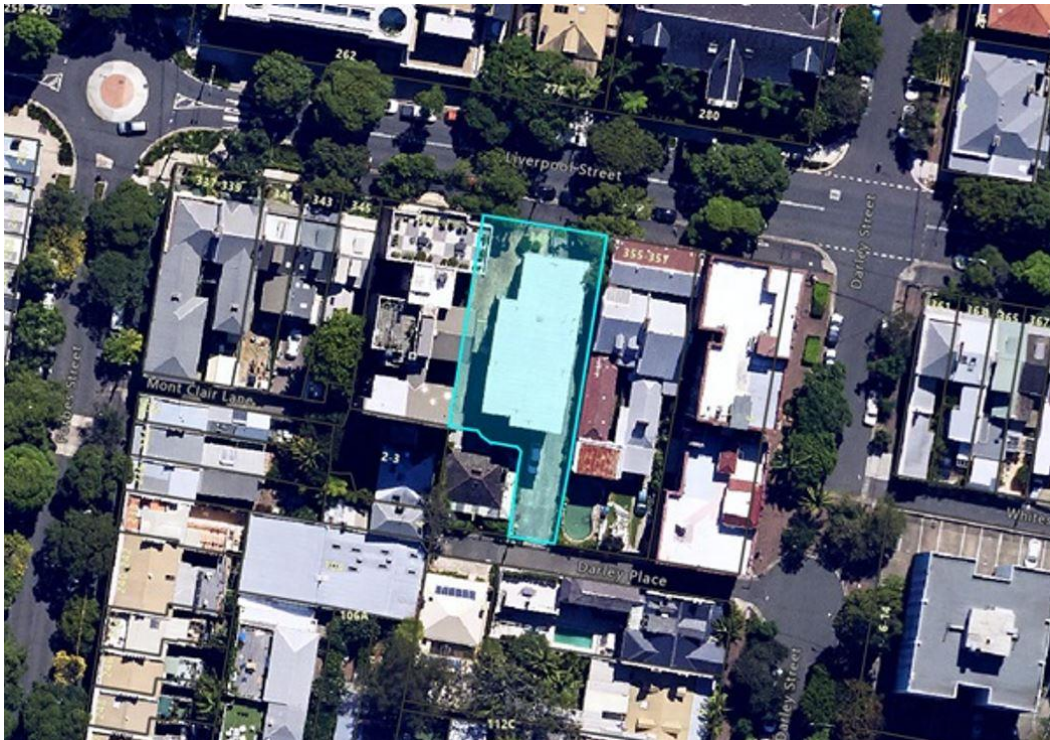


Figure 1: Aerial photographic view of the subject site (shown shaded in blue) and the surrounding locality



Figure 2: The subject site viewed from the northern side of Liverpool Street, facing south



Figure 3: The adjoining residential flat building at 349 Liverpool Street (local heritage item), viewed from the northern side of Liverpool Street, facing south-west

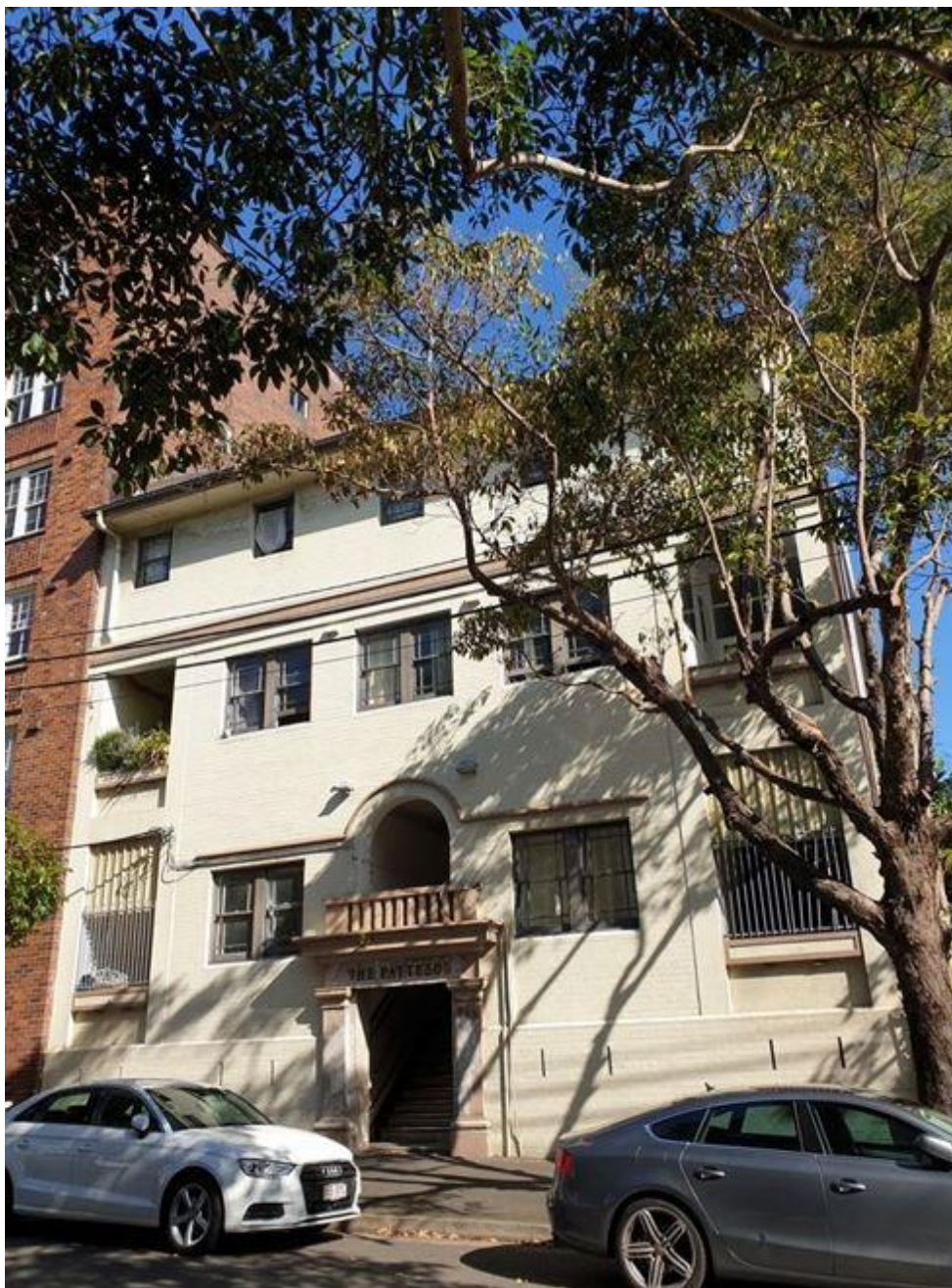


Figure 4: The adjoining boarding house at 355-357 Liverpool Street, viewed from the northern side of Liverpool Street, facing south-east



Figure 5: The residential flat building at 5 Darley Street (local heritage item), viewed from the northern side of Liverpool Street, facing south-west



Figure 6: The residential flat building and terraces at 337-339, 341, 343, 345 Liverpool Street (all local heritage items, from right to left), viewed from the northern side of Liverpool Street, facing south-west



Figure 7: The office premises at 262 Liverpool Street (local heritage item), viewed from the southern side of Liverpool Street, facing north-west



Figure 8: The art gallery at 278 Liverpool Street (local heritage item) opposite the site, viewed from the southern side of Liverpool Street, facing north



Figure 9: The residential flat building at 280 Liverpool Street (local heritage item), viewed from the southern side of Liverpool Street, facing north-east



Figure 10: The subject site, viewed from the southern side of Darley Place, facing north



Figure 11: The adjoining boarding house at 355-357 Liverpool Street, viewed from the southern side of Darley Place, facing north-east



Figure 12: The cottage at 5 Darley Place (local heritage item), viewed from the northern side of Darley Place, facing south-west



Figure 13: The terraces at 2-3 and 4 Darley Place (both local heritage items), viewed from the southern side of Darley Place, facing north-west



Figure 14: The adjoining cottage at 1 Darley Place (local heritage item), viewed from the southern side of Darley Place, facing north-west



Figure 15: The dwelling house at 7 Darley Street, viewed from the eastern side of Darley Street, facing south-west



Figure 16: The residential flat building at 5 Darley Street (local heritage item), viewed from the eastern side of Darley Street, facing north-west

History Relevant to the Development Application

Relevant Applications

23. The following application is relevant to the current proposal:

- (a) **PDA/2022/131** – A request for pre-development application advice was submitted to the City on 23 June 2022. The subject development application was lodged on 19 August 2022, prior to any advice being provided by Council staff.

Compliance Action

24. The site is not subject to any compliance investigation or action.

Chronology

25. Following lodgement of the application, a request for an amended electronic CAD model was sent to the applicant on 6 September 2022.
26. An amended set of architectural drawings and architectural design report were submitted to the City on 14 September 2022, with a further set of amended architectural drawings submitted on 16 September 2022 to match the submitted CAD model.
27. Following a preliminary assessment of the proposed development by Council officers, the application was presented to the City's Design Advisory Panel Residential Subcommittee (DAPRS) on 1 November 2022.
28. The panel provided feedback which concluded that the original design did not exhibit design excellence.
29. The panel also made a range of design recommendations, including to reduce the physical and visual impacts of the proposed development, reduce the overall height, increase boundary setbacks, reduce the extent of the building and basement footprint, and increase the proposed deep soil and communal open space areas.
30. A copy of the DAPRS advice sheet is included at Attachment C.
31. Following the completion of the preliminary assessment of the proposal, a letter requesting additional information and amendments to the application was sent to the applicant on 7 February 2023.
32. The letter raised a wide range of issues with the proposal, including concerns relating to the following matters:
 - (a) the proposed non-compliance with the height of buildings development standard and building height in storeys control applicable to the site;
 - (b) amenity impacts associated with the minimal and non-compliant side and rear setbacks of the proposal, including those relating to visual bulk and scale, outlook, natural ventilation, privacy and light spill;
 - (c) the proposed building expression, including the relationship of the proposed new building with the adjoining heritage item at 347 Liverpool Street, Darlinghurst and its facade design;
 - (d) apartment design and amenity, including apartment depth, balcony orientation and bedrooms reliant on natural ventilation and daylight from light wells;
 - (e) roof design, including lack of a roof plan drawing, air conditioning plant location, photovoltaic (PV) system, privacy impacts, and the design of the building parapet and balustrade system;
 - (f) solar access to proposed apartments and overshadowing of neighbouring properties;

- (g) heritage conservation, including lack of a detailed geotechnical assessment, structural details and methodology, basement setbacks, and hydrant, booster and meter details;
 - (h) landscape design, including minimal deep soil provision, lack of canopy tree provision, and poor communal open space amenity;
 - (i) contamination, including lack of a detailed environmental site investigation;
 - (j) tree management, including location of proposed stormwater infrastructure in proximity to existing street trees;
 - (k) waste management, including storage and chute design, and waste collection;
 - (l) flooding and stormwater management, including the design of the driveway and interface with the public domain along Darley Place and on-site detention infrastructure;
 - (m) accessibility, including provision of a stair climber at the primary entrance;
 - (n) public art, including lack of a preliminary public art plan;
 - (o) site survey, including details of adjoining properties;
 - (p) Building Code of Australia compliance, including boundary openings;
 - (q) view sharing and loss, including lack of a visual impact assessment; and
 - (r) calculation of gross floor area and floor space ratio.
33. A meeting was held between Council staff, the applicant and the applicant's architect and planning consultant on 20 March 2023 to discuss the applicant's response to Council's correspondence.
34. An amended application was submitted to the City on 31 March 2023, including the following:
- (a) an amended architectural drawing set, including revised and additional sun's eye view and shadow diagrams;
 - (b) an amended architectural design report, including a preliminary investigation of alternate building and apartment configuration;
 - (c) an amended landscape drawing set and maintenance strategy;
 - (d) a flood impact assessment and an amended civil engineering drawings and documentation;
 - (e) an amended survey plan;
 - (f) Building Code of Australia and fire engineering documentation;
 - (g) contamination documentation;
 - (h) a preliminary public art plan;

- (i) preliminary archaeological assessment; and
 - (j) a brief assessment of impacts on views and outlook from adjoining properties.
35. The amendments to the proposed design of the development included the following:
- (a) deletion of framing elements at level 6 so that the street wall and cornice line directly adjoin the parapet height of the adjoining building at 347 Liverpool Street, Darlinghurst;
 - (b) increased rear basement and building setbacks, approximately matching the rear setback of the existing building, and provision of a consolidated deep soil area at the rear of the site;
 - (c) amendment of the sandstone materiality of the building base to provide visual differentiation to that of the main facade;
 - (d) amendments to provide a roof level PV system and air conditioning plant, integrated balustrade and parapet and lift access between apartments on level 6 and rooftop private open space;
 - (e) amendment of the landscape drawings to include canopy tree plantings and planter details;
 - (f) amendment of the basement waste storage facilities and provision of separate bin storage on each residential level;
 - (g) amendment of stormwater infrastructure and driveway design; and
 - (h) provision of a platform lift at the Liverpool Street entrance.
36. The response requested that the provision of detailed contamination, archaeological and geotechnical assessment be deferred to prior to the issue of a construction certificate and asserted that a full view impact assessment was not warranted.
37. Following the completion of the assessment of the amended application, further correspondence was sent to the applicant on 31 August 2023.
38. The correspondence noted that, despite positive changes being made to the proposal, crucial information remained outstanding, and significant concerns remained relating to the following matters:
- (a) the proposed non-compliance with the height of buildings development standard and building height in storeys control applicable to the site resulting in solar access, visual bulk and scale and streetscape impacts;
 - (b) amenity impacts associated with the minimal and non-compliant side and rear setbacks, separation and building expression of the proposal;
 - (c) privacy and overlooking impacts, including living room windows at ground level reliant on curtains to large areas for glazing, and bedrooms reliant on natural ventilation and daylight from light wells;
 - (d) excavation impacts, including lack of a detailed geotechnical assessment, a historical archaeological impact assessment and research design, structural details and methodology;

- (e) landscape design, including non-compliant deep soil provision, and poor communal open space amenity;
 - (f) contamination, including lack of a detailed environmental site investigation;
 - (g) flooding and stormwater management, including the design of the driveway and interface with the public domain along Darley Place and stormwater infrastructure;
 - (h) natural ventilation, including design of privacy louvres restricting ventilation access;
 - (i) waste management, including lack a temporary waste storage area and feasibility of the basement waste storage design; and
 - (j) inadequate details and drawings.
39. No formal response to the correspondence has been received from the applicant.
40. The assessment provided in this report is based on the amended application received on 31 March 2023 and the additional information outlined above.

Proposed Development

41. The application, as amended on 31 March 2023, seeks development consent for the following:
- (a) demolition of the existing residential flat building;
 - (b) removal of two trees and pruning of two street trees on the Liverpool Street frontage of the site;
 - (c) excavation of the site; and
 - (d) construction of a new residential flat building with 8 storeys, 14 apartments, 3 basement levels, roof terraces and plunge pools, and associated landscape works, including new tree plantings.
42. In specific terms, the development comprises the following:
- (a) Basement 3: 6 car parking spaces (including 2 Livable Housing Design / adaptable spaces), vehicle lift, turntable, inground stormwater pit, sewer pump, 8 storage cages, 5 store rooms, fire stair and pedestrian lift.
 - (b) Basement 2: 5 car parking spaces (including 1 accessible space), vehicle lift, turntable, 6 storage cages, 5 store rooms, 14 bicycle parking spaces, 2 visitor bicycle parking spaces, fire stair and pedestrian lift.
 - (c) Basement 1: 4 car parking spaces (including 1 accessible space), vehicle lift, turntable, hydrant pump room, air conditioning and mechanical plant room, communications room, switch room, bulky waste room, waste room, recycling room, 4 store rooms, fire stair and pedestrian lift.

- (d) Ground: 2 two-bedroom apartments, landscape areas including tree plantings, pedestrian entry lobby, stair and platform lift to Liverpool Street, lift lobby, communal amenity area, driveway and DDA pathway to Darley Place, vehicle lift, waste room, fire stairs and pedestrian lift.
 - (e) Level 1: 2 three-bedroom apartments, lift lobby, waste room, fire stair and pedestrian lift.
 - (f) Level 2: 2 three-bedroom adaptable apartments, lift lobby, waste room, fire stair and pedestrian lift.
 - (g) Levels 3-5: 2 three-bedroom apartments, lift lobby, waste room, fire stair and pedestrian lift.
 - (h) Level 6: 2 three-bedroom apartments with internal pedestrian stair and lift access to level 7 above, lift lobby, waste room, fire stair and pedestrian lifts.
 - (i) Level 7: 2 private terraces with pedestrian lift and stair access from the apartments below, plunge pools and landscape planters, lift overrun, air conditioning condenser room, plant room, services room, 2 pump rooms, communal terrace and landscape planter, fire stair and pedestrian lift.
 - (j) Roof: Photovoltaic system comprising 42 panels.
43. Selected architectural and landscape drawings are provided in Attachment A.
44. Plan, elevation, section, and photomontage drawing extracts of the proposed development are reproduced in the figures provided below.

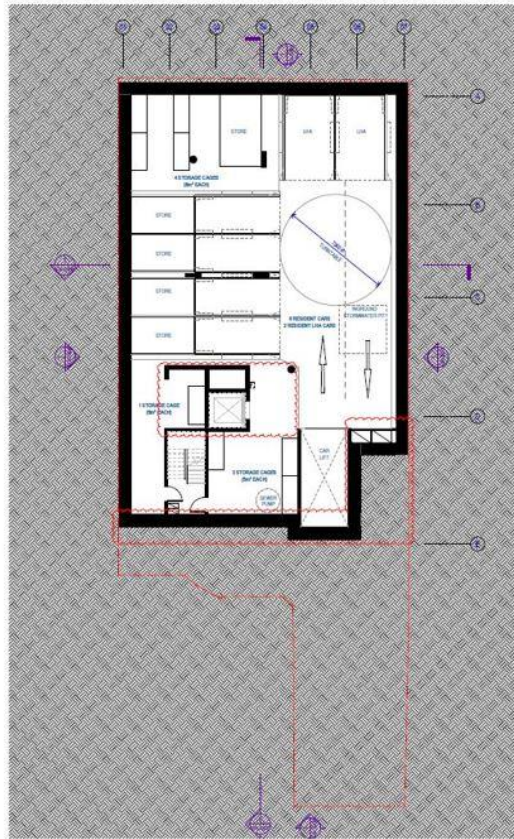


Figure 17: Proposed basement 3 plan

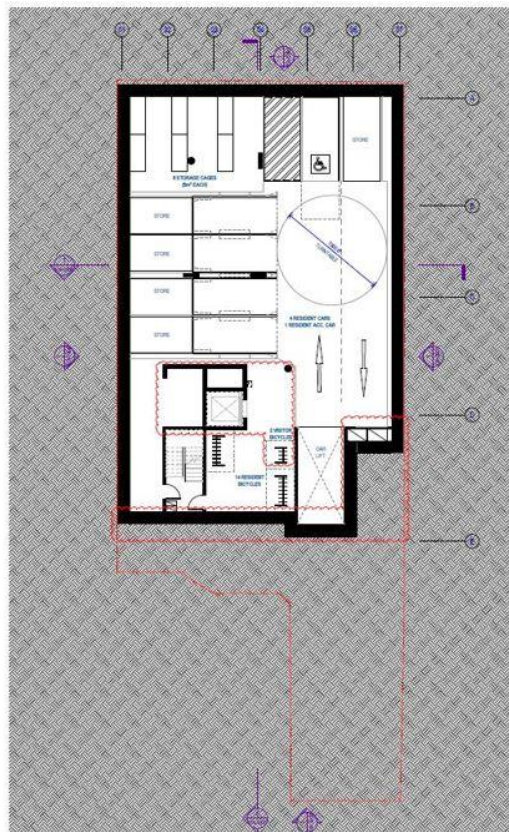


Figure 18: Proposed basement 2 plan

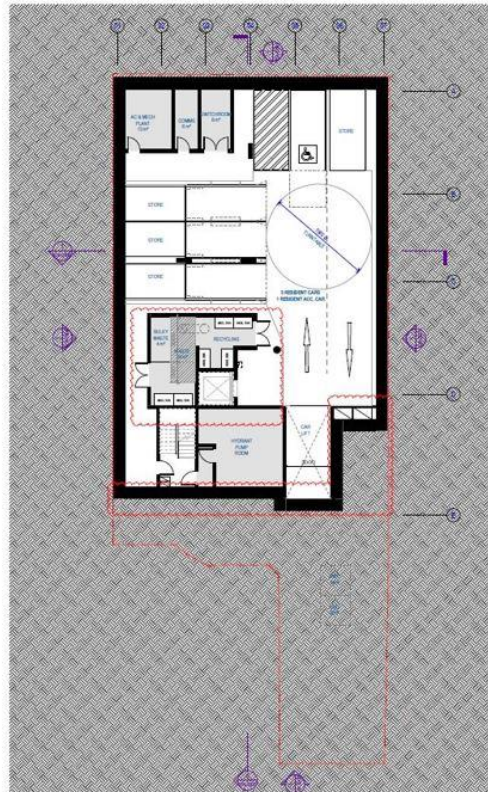


Figure 19: Proposed basement 1 plan

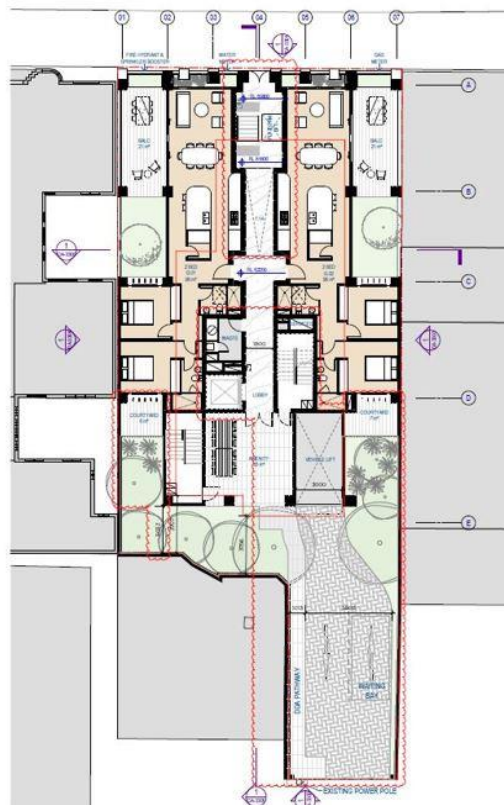


Figure 20: Proposed ground level plan

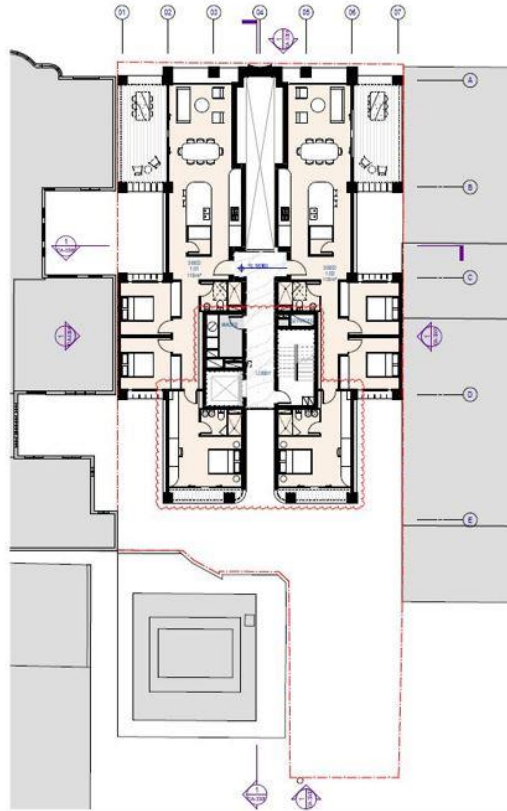


Figure 21: Proposed level 1 plan

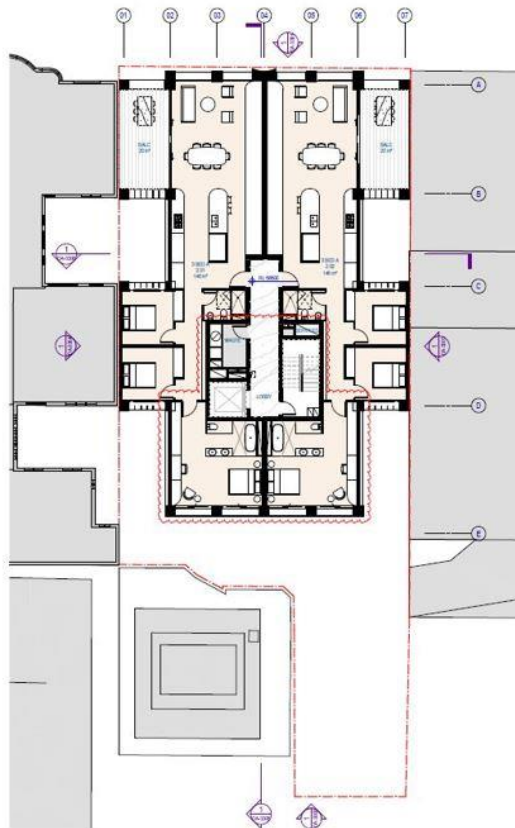


Figure 22: Proposed level 2 plan

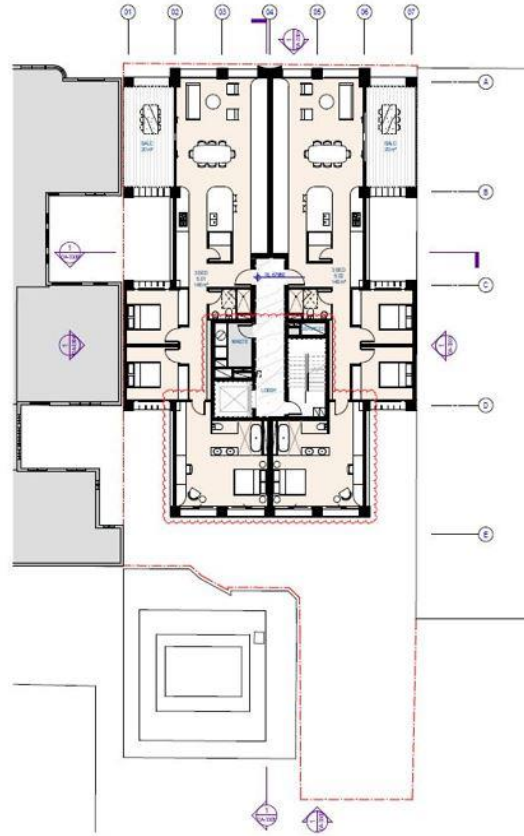


Figure 23: Proposed typical upper level 3-5 plan

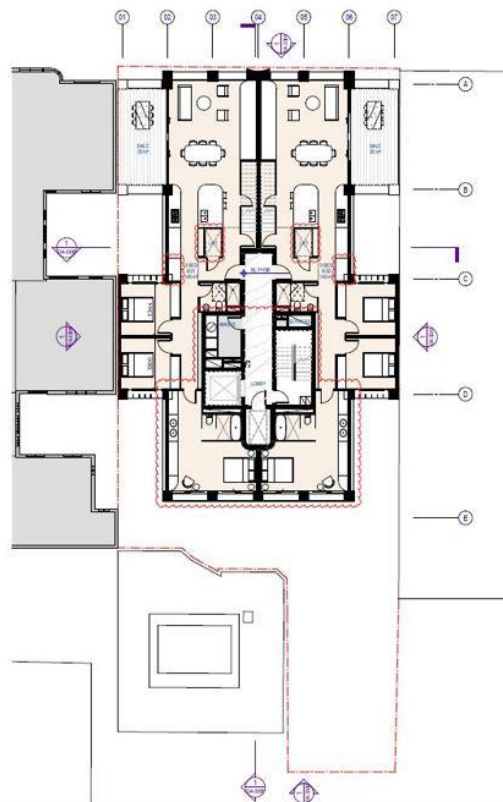


Figure 24: Proposed level 6 plan

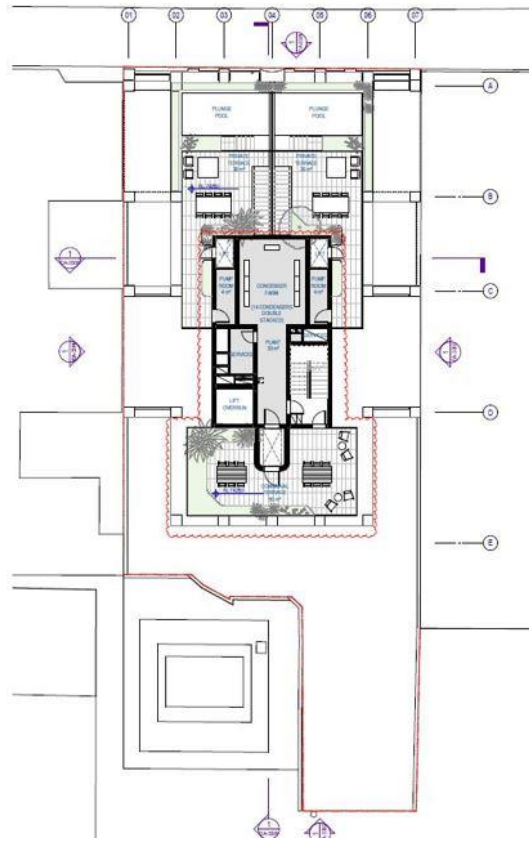


Figure 25: Proposed level 7 / roof terrace plan

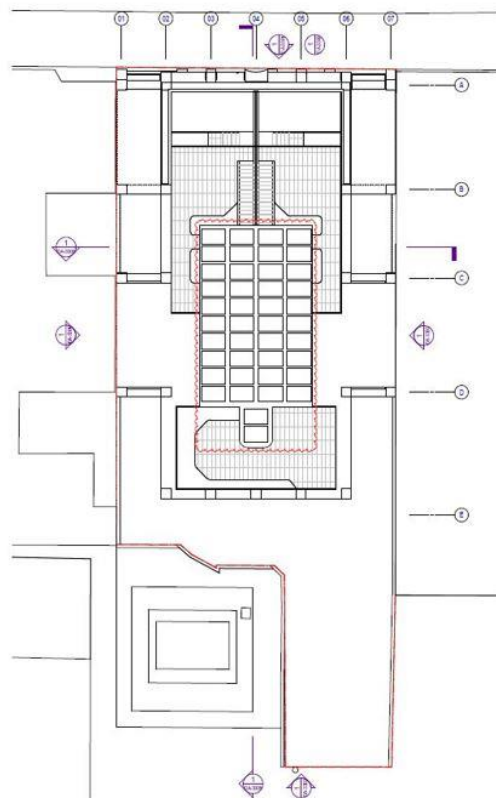


Figure 26: Proposed roof plan



Figure 27: Proposed north (Liverpool Street) elevation

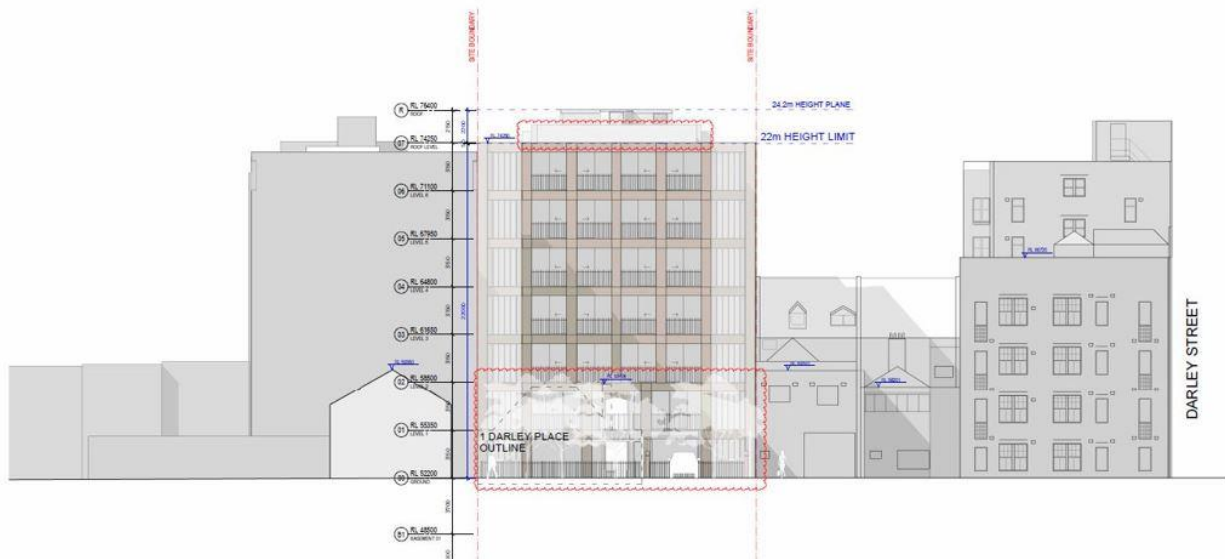


Figure 28: Proposed south (Darley Place) elevation

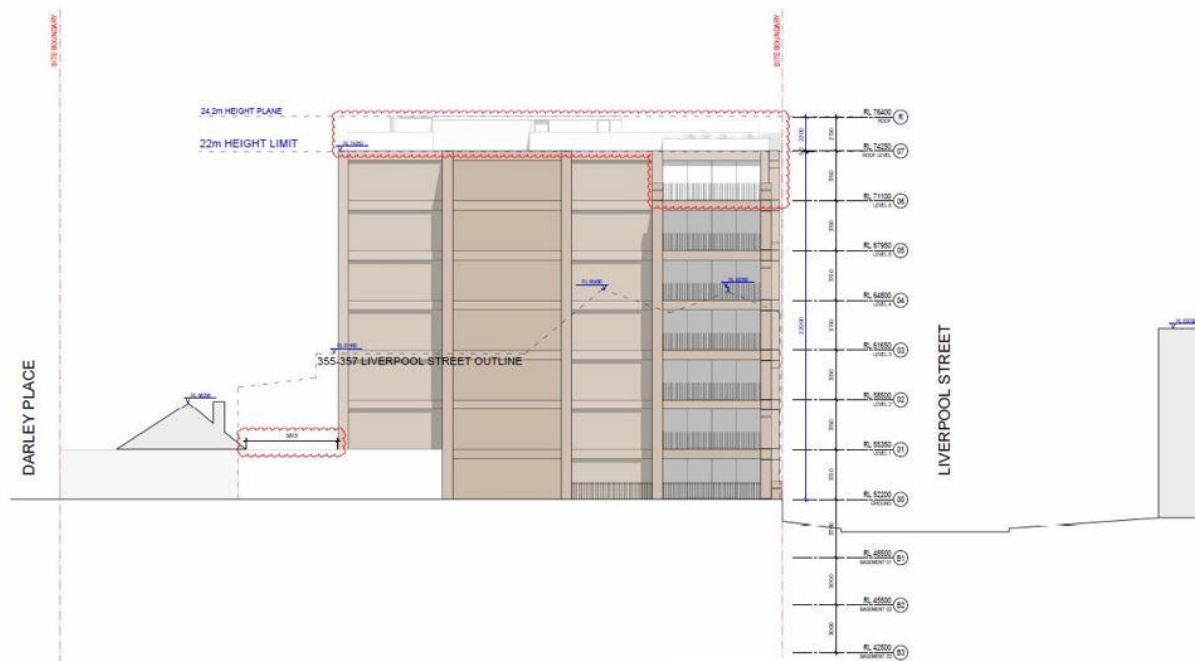


Figure 29: Proposed east elevation

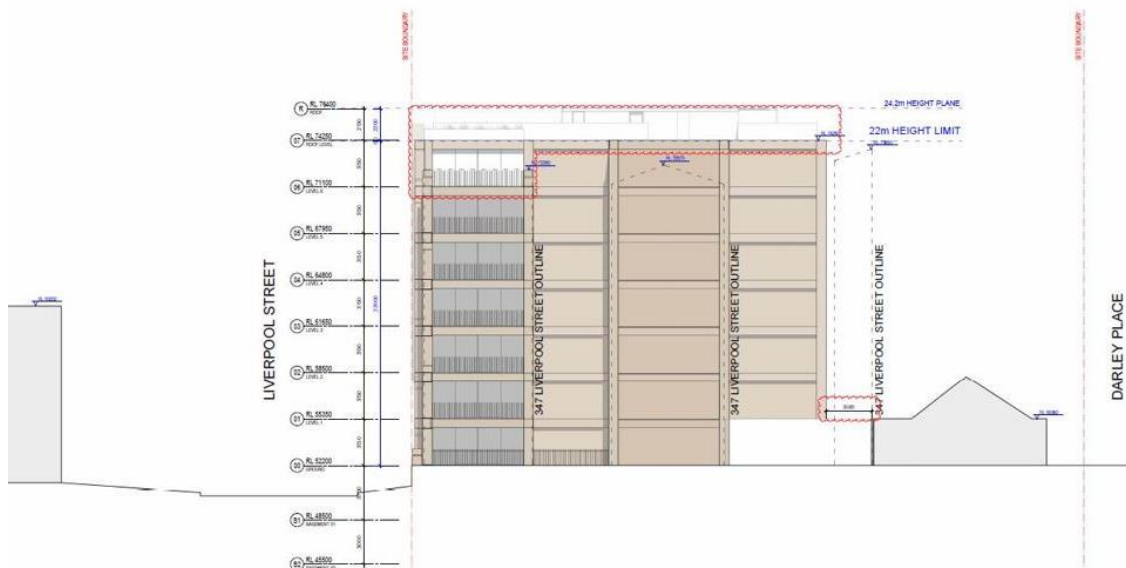


Figure 30: Proposed west elevation

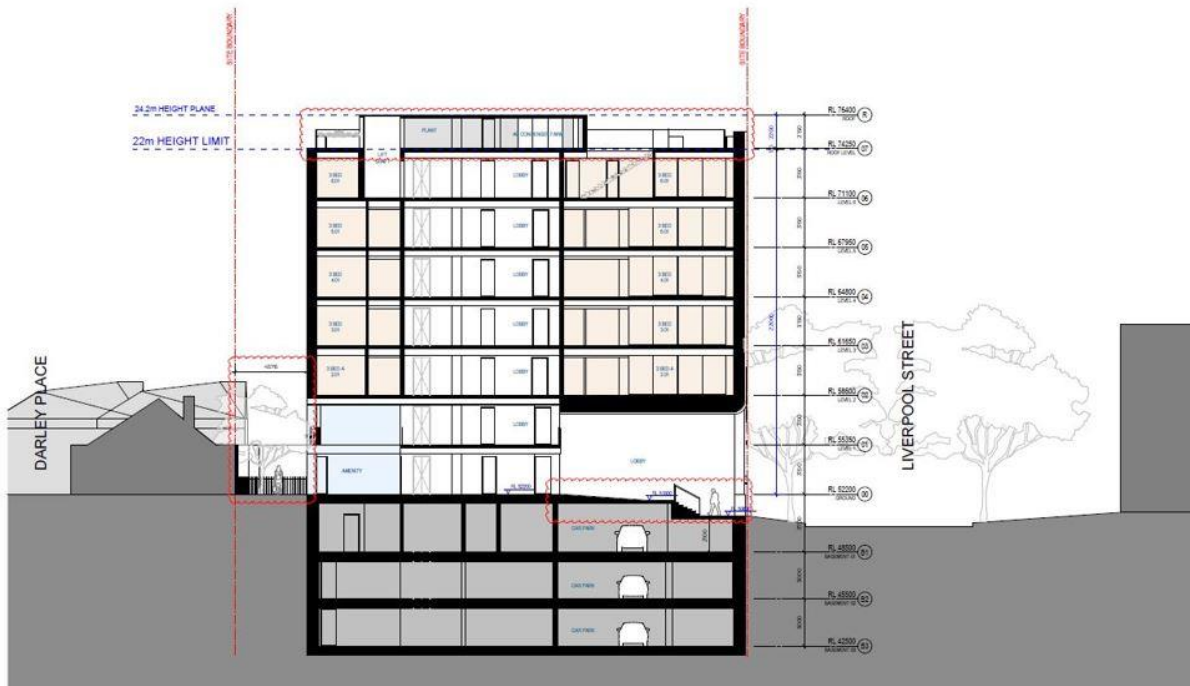


Figure 31: Proposed long section

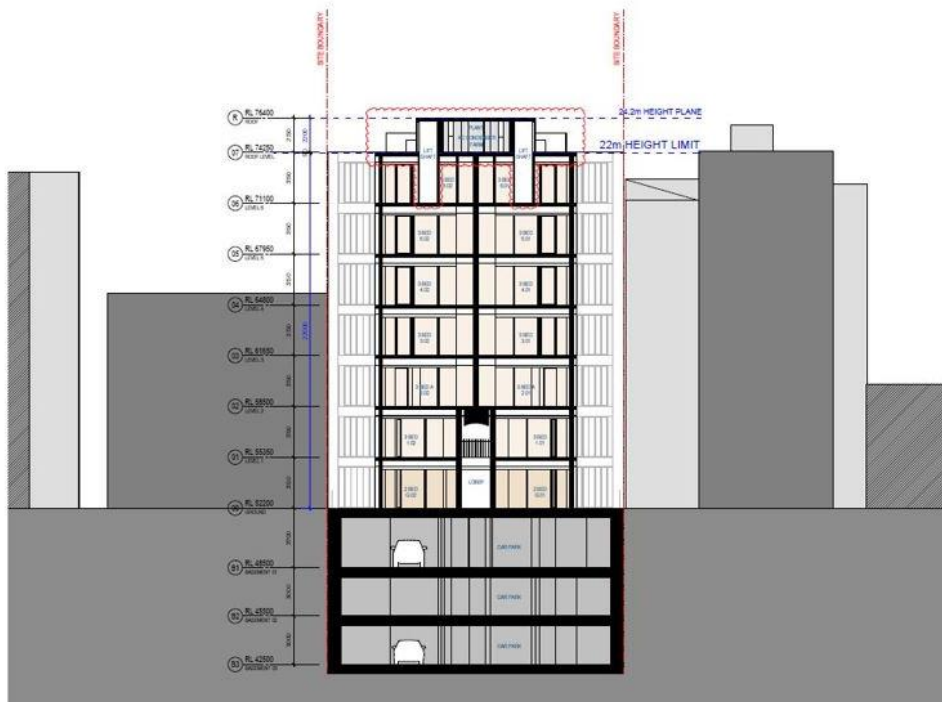


Figure 32: Proposed cross section



Figure 33: Proposed photomontage viewed from Liverpool Street, looking south-east (original scheme)



Figure 34: Proposed aerial photomontage, looking north-west (original scheme)

Sydney Water Act 1994

45. Section 78 of the Sydney Water Act, 1994 sets out various requirements for the determination of development applications which would:
 - (a) increase the demand for water supplied by the Corporation;
 - (b) increase the amount of wastewater that is to be removed by the Corporation;
 - (c) damage or interfere with the Corporation's works; and
 - (d) adversely affect the Corporation's operation.
46. The application was referred to the Sydney Water Corporation (SWC) in accordance with the Act. A response was received from the SWC, raising no objections to the proposal, subject to conditions.

Assessment

47. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

State Environmental Planning Policies

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

48. The aim of SEPP 65 is to improve the design quality of residential apartment development in New South Wales.
49. SEPP 65 provides that, in determining a development application for a residential flat building development of three or more floors and containing four or more apartments, the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles.
50. A design verification statement (DVS) prepared by Jason Fraser of Woods Bagot, who is registered as an architect under the Architects Act 2003, has been submitted with the application.
51. The DVS has been provided to address the design quality principles and objectives of the Apartment Design Guide (ADG).
52. The statement satisfies the requirements set out in Clause 29(2) of the Environmental Planning and Assessment Regulation 2021.
53. The nine design quality principles under Schedule 1 of SEPP 65 and the relevant objectives of the ADG are discussed under each heading and table section provided below.

(a) Principle 1: Context and Neighbourhood Character

- (i) The site is located centrally within the suburb of Darlinghurst, to the north of Oxford Street, to the south of the William Street, and between Forbes Street and Darley Street. It is to the east of the subterranean Eastern Distributor corridor and to the west of the southern sections of Darlinghurst Road and Victoria Street. It is located at the top of the ridge that spans the suburb from north to south.
- (ii) Specifically, the site is located on the southern side of Liverpool Street, between Forbes and Darley Streets. The site is subject to maximum height controls in the Sydney LEP 2012 and Sydney DCP 2012 of 22 metres and 6 storeys, with a 3 storey street wall respectively. The proposal does not comply with these controls and does not respond appropriately to its context in terms its height.
- (iii) The site is located in the R1 General Residential zone. Although residential flat buildings are permitted with development consent in the zone, the proposal is not consistent with the features of the locality and does not achieve compliance with a number of key controls in the Sydney LEP 2012 and the Sydney DCP 2012, as discussed elsewhere in this assessment report.
- (iv) The proposal is inconsistent with the existing and desired future character of the Darlinghurst West locality. This is because it does not satisfactorily respond to or complement the adjacent and nearby heritage items and contributory buildings within the Oxford Street and Victoria Street heritage conservation area, or to the surrounding streetscape along Liverpool Street and Darley Place.
- (v) This is unsatisfactory and forms part of the reasons for refusal of the application.

(b) Principle 2: Built Form and Scale

- (i) The immediate locality along Liverpool Street and Darley Place has no distinct built form pattern, with a range of buildings of varying height, scale, massing, architectural building styles and land uses.
- (ii) The form and scale of the future development anticipated in the area is not consistent with the height and typology of the proposal.
- (iii) As outlined above, the proposal does not comply with the maximum height, storey height, and street wall height controls in the Sydney LEP 2012 and Sydney DCP 2012, presenting unacceptable visual bulk and scale impacts to the surrounding development.
- (iv) It does not appropriately address the public domain or contribute adequately to the character of the surrounding streetscape, and results in unacceptable amenity impacts, as outlined elsewhere in this report.
- (v) The form and scale of the proposed new building is not consistent with either the existing and desired future built form and scale of the streetscape at both the street and lane frontages of the site.

- (vi) This is unsatisfactory and forms part of the reasons for refusal of the application.

(c) Principle 3: Density

- (i) The proposal complies with the maximum 3:1 floor space ratio control applicable to the site. The overall density of the development is generally consistent with that envisaged under the relevant planning controls.
- (ii) The new building accommodates 14 apartments, which is an acceptable level of residential density for the site, given its proximity to established infrastructure, public transport, and community and recreation facilities.

(d) Principle 4: Sustainability

- (i) A BASIX certificate and NatHERS certification was submitted with the original application, but not with the amended application.
- (ii) The proposal relies on lightwells for access to natural light and ventilation to habitable rooms within the development, via window openings with acoustic treatments which will hinder access to natural ventilation. This may result in an undue reliance on artificial lighting, heating and cooling, thereby increasing future energy consumption.
- (iii) These issues have not been adequately addressed and form a part of the reasons for refusal of the application.

(e) Principle 5: Landscape

- (i) The development does not provide an adequate landscape treatment, in terms of an insufficient quantum of deep soil provision, excessive soil mounding, inadequate soil depth, and lack of clarity in relation to maintenance.
- (ii) Communal spaces at the ground floor level and at level 7 do not achieve an adequate size or an appropriate level of design quality and provide for an unsatisfactory level of amenity for residents.
- (iii) These aspects of the design are not supported and form a part of the reasons for refusal of the application.

(f) Principle 6: Amenity

- (i) The proposal does not provide acceptable internal and external amenity for residents and neighbours.
- (ii) Issues include overshadowing of adjoining and nearby properties, reliance on lightwells for natural ventilation, acoustic and visual privacy impacts, lack of adequate communal open space areas, and insufficient deep soil areas.
- (iii) These aspects of the design are not supported and form a part of the reasons for refusal of the application.

(g) Principle 7: Safety

- (i) The proposal provides for an acceptable level of casual surveillance of the surrounding public domain from the proposed apartments within the development.
- (ii) A secure entrance is provided for the use of residents of the proposed residential flat building at the Liverpool Street frontage of the development, however the drawings are unclear as to the treatment of the pedestrian and vehicular access to Darley Place.
- (iii) The proposal is generally consistent with the relevant principles of Crime Prevention through Environmental Design (CPTED).

(h) Principle 8: Housing Diversity and Social Interaction

- (i) The proposal includes two residential apartment types, which provides a degree of housing diversity on the site, including adaptable and silver livable housing level dwellings.
- (ii) As outlined above, the communal spaces proposed at the ground floor level and at level 7 do not achieve an adequate size or an appropriate level of design quality and provide for an unsatisfactory level of amenity for residents.
- (iii) This aspect of the design is not supported and forms a part of the reasons for refusal of the application.

(i) Principle 9: Aesthetics

- (i) Materials and finishes schedules were provided with both the original and amended applications, however these are insufficiently detailed to demonstrate that the proposal exhibits design excellence.
- (ii) The proposed building presents with an unsympathetic void to solid ratio, and grid like expression to its front and rear elevations, with large, glazed infill windows which are inconsistent in the streetscape.
- (iii) These aspects of the design are not supported and form a part of the reasons for refusal of the application.

- 54. The development is not acceptable when assessed against SEPP 65, including the above stated principles and the associated Apartment Design Guide (ADG).
- 55. The controls are generally replicated within the apartment design controls under the Sydney DCP 2012.
- 56. Consequently, non-compliance with SEPP 65 and the ADG generally implies non-compliance with Council's controls.
- 57. A detailed assessment of the proposal against the ADG is provided in each table section provided below.

3A Site Analysis	Compliance	Comment
Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	Yes	Sufficient site analysis documentation and detail accompanies the application addressing the various potential opportunities and constraints of the site, documenting the site location and context, including surrounding development.

3B Orientation	Compliance	Comment
Overshadowing of neighbouring properties is minimised during midwinter.	No	<p>The proposal results in overshadowing of neighbouring and nearby dwellings and residential properties during the midwinter solstice.</p> <p>These impacts result from building elements which exceed the maximum height of buildings development standard applicable to the site.</p> <p>Further, insufficient information has been provided with the original and amended applications to confirm the extent of solar access impacts to neighbouring and nearby residential properties.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

3C Public Domain Interface	Compliance	Comment
Transition between private and public domain is achieved without compromising safety and security.	Partial	The proposal has a secure residential entry gate and lobby to the Liverpool Street frontage of the site and has an acceptable transition between the private and public domain.

3C Public Domain Interface	Compliance	Comment
		<p>The proposal does not incorporate individual entries from the ground level apartments to Liverpool Street, however this is acceptable given that the existing site sits well above street level, and that it provides equitable access to the development through the single centralised entry lobby.</p> <p>The proposal incorporates a new front fence which complies with the requirement for a visually permeable design. The height of the solid components of this fence exceeds 1 metre above the adjacent public domain, however this is acceptable given that the proposal maintains the existing ground floor plane, which sits above the required height.</p> <p>The drawings are unclear as to the how secure pedestrian and vehicle access and egress at the Darley Place frontage of the site is achieved, as they do not indicate that gate access is provided.</p> <p>The large fixed glazed window openings proposed to the front and rear facades do not provide for adequate privacy and are not supported on this basis. This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
Amenity of the public domain is retained and enhanced.	Yes	<p>The proposal incorporates planters to the raised terraces facing Liverpool Street, which softens the edges of the new building.</p> <p>Letterboxes can readily be provided within the lobby of the proposed building.</p> <p>Plant, pump rooms and waste storage rooms are located within the proposed basement levels.</p>

3C Public Domain Interface	Compliance	Comment
		The proposed car parking facility does not protrude above ground level.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No	<p>The proposal provides 12% (83 square metres) of the site area as communal open space.</p> <p>33 square metres of communal open space is provided at the ground floor level to the rear and 50 square metres of roof top communal open space is provided at level 7.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).	Partial	<p>The area of roof top communal open space at level 7 receives direct sunlight at midwinter in compliance with the requirement.</p> <p>The area of communal open space at the ground floor level receives no direct sunlight, as it is largely enclosed by the bulk of the proposed building and is oriented toward the south.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	Partial	<p>The proposed ground floor level and level 7 roof top communal open spaces are provided with few amenities or facilities beyond seating and tables.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p>

3D Communal and Public Open Space	Compliance	Comment
		Refer to the further assessment provided under the 'Discussion' heading below.

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 3 metres	No	<p>The proposal provides 6.5% of the site area as deep soil area, however the primary area is impeded by a stormwater pipe alignment.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

3F Visual Privacy	Compliance	Comment
<p>Up to 4 storeys (12 metres):</p> <ul style="list-style-type: none"> • 6 metres between habitable rooms / balconies • 3 metres between non-habitable rooms <p>5 to 8 storeys (25 metres):</p> <ul style="list-style-type: none"> • 9 metres between habitable rooms / balconies • 4.5 metres between non-habitable rooms 	No	<p>The proposal does not provide compliant building separation distances from the side or rear boundaries of the site.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.	Partial	The proposed development does not include any bedrooms or living spaces adjacent to gallery access or other open circulation spaces.

3F Visual Privacy	Compliance	Comment
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.		There is insufficient detail provided in relation to privacy treatments to the edges of the areas of private and communal open space at level 7. This is unsatisfactory and forms part of the reasons for the refusal of the application. Refer to the further assessment provided under the 'Discussion' heading below.

3G Pedestrian Access and Entries	Compliance	Comment
Building entries and pedestrian access connects to and addresses the public domain. Access, entries and pathways are accessible and easy to identify.	Yes	The proposal has a secure pedestrian residential entry gate and lobby to the Liverpool Street frontage of the site, which satisfactorily addresses the public domain. The drawings are unclear as to the design of the pedestrian and vehicle access and egress at the Darley Place frontage of the site, as no laneway elevation drawing has been provided.

3H Vehicle Access	Compliance	Comment
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	Yes	Vehicle access is proposed from the Darley Place frontage of the site. The design is generally acceptable, noting however that the drawings are unclear as to the design of the pedestrian and vehicle access and egress at the Darley Place frontage of the site, as no laneway elevation drawing has been provided.

3J Bicycle Parking	Compliance	Comment
Parking and facilities are provided for other modes of transport.	Yes	The proposal provides 16 bicycle parking spaces, which are located within basement level 2.

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.	Yes	All 14 apartments received 2 hours of direct sunlight at midwinter to living rooms and private open spaces.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	All 14 apartments receive direct sunlight between 9am and 3pm at midwinter.
Design incorporates shading and glare control, particularly for warmer months	No	<p>The proposal incorporates large north facing windows on the front facade to Liverpool Street which are not operable, and the application documentation has not demonstrated that they are effectively shaded in the warmer months.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p>

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Partial	<p>Most habitable rooms have access to windows which provide for acceptable natural ventilation, however a number of bedrooms rely on windows to lightwells for ventilation.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

4B Natural Ventilation	Compliance	Comment
Minimum 60% of apartments in the first 9 storeys of the building are naturally cross ventilated.	Yes	Natural cross ventilation is provided to all 14 apartments.
Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.	No	<p>The overall depth of the proposed cross through apartments ranges from approximately 19.5 metres at the ground floor level, 25.7 metres at level 1, and 26.7 metres at level 2 through to 5.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7 metres	Yes	Floor to floor heights of at least 3.15 metres are provided, which will generally be capable of achieving 2.7 metre floor to ceiling heights.
Non-habitable rooms: 2.4 metres	Yes	Floor to floor heights of at least 3.15 metres are provided which can achieve 2.4 metre floor to ceiling heights.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum apartment sizes:</p> <ul style="list-style-type: none"> • 2 bedroom: 70 square metres • 3 bedroom: 90 square metres <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5 square metres each.</p>	Yes	<p>All proposed apartments achieve the design criteria for minimum apartment size, ranging in size as follows:</p> <ul style="list-style-type: none"> • 2 bedroom: 95 square metres. • 3 bedroom: 119-146 square metres.

4D Apartment Size and Layout	Compliance	Comment
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	All habitable rooms have windows in external walls with a minimum 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	Habitable rooms are provided with a depth to ceiling height ratio of 2.5, except for open plan layouts, which generally have a depth to ceiling height ratio of 3 in accordance with 4D.3 of the ADG.
8 metre maximum depth for open plan layouts.	Yes	The maximum depth of open plan apartment layouts does not exceed 8 metres from a window or door opening.
Minimum area for bedrooms (excluding wardrobes): <ul style="list-style-type: none"> • Master bedroom: 10 square metres • All other bedrooms: 9 square metres Minimum dimension of any bedroom is 3 metres (excluding wardrobes).	Yes	All apartments achieve the minimum areas and dimensions prescribed for bedrooms.
Living and living/dining rooms minimum widths: <ul style="list-style-type: none"> • Two-bedroom or more: 4 metres 	Yes	All proposed apartments have a living area with a minimum width consistent with the requirements of the ADG.
4 metre minimum width for cross over and cross through apartments.	Yes	All proposed apartments have a minimum width consistent with the requirements of the ADG.

4E Private Open Space and Balconies	Compliance	Comment
3 bedroom apartments are to have a minimum balcony area of 12 metres with a minimum depth of 2.4 metres.	Yes	The proposed 3 bedroom apartment provide areas of private open space measuring greater than 12 square metres, with a depth greater than 2.4 metres.

4E Private Open Space and Balconies	Compliance	Comment
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15 square metres and a minimum depth of 3 metres.	Yes	The proposed ground floor apartments provide areas of private open space measuring greater than 15 square metres, with a depth greater than 3 metres.
Primary private open space and balconies are appropriately located to enhance liveability for residents	No	<p>The proposal locates private open space along the sides of each apartment, with the exception of the apartments at level 6, which are also provided with extensive open roof terraces at level 7.</p> <p>This is inconsistent with the design guidance informing objective 4E-2 of the ADG, which require that balconies are oriented with the longer side facing outwards or be open to the sky.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p>

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is 8.	Yes	The maximum number of apartments off the proposed circulation core is 2.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed.	Yes	No living room or bedroom windows open directly onto circulation spaces.
Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Partial	<p>There are no significant visual privacy impacts on other rooms from common circulation spaces.</p> <p>As discussed below in relation to 4H of the ADG, there is the potential for acoustic privacy impacts from the proposed lift location directly adjacent to apartment bedrooms.</p>

4F Common Circulation and Spaces	Compliance	Comment
Daylight and natural ventilation are provided to all common circulation spaces.	No, but acceptable	<p>The common circulation spaces at the ground floor level and level 1 have access to daylight and natural ventilation.</p> <p>These spaces at levels 2 to 6 inclusive are not provided with any access to sources of either daylight or natural ventilation.</p> <p>This is acceptable given the small number of apartments served by each lift lobby.</p>

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> • 2 bed: 8 cubic metres • 3 bed: 10 cubic metres <p>(Minimum 50% storage area located within unit)</p>	Yes	<p>A storage schedule and diagram has been submitted with the application.</p> <p>The schedule and diagram details provision of storage within apartments and the basement levels which accords with Part 4G of the ADG.</p>

4H Acoustic Privacy	Compliance	Comment
<p>Noise transfer is minimised through the siting of buildings and building layout</p> <p>Noise impacts are mitigated within apartments through layout and acoustic treatments.</p>	Partial	<p>An acoustic assessment report was submitted with the original application.</p> <p>The report makes a range of recommendations in relation to acoustic attention measures for the design of bedroom windows facing lightwells.</p> <p>It is unclear as to whether these measures will permit both natural ventilation and acoustic privacy to be achieved concurrently.</p> <p>Further, the proposal does not provide adequate building separation within the development from neighbouring sites.</p>

4H Acoustic Privacy	Compliance	Comment
		<p>The proposal locates bedrooms directly adjacent to the lift core.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

4K Apartment Mix	Compliance	Comment
<p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p> <p>The apartment mix is distributed to suitable locations within the building.</p>	Yes	<p>The proposed development includes two apartment types with differing sizes, and includes adaptable dwellings, distributed to different locations within the development.</p> <p>The provisions of Section 4.2.3.12 of the Sydney DCP 2012 do not apply to the proposed development, and the mix of dwelling types is acceptable on this basis.</p>

4L Ground Floor Apartments	Compliance	Comment
<p>Street frontage activity is maximised where ground floor apartments are located.</p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	Partial	<p>The proposal includes 2 ground floor level apartments facing Liverpool Street.</p> <p>The proposal does not incorporate direct street access entries Liverpool Street to these apartments, however this is acceptable given that the existing site sits well above street level, and that it provides equitable access to the development through the single centralised entry lobby.</p> <p>It incorporates private open space and planters elevated above street level which assist in providing a degree of privacy and safety, and an open palisade fence design which permits casual surveillance of the public domain.</p>

4L Ground Floor Apartments	Compliance	Comment
		<p>The large fixed glazed window openings to the Liverpool Street facade at the ground floor level do not provide for adequate privacy and are not supported on this basis.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

4M Facades	Compliance	Comment
<p>Building facades provide visual interest along the street while respecting the character of the local area.</p> <p>Building functions are expressed by the facade.</p>	<p>Partial</p>	<p>The proposal incorporates changes in texture, materials, details and colours to emphasise the prominence of building elements.</p> <p>The building entry is clearly defined and the external expression of the proposed apartment configuration is clear.</p> <p>The facade also relates to key datum lines of adjoining and nearby buildings, however the proposed solid to void ratio is inconsistent with the predominant pattern within the streetscape.</p> <p>The parapet height and grid like expression of the front and rear facades, with large, fixed glazed window openings, is unsympathetic to the significance of the adjoining and nearby heritage items and contributory buildings and is not supported on this basis.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

4N Roof Design	Compliance	Comment
<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p> <p>Roof design incorporates sustainability features.</p>	Partial	<p>The amended application deleted a rooftop palisade balustrade and replaced it with a setback balustrade integrated into the parapet with planting, which is supported.</p> <p>The roof also incorporates a PV panel system, as required by the BASIX certificate submitted with the original application.</p> <p>The roof spaces are proposed as communal and private open space but are not provided with any shade structures.</p> <p>These are required to provide shade amenity to these areas but would exceed the maximum height of buildings standard.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

4O Landscape Design	Compliance	Comment
<p>Landscape design is viable and sustainable.</p> <p>Landscape design contributes to the streetscape and amenity.</p>	No	<p>The landscape drawings submitted with the amended application indicate a reliance on excessive soil mounding and inadequate soil depth for planting on structure.</p> <p>The rooftop private and communal open spaces are not provided with any shade structures.</p> <p>Further, the landscape management and maintenance schedule provided is unclear as to how access for maintenance of the rooftop planters adjacent to the plunge pools at level 7 is provided.</p>

4O Landscape Design	Compliance	Comment
		<p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

4P Planting on Structures	Compliance	Comment
<p>Appropriate soil profiles are provided.</p> <p>Plant growth is optimised with appropriate selection and maintenance.</p> <p>Planting on structures contributes to the quality and amenity of communal and public open spaces.</p>	Partial	<p>The landscape drawings submitted with the amended application indicate a reliance on excessive soil mounding and inadequate soil depth for planting on structure.</p> <p>Further, the landscape management and maintenance schedule provided is unclear as to how access for maintenance of the rooftop planters adjacent to the plunge pools at level 7 is provided.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

4Q Universal Design	Compliance	Comment
<p>Universal design features are included in apartment design to promote flexible housing for all community members.</p> <p>A variety of apartments with adaptable designs are provided.</p> <p>Apartment layouts are flexible and accommodate a range of lifestyle needs.</p>	Yes	<p>The proposal provides 14% (2 of 14) of apartments as adaptable dwellings and provides 100% (14 of 14) of apartments as silver level livable dwellings.</p>

4U Energy Efficiency	Compliance	Comment
<p>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.</p> <p>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.</p> <p>Adequate natural ventilation minimises the need for mechanical ventilation</p>	Partial	<p>The proposal provides consolidated heating and cooling infrastructure within centralised basement and rooftop locations, which is supported.</p> <p>A BASIX certificate and NatHERS certification was submitted with the original application, but not with the amended application.</p> <p>This missing information is crucial to the assessment of the proposal, which is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>The proposal incorporates large north facing windows on the front facade to Liverpool Street which are not operable, and the application documentation has not demonstrated that they are effectively shaded in the warmer months.</p> <p>The proposal relies on lightwells for access to natural light and ventilation to habitable rooms within the development, via window openings with acoustic treatments which will hinder access to natural ventilation.</p> <p>These aspects of the proposal are unsatisfactory and form part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

4V Water Management and Conservation	Compliance	Comment
Potable water use is minimised.	Yes	The BASIX certificate submitted with the application requires the provision of a central rainwater tank for irrigation of common landscaped areas on the site.

4V Water Management and Conservation	Compliance	Comment
Urban stormwater is treated on site before being discharged to receiving waters.		This is provided under the driveway at the rear of the site, along with an on-site detention tank.

4W Waste Management	Compliance	Comment
<p>Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.</p> <p>Domestic waste is minimised by providing safe and convenient source separation and recycling.</p>	Partial	<p>Adequately sized waste storage facilities are proposed in each apartment and communal facilities are proposed to be located within basement level 1.</p> <p>An updated Waste Management Plan (WMP) accompanied amended architectural drawings submitted with the application lodged with the City on 31 March 2023.</p> <p>The drawings do not clearly depict an appropriate design for the waste storage room at basement level 1, given that the WMP requires that the chute and diverter area is caged, which results in constrained access to the proposed bulky waste room via a narrow and circuitous route around the lift core.</p> <p>Further, the WMP appears to indicate that the 'DDA pathway' alongside the driveway at the rear of the site is proposed as a temporary bin storage area, whereas the drawings depict it as an unencumbered pedestrian path of travel.</p> <p>These design issues are unsatisfactory and form part of the reasons for the refusal of the application.</p>

4X Building Maintenance	Compliance	Comment
<p>Building design detail provides protection from weathering.</p> <p>Systems and access enable ease of maintenance.</p> <p>Material selection reduces ongoing maintenance.</p>	Partial	<p>The materiality and detailing of the proposed development are generally in keeping with the building typology and expected building life, noting that the materials and finishes schedules are insufficiently detailed to confirm this.</p> <p>Some of the building facades are accessible for cleaning and maintenance by abseil, however insufficient detail has been provided to demonstrate accessibility across proposed rooftop planters.</p> <p>These design issues are unsatisfactory and form part of the reasons for the refusal of the application.</p>

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

58. A BASIX Certificate (Certificate number 1323281M) was submitted with the original application.
59. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal.
60. It is noted that the BASIX Certificate was not updated in the amended application lodged with the City on 31 March 2023, nor have the amended architectural drawings been subject to NatHERS certification.
61. This missing information is crucial to the assessment of the proposal, which is unsatisfactory and forms part of the reasons for the refusal of the application.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)

62. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to Chapter 2 of the Biodiversity and Conservation SEPP.
63. Chapter 2 of the Biodiversity and Conservation SEPP states that the Council must not grant consent for the removal of vegetation within heritage sites or heritage conservation areas unless Council is satisfied that the activity is minor in nature and would not impact the heritage significance of the site.
64. The proposal involves the removal of 2 trees on the subject site and pruning of 2 street trees adjacent to the site's frontage to Liverpool Street.
65. Advice received from the City's Heritage Specialist raises no objection to the proposed tree removal and pruning.

66. Advice received from the City's Tree Management Unit supports the proposed pruning of the street trees and the removal of the 2 trees located on the subject site, the latter being due to their low retention value.
67. Chapters 6 to 12 inclusive (including Chapter 10) of the Biodiversity and Conservation SEPP were repealed by State Environmental Planning Policy Amendment (Water Catchments) 2022. The new framework commenced on 21 November 2022 and includes a new Chapter 6, which is a consolidation of the former chapters 8 to 11.
68. In accordance with the savings and transitional provisions at Clause 6.65 of the Biodiversity and Conservation SEPP however, the former provisions contained in Chapter 10 continue to apply to the subject development application.
69. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the saved provisions of Chapter 10 of the Biodiversity and Conservation SEPP.
70. The Biodiversity and Conservation SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment. The key relevant principles seek to:
 - (a) Protect and improve hydrological, ecological and geomorphologic processes.
 - (b) Consider cumulative impacts of development within the catchment.
 - (c) Improve water quality of urban runoff and reduce quantity and frequency of urban run-off.
 - (d) Protect and rehabilitate riparian corridors and remnant vegetation.
71. The site is not located in the Foreshores Waterways Area or adjacent to a waterway however and, with the exception of the objective of improved water quality, the objectives of Chapter 10 of the Biodiversity and Conservation SEPP are not applicable to the proposed development.

State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

72. The aim of the Housing SEPP is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.
73. Part 3 of the Housing SEPP addresses the reduction in the availability of low rental residential accommodation arising from a development.
74. Section 46 provides that this Part of the Housing SEPP does not apply to buildings which have been approved for strata subdivision.
75. The subject site was strata subdivided into Lots 1 to 24 in Strata Plan 14759 in 1979 and Part 3 of the Housing SEPP does not apply to the proposal as a result.

State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)

76. The aim of Chapter 4 of the Resilience and Hazards SEPP 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.

77. A preliminary site investigation (PESI) report addressing the requirements of Chapter 4 of the Resilience and Hazards SEPP was submitted with the original application.
78. The PESI recommended an investigation of the fill material beneath the site be undertaken prior to commencement of the earthworks program to quantify the extent of fill and assess the potential contamination risk to site workers during works and to classify the material for off-site disposal.
79. The City's Health and Building Unit reviewed the report and recommended that the fill material investigation be undertaken, and a detailed environmental site investigation (DESI) report be prepared and submitted to Council for review in accordance with Section 4.6(3) of the Resilience and Hazards SEPP.
80. A letter prepared by the applicant's environmental consultant was submitted with the amended application made on 31 March 2023, requesting that the preparation of a DESI and (if required) a Remediation Action Plan (RAP) be required by conditions of development consent.
81. The City's Health and Building Unit reviewed the letter and reiterated their previous request that further investigation be undertaken, and a DESI report prepared.
82. Section 4.6(1) of the Resilience and Hazards SEPP provides that the consent authority must not consent to development unless it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. It is not possible to determine that this is currently the case, or will be the case, given the lack of information provided.
83. This forms a part of the reasons for the refusal of the application.

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

84. The provisions of the Transport and Infrastructure SEPP have been considered in the assessment of the development application.
85. The application is subject to Section 2.48 of the Transport and Infrastructure SEPP as the development is in the vicinity of overhead electricity power cables and may affect an electricity transmission or distribution network.
86. As such, the application was referred to Ausgrid in accordance with Clause 2.48 of the Transport and Infrastructure SEPP.
87. Ausgrid provided a response raising no objections to the proposed development, subject to conditions.

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

88. Section 4.2 of the Sustainable Buildings SEPP states that the policy does not apply to development applications submitted on the NSW planning portal but not finally determined before 1 October 2023.
89. The application was lodged on the NSW planning portal on 19 August 2022 and the Sustainable Buildings SEPP does not apply.

Local Environmental Plans

Sydney Local Environmental Plan 2012 (Sydney LEP 2012)

90. An assessment of the proposed development against the relevant provisions of the Sydney LEP 2012 is provided under the following headings and table sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The site is located in the R1 General Residential zone.</p> <p>The proposed development is defined as a residential flat building and is permissible with consent in the zone.</p> <p>The proposal is generally consistent with the objectives for the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 22 metres is permitted.</p> <p>A height of 24.2 metres is proposed.</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 proposed height of development will result in unacceptable environmental impacts and the variation request is not supported in this instance.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further discussion and assessment provided under the 'Discussion' heading below.</p>
4.4 Floor space ratio (FSR)	Yes	<p>A maximum FSR of 3:1, or 2,054.7 square metres of gross floor area (GFA) is permitted.</p> <p>An FSR of 2.94:1, or 2,020 square metres of GFA is proposed.</p>

Provision	Compliance	Comment
		The proposed development complies with the maximum FSR development standard.
4.6 Exceptions to development standards	No	<p>The proposed development seeks to vary the maximum 22 metre height of buildings development standard prescribed under Clause 4.3.</p> <p>A written Clause 4.6 variation request has been submitted with the application.</p> <p>The proposed height of development will result in unacceptable environmental impacts and the variation request is not supported in this instance.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further discussion and assessment provided under the 'Discussion' heading below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is located within a heritage conservation area and adjacent to three heritage items, as discussed under 'The Site and Surrounding Development' heading above.</p> <p>The application was referred to the City's Heritage Specialist.</p> <p>The proposed development will result in detrimental impacts on the significance of the heritage conservation area and adjacent heritage items.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further discussion and assessment provided under the 'Discussion' heading below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
6.21C Design excellence	No	<p>The proposed development does not exhibit design excellence.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further discussion and assessment provided under the 'Discussion' heading below.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	<p>A maximum of 17 car parking spaces are permitted, including 15 residential spaces and 2 visitor spaces.</p> <p>The proposed development includes 15 residential car parking spaces and complies with the development standard.</p>
7.13 Contribution for purpose of affordable housing	Yes	<p>The site is located in part of the City of Sydney Local Government Area that is defined under the clause as being 'residual land'.</p> <p>Refer to the discussion provided below under the Financial Contributions heading.</p>
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils.</p> <p>The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.</p>
7.15 Flood planning	No	<p>The site is identified as being subject to flooding along Darley Place.</p> <p>A flood assessment report has been submitted with the amended application lodged with Council on 31 March 2023.</p>

Provision	Compliance	Comment
		<p>The report has been reviewed by the City's Public Domain Unit who have provided advice that:</p> <ul style="list-style-type: none"> • It refers to the Woolloomooloo catchment, rather than the Rushcutters Bay catchment in which the site is located. • The flood planning levels specified in the report are not clearly shown on the architectural drawings, particularly in relation to the driveway and pedestrian access at the rear of the site. <p>The lack of clarity and missing information is crucial to the assessment of flood impacts associated with the proposal. This is unsatisfactory and forms part of the reasons for the refusal of the application.</p>
7.19 Demolition must not result in long term adverse visual impact	Yes	<p>The proposed development includes demolition of the existing building and construction of a new building.</p> <p>On this basis the site will be comprehensively redeveloped if consent were to be granted for the proposal.</p>
7.26 Public art	Yes	<p>A preliminary public art plan was submitted with the amended application lodged with Council on 31 March 2023.</p> <p>The plan proposes two public art opportunity locations on the Liverpool Street facade.</p> <p>The City's Public Art Unit have reviewed the plan and have provided advice that it satisfies the City's requirements for public art at the development application stage.</p>

Development Control Plans

Sydney Development Control Plan 2012 (Sydney DCP 2012)

91. An assessment of the proposed development against the relevant provisions within the Sydney DCP 2012 is provided under the following headings and table sections.

Section 2 – Locality Statements

92. The site is identified in Section 2.4.12 of the Sydney DCP 2012 as being located within the Darlinghurst West locality.
93. The proposed development is not in keeping with the character and one of the key design principles for the locality.
94. This is because the proposal does not satisfactorily respond to or complement the adjacent and nearby heritage items and contributory buildings within the Oxford Street and Victoria Street heritage conservation area, or to the surrounding streetscape along Liverpool Street and Darley Place.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	<p>Section 3.1.5(3) of the Sydney DCP 2012 states that public art must be provided in new development in accordance with the both the City's guidelines for public art and public art policy.</p> <p>The cost of the proposed development exceeds \$10 million, and the provisions of the City of Sydney Interim Guidelines for Public Art in Private Developments apply.</p> <p>As discussed above in relation to Clause 7.26 of the Sydney LEP 2012, the proposal satisfies the City's requirements for public art at the development application stage.</p>
<p>3.2. Defining the Public Domain</p> <p>3.2.2 Addressing the street and the public domain</p>	No	<p>The proposed development does not provide an appropriate frontage to Liverpool Street and the public domain, in terms of its scale and architectural character, or relate well to neighbouring buildings.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p>

Provision	Compliance	Comment
		Refer to the further assessment provided under the 'Discussion' heading below.
3.2.7 Reflectivity	Yes	The proposed building materials are predominantly sandstone and other materials which will not result in excessive glare that would impact the surrounding public domain or adjacent properties.
3.2.8 External lighting	Not applicable	No external lighting is proposed.
3.5 Urban Ecology	Partial	<p>The proposal involves the removal of 2 trees on the subject site and pruning of 2 street trees adjacent to the site's frontage to Liverpool Street.</p> <p>The City's Tree Management Unit reviewed the proposal and provided advice which supports the proposed street tree pruning and removal of the 2 trees located on the subject site, the latter due to their low retention value.</p> <p>The Tree Management Unit and Landscape Assessment Officer have advised that the proposal relies on excessive soil mounding and insufficient soil depths.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
3.6 Ecologically Sustainable Development (ESD)	No	As discussed under the 'State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004' heading above, while the original application was accompanied by a valid BASIX certificate, the amended application lodged with the City on 31 March 2023 was not, nor have the amended architectural drawings been subject to NatHERS certification.

Provision	Compliance	Comment
		This missing information is crucial to the assessment of the proposal, which is unsatisfactory and forms part of the reasons for the refusal of the application.
3.7 Water and Flood Management	No	<p>As discussed above in relation to Clause 7.15 of the Sydney LEP 2012, the site specific flood study submitted with the amended application lodged with the City on 31 March 2023 is deficient.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Hydraulic engineering drawings accompanied both the original and amended applications, which were reviewed by the City's Public Domain Unit.</p> <p>The advice received indicates that insufficient justification has been provided for an underground stormwater discharge connection, instead of a kerb outlet connection.</p> <p>This missing information is crucial to the assessment of stormwater management associated with the proposal.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The proposed development does not propose site subdivision, strata subdivision or consolidation of allotments.
3.9 Heritage	No	<p>The building is identified as a detracting building.</p> <p>The application was referred to the City's Heritage Specialist.</p> <p>No objection is raised with respect to the proposed demolition of the existing residential flat building, which is identified as a detracting building.</p>

Provision	Compliance	Comment
		<p>The proposed development will result in detrimental impacts on the significance of the surrounding heritage conservation area and adjacent and nearby heritage items.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further discussion and assessment provided under the 'Discussion' heading below.</p>
<p>3.11 Transport and Parking 3.11.1 Managing transport demand</p>	Yes	<p>A transport impact study was submitted with the original application.</p> <p>This document satisfies the requirements of the Sydney DCP 2012 for assessment of transport demand from the proposed development.</p>
<p>3.11.2 Car share scheme parking spaces</p>	No, but acceptable	<p>1 car share space per 60 car spaces provided for residential development is required to be provided.</p> <p>The proposal does not provide any car share spaces.</p> <p>This is acceptable given the site's close proximity to existing car share infrastructure on Darley Street, the relatively small scale of the proposed parking facility (15 spaces), the physical constraints of vehicle access to the site, and reliance on mechanical parking installations to provide car parking on the site.</p>
<p>3.11.3 Bicycle parking and associated facilities</p>	Partial	<p>14 residential bicycle parking spaces and 2 bicycle parking spaces are required to be provided. Residential bicycle parking must be provided on the uppermost level of the basement.</p> <p>Visitor parking must be provided in an accessible on-grade location near a major public entrance to the development.</p> <p>The proposal provides co-located residential and visitor bicycle parking at basement level 2, adjacent to the lift core.</p>

Provision	Compliance	Comment
		The location of the proposed bicycle parking facility is unsatisfactory and forms part of the reasons for the refusal of the application.
3.11.4 Vehicle parking	Yes	The proposal does not provide any visitor parking spaces, which is acceptable.
3.11.6 Service vehicle parking	No, but acceptable	<p>1 service vehicle parking space is required for residential buildings for the first 50 dwellings.</p> <p>The proposal does not provide any service vehicle parking spaces.</p> <p>This is acceptable given:</p> <ul style="list-style-type: none"> • The availability of an existing nearby on-street loading zone. • The relatively small scale of the proposed parking facility. • The physical constraints of vehicle access to the site. • The reliance on mechanical parking installations to provide car parking on the site.
3.11.7 Motorbike parking	No, but acceptable	<p>1 motorcycle parking space is required for every 12 car parking spaces in all buildings that provide onsite parking.</p> <p>The proposal does not provide any motorcycle parking spaces.</p> <p>This is acceptable given:</p> <ul style="list-style-type: none"> • The relatively small scale of the proposed parking facility. • The physical constraints of vehicle access to the site. • The reliance on mechanical parking installations to provide car parking on the site. • The proposed car parking spaces can accommodate motorbike parking.

Provision	Compliance	Comment
3.11.10 Vehicle access for developments greater than 1000sqm GFA	Yes	The proposed driveway location is compliant with the requirements for distance from intersections.
3.11.11 Vehicle access and footpaths	Yes	The design of the proposed vehicle access and egress is acceptable, and the provision of vehicle turntables within the proposed basement levels allows for forward in and forward out vehicle movements.
3.11.12 Tandem, stacked and mechanical parking areas	Yes	The proposal includes mechanical parking installation, including a vehicle lift and turntables.
3.11.13 Design and location of waste collection points and loading areas	No	<p>An updated Waste Management Plan (WMP) accompanied amended architectural drawings submitted application lodged with the City on 31 March 2023.</p> <p>The WMP appears to indicate that the 'DDA pathway' alongside the driveway at the rear of the site is proposed as a temporary bin storage area.</p> <p>The drawings depict it as an unencumbered accessible pedestrian path of travel.</p> <p>The design of the waste collection point is unsatisfactory and forms part of the reasons for the refusal of the application</p>
3.11.14 Parking area design	Yes	The design of the parking facility is generally acceptable.
3.12 Accessible Design	Yes	<p>The proposed development meets the requirements of Section 3.12 of the Sydney DCP 2012, as it includes the provision of two apartments as adaptable dwellings.</p> <p>While the Sydney DCP 2012 does not require it, the proposal also provides 100% (14 of 14) of apartments as silver level livable dwellings.</p>
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance.

Provision	Compliance	Comment
		It also generally meets the 'Crime Prevention Through Environmental Design' (CPTED) principles.
<p>3.14 Waste</p> <p>3.14.1 Waste and Recycling Management Plans</p> <p>3.14.3 Collection and minimisation of waste during occupation</p>	No	<p>An updated Waste Management Plan (WMP) accompanied amended architectural drawings submitted application lodged with the City on 31 March 2023.</p> <p>The drawings do not clearly depict an appropriate design for the waste storage room at basement level 1, given that the WMP requires that the chute and diverter area is caged, which results in constrained access to the proposed bulky waste room via a narrow and circuitous route around the lift core.</p> <p>The WMP appears to indicate that the 'DDA pathway' alongside the driveway at the rear of the site is proposed as a temporary bin storage area, whereas the drawings depict it as an unencumbered accessible pedestrian path of travel.</p> <p>These design issues are unsatisfactory and form part of the reasons for the refusal of the application.</p>
3.16 Signage and Advertising	Not applicable	No signage is proposed.
3.17 Contamination	No	<p>Refer to the discussion and assessment provided in relation to contamination and remediation provided under the State Environmental Planning Policy (Resilience and Hazards) 2021 heading above.</p> <p>The lack of a DESI report forms part of the reasons for the refusal of the application.</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	No	<p>The site is permitted a maximum building height of 6 storeys.</p> <p>The site is permitted a maximum street frontage height of 3 storeys.</p> <p>The proposed development is 8 storeys in height and does not comply.</p> <p>It has a street frontage height of 7 storeys and does not comply.</p> <p>The proposed storey height of development will result in unacceptable environmental impacts and is not supported.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.2.2 Building setbacks 4.2.2.1 Setbacks	Yes	The setbacks of the proposal are consistent with adjoining buildings.
4.2.2.2 Setbacks above the street frontage height	Yes	The setback of level 7 above the proposed street frontage exceeds 3 metres and complies.
4.2.3 Amenity		
4.2.3.5 Landscaping	No	Updated architectural and landscape drawings were submitted with the amended application lodged with the City on 31 March 2023 to address concerns raised by Council staff relating to landscape design.

Provision	Compliance	Comment
		<p>These were referred to the City's Landscape Assessment officer who provided advice that the proposal relies on excessive soil mounding and insufficient soil depths, and that landscape maintenance is unclear.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.2.3.6 Deep Soil	No	<p>10% of the site area (68.49 square metres) is required to be provided as deep soil, with a minimum dimension of 3 metres.</p> <p>Updated architectural and landscape drawings were submitted with the amended application lodged with the City on 31 March 2023 to address concerns raised by Council staff relating to deep soil provision.</p> <p>The amended proposal provides 6.5% (45.2 square metres) of the site area as deep soil.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.2.3.8 Common open space	No	<p>25% of the site area must be provided as common open space with a minimum dimension of 6 metres.</p> <p>The proposal provides 12% (83 square metres) of the site area as common open space, which does not have a minimum dimension of at least 6 metres.</p>

Provision	Compliance	Comment
		<p>The proposed ground floor level and level 7 roof top common open spaces are provided with few amenities or facilities beyond seating and tables.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.2.3.10 Outlook	Partial	<p>A pleasant outlook is provided from all apartments.</p> <p>View sharing from the rooftop communal open space of the adjoining site at 347 Liverpool Street, Darlinghurst, has not been adequately considered in the application, nor have views from apartments within adjoining and nearby buildings.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.2.3.11 Acoustic privacy	No	<p>An acoustic assessment report was submitted with the original application.</p> <p>The proposal makes a range of recommendations in relation to acoustic attention measures for the design of bedroom windows facing lightwells.</p> <p>As discussed elsewhere in this assessment report, it has not been demonstrated that these measures satisfactorily address the requirements in the ADG for natural ventilation.</p> <p>This is unsatisfactory and forms part of the reasons for the refusal of the application.</p>

Provision	Compliance	Comment
4.2.3.12 Flexible housing and dwelling mix	Not applicable	<p>A mix of dwelling types is required for developments proposing more than 20 dwellings.</p> <p>The proposal includes 14 dwellings, and there is no requirement for a mix of dwelling types.</p> <p>2 of the proposed 14 apartments are capable of adaptation.</p>
4.2.3.14 Apartments with setback bedrooms	Not applicable	No apartments are proposed with setback bedrooms.
<p>4.2.5 Types of development</p> <p>4.2.5.4 Residential uses on the ground and first floor</p>	Partial	<p>The proposal includes 2 ground floor level apartments and 2 first floor level apartments which face Liverpool Street, with a zero lot line established by the adjoining development.</p> <p>The ground floor level exceeds 1 metre above the adjacent public domain, however this is acceptable given that the proposal maintains the existing ground floor plane, which sits above the required height.</p> <p>The proposal does not incorporate individual entries from the ground level apartments to Liverpool Street, however this is acceptable given that the existing site sits well above street level, and that it provides equitable access to the development through the single centralised entry lobby.</p> <p>The proposal incorporates a new front fence which complies with the requirements for a predominantly open palisade fence.</p>
4.2.6 Waste and recycling Management	No	An updated Waste Management Plan (WMP) accompanied amended architectural drawings submitted application lodged with the City on 31 March 2023.

Provision	Compliance	Comment
		<p>The drawings do not clearly depict an appropriate design for the waste storage room at basement level 1, given that the WMP requires that the chute and diverter area is caged, which results in constrained access to the proposed bulky waste room via a narrow and circuitous route around the lift core.</p> <p>This design issue is unsatisfactory and forms part of the reasons for the refusal of the application.</p>
4.2.7 Heating and cooling infrastructure	Yes	Heating and cooling infrastructure is proposed in consolidated and centralised locations within the basement and rooftop levels.
4.2.8 Letterboxes	Yes	Letterboxes can readily be provided within the lobby of the proposed building.

Discussion

Clause 4.6 Request to Vary a Development Standard

95. The site is subject to a maximum height of buildings development standard of 22 metres.
96. The proposed development has a height of 24.2 metres at the top of the lift overrun and stair access, which is a 2.2 metre (or 10 per cent) variation of the standard.
97. The extent of non-compliance with the development standard is depicted in the 3-dimensional axonometric drawing extract of the proposed development reproduced in the figure provided below.

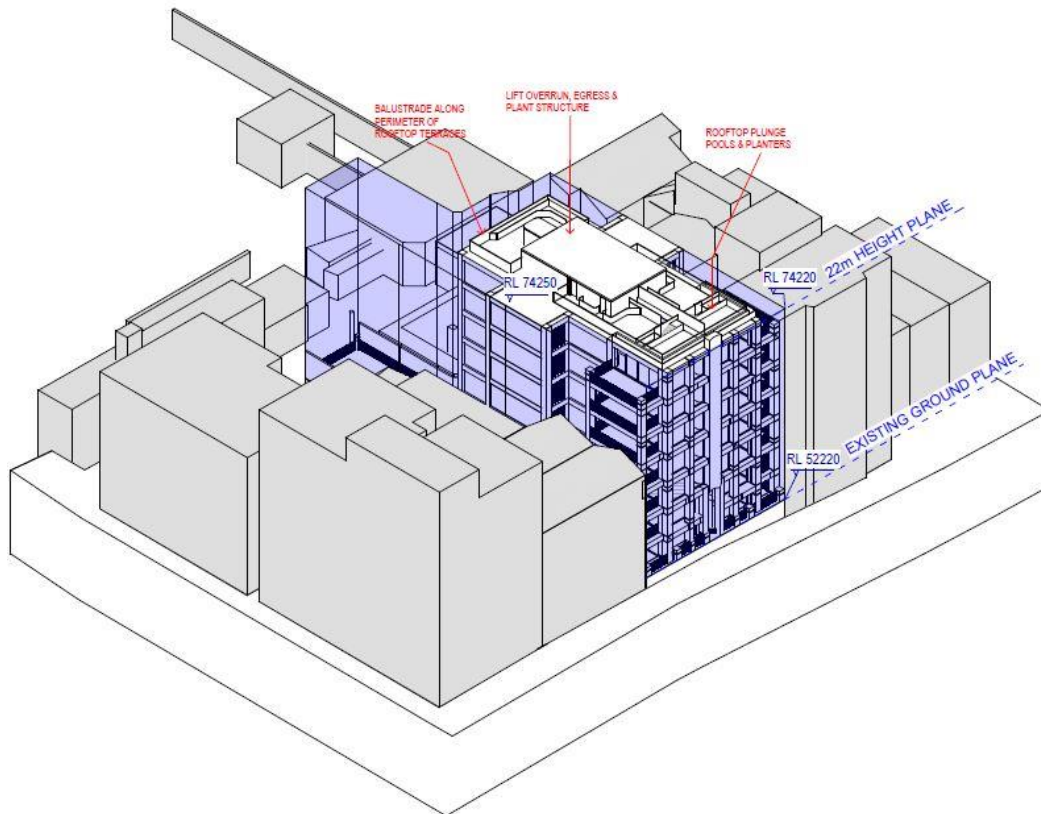


Figure 35: 3-dimensional axonometric drawing extract depicting the maximum 22 metre height plane applicable to the site, with compliant elements shaded in blue and non-compliant elements shaded in white

98. A written request has been submitted to Council with the original application in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
 - That there are sufficient environmental planning grounds to justify contravening the standard.
 - The proposed development will be consistent with the objectives of the zone.
 - The proposed development will be consistent with the objectives of the standard.
99. A copy of the written request is included at Attachment B to this assessment report.
100. It should be noted that the Clause 4.6 request was not updated in the amended application lodged with the City on 31 March 2023.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

101. The written Clause 4.6 request 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:

Objective (a) to ensure the height of development is appropriate to the condition of the site and its context.

- (i) The proposed variation results in an appropriate height for the site and its context, as described below, which meets objective (a) of the maximum height of buildings standard.
- (ii) The site is in a highly urbanised context characterised by multi-storey residential flat buildings fronting Liverpool and Darley Streets, as well as terrace house rows fronting Forbes Street and other areas of Darley Street, which have varying street walls between 3 to 7 storeys. A summary of the site's surrounding built form context is provided below:
 - (i) North: To the north, on the opposite side of Liverpool Street, is 278 Liverpool Street, which is a 3 storey dwelling house known as the Robin Gibson Gallery.
 - (ii) East: To the east, directly adjoining the site, is 355-357 Liverpool Street, which is a 3 storey boarding house built to the front and side boundaries. Further to the east at 3-5 Darley Street, is a 7 storey residential flat building built to the side and front boundaries.
 - (iii) South: To the south, directly adjoining the site is a 1 storey cottage dwelling house at 1 Darley Place. Further to the south on the opposite side of Darley Place is a 1 storey dwelling house at 5 Darley Place, which is also listed as a local heritage item (Item Number I271).
 - (iv) West: To the west, directly adjoining the site is 347 Liverpool Street, is a 7 storey residential flat building known as 'Mont Clair', which is built to the front, side and rear boundaries, with light wells along the side boundaries. Further to the west is a row of 2 and 3 storey terrace dwelling houses at 339-345 Liverpool Street.
- (iii) The block bounded by Liverpool, Darley, Forbes and Burton Streets has a highly irregular pattern of maximum building height controls, with the maximum height varying between 6 metres and 25 metres across the block.
- (iv) As such, there is no homogenous character in the locality or homogenous LEP height limits, whereby a variation to the maximum building height control would prevent the achievement of the objective. Instead, the test is whether the height of the proposed building is compatible and appropriate to the site surrounds.
- (v) The design of the proposed development and height of the building has drawn on contextual cues from adjacent residential flat buildings as well as the maximum building height controls in the locality in order to deliver a development outcome that intrinsically fits in to the neighbourhood context.

- (vi) The proposal has been designed to generally align with the building height set by the nearby residential flat buildings of 347 Liverpool Street and 3-5 Darley Street, so as to present a consistent built form outcome that suits the streetscape whilst simultaneously completing the street wall of Liverpool Street.
- (vii) 347 Liverpool Street and 3-5 Darley Street have localised areas of additional height which protrude above the prevailing parapet height of the building.
- (viii) The variation sought is consistent with the prevailing built form typology for higher density residential flat buildings in the immediate vicinity and cannot be read as out of character with the streetscape.
- (ix) The proposed variation generally pertains to the lift/stairs overrun and balustrades/planters only, with minor areas of the parapet above the height. The variation does not compromise the integration of the proposal with the character of this immediate portion of Liverpool Street.
- (x) The proposed inclusion of both communal and private open space on the rooftop is in direct response to the site's dense urban context. Provision of communal open space is identified in the ADG, which is given statutory effect by SEPP 65.
- (xi) The ADG recommends that communal open space has a minimum area equal to 25 per cent of the site, however, acknowledges that in certain contexts, such as in dense urban areas or small lots where developments are unable to achieve the design criteria, that proposals should:
 - (i) Provide communal spaces elsewhere such as a landscaped rooftop terrace or a common room.
 - (ii) Provide larger balconies or increased private open space for apartments.
 - (iii) Demonstrate good proximity to public open space and facilities and/or provide contributions to public open space.
- (xii) The site is spatially constrained, comprising approximately 685 square metres with a maximum permissible FSR of 3:1.
- (xiii) The proposal has been designed to provide communal open space on the ground floor at the rear of the site, this area does not meet the required 25 per cent due to constraints relating to the rear vehicular access.
- (xiv) The proposal has been designed to comply with the 25 per cent requirement through accommodating communal open space on the rooftop terrace and in a more desirable location for residents.
- (xv) The site is located in Darlinghurst, which is in close proximity to the Sydney Central Business District and Woolloomooloo with access to significant open space on the waterfront.

- (xvi) The site is in close proximity to open space at Green Park, approximately 350 metres to the south east of the site. In these circumstances there would be reasonable grounds not to provide open space within the development, however, the proposal still seeks communal open space to enhance the amenity for its residents.
- (xvii) The height breach, which is limited to the lift overrun and some balustrades/planters framing the terrace, is appropriate to the condition and context of the site. The additional height provides for a significant improvement to the building's response to the site conditions, and broader local context by providing equitable access to the communal rooftop open space for all residents and visitors.
- (xviii) The proposed variation to the height control and the overall development supports the achievement of this objective and would ensure that the building presents as an appropriate response to the condition of the site within its local and site context.

Objective (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas.

- (i) The proposed development is located in the Oxford Street and Victoria Street Heritage Conservation Area (HCA), and adjoins several heritage items, including:
 - (i) To the west, the site adjoins the flat building 'Mont Clair' (Item Number I368) at 379 Liverpool Street, which is a heritage item of local significance.
 - (ii) To the south, the site adjoins an unnamed Cottage (Item Number I268) at 1 Darley Place.
 - (iii) To the southwest, the site adjoins 2 semi-detached house groups (Item Numbers I269 and I270) at 2-3 and 4 Darley Place which are heritage items of local significance.
- (ii) The existing development is identified as a detracting item to the Oxford Street and Victoria Street heritage conservation area in the Sydney DCP 2012. The design of the proposal and its building height has sought to deliver a development outcome that respects the prevailing heritage character of the area and street in terms of bulk, form and scale and materiality, therefore providing an improved heritage outcome.
- (iii) The proposal has been designed to ensure the heritage significance of adjoining and surrounding items is retained. Principally, in relation to the proposed height variation, the proposal continues to align with the height of the adjacent 'Mont Clair' residential flat building.
- (iv) The increase to the overall height will have no heritage impacts to the adjacent item as it maintains the predominant street setback and alignment of the buildings, consistent with the principles of the heritage conservation area's desired character. The scale and massing are considered responsive to the established height alignment of flat buildings along the street and in particularly the adjoining Mont Clair.

- (v) The height and scale of the proposed development will not further impact on the heritage significance of the cottage at 1 Darley Place, given the setback is maintained and the existing building's height and scale dominates the cottage at the rear. As such the additional height does not contribute to any further heritage related impacts on this item, given that existing setbacks are replicated.
- (vi) As such, that notwithstanding the proposed variation to the building height development standard, the proposal is sympathetic to the surrounding heritage character of the locality and provides a suitable built form response to the adjoining heritage items.
- (vii) Overall, its impact on the adjacent heritage items is negligible, and wholistically, the proposed development presents an improved contribution to the heritage conservation area in accordance with objective (b) of the standard.

Objective (c) to promote the sharing of views outside Central Sydney

- (i) The site is located outside of Central Sydney as defined in the Sydney LEP 2012. Due to the site's location and the height and scale of surrounding buildings, the proposal does not impact views from surrounding residential buildings, in accordance with objective (c) of the standard.

Objective (d) to ensure appropriate height transitions from Central Sydney [...] to adjoining areas.

- (i) The site is located in an area of inconsistent building heights, although the portion of Liverpool Street bounded by Forbes and Darley Streets, of which the site comprises part of, is characterised by higher density residential flat buildings.
 - (ii) The proposal has sought to provide a building height that is consistent with the prevailing Liverpool Street wall height, to ensure that the development does not contribute to an inappropriate height transition between Central Sydney and the adjoining areas of Darlinghurst.
 - (iii) The proposed building height supports objective by being consistent with the built form of adjoining development and maintaining a suitable transition in height in accordance with objective (d) of the standard.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard, as follows:

Provision of Communal and Private Open Space

- (i) The additional built form provided above the maximum height comprises the lift/stairs overrun for equitable access to the rooftop, as well as balustrades and planters framing the rooftop communal and private open spaces. The provision of these areas aligns with the ADG, which seeks to maximise residential amenity in all new apartment buildings.

- (ii) Site constraints necessitate that provision of communal open space must be partially provided on the rooftop, as this provides residential amenity and responds to the site context. The additional proposed height will support use of the roof as a high amenity open space for residents to achieve ADG objectives.
- (iii) Substantial provision of communal and private open space is a sufficient environmental planning ground to warrant a variation of the maximum building height provision.

No adverse visual impacts

- (i) The additional height will not have an adverse visual impact when viewed from public domain surrounding the site. This is a result of the overrun's setback from the parapet, which means that the portion exceeding the height limit is indiscernible from the public domain.
- (ii) While the balustrades and planters atop the parapet vary the height provision as well, these represent a negligible protrusion above the development standard and do not give rise to any adverse impacts.
- (iii) The planters will facilitate rooftop landscaping which will enhance and embellish the building, providing an improved sustainability outcome.

Substantive compliance with other built form controls

- (i) The desired future character expressed for the site in the planning controls is a maximum 22 metres height limit as well as a maximum 3:1 FSR. The controls for the locality provide for no consistency in building heights and are varied in immediate proximity to the site.
- (ii) When measured to the top of the parapet, the proposal has a height of 22.05 metres which is a negligible exceedance of the height control, and the proposal maintains compliance with the maximum 3.:1 FSR control.
- (iii) The proposed development remains consistent with the bulk and scale of the site envisaged through the principal development standards under the Sydney LEP 2012.
- (iv) The proposed variation to the maximum building height standard does not contribute to a development outcome that is inconsistent with the built form capacity afforded to the site under the planning controls.
- (v) The variation of the development standard in this instance:
 - (i) Is not significant or material.
 - (ii) Continues to ensure that the overall height of the development is appropriate for the site and its context.
 - (iii) Does not generate any direct adverse visual or heritage impacts.

Environmental Impacts

- (i) The proposed development, despite the variation to the height of buildings development standard, does not cause significant additional environmental impact which would render it incompatible with its surrounding land uses and ensures the proposal is appropriate for the context of the site.
 - (ii) In particular, the variation will not result in significant additional overshadowing impacts to the surrounding public realm or existing residential receivers surrounding the site.
 - (iii) The shadow diagrams provide a comparison of the shadows cast by the development at the 22 metre height and at the proposed 24.2 metre height. This indicates that on 21 June (being the worst case scenario) the additional height only casts minor additional shadow at 3pm onto the roof of the building at 3-5 Darley Street, Darlinghurst.
 - (iv) The additional height does not contribute to the proposal's shadowing extent on the public domain or neighbouring properties windows and private open space. This is by virtue of its location within the central portion of the rooftop.
 - (v) In regard to privacy for surrounding residential receivers, it is noted that the trafficable areas of the rooftop are well setback from the boundaries with both 347 and 355-357 Liverpool Street, ensuring overlooking to residential receivers is minimised. Irrespective of this, it is noted that both adjoining buildings present largely inactive facades to the interface with the site, and as such do not have high sensitivity to overlooking and privacy impacts.
 - (vi) In regard to view impacts, there are no known views obtained over the existing site. Accordingly, the additional height will not disrupt views from surrounding properties.
- (c) The proposed development will be consistent with the objectives of the R1 General Residential zone.
- (i) The proposal will continue to deliver additional, upgraded housing stock for the locality, in full alignment with the strategic objectives of the City of Sydney and the site's permitted FSR.
 - (ii) The proposed variation does not preclude the development from delivering a variety of housing typologies that will serve the future housing needs of the community; and
 - (iii) The proposed variation maintains the compatibility of the proposed development with the prevailing residential land use pattern of the locality.
- (d) The proposed development will be consistent with the objectives of the standard as outlined above.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

102. Development consent must not be granted unless the consent authority is satisfied that:

- (a) The written Clause 4.6 variation 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.
103. In the circumstances of the proposed development, the written variation request has failed to adequately demonstrate that:
- (a) Compliance with the standard is unreasonable and unnecessary.
 - (b) The objectives of the development standards are achieved, notwithstanding the non-compliance with the standard.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

104. The written request does not adequately address the issues at Clause 4.6(3)(a), and compliance with the standard is deemed to be reasonable and necessary, as follows:
- (a) The proposed height of development is not appropriate to the condition of the site and its context, and does not achieve objective (a) of the standard, as it:
 - (i) Does not provide a built form consistent with the desired future character of development set for the site within the Sydney DCP 2012, particularly as it relates to a maximum 6 storey height.
 - (ii) The rationale advanced in the written request that the variation should be supported given the provision of rooftop communal open space is defective, given the under provision of communal open space within the development, its poor quality of design as detailed under the 'Communal Open Space' heading below, and that compliant communal open space could be provided on top of a height compliant development.
 - (b) The proposed height of development does not ensure an appropriate height transition to adjoining and nearby heritage items and buildings in the surrounding heritage conservation area, as detailed under the 'Heritage Conservation' heading below, and does not achieve objective (b) of the standard, given that:
 - (i) It is higher than and competes with the adjoining heritage item at 347 Liverpool Street, Darlinghurst, for prominence within the streetscape.
 - (ii) The height, bulk, scale and massing of the proposal overwhelms the heritage items to the rear in Darley Place and the contributory building to the east at 355-357 Liverpool Street, Darlinghurst, beyond that presented by the existing development on the site.
 - (iii) The non-compliant height of the proposal will result in detrimental visual impacts to the surrounding heritage conservation area and adjoining and nearby heritage items.

- (c) The proposed height of development does not promote the sharing of views outside Central Sydney and does not achieve objective (c) of the standard, as it results in view sharing impacts which have not been subject to adequate assessment and documentation, as detailed under the 'View Sharing and View Loss' heading below.
- (d) The proposed development does not ensure an appropriate height transition from Central Sydney to adjoining areas, and does not achieve objective (d) of the standard, as:
- (i) There is no predominant height of development in the locality, as described in detail under 'The Site and Surrounding Development' heading above.
 - (ii) It does not provide a built form consistent with the desired future character of development set for the site within the Sydney DCP 2012, particularly as it relates to a maximum 6 storey height.
 - (iii) The parapet height of proposal sits well above the parapet height of the tallest buildings along the southern side of Liverpool Street in the block bounded by Forbes and Darley Street, significantly increasing its prominence within the streetscape as depicted in the elevation drawing extract reproduced in the figure provided below.



Figure 36: The Liverpool elevation drawing extract depicting the context of the original proposal along the southern side of the street, with the parapet line of the tallest existing buildings in the street outlined in pink

Does the written request adequately address those issues at Clause 4.6(3)(b)?

105. The written request does not adequately address the issues at Clause 4.6(3)(a), and has not demonstrated sufficient environmental planning grounds to justify the contravention of the standard, as follows:
- (a) The argument advanced that the provision of rooftop private open space justifies the non-compliance is defective, given that all proposed apartments are provided with compliant areas of private open space, that the proposed rooftop private open space areas are additional to these, and are not provided with appropriate shade structures, which would also breach the height control.

- (b) The proposition that the provision of communal open space which does not comply with the standard is defective, as rooftop communal space could readily be provided in a format which complies with the height of buildings development standard, in addition to the fact that the proposal does not provide adequate, well designed communal open space within the development, as detailed under the 'Communal Open Space' heading below.
- (c) The assertion that the non-compliant elements will be indiscernible from the public domain is defective, given that they will be visible from the public domain from the rear along Darley Place and from Liverpool Street, as seen in the perspective drawing extracts reproduced in the figure provided below.



Figure 37: Perspective drawing extracts depicting the development as viewed from Liverpool Street to the north-east (left) and north-west (right), depicting the non-compliant elements in white

- (d) These non-compliant elements result in detrimental visual impacts to the streetscape, the surrounding heritage conservation area and adjoining and nearby heritage items, as detailed under the 'Heritage Conservation' heading below.
- (e) Setting aside the fact that the proposal complies with the maximum FSR standard, the non-compliant building elements do not comply with a suite of other key planning objectives and controls in SEPP 65, the ADG, the Sydney LEP 2012, and the Sydney DCP 2012 applicable to the site and to the development, as set out in detail in the assessment provided in this report.
- (f) The proposition that the proposed non-compliance will not result in significant additional overshadowing impacts from these building elements is defective, as the shadow and sun's eye view diagrams submitted with the application clearly demonstrate additional unquantified overshadowing of adjoining properties, as detailed under the 'Overshadowing' heading below.
- (g) The assertion that the non-compliant elements of proposal will not result in additional overlooking and privacy impacts is defective, as the architectural drawings submitted with the application do not clearly detail privacy treatments to the edges of the areas of private and communal open space at level 7, as discussed under the 'Building Separation and Visual Privacy' heading below.

- (h) As discussed above, the non-compliant building elements result in view sharing impacts which have not been subject to adequate assessment and documentation, as detailed under the 'View Sharing and View Loss' heading below.

Is the development in the public interest?

106. The proposal is not in the public interest, as it is inconsistent with the objectives of the maximum height of buildings standard, and the written variation statement does not demonstrate that there are sufficient environmental planning grounds to justify contravention of the development standard.
107. For the reasons provided above, the requested variation to the maximum height of buildings development standard is not supported. The written Clause 4.6 variation request has not adequately addressed the non-compliance and the matters relevant to Clause 4.6 of the Sydney LEP 2012.

Conclusion

108. For the reasons provided above the requested variation to the height of buildings development standard is not supported as the written Clause 4.6 variation request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012. In addition, the proposed development is not in the public interest because it is inconsistent with the objectives of the height of buildings development standard.

Heritage Conservation

109. The subject site is not identified as a heritage item in the Sydney LEP 2012 but is identified as a detracting building located within the Oxford Street and Victoria Street heritage conservation area in the Sydney DCP 2012 and Sydney LEP 2012 respectively.
110. It is also located in proximity to a number of heritage items of both local and State significance, as detailed under 'The Site and Surrounding Development' heading above.
111. Council's Heritage Specialist has reviewed the proposal, as amended on 31 March 2023.
112. The advice received raises concerns with respect to the following matters:
- (a) As referred to above under the 'Clause 4.6 Request to Vary a Development Standard' heading, the non-compliant height of the proposal results in significant additional visual bulk, scale and overbearing impacts, both in terms of height of buildings and in terms of storey height.
- This is particularly the case in relation to the heritage significance of the heritage item at 1 Darley Place, the contributory building at 355-357 Liverpool Street, and results in an uncomfortable fit in the streetscape adjacent to the heritage item at 347 Liverpool Street.
- (b) The preliminary desktop assessment of archaeological potential submitted with the amended application identifies the site as having moderate potential for archaeological remains of local significance.

The proposed excavation will likely result in impacts on these remains, and an historical archaeological impact assessment and research design report must be prepared to investigate the potential for impact resulting from the proposal and provide mitigation measures to manage these impacts.

- (c) No structural information, detailed geotechnical information or safe construction methodology has been provided to address the requirements of Section 3.9.13 of the Sydney DCP 2012, nor any investigation into the location of the footings of the adjoining buildings.

The proposed excavation for the basement of the new building has no setback from the eastern and western boundaries of the site, and there is no certainty as to the potential for damage or undermining of the neighbouring properties.

The risk to the adjoining buildings associated with proposed excavation in the absence of this information is significant.

- (d) The height of proposed parapet and grid like expression of the front elevation has an unsympathetic solid to void ratio, with large fixed glazed windows, competes with the prominence of the adjoining heritage item and is inconsistent with the other existing development in the streetscape to Liverpool Street and Darley Place.
- (e) The proposed materials schedule is insufficiently detailed and no details of the materials, design and details of the fire hydrant, sprinkler booster, water meter and gas meter on the Liverpool Street frontage have been provided.
- (f) The silhouettes of the original terraces that existed on the site before the existing residential flat building was constructed are highly visible from the public domain along Liverpool Street and are significant, as depicted in the figure provided below. The proposal is constructed to the boundaries so that, although they will be visible from the apartment balconies, these silhouettes will be partly obscured from the street so that they will not be appreciated in the round.



Figure 38: Photographic extracts from the architectural design report submitted with the application, depicting the silhouettes of the original terraces (outlined in yellow) viewed from Liverpool Street to the south-west (left) and south-east (right)



Figure 39: 3-dimensional axonometric extract from the architectural design report submitted with the application, depicting the proposal in relation to the terrace silhouette

113. As such, it has not been demonstrated that the proposal adequately conserves the heritage significance of the surrounding heritage conservation area and adjoining and nearby heritage items in accordance with the relevant objectives and controls of the Sydney LEP 2012 and Sydney DCP 2012.

Overshadowing

114. As discussed under the 'Chronology' heading above, concern was raised in the City's correspondence sent to the applicant on 7 February 2023 in relation to the adequacy of the documentation submitted with the original application, particularly with regard to:

- (a) The survey detail provided on the location and heights of windows on adjoining and nearby properties.
- (b) The level of detail depicted on the shadow and sun's eye view diagrams.

115. Additional and amended shadow diagrams and sun's eye view diagrams were submitted with the amended application lodged with the City on 31 March 2023.

116. An amended survey plan was also provided but did not include any details of affected window openings in relation reduced levels to the Australian Height Datum.

117. These diagrams demonstrate that the building elements which exceed the height controls applicable to the site result in additional unquantified overshadowing of:

- (a) The front yard and window openings to the front elevation of the dwelling house at 2-3 Darley Place, Darlinghurst.
- (b) The PV panel array on the roof of the dwelling house at 5 Darley Place, Darlinghurst.

- (c) The elevated area of private open space at the rear of the dwelling house at 7 Darley Street, Darlinghurst.
 - (d) The window openings to the northern and eastern elevations of the building at 102 Burton Street, Darlinghurst.
 - (e) The rear private open space of the dwelling house at 106 Burton Street, Darlinghurst.
 - (f) The window openings to the western elevation of the building at 5 Darley Street, Darlinghurst.
118. The written assessment submitted with the amended application has not provided any justification for why this additional overshadowing is acceptable.
119. As outlined under the 'Clause 4.6 Request to Vary a Development Standard', the overshadowing impacts associated with the proposed variation of the maximum height of buildings are not supported on this basis.
120. Further, documentation submitted with the amended application lodged with the City has asserted that the sun's eye view diagrams demonstrate that a number of apartments in the adjoining building at 347 Liverpool Street, Darlinghurst currently do not gain the minimum level of sunlight to be defined as 'direct sunlight' in accordance with the City's 'Minimising overshadowing of neighbouring apartments' guideline and the ADG.
121. This guideline notes that:
- For sun to be counted it must have an area of at least 1 square metre and a duration of at least 15 minutes. Areas less than 1 square metre and periods of less than 15 minutes are not considered.
122. Advice received from City's Model Unit is that this assertion cannot currently be verified, given that the survey information outlined above has not been provided to the City.
123. While it may eventuate that some of the overshadowing impacts resulting from the proposed development are acceptable, the application cannot be supported in its current form, in light of the absence of detailed and comprehensive overshadowing documentation and analysis, prepared in accordance with the requirements of the ADG and the City's guideline.

Building Separation and Visual Privacy

124. As outlined in the discussion provided above under the 'State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development' heading, the proposal does not achieve compliance with the building separation provisions of the ADG to either the rear or side boundaries of the site.
125. The proposed building form is modelled on the adjacent building form existing at 347 Liverpool Street, Darlinghurst, which is posited to be contextually appropriate.
126. Council staff do not concur with the proposition that the proposal is acceptable in this respect, given that:

- (a) Setting aside the concern raised above in relation to the visual bulk, scale and mass of the proposal from a heritage perspective, the proposed setback from the rear boundary with the dwelling house at 1 Darley Place is a minimum of 3 metres at all levels, as depicted in the drawing extract reproduced in the figure below, where the ADG requires a setback of between 6 to 9 metres .

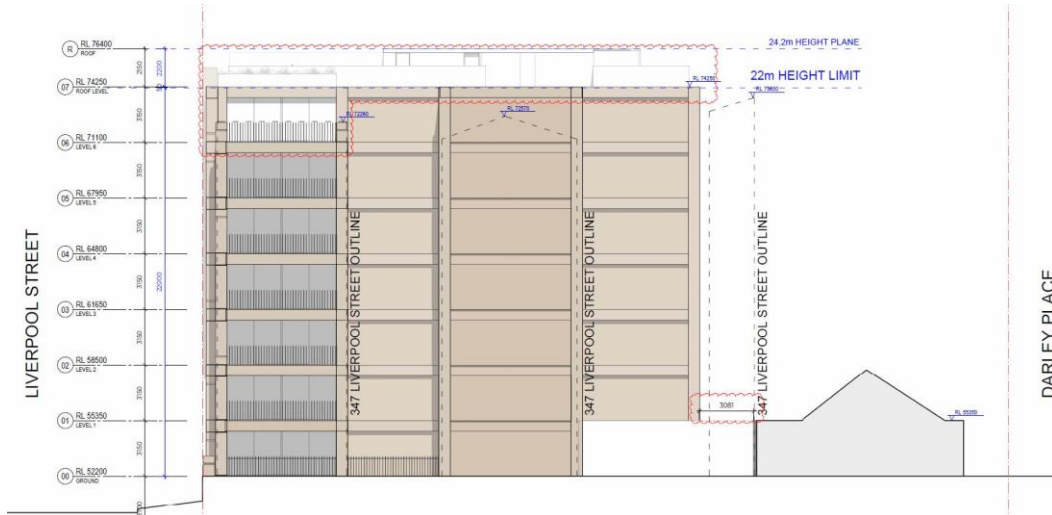


Figure 40: West elevation drawing extract depicting the 3 metre building separation to the dwelling house at 1 Darley Place

- (b) The extent of glazing to the rear facade is uncharacteristic in the locality and results in overlooking of neighbouring and nearby windows and private open space areas, with no design measures provided to mitigate against these potential visual privacy impacts.
- (c) The open design of the side balconies borrow amenity from the eastern neighbour, which may not be available in perpetuity, and do not propose any screening along the side elevations of the development. Unmitigated overlooking across the side boundary of the site is not supported.
- (d) The proposal relies on extensive privacy screens, as depicted in the drawing extract reproduced below, due to inadequate separation and extensive glazing. Insufficient detail on the design of these screens has been provided with the application to demonstrate mitigation.

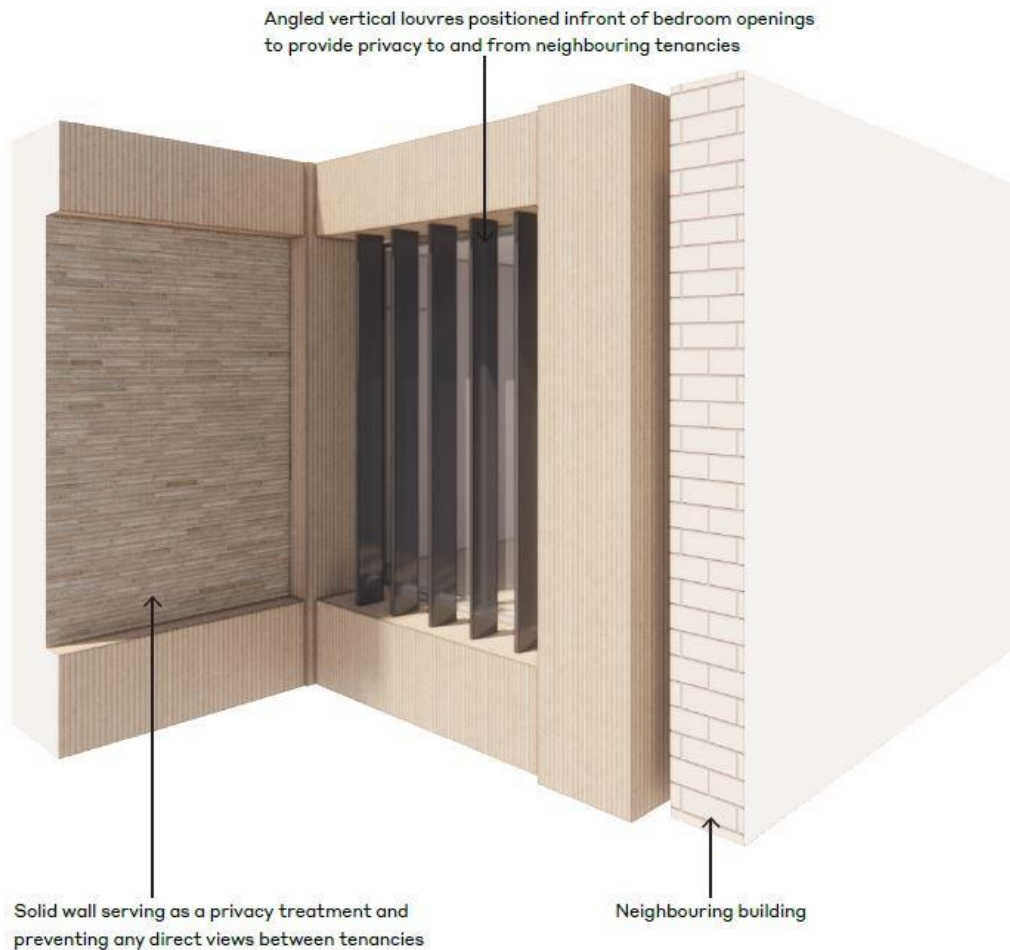


Figure 41: 3-dimensional axonometric extract from the architectural design report submitted with the application, depicting the privacy louvres proposed to apartment bedrooms

- (e) The design inadequately addresses privacy to the ground and first floor balconies, as well as the extensive front glazing to habitable rooms facing Liverpool Street and Darley Place, relying on soft furnishings, rather than greater solidity to the facade design.
- (f) The design does not sufficiently detail privacy treatments to the edges of the areas of private and communal open space at level 7, particularly in relation to overlooking to the windows to apartments within the adjoining lightwells, or to the communal rooftop area of the adjoining building at 347 Liverpool Street, Darlinghurst, or down into areas of private open space at the rear of the site.

127. These aspects of the proposal are not supported, as they will result in poor residential amenity for future residents of the subject development and adjoining properties and are contrary to the relevant objectives and controls of SEPP 65, the ADG, and the Sydney LEP 2012 relating to visual privacy.

Natural Ventilation and Acoustic Privacy

128. As discussed under the 'Chronology' heading above, concern was raised in the City's correspondence sent to the applicant on 7 February 2023 in relation to:

- (a) The lack of operability proposed to the large fixed glazing panels to the front facade of the new building.
 - (b) The reliance on light wells for access to natural ventilation to habitable rooms.
129. The response provided in the amended application lodged with the City was twofold, asserting that the design achieves acceptable natural cross ventilation, and that the light well borrows horizontal ventilation through the apartment balconies from Liverpool Street, as depicted in the drawing extracts provided in the figures below.

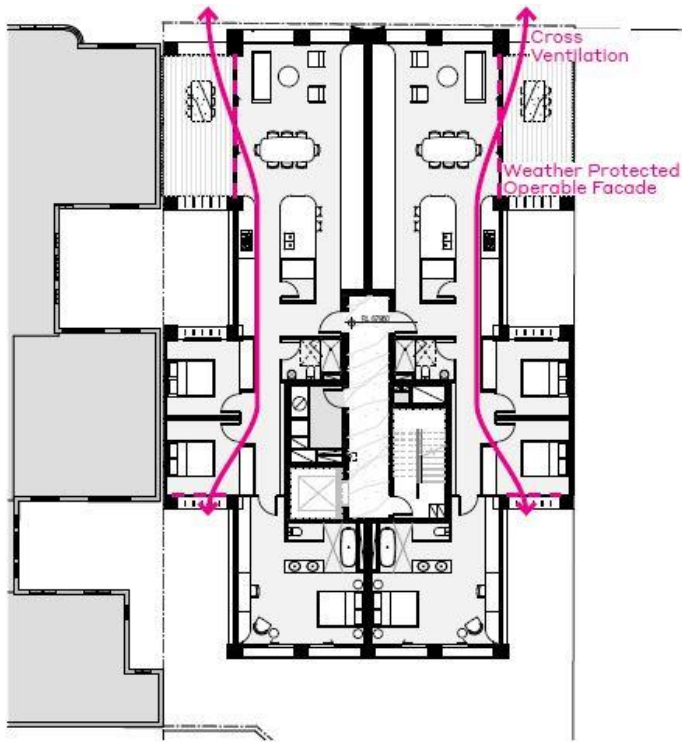


Figure 42: Natural cross ventilation flow path diagram extract

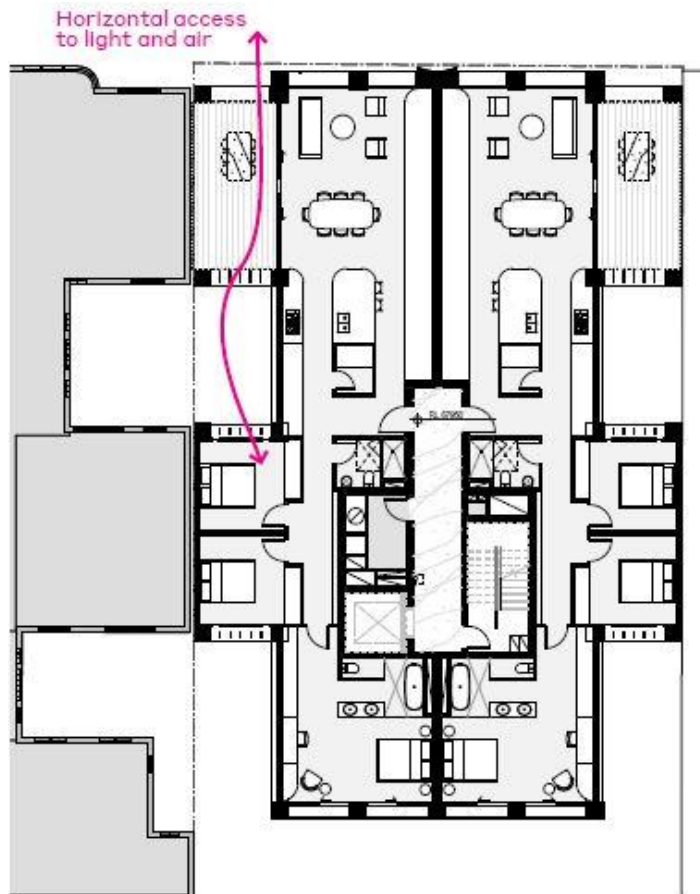


Figure 43: Natural ventilation flow path diagram extract

130. It is accepted that all of the proposed apartments are capable of achieving natural cross ventilation in principle, noting that the overall depth of the apartments does not comply with the relevant requirements of the ADG, which will reduce the efficacy of the cross through apartment design in this respect.
131. Providing operability to the front windows would serve to improve the ventilation amenity to the apartments, as would the provision of separate window openings to the balconies, in order to allow a 'doors closed, window open' scenario for future residents.
132. Council staff do not accept the proposition that the proposed light wells can rely on horizontal natural ventilation through the proposed balcony spaces to provide adequate ventilation amenity to the adjacent bedrooms, in the absence of any supporting detailed analysis or documentation prepared by a qualified ventilation consultant.
133. Further, as a number of proposed bedrooms require open windows for ventilation onto the proposed lightwells, it is unclear how the recommendations made in the acoustic assessment report will assist with acoustic privacy for the bedrooms in a 'windows open' scenario.
134. Given that the proposal does not provide adequate building separation within the development from neighbouring sites, the potential acoustic privacy impacts affect both dwellings in the subject site and on the neighbouring properties.

135. These aspects of the proposal are not supported, as they will result in poor residential amenity for future residents of the subject development and adjoining properties and are contrary to the relevant objectives and controls of SEPP 65, the ADG, and the Sydney DCP 2012 relating to natural ventilation and acoustic privacy.

Communal Open Space

136. The communal open spaces proposed within the new building fall short of the requirement in the ADG and Sydney DCP 2012 for 25 per cent of the site area by 13 per cent, or 89 square metres.
137. Further, although the proposed communal open spaces achieve the minimum 3 metre dimension required under the ADG, they do not meet the minimum requirement of a 6 metre dimension under the Sydney DCP 2012.
138. While the rooftop communal area at level 7 receives good solar access, the ground floor communal open space receives no direct sunlight at the midwinter and does not comply with the solar access requirements for communal open space set out in the ADG or the Sydney DCP 2012.
139. The design of the proposed communal spaces is inadequate, given that they include only some seating, tables and raised planting beds, and no details regarding materials, fencing and furniture selection have been provided.
140. No amenities or communal facilities, such as BBQs, furniture storage areas, or shade structures have been proposed, noting that the provision of the latter amenities would result in a further breach of the maximum height of buildings standard, and the potential for associated overshadowing and view sharing impacts.
141. These aspects of the proposal are not supported, as they will result in poor communal amenity for future residents of the development and are contrary to the relevant objectives and controls of SEPP 65, the ADG, and the Sydney DCP 2012 for communal open space provision.

Landscape Design

142. The landscape design accompanying the application was amended in the application lodged with the City on 31 March 2023.
143. Council's Landscape Assessment Officer has reviewed the amended design. The advice received raises concerns with respect to the following matters.
- (a) Tree species in the central courtyards have been amended from Cabbage Tree Palms to Native Quandongs, which have a nominal spread of 6 metres, however the details in the landscape drawings indicate soil mounding up to 800mm high to achieve a 1.2 metre soil depth for tree planting, as depicted in the figure provided below.

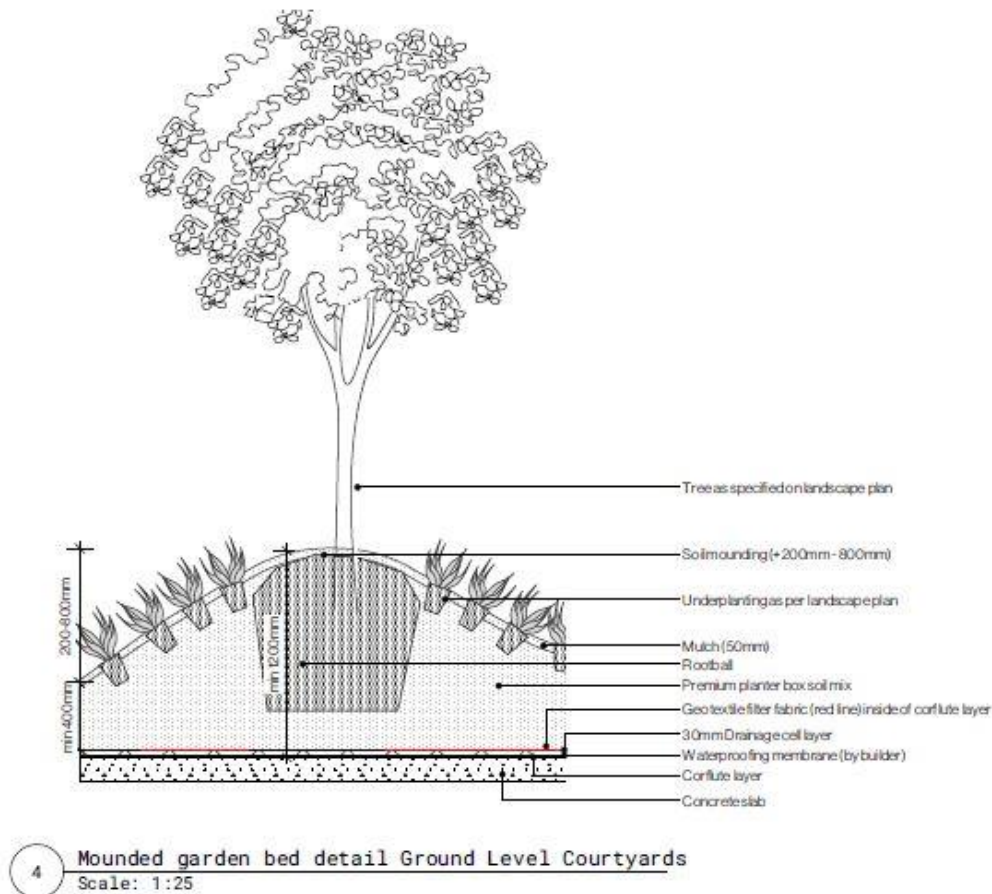


Figure 44: Garden bed detail depicting excessive soil mounding and insufficient soil depth

Excessive soil mounding to achieve soil depth is not supported, given that soil is organic and subsides over time, which can result in bare root balls and plant failure.

- (b) It has not been demonstrated that mounding at acceptable gradients to the required depth is possible within the constrained space of the courtyards. For example, to achieve an 800mm depth, mounding at 1:4 gradients would require 3.2 metre distance, where the proposal only provides between approximately 0.9 to 1.9 metres distance. Any gradients steeper than 1:4 would excessively increase the risks of soil erosion and subsidence.
- (c) Trees on structure are proposed on the ground floor directly south of the southern courtyard of both ground floor apartments. No information has been provided to demonstrate provision of sufficient soil depth for these trees.
- (d) It has not been demonstrated that the proposal is capable of achieving tree canopy cover requirements under Section 3.5 of the Sydney DCP 2012.
- (e) A landscape management and maintenance schedule has been provided, however it nominates safety anchor points for use by maintenance workers for access to maintain the rooftop planters. It is unclear how the planters between the northern boundary and proposed plunge pools will be accessed for maintenance given access is restricted by the pool and the building parapet.

144. In summary, it has not been demonstrated that the proposal can achieve appropriate tree canopy cover, or the resilience, suitability and longevity of the proposed landscape design, or that excellence and integration of landscape design has been achieved in accordance with the relevant objectives and controls of SEPP 65, the ADG, the Sydney LEP 2012 and Sydney DCP 2012.

Deep Soil

145. The amended application lodged with the City on 31 March 2023 increased the rear setback of the proposal, to provide a deep soil area with a minimum dimension of 3 metres.
146. The revised scheme provides 45.2 square metres of deep soil area, which 6.5 per cent of site area. This is 3.5 per cent short of the 10 per cent of site area required by the Sydney DCP 2012, and 0.5 per cent short of the 7 per cent required by the ADG.
147. A stormwater pipe is proposed to run across the centre of the primary deep soil area and is in direct conflict with the location of proposed tree plantings, as depicted in the drawing extracts reproduced in the figures provided below.
148. These aspects of the proposal are not supported as it will result in compromised deep soil area design for the development and is contrary to the relevant objectives and controls of SEPP 65, the ADG, and the Sydney DCP 2012.

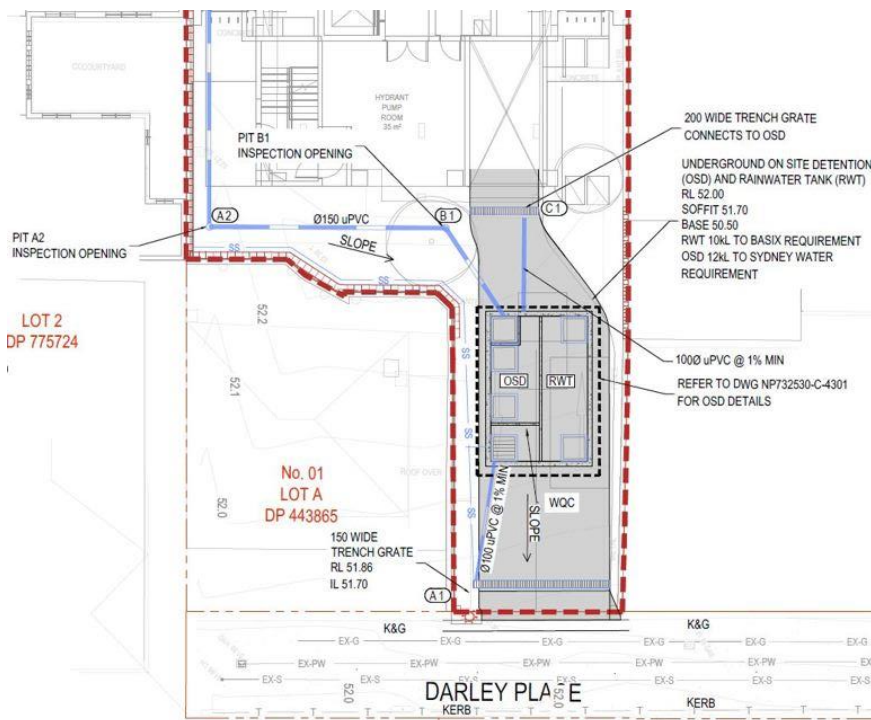


Figure 45: Stormwater management plan drawing extract, showing the proposed stormwater pipe (depicted in blue) running through the deep soil area at the rear of the site

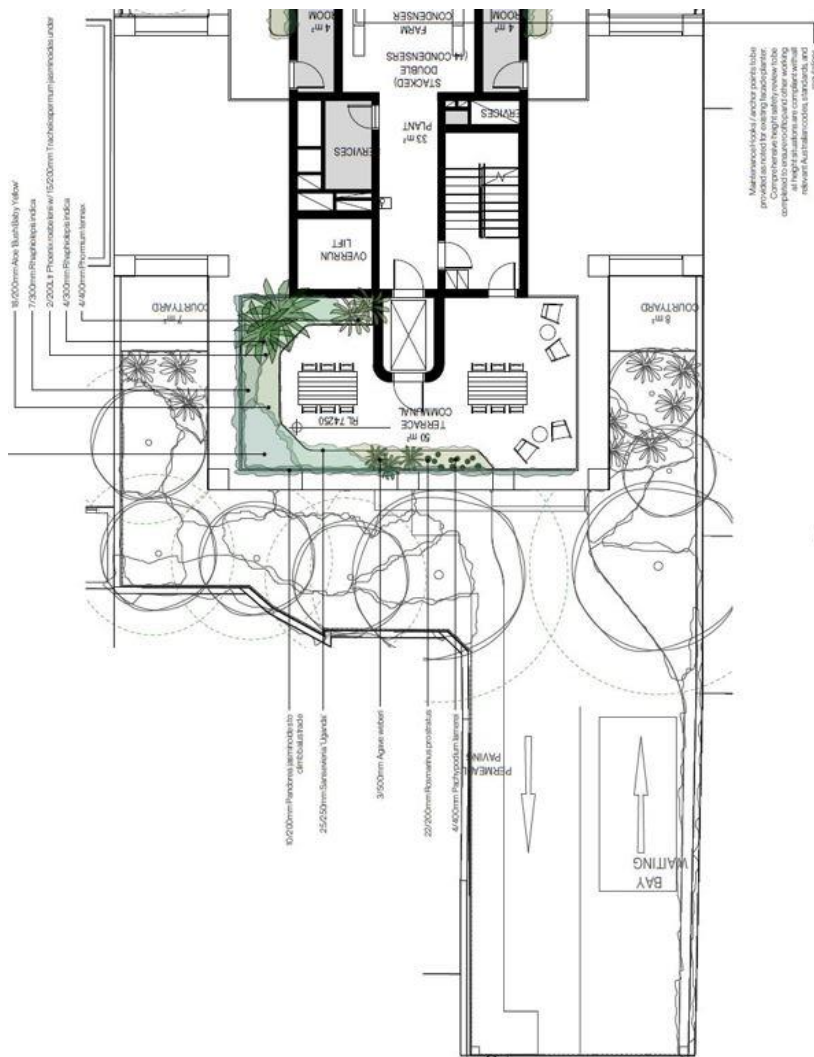


Figure 46: Ground floor level landscape plan drawing extract, showing the proposed location of tree plantings in the deep soil area at the rear of the site

View Sharing and View Loss

149. A number of submissions received by the City in response to the public exhibition and notification of the application have raised concerns about view sharing and view loss as a result of the proposed development from adjacent private properties.
150. An assessment of these matters is provided under the heading below.

Private Views

151. At the invitation of the submitters, Council staff attended 5 private properties located to the east, west, and north-west of the subject site.
152. The primary lines of views and outlook across the site from the apartments in the properties inspected by Council staff are indicated in the annotated photograph reproduced in the figure provided below, and are from:
- The 'Mont Clair' building at 347 Liverpool Street, Darlinghurst, to the north-east towards Kings Cross and the eastern suburbs beyond, and south-east towards St Vincents Hospital and its surrounds.

- (b) The 'Ballina' building at 5 Darley Street, Darlinghurst, to the north-west towards the Sydney Central Business skyline.
- (c) The 'Beaufort Court' building at 198-200 Forbes Street, Darlinghurst, to the south towards the skyline along Liverpool Street.

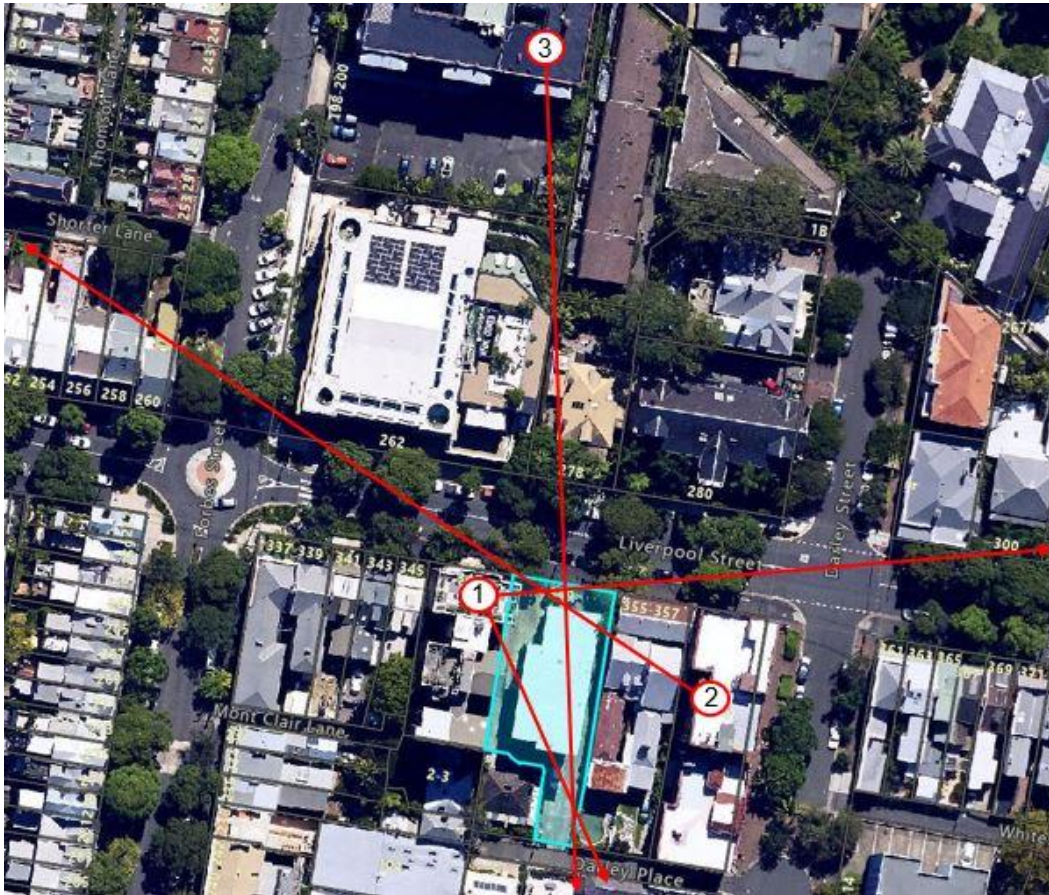


Figure 47: Aerial photograph of the subject site (shaded in blue), with primary view lines in red from adjacent and nearby properties numbered 1 (the 'Mont Clair' building), 2 (the 'Ballina' building) and 3 (the 'Beaufort Court' building)

- 153. A brief assessment of view sharing and view loss was submitted with the amended application lodged with the City on 31 March 2023.
- 154. This assessment has largely been made on the basis of computer-generated modelling images, rather than from site inspections and photographs taken of the views, which does not accord with the relevant planning principle established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.
- 155. It also characterises impacts to view sharing as impacts on outlook i.e. a short range prospect, such as building to building, rather than long range to particular objects or geographic features.
- 156. This assessment is considered to be deficient, given that the assessment below clearly identifies long range views will be impacted by the proposal, and primarily as a result those elements of the new building which do not comply with key planning controls for the site.

157. While it may eventuate that impacts on some views from private properties that arise as a result of the proposed development are acceptable, the application cannot be supported in the absence of a detailed and comprehensive view analysis, prepared in accordance with the above-mentioned planning principle.
158. The planning principle specifies that the notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment which may, in some circumstances, be reasonable.
159. In accordance with this principle, the following matters must be taken into consideration when determining whether a view impact is reasonable:
 - (a) The type of view to be impacted.
 - (b) The location from which a view is available.
 - (c) The extent to which the development affecting the view complies with the relevant planning controls.
 - (d) Whether impacts could be mitigated by a more skilful design.
160. The views from the rooftop communal space of the 'Mont Clair' building at 347 Liverpool Street, Darlinghurst, which may be affected by the proposed development are district views obtained across the side boundary of the subject site to the north-east and south-east.
161. Photographs of examples of the views from this space to the north-east and south-east are reproduced in the figures provided below.
162. These views are from a standing position within the communal space.
163. It is noted that primary views from this communal space to the Sydney Central Business District Harbour to the west, and north-west to the Sydney Harbour Bridge, the Opera House and Sydney Harbour to the north, and district views to the south and south-west, will be unaffected by the proposal.
164. The impacts arise as a result of a proposal which does not comply with the maximum height of buildings development standard, the maximum storey height and street frontage height controls, and the building separation requirements applicable to the site.
165. The impacts on these existing views might be mitigated by a more skilful, or compliant design and, as such, they are unreasonable in the circumstances.



Figure 48: View from the roof top communal space of the 'Mont Clair' building at 347 Liverpool Street, Darlinghurst, looking north-east to district views to Kings Cross and the eastern suburbs



Figure 49: View from the roof top communal space of the 'Mont Clair' building at 347 Liverpool Street, Darlinghurst, looking south-east to district views to St Vincents Hospital and surrounds

166. The views from the rooftop space at, and from an apartment within, the 'Ballina' building at 5 Darley Street, Darlinghurst, which may be affected by the proposed development are partial district and Sydney Central Business District views across several side boundaries.
167. Photographs of examples of the views from the rooftop space and from the apartment to the north-west are reproduced in the figures provided below.
168. These views are from a standing position within the apartment kitchen and the rooftop space.
169. It is noted that primary views from the rooftop space to the Sydney Central Business District Harbour to the north, and district views to the north-east, east, south-east, south and south-west, will be unaffected by the proposal.
170. The impacts arise as a result of a proposal which does not comply with the maximum height of buildings development standard, the maximum storey height and street frontage height controls, and the building separation requirements applicable to the site.
171. The impacts on these existing views might be mitigated by a more skilful, or compliant design and, as such, they are unreasonable in the circumstances.

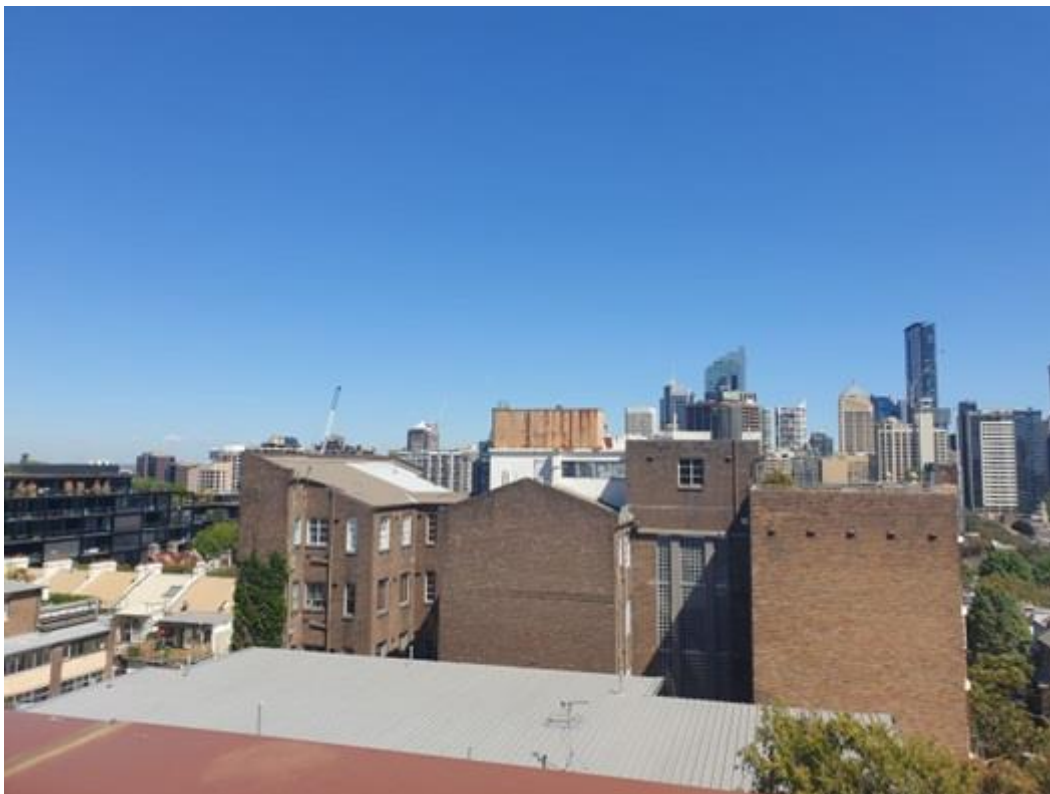


Figure 50: View from the roof top space of the 'Ballina' building at 5 Darley Street, Darlinghurst, looking west to the 'Mont Clair' building and Sydney Central Business District skyline



Figure 51: View from an apartment within the 'Ballina' building at 5 Darley Street, Darlinghurst, looking north-west to the 'Mont Clair' building and the Sydney Central Business District skyline

172. The view from the rooftop space at, and from an apartment within, the 'Beaufort Court' building at 198-200 Forbes Street, Darlinghurst, are not views per se, but outlook toward the roofline of existing development along the northern and southern sides of Liverpool Street.
173. A photograph of the outlook from the rooftop space towards the south is reproduced in the figure provided below.
174. No assessment of this outlook is required in this instance.



Figure 52: Outlook from the roof top space of the 'Beaufort Court' building at 198-200 Forbes Street, Darlinghurst, looking south to the buildings at 262, 278, 280 and 349 Liverpool Street, Darlinghurst

Design Excellence

175. Pursuant to Clause 6.21C(1) of the Sydney LEP 2012, the consent authority must not grant consent to a new building unless it is satisfied that it exhibits design excellence.
176. As outlined through the assessment provided in this report, the proposed development does not exhibit design excellence when it is assessed against the matters for consideration at Clause 6.21C(2) of the Sydney LEP 2012, as follows:
- (a) **Clause 6.21C(2)(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved**

As discussed above, it has not been demonstrated that the proposed architectural design, materials and detailing of the development is appropriate to the building type and surrounding location. The overbearing height and unsympathetic expression of the new building are not supported in this respect.

- (b) **Clause 6.21(2)(b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain**

The proposed form and external appearance of the development will not improve the quality or amenity of the public domain.

It does not minimise the substantial bulk, scale and massing of the new building form, which has insufficient setbacks and building separation to the side and rear boundaries of the site.

(c) Clause 6.21(4)(c) whether the proposed development detrimentally impacts on view corridors

As discussed elsewhere in this report, view impacts arising from the proposed development have not been adequately considered in the design.

An inadequate view sharing assessment has been provided with the application, which has not been prepared in accordance with the Land and Environment Court of New South Wales' Planning Principle for view sharing in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140

(d) Clause 6.21(4)(d)(iii) any heritage issues and streetscape constraints

As discussed under the 'Heritage Conservation' heading above, detrimental impacts associated with the proposed development on the heritage significance of the adjoining and nearby heritage items, and the Oxford Street and Victoria Street heritage conservation area are unacceptable, and are not supported.

(e) Clause 6.21(4)(d)(v) the bulk, massing, and modulation of buildings

The non-compliant height, bulk, scale and mass of the proposal will dominate and overwhelm the existing lower scale buildings on the adjoining site at 1 Darley Place, Darlinghurst, and 355-357 Liverpool Street, Darlinghurst.

The expression of the new building is inconsistent with that in the streetscape along both Liverpool Street and Darley Place.

(f) Clause 6.21(4)(d)(vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind, and reflectivity

As discussed elsewhere in this report, insufficient information has been provided with the application to enable a fulsome assessment of sustainable design, overshadowing, visual privacy, and acoustic privacy and natural ventilation, when considered in conjunction with one another.

(g) Clause 6.21(4)(d)(ix) pedestrian, cycle, vehicular and service access, and circulation requirements, including the permeability of any pedestrian network

The location of bicycle parking and the waste collection point remain unresolved.

(h) Clause 6.21(4)(d)(xiii) excellence and integration of landscape design

The landscape design submitted with the application does not demonstrate excellence and integration with the proposed development, given the issues raised in relation to insufficient communal open spaces with inadequate amenity, soil mounding, soil depth, tree canopy and deep soil provisions in SEPP 65, the ADG and Sydney DCP 2012.

177. Based on the assessment provided above and when considered in conjunction with the advice provided by the City's Design Advisory Panel Residential Subcommittee at Attachment C, the proposed development:
- (a) Does not meet the objective at Clause 6.21 of the Sydney LEP 2012 given that it will fail to deliver the highest standard of architectural, urban and landscape design.
 - (b) Does not exhibit design excellence as required by Clause 6.21C(1) of the Sydney LEP 2012.

Other Impacts of the Development

178. The proposal can achieve compliance with the Building Code of Australia.
179. The proposal will result in detrimental environmental impacts and is consequently recommended for refusal. These include, but are not limited to, potential construction management impacts.
180. It is noted that the proposed development is located on a constrained site, particularly regarding site access and construction management considerations.
181. A draft Construction Management Plan has not been provided with the application outlining the way in which impacts during demolition and construction will be controlled and managed.
182. The application has not sufficiently demonstrated that the following matters have been adequately considered:
- (a) Phasing of construction, including objectives, outcomes, targets, milestones and expected time frames.
 - (b) Identification, classification and quantum of likely impacts including noise, dust, construction traffic management, hours of operations, pedestrian amenity and the like; complaints management.
 - (c) The method of demolition and construction.

Suitability of the Site for the Development

183. The subject site is not suitable for the proposed development in its current form and the development application is recommended for refusal.

Public Interest

159. The proposal will have a detrimental effect on the public interest and the development application is recommended for refusal.

Consultation

Design Advisory Panel Residential Subcommittee

184. After finalisation of a preliminary assessment of the proposed development by Council staff, the application was presented to the City's Design Advisory Panel Residential Subcommittee (DAPRS) on 1 November 2022.

185. The DAPRS provided advice which is reproduced in Attachment C.
186. Some of the design matters raised have been satisfied by the submission of amended drawings and through the provision of additional information, evidence and detail, however there are a range of issues that remain outstanding, as outlined elsewhere in this assessment report.
187. These outstanding matters are summarised as follows:
- (a) Inadequate building separation, and associated issues relating to acoustic privacy and natural ventilation.
 - (b) Insufficient provision of communal open space area, and inadequate amenity and facilities provided to the proposed communal spaces.
 - (c) Insufficient provision of deep soil area.
 - (d) Excessive reliance on soil mounding and inadequate soil depth for planting on structure.
 - (e) Acoustic separation for lifts adjacent to bedrooms.
 - (f) Lack of design details for the fire hydrant, sprinkler booster, water meter and gas meter to the Liverpool frontage of the site.
 - (g) Overshadowing impacts.
 - (h) Lack of sun shading and operability to the northern building facade.
 - (i) Visual privacy impacts.
 - (j) Building expression, including reconsideration of the concave vertical element.
 - (k) Excavation and associated impacts to adjoining heritage buildings.
 - (l) Exceedance of the maximum height of buildings standard and associated environmental impacts to neighbouring properties.

Internal Referrals

188. The application was referred to, or discussed with the following Council units and City officers:
- (a) City Access and Transport Unit.
 - (b) Construction and Building Services Unit.
 - (c) Model Unit.
 - (d) Public Art Unit.
 - (e) Specialist Surveyor.
 - (f) Tree Management Unit.

189. These officers advised that the proposal is acceptable in relation to their referral field of expertise, subject to conditions.
190. The application was also referred to and discussed with Council's:
- (a) Cleansing and Waste Unit.
 - (b) Health and Building Unit.
 - (c) Heritage Specialist.
 - (d) Landscape Assessment Officer.
 - (e) Public Domain Unit.
 - (f) Urban Design Specialist.
191. As discussed elsewhere in this assessment report, these officers raised concerns in relation to the proposed development.

External Referrals

Ausgrid

192. Pursuant to Section 2.48 of the Transport and Infrastructure SEPP, the application was referred to Ausgrid for comment.
193. A response was received raising no objections to the proposed development, subject to conditions.

NSW Police

194. The application was referred to the Kings Cross Local Area Command of the New South Wales Police Force for comment.
195. No response was received.

Sydney Water

196. Pursuant to Section 78 of the Sydney Water Act, 1994, the application was referred to Sydney Water for comment.
197. A response was received raising no objections to the proposed development, subject to conditions.

Advertising and Notification

198. In accordance with the City of Sydney Community Participation Plan, the original application development was notified for a period between 2 September 2022 and 1 October 2022.
199. A total of 625 properties were notified and 86 submissions were received.
200. 66 submissions were in opposition to the proposal, with 20 in support.

201. The submissions in opposition to the proposal raise a wide range of issues of concern, which have been summarised and addressed below.

(a) **Issue:** Excessive and non-compliant building height and height in storeys.

Response: The height of the proposed development is assessed as:

- Being non-compliant with (and contrary to the objectives of) maximum height of buildings development standard in the Sydney LEP 2012
- Being non-compliant with (and contrary to the objectives of) the maximum storey height and street wall height controls in the Sydney DCP 2012.
- Incompatible with the character of the local area.
- Resulting in adverse impacts on the significance of the surrounding heritage conservation area and adjoining and nearby heritage items.
- Resulting in adverse impacts on the residential amenity of adjoining and nearby properties.

This matter forms part of the reasons for refusal of the application.

(b) **Issue:** Incorrect measurement of height.

Response: The application has correctly measured the height of the proposed development from the existing ground level of the site.

(c) **Issue:** The height of the proposed development exceeds 25 metres and must be subject to a competitive design process.

Response: The proposed development does not exceed 25 metres in height, and there is no requirement for a competitive design process.

(d) **Issue:** Visual impacts on the streetscape and heritage significance of the Oxford Street and Victoria Street heritage conservation area and adjacent and nearby heritage items, including potential excavation impacts, and a lack of geotechnical and structural information relating to excavation

Response: The proposed development is assessed as resulting in detrimental impacts on streetscape and the significance of the adjoining and nearby heritage items, and the surrounding heritage conservation area.

The lack of any structural assessment and a detailed geotechnical assessment of the proposal is discussed elsewhere in this report.

These matters form part of the reasons for refusal of the application.

(e) **Issue:** Proposed building footprint is substantially larger than the existing building.

Response: There are no planning controls relating to building footprint that are applicable to the proposed development.

- (f) **Issue:** Inadequate setbacks to the site boundaries and separation from neighbouring buildings, resulting in a loss of residential amenity to the adjoining properties.

Response: The proposed setbacks and separation are assessed as resulting in a range of unacceptable amenity impacts and are incompatible with the character of the local area.

These matters form part of the reasons for refusal of the application.

- (g) **Issue:** Visual impacts to neighbouring properties and the public domain, including those relating to inappropriate street alignment, overbearing bulk, excessive scale and massing, and resultant sense of enclosure.

Response: The visual impacts of the proposed development are unacceptable with regard to the character of the local area, the surrounding heritage conservation area, in terms of its height, bulk, scale, form, expression and minimal boundary setbacks.

These matters form part of the reasons for refusal of the application.

- (h) **Issue:** Loss of solar access and daylight to apartments with window openings on the eastern elevation of the adjoining building at 347 Liverpool Street, Darlinghurst.

Response: Amended and additional sun's eye view and shadow diagrams were submitted to the City with the amended application lodged on 31 March 2023.

As discussed elsewhere in this assessment, this documentation asserts that a number of the apartments with windows to the lightwell at 347 Liverpool Street, Darlinghurst, do not currently gain the minimum level of sunlight to be defined as 'direct sunlight' in accordance with the City's 'Minimising overshadowing of neighbouring apartments' guideline and the ADG.

Advice received from City's Model Unit is that this assertion cannot currently be verified, given that the survey information outlined above has not been provided to the City.

The proposal does not reduce solar access to windows to habitable rooms at level 6 to the eastern elevation of the adjoining building.

- (i) **Issue:** Loss of outlook from apartments with window openings on the eastern elevation of the adjoining building at 347 Liverpool Street, Darlinghurst.

Response: Beyond the requirement in Section 4.2.3.10(2) of the Sydney DCP 2012 for the consideration of outlook from existing residential development in the site planning and massing of development, there are no planning controls which serve to protect outlook from the existing window openings borrowed across the side boundary of the subject site.

- (j) **Issue:** Loss of views from apartments with window openings on the western elevation of the nearby building at 5 Darley Street, Darlington, and from the roof level communal open space and apartments with window openings on the eastern elevation of the adjoining building at 347 Liverpool Street, Darlington.

Response: As discussed elsewhere in this report, insufficient information has been provided with the subject development application to carry out a full assessment of the proposal with regard to private view sharing and view loss impacts.

It is likely that the proposed development, in its current form, will result in view sharing impacts to the buildings at 347 Liverpool Street, Darlington, and 5 Darley Street, Darlington, as a result of proposed building elements which do not comply with the maximum height of buildings development standard, however these have not been adequately quantified.

This matter forms part of the reasons for refusal of the application.

- (k) **Issue:** Visual privacy impacts to apartments with window openings on the eastern elevation of the adjoining building at 347 Liverpool Street, Darlington from the proposed rooftop open spaces and, apartment balconies and windows on the western elevation of the new residential flat building.

Response: The proposal incorporates measures to mitigate against overlooking between apartment balconies and windows proposed on the subject site and existing windows within the adjoining building at 347 Liverpool Street, Darlington. Insufficient detail on the design of these screens has been provided with the application to demonstrate effective mitigation.

The design does not sufficiently detail any privacy treatments to the windows to the rear facade or edges of the areas of private and communal open space at level 7, particularly in relation to overlooking to the windows to apartments within the adjoining lightwells, or to the communal rooftop area of the adjoining building at 347 Liverpool Street, Darlington, or down into areas of private open space at the rear of the site.

- (l) **Issue:** Acoustic privacy impacts to apartments with window openings on the eastern elevation of the adjoining building at 347 Liverpool Street, Darlington from the use of the apartment balconies and windows on the western elevation of the new residential flat building, rooftop communal open space and vehicle traffic along Darley Place.

Response: The proposal has been accompanied by an acoustic report which provides an assessment of potential noise impacts arising from the new development and recommends a range of measures to mitigate these impacts.

The report has been reviewed by the City's Health and Building Unit and is supported. Had the recommendation of this assessment been for approval, conditions requiring implementation of its recommendation would have been recommended.

- (m) **Issue:** Loss of natural ventilation to brick cavity vents and weepholes, and apartments with window openings on the eastern elevation of the adjoining building at 347 Liverpool Street, Darlington, as a result of the proposed nil and minimal side boundary setbacks.

Response: There is no easement for encroachments, light or ventilation over the side boundary of the subject site which burdens the subject site and benefits the adjoining property at 347 Liverpool Street, Darlington.

- (n) **Issue:** Overshadowing of the building at 355-357 Liverpool Street, Darlington.

Response: There will be additional overshadowing of the boarding house at 355-357 Liverpool Street, Darlington in the afternoon at midwinter, as a result of the proposed development.

The sun's eye view diagrams submitted with the application indicate that the additional shadow falls largely over the roof areas of this site, and that the rear communal open space is already heavily overshadowed at midwinter.

- (o) **Issue:** Incompatible height relationship with the buildings at 347 Liverpool Street, Darlington and 5 Darley Street, Darlington.

Response: The height relationship of the proposal with the two buildings referred to above is unsatisfactory, as identified elsewhere in this assessment.

This matter forms part of the reasons for refusal of the application.

- (p) **Issue:** Overshadowing of apartments within the building at 102 Burton Street, Darlington.

Response: The sun's eye view and shadow diagrams submitted with the amended application indicate that the building elements of proposal which do not comply with the maximum height of buildings standard will cast additional shadow across northern and eastern elevations of the building at 102 Burton Street, Darlington, between 9am and 9.45am at the midwinter solstice.

The precise extent of overshadowing of window openings of this building arising as a result of the proposed development is not quantified however, as the openings have not been modelled.

This forms part of the reasons for refusal of the application.

- (q) **Issue:** Visual privacy impacts to apartments within the building at 102 Burton Street, Darlington.

Response: The separation distance between the rear elevation of the proposed development and the building at 102 Burton Street, Darlington is in excess of 40 metres. This comprises an adequate building separation providing a reasonable level of visual privacy, in accordance with the relevant design criterion under Objective 3F-1 of the ADG.

- (r) **Issue:** Overshadowing of the roof top solar panels of the dwelling house at 5 Darley Place, Darlington.

Response: Noted. This matter forms part of the reasons for refusal of the application.

- (s) **Issue:** Visual privacy impacts to the dwelling house at 7 Darley Street, Darlington.

Response: The separation distance between the rear elevation of the proposed development and the building at 7 Darley Street, Darlinghurst exceeds 18 metres. This comprises an adequate building separation providing a reasonable level of visual privacy, in accordance with the relevant design criterion under Objective 3F-1 of the ADG.

- (t) **Issue:** Overshadowing of the private open space at 7 Darley Street, Darlinghurst.

Response: The sun's eye view and shadow diagrams submitted with the amended application indicate that the proposal will cast additional shadow across the elevated area of private open space at the rear of the property at 7 Darley Street, Darlinghurst, between 11am and 1pm at the midwinter solstice.

The precise extent of overshadowing of this area arising as a result of the proposed development is not clearly quantified however, as the space has not been modelled in detail.

This forms part of the reasons for refusal of the application.

- (u) **Issue:** Overshadowing of, and loss of daylight access to an apartment at 280 Liverpool Street, Darlinghurst.

Response: The existing residential flat building at 280 Liverpool Street, Darlinghurst, is located to the north-east of the site and the subject apartment faces south. The proposal will not cast any shadow over this building.

The proposal will not result in any significant loss of daylight access to the subject apartment.

- (v) **Issue:** Loss of outlook from an apartment at 280 Liverpool Street, Darlinghurst.

Response: The proposal will not result in any significant loss of outlook from the subject apartment, given that it is located in excess of 25 metres across the full width of Liverpool Street from the front boundary of the development site.

- (w) **Issue:** Overshadowing of the dwelling house at 2-3 Darley Place, Darlinghurst.

Response: The proposal will result in additional overshadowing of the front yard and window openings of the dwelling house on the property at 2-3 Darley Place, Darlinghurst between approximately 10am and 11.15am at the midwinter solstice.

The precise extent of overshadowing of this area arising as a result of the proposed development is not clearly quantified however, as the space has not been modelled in detail.

This forms part of the reasons for refusal of the application.

- (x) **Issue:** Loss of property value.

Response: Matters relating to loss of property value are not considerations that can be given weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.

- (y) **Issue:** Mental and emotional health impacts.

Response: Matters relating to mental and emotional health impacts are not considerations that can be given weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.

- (z) **Issue:** Demolition and construction noise, vibration and dust impacts.

Response: The proposal has been accompanied by an acoustic report which contains a construction vibration assessment, which has been reviewed by the City's Health and Building Unit and is supported.

Had the recommendation of this assessment been for approval, conditions requiring the preparation of (and compliance with) a detailed construction noise and vibration management plan and construction management measures (including dust control) to manage these impacts throughout the demolition and construction phases of the development.

- (aa) **Issue:** The existing building should be adaptively reused.

Response: There are no planning controls applicable to the site that could be relied upon to require the retention and adaptive reuse of the existing building.

- (bb) **Issue:** Height of proposal should be reduced by 2 to 3 storeys, or the height of the existing building retained.

Response: Council staff concur that the proposal should comply with the height controls, however it must be noted that where developments do achieve compliance with applicable planning controls, more onerous standards cannot be applied.

- (cc) **Issue:** Side setbacks similar to the existing buildings should be required as a consent condition.

Response: The proposed side setbacks are not supported. The recommendation is for refusal on this basis.

- (dd) **Issue:** Side setbacks should be increased to permit views of the eastern side elevation of the building at 347 Liverpool Street, Darlinghurst.

Response: Noted. Advice received from the City's Heritage Specialist supports this position, raising concern with regard to preservation of views from the public domain along Liverpool Street to the silhouette of a previously existing terrace.

- (ee) **Issue:** Developer profiteering.

Response: Matters relating to profit seeking are not considerations that can be given weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.

- (ff) **Issue:** Loss of dwelling diversity in Darlinghurst and more 3 bedroom apartments not needed in the locality.

Response: As discussed elsewhere in this assessment report, the flexible housing and dwelling mix provisions in the Sydney DCP 2012 do not apply to the proposal. The proposed mix of 2 and 3 bedroom apartments is acceptable with regard to dwelling diversity considerations.

- (gg) **Issue:** An additional storey should be incorporated so that the setback from 347 Liverpool Street, Darlinghurst can be increased.

Response: The proposed height of development does not comply with the height controls applicable to the site, and the environmental impacts associated with these non-compliances are not supported. Additional building height would exacerbate the degree of environmental impact identified elsewhere in this assessment report.

- (hh) **Issue:** Excavation impacts on the water table.

Response: Noted. The lack of detailed geotechnical assessment of the proposal, including any excavation-associated impacts to groundwater, is discussed elsewhere in this report.

This matter forms part of the reasons for refusal of the application.

- (ii) **Issue:** Pedestrian wind effect impacts on the public domain to Liverpool Street.

Response: The wind effects provisions in Section 3.2.6 of the Sydney DCP 2012 do not apply to the proposal, and the proposal is acceptable with regard to pedestrian wind effects considerations.

- (jj) **Issue:** Car parking spaces for each home are not required given the area is close to jobs and public transport.

Response: As discussed elsewhere in this assessment report, the proposed car parking facility is generally acceptable with regard to the applicable car parking controls in the Sydney LEP 2012 and Sydney DCP 2012.

- (kk) **Issue:** No new buildings should have more than 1 level of basement car parking, and setback at least 1 metre from the property boundaries, due to the shallow footings of adjoining and nearby heritage buildings.

Response: Excavation of development sites is assessed on a merit basis, case by case, and site by site.

Excavation for more than 1 level of basement car parking may be theoretically acceptable, subject to the provision of appropriate boundary setbacks and detailed structural and geotechnical information, including safe construction methodology.

- (ll) **Issue:** At grade parking should be provided, rather than basement parking.

Response: At grade parking is not proposed, and the relevant planning controls in Section 3.11 the Sydney DCP 2012 preference basement parking facilities over at grade parking.

- (mm) **Issue:** The proposal does not satisfy design quality principles 1, 2 and 6 in SEPP 65.

Response: As discussed elsewhere in this assessment report, the proposal adequately addresses some of the 9 design quality principles set out in Schedule 1 of SEPP 65, but fails to achieve others, including those noted by the submitter.

This matter forms part of the reasons for refusal of the application.

- (nn) **Issue:** Lack of practical, equitable access at the front entrance of the proposal.

Response: The amended application lodged with the City on 31 March 2023 amended the design of the front entrance to provide a platform lift, which is acceptable with regard to the access controls in Section 3.12 of the Sydney DCP 2012.

- (oo) **Issue:** Non-resident access to Darley Place should be prohibited, and all access should be from Liverpool Street.

Response: This matter goes beyond the assessment of the subject development application, however it is noted that Darley Place is a public road and is accessible to all road users.

No objection is raised by Council staff to the proposed vehicular and pedestrian access to Darley Place.

- (pp) **Issue:** Limited site access along Darley Place, no construction management details, and construction and pedestrian traffic impacts, including a requirement for emergency medical access at all times.

Response: The application has provided inadequate information relating to construction management, particularly as it relates to construction traffic and pedestrian management.

This matter forms part of the reasons for refusal of the application.

- (qq) **Issue:** Architecture does not exhibit design excellence.

Response: As noted elsewhere in this assessment report, the proposal is not considered to exhibit design excellence in accordance with the requirements of Clause 6.21C of the Sydney LEP 2012.

This matter forms part of the reasons for refusal of the application.

- (rr) **Issue:** Excessive street tree pruning.

Response: The City's Tree Management has provided advice that pruning of the street trees along Liverpool Street is acceptable, subject to conditions.

- (ss) **Issue:** No solar panels and inadequate detail of roof configuration.

Response: A roof plan was submitted with the amended application lodged with the City on 31 March 2023 which depicts the PV array required by the BASIX certificate submitted with the original application.

- (tt) **Issue:** Inadequate fire hydrant design.

Response: Insufficient detail has been provided in relation to the services proposed to the Liverpool Street frontage of the site.

This matter forms part of the reasons for refusal of the application.

- (uu) **Issue:** Staged construction certificates should not be approved.

Response: The recommendation is for refusal of the application, however had the recommendation been for approval, staging of construction certification would have been considered on a merit basis.

- (vv) **Issue:** Fire protection measures should be demonstrated to protect proposed openings along the side boundaries.

Response: The amended application lodged with the City on 31 March 2023 has been accompanied by documentation prepared by a qualified fire engineer which outlines these measures.

- (ww) **Issue:** Insufficient perspective images

Response: Additional perspective images were provided with the amended application lodged with the City on 31 March 2023.

- (xx) **Issue:** Insufficiently detailed facade design and materials.

Response: Although materials and finishes schedules were provided with both the original and amended applications, however these are insufficiently detailed to demonstrate that the proposal exhibits design excellence.

This matter forms part of the reasons for refusal of the application.

- (yy) **Issue:** Darley Place, comprising 1, 2, 3, 4 and 5 Darley Place, is a unique rare historic precinct of important Georgian houses. 2 and 4 Darley Place are not drawn correctly in the plans, nor are they taken into account or addressed at all in the Heritage Impact Statement.

Response: Noted. As outlined above, the recommendation is for refusal, partly on the basis of heritage impacts associated with the proposal.

- (zz) **Issue:** Inappropriate balcony design.

Response: The proposed balcony design is inconsistent with the design guidance informing objective 4E-2 of the ADG.

This matter forms part of the reasons for refusal of the application.

- (aaa) **Issue:** No dilapidation survey.

Response: Dilapidation reports are generally not required to be submitted with a development application. Had the recommendation of the assessment been for approval, appropriate conditions requiring the preparation of pre and post construction dilapidation reports for adjoining and nearby properties.

- (bbb) **Issue:** Construction works should be restricted to 9am to 3pm on weekdays only.

Response: Had the recommendation of this assessment been for approval, a condition would have been recommended to limit construction hours in accordance with the City of Sydney Construction Hours Noise Policy 1992.

(ccc) **Issue:** Asbestos contamination.

Response: Had the recommendation of this assessment been for approval, a condition would have been recommended to ensure the removal of asbestos is carried out in accordance with the relevant State legislation, policy and guidelines.

(ddd) **Issue:** Loss of affordable housing.

Response: As discussed elsewhere in this report, Part 3 of the Housing SEPP relating to the retention of existing affordable rental housing does not apply to the proposal.

As discussed under the 'Financial Contributions' heading, had the recommendation of the assessment been for approval, a condition would have been recommended requiring the payment of an affordable housing contribution in accordance with Clause 7.13 of the Sydney LEP 2012.

(eee) **Issue:** A new side boundary wall should be erected along the eastern boundary adjacent to the proposed light well and balconies for the full height of the development, as they are not required for solar, daylight or ventilation access, and they will borrow amenity from the adjoining site at 355-357 Liverpool Street, Darlinghurst.

Response: Noted. Had the recommendation of this assessment been for approval, a condition would have been recommended requiring a covenant to be imposed requiring any openings on the boundary to be closed upon redevelopment of the adjoining property, as per the City's standard practice.

202. The submissions in support of the proposal raise a number of matters, which are summarised and addressed below.

(a) **Issue:** The existing building is not appealing, does not fit within the street context, and the proposal makes better use of the site and provides more desirable housing stock

Response: The replacement of the existing building on the site with an appropriately designed infill development is supported in principle.

Irrespective of this however, and as outlined in detail in the assessment provided in this report, the environmental impacts associated with the proposal and lack of sufficient information to justify the new development is not supported.

(b) **Issue:** The design of the proposed facade of the new building, including its expression, colouring and materiality, has architectural merit and will fit and harmonise well within the streetscape.

Response: Elements of the proposed facade design have architectural merit, however other elements, including its grid like expression, unsympathetic solid to void ratio, and large fixed glazed window openings are not compatible with the streetscape, and are not supported.

(c) **Issue:** The proposal provides on-site parking facilities which will provide relief for existing on-street parking spaces.

Response: The existing residential flat building provides 17 on-site at grade car parking spaces.

The proposed basement car parking facility reduces the number of on-site car parking spaces to 15, for a net loss of 2 car parking spaces on the site.

As discussed elsewhere in this assessment report, the quantum of proposed car parking and design of the parking facility is generally acceptable with regard to the planning controls for parking in the Sydney LEP 2012 and Sydney DCP 2012.

- (d) **Issue:** The proposal complies with the maximum FSR for the site.

Response: Noted. The density of the proposed development is acceptable in this regard.

- (e) **Issue:** The design of the proposal does not detract from and is sympathetic to the heritage buildings along Liverpool Street, including the adjoining heritage item at 347 Liverpool Street, Darlinghurst.

Response: Advice received from the City's heritage specialist is that the proposal detracts from the significance of the adjoining and nearby heritage items, contributory buildings, and surrounding heritage conservation area. It is not supported on this basis.

- (f) **Issue:** The architect and developer have previously produced quality, award winning developments.

Response: Noted. The application is recommended for refusal on a planning merits basis and the record of the proponent and designer is not a relevant matter for consideration under the Environmental Planning and Assessment Act, 1979.

- (g) **Issue:** The proposal seems to be within the planning controls applicable to the site and should be granted consent.

Response: The assessment provided in this report outlines a range of non-compliances with the applicable planning controls for the site and proposed development. The recommendation is for refusal on this basis.

- (h) **Issue:** The height of the proposal is appropriate in its context.

Response: The proposal does not comply with the maximum height of buildings, storey height, or street wall height controls applicable to the site and, as discussed elsewhere in this assessment, is not appropriate in its context along Liverpool Street.

Financial Contributions

Contribution under Section 7.11 of the Environmental Planning and Assessment Act, 1979

203. The proposed development is subject to Section 7.11 development contributions under the provisions of the City of Sydney Development Contributions Plan 2015.

204. Had the recommendation of this assessment been for approval, credits would have been applied for the approved use of the site, which is a residential flat building with 24 dwellings.
205. The credits for the existing approved use of the site are greater than the requirement for \$280,000 in Section 7.11 contributions generated by the proposal, which is for a residential flat building with 14 dwellings, consisting of 2 two bedroom and 12 three bedroom dwellings.
206. As a result, and in accordance with the City of Sydney Development Contributions Plan 2015, there is no net population increase on the site as a result of the proposal, and no requirement for the payment of any Section 7.11 contributions to the City.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

207. The site is located within the residual lands affordable housing contribution area.
208. The proposal involves the erection of a new building with a gross floor area of more than 200 square metres.
209. An affordable housing levy contribution of 3 per cent of the total floor area of the development is required, at a rate calculated in accordance with the City of Sydney Affordable Housing Program.
210. The City of Sydney Affordable Housing Program requires such a contribution at a rate of \$10,611.53 per square metre of residential total floor area (TFA).
211. It is noted that neither the original application or the amended application have been accompanied by TFA diagrams.
212. Had the recommendation of this assessment been for approval, a condition of consent requiring the payment of an affordable housing contribution would have been recommended.

Relevant Legislation

213. Environmental Planning and Assessment Act, 1979.
214. Local Government Act, 1993.
215. Roads Act, 1993.
216. Sydney Water Act, 1994.

Conclusion

217. The subject application seeks development consent for the demolition of the existing residential flat building, tree removal, excavation of the site and construction of a new residential flat building with 8 storeys, 3 basement levels, 15 car parking spaces, 14 apartments, rooftop communal and private open space, and associated landscape works including new tree plantings.

218. The application is reported to the Local Planning Panel for determination as the proposal involves development to which State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development applies and is more than four storeys in height. It is also referred because it represents contentious development, due to the receipt by the City of more than 25 unique submissions made by way of objection to the proposal.
219. The proposed development fails to comply with the maximum height of buildings development standard pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012. A Clause 4.6 variation request relating to the exceedance of the standard has been submitted with the application but is not supported by Council staff because of unacceptable environmental impacts associated with the variation.
220. Insufficient information has been provided with the application with regard to view impact assessment, overshadowing, visual and acoustic privacy, contamination, landscape design, acoustic assessment, geotechnical and structural assessment, and construction and waste management.
221. The design and materiality of the residential flat building does not provide an appropriate relationship to adjacent buildings and the immediate locality and is out of character with the streetscape along Liverpool Street and Darley Place. The height and minimal setbacks to the proposed development are not compatible with the neighbouring development.
222. The development will result in an unsatisfactory level of amenity for future occupants due to reliance on light wells for ventilation, visual and acoustic privacy impacts, and compromised amenity due to the design of the residential flat building. The application will result in unacceptably adverse amenity impacts, including loss of views, overbearing visual bulk and scale impacts, overshadowing and privacy impacts to neighbouring properties.
223. The development does not exhibit design excellence, comprises an overdevelopment of the subject site, is not compatible with the desired future character of the local area and is not in the public interest. As such, the application is recommended for refusal.

ANDREW THOMAS

Executive Manager, Planning and Development

David Reynolds, Area Coordinator