

Item 6.**Development Application: 110-120 Kippax Street, Surry Hills****File No.: D/2019/78****Summary****Date of Submission:** 1 February 2019**Applicant:** Canva Pty Ltd**Architect/Designer:** Candalepas Associates**Owner:** Stasia Holdings Pty Ltd**Cost of Works:** \$402,696**Zoning:** The use is defined as commercial and is permissible in the B4 Mixed Use zone.**Proposal Summary:** The application seeks consent for alterations and additions to the rooftop of the existing commercial building including new pergola, awning, landscaping and acoustic barriers to allow as function space and breakout space for the occupants of the building and their clients.

The application was notified for a period of 21 days between 5 February 2019 and 27 February 2019. In response 24 submissions were received relating to visual and acoustic privacy impacts and view impacts.

The proposal has been amended and additional information has been supplied during the assessment of the application to address concerns relating to the acoustic treatment, intensity of the use of the terrace, floor space ratio, landscaping, and to expand the Plan of Management.

The application proposes a maximum height of building of 26.72m, which exceeds the maximum height of building standard under Clause 4.3 of the Sydney LEP 2012 by 4.72m or 19.37%.

**Proposal Summary
(continued):**

The application is referred to the Local Planning Panel for determination as the proposal exceeds the height standard by more than 10%. The applicant has submitted a request to vary the standard pursuant to Clause 4.6 of the Sydney LEP 2012. The variation to the standard is considered to be in the public interest and is supported in this instance.

It is considered that the potential amenity impacts that could arise from the use of the terrace can be adequately managed by conditions of consent, including hours of use, noise, a requirement for the south-eastern side of the roof terrace to be a native garden, and adherence to the Plan of Management.

Summary Recommendation:

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012 (Gazetted 12 December 2012, as amended)
- (ii) Sydney Development Control Plan 2012 (in force on 12 December 2012, as amended)
- (iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (iv) City of Sydney Development Contributions Plan 2012

Attachments:

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

Recommendation

It is resolved that:

- (A) the variation sought to the height of building development standard under Clause 4.3, in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012, be supported in this instance; and
- (B) consent be granted to Development Application No. D/2019/78 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) The proposal is consistent with the objectives of the B4 Mixed Use zone.
- (B) The proposal is consistent with the relevant objectives and provisions outlined in the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (C) The variation to Clause 4.3 of the Sydney Local Environmental Plan 2012 is consistent with the provisions of Clause 4.6 and are in the public interest.
- (D) The proposal will not significantly alter the scale or built form of the existing building and exhibits design excellence as required by Clause 6.21 of the Sydney Local Environmental Plan 2012.
- (E) Subject to conditions, the proposal will not have an unreasonable adverse impact on the amenity of the neighbouring properties.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 13 February 2019.
2. The site is rectangular, with an area of approximately 729.1sqm, and has frontages to Kippax Street, Waterloo Street and Sophia Street of 34.5 metres, 15.39 metres and 33.16 metres respectively. An eight storey commercial building is contained within the site.
3. Surrounding land uses are residential and commercial. The site is adjoined to the east by 33 Sophia Street, the end terrace within a row of three terraces, containing residential dwellings. A mix of two and three storey commercial buildings and residential terraces are located opposite the site on the northern side of Sophia Street. The properties opposite the site on the western side of Waterloo Street are larger three, four and six storey commercial buildings. On the southern side of Kippax Street are two large multi-storey commercial buildings, a nine storey building on the corner of Kippax and Waterloo Streets and an older five storey former warehouse, which is currently being redeveloped as a mixed-use residential and commercial building.
4. The site is not a heritage item nor is it located in a heritage conservation area. The buildings on the northern side of Sophia Street are located within the Little Riley Street Conservation Area (C65) and the building at 119-127 Kippax Street to the south-east of the site, the former Ford Sherington Trunk Factory (including interior) is listed as a heritage item (I1563A) in Schedule 5 of the Sydney LEP 2012.
5. Photos of the site and surrounds are provided below:

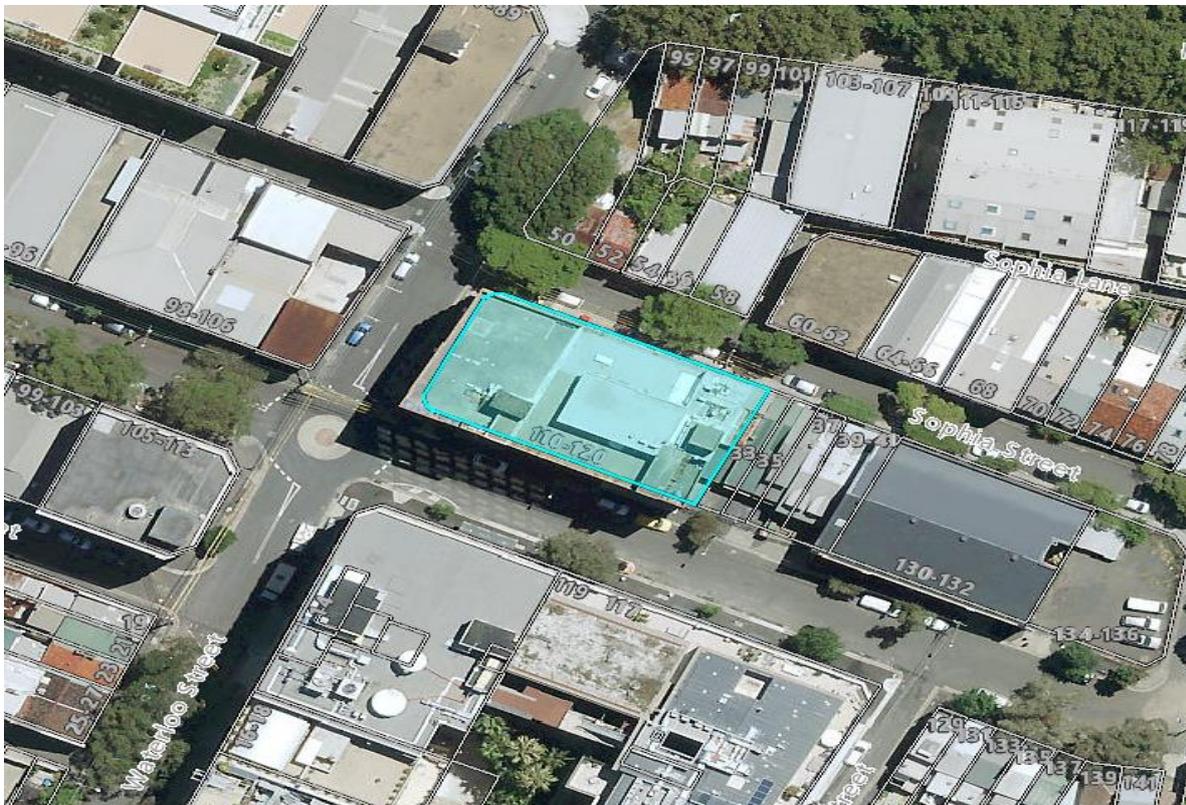


Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Kippax Street

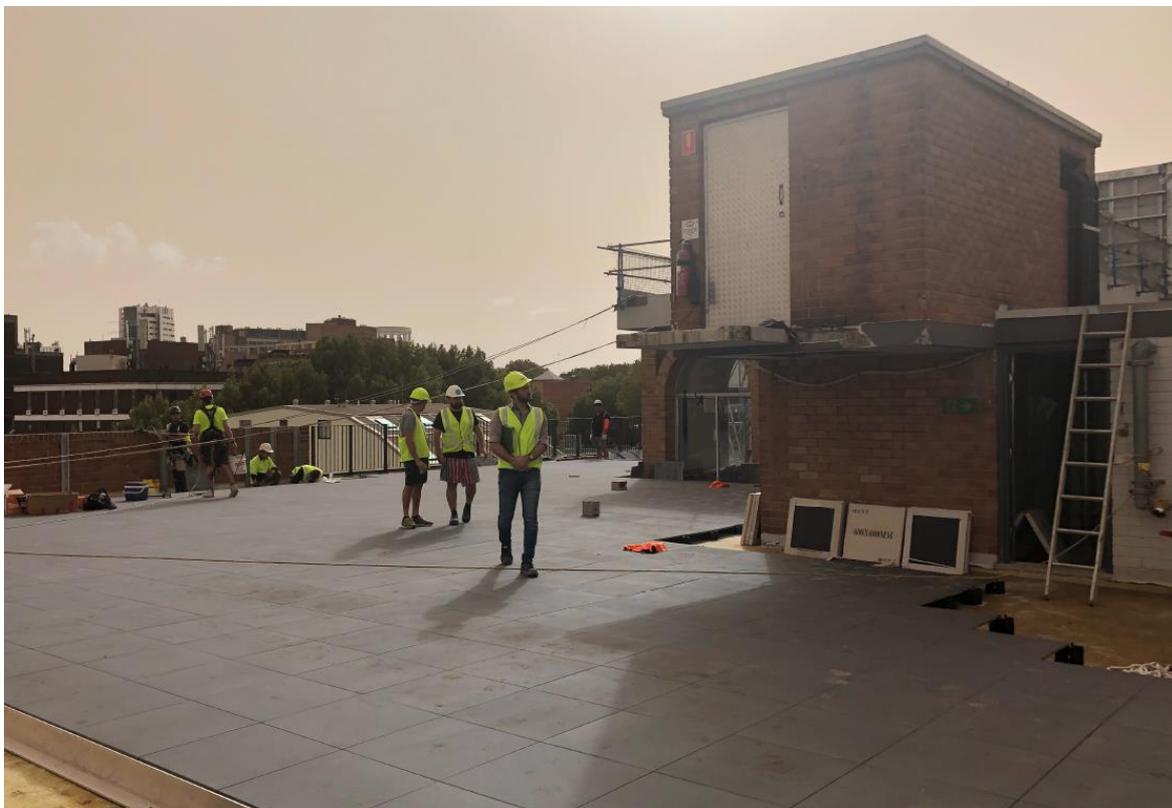


Figure 3: The roof terrace (works pictured were undertaken under a complying development certificate)



Figure 4: View from the rooftop, looking south-east, showing the neighbouring commercial building (right) and residential flat building (left). The commercial building has a current approval (D/2017/1545) for a comparable roof terrace. The residential flat building is subject of the majority of submissions received.

Proposal

6. The application seeks consent for alterations and additions to the rooftop of the existing commercial building to include:
 - (a) Addition of pergola, BBQ with awning roof and storage room.
 - (b) Addition of planters and acoustic barriers on the north, south and west of the roof terrace.
7. The use of the terrace is proposed to be used by staff of the occupiers of the building, Canva, and their clients and investors. Canva has recently moved into the building and tenants all of the levels. The terrace will be primarily used for presentations, lunches, breakfasts, training, workshops and talks, office tours, demonstration days, dinners for investors and clients, Friday night team drinks, and celebrating team achievements. The application proposes a maximum patron capacity of 200 and hours of operation from 7.00am to 10.00pm Monday to Sunday.
8. During the preliminary assessment of the application by City staff, the applicant was requested to provide amended plans and additional information to address the following:
 - (a) Amended plans requiring the deletion of the outdoor servery and the relocation of the acoustic barrier to the inner face of the existing parapet.

- (b) Amended plans requiring the deletion of the storage room as the Clause 4.6 request for FSR was not supported.
 - (c) Amended landscape plans to provide further information on plants, soil, drainage and solar access.
 - (d) Revised Plan of Management and Clause 4.6 Variation Request.
9. The required information was provided on 25 March 2019 and 2 May 2019 and forms the basis of this assessment.
10. Plans of the proposed development are provided below.

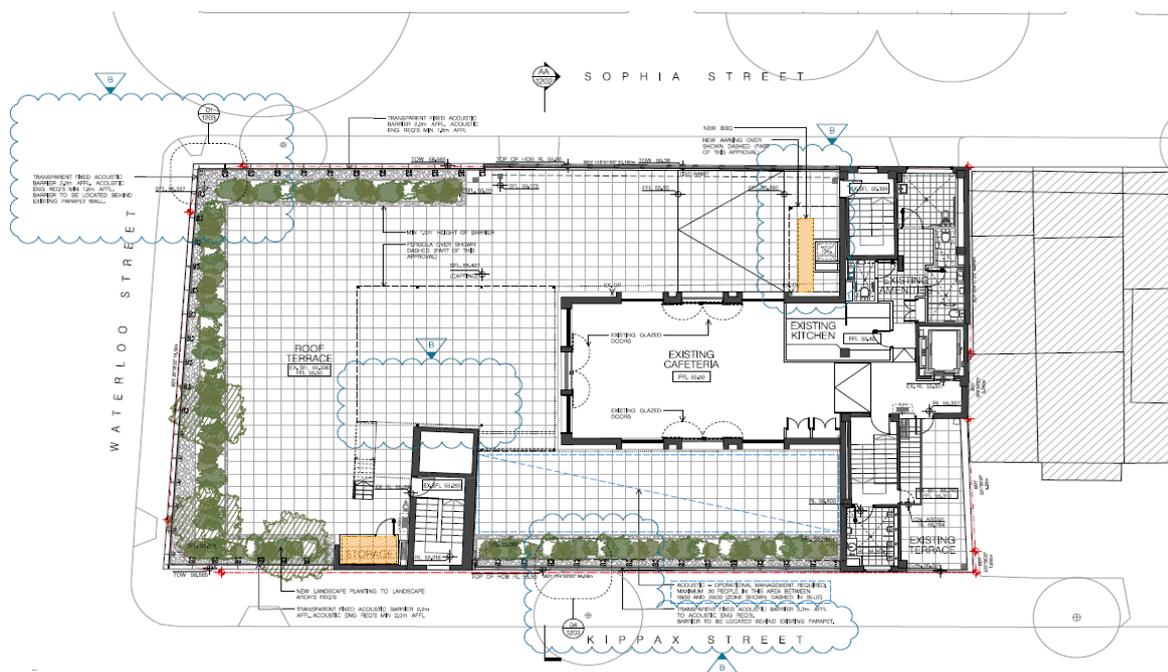


Figure 5: Terrace plan

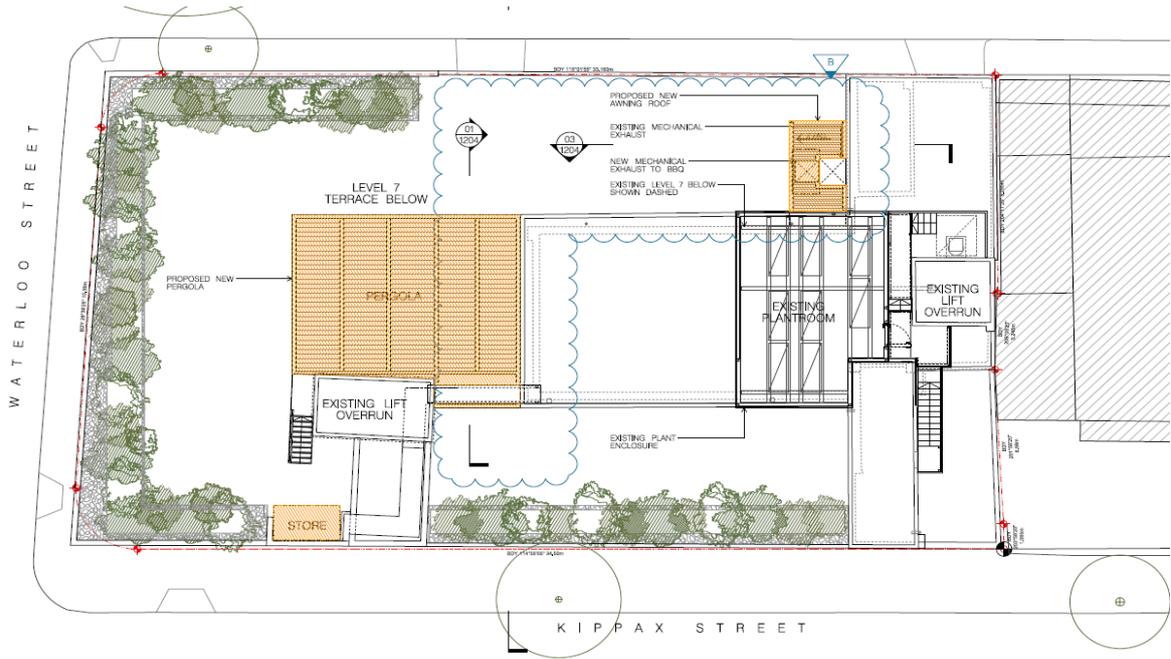


Figure 6: Roof plan

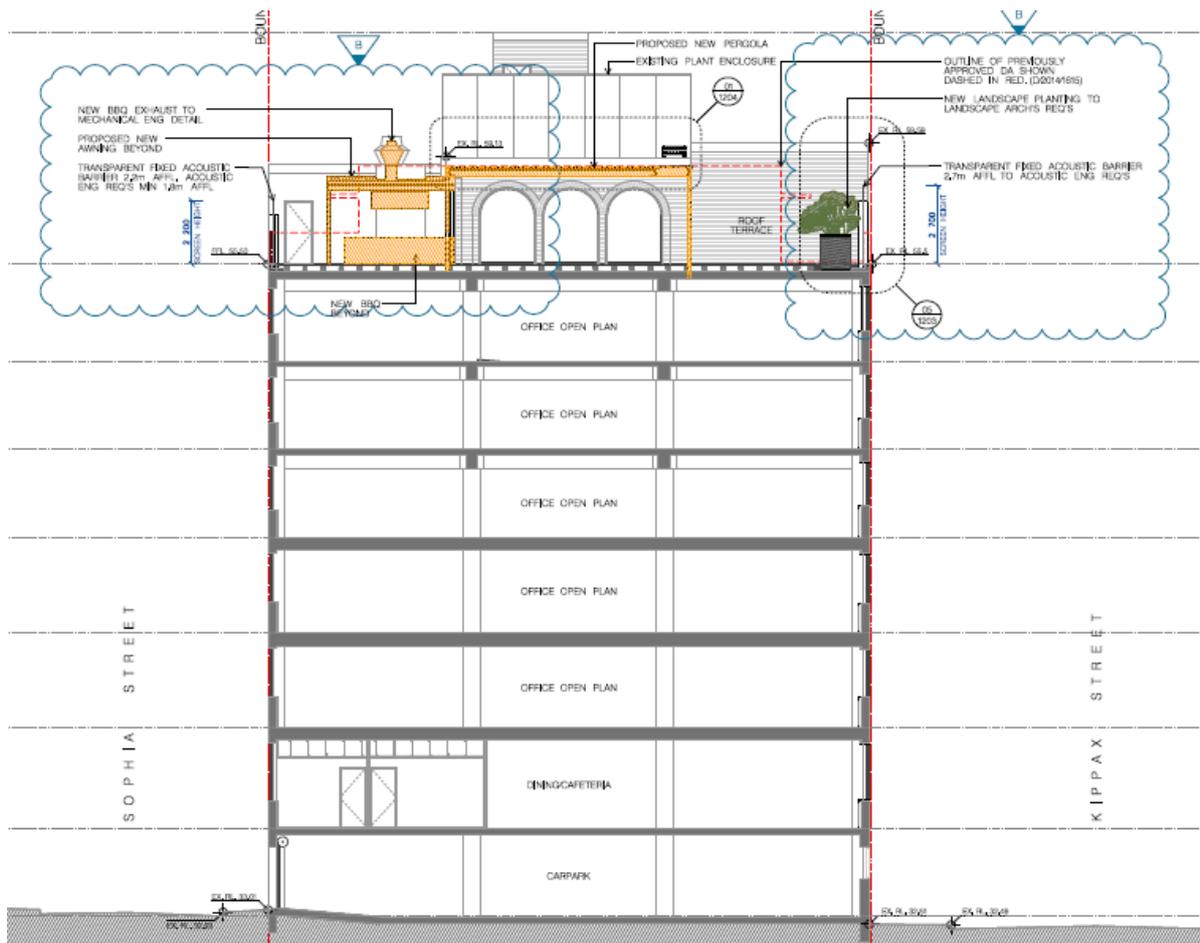


Figure 7: Section AA

History Relevant to the Development Application

11. On 14 December 2015, D/2014/1615 was approved for the adaptive re-use of the commercial building as a mixed-use development containing 35 apartments, retail and office space on Level 1, retail tenancies to Waterloo Street, and parking for 13 vehicles. The consent was not activated.
12. On 13 June 2018, D/2017/1545 was approved for a new rooftop terrace and associated works to the existing commercial office building at 14 Waterloo Street.
13. On 17 July 2018, D/2018/596 was approved for alterations to the commercial building including reduction of existing car parking space to accommodate end of trip facilities, installation of internal accessible chair lift and minor alterations to external facade.
14. On 19 November 2018, Complying Development Certificate J180107A (Council reference P/2018/1062/1) was approved for base building works including rooftop plant. The works are currently underway.
15. On 13 February 2019, D/2018/596/A was approved for a modification of consent for internal alterations to the ground floor, relocation of entry door, and addition of an accessible platform lift and chair lift

Economic/Social Environmental Impacts

16. 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)

17. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
18. 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.
19. 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

20. The site is located within the B4 Mixed Use zone. The use is defined as commercial and is permissible.
21. 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	<p>A maximum height of 22m is permitted.</p> <p>The existing building has a maximum height of 27.4m.</p> <p>The proposal includes the addition of a pergola, awning, planters and acoustic barriers, with a maximum height of 26.72m, representing a 19.37% variation.</p> <p>See discussion under Clause 4.6 under the heading Issues.</p>
4.4 Floor Space Ratio	No	<p>The site is subject to a floor space ratio (FSR) control of 4:1. The existing building has a GFA of 4471.7sqm and FSR of 6.13:1. The original proposal included an additional 4sqm for a small storage room at the roof level, resulting in a GFA of 4475.7sqm and FSR of 6.14:1, representing a 65% variation.</p> <p>The applicant originally submitted a Clause 4.6 request to vary the FSR standard. The request was assessed as inadequate as it failed to address how the proposed variation meets the objectives of the standard and the zone. The issue was discussed with the applicant who submitted amended plans detailing the deletion of the storage room.</p> <p>As no additional GFA is proposed in the amended application, the proposal is acceptable and no assessment under this Clause is required.</p>

Development Control	Compliance	Comment
4.6 Exceptions to development standards	Yes	The proposal seeks to vary the development standard prescribed under Clause 4.3. 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 and landscaping, which are considered to be appropriate to the subject building type and locality. The proposal will have an acceptable visual impact from the public domain and neighbouring properties. The proposal will not significantly alter the scale or form of the existing development.

Sydney DCP 2012

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

2. Locality Statements – 2.11.7 Surry Hills Central

The subject site is located in the Surry Hills Central locality. The proposed alterations and additions to the roof of the existing commercial building to provide a useable outdoor space for tenants of the building and their guests is considered to be in keeping with the unique character of the area and design principles in that it maintains the transition in built form scale, from taller buildings in the west, to consistent two storey areas in the east.

3. General Provisions	Compliance	Comment
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 for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	<p>A maximum of six storeys is permitted on the site.</p> <p>The existing building is predominantly seven storeys, with rooftop structures such as a cafeteria, kitchen, bathrooms, stairs and lifts forming part of an eighth storey.</p> <p>The proposal includes a new pergola roof, awning structure and storage room adjacent to the rooftop structures. These building elements do not constitute a storey and are considered acceptable as they do not add any discernible bulk to the building.</p>
4.2.2 Building setbacks	Yes	The proposal does not alter the existing building setbacks. The planter boxes and acoustic barriers are located at the edges of the building behind the existing parapet walls.
4.2.3 Amenity	Yes	<p>The proposal will not have any unreasonable impacts on the amenity of surrounding development, subject to the recommended conditions.</p> <p>See discussion under heading Issues.</p>

Issues

Clause 4.6 Request to Vary the Height Development Standard

23. The site is subject to a maximum height control of 22m. The proposed development is 26.72m in height, which represents a 19.37% variation to the standard.
24. The existing building has a maximum height of 27.4m, which represents a 21.86% variation to the standard. The aspects of the proposal which breach the height control include the pergola, awning, planters and acoustic barriers. The pergola and awning are not enclosed by walls, the planters are low lying, and the acoustic barriers are transparent, ensuring visual bulk is minimised and views across the site are maintained.
25. 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.
26. A copy of the applicant's written request is provided at Attachment C.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

27. The applicant seeks to justify the contravention of the height development standard on the following basis:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the objectives of the development standard are achieved notwithstanding the non-compliance:
 - (i) The existing building exceeds the height standard and the proposed works sit underneath the maximum height of the existing building. The only prominent additions above the height standard are the pergola, awning, planters and transparent acoustic screening, which are minor and ancillary to the rooftop use.
 - (ii) When viewed from the surrounding streetscape, the proposal will show significant improvements through the provision of a green roof. This not only provides environmental benefits, it improves vistas over the site and is consistent with Council's policy supporting green roofs in dense urban environments.
 - (iii) The proposal maintains adequate height transitions between the development and surrounding developments.
 - (iv) The areas of non-compliance are consistent with the existing scale of the building.
 - (v) The proposal will improve views across the site.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The existing building exceeds the height of building limit. The parameters and footprint of the existing structures have set the rules for the bulk, scale and mass of the proposal with no increased breaches to the roof top structures.
 - (ii) The proposal does not hinder the orderly economic potential of surrounding properties. The benefits of providing a useable roof top area significantly improves the amenity of the building and the neighbourhood.
 - (iii) The benefits of providing landscaping on the roof outweighs the negligible impacts from the additional height.
 - (iv) The proposed roof structures are located within the existing maximum height of building limit and are strategically located on the roof to not have an adverse impact on the neighbouring properties.
 - (v) The provision of landscaping on roofs is consistent with Council's policy supporting green roofs.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

28. 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)?

29. The applicant's written request adequately demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development satisfies the objectives of the standard notwithstanding the non-compliance.
30. The built elements that exceed the height standard sit below the maximum height of the building. The elements support the use of the roof as a communal open space/function space and have been designed to minimise the impacts on the neighbouring properties, in particular, the residential flat building opposite Kippax Street, in terms of view sharing and acoustic privacy. The built elements are consistent with the scale of the existing building.

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

31. The applicant's written request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard.

32. Given the existing building exceeds the maximum height of building permitted for the site, compliance with the standard would not result in a better urban outcome. The pergola and awning support the rooftop use by providing weather protection. The planters provide landscaping on the roof, which is a positive environmental outcome. The acoustic barriers assist in mitigating noise impacts to the neighbouring properties. The siting, transparency and lightweight nature of these structures ensures that views across the site are maintained and protected.

Is the development in the public interest?

33. The objectives of the height development standard include:
- (a) To ensure the height of the development is appropriate to the condition of the site and its context.
 - (b) To ensure appropriate height transitions between new development and heritage items.
 - (c) To promote the sharing of views.
34. The design and form of the additional building elements are appropriate to the site and its context and maintain the transition in built form scale, from taller buildings in the west, to consistent two storey buildings in the east. The area of non-compliance is confined to the pergola, awning, planters and acoustic barriers, which all sit below the existing maximum building height. These elements are sited appropriately and are largely transparent, ensuring they do not obstruct views.
35. The objectives of the B4 Mixed Use zone include:
- (a) To provide a mixture of compatible land uses.
 - (b) 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.
 - (c) To ensure uses support the viability of centres.
36. The application proposes a new roof terrace to be used in association with the commercial office space within the building. The use is consistent with the mixed-use nature of this area of Surry Hills. The site is located within Category D on the Public Transport Accessibility Level Map, which is the highest category identified in the LEP with regard to public transport accessibility.
37. The proposal is in the public interest because it is consistent with both the objectives of the height development standard and the objectives of the B4 Mixed Use zone.

Conclusion

38. For the reasons provided above the requested variation to the height of building development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height development standard and the B4 Mixed Use zone.

Landscaping and Rooftop Structures

39. The original proposal included a BBQ and outdoor serverly adjacent to the roof structures. Concern was raised with the applicant that its location could give rise to amenity impacts given its proximity to sensitive uses to the south. In response, the applicant submitted amended plans detailing the relocation of the BBQ to the northern side of the roof terrace. This ensures that more people will be congregating in an area where there are less opportunities for noise impacts.
40. The application was referred to the City's Landscape Assessment Officer, who required further information on plant species, soil depths, maintenance and drainage. Landscape related conditions have been recommended for further details to be provided prior to the issue of a Construction Certificate, including the requirement for the planters to be set off a minimum 600mm from the parapet to allow for maintenance.

Use of Rooftop Terrace

41. The proposal includes alterations and additions to the existing roof terrace to provide a functions and event space for staff of Canva and their clients/investors. Canva is an Australian graphic design business, which has grown significantly in recent years. The proposed hours of operation are 7.00am to 10.00pm Monday to Sunday, which is not considered late night trading under the DCP.
42. 24 submissions have been received from the neighbouring residential flat building at 117-119 Kippax Street concerned with potential acoustic impacts from the terrace. The submissions cite the loss of amenity experienced by the behaviour of Canva staff at their current operations at 2 Lacey Street. Canva currently hold events and supply food and drinks to their staff on the ground floor of the building, which often spills out onto the street.
43. Canva submitted a modification application, D/2016/1423/A, for the extension of the hours of operation to between 7.00am to 10.00pm Monday to Saturday to allow for functions to be held on the ground floor of the building at 2 Lacey Street. The modification application was not approved on 5 October 2018 as functions are not permissible in the R1 General Residential zone and the applicant was unable to demonstrate appropriate management measures will be implemented and acoustic impacts can be mitigated.
44. Although the modification application has some relevance to the subject development application as it involves the same organisation, the subject site is considered to be in a better location for such a proposal. The site is located within the B4 Mixed Use zone and the applicant has provided the necessary information to ensure the premises is run responsibly and without unreasonable impacts on the amenity of the neighbouring properties, subject to conditions.
45. The proposal includes a maximum patron capacity of 200. The Plan of Management states that the tenant will apply a ratio of one manager per 50 people and engage a security guard for events after 6.00pm with more than 100 people. The Plan of Management states that the roof terrace will be used for presentations, lunches, breakfasts, training, workshops and talks, office tours, demonstration days, dinners for investors and clients, Friday night team drinks, and celebrating team achievements. It further states that management and security will monitor patron behaviour, ensuring patrons do not loiter in public areas, minimise noise, and enact a complaints register.

46. The Plan of Management states that it will be regularly updated and reviewed to reflect any operational changes, which without agreement of Council is not supported. Condition 10 is included in the consent which states that any amendments to the Plan of Management need to be submitted to Council for approval under a modification application.
47. Concern was raised with the applicant during the assessment of the application that there may be management issues relating to investors and clients using the roof terrace. In response, the applicant has expanded the Plan of Management to make clear that the investors and clients will be managed in the same way as staff and be made aware of their responsibilities. The revised Plan of Management adequately addresses these requirements. A condition of consent is recommended stating that persons other than employees of the tenants of the building may use the roof terrace by invitation only and must be supervised at all times in accordance with the Plan of Management.
48. An acoustic report has been submitted with the application which provides details on the proposed acoustic barriers. The proposal includes barriers which are 2m-2.7m high on the southern side of the building and barriers which are 1.8m high on the western and northern sides of the building. The acoustic report also recommends limiting patron capacity on the south-eastern side of the roof terrace to 30 between 8.00pm and 10.00pm, which the Plan of Management states would be enforced by security staff. As this would be difficult to enforce and potentially disruptive to events, it is recommended this area be used as a garden to contribute to the City's urban ecology. An appropriate condition is included.
49. The site is located in close proximity to comparable rooftop developments at 64-76 Kippax Street and 14 Waterloo Street. The hours of operation for 64-76 Kippax Street are restricted to 7.00am to 10.00pm Monday to Saturday and are restricted to 14 Waterloo Street to 7.00am to 8.00pm Monday to Thursday, 7.00am to 10.00pm Friday and 8.00am to 8.00pm Saturday and Sunday. The consent for 64-76 Kippax Street does not have any restrictions on the number or type (e.g. staff, non-staff) of patrons. The consent for 14 Waterloo Street restricts the number of patrons to 100 and to tenants of the building only. Each of the roof terraces are a comparable size to the subject roof terrace with similar facilities e.g. furniture, landscaping, capability to host events, etc.
50. Given the details provided in the discussion above, it is recommended the use of the remaining terrace be restricted to base hours of 8.00am to 8.00pm Monday to Friday, with a 12 month trial for extended hours of 8.00pm to 10.00pm on Thursday and Friday. This will allow Council to monitor the ongoing management performance of the premises to ensure there are no unreasonable impacts on neighbourhood amenity.

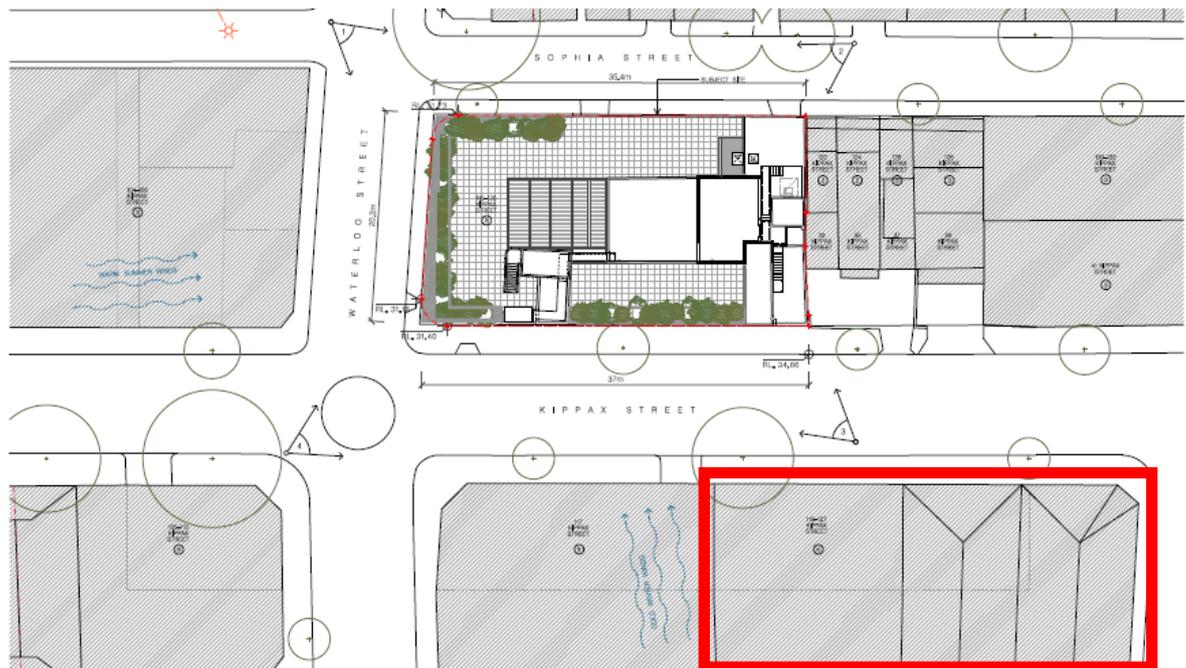


Figure 8: The site plan showing the roof terrace in relation to the affected residential flat building indicated by the red rectangle

View Loss

51. Clause 4.2.3.10 of the DCP states that views and outlooks from existing residential development should be considered in site planning and massing of new development.
52. A submission was received from a resident of the residential flat building on the opposite side of Kippax Street citing view loss. A site visit was carried out at the affected property on 6 March 2019. An assessment against the planning principle contained in *Tenacity Consulting v Warringah Council (2004) NSWLC 140* is provided below:

What are the views to be affected?

53. As illustrated in Figure 10, the site obtains views of parts of the Sydney CBD and Haymarket skylines across the north of the site.



Figure 9: The site viewed from the residential flat building opposite Kippax Street. The red dashed line denotes the area that may be impacted by the proposed pergola and acoustic barriers.

From what part of the property are the views obtained?

54. The outlook from north-facing apartments at 117-119 Kippax Street obtained from living areas, bedrooms and balconies.

What is the extent of the impact?

55. The loss of outlook to the upper level apartments resulting from the proposal is negligible. Upper level apartments will retain distant views of the skyline.
56. Given the transparent nature of the acoustic barriers and lightweight nature of the roof structures, views will not be unreasonably affected.

What is the reasonableness of the proposal causing the impact?

57. The proposal exceeds the height standard by 21.86%. The building elements that exceed the height standard include the acoustic barrier, planters and roof structures, which are transparent and lightweight, ensuring visual bulk is minimised.
58. As denoted by the dashed red line in Figure 10, the affected area includes the loss of views to nondescript sections of buildings that are not considered landmarks.
59. Given all of the above, the impact of the proposal is reasonable and the impacts associated with the loss of outlook are not considered to be of a nature that would warrant refusal of the application.

Other Impacts of the Development

60. The proposed development is capable of complying with the BCA.
61. 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

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

Internal Referrals

63. The conditions of other sections of Council have been included in the proposed conditions.
64. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health Unit; Landscape Assessment Unit; who advised that the proposal is acceptable subject to the recommended conditions.

External Referrals

Notification, Advertising and Delegation

65. 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 21 days between 5 February 2019 and 27 February 2019. As a result of this notification there were 30 submissions received from 24 submitters. The issues raised in the submissions are outlined below:
 - (a) Noise impacts from the functions operating 7 days per week, until 10.00pm, for 200 people. Concerns activities could go past 10.00pm and the acoustic barriers are not sufficient to ameliorate noise impacts.

Response - The roof will be permitted base hours of 8.00am to 8.00pm Monday to Friday, with extended hours of 8.00pm to 10.00pm Thursday and Friday. The Plan of Management and Acoustic Report submitted with the application adequately address how patron behaviour will be managed and noise will be mitigated. Relevant conditions of consent are recommended to ensure adverse impacts are minimised, including the requirement for the south-eastern corner of the roof terrace not to be used for entertaining and is to be a native garden.
 - (b) Inappropriateness of such a development in a residential area

Response - The site is located within the B4 Mixed Use zone in which commercial uses are permissible. The proximity to residential properties has been taken into consideration in the assessment of the application and potential amenity impacts addressed by conditions of consent.

- (c) Issues with Canva at its current premises on Lacey Street including noise impacts, excessive drinking and smoking on the street, blocking vehicles and dumping rubbish. A previous application for trading hours was refused at this site.

Response - As discussed earlier in the report, the subject site is considered a more appropriate context for outdoor uses of this nature considering it is within the B4 Mixed Use zone and is on private land. The relocation of Canva's activities from ground level at 2 Lacey Street to the roof level of this building will ameliorate a lot of the issues raised in the submissions. The application has been accompanied by a Plan of Management and Acoustic Report, which adequately addresses how the premises will be managed and how noise impacts will be mitigated. Conditions of consent are recommended to ensure they are adhered to.

- (d) Patrons drinking excessively and smoking, including noise impacts from ambulances assisting drunken staff.

Response - The Plan of Management adequately addresses how patrons will be managed, including the responsible service of alcohol. The nearest residential apartments are located 15-20 metres away and are unlikely to be affected by second hand cigarette smoke.

- (e) The application should be re-notified as the hours of operation were not included on the notification letter.

Response - The application was notified for 21 days in accordance with Council's notification policy. The documentation stating the proposed hours of operation was available online during this time.

- (f) Possibility the terrace could be used by members of the public.

Response - The roof will be restricted to staff and their invitees.

- (g) Safety concerns from the over use of the premises.

Response - The proposed patron capacity is considered acceptable from a safety perspective.

- (h) The proposal will impact on property values.

Response - This is not a planning consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

- (i) Light pollution from the rooftop.

Response - The hours of operation will ensure there are no unreasonable impacts in regards to light pollution. A condition of consent is recommended to control illumination.

- (j) Odours from BBQ.

Response - The proposed outdoor servery has been deleted from the proposal in response to the concerns raised. A new smaller BBQ area is located on the northern side of the roof terrace.

- (k) Disruption from delivery vehicles.

Response - The proposal will not exacerbate any pre-existing issues with deliveries.

- (l) View loss.

Response - As discussed earlier in the report, the proposal will not result in a loss of views.

- (m) Loss of privacy.

Response - There is considered adequate distance between the subject building and the nearby residential flat building to maintain visual and acoustic privacy. As per the conditions of consent, the south-eastern corner of the roof terrace must not to be used for entertaining and is to be a native garden.

- (n) Concerns the plans are misleading as the existing cafeteria may have never been used as one and may not be approved.

Response - A search of Council's records cannot find a record of existing plans for the building. As the cafeteria is associated with the commercial office use, specific approval is not required. The suitability of the use as a cafeteria has been considered in the assessment of this application.

- (o) Work on alterations has been undertaken prior to approval.

Response - The works undertaken were approved under Complying Development Certificate J180107A (Council reference P/2018/1062/1) for base building works and rooftop plant.

- (p) Food and beverage offering will impact on viability of local businesses.

Response - This is not a planning consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. Notwithstanding, the food and beverages are offered to those associated with Canva and not for members of the public.

- (q) Concerns on how behaviour will be enforced.

Response - The Plan of Management adequately addresses how patrons will be supervised. Any issues or non-compliance with the conditions of consent can be reported to Council if they occur.

- (r) Traffic impacts.

Response - The use of the roof will not result in an increase in the worker population. The site is located within Category D on the Public Transport Accessibility Level map, which is the highest category identified in the LEP with regard to public transport accessibility.

- (s) Canva have not considered their trajectory for growth.

Response - The maximum patron capacity is restricted to 200, which has been assessed as acceptable. Any increase to the patron capacity will be subject to a future application.

- (t) Query regarding liquor licensing.

Response - A liquor license is not required as the sale of alcohol is not proposed.

- (u) Acoustic Report prepared in response to the applicant's Acoustic Report questioning its adequacy.

Response - The reports have been reviewed by staff and the applicant's report has been assessed as acceptable. Conditions of consent relating to hours of operation, patron capacity, adherence to the Plan of Management, adherence to the Acoustic Report and noise mitigation are considered acceptable in ensuring adverse amenity impacts are minimised.

Public Interest

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

S7.11 Contribution

67. The development is not subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015 as it will not result in an increased worker population of a need for additional services.

Relevant Legislation

68. Environmental Planning and Assessment Act 1979.

Conclusion

69. The application seeks consent for alterations and additions to the rooftop of the existing commercial building including new pergola, awning, store room, landscaping and acoustic barriers to allow for communal open space for the users of the building.
70. The applicant submitted a Clause 4.6 variation request to the height development standard under the Sydney LEP 2012. The variation to the height standard is in the public interest and is supported.
71. The proposal, as conditioned, will not have unreasonable impacts on the amenity of the neighbouring properties.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Zeb McInnes, Planner