

Item 7.**Section 4.55(2) Modification Application 38-44 Mountain Street, Ultimo - D/2020/1288/A**

File No.: D/2020/1288A

Summary

Date of Submission:	18 November 2022, amended 24 February 2023 and 13 April 2023
Applicant:	Stangcorp Pty Ltd
Architect/Designer:	SJB
Developer:	Stangcorp Pty Ltd
Owner:	Stangcorp Pty Ltd
Planning Consultant:	Creative Planning Solutions
Heritage Consultant:	GBA Heritage
Cost of Works:	\$10,091,044.00 (As stated for D/2020/1288)
Zoning:	MU1 Mixed Use
Proposal Modification:	<p>The subject Section 4.55(2) modification application seeks consent for internal and external reconfigurations, including the increase of the building height, decrease of floor space ratio (FSR) and the deletion of select conditions of consent.</p> <p>In particular, the proposed modifications include an additional lift overrun and the introduction of a cooling tower which both exceed the height of the approved development, and therefore, continue to exceed the maximum permitted Sydney Local Environment Plan 2012 (LEP) height standard for the site. The proposal also introduces additional plant rooms at each floor of the building, as well as general layout changes to each floor. The introduced plant rooms result in a reduction of the approved floor space ratio for the site. Other changes include the introduction of new features to the approved facade, as well as the proposal to delete existing conditions of consent which require the submission of</p>

specific documentation to Council. The application seeks to justify the deletion of these conditions, through the inclusion of condition-specified documents within this modification application.

The proposed development exceeds the LEP height standard by 25.1%, which is 6.8% greater than the approved D/2020/1288 height variation of 18.3%. As required by the Ministerial Local Planning Panels Direction 2020, Local Planning Panels are to determine applications under Section 4.55(2) of the Act for the modification of development consents that meet the criteria for development applications which are set out in the schedules of this direction relating to departure from development standards.

During assessment of the application Council requested the submission of additional information and amendments to the application on 24 January 2023 and 13 April 2023. The requests generally required additional supporting information for technical aspects of the proposal, and minor design revisions. The applicant responded to the requests with further supporting information on 24 February 2023 and 26 April 2023 respectively.

The application was notified for a period between 19 January 2023 and 3 February 2023 in accordance with the City's Community Engagement Strategy and Participation Plan 2022. The amended applications received on 24 February 2023 and 13 April 2023 were not required to be renotified or advertised given the amendments do not result in significant additional environmental impacts compared to the initial proposal.

A total of 236 properties were notified and no submissions were received.

As amended, the proposed modifications are considered to be substantially the same as previously approved. Subject to recommended conditions the proposal is not likely to negatively impact the amenity of surrounding sites.

With exception to the proposed deletion of select conditions approved under D/2020/1288, the proposed modifications are supported subject to recommended conditions of consent.

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

Development Controls:

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

(iii) SEPP (Resilience and Hazards) 2021

(iv) SEPP (Biodiversity and Conservation) 2021

Attachments:

A. Recommended Conditions of Consent

B. Selected Drawings

Recommendation

It is resolved that consent be granted to Section 4.55 Application No. D/2020/1288/A subject to the amendment of the conditions in Attachment A (with modifications shown in ***bold italics*** (additions) and ~~strikethrough~~ (deletions).

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development, as modified, is substantially the same development as that originally approved and is consistent with Section 4.55(2)(a) of the Environmental Planning and Assessment Act, 1979.
- (B) The proposal is consistent with the aims, objectives and relevant provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 for the reasons set out in the report.
- (C) The development, as modified, is in the public interest.

Background

Site and Surrounding Development

1. The site is identified as Lot 28 in DP 5567 and is located at 38-44 Mountain Street, Ultimo. The site is located on the eastern side of Mountain Street with Smail Street to the north and Smail Lane to the south of the site. The site is located next to the intersection of Mountain Street and Smail Street. The site has a frontage of 27.4m to Mountain Street, a frontage of 37.1m to Smail Street and a site area of 1012 square metres.
2. The site currently contains an existing three storey commercial warehouse building built to the site boundaries. Ground level retail tenancies are located to Mountain Street as well as lobby access to the commercial levels above. Vehicular entry to ground floor parking is located off Smail Street.
3. Surrounding development in the vicinity includes:
 - To the east at 11 Smail Street, a five storey residential development consisting of a converted warehouse building with additional storeys above.
 - To the north at 22-36 Mountain Street, a five storey commercial warehouse building with a one storey addition above the original four storey building.
 - To the northwest at 35-39 Mountain Street, a six storey mixed use building with a two storey mansard addition above the original four storey warehouse building.
 - To the west at 41-49 Mountain Street is a vacant site and heritage item "Electrical Substation" - a heritage item of state significance.
 - To the south at 46-52 Mountain Street, is a heritage listed five storey building used as an educational establishment and known as "Warehouse Wilcox Mofflin Ltd" -an item of local heritage significance.
4. The surrounding locality includes a mix of uses with a predominant warehouse character along Mountain Street and in the surrounds.
5. The site is located within the Mountain Street Heritage Conservation Area (C68) under the Sydney LEP 2012 and is identified as a contributing building under the Sydney DCP 2012.
6. A site visit was carried out on 23 January 2023. Photos of the site and surrounds are provided below.

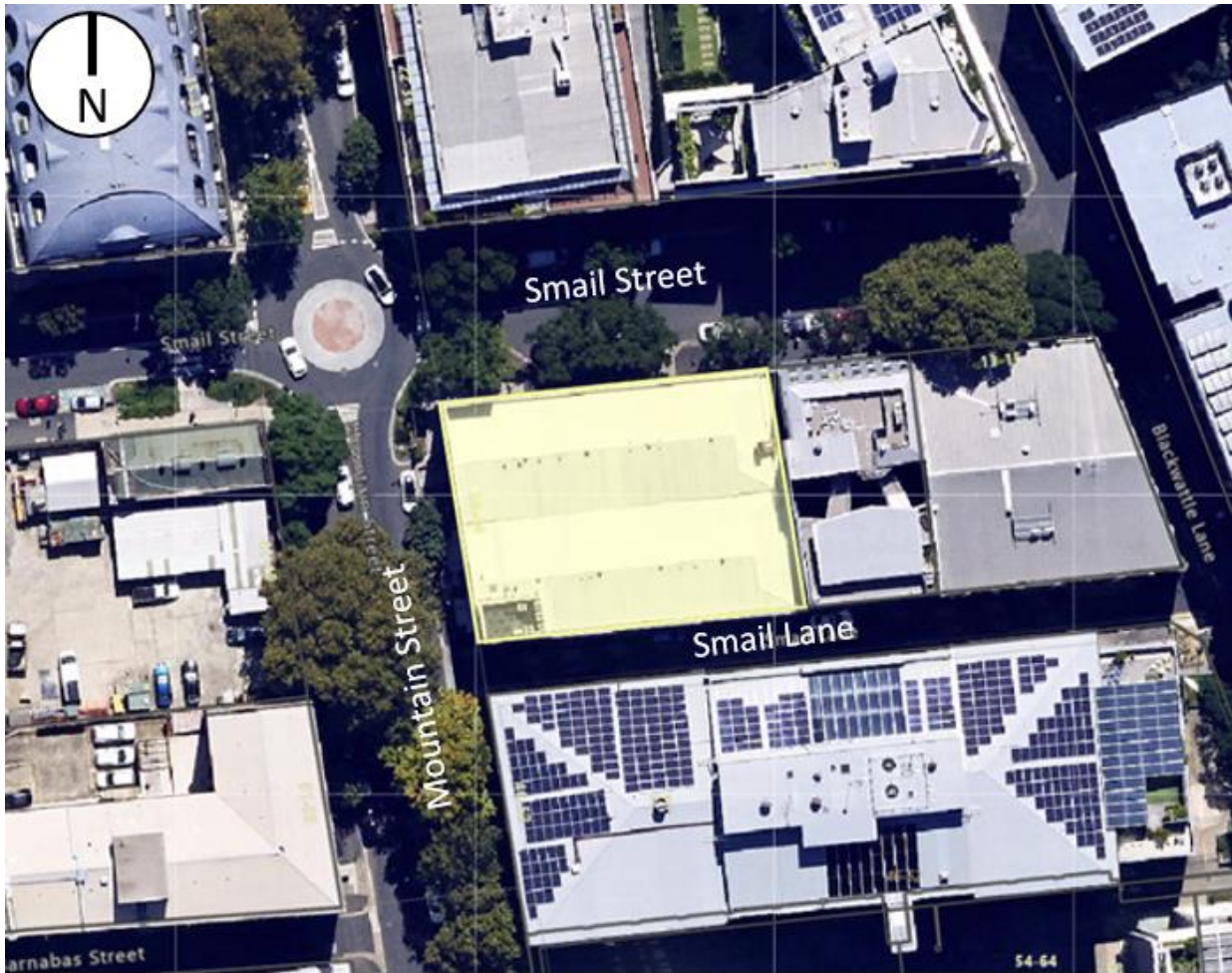


Figure 1: Aerial view of site (identified in yellow) and surrounds



Figure 2: Oblique aerial view of site, looking southeast



Figure 3: Site viewed from across the intersection of Mountain Street and Small Street, looking southeast.



Figure 4: Site (left) viewed from Smail Lane, looking east



Figure 5: Existing north facade of site viewed from across Smail Street, facing southwest



Figure 6: Neighbouring educational facility across Smail Lane



Figure 7: Neighbouring residential flat building - 11 Smail Street, Ultimo, located immediately east of the subject site

History Relevant to the Development Application

Development Application

7. The following application is relevant to the current proposal:
 - **D/2020/1288** – Development consent was granted by the Local Planning Panel on 22 September 2021 for alterations and additions to commercial development. The alterations included a two storey addition and a rooftop terrace. The proposal was approved with a height variation of 18.3% and an FSR variation of 77.98%. Construction based on this consent has not commenced.

Amendments

8. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 24 January 2023 regarding the following:
 - (a) that the approved carpark entrance levels should be retained to limit flood impacts to the building;
 - (b) a redesign of the proposed gas and water meter cabinet and hydrant booster cabinet so that the cabinet doors would not obstruct the public domain when open;

- (c) more precise architectural details of the proposed awnings to demonstrate compliance with DCP 2012 Control 3.2.4 and information to demonstrate that the awnings will not interfere with nearby street tree canopies;
 - (d) an Acoustic Report to verify that potential noise impacts from the proposed cooling tower will not have an adverse impact upon the acoustic amenity of neighbouring properties;
 - (e) landscape details showing how the rooftop landscaping modifications will achieve compliance with DCP Control 3.5.2, and further details demonstrating compliance with the provisions of the City of Sydney Landscape Code Volume 2;
 - (f) the reintroduction of louvres on the building's facade as approved in the Development Application (DA); and
 - (g) the retention of one service vehicle parking space.
9. The applicant responded to the request on 24 February 2023, and submitted the following information:
- (a) That the proposed carpark entrance levels are a correction to the DA and are based on an internal building survey conducted after the approval. The proposal does not therefore propose to lower any floor levels. Though the proposed plans indicate a lower carpark entrance finished floor RL, the actual carpark entrance remains unchanged from the approval.
 - (b) That the flood sensitive devices located at ground level would be located no lower than RL 6.05, being 300mm above the 1% AEP flood levels. The applicant encouraged this specification to be included as a condition of consent.
 - (c) A redesign of the gas and water meter cabinet to include a removable louvred panel, and doors on the fire hydrant booster to be openable to 180 degrees.
 - (d) Additional plans demonstrating the awning details. The applicant also noted with the provision of site photographs and an addendum letter to the Tree Pruning Specification that the modified awnings would not interfere with existing street trees.
 - (e) The applicant also noted that a spandrel band had been added to the proposal instead of the approved louvres and was accompanied by a Section J report.
 - (f) An acoustic report demonstrating that the proposed cooling tower is capable of complying with Council's standard noise conditions.
 - (g) The applicant also included landscape plans and a preliminary Landscape Maintenance Plan in an attempt to satisfy the requirements of Condition 22 (Green) Walls and Condition 23 (Green) Roofs, and proposed that these conditions, which required such information to be submitted prior to the issue of a Construction Certificate, be deleted from the DA consent through this S4.55 application.
 - (h) The applicant also noted that 8 trees had been proposed within the Architectural Rooftop Landscape Plan in an attempt to satisfy Condition 2(b) of the DA Consent.

- (i) Revised plans included one service vehicle parking space.
10. An additional request was sent on 13 April 2023 to raise issues identified during further assessment and resolve existing DA conditions. The following information and amendments were requested:
- (a) a materials and colours schedule;
 - (b) verification from a structural engineer that the proposal is not capable of supporting eight planter boxes of 9 cubic metres of soil as per the City of Sydney Landscape Code Volume 2, as per the applicant's claim on the matter;
 - (c) additional technical details to satisfy the requirements of DA Conditions 22 and 23, including hydraulic/irrigation details and a green wall maintenance plan;
 - (d) a detailed plan of the proposed gas and water service connections to the proposed gas and water meter and hydrant booster, demonstrating that the proposed connections will not interfere with the root network of the existing street trees;
 - (e) the reintroduction of louvres as approved under D/2020/1288; and
 - (f) the placement of flood sensitive devices above an RL of 6.09.
11. The applicant responded on 26 April 2023 with the following information:
- (a) a materials and colours schedule;
 - (b) a revision of the architectural plans to include larger rooftop planter boxes, providing 9 cubic metres of soil per proposed tree;
 - (c) an update of the architectural plans to indicate jacketed (steel encasement) of the building columns to support additional soil load, and a minor amendment to plant room sizes to accommodate the columns' increased size;
 - (d) a request to amend Condition 22 to require that the Green Wall Maintenance Plan be required prior to the issue of an Occupation Certificate, instead of the currently conditioned requirement that the plan be provided to Council prior to a Construction Certificate. The applicant noted that their current green wall consultants were under administration and not able to provide the requested documentation in the specified timeframe;
 - (e) plans demonstrating that the gas and water meter and the hydrant booster are capable of being connected to their respective services without interfering with the root structure of existing street trees;
 - (f) reintroduction of the louvres into the architectural plans as approved under D/2020/1288. The proposed glazing and removal of the louvres is therefore no longer part of this S4.55 modification application; and
 - (g) a notation on the architectural plans indicating the location of flood sensitive devices above an RL of 6.09.

12. On 23 May 2023, the applicant provided a revised copy of the requested Green Wall Maintenance Plan after engaging new consultants. Council's Landscape Unit reviewed the Maintenance Plan, and the previously provided Landscape Plans and noted that previously identified deficiencies regarding detail specifications, irrigation/hydraulic plans and structural details were still deficient. The applicant was provided with a detailed list of deficiencies to assist in resolving this matter. Due to the concluding assessment timeframe, the applicant was advised to resolve this condition post-determination, as per the existing development application conditions.
13. Following the conclusion of final internal referrals, a final request for amendments to the plans was requested on Wednesday 24 May 2023. This included material details of the level 4 glass meeting room, and a redesign of the proposed awnings to Mountain Street to avoid interference with the building's detailed features. The request was intended to enable the deletion of existing Conditions 2(a), 2(c) and Condition 3. The applicant advised that there was insufficient time provided to respond to the condition. The existing conditions of consent are able to be satisfied post the determination of this S4.55 application.

Proposed Development

14. The application seeks consent for the following modifications to the approved development.

Proposed modification	Specific changes
Lift overrun height	An increase of the approved lift overrun height from RL 27.47 to RL 27.59, which represents a 120mm increase upon the existing lift height.
Cooling tower	<p>Introduce a cooling tower to the rooftop terrace. The cooling tower would exceed the 18m height standard and become the highest point of the building at an RL of 28.235.</p> <p>The difference between the proposed height of the cooling tower and the approved lift overrun height (highest approved point under D/2020/1288) is 765mm.</p> <p>Due to height differences in existing ground level across the site, whereby the ground below the proposed cooling tower is lower than the ground level below the lift, the building height is proposed to increase by 1.065m. This represents a variation of 25.1% against the LEP height standard and a difference of 6.8% against the existing approved height variation of 18.3%.</p>
Gross Floor Area (GFA)	Due to the proposed plant rooms, the proposed floor plans will achieve a gross floor area of 3,552sqm which results in an FSR of 3.51:1. This represents a reduction from the approved FSR of 3.7:1 by 0.19:1. Accounting for a reduction in proposed end of trip facilities, the proposal results in an

Proposed modification	Specific changes
	FSR variation of 70.39% which is 7.59% less than the approved variation of 77.98%.
Structural columns	Steel jackets have been added to the proposed structural columns in order to support the additional soil load that is required by Condition 2 of D/2020/1288 and the City of Sydney Landscape Code Volume 2.
Additional green wall	Introduction of a green wall to the level 3 terrace, on the west side (Mountain St) of the building.
Satisfaction and subsequent deletion of existing conditions of consent	<p>The application seeks to satisfy several conditions of consent and requests their subsequent deletion. These particular conditions require the submission of specified documentation to Council prior to the issue of a Construction Certificate and would otherwise be satisfied through a letter from Council post determination. It is intended by the applicant to resolve the conditions through documentation and details provided within the S4.55. The relevant conditions are:</p> <ul style="list-style-type: none"> • Condition 2(a) - Regarding street awning design specifications, • Condition 2(b) - Relating to either tree numbers or canopy requirements, • Condition 2(c) - Regarding specifications of the approved level 4 glass meeting room, • Condition 3 - Regarding the materials and colours sample board, • Condition 22 - Regarding details of the green wall structure, irrigation specifications and maintenance, <p>And the partial deletion of:</p> <ul style="list-style-type: none"> • Condition 23 - Regarding rooftop landscaping, irrigation, and maintenance details.
Other conditions sought to be amended	<ul style="list-style-type: none"> • Condition 4: The proposal seeks to amend the maximum building height specified in this condition from an RL of 27.47 to an RL of 28.235. • Condition 18: The proposal seeks to reduce the provision of parking spaces required by this condition from 16 to 11. The proposal retains a service vehicle

Proposed modification	Specific changes
	<p>parking space and motorcycle space, and increases the accessible space from 1 to 2.</p> <ul style="list-style-type: none"> Condition 20: The proposal seeks to reduce the required number of bicycle spaces required by this condition from 38 to 34, and the locker spaces from 40 to 30.
Ground floor changes	<p>Including:</p> <ul style="list-style-type: none"> Internal reconfigurations to allow for the provision of a switch room, fire pump room, on-site detention tank, bin rooms and bulky waste storage areas. Further, the provision of a grease arrestor within the carpark and the marginal relocation of the lift core to account for the ground floor layout changes. Layout changes to, and a reduction in the end of trip facilities, locker numbers and bike storage capacity in response to a decrease in the current approved gross floor area. Reconfiguration of retail tenancies including the division of two tenancies to three tenancies. This includes a reduction in retail space from 343 sqm to 275 sqm as a result of the provision of additional plant rooms.
Level 1 and 2 changes	<p>Including:</p> <ul style="list-style-type: none"> Location and arrangement of amenities, Addition of two plant rooms to each floor on the eastern side of the building, An increase in the void size over the entrance lobby, Amended stair and lift core location and arrangement.
Level 3 changes	<p>Including:</p> <ul style="list-style-type: none"> Location and arrangement of amenities, The addition of two plant rooms, The introduction of a green wall to the outdoor terrace and manually operable louvres overhead, Amended stair and lift core location and arrangement.

Proposed modification	Specific changes
Level 4 changes	Including: <ul style="list-style-type: none"> • Location and arrangement of amenities, • Addition of two plant rooms, • Amended stair and lift core location and arrangement.
Level 5 (terrace) and roof changes	Including: <ul style="list-style-type: none"> • Reduction in trees from 17 to 8 in line with Condition 2(b) requirements, • A larger PV array, • Introduction of a cooling tower, • General layout changes, including changes to pergola extent, seating arrangement, and planter dimensions and locations. • Amended stair and lift core location and arrangement.
Elevation changes	Including, and in addition to reflecting the above changes: <ul style="list-style-type: none"> • Revised materials and colours, • Introduced colourback glass spandrel to north / Smail Street elevation, • Fire hydrant booster and gas and water meter cabinets to Smail Street, • Revised awning design to comply with Condition 2 of D/2020/1288, • Revised fire exit locations, • Minor revisions to ground floor glazing along Mountain Street and Smail Street, as well as a minor lobby entrance door change. • Addition of louvres on the north and south facade to facilitate mechanical ventilation.

15. Plans and elevations of the proposed development are provided below.

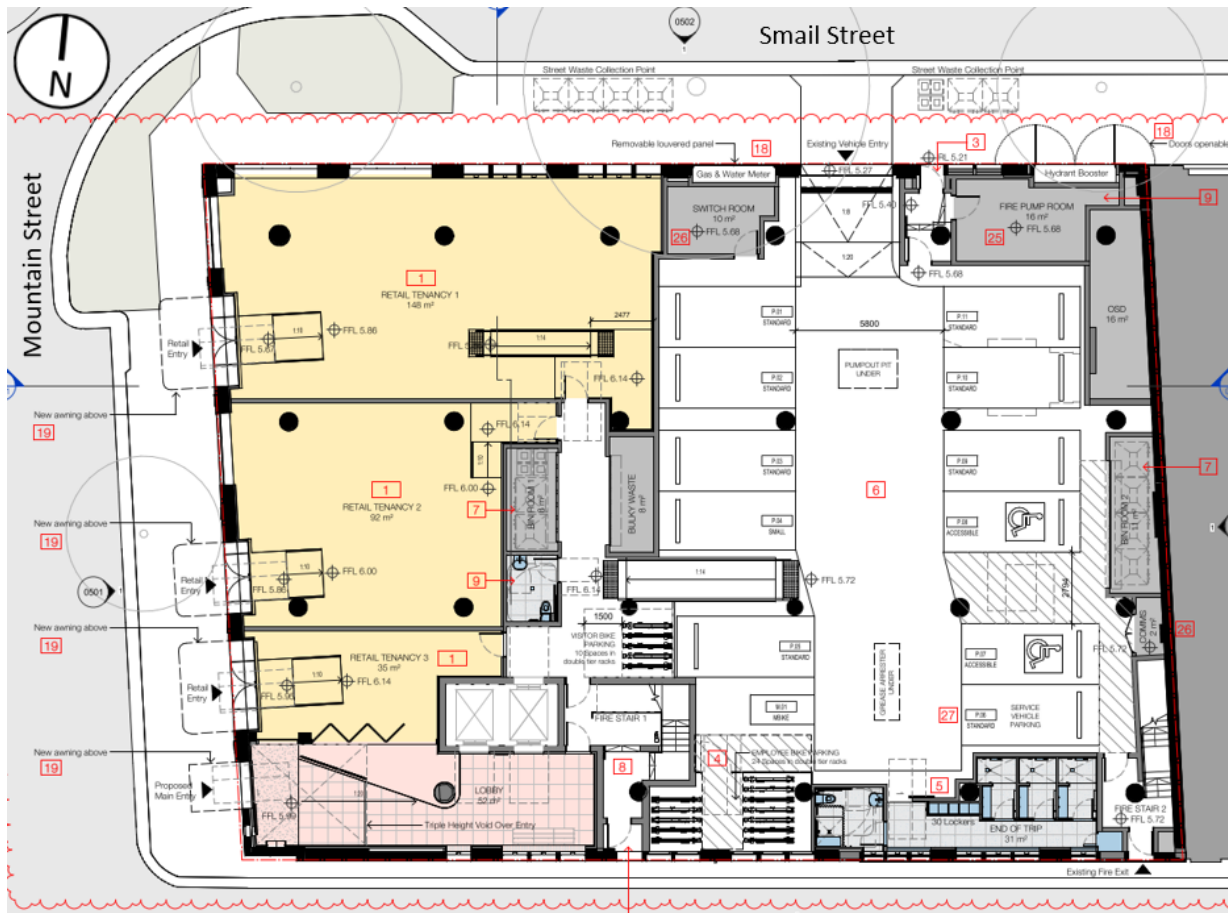


Figure 8: Proposed ground floor

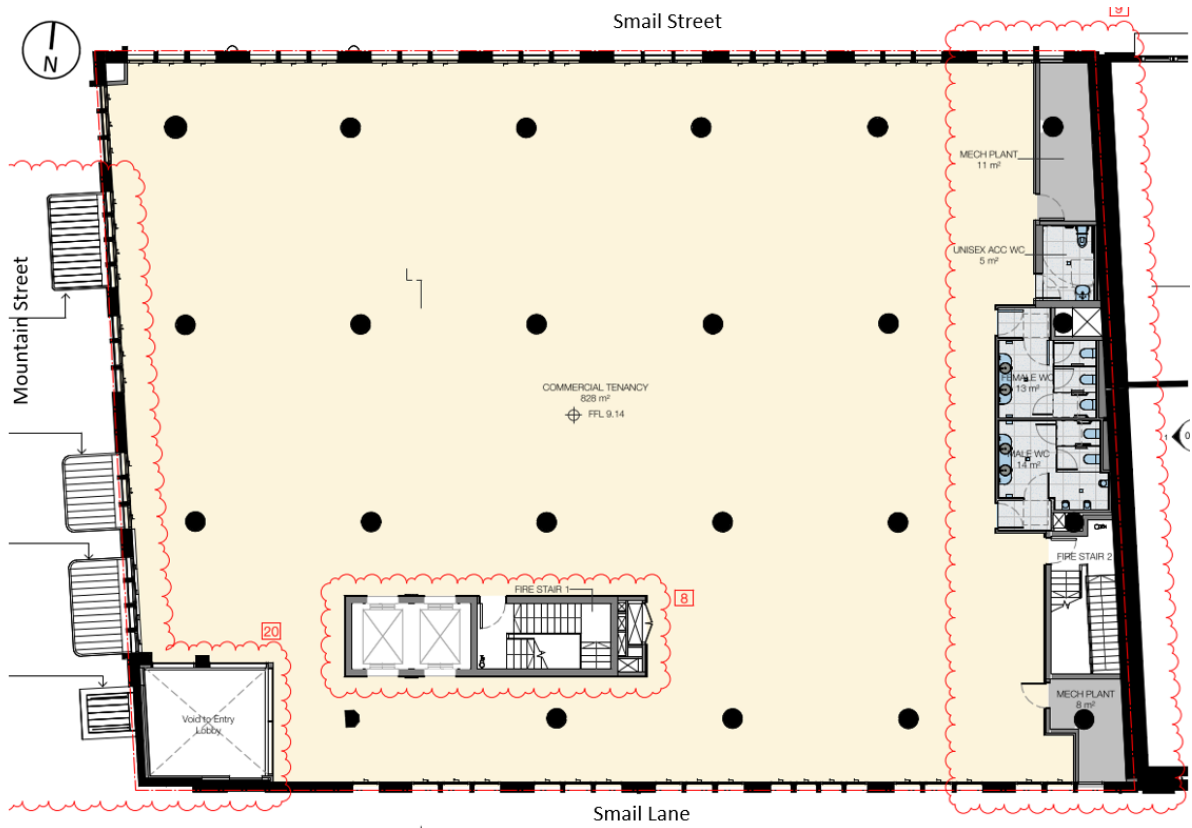


Figure 9: Proposed level 1

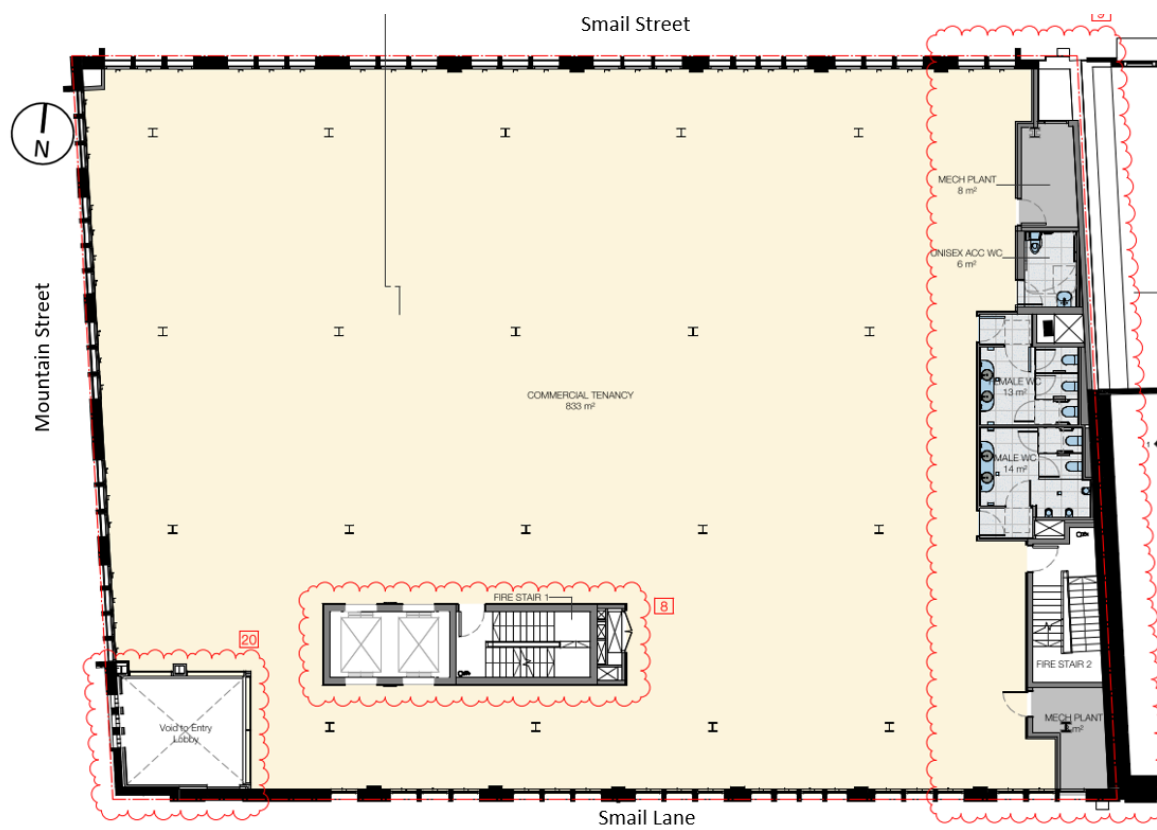


Figure 10: Proposed level 2

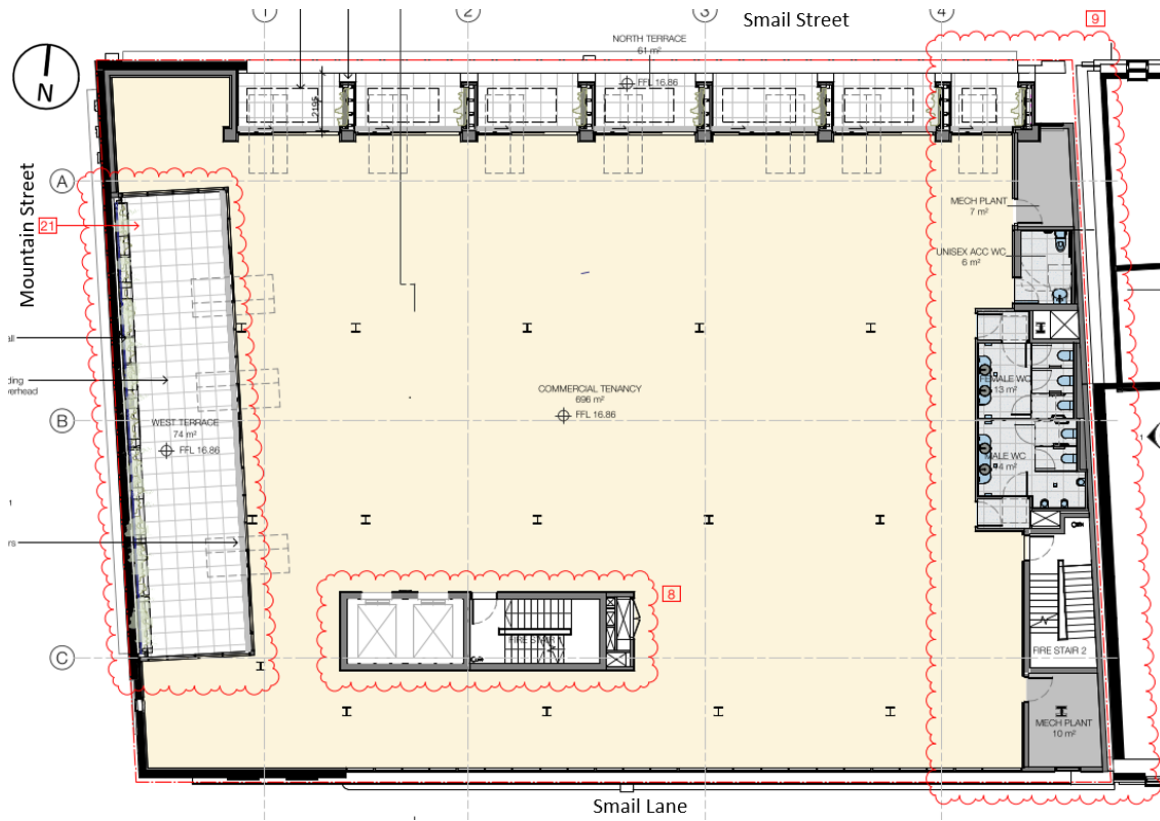


Figure 11: Proposed level 3

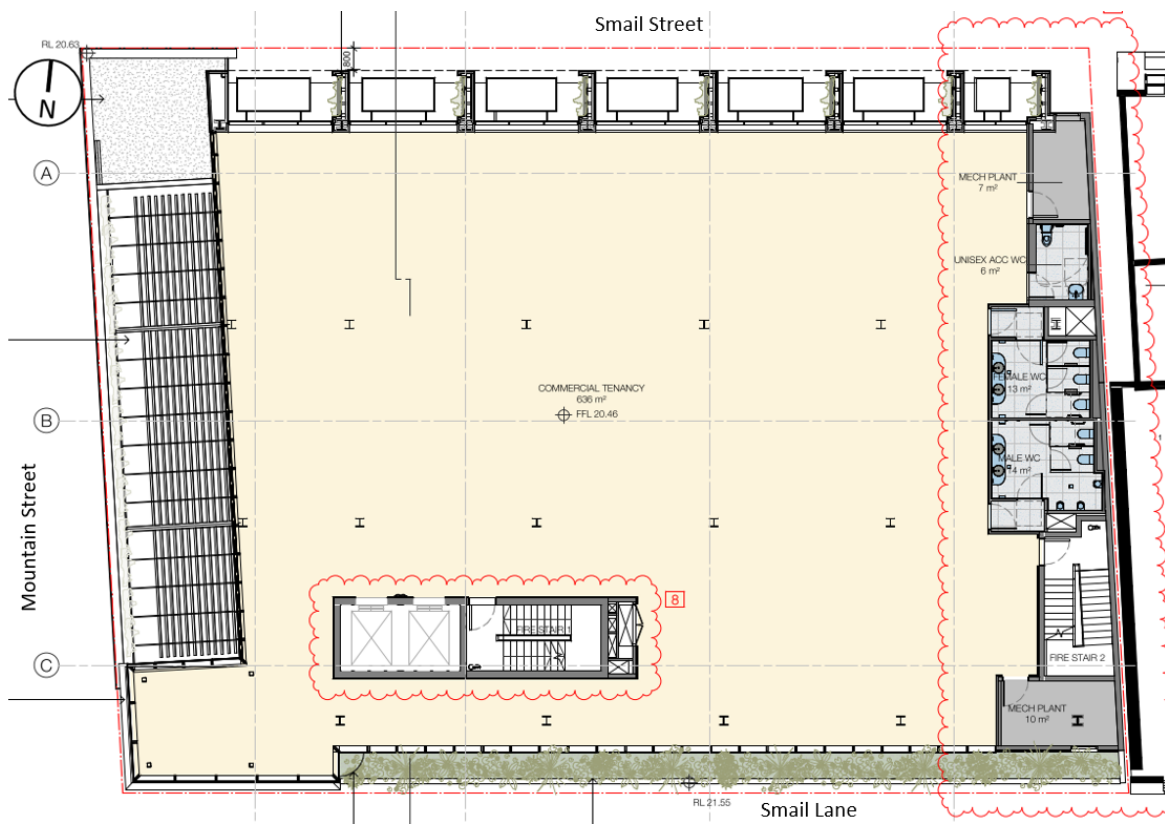


Figure 12: Proposed level 4

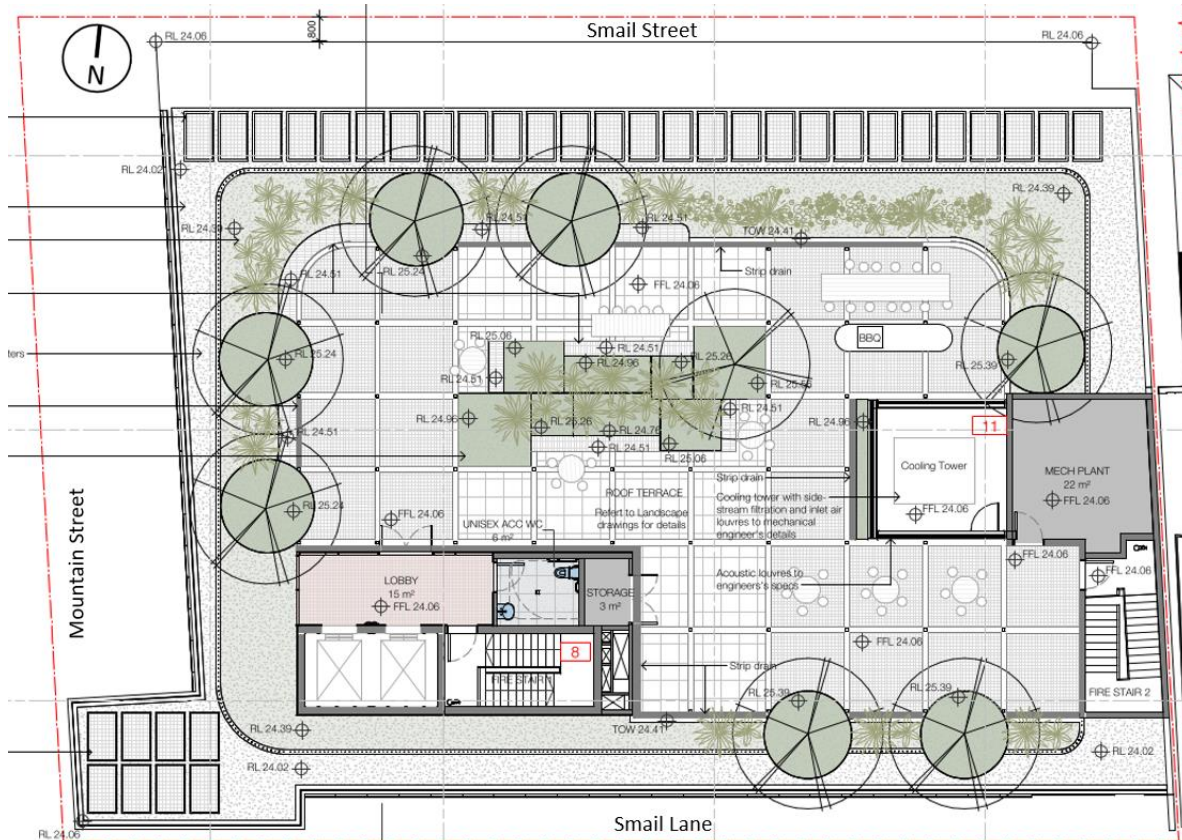


Figure 13: Proposed roof terrace plan

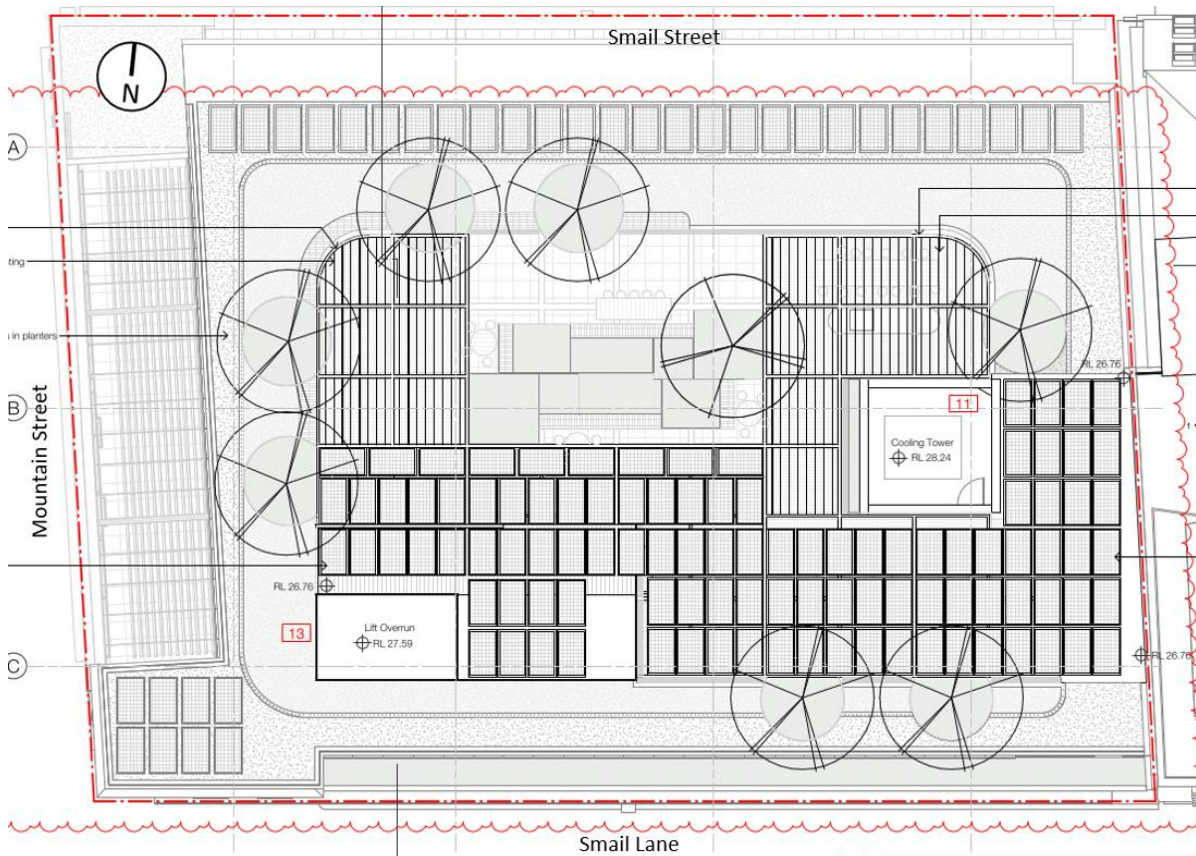
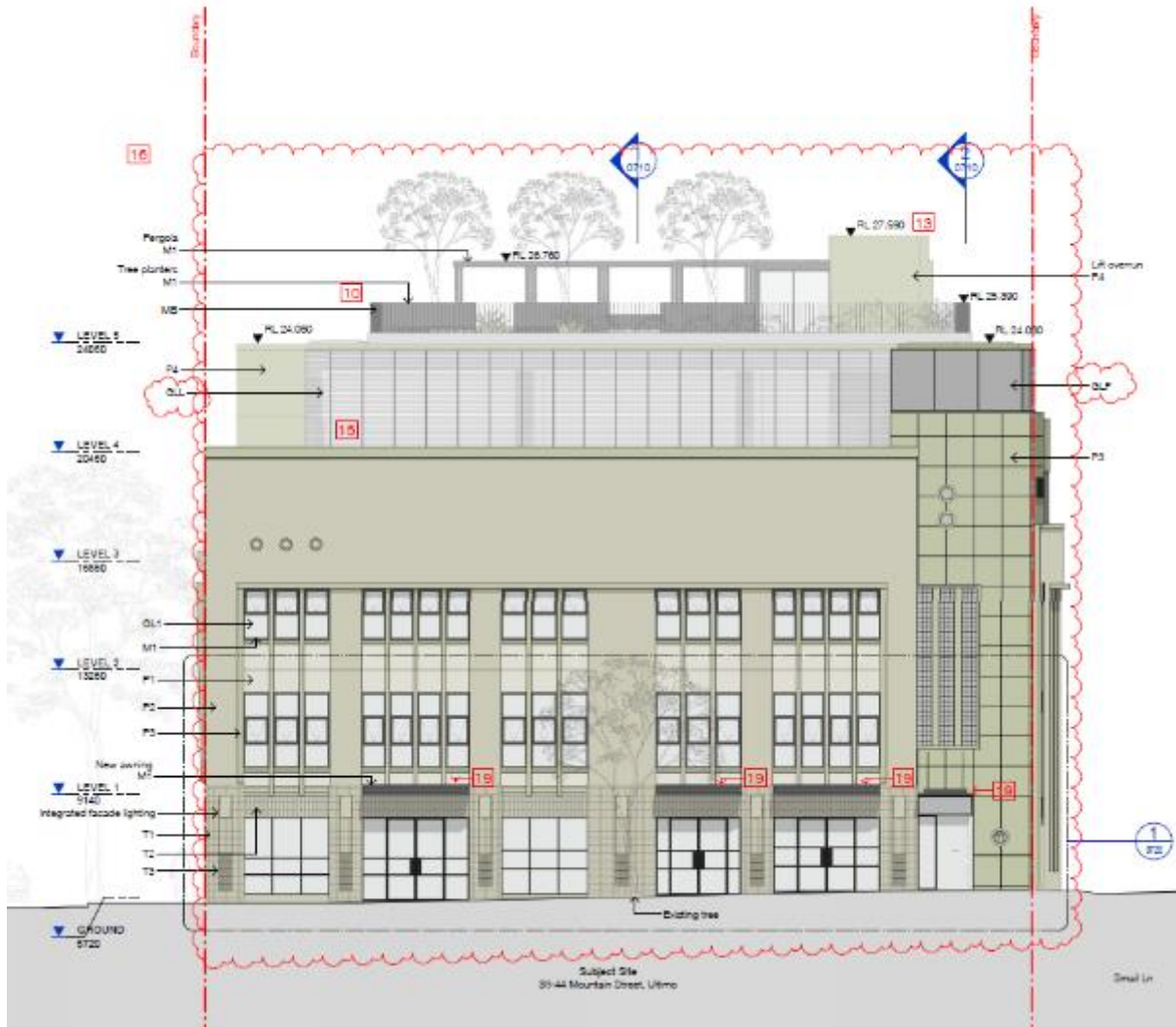


Figure 14: Proposed roof plan



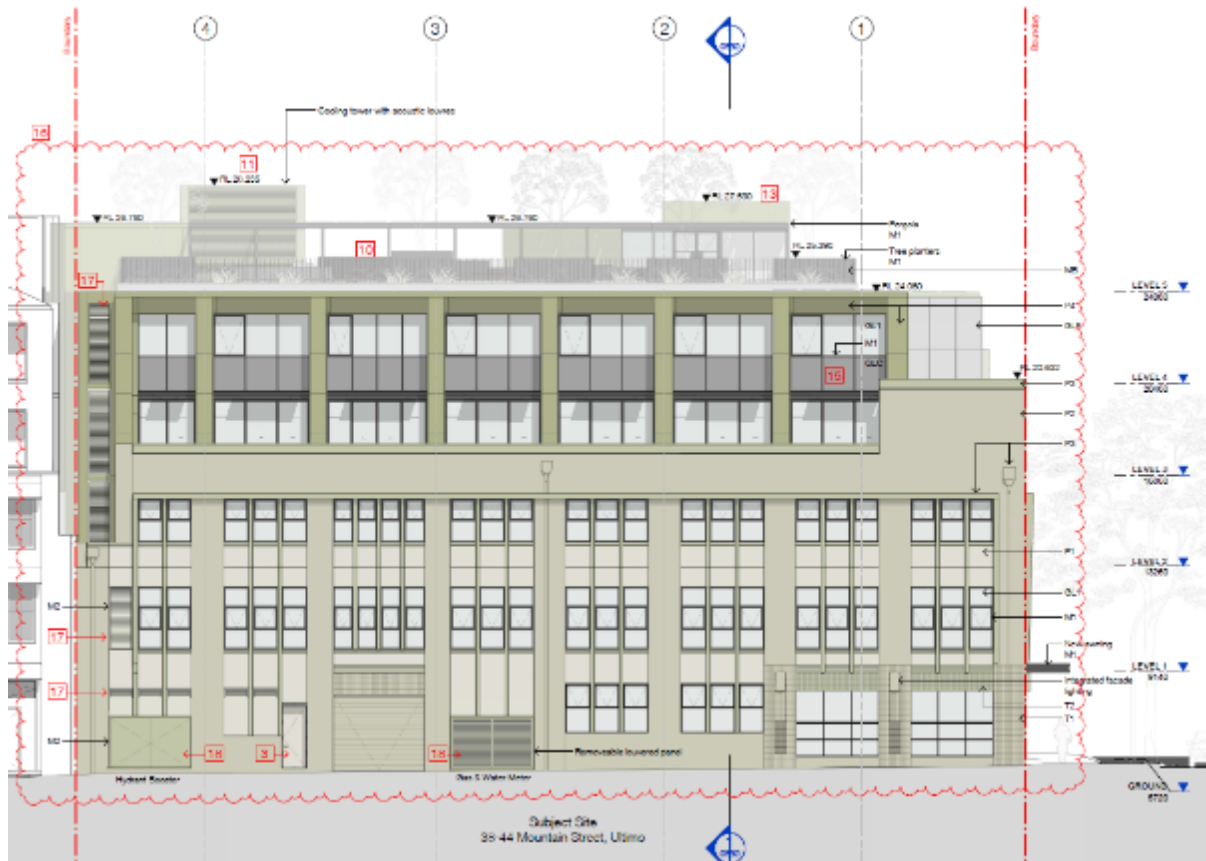


Figure 16: Small Street (North) elevation

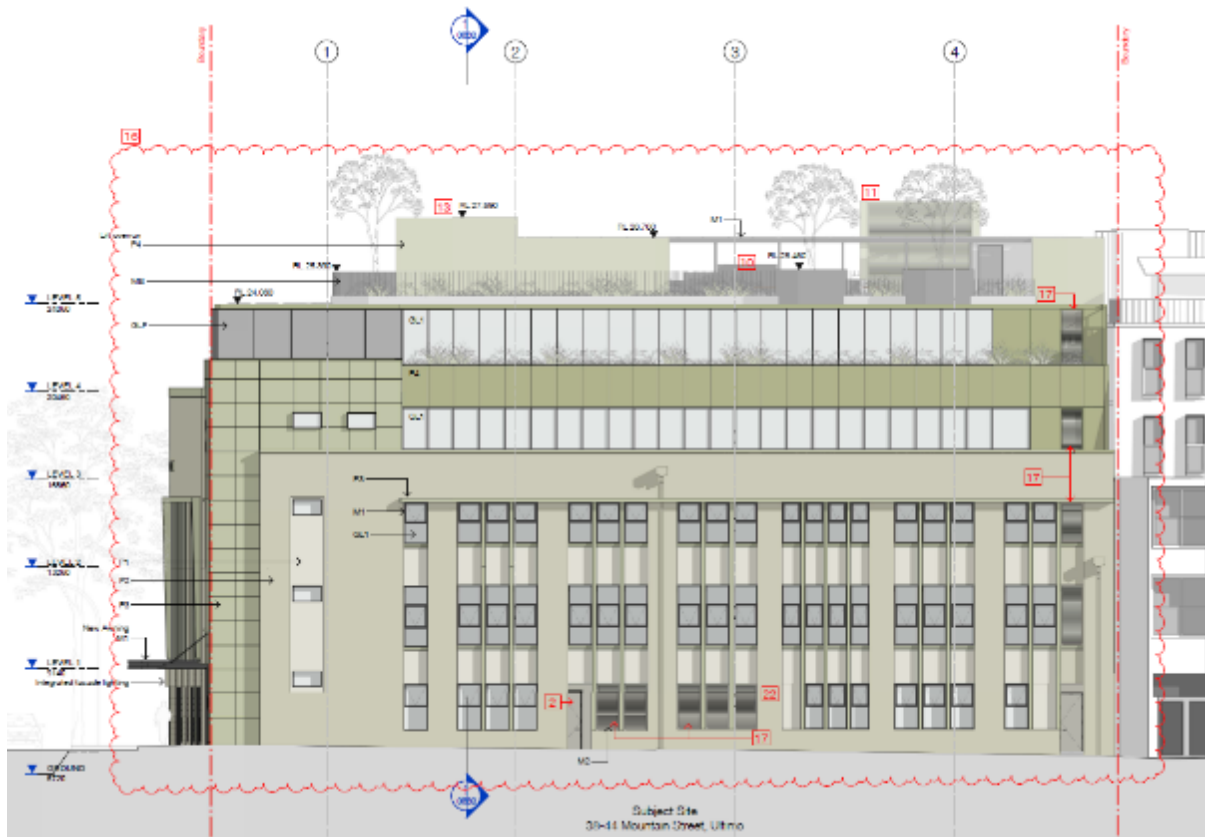


Figure 17: Small Lane (South) elevation

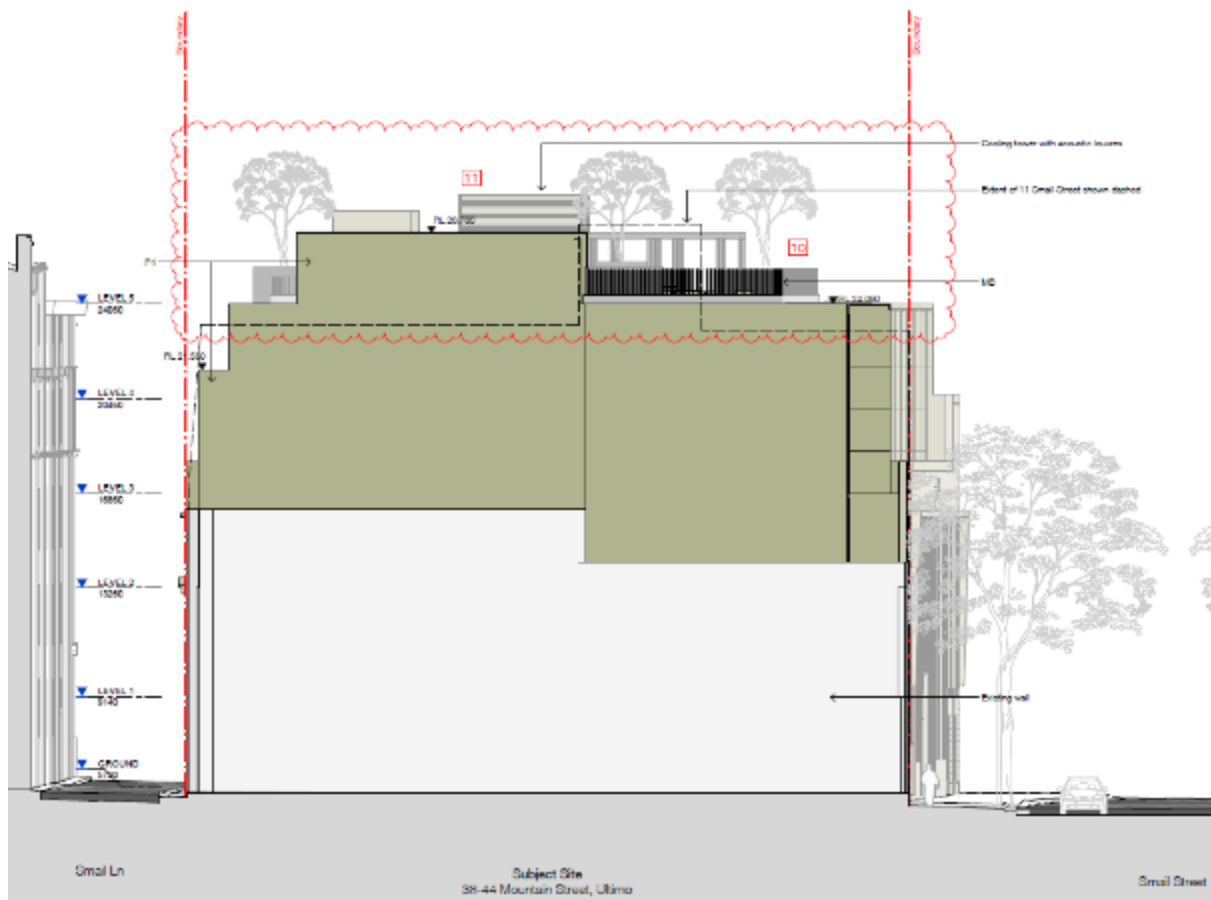


Figure 18: East (side) elevation

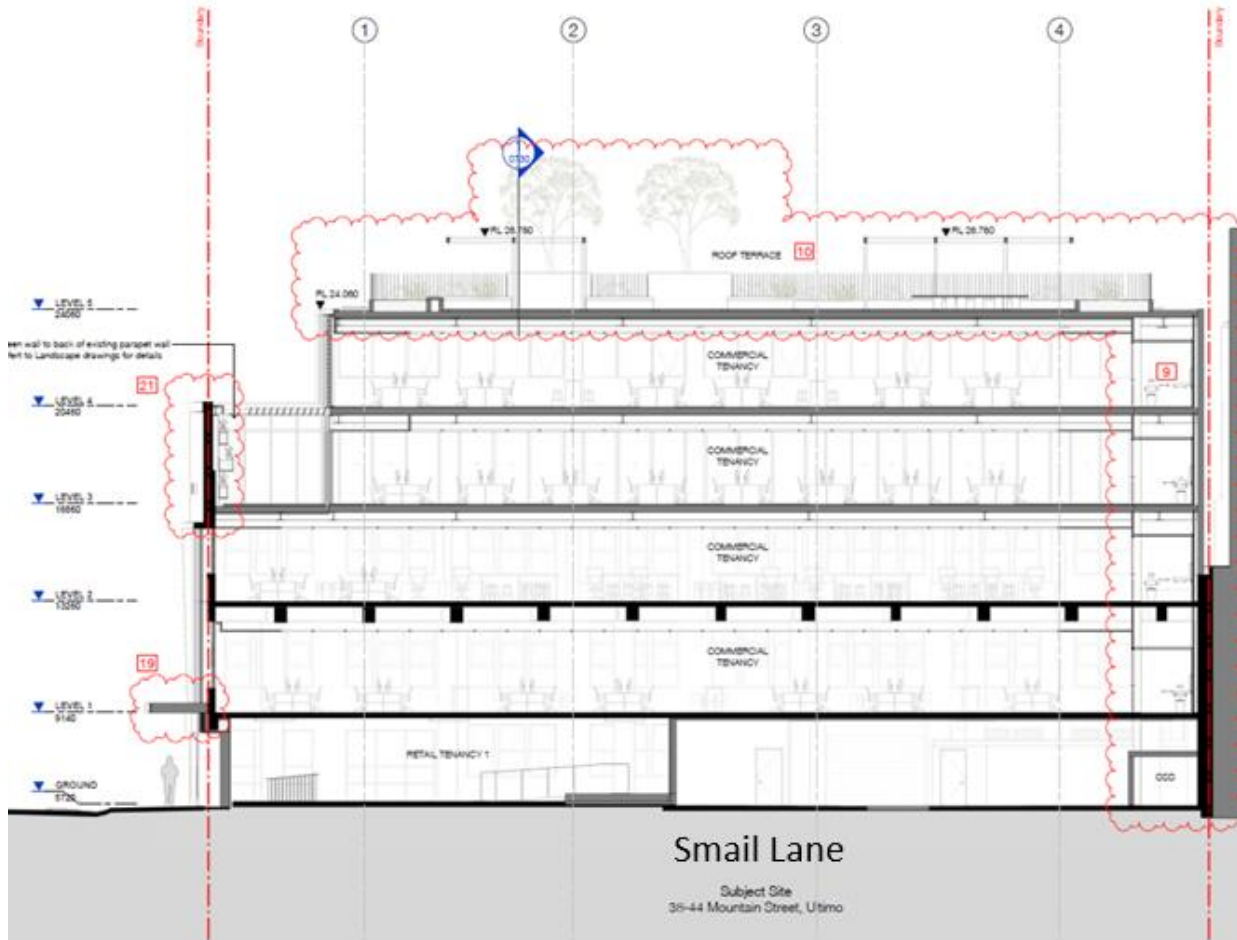


Figure 19: Section A

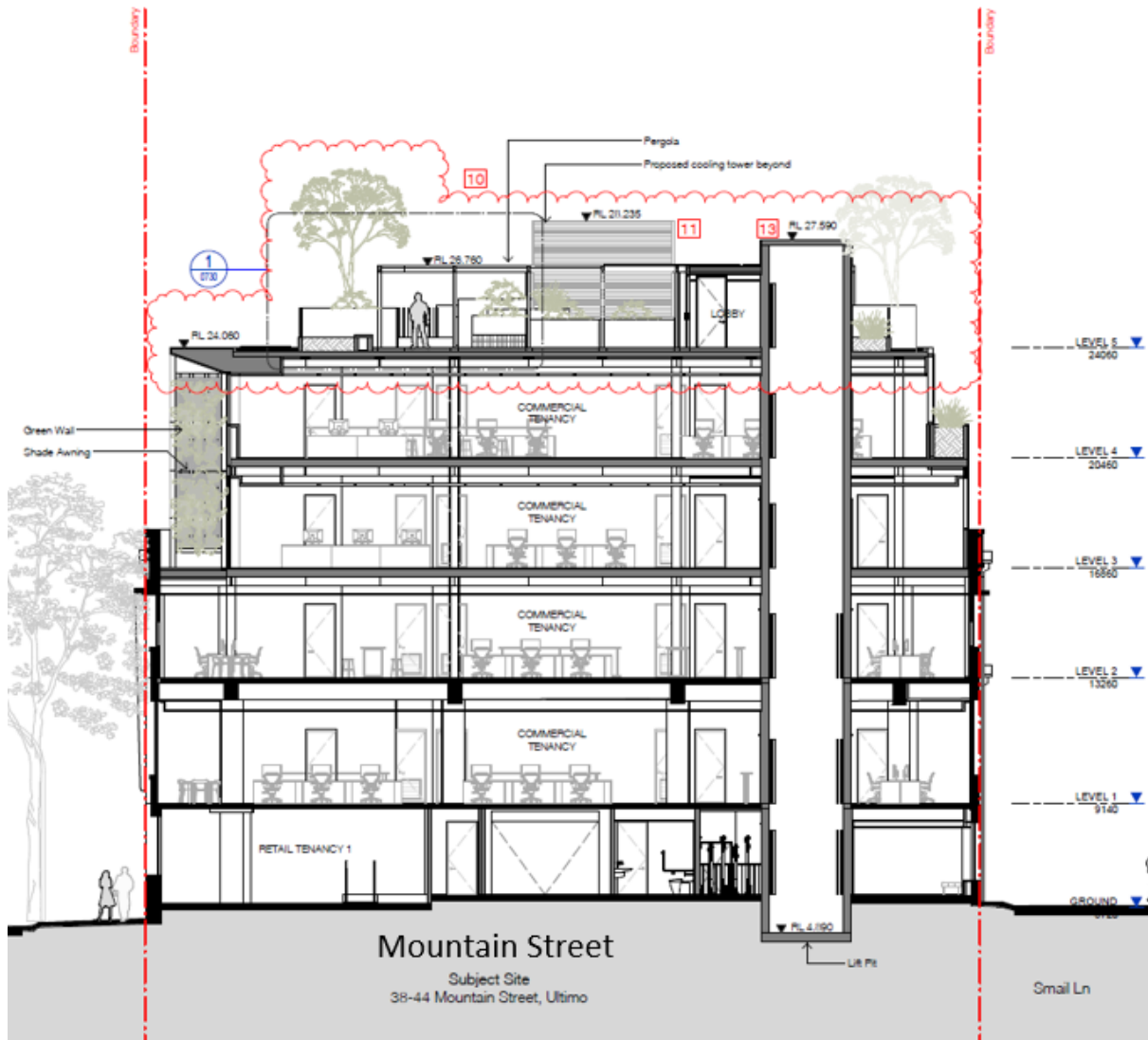


Figure 20: Section B



Figure 21: Artist render of the proposal

Assessment

16. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. Site investigations have identified fill material below the existing ground floor concrete floor (that is being retained) which may pose a contamination risk. An environmental management plan was submitted with the approved development application which includes recommendations to ensure the risks are managed during construction and ongoing use. The proposed modification results in no changes to this matter.
34. The existing consent for the site (D/2020/1288) contains conditions to ensure compliance with the measures outlined, and for Council to be notified should there be any new contamination evidence during remediation, demolition or construction works.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment

35. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
36. The site is within the Sydney Harbour Catchment and eventually drains into Sydney 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 SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

37. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the MU1 Mixed Use zone. The proposed development is defined as commercial premises and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	A maximum building height of 18m is permitted. A height of 22.52m is proposed within this S4.55 modification application. The proposed development does not comply with the maximum height of buildings development standard. The proposal represents a 25.1% variation to the development standard and an increase of 6.8% of the approved height of D/2020/1288. See further details in 'Height' below.

Provision	Compliance	Comment
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 2.06:1 (including end of journey floorspace) or 2085sqm is permitted.</p> <p>A floor space ratio of 3.51:1 or 3,552sqm is proposed as part of this S4.55 modification application.</p> <p>The proposed development does not comply with the maximum floor space ratio development standard.</p> <p>The proposal is a reduction of the approved FSR of 3.7:1 under D/2020/1288.</p> <p>See further details in 'Gross Floor Area' below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the Mountain Street Heritage Conservation Area. To the west at 41-49 Mountain Street is a vacant site and heritage item "Electrical substation" a heritage item of state significance.</p> <p>To the south at 46-52 Mountain Street is a heritage listed five storey warehouse building "Warehouse "Wilcox Mofflin Ltd" an item of local heritage significance.</p> <p>The proposed development as amended will not have detrimental impact on the heritage significance of the heritage conservation area and the heritage item.</p>
5.21 Flood Planning	Yes	<p>The site is located on land identified as having flood risk.</p> <p>Survey details provided with the modification application have been updated since the approval of D/2020/1288 and indicate that the existing building openings are lower than what was originally approved.</p> <p>The proposal has been reviewed by Council's Public Domain Unit who have</p>

Provision	Compliance	Comment
		advised the proposal is supported subject to conditions requiring flood sensitive devices to be located higher than RL 6.09. Existing conditions of consent relating to flooding are still relevant.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 1 Additional floor space (other than land in Central Sydney)		
6.13 End of Journey Floor Space	Yes	The proposed development is eligible for an additional floor space ratio of 0.06:1. The proposal includes 58.6sqm of end of journey floorspace including showers, lockers, change rooms and bicycle storage.
Division 4 Design excellence		
6.21 Design excellence	Yes	The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area. The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	A maximum of 22 car parking spaces are permitted. The proposed development includes 11 car parking spaces (and 1 motorcycle space) and complies with the relevant development standards.

Development Control Plans

Sydney Development Control Plan 2012

38. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

39. The site is located within the Mountain Street locality. The proposed development is in keeping with the warehouse character and the design principles of the locality.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2 Defining the Public Domain	Yes	Section 3.2 of the DCP is capable of being satisfied through the maintenance of existing conditions of consent.
3.5 Urban Ecology	Yes	The proposed modification does not involve the removal of any trees and will not have an adverse impact on the local urban ecology. The proposed roof terrace introduces new canopy coverage for the site.
3.6 Ecologically Sustainable Development	Yes	The proposed modification introduces water cooling system and associated closed circuit cooling tower to achieve a NABERS 5-star energy agreement.
3.7 Water and Flood Management	Partial compliance	The site is identified as being on flood prone land. See discussion under section 7.15 above.
3.9 Heritage	Yes	The site is located within the Mountain Street Heritage Conservation Area. The subject building is noted as a contributory building within the conservation area and is neighboured by two heritage items. Councils' Heritage Unit has reviewed the proposal and advised that the revised colours and materials schedule is generally acceptable but note that the materials proposed for the level 4 glass meeting room are not satisfactory. As such, existing Condition 3 which requires the

Provision	Compliance	Comment
		submission of finalised materials and colours to Council is not recommended to be deleted.
3.11 Transport and Parking	Partial compliance	The proposed modifications will result in a reduction of bicycle storage locations and locker numbers which will not comply with this control. See 'Discussion - General Changes' further in this report. Proposed parking arrangements include a service vehicle parking space and comply with this control.
3.12 Accessible Design	Yes	The proposed modification maintains equitable access.
3.13 Social and Environmental Responsibilities	Yes	The proposed modifications maintain adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	The modification will result in a reduction of 1,100L bins from eight to six and a separation of waste and recycling bin storage areas. Council's Cleansing and Waste Unit have reviewed the proposal and noted that the proposed waste storage areas are acceptable having regard to the reduced space in the ground floor resulting from the introduction of mechanical plant rooms.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.11 Acoustic privacy	Yes	The modification proposal introduces two elements which are likely to generate noise. An acoustic report provided by the applicant, which regards the proposed cooling tower, has been reviewed by Council's Environmental Health - Noise

Provision	Compliance	Comment
		Unit. The Noise Unit have advised that the proposed cooling tower noise levels are acceptable subject to recommended conditions of consent.

Threshold Test

40. The proposed modifications primarily seek to:
- (a) Increase the approved height of the existing development consent, for a National Construction Code compliant lift overrun, and introduce a cooling tower to achieve a 5-star NABERs rating for the building.
 - (b) Introduce plant rooms into the approved building and alter the approved internal configuration to account for the new rooms. Configurations include a revised parking layout, retail floorspace layout, a reduction in the approved end of trip facilities and bicycle storage, as well as the relocation of approved amenities, and revised lift core and stair location and arrangements. The proposal also introduces a new green wall to the level three terrace adjacent Mountain Street.
 - (c) Alter the approved façade of the building, to account for NCC requirements relating to fire exits, introduce carparking and mechanical ventilation, improve the energy efficiency of the building via a glass spandrel, and introduce a gas and water meter to Smail Street in addition to relocating the approved hydrant booster.
 - (d) Alter the approved landscape, seating and amenities arrangement on the approved roof top terrace, as well as introduce additional solar panels.
 - (e) Resolve existing conditions of consent, relating to the requirement to submit additional information, prior to the issue of a Construction Certificate.
41. The development as proposed to be modified is substantially the same as that originally approved. This is because:
- (a) The development continues to relate to alterations and additions to commercial development. In particular:
 - The proposed cooling tower, solar panels and additional green wall are additions to terrace areas which are approved under D/2020/1288.
 - The proposed modifications represent reconfigurations of the approved floor layouts.
 - (b) The proposed materials and colours, awning design, level 4 meeting room design, and the proposed rooftop trees relate to existing conditions of consent which require further details.

- (c) The inclusion of landscape details and specifications within the application regard the currently approved landscape green wall and green roof, and existing Conditions 22 and 23.
- (d) The development remains consistent with the objectives of the statutory instruments and planning controls applying to the site.
- (e) The proposed modifications to the approved building present acceptable environmental impacts when compared to the original approval.

Discussion

Height

Cooling tower

- 42. The applicant has provided written justification to support the proposed cooling tower and height, noting that the cooling tower is necessary to achieve the conditioned 5-star NABERs energy rating. A closed circuit water-cooled system is proposed which requires an increased height to contain the water cooling coils. Alternative systems lower in height are noted to be significantly less efficient than the selected system.
- 43. The applicant has provided correspondence from TORINEX Consulting Engineers to verify the efficiency of the proposed taller design compared to shorter alternatives.
- 44. The proposed building height represents an increase of 1.065m upon the existing approved building height and would become the tallest building element compared to the approved building form under D/2020/1288. However, as the cooling tower is generally centralised in the building's roof terrace, the proposal does not introduce excessive bulk and overshadowing and does not unreasonably interfere with views.
- 45. A proposed elevation of the site demonstrating the proposed cooling tower is provided below in Figure 23.
- 46. The structure does not generate additional gross floor area, or trafficable space and does not prevent the proposal from achieving conditioned tree canopy requirements.
- 47. As such, the proposed cooling tower and the proposed modification to the approved building height is supported.

Lift overrun

- 48. The applicant has provided written justification for the proposed lift overrun height, stating that the proposed increase from the approved RL of 27.47 to a proposed RL of 27.59 is required to meet NCC requirements and account for the lift's mechanism.
- 49. Elevations showing the approved building height and the proposed building height are located below:



Figure 22: Approved North elevation, with lift overrun shown top right



Figure 23: Proposed north elevation, with lift overrun shown top right, and proposed cooling tower shown top left

50. The proposal is supported as the lift overrun results in a minor height increase of 120mm, does not introduce excessive bulk or overshadowing impacts to nearby sites and does not unreasonably interfere with views.

Elevations

Awnings

51. Condition 2(a) of the existing consent requires awnings located at street level entrances along Mountain Street are amended to comply with Section 3.2.4 of the Sydney DCP 2012 or be deleted. The revised design is to be to the satisfaction of Council prior to the issue of a Construction Certificate.
52. The applicant has included 1:20 diagrams of proposed the awnings within this S4.55 modification application. The applicant proposes the inclusion of the design in the modification and proposes the deletion of Condition 2(a). The diagrams are located below.

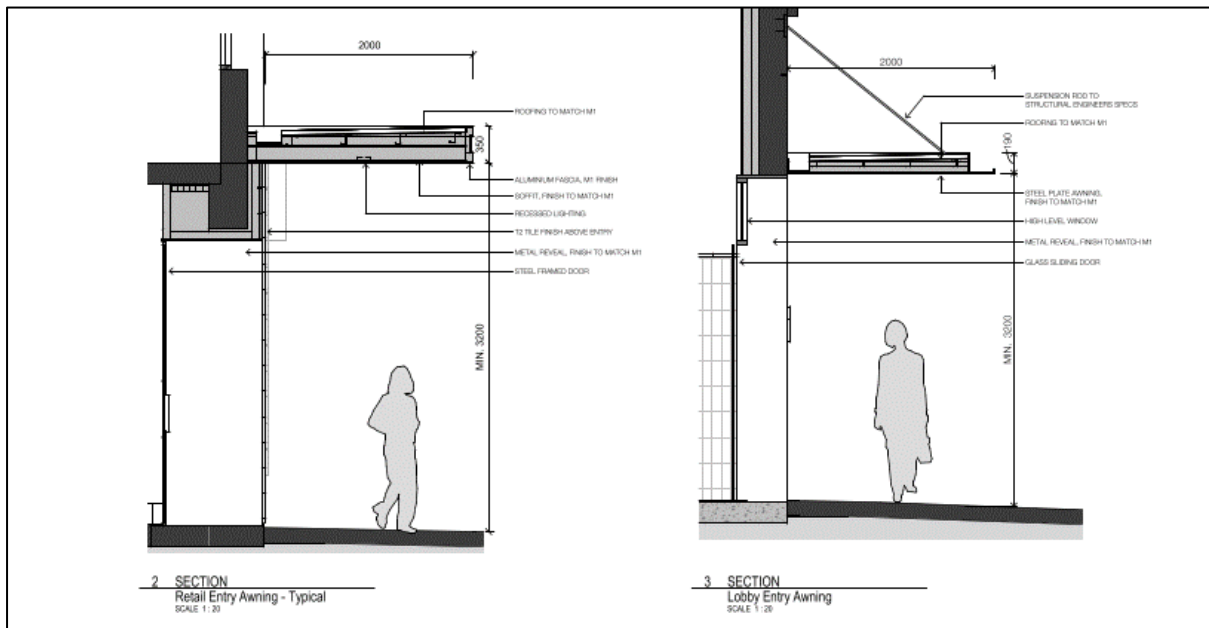


Figure 24: Proposed awning design along Mountain Street.

53. Council's Heritage and Urban Design Units have reviewed the proposal and advised that the proposed design will interfere with existing facade horizontal and vertical trim located above the entrances to the site. The trim is shown in the image in Figure 25.



Figure 25: Image of the Mountain Street façade of the site. The horizontal and vertical trim are shown above the existing street level glazing.

54. The Heritage Unit has advised that the building trim is a significant feature of the building's 'contributing' status under the Sydney DCP, within the Mountain Street Heritage Conservation Area.
55. The existing condition is not recommended to be deleted. This will enable the applicant to submit revised plans and demonstrate an awning design which complies with the Sydney DCP and prevents interference with existing trim.

Materials and Finishes

56. The applicant proposes the deletion of existing Conditions 2(c) and 3. Condition 2(c) requires the submission of detailed 1:5 or 1:10 drawings demonstrating materials and construction details of the approved level 4 glass meeting room. Condition 3 requires the submission of a physical materials and samples board for the facade.
57. Council's Heritage and Urban Design Unit have reviewed the details of the level 4 glass meeting room and have advised that the detailed drawings do not satisfy Condition 2(c) as they do not demonstrate the desired aesthetic intended by the condition, being a "weightless' visual effect." The diagram is demonstrated in the below figure.

Proposed Modification	Applicant Justification	Council Comment
GROSS FLOOR AREA		
Gross Floor Area	The introduced plant rooms reduce the building's gross floor area (GFA) as defined by Sydney LEP 2012	Supported - The proposed gross floor area generates an FSR of 3.51:1 which exceeds the LEP standard of 2.06:1. As the proposal results in a reduction from the approved and non-compliant FSR of 3.7:1, the proposal is considered satisfactory and is recommended to be supported.
CHANGES TO CONDITIONS		
Satisfaction and subsequent deletion of existing conditions of consent	<p>Several of the conditions of D/2020/1288 require the submission of additional documentation to Council prior to the issue of a Construction Certificate.</p> <p>The applicant has provided a number of documents, or incorporated details into the proposed plans and proposed the deletion of specific conditions. These particular conditions would otherwise be satisfied post-determination. This is in order to achieve a Construction Certificate soon after determination.</p>	<p>Not Supported -</p> <p>Council's Landscape Unit have advised that the applicant has not provided adequate documentation to satisfy the requirements of Condition 22 and 23. As such, these conditions are not recommended to be deleted. Condition 2(b), is related to these conditions and is not recommended to be deleted.</p> <p>See 'Discussion' regarding Condition 2(a), 2(c) and 3.</p> <p>Note: a number of existing conditions within D/2020/1288 have been satisfied via written letters from Council, in a separate process to this s4.55 modification application. Those particular conditions are recommended to remain on the consent in line with Council's standard procedures.</p>
Other conditions sought to be amended	The proposed floor plan changes are generally the consequence of the introduced plant rooms at each level of the proposal. This has subsequently	Supported - The affected conditions which have been described in the 'Proposal' section of this report have been reviewed and are recommended to be amended.

Proposed Modification	Applicant Justification	Council Comment
	<p>affected a number of existing conditions.</p> <p>The introduction of the cooling tower requires the modification of Condition 4 - Building Height.</p>	
GENERAL CHANGES		
Floorplans	<p>Advice from consulting engineers post determination of D/2020/1288 has revealed deficiencies in the building's mechanical requirements. Each floor now proposes plant rooms, which has also resulted in layout changes to each floor.</p> <p>A reduction in the building's gross floor area enables a reduction in required bicycle parking numbers. There is also less space to accommodate bicycle parking as a result of introduced plant rooms.</p> <p>Note. Other general changes to the plans such as the division of two retail tenancies into three, or the addition of additional green wall are not specifically justified.</p>	<p>Supported - The introduction of plant rooms is necessary to the building's function. Notwithstanding this, the modification proposes mechanical plant rooms adjacent to the neighbouring residential flat building at 11 Smail Street. The plant and the associated noise impacts are currently unknown and an additional condition is recommended requiring additional acoustic reporting and compliance with Council's noise and vibration criteria.</p> <p>The proposal provides 34 bicycle spaces within the building. DCP Control 3.11.3 requires 36 bicycle spaces for this site. While the proposal does not comply, the application is supported, having regard to the close proximity of the site to public transport and limited space for additional bicycles and associated lockers. The proposed bicycle numbers are supported by Council's City Access and Transport Unit.</p> <p>The proposal offers less lockers than the proposed number of bicycle spaces. It is recommended that that the proposed locker count matches the proposed bicycle spaces of 34, in line with DCP Control 3.11.3.</p>

Proposed Modification	Applicant Justification	Council Comment
Structural columns	The required rooftop planting and associated soil volume require structural upgrades.	Supported - The applicant has noted that this is required to support the required 9 cubic metres of soil for each rooftop tree as specified by Sydney's Landscape Code Volume 2. Relevantly, the architectural plans indicate the provision of 8 mature rooftop trees required by Condition 2(b) of D/2020/1288.
Additional green wall	No specific justification	Supported - Existing conditions will capture the installation and maintenance requirements of the additional green wall.
FACADE CHANGES		
Elevations	<p>Some facade changes are the result of including additional plant rooms and associated ventilation, as well as car parking ventilation.</p> <p>Other changes result from BCA requirements and the relocation of service meters to accommodate internal plant rooms.</p> <p>Changes, such as the colour back glass spandrel on the north facade and a cooling tower result from the response to building energy efficiency.</p> <p>Awning specifications are also proposed as part of this S4.55 in order to resolve existing conditions of consent.</p> <p>Details of the level 4 glass awning are submitted to satisfy Condition 2(c).</p>	<p>Partially supported -</p> <p>Modifications to the building's approved facade have been reviewed by Council's Heritage Unit and Urban Design Unit.</p> <p>The proposed changes are acceptable and maintain the building's status as a contributing building in the heritage conservation area.</p> <p>As discussed above, Conditions 2(a), 2(c) and 3 are not recommended to be deleted.</p>

Consultation

Internal Referrals

63. The application was discussed with Council's:
- (a) Heritage Unit;
 - (b) Urban Design Unit;
 - (c) Public Domain Unit;
 - (d) City Access and Transport Unit;
 - (e) Environmental Health Unit
 - (f) Landscaping Unit
 - (g) Tree Management Unit; and
 - (h) Cleaning and Waste Management Unit.
64. Council's Landscaping Unit has advised that the application does not include sufficient information to satisfy the requirements of existing Conditions 22 - Landscape (Green) Wall and Condition 23 - Landscape (Green) Roof. Deficient information includes hydraulic engineering plans, a complete Maintenance Plan, structural engineering details, and various plan specifications, amongst others. The conditions are recommended to remain on the consent, to be satisfied prior to the issue of a Construction Certificate. The Landscape Unit reviewed the applicant's request to modify Condition 22 to require the Green Wall Maintenance Plan prior to an Occupation Certificate instead of the Construction Certificate, however, as the plan is required to include details regarding construction, this is not supported. The applicant provided an updated Maintenance Plan during assessment, yet it was insufficient to satisfy the condition.
65. As the proposed modification introduces plant rooms and a cooling tower Council's Environmental Health - Noise Unit recommend several conditions designed to protect the ongoing acoustic amenity of the neighbouring residential and commercial buildings. Noting the proximity of the plant rooms to a neighbouring residential flat building at 11 Smail Street, a vibration condition is also recommended.
66. The City Access and Transport Unit recommend an additional condition to ensure that servicing, such as the loading and unloading of goods, occurs on site.
67. Due to additional works proposed along Smail Street, such as the inclusion of a gas and water meter, and the relocation of the approved hydrant booster, an additional tree protection condition is recommended by Council's Tree Management Unit.
68. Advice from Council's Heritage and Urban Design Units relating to Conditions 2(a), 2(c) and 3 have been discussed above, in 'Discussion'.
69. The remaining units advised that the proposal is acceptable subject to conditions, or otherwise raised no issues. Where appropriate, these conditions are included in the Notice of Determination.

Advertising and Notification

70. In accordance with the City of Sydney Community Engagement Strategy and Participation Plan 2022, the proposed development was notified and advertised for a period of 14 days between 19 January 2023 and 3 February 2023.
71. The amended applications received on 24 February 2023 and 13 April 2023 were not required to be renotified or advertised given the amendments do not result in significant additional environmental impacts compared to the initial proposal.
72. A total of 236 properties were notified and no submissions were received.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

73. The development is subject to a Section 7.11 development contribution which has not yet been paid. The existing consent requires a contribution amount of \$215,657.87 to be paid prior to the issue of a Construction Certificate. Through this S4.55 modification application the contribution is reduced to \$198,762.22 in line with the reduced floorspace of the proposal.
74. For ease of interpretation of the amendments to Condition 8, as well as calculation of the final contribution amount at time of payment, the specified amount has been adjusted to the CPI of the June 2021 quarter, as per the original condition. The final contribution amount will be indexed to the current contribution rate at the time of payment.
75. The contribution has been calculated in accordance with the provisions of the City of Sydney Development Contributions Plan 2015.
76. The modified condition relating to this development contribution is included in the recommended conditions of consent in the Notice of Determination. As no Construction Certificate has currently been achieved for D/2022/1288, the condition requires the contribution to be paid prior to the issue of a Construction Certificate in accordance with Planning Circular PS 20-003.

Relevant Legislation

77. Environmental Planning and Assessment Act 1979.

Conclusion

78. Having regards to all of the above matters, the proposed modification will not result in any adverse impacts on both the natural and built environment and the locality and is suitable for the site, subject to appropriate conditions of consent being imposed.
79. The proposed modifications to the building will enable compliance with the existing conditions of consent relating to energy efficiency.

80. The development as proposed to be modified is substantially the same as that originally approved and will have minimal environmental impacts.
81. The proposed modification generally satisfies the relevant provisions of the applicable State Environmental Planning Instruments including the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
82. The proposed modifications are therefore in the public interest and are recommended for approval.

ANDREW THOMAS

Executive Manager Planning and Development

Thomas Walters, Planner