

Item 4.**Development Application: 271-275 Kent Street, Sydney**

File No.: D/2019/504

Summary**Date of Submission:** 17 May 2019**Applicant:** Mirvac Projects Pty Ltd**Architect/Designer:** Woods Bagot, Aspect Studios**Developer:** Mirvac Projects Pty Ltd**Owner:** Mirvac Capital Pty Ltd and City of Sydney**Cost of Works:** \$6,139,880

Zoning: The site is located in the B8 - Metropolitan Centre Zone under Sydney Local Environmental Plan (SLEP) 2012. The proposal for alterations to commercial tenancies, upgrade works and installation of new furniture and landscaping in Sussex Lane are permissible within the subject zone with development consent.

Proposal Summary: The subject development application seeks consent for alterations and additions to existing ground floor commercial/retail tenancies fronting Sussex Street and Sussex Lane within the commercial building known as 'Westpac Place'. The proposal comprises alterations to shopfronts including replacement of glazing, recladding facades, new balustrades and wind barriers, new covered pergolas and planter boxes adjacent to the privately owned eastern and western laneways, replace paving in Sussex Lane and the privately owned eastern laneway and western laneway.

The proposal also seeks consent to remove 3 planters and trees located on the stair landing in Sussex Lane, and install 4 x circular steel framed planters and 3 doubled sided concrete bench seats in the western portion of Sussex Lane.

**Proposal Summary
(continued):**

The application is referred to the Local Planning Panel for determination as Sussex Lane is Council owned property and the proposal seeks to carry out new works in the public domain.

The SLEP 2012 has a maximum floor space ratio control of 10.12:1 and building height control of 80 metres for the subject site.

The existing building has an approved floor space ratio of 11.6:1 and building height of 98.65 metres which exceeds the development standards in SLEP 2012. The proposal does not seek to alter the floor space ratio or building height of the existing building and will not result in any additional building bulk.

The proposed installation of new fixed planter boxes and fixed concrete benches in the centre of Sussex Lane will occupy a prominent area of the lane, and will impact on the visual and spatial character of the lane. The proposed works are not identified as part of Council's public domain plans, will impact the amenity of the public domain and are not supported.

The development application was notified for a 14 day period between 20 May 2019 and 4 June 2019. The notification of the application resulted in 1 submission being received raising concern the proposed works will disrupt adjacent businesses fronting Sussex Lane.

The development is considered to exhibit design excellence and will contribute to the amenity of the public domain, subject to conditions requiring the deletion of proposed planters, concrete bench seats and associated landscaping.

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

Development Controls:

- (i) Local Government Act 1993
- (ii) Sydney Local Environmental Plan 2012
- (iii) Sydney Development Control Plan 2012
- (iv) Central Sydney Development Contributions Plan 2013

Attachments:

- A. Recommended Conditions of Consent
- B1. Selected Drawings

B2. Landscape Drawings

Recommendation

It is resolved that consent be granted to Development Application No. D/2019/504 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 proposed development is consistent with the objectives and provisions of the B8 - Metropolitan Centre Zone in Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012, as set out in the report to the Local Planning Panel.
- (B) The proposal exhibits design excellence as required under Clause 6.21 of Sydney Development Control Plan 2012 as the alterations are consistent with the appearance of the existing building and upgrade works to the public domain will improve amenity, subject to conditions.
- (C) The proposed development will not result in any adverse impacts on the significance of adjacent heritage items, will not have any adverse amenity impacts on surrounding properties and is in the public interest, subject to conditions.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 9 July 2019.
2. The site is irregular in shape, with an area of approximately 9,120sqm. The site is bounded by Napoleon Street to the north, Kent Street to the east, Sussex Lane to the south and Sussex Street to the west. The Western Distributor occupies the air space above a portion of the north-western section of the site.
3. The site is occupied by a commercial development comprising of a tower, a podium and an urban park. Construction of the tower was completed in 2006. The site is currently occupied by Westpac Bank.
4. Along the southern boundary of the site is Sussex Lane, a Council owned pedestrian thoroughfare between Kent Street and Sussex Street. Sussex Lane contains outdoor seating along the southern boundary associated with food and drink premises in the terraces fronting Erskine Street.
5. Sussex Lane (also known as 295A Kent Street and identified as Lot 3 DP 1074069) is not classified as a road under the Roads Act 1993. In this regard, Sussex Lane is considered to be community land under the Local Government Act 1993.
6. Running off Sussex Lane are two privately owned laneways - described in this report as the 'eastern' and 'western' lanes. These laneways generally have a north-south alignment and provide a pedestrian connection between Sussex Lane and the tower lobby. Some retail tenancies front the private laneways.
7. Surrounding lane uses are predominantly commercial with Barangaroo to the west and commercial office towers to the east.
8. The site area occupied by the contemporary commercial tower and Sussex Lane is not a heritage item, however a heritage item of local and State significance is located at the north-western corner of the site (at No. 20-26 Sussex Street and known as the 'Big House Hotel/Napoleon Hotel/Moreton's Hotel') under Sydney LEP 2012 (Item No. I1953) and the State Heritage Register (SHR No. 00513).
9. The area subject of this application is currently occupied by commercial tenancies, outdoor seating and a pedestrian access way. The northern portion of the site is partially under construction.
10. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area.



Figure 2: Site viewed from Kent Street.



Figure 3: Sussex Lane viewed from Kent Street.



Figure 4: View of site and Western Distributor from Sussex Street.



Figure 5: Existing paving in Sussex Lane.

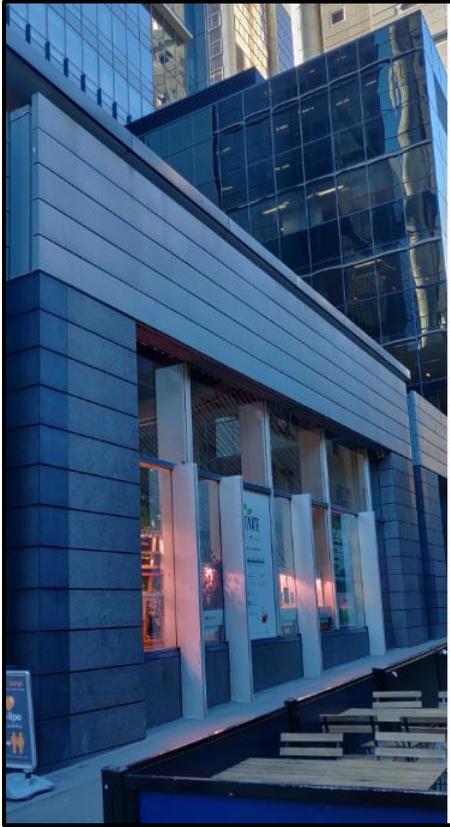


Figure 6: Retail Unit 10 from Sussex Lane.



Figure 7: View of eastern private laneway.



Figure 8: Retail Unit 10 viewed from Sussex Lane and entrance to western private laneway.



Figure 9: Retail Unit 12 from Sussex Lane and entrance to western private laneway.



Figure 10: View of Retail Unit 14 and Sussex Lane from Sussex Street.



Figure 11: Proposed glass wind barriers and pergola to be located behind cladding (in dashed line).

Proposal

11. The application seeks consent for alterations to the commercial tenancies on the lower levels of the building and upgrade of public domain in Sussex Lane, consisting of:
 - (a) new shopfronts, covered pergolas and planters to retail tenancies fronting the eastern private laneway, western private laneway and Sussex Lane;
 - (b) removal and replacement of paving and hand rails in Sussex Lane, the eastern private laneway and western private laneway;
 - (c) removal of 3 x planters and trees on the stair landings in Sussex Lane;
 - (d) removal and replacement of facade cladding and glazing on the southern elevation fronting Sussex Lane and western elevation fronting Sussex Street;
 - (e) replace glazing on northern elevation of Retail R12 and erection of a new covered pergola;
 - (f) new facade cladding and glazed wind barriers fronting Sussex Street;
 - (g) new mechanical louvres above new shopfront window on Sussex Street; and
 - (h) 4 x circular planters and associated landscaping, and 3 x double sided concrete benches in the western portion of Sussex Lane
12. On 12 August 2019, the applicant amended the application by withdrawing an earlier request to install catenary light installations above Sussex Lane.
13. Plans of the proposed development are provided below.

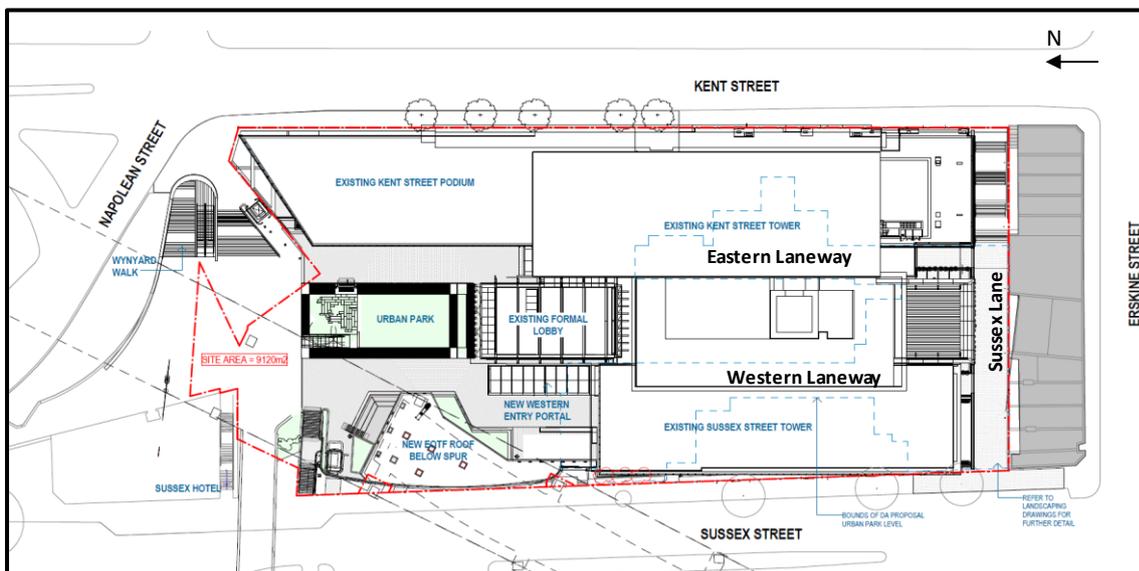


Figure 12: Site plan.

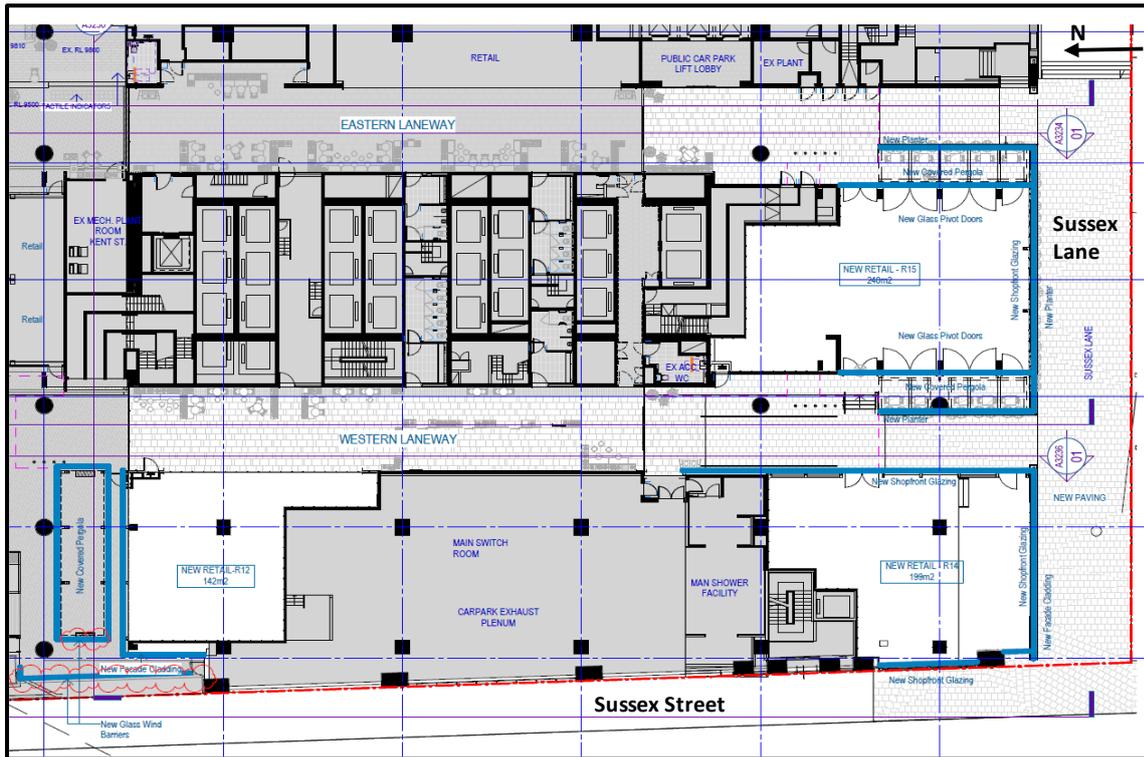


Figure 15: Proposed works - Urban Park Level (floor level above Sussex Street).

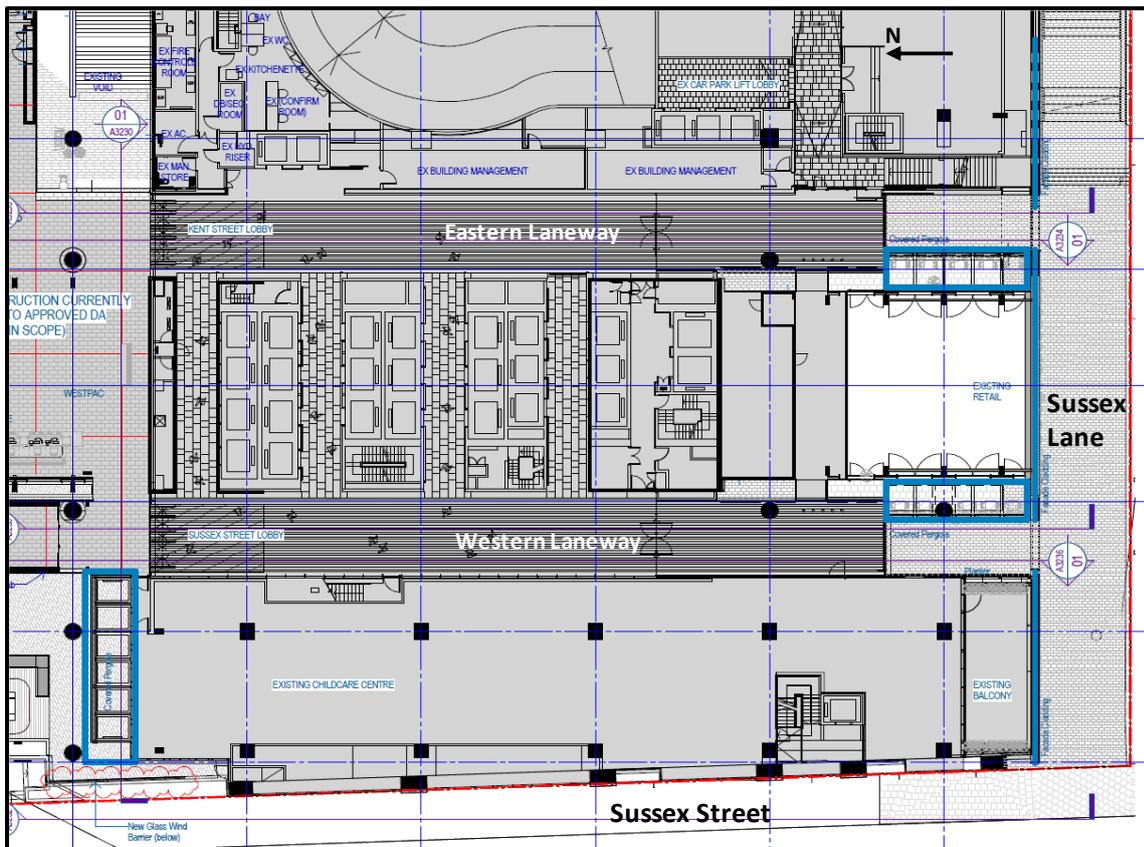


Figure 16: Proposed works - Kent Street Level.

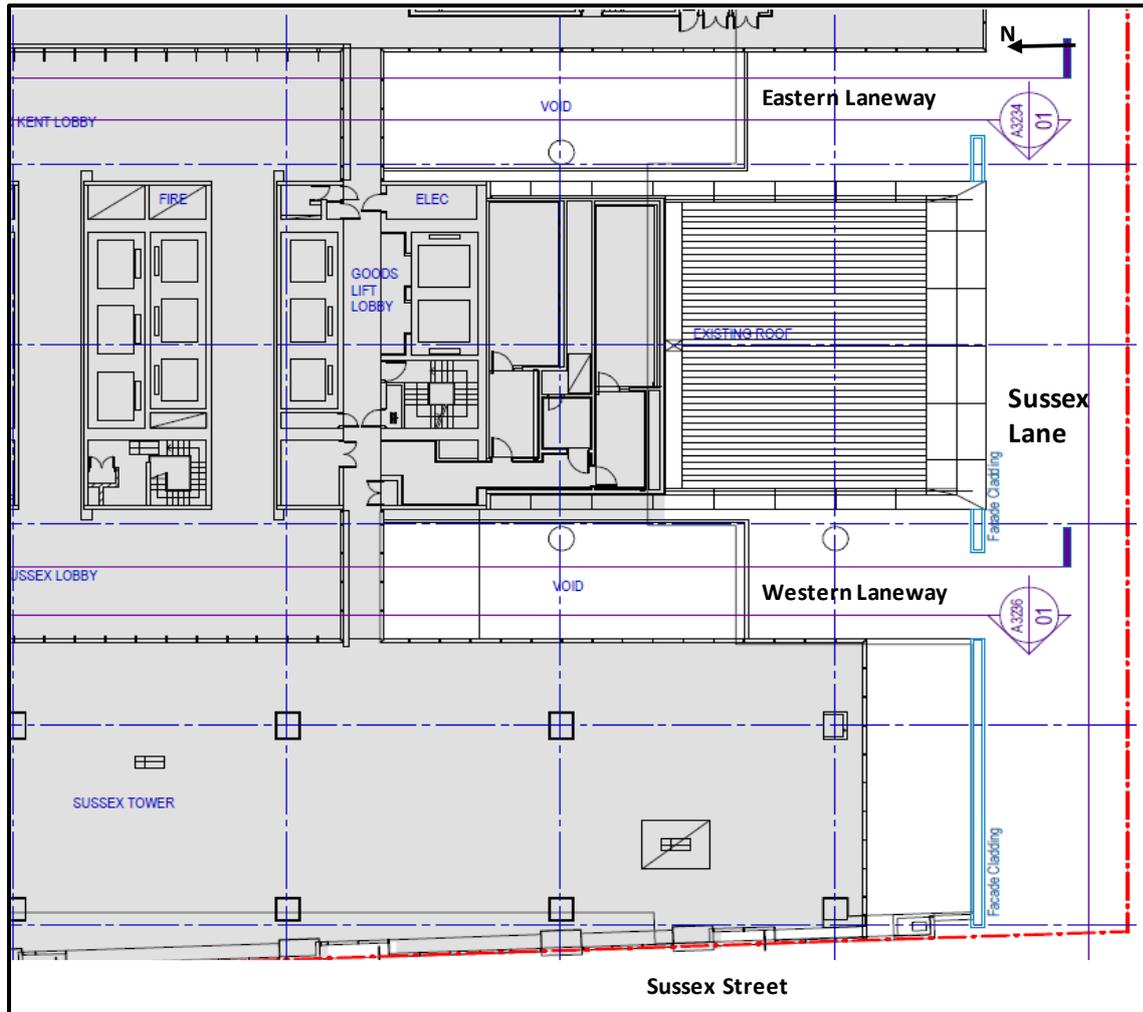


Figure 17: Kent Street roof plan.

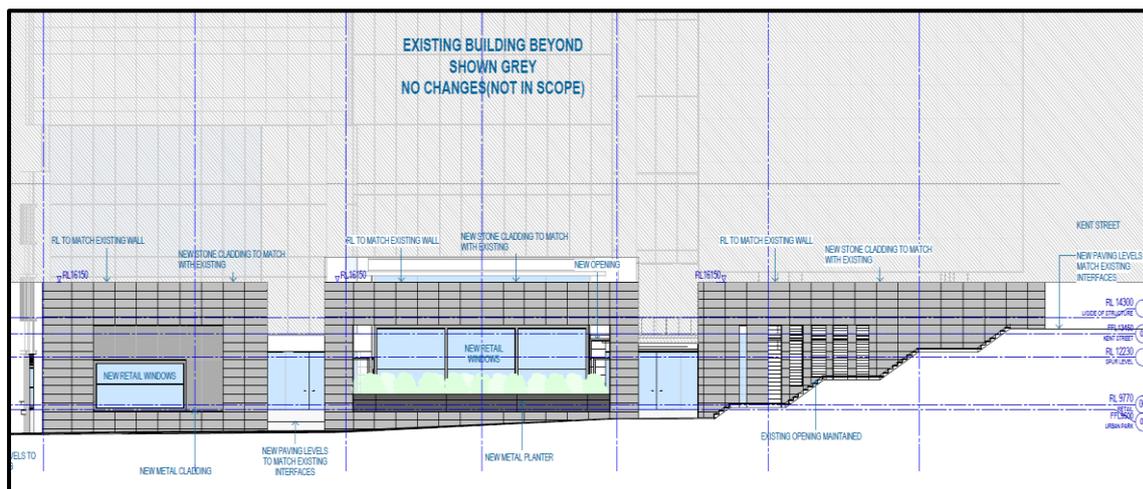


Figure 18: Southern elevation (Sussex Lane).

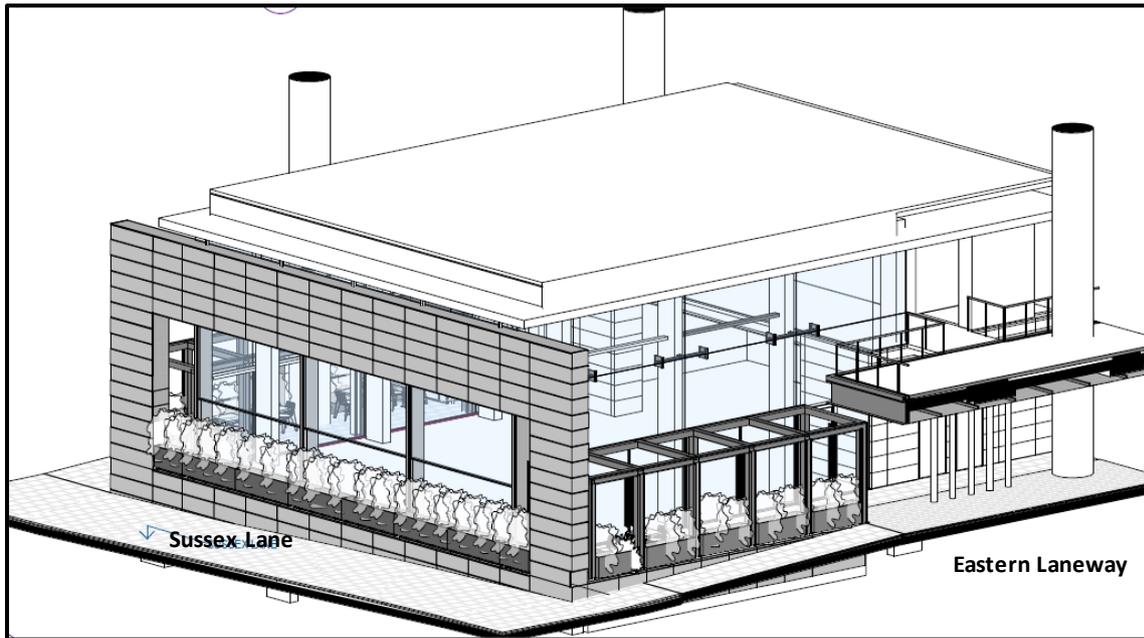


Figure 19: Perspective of eastern and southern facades of proposed Retail R15 viewed from Sussex Lane.

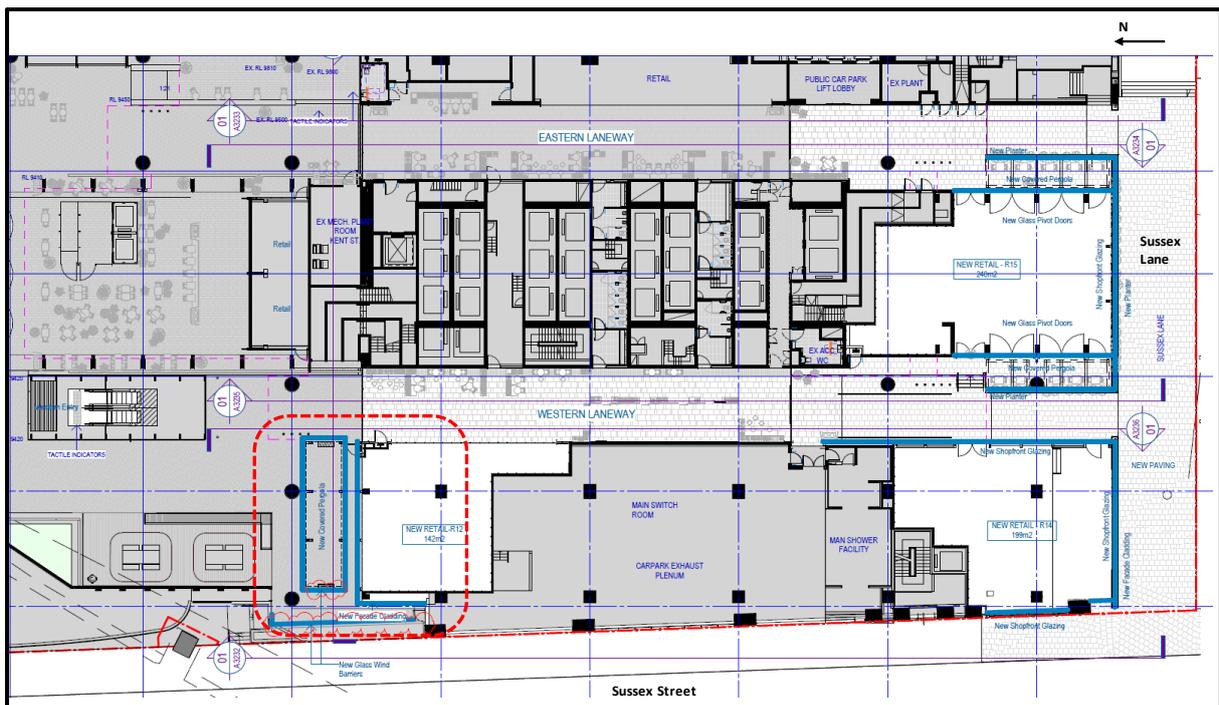


Figure 20: Location plan for proposed works (shown in red dashed line) on northern elevation (Urban Park level, floor level above Sussex Street).

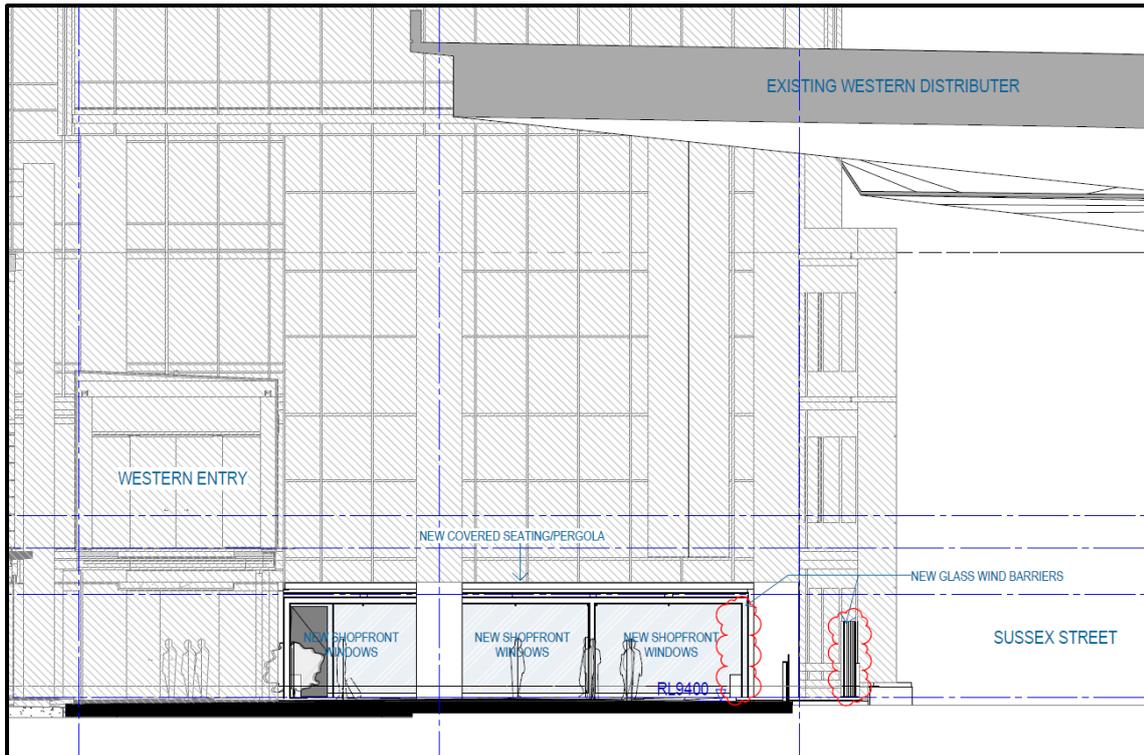


Figure 21: Northern elevation (Urban Park level, floor level above Sussex Street).

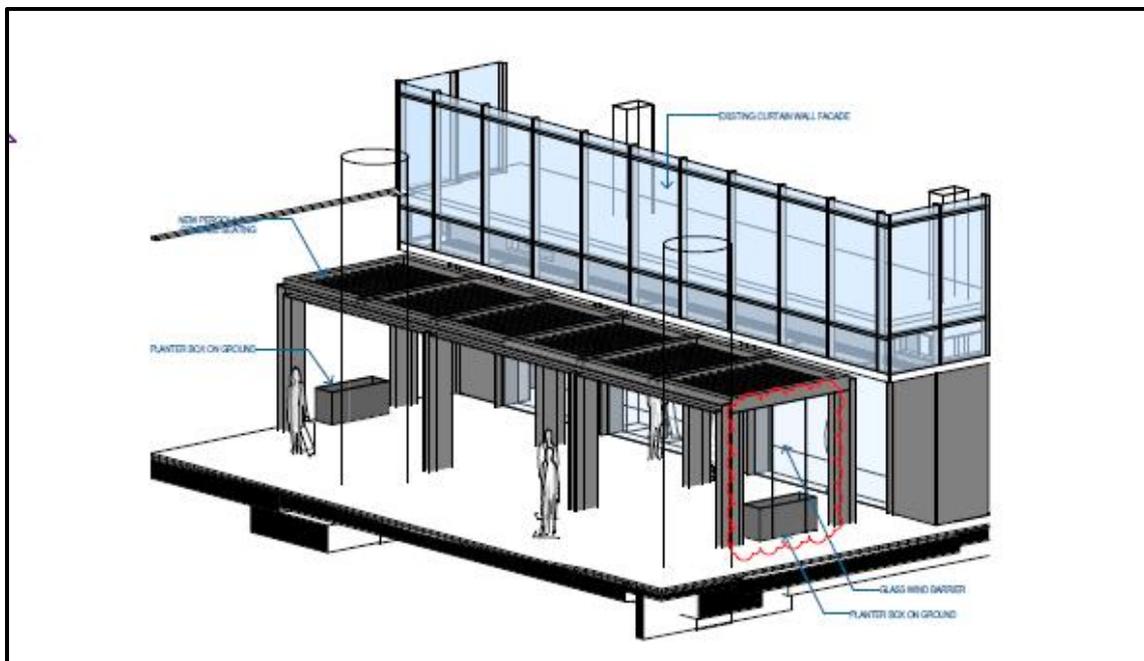


Figure 22: Pergola façade details adjacent to Retail R12 (Urban Park level).

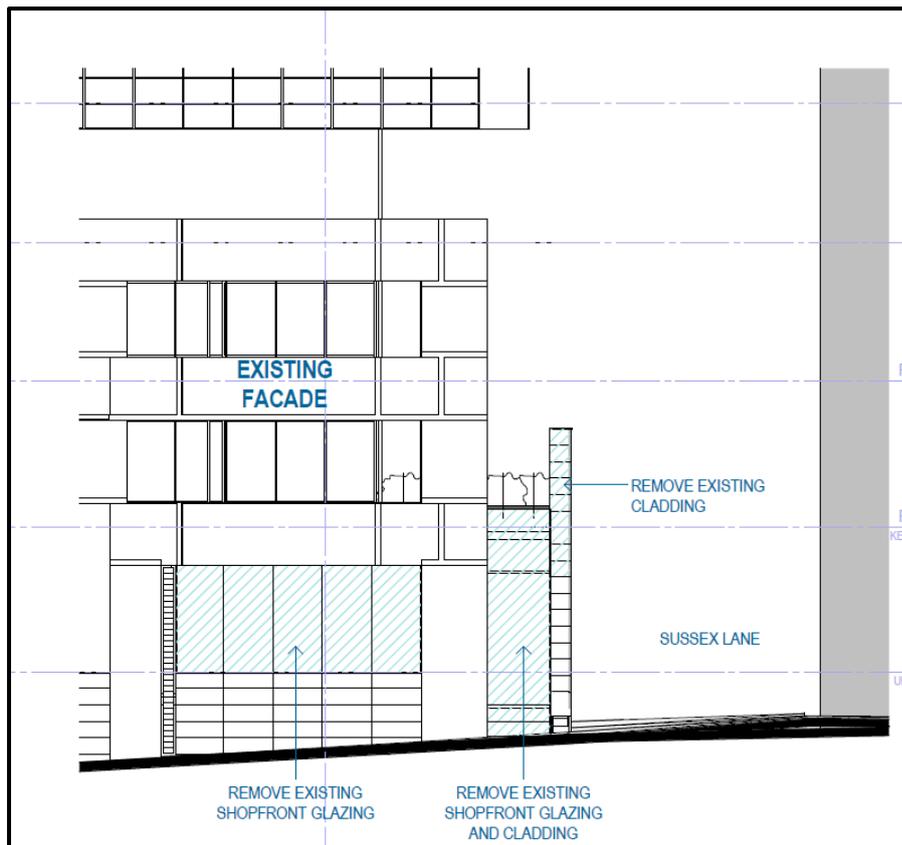


Figure 23: Western elevation at the intersection of Sussex Street and Sussex Lane.

History Relevant to the Development Application

14. On 29 November 2001, a development application (DA No. D/2001/541) for a concept plan comprising two towers and an infill building envelope with retail and public uses at ground level, commercial uses in the podium and towers, basement parking and open space was approved by the Central Sydney Planning Committee (CSPC).
15. D/2001/541 was subsequently modified by Amendment Nos. A and B to relocate the architectural roof feature zone and submission of additional information with a Stage 2 development application. Amendment Nos. A and B do not have any direct relevant to the application the subject of this report.
16. On 14 January 2003, the CSPC granted consent for a development application (DA No. D/2001/886) for a Stage 2 detailed design including demolition of existing buildings and construction of a new commercial building. The proposal also included 650 short stay public car parking spaces, 241 tenant spaces, a retail podium, construction of a new infill building fronting Erskine Street and conservation of Erskine Street terraces.
17. D/2001/886 was subsequently modified by Amendment Nos. A to J, inclusive, relating to various internal and external design modifications and extension of construction hours. The approved modifications do not relate to the area subject of this application and do not have any direct relevant to the application subject of this report.

18. The eastern and western laneways are wholly contained within the privately owned land comprising the commercial tower and podium. The eastern and western laneways are not identified as existing or proposed lanes under Section 3.1.1.3 of the Sydney DCP however, a Right of Way providing access across the lot containing the eastern and western laneways, in favour of Council, is registered to DP 1074069. The proposed installation of new covered pergolas and planters fronting the eastern and western laneways will not impede on pedestrian access and is consistent with the intent and purpose of the Right of Way registered on the Title.

Economic/Social/Environmental Impacts

19. 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.

Local Government Act 1993

20. Sussex Lane is legally identified as Lot 3 in DP 1074069 and is land owned by the City of Sydney.
21. In accordance with Part 2, Division 1 of the Local Government Act 1993, public land are classified either as community land or operational land. Council records indicate that no resolution of Council was made to classify Sussex Lane as operational land after its acquisition by the City. As such, Sussex Lane is taken to be community land under the provisions of the Local Government Act 1993.
22. The existing use of Sussex Lane as a pedestrian access way and partial use for outdoor dining will not be altered by the subject application. The proposal is consistent with permissible uses for community lands under the Local Government Act 1993.

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

23. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
24. 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.
25. 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 within the deemed SEPP.

Sydney Local Environmental Plan 2012

26. The site is located within the B8 Metropolitan Centre Zone. The proposed development is associated with the approved commercial use and is permissible in the subject zone with development consent.
27. 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	Yes	<p>A maximum height of 80m is permitted.</p> <p>The existing building height is 98.65m which exceeds the development standard.</p> <p>The proposal is contained within the lower levels of the existing building and has no impact on building height.</p>
4.4 Floor Space Ratio	Yes	<p>A base FSR of 8:1 is permitted. Additional FSR in accordance with Clauses 4.4, 6.4 and 6.6 of the LEP permits a maximum floor space of 10.12:1.</p> <p>The existing building has a FSR of 11.6:1 which exceeds the development standard.</p> <p>The proposal does not seek to alter existing FSR for the site.</p>
5.10 Heritage conservation	Yes	<p>The site contains a State (SHR No. 00513) and local heritage item (I1953) also known the 'Big House Hotel/Napoleon Hotel/Moreton's Hotel'.</p> <p>The portion of the site subject of this application is not part of the heritage item and has no impact on the heritage item.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	<p>The proposed development is consistent with the materiality and architectural character of the existing building and will contribute to the amenity of commercial tenancies.</p> <p>The proposed upgrade of paving in Sussex Lane will contribute to the amenity of the public domain. However, the proposed new planters, landscaping and concrete bench seats will impact on pedestrian access and the character of Sussex Lane and is not supported.</p> <p>The proposal, subject to conditions to delete the new planters, landscaping and concrete bench seats in Sussex Lane, exhibits design excellence and is supported.</p>

Sydney Development Control Plan 2012

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

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements	Partial compliance	<p>The proposal to replace existing paving in Sussex Lane including the removal of 3 planters on the stairs will improve the amenity for pedestrians and is supported.</p> <p>The proposal to install 4 circular planters, associated landscaping and 3 double sided concrete bench seats in Sussex Lane will impact pedestrian access and the spatial character of Sussex Lane.</p> <p>Concern is raised that the planters, bench seats and tree species will reduce sightlines, lighting and increase clutter in the lane which will have a negative impact on pedestrian amenity.</p> <p>See discussion in the heading Issues.</p>

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Partial compliance	<p>The proposed alterations to the commercial tenancies fronting Sussex Lane and Sussex Street will enhance activation of the public domain.</p> <p>The proposed upgrade of paving in Sussex Lane is consistent with the City's schedule of materials and finishes for public domain in the surrounding area and is supported.</p> <p>It is noted that no changes are proposed to existing finished floor levels.</p> <p>See discussion in the heading Issues.</p>
3.9 Heritage	Yes	<p>A heritage item of State and local significance is located at the north-western corner of the site. The heritage item is also known as the 'Big House Hotel/Napoleon Hotel/Moreton's Hotel' under Sydney LEP 2012 (Item No. I1953) and the State Heritage Register (SHR No. 00513).</p> <p>The scope of works is contained to the commercial tower and Sussex Lane and does not have any impact on the heritage item.</p>
3.12 Accessible Design	Yes	<p>The proposal does not seek to change existing finished floor levels in Sussex Lane, the eastern laneway or western laneway. The finished floor level of the ground floor tenancies will be retained.</p> <p>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.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance to Sussex Street and Sussex Lane, and is generally designed in accordance with the CPTED principles.</p>

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.

Issues

Landscaping in Sussex Lane

29. The proposal seeks removal of three existing planters with trees on the stair landings in Sussex Lane and installation of 4 circular, steel planters in Sussex Lane, between the eastern private laneway and Sussex Street (refer to Figure 24).
30. The proposed new planters have a diameter of 2 metres and will be fixed into the paving. The planters will each contain 1 x 200L *Elaeocarpus eumundii* (also known as Smooth Leaved Quandong) and a mix of ground cover plants. The proposed tree species is not considered suitable for the low light environment in Sussex Lane and is unlikely to survive or thrive. Concern is also raised that trees in the centre of Sussex Lane will likely reduce natural lighting for pedestrians and will reduce the amenity within the public domain.
31. Council's Public Domain Unit raised concerns that the planters are excessive in size and will impact on pedestrian access. Notwithstanding a clearance of approximately 2.17 metres between the southern boundary of the Westpac Place building and the proposed planters, fixed planters in Sussex Lane are not part of Council's public domain works plans and will reduce circulation space for pedestrians on a permanent basis, and is not supported.
32. A condition requiring the deletion of the 4 circular planters in Sussex Lane and associated planting has been included in the recommendation in Attachment A.

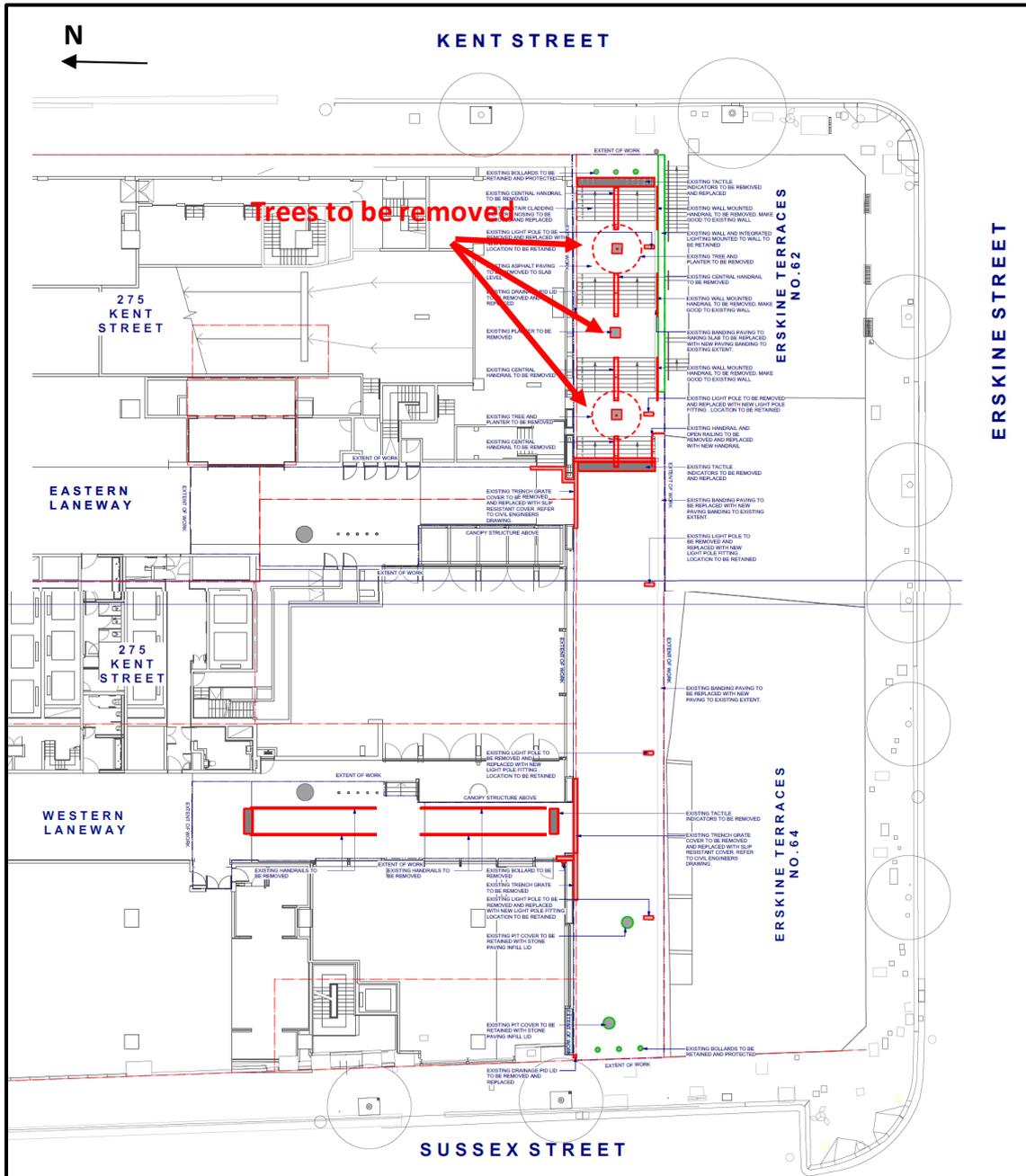


Figure 24: Proposed removal of existing trees in Sussex Lane.

Seating in Sussex Lane

- 33. Sussex Lane measures approximately 6.34 metres wide and currently contains stairs providing access from Kent Street, 3 planters, light poles and outdoor removable seating for tenancies within the Erskine Street terraces.
- 34. The outdoor furniture and associated structures occupying the southern side of Sussex Lane provides activation, however in accordance with Council's outdoor dining policy, the outdoor furniture must be removed from the public domain at the cease of operation, daily.

35. The proposal seeks consent to install 3 x double sided concrete bench seats measuring 87cm in width and between 2.5m and 4m in length in Sussex Lane, between the eastern private laneway and Sussex Street. The seating is proposed to be fixed to the centre of Sussex Lane and partially used as seating for tenancies within Erskine Street terraces.

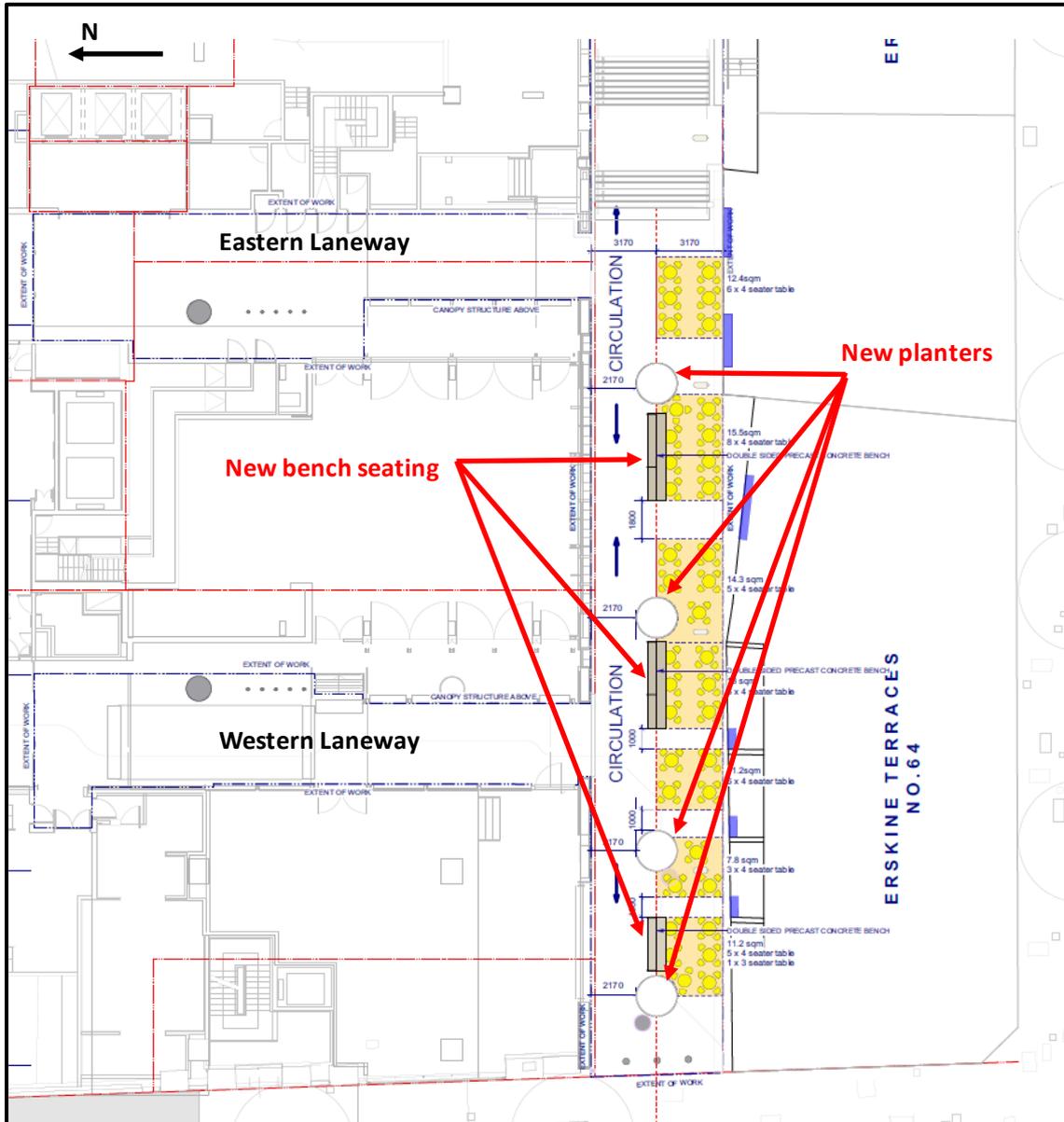


Figure 25: Proposed planters and seating adjacent to outdoor seating areas in Sussex Lane - not supported.

36. The proposal, as shown in Figure 25 above, provides outdoor seating areas along the southern side of Sussex Lane at a width of 3.17m as measured from the northern boundary of Erskine Street terraces to the centre line of Sussex Lane. The proposal for fixed bench seating immediately adjacent to the outdoor seating assumes that bench seating will form part of the outdoor seating area for tenancies.

37. Outdoor seating is subject to development consent, outdoor dining applications and lease agreements with Council. Currently, the approved outdoor seating areas on Sussex Lane do not occupy the width of 3.17m as shown on the proposed plans and Council does not have any strategic or public domain plan in place that supports the proposed configuration of outdoor furniture and landscaping in Sussex Lane. In this regard, Council's Public Domain Unit has raised concerns that the fixed seating in the public domain does not contribute to the character of the lane and is not supported.
38. A condition requiring the deletion of the 3 double sided concrete benches in Sussex Lane has been included in the recommendation in Attachment A.

Access

39. Access for disabled persons is currently provided throughout the site, within the buildings and various pedestrian access paths.
40. The proposal does not seek to alter the existing access along Sussex Lane or the ground level of the building along the eastern and western laneways.
41. It is recommended that disabled access be provided in accordance with the provisions of the DCP. An appropriate condition is recommended.

Other Impacts of the Development

42. The proposed development is capable of complying with the BCA.
43. 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

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

Internal Referrals

45. The application was discussed with the Heritage and Urban Design Specialists; Landscape; Building Services Unit; Public Domain; Surveyors; Transport and Access.
46. Council's Heritage and Urban Design Specialists; Landscape; Building Services Unit; Surveyors; Transport and Access advised that the proposal is acceptable subject to the recommended conditions.
47. Council's Public Domain Unit reviewed the proposal and raised concerns relating to the installation of new planters and concrete bench seating along Sussex Lane. See discussion under the Issues Section.
48. The Public Domain Unit has advised that the proposed upgrade of paving along Sussex Lane is supported subject to recommended conditions.

External Referrals

Notification, Advertising and Delegation

49. 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 20 May 2019 and 4 June 2019. As a result of this notification a total of 162 properties were notified and there was 1 submission received. The submission raised the following concern:

- (a) Construction works will disrupt trade to tenancies with outdoor seating fronting Sussex Lane. Businesses should be compensated for the disruption.

Response - In accordance with the City of Sydney Construction Hours Noise Policy 1992, construction works are permitted to take place within the CBD area 7.00am and 7.00pm on Mondays to Fridays, inclusive, and 7.00am and 5.00pm on Saturdays.

Compensation to surrounding properties during construction works is not a matter for consideration as part of the assessment of this application and is a private matter to be addressed by the applicant.

A condition requiring the contractors to liaise with affected property owners and occupiers prior to and during construction works in Sussex Lane has been included in the recommendation.

Transport for NSW

50. The proposal was referred to Transport for NSW for 21 days as the subject site is in proximity to the CBD and South East light rail corridor and construction zone.
51. On 7 June 2019, Transport for NSW advised that no objection is raised to the proposal subject conditions requiring preparation of a Construction Pedestrian and Traffic Management Plan in consultation with the Sydney Coordination Office within Transport for NSW. A suitable condition has been included in the recommendation in **Attachment A**.

Roads and Maritime Service

52. The proposal was referred to the Roads and Maritime Service (RMS) for concurrence in accordance with Clause 100 of the State Environmental Planning Policy (Infrastructure) 2007.
53. No response has been received from RMS within the mandated 21 day period. As such, it is assumed that RMS raises no objection to the proposal and the consent authority may determine the development application.

Ausgrid

54. Ausgrid was advised of the proposed development as part of the notification process. On 19 June 2019, Ausgrid advised that no objection was raised to the proposal.

Sydney Water

55. The proposal was referred to Sydney Water in accordance with Section 78 of the Sydney Water Act to assess impact on demand, asset, operation or damage.
56. No response has been received from Sydney water. As such, it is assumed that Sydney Water raises no objection to the proposal.

Public Interest

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

S61 Contribution

58. The cost of the development is in excess of \$200,000. The development is therefore subject to a levy under the Central Sydney Development Contributions Plan 2013. A condition relating to this levy has been included in the recommended conditions of consent. The levy is to be paid prior to the issue of a Construction Certificate.

Relevant Legislation

59. The Environmental Planning and Assessment Act 1979.
60. Local Government Act 1993.

Conclusion

61. The subject application seeks consent for alterations and additions to commercial tenancies on the ground floor level of the existing commercial building comprising new shopfronts, pergolas and landscape planters to outdoor seating areas fronting the eastern and western laneways. The proposal also seeks consent to upgrade paving and installation of new planters and bench seats in Sussex Lane.
62. The proposed development generally complies with the objectives and provisions in the Sydney LEP 2012 and Sydney DCP 2012 for the site. In particular, there is no change proposed to existing floor space ratio or building height for the site.
63. The proposed alterations and additions to the ground floor commercial tenancies are generally consistent with the architectural character of the existing building, will improve the interface between the private and public domain and exhibits design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.
64. The proposed upgrade of Sussex Lane including replacement of existing paving with new paving is consistent with materials and finishes in the surrounding public domain. The proposal to install new fixed planters and bench seats in Sussex Lane will have an adverse impact on pedestrian amenity and the character of the lane, and is not considered to be in the public interest.

65. The development is recommended to be approved, subject to the recommended conditions included in Attachment A.

GRAHAM JAHN AM

Director City Planning, Development and Transport

Peggy Wong, Specialist Planner