

# **Attachment C**

<p><b>Clause 4.6 Variation Request – Height of Buildings</b></p>
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# **Request to Vary Height of Building Under Clause 4.6 of Sydney Local Environmental Plan 2012**

## **Alterations and Additions to Existing Backpackers Accommodation at 107 - 109 Darlinghurst Road, Potts Point**

**October 2022**



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## Introduction

This request made under Clause 4.6 of the Sydney Local Environmental Plan 2012 accompanies a proposal for alterations and additions at 107 – 109 Darlinghurst Road, Potts Point. The proposal involves a variation to Clause 4.3 Height of buildings under the Sydney LEP 2012. The proposed alterations and additions will result in a building height of 22.95m which exceeds the maximum building height of 22m by 950mm (4.3%). This request to vary the development standard is considered appropriate for the proposal as will be discussed below.

## The Site and Surrounding Area

The subject site at 107 - 109 Darlinghurst Road, Potts Point is a broadly rectangular shape with an area of 258.2sqm and consists of Lots 1 and 5 in DP 802224. Lot 1 has a size of 239.1sqm, a frontage of 9.25m to Darlinghurst Road and a rear aspect of 4.6m to Earl Place. The site has an average depth of 28m. Lot 5 has a size of 19.1sqm and contains fire escape stairs for the building. 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. There are easements for services and sewer detailed on the DP which accompanies the application.

The site also contains Lot 2 in DP 802224 which contains the entrance way to the Kings Cross Station, contained on the ground floor / part of the first-floor void area. 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 a backpackers accommodation, however has been vacant since the onset of COVID-19.

Adjoining the site to the north is a five storey mixed use building, and to the south is the 20 storey Omnia residential flat building with retail on the ground level. The surrounding area is generally characterised by retail on the ground floor and other uses on above levels.

## The Proposed Variation

The Sydney LEP 2012 include provisions for exception to development standards as follows.

### ***4.6 Exceptions to development standards***

*(1) The objectives of this clause are as follows:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks 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, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *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, and*
  - (b) *the concurrence of the Secretary has been obtained.*

In accordance with Clause 4.6 (4)(a)(i), this written request addresses the matters required to be demonstrated by Clause 4.6 (3) relating to the proposed variation to the building height.

According to the Sydney LEP 2012, the **building height** (or height of building) means—

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The maximum building height applicable to the site is 22m. The proposed alterations and additions will result in a building height of 22.95m, which exceeds the maximum building height of 22m by 950mm (4.3%). It is recognised the existing building is already 19.7m high. Figures 1 to 3 below show the extent of the variation to the northern and southern walls of the building.

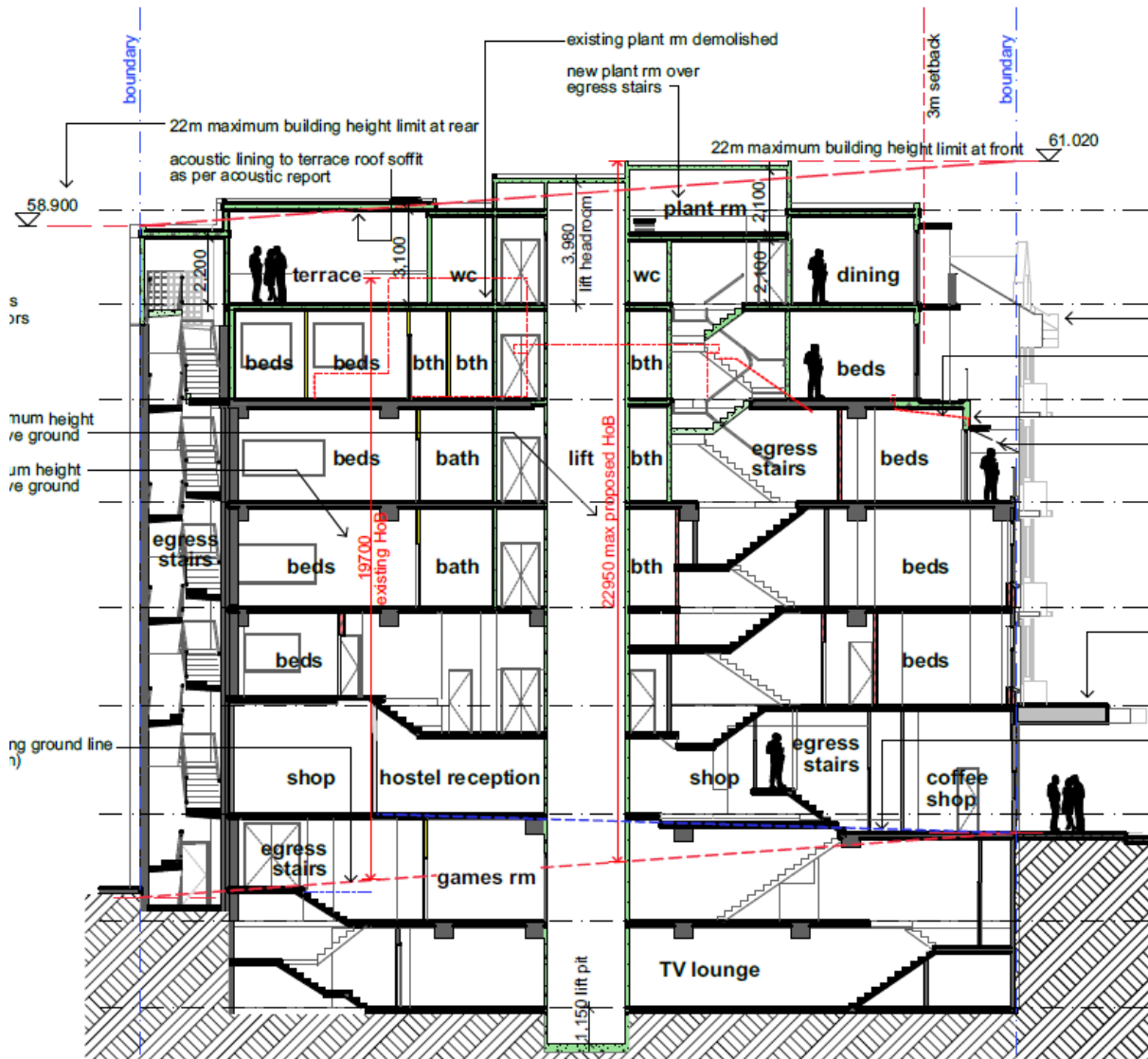


Figure 1: Proposed section looking to the north

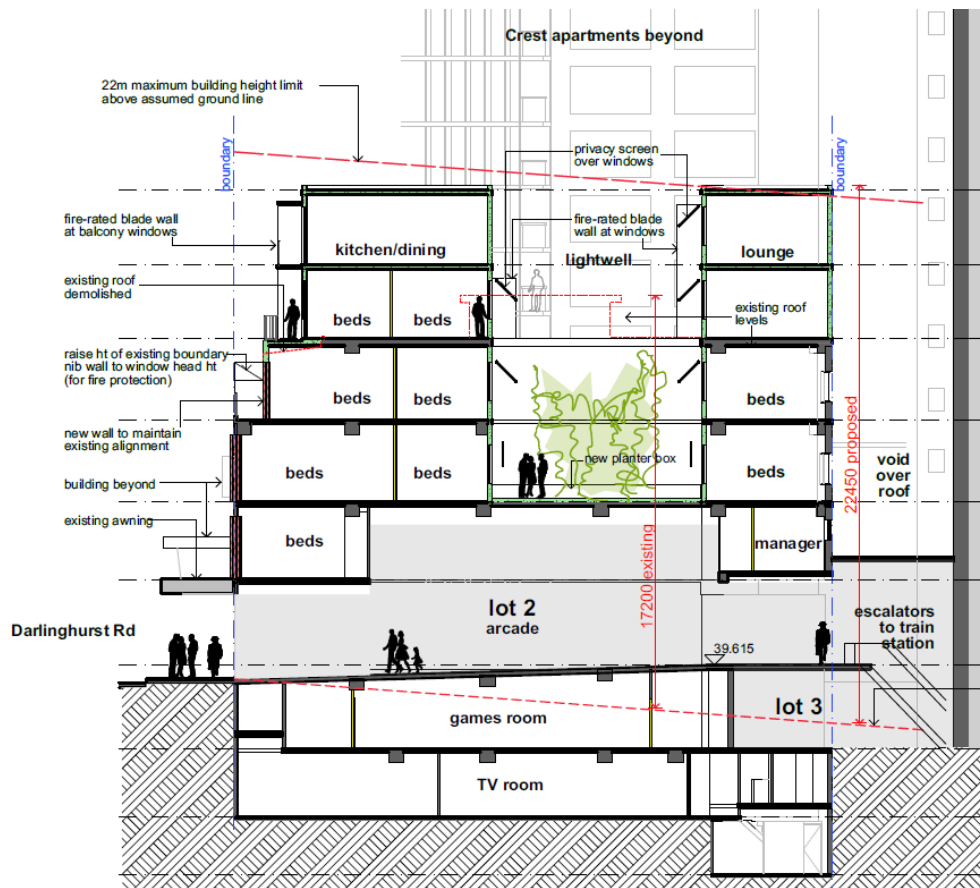


Figure 2: Proposed section looking to the south



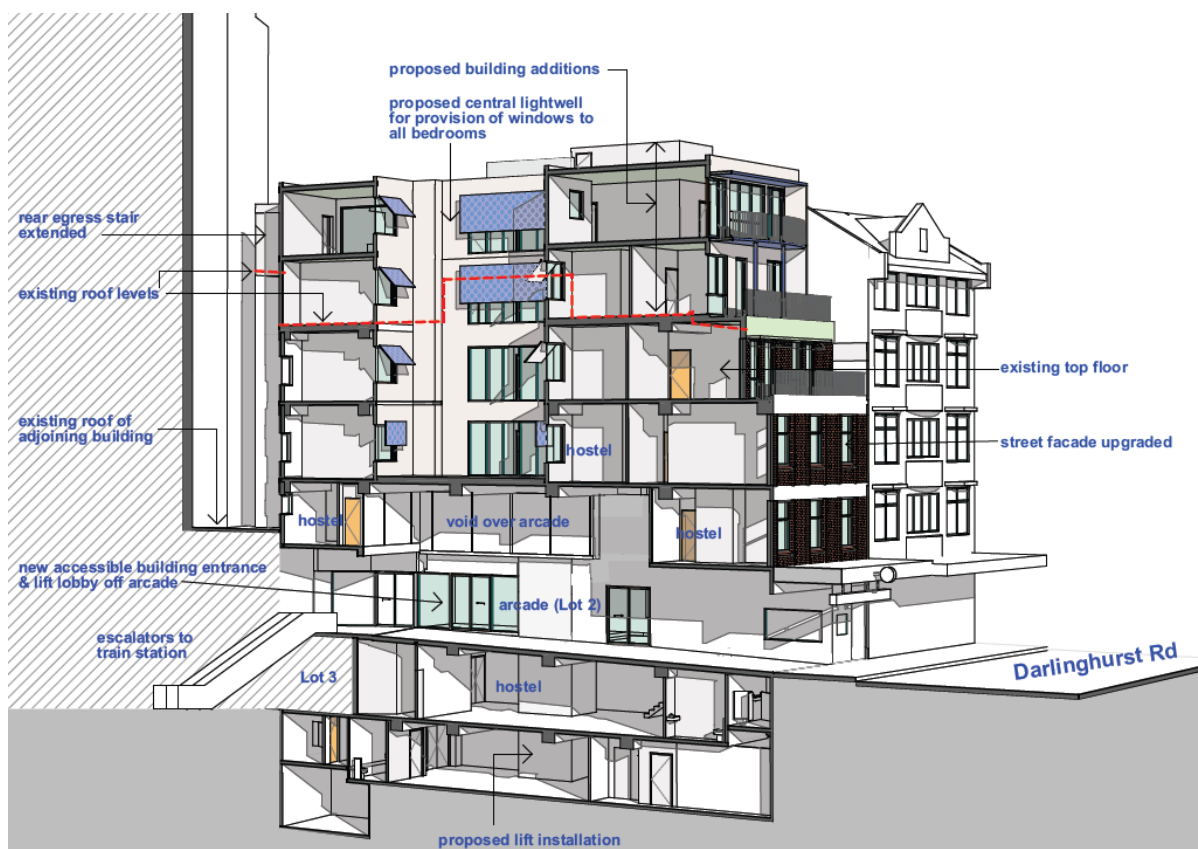


Figure 3: 3D perspective of the proposal showing existing roof level in red dotted line

The assessment in this report addresses the Clause 4.6 criteria demonstrating the proposed building height:

- is consistent with the objectives of the building height development standard
- is consistent with the objectives of the B2 Local Centre zone
- is consistent with State and regional policies
- results in a better planning outcome
- is justified on environmental grounds
- is in the public interest

### Consistent with the Building Height Objectives

Clause 4.3 of the Sydney LEP 2012 includes objectives for the building height standard. These objectives are addressed in relation to the proposal as follows:

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

Comments: 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.

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

Comments: The proposed height of the addition is suitable from a heritage perspective as supported by the submitted Statement of Heritage Impact prepared by Heritage 21. Furthermore, the proposal does not compromise the heritage conservation area.

## Consistent with the B2 Local Centre Objectives

The land use table of the Sydney LEP 2012 includes objectives for the site's B2 zoning classification. These objectives in relation to the proposal are addressed below.

- *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.*

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

- *To encourage employment opportunities in accessible locations.*

Comment: The proposal provides a necessary upgrade to the building to provide accessibility for guests and staff, thereby achieving this objective.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment: The site is conveniently located above the Kings Cross train station and the proposal incorporates bicycle spaces.

- *To allow appropriate residential uses so as to support the vitality of local centres.*

Comment: Not relevant as the proposal maintains the existing use as a backpacker's accommodation.

## Consistent with State and Regional Policies

The proposed variations ensure the site can achieve a high quality outcome without compromising the desired future character or the amenity of the surrounding area. The proposal is consistent with the objects of the Environmental Planning and Assessment Act 1979 and with relevant state and regional policies.

## Results in a Better Planning Outcome

The proposal is expected to generate a better planning outcome for the following reasons:

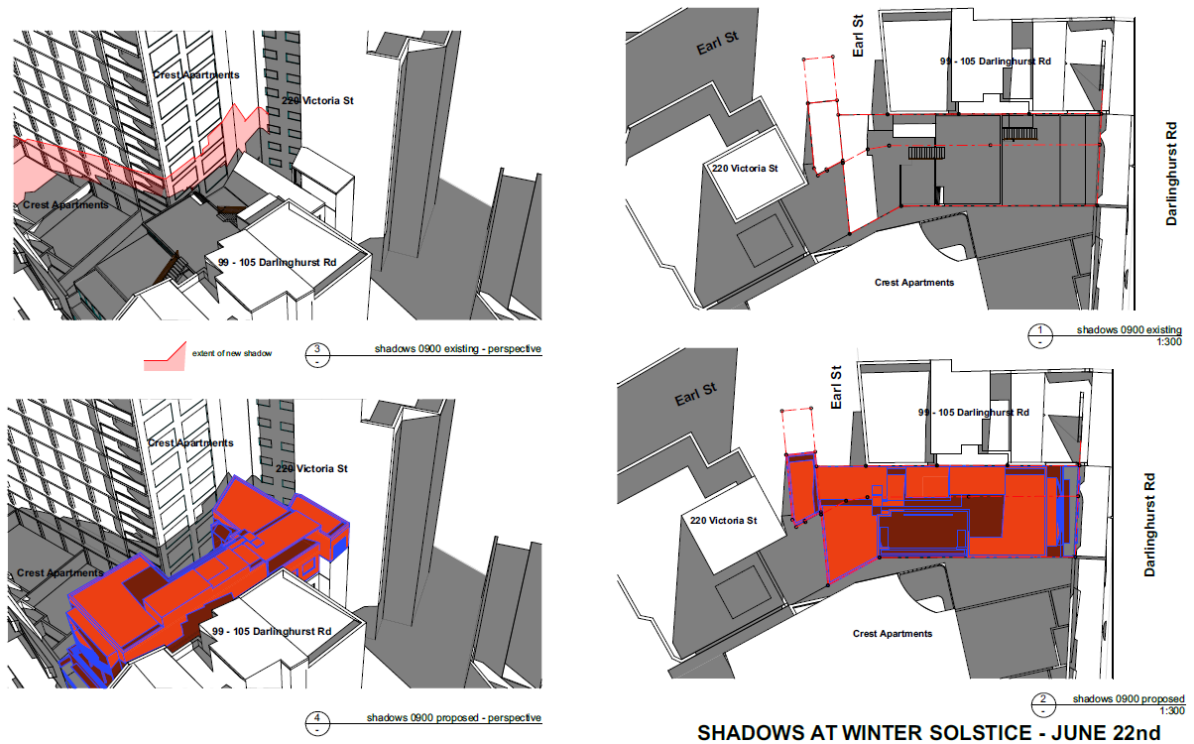
- The proposal introduces a central lightwell within the existing building that removes usable floor space in order to provide natural sunlight to the rooms. The additional building height is required to offset the floor space above the existing building. This is considered to be a better planning outcome rather than simply filling in the existing void area and increasing the building height as this would lead to reduced and therefore compromised amenity for the guests.
- The additional height can be undertaken without compromising the existing façade through providing an appropriate front setback.
- The proposed variation to the building height can be achieved without any unreasonable impacts to the amenity of adjoining properties.
- The proposed building height variation has been designed to be integrated within the existing and adjoining buildings and results in a better planning outcome from a heritage perspective.

## Justification on Environmental Grounds

In accordance with Clause 4.6 (3)(b) of the Sydney LEP 2012, the following environmental planning grounds are sufficient in justifying the proposed variation of the building height provisions:

- The proposed height variation does not materially contribute to additional shadowing that would cause any unreasonable overshadowing to the site or adjoining properties. Refer to Figures 4 to 6 showing the existing and proposed shadowing particularly in relation to the adjoining 20 storey apartment building.

- The proposed setbacks are considered suitable to mitigate against any unreasonable environmental impacts associated with the proposed variation.
- The building height variation does not impede on any public or private views.
- 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.
- The proposal is also supported from a heritage perspective as demonstrated in the submitted Statement of Heritage Impacts.



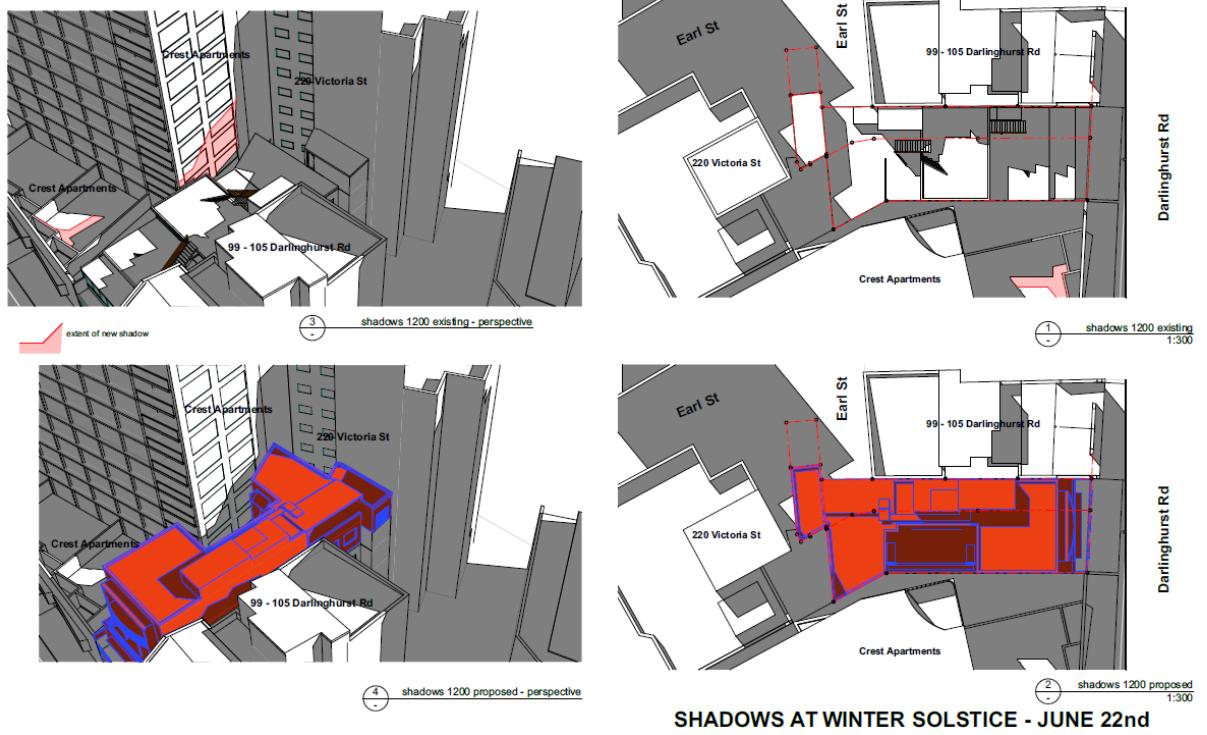


Figure 5: Proposed shadowing at 12pm (winter solstice)

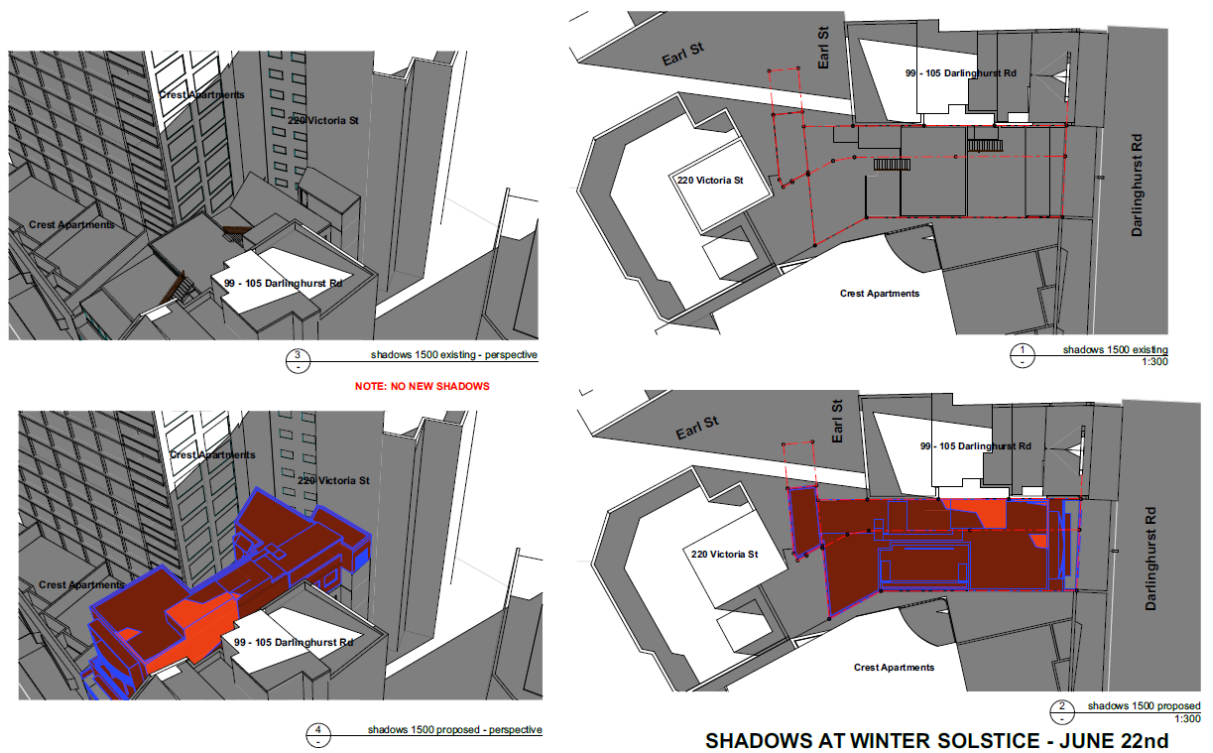


Figure 6: Proposed shadowing at 3pm (winter solstice)

## Is in the Public Interest

The proposal and associated variation to the building height is in the public interest. The variation is accommodated without generating any significant impacts to the adjoining amenity or public domain.

## Unreasonable and Unnecessary Building Height Development Standard

Wehbe V Pittwater Council (2007) NSWLEC 827 sets out the methods of establishing why compliance with the development standards are unreasonable or unnecessary. The application of the building height provision to the proposal is considered unreasonable and unnecessary, consistent with for the following reasons:

- 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.
- 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.
- The site is wedged between a 20 storey building and a five storey building as demonstrated in Figure 7 below. As such, the proposed building height and variation of only 4.3% is appropriate.

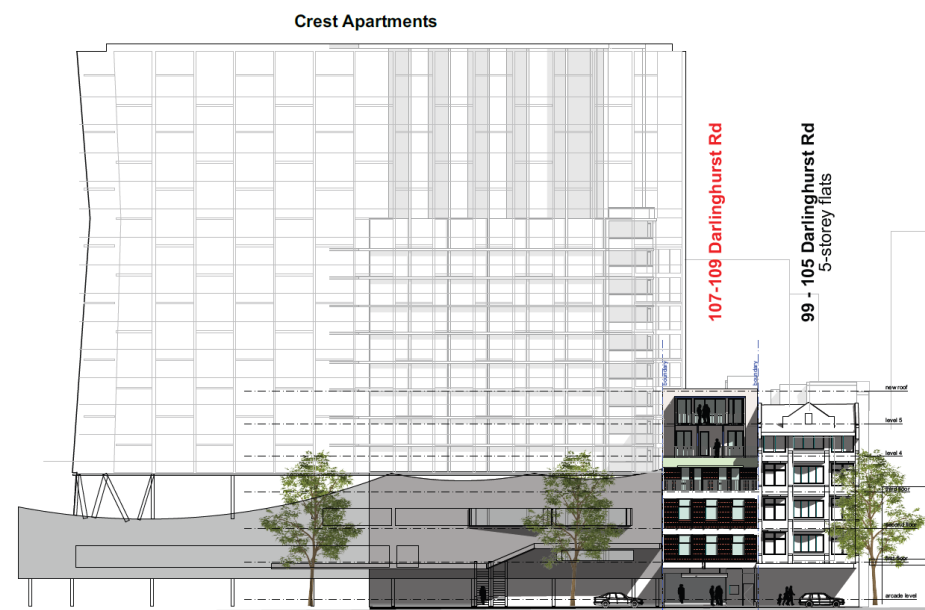


Figure 7: Proposed streetscape

## Conclusion

Based on the above assessment, the proposal at 107 – 109 Darlinghurst Road, Potts Point can achieve full compliance with the objectives and intentions of both Clause 4.3 Height of buildings and the B2 zone under the Sydney LEP 2012. This report also validates the proposal can be justified to provide a better planning outcome and the building height standard applicable is unreasonable and unnecessary given the existing site conditions and the desired future character of Potts Point.

The design and the variation maintain the characteristics of the building, surrounding heritage listed properties and the heritage conservation area. The proposal will not lead to unreasonable amenity impacts to the surrounding residential properties in terms of bulk, scale, views, privacy and overshadowing. The proposed alterations and additions have been designed to provide a high standard of amenity for the residents and will enhance the existing backpacker's accommodation. The proposed building height variation should therefore be considered favourably by Council.