Chapter 23: Unavoidable Adverse Impacts

A. INTRODUCTION

According to the 2010 *City Environmental Quality Review (CEQR) Technical Manual*, unavoidable significant adverse impacts are defined as those that meet the following two criteria:

- There are no reasonably practicable mitigation measures to eliminate the Proposed Actions' impacts; and
- There are no reasonable alternatives to the Proposed Actions that would meet its purpose and need, eliminate its impacts, and not cause other or similar significant adverse impacts.

As described in Chapter 21, "Mitigation," the Proposed Actions would result in significant adverse impacts with respect to: Shadows; Historic and Cultural Resources; Transportation (traffic, transit, and pedestrians); and Construction Impacts related to Open Space, Transportation, and Noise. To the extent practicable, mitigation has been proposed for these identified significant adverse impacts. However, in a number of instances no practicable mitigation was identified to fully mitigate significant adverse impacts, and there are no reasonable alternatives to the Proposed Actions that would meet its purpose and need, eliminate its impacts, and not cause other or similar significant adverse impacts. The following is a summary of those "Unavoidable Adverse Impacts."

B. SHADOWS

The analysis in Chapter 6, "Shadows" finds that the shadows cast by the Bleecker Building would result in significant adverse shadow impacts on LaGuardia Corner Gardens, a community garden located along LaGuardia Place adjacent to the Bleecker Building site on the South Block. While considered a private open space because of limited public access, the garden is an important community resource. The Bleecker Building would cast between four and five-and-a-half hours of new shadow on the restored garden during morning hours throughout the growing season (in the spring, summer, and fall). While the remaining sunlight could support shade-tolerant species, the proposed project's incremental shadows would jeopardize the viability of shade-intolerant species.

Mitigation options considered, but rejected, for the significant adverse shadow impact on LaGuardia Corner Gardens included moving the proposed Bleecker Building eastward toward the center of the South Block, or southward toward West Houston Street, as well as reducing the height of the proposed Bleecker Building. While a change in the location of the Bleecker Building (either eastward or southward) would reduce the incremental shadows cast on the LaGuardia Corner Gardens, such an adjustment in site plan would result in an encroachment on the boundary of University Village, which has been determined eligible for listing on the State and National Registers of Historic Places (S/NR-eligible), and is also a designated New York City Landmark (NYCL). Given that such an adjustment could have adverse contextual effects on this historic resource, and that the reduction in shadows would only partially mitigate the

significant adverse shadow impact, the relocation of the proposed Bleecker Building was rejected as a potential mitigation measure.

Reducing the proposed height of the Bleecker Building and/or re-orienting the tower portion of the building also were considered, but rejected as potential mitigation measures. Re-orienting the tower so that the nine-story portion of the building faces LaGuardia Place was rejected because shadow modeling of this configuration showed only marginal improvements in shadows on the LaGuardia Corner Gardens, and because the re-orientation could have adverse effects on the north-facing views from 505 LaGuardia Place. A reduction in height of the proposed Bleecker Building was rejected because the reduction in height that would be necessary to mitigate the significant adverse shadows impact would be so severe as to substantially compromise the goals and objectives of the Proposed Actions. As described in Chapter 22, "Alternatives," based on shadow modeling, it was determined that the proposed Bleecker Building would have to be approximately 50 feet in height or less in order to eliminate the unmitigated significant adverse shadow impact on the LaGuardia Corner Gardens. Such a substantial reduction in height (from 208 feet with the proposed project) would not allow for the provision of a 100,000-square-foot public school within the building (or a 100,000-square-foot academic space should SCA not exercise its option to build a public school), nor would it allow the amount of space that would be necessary for NYU to redevelop the site as a dormitory. As described in Chapter 1, "Project Description," a purpose and need for the Proposed Actions is to develop NYU dormitories so that more undergraduate students would have opportunity to live in student housing within the core campus to create a strong academic community and to become better acclimated to the City. Additionally, the proposed Bleecker Building is the best location for a public school within the proposed project because it could be built earlier than the buildings on the North Block—allowing the New York City School Construction Authority (SCA) greater flexibility in the timing of the public school—and the building's design would allow for the public school as a separate and distinct use, with a separate entrance exclusive to the public school along Bleecker Street.

A partial mitigation measure under consideration is planting shade-tolerant species in portions of the LaGuardia Corner Gardens that would receive substantial shadowing as a result of the proposed project, and monitoring the health of the replanted garden. This mitigation would occur when the garden is restored (i.e., after the construction of the proposed Bleecker Building). While this mitigation is feasible, it would not serve to fully mitigate the significant adverse impact because the extent of project-generated shadows during the growing season could substantially alter the types of plantings that would be viable.

A potential mitigation measure with uncertain feasibility is the relocation of the LaGuardia Corner Gardens prior to construction of the Bleecker Building, either further south on the South Block or elsewhere in the study area. The feasibility of this mitigation is uncertain because the LaGuardia Corner Gardens and other potential relocation sites—including less shadowed locations further south along the LaGuardia Place Strip—are not owned or controlled by the project sponsor.

Between the DEIS and FEIS, options will be explored to determine the feasibility of the above-described mitigation measures, and to identify different mitigation measures for this significant adverse shadows impact. This further analysis of mitigation will be coordinated with the lead agency; with the New York City Department of Parks and Recreation (NYCDPR), which provides support to LaGuardia Corner Gardens as a member of the City's GreenThumb

program; and with NYCDOT, which has jurisdiction over the LaGuardia Corner Gardens and other property on the LaGuardia Place Strip.

In the absence of the relocation of facilities or other mitigation measures not yet identified, the significant adverse shadow impacts on the LaGuardia Corner Gardens would only be partially mitigated by the planting of shade-tolerant species in coordination with support for monitoring and maintenance by NYU. Therefore, absent the identification of reasonable alternatives to the Proposed Actions that would meet its purpose and need, eliminate this impact, and not cause other or similar significant adverse impacts, the Proposed Actions could have an unavoidable adverse impact on the LaGuardia Corner Gardens.

C. HISTORIC AND CULTURAL RESOURCES

WASHINGTON SQUARE VILLAGE

As detailed in Chapter 7, "Historic and Cultural Resources," Washington Square Village has been determined eligible for listing on the State and National Registers of Historic Places (S/NR). The proposed project would result in alterations to the Washington Square Village complex—including the proposed development of two new buildings and landscaping, which require the elimination of the LaGuardia Retail building and the elevated garden, as well as limited alterations to the Washington Square Village buildings themselves. These alterations to the Washington Square Village complex would remove elements of this architectural resource that contribute to its significance. Therefore, the proposed project would have a significant adverse impact on this architectural resource.

Measures to minimize or partially mitigate significant adverse impacts to Washington Square Village would be implemented in consultation with the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) and would be set forth in a Letter of Resolution (LOR) to be signed by the applicant, OPRHP, DASNY, and potentially other involved agencies. Potential mitigation measures include the following:

- Preparation of Historic American Buildings Survey (HABS) documentation of Washington Square Village would be prepared which would include photographic documentation, historic plans, and an accompanying historical narrative.
- NYU would consult with OPRHP regarding proposed changes to the ground floor facades of Washington Square Village's north and south buildings as design plans proceed. The LOR will specify the points in the design process at which consultation with OPRHP would occur.
- Prior to construction of the proposed project, and in consultation with OPRHP and the New York City Landmarks Preservation Commission (LPC), NYU would develop and implement Construction Protection Plans (CPPs) for University Village, Washington Square Village, the buildings in the Commercial Overlay Area that would be directly affected by ground floor alterations and buildings immediately adjacent to these buildings, and Shimkin Hall. The CPPs would be prepared in coordination with a licensed professional engineer and would follow the guidelines set forth in Section 523 of the *CEQR Technical Manual,* including conforming to LPC's *New York City Landmarks Preservation Commission Guidelines for Construction Adjacent to a Historic Landmark* and *Protection Programs for Landmark Buildings*. The CPP would also comply with the procedures set forth in the New

York City Department of Buildings (DOB)'s *Technical Policy and Procedure Notice* (TPPN) #10/88.[1]

As detailed in **Appendix B: Historic and Cultural Resources**—which assesses whether it would be feasible to retain the Washington Square Village complex in its current configuration as part of the proposed project—no practicable mitigation measures have been identified to fully mitigate this significant adverse impact. Therefore, absent the identification of reasonable alternatives to the Proposed Actions that would meet its purpose and need, eliminate this impact, and not cause other or similar significant adverse impacts, there would be an unavoidable significant adverse impact on Washington Square Village as a result of the Proposed Actions.

POTENTIAL NOHO HISTORIC DISTRICT EXPANSION

As detailed in Chapter 7, "Historic and Cultural Resources," four of the six buildings[2] in the Commercial Overlay Area that would be modified with ground floor alterations as a result if the Proposed Actions are contributing to the S/NR-eligible potential NoHo Historic District Expansion. Although these buildings are within an S/NR-eligible historic district, because there is no federal or state funding involved with the proposed ground floor alterations, there is no regulatory process to control changes to these architectural resources. Further, none of these architectural resources is an NYCL and, therefore, alterations to these architectural resources would not require LPC's review and approval. The analysis in this DEIS finds that depending on the extent of alterations and intact historic material to be removed, future alterations to the ground floors of these architectural resources could in some cases result in significant adverse impacts. To address this potential significant adverse impact, prior to the commencement of construction of the proposed project,[3] in consultation with LPC and OPRHP, NYU would develop and implement CPPs for the four Commercial Overlay Area buildings that are contributing to the potential NoHo Historic District Expansion. The CPPs would be prepared in coordination with a licensed professional engineer and would follow the guidelines set forth in Section 523 of the *CEQR Technical Manual,* including conforming to LPC's New York City Landmarks Preservation Commission Guidelines for Construction Adjacent to a Historic Landmark and Protection Programs for Landmark Buildings. The CPPs will also comply with the procedures set forth in the New York City Department of Buildings Technical Policy and Procedure Notice (TPPN) #10/88. However, currently there are no specific redevelopment plans for the four buildings contributing to the S/NR-eligible Potential NoHo Historic District Expansion, so at this time it cannot be determined whether this measure would fully mitigate potential impacts. By excluding the development in the Commercial Overlay Area, one of NYU's programmatic needs—to allow for an enlivened, more flexible streetscape to better

[1] TPPN #10/88 was issued by DOB on June 6, 1988, to supplement Building Code regulations with regard to historic structures. TPPN #10/88 outlines procedures for the avoidance of damage to historic structures resulting from adjacent construction, defined as construction within a lateral distance of 90 feet from the historic resource.

[2] As part of an environmental review for a separate project in 2007, the buildings at 7 Washington Place/283 Mercer Street and 15 Washington Place were determined by OPRHP to be ineligible for listing on the State/National Registers of Historic Places and to be non-contributing to the Potential NoHo Historic District Expansion (see Appendix A, "Historic and Cultural Resources.")

[3] Submission of the CPPs may be phased so that a CPP is not required for a particular building until construction will occur at or proximate to that building.

connect NYU's buildings to the City and the surrounding area—would not be fulfilled. Absent the identification of practicable mitigation measures to ensure that this potential impact would be fully mitigated, or the identification of reasonable alternatives to the Proposed Actions that would meet its purpose and need, eliminate this impact, and not cause other or similar significant adverse impacts, there is the potential for an unavoidable significant adverse impact on the Potential NoHo Historic District Expansion as a result of the Proposed Actions.

D. TRANSPORTATION

Chapter 14, "Transportation," identified the potential for significant adverse traffic, pedestrian, and transit impacts as a result of the Proposed Actions. Chapter 21, "Mitigation," identifies mitigation measures that would fully mitigate the significant adverse traffic and pedestrian impacts. The following section describes how the identified transit impacts are potentially unavoidable significant adverse impacts as a result of the Proposed Actions.

TRANSIT

As discussed in Chapter 14, "Transportation," the Proposed Actions under Reasonable Worst-Case Development Scenario (RWCDS) 3 (the "Max Hotel Scenario," as detailed in Table 1-7 of Chapter 1, "Project Description") would not result in any significant adverse transit impacts by 2021 Phase 1 completion, but would result in significant adverse impacts to stairways at the Broadway-Lafayette and the West 4th Street subway stations (stairways S9 and S2A/B, respectively) upon the proposed project's full build-out in 2031. If NYU proceeds with the development of RWCDS 1 (the "Max Academic Scenario"), the same impacts at these two stations would occur in both 2021 and 2031.

Mitigation that would improve conditions at these stations includes widenings of the impacted stairways and/or providing additional station access locations, which are long-term capital improvements. The engineering analysis to determine the feasibility of implementing and any implementation of these mitigation measures would be coordinated with the Metropolitan Transportation Authority (MTA) New York City Transit (NYCT) to allow enough time for design and specification approvals, and for their construction to address the increased demand that would result from development of the proposed project. Between the DEIS and FEIS, additional station elements at the Broadway-Lafayette and West 4th Street Stations, as well as the Prince Street Station will be analyzed. Any significant adverse impacts that may be identified for these other station elements would be disclosed in the FEIS and potential mitigation measures explored to mitigate these impacts. If the stairway widenings or other alternate mitigation measures are determined to be infeasible, the projected significant adverse subway station impacts would remain unmitigated. Eliminating the impact would require a reduction in the project activity level of greater than 50 percent; such a substantial reduction in the size of the proposed project would be inconsistent with meeting its goals and objectives. Absent the identification of feasible and practicable mitigation measures to ensure that this potential impact would be eliminated, or the identification of reasonable alternatives to the Proposed Actions that would meet its purpose and need, eliminate this impact, and not cause other or similar significant adverse impacts, there is the potential for an unavoidable significant adverse transit impacts.

E. CONSTRUCTION IMPACTS

TRANSIT

After the completion of Phase 1 components of the proposed project, the area's subway stations would incur increases in passengers generated by the completed uses. As discussed in Chapter 14, "Transportation," subway impacts are expected to occur in 2021 with the development of RWCDS 1. Hence, the combination of the Phase 2 construction worker subway trips and those generated by the completed Phase 1 project during the commuter peak hours would result in comparable significant adverse impacts to the subway station elements described for the proposed project (i.e., S9 stairway at the Broadway-Lafayette Station and S2A/B stairway at the West 4th Street Station). As described in Chapter 21, "Mitigation," potential mitigation measures for impacts at these locations will be explored between the DEIS and FEIS. If these mitigation measures are found to be infeasible, the impacts would be unmitigated. Eliminating the impact would require a reduction in the project activity level of greater than 50 percent; such a substantial reduction in the size of the proposed project would be inconsistent with meeting its goals and objectives. Absent the identification of feasible and practicable mitigation measures to ensure that this potential impact would be eliminated, or the identification of reasonable alternatives to the Proposed Actions that would meet its purpose and need, eliminate this impact, and not cause other or similar significant adverse impacts, there is the potential for an unavoidable significant adverse transit impacts during construction.

NOISE[1]

The Proposed Actions would result in significant adverse construction noise impacts at some nearby residential locations, including at residential terraces. The proposed mitigation measures would partially mitigate significant project impacts (and substantially reduce construction-related noise levels) at some locations. However, absent the implementation of additional mitigation measures and/or refined analyses which result in lower noise levels, the proposed project would have significant adverse construction noise impacts that are not fully mitigated. Any development of the scale of the proposed project would have the potential to result in unmitigated significant adverse impacts at the locations mentioned above.

Absent the identification of practicable mitigation measures to ensure that these potential construction-related noise impacts would be fully mitigated, or the identification of reasonable alternatives to the Proposed Actions that would meet its purpose and need, eliminate this impact, and not cause other or similar significant adverse impacts, there is the potential for unavoidable significant adverse construction noise impacts as a result of the Proposed Actions.

OPEN SPACE

As described in Chapter 20, "Construction Impacts," during construction of the proposed Bleecker Building under the LaGuardia Place Staging Option (construction staging for the proposed Bleecker Building only along the LaGuardia Place frontage), the LaGuardia Corner Gardens— a Green Thumb garden on City-owned land that is not assessed as public open space under guidance set forth in the *CEQR Technical Manual*—would not be available for the approximately 39-month construction period, because it would be located inside of the

[1] Construction-related noise impacts on open spaces are described separately under "Open Space" in Section E.

construction perimeter, within an area that would be utilized for construction staging. The temporary displacement of the LaGuardia Corner Gardens would be a significant adverse impact on this resource. Under the Bleecker Staging Option (construction staging only along the Bleecker Street frontage), it is expected that the LaGuardia Corner Gardens would remain accessible throughout Bleecker Building construction. However, under the Bleecker Street Staging Option, for an approximately 27-month period during construction most, if not all, of the garden would need to be covered by a construction shed in order to provide a safe construction site. The construction shed would reduce the overall utility of the garden, and would block most, if not all, direct sunlight for an approximately 27-month period, thereby affecting the viability of all plantings, and therefore would result in a significant adverse impact on this resource.

Between the DEIS and FEIS, options will be explored to relocate the LaGuardia Corner Gardens, either further south on the South Block or elsewhere within a ¼-mile area of the project site. However, the feasibility of relocation is uncertain because the LaGuardia Corner Gardens and other potential relocation sites—including less shadowed locations further south along the LaGuardia Place Strip—are not owned or controlled by the project sponsor. If an acceptable relocation space cannot be identified between the DEIS and FEIS, other options will be further explored to refine construction staging and logistics for the Bleecker Building construction site with the goal of minimizing the extent and duration of disturbance of the LaGuardia Corner Gardens due to construction activities. For example, the possibility of staging construction from either the south or east of the Bleecker Building site will be further explored. However, this would require occupying property that the applicant owns but does not control due to the existence of a long-term lease and, therefore, the applicant would need to obtain permission from that lessee. Absent the identification of an acceptable relocation space, the temporary significant adverse construction impact could only be partially mitigated by the provision of temporary space and/or the refining of construction staging and logistics. Furthermore, this partial mitigation would not minimize the significant adverse shadows impact on the LaGuardia Corner Gardens that is projected to occur once the Bleecker Building is operational.

As described in Chapter 20, "Construction Impacts," noise levels at on-site open space locations adjacent to where construction activities are taking place would substantially exceed the 3-5 dBA *CEQR Tehnical Manual* impact criteria. Due to the close proximity of on-site open spaces to construction activities, construction of the proposed project would result in significant adverse noise impacts on open spaces. Noise levels at publicly accessible and private open space locations on the project site (e.g., Mercer Playground, Washington Square Village Elevated Garden, Silver Tower Oak Grove) are currently above the 55 dBA $L_{10(1)}$ recommended in the *CEQR Technical Manual* noise level for outdoor areas. Proposed construction activities would exacerbate these exceedances of the recommended level. No practical and feasible mitigation measures have been identified that could be implemented to reduce noise levels to below the 55 dBA $L_{10(1)}$ guideline and/or eliminate project impacts. Consequently, construction activities would result in noise levels in open space locations that would result in an unmitigated significant adverse construction noise impact. There is no feasible construction approach to the proposed project that would eliminate this unmitigated significant adverse impact.

As detailed in Chapter 20, "Construction Impacts," during Phase 2 of construction—from 2022 to 2026 based on the conceptual construction schedule analyzed—the projected decreases in open space ratios would result in temporary significant adverse indirect impacts to active open space resources in the residential study area. The temporary impact would not begin until the proposed Mercer Building has initiated construction, and would be eliminated by the provision

of the project open spaces associated with the next stage of construction (i.e., completion of the Mercer Building and central portion of the North Block's proposed open space). Between the DEIS and FEIS, NYU, in coordination with NYCDPR will investigate the feasibility of full or partial mitigation for this temporary significant adverse impact. If feasible mitigation measures cannot be identified to fully mitigate this temporary impact, it would remain unmitigated.

Absent the identification of practicable mitigation measures to ensure that these potential construction-related open space impacts would be fully mitigated, or the identification of reasonable alternatives to the Proposed Actions that would meet its purpose and need, eliminate this impact, and not cause other or similar significant adverse impacts, there is the potential for unavoidable significant adverse impacts on open spaces during construction as a result of the Proposed Actions. ✷