

Item 4.**Development Application: 355-357 Liverpool Street, Darlinghurst - D/2024/230****File No.: D/2024/230****Summary****Date of Submission:** 3 April 2024**Applicant:** X. PACE Design Group PTY LTD**Architect/Designer:** X.PACE Design Group PTY LTD**Owner:** GUMBLE PTY LTD**Planning Consultant:** GSA Planning**Heritage Consultant:** Architectural Projects PTY LTD**DAPRS:** 7 May 2024**Cost of Works:** \$13,550,785**Zoning:** R1 - General Residential

The proposed development is for a residential flat building and is permissible with consent in the zone.

Proposal Summary:

The application seeks consent for the substantial demolition of the existing building and structures for the construction of a new part-six and part-eight storey residential flat building comprising nineteen apartments, with associated waste areas and plant rooms, and a two-level basement for car parking and storage.

The existing building proposed to be demolished is a 33-bedroom boarding house which provides low rental accommodation for tenants and is identified as a contributory building within the heritage conservation area.

The application is recommended for refusal due to multiple reasons, the principal being:

1. The application will result in the loss of 33 boarding house rooms and the application fails to adequately address or satisfy the Retention of Existing

Affordable Rental Housing provisions prescribed by Chapter 2 Part 3 of the Housing SEPP 2021;

2. The application proposes the substantial demolition of the existing contributory building and fails to respect the site's heritage significance, or demonstrate the proposed extent of demolition is justified; and
3. The proposed new development is poorly conceived as it has an overbearing impact upon its surroundings, appears incongruous within its setting and provides inadequate levels of amenity to future occupants of the building.

The inappropriate scale and massing of the proposal is reflected by the proposal's non-compliance with the principal Height of Buildings and Floor Space Ratio development standards of the Sydney LEP, in addition to the Height in Storeys and Street Frontage height controls of the Sydney DCP. This sense of overdevelopment is further compounded by the development's non-compliance with deep soil and multiple amenity controls of the ADG.

The applicant has submitted a Clause 4.6 variation request to seek approval in relation to the development's breach of the Height of Buildings development standard, pursuant to Clause 4.3 of the Sydney LEP. The applicant's request is not recommended to be supported.

The development is also non-compliant with the Floor Space Ratio development standard pursuant to Clause 4.4 of the Sydney LEP, in addition to the minimum internal area of apartments and minimum ceiling heights of apartment buildings development standards prescribed by Clause 148(2)(b) and (c) of the Housing SEPP 2021. The applicant has not submitted Clause 4.6 variation requests to seek approval to vary these standards.

The proposed development is considered inappropriate in the current housing climate; whilst the proposed design and massing of the new development inadequately responds to the site context and its surroundings, offers poor residential amenity, inhibits landscaping opportunities and adversely impacts upon surrounding properties.

The application is referred to the Local Planning Panel for determination as it represents contentious development, with receipt of 25 or more unique submissions by way of objection. Many of the objections received relate to the loss of existing affordable rental housing accommodation.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) Housing SEPP 2021
- (iv) Resilience and Hazards SEPP 2021
- (v) Transport and Infrastructure SEPP 2021
- (vi) Biodiversity and Conservation SEPP 2021
- (vii) Sustainable Buildings SEPP 2022

Attachments:

- A. Selected Drawings
- B. Photomontages
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Submissions

Recommendation

It is resolved that consent be refused for Development Application Number D/2024/230 for the following reasons:

- (A) The proposal is contrary to and fails to adequately satisfy the matters for consideration set out in Section 47(2) of Part 3: Retention of existing affordable rental housing of the State Environmental Planning Policy (Housing) 2021 and the Guidelines for Retention of Existing Affordable Rental Housing.
- (B) The application is inconsistent with the Clause 1.2(2)(e) aim of the Sydney LEP as it fails to encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing, including affordable housing.
- (C) The application fails to satisfy the objectives of the R1 General Residential Zone of the Sydney LEP as it does not provide for the housing needs of the community and does not contribute to a variety of housing types and densities.
- (D) The proposed development is in breach of the Height of Buildings development standard pursuant to Clause 4.3 of the Sydney LEP. The applicant's Clause 4.6 variation request to contravene the Height of Buildings standard is not supported.
- (E) The proposed development is in breach of the Floor Space Ratio development standard pursuant to Clause 4.4 of the Sydney LEP. A Clause 4.6 variation request to seek approval to vary the standard has not been submitted by the applicant.
- (F) The proposed development fails to provide compliant floor to ceiling heights to non-habitable areas pursuant to Objective 4C of the ADG. Minimum ceiling heights are non-discretionary development standards as identified by Clause 148(2)(c) of the Housing SEPP 2021. A Clause 4.6 variation request to seek approval to vary the standard has not been submitted by the applicant.
- (G) The proposed development fails to provide compliant minimum internal areas to several apartments within the development pursuant to Objective 4D of the ADG. Minimum internal areas of apartments are non-discretionary development standards as identified by Clause 148(2)(b) of the Housing SEPP 2021. A Clause 4.6 variation request to seek approval to vary the standard has not been submitted by the applicant.
- (H) The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding heritage character, pursuant to Clause 6.21C(2)(a) of the Sydney LEP.
- (I) The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy, pursuant to the provisions outlined under Clause 6.21C(2)(d)(vii) of the Sydney LEP.
- (J) The proposed development fails to exhibit Design Excellence pursuant to Clause 6.21C of the Sydney LEP.

- (K) The proposed development provides inadequate amenity to apartments within the development and is non-compliant with multiple provisions of the ADG, including Objectives 3D, 3E, 3F, 4A, 4B and 4E.
- (L) The proposal fails to respect the heritage significance of the contributory building and will have an overbearing impact upon the surrounding heritage conservation area, in breach of the provisions outlined within Section 3.9.7 of the Sydney DCP.
- (M) The proposal provides no deep soil and is non-compliant with Objective 3E of the ADG and Section 4.2.3.6 of the Sydney DCP.
- (N) The application provides insufficient information to determine the impacts of the proposed excavation upon the structural integrity of neighbouring properties and the retained building fabric, pursuant to Section 3.9.13 of the Sydney DCP.
- (O) The application fails to demonstrate 15 per cent tree canopy coverage within 10 years of completion, pursuant to Section 3.5.2 of the Sydney DCP.
- (P) The application fails to satisfactorily address Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 and the Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land.
- (Q) The development is unsatisfactory when assessed pursuant to the matters for consideration at section 4.15(1)(e) of the EP&A Act and is therefore not in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 64073, Lot 1 DP 112978, known as 355-357 Liverpool Street, Darlinghurst. It is rectangular in shape with area of approximately 620.3 square metres. It has a primary street frontage of 13.7 metres to Liverpool Street and a secondary street frontage of 13.8 metres to Darley Place. The site is located close to the intersection of Liverpool Street and Darley Street.
2. The site has an east to west fall along Liverpool Street of 0.42 metres (RL 51.37 AHD to RL 50.95 AHD). There is no fall along the rear boundary. The site has a south to north cross fall of 0.66 metres (RL 51.83 AHD to RL 51.17 AHD).
3. The site is occupied by a three-storey painted brick boarding house containing 33 boarding house rooms. The existing site reflects Victorian development with a later overlay of Interwar development.
4. The original Victorian terraces are setback from the frontage to Liverpool Street and were likely constructed in 1877. In 1926, an interwar addition was constructed in the front yards of the terraces including the front verandahs and balconies which are now visible from Liverpool Street.
5. Both the original terraces appear to have been extended with later additions. The site is identified as Contributory within the heritage conservation area because it reflects two key layers of historic development.
6. The surrounding area predominantly comprises residential uses and a variety of commercial and mixed-use development. Residential uses in proximity of the subject site include terraces, detached dwelling houses and residential flat buildings ranging from one and eight storeys.
7. To the north is the site's frontage to Liverpool Street and the local heritage item residential flat building at 280 Liverpool Street, known as "*Alexandra Flats*" including interior and street fencing (I359).
8. To the east is the adjacent local heritage item residential flat building at 3-5 Darley Place, known as "*Ballina Flats*" including interior (I275).
9. To the south is the site's rear frontage to Darley Place and the adjacent two storey terrace and rear setback of 7 Darley Street.
10. To the west is the adjacent residential flat building and rear setback of 349 Liverpool Street, and beyond the rear setback is the single storey local heritage item *cottage including interior* (I275) at 1 Darley Place.
11. The scale of development at the rear of the site across Darley Place significantly reduces to 1 and 2-storey terraces.
12. The site is not a heritage item but is identified as a contributory building within the Oxford Street and Victoria Street heritage conservation area (CA12).
13. The site is located within the Darlinghurst West locality and is identified as being subject to minor flooding in the south-west corner of the site.

- 14. A site visit was carried out on 30 April 2024. Photos of the site and surrounds are provided below:
- 15. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Front of the site viewed from Liverpool Street



Figure 3: Site viewed from looking south east along Liverpool Street



Figure 4: Looking south-west from the Liverpool Street and Darley Street intersection towards the neighbouring residential flat building of 3-5 Darley Street, situated to the east of the site (subject site is situated on the right hand side of 3-5 Darley Street and hidden behind street trees)



Figure 5: Rear of the site viewed from Darley Street



Figure 6: Rear setback of the subject site looking north towards rear of existing buildings on site



Figure 7: Rear setback of the subject site looking south towards Darley Place



Figure 8: Rear setback of the subject site looking west and illustrating rear setbacks of residential flat buildings adjacent



Figure 9: Rear of the site looking north east from Darley Place



Figure 10: Looking west along Darley Place from Darley Street with neighbouring residential flat building of 3-5 Darley Street in the foreground



Figure 11: Looking north towards the rear setback of 349 Liverpool Street and the heritage item cottage of 1 Darley Place on the left-hand side. Subject site situated on the right-hand side.



Figure 12: Existing internal courtyard of subject site



Figure 13: Existing internal entrance hallway

History Relevant to the Development Application

Development Applications

16. The following applications are relevant to the current proposal:

- **PDA/2014/21** – Pre-DA advice was issued on 25 March 2014 in relation to a development proposal for the demolition of the existing boarding house and construction of a 6-storey mixed-use retail/residential development.

Council advised that the existing building makes an important contribution to the character and significance of the heritage conservation area and therefore its demolition would not be supported.

Further, it was advised that a comprehensive social impact assessment would be required to inform assessment of the impact of the loss of affordable rental housing.

- **D/2022/831** - Development consent was recently granted on 16 May 2024 by way of Section 34 agreement through the Land and Environment Court on the neighbouring site of 349 Liverpool Street for the demolition of existing structures and construction of a seven-storey residential flat building comprising 14 apartments with three basement levels, rooftop communal open space, associated landscaping works and vehicle access from Darley Place.

Correspondence with Applicant

17. Council officers wrote to the applicant on 23 May 2024 advising that the application would not be supported due to significant issues identified following detailed review.
18. This assessment included consideration of all feedback received from internal referrals, public submissions and advisory comments provided by the City's Design Advisory Panel Residential Subcommittee (DAPRS).
19. Council's letter provided a detailed breakdown of all issues identified and highlighted the principal issues of concern; both in relation to the loss of existing affordable housing accommodation on site and concerns associated with design, heritage impacts and amenity.
20. The applicant was advised that, given the threshold issue associated with the loss of affordable rental housing and the substantial revisions required to remedy the overarching planning and concept design issues associated with the proposal, Council would not be accepting amendments under the current application.
21. DA amendments can only be made with the agreement of Council pursuant to Clause 37 and 38 of the Environmental Planning and Assessment Regulation 2021.
22. The applicant was provided with the opportunity to withdraw the application should they wish to do so; however no response has been received at the time of writing.
23. The application is therefore reported to the Local Planning Panel for determination.

Proposed Development

24. The application seeks consent for demolition of the existing building on site and construction of a new part six and part eight storey residential flat building comprising nineteen apartments, with associated waste areas and plant rooms, and a two-level basement for car parking and storage. The proposal also includes associated landscaping works to a central courtyard and on rooftop levels.
25. The proposed scope of works consists of the following:

Demolition

- Substantial demolition of existing 33-bedroom boarding house and structures on site
- Only front façade of the existing buildings and balconies fronting Liverpool Street are to be retained

Proposed

- Excavation across near full-extent of the site boundary to create a two-level basement
- Basements provide 16 car parking spaces and 2 motorbike spaces all accessible by a single vehicle lift, in addition to bicycle parking and storage
- Construction of a 6-storey brick and off-form concrete front addition atop of retained façade with large window openings to Liverpool Street
- Construction of an 8-storey off form concrete rear addition with a communal rooftop space including lift and stairwell overrun
- The two built forms are proposed to be built around a central internal courtyard and garden

Unit Mix

The proposed nineteen apartment unit mix consists of:

- 4 x 1-bedroom apartments
 - 14 x 2-bedroom apartments
 - 1 x 3-bedroom apartment
26. Plans and elevations of the proposed development are provided below.

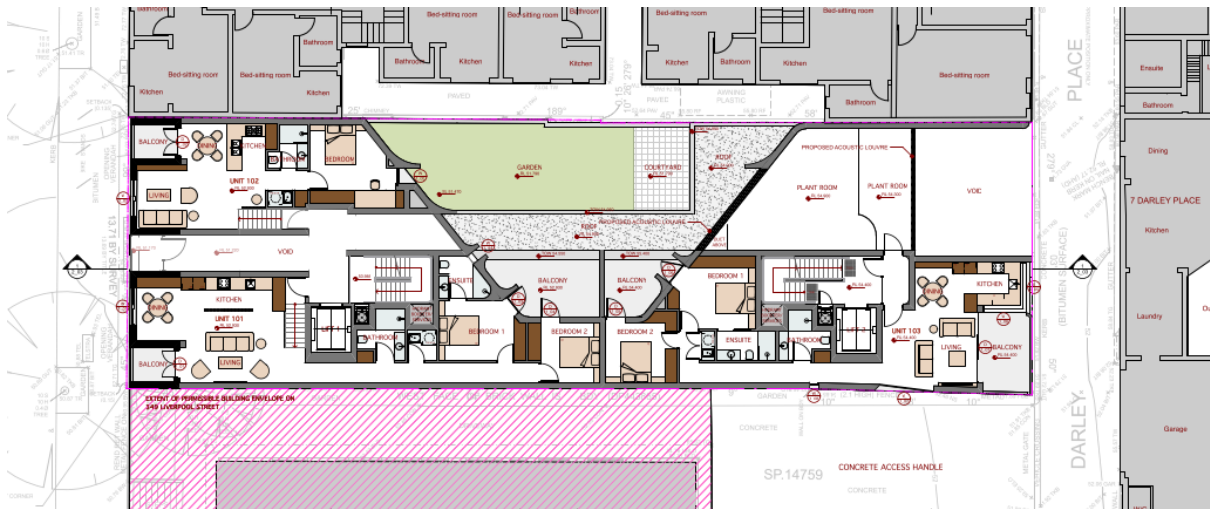


Figure 17: Proposed Level 1

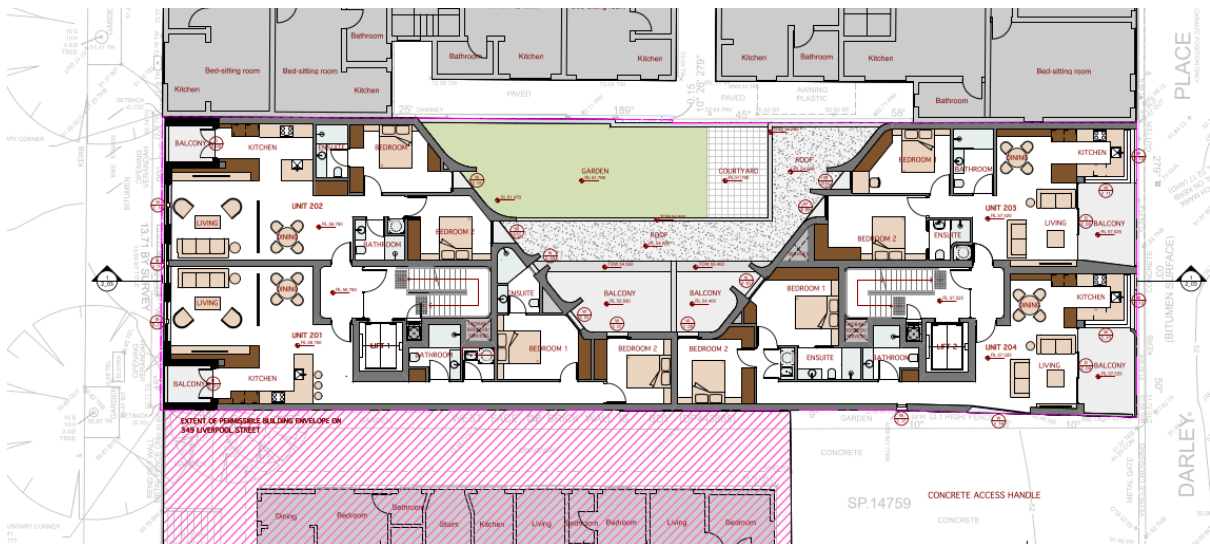


Figure 18: Proposed Level 2

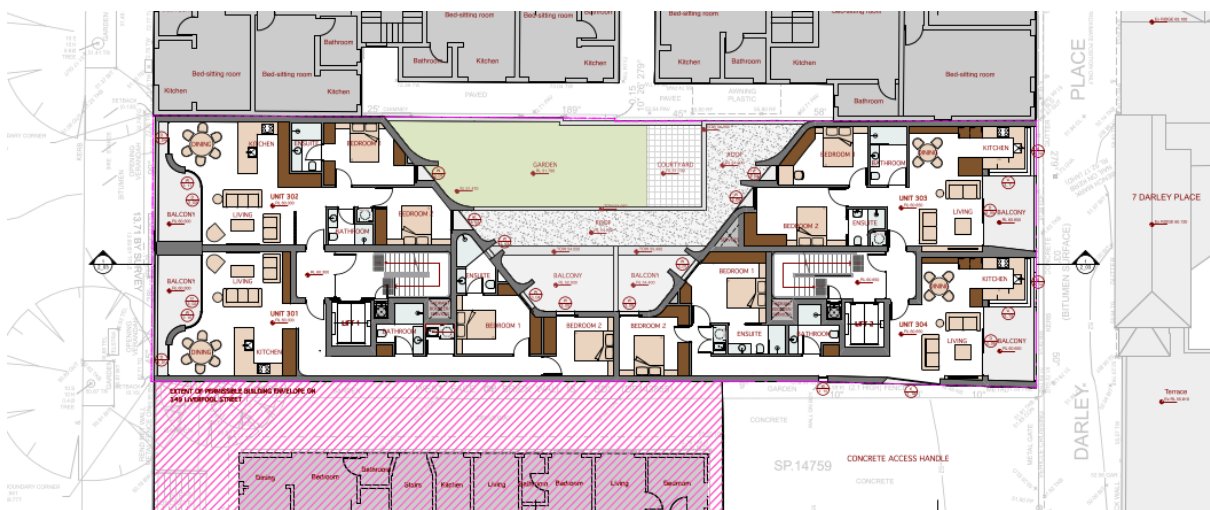


Figure 19: Proposed Level 3

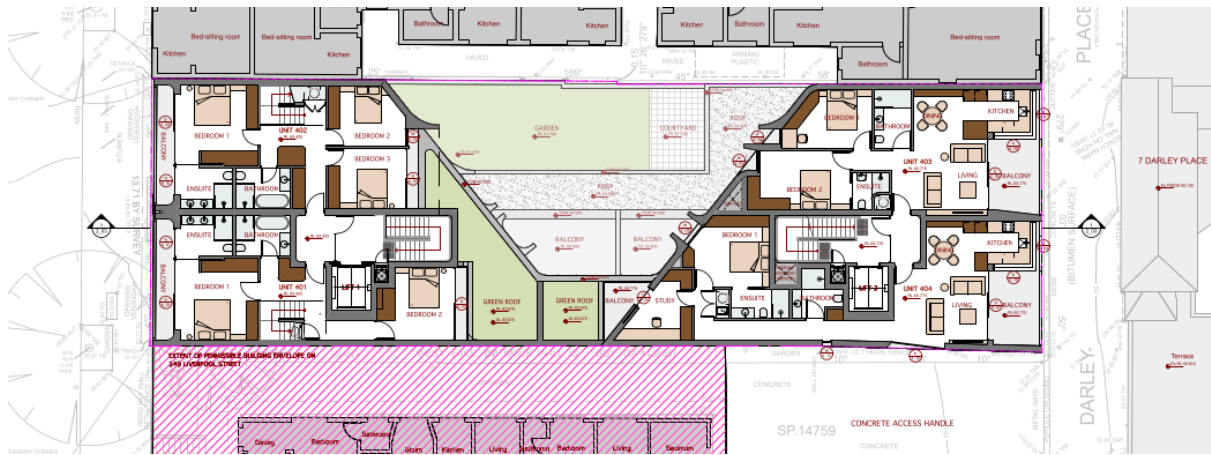


Figure 20: Proposed Level 4

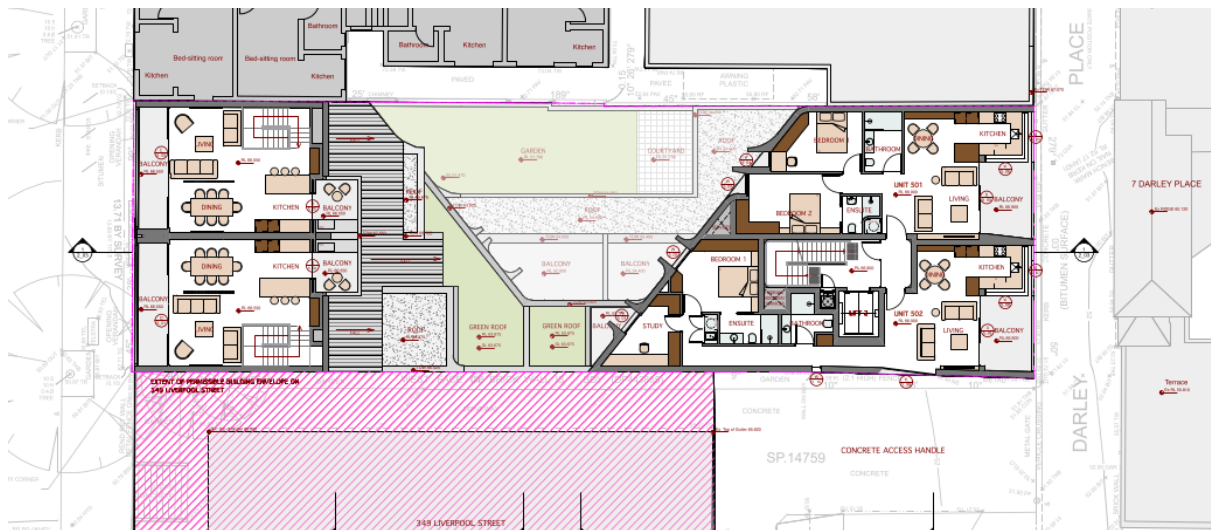


Figure 21: Proposed Level 5

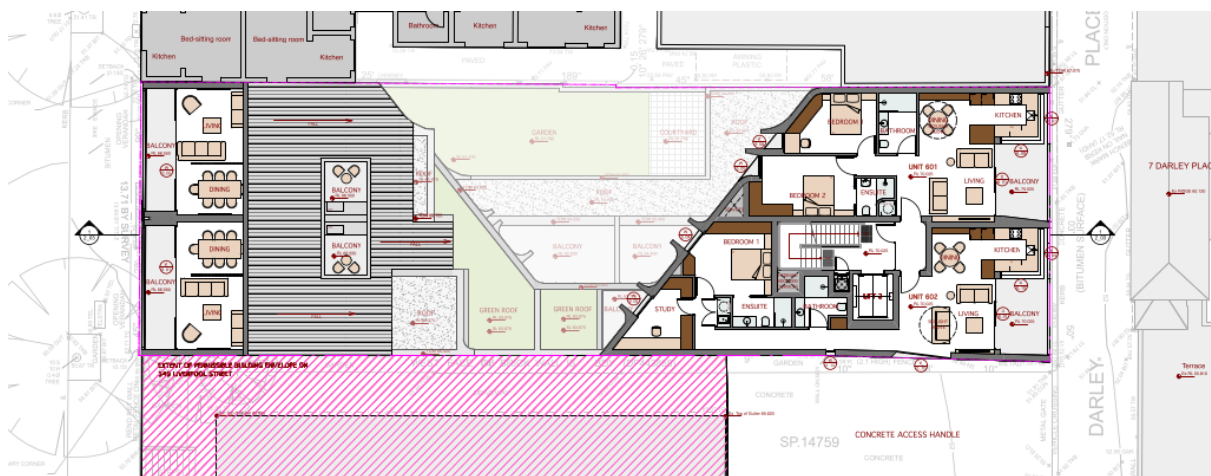


Figure 22: Proposed Level 6

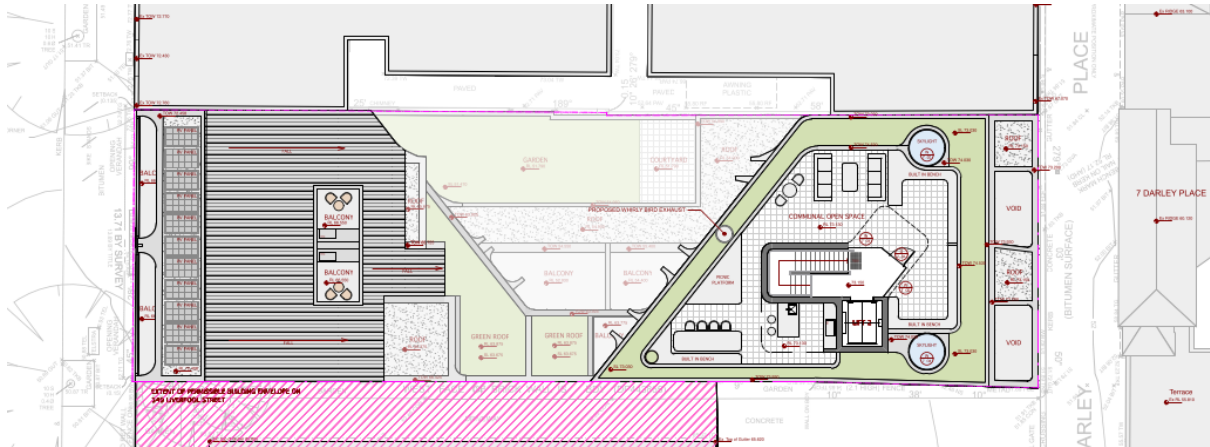


Figure 23: Proposed Level 7 (Rooftop Level)



Figure 24: Proposed Roof Plan

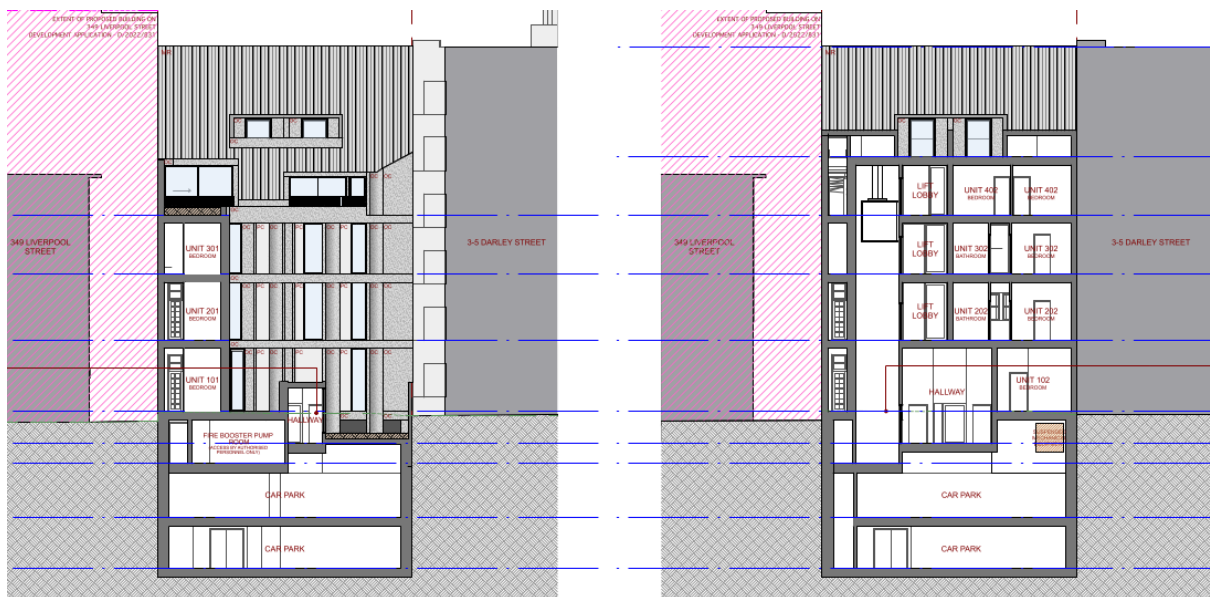


Figure 25: Proposed Booster Short Sections (through front built form to Liverpool Street)



Figure 26: Proposed Short Sections (through rear built form to Darley Place)

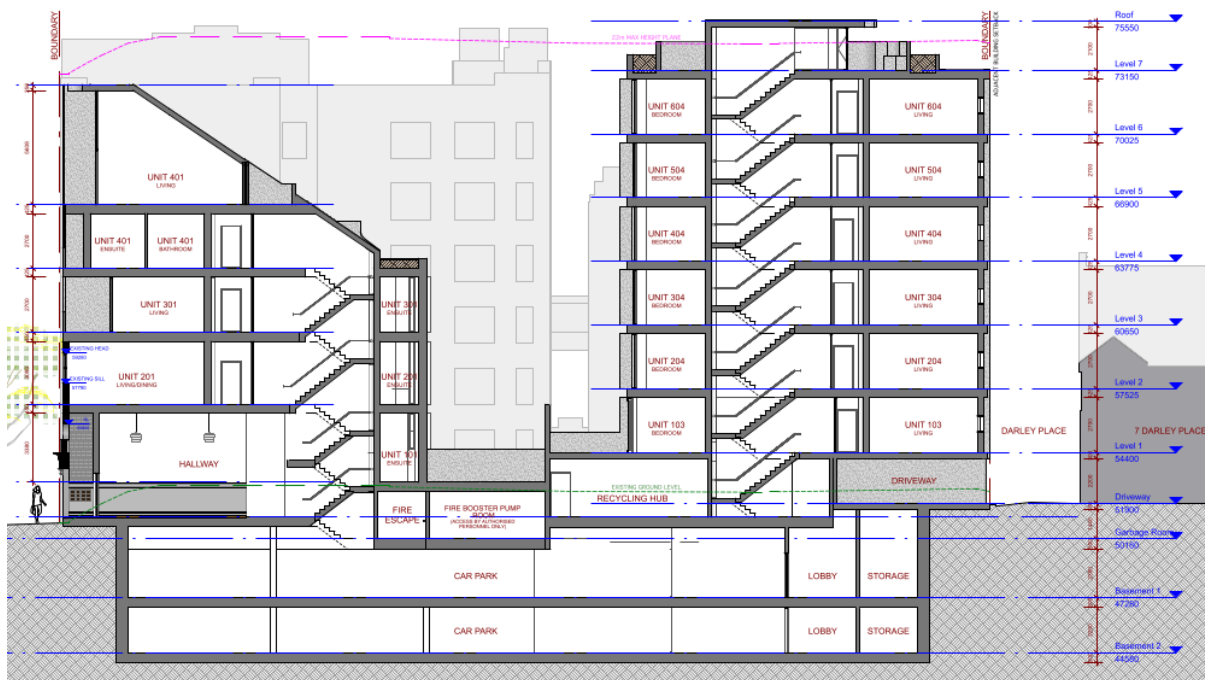


Figure 27: Proposed Long Section



Figure 28: Proposed Front (North) Elevation

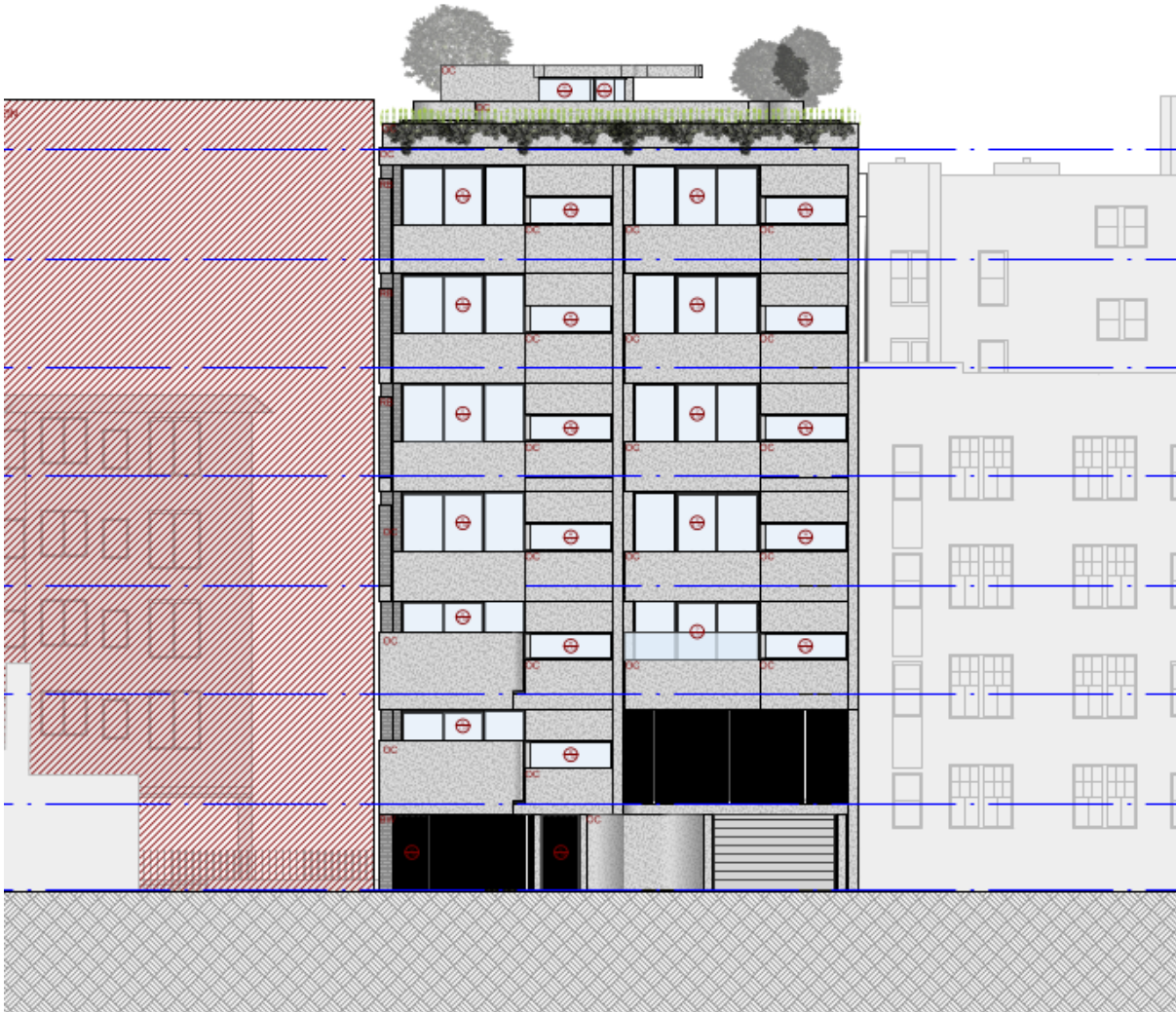


Figure 29: Proposed Rear (South) Elevation

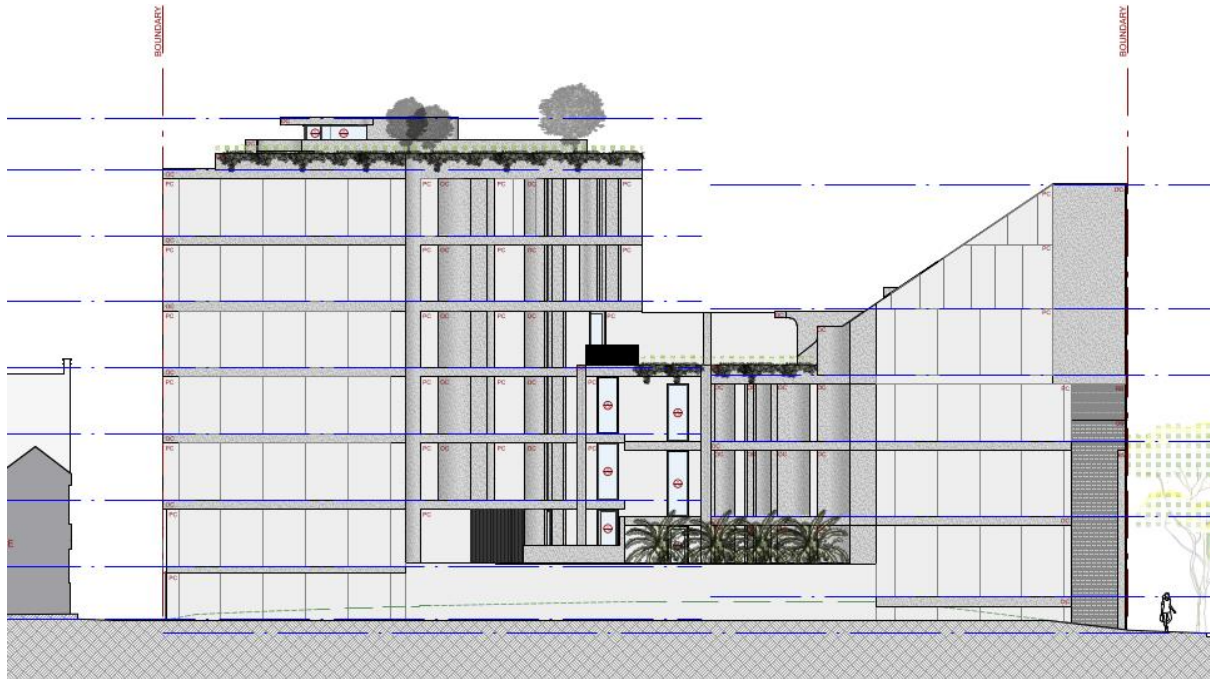


Figure 30: Proposed Side (East) Elevation

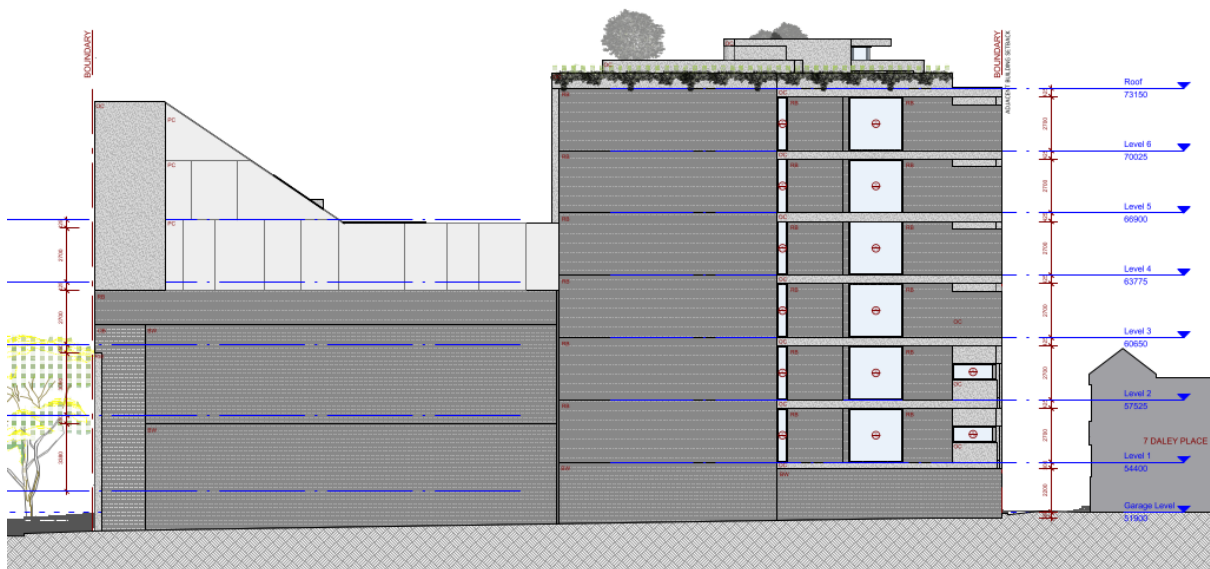


Figure 31: Proposed Side (West) Elevation

Assessment

27. 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 (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

28. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
29. In this instance, whilst the site has historically been used for residential purposes, the proposal involves the excavation for two basement levels and will also include demolition of existing buildings/structures and soil disturbance.
30. Whilst there is a low risk of any existing contaminants on site, further information is required to investigate and confirm the level of risk through a Preliminary Environmental Site Investigation (PESI) to identify any past or present potentially contaminating activities that have occurred on the subject site and, if required, provide a basis for a more detailed investigation.
31. The applicant has not provided detail of any site investigations carried out and therefore it cannot be confirmed whether the proposal is acceptable pursuant to the provisions of Clause 4.6 of the SEPP.

State Environmental Planning Policy (Housing) 2021

32. The principles of the Housing SEPP 2021 include encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability (Clause 3(b)) and mitigating the loss of existing affordable rental housing (Clause 3(h)).
33. Chapter 2 Part 3 of the Housing SEPP also contains matters that must be taken into account in relation to the retention of existing affordable rental housing stock.

Chapter 2 Affordable Housing

Part 3 Retention of existing affordable rental housing

34. Part 3 of the SEPP addresses the reduction in the availability of low rental residential accommodation arising from a development.
35. Clause 46 of the Housing SEPP states that Part 3 applies to low-rental residential buildings on land within the Greater Sydney region, which includes boarding houses.
36. The Housing SEPP identifies a need for the retention and provision of affordable housing and it is self-evident that the proposed conversion of the 33-room boarding house into a residential flat building will reduce the affordable rental housing stock within the City of Sydney LGA and is subject to assessment under the provisions of Clause 47 of the Housing SEPP.
37. Clause 47(2) of the Housing SEPP sets out that development resulting in the reduced availability of existing affordable housing provided by a low-rental residential building (through demolition or conversion of the use) requires consideration of the Guidelines for Retention of Existing Affordable Rental Housing (Guidelines) and the following matters assessed in the table sections below.

Provision	Comment
(a) whether the development will reduce the amount of affordable housing in the area	The proposed conversion of a 33-room boarding house to a residential flat building will result in the loss of affordable housing within the local area and within the broader City of Sydney LGA.
(b) whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation,	<p>The Guidelines state that a rental vacancy rate of less than 3% in the area indicates insufficient comparable accommodation to mitigate the loss of the affordable housing.</p> <p>The rental vacancy rates for the inner Sydney area was between 1.6% and 2% for the three-month quarterly period preceding lodgement of the subject application, being January to March 2024 according to the Vacancy Rate Survey Results provided by the Real Estate Institute NSW.</p> <p>Accordingly, there is currently not sufficient comparable accommodation available in the locality to satisfy the demand.</p>
(c) whether the development is likely to result in adverse social and economic effects on the general community,	<p>The proposal will contribute to the cumulative loss of affordable housing across the City of Sydney LGA.</p> <p>The applicant has not submitted a Social Impact Assessment to facilitate detailed assessment of the social issues and impacts resulting from the development.</p> <p>Notwithstanding the above, given the vacancy rate for the inner Sydney area is significantly less than 3%, there is not sufficient comparable accommodation in the locality to satisfy existing demand (as per (b) above).</p> <p>It follows that the removal of the subject boarding house is likely to result in adverse social and economic effects on the general community.</p>

Provision	Comment
<p>(d) whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation,</p>	<p>The application provides no detail of arrangements to assist residents in finding future comparable arrangements.</p> <p>The Guidelines suggest a number of options which should be considered when accommodating displaced residents. These include provision of accommodation in other premises, written agreements giving displaced residents first option for comparable accommodation that comes onto the market and payment of relocation costs or ex-gratia disruption payments.</p> <p>However, the potential feasibility or value of any of these options is undermined by the significant undersupply of alternative comparable accommodation as outlined under point b) and, as such, these options are unlikely to actually assist residents in finding new accommodation.</p>
<p>(e) the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area,</p>	<p>As at 30 June 2022, the City of Sydney currently has a stock of 1,427 affordable rental dwellings with an additional 641 approved or under construction. These figures relate to housing managed by community housing providers and rented to very low to moderate income households.</p> <p>The City of Sydney's Local Housing Strategy Technical Report 2020 indicates that in 2014, there were 744 genuine boarding houses within the LGA. In 2018, this reduced to 623.</p> <p>The City of Sydney's Local Housing Strategy 2020 advises that the total net affordable housing requirement in 2036 will be approximately 11,690 dwellings, or 7.5% of all private housing. This figure is based on the assumption that the current stock of affordable housing is not further diminished from current levels.</p> <p>Despite increases in the number of community housing provider managed affordable rental dwellings, as a proportion of total dwellings, the amount</p>

Provision	Comment
	<p>of affordable rental housing in the City remains very low at 0.76% of total housing stock.</p> <p>The loss of 33 boarding house rooms will contribute to the ongoing cumulative loss of affordable housing stock in the City of Sydney Local Government Area.</p>
<p>(f) whether the building is structurally sound, including—</p> <p>(i) the extent to which the building complies with relevant fire safety requirements, and</p> <p>(ii) the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements,</p>	<p>The submitted SEE describes the existing boarding house as dilapidated, however the application provides no further information with regards to the existing building condition or structural soundness.</p> <p>Accordingly, Council officers are unable to determine whether any upgrade works are required to achieve acceptable housing, structural and fire safety standards as required by the Guidelines.</p>
<p>(g) whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development,</p>	<p>The removal of the subject boarding house will exacerbate the area's already extremely low level of comparable housing stock and low vacancy rate.</p> <p>It follows that the proposed removal of the boarding house from current affordable housing stock will result in significantly adverse social and economic impacts for both the current tenants and general community.</p> <p>A monetary contribution will not adequately mitigate the reduction of affordable housing resulting from the development.</p>
<p>(h) for a boarding house—the financial viability of the continued use of the boarding house.</p>	<p>The application provides no assessment of the financial viability on the continued use of the property as a boarding house.</p> <p>The Guidelines provide that consideration should be given to upgrades to an existing boarding house to determine whether the continued boarding house use is financially viable. For example, upgrading a boarding house could increase its viability by decreasing maintenance and</p>

Provision	Comment
	management costs (expenses), reducing vacancies or increasing rents (but at a level below the land tax exemption threshold).

38. Overall, the application has failed to adequately address the eight matters for consideration established by Clause 47(2) of the Housing SEPP and therefore is not supported.
39. Further assessment regarding the issue of the loss of existing affordable rental accommodation is provided in the 'Discussion' section below.

Chapter 4 - Design of Residential Apartment Development

40. The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales.
41. When determining an application for a residential flat development of three or more floors and containing four or more apartments, the SEPP requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 9.
42. The applicant has submitted a design verification statement and design report prepared by Goran Stojanovic (architectural registration 6949) with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide (ADG). The statement does not satisfy Clause 29 of the Environmental Planning and Assessment Regulation 2021 as it fails to demonstrate how the development addresses the objectives in Parts 3 and 4 of the ADG.
43. A detailed assessment of the proposal against the provisions of the ADG is provided below.

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	<p>The proposed development is broken up into two distinct building masses.</p> <p>The irregular depth of each building mass are within the range of 12-18m glass line to glass line and are consistent with ADG provisions.</p>

2F Building Separation	Compliance	Comment
Up to four storeys (approximately 12 metres):	No	The proposal will extend the built form of development on the site towards the rear. The proposed rear addition is built to the boundary, thus providing no

2F Building Separation	Compliance	Comment
<ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 		<p>separation to 3-5 Darley Street to the east and 1 Darley Place to the west.</p> <p>It is noted that the existing building is currently built boundary to boundary at the front of the site, however the proposal will involve construction of a new development built boundary to boundary at the rear of the site.</p> <p>This undeveloped area at the rear currently provides relief to other properties adjacent and offers opportunities for landscaping.</p> <p>Whilst it is accepted that achieving compliant building separation is challenging given the dense urban context, the proposed built form and separation distances will have a disproportionate and overbearing impact upon neighbours.</p> <p>This issue is exacerbated by the proposal's intention to construct residential windows to living room areas on the boundary at the rear of the site facing west and directly overlooking 1 Darley Place.</p>

3D Communal and Public Open Space	Compliance	Comment
<p>Communal open space has a minimum area equal to 25% of the site.</p>	No	<p>The proposed development provides 153.5sqm of communal open space which equates to 24.7%.</p> <p>Whilst this represents a marginal non-compliance with regards to the quantum of communal open space required, the development's provision of communal open space is inconsistent with the design guidance underpinning Objective 3D.</p> <p>Inconsistencies with the design guidance of Objective 3D include consolidation of communal open spaces and co-locating communal open space with deep soil areas.</p>

3D Communal and Public Open Space	Compliance	Comment
		See further assessment of communal open space under the Discussion section below.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	The proposal achieves over 2 hours direct sunlight to over 50% of the minimum requirement of communal open space (which equates to 77.5sqm) on the communal rooftop area between 9am and 3pm on 21 June.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m	No	The proposed development involves full site coverage with basement areas below and no deep soil zones are proposed.

3F Visual Privacy	Compliance	Comment
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms <p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 	No	<p>The proposed development provides zero setbacks to the side boundaries to the east and west.</p> <p>Whilst the ADG allows for zero separation between blank walls, the proposal involves residential windows to living room areas on the boundary at the rear of the site facing west and directly overlooking 1 Darley Place.</p> <p>Further, the proposed development provides zero separation and is built to the frontage of Darley Place at the rear. This places residential windows and balconies within 5m of the residential windows and private open space areas of 7 Darley Street.</p> <p>The application fails to address or respond to the recent development consent on the neighbouring site of 349 Liverpool Street to the west (D/2022/831) and the proposed zero</p>

3F Visual Privacy	Compliance	Comment
		<p>separation to the boundary will constrain the amenity of residential apartments and windows facing the subject site within the consented scheme.</p> <p>The proposal fails to demonstrate adequate building separation distances are provided between neighbouring sites, to achieve reasonable levels of external and internal visual privacy, as required by objective 3F1 of the ADG.</p>

4A Solar and Daylight Access	Compliance	Comment
<p>70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.</p>	No	<p>The applicant has provided insufficient information to facilitate detailed and accurate assessment against the solar access provisions provided by Objective 4A1 of the ADG.</p> <p>Notwithstanding the above, the submitted SEE states that 12 of the 19 apartments within the proposed development will receive 2 hours solar access.</p> <p>This represents only 63% of the apartments within the development achieving compliant solar access and is non-compliant with the control.</p>
<p>Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.</p>	No	<p>Five south facing apartments at the rear of the site receive no direct sunlight to living room windows or balconies between 9am and 3pm on 21 June (Units 203, 303, 403, 501 and 601).</p> <p>This represents 26% of the apartments within the development receiving no solar access.</p> <p>Further, six other south facing apartments are reliant upon windows positioned directly on the western boundary in order to achieve solar compliance (Units 103, 204, 304, 404, 502 and 602).</p>

4A Solar and Daylight Access	Compliance	Comment
		Solar access to these west facing windows will also be restricted by the recent approval on 349 Liverpool Steet (D/2022/831) - the impact of this development consent on the subject site and its implications for the proposed redevelopment of the site has not been demonstrated.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Not demonstrated	<p>Whilst all habitable rooms within the development have window or door openings, it is unclear whether these openings comply with the design guidance outlined under Objective 4B-1 of the ADG.</p> <p>Window operability is not depicted on elevation drawings and the majority of windows facing the internal courtyard are not visible on the eastern elevation drawings due to the proposed window blinkers designed to restrict overlooking impacts towards No.3-5 Darley Street.</p> <p>Accordingly, it cannot be verified from the information provided whether the obscured windows and doors provide an opening at least 5% of the floor area served.</p> <p>Notwithstanding the above, the bedrooms to Units 101 and 103 on Level 1 only appear to be served by balcony doors with no other windows. This arrangement provides limited options for night time amenity, or flexibility in ventilating the space.</p>
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Not demonstrated	Whilst all proposed apartments within the development are dual aspect, it is unclear whether window openings provide for adequate natural ventilation as noted above and therefore compliance with the ADG provisions for cross-ventilation cannot be verified.

4B Natural Ventilation	Compliance	Comment
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	No	All proposed apartments within the development are cross-through apartments and many of these apartments exceed 18m in depth measured glass line to glass line. The proposal is therefore non-compliant with Objective 4B-3 of the ADG.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	All habitable rooms provide a minimum 2.7m floor to ceiling height.
Non-habitable rooms: 2.4m	No	There are a number of non-habitable areas within the development which do not achieve 2.4m floor to ceiling heights, including the landing to the communal rooftop and the lower level basement. Providing compliant 2.4m floor to ceiling height for the landing to the communal rooftop would likely have implications upon development height in an area which is already in breach of the maximum height development standard of the Sydney LEP. See further assessment of floor to ceiling heights under the Discussion section below.
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.	Yes	The two storey apartments within the development achieve compliant 2.7m floor to ceiling heights throughout.

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> Studio: 35m² 	No	Units 203, 303, 501 and 601 are 2-bed apartments with 2 bathrooms, each measuring less than 75sqm and are

4D Apartment Size and Layout	Compliance	Comment
<ul style="list-style-type: none"> • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>		<p>therefore non-compliant with Objective 4D-1 of the ADG.</p> <p>See further assessment of apartment sizes under the Discussion section below.</p>
<p>Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.</p>	<p>Not demonstrated</p>	<p>Whilst all habitable rooms within the development have window or door openings, it is unclear whether these openings comply with the design guidance outlined under Objective 4D-1 of the ADG.</p> <p>The majority of windows facing the internal courtyard are not visible on the eastern elevation drawings due to the proposed window blinkers designed to restrict overlooking impacts towards No.3-5 Darley Street.</p> <p>Accordingly, it cannot be verified from the information provided whether the obscured windows and doors provide a minimum glass area at least 10% of the floor area of the room served.</p>
<p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>Yes</p>	<p>All apartments within the proposed development are open plan and comply with the maximum habitable room depth of 8m.</p>
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² 	<p>Yes</p>	<p>All bedrooms measure over 9sqm excluding wardrobe space and comply.</p>

4D Apartment Size and Layout	Compliance	Comment
Minimum dimension of any bedroom is 3m (excluding wardrobes).		
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	No	<p>The living areas of Units 101 and 102 measure less than 3.6m and do not comply with the minimum dimension requirement.</p> <p>Unit 101 is a two-bedroom apartment and Unit 102 is a one-bedroom apartment.</p> <p>Both these apartments have a non-compliant minimum living room width of 3.2m.</p>
4m minimum width for cross over and cross through apartments.	No	<p>The width of apartments within the development is constrained by the proposed location of the dual lift and stairwell cores due to the development being separated into two principal building masses.</p> <p>This results in a number of apartments having constrained widths measuring less than 4m along long sections.</p>

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m² with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m² with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area</p>	No	<p>Many of the proposed balconies are non-compliant with the private open space provisions of the ADG as they do not achieve the minimum quantum requirements, or they are inconsistent with the design guidance of the ADG.</p> <p>Noted inconsistencies with the design guidance include principle private open space areas of several apartments only being accessible from bedrooms and several balconies off living rooms not achieving the minimum depths prescribed by Objective 4E-1 of the ADG.</p>

4E Private Open Space and Balconies	Compliance	Comment
of 12m ² with a minimum depth of 2.4m.		<p>Only 9 of the 19 apartments within the development are considered to comply with the design criteria and guidance for private open spaces prescribed by Objective 4E the ADG.</p> <p>Even so, a number of these compliant private open space areas do not achieve compliant solar access pursuant to the provisions of Objective 4A-1 of the ADG.</p>

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The application proposes two separate stairwell and lift cores in each building mass, each with a maximum 2 apartments off at each level and complies.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	Windows to primary living areas and bedrooms are generally separated or offset from common circulation spaces and communal space and complies with the provision.
Daylight and natural ventilation are provided to all common circulation spaces.	No	Common circulation spaces of the development are primarily fully enclosed with no windows for natural daylight or ventilation.

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 6m³ • 2 bed: 8m³ 	Yes	The applicant has provided storage calculation diagrams which demonstrates that each apartment has adequate storage space and complies.

4G Storage	Compliance	Comment
<ul style="list-style-type: none"> • 3 bed: 10m3 (Minimum 50% storage area located within unit)		

State Environmental Planning Policy (Sustainable Buildings) 2022

44. The aims of this Policy are as follows —
- (a) to encourage the design and delivery of sustainable buildings,
 - (b) to ensure consistent assessment of the sustainability of buildings,
 - (c) to record accurate data about the sustainability of buildings, to enable improvements to be monitored,
 - (d) to monitor the embodied emissions of materials used in construction of buildings,
 - (e) to minimise the consumption of energy,
 - (f) to reduce greenhouse gas emissions,
 - (g) to minimise the consumption of mains-supplied potable water,
 - (h) to ensure good thermal performance of buildings.

Chapter 2 Standards for residential development - BASIX

45. A BASIX Certificate has been submitted with the development application - Certificate number: 1732331M.
46. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. The proposed development is not recommended for approval, however a condition of consent could be readily recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network

Clause 2.48 Determination of development applications – other development

48. The application is subject to Clause 2.48 of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.
49. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non Rural Areas) 2017

50. The proposed development involves the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
51. The SEPP states that the Council must not grant consent for the removal of vegetation within heritage sites or heritage conservation areas unless Council is satisfied that the activity is minor in nature and would not impact the heritage significance of the site.
52. In this regard, the proposed development involves full site coverage requiring the clearing of existing vegetation at the rear in addition to basement excavation which has the potential to impact upon the root zones of existing street trees and trees within neighbouring properties.
53. The applicant has not submitted an Arborist Report with the application therefore impacts upon existing vegetation cannot be determined.
54. Additionally, the proposed full site coverage of the development and consequent zero deep soil planting or tree canopy coverage fails to offset any impacts resulting from the clearing of existing vegetation and/or trees and therefore the application fails to satisfy the provisions of the SEPP.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment

55. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
56. 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.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 6 Water catchments

57. 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 control of improved water quality and quantity, the controls set out in Division 2 of the SEPP are not applicable to the proposed development.

Local Environmental Plans**Sydney Local Environmental Plan 2012**

58. 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	No	<p>The site is located in the R1 General Residential zone. The proposed development is defined as a residential flat building and is permissible with consent in the zone.</p> <p>Notwithstanding the above, the proposal is inconsistent with the objectives of the zone as it will result in the loss of existing affordable rental accommodation, for which there is a significant undersupply and shortfall across the City of Sydney LGA. There is currently insufficient affordable housing stock to meet existing demand and the proposal will exacerbate these existing pressures.</p> <p>Accordingly, the proposal fails to satisfy the objectives of the zone as it does not provide for the housing needs of the community and does not contribute to a variety of housing types and densities.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 22m is permitted.</p> <p>The proposed development breaches the permitted height control at the rear of the site due to the proposed communal rooftop and associated structures atop the rear built form.</p> <p>The precise extent of variation cannot be accurately determined due to uncertainty regarding the applicant's assessment of the existing ground level across the site.</p> <p>The applicant submits that the development has a maximum height of 23.76m, representing an 8% breach of the development standard.</p> <p>Council Officers consider that the non-compliance is likely to be greater than this due to uncertainty regarding the applicant's assessment of the existing ground level across the site.</p>

Provision	Compliance	Comment
		<p>Notwithstanding the above, 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. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 3:1 or 1,860.9sqm is permitted.</p> <p>A floor space ratio of 1,874.5sqm equating to a proposed FSR of 3.02:1 is proposed.</p> <p>The proposed development does not comply with the maximum floor space ratio development standard.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has not been provided. See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	No	<p>Height of Buildings</p> <p>The proposed development seeks to vary the Height of Buildings development standard prescribed under Clause 4.3 of the Sydney LEP.</p> <p>A Clause 4.6 variation request has been submitted with the application but is not recommended for approval.</p> <p>See further details in the 'Discussion' section below.</p> <p>Floor Space Ratio</p> <p>The proposed development is in breach of the Floor Space Ratio development standard prescribed by Clause 4.4 of the Sydney LEP.</p> <p>A Clause 4.6 variation request has not been submitted to support this departure.</p> <p>See further details in the 'Discussion' section below.</p> <p>Apartment Size</p>

Provision	Compliance	Comment
		<p>A number of apartments within the development measure less than the minimum internal area prescribed by Part 4D of the Apartment Design Guide.</p> <p>Minimum internal areas of apartments are non-discretionary development standards as identified by Clause 148(2)(b) of the Housing SEPP 2021.</p> <p>A Clause 4.6 variation request has not been submitted to seek approval to vary the minimum internal area apartment size development standard.</p> <p>See further details in the 'Discussion' section below.</p> <p>Ceiling Heights</p> <p>A number of non-habitable areas within the development do not achieve the minimum ceiling heights for non-habitable areas prescribed by Part 4C of the Apartment Design Guide.</p> <p>Minimum ceiling heights are non-discretionary development standards as identified by Clause 148(2)(c) of the Housing SEPP 2021.</p> <p>A Clause 4.6 variation request has not been submitted to seek approval to vary the minimum ceiling height development standard.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	The site is located within the Oxford Street and Victoria Street Heritage Conservation Area (CA12) and is adjacent to a local heritage item known as <i>'Ballina Flats' including interior (I275)</i> , situated at 3-5 Darley Street and the immediate neighbour to the east of the site.

Provision	Compliance	Comment
		<p>There are also a number of other local heritage items in close proximity at the front and rear of the site. This includes the heritage <i>Cottage including interior (I268)</i>, situated to the west at the rear of the site along Darley Place.</p> <p>The proposed development will result in detrimental impact on the heritage significance of the heritage conservation area and heritage items.</p> <p>See further details in the 'Discussion' section below.</p>
5.21 Flood Planning	No	<p>The subject site is not currently flood-affected due to the present kerb height along both frontages.</p> <p>The proposed new driveway and opening in the existing wall for the internal parking at the street level expose the property to the 1% AEP and PMF flooding from the street.</p> <p>A flood assessment has not been provided and is required to set levels of the new driveway crossing in order to protect the property from flooding.</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 demonstrate design excellence as it; provides inadequate amenity to the proposed apartments, constrains the level of amenity to immediate neighbours, adversely impacts upon the character of the heritage conservation area and fails to enhance urban greening or demonstrate excellence in landscape design.</p> <p>The proposal therefore fails to satisfy the Design Excellence provisions of the Sydney LEP.</p>

Provision	Compliance	Comment
		See further details in the 'Discussion' section below.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	<p>A maximum of 17 car parking spaces are permitted.</p> <p>The proposed development includes 16 car parking spaces and complies with the relevant development standards.</p>
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Applicable if approved	<p>The proposed development is situated on residual land.</p> <p>Existing floorplans have not been provided to determine the precise gross floor area uplift of the proposed development, however the proposal will result in the creation of over 200sqm of GFA intended for the purposes of residential accommodation and therefore an affordable housing contribution is applicable.</p> <p>The proposal is not recommended for approval, however proposed total floor area plans would be required in order to calculate affordable housing contributions applicable pursuant to the provisions of Clause 7.13 of the Sydney LEP if the application is considered for approval.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with Class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.26 Public art	No	The development triggers the requirement for public art with a cost of

Provision	Compliance	Comment
		development greater than \$10M, however a Preliminary Public Art Plan has not been submitted.

Development Control Plans

Sydney Development Control Plan 2012

59. 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

60. The site is located within the Darlinghurst West locality. The proposed development is not in keeping with the unique character and the design principles of the locality as it involves substantial demolition of an existing contributory building, whilst the proposed additions appear incongruous with the character of the area.
61. The proposal will have an overbearing impact upon Liverpool Street streetscape and the curtilage of heritage items to the rear along Darley Place.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	No	<p>The proposed built form of the development involves full site coverage, requiring the removal of all existing vegetation and severely restricts any opportunities for deep soil provision, tree planting and landscaping.</p> <p>Further the proposed extent of excavation has the potential to adversely impact upon the health of existing street trees at the front of the site and those within the front setback of 349 Liverpool Street.</p> <p>An Arborist Report has not been submitted with the application to determine impacts of the proposed excavation on the health of those trees.</p> <p>Notwithstanding the above, the proposed full site coverage of the development and consequent zero deep soil planting severely constrains opportunities to provide any tree canopy coverage.</p>

Provision	Compliance	Comment
		The proposal is therefore non-compliant with the DCP requirement of providing 15% canopy coverage within 10 years of completion and fails to enhance the urban ecology of the site.
3.6 Ecologically Sustainable Development	Yes	The proposal is capable of satisfying BASIX and environmental requirements.
3.7 Water and Flood Management	No	<p>The subject site is not currently flood-affected due to the present kerb height along both frontages.</p> <p>The proposed new driveway and opening in the existing wall for the internal parking at the street level expose the property to the 1% AEP and PMF flooding from the street.</p> <p>A flood assessment has not been provided and is required to set levels of the new driveway crossing in order to protect the property from flooding.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The proposed development is not recommended for approval, however conditions could be readily applied to any consent requiring strata subdivision if the DA was considered for approval.
3.9 Heritage	No	<p>The site is located within the Oxford Street and Victoria Street Heritage Conservation Area (CA12). The building is identified as a contributing building.</p> <p>The proposed development involves the substantial demolition of a contributory building and will have an overbearing adverse impact upon the character of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
3.11.12 Tandem, Stacked and Mechanical Parking Areas	No	<p>Tandem or stacked parking areas are only permitted where each tandem or stacked parking arrangement is limited to a maximum of two spaces.</p> <p>The proposed parking stacker is the sole vehicle access to both levels of the</p>

Provision	Compliance	Comment
		basement and is non-compliant as it will be servicing 16 car parking spaces.
3.12.2 Adaptable Dwelling Mix	Yes	The proposed development is required to provide a minimum of 2 adaptable dwellings. The application identifies Units 203 and 303 as adaptable units and complies.
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	No	The proposed waste arrangements are inadequate as insufficient space is provided for waste rooms and doors to allow efficient circulation of waste bins. No bulky waste area has been provided and the proposed waste chute arrangement does not comply with Council's requirements for waste management facilities in accordance with Sections 4.2.6 of the Sydney DCP and the City's Guidelines for Waste Management in New Developments (2018).

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 3 storeys. The proposed development is 8 storeys in height with a street frontage height of 6 storeys and does not comply. See further details under the sub-heading 'Height, Bulk and Massing' in the 'Discussion' section below.

Provision	Compliance	Comment
4.2.2 Building setbacks	No	<p>The proposal is in breach of the street frontage height controls and does not provide an upper level setback to Liverpool Street. The proposed development has zero setback to the rear at Darley Place.</p> <p>The resulting bulk and massing has an overbearing impact upon the existing contributory building and the heritage curtilage of properties adjacent, along Darley Place and the wider heritage conservation area.</p> <p>See further details under the sub-heading 'Height, Bulk and Massing' in the 'Discussion' section below.</p>
4.2.2.2 Setbacks above the street frontage height	No	<p>A minimum setback of 3m above the street frontage height is to be provided where new development is adjacent to a heritage item to reduce visual impact and to respect the heritage item.</p> <p>The proposal provides no setbacks from Liverpool Street and Darley Place and has an overbearing impact upon the heritage curtilage of heritage items adjacent, notably 3-5 Darley Street to the east and 1 Darley Place to the west at the rear of the site.</p> <p>See further details under the sub-heading 'Height, Bulk and Massing' in the 'Discussion' section below.</p>
4.2.3 Amenity		
4.2.3.4 Design features to manage solar access	No	<p>The proposed upper level units facing Liverpool Street (Units 401 and 402) have extensive double height north facing glazing with limited shading.</p> <p>This glazing is unprotected from mid-summer sunlight which presents difficulties in achieving thermal performance requirements.</p>

Provision	Compliance	Comment
		The proposed extent of north facing glazing to these apartments is excessive and is not supported.
4.2.3.5 Landscaping	No	<p>The proposed development involves full site coverage which severely restricts opportunities for meaningful landscape planting.</p> <p>The proposed development involves the clearing of all existing vegetation on site, whilst the proposed extent of excavation has the potential to adversely impact upon the health of existing street trees on Liverpool Street and trees within the neighbouring front setback of 349 Liverpool Street adjacent.</p> <p>The applicant has not provided an Arborist Report to assess the impact of proposed excavation on the existing trees.</p>
4.2.3.6 Deep Soil	No	<p>The proposed development is required to allocate 10% of the site area for deep soil planting which equates to 62.3sqm on the subject site.</p> <p>The proposed development involves full site coverage providing no deep soil areas and is therefore non-compliant.</p>
4.2.3.10 Outlook	No	<p>Outlook from apartments within the development is constrained by the proposed narrow windows and blinkers to bedrooms.</p> <p>Whilst these narrow windows and blinkers provide some benefit in mitigating overlooking across side boundaries, they adversely impact upon the amenity and outlook of apartment bedrooms.</p>
4.2.6 Waste and recycling Management	No	The proposed waste arrangements are inadequate as insufficient space is provided for waste rooms and doors to allow efficient circulation of waste bins.

Provision	Compliance	Comment
		No bulky waste area has been provided and the proposed waste chute arrangement does not comply with Council's requirements for waste management facilities in accordance with Sections 4.2.6 of the Sydney DCP and the City's Guidelines for Waste Management in New Developments (2018).
4.2.7 Heating and cooling infrastructure	No	<p>For building maintenance and to future proof residential buildings to enable infrastructure upgrades, heating and cooling infrastructure is to be consolidated into a centralised basement location and near the street frontage where possible.</p> <p>The development proposes a plant room at the rear of the site on Level 1 close to Darley Place. Whilst the infrastructure is in a consolidated location, it adds to the bulk of the rear addition and would be more appropriately located within the basement, particularly given that a multi-level basement is proposed.</p>
4.2.8 Letterboxes	Yes	The letterboxes are provided within the lobby of the building and the proposed arrangement is acceptable.

Discussion

Loss of Affordable Rental Housing

62. The principal threshold issue with the proposed development relates to the loss of existing affordable rental housing and the applicant's failure to adequately address the retention of affordable rental housing provisions, pursuant to Chapter 2 Part 3 of the Housing SEPP 2021.
63. As outlined earlier in this report under the section assessing the Housing SEPP provisions, the City of Sydney LGA currently has extremely low vacancy rates for rental accommodation, whilst the amount of affordable rental housing in the City remains very low at 0.76 per cent of total housing stock.
64. Accordingly, there is not sufficient comparable accommodation to satisfy the demand for affordable rental accommodation, which then presents difficulties in assisting residents being displaced to find alternative comparable accommodation, pursuant to Clause 47(2)(b) and 47(2)(d) of the Housing SEPP.

65. Clause 45 of the Housing SEPP provides that comparable accommodation means accommodation comparable with accommodation provided within an existing low-rental residential building the subject of a development application to which Part 3 of the Housing SEPP applies (Part 3 accommodation) because:
 - (a) it is in the same or a neighbouring suburb, and
 - (b) it is let at the same rental level as, or not more than 5 per cent higher than the rental level of, the Part 3 accommodation, and
 - (c) it is available for occupation on the day the development application is lodged, and
 - (d) for residential flat buildings—it comprises dwellings with the same number of bedrooms as the dwellings in the Part 3 accommodation.
66. The Guidelines for Retention of Affordable Rental Housing confirms that a Sydney vacancy rate of less than 3 per cent is deemed to indicate that insufficient comparable accommodation is available to mitigate the impact of the development on demand for such accommodation. When that is the case, no weight can be given in assessment of this criteria to information purporting to show a sufficiency of comparable accommodation and no further analysis is required to conclude that sufficient comparable accommodation is not available.
67. In this regard, the rental vacancy rates for the inner Sydney area for the three-month quarterly period preceding lodgement of the subject application was below 3% and reflective of a significant shortfall in affordable housing provision across the LGA.
68. This then places further emphasis on whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation, pursuant to Clause 47(2)(d) of the Housing SEPP.
69. The application provides no detail of arrangements to assist residents being displaced; however the adequacy and feasibility of any arrangements would be questionable given the significant undersupply of comparable accommodation across the LGA.
70. The loss of 33 boarding house rooms is significant and will contribute to the cumulative loss of affordable housing placing further pressures on the already limited supply of this type of accommodation.
71. Clause 47(2) of the Housing SEPP provides the consent authority with eight matters for consideration when determining whether to grant consent for development resulting in the loss of existing affordable rental housing.
72. Detailed assessment against each of these considerations - parts (a) to (h) of Clause 47(2) - is provided under the Housing SEPP section earlier in this report.
73. The Guidelines provide that the most fundamental criteria of the assessment is part (a) of Clause 47(2), relating to whether the development will reduce the amount of affordable housing in the area.
74. The seven provisions following this fundamental question provides consideration for whether the loss of affordable housing can be adequately mitigated, or whether the loss of affordable housing is justified in the circumstances of case (Clause 47(2) - parts b to h).

75. In this instance, as evidenced above, the proposed development will have a significant impact as it will reduce the availability of affordable housing within the area and will place additional strain on the already severely limited supply of comparable alternative accommodation.
76. The applicant has not provided a Social Impact Statement to assess whether the development is likely to result in adverse social and economic effects on the community pursuant to Clause 47(2)(c) of the Housing SEPP, however in light of the above considerations it is difficult to see how it will not.
77. Less housing choice for existing and potential future residents contributes to a loss of household diversity (socio-economic, structure, age and ethnicity) increasing the social isolation of remaining low-income residents. In turn, increased competition for affordable rental housing can lead to an increase in rents, making housing less affordable for the community generally.
78. As a result, the displacement of existing residents who can no longer afford to live in the area causes break down of established social networks, resulting in social dislocation both for displaced residents and the community they are displaced from.
79. The Guidelines provide that where a development is likely to result in displacement of existing residents, arrangements to assist those residents to find satisfactory alternative accommodation must be identified.
80. The lack of information provided in confirming how the existing residents would be assisted in finding alternative accommodation should the development progress is concerning and as such fails to satisfy Clause 47(2)(d) of the Housing SEPP.
81. Clause 47(2) parts (f) and (h) of the Housing SEPP requires that consideration be given to the existing building condition and the financial viability of the continued use of the property as a boarding house.
82. The application has not provided any information in relation to the existing building condition or continued financial viability of the boarding house, however it is noted that the boarding house appeared to be fully occupied on site inspection.
83. Furthermore, whilst financial viability is a 'crucial part of the assessment', as stated in the Guidelines, it is not the fundamental determinative factor in the assessment of the retention or removal of affordable housing. As stated, in this instance insufficient information has been provided to determine the financial viability of the boarding house.
84. As such this consideration can be given no weight and precedence should be given to the negative impacts caused by the loss of boarding house accommodation given the circumstances of the current affordable rental housing market conditions across the City of Sydney LGA.
85. The final matter for consideration in assessing the loss of affordable rental accommodation is whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development, pursuant to Clause 47(2)(g) of the Housing SEPP.

86. In this regard, given the significant shortfall in available alternative accommodation, pressures on land and limited development capacity of the surrounding area it is unlikely that monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development.
87. This is demonstrated by figures from the City of Sydney's Local Housing Strategy Technical Report 2020 which indicated that in 2014, there were 744 genuine boarding houses within the LGA, however by 2018 this figure had reduced to 623.
88. With increasing rents and continued housing affordability pressures across the LGA, it is imperative that the City's existing affordable rental housing stock is preserved in addition to the delivery of further affordable accommodation to address existing shortfalls.
89. Accordingly due to these existing pressures, it is considered that a monetary contribution would not adequately mitigate the loss of affordable rental housing resulting from the development.
90. In summary, the applicant has failed to adequately address the eight considerations in relation to developments resulting in the loss of existing affordable rental housing pursuant to Clause 47(2) of the Housing SEPP and there are insufficient planning grounds to justify the loss of the existing boarding house accommodation.

Clause 4.6 Request to Vary a Development Standard - Height of Buildings

91. The site is subject to a maximum Height control of 22m pursuant to the development standard prescribed by Clause 4.3 of the Sydney LEP.
92. The proposed development breaches the permitted height control at the rear of the site due to the proposed communal rooftop and associated structures atop the rear built form.
93. The precise extent of variation cannot be accurately determined due to uncertainty regarding the applicant's assessment of the existing ground level across the site, however there appear to be inconsistencies between the applicant's existing ground level as drawn and surveyed points across the site identified on the submitted Survey Plan.
94. The applicant submits that the development has a maximum height of 23.76 metres, representing an 8 per cent breach of the development standard. Council Officers consider that the non-compliance is likely to be greater than this due to uncertainty regarding the applicant's assessment of the existing ground level.
95. Notwithstanding the above, the proposed development does not comply with the maximum height of buildings development standard.
96. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the 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 standard.

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

97. 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's submission seeks to demonstrate that the compliance with the standard is unreasonable or unnecessary in the circumstances of case by applying Test 1 of the judgement established by *Wehbe v Pittwater Council* (2007).
 - (ii) This test requires applicants to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the standard.
 - (iii) The applicant's assessment of the proposed non-compliance against the objectives of the Clause 4.3 Height of Buildings development standard of the Sydney LEP are provided below.

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

- (iv) The applicant submits that the proposed height of the rear-built form has been designed with the existing conditions of the site and the context.
- (v) The applicant submits that the minor height breach is acceptable due to a number of higher density residential flat buildings, including No. 3-5 Darley Street a part five and seven storey building and No. 347 Liverpool Street a seven-storey building.
- (vi) The applicant submits that the proposed minor variation in the existing and future context of surrounding development and is acceptable, pointing out that part of the non-compliance is due to existing excavation associated with the inground pool at the rear of the site.

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

- (vii) The applicant submits that the proposal has been sensitively designed to ensure an appropriate height transition between the subject site and the neighbouring heritage item at 3-5 Darley Place, in addition to surrounding buildings in the HCA.
- (viii) The applicant submits that the street frontage height to Liverpool Street complies with the standard and the minor extent of height variation to the rear-built form will not be readily visible from Liverpool Street once constructed.
- (ix) The applicant submits that portion of non-compliant height variation at the rear is centrally located and unlikely to impact the curtilage of No.3-5 Darley Street or 349 Liverpool Street.

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

- (x) The applicant submits that there are no iconic views across or adjacent to the site that have been identified.
- (xi) The applicant submits that given the proposal has a compliant FSR and a predominantly compliant building height the proposal is unlikely to affect view sharing with surrounding development, in particular given the scale of the existing building at No. 3-5 Darley Street.

Objective (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

- (xii) The site does not border Central Sydney or Green Square Town Centre therefore this objective is not applicable to the proposed development.
- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
- (i) The applicant submits the non-compliance is a result of providing stair access to roof top communal open space, is partially a result of an existing excavated area and is also a result of the provision of a highly articulated built form made up of two separate volumes to maintain 'borrowed amenity' for the single aspect units at No. 3-5 Darley Place.
 - (ii) The applicant submits there are sufficient environmental planning grounds to justify the building height non-compliance. They include the provision of communal open space that complies with the ADG solar access requirements; the artificial existing ground level; a better planning outcome both for and from the site; consistency in the context; and orderly and economic development.
 - (iii) The applicant submits that the height breach is restricted to the stair enclosure on the rear-built form that provides access to a roof top communal open space area. The roof top communal open space area has been designed to ensure the residential flat building complies with the solar access requirements of the ADG. If strict compliance were required, this would mean the stair enclosure that provides access to the roof top communal open space would need to be removed, and subsequently, the roof top communal open space would be deleted from the scheme. Removal of the roof top communal open space would reduce on site amenity and would not result in a favourable planning outcome for the site.
 - (iv) The applicant submits that the proposed height non-compliance is partially a result of measuring building height from an existing excavated area below the building. If building height were measured from the natural ground level at the location of the existing swimming pool this would reduce the extent of height non-compliance.

- (v) The applicant submits that the site is currently underdeveloped and comprises a dilapidated boarding house that provides little amenity for current residents. The building also does not respond to the allowable building height or FSR for the site. As such, the proposal for construction of a new residential flat building that complies with the FSR development standard and predominantly complies with the height development standard will enhance the overall amenity and functionality of the land in accordance with Council's development controls.

Consideration of Applicant's Written Request - Clause 4.6 (3)

98. Development consent must not be granted unless the consent authority is satisfied 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.

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

99. The applicant's written request fails to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of case as the proposal is inconsistent with objectives (a) and (b) of the Height of Buildings development standard, pursuant to Clause 4.3 of the Sydney LEP.
100. Council Officers disagree with the applicant's assertion that that the proposed height of the development is appropriate to the condition of the site and its context.
101. The rear portion of the development which is in breach of the height standard is 8 storeys in height and built to the street frontage of Darley Place.
102. The existing development on the site and on the neighbouring site of 349 Liverpool Street focusses the main building mass towards of the front of the site towards Liverpool Street and each have a rear setback which provides relief to the heritage curtilage of properties along Darley Place, notably the heritage items at 1 Darley Place and 3-5 Darley Place.
103. In doing so, the existing development on these sites provide an appropriate height transition between the residential flat buildings and the lower density development and heritage items along Darley Place.
104. This relationship is something objective (b) of the Height of Buildings development standard seeks to maintain.
105. Conversely the proposed development will have an overbearing impact on the existing character and heritage curtilage of Darley Place and will detract from the significance of these valued buildings within the heritage conservation area.
106. Accordingly, the applicant's written request has failed to demonstrate that compliance with the standard is unnecessary or unreasonable in the circumstances of case as the proposed development is inconsistent with the objectives of the height of buildings development standard due to the proposed excessive bulk and massing at the rear of the site where the development is in breach of the standard.

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

107. The applicant's written request fails to demonstrate that there are sufficient environmental grounds for contravening the development standard.

108. An important consideration in determining whether there are sufficient environmental grounds for contravening a development standard rest upon the accuracy of the information provided and planning arguments formed.
109. In this instance, Council Officers have concerns with regards to the applicant's assessment of 'existing ground level' and consequent impact upon the accuracy of the development height variation for which the request is made.
110. Given this uncertainty, the proposed height variation may be more significant than stated and Council Officers disagree with the applicant's assertion that much of the proposed height variation is due to the existing level of the inground pool.
111. Further, it is noted that the stair enclosure of the communal rooftop is non-compliant with the minimum floor to ceiling heights prescribed by Objective 4C-1 of the ADG and that achieving compliance will further increase the height of the building and consequent contravention of the Height of Buildings development standard.
112. The applicant's submitted Clause 4.6 variation request does not address the non-compliant floor to ceiling height of the stairwell enclosure on the communal rooftop - see further discussion in relation to floor to ceiling heights under the sub-heading below.
113. Council officers disagree with the applicant's assertion that the proposed height variation is necessary in order to construct a stair enclosure to a communal roof terrace providing compliant solar access in accordance with the provisions of the ADG.
114. The view from the sun diagrams submitted with the application demonstrate that the communal roof terrace would still achieve compliant solar access in accordance with the provisions of the ADG were it to be situated at a lower level by deleting one of the storeys of the rear built form.
115. The Height of Buildings standard applies to all elements of the built form, including stairwells and lift overruns, and developments should be designed to accommodate these structures within the height limit.
116. Further Council Officers disagree with the applicant's assertion that the principal development standards of Height and Floor Space Ratio only should guide the development potential alone.
117. Whilst there may be scope for development uplift on the site, any future development must provide a more considered approach to the site which respects the heritage significance of the existing buildings on site and surrounding properties; in parallel with securing opportunities to enhance urban greening and landscaping.
118. These vitally important wider considerations have been overlooked by the current proposal in preference of securing the maximum development uplift of the site and this approach is neither supported nor consistent with the objectives of the Height of Buildings development standard.

Conclusion

119. 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.

Floor Space Ratio - No Clause 4.6 Submitted

120. The site is subject to a maximum Floor Space Ratio of 3:1 pursuant to the development standard prescribed by Clause 4.4 of the Sydney LEP.
121. The applicant submits that the development FSR equates to a compliant 2.99:1 or 1,856.5 square metres. However, the applicant's calculation has excluded a waste room measuring approximately 18 square metres from the gross floor area calculations of the site on the basis that it is situated within the basement of the development.
122. The definition for '*Gross Floor Area*' definition provided within the Sydney LEP confirms that waste rooms are only to be excluded where they are situated in the basement. The applicant's section drawing indicates that the waste room in question is situated wholly below the existing ground level, however an assessment of the existing ground level against the submitted survey plan indicates that the existing ground level has been drawn incorrectly.
123. Accordingly, it is considered that the waste room in question is not wholly situated below the existing ground level and therefore cannot be considered 'basement'. The 18 square metres of additional GFA is therefore required to be included in the GFA calculations of the development.
124. As a result, the GFA of the proposed development including the previously excluded waste room is calculated to be 1,874.5 square metres equating to a proposed FSR of 3.02:1.
125. The proposal is therefore in breach of the Floor Space Ratio development standard applying to the site pursuant to Clause 4.4 of the Sydney LEP and a Clause 4.6 variation request has not been submitted to seek approval to vary the standard.
126. Accordingly, development consent cannot be granted to the proposed development as it contravenes the Floor Space Ratio development standard and the applicant has not demonstrated that the breach is acceptable pursuant to the provisions of Clause 4.6(3)(a) and (b) of the Sydney LEP.

Apartment Size - No Clause 4.6 Submitted

127. Objective 4D-1 of the ADG prescribes minimum internal area for apartment sizes by apartment type.
128. The ADG confirms that 2-bedroom apartments are required to have a minimum of 70 square metres internal area. The design criteria confirms that the minimum internal area includes only one bathroom. Additional bathrooms increase the minimum internal area by 5 square metres each.
129. The proposed development includes a number of 2-bedroom apartments each with 2 bathrooms and therefore requiring a minimum internal area of 75 square metres.
130. Several of these 2-bed apartments measure less than 75 square metres and are therefore non-compliant with Objective 4D-1 of the ADG. These include Units 203, 303, 403, 501.
131. The internal area of these units measure approximately 73 square metres.

132. Whilst the extent of non-compliance is relatively marginal, minimum internal areas of apartments are non-discretionary development standards as identified by Clause 148(2)(b) of the Housing SEPP 2021.
133. In accordance with Section 4.15(3)(b) of the EP&A Act, the provisions of Clause 4.6 of the Sydney LEP apply to all development proposals seeking approval to vary a non-discretionary development standard.
134. A Clause 4.6 variation request has not been submitted to seek approval to vary the minimum internal area apartment size development standard and therefore development consent cannot be granted as the applicant has not demonstrated that the proposed contravention of the standard is justified in accordance with the provisions of Clause 4.6(3) of the Sydney LEP.

Ceiling Heights - No Clause 4.6 Submitted

135. Objective 4C-1 of the ADG prescribes minimum floor to ceiling heights of 2.4 metres for non-habitable areas of residential buildings.
136. A number of non-habitable areas within the development do not achieve the minimum ceiling heights for non-habitable areas, including the lower basement level which has a floor to ceiling height of approximately 2.2 metres and the proposed stair enclosure on the rooftop which has a floor to ceiling height of approximately 2.1 metres.
137. Whilst the areas of non-compliance related to non-habitable areas and comply with the minimums prescribed by the BCA, minimum ceiling heights are non-discretionary development standards as identified by Clause 148(2)(c) of the Housing SEPP 2021.
138. In accordance with Section 4.15(3)(b) of the EP&A Act, the provisions of Clause 4.6 of the Sydney LEP apply to all development proposals seeking approval to vary a non-discretionary development standard.
139. A Clause 4.6 variation request has not been submitted to seek approval to vary the minimum internal area apartment size development standard and therefore development consent cannot be granted as the applicant has not demonstrated that the proposed contravention of the standard is justified in accordance with the provisions of Clause 4.6(3) of the Sydney LEP.
140. Further, the development standard is relevant in this instance as the proposed stair enclosure on the communal rooftop is already in breach of the LEP Height of Buildings development standard.
141. Accordingly, providing compliant 2.4 metres floor to ceiling height to this non-habitable space will increase the height of the building and consequent breach of the Height of Buildings development standard.
142. The proposed contravention of the Height of Buildings development standard is not supported as discussed above and therefore increasing the building height for the purposes of providing compliant floor to ceiling heights would not be appropriate.
143. The proposed exceedance of the LEP Height of Buildings development standard and the development's non-compliance with the floor to ceiling height development standard are considered representative of the perceived overdevelopment of the site.

Heritage

144. The subject site is identified as a contributory building within the Oxford Street and Victoria Street Heritage Conservation Area (CA12). The site is also situated within the heritage curtilage of several local heritage items, including 1 Darley Place (I268) at the rear and 3-5 Darley Street (I275), the immediate neighbour to the east.
145. Section 3.9.7 of the Sydney DCP requires that contributory buildings are to be retained unless the consent authority determines that the replacement is justified in exceptional circumstances.
146. In this regard, Council's Heritage Specialist disagrees with statements provided in the submitted Heritage Impact Statement which conclude that the building has low historical significance for its ability to evidence Interwar development in the Darlinghurst area.
147. In the view of Council Officers, the site is identified as Contributory because it includes two key layers of historic development, being the original terraces set back from the Liverpool Street frontage and the later 1926 interwar addition constructed in the front yards of the terraces including the front verandas and balconies facing Liverpool Streets. These are easily recognisable and the buildings are substantially intact in their form.
148. Section 3.9.7 of the DCP defines contributory buildings as buildings that make an important and significant contribution to the character and significance of the heritage conservation area. They have a reasonable to high degree of integrity and date from a key development period of significance of the heritage conservation area. They are buildings:
 - from a significant historical period and are highly or substantially intact; or
 - from a significant historical period and are altered yet recognisable and reversible.
149. The site and existing buildings meet this definition and therefore are contributory to the streetscape and understanding of the evolution of development in the HCA.
150. Accordingly, the proposed substantial demolition of the existing building is not supported and the submitted HIS does not demonstrate why the building is not capable of retention or reuse, pursuant to the provisions of Section 3.9.1 of the Sydney DCP.
151. Section 3.9.7 of the Sydney DCP goes on to state that alterations and additions must not significantly alter the appearance of principal and significant facades of a contributory building and must respect the original or characteristic built form.
152. In this regard, the proposal involves the substantial demolition of all existing buildings on site with only the front façade and parts of the existing front balconies retained, whilst the proposed upper-level additions provide no separation to the retained fabric.
153. The approach is considered representative of facadism and is inconsistent with the heritage conservation provisions of the Burra Charter, whilst the proposed upper-level additions appear incongruous within the streetscape and will have an overbearing impact upon the fabric retained - as discussed in further detail below under sub-heading 'Height, Bulk and Massing'.

154. Further the proposed scale of development at the rear of the site is excessive in the context of a laneway and the Urban Design report does not provide any contextual justification for the height and scale of the laneway front development. There are overbearing and dominance impacts on the neighbouring properties and the proposal provides no transition in height to respect the neighbouring domestically scaled contributing buildings and heritage items.

Impacts of Excavation

155. The proposed development involves excavation nearly across the full-extent of the site and directly adjacent to the residential flat building of 3-5 Darley Street to the east.
156. Section 3.9.13 of the Sydney DCP provides controls to ensure the protection of buildings where excavation is proposed in the vicinity of heritage items and in heritage conservation areas.
157. Excavation beneath, adjacent to, or in front of early buildings has the potential to adversely impact on their structural integrity. Understanding the nature of construction of all structures on the site and neighbouring sites and the ground conditions is necessary to assess the effects of excavation.
158. In this regard, the proposal is non-compliant with section 3.9.13 as it does not provide a structural engineering report assessing the impacts of the proposed excavation on neighbouring properties, including the heritage item 3-5 Darley Street.
159. Further, the extent of basement excavation is also wrongly identified in the submitted Geotechnical report and only one borehole was drilled to understand site conditions which is insufficient to facilitate detailed assessment of potential impacts.

Height, Bulk and Massing

160. In addition to the proposed development's non-compliance with the LEP Height of Buildings development standard at the rear of the site discussed above, the proposal is also in breach of the 6-storey height in storeys and 3 storey street frontage height controls, pursuant to Section 4.2.1.1 of the Sydney DCP.
161. Section 4.2.1.1(2) of the Sydney DCP states that the maximum height in storeys can only be achieved where it can be demonstrated that the proposed development reinforces the neighbourhood character and does not detract from the character and significance of the existing building.
162. Whilst the proposal presents as a 6-storey development at the street frontage to Liverpool Street, the proposed upper-level additions provide no setback above the street frontage height and have an overbearing impact upon the limited retained contributory fabric.
163. Council officers disagree with the applicant's assertion that the now-consented development proposal for 349 Liverpool Street (D/2022/831) - which is built to the street frontage and involves full demolition for the existing building - provides automatic justification for a 6-storey street frontage on the subject site.
164. It is important to note that 349 Liverpool Street is identified as a detracting building within the heritage conservation area, whereas the contributory status of the subject site requires a more sympathetic and considered approach to the existing building fabric in order to preserve and enhance its contribution to the heritage conservation area.

165. Similarly, the proposed scale of development at the rear is considered excessive and dominates the lower-scale character of Darley Place, which is predominantly characterised by landscaped setbacks and 1 or 2-storey buildings bookended by 3-5 Darley Place.
166. The existing landscaped setbacks at the rears of the subject site and 349 Liverpool Street provide both relief and an appropriate height transition to the lower density Darley Place.
167. It is notable that the consented scheme for 349 Liverpool Street (D/2022/831) maintains a landscape setback and deep soil areas to 1 Darley Place and the Darley Place frontage at the rear of the site.
168. Conversely, the proposed development involves full site coverage and presents as a non-compliant 8 storey development with zero setback to Darley Place and the heritage curtilage of properties adjacent, notably the heritage item of 1 Darley Place.

Landscaping, Deep Soil and Urban Canopy

169. Further to these streetscape and heritage impacts, the proposed massing and modulation of the development severely inhibits opportunities for any meaningful landscape planting or deep soil areas.
170. Consequently, the proposed development provides no deep soil and tree canopy and is thus non-compliant with the targets of the ADG and Sydney DCP. This approach adversely impacts upon the local ecology and contributes towards urban heat gain.
171. In summary, the massing and modulation of the proposed development has an overbearing impact upon the existing contributory fabric, the streetscape and the heritage conservation area.
172. In doing so, the proposal severely inhibits potential urban greening opportunities and is representative of overdevelopment of the site in the interests of maximising development uplift to the detriment of wider planning considerations.

Design Excellence

173. The perceived overdevelopment of the site is further illustrated by the poor levels of amenity achieved by numerous apartments within the development.
174. Despite the proposed full site coverage of the development, a number of apartments do not achieve the minimum internal area quantum and dimensions for various areas prescribed by Objective 4D of the ADG.
175. A number of apartments do not achieve compliant solar access or compliant private open space pursuant to Objectives 4A and 4E of the ADG, with 26% apartments receiving no direct sunlight - representing a significant non-compliance the 15% maximum prescribed by Objective 4A-1 of the ADG.
176. Further, a number of apartments which do achieve compliant solar access at the rear of the development are reliant upon living room windows positioned directly on the eastern site boundary and directly overlooking 1 Darley Place and 349 Liverpool Street.

177. In tandem with the above, a number of the apartments within the development are too deep to achieve effective cross-ventilation and a number of bedrooms do not comply with Objective 4D-1 of the ADG as the windows cannot be seen from every point within the room due to joinery and the extended 'blinker' walls added externally for privacy further reduce outlook and amenity.
178. Combined, the noted non-compliances discussed above illustrate the development provides inadequate residential amenity to the residential apartments and fails to demonstrate the development achieves a high standard of architectural design and detailing appropriate to the building type, pursuant to Design Excellence Clause 6.21C(2)(a) of the Sydney LEP.
179. Additionally, for the reasons outlined above, the proposal fails to adequately address matters of, bulk, massing and modulation, environmental impacts of solar access and visual privacy, and excellence and integration of landscape design.
180. The proposed development therefore fails to demonstrate Design Excellence pursuant to the requirements of Clause 6.21C of the Sydney LEP and is therefore not supported.

Consultation

Internal Referrals

181. The application was discussed with Council's:
 - (a) Heritage and Urban Design Unit
 - (b) Landscaping Unit;
 - (c) Environmental Health Unit;
 - (d) Public Domain Unit;
 - (e) Transport and Access Unit;
 - (f) Tree Management Unit;
 - (g) Cleansing and Waste Unit; and
 - (h) Public Art Unit.
182. Each of these referrals raised issues with the proposed development and all issues raised have been discussed within this report.

External Referrals

Ausgrid

183. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.

184. A response was received raising no objections to the proposed development, subject to conditions accompanying any approval requiring the developer to refer to SafeWorks Code of Practice in relation to works close to overhead powerlines, requiring driveways to maintain a minimum 1.5 metre clearance from electricity poles, and requiring the proponent to apply to Ausgrid to connect or modify a connection to the residential premises as required.

Advertising and Notification

185. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 11 April 2024 and 10 May 2024. A total of 847 properties were notified and 34 submissions were received.
186. The submissions raised the following issues:
- (a) **Issue:** Concerns related to the loss of affordable rental housing accommodation.
- Response:** The application is recommended for refusal as the proposed development will result in the loss of existing affordable rental housing and the applicant has inadequately addressed the provisions of Clause 47 of the Housing SEPP 2021. See detailed assessment under 'Discussion' section above.
- (b) **Issue:** Concerns that the proposal is inconsistent with the objectives of the R1 - General Residential zone.
- Response:** Council officers agree that the proposed development is inconsistent with the objectives of the R1 General Residential zone as it involves the loss of affordable rental accommodation and thus fails to provide for the housing needs of the community. This matter is one of the recommended reasons for refusal.
- (c) **Issue:** Concerns that proposed development will impact upon solar access, views and outlook from neighbouring properties.
- Response:** The application is recommended for refusal, however further information would be required to facilitate detailed assessment of the impacts upon solar access, views and outlook from neighbouring properties as a result of the proposed development if the application was considered for approval.
- (d) **Issue:** Concerns related to construction impacts along Darley Place during development of the subject site and the recent development approval for the neighbouring site at 349 Liverpool Street.
- Response:** The application is not recommended for approval, however conditions to manage the impacts of construction are imposed upon all development proposals of this scale.
- (e) **Issue:** Concerns that the proposed extent of excavation could adversely impact upon the foundations of neighbouring properties.

Response: The applicant has provided insufficient information to facilitate detailed assessment of the potential impacts of excavation upon neighbouring properties pursuant to the provisions of Section 3.9.13 of the Sydney DCP.

The application is not recommended for approval and the inadequacy of information with regards to excavation impacts is one of the recommended reasons for refusal.

- (f) **Issue:** Concerns related to the proposed height and scale of the proposed development.

Response: Council officers agree that the proposed scale of development is excessive and will adversely impact upon the existing contributory building and the heritage curtilage and low-scale character of Darley Place.

The excessive height and scale of the proposed development is one of the recommended reasons for refusal, including the development's breach of the Height of Buildings development standard pursuant to Clause 4.3 of the Sydney LEP.

- (g) **Issue:** Concerns that the development fails to provide adequate landscaping and tree canopy coverage.

Response: The proposed development is in breach of the deep soil and tree canopy coverage controls and these matters are part of the recommended reasons for refusal.

- (h) **Issue:** Concerns that the proposed development is built to the street frontage of Darley Place, disrupting the low scale character at the rear of the site. Request for the existing rear setback to be maintained.

Response: Council officers agree that the proposal has an overbearing impact upon the character of Darley Place and that the rear setback should be maintained to provide opportunities for deep soil and landscape planting.

- (i) **Issue:** Concerns related to the proposed extent of demolition and heritage impacts.

Response: Council officers agree that the proposed extent of demolition is excessive and the development fails to respect the heritage significance of the existing contributory building.

The application is not recommended for approval and the extent of demolition and heritage impacts are one of the recommended reasons for refusal.

- (j) **Issue:** Concerns that the proposed development will impact upon neighbouring apartment values.

Response: The proposed development is not recommended for approval; however development applications are assessed on their planning merits and impacts upon apartment values is not a planning consideration.

- (k) **Issue:** Concerns related to construction and noise impacts during construction.

Response: The proposed development is not recommended for approval; however conditions could be readily imposed to manage construction and noise impacts and this is not a reason for refusal.

Relevant Legislation

187. Environmental Planning and Assessment Act 1979.
188. Heritage Act 1977.

Conclusion

189. The application proposes to demolish an existing boarding house and as such will result in a significant loss of existing affordable rental accommodation in the form of 33-boarding house rooms.
190. There is a significant shortfall in the availability of affordable housing across the City of Sydney LGA as demonstrated by the extremely low vacancy rates and there are already significant pressures on the City's existing affordable housing stock.
191. The Retention of Existing Affordable Rental Housing provisions outlined under Chapter 2 Part 3 of the Housing SEPP 2021 provide a framework for assessment for the consent authority when assessing development proposals involving the loss of existing affordable rental housing accommodation.
192. Clause 47(2) of the Housing SEPP provides eight matters for consideration to determine whether the loss is acceptable, or whether adequate measures are in place to mitigate the adverse social and economic impact of the proposed development by assisting residents in finding suitable alternative accommodation.
193. In this instance, the loss of affordable housing is not acceptable due to the significant shortfall and pressures on affordable rental accommodation that exist across the LGA.
194. The application fails to adequately address the matters for consideration under Clause 47(2) of the Housing SEPP and fails to demonstrate how existing residents being displaced can be supported in finding alternative suitable accommodation.
195. Accordingly, the application is recommended for refusal on the grounds that there is insufficient comparable accommodation to satisfy the demand for affordable rental housing and the applicant has failed to adequately address the matters for consideration under Clause 47(2) of the Housing SEPP.
196. Furthermore, the proposed redevelopment of the site is considered representative of overdevelopment by proposing a building which is out of scale and incongruous with its surroundings and breaches numerous development standards.
197. The development fails to respect the heritage significance of the existing building on site and the proposed extent of demolition is not justified.
198. Compounding the above issues, the proposal is non-compliant with multiple provisions of the NSW Apartment Design Guide and offers inadequate provision of residential amenity to future occupants of the building.

199. For these reasons, the proposal fails to demonstrate design excellence pursuant to the provisions of Clause 6.21C of the Sydney LEP and significant revisions are required to the overarching planning and design concept in order to achieve design excellence.
200. The proposed development is considered inappropriate in the current housing climate; whilst the proposed design, height and massing of the new development inadequately responds to the site context and its surroundings, offers poor residential amenity, inhibits landscaping opportunities and adversely impacts upon surrounding properties.
201. In these circumstances it is recommended that the development application should be refused.

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