

Item 6.**Development Application - 21-25 Codrington Street, Darlington - D/2026/264****File Number:** D/2026/264**Summary**

Date of submission:	3 April 2026
Applicant:	The University of Sydney
Developer:	The University of Sydney
Owner:	The University of Sydney
Architect/Designer:	nettletontribe
Planning consultant:	Colliers Urban Planning
Cost of works:	\$5,628,758.00
Zoning:	SP2 - Educational Establishment. The proposed use is ancillary to the educational establishment use and is permissible with consent in the zone.
Proposal summary:	The proposed development comprises alterations and additions to the existing student accommodation building, including the construction of a new commercial kitchen and enclosed dining hall to serve the existing student population. The application is Crown development as it has been made by or on behalf of an Australian university. Council supports the development and recommends approval. However, the applicant has objected to the affordable housing contribution condition proposed under clause 7.13 of the Sydney Local Environmental Plan 2012 (Sydney LEP). Council considers the condition to be appropriate and justified, having regard to clause 7.13 of the Sydney LEP and the City of Sydney Affordable Housing Program.

As agreement has not been reached on the proposed condition and as the application is Crown development, the matter has been referred to the Local Planning Panel pursuant to section 4.33 of the Environmental Planning and Assessment Act 1979 (EP&A Act) to consider the applicant's objection and whether the disputed condition should be referred to the Minister.

Summary recommendation: Referral to Minister regarding affordable housing condition

Development controls: Sydney Local Environmental Plan 2012
Sydney Development Control Plan 2012
State Environmental Planning Policy (Biodiversity and Conservation) 2021
State Environmental Planning Policy (Transport and Infrastructure) 2021
State Environmental Planning Policy (Housing) 2021

Attachments: A - Council assessment report
B - Recommended conditions of consent
C - Selected drawings
D - Applicant's objection to the affordable housing contribution condition
E - City of Sydney Affordable Housing Program

Recommendation

It is resolved that, pursuant to section 4.33 of the Environmental Planning and Assessment Act 1979, the Local Planning Panel refer the applicant's objection to the affordable housing contribution condition to the Minister for consideration.

Reasons for Recommendation

- (A) The application is Crown development for the purposes of section 4.33 of the EP&A Act, and the applicant has objected to the proposed affordable housing contribution condition.
- (B) Pursuant to sections 4.33(1)(b) and 4.33(2A) of the EP&A Act, a condition objected to by the applicant cannot be imposed unless approved by the applicant or the Minister, and a disputed Crown development condition must first be referred to the applicable planning panel before referral to the Minister.
- (C) As the applicant maintains its objection to the condition, the matter requires consideration by the Local Planning Panel and referral of the disputed condition to the Minister in accordance with section 4.33 of the EP&A Act.
- (D) The Affordable Housing Program and clause 7.13 of the Sydney LEP apply to the proposed development, and Council considers the affordable housing contribution condition to be appropriate, justified and consistent with the applicable statutory framework.
- (E) Council considers the disputed condition raises broader strategic and public interest considerations regarding the application of affordable housing contributions to university student accommodation developments that generate additional residential floor area. Affordable housing contributions are a key mechanism for implementing the City's adopted Affordable Housing Program and responding to the demonstrated need for affordable housing arising from ongoing development and growth within the local government area (LGA). Given the demonstrated need for affordable housing within the City of Sydney and the importance of maintaining a consistent contribution framework, Council considers it appropriate that the Minister consider whether the condition should apply in this instance.

Background

Reason the application is reported to the Local Planning Panel

1. The application is reported to the Local Planning Panel because the applicant has objected to the proposed affordable housing contribution condition. As the application is Crown development, section 4.33 of the EP&A Act requires the proposal to be referred to the Local Planning Panel for consideration before it can be referred to the Minister.

Site and surrounding development

2. The subject site has a legal description of Lot 101 DP 1212817, Lot 103 DP 844695 and Lot 102 DP 1212817, commonly known as 21-25 Codrington Street, Darlington. It is rectangular in shape with an area of approximately 19,200 square metres (sqm). It has a primary street frontage to Abercrombie Street and secondary street frontages to Codrington Street and Darlington Lane.
3. The site forms part of the University of Sydney's Darlington Campus. The subject development application (DA) relates to a 6-storey student accommodation building on site known as the Abercrombie Student Accommodation which includes a stepped podium to Abercrombie Street with three individual tower elements.
4. Specifically, the DA relates to a portion of the ground floor level of this building including an internal common area and adjoining eastern courtyard. This area is internal facing to the site and is not directly visible from Abercrombie Street.
5. Refer to Council's assessment report (Attachment A) for a full description of the site and surrounding locality.



Figure 1: Aerial view of site and surrounds

Proposed development

6. The application seeks consent for alterations and additions to the existing student accommodation building including the construction of an enclosed dining hall and a new commercial kitchen.
7. The commercial kitchen will be operated by an external provider, and the dining hall will serve the existing student population only. The kitchen is expected to employ a total of 10 staff and will operate daily between 8:00am and 11:00pm.
8. Associated works include reconfiguring the existing common room to retain self-catering facilities for residents, modifications to the existing basement to accommodate revised bicycle and waste storage areas, and upgrades to building plant and services including the installation of new rooftop plant equipment.
9. The proposed development results in 238sqm of additional gross floor area (GFA).
10. Refer to Attachment C for plans, sections and elevations of the proposed development.

Background

11. This application has been made by or on behalf of an Australian university within the meaning of the Higher Education Act 2001 and under clause 294 of the Environmental Planning and Assessment Regulation. The application is therefore Crown development for the purposes of section 4.33 of the EP&A Act.
12. During the assessment of the application, amended plans and additional information were submitted to address issues raised by Council officers. Following a review of the amended application, Council formed the view that the development is acceptable and could be supported subject to conditions of consent.
13. Section 4.33 (1) (b) of the Act provides that a consent authority must not impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.
14. In accordance with section 4.33(1)(b) of the Act, draft conditions of consent were provided to the applicant on 14 July 2026 for review.
15. The draft conditions included an affordable housing contribution condition was included, in accordance with clause 7.13(1)(a)(ii) of the Sydney LEP (clause extract provided below):

7.13 Contribution for purpose of affordable housing

(1) This clause applies to the following development—

(a) development on land at Green Square or Ultimo-Pyrmont, or on southern employment land or residual land that involves—

(ii) alterations to an existing building that will result in the creation of more than 200 square metres of gross floor area that is intended to be used for the purpose of residential accommodation, or

- (2) The consent authority may, when granting development consent to development to which this clause applies, impose a condition requiring a contribution not exceeding the applicable affordable housing levy contribution for the development provided for in subclause (2A) or (2C).
16. On 27 July 2026, the applicant requested amendments to the draft conditions, including the removal of the affordable housing contribution condition and food and drink premises conditions, and revisions to conditions relating to mechanical ventilation and waste management.
 17. On 31 July 2026, amended draft conditions were provided to the applicant (Attachment B). These incorporated all requested changes other than the removal of the affordable housing contribution condition (included as Condition 2 in Attachment B), which Council considers to be appropriate and justified. Further details are provided in Council's assessment report (Attachment A) and the 'Views of Council' section below. Council otherwise supports the development, and the affordable housing contribution condition is the only unresolved matter.
 18. As the applicant maintains its objection to the affordable housing contribution condition, agreement has not been reached on all proposed conditions of consent. Pursuant to section 4.33(1)(b) of the EP&A Act, a condition objected to by an applicant cannot be imposed unless approved by either the applicant or the Minister. Section 4.33(2A) further requires a Crown DA to be referred to the Local Planning Panel before the disputed condition can be referred to the Minister.
 19. Accordingly, the application is reported to the Local Planning Panel to consider referral of the Crown development application to the Minister under section 4.33 of the EP&A Act because of the applicant's objection to the affordable housing contribution condition.

Views of Applicant

20. The applicant, Sydney University, objects to the proposed affordable housing contribution condition and requests its removal from any consent issued for the development. The applicant has provided their reasoning for the request for deletion of the condition in their letter dated 23 July 2026, included as Attachment D.
21. The applicant has raised the following grounds in support of deleting the proposed affordable housing contribution condition. These matters are addressed by Council in the 'Views of Council' section under the corresponding sub-headings:
 - (a) Absence of planning nexus
 - (b) Statutory framework clause 7.12 and section 7.32
 - (c) Consistency with established legal principles
 - (d) Nature of the development and the public benefit
 - (e) The University already contributes to affordable housing outcomes
 - (f) Inconsistency with established practice
 - (g) Broader public interest considerations

22. In summary, the applicant submits that, although clause 7.13 of the Sydney LEP is triggered by the proposal, the imposition of an affordable housing contribution remains discretionary and is not justified in the circumstances of the development.
23. The applicant contends that the proposal is limited to upgrades and alterations to an existing student accommodation building, including a new commercial kitchen, dining facilities and associated amenity improvements, and does not increase student accommodation capacity, student numbers, residential floor space, or demand for housing. As a result, the applicant submits that there is no planning nexus between the development and any need for affordable housing contributions.
24. The applicant further submits that the proposed contribution is unreasonable because the development does not generate private development uplift, does not create an identifiable affordable housing impact requiring mitigation, and delivers a public benefit through improvements to existing student accommodation infrastructure. The applicant also argues that the proposed condition is inconsistent with the treatment of comparable university, health and other Crown development projects, and notes its existing contribution to housing outcomes through the provision of student accommodation.
25. Accordingly, the applicant requests that the affordable housing contribution condition be deleted from the development consent.

Views of Council

26. Council has considered the applicant's grounds for objecting to the proposed affordable housing contribution condition and provides a response as follows:
 - (a) **Absence of planning nexus**
27. Council does not accept the applicant's submission that there is no planning nexus between the development and the affordable housing contribution.
28. The City of Sydney Affordable Housing Program (included at Attachment E) identifies residual lands as an area where development both reduces the availability of affordable housing and creates a need for affordable housing.
29. The Program explains that investment in public infrastructure, increasing levels of amenity and the growing desirability of inner-city living and working continue to place upward pressure on housing prices and rents across the LGA. In addition, employment growth within the City increases demand for housing and intensifies competition for an increasingly limited supply of lower-cost accommodation, resulting in the displacement of lower-income households and a corresponding need for additional affordable housing.
30. The Program further identifies residual lands as a significant source of future development, with approximately 35% of projected dwelling growth in the City anticipated to occur within these areas. The Program recognises that ongoing residential and employment growth within the City will continue to place upward pressure on housing costs beyond the means of very low, low and moderate income households unless additional affordable housing is provided.

31. Accordingly, the statutory nexus underpinning clause 7.13 of the Sydney LEP is not dependent on demonstrating that an individual development will increase occupancy or population. Rather, it arises from the relationship between additional development capacity within residual lands and the cumulative impact that development has on housing affordability, housing demand and the need for affordable housing across the local area. The proposal generates additional gross floor area in excess of the threshold prescribed by clause 7.13 and therefore falls within the contribution framework established by the Sydney LEP and the Affordable Housing Program.

(b) Statutory framework clause 7.12 and section 7.32

32. Council acknowledges that clause 7.13 of the Sydney LEP and section 7.32 of the EP&A Act do not in themselves mandate the imposition of an affordable housing contribution rather they provide for the circumstances in which such a condition may be imposed.
33. The proposal is located within the residual lands affordable housing contribution area and will create approximately 238sqm of additional gross floor area associated with residential accommodation, exceeding the 200sqm threshold in clause 7.13(1)(a)(ii) of the Sydney LEP. The City of Sydney Affordable Housing Program identifies a demonstrated need for affordable housing within the LGA and provides that development on residual lands exceeding the applicable threshold is subject to an affordable housing contribution unless specifically exempt.
34. The development is not exempt under Section 2.2 of the Affordable Housing Program and does not fall within an excluded category, being social housing or affordable housing.
35. Council is satisfied that the condition complies with section 7.32(3)(a) of the EP&A Act, as it is imposed consistently with section 15 of the Housing SEPP, and section 7.32(3)(c) of the Act, as the contribution is reasonable in the circumstances. The contribution is calculated only on the additional floor area generated by the proposal and not the existing development as a whole. The contribution payable is estimated at \$80,470.92 (subject to indexation), representing approximately 1.43% of the total development cost. Council therefore considers the contribution to be proportionate to the scale of the development and the additional development capacity it facilitates.
36. The condition has been imposed following consideration of the statutory framework established by the EP&A Act, Housing SEPP, Sydney LEP and City of Sydney Affordable Housing Program; the identified need for affordable housing within the LGA; the absence of any applicable exemption or exclusion; and the reasonableness and proportionality of the contribution having regard to the scale of the development.

(c) Consistency with established legal principles

37. Council acknowledges the applicant's reliance on Freecity Alpha Development Pty Ltd v City of Sydney [2025] NSWLEC 1694, however, the decision is considered to be of limited relevance to the present application given the particular circumstances in which it was made and the materially different circumstances of the current proposal.
38. Council does not accept that the necessary nexus required by the Newbury principles (from Newbury District Council v Secretary of State for the Environment) is absent, as stated by the applicant. The condition fairly and reasonably relates to the development because the proposal creates additional residential floor area within an area identified as having a demonstrated need for affordable housing and falls within the affordable housing contribution framework established by clause 7.13 of the Sydney LEP and the

City of Sydney Affordable Housing Program. The contribution is calculated only on the additional floor area generated by the development and is therefore directly related to the development for which consent is sought.

(d) Nature of the development and the public benefit

39. Council acknowledges that the proposal relates to student accommodation operated by a public educational institution and that the development will deliver amenity improvements for existing residents. However, neither clause 7.13 of the Sydney LEP nor the City of Sydney Affordable Housing Program exempts development undertaken by public educational institutions from the affordable housing contribution framework.
40. Council does not accept that the absence of development profit, land value uplift or an increase in student numbers precludes the imposition of an affordable housing contribution. The statutory framework applies to development that generates additional floor area within identified contribution areas and is not dependent on whether the development is undertaken for a commercial purpose. The contribution is calculated solely on the additional floor area facilitated by the proposal and is directed toward addressing the demonstrated need for affordable housing within the LGA.
41. While the proposal will improve the quality and functionality of the University's student accommodation, Council does not consider that these public benefits outweigh or displace the objectives of the affordable housing contribution framework. The contribution forms part of a broader strategic approach to maintaining housing diversity and supporting affordable housing outcomes as development occurs within the City of Sydney.

(e) The University already contributes to affordable housing outcomes

42. Council acknowledges the University's role in providing student accommodation. However, student accommodation is not recognised as affordable housing under the applicable statutory planning framework. This development type is intended to accommodate a specific transient student cohort rather than provide long-term affordable housing for low to moderate income households.
43. While the proposal will improve the amenity and operation of an existing student accommodation facility, this does not alter the operation of clause 7.13 of the Sydney LEP, which applies where the prescribed floor area threshold is exceeded. Nor does the University's existing contribution to housing outcomes exempt the development from the affordable housing contribution framework established by the Sydney LEP and the City of Sydney Affordable Housing Program.

(f) Inconsistency with established practice

44. Council does not agree that the proposed condition is inconsistent with established practice. The appropriateness of an affordable housing contribution must be considered having regard to the applicable statutory framework, including clause 7.13 of the Sydney LEP, section 7.32 of the EP&A Act and the City of Sydney Affordable Housing Program.

45. Council has consistently recommended the imposition of affordable housing contributions on educational establishment and student accommodation developments where the relevant statutory provisions apply. The applicant has identified some Sydney University projects and other nearby Crown development projects where affordable housing contributions were not imposed, however these projects were determined by the Department of Planning, Housing and Infrastructure (the Department) rather than Council. The absence of a contribution in these approvals does not, of itself, establish that a contribution is inappropriate in the present case.
46. It is relevant that the Department's most recent approval of a University of Sydney project, the Ross Street Teaching and Learning Hub (SSD-57838709), included an affordable housing contribution. In that case, the Department's assessment report outlined that clause 7.13 of the Sydney LEP applied because the development involved the erection of a new building on residual land containing more than 200sqm of gross floor area, and section 7.32 of the EP&A Act enabled the imposition of a contribution towards affordable housing.
47. Imposition of the proposed condition is not considered to be a departure from established practice. Rather, it reflects the application of the statutory affordable housing contribution framework to a development that exceeds the threshold prescribed by clause 7.13 of the Sydney LEP and is not otherwise exempt from the Affordable Housing Program.

(g) Broader public interest considerations

48. Council acknowledges the public benefits associated with higher education infrastructure and student accommodation. However, the proposal is not exempt from the affordable housing contribution framework established by clause 7.13 of the Sydney LEP and the City of Sydney Affordable Housing Program.
49. It is considered that the consistent application of the affordable housing contribution framework is in the public interest. The framework has been adopted to respond to the demonstrated need for affordable housing within the City of Sydney and relies on contributions from eligible developments to assist in delivering affordable housing outcomes over time. While the contribution from an individual development may be limited, the cumulative application of the framework across eligible developments is an important mechanism for addressing housing affordability within the LGA.
50. Accordingly, it is not considered that the public benefits associated with the proposal warrant an exception to the contribution requirements that apply to the site.

Matters for Local Planning Panel's Consideration

51. The proposed development is supported in principle subject to conditions. Conditions have been agreed to with the applicant, with the exception of the proposed affordable housing contribution condition.
52. The matter before the Panel is therefore:
 - (a) Whether or not the application should be approved without the imposition of an affordable housing contribution condition;
 - Or
 - (b) If the affordable housing contribution condition is warranted the matter be referred to the Minister in accordance with section 4.33 of the EP&A Act.
53. The application cannot be refused as this requires the consent of the Minister.
54. In considering the matter relating to an affordable housing contribution condition the Panel should have regard to:
 - The applicant's submission that the affordable housing contribution condition is not justified in the circumstances of the proposed development;
 - Council's position that the condition is appropriate, reasonable and authorised under section 7.32 of the EP&A Act, clause 7.13 of the Sydney LEP and the City of Sydney Affordable Housing Program; and
 - The statutory requirements of section 4.33 of the EP&A Act governing disputed conditions of consent for Crown development applications.
55. If the Panel forms the view that the affordable housing contribution condition should be imposed, section 4.33 of the EP&A Act requires the matter be referred to the Minister.
56. Alternatively, if the Panel agrees with the applicant's objection and determines that the affordable housing contribution condition should not be imposed, section 4.33(3) of the EP&A Act permits the Panel, as the consent authority, to exercise the functions of Council and determine the DA, subject to section 4.33(1) of the Act.

Relevant legislation

57. Environmental Planning and Assessment Act 1979.

Conclusion

58. As agreement has not been reached with the applicant regarding the affordable housing contribution condition and the application is Crown development, the matter is referred to the Local Planning Panel for consideration under section 4.33 of the EP&A Act.
59. Council maintains that the condition should be retained and recommends referral of the disputed condition to the Minister.

60. Council considers that, in the context of the significant housing affordability challenges currently facing Sydney, the consistent application of affordable housing contributions to eligible developments is necessary to support the cumulative delivery of affordable housing and achieve the objectives of the City's adopted Affordable Housing Program.

BILL MACKAY

Manager Planning Assessments

Mia Music, Senior Planner