

**Item 3.****Development Application: 29-43 Balfour Street, Chippendale**

File No.: D/2018/1097

**Summary****Date of Submission:** 13 September 2019**Applicant:** Mr D Klien  
c/: Ethos Urban**Architect:** SJB Architects**Owner:** NMI Holdings Pty Ltd**Cost of Works:** \$2,997,500**Zoning:** B4 Mixed Use zone - alterations and additions to the existing commercial building are permissible with consent**Proposal Summary:** The application seeks consent for the demolition of an existing mezzanine level and replacement with an additional storey, relocation of plant, creation of new roof terraces and internal works to the existing office building at No.29-33 and No.35-43 Balfour Street, Chippendale (known as 'the site').

The application was advertised and notified for a period of 21 days between 25 September 2018 and 17 October 2018. Ten submissions were received objecting to the proposed development. The submissions raised concerns relating to the acoustic impacts of the proposal, overlooking from the terrace, proposed height breach and operation of the site.

The proposal has been amended and additional information has been supplied during the assessment of the application to address preliminary concerns relating to the proposed rear roof terrace, location of the plant and impacts to the contributory building.

**Proposal Summary  
(continued):**

The application proposes a maximum building height of 15.65m (which is a 3.65m or a 30% exceedance of the LEP height standard). The elements of the building which exceed the height limit are the eastern and western most edges of the fourth storey addition, all of which remain level with the existing building's highest point. The application seeks a variation to the height of building development standard under Clause 4.6 of the LEP. The written request is supported and it is considered that strict compliance with the height of building development standard is unreasonable and unnecessary in the circumstances.

The application is referred to the Local Planning Panel for determination as the proposal exceeds the height of buildings development standard by 30%.

The application proposes a maximum FSR of 2.5:1 (which is a 44% or 771.8sqm exceedance to the FSR standard). This remains unchanged from the existing situation but as the proposal includes new floor space, a Clause 4.6 request has been provided. The additional floor space will be located within the footprint of the existing mezzanine and within the existing built form of the building. The written request is supported and it is considered that strict compliance with the FSR development standard is unreasonable and unnecessary in the circumstances.

The amended proposal has been assessed as having a built form, scale and height that satisfactorily addresses the context of the site including neighbouring development and the streetscape. The development is considered to be of an appropriate form, scale, and materiality for the locality, and subject to conditions will not result in adverse impacts to surrounding properties.

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

**Development Controls:**

- (i) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (ii) Sydney Local Environmental Plan 2012
- (iii) Sydney Development Control Plan 2012
- (iv) City of Sydney Development Contributions Plan 2015

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings

- C. Clause 4.6 Request - Height of Buildings
- D. Clause 4.6 Request - Floor Space Ratio

## Recommendation

It is resolved that:

- (A) the variation requested to the Height in Buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be supported;
- (B) the variation requested to the Floor Space Ratio development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be supported; and
- (C) consent be granted to Development Application No. D/2018/1097 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 is consistent with the objectives of the B4 Mixed Use zone in that it provides for a range of compatible land uses and will support the viability of the surrounding centre.
- (B) The requested variation to the Height of Buildings is supported because the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be addressed by Clause 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 Clause 4.3 Height of Buildings and the B4 Mixed Use zone.
- (C) The requested variation to the Floor Space Ratio is supported because the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be addressed by Clause 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 Clause 4.4 Floor Space Ratio and the B4 Mixed Use zone.
- (D) The proposal is considered to exhibit design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.
- (E) The proposal is considered appropriate within its setting and is generally compliant with the relevant planning controls contained in the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (F) The proposed use is compatible with the mixed use nature of the area and it is considered that the development will not result in unreasonable impacts to nearby residential properties, subject to the attached conditions.

## Background

### The Site and Surrounding Development

1. A site visit was carried out by Council staff on 16 October 2018.
2. The site is irregular in shape and comprises 2 properties, Lot 1 of DP 88517 known as 29-33 Balfour Street to the north and Lot 2 of DP 234694 known as 35-43 Balfour Street to the south. The site has a combined site area of approximately 980.5sqm. It has a combined frontage to Balfour Street of 65m with a frontage of 20m to Dick Street in the north and 30.5m to Little Queen Street to the south.
3. The site currently contains 2 x 3 storey warehouse buildings currently under renovation for use as an office/commercial property. The warehouses have largely intact exteriors with the majority of original windows intact. The interiors have been heavily altered with the original staircase in the centre of the buildings remaining.
4. The site has vehicular access from Little Queen Street and Balfour Street with vehicular access from a service lane accessed from Dick Street to the rear of the site. Pedestrian access is available from all three frontages.
5. The site is not a heritage item but is located within the C9 - Chippendale Conservation Area. No.29-33 Balfour Street is identified as a neutral building and No.35-43 Balfour Street is identified as a contributory building within the conservation area.
6. The site is located within a mixed use precinct surrounded by residential and commercial uses. To the immediate north across Dick Street, south across Little Queen Street and north-west are terrace houses of typically 2 and 3 storeys in height including rear private open spaces. To the south-west fronting Little Queen Street is a converted warehouse used as a warehouse and office. To the east opposite Balfour Street is a 4 storey residential flat building.
7. Further to the north is White Rabbit Gallery and the Central Park development precinct. To the south, east and west is a continuation of the Chippendale Conservation area primarily used for residential interspersed with small scale commercial uses.
8. Photos of the site and surrounds are provided below:

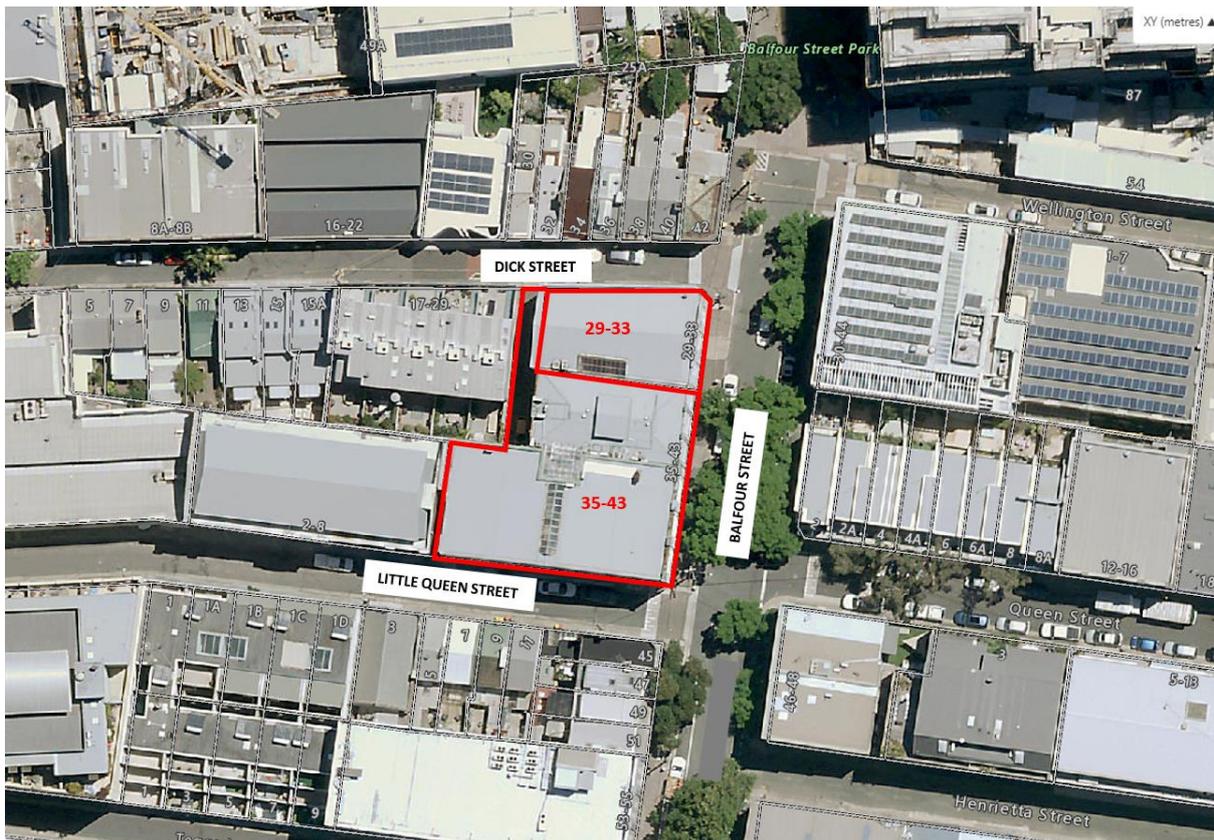


Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from the corner of Balfour and Dick Streets looking south



**Figure 3:** Looking north from the corner of Balfour and Little Queen Streets.



**Figure 4:** Looking west down Little Queen Street with the subject site to the right of the picture.



**Figure 5:** Looking west down Dick Street with the subject site to the left of the picture.



**Figure 6:** Looking south along the service lane between the subject site (left) and the residential properties at No.17-29 Dick Street.



**Figure 7:** Existing mezzanine to be demolished and replaced as viewed from the level below looking south



**Figure 8:** Existing mezzanine beams to be retained



**Figure 9:** Existing mezzanine floor level. Note the proposed addition will raise the floor level above the top of the window to the floor below

## Proposal

9. The application seeks consent for alterations and additions to the existing building comprising of:
  - (a) infilling of existing light-well adjacent to the central staircase;
  - (b) demolition of existing roof and mezzanine level on the southern portion of the site and replacement with a fourth storey addition of the same floor area for use as office space;
  - (c) new east facing roof terrace with acoustic screening and landscaping; and
  - (d) relocation of roof top plant to new western non-trafficable roof terrace including acoustic screening.
10. The majority of the works are to be contained within the contributory building of No.35-43 Balfour Street.
11. Plans of the proposed development are provided below.



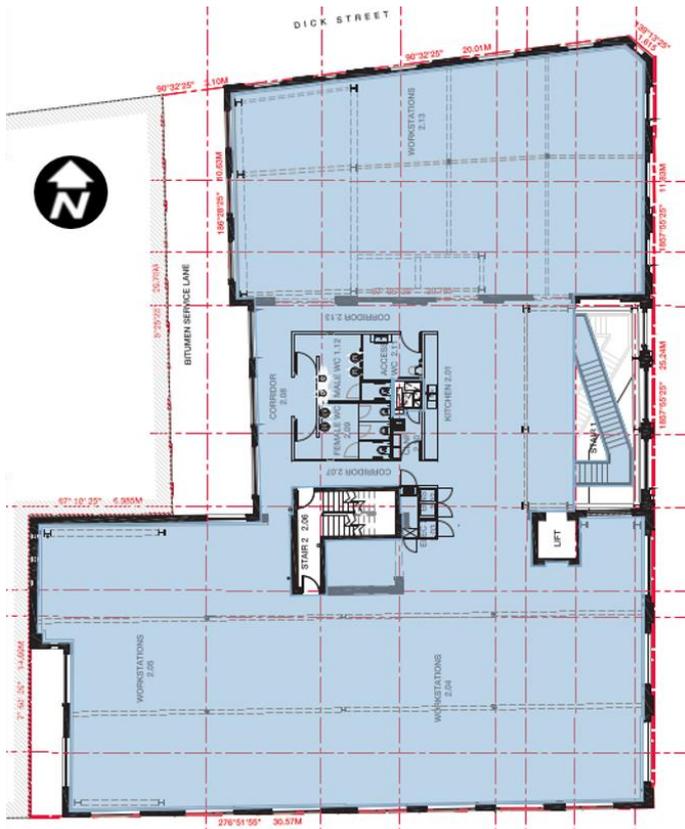


Figure 12: Proposed second floor plan

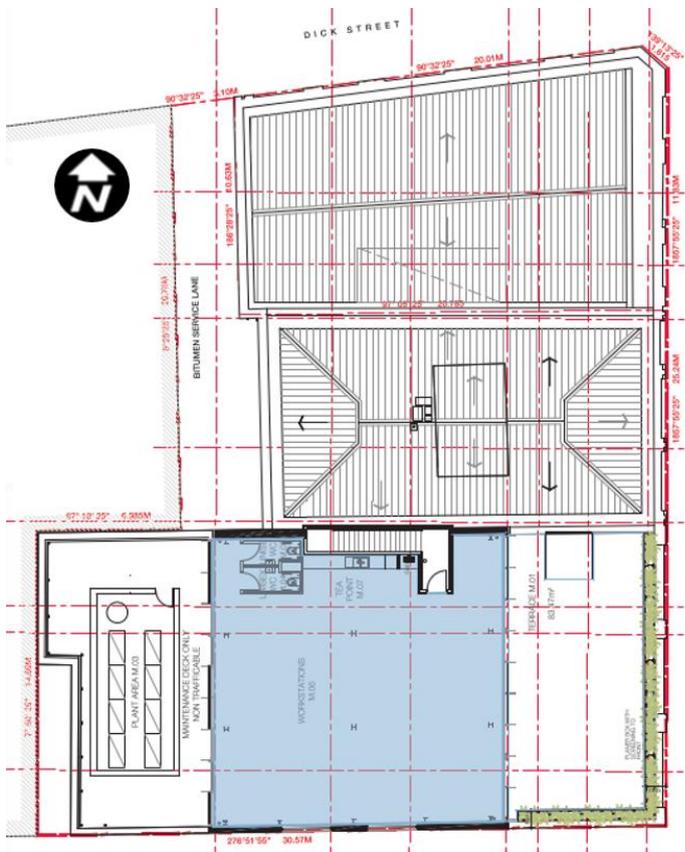


Figure 13: Proposed fourth storey addition and roof terraces

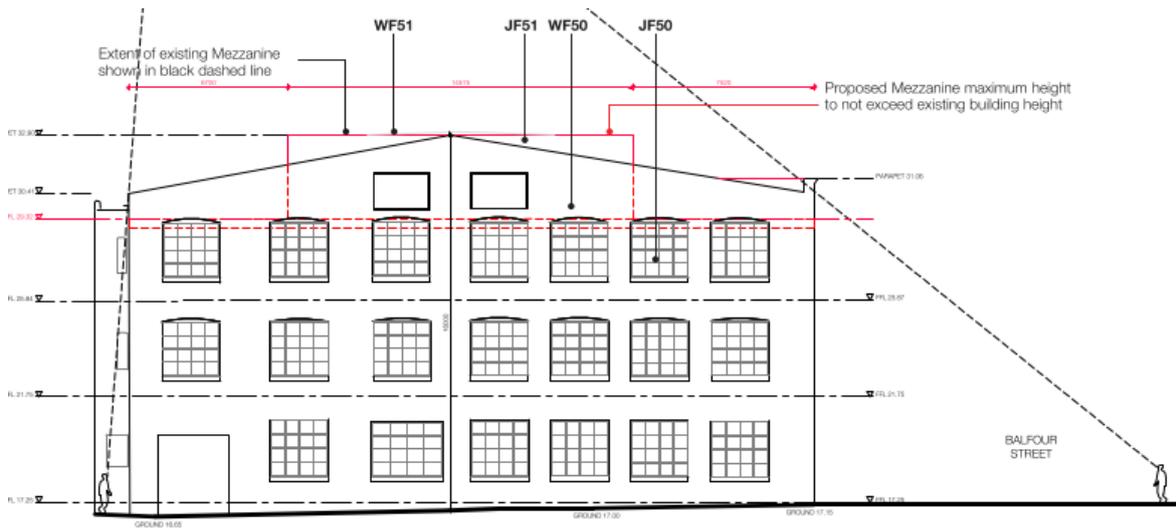


Figure 14: South (Little Queen Street) elevation

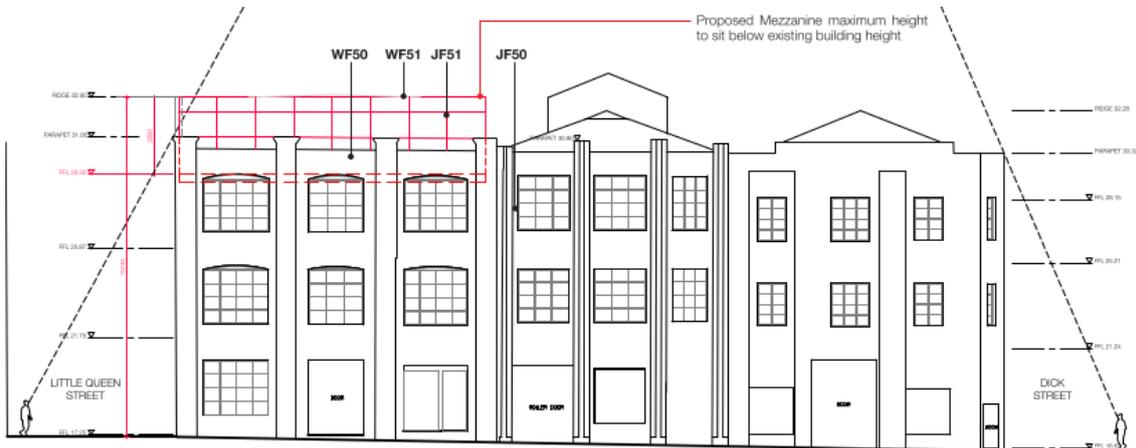


Figure 15: Eastern (Balfour Street) elevation

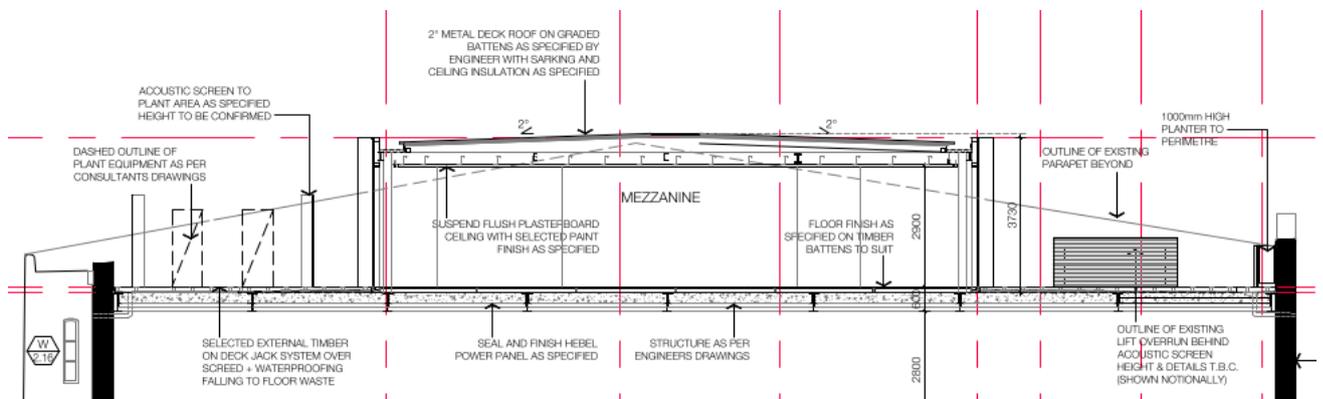


Figure 16: Long section through the fourth storey addition,



**Figure 17:** Photomontage as viewed from Balfour Street

### History Relevant to the Development Application

12. On 3 January 2018, consent was granted under D/2017/1538 for a change of use of the buildings to commercial offices and associated fitout. These works included demolition of internal partitions, new internal partitions (creating 8 tenancies), BCA upgrades and painting of the exterior. Hours of operation of the site was set at 7am to 10pm Monday to Friday. Construction has commenced on site.
13. At the request of Council's Officers, the subject application was amended to delete a proposed second terrace at the rear and relocate the roof top plant to the centre of the southern roof area away from sensitive uses at the rear. The amended plans now form the subject application and have been assessed below.

### Economic/Social/Environmental Impacts

14. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
  - (a) Environmental Planning Instruments and DCPs.

### Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

15. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
16. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
  - (a) protect and improve hydrological, ecological and geomorphologic processes;
  - (b) consider cumulative impacts of development within the catchment;

- (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
  - (d) protect and rehabilitate riparian corridors and remnant vegetation.
17. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained within the deemed SEPP.

### Sydney LEP 2012

18. The site is located within the B4 Mixed Use zone. The proposed works to the existing commercial building are permissible.
19. The application submits that the proposed addition is a mezzanine floor within the existing building. Pursuant to the Sydney LEP 2012, a mezzanine is defined as:

*mezzanine means an intermediate floor within a room.*

20. The proposed addition does not satisfy the LEP definition of 'mezzanine' as it comprises a discreet floor constructed above the floor below, contained beneath a new roof. Accordingly, the proposal constitutes a fourth storey addition, not a mezzanine as described in the application. The additional floor space has been assessed as a fourth storey addition.
21. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

### Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 12m is permitted.  A height of 15.65m is proposed which is a 3.65m or 30% variation to the height development standard.  See discussion under the heading Issues below.
4.4 Floor Space Ratio	No	A maximum FSR of 1.75:1 is permitted.  A FSR of 2.5:1 is proposed to be retained which is a 44% or 771.8sqm variation to the development standard.  See discussion under the heading Issues below.

<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.6 Exceptions to development standards	Yes	The proposal seeks to vary the development standards under Clause 4.3 and 4.4 of the SLEP 2012 prescribed under Clause 4.3.  See discussion under the heading Issues.
5.10 Heritage conservation	Yes	The subject site is located within a heritage conservation area.  See discussion under the heading Issues.

<b>Part 6 Local Provisions - Height and Floor Space</b>	<b>Compliance</b>	<b>Comment</b>
Division 4 Design excellence	Yes	The proposed development demonstrates a high standard of architectural design through the setbacks to the additional storey, the quality of materials proposed and the minimal visibility from the public domain of the addition.  The proposal will have minimal impacts to adjoining properties with no additional overshadowing and the provision of acoustic screens to minimise and acoustic impacts.  The proposed development exhibits design excellence and therefore satisfies the requirements of this provision.

<b>Part 7 Local Provisions - General</b>	<b>Compliance</b>	<b>Comment</b>
7.14 Acid Sulphate Soils	Yes	The site is identified as containing class 5 Acid Sulphate Soil. As the proposal does not include excavation within 500m of Class 1-4 soils, no further action is required.

**Sydney DCP 2012**

22. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

**2. Locality Statements – 2.3.1 - Chippendale**

The subject site is located in the Chippendale locality. The proposed alterations and additions to the existing commercial building are considered to be in keeping with the unique character of the area and design principles in that they respond to the height, massing and predominate proportions of nearby contributory items. The proposal retains the scale and massing of the existing buildings as viewed from the primary street frontage (Balfour Street) and retains and protects early industrial warehouses on the site.

<b>3. General Provisions</b>	<b>Compliance</b>	<b>Comment</b>
3.9 Heritage	Yes	The existing building is located within a heritage conservation area with one building being neutral and the other contributory to the conservation area. See discussion under the heading Issues.
3.10 Significant Architectural Building Types	Yes	The site is a warehouse older than 50 years and is therefore subject to this provision. See discussion under the heading Issues.
3.12 Accessible Design	Yes	The fourth storey and roof terraces are accessible through a lift.

<b>4. Development Types</b>	<b>Compliance</b>	<b>Comment</b>
<b>4.2 Residential flat, commercial and mixed use developments</b>		
4.2.1 Building height	No	A maximum building height of 3 storeys is permitted.  A maximum of 4 storeys is proposed. See discussion under the heading Issues.
4.2.1.2 Floor to ceiling height and floor to floor heights	Yes	The proposal has a floor to floor height of 3.6m for the proposed addition.

4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.2 Building setbacks	Yes	<p>The subject building is located in a locality where rear and side setbacks vary due to the range of building forms (warehouses/terraces/ect).</p> <p>For the remaining warehouses in the area including the subject site nil setbacks on all sides is typical. This is true for the subject site.</p> <p>The proposal includes a rear (west) setback of 8m (as measured on the north-western corner) and 7.6m from the front of the site. Due to the setbacks and the height of the existing parapet, the proposed addition will not be visible from Balfour or Dick Streets and is setback from the boundary between the buildings continuing to permit the continued reading of the 2 buildings.</p> <p>A 200mm setback to the southern boundary on Little Queen Street is proposed, however a condition has been recommended to increase this setback to 600mm from the external face of the southern wall to reduce the visibility of the addition from Little Queen Street above the parapet. This is discussed in greater detail below. The proposal in general terms will not interrupt the existing pattern of development and maintains the setting for nearby contributory buildings within the conservation area. Overall, the proposed setbacks are acceptable subject to conditions as detailed below.</p>
4.2.3.1 Solar access	Yes	The proposal will result in minimal additional overshadowing to properties to the south with the additional shadows to fall on the roofs of the adjoining properties and is considered acceptable.
4.2.3.11 Acoustic privacy	Yes	See discussion under the heading Issues.

4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.6 Waste minimisation  4.2.6.4 Additional provisions for non-residential development	Yes	The development proposes to utilise the existing waste facilities for the site. This is considered acceptable as the proposal will not result in any additional floor space and will therefore not increase the demand on waste facilities as approved under D/2017/1538.
4.2.7 Heating and Cooling Infrastructure	Yes	The development proposes to locate the air conditioning condensers in a consolidated area on the new roof terrace at the rear of the site, setback 4.7m from the adjoining residential properties and surrounded by an acoustic screen.  See further discussion on acoustic privacy under the heading Issues below.
4.2.9 Non-residential developments in the B4 Mixed Uses zone	Yes	The proposal will not change the approved use of the site.

## Issues

### Clause 4.6 request to vary a development standard - height of buildings

23. The site is subject to a 12m height of buildings development standard. The proposed development has a height of 15.65m which is a 30% variation to the development standard.
24. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - (b) that there are sufficient environmental planning grounds to justify contravening the standard.
25. A copy of the applicant's written request is provided at Attachment C.

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

26. 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 proposed development will not increase the existing maximum height of the building and as such will have no additional impacts on views or overshadowing;
    - (ii) will comply with the relevant sections of the Sydney City Development Control Plan 2012 (as outlined within the accompanying Statement of Environmental Effects); and
    - (iii) will be consistent with the objectives of the B4 Mixed Use zone and the 'maximum height of buildings' development standard as they apply to the site.
  - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
    - (i) The proposed exceedance of the 'maximum height of buildings' development standard relates only to a minor increase of part of the existing mezzanine level and will not increase the overall height of the existing buildings. The modifications proposed to the existing roof will not be readily visible from the ground. Shadow studies have been provided within the architectural plans demonstrate that the proposed development will have no adverse additional overshadowing impact on any neighbouring building or any area of public open space.
    - (ii) The proposed development seeks to improve the functionality of the entire building so that additional outdoor space is made available to the occupants of the building. Currently, the nearest open space available to occupants of the building is the nearby Chippendale Green park, which is located within 50m of the site. Because of the intended occupancy of this development by a high-end commercial tenant, there will likely be an increase to the number of users within the building. This will place additional strain on the existing green spaces and as a mitigation strategy, the proposed mezzanine terrace will provide some green space for users to occupy during building opening hours.

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

27. 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)?

28. The applicant has adequately addressed the issues raised within Clause 4.6(3)(a) through a full assessment detailing how the proposal will comply with the objectives of the B4 mixed Use zone and the Maximum Height of Buildings development standard:

- (a) *to ensure the height of development is appropriate to the condition of the site and its context*
  - (i) As noted above in Section 3, the proposed exceedance of the 'maximum height of buildings' development standard relates to a fourth storey addition which replaces an existing mezzanine level and will not increase the overall height of the buildings. As shown in Figure 2 and Figure 3 the modifications proposed to the existing roof will not be readily visible from the ground. Shadow studies have been provided within the architectural plans demonstrate that the proposed development will have no additional adverse overshadowing impact on any neighbouring building or any area of public open space. In light of the above it is clear that the proposed development, including the exceedance of the 'maximum height of buildings' development standard, is appropriate for the condition of the site and its context.
- (b) *to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
  - (i) The site is not mapped or listed as an item of local or State heritage significance, however, the site is located within the Chippendale heritage conservation area (HCA). The proposed addition is sympathetic to both the existing building on which it is located, and the contribution of the existing building to the local character of Chippendale and the Chippendale HCA. As shown in Figure 2 and Figure 3 the modifications proposed to the existing roof will not be readily visible from the ground.
  - (ii) Further, the proposed development demonstrates adaptive reuse with a contemporary rooftop addition, consistent with development in the immediate surrounds (including 30 Balfour Street, immediately east of the site and 2-8 Little Queen Street, immediately west of the site). The proposed development will facilitate the occupancy of a high-end commercial tenant, consistent with uses in the immediate surrounds (including 30 Balfour Street, currently occupied by the White Rabbit Gallery).
  - (iii) The proposed development involves the removal of the existing warehouse roof structure of the southern building to accommodate a fourth storey addition which replaces the mezzanine while retaining the overall height of the existing building. As the construction of the roof is masked by the warehouse's parapet, the removal of the roof structure will result in negligible change to the built form character of Chippendale. The proposed development's materiality in relation to heritage conservation has aimed to integrate the design of the roof terrace to fit with the local character of the surrounding neighbourhood.

- (c) *to promote the sharing of views*
- (i) The proposed development will not increase the overall height of the existing building but will increase the bulk of the top floor as viewed from elevated buildings surrounding the site. The sightlines to and from the site offer district outlooks onto Central Park but the site and surrounding buildings do not enjoy significant views such as the city skyline or of significant buildings. Therefore significant impacts of the proposed rooftop addition on views past the existing building are not anticipated.
  - (ii) The roof terrace has also been designed to reduce impact on views or outlooks from other surrounding roof terraces or outdoor spaces. An acoustic privacy screen adjacent to the existing parapet, and the height of the existing parapet, plus the separation distances to surrounding neighbours will consequently prevent any adverse privacy impacts in relation to views neighbouring roof terraces or outdoor spaces.
- (d) *to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas*
- (i) The proposed development does not alter the maximum height of the existing building and as such does not affect the overall height transition from Central Sydney and Green Square Town Centre and adjoining areas. As such, the proposed development will retain the existing height transitions.
- (e) *in respect to Green Square*
- (i) The proposed development is not located within the Green Square precinct and therefore Objective (e) does not apply.

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

29. The applicant has provided adequate justification that there are sufficient environmental planning grounds to justify the contravention of the development standard.

Is the development in the public interest?

30. The proposal will be in the public interest because it is consistent with the relevant objectives of the development standard, as follows:

- (a) *To ensure the height of the development is appropriate to the condition of the site and its context*
- (i) The proposal is in keeping with the existing height of the building with only minor projections beyond the existing parapet. The addition will not be highly visible and will be recessed behind the existing parapet.
  - (ii) The site is located in an area of varying heights of buildings from 2 to 5 storeys. The addition will be not out of context within the immediate area.
  - (iii) The proposal will have no adverse amenity impacts to the lower density residential dwellings surrounding the site. This is in terms of separation, perceived bulk/overbearingness, visual privacy and acoustic privacy.

- (iv) The elements that breach the height of building development standard do not adversely overshadow the adjoining properties with any additional overshadowing falling on existing roofs.
  - (b) *To ensure appropriate height transitions between new development and heritage items and buildings in Heritage Conservation Areas or special character areas.*
    - (i) The site is within the C9 - Chippendale Conservation Area and contains both neutral and contributory buildings. The proposal will have no adverse impacts on surrounding contributory buildings and will continue to enable the site to be read as an early warehouse of the Chippendale area.
  - (c) *To promote the sharing of views.*
    - (i) The proposal does not result in the loss of any significant views or sightlines.
  - (d) *To ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas.*
    - (i) The proposed height is considered to be appropriate within its transitioning precinct.
  - (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.*
      - (i) The site is not located within Green Square.
31. The proposal is also in the public interest as it meets the objectives of the B4 Mixed Use zone, as the proposed use contributes towards providing a mixture of compatible uses in the area, integrates suitable development in an accessible location, and will support the viability of the centre.

#### Conclusion

32. For the reasons provided above the requested variation to the height of building 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 Clause 4.3 Height of Buildings and the B4 Mixed use zone.

#### **Clause 4.6 request to vary a development standard - floor space ratio**

33. The site is subject to a 1.75:1 FSR development standard. The proposed development has a FSR of 2.5:1 which is a 44% variation to the development standard.
34. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- (b) That there are sufficient environmental planning grounds to justify contravening the standard.

35. A copy of the applicant's written request is provided at Attachment D.

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

36. The applicant seeks to justify the contravention of the FSR development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
  - (i) the proposed development will not increase the existing floor space ratio of the building and as such will have no additional impacts on views or overshadowing;
  - (ii) will comply with the relevant sections of the Sydney City Development Control Plan 2012 (as outlined within the accompanying Statement of Environmental Effects); and
  - (iii) will be consistent with the objectives of the B4 Mixed Use zone and the 'floor space ratio' development standard as they apply to the site.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
  - (i) The proposed FSR is commensurate with that which already exists on site and therefore does not seek to increase the density of the development.
  - (ii) The proposal increases the site's existing GFA by 6.8m<sup>2</sup> (0.02%) which is considered to be a negligible and will not intensify the use of the site.
  - (iii) The additional FSR will not substantially alter the envelope of the development and consequently will have no impact on view corridors obtained from surrounding properties.
  - (iv) The maximum FSR nominated by the SLEP 2012 was established subsequent to the redevelopment of the site and therefore cannot reasonably be applied to proposals that seek consent to retain the existing building envelope.
  - (v) The proposed development seeks to maintain and upgrade the existing warehouse building. In doing so the proposal respects site's unique qualities and location within a heritage conservation area and will continue to contribute to the legibility of the locality's industrial character.
  - (vi) As demonstrated by the shadow diagrams that accompanied the SEE, the proposal will provide a minimal amount of overshadowing on the basis that the alterations and additions are minor and will not substantially amend the existing envelope.

- (vii) The proposal does not include on-site parking and consequently the additional GFA will not give rise to additional traffic generation.

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

37. 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)?

38. The applicant has adequately addressed the issues raised within Clause 4.6(3)(a) through a full assessment detailing how the proposal will comply with the objectives of the B4 mixed Use zone and the Floor Space Ratio development standard:

*Objective (a): To provide sufficient floor space to meet anticipated development needs for the foreseeable future*

- (i) The development needs associated with the proposal are primarily to facilitate the delivery of a development that is both appropriate for attracting long term commercial tenants and compatible with the surrounding locality. The site is located in Chippendale within a heritage conservation area and the surrounding locality is characterised by a mix of uses typically accommodated within pre-war and post-war industrial warehouses. The character statement for the locality is set out in Section 2.3.1 of the Sydney DCP and provides the following relevant principles which govern redevelopment throughout the area.
- Retain the rich mix of building types and encourage the adaptive re-use of heritage and warehouse buildings.
  - Maintain the existing pattern of retail and small-scale commercial uses scattered throughout the neighbourhood.
- (ii) The proposal relates to alterations and additions that are predominately internal and do not substantially alter the bulk and scale of the existing envelope which already contravenes the FSR development standard. The works are proposed for the purpose of adaptively reusing the existing warehouse building located within a heritage conservation area and will contribute to maintaining the character of the area. It is noted that the GFA is generally consistent with the building's existing GFA and proposes no change to the FSR.
- (iii) The gross floor area is also proposed for the purpose of supporting the building's redevelopment as a functional and economically viable commercial premises. With the building consisting of an outdated warehouse, there is a clear need to execute upgrades to ensure the

building's internal spaces are suitable for commercial purposes without compromising the warehouse character of the building. In doing so, the proposal will assist in maintain the existing pattern of small-scale commercial uses that typify the Chippendale neighbourhood.

- (iv) As noted above, the existing building exceeds the relevant development standard and consequently any proposed works to the building would require a variation to the development standard. A building that strictly adhered to the FSR standard would provide a significantly smaller building envelope. A reduced building envelope would result in a less optimal outcome for occupants in that it would be less functional and have limited capacity to support a future commercial premise. It would also necessitate the redevelopment of the warehouse which would likely reduce the heritage values of the conservation area.

*Objective (b): To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic*

- (i) The density of development within the City of Sydney is in part regulated by the FSR controls established by the SLEP 2012. The proposal is subject to a maximum GFA of 1.75:1. Notwithstanding, the existing building exceeds the development standard by providing an FSR of 2.5:1. Being an early twentieth century industrial warehouse, the applicable development standard was introduced subsequent to the redevelopment of the site and is therefore considered inappropriate in respect to the assessment of the proposed alterations and additions.
- (ii) When calculated in accordance with the gross floor area definition provided by the SLEP 2012, the proposal has an FSR consistent with the existing building. Whilst the proposed provides a slightly greater GFA, the increase is negligible and will not alter the building's level of occupancy. In light of this, it is considered the proposal will not increase the land use intensity or level pedestrian traffic generation.
- (iii) The proposal does not seek to provide parking and benefits from access to public transport due to its proximity to Redfern and Central stations. Consequently, the proposal will not increase traffic generation.
- (iv) Overall it is considered that the proposal will not result in any adverse impacts on the built form, land use intensity, vehicle or pedestrian generation on the site. It therefore satisfies this objective notwithstanding the proposed variation to the development standard.

*Objective (c): To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure*

- (i) The proposed development is limited to alterations and additions and will not substantially increase the GFA beyond what is already accommodated within the site. As such, the proposal will not create an intensity of development that is incompatible with the site's existing and planned infrastructure. As noted above, the site is well located close to public transport. Specifically, it is situated a 10-minute walk from Central Station (850m) and a 13-minute walk from Redfern Station (900m). In light of this, no appreciable impact on the locality's infrastructure capacity is anticipated to arise as a result of the proposed development.

*Objective (d): To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.*

- (i) The site is located within Chippendale and seeks to provide a commercial use. An assessment of the proposed development against the relevant design principles established by the Chippendale locality statement within the Sydney DCP is provided in Table 1 available in Attachment D.

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

39. The applicant has provided adequate justification that there are sufficient environmental planning grounds to justify the contravention of the development standard.

Is the development in the public interest?

40. The proposal will be in the public interest because it is consistent with the relevant objectives of the development standard, as follows:

(a) *to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*

- (i) The proposal will not impact the area's ability to provide for anticipated development needs for the foreseeable future. This is due to the lack of change in actual floor space available to the building, the existing building is being retained and its use as approved previously has been considered to be acceptable for the area.

(b) *to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*

- (i) The proposal will not alter the numerical floor space of the existing building and will not alter the density and land use intensity of the area.

(c) *to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,*

- (i) The proposal will have no impact on the infrastructure needs for the surrounding area as the proposal will not increase the existing floor space of the building.

(d) *to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.*

- (i) As detailed in a complete assessment elsewhere in this report, the proposal will continue to reflect the desired future character of the area and minimises adverse impacts to the amenity of the locality (subject to conditions).

41. The proposal is also in the public interest as it meets the objectives of the B4 Mixed Use zone, as the proposed use contributes towards providing a mixture of compatible uses in the area, integrates suitable development in an accessible location, and will support the viability of the centre.

## Conclusion

42. For the reasons provided above the requested variation to the FSR development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of Clause 4.4 Floor Space Ratio and the B4 Mixed use zone.

## Acoustic Privacy

43. The application proposes to relocate the air conditioning condensers from the centre of the site and to the non-trafficable rear (western) roof terrace. The proposal includes a 2.1m high acoustic screen around the plant.

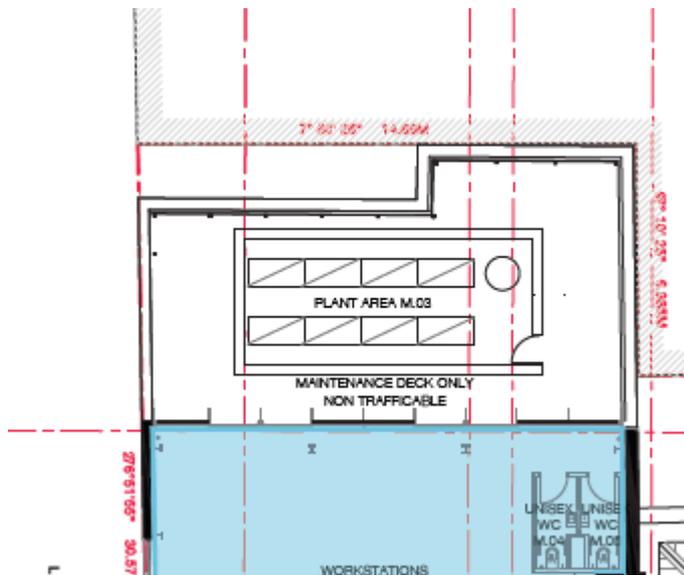


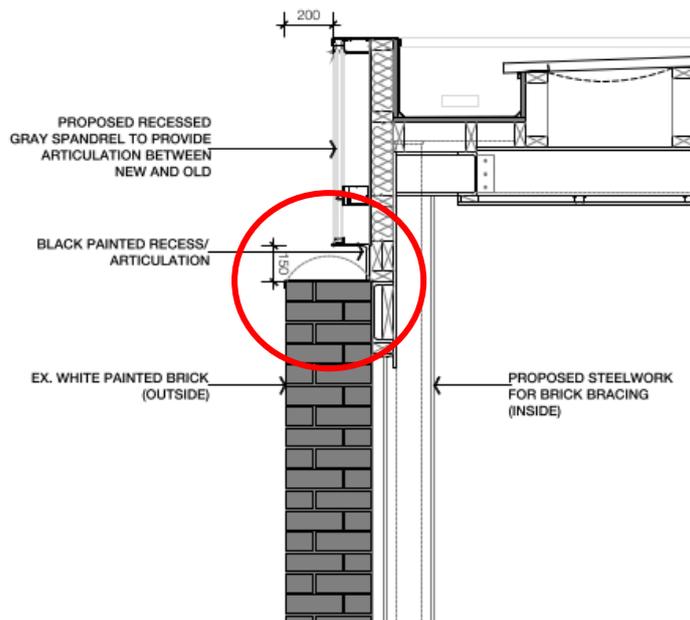
Figure 18: Proposed location of the plant

44. The applicant has submitted an acoustic report which has been peer reviewed as well as being assessed by Council's Environmental Health Unit.
45. The application states that the location of the plant is the best location available given the roof forms, amount of plant required for the building and the need to limit visibility from the street. The acoustic report details that the proposal will remain well below the maximum permitted noise of 59dB(A) for the nearest residential receiver. The acoustic report states that the predicted noise from the mezzanine (including plant) is 48dB(A).
46. The application also proposes the use of the front roof terrace in association with the office use until 10pm Monday to Friday in keeping with the previously approved hours of operation under D/2017/1538. The proposal includes 1.6m high acoustic screens surrounding the front terrace.
47. While it is noted that the proposal has been accompanied by an Acoustic Report which states that the use of the terrace by up to 166 people (2 people/sqm) will meet the required noise levels, the terrace is not a requirement for the use of the site as an office and has the potential to result in adverse privacy impacts associated with noise. It is recommended that the use of the terrace area be restricted to base hours of 8pm, with its use to 10pm on a 12 month trial

48. The proposed location of the plant and the use of the front roof terrace is capable of complying with Council's requirements. Conditions of consent have been recommended including noise level requirements for plant and restricted capacity and hours for the use of the terrace.

### Heritage

49. The site is located within a Conservation Area and contains a building over 50 years old. The site is therefore subject to the heritage provisions of this DCP. No.29-33 Balfour Street is a neutral building and No.35-43 is a contributory building within the conservation area.
50. The proposal will not result in the loss of significant original fabric with the existing mezzanine and roof being later additions. The proposal includes the retention of the original roof trusses which currently sit either side of the existing mezzanine. The new floor will sit within the existing building footprint and while the roof is to be replaced, the roof trusses either side will be retained.
51. Through the assessment of the application Council raised concerns regarding the floor level of the addition which sought to retain the existing mezzanine's floor level that intersects with the arched windows of the floor below on the Little Queen Street elevation. Details of the proposal have been subsequently provided to show that the floor level will be raised to predominately sit above the glazing. However, given the arched shape of the windows, there will be some structure visible at the apex of the arch however this will largely be concealed by the window frame and will be setback from the window. Council's heritage specialist is satisfied that this will not result in detrimental impacts on the character and significance of the contributory item.
52. The nil setback to Little Queen Street is not supported on heritage grounds. While the shadow line and 200mm setback from the external face of the original wall is noted, the feasibility of this detail is questioned. The proposal will result in a gap which is susceptible to water damage and accumulation of debris. This area is likely to be flashed over resulting in the loss of the curved capping which is a key feature of the contributory building.



**Figure 19:** Detailed section

53. It is therefore recommended that the addition be setback a total of 600mm from the external face of the southern wall. This will result in a small loss of usable floor space (approximately 6sqm) due to the required low height of the box gutter, however this would continue to permit sufficient usable floor space within the mezzanine. This will also reduce the addition's visibility from Little Queen Street. A condition of consent to require the submission of amended plans incorporating these details prior to Construction Certificate is recommended.
54. Overall, the proposal generally complies with the relevant aims, objectives and controls of the DCP subject to conditions as discussed.

#### **Other Impacts of the Development**

55. The proposed development is capable of complying with the BCA.
56. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

#### **Suitability of the site for the Development**

57. The proposal is of a nature in keeping with the overall function of the site. The premises are in a mixed use surrounding and amongst similar uses to that proposed.

#### **Internal Referrals**

58. The application, as amended was discussed with Heritage and Urban Design Specialist, Building Services Unit and Environmental Health, who advised that the proposal is generally acceptable subject to recommended conditions.

59. All recommended conditions from other sections of Council have been included in the proposed conditions.

## External Referrals

### Notification, Advertising and Delegation

60. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 21 days between 25 September 2018 and 17 October 2018. As a result of this notification there were 10 submissions received.

- (a) The proposal will overlook into adjoining residential properties

**Response:** The proposed roof terrace at the rear of the site is now nominated as being non-trafficable (excluding maintenance). The front facing roof terrace has been designed with acoustic screening to a height of 1.6m and a 1m wide planter box to prevent occupants from having direct overlooking into sensitive land uses.

While there is likely to be some shared overlooking, the site is located within a dense urban environment with an element of overlooking to be expected, combined with its use being restricted to 7am to 10pm (subject to a trial) Monday to Friday, the potential for overlooking is considered to be acceptable.

- (b) The variation to the height limit will set a precedent for future development in the area

**Response:** A complete assessment of the proposed variation is provided above but it is noted that the proposal will not increase the overall height of the building and is in line with the existing highest point.

Each request for variation is assessed on its individual merits with any future request by another site subject to the same tests as which applied to the subject application.

- (c) The submitted Acoustic Report is inadequate and does not accurately measure background noises from adjoining residential properties

and

- (d) The rear terrace and plant will have unacceptable acoustic impacts to the adjoining residential properties to the west

**Response:** The acoustic report has been independently assessed by Council's Environmental Health Unit and has been externally peer-reviewed. The Acoustic Report has stated that the proposal will fall below the acoustic requirements and is acceptable subject to acoustic screens. The proposal will be subject to a number of amenity conditions including restricting the use of the terrace until 10pm (subject to a 1 year trial) and a number of noise conditions. It is noted that the rear facing roof terrace is non-trafficable and the plant has been moved off the western property boundary.

- (e) The use of the building and terrace until 10pm would have unreasonable impacts to surrounding residents

**Response:** The site is located within a "white" uncategorised area under Council's late night trading controls within DPC 2012 and trading until 10pm not considered to be late night. That being said, it is acknowledged that the site is located close to sensitive uses and so the use of the terrace will be restricted until 8pm with use until 10pm subject to a 1 year trial. The trial period will enable Council to monitor any potential detrimental impacts on the surrounding area. The site will also be subject to a number of noise conditions relating to the emission of acoustic impacts which must be adhered to regardless of approved hours.

- (f) The repainting of the exterior will result in paint chips falling into the adjoining properties

**Response:** The repainting of the exterior was approved under D/2017/1538 and is not a matter which is the subject of the subject application.

- (g) The proposed use of the existing waste facilities is inadequate

**Response:** The proposal will not result in any additional floor space and so the requirements for waste will not change from that as approved under D/2017/1538. It is of note that the waste requirements for the site were substantially changed from previous arrangements under the 2017 approval to accommodate the increased occupation of the site.

- (h) The addition is inappropriate to the heritage significance of the building

**Response:** A complete assessment of the heritage impacts has been provided above with the proposal considered to be in keeping with the objectives of the heritage provisions within the planning controls.

- (i) The operation/population of the site once complete has not been explained

**Response:** The operation of the site to change from a warehouse to an office was approved under a previous consent. The subject application cannot consider the operation of the site as a whole, only the works proposed.

- (j) Impacts from the construction of the proposal including communication with neighbours the full program of works

**Response:** There is no requirement within the planning provisions for this level of communication with the surrounding residents. It is recommended that concerned resident's discuss the matter with the builder or Principal Certifier to arrange an acceptable outcome for all parties.

- (k) Risk of anti-social behaviour

**Response:** The proposal does not involve the sale of alcohol with the use of the building and terrace restricted to 7am to 10pm Monday to Friday. Antisocial behaviour is not anticipated.

## Public Interest

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

### S7.11 Contribution

62. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. However, as the works will not result in an increase to the gross floor area from the existing situation and therefore no new increase in the worker population, no contributions are payable for the subject application.
63. It is noted that S7.11 contributions were applied under the previous application D/2017/1538 for the change of use.

### Relevant Legislation

64. The Environmental Planning and Assessment Act 1979.

### Conclusion

65. The application seeks consent for the demolition of and replacement of the existing mezzanine level with a fourth storey addition, relocation of plant, new roof terraces and minor internal works to the existing office building.
66. The proposal has been amended and additional information has been supplied during the assessment of the application to address preliminary concerns relating to the proposed rear roof terrace, location of the plant and impacts to the contributory building within the conservation area.
67. The application results in a breach 3.65m or a 30% to the 12m building height development standard. The applicant has submitted a Clause 4.6 variation to height under the Sydney LEP 2012. The requested variation to the height development standard is upheld in this instance because the consent authority is satisfied that the applicant's amended written request has adequately addressed the matters required to be addressed by Clause 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 Clause 4.3 Height of Buildings and B4 Mixed Use zone. It is considered that strict compliance with the height of buildings development standard is unreasonable or unnecessary in this instance.
68. The application results in a breach of 771.5m or 44% to the 1.75:1 FSR development standard. Although the proposed development results in the creation of some new floor space the total quantum of floor space resulting from the development will be no greater than that of the existing building.
69. The applicant has submitted a Clause 4.6 variation to FSR under the Sydney LEP 2012. The requested variation to the FSR development standard is upheld in this instance because the consent authority is satisfied that the applicant's amended written request has adequately addressed the matters required to be addressed by Clause 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 Clause 4.4 Floor Space Ratio and B4 Mixed Use zone. It is considered that strict compliance with the FSR development standard is unreasonable or unnecessary in this instance
70. Overall, the amended proposal generally consistent with the objective, standards and guidelines of the relevant planning controls, subject to conditions.

71. Accordingly, the Development Application is recommended for approval, subject to conditions.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Jemima Royall, Specialist Planner