Item 3.

Development Application 89 Macleay Street, Potts Point - D/2024/1237

File Number: D/2024/1237

Summary

Date of Submission:	16 January 2025
Applicant:	James Alexander-Hatziplis
Architect/Designer:	Place Studio
Developer:	Mr John Izzo
Owner:	Crisfill Pty Ltd
Planning Consultant:	Mod Urban
Heritage Consultant:	NBRS
DAPRS:	4 March 2025
Cost of Works:	$8,015,306
Zoning:	MU1 - Mixed-Use zone. The proposal is defined as a mixed use development comprising of a retail premises and a residential flat building. The proposal is permissible in the zone subject to development consent.
Proposal Summary:	The application seeks development consent for the substantial demolition of an existing contributory building and construction of a six-storey mixed use development comprising retail and residential uses on the ground floor, with five levels of residential uses above and rooftop communal open space and pool. The application has been referred to the Local Planning Panel as the proposal is subject to State Environmental Planning Policy (Housing) 2021 (Housing SEPP), Chapter 4 and is more than four storeys in height. The application is recommended for refusal due to multiple reasons, the principle of which are:

1. The application also proposes to exceed the 'Floor space ratio' development standard, however, a clause 4.6 variation request has not been submitted with the application to justify the exceedance, and as such the application cannot be determined by way of approval. The proposed FSR exceedance is interrelated with issues regarding natural ventilation, apartment depth and heritage.

2. The application will result in the loss of 12 low-rental dwellings and the application fails to adequately address or satisfy the 'retention of existing affordable rental housing' provisions prescribed by Chapter 2, Part 3 of SEPP (Housing) 2021.

3. The application proposes the substantial demolition of the existing contributory building within the Potts Point heritage conservation area and the materiality of the proposed residential flat building fails to respect the heritage conservation area.

4. The proposed new development is likely to result in adverse impacts to the surrounding area with regard to view loss and overshadowing.

5. The proposed building is likely to adversely affect the amenity of future occupants of the building due to insufficient solar access, natural ventilation, and inadequate waste management.

6. Insufficient information has been submitted with the application with regard to remediation of potential site contaminants, public domain interface, drainage details, overshadowing, view loss, structural engineering, demolition, heritage refurbishment and variation to a development standard for floor space ratio.

7. The proposed development fails to exhibit 'design excellence' pursuant to clause 6.21C of the Sydney LEP 2012 as the proposal fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and location, and fails to address heritage issues, and environmental issues relating to overshadowing, solar access and view loss, and as the proposal does not adequately demonstrate an appropriate interface at ground level between the building and the public domain.

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. Notwithstanding the

recommended refusal of the application, the justification presented in applicant's 4.6 variation request is accepted.

The application was notified for a period of 28 days between 21 January and 19 February 2025. Six submissions were received raising issues relating to view loss, overshadowing, heritage, privacy and waste storage.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

(i) Environmental Planning and Assessment Act 1979

(ii) Environmental Planning and Assessment Regulation 2021

(iii) Sydney Local Environmental Plan 2012 (Sydney LEP)

(iv) Sydney Development Control Plan 2012 (Sydney DCP)

(v) SEPP (Resilience and Hazards) 2021

(vi) SEPP (Biodiversity and Conservation) 2021

(vii) SEPP (Housing) 2021

Attachments:

A. Selected Drawings

B. Clause 4.6 Variation Request - Height of Buildings

C. Submissions

Recommendation

It is resolved that consent be refused for Development Application Number D/2024/1237.

Reasons for Recommendation

The application is recommended for refusal 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 fails to satisfactorily address clause 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, as the application has not demonstrated additional testing or remediation measures for the site which is likely to be contaminated.

(C) The proposed development is in breach of the 'floor space ratio' development standard pursuant to clause 4.4 of the Sydney LEP 2012. A clause 4.6 variation request to seek approval to vary the standard has not been submitted by the applicant.

(D) The application is inconsistent with 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.

(E) The proposed development fails to exhibit 'design excellence' pursuant to clause 6.21C of the Sydney LEP 2012 for the following reasons:

  (a) The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and location, pursuant to clause 6.21C(2)(a),

  (b) The application fails to appropriately address heritage issues, pursuant to clause 6.21C(2)(d)(iii),

  (c) The application fails to adequately address environmental impacts of overshadowing, solar access, and views, pursuant to clause 6.21C(2)(d)(vii),

  (d) The proposed development does not adequately demonstrate an appropriate interface at ground level between the building and the public domain, pursuant to clause 6.21C(2)(d)(xii).

(F) The proposed development provides inadequate amenity to apartments within the development and is non-compliant with Objective 4A - Solar and Daylight Access of the ADG.

(G) The proposal fails to respect the heritage significance of the contributory building and will have an unsympathetic impact upon the surrounding heritage conservation area and retained component of the existing contributory building, in breach of the provisions outlined within Section 3.9.7 of the Sydney DCP 2012.

(H) The application fails to demonstrate 15% tree canopy coverage within 10 years of completion, pursuant to Section 3.5.2 of the Sydney DCP 2012.

(I) The proposal fails to provide adequate bicycle storage in the building, and as such is inconsistent with the requirements of Section 3.11 of the Sydney DCP 2012.

(J) The development is unsatisfactory when assessed pursuant to the matters for consideration at section 4.15(1) of the EP&A Act and is therefore not in the public interest pursuant to section 4.15(1)(e) of the Act.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 10 DP 581282, known as 89 Macleay Street, Potts Point. It is rectangular in shape with area of 463.8sqm. It has a primary street frontage of 12.9 metres to Macleay Street. The site is located close to the intersection of Macleay Street and Crick Avenue. The site is entirely built over and is generally flat.

2. The site contains a mixed use building with a shop and a food and drinks premises on the ground floor and three-storey residential flat building at the rear of the site, including a residential unit over the retail frontage. The existing building has been enlarged over time, originally comprising of a two-storey federation former-dwelling with an inter-war shopfront on the street end of the site, and the later addition of a residential flat building to the western half of the site. Access to the residential components is available from either side setback.

3. The surrounding area is characterised by a mixture of land uses, primarily being mixed-use developments consisting of ground flood retail premises and residential uses above. Developments around the site are of a variety of ages developed from the early to late 20th century, and the 21st century.

4. The site is a not a heritage item but is located within the Potts Point heritage conservation area under the Sydney LEP 2012 (reference no. C51) and is identified as a contributory building under the Sydney DCP 2012.

5. A number of heritage-listed residential flat buildings are within area and are visually accessible from the site or where standing in close proximity to the site on Macleay Street.

6. The site is located within the Potts Point locality area under the Sydney DCP 2012 (reference no. 2.4.4.)

7. The site is not identified as being subject to flooding.

8. A site visit was carried out on 13 February 2025. Photos of the site and surrounds are provided below.

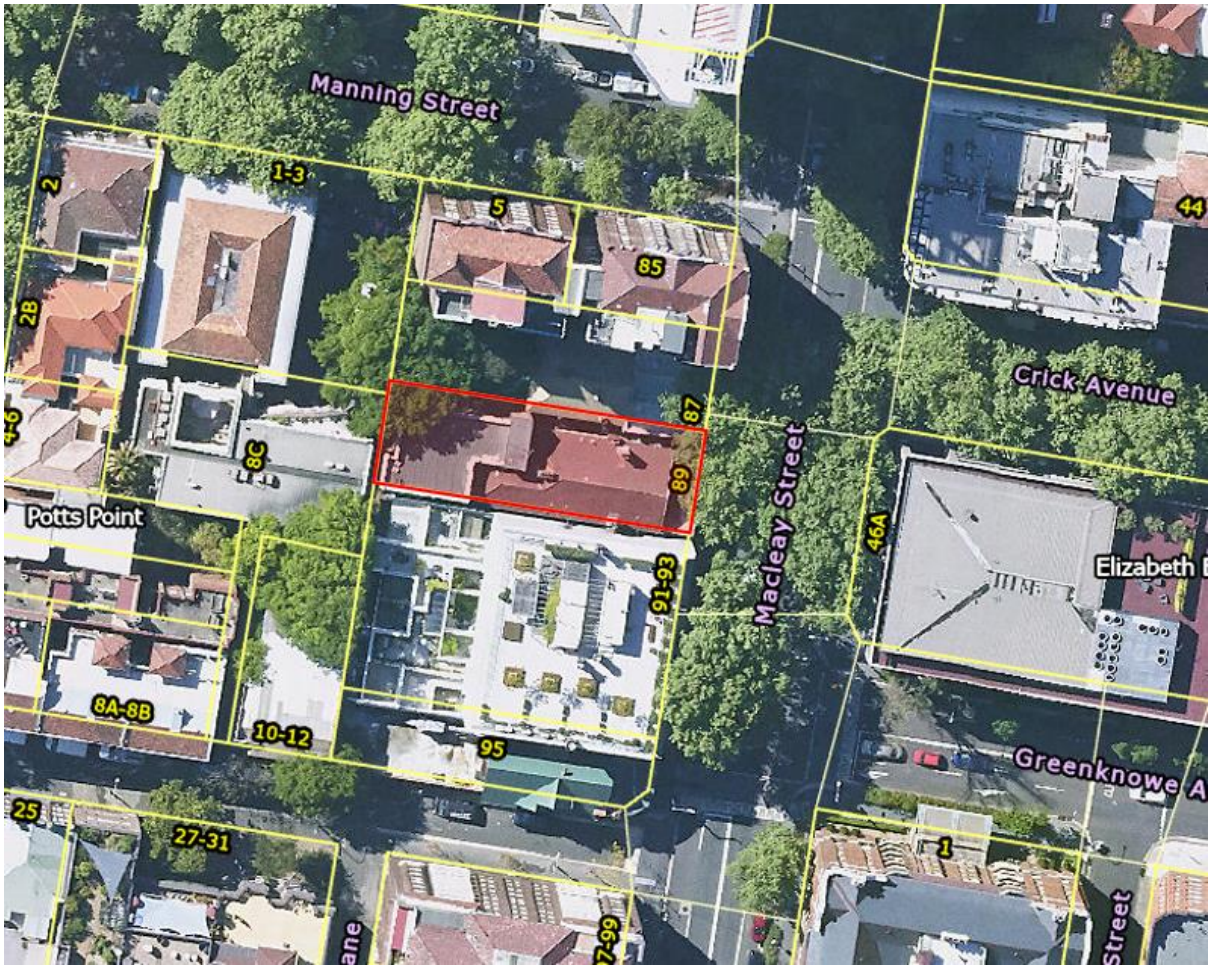

Figure 1: Aerial view of site (red) and surrounds

Figure 2: Site (red) viewed from across Macleay Street, viewed facing southwest

Figure 3: Site viewed from Macleay Street, viewed facing southwest

Figure 4: Site viewed from Macleay Street (red), facing northwest

Figure 5: South side-setback of the site, viewed facing west

Figure 6: North side-setback of the site, viewed facing west

Figure 7: Street half of the site viewed from level 2 of the existing residential flat building at the rear half of the site, viewed facing east. Original dwelling shown in foreground with chimneys and rear half proposed to be demolished. Neighbouring mixed-use retail and backpacker's accommodation shown left (87 Macleay Street).

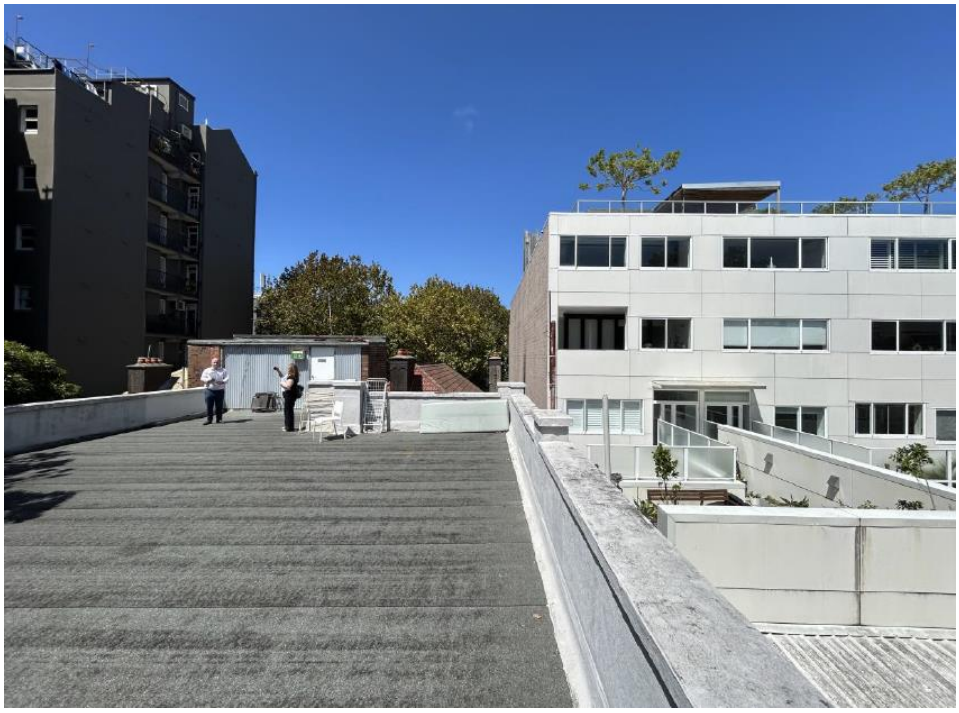

Figure 8: Site viewed from roof level of the residential flat building at the rear of the site, viewed facing east, with the neighbouring mixed-use retail and residential flat building (91-93 Macleay Street) shown to the right

Figure 9: Neighbouring site 91-93 Macleay Street as viewed from the roof of the subject site viewed facing south. Lower storey residential terraces shown in foreground, and rear building line of upper storey units shown left. RFB and local heritage item (Byron Hall) located at 97-99 Macleay Street shown in the background.

History Relevant to the Development Application

Development Applications

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

- **PDA/2024/84** - Pre-lodgement advice was provided for the proposed construction of a seven-storey mixed-use development (across multiple sites); parking, retail, residential apartments and independent seniors living.
- **PDA/2022/270** - Pre-lodgement advice was provided for the proposed refurbishment of existing contributing item and the new construction of an attached six-storey commercial building at the rear half of the site.
- **PDA/2022/84** – Pre-lodgement advice was provided for the proposed amalgamation of 87 and 89 Macleay Street, and construction of a mixed-use multi-storey building.
- **PDA/2018/155** – Pre-lodgement advice was provided for the proposed demolition of the existing buildings (across multiple adjoining sites) and the construction of a multi-storey mixed-use development.

Compliance Action

10. The site is not subject to any compliance action.

History of the Subject Development Application

11. Following a preliminary assessment of the proposal, a request for additional information was sent to the applicant on 7 February 2025 requesting:

    (a) a Detailed Site Investigation which identifies the extent of contaminants on the site and whether a Remediation Action Plan (RAP) is required to remediate the site

    (b) confirmation whether the existing building is a 'low-rental residential building' and if so, a response to the provisions in Section 47 of SEPP Housing 2021 and the 'Guidelines for the Retention of Existing Affordable Rental Housing'

12. On 18 February 2025, the applicant was requested to provide a letter detailing how the proposal complies with the design principles contained in Schedule 9 of SEPP (Housing) 2021, in accordance with the requirements EPA Regulations 2021, Part 3, Clause 29. The applicant provided the design verification statement on 24 February 2025.

13. The applicant responded to the request regarding low-rental accommodation on 21 March 2025 with the submission of a Social Impact Assessment which confirmed that the existing building on the site is a 'low-rental residential building', and that the vacancy rate for the locality was less than the 3% threshold identified in SEPP (Housing) 2021.

14. The applicant did not provide the requested Detailed Site Investigation.

15. Council officers subsequently wrote to the applicant on 25 March 2025 advising that the application would not be supported due to significant issues identified following a detailed review.

16. This assessment included consideration of all feedback received from internal specialist referrals, public submissions and advisory comments provided by the City's Design Advisory Panel Residential Subcommittee (DAPRS).

17. 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 low-rental dwellings on site and concerns associated with exceedance of the site's floor space ratio, design issues, heritage impacts, amenity impacts and insufficient documentation.

18. The applicant was advised that, given the threshold issue associated with the loss of low-rental dwellings and the substantial revisions required to remedy the overarching planning and design issues associated with the proposal, Council would not be accepting amendments under the current application.

19. Development application amendments can only be made with the agreement of Council pursuant to Clause 37 and 38 of the Environmental Planning and Assessment Regulation 2021.

20. The applicant was provided with the opportunity to withdraw the application, however no response has been received at the time of writing.

21. The application is therefore reported to the Local Planning Panel for determination.

Proposed Development

22. The application seeks consent for the substantial demolition of an existing contributory building and construction of a seven-storey mixed-use development comprising ground floor retail premises and residential unit on the ground floor, with five levels of residential units above, and rooftop communal open space and a pool. It is noted that the seventh storey is only comprised of a centralised and minimal lift lobby.

23. The proposed scope of works consists of the following:

    - demolition of the rear portion of a mixed-use contributory building
    - construction of a seven-storey RFB (including rooftop lobby level for lift and stair access)
    - alterations to the retained contributory building for ground floor retail use, and residential uses integrated with the proposed RFB at the rear of the site

24. The demolition of the existing building will result in the demolition of 15 single-bedroom units (3 of which are currently uninhabitable due to damp) and demolition of two ground floor retail premises.

25. The new building is proposed to include one ground floor retail premises fronting Macleay Street, four two-bedroom residential apartment units, and four three-bedroom units. The apartments are proposed to be accessed through entrances halfway down the site accessed through the building's side setbacks. The building is also proposed to include a rooftop communal area which includes a pool.

26. A photomontage of the development is provided below. Plans and elevations of the proposed development are provided within Attachment A.

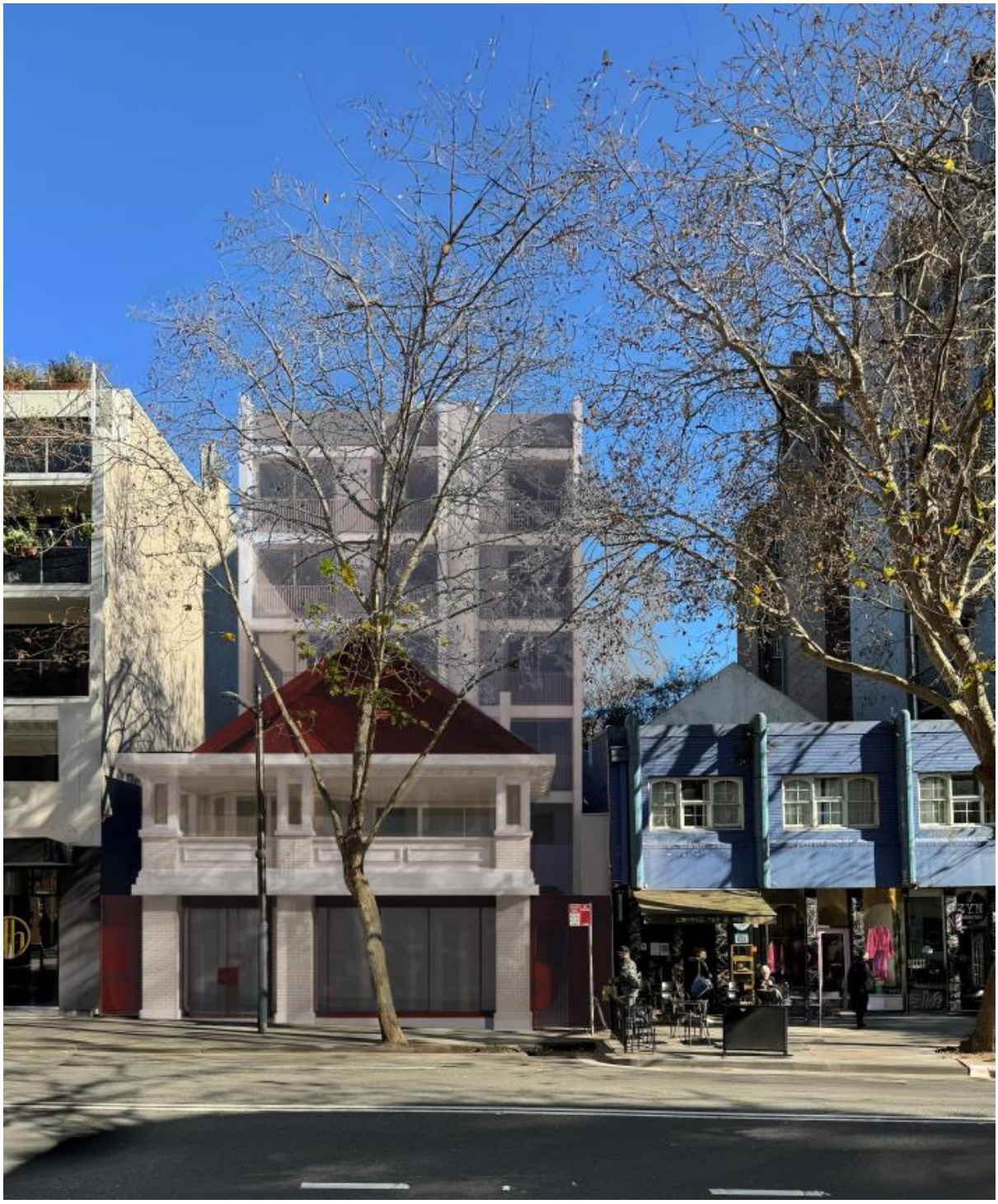

Figure 10: Photomontage of the proposal, as the development would be viewed from Macleay Street

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. A Preliminary Site Investigation (PSI) submitted with the application submits that the potential contaminants may be present in the site as caused by previous neighbouring land uses (a motor garage and several dry cleaners), and the introduction of fill into the site from unknown origins.

29. Council's Health Unit has reviewed the information provided, and consequently the applicant was requested to provide a Detailed Site Investigation (DSI) to confirm the site's contaminants and identify suitable site remediation measures, including the submission of a Remediation Action Plan if necessary. It is noted that the issues raised in the PSI are not able to be resolved through the imposition of conditions of consent.

30. The applicant noted an intent to respond to the request, however, a formal response was not received. Site contaminants remain unknown, and appropriate site remediation measures are not able to be implemented.

31. The proposed development does not satisfy the considerations under clause 4.6 of SEPP (Resilience and Hazards) 2021, and is inconsistent with the objectives of Chapter 4, and as such, the proposed development is recommended for refusal.

State Environmental Planning Policy (Housing) 2021

Chapter 2 Affordable Housing

Part 3 Retention of existing affordable rental housing

32. Part 3 of the SEPP addresses the reduction in the availability of low rental residential accommodation arising from a development.

33. Clause 46 of the Housing SEPP states that Part 3 applies to 'low-rental residential buildings' on land within the Greater Sydney region.

34. The Housing SEPP defines a 'low-rental dwelling' as a dwelling that was let at a rental level no greater than the median rental level, as specified in the Rent and Sales Report, during the relevant period (the 5-year period prior to the lodgement of the subject development application) in relation to a dwelling

    (a) of the same type, and

    (b) with the same number of bedrooms, and

    (c) in the same local government area

35. The Housing SEPP defines a 'low-rental residential building' as a building used, during the relevant period, as a residential flat building containing a low-rental dwelling or as a boarding house, and includes a building that—

    (a) is lawfully used as a residential flat building containing a low-rental dwelling or as a boarding house, irrespective of the purpose for which the building may have been erected, or

(b) was used as a residential flat building containing a low-rental dwelling or as a boarding house, but the use has been changed unlawfully to another use, or

(c) is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house.

36. The applicant has submitted a Social Impact Assessment (SIA) which identifies that the existing building on site is a low-rental building containing twelve low-rental dwellings. The proposal will reduce affordable housing stock in the City of Sydney LGA through the demolition of the twelve low-rental dwellings and the construction of a residential flat building containing eight dwellings, and as such is subject to the considerations of clause 47 of SEPP (Housing) 2021.

37. Of note, the SIA asserts that of the fifteen existing dwellings in the building, three of the dwellings have not been occupied in the 5 years prior to the lodgement of the development application, and as such do not meet the classification of a low-rental dwelling. Although no data has been submitted to support this, the calculation is accepted for the purposes of this particular assessment as the SIA acknowledges that the building still meets the criteria of a 'low-rental residential building', and because the application is being recommended for refusal the status of the three dwellings is not consequential to the issues discussed below.

38. 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 proposal will reduce affordable housing stock in the City of Sydney LGA through the demolition of the twelve single-bedroom low-rental dwellings and the construction of a residential flat building containing eight two- and three-bedroom dwellings.
(b) whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation.	The applicant submits that a review of available rental accommodation in the Potts Point area and in neighbouring suburbs in March 2025 indicates that there is a good supply of comparable accommodation in the area. Despite this, the Guidelines state that where the vacancy rate for Sydney is less than 3%, it must be concluded that there is not sufficient comparable accommodation in the locality to satisfy the demand for such accommodation. The Guidelines also note that increased competition for affordable rental housing can lead to an increase in rents, making

Provision	Comment
	housing less affordable for the community generally. The vacancy rate for private rental accommodation in Inner Sydney as published by the Real Estate Institute of NSW for January 2025, when the application was originally lodged was approximately 1.4%. Accordingly, there is currently not sufficient comparable accommodation available in the locality to satisfy the demand.
(c) whether the development is likely to result in adverse social and economic effects on the general community.	The Guidelines state that in the instances of insufficient available comparable accommodation, a development proposing a loss of such accommodation is likely to cause adverse social and economic effects on the general community.
(d) whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation.	With regard to (d) the submitted SIA makes the following recommendations: • *"Tenants of the existing residential units will be given ample notice of the need to find alternative accommodation should the application be approved.* • *The units are currently leased through local real estate agents, who will assist existing residents in relocating, if needed."* 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 appropriate new accommodation.
(e) the extent to which the development will contribute to the cumulative loss of affordable housing in the local government area.	The proposal will reduce the number of low-rental dwellings in the area by twelve.

Provision	Comment
	The SIA asserts that the loss of twelve low-rental dwelling is of a minor impact to the local government area, and that the provision of eight two- and three-bedroom dwellings contributes to housing diversity in the area. Yet, the applicant has not submitted data to support this argument, and indeed does not identify how the replacement of the dwellings with the proposed two- and three-bedroom dwellings will contribute to offsetting the impact of the decrease in low-rental accommodation. The matter is key issue for consideration, for which insufficient data has been submitted. The cumulative loss of affordable dwellings is a prescient issue as discussed in the Guidelines which states: "there has been an incremental, long term decline in low rental accommodation in most areas to which the policy applies (though the rate of decline varies in time and location). The individual contribution which a particular low rental building makes to the overall supply of low rental accommodation may be small, but the cumulative impact of many such losses is significant." Additionally, the City of Sydney Housing Strategy Technical Guidelines 2020 identifies that private dwelling numbers continue to outpace affordable housing stock, and as such, contribute to a proportionate decrease of affordable accommodation. Consequently, the issue is taken not have been adequately addressed in the applicant's submitted documentation.
(f) whether the building is structurally sound, including— (i) the extent to which the building complies with relevant fire safety requirements, and	The submitted application does not provide any reports to evidence that the existing building is not structurally sound, or that it does not comply with relevant fire safety requirements, or that costs involved in ensuring the building complies with the requirements (if

Provision	Comment
(ii) the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements	deficient) would be prohibitive to its retention as a low-rental building.
(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,	The Guidelines indicate that the imposition of an affordable housing contribution may be appropriate where the proposal satisfies a number of the above considerations. However, where it is clear that the overall impact is major and adverse and cannot be adequately mitigated, serious consideration should be given to refusal – or at least negotiating a modification of the proposal to make its impact acceptable. It is considered that amendments to the proposal as suggested by the Guidelines would result in a substantially different development to that which is proposed which cannot be accommodated as part of this assessment. As the proposal is unsatisfactory with regard to each of the above considerations, and as the impacts of the reduction of the low rental dwellings is adverse, a monetary contribution will not adequately mitigate the reduction of affordable housing resulting from the development.
(h) for a boarding house—the financial viability of the continued use of the boarding house.	N/A.

39. Overall, the application has failed to adequately address the 7 relevant matters for consideration established by Clause 47(2) of the Housing SEPP and therefore is not supported.

Chapter 4 - Design of Residential Apartment Development

40. 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.

41. The applicant has submitted a design verification statement and design report prepared by James Alexander-Hatziplis (NSW ARB10535) with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide.

42. The statement does not adequately address the objectives in Parts 3 and 4 of the Apartment Design Guide.

43. A detailed assessment of the proposal against the provisions of the ADG is provided below.

2E Building Depth	**Consistency**	**Comment**
12-18m (glass to glass)	Partial compliance	The depth of the building has been influenced by the narrow lot shape. The proposed building is 32m in depth on the ground floor and first floor, however, these two floors address two different setbacks (front and rear) and is generally consistent with the aims of the control. On level four, unit 5 is 19.5m in depth, and is inconsistent with the aim of the control to meet other objectives of the ADG whereby in this instance the issue is interrelated with natural and cross ventilation matters which are discussed further below. Unit 4 also exceeds the 18m depth control by 240mm, however, is generally consistent with the aims of the control, as well as other controls regarding cross-ventilation. It is noted however, that the depth of both unit 4 and 5 create a proximity issue with other retained parts of the building, and are interrelated with other design issues regarding heritage, solar access and outlook, which are discussed elsewhere in this report.

2F Building Separation	Consistency	Comment
Up to four storeys (approximately 12 metres): • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms Five to eight storeys (approximately 25 metres): • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms	No, but acceptable	The proposed building is located in close proximity to an existing residential flat building to the south of the site and a mixed use building containing backpacker accommodation to the north of the site. A blank wall is proposed to the side boundaries of the lot, and the proposed development is consistent with the aims of control 2F. Windows and balconies facing the street and the rear of the site remain consistent with the control. Existing retained windows to the side boundaries of the site would not present privacy impacts to neighbouring sites.

3D Communal and Public Open Space	Consistency	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	163.6sqm, or 35.3% of the site is reserved for use as communal open space. The communal open space is proposed on the roof of the building and will be accessible to all building residents through a lift and fire stair.
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	Sun's eye diagrams submitted with the proposal demonstrate that the communal open space will achieve adequate solar access.

3E Deep Soil Zones	Consistency	Comment
The deep soil zones for this site are to have a minimum	Yes	45.9sqm, or 10% of the site is dedicated to deep soil.

3E Deep Soil Zones	Consistency	Comment
area equivalent to 7% of the site.		

3F Visual Privacy	Consistency	Comment
Up to four storeys (12 metres): • 6m between habitable rooms / balconies • 3m between non-habitable rooms Five to eight storeys (25 metres): • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms	Yes	The first four storeys of the proposed building comply with minimum separation distances detailed under this control. The remaining storeys - being five and six - comply with the minimum separation distances provided for in this control.
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	The proposed habitable rooms are separated from circulation spaces in the building.

4A Solar and Daylight Access	Consistency	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No	Sun's eye diagrams demonstrate that only the living areas of unit 8 are able to comply with this control. It is unclear whether unit 7 achieves adequate solar access between 9am and 10am in midwinter. Remaining units only achieve one hour of direct solar access to a living room between 2pm and 3pm. As such, only 12.5% of the number of units in the development achieve

4A Solar and Daylight Access	Consistency	Comment
		appropriate solar access in accordance with the control. The proposal significantly contravenes the numerical provisions of the control and is inconsistent with the objective of the control to optimise the number of apartments receiving direct sunlight to habitable rooms. The proposed inconsistency with the control presents an adverse impact to the general amenity of future residents of the building and sets an undesirable precedent for similar development. The proposed variation to the control is not supported and the proposed development is recommended to be refused.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	No	Sun's eye diagrams demonstrate that at least 87.5% of units within the proposed building will not achieve adequate solar access in accordance with the design criteria of the control. For the same reasons as above, the proposal is not supported and the proposal is recommended for refusal.

4B Natural Ventilation	Consistency	Comment
All habitable rooms are naturally ventilated.	Yes	All proposed units in the building are demonstrated as being naturally ventilated. However, the feasibility of retaining the openable windows to ensure natural ventilation is achieved has been raised with the applicant, as the submitted BCA reports indicates that fixed glazing may be required to satisfy fire safety provisions of the NCC due to the windows' close (less than 3m) proximity to the side boundary.

4B Natural Ventilation	Consistency	Comment
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	Five out of eight units (62.5%) are capable of meeting cross ventilation requirements. However, the feasibility of retaining the openable windows to ensure natural ventilation is achieved has been raised with the applicant, as the submitted BCA reports indicates that fixed glazing may be required to satisfy fire safety provisions of the NCC due to the windows' close (less than 3m) proximity to the side boundary.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	No	The proposed cross-through units predominantly comply with the provision. However, unit 4 partially exceeds the apartment depth by 240mm, and unit 5 exceeds the depth limit by 1.3 metres. It is considered likely that unit 4 will still achieve adequate cross-ventilation, although, the significant depth of unit 5 will not achieve the aim of the control to enable cross-ventilation.

4C Ceiling Heights	Consistency	Comment
Habitable rooms: 2.7m	Yes	Habitable rooms in the proposal have a minimum height of 2.7m.
Non-habitable rooms: 2.4m	Yes	Non-habitable rooms in the proposal have a minimum height of 2.4m.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Partial consistency	The proposed ground floor, which includes both the commercial component of the building and a residential dwelling, has a floor to ceiling height of 3.6m, which is consistent with the design criteria. The proposed first floor has a predominant floor to ceiling height of 2.8m, which has been informed by the structure of the existing retained components of the building. With regard to the preservation of the existing

4C Ceiling Heights	Consistency	Comment
		building frontage, which is of contributory value to the heritage conservation area, this is acceptable.

4D Apartment Size and Layout	Consistency	Comment
Minimum unit sizes: • Two bed: 70sqm • Three bed: 90sqm The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm each.	Yes	The proposed two-bedroom apartments have a floor space ranging between 90 to 103sqm. The three-bedroom apartments have a floor space of between 133 to 169sqm. The proposed apartment sizes comply with the design criteria of the control.
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	Each habitable room has a window within an external wall, which are each at least 10% of the size of the floor area of the room.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	Although several of the apartments have deep open floor plans which accommodate a living room, lounge room and kitchen, these layouts include a window to each end of the floorplan, from which the middle of the floorplans are less than the maximum distance allowed under the control, and this is consistent with the control.
8m maximum depth for open plan layouts.	Yes	As above - the centre of the open floor plans is less than the maximum distance from windows at each end of the floorplan and this is consistent with the control. For habitable rooms with one aspect, the depths of the rooms do not exceed 8m.

4D Apartment Size and Layout	**Consistency**	**Comment**
Minimum area for bedrooms (excluding wardrobes): • master bedroom: 10sqm • all other bedrooms: 9sqm Minimum dimension of any bedroom is 3m (excluding wardrobes).	Yes	The proposed bedrooms comply with the control.
Living and living/dining rooms minimum widths: • Two-bedroom or more: 4m	Yes	The living and dining rooms have minimum widths of 4m.
4m minimum width for cross over and cross through apartments.	Yes	All cross over apartments are over 4m in width.

4E Private Open Space and Balconies	**Consistency**	**Comment**
Two bed apartments are to have a minimum balcony area of 10sqm with a minimum depth of 2m. Three bed apartments are to have a minimum balcony area of 12sqm with a minimum depth of 2.4m.	Yes	Each proposed apartment meets or exceeds the minimum balcony requirements.
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15sqm and a minimum depth of 3m.	Yes	The ground floor apartment has a yard, garden and deck with a total area of 87sqm.

4F Common Circulation and Spaces	Consistency	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The proposal complies with the control.
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	The proposed units comply with the control.
Daylight and natural ventilation are provided to all common circulation spaces.	N/A	The provision contained within the design guidance of this ADG control is not required to be addressed as the proposal complies with the design criteria of the control.

4G Storage	Consistency	Comment
Minimum storage provision facilities: • 2 bed: 8m3 • 3 bed: 10m3 (Minimum 50% storage area located within unit)	Yes	The submitted floor plans demonstrate that each unit complies with the minimum requirements of the control.

4J Noise and Pollution	Consistency	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	The proposal complies with the design criteria of the control by setting back the residential components of the building from the street. The proposal is also accompanied by an Acoustic Report which confirms that the proposal is acceptable with regard to acoustic impacts.

State Environmental Planning Policy (Sustainable Buildings) 2022

Chapter 2 Standards for residential development - BASIX

44. A BASIX Certificate has been submitted with the development application 1778963M.

45. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in 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.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments

46. 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.

47. 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. The proposed development is recommended for refusal, however, if it were to be supported appropriate conditions could be imposed to ensure that water runoff from the site does not have a negative impact on the quality of water entering the harbour.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the MU1 Mixed Use zone. The proposed development is defined as mixed use development, consisting of a retail premises and a residential flat building and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No, but acceptable	A maximum building height of 22m is permitted.

Provision	Compliance	Comment
4.6 Exceptions to development standards		A height of 23.2m is proposed. The proposed developmentexceeds the height of buildings development standard by 5.45% or 1.2m due to the lift overrun and fire stair on the building's roof. 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.
4.4 Floor space ratio 4.6 Exceptions to development standards	No	A maximum floor space ratio of 2.5:1 or 1,159.5sqm is permitted. A floor space ratio of 2.64:1 or 1224.9sqm is proposed. The proposed development does not comply with the maximum floor space ratio and exceeds the FSR development standard by 5.64% or 65.4sqm. A Clause 4.6 request to vary the development standard has not been submitted. As the proposal exceeds the development standard, and as a clause 4.6 variation request has not been submitted to justify the exceedance, the proposal cannot be determined by way of approval.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	The proposed development will have detrimental impact on the heritage significance of the heritage conservation area due to the substantial demolition of the existing contributory building, the proximity of the new building to the retained portions of the contributory building, and the unsympathetic use of materials across the building. On this basis, the proposal is recommended for refusal. See further details in the Discussion section below.

Part 6 Local provisions – height and floor space

Division 4 Design excellence		
6.21 Design excellence	No	The proposed development does not demonstrate design excellence. 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	The proposed development does not include any car parking spaces and complies with the relevant development standards.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Development Control Plan 2012

49. 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

50. The site is located within the Potts Point locality (DCP reference no. 2.4.4). The proposed development is not in keeping with the unique character and the design principles of the locality as the proposed residential flat building materiality and interface with the retained contributory building is not complementary to the heritage conservation area and streetscape.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The proposed building includes a ground floor retail premises with openings to address the street and is generally consistent with the objectives and provisions of this control.

Provision	Compliance	Comment
		Although the application does not propose a footpath awning, this would be considered acceptable were the application recommended for approval so as to preserve the façade of the retained portions of the contributory building.
3.5 Urban Ecology	No	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology. Council's Tree Management unit has reviewed the proposal and advised that the proposed tree plantings will not achieve the required 15% site canopy coverage required by this control, but have noted that the site is capable of accommodating appropriate tree species. The issue forms part of the basis for the recommended refusal of the application.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements. Refer to SEPP (Sustainable Buildings).
3.9 Heritage	No	The application has been reviewed by Council's Heritage Specialist who has advised that the proposed building presents a number of heritage impacts. See Discussion.
3.11 Transport and Parking	No	This control requires that the proposal provides 8 bicycle spaces in a Class 2 storage system. The applicant proposes to store bicycles in individual units. The proposed inclusion of bicycle spaces with each individual unit is not an accepted approach as it utilises available floor space and is inconsistent with the application of the control to other approved residential buildings. The issue forms part of the basis for the recommended refusal of the application.

Provision	Compliance	Comment
3.12 Accessible Design	Yes	An Access Report has been submitted with the application which has been prepared by an accredited access consultant. The report concludes that the proposal is capable of complying with access requirements of the BCA.
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 DCP section requires that a Waste Management Plan be prepared in accordance with the 'City of Sydney guidelines for waste management in new developments'. The proposed waste storage location is inconsistent with the guidelines which specifies a maximum manual handling distance of 10m between the waste storage location and the street collection location for bins between 120L to 1,100L. The purpose is to ensure that waste collection by contractors is achievable and that a waste collection contract can be secured. Due to the narrow lot frontage and number of bins required, kerbside bin storage could not be supported as an alternative. In order to satisfy waste management provisions of the DCP, a substantial redesign of the waste storage areas and access to the street would be required, and as such the proposal is not supported. The issue forms part of the basis for the recommended refusal of the application.
3.7 Water and Flood Management	No	Council's Public Domain unit have reviewed the proposal and advised that insufficient information has been submitted to demonstrate that interface levels between the boundary of the site and the public domain are compliant with the City's Interim Floodplain Management Policy, Section 5, and the

Provision	Compliance	Comment
		City's Public Domain Manual Requirements. Additionally, the building is proposed to be connected to an existing stormwater pit fronting the property, and insufficient information has been submitted to address DCP Section 3.7.2 Drainage and Stormwater Management.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

The Housing SEPP 2021 states that any DCP requirement, standard or control for residential apartment development relating to the matter listed at Section 149 of the SEPP has no effect if the ADG also specifies a requirement, standard or condition in relation to the same matter. As such, this assessment has not been reproduced below. See responses within that ADG table above for assessment of visual privacy, solar access, common circulation, apartment size, private open space, natural ventilation.

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Partial compliance	The site is permitted a maximum building height of 6 storeys. The proposed development is 7 storeys in height. The seventh storey consists of minimal rooftop lobby to shelter the lift and fire door access to the roof's communal area. The seventh storey does not present any adverse impacts and is not visible from the street and is capable of being supported.
4.2.2 Building setbacks	No	The proposed development exceeds the rear building line of the neighbouring site to the north which consists of ground floor retail and backpacker's accommodation (87 Macleay Street) and exceeds the rear building line of the uppermost storeys of the neighbouring mixed use building to the south of the site (91-93 Macleay Street). Consequently, the proposed building encroaches upon the view lines of several apartments at 91-93 Macleay

Provision	Compliance	Comment
		Street towards the Sydney Harbour Bridge and Sydney Opera House. Insufficient information has been submitted by the applicant to address this issue. The proposed position of the building may also generate an overshadowing impact to the terraces of neighbouring apartments, however, the impact to the terraces is not demonstrated on the submitted overshadowing diagrams, as the terraces have not been drawn.
4.2.3 Amenity		
4.2.3.1	No	The submitted overshadowing diagrams do not provide sufficient detail of the neighbouring mixed-use building at 91-93 Macleay Street to enable assessment against development control 4.2.3.1(2) and (3). The diagrams do not show the balconies of the neighbouring site, existing private open space and living room glazing, and are not readily measurable.
4.2.3.5 Landscaping	Yes	A landscape plan has been submitted with the application. The proposed landscape plan is generally consistent with the control.
4.2.3.6 Deep Soil	Yes	The control requires the provision of 10% deep soil across the site area. The application proposes 10% deep soil.
4.2.3.10 Outlook	Yes	The proposed apartments are granted a suitable open-air outlook from their balconies and living and dining rooms.
4.2.3.11 Acoustic privacy	Yes	An Acoustic Report has been submitted with the application. Council's Environmental Health unit have reviewed the report and advise the proposal is satisfactory with regard to the control subject to the imposition of standard conditions of consent.

Provision	Compliance	Comment
4.2.6 Waste and recycling Management	Partial compliance	The application proposes separate waste storage areas for the retail and residential components of the building. The waste areas will prevent use by non-residential tenants using residential waste storage. However, the proposed waste collection areas are not located near to the waste collection point and presents a likely detriment to practical waste collection in the building. The issue forms part of the basis for the recommended refusal of the application.
4.2.7 Heating and cooling infrastructure	No	No information has been submitted to demonstrate proposed heating and cooling infrastructure.
4.2.8 Letterboxes	Yes	The letterboxes are provided within the lobby of the building.
4.2.9 Non-residential development in the MU1 Mixed Uses Zone	Yes	The proposed non-residential component of the application is compatible with other uses in the zone.

Discussion

Clause 4.6 Request to Vary a Development Standard - Clause 4.3 - Height of buildings under the Sydney LEP 2012

51. The site is subject to a maximum height control of 22m. The proposed development has a height of 23.2m.

52. 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)

53. 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 because objectives of the development standard are achieved notwithstanding non-compliance with the standard:

(i) That with regard to objective (a) 'to ensure the height of development is appropriate to the condition of the site and its context', of clause 4.4 -

i. The proposed development is compatible with the built form and density of surrounding developments. It has been designed to incorporate a setback from the street to the upper levels to ensure it integrates with the scale and bulk of surrounding developments.

ii. The lift shaft and overrun and fire stairs which comprises the encroaching elements will not be readily discernible from the street by virtue of its setback from the front at Macleay Street.

iii. The lift cannot be constructed without an overrun. The lift provides equitable and convenient access to all of units and their associated amenities. Strict compliance with the standard would require the lift to terminate its service at a lower level to delete the lift overrun, making the uppermost level the least convenient. Requiring this would provide no perceivable benefit to the adjoining or neighbouring land but would result in a worse outcome for amenity and access arrangements for this development.

iv. The proposed development will be viewed as a six storey development from the streetscape and will not appear to exceed the height of the existing buildings on Macleay Street or its surrounds.

v. The proposed variation will not affect the overall height of the development, the lift shaft, and fire stairs exceed the LEP height limit by 1.28m central to the roof top floor plate. Strict application of the height control would be unreasonable in the circumstances.

vi. The lift overrun and fire stairs will not add any discernible bulk or massing to the rooftop level as it is setback from the building edges and screened by vegetation in some places.

vii. The provision of a covered lobby to the lift lobby is essential for as there needs to be a guarantee that there is no possibility of water ingress to the lift shaft and this can only be provided by the installation of a water-proof enclosure.

viii. The additional bulk and scale of the lift shaft, and fire stairs are only viewable from limited viewpoints in the surrounding locality, and the closer you get to the building the less it is able to be observed.

ix. It is important to point out that there is no perceived privacy or overlooking impacts as a result of the proposed rooftop terrace.

x. No additional overshadowing to private open space and habitable rooms are to occur from the proposed increased built form at the rooftop level. Refer to the shadows diagrams provided.

(ii) That with regard to objective (b) 'to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas', of clause 4.4 -

i. The proposed alteration and additions of the property at 89 Macleay Street, Potts Point, will have an acceptable impact on the heritage significance of the Potts Point Heritage Conservation Area and heritage items in the vicinity.

ii. The proposed rear apartment addition has been designed to be sympathetic to the Potts Point HCA and nearby heritage items, by being readily identifiable as contemporary addition.

iii. The proposed building height and bulk is similar to nearby adjacent buildings with a similar or larger height and built form.

iv. Additional bulk or massing from the lift shaft is minimal..

v. The attached Heritage Impact statement is supportive of the proposal and its heritage impacts.

(iii) That with regard to objective (c) 'to promote the sharing of views outside of Central Sydney', of clause 4.4 -

i. The portion of development which protrudes beyond the prescribed height limit comprises the lift overrun, fire stairs.

ii. There is no adverse view loss attributed the areas of additional height above the standard, as these elements being the lift overrun and fire stairs have no consequence on views as compared to the height compliant components of the building.

iii. No significant views from surrounding properties currently occur that will be impacted, and therefore no view sharing is required.

(iv) That with regard to objective (d) 'to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,', of clause 4.4 -

i. The site is not located within Central Sydney or Green Square.

That with regard to objective (e) 'in respect of Green Square — (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and (ii) to ensure the built form contributes to the physical definition of the street network and public spaces', of clause 4.4 -

ii. The site is not located with Green Square.

(b) That there are sufficient environmental planning grounds to justify contravention of the standard:

(i) The additional height is required to facilitate equitable access to all levels including the rooftop communal open space by allowing the fire stair and lift overrun to peak through the height plane.

(ii) The lift cannot be constructed without an overrun. The lift provides equitable and convenient access to all of units and their associated amenities. Strict compliance with the standard would require the lift to terminate its service at a lower level to delete the lift overrun, making the uppermost level the least convenient. Requiring this would provide no perceivable benefit to the adjoining or neighbouring land but would result in a worse outcome for amenity and access arrangements for this development.

(iii) The proposed development is compatible with the built form and density of surrounding developments. It has been designed to incorporate a setback to the upper levels to ensure it integrates with the scale and bulk of surrounding developments.

(iv) The provision of a covered lobby to the lift shaft and fire stairs is essential as there needs to be a guarantee that there is no possibility of water ingress to the lift shaft or stair well and this can only be provided by the installation of a water-proof enclosure.

(v) The proposed variation will not affect the overall height of the development, the lift shaft, and fire stairs exceed the LEP height limit by 1.2m central to the roof top floor plate. Strict application of the height control would be unreasonable in the circumstances.

(vi) The lift overrun and fire stairs will not add any discernible bulk or massing to the rooftop level as it is setback from the building edges and screened by vegetation in some places.

(vii) The additional bulk and scale of the lift shaft, and fire stair wall are only viewable from limited viewpoints in the surrounding locality, and the closer you get to the building the more it is not able to be observed.

(viii) There is no perceived privacy or overlooking impacts as a result of the proposed rooftop terrace.

(ix) No additional overshadowing to private open space and habitable rooms are to occur from the proposed increased built form at the rooftop level.

(x) The proposed rear apartment addition has been designed to be sympathetic to the Potts Point HCA and nearby heritage items, by being readily identifiable as contemporary addition.

(xi) In light of the proposal's contribution to achieving the desired future character of the area, a reduction of height would serve no material planning purpose, other than numerical compliance with a generic Council control.

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

54. Development consent must not be granted unless the consent authority is satisfied that 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)?

55. The applicant's submission with regard to clause 4.6(3)(a) - that compliance is unreasonable or unnecessary in the circumstances in the case as the objectives of the development standard are achieved notwithstanding non-compliance with the standard is adequately addressed as the applicant has submitted acceptable reasoning as to how each of the relevant objectives are achieved.

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

56. The applicant's submission with regard to clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the standard is adequately addressed as the applicant has identified that the lift overrun and is a necessary feature of the lift and ensures equitable access to the buildings proposed communal rooftop and does not present any adverse environmental impacts.

Conclusion

57. For the reasons provided above the requested variation to clause 4.3 height of buildings development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012.

Floor Space Ratio

58. The submitted GFA calculation plans fail to include several walls within the building, as well as the ground floor under croft area.

59. Consequently, the proposal exceeds the FSR standard for the site by 5.64% (or 65.4sqm). A 4.6 variation request has not been submitted with respect to the proposed variation to FSR under this application. The proposed exceedance of the development standard is a threshold issue which cannot be determined by way of approval without satisfaction of the provisions of Clause 4.6 of the Sydney LEP 2012. As such, the proposal is required to be determined by way of refusal.

View Loss

60. A site visit to the neighbouring residential apartments at 91-93 Macleay Street, Potts Point indicates that the proposed development is likely to cause a loss of views to the Sydney Harbour Bridge and the Opera House. A number of objections to the proposal have raised this issue.

61. Through design, development proposals should demonstrate that views from surrounding private and public places have been considered, and that any loss of views are minimised where possible. Section 4.2.3.10(2) of the DCP, relating to outlook, provides that 'Views and outlooks from existing residential development should be considered in the site planning and massing of new development'.

62. Although there is no 'right to a view', view sharing principles and a four-step assessment were established in the planning principle in Tenacity Consulting v Warringah Council (2004] NSWLEC 140. Per the principle, the notion of 'view sharing' is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. The assessment devised in Tenacity comprises establishing views to be affected and attributing a value to those views, assessing where the views are obtained, establishing the overall impact of the view loss, and finally the reasonableness of the proposal causing the impact.

63. A view loss analysis report has not been submitted with the application. As such, insufficient information submitted by the applicant to qualitatively assess the extent of view loss for individual units using the scale defined in Tenacity of negligible, minor, moderate, severe or devastating.

64. As the proposal is likely to present a view loss impact to high value views of the Sydney Harbour Bridge and Sydney Opera house, and as no information has been submitted to demonstrate these impacts and if necessary, reduce the impacts, the application is recommended for refusal.

Heritage

65. The building originally consisted of a dwelling likely built between 1907-1908, and a later residential apartment was added to the building prior to 1927. Council's Heritage Specialist has reviewed the application and advises that the proposal presents adverse heritage impacts to the site and heritage conservation area due to the reasons discussed below.

Shopfront alterations

66. Council's Heritage Specialist has advised the proposed ground floor shop front is not sympathetic to the heritage conservation area (HCA). Documentary evidence of the 1930s shopfront is available, which can be replicated in the proposal and which would improve the relationship of the proposal to the HCA.

67. Sydney DCP control 3.9.7(3)(d) outlines that alterations and additions to contributory buildings are required to retain, and where possible reinstate, significant features and building elements, including but not limited to joinery and shop front detailing, and (g) respect the pattern, style and dimensions of original windows and doors. Therefore, the proposed alterations to the existing shopfront are not supported.

Materiality and Streetscape

68. The application proposes the refurbishment of the retained contributory building; however, insufficient details have been submitted as to what refurbishment will occur, and whether this will involve replacement of existing materials or colours. Due to insufficient information provided, the proposed refurbishment is not supported.

69. The state of significance for the HCA in the State Heritage Inventory states that "the area provides building types which represents the last 150 years of development that coexist in a harmonious way." The application was reviewed by councils Design Advisory Panel Residential Subcommittee (DAPRS) which advised that: "the architectural character of the Potts Point heritage conservation area (HCA) should be analysed to further inform the architectural expression of the proposal. The exposed party wall will be highly visible and is likely to persist for a long period after the completion of the development, and therefore the proposal for concrete and marble finishes is to be given further consideration."

70. Planning assessment staff consider that the proposed design is inconsistent with the established architectural characteristics and heritage of the area and consider that an informed review of the proposed materiality of the proposal is required to address this concern. The City's Heritage Specialist has advised that the proposal should rely predominantly on the use of brick, which is highly consistent with historic use of brick amongst existing residential flat buildings in the area and Macleay Street, and which is consistent with the recent recommendation and approval of the 95 Macleay Street apartment development. The primary roof of the contributory building should be reinstated as terracotta tile (rather than replaced with red coloured metal sheet roofing as currently noted). And in addition to the above, consideration should be given to textured or modelled surfaces, or decorative bonding on the side elevations of the building, to provide greater interest and shadow play to the visible boundary wall.

Demolition

71. The application proposes the demolition of the entire rear apartment and the partial demolition of the original dwelling, and the construction of the residential flat building in very close proximity to the retained roof section. The proposed proximity between the new and existing building presents an overbearing relationship to the 1908 building which is unsympathetic to the contributory function of the building, and therefore presents an adverse impact the wider heritage conservation area. This close proximity also requires the demolition of two chimneys which are significant roof features of the 1908 building. Consequently, the proposal is generally inconsistent with clause 5.10(4) of the Sydney LEP 2012 and is therefore not supported.

Summary

72. Due to the substantial heritage issue presented by the proposal, including the unsympathetic shop front façade, inappropriate use of materials, poor relationship between the new and existing building and the demolition of significant roof features, the proposal is recommended for refusal.

Demolition Details

73. The application is submitted with insufficient documentation to detail the proposed demolition of the proposal. The existing building is three storeys in height on the rear half of the site, and two storeys in height on the street half of the site. Yet, the application only includes demolition plans of the ground floor and roof of the building.

74. The demolition details are insufficient in order to make a proper and informed assessment of the proposal. Presently, there is insufficient information submitted to understand which components of the building are proposed to be demolished, and therefore insufficient information enable the approval of the demolition necessary to construct the proposed development. It is also not possible to properly understand the heritage impacts of the proposed demolition.

75. There is also insufficient detail included on the proposed section drawings to understand which components of the building are proposed to be constructed and which are to be demolished or replaced, and it is not possible to understand the proposed interface between the existing and proposed building. Furthermore, the lack of detail for the proposed and existing building elements is prohibitive to achieving development consent as the proposed scope of works is unknown.

76. Due to the insufficient demolition details proposed, the unknown scope of works, and unknown heritage impacts proposed, the application is recommended for refusal.

Structure

77. The application proposes substantial demolition of an existing building and construction of a new building, much of which is proposed to be positioned on top of existing structure. The application poses significant structural challenges which may affect the feasibility of the proposal, and which are required to be understood during the assessment process so that implications relating to the interface of new and existing structures, demolition, and design can be identified, such as whether additional structural works are required, whether the layout of the floorplans must be reconfigured, and whether the existing slab of the building is required to be replaced.

78. No information has been provided to detail the structural considerations of the proposal, and consequently the impacts relating to demolition, heritage, layout, and construction cannot be understood. Due to insufficient structural information and unknown environmental impacts of the proposal the application is recommended for refusal.

Unit 4 Bedroom

79. The application proposes a bedroom in unit 4 which is in very close proximity (1.66m) to the retained roof form of the retained contributory building. Consequently, the bedroom will be subject of poor amenity from a lack of light, fresh air and outlook. The inclusion of a multi-level 'V' shaped flue to the facade of the building will also interfere with air circulation and solar access to this room. The issue of proximity is interrelated with other discussed issues regarding heritage and ADG compliance, and as such the proposed position of the bedroom is not supported.

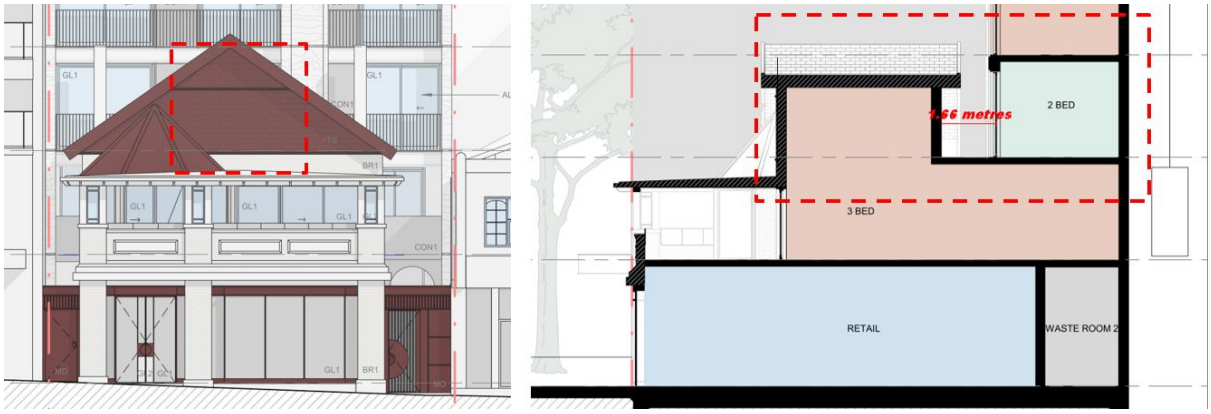

Figure 11: An excerpt of the east elevational drawing and long section demonstrating the position and proximity of the unit 4 bedroom to the retained roof of the contributory building

Design Excellence

80. Pursuant to clause 6.21C(1) of the Sydney LEP 2012, the consent authority must not grant consent to a new building unless it is satisfied that it exhibits design excellence.

81. As outlined through the assessment provided in this report, the proposed development does not exhibit design excellence when it is assessed against the matters for consideration at clause 6.21C(2) of the Sydney LEP 2012, as follows:

    (a) The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and location, pursuant to clause 6.21C(2)(a).

    (b) The application fails to appropriately address heritage issues, pursuant to clause 6.21C(2)(d)(iii).

    (c) The application fails to adequately address environmental impacts of overshadowing, solar access, and views, pursuant to the provisions outlined under clause 6.21C(2)(d)(vii).

    (d) The proposed development does not adequately demonstrate an appropriate interface at ground level between the building and the public domain, pursuant to clause 6.21C(2)(d)(xii).

82. Based on the assessment provided above and throughout this report, the proposed development:

    (a) does not meet the objective at clause 6.21 of the Sydney LEP 2012 given that it will fail to deliver the highest standard of architectural, urban and landscape design; and

    (b) does not exhibit design excellence as required by clause 6.21C(1) of the Sydney LEP 2012.

Consultation

Internal Referrals

83. The application was discussed with Council's;

    (a) Environmental Health unit

    (b) Heritage and Urban Design unit

    (c) Landscaping unit

    (d) Public Domain unit

    (e) Surveyors

    (f) Transport and Access unit

    (g) Tree Management unit

    (h) Waste Management unit

84. The issues raised by the referral units have been discussed elsewhere in the report.

Advertising and Notification

85. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 21 January 2025 and 19 February 2025. A total of 1211 properties were notified and 6 submissions were received.

86. The submissions raised the following issues:

(a) **Issue:** The application should be supported as the proposal will increase housing diversity and supply in the area.

Response: The application has been assessed in accordance with the provisions of clause 47(2) of SEPP (Housing) 2021, under which the subject units have been identified as 'low-rental dwellings' and for which insufficient data has been submitted by the applicant to address their loss and subsequent social and economic effects on the general community. The provisions have been assessed with reference the NSW Government's Guidelines for the Retention of Existing Affordable Housing, and the impacts of the proposal are considered likely to be adverse. In consideration of the assessment criteria of clause 47(2) of the SEPP, the proposal is recommended for refusal. This matter is further detailed in the 'State Environmental Planning Policy (Housing) 2021 [Chapter 2, Part 3]' section of this report.

(b) **Issue:** The proposal presents view loss of the Sydney Harbour Bridge and Sydney Opera House for multiple apartment units located at 91-93 Macleay Street, Potts Point.

Response: This issue is discussed in the 'Discussion' section of this report. Due to the probable adverse impacts presented by the proposal in this regard - for which no information has been submitted to address - the application is recommended for refusal.

(c) **Issue:** There is insufficient information regarding overshadowing impacts to the neighbouring apartment units at 91-93 Macleay Street, Potts Point.

Response: This issue is discussed in the 'Discussion' section of this report. Due to the probable adverse impacts presented by the proposal in this regard - for which no information has been submitted to address - the application is recommended for refusal.

(d) **Issue:** The proposed design of this building is not compatible with Macleay Street or the area.

Response: This issue is discussed under the 'Heritage' subheading in the 'Discussion' section of this report. Due to the adverse impacts presented to the heritage conservation area, the proposal is recommended for refusal.

(e) **Issue:** There are some north side windows on the drawings that will overlook the neighbouring building, which should not be there but if they have to, is best to have obscure glass.

Response: The application proposes the retention of an existing first floor single window to the north façade in the retained contributing building. The window faces a blank wall to the north and does not present any privacy issues to the neighbouring site.

(f) **Issue:** The fire hydrant booster should not be located behind the principal entry gate and right against the 87 Macleay Street building wall.

Response: This issue has been raised with the applicant as a point of consideration in the instance of the submission of a revised scheme in a separate development application. The applicant has been advised to consult with Fire and Rescue NSW to determine an appropriate location for the fire booster.

(g) **Issue:** The proposal will result in more bins being stored on the footpath for long periods of time.

Response: The submitted Waste Management Report proposes a wheel-in/wheel-out waste collection service by a waste collection contractor. In this manner waste would be stored in a centralised location in the building and be collected regularly without any bins being left of the street. Notwithstanding this, the proposed location of the ground floor service areas is inconsistent with the City's Guidelines for Waste Management in new developments and this issue forms one of the reasons for the recommended refusal of this application.

(h) **Issue:** The proposed building has a direct line of site to a unit at 2B Tusculum Street, Potts Point and presents a privacy impact to residential dwellings.

Response: With regard to visual separation, the proposed development has been designed in accordance with the provisions of the Apartment Design Guide and complies with the 6m setback requirements for the first four floors, and a 9m setback for floors five to eight. Notwithstanding that the building complies with the minimum requirement for a rear setback in accordance with the ADG, the rear of the building wall also be approximately 36.7m from the residential flat building located at 2B Tusculum Street. It is also noted that 2B Tusculum Street is separated from the site by the entirety of another lot which contains the Australian Institute of Architects auditorium. Therefore, the proposal is not considered to present any adverse or unreasonable privacy impact to neighbours at the rear of the site.

(i) **Issue:** The proposal is significantly larger in scale than both of its direct neighbours, exacerbating its visual dominance. The lift overrun exceeds the height control, further contributing to the bulk and scale of the development.

Response: With the exception of the lift overrun and rooftop lobby, the proposal is consistent with the Sydney LEP 2012 height in metres standard, and the Sydney DCP 2012 height in storeys control, and in terms of bulk and scale is consistent with the relevant provisions regulating height at this site. While the proposal is not consistent with the rear building setback of the upper levels of the existing apartment at 91-93 Macleay Street, which presents potential view loss and overshadowing issues to that site, the positioning of the building is not considered to present a bulk and scale impact to residential units located at 2B Tusculum Street, which is a four-storey residential flat building located approximately 31.7m from the subject site and 36.7m from the proposed rear building line.

The height in storeys exceedance presented by the rooftop lobby is not considered to generate a bulk impact due to its small floorplan and minimal height, and its position behind the rooftop stairway (which is not a 'storey' per the Sydney LEP 2012 dictionary) and which causes it to be out of line of site from 2B Tusculum Street. The exceedance by the rooftop lobby is minor and centralised in the roof and is not of a bulky design. The exceedance of the building height standard by 1.2m by the fire stair and lift has been discussed in the 'Clause 4.6 variation' section of this report, and the applicant's reasoning and justification are accepted by Council assessment staff. The proposed rooftop access arrangements are critical to the rooftop and communal open space function of the building. Notwithstanding this however, the proposal is recommended for refusal for other reasons described in this report.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

87. The City of Sydney Development Contributions Plan 2015 applies to the site. The development is subject to a section 7.11 local infrastructure contribution under this Plan.

88. Due to credits applied for the existing dwellings contained on the site, the proposal would not be required to pay a 7.11 contribution under this plan.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

89. The site is located within the residual lands affordable housing contribution area. As the proposal involves the demolition of existing floor area and the subsequent creation, whether for the same or a different purpose, of more than 200 square metres of gross floor area, the proposal is subject to a 7.13 Contribution.

90. If the application were to be supported a condition would be recommended.

Housing and Productivity Contribution

91. The development is subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2024.

92. The site is located with the Greater Sydney region, the development is a type of residential development (high-density residential development) to which the Housing and Productivity Contribution applies, and the development is not of a type that is exempt from paying a contribution.

93. If the application were to be supported a condition would be recommended.

Relevant Legislation

94. Environmental Planning and Assessment Act 1979

Conclusion

95. The application proposes to demolish an existing low-rental building and as such will result in the loss of existing low-rental dwellings in the form of twelve single bedroom units.

96. There is a significant shortfall in the availability of affordable housing across the City of Sydney LGA as demonstrated by the low vacancy rates and there are already significant pressures on the City's existing affordable housing stock. 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.

97. The proposal fails to comply with the Sydney LEP 2012, clause '4.4 - Floor space ratio' development standard as the proposal exceeds the maximum permissible floor space ratio for the site and has failed to justify the exceedance through the submission of a 4.6 variation request.

98. The proposal fails to satisfy the considerations under clause '5.10 - Heritage conservation' of the Sydney LEP 2012 as the development fails to respect the heritage significance of the existing building on site and the proposed extent of demolition is not justified.

99. The proposal is inconsistent with Sydney DCP 2012 sections regarding heritage, transport and parking, tree management, building setbacks, waste and recycling management, and heating and cooling infrastructure.

100. 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.

101. 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.

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

103. In these circumstances it is recommended that the development application should be refused.

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