

**Item 3.****Section 8.2 Review of Determination - 21 O'Connor Street, Chippendale - RD/2018/1360/A**

File No.: RD/2018/1360/A

**Summary****Date of Review Application Lodgement:** 12 June 2019**Date of Original Determination:** 3 April 2019**Date by which Review Panel must determine the application:** 3 October 2019**Applicant:** Kreis Grennan Architecture**Architect:** Kreis Grennan Architecture**Owner:** Anthony Rodgers and Bernadette Mullin**Cost of Works:** \$611,128**Zoning:** The site is located within the B4 Mixed Use zone. The use is defined as commercial and residential and is permissible within consent in the zone.**Proposal Summary:** A request for a review of the determination of development application D/2018/1360 under the provisions of Section 8.2 (1) (a) of the Environmental Planning and Assessment Act has been lodged.

The original application sought consent for alterations and additions to the existing mixed-use warehouse building to include a new commercial studio, courtyard and garage on the ground floor; internal reconfiguration of the first floor; extension of the second floor onto the existing outdoor terrace; and addition of a roof terrace above.

The application was subsequently refused for the following reasons:

**Proposal Summary  
(continued):**

- (a) The variation to the Height and Floor Space Ratio development standards was considered to be inconsistent with the provisions of Clause 4.6 and not in the public interest.
- (b) The proposed alterations and additions were considered to be unsympathetic to the contributory building within the Chippendale heritage conservation area.
- (c) The proposal was considered to have excessive bulk and scale which did not demonstrate design excellence.
- (d) The proposal was considered to have detrimental impacts on the amenity of neighbouring properties by way of privacy and acoustic impacts.
- (e) The proposal was not considered to be in keeping with the desired future character of the area and not in the public interest.

The applicant is requesting that the Panel review the decision in light of the amended plans submitted with the review application. The amendments include the following:

- (f) Internal alterations at ground floor level including a reduction in the size of the garage and use of the store room as a recreation room.
- (g) Addition of a balcony adjacent to the external stairs at first floor level.
- (h) Deletion of the roof terrace and associated access stairs.
- (i) Provision of additional solar panels on the roof (13 in total).
- (j) Amendments to the roof addition including alterations to glazing, the addition of louvres and amendments to the materials.

One submission was received, objecting to the Section 8.2 (1) (a) review request. The objection raised the issue of the impact of the proposal on parking.

**Summary Recommendation:** That the Panel consider the amendments made to the proposal and approve the request to change the development consent.

**Development Controls:**

- (i) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (ii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iii) Sydney Local Environmental Plan 2012 (Gazetted 12 December 2012, as amended)
- (iv) Sydney Development Control Plan 2012 (in force on 12 December 2012, as amended)
- (v) City of Sydney Development Contributions Plans 2015

**Attachments:**

- Attachment A.** Recommended Conditions of Consent
- Attachment B.** Review Application Form, Amended Plans and Supporting Documents
- Attachment C.** Refused Plans
- Attachment D.** Original Notice of Determination
- Attachment E.** Original Planner's Report

## Recommendation

It is resolved that:

- (A) the variation sought to the height of building development standard under Clause 4.3, in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 be supported in this instance;
- (B) the variation sought to the floor space ratio development standard under Clause 4.4, in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 be supported in this instance; and
- (C) consent be granted to Development Application No. RD/2018/1360/A 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 requested variation to the development standards prescribed under Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio of the Sydney Local Environmental Plan 2012 is upheld 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 the Height of Buildings and Floor Space Ratio development standards and the B4 Mixed Use zone.
- (B) The amended proposal results in sympathetic alterations and additions to a contributory building within the Chippendale Heritage Conservation Area (C9) in accordance with the requirements of Clause 5.10 of the Sydney Local Environmental Plan 2012 and Section 3.9 of the Sydney Development Control Plan 2012.
- (C) The amended proposal demonstrates design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.
- (D) The proposal will not have detrimental impacts on the amenity of neighbouring properties and as such is consistent with the provisions of Section 4.2.3 of the Sydney Development Control Plan 2012.
- (E) The proposal is in keeping with the desired future character of the area and is considered to be in the public interest.
- (F) The development, as modified, is considered to be substantially the same development as the development refused under D/2018/1360 in accordance with Clause 8.3 (3) of the Environmental Planning and Assessment Act 1979.

## Background

### The Site and Surrounding Development

2. A site visit was carried out by staff on 10 July 2019.
3. The site is irregular in shape with an area of approximately 96.2sqm. It is located on the south-eastern corner of O'Connor Street and Smithers Street with its primary frontage to Smithers Street. A two storey building, with a mansard attic addition, is contained within the site
4. The existing two storey building was constructed as a commercial warehouse in the post-war period. A mansard attic addition was approved in 2013. The building includes a commercial premises on the ground floor level and a residential dwelling occupying the first floor level and attic level. The building includes an outdoor roof terrace on the first floor at the northern end of the building.
5. Surrounding land uses are residential and commercial. A row of two-storey terrace houses adjoins the site to the north, south and east. A two storey commercial building adjoins the site to the west. Larger scale commercial buildings and residential flat buildings are located on Abercrombie Street and Buckland Street.
6. The site is not a heritage item but is identified as a contributory building within the Chippendale Conservation Area (C9).



Figure 1: Aerial image of subject site and surrounding area



**Figure 2:** Site viewed from O'Connor Street looking south-east



**Figure 3:** Site viewed from Smithers Street looking north-east



Figure 4: Site viewed from Smithers Street looking north-east



Figure 5: View from existing roof terrace



**Figure 6:** View of existing addition to be demolished

### **Background of Development Application RD/2018/1360/A**

7. The original development application was lodged on 8 November 2018 and sought development consent for the following alterations and additions to the existing mixed-use building
  - (a) **Ground Floor:**
    - (i) demolition of internal walls and stair;
    - (ii) addition of new 13sqm internal courtyard with tree, landscaping and stair to upper levels; and
    - (iii) addition of new commercial studio, garage, store room and two WCs.
  - (b) **First Floor:**
    - (i) demolition of internal walls, stair and slab on the northern section of the building;
    - (ii) removal of the glass from the two northern windows and replacement with steel mesh; and
    - (iii) addition of "study" with kitchen and laundry facilities, two bedrooms and bathroom.

**(c) Second Floor:**

- (i) demolition of mansard attic addition including walls and roof and demolition of slab on the northern section of the building;
- (ii) new addition with pitched walls containing living room with kitchen, bedroom and bathroom; and
- (iii) addition of a 15.8sqm roof terrace.

**(d) Roof:**

- (i) addition of 29sqm roof terrace with solar panels above the new addition.

8. Following preliminary assessment of the application by City staff and a presentation to the City of Sydney Design Advisory Panel Residential Subcommittee, a request for amended plans was sent on 20 December 2018. The applicant was required to address a number of issues, including
  - (a) Request to delete the new roof terrace and stair and amend the form of the addition to maintain an attic-like addition.
  - (b) Request to retain the window frames to the north of the building
  - (c) Request for further information on overlooking and overshadowing impacts, materials and finishes, ventilation and tree.
9. Amended plans and additional information was received on 23 January 2019 which included amendments to the proposal, however the building height and provision of the roof top terrace remained unchanged.
10. On 29 March 2019, the applicant submitted additional information and amended plans to address the reasons for refusal in the recommendation to Local Planning Panel. The applicant requested that the amended plans were approved with appropriate conditions or that the Panel defer the application for Council staff to assess the amended plans.
11. The amended plans were received on 29 March 2019, 4 days before the Local Planning Panel meeting on 3 April 2019. The Local Planning Panel were advised that the amended plans should not be accepted as the assessment had already been completed and as there was insufficient time to carry out a complete assessment.
12. The application was heard at the Local Planning Panel meeting on 3 April 2019. It was resolved to refuse development consent for the reasons included in Attachment D, being the original notice of refusal.

**Proposal**

13. The applicant is seeking a review of the refusal and has submitted amended plans to address the reasons for refusal.
14. The amendments include the following:

- (a) Internal alterations at ground floor level including a reduction in the size of the garage and use of the store room as a recreation room.
  - (b) Addition of a balcony adjacent to the external stairs at first floor level.
  - (c) Deletion of the roof terrace and associated access stairs.
  - (d) Provision of additional solar panels on the roof (13 in total).
  - (e) Amendments to the roof addition including alterations to glazing, the addition of louvres and amendments to the materials.
15. As was the case with the original proposal, each of the three levels of the building are accessed via an external stair. As both residential levels include a living area, bedrooms, bathroom and kitchen, the proposal appears to present as two apartments. The applicant has advised that they intend to use the upper levels as one residential dwelling. This is discussed in the issues section of this report.
16. A comparison between the refused and proposed plans and elevations is shown in Figures 7 to 22 below.

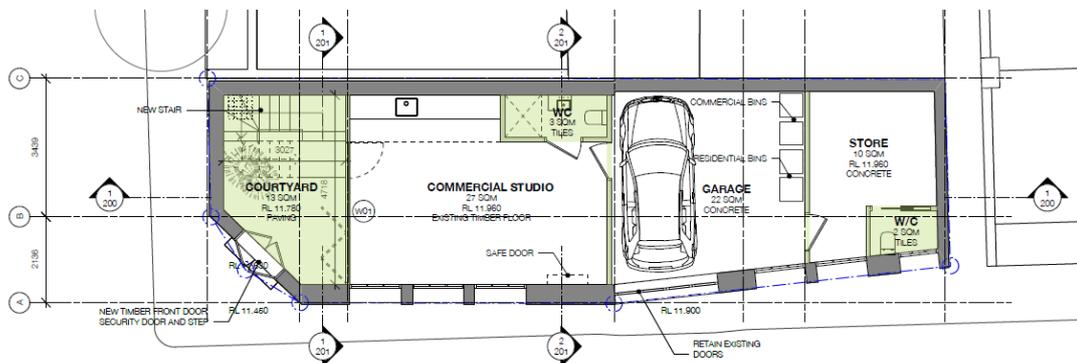


Figure 7: Refused ground floor plan

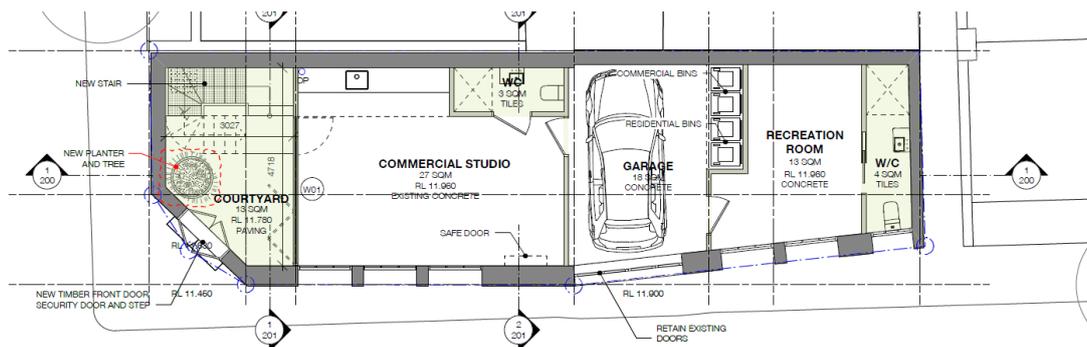


Figure 8: Proposed ground floor plan

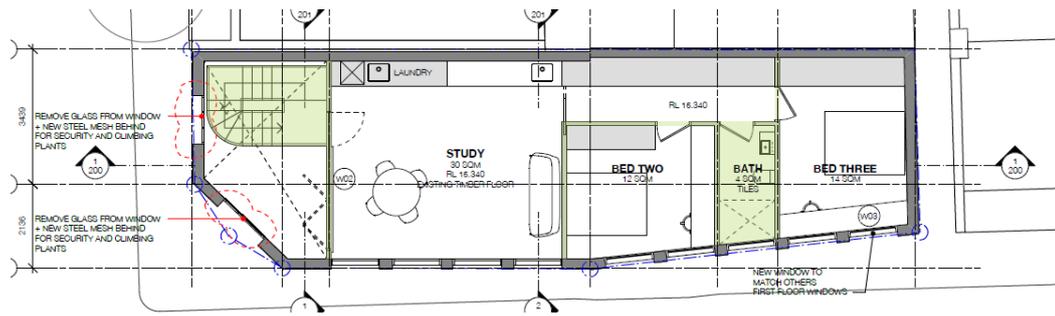


Figure 9: Refused first floor plan

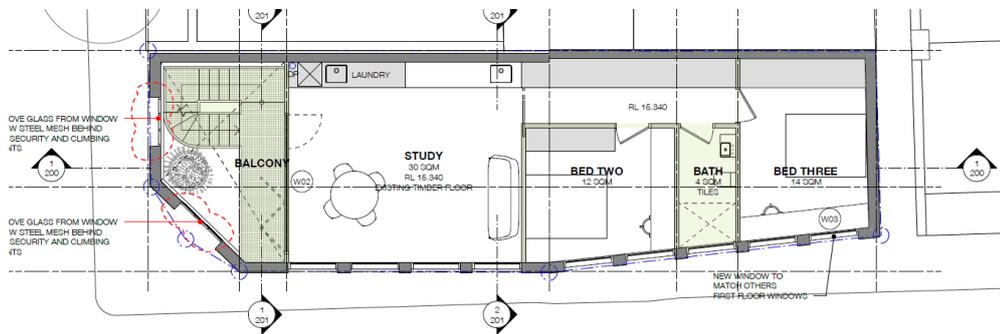


Figure 10: Proposed first floor plan

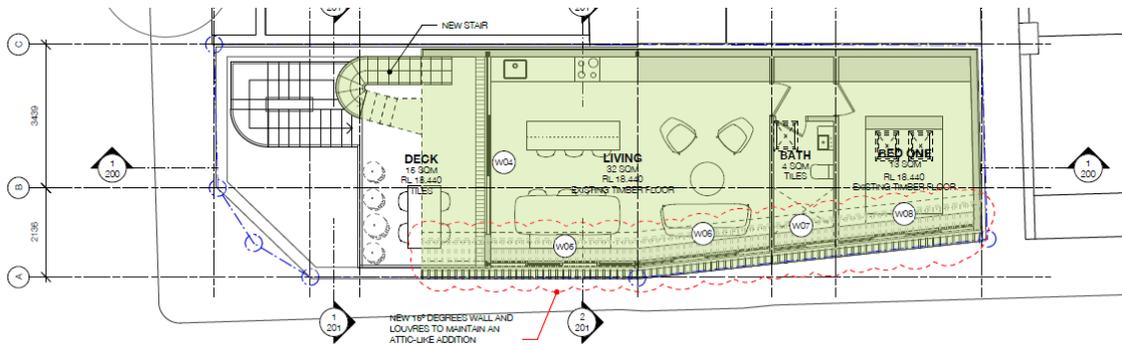


Figure 11: Refused second floor plan

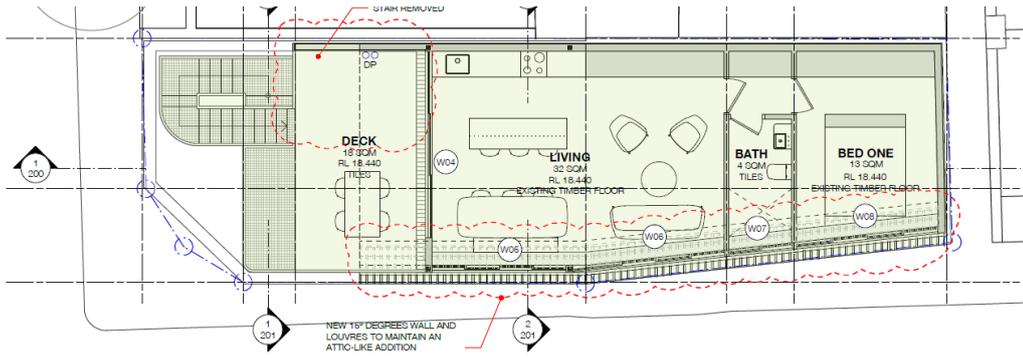


Figure 12: Proposed second floor plan

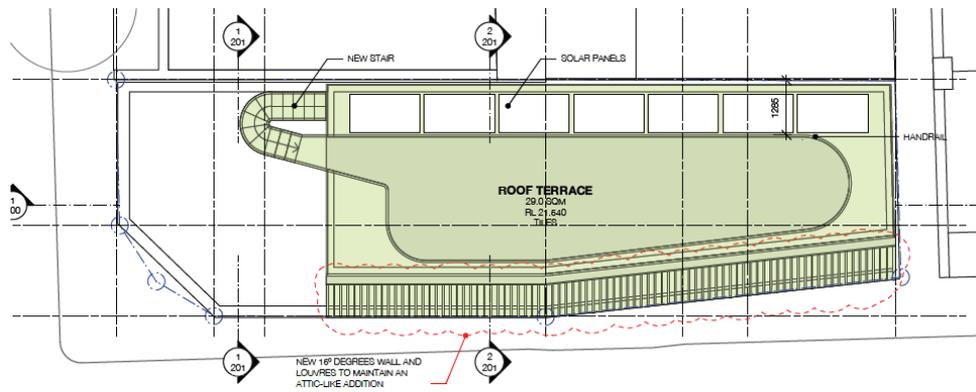


Figure 13: Refused roof plan

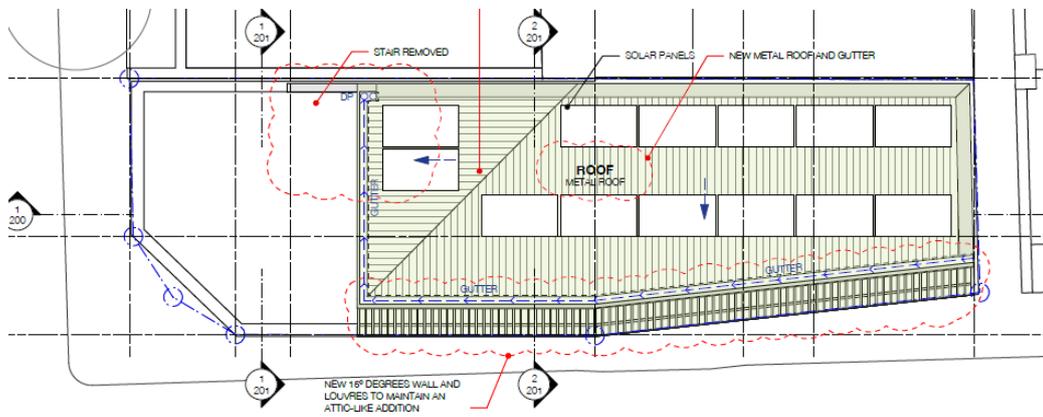


Figure 14: Proposed roof plan



Figure 15: Refused west elevation

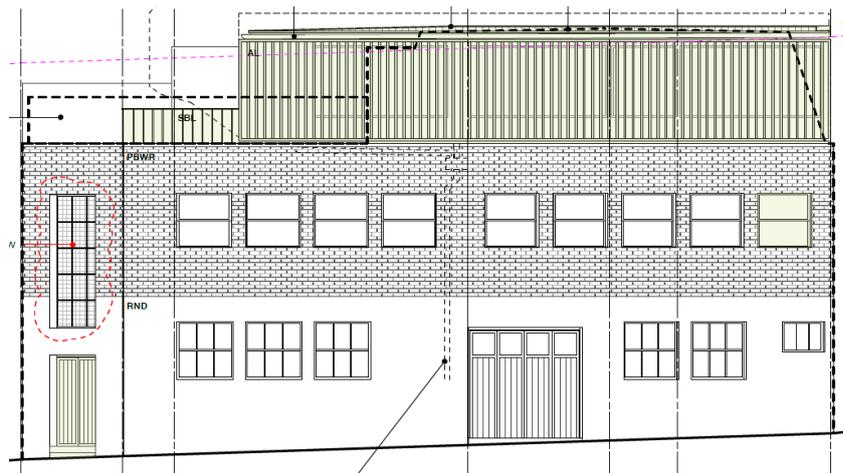


Figure 16: Proposed west elevation

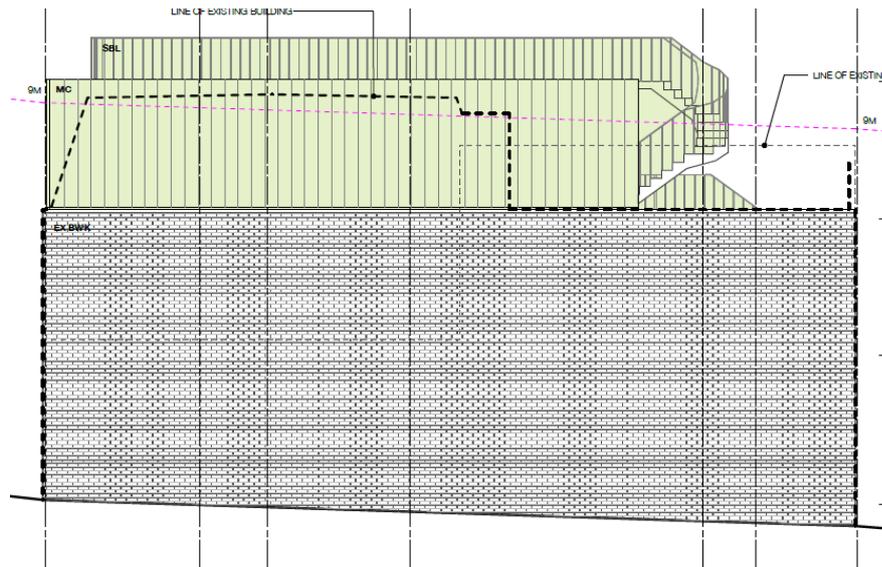


Figure 17: Refused east elevation

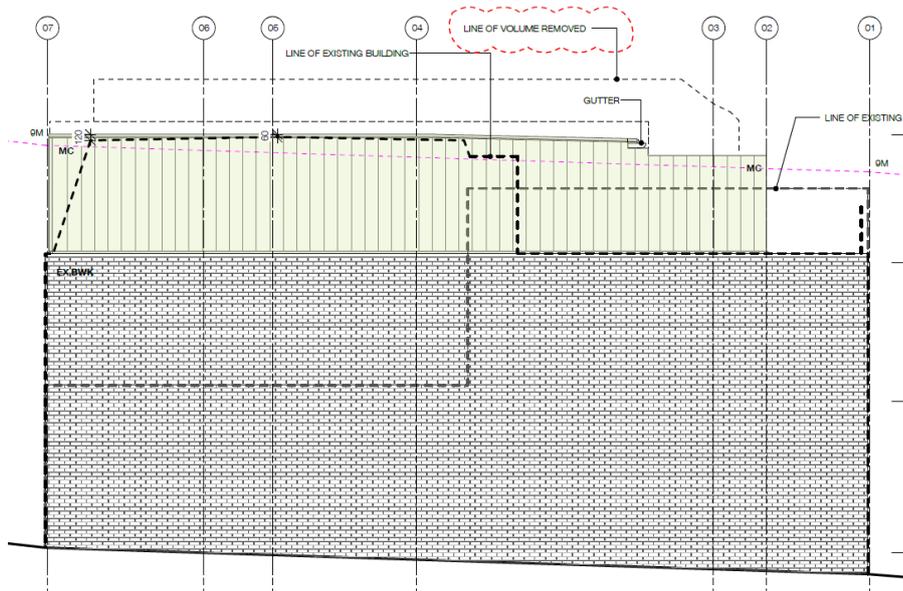


Figure 18: Proposed east elevation

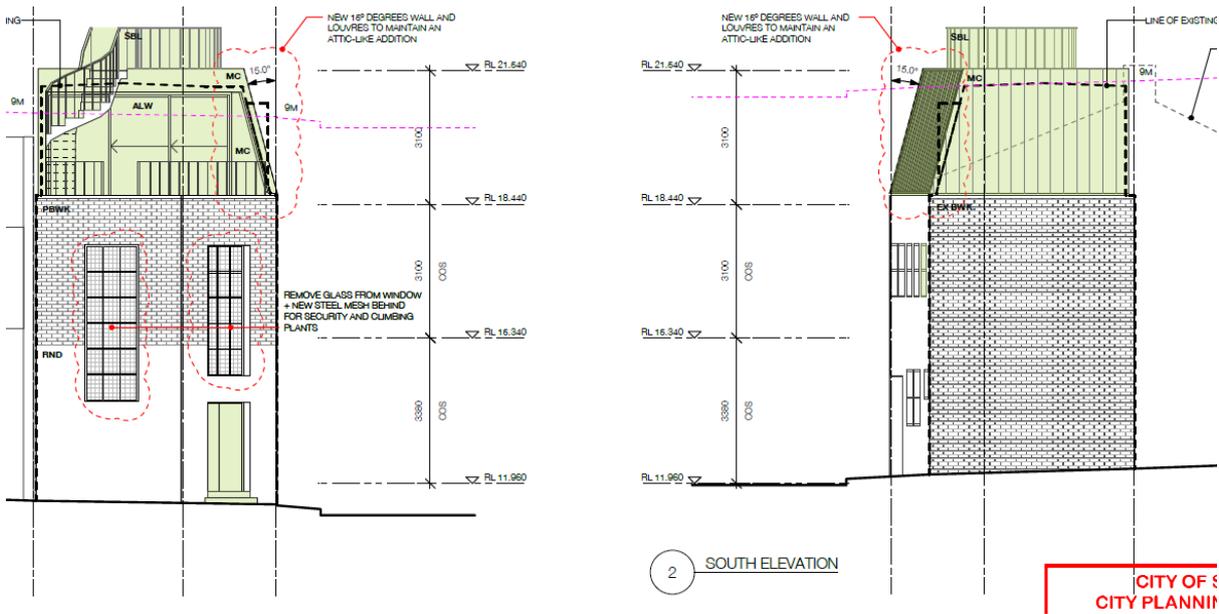


Figure 19: Refused north and south elevations

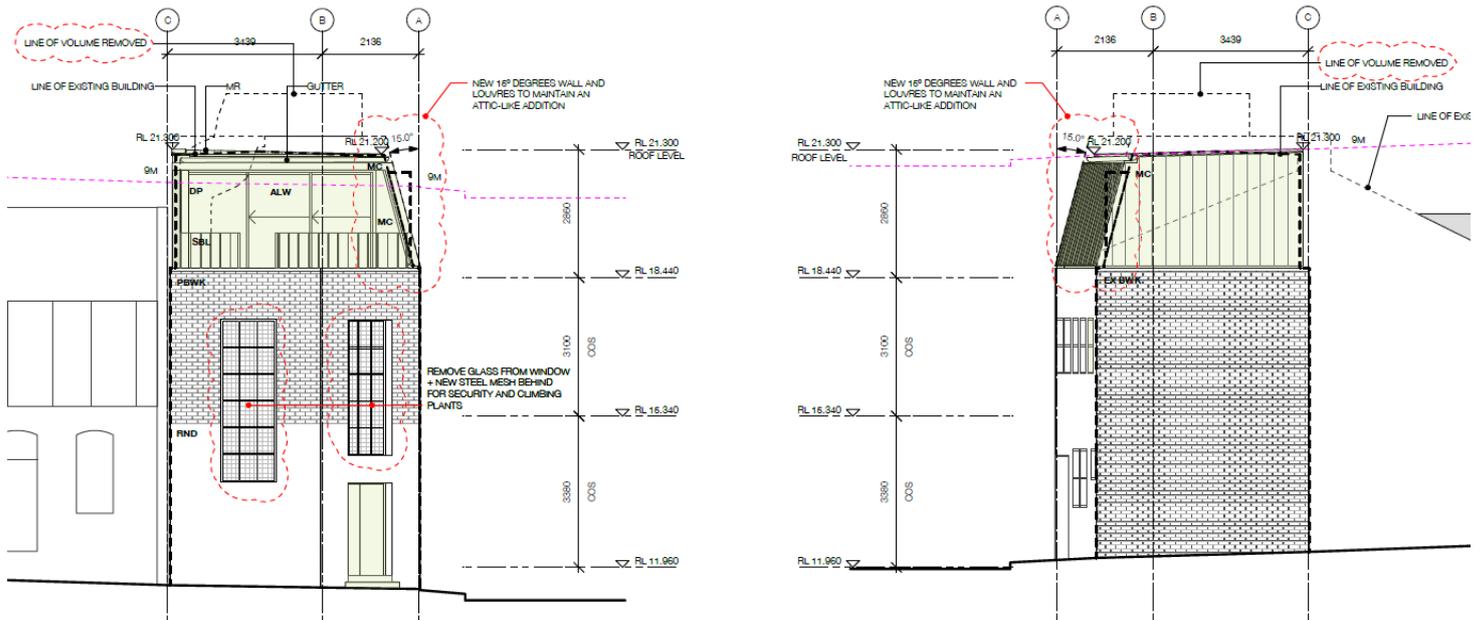


Figure 20: Proposed north and south elevations



Figure 21: Refused west elevation - materials



Figure 22: Proposed west elevation - materials

17. The applicant has submitted the following justification with the amended plans.
18. The amended proposal addresses reason for refusal 1:
  - (a) The existing building exceeds the height limit and FSR. The proposal as modified reduces the existing FSR slightly and removes an existing and proposed roof terrace.
  - (b) The removal of the proposed roof terrace and redesign of the second floor ensures that any height alteration is minimised to 150mm. Furthermore the design of the second floor now incorporates a 150 wall and louvres to ensure it appears as an attic-like addition.
  - (c) The gross floor area is now slightly below the existing gross floor area (3.9m<sup>2</sup>).
  - (d) The Clause 4.6 variations demonstrate that the development standards are unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify a variation to the control.
19. The amended proposal addresses reason for refusal 2:
  - (a) The amended proposal is consistent with the Clause 5.10 of the LEP 2012 and Section 3.9 of the Sydney DCP 2012 in the following manner:
    - (i) A proposed roof terrace has been removed and all alterations are generally within the envelope of the existing building.
    - (ii) The upper floor includes pitched walls at 15 degree to present an attic-like roof addition.
    - (iii) The proposed height, bulk and scale is consistent with the character of surrounding development.
    - (iv) The proposal is of a high standard of design and will improve the existing amenity of the dwelling.
    - (v) The proposal will not result in any adverse amenity impacts to surrounding neighbours in terms of privacy, solar access or views.
  - (b) As noted by John Oultram in the HIS and subsequent correspondence to Council:

*The post war building will be retained with limited change to its visible elevations. The current roof form is modern resulting from the later mansard and this will be replaced to a similar form.*
  - (c) As such the amended proposal will not have a detrimental effect on the Chippendale Heritage Conservation Area and therefore addresses Reason 2.
20. The amended proposal addresses reason for refusal 3:
  - (a) A proposed roof terrace has been removed and all alterations are generally within the envelope of the existing building. Floor space is slightly reduced to accommodate an internal courtyard. As such, there is no increase in bulk and scale and the design of the second floor includes a 15° pitch to present as an attic form.

- (b) The removal of the proposed roof terrace and access thereto ensures no adverse privacy impacts on adjoining neighbours.
  - (c) High quality materials of metal cladding copper / brass matte colour are proposed replacing a non – original form at this level and exhibiting design excellence in the streetscape and Heritage Conservation Area.
21. The amended proposal addresses reason for refusal 4:
- (a) The removal of the proposed roof terrace and access thereto ensures no adverse privacy impacts on adjoining neighbours.
22. The amended proposal addresses reason for refusal 5:
- (a) The proposal in its modified form is considered suitable, as it will not visibly increase the height of the building (150mm change), reduces bulk and scale and includes an attic style second floor, which is entirely consistent with the existing and the desired future character of the area.

### **History Relevant to the Development Application**

23. D/2013/897 - On 26 August 2013, development consent was approved for the demolition of the existing rooftop level and replacement with a new mansard roof addition.
24. D/2016/1214 - On 5 December 2016, development consent was approved for strata subdivision of the existing mixed-use building into two lots and common property. One lot consisted of the commercial tenancy on the ground floor and the other lot consisted of the residential tenancy on the upper two floors. The subdivision was never registered and the consent was surrendered on 3 May 2018.
25. D/2018/1360 - On 3 April 2019, development consent was refused for alterations and additions to existing mixed-use warehouse building to include a new commercial studio, courtyard and garage on the ground floor, internal reconfiguration of the first floor, extension of the second floor onto the existing outdoor terrace, and addition of a roof terrace above.

### **Implications of the Proposal**

#### **Division 8.2 Reviews**

26. In accordance with Section 8.2(1) the following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:
- (a) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),
  - (b) the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),

- (c) the decision of a council to reject and not determine an application for development consent.
27. The Panel may review a determination in accordance with Section 8.2(1)(a) of the Environmental Planning and Assessment Act 1979 if it has notified the request for review in accordance with:-
- (a) The regulations, if the regulations so require; or
  - (b) A development control plan, if Council has made a development control plan that requires the notification or advertising of requests for the review of its determinations; and
  - (c) It has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan.
28. The application has been notified in accordance with the City of Sydney Development Control Plan 2012 and is discussed in further detail within this report.
29. In accordance with Section 8.3(5) the review of a determination or decision made by a Local Planning Panel is to be conducted by the panel.
30. In accordance with Section 8.3(3), in requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.
31. The applicant has submitted an amended proposal with the review application as they are seeking to address the reasons for refusal.
32. The amendments include the following:
- (a) Internal alterations at ground floor level including a reduction in the size of the garage and use of the store room as a recreation room.
  - (b) Addition of a balcony adjacent to the external stairs at first floor level.
  - (c) Deletion of the roof terrace and associated access stairs.
  - (d) Provision of additional solar panels on the roof.
  - (e) Amendments to the roof addition including alterations to glazing, the addition of louvres and amendments to the materials.
33. In considering whether or not a development is substantially the same it is appropriate to consider both quantitative and qualitative aspects of the proposal and not the merits of the changes.
34. It is considered that the amended proposal satisfies the requirements of the substantially the same test as it results in a built form which has a similar height, bulk, scale and appearance to the original proposal. A comparison between the original and proposed plans is shown in Figures 7 to 22 above.

**Section 4.15 Evaluation**

35. Given that the previous determination was a refusal, a new and full assessment of the Section 8.2(1)(a) application under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been made, including consideration of the Environmental Planning Instruments and DCPs.

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

36. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
37. 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.
38. 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 with the deemed SEPP.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

39. A BASIX Certificate has been submitted with the development application.
40. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. A condition is recommended ensuring the measures detailed in the BASIX certificate are implemented.

**Sydney Local Environmental Plan 2012**

41. The site is located within the B4 Mixed Use zone. The proposed use is defined as commercial and residential and is permissible.
42. 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	<p>A maximum height of 9m is permitted.</p> <p>The existing building has a height of 9.41m (RL21.18). A height of 9.56m (RL21.30) is proposed.</p> <p>See discussion under the heading Issues.</p>
4.4 Floor Space Ratio	No	<p>A maximum FSR of 1.5:1 is permitted.</p> <p>The existing building has a GFA of 196.89sqm and an FSR of 2.11:1.</p> <p>The applicant states that the proposed GFA would be 195.6sqm which would result in a FSR of 2.0:1.</p> <p>Council's measurement of the proposed GFA is 182.3sqm which would result in a FSR of 1.89:1. A net reduction of 14.59sqm is therefore proposed.</p> <p>See discussion under the heading Issues.</p>
4.6 Exceptions to development standards	Yes	<p>The proposal seeks to vary the development standard prescribed under Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio).</p> <p>See discussion under the heading Issues.</p>
5.10 Heritage conservation	Yes	<p>The site is not a heritage item but is identified as a contributory building within the Chippendale Conservation Area (C9).</p> <p>See discussion under the heading Issues.</p>

Development Control	Compliance	Comment
Division 4 6.21 Design Excellence	Yes	<p>The application proposes to utilise appropriate quality materials and detailing, including copper/brass matte coloured aluminium louvres to the new addition, and improvements to the facade of the existing building, including a dark grey coloured rendered paint finish on the ground level and dark grey coloured painted brickwork on the first floor level.</p> <p>The form and scale of the addition is considered to be appropriate to the site and not have a detrimental impact on the significance of the heritage conservation area or on the amenity of neighbouring properties.</p> <p>The proposal was reviewed by the City's Urban Designer who advised that the resolution of the architectural detail between the existing parapet and the new addition should be provided to ensure that the proposal meets design excellence. A condition of consent is recommended requiring this detail.</p>

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	<p>A maximum of 2 car parking spaces is permitted for the site.</p> <p>The site currently has no on site car parking spaces. 1 car parking space is proposed within the new garage.</p>

### Sydney Development Control Plan 2012

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

#### 2. Locality Statements – Chippendale

The subject site is located in the Chippendale locality. The proposed alterations and additions to the mixed-use building are considered to be in keeping with the unique character of the area and design principles in that they respond to the contributory building and heritage conservation area and are appropriate in height, scale, design and form.

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements	Yes	The proposed development will make a positive contribution to the public domain as it will provide a sympathetic roof addition which uses high quality materials and does not create any additional amenity impacts.
3.5 Urban Ecology	Yes	The proposal includes the partial demolition of the ceiling to the ground floor and roof at the northern end of the building to create an internal void for a landscaped courtyard at the ground floor level. No changes have been made to this area when compared with the original proposal which was reviewed by the City's Landscape Assessment Officer who raised no objection.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.9 Heritage	Yes	The site is not a heritage item but is identified as a contributory building within the Chippendale Conservation Area (C9).  See discussion under the heading Issues.

3. General Provisions	Compliance	Comment
3.10 Significant Architectural Building Types	Yes	<p>The original application was accompanied by a Heritage Impact Statement which states that the building was constructed in stages between 1951 and 1957 as a commercial warehouse to replace a single storey 1880s cottage.</p> <p>The application is therefore subject to section 3.10.1 of the DCP which requires alterations and additions to sympathetic in scale and style to the existing building.</p> <p>The roof addition is considered to be complimentary to the original building, is simple in form, is clearly distinguishable as a new addition and complements the materials and articulation of the existing façade.</p> <p>The amended proposal is considered to meet the provisions of section 3.10.1.</p>
3.11 Transport and Parking	Yes	<p>The proposal includes a single car garage on the ground floor, with access provided from the existing garage door and vehicle crossover. The application was reviewed by the City's Transport and Access Unit who advised that the proposed length of the garage does not meet the requirements. However, transport have advised that given that only one car space is provided, the proposed garage is acceptable subject to a condition which requires any car using the garage to not exceed 4.4m in length.</p> <p>Given that a new use is not proposed, bicycle parking is not required to be provided. However, there is adequate room to store bicycles within the ground floor courtyard.</p>
3.14 Waste	Yes	<p>A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	<p>A maximum of 2 storeys is permitted.</p> <p>The existing building is 2 storeys in height with a mansard addition. The proposal involves the demolition and re-build of the mansard addition and would therefore not result in a change to the existing height in storeys.</p> <p>Whilst the attic addition would read as a third storey, the proposed design and materials are complimentary to the existing building and the form and scale of the addition would not detract from the character and significance of the existing building.</p> <p>For mixed-use buildings, the DCP requires a minimum floor to floor height of 4.5m for the non-residential use on the ground floor and 3.3m for residential floors above. The DCP requires habitable rooms in mixed use development to have a minimum floor to ceiling height of 2.7m.</p> <p>The proposal maintains the ground and first floor to floor heights of 3.38m and 3.1m respectively and the first floor level height of 3.1m. Given the building is an existing contributory building, the non-compliances are considered to be acceptable.</p> <p>The proposed addition would have a floor to ceiling height of 2.4m which is considered to provide an acceptable level of internal amenity and is capable of meeting the minimum floor to ceiling height of 2.4m under the Building Code of Australia.</p>

4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.2 Building setbacks	Yes	The existing building is built to all boundaries with no setbacks. The proposal would result in the existing rear and side setback alignments being maintained, which is consistent with the adjoining buildings.
4.2.3 Amenity	Yes	<p><b>Layout and proposed use of the building</b></p> <p>As was the case with the original proposal, each of the three levels are accessed via an external stair and are therefore capable of being self-contained, with no internal connectivity. See discussion under the heading Issues.</p> <p><b>Solar Access</b></p> <p>The submitted shadow diagrams show that the proposal would result in additional overshadowing to the front setbacks of the residential terraces on the opposite side of Smithers Street at 10.00am and a the private open space of 2 Smithers Street at 2.00pm. The shadow diagrams also show that the proposal would result in additional overshadowing to the roofs of various properties.</p> <p>The extent of the additional overshadowing is negligible and the diagrams show that the affected properties will continue to maintain a minimum of two hours solar access, as per the DCP requirements. As such the proposal is not considered to result in significant adverse impacts in relation to solar access.</p>

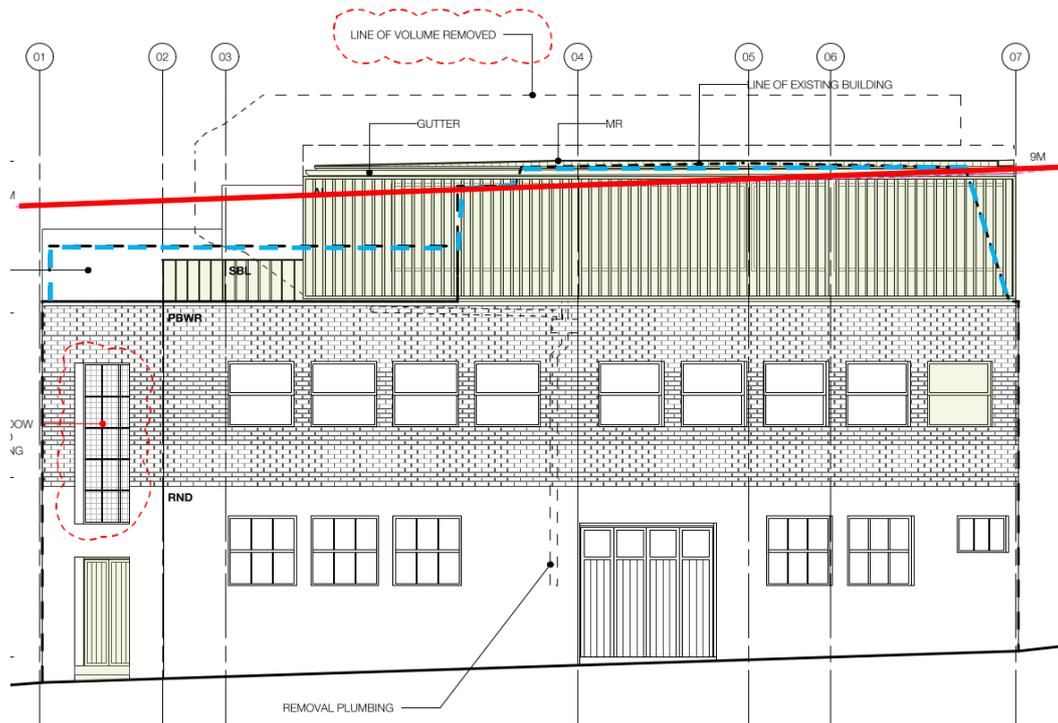
4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
		<p><b>Privacy</b></p> <p>The roof terrace which was part of the original development application has been removed from the proposal. The proposal would not result in any additional privacy impacts to neighbouring properties.</p> <p><b>Private Open Space</b></p> <p>The proposal includes a ground floor courtyard with an area of 13sqm. This courtyard serves as an entry foyer/ circulation space and is not considered to contribute to private open space.</p> <p>Provision (6) (a) requires upper level units to have a minimum of 10sqm of private open space with a minimum dimension of 2m. A 4.7sqm balcony is provided at the first floor level and a 17sqm terrace at the second floor level. Both areas of external private open space would be accessed from living areas and are considered to provide an acceptable level of private open space for the dwelling.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	The scale, modulation and façade articulation of the proposed development responds to the context provides an appropriate transition between the neighbouring terraces commercial buildings opposite.

## Issues

### Clause 4.6 request to vary the Height of Buildings development standard

44. The site is subject to a maximum Height of Buildings control of 9m. The existing building has a height of 9.41m (RL21.18) and the proposed development has a maximum height of 9.56m (RL21.30).
45. The variation to the height control results in an exceedance of the development standard by 0.56m which equates to a 6.22% variation.

46. The red line in Figure 23 shows the 9m height control in context with the proposed development.



**Figure 23:** Proposed west elevation with 9m height control shown in red and the height of the existing building shown dashed in blue.

47. 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; and
  - That there are sufficient environmental planning grounds to justify contravening the standard.
48. A copy of the applicant's written request is provided in Attachment B.

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

49. The applicant seeks to justify the contravention of the Height of Buildings development standard on the following basis:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
    - The proposal meets the objectives of the height development standard as follows:

- Objective (a) seeks to provide appropriate heights, which allow for the environmental amenity of neighbouring properties. The proposal will ensure that adequate solar access is provided to adjoining properties and no new impacts are created in terms of privacy. In particular, it is noted that the components, which extend beyond the height control will not result in a loss of environmental amenity for the neighbouring properties as outlined above.
  - Objective (b) will be met as the proposal ensures an acceptable transition between this building and others in the Conservation Area.
  - Objective (c) is met as no views will be impacted upon and in particular, the non-compliant elements will not affect views from adjoining properties.
  - Objectives (d) and (e) are not applicable to this site.
- (ii) Compliance with the development standards is unreasonable and unnecessary as this would reduce the height of the existing building and compromise floor to ceiling heights with no benefit for neighbouring properties or in terms of the overall bulk of the building as presented to the public domain.
- (iii) The components of the second floor above the height control will not result in adverse building bulk that results in environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.
- (iv) The second floor has been redesigned to include pitched walls at 15 degree to present an attic-like roof addition, further reducing apparent bulk.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The proposal seeks to undertake alterations and additions including a new second floor presenting an attic-like roof addition. The addition is recessive, using high quality materials and exhibits design excellence. This represents a better planning outcome for the residential amenity of the site with no adverse impacts on the area.
  - (ii) The proposal overall is therefore considered to be an appropriate response for the site and the non-compliant elements will not affect the amenity of adjoining properties, whilst improving the amenity of the subject property.
  - (iii) The proposed height is achieved without adverse impacts and the proposal will provide a suitable design and of suitable amenity in terms of the built environment, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).
  - (iv) The visual bulk of the component above the height control has been reduced by providing a 15 degree wall hipped away from the street.

- (v) Compliance with the height control will not result in improved amenity for adjoining properties and the visual bulk of the upper level as perceived from the street will be reduced. The lack of unreasonable impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds.

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

50. 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)?

51. The applicant's written request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the objectives of the Height of Buildings development standard are achieved notwithstanding the non-compliance with the standard. The request and plans demonstrate that compliance with the height standard would result in a development that does achieve the minimum floor to ceiling heights under the BCA and the development is considered to be appropriate to the condition of the site and its context and provides an appropriate height transition between the site and surrounding heritage items and contributory items within a heritage conservation area.

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

52. The written request states that the proposal will not result in unreasonable impacts to neighbouring properties in terms of solar access, privacy, view loss and visual bulk. It also states that the addition is recessive, uses high quality materials and exhibits design excellence. This is accepted, the submitted solar diagrams show that the proposal will not have a detrimental impact on solar access to neighbouring properties and the proposal would not result in any additional overlooking. The non-compliance with the height control would enable a BCA compliant floor to ceiling height in the addition. Accordingly, it is considered that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.

Is the development in the public interest?

53. The objectives of the Height of Buildings development standard include:

- (a) to ensure the height of the development is appropriate to the condition of the site and its context;
- (b) to ensure appropriate height transitions between new development and heritage items; and
- (c) to promote the sharing of views.

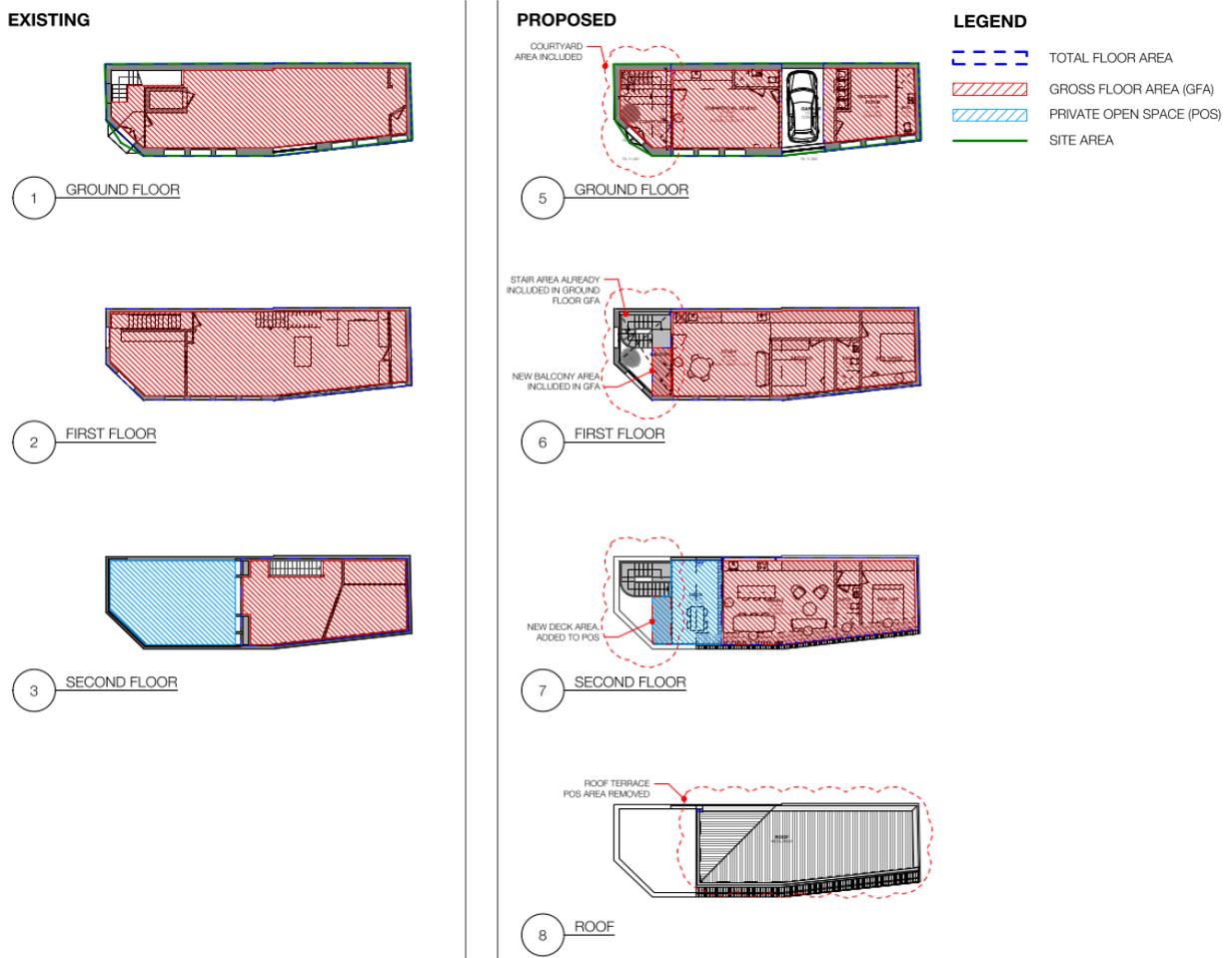
54. The form and scale of the third storey addition is considered to be appropriate to the site and context and provides an appropriate height transition between the existing contributory item and the surrounding contributory and heritage items.
55. The objectives of the B4 Mixed Use zone relevant to the proposal include:
  - (a) To provide a mixture of compatible land uses.
  - (b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage.
56. The commercial and residential components of the building will be maintained, which is consistent with the mixed-use nature of Chippendale. The proposal is located in close proximity to public transport.
57. Accordingly, the proposal is considered to be in the public interest because it is consistent with the objectives of the Height of Buildings development standard and the B4 Mixed Use zone.

#### Conclusion

58. 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 B4 Mixed Use zone.

#### **Clause 4.6 request to vary the Floor Space Ratio development standard**

59. The site is subject to a maximum Floor Space Ratio (FSR) of 1.5:1. The proposed development has an FSR of 1.89:1.
60. The existing building has an FSR of 2.11:1. The proposal results in a net decrease of 14.59sqm of floor space due to the installation of a void at first and second floor levels and the provision of a car parking space at the ground floor level. Despite the reduction in floor space, the development still represents an exceedance of 0.39:1 which equates to a 26.3% variation to the FSR development standard.
61. Figure 24 shows the Gross Floor Area plans submitted by the applicant.



**Figure 24:** Existing and proposed GFA diagrams submitted by the applicant. The GFA is shown in red.

62. 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.
63. A copy of the applicant's written request is provided in Attachment B.

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

64. The applicant seeks to justify the contravention of the Floor Space Ratio 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 proposal meets the objectives of the Floor Space Ratio development standard as follows:
    - Objective (a) is not applicable in this case.
    - Objective (b) seeks to regulate the density of development. In this case the FSR is being reduced.
    - Objective (c) seeks to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure. In this case the FSR is being reduced.
    - Objective (d) seeks to ensure that new development reflects the desired character of the locality. In this case the proposed FSR can be achieved without adverse impacts as the alterations reflect the desired character of the locality in which it is located and minimises adverse impacts on the amenity of the locality.
  - (ii) Compliance with the development standards is unreasonable and unnecessary as the proposal is to renovate an existing building and will result in a slight reduction in FSR.
  - (iii) Exceedance of the FSR control will not create additional building bulk that results in adverse environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in FSR would not create additional benefit for adjoining properties or the locality.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The proposal is for alterations to an existing building with an FSR over the control and it will result in a slight reduction to the existing FSR.
  - (ii) The proposed FSR can be achieved without adverse impacts as the alterations reflect the desired character of the locality in which it is located and minimises adverse impacts on the amenity of the locality.
  - (iii) The intensity of the development is appropriate and acceptable, having regard to existing development on the site which has greater FSR.
  - (iv) Non-compliance with the standard does not contribute to adverse environmental impacts.
  - (v) The proposed development achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.
  - (vi) The proposal will provide a suitable design and of suitable amenity in terms of the built environment, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).
  - (vii) Reduction in the FSR would not result in improved amenity for adjoining properties. The lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds.

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

65. 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)?

66. The written request demonstrates that the objectives of the Floor Space Ratio development standard are achieved notwithstanding the non-compliance with the standard, in particular Clause 4.4(1)(d), which requires new development to reflect the desired future character of the locality and minimise adverse impacts on the amenity of the locality. The development results in a small reduction in overall FSR and the roof addition is considered to be sympathetic to the contributory building and does not result in any significant detrimental amenity impacts.

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

67. The written request demonstrates that the density, scale and intensity of the development is appropriate to the existing building and within the context of surrounding development. The proposed addition is considered to be sympathetic to the host building with regards to bulk and scale and is comprised of high quality materials which would not have a detrimental impact on the wider heritage conservation area or on the amenity of neighbouring properties.
68. Accordingly, it is considered that the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention to the standard

## Is the development in the public interest?

69. The objectives of the Floor Space Ratio development standard include:
- (a) To provide sufficient floor space to meet anticipated development needs for the foreseeable future.
  - (b) To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.
  - (c) To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.
  - (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.
70. The proposal is consistent with the desired future character of the locality as it responds to and complements the contributory building and heritage conservation area, and is appropriate in height, scale, design and form. The proposal will not have a detrimental impact on the amenity of surrounding neighbouring buildings.

71. The objectives of the B4 Mixed Use zone relevant to the proposal include:
  - (a) To provide a mixture of compatible land uses.
  - (b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
72. The commercial and residential components of the building will be maintained, which is consistent with the mixed-use nature of Chippendale. The proposal is located in close proximity to public transport.
73. Accordingly, the proposal is considered to be in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard and the B4 Mixed Use zone.

#### Conclusion

74. For the reasons provided above the requested variation to the Floor Space Ratio 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 Floor Space Ratio development standard and the B4 Mixed Use zone.

#### Heritage

75. The site is not a heritage item but is identified as a contributory building within the Chippendale Conservation Area (C9).
76. The original application was accompanied by a Heritage Impact Statement which states that the building was constructed in stages between 1951 and 1957 as a commercial warehouse to replace a single storey 1880s cottage.
77. The bulk and scale of the proposed addition is considered to be sympathetic to the existing contributory item and is considered to improve the appearance of the building when compared with the existing roof addition. The removal of the roof terrace and external stair has significantly reduced the bulk of the addition.
78. The amended proposal was reviewed by the City's Heritage Specialist, who recommended that the south elevation of the addition to be changed to a mansard form and for the proposed colour scheme to be amended to a lighter colour. These issues were not raised as contentions in the original assessment of the proposal.
79. Whilst the comments from the City's Heritage Specialist have been taken into consideration in the assessment of the amended proposal, the form of the addition on the south elevation is considered to be acceptable as it provides an appropriate height transition with the neighbouring two storey terraces, does not result in any detrimental amenity impacts to adjoining properties and provides a better amenity outcome for the future occupants of the building. The colour scheme is considered to be acceptable in this instance and is not considered to reduce the significance of the Heritage Conservation Area.

**Layout and proposed use of the building**

80. As was the case with the original proposal, each of the three levels are accessed via an external stair and are therefore capable of being self-contained, with no internal connectivity.
81. As both residential levels include a living area, bedrooms, bathroom and kitchen, the proposal appears to present as two apartments. The applicant has advised that the intention is to use the upper levels as a single dwelling and that they are not seeking development consent for two apartments and that a kitchen would not be installed on level 2.
82. The use and subdivision of the residential floors as two separate dwellings would not be supported. This is because the apartment on level 1 would not meet the minimum requirement for private open space and the occupiers of the top floor would need to walk past the doors of the first floor to access the top floor resulting in privacy issues. To ensure the upper floors are used a single dwelling, conditions of consent are recommended which state that the site cannot be subdivided and that the building is to be used as a single dwelling with a commercial use on the ground floor.
83. The applicant has confirmed that the proposed garage and recreation room on the ground floor are to be used by the residential dwelling.

**Other Impacts of the Development**

84. The proposed development is capable of complying with the BCA.
85. 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**

86. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed.

**Internal Referrals**

87. The conditions of other sections of Council have been included in the proposed conditions.
88. The application was discussed with Urban Design Specialists; Transport and Access who advised that the proposal is acceptable subject to the recommended conditions.
89. The application was discussed with the City's Heritage Specialists who raised concerns with certain aspects of the amended scheme. See discussion under the heading 'Heritage' in the Issues section.

## External Referrals

### Notification, Advertising and Delegation

90. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 14 days between 18 June 2019 and 3 July 2019. As a result of this notification a total of 67 properties were notified and 1 submission was received.
91. The submission raised the following issue:
  - (a) The proposal will have an adverse impact on parking.

**Response** - The proposal includes the provision of an off-street parking space which would reduce the impact on on-street parking. The mixed-use nature of the site would not change as a result of the proposal.

### Public Interest

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

### S7.11 Contribution

93. The development is not subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015 as credits have been applied for the existing commercial space and the existing 1 bedroom dwelling which results in a net population decrease.

### Relevant Legislation

94. The Environmental Planning and Assessment Act 1979.

### Conclusion

95. The application is a review of the determination of development application D/2018/1360 under the provisions of Section 8.2 (1) (a) of the Environmental Planning and Assessment Act.
96. The proposal has been amended to address the reasons for refusal including the removal of the roof terrace and amendments to form, detailed design and materials of the roof addition.
97. The form of the roof addition is considered to be sympathetic to the contributory building and surrounding conservation area and subject to conditions, demonstrates design excellence.
98. The applicant has submitted Clause 4.6 variations to the height and Floor Space Ratio development standards under the Sydney LEP 2012. The variations to the standards are considered to be in the public interest and are supported.

99. Having regard to the all of the above matters, it is considered that the proposal generally satisfies the relevant strategy, objectives and provisions of the Sydney LEP 2012 and the Sydney DCP 2012, is acceptable and is recommended for approval.
100. The development, as modified, is considered to be substantially the same development as the development refused under D/2018/1360 in accordance with Clause 8.3 (3) of the EP&A Act 1979.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Sally Shepherd, Planner