

Item 4.**Development Application: 13-15 Bayswater Road, Potts Point**

File No.: D/2018/1411

Summary

Date of Submission:	22 November 2018 with amended plans and details received 21 December 2018
Applicant:	Space Landscape Designs Pty Ltd
Architect/Designer:	Space Landscape Designs Pty Ltd
Owner:	Pamela Joy Williams and W Warren Scott, Strata Plan No 85899
Cost of Works:	\$69,400
Zoning:	B2 Local Centre zone. The proposal comprises alterations to a residential flat building which is permissible with consent.
Proposal Summary:	<p>Alterations and additions to the existing rooftop terrace of Unit 902. The works include the erection of a structure on the south-western corner of the terrace to accommodate plant and an adjoining timber pergola with seating underneath; landscaping, including the provision of planters and seating areas; and demolition of internal, non-structural walls within the existing stairwell and replacement with aluminium framed glazed doors.</p> <p>The application is reported to the Local Planning Panel as the proposal exceeds the 27m building height development standard pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) by 7.88m or 29.2%.</p> <p>A written request has been provided seeking a variation to the height development standard in accordance with Clause 4.6 of the Sydney LEP 2012. The request to vary the development standard is supported.</p>

**Proposal Summary
(continued):**

The application was advertised and notified for a period of 14 days between 23 November 2018 and 8 December 2018. Three submissions were received, which raised concerns regarding the use of the terrace, overshadowing, loss of views and further details to be required. These concerns have been addressed within the report and the proposal is considered to be acceptable.

The application is recommended for approval, subject to conditions.

Summary Recommendation:

The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (ii) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (iii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request

Recommendation

It is resolved that consent be granted to Development Application No. D/2018/1411 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) Subject to conditions, the proposed development will be consistent with the aims and objectives of the B2 - Local Centre zone.
- (B) The proposal will not impact on the character and heritage significance of the subject contributory building and heritage conservation area.
- (C) The proposed development will not adversely impact neighbouring residential amenity and will provide adequate levels of residential amenity.
- (D) The proposal is considered to be suitable for the site.
- (E) The proposal will have no detrimental effect on the public interest, subject to appropriate conditions.
- (F) Subject to conditions, the proposal generally satisfies the relevant strategy, objectives and provisions of the Sydney LEP 2012 and the Sydney DCP 2012.
- (G) The requested variation to the Clause 4.3 of the Sydney LEP 2012 "Height of Buildings" is upheld because the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the Height of Buildings development standard and the B2 Local Centre zone.

Background

The Site and Surrounding Development

1. A site visit was carried out by Council staff on 11 December 2018.
2. The site is irregular in shape, with an area of approximately 1,658sqm. It has a primary street frontage to Bayswater Road to the north and secondary street frontages to Pennys Lane to the west and Goderich Lane to the south. A nine storey residential flat building is located on the site.
3. This development application relates to Unit 902, which is located on Level 9 of the building and benefits from access to an existing rooftop terrace, located in the south eastern corner of the building. It is one of four of the building's rooftop terraces. Surrounding land uses are residential and commercial.
4. The site is not a heritage item but is located within the Potts Point Conservation Area (C51).
5. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area. The location of the rooftop terrace is indicated in red.



Figure 2: View of the northern elevation of the subject building from Bayswater Road. The terrace is to the rear.



Figure 3: View from the existing roof terrace to the south.



Figure 4: View westwards from the existing roof terrace.



Figure 5: View across the existing roof terrace to the north.



Figure 6: View across the existing roof terrace to the northeast.



Figure 7: View westwards across the existing roof terrace towards the access stairwell.



Figure 8: View eastwards across the existing roof terrace.



Figure 9: Location of terrace as viewed from Goderich Lane.

Proposal

6. The application seeks consent for alterations to the existing rooftop terrace associated with Unit 902. The proposed works include:
 - (a) The erection of a structure on the south-western corner of the terrace to accommodate plant (air conditioning and a hot water system) and an adjoining timber pergola with seating underneath.
 - (b) Landscaping, including the provision of planters and seating areas.
 - (c) Demolition of internal, non-structural walls within the existing stairwell and replacement of aluminium framed glazed doors.
7. During the assessment of the application a materials schedule was provided and the storage room proposed was amended to be a plant room.
8. Plans of the proposed development are provided below.

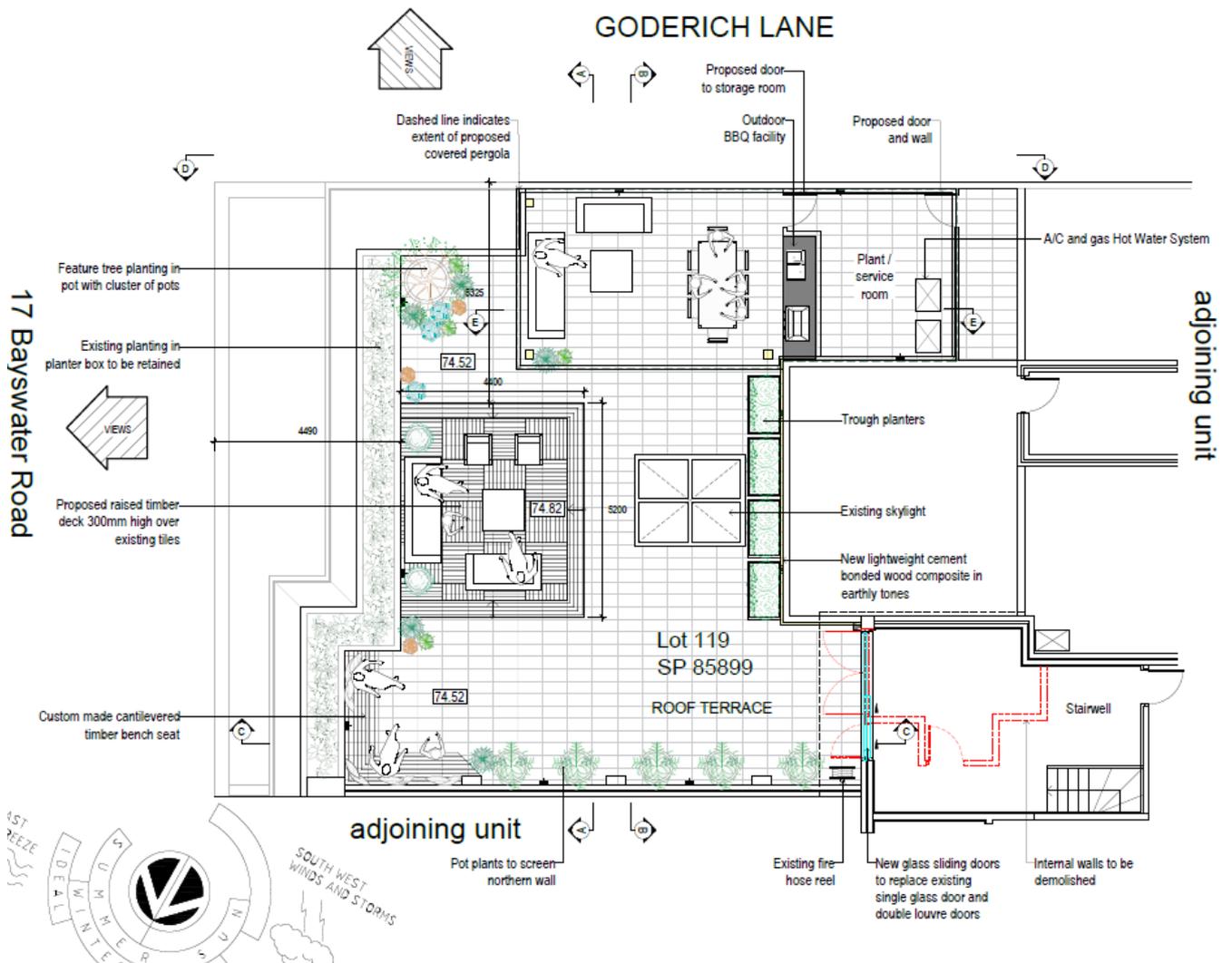


Figure 10: Proposed layout of existing roof terrace

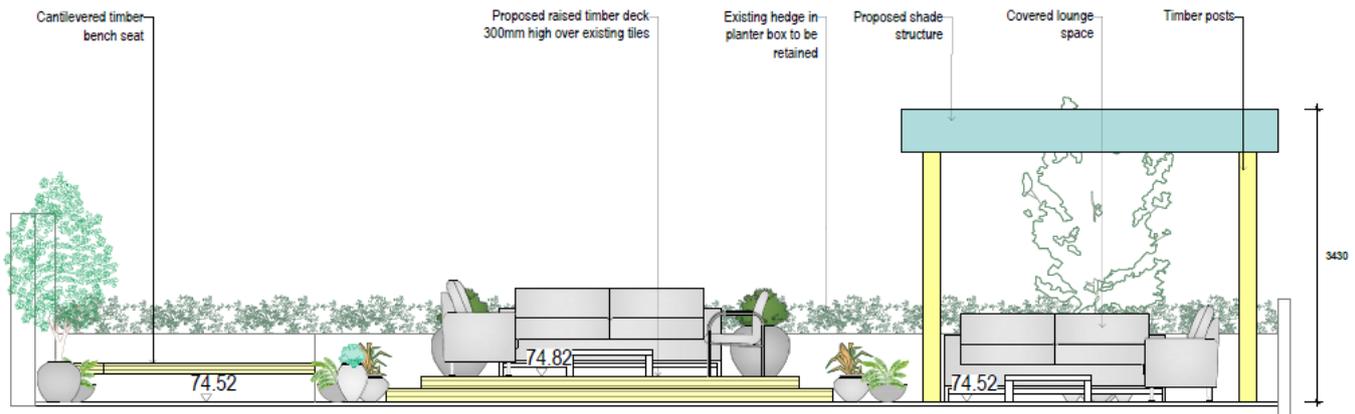


Figure 11: Section of terrace with pergola looking east

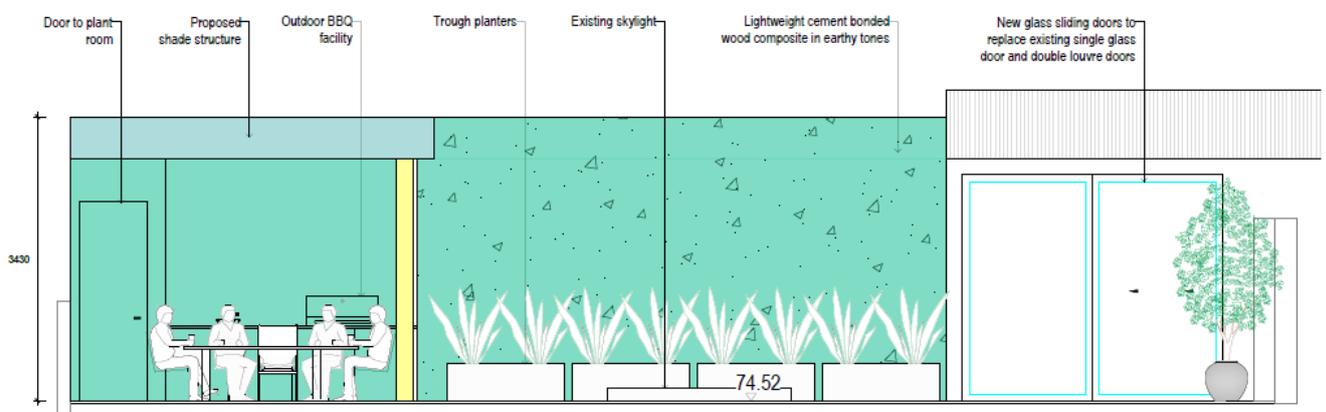


Figure 12: Section of terrace with pergola looking west.

History Relevant to the Development Application

9. There is an extensive history for the site. The following history is relevant to the subject application:

D/2018/466 – consent granted on 22 June 2018 for alterations and additions to rooftop terrace associated with Unit 903 (North West corner of building) including new covered pergola, new raised timber deck and new glazed doors and louvres to replace existing aluminium louvres.

Economic/Social/Environmental Impacts

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

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

11. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
12. 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.
13. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

Sydney LEP 2012

14. The site is located within the B2 Local Centre zone. The proposed development comprises alterations to a residential flat building and is permissible.
15. 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 27m is permitted. A height of 34.88m is proposed (as measured from ground level on Goderich Lane).
4.4 Floor Space Ratio	Yes	A maximum FSR of 5:1 is permitted. No additional FSR is proposed. A plant room is proposed, which is not considered to be FSR; however, it is recommended through a condition to be reduced in size.

Development Control	Compliance	Comment
4.6 Exceptions to development standards	Yes	The proposal seeks to vary the height development standard prescribed under Clause 4.3. See discussion under the heading Issues.
5.10 Heritage conservation	Yes	The subject site is not a heritage item but is located within a heritage conservation area. The proposed works are located at roof level are generally not be visible from the public domain. Therefore, the alterations are not considered to have a detrimental impact on the character of the heritage conservation area.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	The proposed development satisfies the requirements of this provision.

Sydney DCP 2012

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

2. Locality Statements – Kings Cross
The subject site is located in the Kings Cross locality. The proposed alterations and additions to the roof top terrace are considered to be in keeping with the unique character of the area and design and would not have a detrimental impact on the streetscape or surrounding taller buildings. The proposal will generally not be seen from the public domain.

3. General Provisions	Compliance	Comment
3.9 Heritage	Yes	<p>The existing building is located within a heritage conservation area and is identified as a contributory building. The proposed development will be modest in scale and consists of a lightweight pergola structure located at rooftop level, which will largely not be visible from the public domain.</p> <p>It is considered that the proposal will not impact on the character of the existing building or wider heritage conservation area.</p> <p>A condition is recommended requiring a reduction in size of the proposed plant room, which has a proposed area of 13sqm, which is considered to be excessive for the small amount of plant to be contained. A condition is also proposed stating that the plant room cannot be used for storage.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.3 Amenity	Yes	<p>The proposed structures will be located on the existing roof terrace, with acceptable levels of separation from neighbouring residential properties. Given the separation distances and the lightweight nature of the proposal, the development will not adversely impact residential amenity in terms of solar access or outlook, with no important significant views being blocked by the proposal.</p> <p>The rooftop terrace is currently trafficable and this will not be intensified by the proposed development. Therefore, the proposal will not unreasonably impact on existing levels of neighbouring visual or acoustic privacy.</p> <p>In light of the above, it is considered that the proposed development will not adversely impact neighbouring residential amenity, consistent with the provisions of section 4.2.3 of the DCP.</p>

Issues

Height

17. The site is permitted to have a maximum height of 27m under Clause 4.3 of Sydney LEP 2012. The proposed development seeks a maximum height of the building of 34.88m. This exceeds the maximum permitted height by 7.88m or 29.2%.
18. The additional height is a result of the proposed pergola and plant structure on the existing roof terrace; however, is below the highest point of the existing structures on the building.
19. In accordance with Clause 4.6 of Sydney LEP 2012, the applicant has submitted a written justification seeking exception to the Height development standard, which is discussed below.

Clause 4.6 request to vary a development standard

20. The site is subject to a maximum height control of 27m. The proposed development has height of 34.88m, a 29.2% variation to the height control.

21. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - (b) that there are sufficient environmental planning grounds to justify contravening the standard.
22. A copy of the applicants written request is provided at Attachment C.

Applicants Written Request - Clause 4.6(3)(a) and (b)

23. The applicant seeks to justify the contravention of the height of building development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The existing building does not comply with the maximum height of 27m. The proposed pergola is below the existing roof structure on the terrace.
 - (ii) The height of the pergola is under 3.5m and therefore is at an acceptable height for this type of structure.
 - (iii) The proposal is consistent with the character of the area.
 - (iv) Council recently approved the same structure for the roof terrace of Unit 903. Therefore Council have departed from the standard and strict compliance for Unit 902 would be unreasonable.
 - (v) The structure will not adversely impact the character of the area as it is not visible from the streetscape and is located at the rear of the site.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposal is consistent with the character of the area.
 - (ii) The structure will have minimal impact to neighbouring properties and will not cause any overshadowing.
 - (iii) The development is a minor modification to the existing building.
 - (iv) The pergola will not obstruct views and as such is consistent with the objective.
 - (v) The same structure was recently approved for unit 903 and therefore this approval will not set precedent.

Consideration of Applicants Written Request - Clause 4.6(4) (a) (i) and (ii)

24. Development consent must not be granted unless the consent authority is satisfied that:

- (a) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
- (b) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

25. The applicant's written request has adequately demonstrated that compliance with the development standard for Height is unreasonable and unnecessary in the circumstances of this case as the proposed development satisfies the objectives for Height, notwithstanding non-compliance with the standard.
26. The proposed development is consistent with the objectives for the B2 Local Centre zone under SLEP 2012 and is in the public interest as the pergola has been designed to be below the existing building height and will not be seen from the public domain. The additional height does not result in any adverse environmental impacts to surrounding properties and as such, compliance with the development standard is considered unreasonable and unnecessary.

Does the written request adequately address those issues at clause 4.6(3)(b)?

27. The applicant's written request has adequately addressed that there are sufficient environmental planning grounds to justify contravening the Height development standard as the proposed development will be lower than the highest point of the building and responds appropriately to this.

Is the development in the public interest?

28. The proposed development is in the public interest as it is consistent with objectives of the Height development standard and the B2 Local Centre zone. The proposed development achieves a height that does not result in any adverse amenity impacts on surrounding properties or the streetscape, and will provide for improved amenity of the residents of the unit.
29. The proposed development achieves the objectives for the B2 Local Centre zone by providing amenity to the existing residential use.

Conclusion

30. For the reasons provided above the requested variation to the height standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of Height development standard and the B2 Local Centre zone.

Other Impacts of the Development

31. The proposed development is capable of complying with the BCA.
32. 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

33. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding.

Internal Referrals

34. The conditions of other sections of Council have been included in the proposed conditions. Council's Heritage and Urban Design officers do not object to the proposal, subject to the plant room being deleted or reduced in size, which has the potential to be used as storage and would be additional Gross Floor Area (GFA). A condition is also recommended requiring specific materials and colours to be submitted.

External Referrals

Notification, Advertising and Delegation (Submissions Received)

35. 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 23 November 2018 and 8 December 2018. As a result of this notification three submissions were received. The issues raised in the submissions included:
- (a) Concerns that additional external lighting on the rooftop terrace will cause adverse light spill onto neighbouring properties.
- Response - No external lighting is proposed or approved as part of the application.
- (b) Work has already commenced and when completed will block harbour views from neighbouring properties.
- Response - At the time of inspection no building works had commenced. It is noted that works have begun for the approval at unit 903. Important views of the harbour will not be blocked due the location, minor scale and lightweight design of the proposed structures. It is noted that the submitter is within a commercial office.
- (c) The height of building is unclear as no RL's have been provided and a clause 4.6 variation request should be required.
- Response - Subsequent to the exhibition period, the applicant has provided RL's for the building and proposed works. A Clause 4.6 statement of justification has been provided and discussed in detail under the Issues section of this report.
- (d) Shadow diagrams have not been provided to demonstrate that the development will not adversely impact neighbouring properties.
- Response - Given the modest scale and rooftop location of the proposed structures, it is not considered necessary to provide shadow diagrams in this instance. Adequate separation distances between the subject site and neighbouring properties will ensure that there will not be an adverse impact on neighbouring properties in relation to solar access as a result of the proposal.

- (e) The new storage room will add GFA and no details of FSR for the site have been provided.

Response - The proposed plant room is recommended to be reduced in size to ensure that it will house the plant only and not be used for storage, which would be additional GFA. A condition is also proposed stating that the plant room cannot be used for storage.

- (f) Additional noise impacts from the roof terrace, which will allow large groups to enjoy the terrace. A condition is requested to limit the number of person who can use the terrace at any one time, in order to limit noise and disturbance. An acoustic report should be provided.

Response - The roof terrace is existing and is attached to a single residential unit. The proposed development will not increase its size or capacity. There are currently no conditions that limit the number of persons who can use the existing terrace and therefore it would be unreasonable to impose such a condition as part of this application consent.

Public Interest

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

S7.11 Contribution

37. The development is not subject to a S7.11 development contribution as it is for structures on the existing roof terrace, which will not increase the net population of the building in accordance with the City of Sydney Development Contributions Plan 2015 and is excluded from the need to pay a contribution. A contribution is therefore not payable.

Relevant Legislation

38. The Environmental Planning and Assessment Act 1979.

Conclusion

39. The application proposes alterations and additions to the existing rooftop terrace of Unit 902, which is one of four rooftop terraces. The works include the erection of a structure on the south-western corner of the terrace to accommodate plant and an adjoining timber pergola with seating underneath; landscaping, including the provision of planters and seating areas; and demolition of internal, non-structural walls within the existing stairwell and replacement with aluminium framed glazed doors.

40. The proposal results in a breach of the 27m building height development standard by 7.88m or 29.2%. The applicant has submitted a Clause 4.6 variation to height request under the Sydney LEP 2012. The requested variation to the height development standard is upheld in this instance because the consent authority is satisfied that the applicant's amended written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of Clause 4.3 Height and B2 Local Centre zone. It is considered that strict compliance with the height of buildings development standard is unreasonable or unnecessary in this instance.
41. Subject to the reduction in size of the plant room, the proposal is generally consistent with the objectives, standards, and guidelines of the relevant planning controls, subject to conditions. The proposal will provide additional amenity to the unit and cannot generally be seen from the public domain. It is noted that unit 903 recently had a similar proposal approved.
42. Accordingly, the Development Application is recommended for approval, subject to conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Bridget McNamara, Area Coordinator