

Item 5.**Section 4.55 Application: 132-138 McEvoy Street, Alexandria - D/2018/1615/D****File No.:** D/2018/1615/D**Summary****Date of Submission:** 19 May and 30 June 2021**Applicant:** Willowtree Planning**Architect:** SJB Architects**Owner:** Stormac Pty Ltd**Proposed Modification:** The subject application seeks to modify the previous consent for a 4-storey commercial building to:

- provide a trafficable rooftop terrace for use as a communal open space;
- provide lift and stair access to the roof;
- reconfigure rooftop solar, green roofs, plant and enclosures to accommodate the proposed modifications; and
- amend the elevations and sections to reflect the changes described above

The original application (D/2018/1615) was granted deferred commencement development consent on 7 August 2019. On 21 October 2020, following the execution and registration of the Planning Agreement on the title of the land, the deferred commencement conditions were satisfied and the consent was made operative.

As a section 4.55(2) modification, the subject application was notified for a period of 14 days between 1 July 2021 and 16 July 2021. No submissions were received.

The previously approved development is to a maximum height of 17.4m which complies with the 18m height of buildings control pursuant to clause 4.3 of the Sydney LEP 2012 (the LEP).

The proposed modifications include an increase in the height of the development to accommodate rooftop structures, such as lift overruns and stair balustrades, to a maximum height of 21.1m, which is a 3.1m breach or 17% variation of the 18m LEP height of buildings control.

The proposed modifications that cause these breaches of the height control are to improve the amenity of the building for future intended occupants and have no unacceptable adverse environmental impacts. For these reasons the proposed variation of the height control is supported.

The proposed modifications do not result in any change to the previously approved FSR of 2.04:1

As the subject section 4.55 application comprises a variation of a development standard in excess of the 10% threshold for such variations, it is to be determined by the Local Planning Panel.

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Airports Authority Approval
- D. Notice of Determination - Most Recently Approved Modification (D/2018/1615/C)
- E. Stamped Plans - Most Recently Approved Modification (D/2018/1615/C)

Recommendation

It is resolved that consent be granted to Section 4.55 Application No. D/2018/1615/D subject to the conditions set out in Attachment A to the subject report (additions shown in ***bold italics***, deletions shown in ~~striketrough~~).

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development, as modified is considered to be substantially the same as that originally approved.
- (B) Appropriate conditions of consent have been imposed to ensure that the development will not result in detrimental environmental impacts.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 2 DP 243107, and is commonly known as 132-138 McEvoy Street, Alexandria.
2. The site is located on the southern side of McEvoy Street, which is a state classified road, at its intersection with Bowden Street. The site is irregular in shape with an area of 4,610 sqm. It has a frontage of 77.01m to McEvoy Street and 67.88m to Bowden Street. McEvoy Street includes an off-road shared-path and Bowden Street includes a separated off-road cycleway, both adjacent to the site.
3. Currently the site accommodates a single storey warehouse building, most recently used as a retail premises. Vehicular access to the site is via driveways to its McEvoy Street and Bowden Street frontages.
4. A stormwater culvert is located under the building's eastern corner, which forms part of the local stormwater infrastructure for Shea's Creek and the Alexandra Canal catchment.
5. The site is not listed as a heritage item or identified as being located within a heritage conservation area.
6. The site is located within both the Green Square urban renewal area and the Southern Employment Lands. The surrounding context is characterised by large format warehouse development however many neighbouring sites are undergoing redevelopment to other uses.
7. Adjacent to the south of the site, at 9 Bowden Street, is an open hard stand car parking area. Further south at 11 Bowden Street is a recently constructed four storey educational establishment.
8. To the east, on the opposite side of Bowden Street, at 128-130 McEvoy Street and 4-6 Bowden Street is a single storey vehicle repair station.
9. To the north, on the opposite side of McEvoy Street, at 147-161 McEvoy Street is a five and six storey residential flat building development.
10. To the north-west, on the opposite side of McEvoy Street, at 163-173 McEvoy Street, is a two-storey industrial building, which is the subject of a detailed design development application (D/2019/1350) for the demolition of the existing two storey industrial buildings, remediation, excavation and construction of a 7 to 8 storey mixed use development.
11. Directly to the west of the site at 140-142 McEvoy Street is a single storey warehouse building, formerly used as a food and drink premises.
12. Photos of the site and surrounding development are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Subject site at the corner of McEvoy and Bowden Streets



Figure 3: Western end of subject site's McEvoy Street frontage



Figure 4: Subject site's Bowden Street frontage, looking north

Relevant History

History of Approvals

13. The following applications are relevant to the modification application:

- (a) D/2018/1615 – On 7 August 2019, deferred commencement development consent was granted for demolition of existing buildings and construction of a new four storey mixed use development comprising ground floor shops and food and drink premises with office premises on levels above, car parking spaces at ground level, signage and landscaping.

Deferred commencement conditions required the execution and registration on title of the associated Voluntary Planning Agreement (VPA) and design modifications including amendments for the building to be setback from the stormwater culvert that traverses the site and amendments to facade and roof designs.

The VPA (VPA/2019/6) secured public benefits associated with the development including:

- (i) transfer a 1.4m wide strip of land along the site's McEvoy Street frontage, with an area of 108sqm, for footpath widening; and
- (ii) embellishment works to the transfer land including construction of footpaths and vehicle crossovers.
- (b) D/2018/1615/A – On 26 September 2019, approval was granted to modifications to condition (75) Landscaping of the Site to delete requirements for tree planting in the approved car parking area.
- (c) D/2018/1615/B – On 19 December 2019, approval was granted to modifications to move deferred commencement condition (3) Design Modifications that require the submission of design details for the substation to these requirements into the operational conditions at Part B of the development consent.
- (d) D/2018/1615/C – On 25 August 2020, approval was granted to modifications to:
- (i) delete deferred commencement conditions (2) Sydney Water and (3) Design Modifications;
- (ii) delete operational condition (123) Electricity Substation; and
- (iii) to amend the approved development design by reconfiguration of the ground floor layout, reconfigure fire exits and services and to alter the roof design.
- (e) On 21 October 2020, following the execution and registration of the VPA on the title of the land, deferred commencement conditions were satisfied, and the consent was made operative.

Compliance Action

14. There are no compliance actions currently underway, nor are there any previous compliance actions that are now closed that have any relevance for the subject application.

History of the Subject Application

Preliminary issues

15. The application was lodged on 19 May 2021 as a section 4.55(1A) application. Given the additions and use of rooftop space and increase in height the application was reclassified as a section 4.55(2) application. This was accepted by the proponent.

Request for Information

16. Following an assessment of the application, Council Officers contacted the Applicant to raise concerns about the design of the rooftop terrace. More design detail of the terrace was required to ensure the amenity of the space and ensure its practical use in the long term.
17. Additional information was requested for design details of the rooftop terrace, including amended drawings:
 - (a) that demonstrate a flexible and useable space with a good level of fixed amenity including (but not limited to) seats, garden beds and weather protection;
 - (b) that incorporate at least three small canopy trees in planters of a minimum 1m soil depth, with volumes in accordance with the Sydney Landscape Code Volume 2; and
 - (c) that provide sectional details through planters, demonstrating the planter build-up, drainage and depth.
18. Confirmation from a structural engineer was also requested to ensure that the roof terrace has the capacity to support all the proposed elements.
19. Three weeks after a revised deadline for submission of requested information had passed, and after several unsuccessful attempts to contact the Applicant over the phone, Council's Planning Officer contacted the Applicant in writing to ask whether they intended to submit the requested information or not. To date no response has been received. This report is based on the current plans with conditions recommended to resolve outstanding issues.

Proposed Modification

20. The subject application seeks consent for the following modifications:
 - (a) Roof plan -
 - (i) Extend the lift shaft and fire stairs to provide access to the rooftop terrace.
 - (ii) Introduce a new lift lobby.
 - (iii) Relocate solar PV cells to the northern portion of the roof.
 - (iv) Relocate green roof to the southern portion of the roof.
 - (v) Delete a portion of the green roof and replace with a communal trafficable roof terrace 36m by 12m (432sqm).

- (vi) Reconfigure rooftop plant enclosure.
- (b) Elevations and sections -
 - (i) Amend the design, including to increase the height of parapets and rooftop structures, to accommodate the changes to the roof plan noted above.

21. Selected plans and elevations of the proposed modification are provided below.

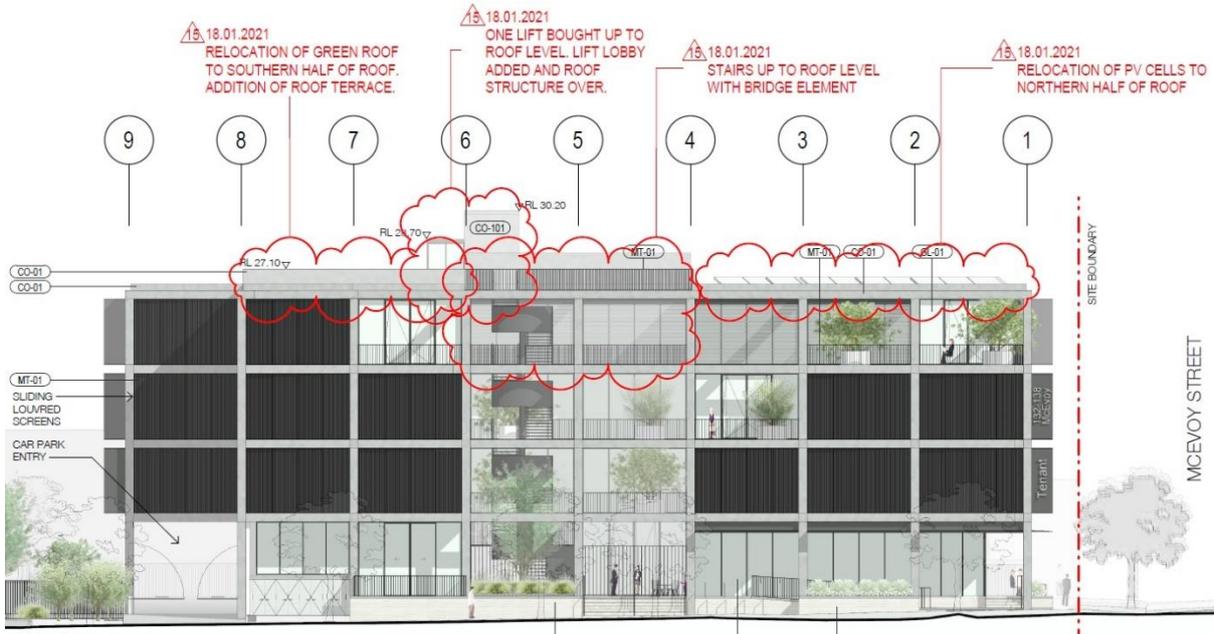


Figure 5: Proposed modifications to the Bowden Street (northeast) elevation



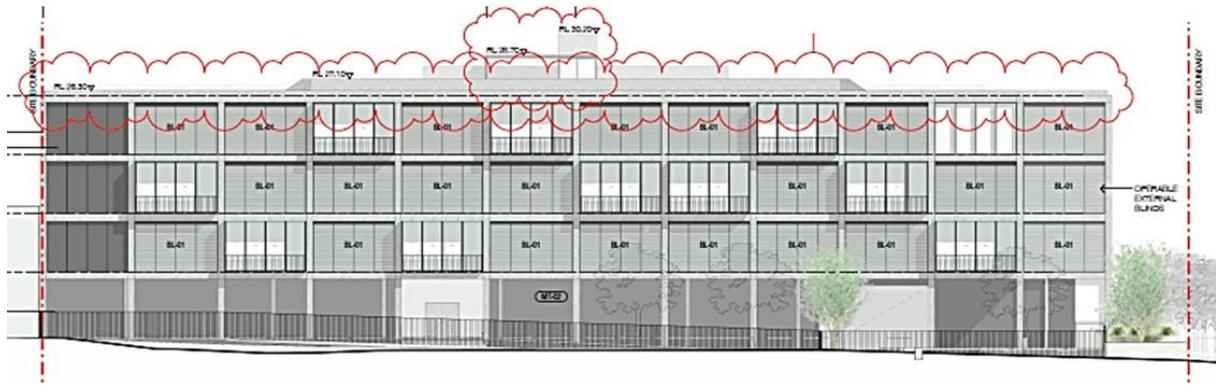


Figure 7: Proposed modifications to the southeast elevation



Figure 8: Proposed modifications to the southwest elevation



Figure 9: Proposed modifications to short section (section B)



Figure 10: Proposed modifications to long section (section D)

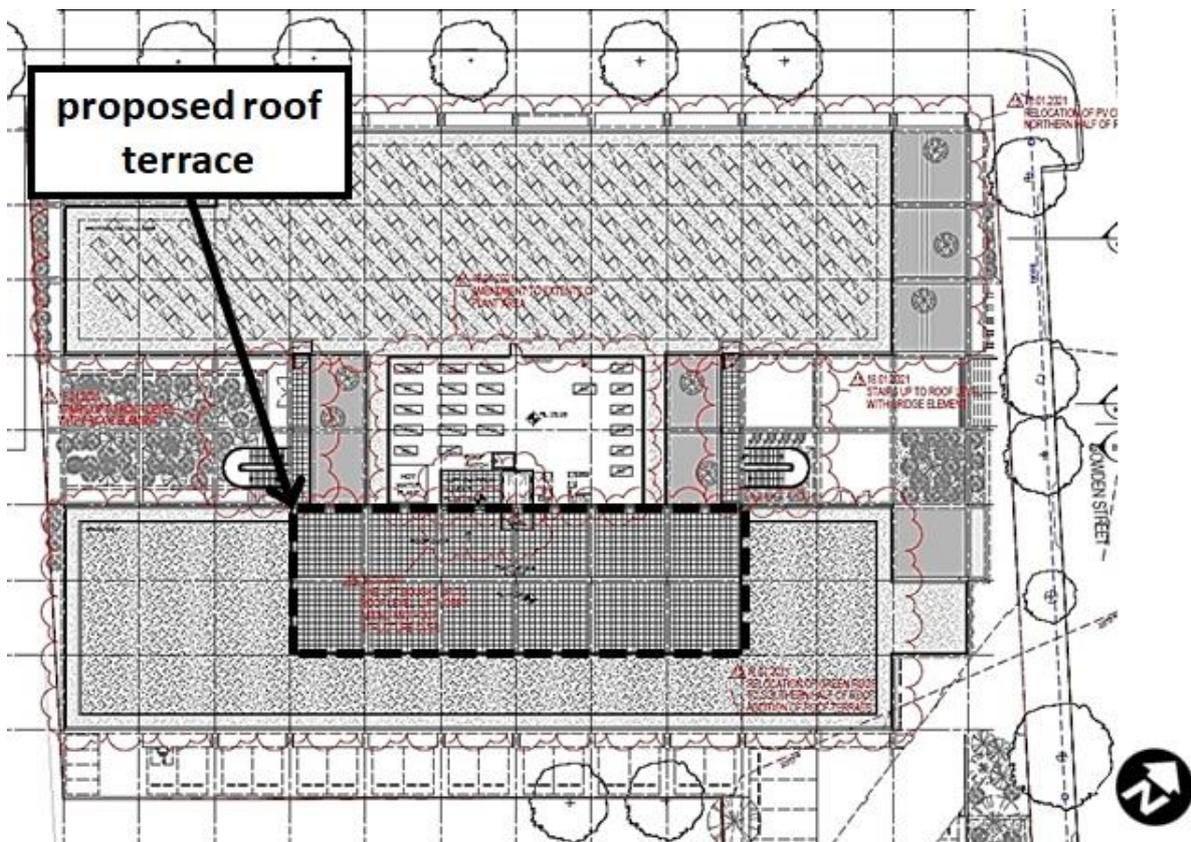


Figure 11: Proposed modifications to the roof plan

Assessment

- 22. The site is in Zone B6 Enterprise Corridor and the proposed modification is to augment the approved mixed-use development comprising shops and food and drink uses at ground level and offices above. These uses are permitted with consent in the Zone B6 Enterprise Corridor.
- 23. The relevant provisions of the Sydney Local Environmental Plan 2012 (the LEP) and the Sydney Development Control Plan 2012 (the DCP) have been taken into consideration in the assessment of the proposal as outlined in the table below.

Proposed Modification	Assessment
Roof plan	
Extend the lift shaft and fire stairs to provide access to the rooftop terrace.	<p>Provision of stair and lift access to the roof will improve amenity for future intended occupants. There are no unacceptable adverse impacts to adjacent properties arising from the new roof structures.</p> <p>The proposal has merit and is supported.</p> <p>The resulting breach of the LEP building height control is discussed in the Issues section of this report below.</p>
Introduce a new lift lobby.	<p>A rooftop lift lobby is required to provide lift access to the roof and will improve amenity for future intended occupants of the building. There are no unacceptable adverse impacts to adjacent properties arising from the new lift lobby structure.</p> <p>The proposal has merit and is supported.</p> <p>The resulting breach of the LEP building height control is discussed in the Issues section of this report below.</p> <p>Implications for FSR and related development contributions are discussed in the Issues and Financial Contributions sections of this report below.</p>
Relocate solar PV cells to the northern portion of the roof.	<p>The proposed relocation maintains the quantum of solar PV as previously approved under the original consent.</p> <p>The proposal has merit and is supported.</p>
Relocate green roof to the southern portion of the roof.	<p>The proposal has merit and is supported.</p> <p>Refer to the discussion of landscape design in the Issues section of this report below.</p>
Delete a portion of the green roof and replace with a communal trafficable roof terrace.	<p>The proposal is supported in-principle.</p> <p>A condition is recommended requiring landscape design details of the trafficable rooftop terrace to be submitted to and approved by Council Officers.</p> <p>Refer to the discussion of landscape design in the Issues section of this report below.</p>
Reconfigure rooftop plant enclosure.	<p>The rooftop plant enclosure is to be reconfigured to accommodate the changes outlined above. Rooftop plant is screened and will not be visible from the public domain.</p> <p>The proposal has merit and is supported.</p>

Proposed Modification	Assessment
<i>Elevations and sections</i>	
Amend the design, including to increase the height of parapets and rooftop structures, to accommodate the changes to the roof plan noted above.	The proposal has merit and is supported. Refer to the discussion in the Issues section of this report below.

Issues

Building height

24. The previously approved development (under consent no. D/2018/1615/C) was to a maximum building height of 17.4m (RL 26.90).
25. The proposed modifications introduce several new rooftop structures such as new lift overrun, lift lobby and balustrades to the rooftop terrace. The rooftop plant enclosure has also been increased in height. All these modifications result in increases in the height of the building.
26. The proposed modifications result in a maximum building height of 21.1m (RL 30.20) to the top of the lift overrun and a breach of the 18m LEP maximum permitted building height control as shown in Figure 12 below.

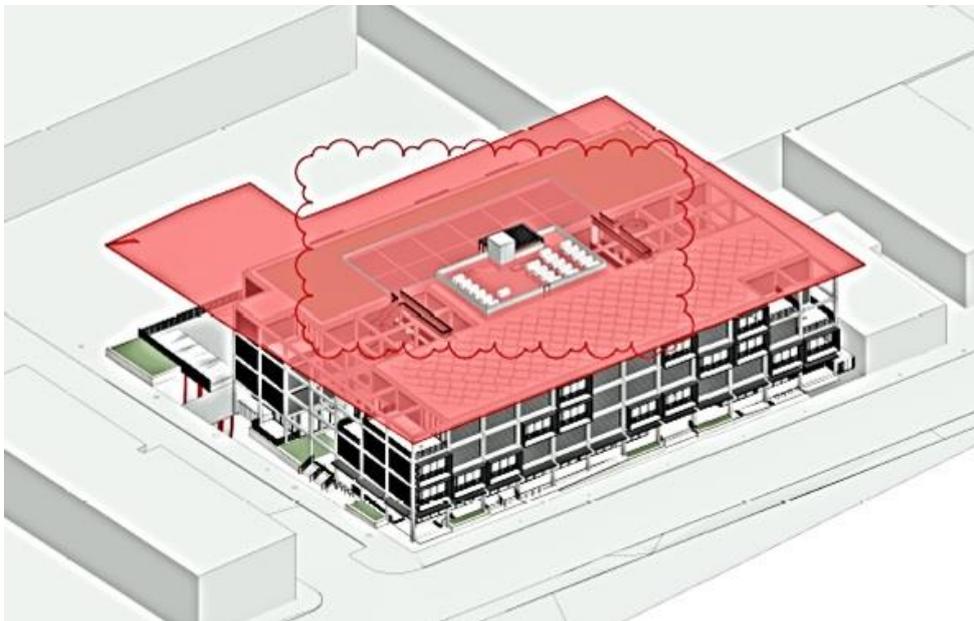


Figure 12: Proposed modifications and subsequent breaches of the 18m height control

27. The proposed breaches of the height control are centrally located within the roof plan and do not significantly increase the bulk and scale of the building. As noted below, there are no unacceptable adverse overshadowing impacts arising from the proposed modifications.

28. The requirement to justify departures to development standards under LEP clause 4.6 only applies when development consent is granted, not when a modification application is made. Subsequently, clause 4.6 does not apply to section 4.55 modification applications.
29. For these reasons, the proposed increase in the height of the building and the 3.1m breach or 17% variation to the 18m LEP height control, are supported.

Floor space ratio

30. The design approved by D/2018/1615/C has a FSR of 2.04:1.
31. The proposed modifications, including the introduction of a lift lobby at roof level, results in 5sqm additional GFA. The additional GFA arising from the introduction of a lift lobby does not result in any change to the previously approved FSR of 2.04:1.
32. Changes to contributions arising from the proposed modifications are discussed in the Amendments to Financial Contributions section of this report below.

Design

33. Council's Urban Design Specialist has reviewed the submitted drawings and supports the proposed modifications to continue the lift and stair to roof level, to provide a communal open space on the rooftop for the benefit of future intended occupants.
34. There are no unacceptable overshadowing or visual privacy impacts arising from the proposed modifications given that there are no residential properties immediately adjacent to the site.
35. As noted in the Relevant History section of this report above, Council Officers raised concerns about lack of a suitable detailed design for the expansive (432sqm) roof terrace. It is unshaded and unprotected from the weather. As shown in Figure 13 below, no design of shading, facilities or furniture - has been submitted for the roof terrace space. For this reason, the rooftop terrace space would be unusable during the hotter months of the year and during inclement weather.

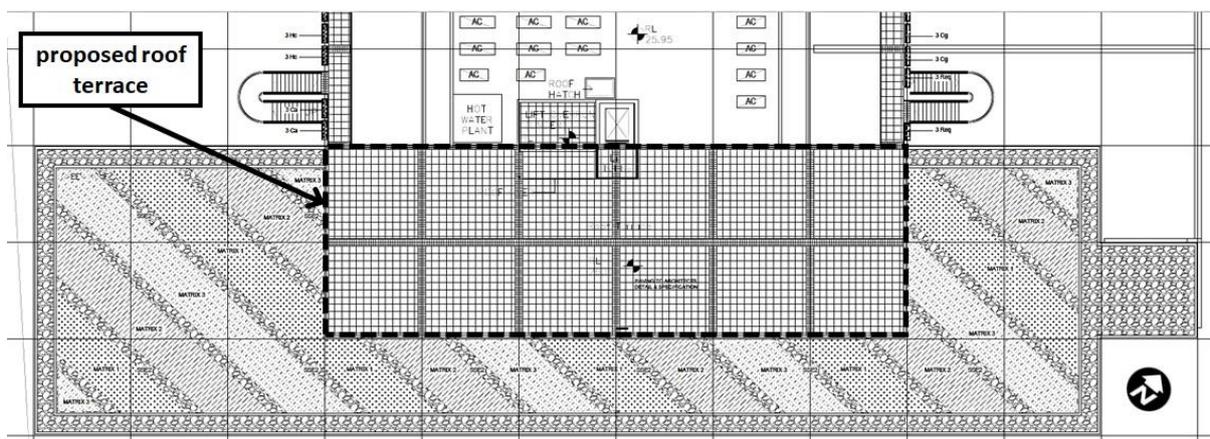


Figure 13: Proposed roof terrace lacks shading, furniture or facilities

36. It is recommended that condition (75) Landscaping of the Site is modified - as shown below - to require a detailed landscape design for the rooftop terrace to be submitted to and approved by Council Officers, prior to the issue of any amended Construction Certificate for the development. This condition allows for the landscape design details to incorporate shade structures and the like up to a maximum height of approximately 19.6m (RL 28.70).

(75) LANDSCAPING OF THE SITE

- (b) A detailed landscape design including plans and details, drawn to scale and technical specification, by a registered landscape architect or qualified landscape designer, must be submitted to and approved by Council's Area Planning Manager prior to the issue of an **amended** Construction Certificate for above ground building works. These documents must include:

- (xi) ***The detailed design of the accessible rooftop terrace approved by modification D/2018/1615/D. Design details must demonstrate that the rooftop terrace can be utilised as a flexible and usable space with a good level of fixed amenity, including (but not limited to) seats, garden beds and weather protection. The design should incorporate at least three small canopy trees in planters of a minimum 1m soil depth, with volumes in accordance with the Sydney Landscape Code Vol. 2. Sectional details through planters should be provided, demonstrating the planter build-up, drainage and depth. Confirmation from a structural engineer is also required to ensure that the roof terrace has the capacity to support all elements. New shade structures and other rooftop structures incorporated into the detailed design must be no greater than approximately 19.6m in height (RL 28.70).***

As modified by D/2018/1615/D – 24 November 2021

37. A condition is also recommended to limit the use of the rooftop terrace to between 7am and 8pm, Monday to Sunday.

Substantially the same development

38. The development to which the proposed modification relates is substantially the same as that originally granted.
39. Besides the other matters discussed in this report, the previous assessment against the provisions of section 4.15 of the EP&A Act are still relevant.

Consultation

Internal Referrals

40. The assessment process has been informed by advice from Council's Environmental Health, Urban Design and Landscape Design Specialists. Where appropriate, conditions recommended by these referrals have been included for imposition on any consent granted.

External Referrals

Sydney Airport

41. The subject site is in an area defined in schedules of the Civil Aviation (Buildings Control) Regulations 1988 which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority. Accordingly, an approval from the relevant airports' authority is required pursuant to s.183 of the Airports Act 1996.
42. The subject application was forwarded to Sydney Airport via the NSW Planning Portal on 5 July 2021.
43. The approval of a controlled activity was issued by Sydney Airport via the NSW Planning Portal on 14 July 2021 and is provided at Attachment C to this report.

Advertising and Notification

44. In accordance with the Community Participation Plan 2019, the proposed Section 4.55 (2) modification was notified for a period of 14 days between 1 July 2021 and 16 July 2021. In addition, previous submitters to the original DA were notified in accordance with the Community Participation Plan 2019. A total of 38 properties were notified. No submissions were received.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

45. As noted in the Assessment section of this report above, the proposed modification results in an additional 5sqm of GFA. This will incur an additional contribution.
46. As the contribution levied under Part B, condition (2) Section 7.11 Contributions Payable of development consent D/2018/1615/C has been paid, a new condition is recommended which requires the payment of the additional development contribution resulting from this modification.
47. The proposed modification results in a net population increase of 0.2 workers, based on 5sqm of additional GFA attributed to office uses. The contribution is broken down into its component amounts in the table below.

Contribution	Total
Open space	\$398.47
Community facilities	\$61.95
Traffic and transport	\$505.83
Stormwater and drainage	\$200.02
	\$1,166.28

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

48. The proposed modifications result in an additional 12.8sqm of Total Floor Area as defined by LEP clause 7.13. This will require condition (3) Affordable Housing Contribution to be modified to reflect the contribution payable.
49. The development previously approved by development consent D/2018/1615/C comprised 10,813.3 sqm of Total Floor Area.
50. Subject to the proposed modifications the development will comprise 10,826.1sqm of Total Floor Area.
51. It is recommended for condition (3) to be modified accordingly, to levy a contribution at a rate of \$76.16 per square metre. Based on a total non-residential floor area of 10,826.1sqm, for a total contribution of \$824,516.77.

Relevant Legislation

52. Environmental Planning and Assessment Act 1979.

Conclusion

53. The subject application seeks to modify the previous consent for a 4-storey mixed-use retail/commercial building to provide a trafficable rooftop terrace for use as a communal open space.
54. The proposed modifications do not impede the delivery of public benefits associated with the development and as secured in the VPA as part of the original development consent.
55. The proposed modifications include an increase in the height of rooftop structures, such as lift overruns and stair balustrades, to a maximum height of 21.1m and which is a 3.1m breach or 17% variation of the 18m LEP height of buildings control.

56. The proposed modifications that cause these breaches of the height control are to improve the amenity of the building for future intended occupants and have no unacceptable adverse environmental impacts. For these reasons the proposed variation of the height control is supported. The proposed modifications do not result in any change to the previously approved FSR of 2.04:1.
57. The development, as modified is considered to be substantially the same as that originally approved.
58. The application is recommended for approval, subject to conditions.

ANDREW THOMAS

Executive Manager Planning and Development

Ben Chamie, Area Planning Coordinator