

Item 7.**Development Application: 107-109 Darlinghurst Road, Potts Point - D/2022/1107**

File No.: D/2022/1107

Summary**Date of Submission:** 27 October 2022**Applicant:** James Burns**Architect/Designer:** James Burns Architect**Owner:** Raben Footwear Pty Ltd**Planning Consultant:** Navon Planning**Heritage Consultant:** Heritage 21**Cost of Works:** \$4,641,628.00**Zoning:** E1 - Local Centre

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

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

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

Although additional floorspace is proposed, the proposed occupancy of the backpacker accommodation is reduced from a maximum of 94 guests as existing, to 91 guests proposed and a manager's room. This is due to upgrading of existing facilities and amenities, including the creation of

an enlarged lightwell void to improve amenity of the backpackers' rooms.

Proposed changes to the retail arcade entrance to Kings Cross Station involve a new backpacker hostel reception/lift lobby, with the creation of 2 new pocket retail tenancies either side. An existing coffee cart tenancy within the arcade adjacent to Darlinghurst Road is also to be retained.

The proposed development is in breach of the maximum height of buildings and floor space ratio development standards applying to the site, pursuant to Clause 4.3 and Clause 4.4 of the Sydney Local Environmental Plan 2012. The applicant has submitted Clause 4.6 variation requests to seek approval to vary these development standards, however these requests are not supported.

The application is reported to the Local Planning Panel for determination as it represents a significant departure from the floor space ratio development standards applying to the site. Council officers have calculated that the proposed development seeks approval for a 74% variation of the floor space ratio development standard. The application therefore sits outside Council's delegation and is required to be determined by the Local Planning Panel in accordance with Schedule 3 of the Local Planning Panels Direction.

The application is recommended for refusal as it represents a significant departure from the floor space ratio development standard, adversely impacts upon the residential amenity of neighbouring apartments and fails to exhibit design excellence.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

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

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request - Floor Space Ratio
- C. Clause 4.6 Variation Request - Height

Recommendation

It is resolved that consent be refused for Development Application Number D/2022/1107 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

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

- (J) The development is considered unsatisfactory when assessed against the considerations contained in 6.21C (2) of the Sydney Local Environmental Plan 2012, particularly as it:
- (i) does not demonstrate that a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved;
 - (ii) does not demonstrate that the form and external appearance of the proposed development will improve the quality and amenity of the public domain; and
 - (iii) will result in unacceptable overshadowing impacts to neighbouring properties.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 and Lot 5 in Deposited Plan 802224, and is commonly known as 107-109 Darlinghurst Road, Potts Point. It is irregular in shape with area of approximately 259 square metres.
2. Lot 1 has a size of 239.1 square metres, a frontage of 9.25 metres to Darlinghurst Road and a rear aspect of 4.6 metres to Earl Place. Lot 1 is located on the north-western side of Darlinghurst Road and currently accommodates a 7-storey building which includes 3 storeys of basement. The existing building was previously used as backpacker accommodation, however has been vacant since the onset of the COVID-19 pandemic.
3. Lot 5 has a size of 19.1 square metres and contains fire escape stairs for the building.
4. The site is subdivided in stratum with Lot 2, Lot 3 and Lot 4 of Deposited Plan 802224 forming the Transport Asset Holding of NSW and known as 109A Darlinghurst Road, Potts Point. Lot 2 in Deposited Plan 802224 contains the entrance way arcade to Kings Cross Station, at the ground floor / part of the first-floor void area. These lot holdings are situated within the same site boundaries but are unaffected by the proposed development and the application does not propose any works or changes to these areas.
5. The site is burdened by a number of easements, including rights of footway through the site to Kings Cross Station and fire escape access for users to Earl Street.
6. Adjoining to the north is 99-105 Darlinghurst Road, which is a five-storey mixed use residential building with retail uses at ground floor.
7. To the east is the row of 3-storey properties on the opposite eastern side of Darlinghurst Road, primarily containing retail/entertainment uses at ground level and shop-top housing or commercial space above.
8. To the south is 113 Darlinghurst Road, which is a twenty-storey residential flat building known as 'Omnia' (or 'Crest Apartments'), with retail uses on the ground level.
9. To the west is 214-220 Victoria Street, a twelve-storey residential flat building with the Victoria Street station access to Kings Cross Station at ground level.
10. The surrounding area is generally characterised by a mixture of land uses, primarily retail at ground floor and generally residential or commercial uses on upper levels.
11. The site is not identified as a heritage item but is located within the Potts Point heritage conservation area (Map reference C51). The site is identified as a detracting building within the heritage conservation area.
12. The site is located within the Kings Cross locality and is not identified as being subject to flooding.
13. Site visits were carried out on 23 January 2023 and 10 August 2023.
14. Photos of the site and its surroundings are provided below.

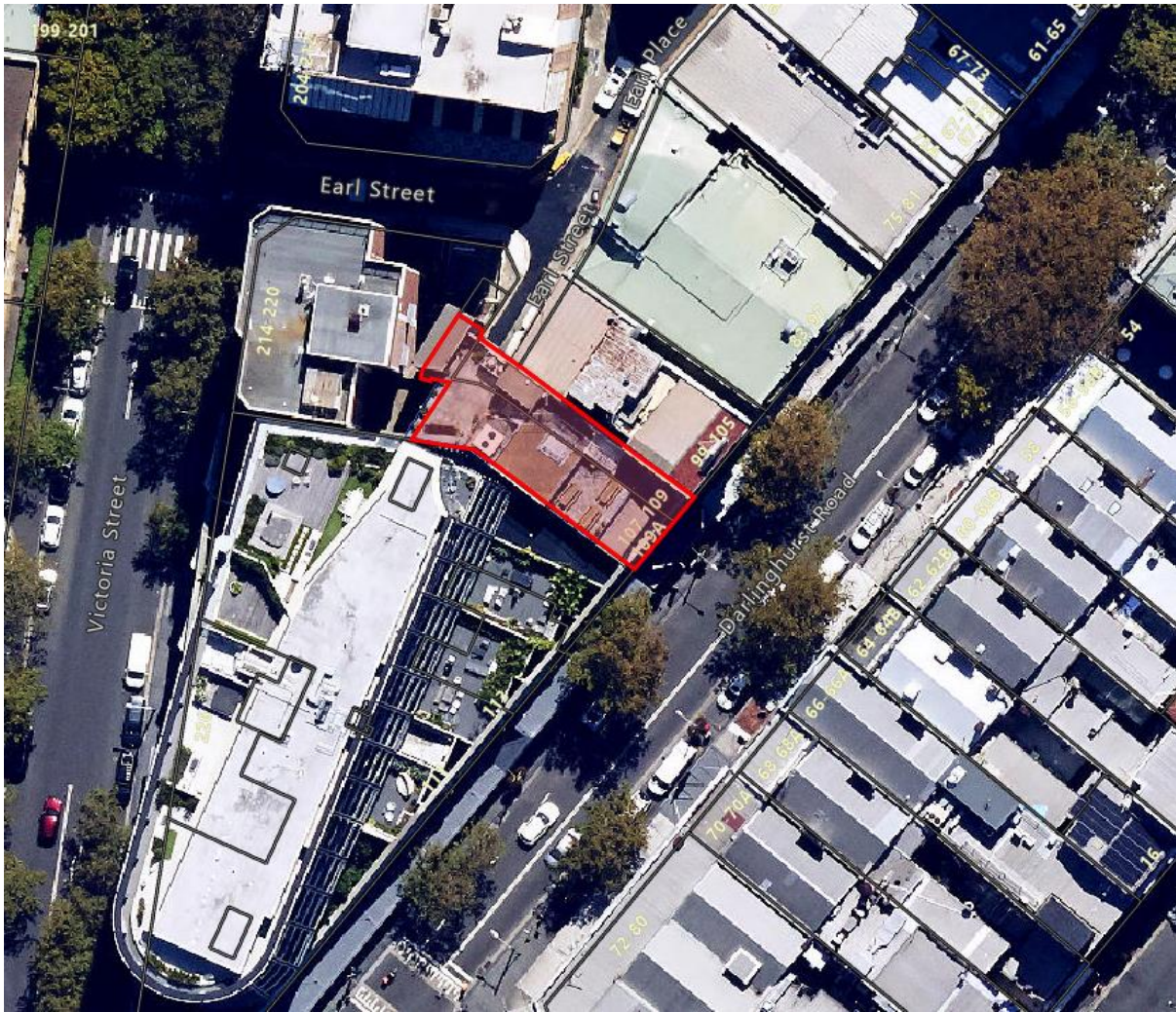


Figure 1: Aerial view of the site (shown shaded in red) and surroundings



Figure 2: Front of the site viewed from Darlinghurst Road, looking west



Figure 3: Looking south-west along Darlinghurst Road



Figure 4: Looking north along Darlinghurst Road



Figure 5: Rear of the site viewed from Earl Street, looking south



Figure 6: Existing basement level 2



Figure 7: Existing basement level 1



Figure 8: Existing fire stair egress from basement levels to Earl Street



Figure 9: Ground level retail arcade and level 1 void looking towards Kings Cross Station entrance



Figure 10: Ground level retail arcade and level 1 void looking towards Darlinghurst Road

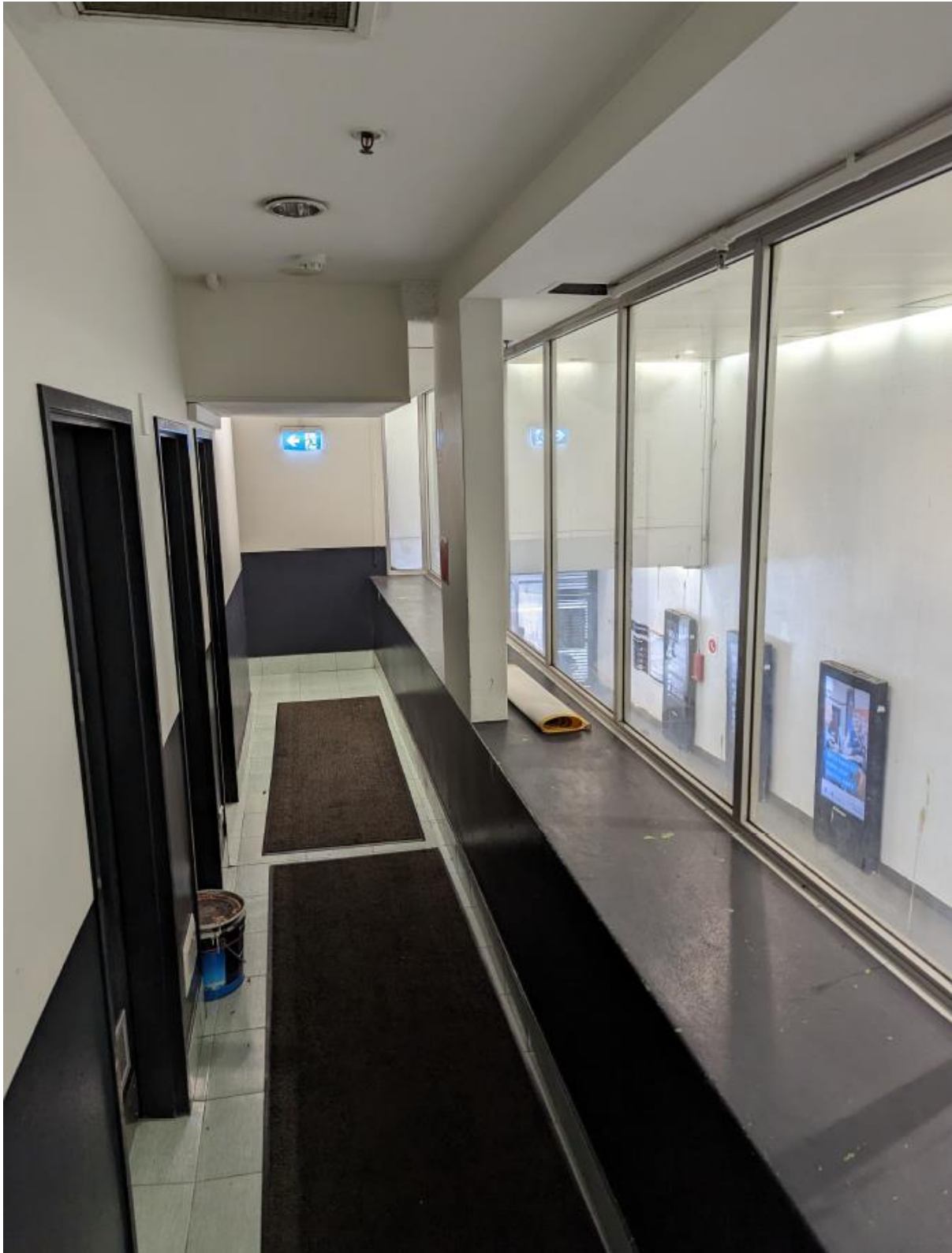


Figure 11: Level 1 walkway of backpacker accommodation overlooking retail arcade entrance to Kings Cross Station



Figure 12: Existing backpackers' room with outlook to retail arcade entrance to Kings Cross Station



Figure 13: Existing backpackers' room at front of the building with outlook to Darlinghurst Road



Figure 14: Existing backpackers' room at rear of the building with outlook to Earl Street



Figure 15: Eastern side of existing rooftop terrace at the front of the building looking south



Figure 16: Western side of existing rooftop terrace at the rear of the building looking west

History Relevant to the Development Application

Pre-Development Application Advice (PDA/2021/240)

15. Pre-development application advice was sought by the applicant on 18 August 2021 in relation to proposed renovation and upgrading of the existing mixed use building, including a new two-storey addition, and potential suitability of the site for a range of possible uses.
16. The request for advice listed the following possible uses of the site:
 - (a) backpacker accommodation (as per existing use);
 - (b) boarding house;
 - (c) hotel;
 - (d) student accommodation (serviced apartments);
 - (e) commercial premises (office premises); and
 - (f) Night club (at basement levels).
17. In response, Council issued advice on 28 September 2021 which confirmed that the proposal would be in breach of the principal height of buildings and floor space ratio development standards applying to the site.
18. Council's advice highlighted that the exceedance of the floor space ratio control represented a significant departure from the development standard and would unlikely be supported.
19. It was further advised that any future change of use or new use of the site would dictate the design and layout of the proposed built form and that as no single use was specified, it was difficult at the pre-development application stage to ascertain or comment upon how this would affect the built form as proposed.
20. Notwithstanding the above, the applicant was advised to consider how the provisions of the Building Code of Australia (BCA) may affect the planning and design of the building depending upon on the nominated use.
21. It was also advised that any proposal for backpacker accommodation, such as proposed under the current application, would need to demonstrate adherence with Section 4.4.8.1 and Section 4.4.8.4 of the Sydney Development Control Plan 2012, particularly in relation to the provision of communal recreation areas, kitchens, dining areas, bathrooms, laundry facilities and staff rooms.

Amendments

22. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant in order to facilitate accurate assessment of the proposed development and its associated impacts.
23. The applicant responded to Council's request and provided additional information in relation to the following:

(a) Overshadowing

Shadow diagrams and view from the sun diagrams provided at hourly intervals between 9am and 3pm on 21 June to facilitate assessment of overshadowing impacts upon neighbouring properties.

(b) Building Height

A three-dimensional height plane diagram provided to demonstrate which parts of the proposed rooftop areas exceed the Sydney Local Environmental Plan 2012 height control and the degree of non-compliance.

(c) Visual Impact Assessment

A three-dimensional photomontage view of the proposed development provided looking north-east from Darlinghurst Road to illustrate visual impact of the proposed rooftop additions within the streetscape.

(d) Structural Report

A structural report provided and prepared by a qualified structural engineer to confirm that the base building can accommodate the additional loads proposed by upper-level additions.

24. Following detailed review and consideration of the additional information provided, Council officers wrote to the applicant to advise that the proposed development was not be supported in its current form.
25. The applicant was advised that this was principally based on the significant exceedance of the floor space ratio control applying to the site and the developments impacts on adjoining properties. It was further advised that the proposed design was considered unsatisfactory as it failed to satisfy the design excellence provisions of the Sydney Local Environmental Plan 2012.
26. Given the above the applicant was informed that a the proposal would need to be subject of a significant redesign providing for a more modest development for the application to be supported.
27. The applicant submitted amended drawings which sought to address some of the issues raised by Council.
28. Council officers provided general feedback on the amended drawings; however it was advised that the principal threshold issue of the proposed development's significant exceedance of the floor space ratio control remained and that the amendments failed to adequately demonstrate design excellence.
29. The amended drawings therefore have not been formally accepted by Council.

Proposed Development

30. The application seeks consent for alterations and additions to the existing mixed-use building above Kings Cross Station, including construction of two additional levels.

31. The application principally proposes extension and upgrade of the existing backpacker hostel accommodation, in addition to changes to several small-scale pocket retail tenancies within the street level arcade entrance to Kings Cross Station.
32. The proposed scope of works consists of the following:

Extension and Upgrade of Backpacker Accommodation

- (a) construction of a two-storey addition atop of the existing building;
- (b) new covered roof terrace facing Earl Street;
- (c) new protruding balconies and framing surround off upper-level additions to Darlinghurst Road;
- (d) upgrade of backpacker facilities across all levels, including new sleeping rooms, communal lounge/dining/kitchen areas, manager's office and sleeping room, bathrooms and amenities - backpacker occupancy reduced from 94 guests to 91 guests;
- (e) changes to basement areas to provide reconfigured lounge/tv room and games room, staff room, laundry room, waste/storage areas, parking for 11 bicycles, bathrooms and amenities;
- (f) creation of an enlarged lightwell void from second floor extending up to roof level to improve amenity to sleeping rooms, communal areas and circulation spaces; and
- (g) new stairs and lift access;

Changes to Kings Cross Station Entrance Arcade

- (h) new backpacker hostel reception area and lift lobby directly accessible from arcade;
- (i) two new pocket retail tenancies either side of backpacker hostel reception; and
- (j) retention of existing coffee cart tenancy within the arcade adjacent to Darlinghurst Road; and

Darlinghurst Road Frontage

- (k) changes to Darlinghurst Road facade including changes to windows and openings, new brickwork and facade remediation works.

33. Plan, elevation and section drawing extracts of the proposed development are provided below.

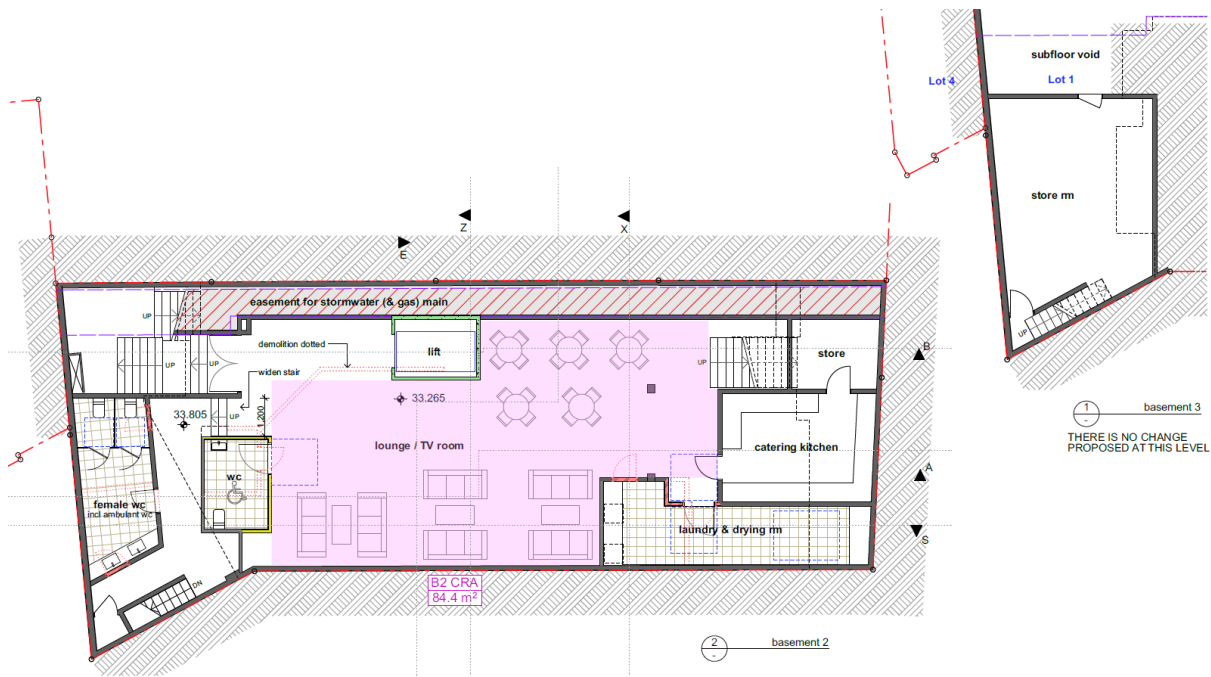


Figure 17: Proposed basement level 2 and basement level 3

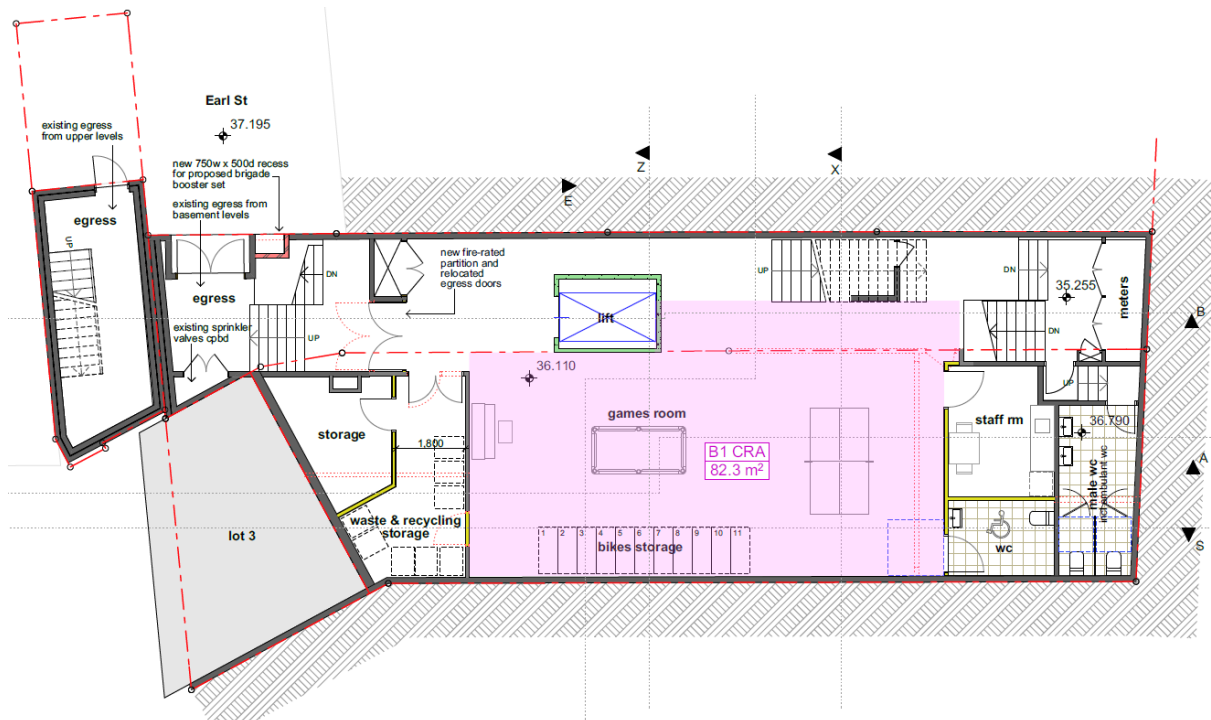


Figure 18: Proposed basement level 1

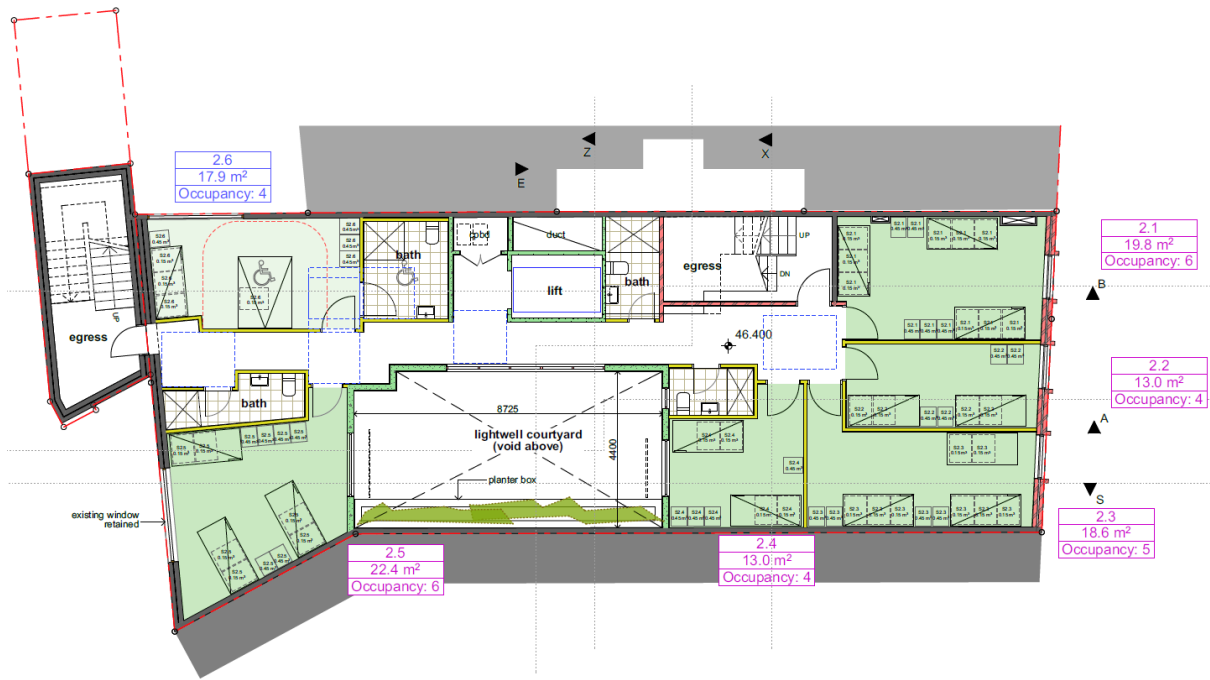


Figure 21: Proposed second floor

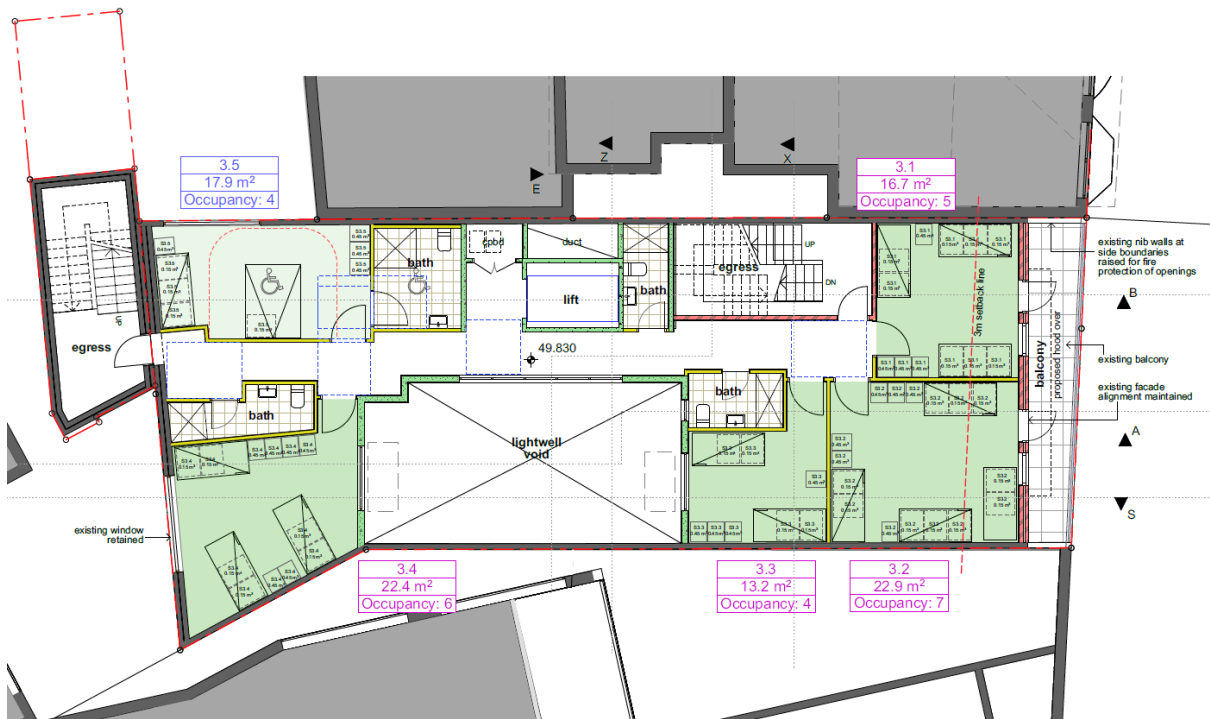


Figure 22: Proposed third floor



Figure 23: Proposed fourth floor

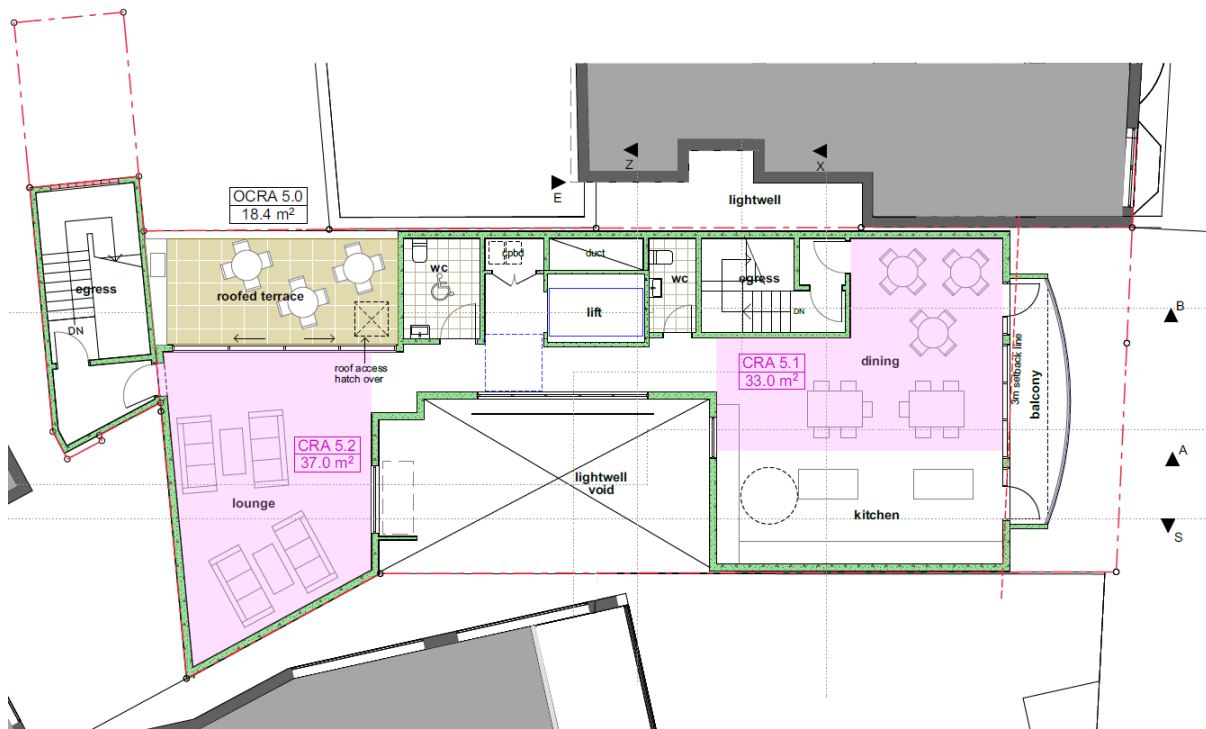


Figure 24: Proposed fifth floor

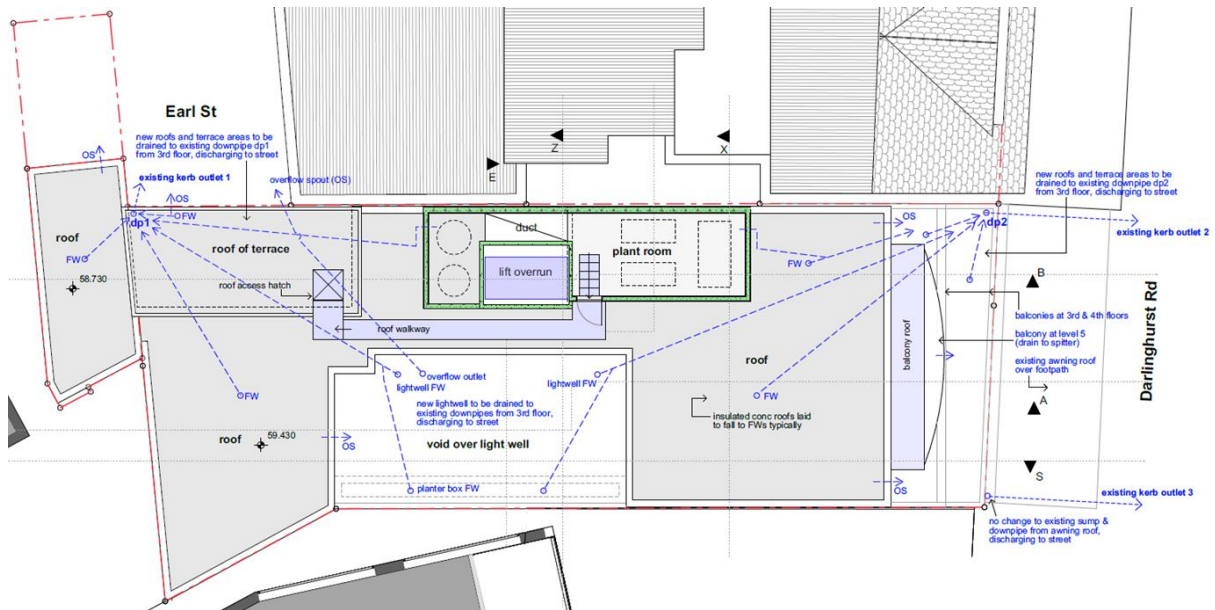


Figure 25: Proposed roof plan



Figure 26: Proposed eastern Darlinghurst Road elevation

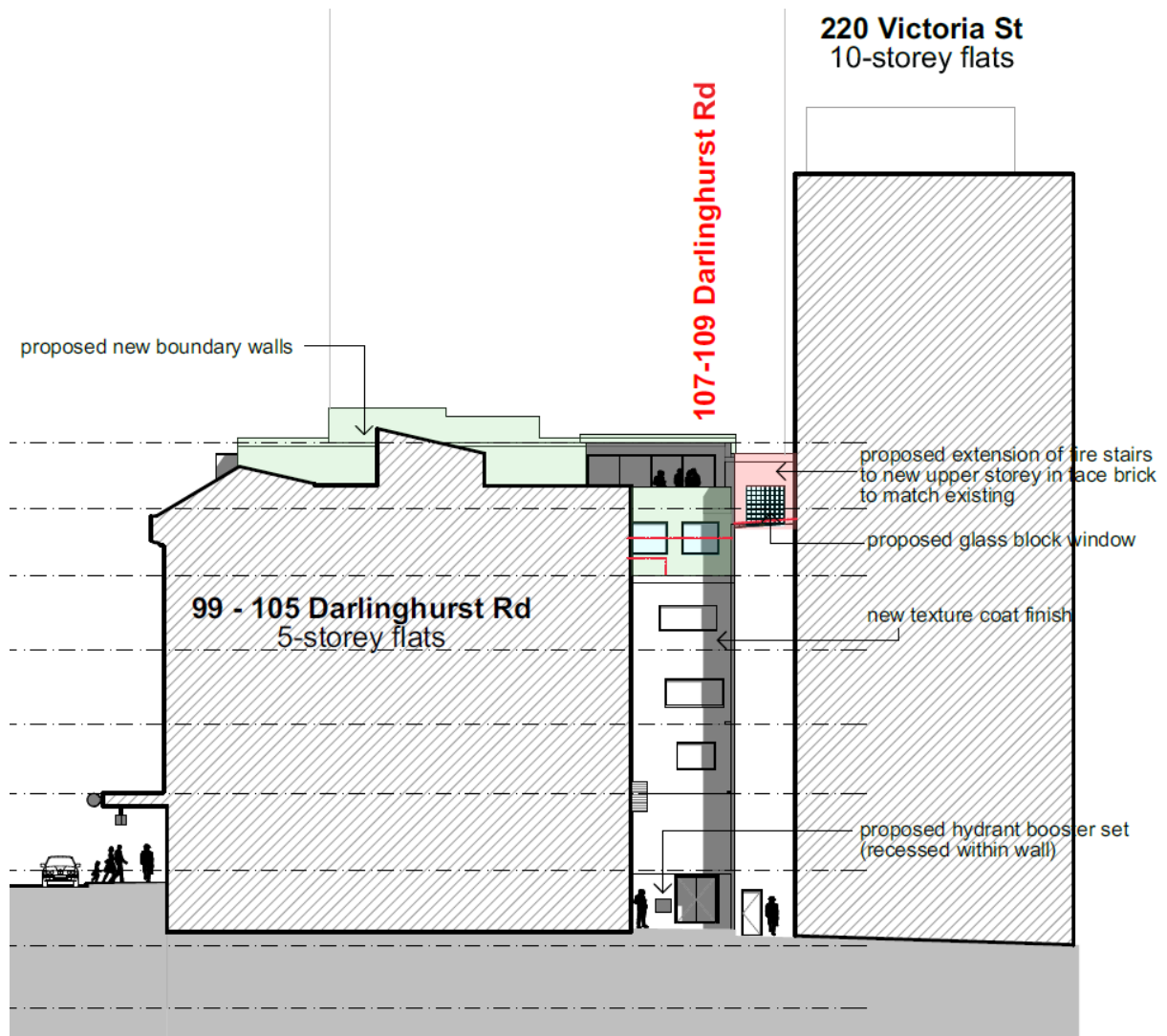


Figure 27: Proposed northern Earl Street elevation

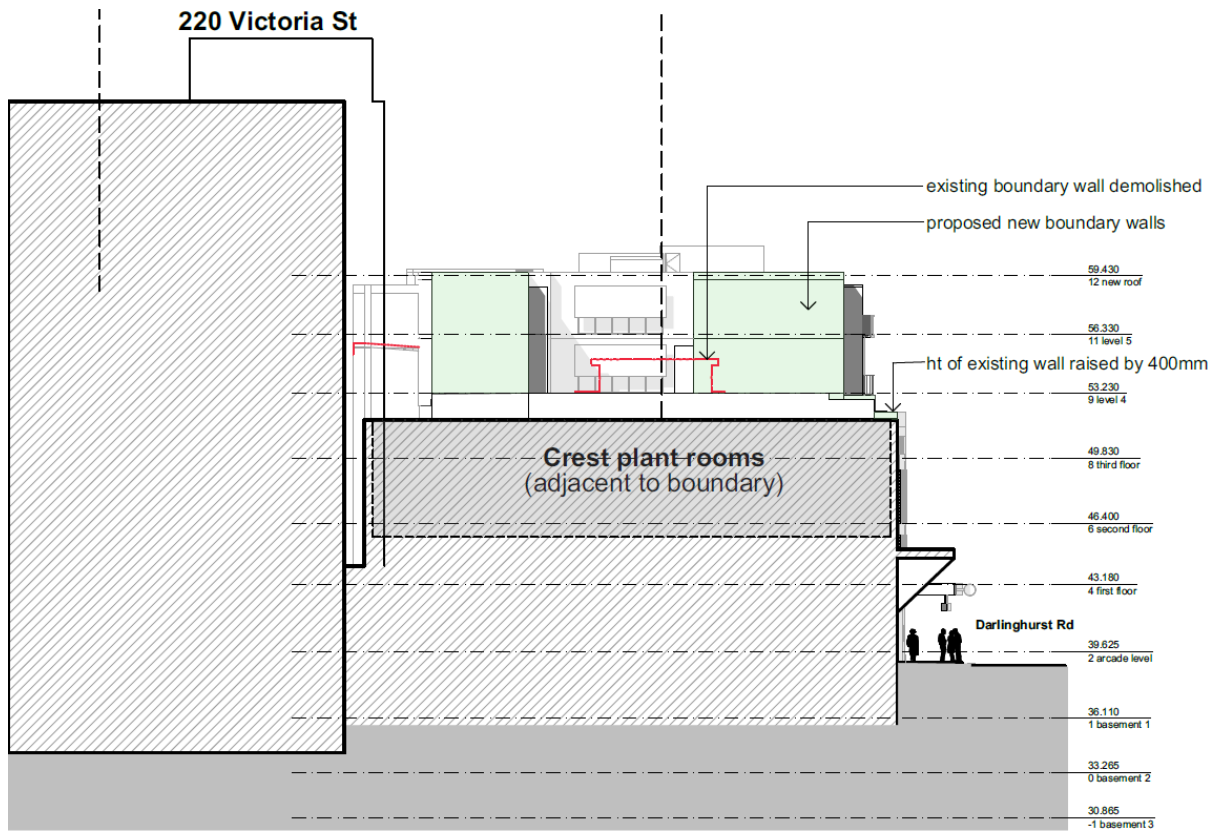


Figure 28: Proposed southern side elevation

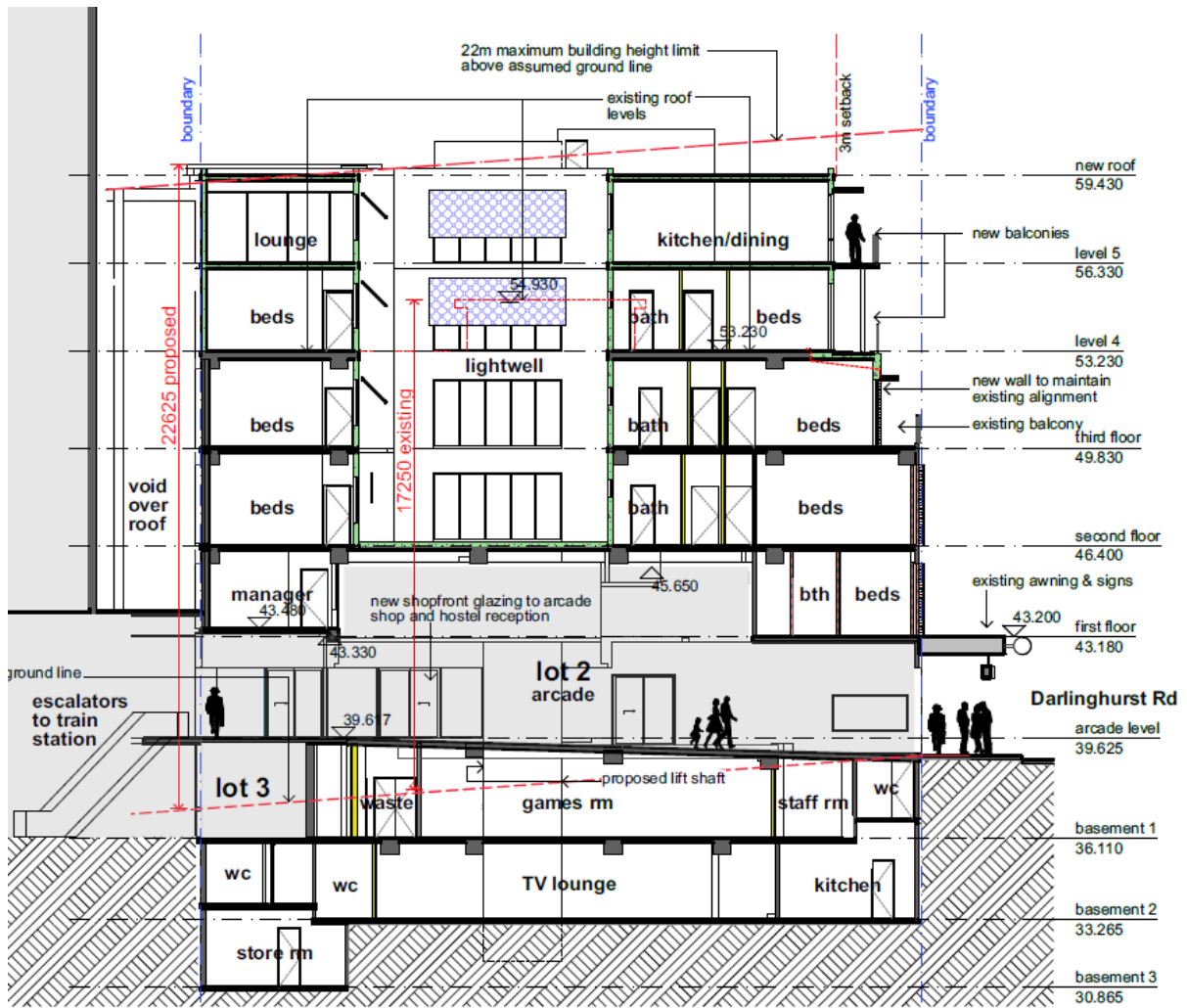


Figure 29: Proposed long section

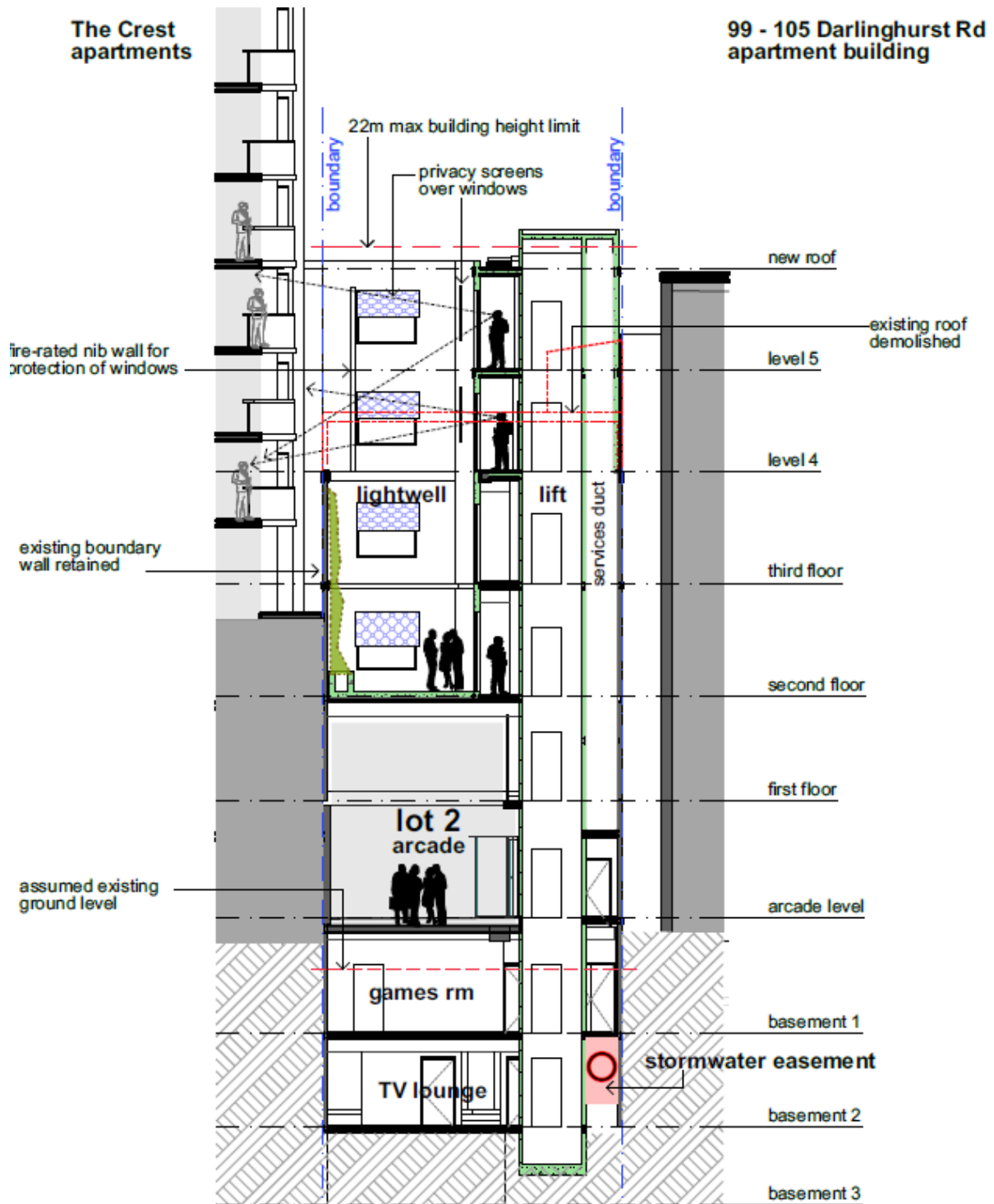


Figure 30: Proposed cross section

Assessment

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

State Environmental Planning Policies

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

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

Clause 2.98 – Excavation in, above, below or adjacent to rail corridors

36. Whilst the application does not propose excavation, it does involve development above and adjacent to a rail corridor as the development is situated above Kings Cross Train Station. Accordingly, the application was referred to Transport for NSW (Sydney Trains).
37. TfNSW (Sydney Trains) responded to advise that the proposed development has been assessed in accordance with the requirements of Section 2.99(4) and granted its concurrence to the development proposed in development application D/2022/1107.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021

38. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 10 of the SEPP (Biodiversity and Conservation) 2021. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
39. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the E1 - Local Centre zone. The proposed development is defined as a mixed-use development containing backpacker accommodation and retail premises, and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 22 metres is permitted.</p> <p>A height of 22.95 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. Refer to the further details provided in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>The site is subject to two different floor space ratio controls and a maximum floor space ratio of 2:1 and 3:1 applies over different parts of the site.</p> <p>The permitted gross floor area (GFA) across the site has been calculated to be 601.5 square metres.</p> <p>A floor space ratio of 4.02:1, or 1,038 square metres of GFA is proposed.</p> <p>The proposed development does not comply with the maximum floor space ratio development standards applying to the site.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted.</p> <p>Refer to the further details provided in the 'Discussion' section below, including assessment of compliance against each of the individual Floor Space Ratio controls.</p>
4.6 Exceptions to development standards	No	<p>The proposed development seeks to vary the development standards prescribed under Clause 4.3 and 4.4 of the Sydney Local Environmental Plan 2012.</p> <p>Clause 4.6 variation requests have been submitted with the application to seek</p>

Provision	Compliance	Comment
		<p>approval to vary the maximum floor space ratio and height of buildings development standards applying to the site.</p> <p>These Clause 4.6 variation requests are not supported.</p> <p>Refer to the further details provided in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is located within the Potts Point heritage conservation area (Map reference C51).</p> <p>The proposed development is not consistent with the heritage character of the area.</p> <p>Refer to the further details provided in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	No	<p>The proposed development does not exhibit design excellence.</p> <p>Refer to the further details provided in the 'Discussion' section below.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	<p>The proposed development involves alterations to an existing building that will result in the creation of more than 60 square metres of gross floor area that is intended to be used for a purpose other than residential accommodation, and</p>

Provision	Compliance	Comment
		therefore is subject to an affordable housing contribution. The application is not recommended for approval, however a contribution would apply if the application was considered for approval.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Development Control Plan 2012

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

Section 2 – Locality Statements

42. The site is located within the Kings Cross locality. The proposed development is not in keeping with the unique character and the design principles of the Kings Cross locality as it is inconsistent with the prevailing built form and fails to reinforce the urban form of Darlinghurst Road.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Partial compliance	The application does not provide any details of sustainability commitments and is not recommended for approval. Whilst not recommended for approval, it is considered that environmental sustainability and building performance could be appropriately addressed as part of a significant redesign.
3.9 Heritage	No	The site is located within the Potts Point Heritage Conservation Area (Map reference C51). The

Provision	Compliance	Comment
		<p>existing building is identified as a detracting building within the heritage conservation area.</p> <p>The proposed development is not consistent with the heritage character of the area.</p> <p>Refer to the further details provided in the 'Discussion' section below.</p>
3.11 Transport and Parking	Yes	<p>The application proposes to allocate 11 bicycle parking spaces within the basement which meets the requirements of the DCP.</p> <p>The application is not recommended for approval, however there is adequate space within the development to condition end of trip facilities to be provided in accordance with the provisions of the DCP if the application was considered for approval.</p> <p>The application was referred to Council's Transport and Access Unit who raised no objection.</p>
3.12 Accessible Design	Yes	<p>The applicant has provided an access report and access design statement which assesses the ability of the proposed building works to comply with the BCA.</p> <p>The reports suggests that there may be some inherent non-compliances in the design which will need to be addressed by way of a performance solution at Construction Certificate stage.</p> <p>Apart from this however, it is generally considered that the proposed works are capable of complying with the BCA without necessitating significant design changes.</p> <p>The application was referred to Council's Construction and Building Unit who raised no objection to approval of the development application, subject to recommended conditions of consent.</p> <p>The application is not recommended for approval, however all aspects relating to performance solutions to address disability standards would be required to be considered by</p>

Provision	Compliance	Comment
		the Certifying Authority prior to a Construction Certificate being issued for any consent.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Partial compliance	<p>The application was referred to Council's Cleansing and Waste Unit who observed that the proposed waste arrangements for the backpacker accommodation are not ideal in relation to waste storage or collection of bins as the waste needs to be transported up stairs for collection from Earl Street.</p> <p>However, the proposed waste arrangements for the backpacker accommodation are able to be supported in this instance as they reflect a business-as-usual approach and taking into account that there are limited alternatives.</p> <p>Notwithstanding the above, the application provides inadequate information to demonstrate how waste generated by the various retail tenancies and coffee cart within the Kings Cross Station entrance arcade will be stored and managed.</p> <p>Council officers have raised concerns with the applicant that in the absence of a waste storage area being identified, waste from the retail tenancies and coffee cart may be left in shared spaces whilst awaiting collection and obstruct the fire egress routes and stairs of the backpacker accommodation.</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	The site is permitted a maximum building height of 6 storeys with a maximum street frontage height of 4 storeys.

Provision	Compliance	Comment
		<p>The proposed development is 6 storeys in height with a street frontage height of 4 storeys.</p> <p>Section 4.2.2.2 of the DCP requires a setback above the prescribed street frontage height is to be a minimum of 3m.</p> <p>The proposed upper two levels are setback only 1.4m from the building frontage, will be highly visible from Darlinghurst Road and consequently the proposal does not comply with the street frontage height control.</p> <p>Refer to the further details provided under the sub-heading 'Height, Bulk and Massing' in the 'Discussion' section below.</p>
<p>4.2.2 Building setbacks</p> <p>4.2.2.2 Setbacks above the street frontage height</p>	No	<p>The proposal fails to reinforce the areas desired future character by presenting a development 2-storeys above the prescribed 4-storey street frontage height control applying to the site.</p> <p>Section 4.2.2.2 of the DCP requires a setback above the prescribed street frontage height is to be a minimum of 3m.</p> <p>The proposed upper two levels are setback only 1.4m from the building frontage. The proposed upper two levels are not sufficiently setback from the street frontage and will be highly visible from the public domain, contributing to the visual bulk and massing of the building.</p> <p>Refer to the further details provided under the sub-heading 'Height, Bulk and Massing' in the 'Discussion' section below.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	No	The DCP requires apartments within a development and neighbouring sites must achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on

Provision	Compliance	Comment
		<p>21 June onto at least 1 square metres of living room windows and a minimum 50% of the required minimum area of private open space area.</p> <p>The applicant has provided shadow diagrams and view from the sun diagrams to facilitate assessment of overshadowing impacts.</p> <p>The submission demonstrates that the proposed development will create additional overshadowing to living room windows and private open space areas of apartments within the Omnia Building (Crest Apartments) adjacent at 113 Darlinghurst Road.</p> <p>From this analysis it is evident that the proposal will restrict solar access to the living room windows and private open space areas of a number of the affected apartments to less than 2 hours between 9am and 3pm on 21 June.</p> <p>This constraining of solar access resulting in a non-compliance is directly associated with the proposed development's significant exceedance of the floor space ratio control applying to the site and is not supported.</p> <p>Refer to the further details provided under the sub-heading 'Overshadowing' in the 'Discussion' section below.</p>
4.2.3.2 Lightwells	Yes	<p>The application proposes to create a lightwell void to improve light and amenity to bedrooms and areas of the backpacker accommodation.</p> <p>The plans propose fire-rated nib walls off the lightwell to achieve BCA fire safety compliance to the boundary in addition to privacy treatment to windows to restrict overlooking impacts.</p> <p>The application is not recommended for approval, however further details of the privacy treatment measures could be provided as part of a redesign and updated submission demonstrating their</p>

Provision	Compliance	Comment
		<p>efficacy in restricting overlooking if the application was considered for approval.</p> <p>Window operability details of windows facing the lightwell would also be required to determine whether acoustic impacts to the lightwell require mitigation measures.</p>
4.2.3.6 Deep Soil	No, but acceptable	The proposed development provides no deep soil planting areas, however the non-compliance is acceptable in this instance as the site is fully occupied by the existing building which restricts opportunity for deep soil provision.
4.2.3.11 Acoustic privacy	Partial compliance	<p>The applicant has submitted an acoustic report with the application to assess the noise impacts of the backpacker accommodation impacting upon nearby residential receivers.</p> <p>The report advises the development is capable of complying with relevant noise standards provided that recommended noise attenuation measures as set out in the acoustic report are implemented. These attenuation measures include the resealing of acoustic seals.</p> <p>The submitted acoustic report has been reviewed by Council's Environmental Health Unit who have confirmed that the proposal can be supported subject to conditions requiring the recommendations of the report be implemented at construction stage.</p> <p>The application is not recommended for approval and the applicant would first need to confirm window operability details of windows facing the lightwell to determine the adequacy of any acoustic mitigation measures before imposing the above recommended condition.</p> <p>Additional conditions were also recommended restricting the use and occupancy of the proposed rooftop area, including banning of outdoor music, in</p>

Provision	Compliance	Comment
		<p>order to minimise acoustic impacts of the space.</p> <p>The application is not recommended for approval, however these recommended conditions could be readily applied to any consent if the proposal was considered for approval.</p>

4.4 Other Development Types and Uses

4.4.8 Visitor accommodation

Provision	Compliance	Comment
4.4.8.1 General	Yes	<p>The design of the proposed backpacker accommodation use provides acceptable levels of health, safety, cleanliness, amenity and administration for guests.</p> <p>It is appropriately located with good public transport links being that it is situated above Kings Cross Station and a Plan of Management has been submitted with the application which generally demonstrates that the use can operate without adversely impacting on the amenity of the surrounding locality.</p>
4.4.8.4 Additional provisions for backpacker accommodation	Yes	<p>The proposed sleeping rooms of the backpacker accommodation provide adequate space for the proposed number of guests and no single room will accommodate more than 8 guests, in compliance with DCP requirements.</p> <p>The plans demonstrate adequate storage for the proposed occupant capacity of the premises.</p> <p>Communal recreation areas are to be provided at a rate of 0.75 square metres per person based on the maximum number of guests. This equates to a minimum communal recreation area requirement of 68.25 square metres in this instance.</p> <p>The application identifies 152.2 square metres of communal recreation areas on</p>

Provision	Compliance	Comment
		<p>the submitted plans and complies with the provisions of the DCP.</p> <p>The proposed rooftop space has been designed to minimise acoustic impacts upon nearby residential properties and the submitted Plan of Management restricts the use of the space to between 7am and 10pm in accordance with the provisions of the DCP.</p> <p>The proposed layout of the backpacker accommodation provides adequate kitchen/dining areas, bathrooms and laundry facilities.</p> <p>A manager's office and sleeping room is identified on the proposed first floor plan for a resident on site manager.</p>

Discussion

Clause 4.6 Request to Vary Floor Space Ratio Development Standard

43. The site is subject to two different floor space ratio controls with a maximum floor space ratio of 2:1 and 3:1 applying over different parts of the site, pursuant to Clause 4.4 of the Sydney Local Environmental Plan 2012.
44. The application incorrectly identifies that a 2:1 Floor Space Ratio controls applies across the entire site which is inaccurate.
45. The permitted gross floor area across the site as a whole has been calculated to be 601.5 square metres.
46. This is calculated on the basis that the 3:1 Floor Space Ratio control applies across 83sqm of the site area - equating to a permissible gross floor area of 249sqm on that portion of the site; whilst the 2:1 Floor Space Ratio control applies across 176sqm of the site area - equating to a permissible gross floor area of 352sqm on that portion of the site.
47. The proposed development does not comply with the maximum floor space ratio development standards applying to the site as a combined floor space ratio of 4.02:1, or 1,038 square metres of gross floor area is proposed across the site as a whole, which represents a 73% variation of the standard.
48. Alternatively, assessing compliance against each of the individual Floor Space Ratio controls which apply to the site:
 - the permissible gross floor area on the 2:1 portion of the site is 352sqm; and
 - the permissible gross floor area on the 3:1 portion of the site is 249sqm.

49. The application proposes 716sqm of gross floor area on the 2:1 portion of the site - representing a 103.4% variation of the 2:1 development standard.
50. The application proposes 322sqm of gross floor area on the 3:1 portion of the site, representing a 29.3% variation of the 3:1 development standard.
51. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney Local Environmental Plan 2012 seeking to justify the contravention of the development standard by demonstrating:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
 - (c) The proposed development will be consistent with the objectives of the zone; and
 - (d) The proposed development will be consistent with the objectives of the standard.

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

52. The applicant seeks to justify the contravention of the floor space ratio development standard on the following basis:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicant submits that the maximum floor space ratio does not consider the existing building already exceeds the maximum floor space ratio. It is therefore unreasonable to expect the building to be reduced to comply.
 - (ii) The applicant submits that the maximum floor space ratio applicable to the site does not consider a proposal that reduces the existing capacity of the backpacker accommodation, rather than increasing the capacity, as would be typically found in other applications. However, the owners are committed to improving the internal and external layout for the guests, visitors and staff. Therefore, the floor space ratio is unreasonable and unnecessary.
 - (iii) The applicant submits that, despite the variation, the proposal comprises a skilful design that is compatible with the established character of the site and the surrounding heritage conservation area and does not cause any significant impacts to the amenity of the site or surrounding area.
 - (iv) The applicant submits that the broad application of floor space ratio does not exclude the possibility of a high-quality built form without compromising the amenity of surrounding properties. Despite the variation, the proposal can achieve these outcomes.
 - (v) The applicant submits that the site is wedged between a 20-storey building and a five-storey building. As such, the proposed variation is appropriate.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The applicant submits that the proposed floor space ratio variation does not materially contribute to additional shadowing that would cause any unreasonable overshadowing to the site or adjoining properties.
 - (ii) The applicant submits that the proposed setbacks are considered suitable to mitigate against any unreasonable environmental impacts associated with the proposed variation.
 - (iii) The applicant submits that the floor space ratio variation does not impede on any public or private views.
 - (iv) The applicant submits that the skilful design maintains appropriate privacy between the proposed building and adjoining buildings. The proposed floor space ratio variation comprises no significant impacts to the overall building envelope.
 - (v) The applicant submits that the distribution of new floor space and removal of floor space has been appropriately organised to minimise the bulk of the existing building.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The applicant's request was prepared prior to the introduction of the introduction of new zoning under the Sydney Local Environmental Plan 2012.
 - (ii) Council officers wrote to the applicant to advise that the Clause 4.6 variation requests do not address the current zoning of the land, however the applicant has not submitted a revised request addressing the latest zoning of the land and associated objectives.
 - (iii) Accordingly, the applicant's request incorrectly refers to the objectives of the now superseded B2 Local Centre zone and provides the following justification against those objectives:

Objective: *to provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Applicant's comment: the proposal maintains the existing use as backpacker accommodation and provides small additional retail uses on the ground/arcade level.

Objective: *to encourage employment opportunities in accessible locations.*

Applicant's comment: the proposal provides a necessary upgrade to the building to improve accessibility for guests and staff, thereby achieving this objective.

Objective: *to maximise public transport patronage and encourage walking and cycling.*

Applicant's comment: the site is conveniently located above the Kings Cross train station and the proposal incorporates bicycle spaces.

Objective: *to allow appropriate residential uses so as to support the vitality of local centres.*

Applicant's comment: not relevant as the proposal maintains the existing use as backpacker accommodation.

(d) The proposed development will be consistent with the objectives of the standard

(i) The applicant's request provides the following justification against the objectives of the floor space ratio standard:

Objective (a): *to provide sufficient floor space to meet anticipated development needs for the foreseeable future.*

Applicant's comment: there already is an existing floor space ratio variation and the additional floor space proposed assists with providing greater internal amenity and accessibility for the guests, staff and visitors.

Objective (b): *to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.*

Applicant's comment: the proposal seeks to improve the existing building while providing a reduction to the number of guests, from 94 to 91. The capacity is therefore reduced, however the internal amenity is improved, the backpacker hostel is currently not accessible and accessibility is substantially improved via the new lift and other means, and the building will be closer to compliance with the BCA.

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

Applicant's comment: the capacity of the building is reduced and therefore does not increase the need for additional infrastructure.

Objective (d): *to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.*

Applicant's comment: the Darlinghurst Road precinct is evolving particularly since the devastating social and economic impacts created by the COVID-19 pandemic. The skilful design reflects a considerate approach to minimising the amenity impacts to the surrounding buildings. The proposed floor space ratio variation is suitable from a heritage perspective as supported by the Heritage Impact Statement submitted with the application. Furthermore, the proposal does not compromise the heritage conservation area.

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

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

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

- 54. The applicant's request inadequately addresses the provisions of Clause 4.6(3)(a) as the submission does not identify the two separate Floor Space Ratio development standards applying to different parts of the site.
- 55. The applicant's request to vary the floor space ratio standard points to the fact that the existing building is already in breach of the standard as existing and therefore compliance with the standard is unreasonable.
- 56. Whilst it is accepted that it would be unreasonable for existing development on site to be reduced in order to achieve strict compliance with the standard, the application proposes a further variation of the standard beyond the existing breach and therefore the objectives of the floor space ratio standard are a relevant consideration in determining whether the further variation can be supported.
- 57. In this regard, it is considered that the proposed development is inconsistent with the fourth objective (d) of the floor space ratio standard in that it is inconsistent with character of the locality and adversely impacts upon the amenity of the locality.
- 58. Council officers disagree that the proposal represents a high-quality built form or skilful design. The proposed development appears incongruous with its surroundings and the architectural articulation fails to tie the development in with the streetscape.
- 59. The proposed additional floorspace created contributes to the perceived visual bulk and massing of the development and its impact upon the streetscape.
- 60. Furthermore, the additional bulk and massing causes overshadowing which will constrain solar access to neighbouring residential properties resulting in a non-compliance with the solar access provisions of the Sydney Development Control Plan 2012.
- 61. The impacts discussed above are directly associated with the proposed development's variation of the floor space ratio development standard and detract from the character and amenity of the locality.
- 62. Accordingly, further exceedance of the standard is not supported as the proposal is inconsistent with the objectives of the standard.
- 63. Further discussion of overshadowing impacts, design excellence considerations and the perceived height, bulk and massing of the proposal is provided under the corresponding subheadings of the Discussion section below.

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

64. Council officers do not share the applicant's view that the proposed floor space ratio variation does not materially contribute to additional shadowing that would cause any unreasonable overshadowing to the site or adjoining properties.
65. As discussed in detail under the 'Overshadowing Impacts' subheading of the Discussion section below, the proposal will cause additional overshadowing to residential apartments within the Omnia Building (Crest Apartments) resulting in a non-compliance with the solar access controls of the Sydney Development Control Plan 2012.
66. Council officers do not share the applicant's view that the proposed setbacks are suitable to mitigate against any unreasonable environmental impacts associated with the proposed variation, or that the new floor space has been appropriately organised to minimise the bulk of the existing building.
67. The proposed upper two levels are not sufficiently setback from the street frontage and will be highly visible from Darlinghurst Road, resulting in a non-compliance with the street frontage height control applying to the site, pursuant to Section 4.2.1.1 of the Sydney Development Control Plan 2012.
68. The form and modulation of additional floorspace proposed contributes to the visual bulk and massing of the development. This in part contributes to the development appearing incongruous in the streetscape and detracting from the character of the heritage conservation area.
69. Accordingly, the applicant's written request fails to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the standard.

Is the development in the public interest?

70. The development is not considered to be in the public interest as it is inconsistent with the objectives of the floor space ratio development standard as discussed above, whilst the applicant's written request to vary the standard does not accurately identify the current zoning of the land or the objectives of the zone.
71. The applicant's written request addresses the objectives of the now superseded B2 Local Centre Zone. The zones of the Sydney Local Environmental Plan 2012 have been updated and the site is now situated within the E1 Local Centre Zone, for which different zone objectives apply.
72. Accordingly, the applicant's written request cannot be supported as the request fails to assess public interest considerations by demonstrating that the proposal is consistent with the accurate zone objectives applying the site.
73. It should be noted that State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023 has removed the requirement for the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

74. Notwithstanding the above, the policy amendment contains savings provisions confirming that a development application made, but not finally determined, before the commencement of State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023 must be determined as if that policy had not commenced.
75. Accordingly, the subject application was lodged prior to the policy amendment coming into effect and therefore public interest is a relevant consideration in determining whether the applicant's request to vary the development standard can be supported.

Conclusion

76. For the reasons provided above the requested variation to the floor space ratio development standard is not supported as the applicant's written 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 floor space ratio development standard and the applicant's request has not addressed the objectives of the E1 Local Centre zone.

Clause 4.6 Request to Vary Height of Buildings Development Standard

77. The site is subject to a maximum height of buildings control of 22 metres. The proposed development has a maximum building height of 22.95 metres, representing a 4.3% variation of the height of buildings development standard applying to the site.
78. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney Local Environmental Plan 2012 seeking to justify the contravention of the development standard by demonstrating:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
 - (c) The proposed development will be consistent with the objectives of the zone; and
 - (d) The proposed development will be consistent with the objectives of the standard.

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

79. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicant submits that, despite the variation, the proposal comprises a skilful design that is compatible with the established character of the site and the surrounding heritage conservation area and does not cause any significant impacts to the amenity of the site or surrounding area.

- (ii) The applicant submits that the broad application of building height does not exclude the possibility of a high-quality built form without compromising the amenity of surrounding properties. Despite the variation, the proposal can achieve these outcomes.
 - (iii) The applicant submits that the site is wedged between a 20-storey building and a five-storey building. As such, the proposed building height and variation of only 4.3% is appropriate.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The applicant submits that the proposed height variation does not materially contribute to additional shadowing that would cause any unreasonable overshadowing to the site or adjoining properties.
 - (ii) The applicant submits that the proposed setbacks are considered suitable to mitigate against any unreasonable environmental impacts associated with the proposed variation.
 - (iii) The applicant submits that the building height variation does not impede on any public or private views.
 - (iv) The applicant submits that the skilful design maintains appropriate privacy between the proposed building and adjoining buildings. The proposed height variation comprises no significant impacts to the overall building envelope.
 - (v) The applicant submits that the proposal is also supported from a heritage perspective as demonstrated in the submitted Heritage Impact Statement.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The applicant's request was prepared prior to the introduction of the introduction of new zoning under the Sydney Local Environmental Plan 2012.
 - (ii) Council officers wrote to the applicant to advise that the Clause 4.6 variation requests do not address the current zoning of the land, however the applicant has not submitted a revised request addressing the latest zoning of the land and associated objectives.
 - (iii) Accordingly, the applicant's request incorrectly refers to the objectives of the now superseded B2 Local Centre zone and provides the following justification against those objectives:

Objective: *to provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Applicant's comment: the proposal maintains the existing use as backpacker accommodation and provides small additional retail uses on the ground/arcade level.

Objective: *to encourage employment opportunities in accessible locations.*

Applicant's comment: the proposal provides a necessary upgrade to the building to improve accessibility for guests and staff, thereby achieving this objective.

Objective: *to maximise public transport patronage and encourage walking and cycling.*

Applicant's comment: the site is conveniently located above the Kings Cross train station and the proposal incorporates bicycle spaces.

Objective: *to allow appropriate residential uses so as to support the vitality of local centres.*

Applicant's comment: not relevant as the proposal maintains the existing use as backpacker accommodation.

(d) The proposed development will be consistent with the objectives of the standard

(i) The applicant's request provides the following justification against the objectives of the height of buildings standard:

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

Applicant's comment: The proposed height is considered to be appropriate given there is an existing height variation and the proposed addition is setback from the street. The addition is at the rear and the proposal is contextually appropriate given the 20 storey Omnia building to the south and acts as a suitable transition to the lower buildings to the north.

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

Applicant's comment: The proposed height of the addition is suitable from a heritage perspective as supported by the submitted Heritage Impact Statement. Furthermore, the proposal does not compromise the heritage conservation area.

(ii) The applicant's written request does not address objectives (c) to (e) of the height of buildings development standard, however it is agreed that these objectives do not apply to the proposed development as they relate exclusively to sites within Central Sydney and Green Square.

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

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

(a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and

- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

81. Council officers do not share the view that the proposal is compatible with the character of the streetscape and surrounding heritage conservation area.
82. The breach of the height of buildings standard contributes to the bulk and massing of the building, although the elements of the development in breach of the standard are setback from the building frontage and not highly visible from the public domain, as illustrated by figure 31 below.

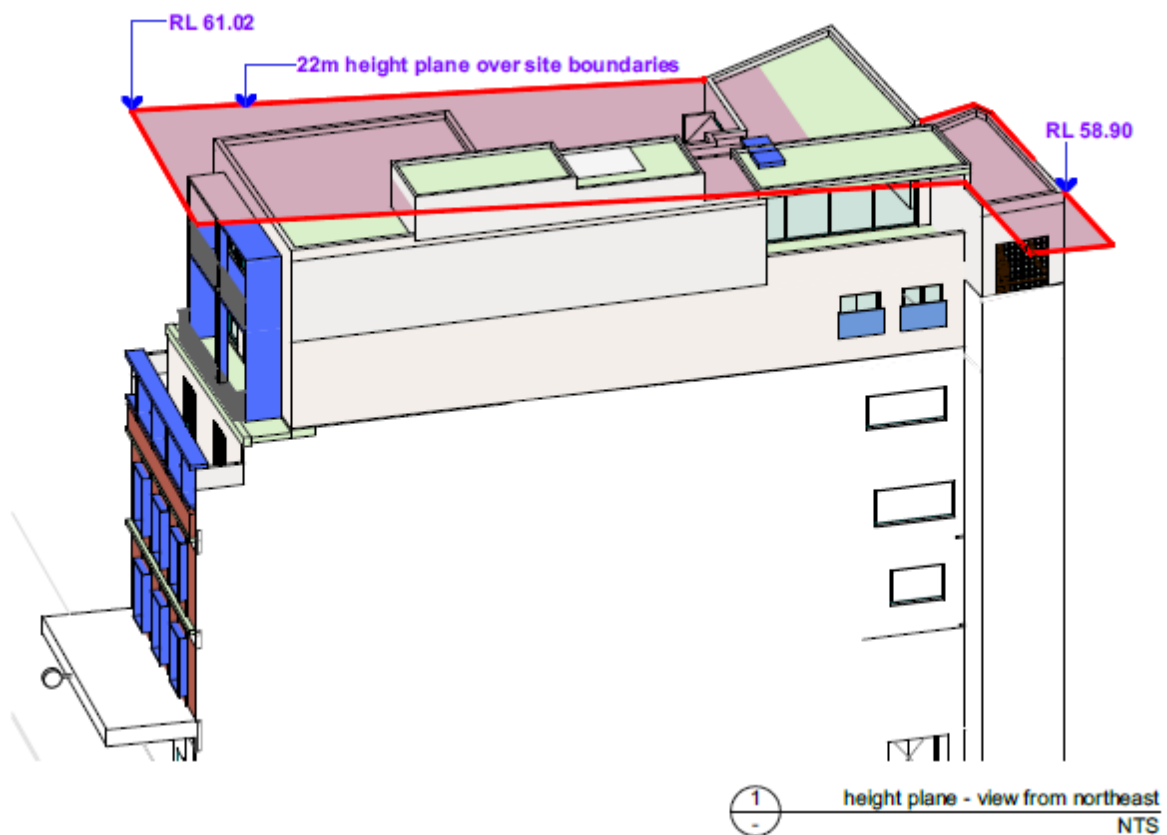


Figure 31: Three dimensional height plane illustrating elements of the proposed development in breach of the Sydney Local Environmental Plan 2012 22 metre Height of Buildings development standard

83. Similarly, council officers do not share the view that the proposal presents a high-quality built form, or that it does not compromise the amenity of locality, however the elements of the proposed development in breach of the height of buildings standard are not principally attributed with these impacts.

84. While in isolation the elements of the development in breach of the height control have a negligible impact upon the amenity of its surroundings and impact upon the streetscape, the breaches are considered to be a product of the excessive bulk and height of development at the street frontage to Darlinghurst Road, noting that part of the breach relates to a stair and lift overrun.
85. Accordingly, compliance with the development standard is considered relevant and necessary in the circumstances of case as it provides a relevant measure to ensure development is appropriate to its context and designed to accommodate all ancillary structures such as lift and stair overruns within the height limit.

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

86. Council officers accept that the proposed height variation does not materially contribute to additional shadowing that causes unreasonable overshadowing to the site or adjoining properties.
87. Whilst it is considered that the proposal causes unacceptable overshadowing to neighbouring properties resulting in a non-compliance, the elements of the development in breach of the height of buildings standard are generally not attributed with these impacts.
88. Notwithstanding the above, council officers do not share the view that the height variation comprises no significant impacts to the overall building envelope.
89. As discussed above, the proposed stair and lift overrun in breach of the standard are in part a result of excessive bulk and massing at the front of the building and the development should be designed to accommodate these ancillary structures within the permitted envelope.
90. Accordingly, the applicant's written request fails to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the standard.

Is the development in the public interest?

91. The development is not considered to be in the public interest as it is inconsistent with the objectives of the height of buildings development standard as discussed above, whilst the applicant's written request to vary the standard does not accurately identify the current zoning of the land or the objectives of the zone.
92. The applicant's written request addresses the objectives of the now superseded B2 Local Centre Zone. The zones of the Sydney Local Environmental Plan 2012 have been updated and the site is now situated within the E1 Local Centre Zone, for which different zone objectives apply.
93. Accordingly, the applicant's written request cannot be supported as the request fails to assess public interest considerations by demonstrating that the proposal is consistent with the accurate zone objectives applying the site.
94. It should be noted that State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023 has removed the requirement for the consent authority to be satisfied that 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.

95. Notwithstanding the above, the policy amendment contains savings provisions confirming that a development application made, but not finally determined, before the commencement of State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023 must be determined as if that policy had not commenced.
96. Accordingly, the subject application was lodged prior to the policy amendment coming into effect and therefore public interest is a relevant consideration in determining whether the applicant's request to vary the development standard can be supported.

Conclusion

97. For the reasons provided above, the requested variation to the height of buildings development standard is not supported as the applicant's written 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 and the applicant's request has not addressed the objectives of the E1 Local Centre zone.

Overshadowing

98. Section 4.2.3.1 of the Sydney Development Control Plan 2012 requires that any apartments within proposed developments and existing apartments within neighbouring developments must achieve 2 hours' direct sunlight between 9am and 3pm on 21 June onto at least 1 square metres of living room windows and a minimum 50% of the required minimum area of private open space area.
99. At the request of Council officers, the applicant has provided shadow diagrams and view from the sun diagrams at hourly intervals between 9am and 3pm on 21 June to facilitate assessment of the overshadowing impacts of the proposal against the solar access provisions of the Sydney Development Control Plan 2012.
100. The information provided demonstrates that the proposed development will cause additional overshadowing to living room windows and private open space areas of apartments within the Omnia building (Crest Apartments) to the south at 113 Darlinghurst Road.
101. While some of the apartments affected by additional overshadowing will maintain compliant 2 hours' solar access, there are a number of apartments which are affected by additional overshadowing where solar access is constrained to less than 2-hours and resulting in a non-compliance with the provisions of the DCP.
102. Namely - the living room windows of Unit 4.12 and the private open space raised terrace areas of Unit 3.02 and Unit 3.03 on the podium Level 3 of the Omnia building.

Overshadowing to Living Room Windows of Unit 4.12

103. Unit 4.12 currently receives 2 hours' direct solar access to its north facing living room windows between 10am and 12 midday on 21 June.
104. The proposed development and additional two levels proposed atop of the existing building will block all direct sunlight these living room windows currently receive between 9am and 3pm on 21 June resulting in a non-compliance with the provisions of the DCP.

105. Overshadowing impacts to these living room windows are demonstrated by Figure 32 below, with the living room windows in question highlighted in red.

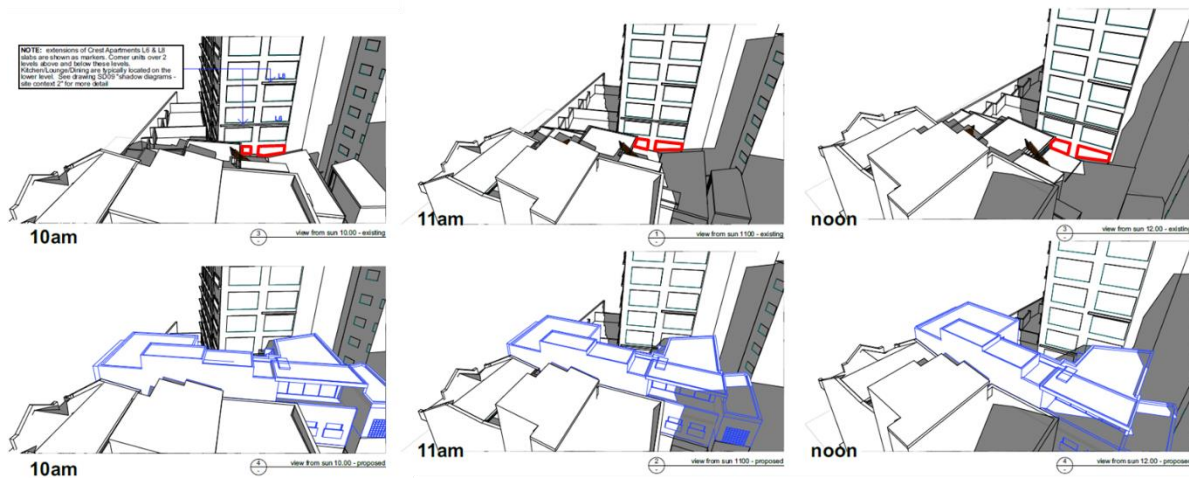


Figure 32: View from the sun diagrams demonstrating additional overshadowing impacts to the living room windows of Unit 4.12 within the Omnia building adjacent - highlighted in red

Overshadowing to Private Open Space Areas of Unit 3.02 and Unit 3.03

106. The private open space terrace area of Unit 3.02 on the podium level of the Omnia building currently receives 2 hours' direct sunlight between 9am and 11am on 21 June.
107. As Unit 3.02 is a 2-bedroom apartment, the required minimum amount of private open space provision is 10 square metres in accordance with the provisions of the Objective 4E-1 of the NSW ADG.
108. Accordingly, the minimum solar access requirement to this terrace area is 2 hours' direct sunlight to at least 5 square metres, as 50% of the minimum required area pursuant to Section 4.2.3.1 of the Sydney DCP.
109. Whilst the applicant has not provided dimensions to measure existing solar access to this space, it is noted that the terrace measures 96 square metres and it is considered that the terrace will comfortably achieve the minimum 5 square metres direct sunlight for at least 2-hours as existing.
110. Similarly, the adjacent private open space terrace area of Unit 3.03 on the same podium level of the Omnia building currently receives 2 hours' direct sunlight between 10am and 12 midday on 21 June.
111. Like Unit 3.02, Unit 3.03 is also a 2-bedroom apartment and therefore the minimum solar access requirement to this terrace area is 2 hours of direct sunlight to at least 5sqm, pursuant to Section 4.2.3.1 of the Sydney DCP.
112. Whilst the applicant has not provided dimensions to measure existing solar access to this space, it is noted that the terrace measures 79 square metres and it is considered that the terrace will comfortably achieve the minimum 5 square metres direct sunlight for at least 2-hours as existing.

113. The proposed development and additional two levels proposed atop of the existing building will block almost all direct sunlight to these private open space areas during the morning hours between 9am and 12midday on 21 June.
114. This is the only time of day the terrace areas currently receive direct sunlight, resulting in a non-compliance with Section 4.2.3.1 of the DCP.
115. Overshadowing impacts to these private open space areas is demonstrated by Figure 33 below, with the terraces of Unit 3.02 and Unit 3.03 highlighted in green.

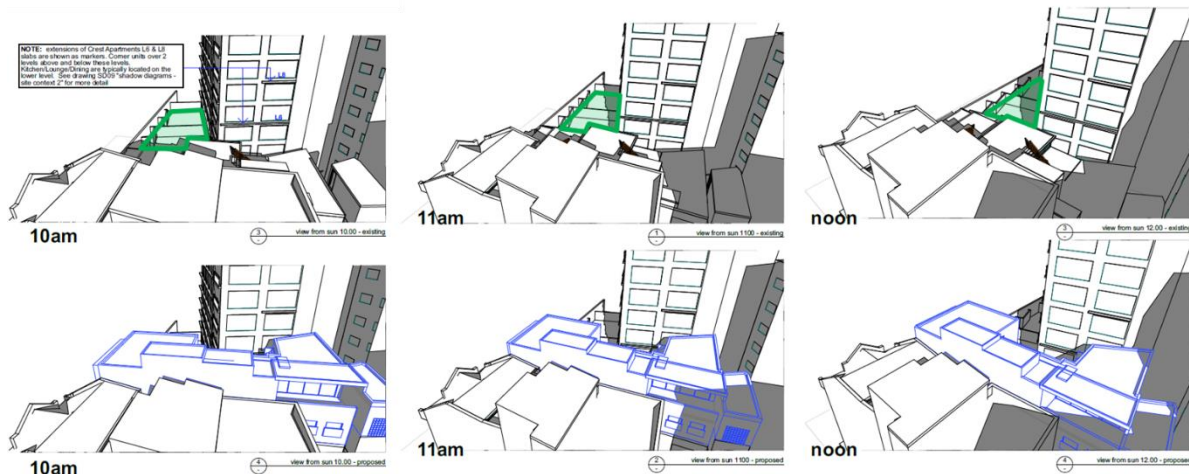


Figure 33: View from the sun diagrams demonstrating additional overshadowing impacts to the terraces of Unit 3.02 and Unit 3.03 on the podium level of the Omnia building adjacent - terrace areas highlighted in green

Summary of Overshadowing Impacts

116. As demonstrated above, the proposed development will cause additional overshadowing to residential apartments within the Omnia building at 113 Darlinghurst Road and will block existing solar access resulting in a non-compliance with Section 4.2.3.1 of the DCP.
117. A notation in the DCP confirms that Section 4.2.3.1 applies to at least 70% of apartments within a development.
118. In this regard, it is noted that the development consent for conversion of the former Crest Hotel into residential apartments (D/2015/331) - now known as the 'Omnia' building - permitted a non-compliance with the solar access provisions of the Residential Flat Design Code. Only 65% of apartments within the approved development achieved 2 hours of direct sunlight to living room windows and only 66% of apartments within the building achieved 2 hours of direct sunlight to private open space areas at midwinter.
119. Accordingly, given the existing solar compliance of the Omnia building, the impact of any additional overshadowing is more acute.
120. The proposed development will obstruct almost all solar access to living room windows or private open space areas of 3 apartments within the Omnia building at midwinter.

121. Noting that the additional overshadowing is directly associated with and caused by the proposed development's significant exceedance of the floor space ratio control applying to the site pursuant to Clause 4.4 of the Sydney Local Environmental Plan 2012, the proposal is not recommended for approval and in the opinion of Council officers, should not be supported.

Height, Bulk and Massing

122. The site is subject to three different height controls; a 22 metre maximum height limit pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012 (LEP), in addition to a maximum 6-storey height control and maximum 4-storey street frontage height controls pursuant to Section 4.2.1.1 of the Sydney Development Control Plan 2012 (DCP).
123. These height controls should work together to inform the design, massing and modulation of development on the site.
124. The application inadequately responds to the height controls, proposing a development which is in breach of the LEP 22 metre height control and presents a 6-storey development to Darlinghurst Road, in breach of the 4-storey street frontage height control of the DCP.
125. Section 4.2.2 of the DCP encourages new building setbacks where appropriate to reinforce the areas desired future character, whilst Clause 4.2.2.2 of the DCP recommends a setback above the prescribed street frontage height is to be a minimum of 3 metres with ancillary structures or screening visually recessed to be secondary to the street wall of the building.
126. The applicant submits that the additional two levels are proposed to the rear of the site and therefore setback from the existing streetscape, however this view is not shared by Council officers.
127. The proposed upper two levels complete with protruding balconies are setback only 1.4 metres from the street frontage and will be highly visible within the streetscape from Darlinghurst Road.
128. The applicant has sought to justify the proposed height by referencing existing development adjacent - namely the 20-storey Omnia building to the south (113 Darlinghurst Road) and the five-storey mixed use building to the north at 99-105 Darlinghurst Road.
129. In this regard, it is noted that the Omnia building is situated on a corner site and an entirely different typology to the subject development site.
130. Similarly, 99-105 Darlinghurst Road is somewhat of an outlier in the street as a 5-storey development with the majority of development on this section of Darlinghurst Road on either side of the street generally being between 2 and 3 storeys in height.
131. Accordingly, the 4-storey street frontage height ensures an appropriate height transition without development having an overbearing or dominant impact upon the streetscape.
132. The proposed development inadequately responds to the height controls applying to the site and places excessive bulk and massing at the street frontage, becoming a dominant and detracting presence within the streetscape.

133. The excessive bulk and massing at the front of the site is exemplified by the highly visible and blank expression of the southern side of the upper levels of the development in profile view from Darlinghurst Road, as illustrated by Figure 34 below.



Figure 34: Wire frame view of proposed development looking north along Darlinghurst Road

134. The proposed development appears incongruous with its setting and detracts from the Darlinghurst Road streetscape, as discussed further under 'Design Excellence' subheading below.

Design Excellence

135. Clause 6.21C of the Sydney Local Environmental Plan 2012 confirms that development consent must not be granted to development unless, in the opinion of the consent authority, the proposed development exhibits design excellence.
136. In considering whether development exhibits design excellence, regard must be given to whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved.
137. In this regard, it is considered that the proposed upper-level additions and elements lack integration with the architectural design of the rest of the building, resulting in a

somewhat ad-hoc appearance where the development can be viewed from the public domain and in elevation.

138. This issue is exacerbated by the existing setback and balcony of the fourth storey of the building resulting in an irregular tiered effect, in addition to the various proposed protruding elements on the Darlinghurst Road frontage, including window surrounds, decorative brickwork and upper-level balconies, framing and balustrades.
139. The design of the front elevation would be better served by bringing the fourth storey forward to reinforce the 4-storey street frontage and extending a continuous parapet atop to crown the principal street frontage elevation.
140. The design of the upper-level additions should then be further recessed and integrated with the design of the existing building in order to minimise their visual prominence and detracting impact upon the streetscape and heritage conservation area.
141. Rather than protruding elements, window openings should be recessed into the wall to provide a cleaner facade to reinforce the repetitive elements of the surrounding neighbourhood character and improve the contribution of the site to the character of the heritage conservation area, pursuant to Section 3.9.9 of the Sydney Development Control Plan 2012.
142. Further, as outlined in detail above, the proposed development causes unacceptable overshadowing impacts to neighbouring properties by constraining existing solar access to residential apartments resulting in a non-compliance.
143. Accordingly, the application fails to demonstrate a high standard of architectural design and detailing appropriate to the location and inadequately addresses environmental impacts upon adjoining properties.
144. The application is therefore not recommended for approval as it fails to satisfy the design excellence provisions, pursuant to Clause 6.21C of the Sydney Local Environmental Plan 2012.

Consultation

Internal Referrals

145. The application was discussed with Council's:
 - (a) Building Services Unit;
 - (b) Environmental Health Unit;
 - (c) Public Domain Unit;
 - (d) Surveyors;
 - (e) Transport and Access Unit;
 - (f) Tree Management Unit; and
 - (g) Waste Management Unit.

146. The above-mentioned Council Units advised that the proposal is generally acceptable and could be supported subject to conditions. The application is not recommended for approval, however the recommended conditions of internal referrals could be readily applied to any future consent if the application was considered for approval.
147. Council's Tree Management Unit raised concerns that the applicant has not provided a Landscape Plan demonstrating that the proposed development could achieve 15% canopy coverage within 10 years of completion.
148. The application is not recommended for approval and this information was not sought from the applicant as the site is already fully occupied by existing development and therefore tree planting opportunities are severely limited.
149. The application was discussed with Council's Heritage and Urban Design Specialists who raised concerns that the proposal fails to exhibit Design Excellence and will adversely impact upon the character of the area and the amenity of surrounding properties. Refer to the further details provided in the 'Discussion' section above.

External Referrals

Sydney Trains

150. Pursuant to Clause 2.98 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Sydney Trains for comment.
151. Whilst the application does not propose excavation, it does involve development above and adjacent to a rail corridor as the development is situated above Kings Cross Train Station. Accordingly, the application was referred to Transport for NSW (Sydney Trains).
152. Sydney Trains responded to advise that the proposed development has been assessed in accordance with the requirements of Section 2.99(4) of the SEPP and granted its concurrence to the development proposed in development application D/2022/1107.

Advertising and Notification

153. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was required to be notified for a period of 21 days. The application was notified between 19 December 2022 and 30 January 2023 as the Christmas period was excluded from the required notification period.
154. A total of 615 properties were notified and no submissions were received.

Relevant Legislation

155. Environmental Planning and Assessment Act 1979.

Conclusion

156. The application proposes alterations and additions to an existing mixed-use building above Kings Cross Station, including construction of two additional levels. The application principally proposes extension and upgrade of an existing backpacker hostel accommodation, in addition to changes to several small-scale pocket retail tenancies within the street level arcade entrance to Kings Cross Station.
157. While the proposed continued use for backpacker accommodation is an appropriate use of the site, the design and form of the associated alterations and additions proposed are more problematic as they adversely impact upon local character and amenity.
158. The design, massing and modulation contributes to the perceived excessive visual bulk of the proposal. This has an overbearing impact upon the Darlinghurst Road streetscape and detracts from the character of the Potts Point Heritage Conservation Area.
159. The perceived overdevelopment is a direct result of the proposal's significant exceedance of the floor space ratio development standards applying to the site pursuant to Clause 4.4 of the Sydney Local Environmental Plan 2012; and, to a lesser extent, the proposal's exceedance of the maximum height of buildings development standard pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012.
160. The submitted Clause 4.6 variation requests to vary the floor space ratio and height of buildings development standards are not supported as they fail to adequately address the requirements of Clause 4.6(3) of the Sydney Local Environmental Plan 2012.
161. While it is acknowledged that the existing building is in breach of the floor space ratio development standards, the proposed further exceedance of the control is directly associated with the development's overbearing impact upon the streetscape and overshadowing of neighbouring residential dwellings adjacent.
162. Accordingly, further exceedance of the floor space ratio control is not supported as the development is inconsistent with the objective in Clause 4.4(1)(d) of the Sydney Local Environmental Plan 2012, which requires that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.
163. Further, the height in storeys and street frontage height controls which apply require a more nuanced design response which the proposed development fails to address.
164. In tandem with the above, the somewhat ad hoc appearance of the proposed design fails to tie in the development with the existing streetscape or integrate the proposed additions with the overall architecture of the building.
165. As a result, the proposed development lacks cohesion, appears incongruous within the streetscape and fails to satisfy the design excellence provisions of the Sydney Local Environmental Plan 2012.
166. These impacts can in large part be attributed to the massing and modulation of the proposed non-compliant upper-level additions, which in turn adversely impact upon the residential amenity of adjoining properties.

167. Accordingly, the application is therefore recommended for refusal as it will detract from the character of the streetscape and heritage conservation area, will adversely impact upon the amenity of the locality and fails to justify exceedance of the floor space ratio and height of buildings development standards applying to the site.

ANDREW THOMAS

Executive Manager Planning and Development

Daniel Stanley, Planner