

Item 5.**Development Application: 9A Rosebery Avenue, Rosebery - D/2022/306**

File No.: D/2022/306

Summary**Date of Submission:** 13 April 2022**Applicant:** QMS Media Pty Ltd**Architect/Designer:** Grimshaw Architects**Developer:** QMS Media Pty Ltd**Owner:** City of Sydney**Planning Consultant:** Mecone Ltd**Cost of Works:** \$384,780.00**Zoning:** The proposed structure is located in a MU1 Mixed Use zone under the Sydney Local Environmental Plan 2012. The proposed structure is permissible with consent in this location.**Proposal Summary:** The proposal seeks consent for one new automated public toilet (APT) in North Rosebery Park. The proposed location of the APT has been informed by the North Rosebery Park Concept Plan and Urban Design Analysis.

The proposed development exceeds the 3m 'height of building' development standard. A written request to vary the development standard in accordance with Clause 4.6 of the Sydney LEP 2012 has been submitted.

The application is referred to the Local Planning Panel for determination as the Council is the landowner and more than one objection has been received.

The application was notified for 28 days between 28 April 2022 and 27 May 2022. As a result, four submissions were received, which raised the following concerns:

- the APT design details should reflect collaboration with the designers of the new park;

- the proposed clause to relocate the APT up to 5m is inappropriate;
- installation of an APT is unnecessary as most users of the park live close by;
- impacts of the advertising signage to surrounding residents and users of the park; and
- management of the maintenance of the APT.

All concerns raised in the submissions are addressed within the report.

Overall, the proposal addresses issues identified by Council staff and concerns raised in the public submission. Subject to the recommended conditions included in Attachment A, the proposal responds satisfactorily to the surrounding context, and achieves an acceptable standard of design to satisfy the design excellence requirements.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) Environmental Planning and Assessment Regulation 2021
- (iii) SEPP (Resilience and Hazards) 2021
- (iv) SEPP (Industry and Employment) 2021
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Urban Design Analysis

Recommendation

It is resolved that:

- (A) the variation requested to the 'height of buildings' development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application No. D/2022/306 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act, 1979, in that, subject to the imposition of appropriate conditions as recommended, it achieves the objectives of the planning controls for the site.
- (B) The development complies with the objectives of the MU1 Mixed Use zone pursuant to Sydney Local Environmental Plan 2012.
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) The applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the 'height of buildings' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012; and
 - (ii) The proposal is in the public interest because it is consistent with the objectives of the MU1 Mixed Use zone and the 'height of buildings' development standard.
- (D) The development, subject to conditions, will promote the orderly operation of the automated public toilet.
- (E) The development accords with objectives of relevant planning controls.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 3081 in DP 1232047, and is known as North Rosebery Park at 9A Rosebery Avenue, Rosebery. It is rectangular in shape with an area of approximately 5,555 square metres. It has a street frontage of 62.8 metres to Confectioners Way, 89.3 metres to Crewe Place and 62.3 metres to Rosebery Avenue.
2. The subject APT which is to be located on this site, covers an area of 9.8 square metres and is proposed to be located in the south-west corner of the site, adjacent to the footpath along Confectioners Way and to the north of Crewe Place.
3. The surrounding area is characterised by a mixture of land uses, primarily being mixed use and residential flat buildings. Adjoining the site to the north (11 Rosebery Avenue) and west (28 Confectioners Way) are mixed use buildings with commercial development on the ground floor and residential dwellings above.
4. The site is not classified as a heritage item nor located within a heritage conservation area.
5. A site visit was carried out on 19 May 2023. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds, with the proposed APT location shown in red



Figure 2: Site viewed from Confectioners Way looking east, with the indicative location of the APT shown in red



Figure 3: Site viewed from Rosebery Avenue looking west, with the indicative location of the APT shown in red



Figure 4: Site viewed from Crewe Place looking north, with the indicative location of the APT shown in red

History Relevant to the Development Application

North Rosebery Park Concept Plan and Urban Design Study

6. The subject site was dedicated to Council under a Voluntary Planning Agreement (VPA/2015/8) between Council and the developer of the adjoining sites to the north and west (25-55 Rothschild Avenue & 5-13 Rosebery Avenue). Under the VPA the developer was required to carry out works to the park which included delivery of shrub planting and turf.
7. Following transfer of the land to Council, a Concept Plan was prepared by Gallagher Studio for a new public open space including the provision of a new playground and public toilet (See **Figure 5** below).
8. Inclusion of a public toilet within North Rosebery Park was driven by the demand for new public toilet facilities in the Rosebery area, as outlined within the City of Sydney Public Toilet Strategy 2014. As such, a toilet was integrated within the park design at the Concept Plan stage.
9. The Concept Plan was exhibited for community comment between 5 March and 6 April 2021, and endorsed by the City of Sydney Environmental Committee on 11 October 2021.
10. Following endorsement of the Concept Plan, an Urban Design Analysis was prepared by Grimshaw Architects which included a detailed analysis of potential locations for provision of a public toilet. The selected location was identified as most suitable, given its integration with the landscape design of the park and land use.

11. The location proposed under the subject application is consistent with the North Rosebery Concept Plan and Urban Design Analysis. See further details in the 'Discussion' section below.



Figure 5: North Rosebery Park Concept Plan, with the location of the proposed toilet outlined in red

Development Applications

12. Fourteen other APTs have been approved at various locations across the City (under D/2021/969, D/2021/971, D/2021/1087, D/2021/1088 and D/2021/1213).
13. This application is one of three applications under assessment seeking development consent for new APTs, some of which include digital advertising panels or green walls, or a combination of both, in various locations throughout the City of Sydney. Of these applications, D/2022/306, D/2022/431 and D/2022/1248 have been assessed concurrently and are being reported to this Local Panel meeting for consideration.

Proposed Development

14. The proposed development is for the installation of one new Automated Public Toilet (APT). The APT is a 'single' type comprising one accessible toilet and 3 integrated advertising panels.

15. The proposed APT comprises a contemporary design which is generally rectangular in shape within round edges, with the following dimensions:

Measurements	APT	Signage
Height	3075mm	2100mm
Width	3660mm	1338mm
Depth	2700mm (plus an 811mm awning)	-
Visible Screen Area	-	2.02sqm

16. The APT will be operational 24 hours a day. The external maintenance and cleaning will be undertaken by QMS, and the internal maintenance will be the responsibility of the City.
17. The advertising panels will be used to display third-party advertisements in accordance with the terms of the *City of Sydney Street Furniture and Outdoor Media Services Agreement* between the City and QMS Media. The digital advertising panels are proposed to operate 24 hours a day, seven days a week. In accordance with the agreement, up to 10 per cent of the screen time of the digital advertising displays will be used for material and content managed by the City to advertise public information, community messages and promotion of events. Also, if an emergency arises then public information messaging can also be displayed by the panels.
18. Selected drawings of the new APT is provided below.

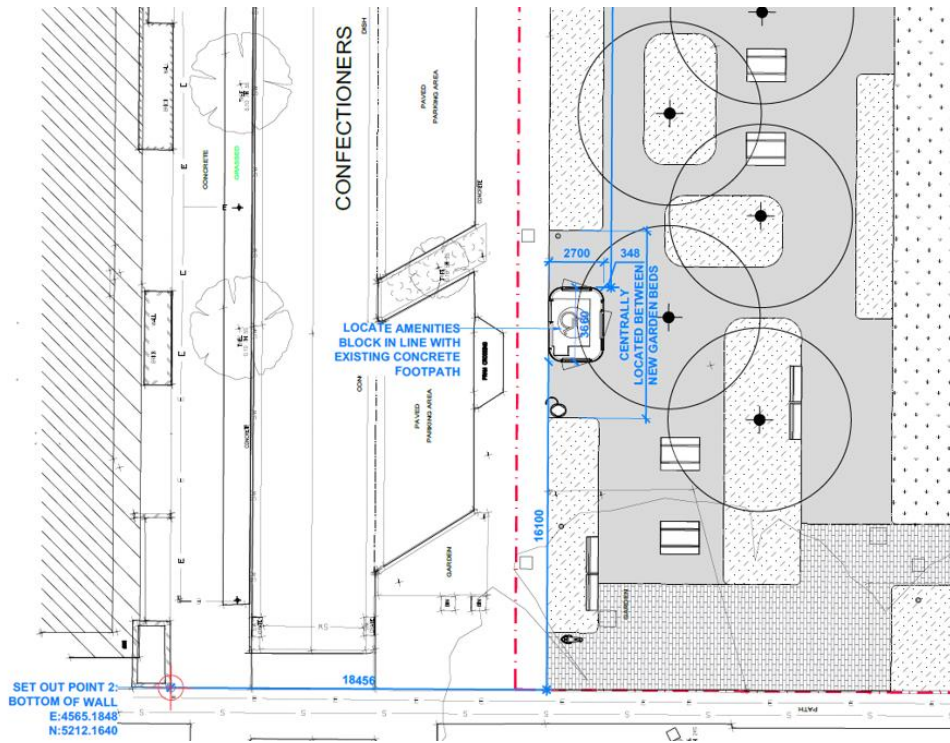


Figure 6: Proposed site plan

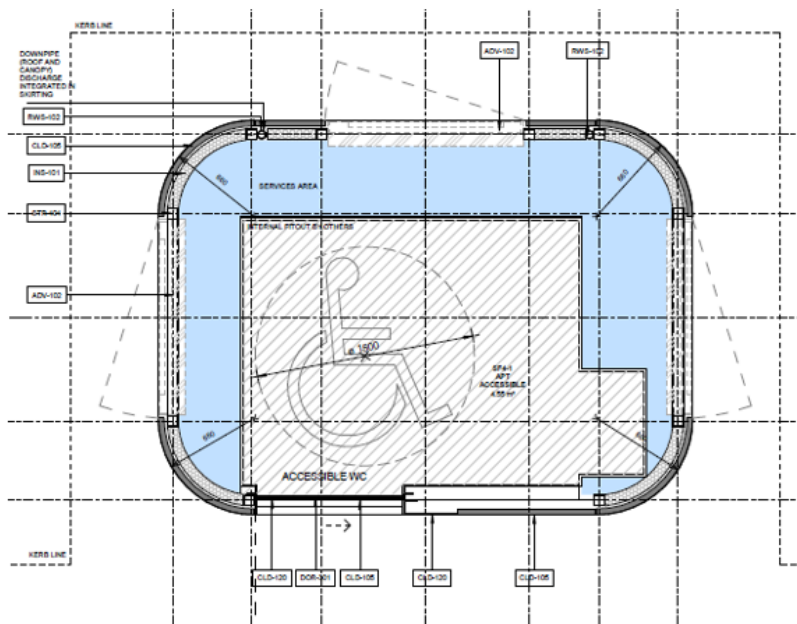


Figure 7: Proposed floor plan

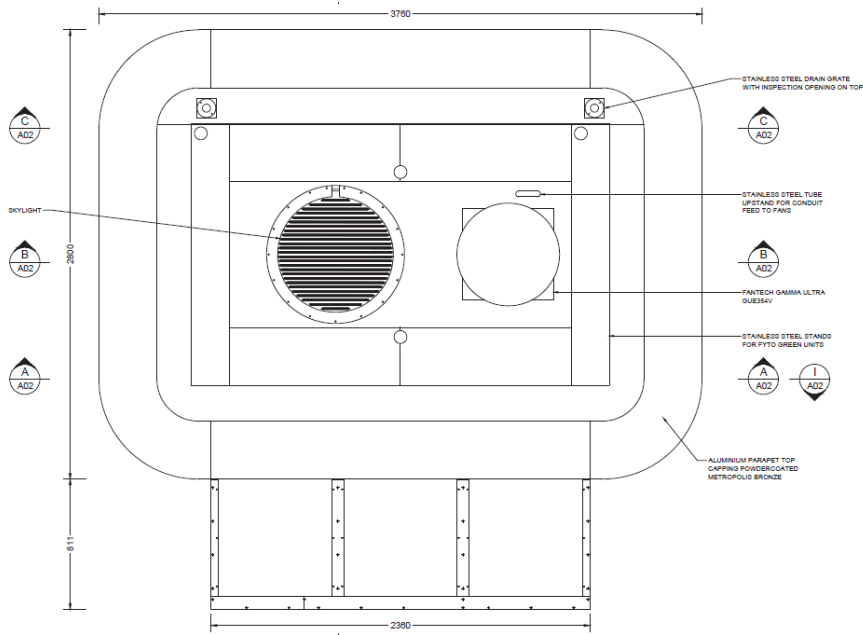


Figure 8: Proposed roof plan



Figure 9: Proposed front elevation

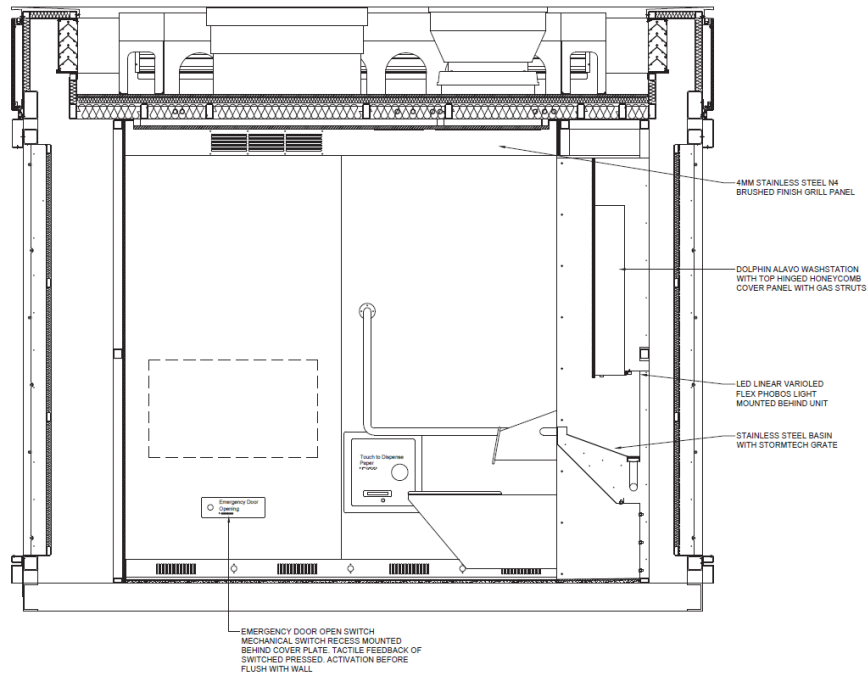


Figure 10: Proposed section



Figure 11: Proposed 3D view of APT (front view)



Figure 12: Proposed digital signage panels



Figure 13: Photomontage of APT, view looking north-east from Confectioners Way



Figure 14: Photomontage of APT, view looking south from Confectioners Way

Assessment

19. 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

20. 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.
21. The site has not been identified as contaminated and no remediation works are required.

State Environmental Planning Policy (Industry and Employment) 2021 – Chapter 3 Advertising and Signage

22. The aim of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage is to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of a high-quality design and finish.

23. The proposed signage has been considered against the requirements of Section 3.11(1) and is consistent with the objectives of the policy in that the proposed signage is compatible with the desired amenity of North Rosebery Park, is of high-quality design and finishes, and is in a suitable location.
24. A detailed assessment against the provisions within the assessment criteria set out in Schedule 5 is provided in the table below.

Provision	Compliance	Comment
1. Character of the area	Yes	<p>The proposal includes new advertising signage with a standard design which is consistent across the local government area and is acceptable. The proposed signage is compatible with the desired future character of the area and has been designed in consideration to the North Rosebery Park Concept.</p> <p>Subject to conditions, the proposed signage does not detract from the amenity or visual quality of the locality or the North Rosebery Park.</p>
2. Special areas	Yes	As above. Subject to conditions, the proposed signage does not detract from the amenity or visual quality of the locality or the North Rosebery Park.
3. Views and vistas	Yes	The proposed signage is located at ground floor level and subsequently does not obscure or compromise any important views. It does not dominate the skyline and has no impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	Yes	<p>The proposal adopts the new standard design for street furniture digital advertising across the local government area that is of an appropriate scale, proportion and form and provides an acceptable contribution to the streetscape and setting of the area.</p> <p>The proposed signage does not protrude above buildings, structures or tree canopies in the North Rosebery Park. The proposed location of the signage within the Park ensures that minimal vegetation management is required.</p>

Provision	Compliance	Comment
5. Site and building	Yes	The scale, proportion and positioning of the proposed signage is compatible with the APT structure and surrounding park landscape features. Further, the materiality is compatible with the finishes and colours of the APT.
6. Associated devices and logos	Yes	Not applicable.
7. Illumination	Yes	Conditions are recommended to ensure that the illumination does not result in unacceptable glare, affect safety or detract from the amenity of any residential accommodation.
8. Safety	Yes	The proposed signage will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

25. It is also noted that Clause 3.12 of the SEPP restricts the duration of any development consent to a maximum of 15 years.
26. Subject to conditions, the proposed signage is consistent with the objectives of the SEPP (Industry and Employment) 2021 as set out in Clause 3.1 and satisfies the assessment criteria specified in Schedule 5.

Local Environmental Plans

Sydney Local Environmental Plan 2012

27. 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 a community facility and advertising signage 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	<p>A maximum building height of 3m is permitted.</p> <p>The proposed APT is 3.075m in height, which represents a 2.5% variation to the development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 1:1 applies. The proposed development complies with the maximum floor space ratio development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3. A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed location of the new APT has been informed by the Rosebery Park Concept Plan and Urban Design Study to ensure integration with the landscape plan for the park and associated upgrades to the public domain. The selected location has negligible impacts to solar access and is accessible from both the park and adjacent footpath on Confectioners Way.</p> <p>The design of the APT is consistent with other public APTs and kiosks located throughout the City.</p> <p>The design, which incorporates high-quality finishes, will not adversely impact</p>

Provision	Compliance	Comment
		on the streetscape features of Rosebery Avenue and Confectioners Way. Considering the above, the proposal satisfies the requirements of this Clause.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Development Control Plan 2012

28. 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

29. The site is located within the North Rosebery locality. The proposed development is in keeping with the unique character and the design principles of the North Rosebery locality in that it responds to and complements the concept design for North Rosebery Park including existing and proposed tree planting and landscaping. Further, the proposed APT will support recreational use of the North Rosebery Park by the community.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	Subject to conditions, the proposal will maintain an acceptable contribution to the public domain. The design of the APT is generally in accordance with the Sydney Streets Design Code.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees. The proposed location of the APT aligns with the Concept Plan for North Rosebery

Provision	Compliance	Comment
		Park and will not have an adverse impact on ecology within the park.
3.12 Accessible Design	Yes	The proposal provides an accessible APT. Sufficient clearance is provided along the footpath between the APT and kerb for wheelchair manoeuvrability. Conditions of consent are recommended to ensure DDA compliance.
3.13 Social and Environmental Responsibilities	Yes	The proposed location allows for passive surveillance to and from the APT and is designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.16 Signage and Advertising	Yes	<p>The proposed APT includes the provision of three dynamic content advertising signs. The advertising signs have been assessed against the objectives of this provision and relevant controls under sections 3.16.1, 3.16.2 and 3.16.3.</p> <p>A signage strategy has not been prepared for the subject application, as the proposal is considered to be minor in nature and satisfies the objectives of section 3.16.1.</p>
3.16.3 General requirements for signage	Yes	<p>The proposed signage is compatible with the materials, finishes and colours of the streetscape, and will not detract from the amenity or visual quality of open space.</p> <p>The signage is integrated into the design of the APT and does not conceal or detract from integral architectural features or cover any mechanical ventilation systems.</p>
3.16.4 Illuminated signage	Yes	Appropriate conditions of consent are recommended to ensure the illumination of the proposed signage does not result in unacceptable glare.

Provision	Compliance	Comment
3.16.6.9 Dynamic content signs	Partial compliance	<p>The proposed signs generally comply with the requirements of this section in that, subject to conditions, they will not contain animations, will include a dwell time of 10 seconds and a transition time of 0.1 seconds, and therefore will not cause a safety risk for road users.</p> <p>The DCP generally requires dynamic content signs which are located in the MU1 zone are not to operate between 11.00pm and 7.00am where visible from residential premises. The proposed signs are located a minimum of 30m from the closest residential apartment and are situated at ground floor level. As such, it is not considered reasonable to apply this restriction in this instance.</p> <p>The proposed advertising panels are 2.02sqm in area which exceeds the 1.5sqm requirement in the controls. Notwithstanding it is considered acceptable as the proposed signage is consistent with the standard design for signage affixed to street furniture across the LGA.</p>
3.16.7.1 Advertising structures and third-party advertisements	Yes	The signs are to be provided by QMS Media via the City of Sydney Street Furniture and Outdoor Media Services Agreement on behalf of the City of Sydney as a public authority.

Section 5 – Specific Areas

Provision	Compliance	Comment
5.2 Green Square	Yes	The proposed development is generally consistent with the controls and objectives for Green Square in that the APT provides a facility that supports use of the North Rosebery Park as a community node.

Discussion

Clause 4.6 Request to Vary a Development Standard

30. The wider park site is subject of a number of height controls. The north-west corner of the park site has a height limit of 22 metres, and the north-east corner has a height limit of 24 metres. The portion of the site where the APT is proposed to be located is subject to a three metre height control. Refer to **Figure 15** below.



Figure 15: Extract from height of buildings map, with the proposed APT location identified

31. The proposed APT is 3.075m in height, which represents a 2.5% variation to the development standard. The extent of the non-compliance is shown in **Figure 16** below.

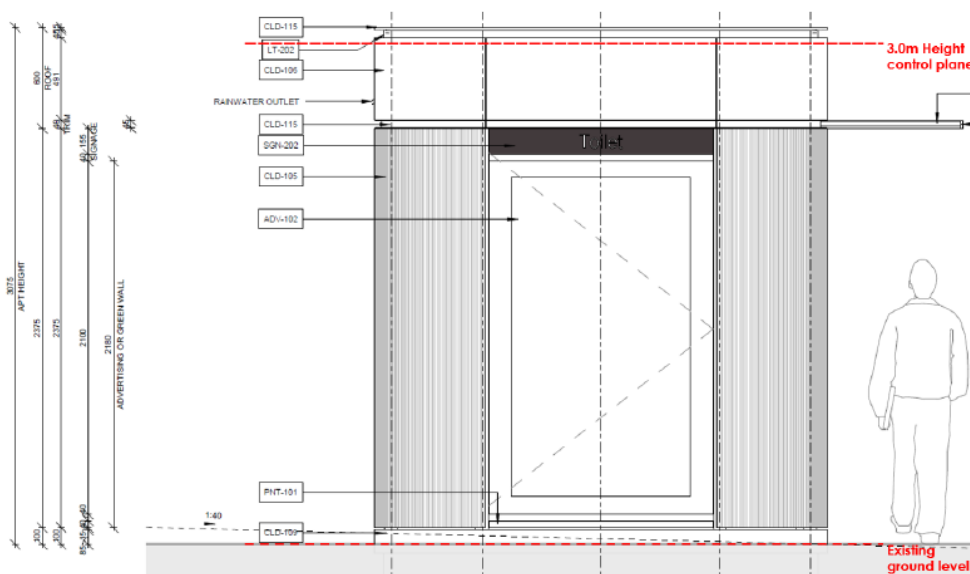


Figure 16: Height exceedance shown on an elevation.

32. A written request has been submitted to Council in accordance with Clause 4.6 of the Sydney LEP 2012 seeking to justify the contravention of the height of buildings development standard.
33. Development consent may be granted to the development, subject to Clause 4.6, even though the development would contravene Clause 4.3 of the Sydney LEP 2012, provided the Panel is satisfied:
- (a) That the applicant's written request has demonstrated that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case; and
 - (b) That the applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (c) The proposed development will be in the public interest because it is consistent with the objectives of the height of buildings development standard and consistent with the objectives of the MU1 Mixed Use zone.
34. A copy of the applicant's written request is provided at Attachment C.

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

35. The applicant seeks to justify the contravention of the 'height of buildings' 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 statement referred to the first method of the five methods established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.
 - (ii) A summary of the applicant's assessment against the objectives of the development standard is provided below:

Objective (a): to ensure the height of development is appropriate to the condition of the site and its context

- (iii) The proposed height variation will not detract from the condition and character of the site and its context. The height variation is concentrated in a small section of Rosebery Park with a blanket three metre height limit. This is in contrast to the 15 metre, 18 metre, 22 metre and 24 metre building height limits surrounding the park. The proposed 7.5 centimetre variation is very minor and appropriately maintains the intended height contrast between the open space of the proposed APT services and the surrounding medium to high-rise mixed-use buildings that frame the open space.

Objective (b): to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas

- (iv) The site is not a heritage item, nor located in a heritage conservation area. However, the site is located within the vicinity of a local heritage item situated approximately 50 metres south, known as the 'Former Wrigley's Factory'. The proposed building height is respectful of and leads to a largely imperceptible change to the existing height transitions in place in the vicinity; maintaining a low height around Rosebery Park in contrast to the 15 metre, 18 metre, 22 metre, and 24 metre building height limits surrounding and framing the park. The variation will not detract from the aesthetic, historical significance, or views of the heritage item.

Objective (c): to promote the sharing of views outside Central Sydney

- (v) The proposed variation is not of a height nor located in a manner that will obstruct private view corridors from surrounding mixed-use residential flat buildings to the surrounding landscape or to North Rosebery Park.

Objective (d): to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas

- (vi) The proposal is located approximately 900 metre southeast of the Green Square Town Centre. In the context of the surrounding built form, the proposed variation will continue to provide an appropriate transition in height and scale to adjoining areas. The proposed height is well below that of the aforementioned height controls of surrounding buildings and offers an appropriate transition from the taller residential flat buildings to the open space in Rosebery Park.

Objective (e): in respect of Green Square - (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and (ii) to ensure the built form contributes to the physical definition of the street network and public spaces

- (vii) The proposal (and variation in height control of 7.5 centimetre) will maintain the public domain amenity of North Rosebery Park, and also maintain the physical definition between the street network and public spaces network.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposed Automated Public Toilet (APT) has been architecturally designed by Grimshaw Architects to create a clean contemporary appearance, forming one of the several new APTs to be installed across the City of Sydney in accordance with the *City of Sydney Street Furniture and Outdoor Media Services Agreement* between the City and QMS Media. The design and appearance of the new suite of street furniture has been subject of a rigorous process addressing all aspects of design, function, meeting necessary Disability Discrimination Act (DDA) and Australian Standards (AS). Without revisiting every aspect of the design, functioning, DDA and AS compliance, it is not practical to redesign the APT for this location to reduce the height to achieve strict Height of Building compliance. It is also not possible to set the structure further into the ground, given the requirements to achieve accessible wheelchair access to the APT, incorporating a step or ramp makes this option impractical.

- (ii) The proposed height variation will not result in adverse amenity impacts to the built environment, including the surrounding public domain and private properties. The proposal is of an insufficient height to overshadow surrounding residential units, which are elevated above ground floor retail uses. Furthermore, any potential increased overshadowing cast to the east on Rosebery Park in the late afternoon due to the 0.075 metre exceedance will be negligible. Further, given that the APT is substantially lower in height than the existing mixed-use residential building sited across Confectioners Way to the west, it is likely to fall within the shadow envelope of the aforementioned building and thus the exceedance will not cast any significant additional shadows of its own across Rosebery Park.
- (iii) The very minor non-compliance with the development standard does not result in any adverse environmental planning impacts. Specifically, the proposal:
 - i. Will not impact the surrounding street network or pedestrian movement patterns;
 - ii. Provides minimal overshadowing impacts that do not affect sensitive residential uses;
 - iii. Provides an accessible community facility for all members of the public;
 - iv. Does not materially or adversely impact the visual amenity of the area; and
 - v. Provides an appropriate built form and massing outcome.

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

36. 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 (a) of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,
 - (b) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 (b) of Clause 4.6 being that there are sufficient environmental planning grounds to justify contravening the development standard;
 - (c) The proposed development will be in the public interest because it is consistent with the objectives of the development standard in question; and
 - (d) The proposed development will be in the public interest because it is consistent with the objectives of the zone within which the development is proposed to be carried out.
37. The four matters are addressed individually below.

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

- (a) A detailed discussion of the applicant's submission with regard to the objectives of the development standard is provided above. The written request has adequately demonstrated that the proposed development meets the objectives of

the 'height of buildings' development standard despite the non-compliance with the numerical standard. As such, to the extent of the variation proposed compliance with the development standard is unreasonable and unnecessary.

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

- (b) A detailed discussion of the applicant's submission with regard to environmental planning grounds to justify contravening the development standard is provided above. The environmental planning grounds established are specific to the circumstances of the site to justify the extent of non-compliance with the 'height of buildings' development standard. In this instance, the elements of non-compliance are required to achieve DDA and AS compliance and given the APT adopts the standard design for City of Sydney street furniture, redesign for this specific site is considered unreasonable and unnecessary. The written request has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of the variation proposed.

Is the development in the public interest by being consistent with the objectives of the development standard in question?

- (c) With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the zone and development standard sought to be varied. As discussed above, the development is consistent with the objectives of Clause 4.3 despite the non-compliance with the numerical standard and is therefore in the public interest.

Is the development in the public interest by being consistent with the objectives of the zone within which the development is proposed to be carried out?

- (d) Similarly, the public interest is considered protected where a development is consistent with the objectives of the MU1 Mixed Use zone, in which the development is proposed to be carried out. The objectives of the zone are discussed below:

First objective to encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

- (i) Not applicable.

Second objective to ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

- (ii) The proposed development contributes to the existing mixture of compatible land uses by providing a highly accessible public amenity for all members of the public outside of their homes - particularly pedestrians using the street and North Rosebery Park as a public recreation space. The proposed development is compatible with the recreational land use provided in North Rosebery Park by providing amenity for the park's diverse user group such as joggers, walkers and cyclists, and by supporting prolonged visitation by families and the elderly.

Third objective to minimise conflict between land uses within this zone and land uses within adjoining zones.

- (iii) Not applicable.

Fourth objective to encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

- (iv) Not applicable.

Fifth objective to ensure land uses support the viability of nearby centres.

- (v) The proposal contributes to the liveability of the local area, allowing for city living that supports active travel, shopping, and recreational activities in the precinct. It will not detract from the commercial or residential viability of the local area, or Green Square town centre.

Sixth objective to integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.

- (vi) The proposed development is located such that it is integrated with surrounding local retail, residential and recreational uses, which will encourage active modes of travel such as walking and cycling.

Conclusion

38. 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 of buildings' development standard and the MU1 Mixed Use zone.

City of Sydney Public Toilet Strategy 2014

39. Council's Public Toilet Strategy 2014 identifies that there is a lack of public toilets in key locations and that the provision of public toilets is required to meet the future needs of the City of Sydney.
40. The key recommendations of the Strategy includes:
- (a) Public toilets are provided within 400 metres (5-10 minutes walk) of any point within Central Sydney and at all village centres and major neighbourhood parks.
 - (b) Advocate for the provision of new public toilets to service urban renewal areas and projects including Green Square.
 - (c) Implement Crime Prevention Through Environmentally Sustainable Design principles in planning, design, procurement and maintenance of public toilet facilities.
 - (d) Consult with the community to ensure public toilets are well-designed and built using robust, high-quality, vandal-resistant materials and fixtures that reflect the character of their setting.
41. The proposed APT is generally consistent with the recommendations of the Strategy.

Urban Design Analysis

42. The applicant has submitted an Urban Design Analysis prepared by Grimshaw Architects. This analysis covers the various APT locations the subject of DAs under assessment. The parts of the Analysis relevant to this DA can be found at Attachment D.
43. The Analysis provides the following explanation of the proposed siting:
- The need for an APT in this area is driven by the redevelopment of North Rosebery Park. Designed by Gallagher Studio, the park will provide a safe and accessible meeting place for the community and will contain much needed children's play space. The proposed APT is ideally situated adjacent to the park and play area. The proposed location has been coordinated with the landscape design to meet CPTED principles.
 - This location at North Rosebery Park was endorsed by the City of Sydney Environment Committee in October 2022 and is integrated into the park design.



Figure 17: Existing and proposed site conditions; documentation prepared by Grimshaw Architects

44. The Analysis also considered alternate locations and provided an explanation why the proposed location is appropriate:
- Alternative locations (on residential or commercial streets) were discounted as inappropriate. The co-location of toilet facilities with public parks is a well-established principle of good planning. This will be the main park and playground in this area, and an APT here will be in high demand.
 - The APT location is opposite busy supermarkets, restaurants, and other commercial shopfronts. This provides excellent passive surveillance as well as regular pedestrian traffic passing the site.



Figure 18: Options analysis; documentation prepared by Grimshaw Architects

45. The Analysis was subsequently presented to Council's Design Advisory Panel. The Panel raised no objection to the proposed location.
46. The Urban Design Analysis has informed the location of the APT proposed under this development application. The selected location is consistent with the recommendations of the Analysis and Concept Plan for the North Rosebery Park.

Street Furniture Location

47. With recent street furniture DAs, sites may be affected by obstructions of above or underground services or utilities, conditions have been included allowing possible relocation of the item/s up to either 3 metres or 5 metres and subject to certain parameters. These parameters include ensuring that the item is not relocated from a 'permissible' location to a 'prohibited' location and ensuring that the relocation position/s complies with all the relevant standards and do not conflict with existing street furniture and fixtures.
48. The applicant has requested a similar condition allowing the possible relocation up to 5 metres to allow for some fine-tuning of the final sitting of the structure.
49. It is considered that the above condition is not appropriate for the subject application. It is recommended that should consent be granted, it be restricted to the footprint as shown on the plans. This is to ensure that they do not have a detrimental impact on their settings within the environment and general use of the public park. This is consistent with the approach the LPP took with the previous APT DAs approved in April 2022.
50. Any future necessity for a re-positioning of the APT should be subject to a separate s4.55 modification application or development application.

Consultation

Internal Referrals

51. The application was discussed with Councils;
 - (a) Director Planning, Development and Transport;
 - (b) Executive Manager Planning and Development;
 - (c) Heritage and Urban Design Unit;
 - (d) Public Domain Unit;
 - (e) Safe City Unit;
 - (f) Surveyors;
 - (g) Tree Management Unit; and
 - (h) Waste Management Unit.
52. Relevant comments have informed the assessment included in this report, and where appropriate, recommended conditions have been included in Attachment A.

External Referrals

NSW Police

53. The application was referred to NSW Police for comment.
54. A response was received raising no objections to the proposed development, subject to conditions. Where appropriate, conditions have been included in Attachment A.

Advertising and Notification

55. In accordance with the City of Sydney Community Participation Plan 2020, the proposed development was notified and advertised for a period of 28 days between 28 April 2022 and 27 May 2022. A total of 931 properties were notified and four submissions were received.
56. The submissions raised the following issues:
 - (a) **Issue:** The design details do not reflect any collaboration with the designers of the new park.

Response: The proposed location of the APT has been informed by the Concept Design for North Rosebery Park and an Urban Design Analysis prepared by Grimshaw Architects. See 'Discussion' section above for further details.
 - (b) **Issue:** The rear digital panel which addresses the neighbourhood park is in conflict with the purpose of the park.

Response: The signage panels are integrated into the design of the APT structure. The structure itself is located on the edge of the park and sufficient landscaping is provided around the APT to minimise the impacts on the park.

- (c) **Issue:** A Clause to move the APT up to 5 metres could result in the APT being located inappropriately, particularly if it is moved to the south or east.

Response: It is considered a condition to relocate the APT is not appropriate for the subject application. Any future necessity for a re-positioning of the APT will be subject to a separate s4.55 modification application or new development application.

- (d) **Issue:** Who will be responsible for the maintenance of the toilet and will ensure the toilet does not become filthy?

Response: Maintenance will be undertaken in accordance with submitted Plan of Management. Internal maintenance will be undertaken by the City of Sydney and external maintenance and cleaning will be undertaken by QMS Media.

- (e) **Issue:** Installation of an APT in this location is unnecessary as many people live upstairs from the park.

Response: Demand for provision of an APT in this location has been established by the City of Sydney Public Toilet Strategy 2014. Further, detailed analysis has been undertaken to determine the proposed location of the APT with the park. See 'Discussion' section above for further details.

- (f) **Issue:** The light pollution from the advertising signage panels will affect the surrounding residents at night.

Response: The proposed digital signage panels are small scale, located at ground floor level and setback a minimum of 30m from any residential development. Noting the latter, and that the site is adjacent to several other light sources, the light impact is considered negligible in this instance. Notwithstanding, relevant conditions are recommended to enable mitigation of any potential light impacts in the future.

- (g) **Issue:** The APT should be provided as an accessible toilet and if a green roof is not included then the roofing should be mandated to be white, or another light and heat reflective colour.

Response: The proposed APT has an accessible toilet and is designed to comply with the Disability Discrimination Act and relevant Australian Standards. The proposed materials and finishes are consistent with the standard design for public furniture adopted by the City of Sydney throughout the local government area.

- (h) **Issue:** It is unclear if the City or QMS is required to pay electricity costs for the digital advertising. If paid for by the city, then QMS Media should be required to reimburse the City for the electrical costs associated with the advertising.

Response: The proposed APT will be delivered in accordance with the *City of Sydney Street Furniture and Outdoor Media Services Agreement* between the City and QMS Media. The specific terms of the agreement are outside the scope of this development application.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

57. The City of Sydney Development Contributions Plan 2015 applies to the subject site.
58. The proposal is not subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015 as it will not result in an increase in population.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

59. The subject site is located within the Green Square affordable housing contribution area. As the development is development for purposes other than residential accommodation that will result in the creation of less than 60 square metres of gross floor area, the development is excluded and is not subject to a Section 7.13 affordable housing contribution.

Relevant Legislation

60. Environmental Planning and Assessment Act 1979.

Conclusion

61. The proposed APT is generally consistent with the zone objectives contained in Sydney LEP 2012.
62. A written request to vary the 'height of buildings' development standard under Clause 4.3 of Sydney LEP 2012 was submitted. The proposed request is well founded and demonstrates that compliance with the standard is unnecessary in this instance and that there are sufficient environmental planning grounds to justify the variation. Despite the variation, the proposed development is consistent with the objectives of Clause 4.3 of the Sydney LEP 2012, and the MU1 Mixed Use zone, and therefore in the public interest.
63. The development is generally consistent with the requirements of the Sydney DCP 2012. Where non-compliances exist, they have been demonstrated in this report to be acceptable in the circumstances of the proposed development or can be resolved by the recommended conditions.
64. Subject to recommended conditions, it is considered that the proposed development will provide for an appropriately located new APT that is of a high design standard which can contribute positively to the public domain of the local government area.

ANDREW THOMAS

Executive Manager Planning and Development

Veronique Hoffman, Planner