

Item 7.**Development Application: 901/ 13-15 Bayswater Road Potts Point - D/2019/646****File No.:** D/2019/646**Summary**

Date of Submission: 20 June 2019 with amended plans and details received 11 September 2019

Applicant: Space Landscape Designs Pty Ltd

Architect/Designer: Space Landscape Design Pty Ltd

Owner: Michelle M Mulligan, Phillip A J Beniac, and Strata Plan No. 55899

Cost of Works: \$147,450

Zoning: B2 Local Centre zone. The proposal comprises alterations to an existing residential flat building which is permissible with consent.

Proposal Summary: Alterations and additions to the existing rooftop terrace of Unit 901 of the Hampton building. The works include the erection of a 3.4m high pergola; a new 1.2m wide x 3m deep structure on the south-western corner of the terrace to accommodate plant with metal louvre sliding doors; landscaping, including the provision of planters and seating areas; new 300mm high timber decking to the northern side of the terrace; replacement of existing steel louvre door to the existing plant room with a fibre cement wall and conversion of the existing plant room to a bathroom.

The application is reported to the Local Planning Panel as the proposal exceeds the height and floor space ratio development standards of the Sydney Local Environmental Plan (LEP) 2012 by more than 10%.

The proposal exceeds the 27m building height development standard pursuant to Clause 4.3 of the Sydney Local Environmental Plan (LEP) 2012 by 5m or 18.5%.

The proposal exceeds the 5:1 floor space ratio (FSR) standard pursuant to Clause 4.4 of the Sydney LEP 2012. As the existing building currently exceeds the FSR, the proposed addition of 7sqm of floor space results in an overall exceedance of 1325.5sqm or 15.6%.

Written requests have been provided seeking variations to the height development standard and the floor space ratio development standard in accordance with Clause 4.6 of the Sydney LEP 2012. The requests to vary the height and floor space ratio development standards are supported.

The application was notified for a period of 14 days between 21 June 2019 and 6 July 2019. No submissions were received.

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 (DCP) 2012 (in force on 14 December 2012, as amended)

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Height Variation Request
- D. Clause 4.6 Floor Space Ratio Variation Request

Recommendation

It is resolved that:

- (A) the written requests seeking to vary the height development standard and floor space ratio development standard be supported in this instance, pursuant to Clause 4.6 of Sydney Local Environmental Plan 2012; and
- (B) consent be granted to Development Application No. D/2019/646 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 the heritage conservation area.
- (C) The proposed development will not adversely impact neighbouring residential amenity and will improve the residential amenity of the subject unit.
- (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 proposed development is considered to achieve design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.
- (G) Subject to conditions, the proposal generally satisfies the relevant strategy, objectives and provisions of the Sydney LEP 2012 and the Sydney DCP 2012.

- (H) The requested variation to the Clause 4.3 Sydney LEP 2012 'Height of buildings' Standard is upheld. The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6(3) of the Sydney LEP 2012, that compliance with the 27m height development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012. Based upon the material available, the consent authority is satisfied that the proposal is in the public interest because it is consistent with the objectives of the B2- Local Centre zone and the Height development standard.
- (I) The requested variation to the Clause 4.4 Sydney LEP 2012 'Floor space ratio' Standard is upheld. The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6(3) of the Sydney LEP 2012, that compliance with the 5:1 floor space development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.4 of the Sydney LEP 2012. Based upon the material available, the consent authority is satisfied that the proposal is in the public interest because it is consistent with the objectives of the B2- Local Centre zone and the Floor Space Ratio development standard.

Background

The Site and Surrounding Development

1. Site visits were carried out by Council staff on 1 July 2019 and 2 September 2019.
2. The site is irregular in shape, with an area of approximately 1,696sqm. It has a primary street frontage to Bayswater Road to the north and secondary frontages to Pennys Lane to the west and Goderich Lane to the south. The site is located close to the intersection of Bayswater Road and Darlinghurst Road. A nine storey residential flat building with ground level retail is located within the site.
3. The subject development application relates to Unit 901, which is located on Level 9 of the building and benefits from access to a private rooftop terrace, located in the north-eastern corner of the building. It is one of four rooftop terraces on the building. Surrounding land uses are residential and commercial.
4. The site is not a heritage item but is a contributory building within the Potts Point Heritage Conservation Area (C51).
5. Photos of the site and surrounds are provided below:

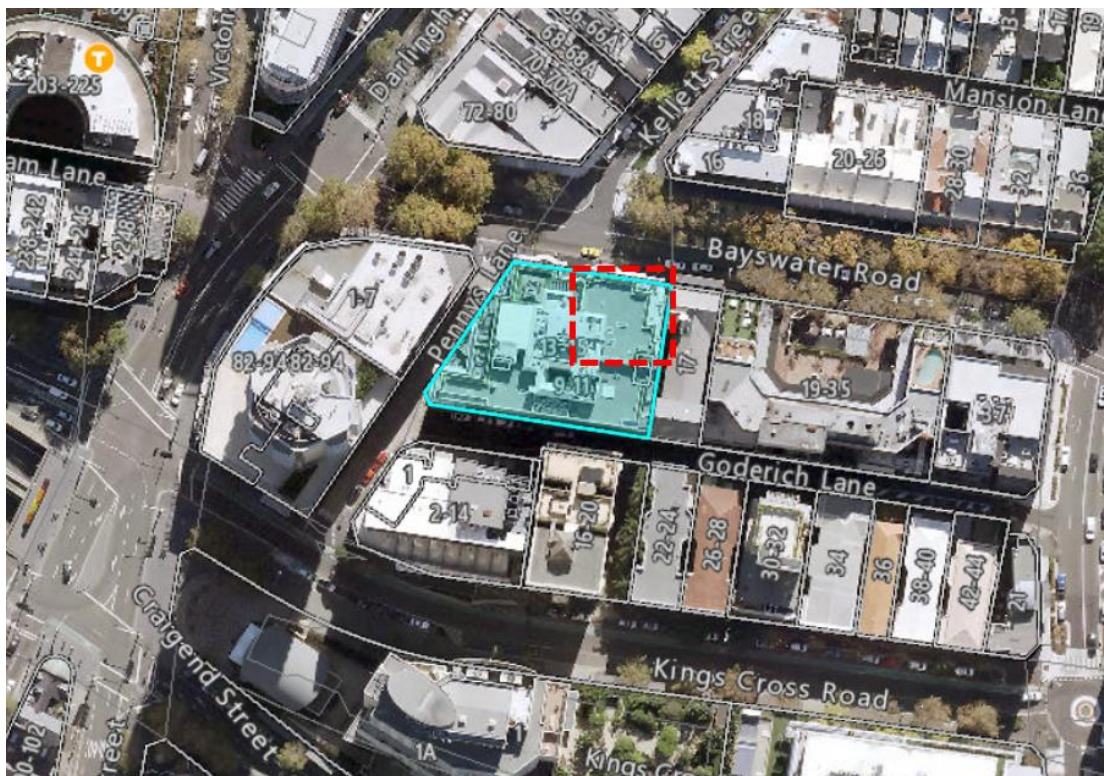


Figure 1: Aerial image of subject site and surrounding area. The location of the subject rooftop terrace is indicated in red.



Figure 2: View of the subject site from Bayswater Road, with roof terrace indicated by the arrows.



Figure 3: Location of subject terrace as viewed from Bayswater Road.



Figure 4: View to the north-east across the subject roof terrace.



Figure 5: View to the east across the subject roof terrace.



Figure 6: Looking to the south-east across the subject roof terrace.

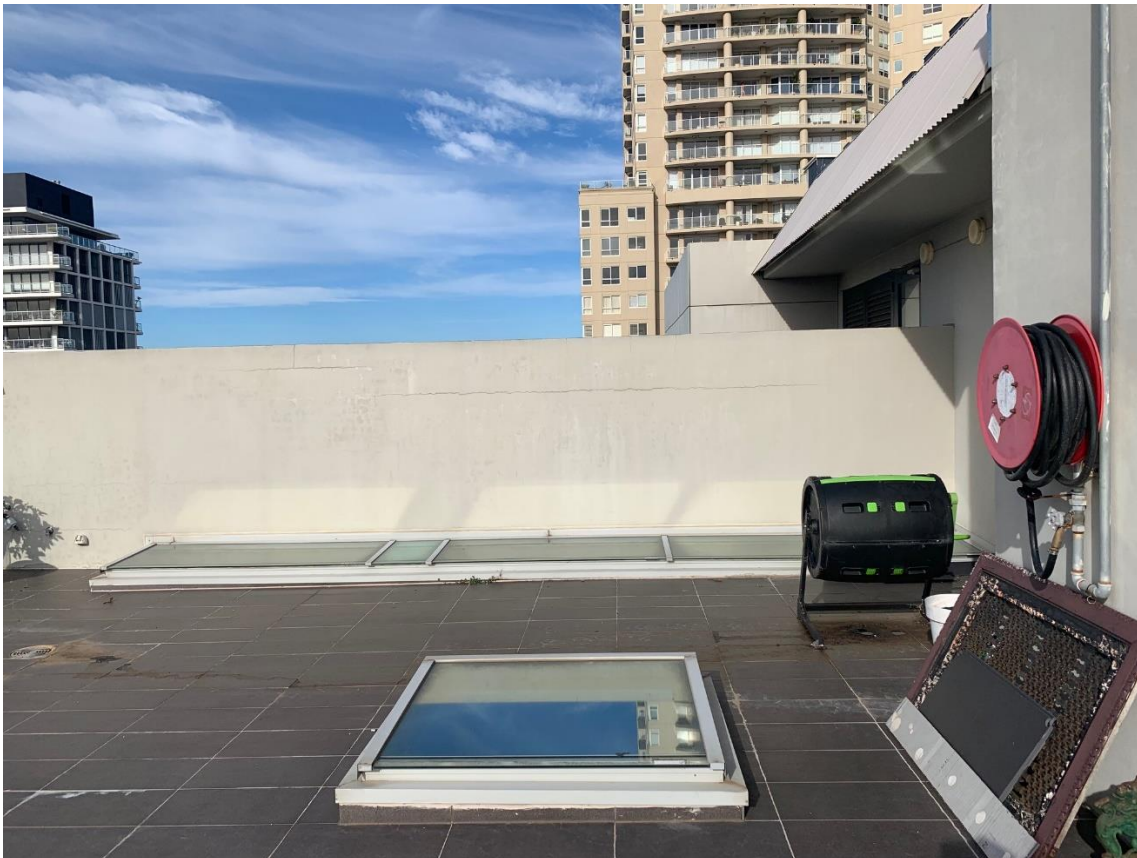


Figure 7: Looking to the south across the existing roof terrace.



Figure 8: Looking to the south-west across the roof terrace towards the existing plant room and stairwell.

Proposal

6. The application seeks consent for alterations to the existing rooftop terrace associated with Unit 901. The proposed works include:
 - (a) The erection of a 3.4 metre high timber and metal pergola with seating underneath;
 - (b) The erection of a 3 metre wide by 1.2 metre deep structure with metal louvre sliding doors on the south-western corner of the terrace to accommodate plant (air conditioning and hot water system associated with the subject unit);
 - (c) Removal of two existing skylights on the terrace (positioned over a hallway and bathroom within Unit 901) and installation of new pedestal pavers across the whole terrace area;
 - (d) Landscaping, including the provision of planters, BBQ and seating areas;
 - (e) Raised timber decking (300mm high) to the northern boundary of the terrace;
 - (f) Replacement of the steel louvre doors to the existing plant room with fibre cement walls;
 - (g) New bathroom within the existing plant room area.
7. During the assessment of the application the proposed pergola was reduced in size, proposed storage rooms were removed and a previously proposed lift was removed from the plans.

8. Plans of the proposed development are provided below.

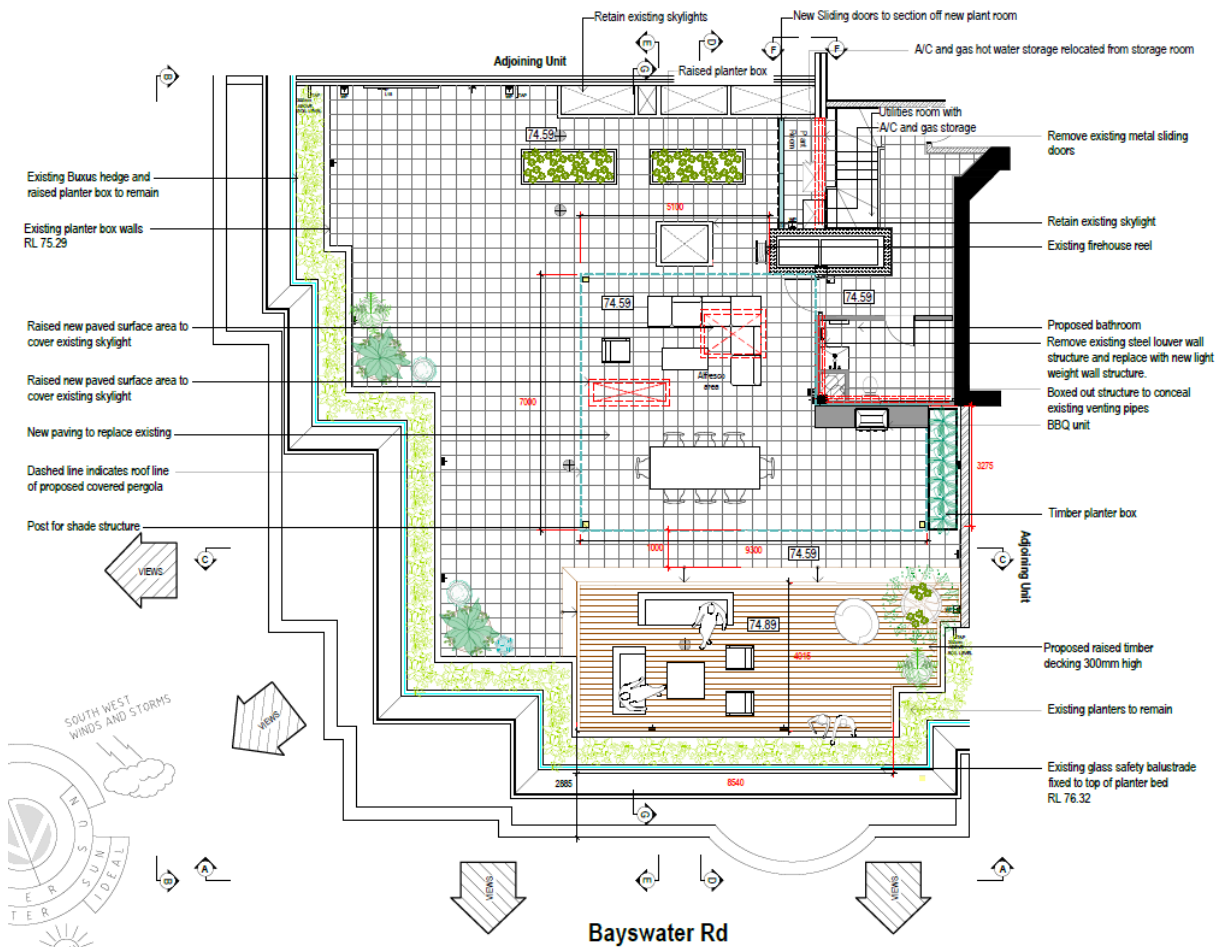


Figure 9: Proposed floor plan of the roof terrace.

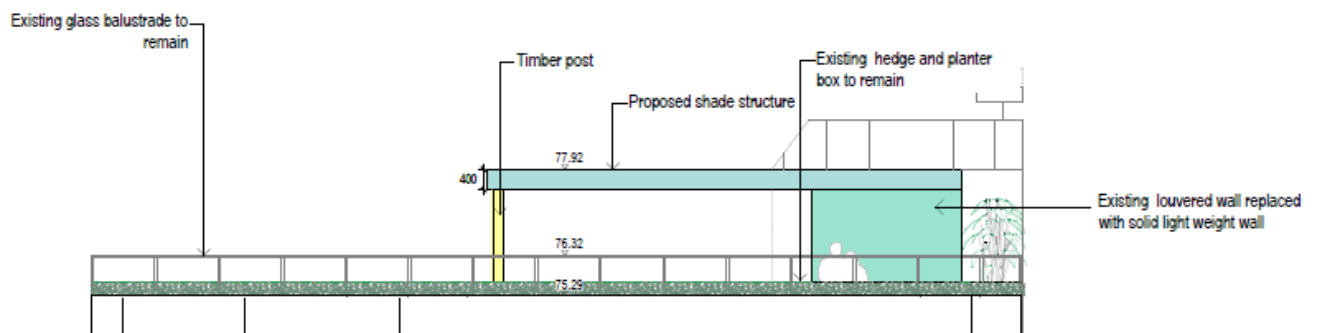


Figure 10: Elevation AA - Northern elevation of pergola and new wall to bathroom.

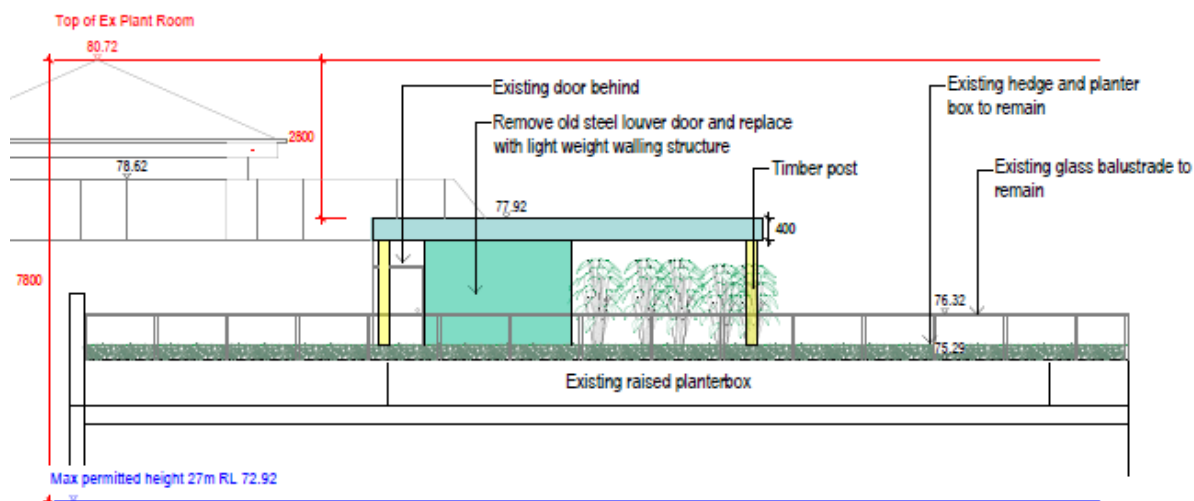


Figure 11: Eastern elevation (BB) of proposed pergola structure and new wall to the bathroom.

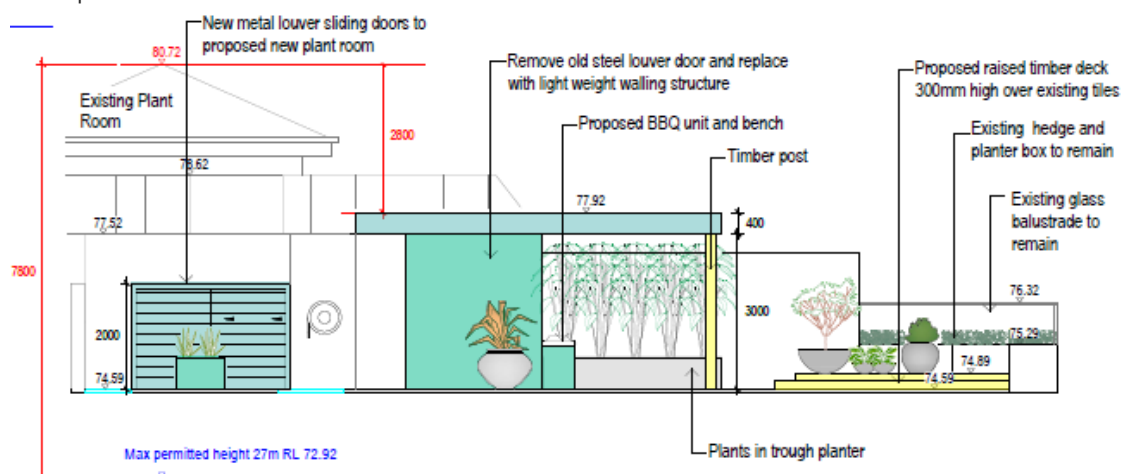


Figure 12: Section DD - Proposed new plant room, pergola structure, new wall to bathroom and new raised decking.

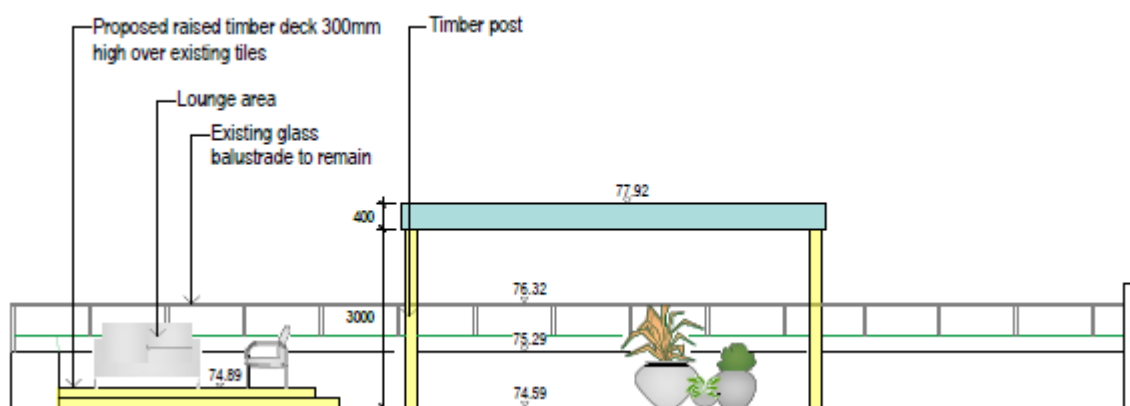


Figure 13: Section EE - Proposed raised decking and pergola looking to the west.

History Relevant to the Development Application

9. There are a number of development applications for the subject site. The following application history is relevant to the subject application:
 - (a) D/2018/466 - On 22 June 2018 approval was granted for alterations and additions to the rooftop terrace associated with Unit 903 (north-west corner of the building) including new covered pergola, new raised timber deck and new glazed doors and louvres to replace the existing aluminium louvres to the plant room.
 - (b) D/2018/1411 - On 27 February 2019 approval was granted for alterations and additions to the rooftop terrace associated with Unit 902 (south-east corner of the building) including new covered pergola, raised timber deck and new plant room.

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 runoff; 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 within the deemed SEPP.

Sydney Local Environmental Plan 2012

14. The site is located within the B2 Local Centre zone. The proposed development involves alterations and additions to the existing 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	<p>A maximum height of 27m is permitted.</p> <p>The proposed pergola is 3.4m in height above the existing terrace floor level. The overall height of the pergola is 32m, as measured above ground level along Bayswater Road.</p>
4.4 Floor Space Ratio	No	<p>A maximum FSR of 5:1 is permitted.</p> <p>The existing building has a FSR of 5.77:1. The proposal involves an additional 7sqm of gross floor area which will result in an overall FSR of 5.78:1 for the building.</p>
4.6 Exceptions to development standards	Yes	<p>The proposal seeks to vary the height and floor space ratio development standards prescribed under Clause 4.3 and 4.4 of the Sydney LEP 2012.</p> <p>See discussion under the heading Issues.</p>
5.10 Heritage conservation	Yes	<p>The subject site is not a heritage item but is a contributory building located within the Potts Point heritage conservation area.</p> <p>See discussion under the heading Issues.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 6.21 Design excellence	Yes	The proposed development satisfies the requirements of this provision. The proposed pergola structure and conversion of the plant room to a bathroom will improve the amenity and useability of the terrace area for Unit 901. Given the separation distances to neighbouring buildings and the lightweight nature of the proposed structures, the development will not adversely impact residential amenity in terms of solar access or outlook, with no significant views being blocked by the proposal. See discussion under the heading Issues.

Sydney Development Control Plan 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
<p>The subject site is located in the Kings Cross locality. The proposed alterations and additions to the rooftop terrace are considered to be in keeping with the unique character of the area and design principles. The proposed pergola, conversion of the existing plant room to a bathroom and new plant room will not have a detrimental impact on the amenity of the neighbouring rooftop terraces. The proposal will generally not be visible from the public domain and will therefore not impact on the Bayswater streetscape or the Potts Point heritage conservation area.</p>

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	<p>The development is considered to meet the public domain provisions of Section 3.2 of the Sydney DCP 2012.</p> <p>Shadow diagrams have been submitted with the application which demonstrate that the proposed development will not detrimentally impact on solar access to publicly accessible spaces. As the proposed pergola structure will be set back approximately 5.6m from the eastern edge of the terrace and approximately 7.2m from the northern edge of the terrace, the structure will generally not be visible from the public domain.</p> <p>A condition of approval has been recommended to ensure that a separate application would be required to be lodged for any external lighting to the terrace area.</p>
3.9 Heritage	Yes	<p>The existing building is located within the Potts Point heritage conservation area and is identified as a contributory building.</p> <p>The proposal consists of a lightweight pergola structure, landscaping, new plant room and conversion of the existing plant room to a bathroom. As the proposed pergola structure will be set back approximately 5.6m from the eastern edge of the terrace and approximately 7.2m from the northern edge of the terrace, the structure will generally not be visible from the public domain.</p> <p>A condition is recommended requiring that details of all materials and finishes be submitted for the approval of Council's Area Planning Manager prior to the issue of a construction certificate.</p> <p>It is considered that the proposed development will not impact on the character of the existing building or wider Potts Point heritage conservation area.</p>

3. General Provisions	Compliance	Comment
3.14 Waste	Yes	A condition has been recommended to ensure the proposed development complies 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 8 storeys is permitted. The existing building is 9 storeys with an additional plant room level. The proposed pergola, new plant room and bathroom are at the same level as the existing plant room on the terrace and do not change the existing height in storeys of the building.</p> <p>The proposed height of the development is consistent with the scale and form of existing rooftop structures and surrounding buildings in the heritage conservation area and does not detract from the character or significance of the existing building. The proposed development is therefore considered acceptable.</p>
4.2.2 Building setbacks	Yes	<p>The proposed pergola structure is set back approximately 5.6m from the eastern edge of the roof terrace and approximately 7.2m from the northern edge of the terrace. It is also proposed to be set back 1m from the neighbouring rooftop terrace to the west and 5.3m from the adjoining rooftop terrace to the south. The proposed new plant room is set back approximately 1m from the adjoining rooftop terrace to the south.</p> <p>The proposed setbacks to the terrace edges ensure that the pergola and plant room will generally not be visible from the public domain.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
		The setbacks are also considered to complement the setbacks of the recently approved pergola structures to the adjoining rooftop area of Unit 902 (adjoining terrace to the south) and Unit 903 (adjoining terrace to the west).
4.2.3 Amenity	Yes	<p>The proposal will ensure a high standard of residential amenity is maintained to the subject dwelling and adjoining terraces.</p> <p>Solar diagrams were submitted with the application which demonstrate that the subject terrace and adjoining terraces will continue to achieve a minimum of 2 hours direct sunlight to 5sqm of open space between 9am and 3pm at mid-winter. This complies with the solar access requirements of Section 4.2.3.1 of the Sydney DCP 2012.</p> <p>A landscape plan and planting schedule were submitted in accordance with the requirements of Section 4.2.3.5 of the Sydney DCP 2012. These were reviewed by Council's Landscaping officer who advised that the plan was acceptable subject to recommended conditions.</p> <p>The subject terrace is located a minimum of 26m away from the nearest residential apartment building. Given the existing separation distances, and the lightweight nature of the proposal, the development is not considered to detrimentally impact on the outlook of neighbouring residential apartments in accordance with Section 4.2.3.10 of the Sydney DCP 2012.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
		<p>The use of the subject rooftop terrace, which is currently trafficable, is not considered to be intensified substantially by the proposed development, which is exclusively associated with the residential unit below. Therefore the proposal will not unreasonably impact on 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 amenity and is in accordance with the amenity requirements of Section 4.2.3 of the Sydney DCP 2012.</p>
4.2.7 Heating and Cooling Infrastructure	Yes	<p>The existing heating and cooling infrastructure located within the existing plant room is proposed to be relocated to a new plant room located to the south-west corner of the terrace area. As the arrangement is similar to the existing, it is considered acceptable in this instance.</p>

Issues

Height

17. The site is subject to a maximum height of 27m under Clause 4.3 of the Sydney Local Environmental Plan (LEP) 2012. The proposed development has a height of 32m. This exceeds the maximum permitted height by 5m or 18.5%.
18. The additional height is a result of the proposed 3.4m high pergola and plant structure on the existing rooftop terrace. It is noted, however, that these structures are located below the highest point of the existing roof structures on the building which currently reach a height of 34.8m above ground level (7.8m above the 27m height standard).
19. In accordance with Clause 4.6 of the Sydney LEP 2012, the applicant has submitted a written justification seeking an exception to the Height development standard, which is discussed below.

Clause 4.6 request to vary the height development standard

20. The site is subject to a maximum height control of 27m. The proposed works are at a height of 32m, an 18.5% 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 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 applicant contends that compliance with the maximum height development standard is unnecessary in the circumstances of the case as the development meets the objectives of the Height development standard, as summarised below:

Objectives of the Height Development Standard:

- i. (a) to ensure the height of development is appropriate to the condition of the site and its context.
 - The proposed pergola and plant room will not exceed the height of the existing plant structures at roof level, being 2.8m below the height of the existing plant room. The proposal will also not be visible from the street below (Bayswater Road). Further, Council have recently approved a pergola at a similar height on the adjacent rooftop terrace to the south. The proposal is therefore considered appropriate to the condition of the site and its context.
- ii. (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.
 - The development respects the existing ridge height of the building, being set 2.8m lower than the existing plant room. The proposed development does not significantly alter the general bulk of the existing building and is therefore considered to provide an appropriate height transition to other buildings within the heritage conservation area.
- iii. (c) to promote the sharing of views.
 - It is considered that the proposed pergola and plant room will continue to promote the sharing of views and will not significantly obstruct existing views due to the following:
 - There are existing 2m high solid walls along the southern and western boundaries separating the neighbouring roof

- terraces which will screen the majority of the proposal when viewed from development to the south and west of the site;
 - The proposed pergola is lightweight in nature; and
 - There is an existing large separation between the subject terrace and adjoining buildings which will likely minimise the impact on any existing views across the terrace.
- iv. (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas.
- This objective is not applicable to the site.
- v. (e) in respect of Green Square - to ensure the amenity of the public domain by restricting taller buildings to only part of the site, and to ensure the built form contributes to the physical definition of the street network and public spaces.
- This objective is not applicable to the site.
- (ii) The applicant contends that the objectives of the development standard are achieved notwithstanding the non-compliance. The applicant contends that strict compliance with the height development standard is therefore unnecessary in the circumstances of the case.
- (b) The applicant contends that there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The applicant contends that, despite the non-compliance, the proposed pergola is consistent with the height of the existing building structures and the character of the area.
 - (ii) The proposed development will have no detrimental impact to neighbouring properties and will not cause any overshadowing to neighbouring rooftop terraces.
 - (iii) The development is a lightweight addition to the existing building and is unlikely to significantly obstruct views towards the harbour from properties to the south.
 - (iv) The roof top terrace is an approved open space area to the apartment and the proposed changes will provide increased amenity to this space.
 - (v) The existing building already exceeds the maximum 27m height development standard. The proposed pergola is 2.8m below the existing roof structure of the building and will not detract from the form and scale of the existing building.

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 addressed clause 4.6(3)(a) in that they have demonstrated that compliance with the development standard for Height is unnecessary in the circumstances of this case as the proposed development satisfies the objectives for Height, notwithstanding non-compliance with the standard.

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

- 26. The applicant has adequately addressed Clause 4.6(3)(b) in that they have identified sufficient environmental planning grounds to justify contravening the development standard. It has been demonstrated that the proposal, despite the non-compliance, will achieve an acceptable development outcome with increased amenity to the residents of the subject unit, whilst maintaining the amenity of neighbouring properties.

Is the development in the public interest?

- 27. The proposal is considered to be in the public interest as it is consistent with the objectives of the Height development standard and the objectives of the B2 Local Centre zone. The development results in a building height that is appropriate to the condition of the site, maintains appropriate height transitions to surrounding development and continues to promote the sharing of views in accordance with the objectives of the Height development standard (as outlined above at point 23 (a) (i)). The proposal is also consistent with the objectives of the B2 Local Centre zone as outlined below:
 - (a) To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
 - (i) The proposal will improve the amenity of the existing rooftop terrace of Unit 901 and will not limit the range of business uses within the local area.
 - (b) To encourage employment opportunities in accessible locations.
 - (i) The proposal relates to an existing residential flat building and will not limit employment opportunities within the local area.
 - (c) To maximise public transport patronage and encourage walking and cycling.
 - (i) The proposal will improve amenity for the residents of Unit 901. The residents of the building will continue to live in an area that benefits from public transport and easy walking and cycling distances from local amenities.
 - (d) To allow appropriate residential uses so as to support the vitality of local centres.
 - (i) The proposed development will improve the amenity of the existing rooftop terrace for residents of Unit 901. The existing unit will remain a residential unit and will continue to support the vitality of the local centre.

Conclusion

28. For the reasons provided above, the requested variation to the Height of buildings development 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 Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the Height development standard and the B2 Local Centre zone.

Floor Space Ratio (FSR)

29. The site is subject to a maximum Floor Space Ratio (FSR) of 5:1 under Clause 4.4 of the Sydney LEP 2012.
30. The site area for the building is 1696sqm. The existing building has a floor space area of 9798.5sqm with a FSR of 5.77:1. The existing building currently exceeds the floor space area by 1318.5sqm or 15.5%.
31. The proposed development involves the conversion of the existing plant room, which is not gross floor area under the Sydney LEP 2012 definition, into a bathroom, which does comprise gross floor area under the definition. This results in an addition of 7sqm of gross floor area to the building.
32. As the existing building currently exceeds the FSR development standard for the site, the proposed addition of 7sqm of floor space results in an overall variation of 1325.5sqm or 15.6%. The proposed FSR for the site is 5.78:1.
33. In accordance with Clause 4.6 of the Sydney LEP 2012, the applicant has submitted a written justification seeking to vary the FSR development standard, which is discussed below:

Clause 4.6 request to vary the height development standard

34. The site is subject to a maximum FSR control of 5:1. As the existing building currently exceeds the FSR development standard for the site, the proposed addition of 7sqm of floor space results in an overall variation of 1325.5sqm or 15.6%. The proposed FSR for the site is 5.78:1.
35. 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 FSR 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.
36. A copy of the applicant's written request is provided at Attachment D.

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

37. The applicant seeks to justify the contravention of the FSR 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 applicant contends that compliance with the maximum FSR development standard is unnecessary in the circumstances of the case as the development meets the objectives of the development standard, as summarised below:

Objectives of the Floor Space Ratio Development Standard

- i. To provide sufficient floor space to meet the anticipated development needs for the foreseeable future.
 - As noted, the existing building currently exceeds the FSR development standard and therefore any addition of floor space to this building will require a variation to the standard. The proposed increase of 7sqm of floor space is a minor departure from the existing FSR of the development, which currently provides sufficient floor space to meet the anticipated residential needs. It is considered that the proposed development will therefore continue to provide sufficient floor space to meet anticipated development needs.
- ii. To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.
 - The proposed bathroom is located on the roof top terrace which is an approved open space area to apartment 901 and will not be visible from the street. The density of people living within the existing building will not be intensified as the proposal will retain the single residential use of the unit and the rooftop will remain as non-habitable. The proposed bathroom will therefore not cause any increase in vehicle or pedestrian traffic within the local area. As the bathroom is proposed to be located within the existing plant room structure, the existing built form of the building will not be significantly altered by the development.
- iii. To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.
 - The proposed alterations and additions are limited to the rooftop of unit 901. The addition of the proposed bathroom will retain the existing single residential use of the unit and will not intensify the number of people living within the dwelling. The proposal will therefore continue to provide a development on site that is commensurate with the capacity of existing and planned infrastructure for the area.

- iv. To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of the locality.
 - The proposed conversion of the existing plant room to a bathroom will have a minor impact on the external appearance of the existing building due to the proposed relocation of the plant room to the south west corner of the rooftop terrace. As the proposed plant room is located over 11m from the closest street boundary it will not be visible from Bayswater Road below. The development, which will not be visible from the public domain, will therefore continue to reflect the desired character of the locality in which it is located.
 - The proposed bathroom and new plant room will not have any detrimental shadow impact on adjoining terraces and will not significantly impact on existing views across the terrace. The development is therefore considered to minimise adverse impacts on the amenity of the locality.
- (ii) The applicant contends that the objectives of the FSR development standard are achieved notwithstanding the non-compliance. The applicant contends that strict compliance with the FSR development standard is therefore unnecessary in the circumstances of the case.
- (b) The applicant contends that there are sufficient environmental planning grounds to justify contravening the FSR development standard:
 - (i) As the existing building exceeds the 5:1 FSR development standard, it is inevitable that any additional floor space required to improve the existing development, including the proposed bathroom, will not comply with the standard.
 - (ii) The proposed bathroom and new plant room are well set back from the edge of terrace and will not be visible from the public domain at street level.
 - (iii) The proposed conversion of the existing plant room to a bathroom, generally retains the existing form of the building and is therefore consistent with the character of the area.
 - (iv) The proposal will have no detrimental impact on the neighbouring properties due to the existing 2m high walls separating the adjoining terraces and will not cause any overshadowing.
 - (v) The development is a minor modification to the existing building and is not likely to obstruct views due to the lightweight nature of the proposal and existing separation distances to existing buildings to the south which currently benefit from views to the harbour.
 - (vi) The rooftop terrace is an approved open space area to Unit 901 and will remain a non-habitable area.
 - (vii) The proposed conversion of the plant room to a bathroom will increase the useability and amenity of the space for the residents of the subject unit.

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

38. 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)?

39. The applicant's written request has adequately addressed Clause 4.6(3)(a) in that they have demonstrated that compliance with the development standard for FSR is unnecessary in the circumstances of this case as the proposed development satisfies the objectives for FSR, notwithstanding the non-compliance with the standard.

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

40. The applicant has adequately addressed Clause 4.6(3)(b) in that they have identified sufficient environmental planning grounds to justify contravening the development standard. It has been demonstrated that the conversion of the existing plant room to a 7sqm bathroom and new associated plant room will largely maintain the existing form of the building and maintain the amenity of neighbouring properties, despite the non-compliance.

Is the development in the public interest?

41. The proposal is considered to be in the public interest as it is consistent with the objectives of the FSR development standard and the objectives of the B2 Local Centre zone. The development will not result in an increase of intensity of the existing use of Unit 901 and will not impact on transport usage or the capacity of the overall infrastructure network (as outlined earlier). The proposal is also consistent with the objectives of the B2 Local Centre zone as outlined below:

- (a) To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
 - (i) The proposal will improve the amenity and useability of the existing rooftop terrace and will not limit the range of business uses within the local area.
- (b) To encourage employment opportunities in accessible locations.
 - (i) The proposal, which involves the conversion of the existing plant room to a bathroom will not limit employment opportunities within the local area.
- (c) To maximise public transport patronage and encourage walking and cycling.
 - (i) The proposal will improve amenity for the residents of Unit 901. The residents of the building will continue to live in an area that benefits from public transport and is within easy walking and cycling distance from local amenities.

- (d) To allow appropriate residential uses so as to support the vitality of local centres.
- (i) The proposed development will improve amenity of the existing rooftop terrace for residents of Unit 901. The existing unit will remain a residential unit and will continue to support the vitality of the local centre.

Conclusion

42. For the reasons provided above the requested variation to the FSR development 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 Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of FSR development standard and the B2 Local Centre zone.

Impact on views

43. Although no formal view impact assessment was submitted with the application, the proposed 3.4m high pergola structure and new plant room to the rooftop of the subject building are not likely to significantly impact on the views of nearby properties. The likely impacts of the proposal on existing views to the harbour from adjoining properties to the south and south-west of the site are discussed below.
44. As the existing overall height of the adjoining residential flat building to the south at 16-20 Kings Cross Road is lower than the subject building, there are currently no views across the subject roof terrace from this building. The proposal will therefore not impact on existing views from this building.
45. Existing views from the hotel to the south west of the subject site at 2-14 Kings Cross Road are likely already obstructed by the existing plant room structure to the centre of the subject building. The proposed pergola, which is set down approximately 2.8m below the existing plant room, is therefore unlikely to impact on existing views from this building, due to the position of the proposed pergola.
46. The existing mixed use building to the south west across Kings Cross Road at 1A Kings Cross Road (shown in Figure 7 of this report) currently benefits from some views across the subject terrace towards the harbour. Views from this building are however not considered to be significantly impacted by the proposal as the building is located approximately 76m from the subject terrace. This separation distance is likely to minimise the impact of the pergola structure on existing views. Council also recently approved a 3.4m high pergola to the southern terrace (D/2018/1411) located between this building and the subject terrace. Due to the above reasons and the lightweight nature of the proposed pergola, views from this building are not considered to be significantly impacted by the proposed development.
47. In light of the above, the proposal is not likely to significantly impact on the views of nearby properties to the south and southwest of the site and is considered acceptable.

Heritage

48. The site is a contributory building within the Potts Point Heritage Conservation Area (C51) and is therefore subject to the heritage provisions of the Sydney DCP 2012. The proposal generally complies with the relevant aims, objectives and controls of the DCP. The proposed works are located at roof level and the pergola is setback approximately 5.6m from the eastern edge of the roof terrace and approximately 7.2m from the northern edge of the terrace such that it will not be readily visible from the public domain. The proposed additions to the rooftop are lightweight in nature, with a combination of timber posts, with metal roofing. The proposed alterations to the existing rooftop of Unit 901 are therefore not considered to have a detrimental impact on the character of the heritage conservation area in accordance with the requirements of the Sydney DCP 2012.

Other Impacts of the Development

49. Compliance with the BCA can be resolved at construction certificate stage.
50. 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

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

Internal Referrals

52. Where relevant, the conditions of other sections of Council have been included in the recommended conditions.

Heritage and Urban Design Specialists

The application was discussed with the Heritage and Urban Design Specialists who originally raised concerns regarding the proposed raised decking and compliance of the existing balustrade with the BCA, the proposed addition of new tiles over the existing terrace tiles, solar access diagrams, proposed drainage of the rooftop and the materials and finishes of the proposed structures. Following a request by Council for further information, the applicant submitted amended plans with RL levels demonstrating that the existing glass balustrades will comply with the BCA and additional information regarding the proposed pedestal tile installation system to allow the development to rely on existing drainage points on the terrace. Conditions requiring the submission of a detailed material and finishes schedule and a drainage methodology for approval by Council prior to issue of a construction certificate, have been recommended in line with the Heritage and Urban Design Specialists comments.

Landscaping Specialist

The application was discussed with the Landscaping Specialist who did not object to the proposal, subject to recommended conditions regarding the submission of a detailed landscape plan. A condition to this effect has been recommended.

Notification, Advertising and Delegation (No Submissions Received)

53. In accordance with Schedule 1 of 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 21 June 2019 and 6 July 2019, a total of 872 properties were notified and no submissions were received.

Public Interest

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

S7.11 Contribution

55. The development is not subject to a S7.11 development contribution as it is for a pergola on the existing roof terrace of Unit 901, which will not increase the net population of the building. The proposed works are therefore excluded from the need to pay a contribution in accordance with the City of Sydney Development Contributions Plan 2015. A contribution is therefore not payable.

Relevant Legislation

56. The Environmental Planning and Assessment Act 1979.

Conclusion

57. The application proposes alterations and additions to the existing rooftop terrace of Unit 901, which is one of four existing private rooftop terraces on the building. The works include the erection of a timber and metal pergola at the centre of the terrace, a new structure to the south-western corner of the terrace to accommodate plant, landscaping, including the provision of planters and seating, new pedestal tiling over the existing tiles and removal of two existing skylights, raised timber decking to the northern boundary and a new bathroom within the existing plant room.
58. The proposal results in a breach of the 27m building height development standard by 5m or 18.5%.
59. The proposal also exceeds the 5:1 floor space ratio (FSR) development standard. As the existing building currently exceeds the FSR standard, the proposed addition of 7sqm of floor space results in an overall exceedance of 1325.5sqm or 15.6%.
60. Written requests have been provided seeking variations to the height development standard and the floor space ratio development standard in accordance with Clause 4.6 of the Sydney LEP 2012.

61. The requested variations to the height development standard and FSR development standard are recommended to be upheld in this instance because the consent authority is satisfied that the applicant's written requests adequately address the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012. Further, the proposed development is considered to be in the public interest as it is consistent with the objectives of Clause 4.3 Height and Clause 4.4 Floor Space Ratio and the objectives of the B2 Local Centre zone. It is considered that strict compliance with the height of buildings development standard and the FSR development standard is unreasonable or unnecessary in this instance.
62. Subject to the inclusion of recommended conditions, the proposed development is generally consistent with the objectives, standards and guidelines of the relevant planning controls. The proposal will provide additional amenity to the existing rooftop terrace to Unit 901, will not significantly impact on adjoining dwellings in relation to bulk, scale or overshadowing, and will generally not be able to be visible from the public domain. The proposed development is considered to achieve design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.
63. Accordingly, the Development Application is recommended for approval, subject to conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Julia Errington, Planner