

Item 8.**Development Application: 14 Waterloo Street, Surry Hills****File No.: D/2017/1545****Summary****Date of Submission:** 10 November 2017**Applicant:** Waterloo 10 Pty Ltd**Architect:** Billard Leece Partnership Pty Ltd**Owner:** Waterloo 10 Pty Ltd**Cost of Works:** \$1,141,300

Proposal Summary: The application proposes alterations to an existing commercial building consisting of a new rooftop terrace and associated works. These include new lift services to the rooftop, toilet facilities, landscaping, flooring, decking, screening, and some kitchen facilities.

The application is referred to the Local Planning Panel for determination as the proposed development exceeds height of buildings development standard by 54.6%, and exceeds the floor space ratio development standard by 118.3%.

The Sydney LEP 2012 allows for a maximum building height of 22m; and the Sydney DCP 2012 allows six storeys in height. The existing building, built prior to the LEP, is nine storeys and has a height of 37m to the top of the lift motor room (which is a 15m or 68.1% exceedance to the lift motor room). The maximum height of the works proposed is 34.01m (which represents a 12.01m or a 54.6% exceedance to the LEP height standard). The application seeks a variation to the height control under Clause 4.6. This variation is supported.

Proposal Summary: (continued)	The Sydney LEP 2012 allows for a maximum floor space ratio (FSR) of 3.5:1. The application proposes a maximum FSR of 7.64:1 (which is a 118.3% exceedance of the LEP FSR standard). It is noted that the existing building has a FSR of 7.62:1 (which is a 117.7% exceedance to the FSR standard). The total additional gross floor area (GFA) proposed as part of the application is 18.2sqm. The application seeks a variation to the FSR control under Clause 4.6. This variation is supported.
	The application has been amended during the course of the assessment to address privacy impacts to nearby residential apartments. Two submissions have been received objecting to the proposed development. Issues raised in submissions relate to privacy, noise impacts, and insufficient information provided with the application.
Summary Recommendation:	The development application is recommended for approval, subject to conditions.
Development Controls:	(i) Sydney Local Environmental Plan 2012 (ii) Sydney Development Control Plan 2012 (iii) City of Sydney Development Contributions Plan 2015
Attachments:	A. Recommended Conditions of Consent B. Architectural Drawings C. Clause 4.6 Variations

Recommendation

It is resolved that:

- (A) Pursuant to the provisions of Clause 4.6 of the Sydney Local Environmental Plan (LEP) 2012, the variation sought to Clause 4.3 Height of Buildings contained in the Sydney LEP 2012 be supported in this instance;
- (B) Pursuant to the provisions of Clause 4.6 of the Sydney LEP 2012, the variation sought to Clause 4.4 Floor Space Ratio contained in the Sydney LEP 2012 be supported in this instance; and
- (C) Consent be granted to Development Application No. D/2017/1545 subject to conditions set out in Attachment A to this report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) It is consistent with the objectives of the B4 - Mixed Use zone;
- (B) As conditioned, it is generally consistent with the objectives of the relevant controls for the site;
- (C) The proposal will not significantly alter the scale or built form of the existing development, and has been designed to ensure limited visibility from the public domain and to address potential impacts on the surrounding area. As such the proposed development is considered to be appropriate to the building and its immediate context and is considered to exhibit design excellence;
- (D) The Clause 4.6 variations to height and FSR are considered to be well founded, demonstrate that compliance with the development standard is unreasonable and unnecessary in this instance, and adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the development standards;
- (E) The recommended landscape conditions will ensure suitable landscaping to the rooftop terrace that is consistent with Council's Green roofs policy;
- (F) The recommended operational conditions for the use of the rooftop terrace are considered to adequately address issues raised by the community in relation to noise management and amenity impacts.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 6 February 2018.
2. The site is rectangular, with an area of approximately 831sqm. It is located on an intersection, with a primary street frontage to Waterloo Street and a secondary street frontage to Kippax Street. A nine storey commercial office building is contained within the site. The site slopes from east to west, with a fall of approximately 2.5m.
3. The site is neither heritage listed, nor is it located within a heritage conservation. However, the site to its immediate east, at 117 and 119-127 Kippax Street Surry Hills, is a locally listed heritage item (I1563A) known as the 'Former Ford Sherington Trunk Factory.'
4. An aerial map of the site, and photographs of the subject building, are provided as follows:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Subject building as viewed from opposite corner of Waterloo Street and Kippax Street, looking south-east



Figure 3: Upper levels of subject building as viewed from opposite corner of Waterloo Street and Kippax Street



Figure 4: Subject site as viewed from Kippax Street, looking west - neighbouring heritage item in foreground



Figure 5: Existing rooftop area, looking north-east

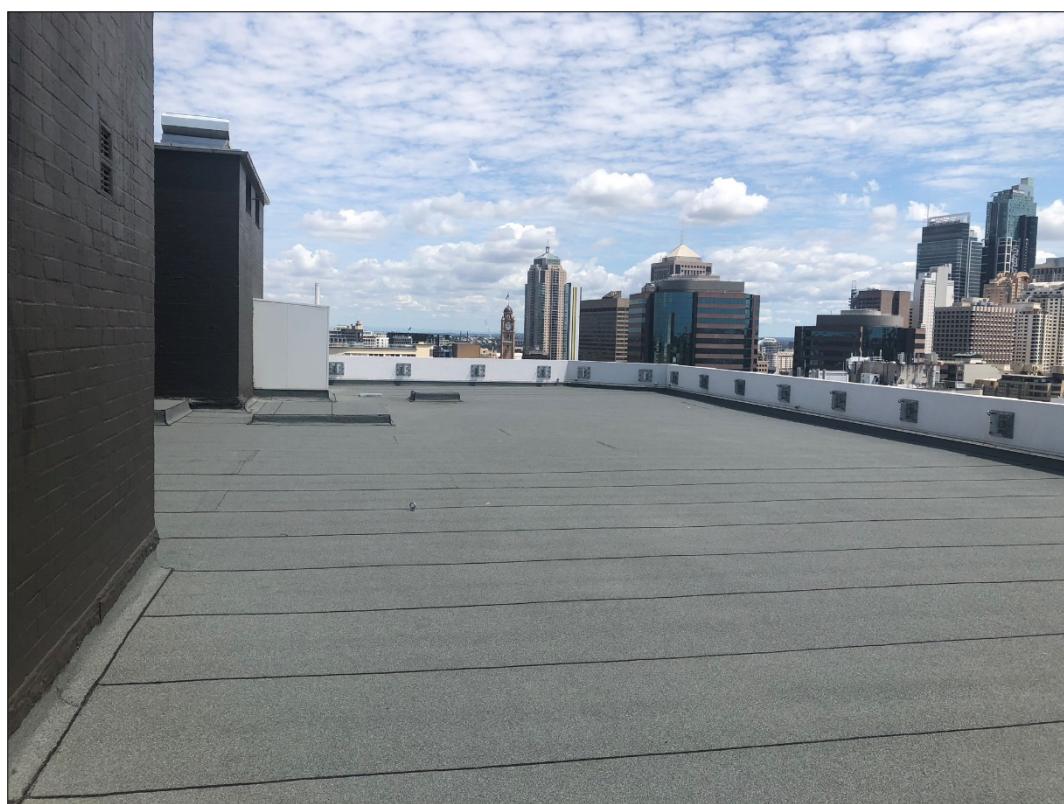


Figure 6: Existing rooftop area, looking north-west



Figure 7: Existing rooftop structures and plant, looking south

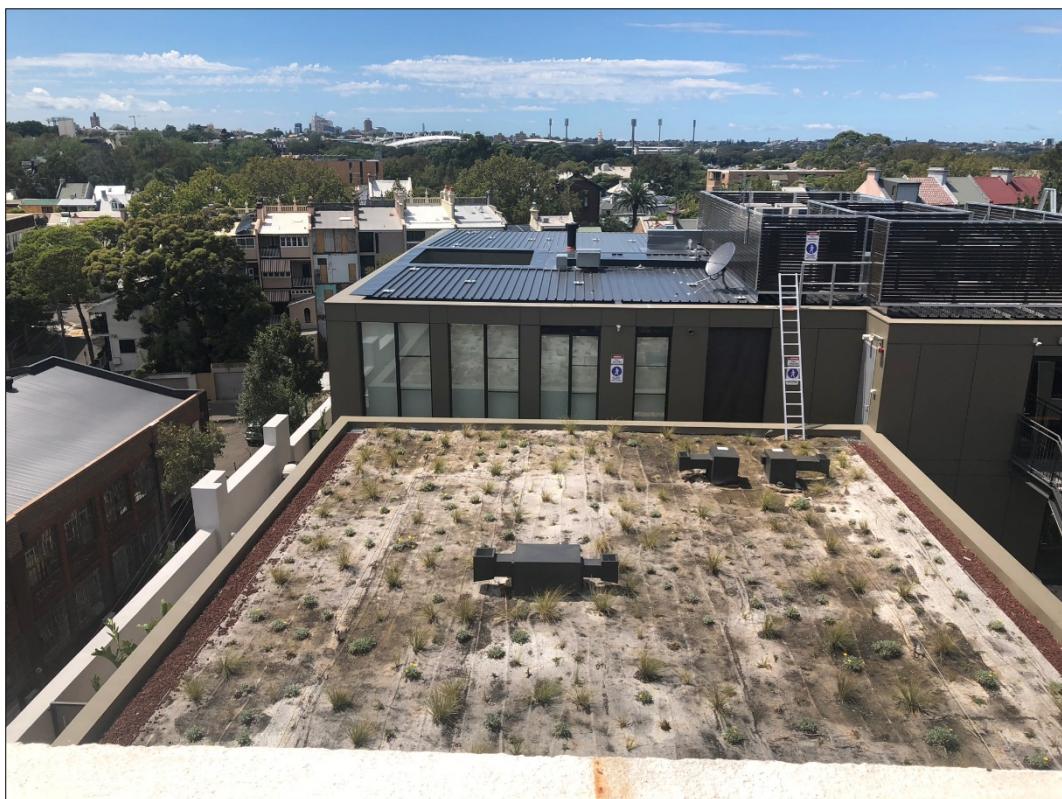


Figure 8: Looking east over adjacent residential building



Figure 9: Looking south-east to adjacent residential/mixed use building (left) and nearby residential/mixed use building (right)



Figure 10: Looking north-east from the existing rooftop

5. Surrounding land uses are a mix of commercial and residential development. The aforementioned heritage item adjacent site, located to the east, is a former warehouse building, which was recently converted into a mixed use development under D/2014/1506. The DA approved basement parking, commercial/retail uses at lower ground and ground, and 45 residential apartments to the six levels above.
6. To the immediate south of the site is a nine storey residential apartment building. Further south along Waterloo Street at 72-80 Cooper Street is a part 8, part 9 storey commercial office building. The site located on the opposite corner of the block, at 82-92 Cooper Street, is a part 7, part 8 storey mixed use development containing retail, commercial, and residential uses.
7. Opposite the site at 110-120 Kippax Street is an eight storey commercial building. Deferred commencement approval, granted under D/2014/1615, approved the adaptive re-use of the building as a mixed use development containing 35 apartments, retail and office uses, and car parking. This consent is yet to be activated.
8. Diagonally across the intersection at 98-106 Kippax Street is a site that contains a three storey commercial building.
9. Opposite the site at 105-113 Kippax Street is a six storey commercial building, and a row of four two storey terraces and a two storey corner building, all of which are used for commercial purposes.

Proposal

10. The application seeks consent for the construction of a rooftop terrace on the existing roof of the subject building. The works include:
 - Provision of new lift service to access the rooftop
 - Provision of a unisex and accessible toilet on the rooftop
 - Provision of fixed retractable umbrellas on the rooftop
 - Landscaping including mature plants in large non-fixed pots, and small plants in planter boxes and non-fixed pots
 - Floating flooring above existing structure
 - Screening to existing rooftop plant and machinery
 - Small kitchenette facilities including BBQ, sinks, and small bar fridges.
11. The use of the terrace is proposed to be limited to occupants of the commercial office building, and will be managed by the existing building/property manager.
12. A Plan of Management has been submitted which limits the capacity of the proposed terrace to 100 people and restricts use to between 7.00am and 10.00pm, Monday to Sunday.
13. Selected plans of the proposed development are provided below.

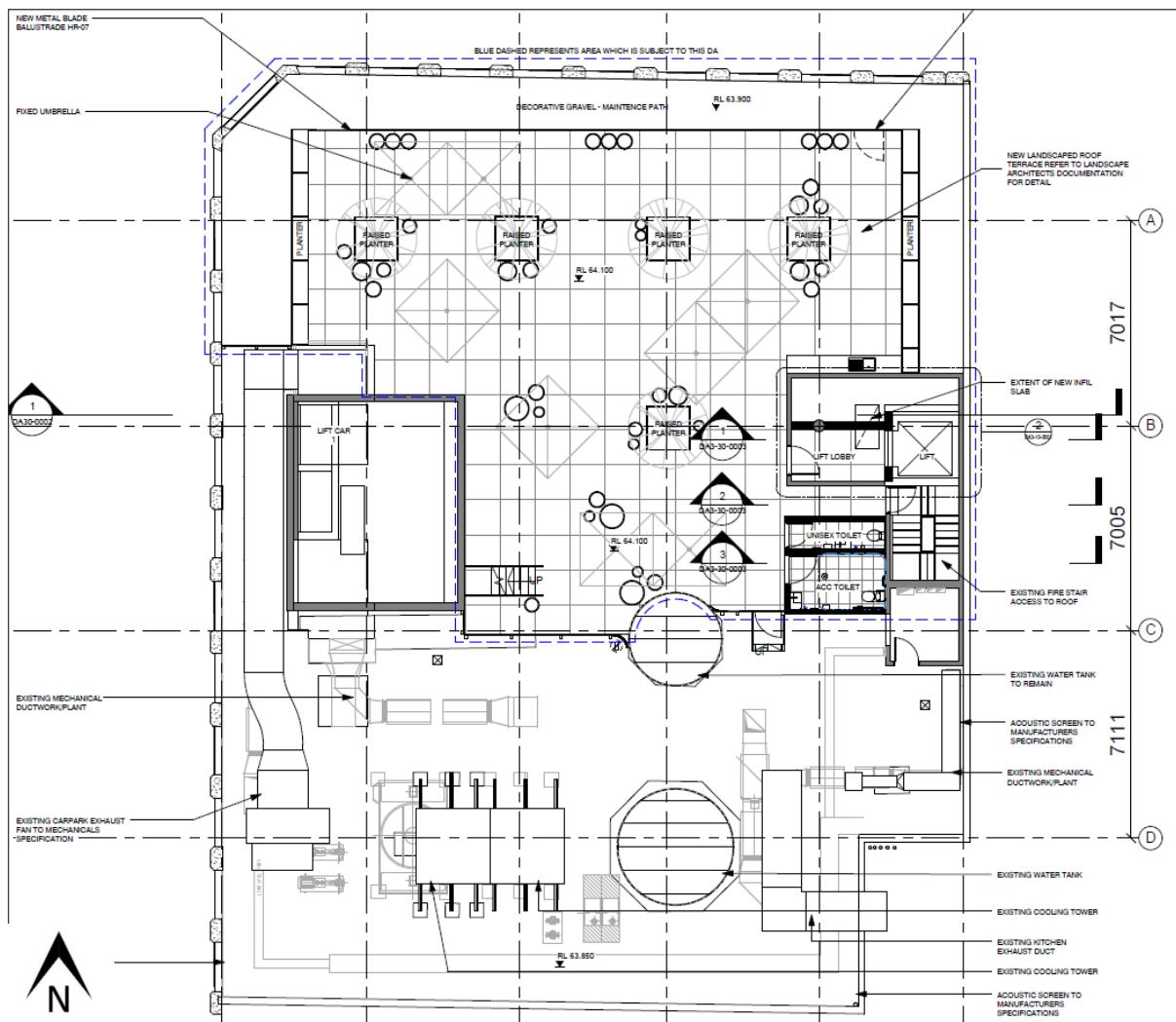
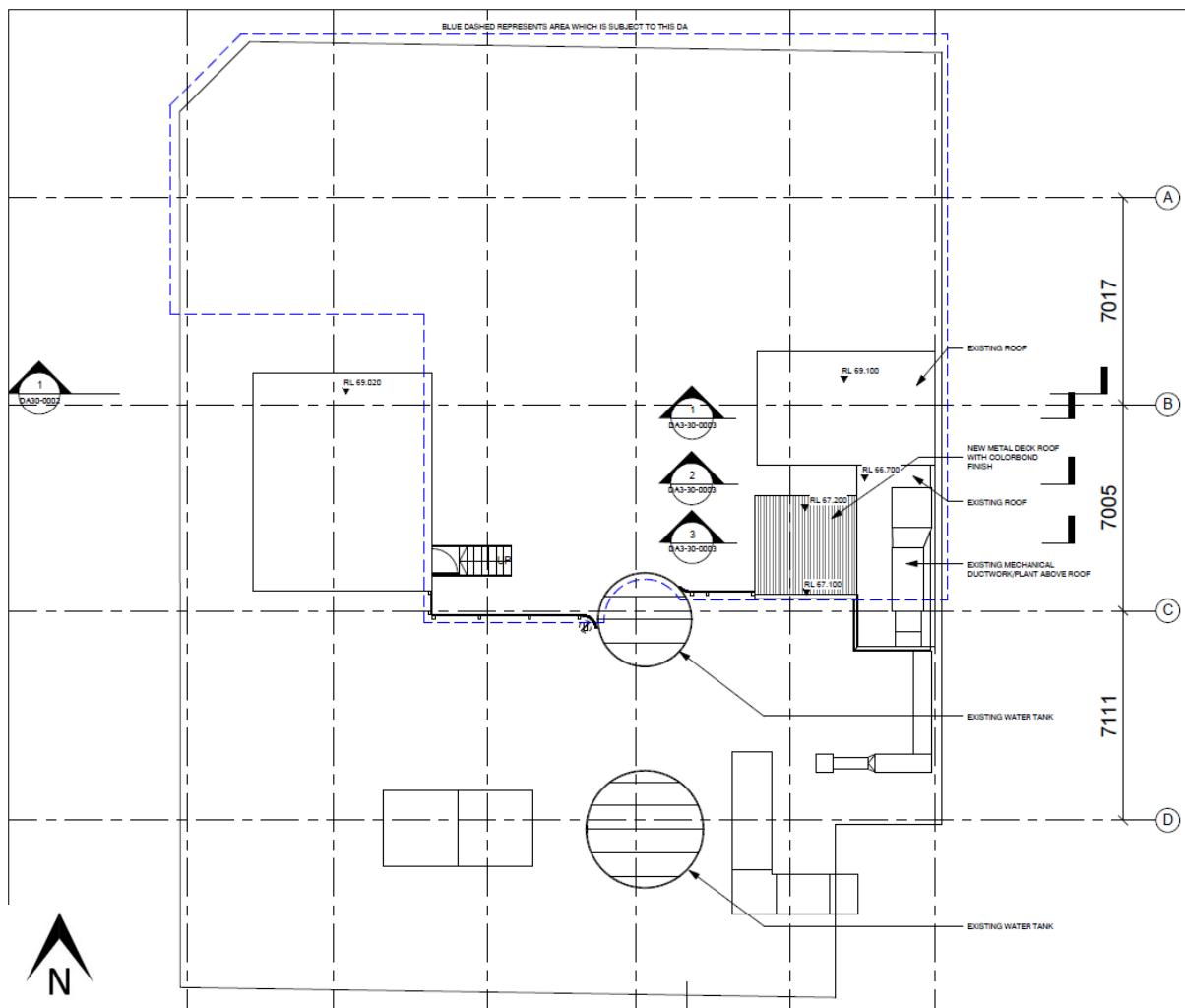
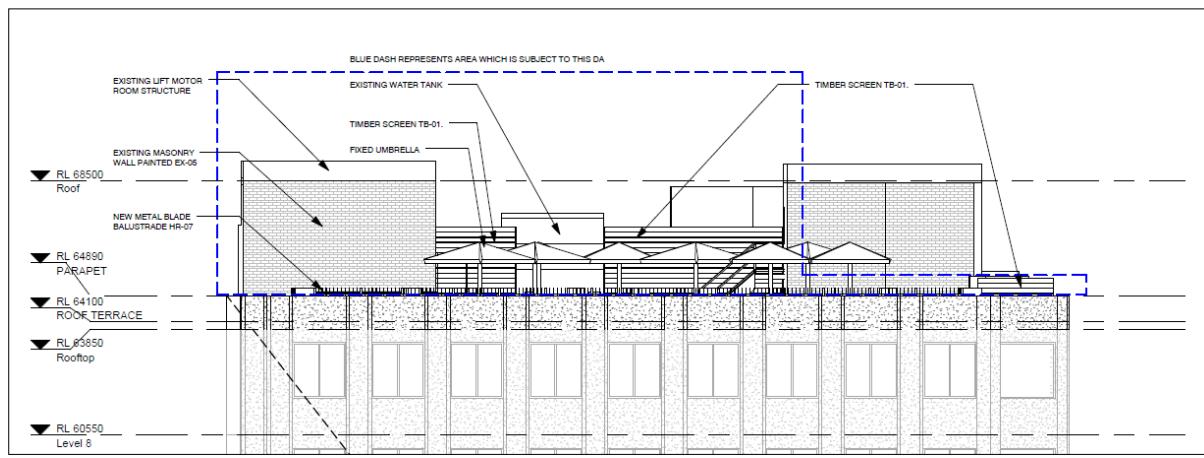


Figure 11: Terrace plan

**Figure 12:** Roof plan**Figure 13:** North elevation

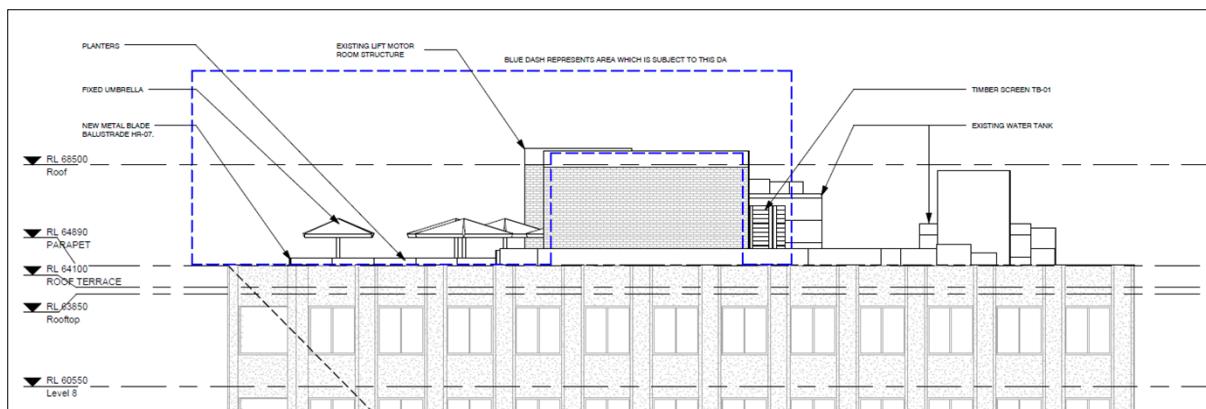


Figure 14: West elevation

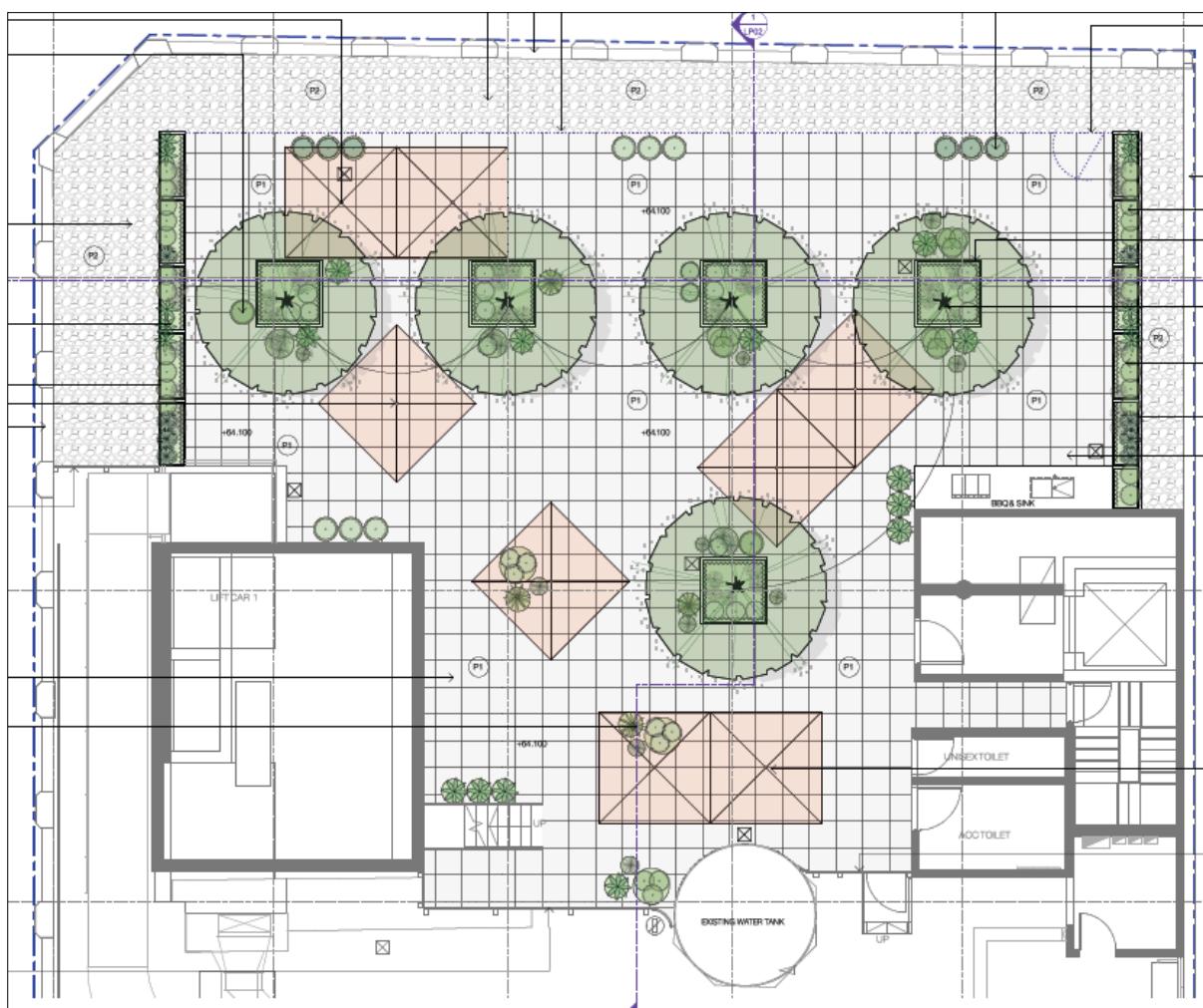


Figure 15: Landscape Plan

History Relevant to the Development Application

14. The development application has been amended during the course of assessment. Council staff requested the applicant consider privacy impacts to nearby residential apartments. The applicant provided amended plans proposing a metal architectural screen attached to the proposed planter box, to obstruct views in the direction of neighbouring residential uses.

Economic/Social/Environmental Impacts

15. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
- Environmental Planning Instruments and DCPs.

Sydney LEP 2012

16. The site is located within the B4 - Metropolitan Centre zone. The proposed use is defined as commercial and is permissible.
17. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 22m is permitted. The maximum height of proposed external works is 34.01m. The proposal does not increase the height of the existing building of 37m..
4.4 Floor Space Ratio	No	A maximum FSR of 3.5:1 is permitted. The existing building has a FSR of 7.62:1. A FSR of 7.64:1 is proposed.
4.6 Exceptions to development standards	Yes	The proposal seeks to vary the development standard prescribed under Clauses 4.3 - Height of Buildings and 4.4 - Floor Space Ratio. See discussion under the heading Issues.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	The application proposes to utilise high quality materials, including recycled timber and Colorbond, which are considered to be appropriate to the subject building. The development will not be visible from the public domain and the proposed works do not significantly alter the scale or form of the existing development. The proposed development satisfies the requirements of this provision.

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	A maximum of 16 car parking spaces are permitted. No change to car parking is proposed.

Sydney DCP 2012

18. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – Surry Hills Central		
The subject site is located in the Surry Hills Central locality. The proposed rooftop terrace is considered to be in keeping with the unique character of the area and design principles in that it will not detrimentally affect nearby heritage items and maintains the transition between taller buildings in the west to two storey areas in the east.		

3. General Provisions	Compliance	Comment
3.6 Ecologically Sustainable Development	Yes	The proposal includes some water harvesting and storage for reuse in the watering of plants and trees, satisfying environmental requirements.
3.12 Accessible Design	Yes	A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.

3. General Provisions	Compliance	Comment
3.14 Waste	Yes	A condition has been recommended to ensure that the proposed development complies with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		
4.2.1 Building height	No, but acceptable	<p>The DCP specifies a maximum height in storeys of 6.</p> <p>The existing building has a height of 9 storeys. The proposal does not result in an additional storeys but relates to landscaping, screening, a new lift within the existing lift shaft and new toilet facilities</p>
4.2.2 Building setbacks	Yes	<p>The proposal does not alter the existing building setbacks. The terrace and associated landscaping is set back from the existing parapet walls to the rooftop area. The size of the setback varies, being approx. 1m to the east, approx. 1.5-1.8m to the north, and approx. 2.4m to the west</p>
4.2.3 Amenity	Yes	<p>The proposed roof terrace does not result in adverse overshadowing impacts or the loss of outlook to surrounding properties.</p> <p>The proposed umbrellas do not restrict access to natural daylight, and the proposed landscaping is generally considered to enhance the currently underutilised open space. The proposed landscaping is discussed in detail under Issues.</p>

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		The amenity of neighbouring residences and the management of the rooftop terrace are also discussed in detail under Issues.

Issues

Height

19. The Sydney LEP 2012 permits a maximum building height of 22m. The Sydney DCP 2012 permits a 6 storey building height.
20. The existing non-compliant building is 9 storeys, and 37m in height. The maximum height of proposed external works is 34.01m. The variation to the building height LEP control results in an exceedance of 54.6%.
21. The applicant has requested an exception to the height development standard in accordance with Clause 4.6 of the Sydney LEP 2012. The Local Planning Panel may grant an exception pursuant to the Section 9.1 direction granted by the Minister for Planning on 23 February 2018.
22. The applicant submits that the height of the proposed development is consistent with the height objectives of Clause 4.3 of the Sydney LEP 2012 in that:
 - (a) The proposed development has been carefully designed and configured with regard to minimising the height variation and associated impacts;
 - (b) The variation to the height of building standard will not impact upon the fundamental details of the building's design and will not present a development with excessive bulk and scale or cause significant view impacts;
 - (c) The proposal is considered to be compatible with the future desired character of Surry Hills;
 - (d) All proposed works are below the existing maximum height of the building. The development standard is unreasonable and unnecessary given the existing scale of the site;
 - (e) The proposal does not hinder the orderly economic potential of surrounding properties. The height is considered appropriate in terms of surrounding context and provides the unique benefit of a rooftop terrace, improving the amenity of the building and high rise surrounds; and
 - (f) The proposal is consistent with the objectives for development within the B4 - Mixed Use zone.

23. The proposed external works height of 34.01m is considered acceptable in this instance, and is consistent with the objectives for height contained in Clause 4.3(1) of the Sydney LEP 2012 as:
 - (a) The existing building has a height of 37m. The maximum height of the proposed external works is 34.01m, and the proposed rooftop structures are setback from the boundary. The proposal does not result in any additional overall height or bulk to the building;
 - (b) The proposed development provides suitable development opportunities in a highly accessible location and is therefore consistent with the objectives of the B4 – Mixed Use zone;
 - (c) The proposal is consistent with the objectives of the building height development standard pursuant to Clause 4.3 of the Sydney LEP 2012 as the proposal is appropriate to the context of the site and the desired future character of Surry Hills, and does not result in any view loss of significant views;
 - (d) The subject site is located on a block that contains 7 to 9 storey buildings to the south, and a 7 storey building to the east. Opposite the site on Kippax Street is an 8 storey building. Opposite the site on Waterloo Street is a 5 to 6 storey building. The context of the existing building in terms of building height and bulk is varied. Overall, the proposal responds appropriately to its context; and
 - (e) The proposed exceedance of the height of buildings standard will not result in any significant adverse amenity impacts to surrounding development.
24. It is therefore considered that the written statement provided by the applicant has sufficiently justified that strict numeric compliance with the development standard is unreasonable and unnecessary in this instance.
25. For the reasons outlined above, there are sufficient environmental planning grounds to justify contravening the building height development standard and it is recommended that a Clause 4.6 exception be granted.

Floor space ratio

26. The Sydney LEP 2012 permits a maximum floor space ratio (FSR) of 3.5:1, equivalent to 2,880.5sqm of gross floor area (GFA).
27. The existing GFA of the site is 6,270sqm, which is a FSR of 7.62:1. This exceeds the FSR standard by 117.7%.
28. The application proposes an additional 18.2sqm of GFA, resulting from the proposed toilet facilities to the rooftop level (18.2sqm). This increases the GFA of the site to 6,288.2sqm resulting in a variation to the floor space ratio standard in exceedance of 118.3%.
29. The applicant has requested an exception to the floor space ratio development standard in accordance with Clause 4.6 of the Sydney LEP 2012. The Local Planning Panel may grant an exception pursuant to the Section 9.1 direction granted by the Minister for Planning on 23 February 2018.

30. The applicant submits that the proposed development is consistent with the floor space objectives of Clause 4.4 of the Sydney LEP 2012 in that:
 - (a) The existing building exceeds the FSR standard. The proposed development results in a very minor increase to the existing floor area;
 - (b) The proposal achieves the objectives of the FSR standard and the objectives of the B4 - Mixed Use zone, notwithstanding the technical non-compliance;
 - (c) There are sufficient environmental planning grounds to support the proposed variation (given the existing scale of several surrounding buildings and the existing building footprint on the site);
 - (d) The proposal will improve the building's presentation, provides improved commercial floor space and tenant amenities, and is in keeping with the City's green roofs policy and objectives;
 - (e) The additional floor area equates to a less than 0.3% increase to the site's existing GFA;
 - (f) The maintenance of key commercial floor space in the area will maintain diversity and job opportunities in the city fringe; and
 - (g) The proposed rooftop terrace has minimal bulk, scale, overshadowing and view implications.
31. Minor exceedance of the FSR standard is considered acceptable in this instance, and is consistent with the objectives for floor space ratio contained in Clause 4.4 of the Sydney LEP 2012 as:
 - (a) The FSR of the existing building already substantially exceeds the FSR standard. The proposed increase in GFA of 0.3% is minor, and does not contribute to the overall bulk of the building or result in any perceptible amenity impacts. See Figure 16 below, indicating the extent of additional floor area;

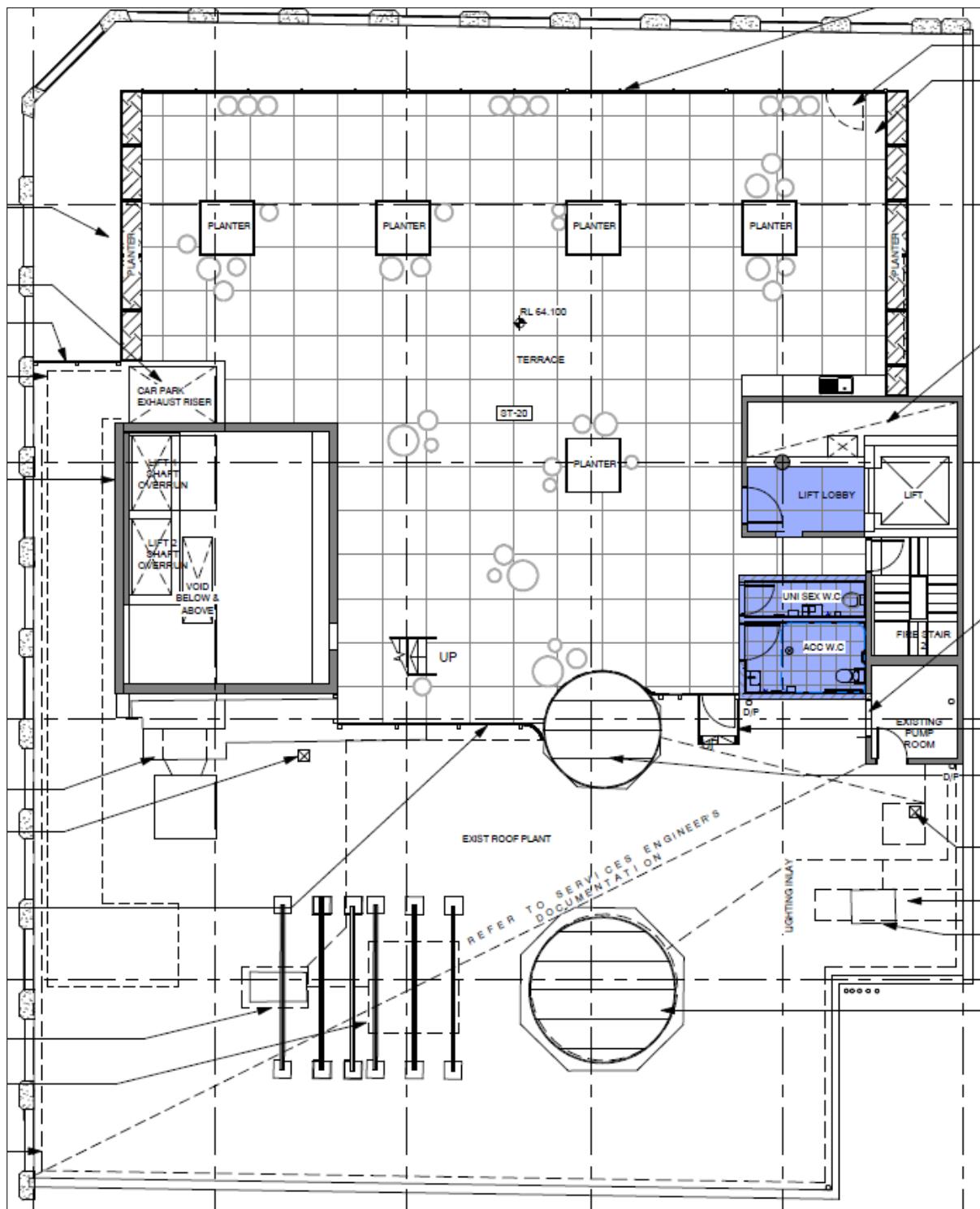


Figure 16: Proposed additional gross floor area

- (b) The proposed rooftop terrace enhances existing commercial office space, improving the amenity and useability of the subject site. The additional floor space provides necessary facilities for the rooftop terrace, allowing for the activation of an underutilised space;

- (c) The use of the rooftop will be limited to workers occupying the building. This is not expected to result in an increase in pedestrian or vehicular traffic, or exceed the capacity of existing and planned infrastructure;
 - (d) The proposed development reflects the desired character of the area as it provides additional amenity to an existing commercial development, which is considered to be appropriate within its context, subject to appropriate conditions with regard to hours of operation; and
 - (e) The proposed development is consistent with the objectives of the B4 - Mixed use zone. It will provide a compatible land use to serve the work force.
32. It is therefore considered that the written statement provided by the applicant has sufficiently justified that strict numeric compliance with the development standard is unreasonable and unnecessary in this instance.
33. For the reasons outlined above, there are sufficient environmental planning grounds to justify contravening the floor space ratio development standard and it is recommended that a Clause 4.6 exception be granted.

Landscaping

- 34. The application proposes landscaping to the rooftop terrace area, consisting of freestanding raised pots and planters of various sizes. It is considered that further information regarding the dimensions of all proposed planters is required, and it is unclear from the plans provided whether the planters can achieve the minimum soil depths for planting on slab.
- 35. A condition relating to the proposed landscaping has been recommended, requiring verification of the building's structural capacity, minimum soil depth requirements for the planters, requirements to achieve a mix of plant species, and details of the drainage and irrigation systems.

Neighbouring amenity and management of the roof terrace

- 36. The application seeks consent for the use of the rooftop terrace area (in association with the commercial office building) between 7.00am and 10.00pm, seven days a week, with a maximum capacity of 100 people.
- 37. As the subject site is located immediately adjacent to residential uses, the use of the terrace is considered to have the potential to adversely impact on neighbourhood amenity, especially with regards to noise.
- 38. It is noted that the use of the proposed terrace area is associated with the commercial office uses of the building and there are no licensed premises located within the building.
- 39. The Applicant has confirmed that the operating hours for the existing commercial tenants of the building are between 7.00am and 10.00pm, but that the building manager is only on site between the hours of 8.00am and 5.30pm, Monday to Friday.
- 40. The Applicant advises that strict enforceable obligations are provided in the lease agreements for all tenants of the building to ensure quiet enjoyment for other tenants and neighbours, along with other conditions of compliance with all regulatory authorities. Similarly, a Plan of Management has been submitted to ensure that the use of the terrace is managed appropriately.

41. Given the close proximity of the terrace to residential development, a condition has been recommended restricting the proposed hours of use to between 7.00am and 8.00pm, Monday to Thursday, between 7.00am and 10.00pm, Friday, and between 8.00am and 8.00pm, Saturday and Sunday.
42. The application was referred to Council's Health Unit, who advised the proposal is acceptable, subject to standard noise conditions. A condition has also been included to ensure that the use of the terrace is in accordance with the Plan of Management (PoM) that was provided with the application,

Other Impacts of the Development

43. The proposed development is capable of complying with the BCA.
44. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

45. The proposal is of a nature in keeping with the overall function of the site as a commercial office building. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed.

Internal Referrals

46. The conditions of other sections of Council have been included in the proposed conditions.
47. The application was discussed with the Heritage and Urban Design Specialists, and referred to the Environmental Health Unit and Landscape Architect, who advised that the proposal is acceptable subject to the recommended conditions.

External Referrals

Notification, Advertising and Delegation (Submissions Received)

48. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 14 days between 15 November 2017 and 30 November 2017. As a result of this notification there were two submissions received. Issues raised have been summarised below.
49. The amended plans, received on 11 December 2017, were not required to be notified as the amendments do not result in significant additional environmental impacts. Changes detailed in the plans relate to additional privacy screening and some additional landscaping information.

Visual privacy

- (a) The proposed roof terrace will look straight into west facing floor to ceiling residential apartment windows, to a bedroom.

Response - Amended plans have been provided, which indicate planters and a metal privacy screen to the eastern elevation, which will obscure sightlines and provide privacy to the residential apartment windows to the east. This solution was reached in consultation with a resident of the neighbouring building.

It is also noted that the terrace area is set back by approx. 1m from the parapet walls, which will also assist in this regard. See Figure 17 below:

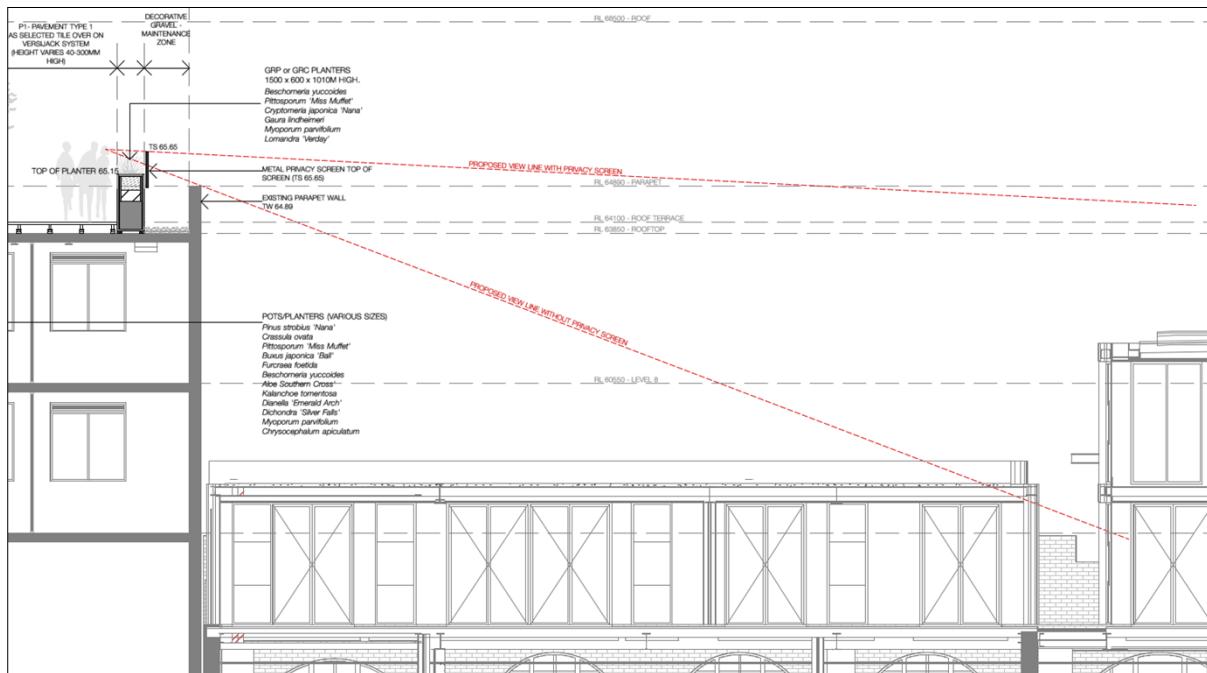


Figure 17: Metal privacy screen, proposed view line

Acoustic impacts

- (b) The Noise Impact Assessment relies on obsolete noise data collected in 2016, and does not provide a satisfactory assessment of the potential noise impacts of the proposal.
- (c) The use of the rooftop terrace may result in adverse noise impacts to surrounding residential development.

Response - The submitted acoustic report has been reviewed by Council's Environmental Health Unit, who consider it to be suitable, and have advised the proposal is acceptable subject to recommended conditions. These include prohibiting speakers or music outside, compliance with the submitted Plan of Management, compliance with the submitted acoustic report, and Council's standard noise condition.

Similarly, the application proposes use of the rooftop terrace between 7.00am and 10.00pm, seven days a week. As discussed elsewhere in this report, a condition has been recommended, restricting the hours of use to between 7.00am and 8.00pm, Monday to Thursday, between 7.00am and 10.00pm, Friday, and between 8.00am and 8.00pm, Sunday, to ensure that the use of the rooftop terrace does not adversely affect the amenity of the surrounding area.

These measures are considered to sufficiently address potential noise impacts arising from the use of the rooftop terrace.

Inadequate information

- (d) The Development Application has not adequately documented the proposal, does not clearly define the proposed use of the roof terrace, and has not provided a sufficient assessment of the impacts of the terrace.

Response - The application clearly states the proposed intended use of the rooftop terrace, detailing both the scope of works and proposed operation of the space. Some additional information has been requested from the applicant during the course of assessment to clarify certain elements of the proposal, however the documentation provided by the applicant is considered acceptable.

Public Interest

50. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

51. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

52. The following monetary contribution is required towards the cost of public amenities:

(a)	Open Space	\$1,089.70
(b)	Community Facilities	\$1,026.76
(c)	Traffic and Transport	\$170.83
(d)	Stormwater Drainage	\$0.00
	Total	\$2,287.28

Relevant Legislation

53. The Environmental Planning and Assessment Act 1979.

Conclusion

54. The proposal is for the construction and use of a new rooftop terrace including associated works, including new lift services to the rooftop, toilet facilities, landscaping, flooring, decking, screening, and some kitchen facilities.
55. The proposal has been amended to address privacy concerns raised by Council Staff.
56. The applicant has submitted Clause 4.6 variation requests to both height and floor space ratio development standards under the Sydney LEP 2012. The variations to the development standards are supported.
57. Overall, the proposal is consistent with the objectives, standards, and guidelines of the relevant planning controls. Conditions have been recommended to address issues relating to the operation and management of the terrace, and landscaping.
58. Accordingly, the Development Application is recommended for approval, subject to conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Anna Kaskanlian, Planner