

Item 4.**Development Application: 65 Cowper Wharf Roadway, Woolloomooloo**

File No.: D/2018/335

Summary

Date of Submission:	6 April 2018
Applicant:	Mr G Cranswick-Smith
Architect:	Eeles Trelease
Owner:	Mr G Cranswick-Smith
Cost of Works:	\$275,000
Zoning:	B4 Mixed Use. The development is permissible with consent.
Proposal Summary:	<p>Alterations and additions to an existing mixed-use building to include a roof deck and associated landscaping attached to the level 5 penthouse apartment.</p> <p>The application is reported to the Local Planning Panel as the development exceeds the height development standard of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) by more than 10%.</p> <p>The application was notified for a period of 14 days. As a result of this notification there were 16 submissions received. The objections raised the following concerns:</p> <ul style="list-style-type: none">• View loss;• Height of development, and breach of Height in Metres control;• Acoustic privacy; and• Visual privacy.
Summary Recommendation:	This proposal is recommended for refusal.

- Development Controls:**
- (i) Sydney Local Environmental Plan 2012
 - (ii) Sydney Development Control Plan 2012
 - (iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

- Attachments:**
- A. Selected Drawings
 - B. Clause 4.6 Variation Request

Recommendation

It is resolved that consent be refused for Development Application No. D/2018/335.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) The proposal does not comply with the provisions of Clause 4.3 - Height of Buildings within Sydney Local Environmental Plan 2012, and does not satisfy the criteria within Clause 4.6 justifying the proposed height development standard;
- (B) The proposal results in unacceptable view loss impacts to surrounding residential properties, as prescribed in 4.3 (1)(c) of the Sydney Local Environmental Plan 2012 and part 4.2.3.10 of Sydney Development Control Plan 2012.
- (C) The proposal does not comply with the provisions of Clause 6.21 - Design Excellence as the proposal is not considered to be appropriate to the building location and has a detrimental impact on view corridors.
- (D) The proposal is inconsistent with the Height of Buildings control and as such is not in the public interest, pursuant to Clause 4.15 of the Environmental Planning and Assessment Act 1979.

Background

The Site and Surrounding Development

2. A site visit was carried out by staff on 18 April 2018.
3. The site is rectangular, with an area of approximately 493.5sqm. It has a primary street frontage to Cowper Wharf Roadway, a secondary street frontage to Dowling Street to the west and a rear address to McElhone Street to the east. A five storey mixed use building occupies the site.
4. Surrounding land uses are a mix of residential and commercial. Contemporary commercial buildings neighbour the site to the immediate west and towards the intersection of Devonshire and Elizabeth Streets. The site is not a heritage item but is located within the Woolloomooloo Conservation Area (C71).
5. Photos of the site and surrounds are provided below:

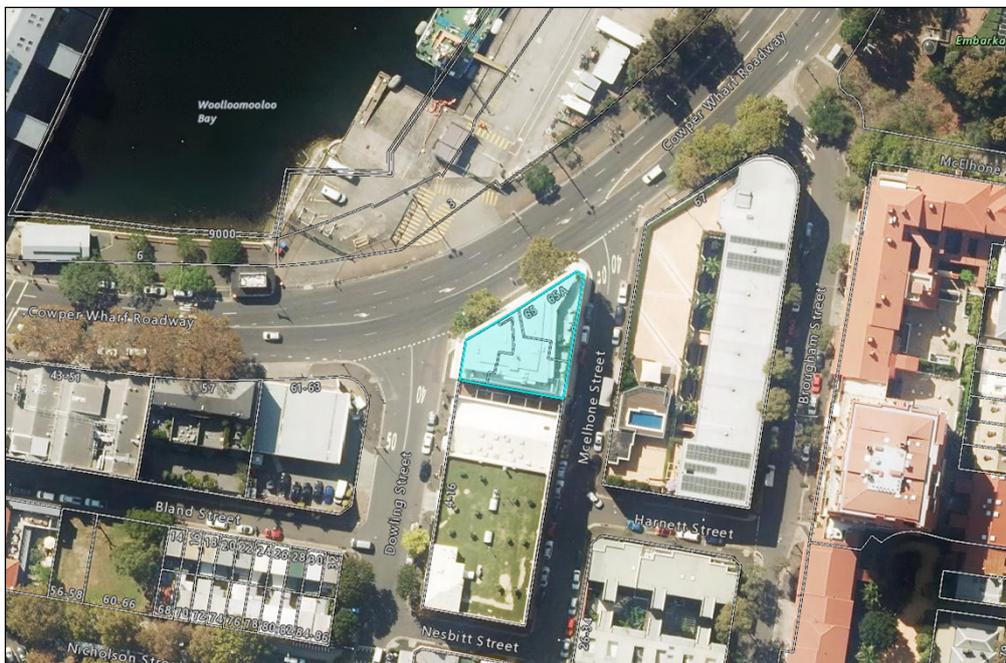


Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from the primary Cowper Wharf Roadway frontage.



Figure 3: Adjoining site to the north-east along Cowper Wharf Roadway



Figure 4: Adjoining site to the south-west along Cowper Wharf Roadway

Proposal

6. The application seeks consent for the construction of a roof deck associated with the level 5 penthouse apartment below and associated landscaping. The works include a wooden deck area, planters containing low height grass and plant varieties, a glass balustrade around the perimeter of the roof area and associated spiral staircase leading to the eastern section of the balcony below.
7. Plans of the proposed development are provided below.

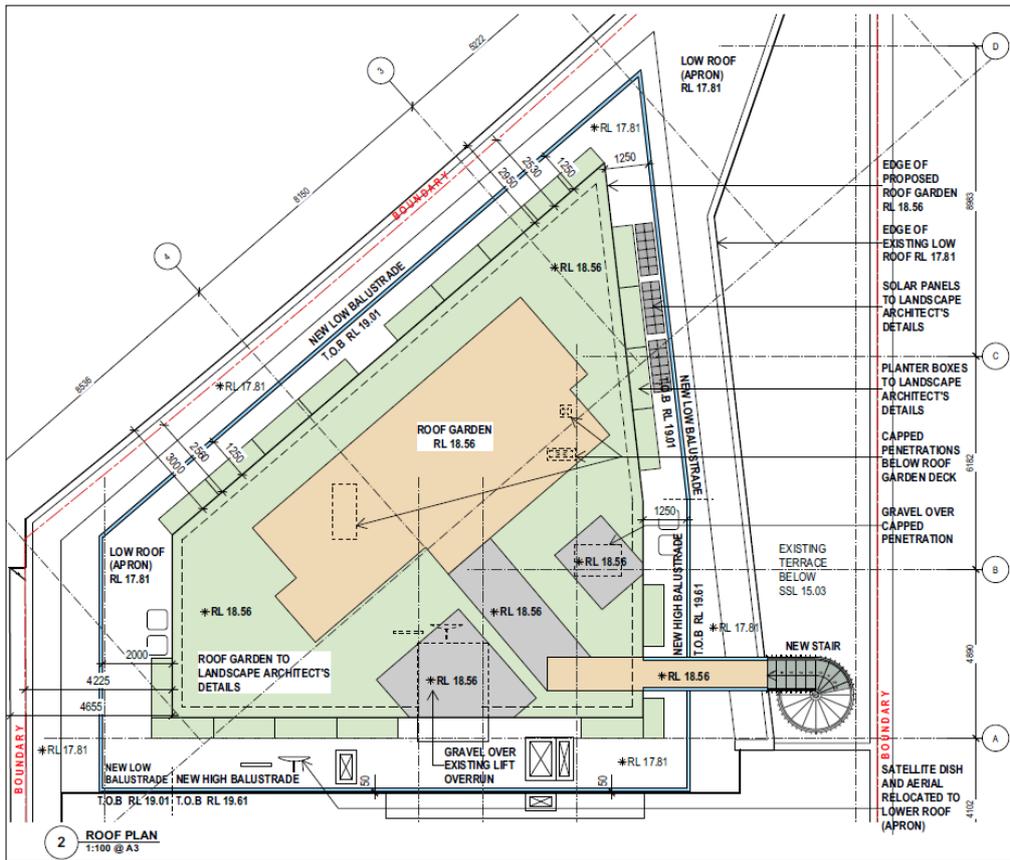


Figure 5: Excerpt of the proposed roof plan



Figure 6: Excerpt of the proposed northern elevation

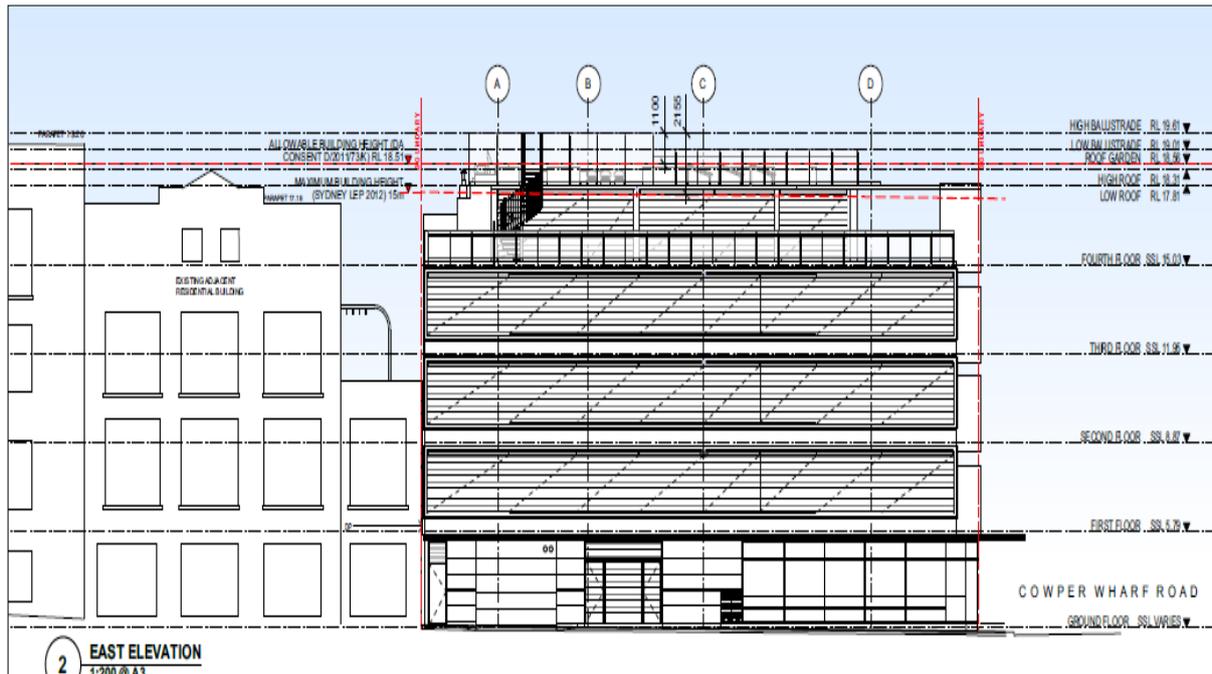


Figure 7: Excerpt of the proposed eastern elevation

History Relevant to the Development Application

8. D/2011/73, subject site – “Construction of a five-storey residential flat building for 16 units, ground floor retail, and a three-level basement car stacker”. This application was granted deferred commencement consent on 18 July 2011.
9. It is noted that a condition was specifically placed on the consent which restricted the maximum height of the approved building to 15.74m excluding any lift overrun, and that all rooftop plant must be within the approved building envelope.
10. Several modifications were made to the consent (modifications 'A' - 'K') under the provisions of Section 96/Section 4.55 of the Environmental Planning and Assessment Act 1979 which primarily consisted of minor internal modifications and wording of conditions. Modification 'K' included an increase to the maximum height of the building to 15.94m.
11. D/2018/245, subject apartment – “Alterations to apartment 400 including enclosure of segment of balcony and internal alterations to bathroom”. This application was approved on 17 July 2018.
12. It is noted that pre-DA advice was sought by the applicant prior to the lodgement of the subject application. On 3 July 2017 Council officers attended the site and subsequently informed the applicant that extensive view loss analysis must be undertaken. It was also advised that further exceeding the height of the building is likely to cause impacts and may not be supported.

Economic/Social/Environmental Impacts

13. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development
 - (b) Sydney Regional Environmental Plan (Sydney harbour Catchment) 2005 (Deemed SEPP)
 - (c) Sydney Local Environmental Plan 2012
 - (d) Sydney Development Control Plan 2012

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

14. The proposal adds a significant amount of additional private open space to the dwelling, in addition to the existing compliant area of private open space on level 5 below being 54sqm.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

15. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
16. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
17. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. The site is also located within in the Foreshores Waterways Area.
18. The development is consistent with the controls contained with the deemed SEPP.

Sydney LEP 2012

19. The site is located within the B4 Mixed use zone. The proposed use is defined as being ancillary to a Residential Flat Building and is permissible with consent.
20. The relevant matters to be considered under Sydney LEP 2012 for the proposed development are outlined below.

Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 15m is permitted. A height of 17.04m is proposed. See discussion under the heading issues.
4.4 Floor Space Ratio	No	A maximum FSR of 2.5:1 is permitted. The proposal does not include an increase to the approved FSR of the building, being 3.99:1.
4.6 Exceptions to development standards	No	The proposal seeks to vary the development standard prescribed under Clause 4.3. See discussion under the heading Issues.
Division 4 Design excellence 6.21 Design Excellence	No	The proposed development does not satisfy the requirements of this provision. See discussion under the heading Issues.

Sydney DCP 2012

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

2. Locality Statements – Woolloomooloo

The subject site is located in the Woolloomooloo locality. The proposed roof deck is not considered to be in keeping with the unique character of the area and design principles in that the built form does not relate to the topography of the neighbourhood regarding adverse impacts related to height and scale.

4. Development Types		
4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.3 Amenity	No	Views from neighbouring buildings to the Sydney Harbour Bridge and the city skyline to the north-west and west respectively are unreasonably impacted by the proposal. See discussion under the heading Issues.

Issues

Non-compliance - Height of Buildings

22. The proposal includes works on the existing roof including a roof garden and deck area with associated glass balustrades. The proposal has a maximum height of 17.04m, measured to the top of the balustrade on the southern and eastern sides of the roof.
23. The maximum height in metres, prescribed under Clause 4.3 of Sydney LEP 2012 is 15m. This results in a 13.6% (2.04m) exceedance of the control.
24. The applicant is relying on the provisions of Clause 4.6 of the Sydney LEP 2012 to seek an exception to the height in metres standard.
25. In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the height of buildings development standard has been considered against the objectives and provisions of Clause 4.6 in the table below.

Clause 4.6 Requirement	Assessment
4.6(4)(a)(i) The applicant must submit a written request to vary the development standard	A written request has been submitted to Council justifying the proposed contravention of the Height of Buildings development standard on the following basis: <ul style="list-style-type: none">• The proposal does not result in unacceptable impacts to the sharing of views to the north-west and west.• The proposal predominantly includes a green roof, which is encouraged under associated planning policies from the City. As such, the breaching of this control allows the green roof to take place.• The proposal provides private open space with good views to the Sydney Harbour Bridge and city skyline.• The form does not result in unreasonable levels of bulk and scale.

Clause 4.6 Requirement	Assessment
<p>4.6(4)(a)(ii)</p> <p>Council must be satisfied that the proposed development is consistent with the objectives of the development standard and the objectives for development within the zone</p>	<p>The objectives of the development standard are:</p> <ul style="list-style-type: none"> • To ensure the height of development is appropriate to the condition of the site and its context; • To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas; • To promote the sharing of views; and • To ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas. <p>The applicant submits that:</p> <p>Having regard to the stated objectives of the height of buildings development standard, it is considered that strict compliance is both unreasonable and unnecessary for the reasons stated in regard to clause 4.6(4)(a)(i) above.</p> <p>Council officer's Comment:</p> <p>Council cannot be satisfied that the proposal is in the public interest as it is inconsistent with the objectives of the height standard in Clause 4.3 of the Sydney LEP 2012 for the following reasons:</p> <ul style="list-style-type: none"> • The inclusion of additional height to the proposal is not considered to be sufficiently justified as the height is not deemed appropriate for the site and its context for the reasons discussed in this report.

Clause 4.6 Requirement	Assessment
<p>4.6(4)(a)(ii)</p> <p>Council must be satisfied that the proposed development is consistent with the objectives of the development standard and the objectives for development within the zone</p> <p>(continued)</p>	<ul style="list-style-type: none"> • The proposal is shown to have an adverse impact upon the amenity of adjoining buildings through the reduction in view sharing as a result of the restriction of iconic views and land-based views to the north-west from the adjacent residential flat building to the east; • Insufficient information has been submitted to assess the full extent of residential dwellings which are affected, including multiple residential dwellings in the residential flat building to the east; <p>The objectives of the B4 Mixed Use zone are:</p> <p style="padding-left: 40px;">To provide a mixture of compatible land uses;</p> <p style="padding-left: 40px;">To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling;</p> <p style="padding-left: 40px;">To ensure uses support the viability of centres.</p> <p>Council officer's Comment:</p> <p>The proposal is compliant with the objectives of the zone.</p>

26. Therefore, it is considered that the applicant's written request does not adequately demonstrate that compliance with the height of buildings development standard in Clause 4.3 of the Sydney LEP 2012 is unnecessary or unreasonable. Further, Council is not satisfied that the proposal is in the public interest as it is not consistent with the objectives of Clause 4.3 of Sydney LEP 2012, and demonstrates a clear adverse impact upon the amenity of adjacent properties due to the impact upon iconic views from the building located to the immediate east of the site.

View sharing

27. The existing building is situated in a position where works outside of the existing building envelope have the potential to impact views from buildings to the east and south towards the Sydney Harbour Bridge to the north-west and the Sydney skyline to the west (see Figure 8). The proposed roof deck and associated glass balustrades have a height at the highest point of 1.3m above the highest portion of the roof.
28. In order to assess the impact of the proposal on existing views an assessment has been made against the planning principles established by Senior Commissioner Roseth in the Land and Environment Court decision of Tenacity Consulting v Warringah [2004] NSWLEC140.

29. An assessment of impacts on views from the residential flat building to the east has been submitted with this application. This includes views from the private open space of a fifth floor apartment, a communal pool area on the fifth floor, and a large communal courtyard located adjacent to this pool area on the fourth floor of this building.

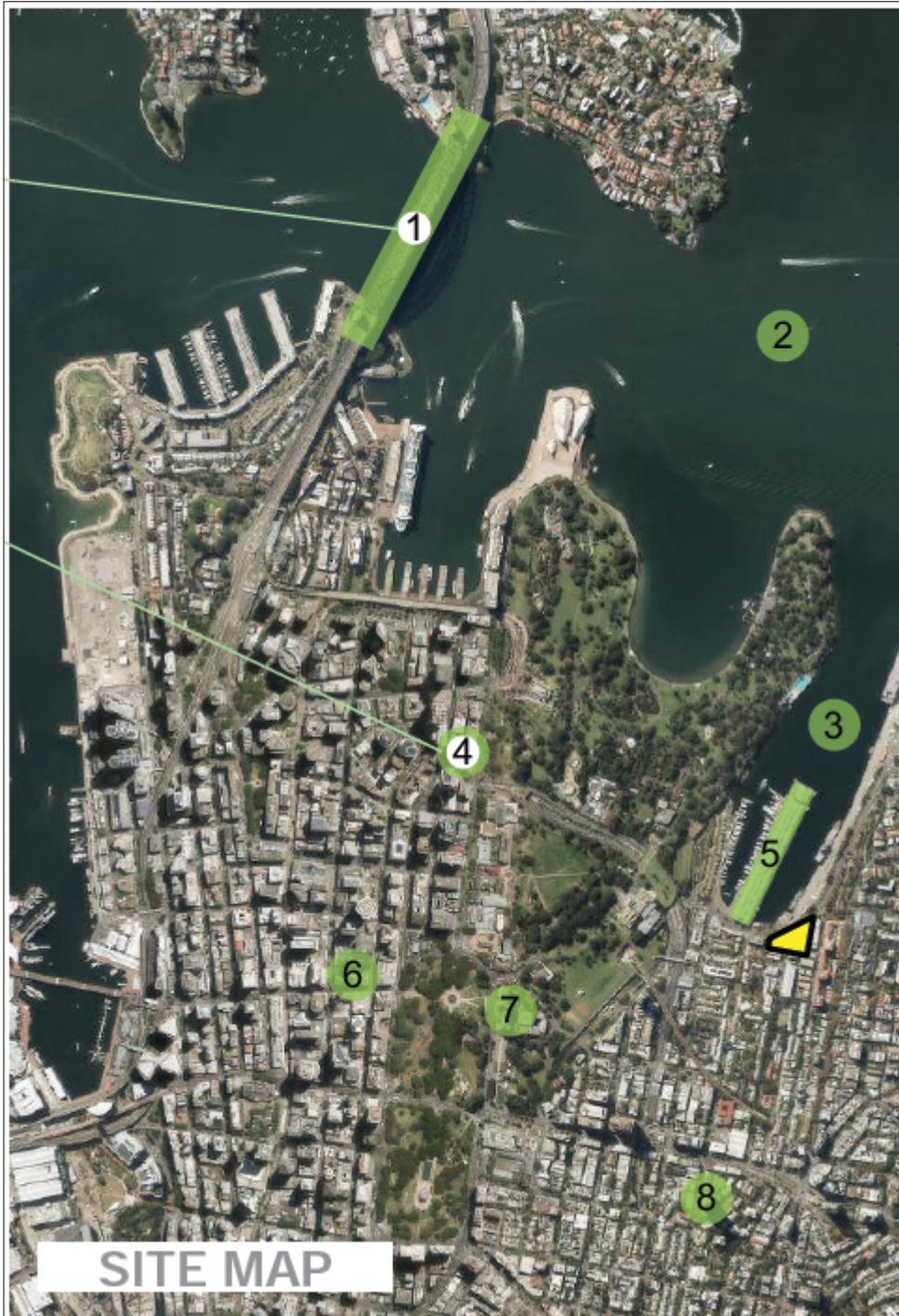


Figure 8: View of the site in yellow, with location of key views indicated in green. 1 indicates the location of the Sydney Harbour Bridge to the north-west.



Figure 9: Aerial view of the subject site, indicating location of views shown below.

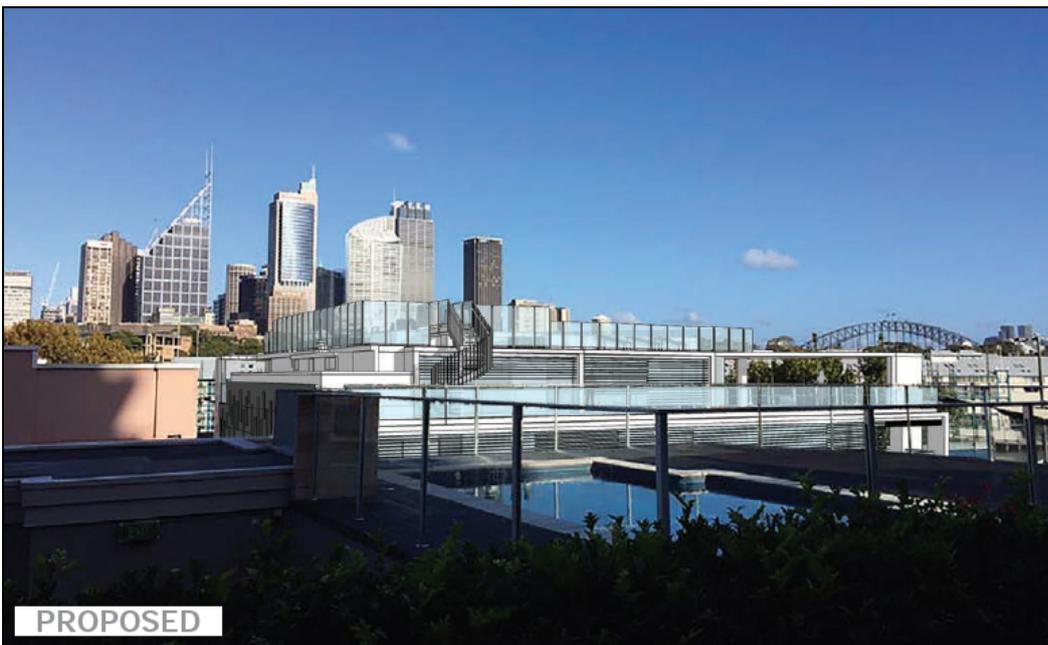


Figure 10: View from the front balcony of a fifth floor unit, taken from the submitted view analysis.



Figure 11: Existing view from the fifth floor elevated communal pool area including current view of the Sydney Harbour Bridge, taken from the submitted view analysis.

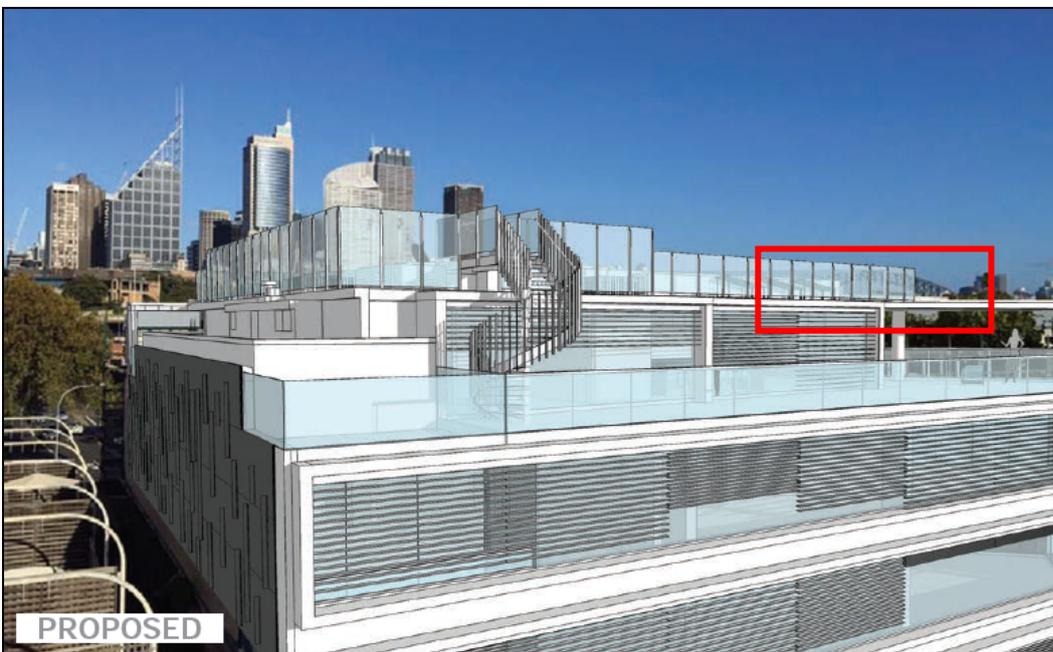


Figure 12: View from the fifth floor elevated communal pool area including the proposed view of the Sydney Harbour Bridge, taken from the submitted view analysis.

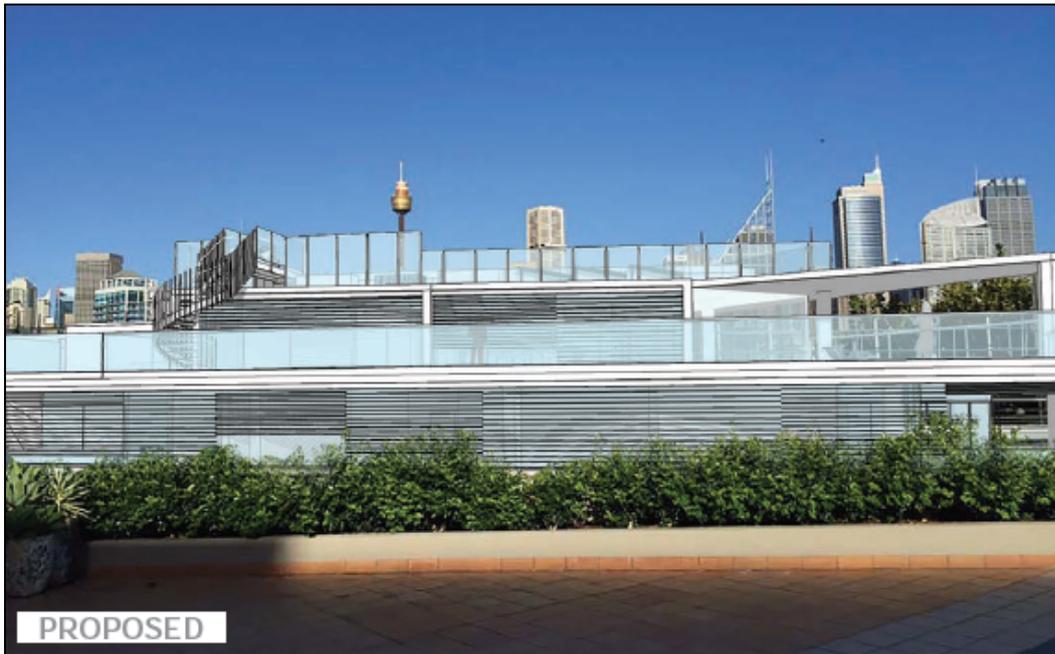


Figure 13: View from a fourth floor communal courtyard, taken from the submitted view analysis.



Figure 14: View of locations from the subject rooftop area.

30. Figure 11 indicates that existing views to the Sydney Harbour Bridge are partial from the deck of a communal pool on the neighbouring site to the east. Figure 12 indicates that views will be obstructed by the proposal from this location.

31. The reduction of these views is considered severe, due to the both the volume of the obstruction on a horizontal plane as well as the iconic nature of the object being viewed.
32. Figure 11 also indicates that part of the existing view to the Sydney skyline to the west will be lost as a result of the development. The level of existing views to the city skyline is moderately impacted by the development proposed. Partial views of buildings can still be seen above the proposed balustrading and stair enclosure on the roof.
33. It is also considered that the information provided does not address possible impacts from several properties to the south-east and south of the site, containing residential dwellings. Due to the iconic nature of the view to the north-west, any sites which may be impacted must be assessed thoroughly.
34. The level of view loss from the perspectives provided is also not addressed as per the scale of impacts discussed within Tenacity vs Waverley, being minor, moderate, severe and devastating.
35. In accordance with the planning principle of the Land and Environment Court, the impact that the proposal will have on views from the surrounding properties is considered unacceptable, with a view of the Sydney Harbour Bridge being viewed as severe from the location indicated in Figure 12.

Other Impacts of the Development

36. The proposed development is capable of complying with the Building Code of Australia (BCA).
37. It is considered that the proposal will have significant detrimental effects relating to environmental, social or economic impacts on the locality as discussed above.

Suitability of the site for the Development

38. The proposal is of a nature in keeping with the overall function of the site, however as discussed above it is not considered that the development is appropriate based on its impacts to surrounding residential properties and the exceedance of the applicable Height in Metres development standard.

Internal Referrals

39. The conditions of other sections of Council have been included in the proposed conditions.
40. The application was discussed with the Urban Design specialists, Building Services Unit, Surveyors, and Landscape specialists.
41. Council's Urban Design specialists indicated that the information submitted with this application specifically showed that both iconic views of the Sydney Harbour Bridge and land-based views of the city skyline would be lost as a result of the development, referring to Figure 12.

42. It was also stated that the information submitted with this application was inadequate, as it did not go into detail about the location and context of where the images were taken, did not examine each potentially impacted apartment at each level, did not assess the degree of view loss in terms of being minor, moderate, severe or devastating, and it was not evident whether surrounding properties were taken into account in the assessment.
43. In terms of the design of the proposal, the presentation of the balustrade to the public domain was seen as a parapet-like element which diminished the appearance of the building within the streetscape.
44. The proposal was also not considered to comply with the provisions of Clause 6.21, Design Excellence within Sydney LEP 2012, and in direct connection to the breach of the Height of Buildings development standard, the proposal was not supported.
45. Council's Landscape specialists considered the proposal to be acceptable subject to conditions including submission of documentation surrounding noise privacy and wind treatments, and further detailed sections of all existing and proposed structures.

External Referrals

Notification, Advertising and Delegation (Submissions Received)

46. In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development is required to be notified. The application was notified for a period of 14 days between 19 April 2018 and 4 May 2018. 16 submissions were received.
 - (a) View loss/view sharing

Response – It is agreed that the proposal has detrimental impacts to the sharing of views to the Sydney Harbour Bridge to the north-west and city skyline to the west. The application is recommended for refusal.
 - (b) Building height

Response – It is agreed that the proposed height is inappropriate. The application is recommended for refusal.
 - (c) Noise and acoustic privacy

Response – Due to the adjoining building to the east containing a large communal area of a similar height, and based on the use of the area being in association with a single dwelling, acoustic impacts would be considered acceptable. Nonetheless, the application is recommended for refusal for the reasons discussed within this report.
 - (d) Solar access

Response – It is not considered that the proposal would result in adverse impacts to solar access of surrounding dwellings. Nonetheless, the application is recommended for refusal.

Public Interest

47. It is considered that the proposal is inconsistent with the objectives of the Height of Buildings development standard and is not in the public interest. The proposal is recommended for refusal.

S7.11 Contribution

48. The development is not subject to a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. Nonetheless, the development is recommended to be refused.

Conclusion

49. Having regard to all of the above matters, it is considered that the proposed roof deck and associated landscaping does not satisfy the relevant strategy, objectives and provisions of the Sydney LEP 2012 and the Sydney DCP 2012, is not acceptable and is recommended for refusal.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Nicholas Beck, Planner