

Resolution of Local Planning Panel

2 September 2026

Item 4

Development Application: 107-109 Darlinghurst Road, Potts Point - D/2025/1026

The Panel:

- (A) upheld the variation requested to Clause 4.3 (Height of Buildings) in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012
- (B) upheld the variation requested to Clause 4.4 (Floor Space Ratio) in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012
- (C) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, granted a deferred commencement consent to Development Application Number D/2025/1026 subject to the conditions set out in Attachment A to the subject report, subject to the following amendments (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~):

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2025/1026 dated 27 October 2025 and the following drawings prepared by McGregor Westlake Architecture:

Drawing Number	Drawing Name	Date
03 (Revision J)	Demolition Plans	21/8/2026
04 (Revision J)	Demolition Sections	21/8/2026
05 (Revision I)	Basement 3	17/7/2026

Drawing Number	Drawing Name	Date
06 (Revision H)	Basement 2	17/7/2026
07 (Revision L)	Lower Ground Floor Plan / Basement 1	21/8/2026
08 (Revision K)	Ground Floor Plan	21/8/2026
09 (Revision I)	Level 1 Plan	22/7/2026
10 (Revision H H J)	Level 2 Plan	17/7/2026 27/8/2026
11 (Revision H)	Level 3 Plan	17/7/2026
12 (Revision H)	Level 4 Plan	17/7/2026
13 (Revision H)	Level 5 Plan	17/7/2026
14 (Revision H)	Roof Plan	17/7/2026
15 (Revision H)	Streetscape Elevations – Darlinghurst Road	17/7/2026
16 (Revision H)	East Elevation – Darlinghurst Road	17/7/2026
17 (Revision H H J)	North Elevation – Earl Street	17/7/2026 27/8/2026
18 (Revision H)	West Elevation	17/7/2026
19 (Revision H)	South Elevation	17/7/2026
20 (Revision H)	Section 1	17/7/2026
21 (Revision K)	Section 2	21/8/2026

Drawing Number	Drawing Name	Date
22 (Revision L)	Section 3 & 4	21/8/2026
23 (Revision H)	Finishes Schedule	17/7/2026
53 (Revision H)	Secure Lockable Storage Facilities 1	17/7/2026
54 (Revision H)	Secure Lockable Storage Facilities 2	17/7/2026
57 (Revision H)	Bed Types and Room Sizes	17/7/2026

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the drawings will prevail.

Reason

To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

(2) DESIGN MODIFICATIONS

The development must be modified as follows:

- (a) The ***extended footpath***, kerb, gutter and pram ramp annotated on Earl Street are not approved under this development consent and must be removed from the architectural drawings.
- (b) No demolition of the existing shopfront glazing which projects into Stratum Lot 2 (the Sydney Trains Pedestrian arcade) is approved. The existing ground floor demolition plan must be amended to reflect this and align with the approved proposed floor plan.
- (c) ***Details of how the lightwell will be drained are to be shown on the drawings.***

The modifications are to be submitted to and approved by Council's Area Planning Manager prior to the issue of any Construction Certificate.

Reason

To require amendments to the approved plans and supporting documentation following assessment of the development.

(2A) LIGHTWELL MAINTENANCE

- (a) *Access to the lightwell through the service door is to be limited strictly to maintenance purposes.*
- (b) *Access is to be undertaken only by the owner, building manager, maintenance contractor or other authorised person.*
- (c) *The service door is to remain closed and secured when not being used for authorised maintenance.*
- (d) *The lightwell is to be kept clean, free of rubbish, debris, leaves and accumulated water.*
- (e) *Any drainage points, grates and outlets are to be kept clear and maintained in working order.*

Reason

To ensure access to the lightwell is only for maintenance purposes and is adequately maintained.

(3) WINDOWS – OBSCURE GLAZING AND PRIVACY FILM

- (a) The **glass block** windows to the **Earl Street facade**, lightwell and the lift lobby on Level 1 above the pedestrian arcade are to be installed with obscure glass blocks.
- (b) The windows on the north-western boundary to rooms 1.01, 2.01, 3.01, 4.01 and 5.01 are to be installed with privacy film to a height of 1.6m above the finished floor level of each floor.

Reason

To achieve acceptable visual privacy protection.

(3A) EXCAVATION – NOT APPROVED

No excavation is approved under this development consent. Should excavation be required, an application must be submitted to Council for assessment.

Reason

To clarify the scope of the consent.

(3B) USE AND FIT-OUT OF RETAIL PREMISES – NOT APPROVED

The use and fit-out of the retail premises are not approved under this development consent. A separate development application shall be submitted for the fit-out and use of the retail premises on the site.

Reason

To clarify the scope of the consent.

(13) PLAN OF MANAGEMENT

- (a) The Plan of Management submitted with this application dated 19 March 2026 is not approved. The Plan of Management must be updated to include the minimum criteria as stipulated in Council's Sydney Development Control Plan 2012 – Section 4.4.8 and address the following:
 - (i) provision of strengthened access control for all guest floors, communal areas, and storage spaces
 - (ii) provision of enhanced CCTV coverage and lighting throughout internal and external areas, **including the Earl Street entrance**
 - (iii) provision of clear signage outlining behavioural expectations, visitor rules, and safety information
 - (iv) regular maintenance and security checks to ensure all safety features remain functional
 - (v) provision of guest information on e-bike safety and NSW road rules
 - (vi) ongoing communication with local police regarding incidents and emerging issues
 - (vii) operational practices that acknowledge the surrounding dense residential area, including measures to minimise noise, antisocial behaviour, and late-night disturbances
 - (viii) ~~operational hours for the entrance to the backpacker accommodation entrance from the Sydney Trains pedestrian arcade and how this will be managed~~
 - (ix) deletion of reference to the arcade entry for the backpackers accommodation
 - (x) the management measures outlined in the approved acoustic report, including hours of use limited to 7am-10pm for the rooftop communal space, maximum limit of 14 people within the rooftop communal outdoor area at any one time, no amplified music to be used in the outdoor communal area and no parties permitted on the rooftop area
 - (xi) details of lighting to the rooftop area **and Earl Street entrance**, including type of lighting proposed, hours of operation, and specifying compliance with Australian Standard 4282-2023 "Control of the Obtrusive Effects of Outdoor Lighting"
 - (xii) **provision of an incidents and complaints register which must be made available to Council officers on request**
 - (xiii) **a manager being onsite 24 hours a day**
 - (xiv) **a 24-hour resident contact for any complaints and concerns in relation to operation of the premises**

- (xv) ***the onsite manager is to ensure no gatherings of guests in the public domain adjacent to the entrance or in the vicinity along Earl Street***

The updated Plan of Management must be submitted to and approved by Council's Area Planning Manager prior to the issue of an Occupation Certificate.

- (b) The use must always be operated / managed in accordance with the approved Plan of Management.

Reason

To require amendments to the Plan of Management following assessment of the development.

(21A) MECHANICAL PLANT

Prior to the issue of a Construction Certificate, details of all mechanical plant associated with the development, including its location, height and acoustic treatment, are to be submitted to and approved by Council. The mechanical plant must be contained within the approved building envelope and must not result in any additional exceedance of the approved building height.

Reason

To ensure that mechanical plant does not result in adverse amenity impacts.

(42A) DEMOLITION AND CONSTRUCTION NOISE AND VIBRATION MANAGEMENT PLAN

A site-specific noise management plan must be submitted to the Council for comment and approval prior to issue of any Construction Certificate. The Plan must be prepared by a suitably qualified acoustic consultant who is a person who possesses the qualifications to join the Australian Acoustic Society, Institution of Engineers Australia (grade of member) or the Association of Australasian Acoustic Consultants (grade of member firm). The plan must include but not be limited to the following:

- (a) ***identification of noise sensitive receivers near to the site***
- (b) ***a prediction as to the level of noise impact likely to affect the nearest noise sensitive receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite. A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the City of Sydney Construction Hours / Noise Code of Practice 1992 for the typical construction hours of 07:00am to 07:00pm. Where resultant site noise levels are likely to be in exceedance of this noise criteria then a suitable proposal must be given as to the duration and frequency of respite periods that will be afforded to the occupiers of the neighbouring property***

- (c) *a representative background noise measurement (LA90, 15 minute) should be submitted, assessed in the vicinity of any potentially affected receiver locations and measured in accordance with AS 1055:1.2.1997*
- (d) *confirmation of the level of community consultation that has / is and will be undertaken with Building Managers / occupiers of the main adjoining noise sensitive properties likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases*
- (e) *confirmation of noise monitoring methodology that is to be undertaken during the main stages of work at neighbouring noise sensitive properties in order to keep complaints to a minimum and to ensure that noise from site works complies with the noise criteria contained within City's Construction Noise code*
- (f) *what course of action will be undertaken following receipt of a complaint concerning offensive noise*
- (g) *details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupiers of neighboring noise sensitive property to a minimum*
- (h) *what plant and equipment is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on the occupiers of neighbouring property and other less intrusive technologies available*

Reason

To ensure an adequate construction noise and vibration management plan is prepared.

(46A) HAZARDOUS MATERIALS SURVEY REQUIRED

A Hazardous Materials Survey Report must be prepared by a certified Occupational Hygienist (Australia Institute of Occupational Hygienists) and submitted to the satisfaction of Council's Area Planning Manager prior to any demolition / refurbishment work commencing at the site. The report must identify and record the type, location and extent of any hazardous materials on the site and make recommendations as to their safe management and/or removal to ensure the site is made safe for demolition, construction and future use/occupation.

Reason

To ensure that hazardous materials on the site are identified and appropriately managed.

(46B) DEMOLITION AND CONSTRUCTION MANAGEMENT

- (a) ***Prior to the commencement of demolition work the following details must be submitted to and be approved by the Principal Certifier:***
- (i) ***plans and elevations showing distances of the subject building from the location of adjoining and common/party walls, and (where applicable) the proposed method of facade retention***
 - (ii) ***a Demolition Work Method Statement prepared by a licensed demolisher who is registered with SafeWork NSW (the demolition by induced collapse, the use of explosives or on-site burning is not permitted)***
 - (iii) ***a Waste and Recycling Management Plan – Demolition and Construction for the demolition works associated with the proposed development***
 - (iv) ***plans and elevations showing the location, construction and installation of temporary site fencing and any construction related temporary structures placed on and/or above roads used in connection with the development***

Note: Construction related temporary structures, including hoardings and scaffolding, proposed for erection on and/or above City-owned and controlled land (footways and roadways), and other activities, must comply with Council's Code of Practice: Construction related Temporary Structures On and Above Roads and the Code of Practice: Hoisting and Construction Activities On and Above Roads including obtaining all required approvals from Council under the provisions of the Local Government Act 1993 and the Roads Act 1993 prior to installation.

- (b) ***Such statements must, where applicable, be in compliance with AS2601-2001 Demolition of Structures, the Work, Health and Safety Act 2011 and Regulation; Council's Guidelines for Waste Management in New Developments 2018, the Waste Avoidance and Resource Recovery Act 2001, and all other relevant acts and regulations and must include provisions for:***
- (i) ***a Materials Handling Statement for the removal of refuse from the site in accordance with the Waste Avoidance and Resource Recovery Act 2001***
 - (ii) ***the name and address of the company/contractor undertaking demolition works***
 - (iii) ***the name and address of the transport contractor***
 - (iv) ***the type and quantity of material to be removed from site***
 - (v) ***location and method of waste disposal and recycling***
 - (vi) ***proposed truck routes, in accordance with this development consent***

- (vii) procedures to be adopted for the prevention of loose or contaminated material, spoil, dust and litter from being deposited onto the public way from trucks and associated equipment and the proposed method of cleaning surrounding roadways from such deposits. (Note: With regard to demolition of buildings, dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site)*
- (viii) measures to control noise emissions from the site*
- (ix) measures to suppress odours*
- (x) enclosing and making the site safe*
- (xi) induction training for on-site personnel*
- (xii) written confirmation that an appropriately qualified Occupational Hygiene Consultant has inspected the building/site for asbestos, contamination and other hazardous materials, in accordance with the procedures acceptable to SafeWork NSW*
- (xiii) an Asbestos and Hazardous Materials Clearance Certificate by a person approved by the SafeWork NSW*
- (xiv) disconnection of utilities*
- (xv) firefighting (firefighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed)*
- (xvi) access and egress (demolition activity must not cause damage to or adversely affect the safe access and egress of the subject building or any adjacent buildings)*
- (xvii) waterproofing of any exposed surfaces of adjoining buildings*
- (xviii) control of water pollution and leachate and cleaning of vehicles tyres (proposals must be in accordance with the Protection of the Environmental Operations Act 1997)*
- (xix) working hours, in accordance with this development consent*
- (xx) any SafeWork NSW requirements*
- (c) The approved work method statements and a waste management plan as required by this condition must be implemented in full during the period of construction.*

- (d) *All waste records from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site. These records must be available for sighting on request by an authorised Council officer.*

Reason

To ensure that impacts arising from demolition, excavation and construction are appropriately managed.

(61A) COVERING OF LOADS

All vehicles involved in the demolition process and departing the property with demolition materials, spoil or loose matter must have their loads fully covered before entering the public roadway.

Note: Refer to the City's 'Code of Practice: Hoisting and Construction Activities On and Above Roads' for further information and requirements.

Reason

To ensure loads are managed appropriately and do not impact local amenity.

(61B) COMPLIANCE WITH DEMOLITION & CONSTRUCTION NOISE AND VIBRATION MANAGEMENT PLAN

- (a) *All works conducted on site which form part of this development must be carried out in accordance with the submitted and approved Demolition and Construction Noise and Vibration Management Plan required under Condition 42A above.*

- (b) *Where all such control measures have been implemented and the resultant noise and/ or vibration levels at any sensitive receiver still exceed the council's applicable criteria stated in the Construction Hours/Noise Code 1992 and are giving rise to sustained complaints then the contractor must provide regular, appropriate and sustained periods of respite in consultation with Council's Health and Building unit. Approval to vary the authorised noise and vibration levels must be received in writing by the proponent from Council prior to activities being undertaken that exceed sanctioned emission levels. (Use where respite periods not specified under the approved DEC NMP)*

Such periods must be set and agreed to by Council's Health and Building Unit.

Note: Refer to the City's 'Code of Practice: Hoisting and Construction Activities On and Above Roads' for further information.

Reason

To ensure all parties are aware of the supporting documentation that applies to the development.

(72A) COMPLIANCE WITH HAZARDOUS MATERIALS SURVEY REPORT

All of the recommendations for management and/or removal of hazardous materials on the site, as outlined in the Hazardous Materials Survey Report, as approved by Council's Area Planning Manager or Area Coordinator Planning Assessments upon satisfaction of the 'HAZARDOUS MATERIALS SURVEY REQUIRED' condition of this consent must be complied with.

Prior to the issue of any Occupation Certificate, certification must be submitted to the Principal Certifier from a certified Occupational Hygienist (Australia Institute of Occupational Hygienists) confirming that all hazardous materials identified have been contained, managed or removed in accordance with the recommendations given in the approved Hazardous Materials Survey Report approved by Council's Area Planning Manager upon satisfaction of the 'HAZARDOUS MATERIALS SURVEY REQUIRED' condition of this consent and that the site is safe for future occupation in accordance with the approved use.

Reason

To ensure that hazardous materials on the site are appropriately managed.

(72B) SURVEY CERTIFICATE AT COMPLETION

Prior to the issue of any Occupation Certificate, a Final Survey Plan and Certificate prepared and signed by a Surveyor, registered under the Surveying & Spatial Information Act, 2002 must be submitted at the completion of the building work certifying the location and height of the building, and showing offsets, in relation to the boundaries of the allotment.

Reason

To ensure the development does not encroach onto neighbouring properties and is in accordance with the approved plans.

(77) SURVEILLANCE CAMERAS

- ~~(a) CCTV surveillance cameras must be strategically installed, operated and maintained throughout the premises with coverage to:
 - ~~(i) All entrance/s and exits used by the public including a 10m radius of these entrance/s and exits;~~
 - ~~(ii) all areas within the premise occupied by the public (excluding toilets).~~~~
- ~~(b) All CCTV recording equipment and cameras must be of high-grade digital quality capable of establishing the population and identification of patrons, offenders and incidents within the depth of field view of the cameras.~~
- ~~(c) CCTV recordings must be retained for 28 days before being re-used, destroyed or deleted. Time and date must be automatically recorded. The CCTV recording equipment must be capable of reproducing a digital copy.~~

~~(d) All CCTV recording devices and cameras must be checked to ensure the equipment is operating correctly.~~

~~(e) When the premises is operating there must be at least one staff member present at the premises who is authorised to access the CCTV system and able to immediately review recordings and produce copies.~~

Reason

~~To ensure the safety and security of staff, patrons and the surrounding neighbourhood is adequately monitored and maintained.~~

Reasons for decision

The application was approved for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act 1979 in that, subject to the recommended conditions of consent, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Panel.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant has demonstrated that compliance with the height of buildings development standard in Clause 4.3 of the Sydney Local Environmental Plan 2012 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with the requirements of Clause 4.6(3) of the Sydney Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the E1 Local Centre zone and the height of buildings development standard.
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant has demonstrated that compliance with the floor space ratio development standard in Clause 4.4 of the Sydney Local Environmental Plan 2012 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with the requirements of Clause 4.6(3) of the Sydney Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the E1 Local Centre zone and the floor space ratio development standard.
- (D) The development is permissible with consent in the E1 - Local Centre zone and is consistent with the objectives of the zone.
- (E) The proposal has been assessed against the aims and objectives of the relevant planning controls including the Sydney Local Environmental Plan 2012, the Sydney Development Control Plan 2012, and the applicable Environmental Planning Instruments. Where non-compliances are proposed, they have been assessed in this report as being acceptable in the circumstances of the case or can be resolved by the recommended conditions of consent.

- (F) The development will not detrimentally impact the heritage significance of the Potts Point Heritage Conservation Area.
- (G) The development is consistent with the character of the Kings Cross locality.
- (H) The proposed development demonstrates design excellence in accordance with the relevant provisions and matters for consideration in clause 6.21C of the Sydney Local Environmental Plan 2012.
- (I) The development, subject to conditions, will not unreasonably compromise the amenity of the surrounding area.
- (J) The development, subject to conditions, is in the public interest.
- (K) Condition 1 was amended to include reference to the updated architectural drawing and updated floor plan, to correct inconsistencies.
- (L) Condition 2 was amended as lightwell drainage details were not submitted for assessment as part of the development application.
- (M) Condition 2A was added as lightwell maintenance details were not submitted as part of the development application.
- (N) Condition 3 was amended to ensure that privacy impacts will be acceptable.
- (O) Condition 3A was added to clarify that excavation is not approved under this development consent.
- (P) Condition 3B was added to clarify that no fit-out and use of the retail premises on the site is approved.
- (Q) Condition 13 was amended to reflect changes to the application on 21 August 2026, removing reference to the use of the backpacker accommodation from the Sydney Trains Pedestrian arcade, and to address neighbouring residents' amenity concerns.
- (R) Condition 21A was added as the mechanical plant details have not yet been finalised.
- (S) Conditions 42A, 46A, 46B, 61A, 61B, 72A and 72B were added to correct administrative errors of omission.
- (T) Condition 77 was deleted as provision of CCTV is addressed under Condition 13.

Carried unanimously.

D/2025/1026