

Item 8.**Development Application: 23-25 Doody Street, Alexandria - D/2022/1367**

File No.: D/2022/1367

Summary

Date of Submission: 22 December 2022 amended plans submitted 25 July 2023.

Applicant: Mr Uwe Stache

Architect/Designer: U+I Building Studio

Owner: Twenty Three Doody Pty Ltd

Planning Consultant: R & H Projects

Cost of Works: \$226,363

Zoning: E3 Productivity Support. Development is permitted with consent.

Proposal Summary: Approval is sought for the conversion of the rooftop of an existing 4 storey building for use as a communal terrace including extension of an internal lift and fire stairs, construction of a pergola structure and associated landscaping.

The application is referred to the Local Planning Panel for determination as the proposal seeks to contravene the maximum height of buildings control by 13.9 per cent.

The application was referred to Sydney Airport for comments as the site is subject to the Civil Aviation (Building Control) Regulations which limits the height of structures to 15.24 metres above the existing ground height without prior approval of the Civil Aviation Safety Authority. No objections were raised, and no conditions were recommended. It is recommended that the City's standard Sydney airport condition be imposed restricting the maximum height to 35 metres AHD.

The application has been amended to address issues identified by Council during assessment, in particular:

- limited landscaping;
- lack of tree canopy cover; and
- inadequate Clause 4.6 Variation Request.

The application was amended in July 2023 and addressed all concerns raised.

Overall, the development does not result in adverse environmental impacts to the site or neighbouring sites, provides improved amenity for occupants and supports the continued use of the existing building as a high technology development. The application was notified for 21 days between 5 May 2023 and 27 May 2023 and no submissions were received.

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

Development Controls:

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

Attachments:

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

Recommendation

It is resolved that:

- (A) the variation requested to clause 4.3 'Height of Buildings' 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 Number D/2022/1367 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 complies with the relevant controls of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (B) The proposal represents an appropriate development for the site and supports the employment generating use of the E3 Productivity Support zone.
- (C) The proposal satisfies design excellence provisions.
- (D) 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 Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the E3 Productivity Support zone and the Height of Buildings development standard.

Background

Site and Surrounding Development

1. The site has a legal description of Lot 1 in DP 89681, known as 23-25 Doody Street, Alexandria. It is irregular in shape with area of approximately 1,358sqm. It has a primary street frontage of 31.7m to Doody Street.
2. The site contains a part 2 storey, part 4 storey mixed use development consisting of ground floor car park, retail premises and food and drink premises and light industrial high technology uses with ancillary offices on Level 1 and above.
3. The surrounding area is characterised by a mixture of land uses, primarily being mixed use commercial and light industrial.
4. The site is located within the Enterprise Corridor locality and is identified as being subject to flooding.
5. A site visit was carried out on 11 May 2023. Photos of the site and surrounds are provided below:
6. Photos of the site and surrounds are provided below.

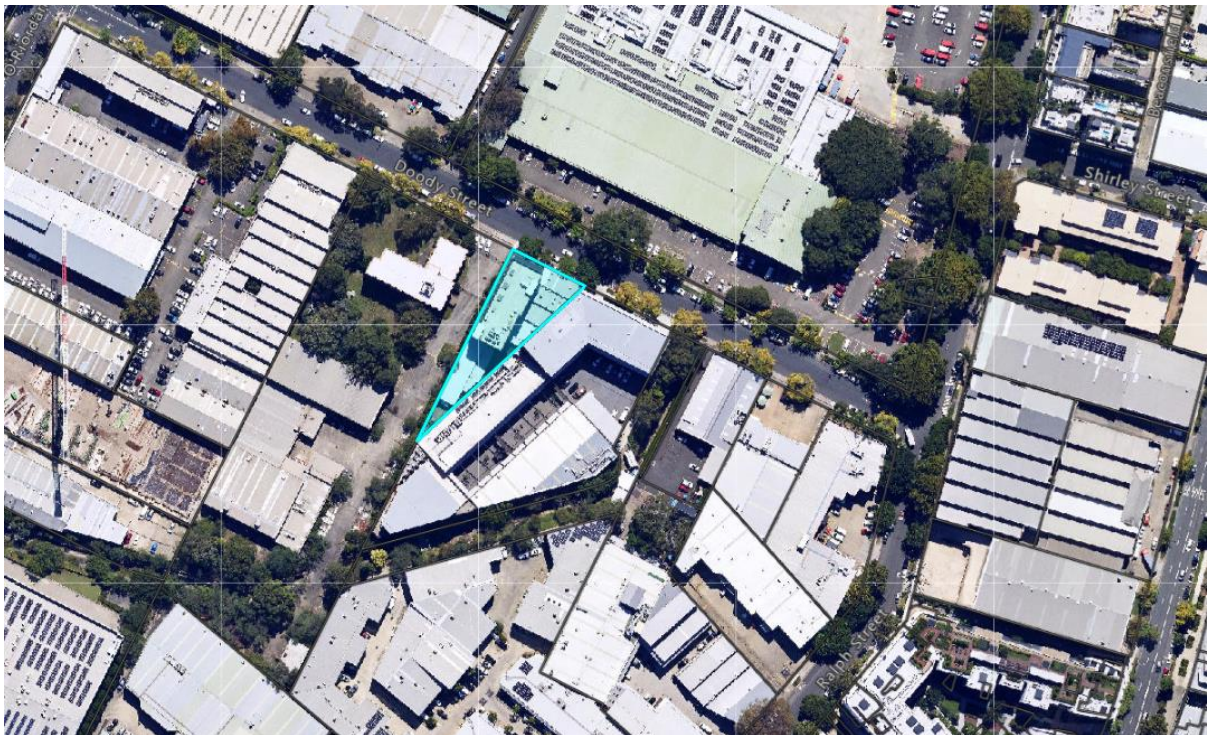


Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Doody Street looking east



Figure 3: Doody Street frontage showing the blank wall of the neighbouring commercial building



Figure 4: Existing rooftop of subject site



Figure 5: Existing rooftop showing fire stair access and mechanical ventilation

History Relevant to the Development Application

Development Applications

7. The following applications are relevant to the current proposal:

D/2016/1734 - Development consent by the Land and Environment Court was granted on 9 November 2017 for the partial demolition of an existing warehouse and the construction of a new four (4) storey commercial building and two (2) multi storey car stackers at the rear of the property.

D/2017/231 - Development Consent was granted on 24 April 2017 for the change use and fit-out of the building to part light industry, part food and drink premises and part retail premises.

C2019030 - A Complying Development Certificate was issued on 12 March 2019 for the change of use over part of the building and addition of a small mezzanine.

C2019055A - A Complying Development Certificate was issued on 10 July 2019 for the partial retention of the existing two storey warehouse building and construction of a 4 storey building for use as high technology industrial with ancillary offices. The proposal retained the existing mixed use of the ground floor including retail premises and food and drink premises.

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 15 June 2023 and included the following:

- The proposed roof terrace design is to be amended to create an accessible green roof with integrated planters for trees and vegetation to satisfy Provision 3.5 of the Sydney DCP with regard to canopy coverage and greening.
- A landscape plan is to be submitted that includes additional trees, shrubs and green roof where possible.

9. The applicant responded to the request on 25 July 2023, and submitted the following information:

- amended Architectural plan demonstrating revised design;
- landscape Plan; and
- structural Report.

10. Following a review of the amended documentation, a request for further amendments was sent on 8 August 2023 and included the following:

- Landscape Plan is to be amended to include 4 trees as per the requirements of Provision 3.5 of the DCP.
- Revised Clause 4.6 Assessment is to be provided outlining the variation percentage of the proposal.

- Submission of a Height Plane diagram to clearly show where the built form exceeds the 18m height limit.

11. The applicant responded on 7 September 2023 and submitted the requested information.

Proposed Development

12. The application seeks consent for the following:

- partial demolition of existing rooftop structures to allow for the use of the rooftop as communal open space;
- extension of existing lift core to provide equitable access to the rooftop;
- extension of fire stairs to rooftop;
- construction of a tiled deck;
- construction of an open air pergola structure;
- associated landscaping to the rooftop including planter boxes, opportunities for climbers; and
- planting of two trees on the ground floor at the rear of the site.

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

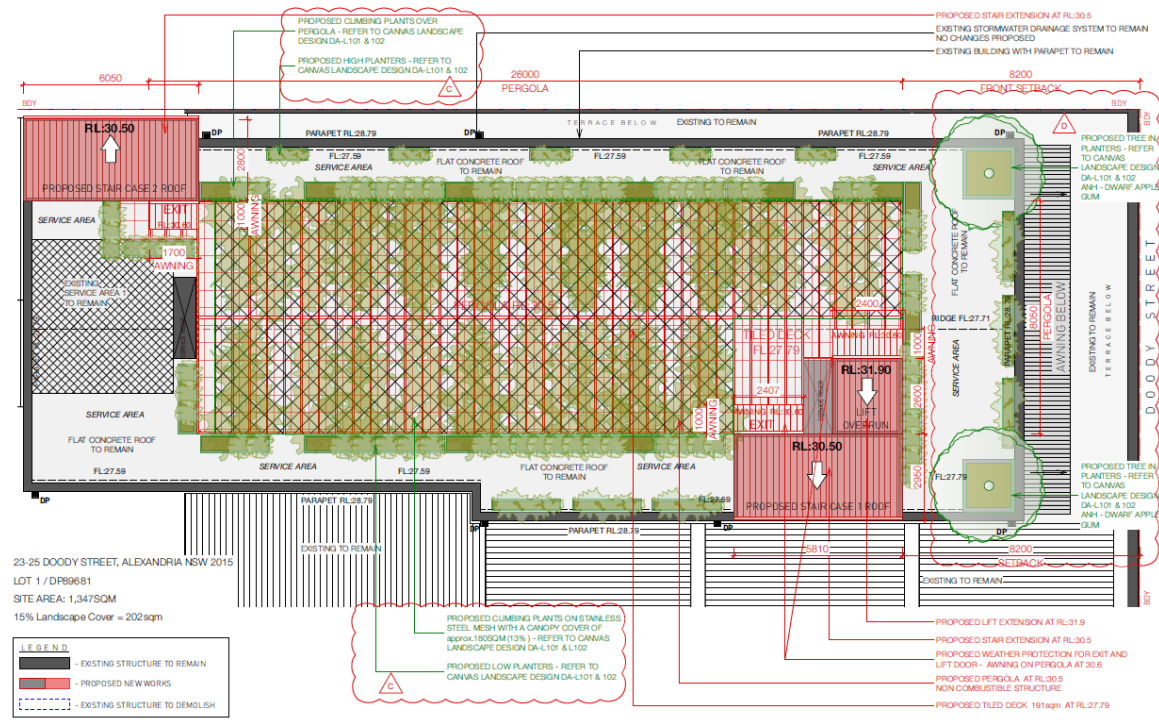


Figure 6: Proposed Roof Plan demonstrating the proposed extension of the lift and fire stairs including roof over, proposed pergola structures and associated landscaping



Figure 7: Proposed North Elevation Plan (Doody Street) showing the extent of the proposed works to the rooftop including lift and lift overrun, extension of fire stairs and pergola

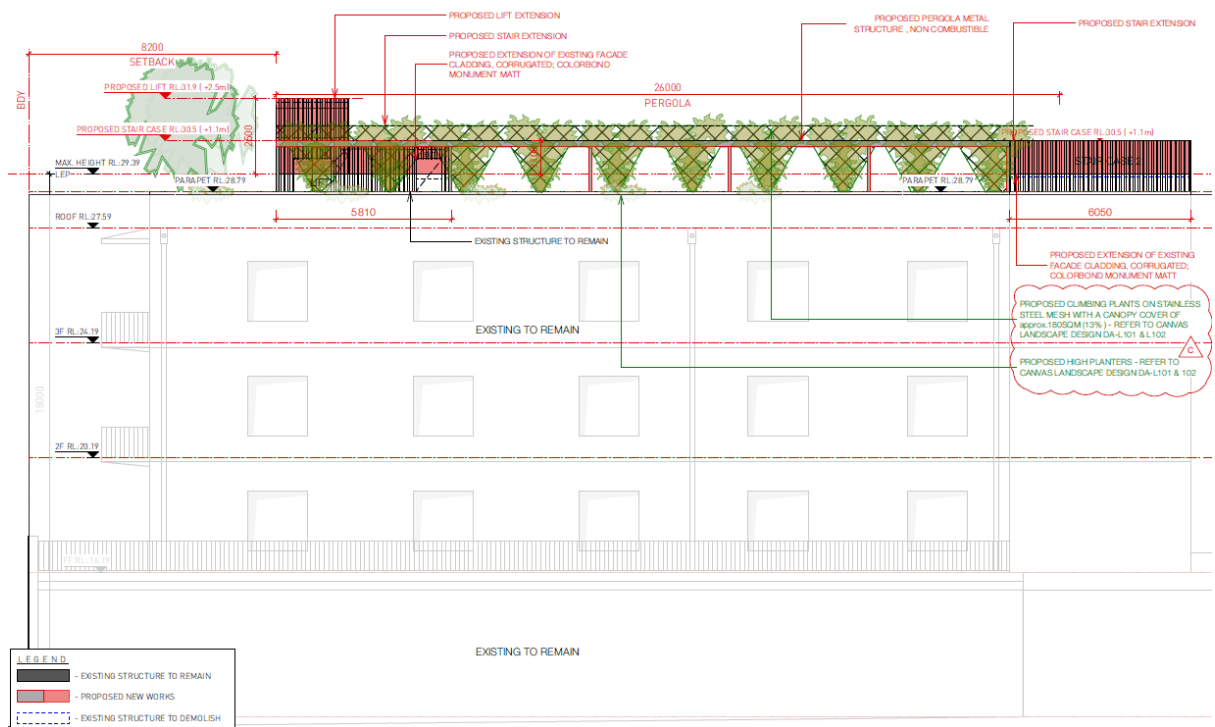


Figure 8: Proposed West Elevation Plan demonstrating the proposed pergola structure and associated landscape screening

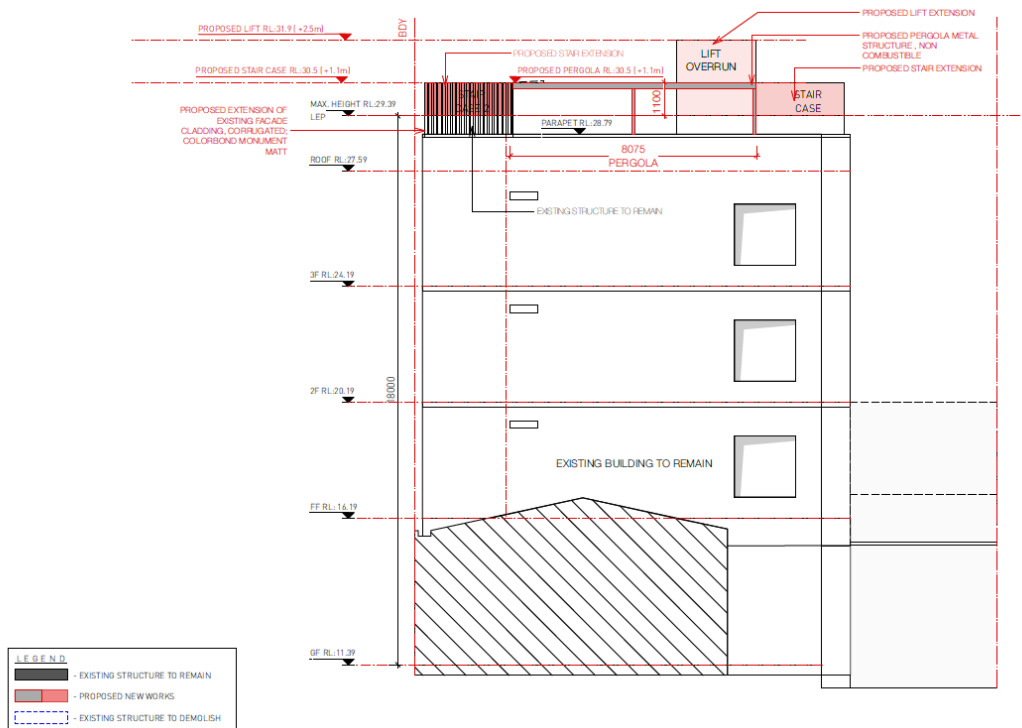


Figure 9: Proposed South Elevation

Assessment

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

Local Environmental Plans

Sydney Local Environmental Plan 2012

- 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 E3 Productivity Support zone. The proposed development is permissible with consent in the zone. The proposal is consistent with the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A maximum building height of 18m is permitted.</p> <p>A height of 20.5m is proposed.</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 1.5:1 is permitted.</p> <p>The proposed development does not seek to alter the existing gross floor area of the building.</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 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.</p> <p>The proposal is contained within the existing building envelope and will provide improved amenity for staff and additional greening across the site. Non-compliances with the maximum building height are contained to the centre of the building and will not result in impacts to</p>

Provision	Compliance	Comment
		<p>the site, neighbouring sites or streetscape.</p> <p>Proposed materials and colours respect the existing building design to provide a seamless connection between the existing building and new structures. A condition is recommended requiring a materials and samples schedule to be submitted for assessment prior to the issue of a construction certificate.</p> <p>The development has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>
Division 5 Site specific provisions		
6.28 Development in Enterprise Area	Yes	The site is located within the Enterprise Area. The proposal does not propose to erect a new building, propose additional floor area or exceed the maximum permissible building height by more than 15 per cent. Therefore, the clause does not apply.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.8 Industry and warehouse or distribution centres	Yes	The proposal does not seek additional GFA or alter existing car parking arrangements on site.
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.

Provision	Compliance	Comment
7.15 Flood planning	Yes	<p>The site is identified as being subject to flooding at the interface with Doody Street.</p> <p>The proposal is for works to the roof only and does not seek additional GFA or alterations to the ground floor. As per section 3.2 of the Interim FloodPlain Management Policy, the proposal is acceptable.</p>
7.16 Airspace operations	Yes	<p>The site is subject to a maximum Australian Height Datum (AHD) of 51m. The proposal seeks a maximum height of 35m AHD.</p> <p>The concurrence of Sydney Airport Corporation, as a proxy for the Civil Aviation Safety Authority, has been received. No conditions are recommended however Council's standard Sydney Airport condition is recommended to restrict the maximum height to 35 metres AHD.</p>
7.25 Sustainable transport of southern employment land	Yes	<p>The proposal is located within the Southern Employment Land. The proposed development does not seek to erect a new building, seek additional floor space or change the use of the building.</p>

Development Control Plans

Sydney Development Control Plan 2012

16. 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

17. The site is located within the Enterprise Corridor locality. The proposed development is in keeping with the unique character and the design principles of the locality. The proposal seeks to strengthen the use of the high technology use by providing improved amenity for staff. The proposal will have minimal impacts on the streetscape, being contained wholly on the rooftop.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology. 4 trees are proposed to be planted, 2 trees on the rooftop and 2 trees on the ground floor at the rear of the site, improving the canopy cover.
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under section 7.15 above.
3.12 Accessible Design	Yes	The proposal includes the extension of the existing lift to the rooftop, providing equitable access to the proposed communal open space.
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.

Section 4 – Development Types**4.2 Residential Flat, Commercial and Mixed Use Developments**

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	The site is permitted a maximum building height of 4 storeys. The existing development consists of 4 storeys. The proposal does not seek to alter the existing height of the building.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	The proposal does not seek to alter internal areas of the building and therefore will not impact existing floor to ceiling heights.
4.2.2 Building setbacks	Yes	The proposal is contained within the existing building envelope, being within

Provision	Compliance	Comment
		the rooftop and does not seek to alter existing setbacks.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The proposal will result in additional overshadowing to the neighbouring mixed-use commercial building at No. 15-21 Doody Street to the east and south of the site. However, given the positioning of the 4 storey portion of the site along the western boundary on which the rooftop terrace is proposed, additional overshadowing generally falls on the roof of the two storey portion of the site. It is also noted that the western wall of No.15-21 does not contain any windows. Therefore, the proposal will not result in any significant additional impacts to neighbouring sites.
4.2.3.5 Landscaping	Yes	The submitted landscape plan has been assessed by the City's Landscape Officer and includes landscaping of the roof and small section at the rear of the site on the ground floor. As discussed within the "Amendments" section above, 4 large trees (two on the rooftop and two on the ground floor) are proposed to provide additional canopy cover along with opportunities for climbers over the pergola structure.
4.2.6 Waste and recycling Management	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.

Section 5 – Specific Areas

Provision	Compliance	Comment
Southern Enterprise Area		
5.8.1 General	Yes	The proposed development supports the Southern Enterprise Area Urban Strategy which supports the approved use of the site as an employment generating use.
5.8.3 Development		The proposal will have minimal impact on the existing streetscape. The proposal will improve the amenity for tenants of the building by providing communal open space.
5.8.5 Managing Transport Demand		The proposal will not result in an increased intensity of use as no additional GFA is proposed and only seeks works for the creation of a communal rooftop terrace for tenants.
5.8.3.7 Parking, Access and Loading and Servicing		The proposal does not seek to change the approved use of the site or alter existing parking arrangements, nor does it seek to change loading and servicing arrangements.

Discussion

Clause 4.6 Request to Vary a Development Standard

18. The site is subject to a maximum Height of Building control of 18m. The proposed development has a maximum height of 20.51m resulting in a 13.9 per cent non-compliance. The extent of the non-compliance is illustrated in Figure 10 below.

19.

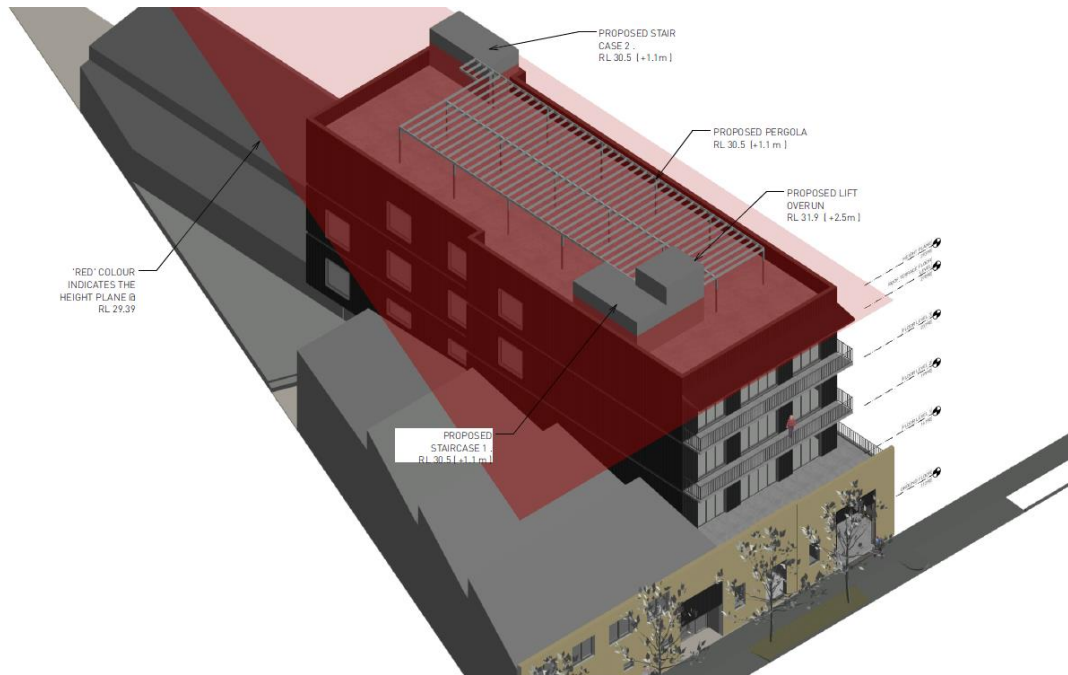


Figure 10: Height plane drawing demonstrating elements that breach the 18m height control

20. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - That there are sufficient environmental planning grounds to justify contravening the standard;
 - The proposed development will be consistent with the objectives of the zone; and
 - The proposed development will be consistent with the objectives of the standard.

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

21. 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, whilst not specifically referencing case law, has used the method of the five part test 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 noncompliance with the numerical standard. That there are sufficient environmental planning grounds to justify contravening the standard. The statement justifies the development against the first *Wehbe* test.

(ii) A summary of the applicant's assessment against the objectives of the development standard are provided below:

(iii) The apparent scale, bulk and setbacks of the building are unchanged by the proposed development;

(iv) The building in its final form will remain consistent with the existing character of the neighbourhood; and

(v) The proposed development is consistent with the objectives of the E3 Productivity Support Zone in SLEP and is in the public interest.

(b) That there are sufficient environmental planning grounds to justify contravening the standard:

(i) The proposed development is compliant with other standards and controls in the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012;

(ii) The increase in height does not noticeably alter the visual presence of the building;

(iii) The increase in the building height will not reduce the environmental amenity of neighbouring properties through loss of views due to no changes to the building setback; and

(iv) The purpose of the proposal would improve the facilities provided for tenants.

(c) The proposed development will be consistent with the objectives of the zone;

(i) The proposal is consistent with the objective of meeting the needs of occupants;

(ii) The proposal is designed to provide improved amenity for the approved high technology use of the site and therefore encourages improved economic viability of the area;

- (iii) The proposal does not result in the loss of employment space and will encourage existing and new businesses to the area.
- (d) The proposed development will be consistent with the objectives of the standard.
 - (i) Elements proposed to extend beyond the maximum building height are located within the centre of the site and will not result in impacts to the streetscape or adverse environmental impacts to the site or neighbouring sites;
 - (ii) The proposal will not result in impacts to heritage items, nor is the site located within a heritage conservation area; and
 - (iii) The proposal will not have an impact on views from neighbouring buildings.

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

22. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

23. A detailed summary 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)?

24. A detailed summary of the applicant's submission with regard to environmental planning grounds to justify contravening the development standard is provided above. The additional height that results in the development exceeding the height of buildings development standard will not have any significant impacts for neighbouring sites in relation to visual bulk, overshadowing, view sharing and will not result in any significant privacy impacts. 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 high occupant amenity for the development and are appropriately located to fit within the context of the immediate surroundings. 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?

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

Conclusion

26. For the reasons provided above the requested variation to the 'Height of Buildings' 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 'Height of Buildings' and the E3 Productivity Support zone.

Use and Hours of Operation

27. The use of the rooftop as a communal open space for staff and guests of the building is supported. The use will have an improved amenity for staff, however, could result in noise impacts to neighbouring land uses if used late at night. A condition is recommended restricting the use of the terrace to staff and invited guests. A condition is also recommended restricting hours of use to between 7.00am and 8.00pm Monday to Sunday.

Consultation

Internal Referrals

28. The application was discussed with Council's;
- (a) Building Services Unit;
 - (b) Environmental Health Unit;
 - (c) Heritage and Urban Design Unit;
 - (d) Landscape Unit;
 - (e) Tree Management Unit; and
 - (f) Waste Management Unit.

29. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Sydney Airport

30. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.

31. Schedules 2 and 5 of the Civil Aviation (Building Control) Regulations 1988 identify that the site is subject to a prohibition of the construction of buildings more than 51m AHD above existing ground level.
32. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).
33. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, provided approval for the controlled activity on 1 March 2023.

Advertising and Notification

34. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 5 May 2023 and 27 May 2023. A total of 63 properties were notified with no submissions received.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

35. The development is not subject to a Section 7.11 development contribution as the proposal does not result in an increase in Gross Floor Area or result in a change of use and therefore does not increase the intensity of use of the site. The development is excluded from the need to pay a contribution.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

36. 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

37. Environmental Planning and Assessment Act 1979.

Conclusion

38. The application includes a request to vary the height of buildings development standard. The request to vary the standard is supported in this instance within the context of the site and surrounding development.
39. The proposal is recommended for approval as it generally complies with the relevant controls of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012, provides a land use compatible with the locality and does not result in significant environmental impacts to the site or neighbouring sites.

ANDREW THOMAS

Executive Manager Planning and Development

Shaun de Smeth

Specialist Planner