

Attachment E

Original Planner's Report

Item 6.**Development Application: 21 O'Connor Street, Chippendale****File No.:** D/2018/1360**Summary****Date of Submission:** 8 November 2018**Applicant:** Kreis Grennan Architecture**Architect/Designer:** Kreis Grennan Architecture**Owner:** Anthony Rodgers and Bernadette Mullin**Cost of Works:** \$611,128**Zoning:** The use is defined as commercial and residential and is permissible in the B4 Mixed Use zone.**Proposal Summary:** The application proposes 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 is referred to the Local Planning Panel for determination as the proposal seeks to vary the floor space ratio and height of buildings development standards prescribed by Sydney LEP 2012 by more than 10%.

The site is subject to a maximum building height of 9m under the Sydney LEP 2012. The proposal has a maximum building height of 10.83m, which exceeds the standard by 18.45%.

The site is subject to a maximum floor space ratio of 1.5:1 under the Sydney LEP 2012. The proposal has a floor space ratio of 1.93:1, which exceeds the standard by 25%.

A request to vary the standards has been made pursuant to Clause 4.6 of the Sydney LEP 2012. The requests to vary the standards are not supported in this instance for the reasons outlined in this report.

**Proposal Summary
(continued):**

The proposal has been considered by the Design Advisory Panel Residential Subcommittee who recommended the applicant maintain an attic-like addition, retain the window frames, and provide further information in relation to overlooking and overshadowing impacts.

The application was amended on 23 January 2019 following feedback from City staff. The amendments include the addition of a pitched side wall and changes to the window design.

The proposal results in an unacceptable non-compliance with the Sydney LEP 2012 height control and Sydney DCP 2012 height in storeys control, will result in overlooking impacts, is excessive in bulk and scale, and is unsympathetic to the contributory building and conservation area. As such the proposal is not supported.

The application was notified in accordance with Council's notification policy. Two submissions have been received relating to excessive height, bulk and scale, overlooking impacts, overshadowing impacts and streetscape and heritage impacts.

Summary Recommendation: This proposal is recommended for refusal.

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:

- A. Selected Drawings
- B. Clause 4.6 Variation Requests

Recommendation

It is resolved that consent be refused for Development Application No. D/2018/1360 for the following reasons:

- (A) The variations sought to development standards prescribed under Clause 4.3 Height and Clause 4.4 Floor Space Ratio of the Sydney LEP 2012 are inconsistent with the provisions of Clause 4.6 and are not considered to be in the public interest.
- (B) The proposal results in unsympathetic alterations and additions to a contributory building within the Chippendale Heritage Conservation Area (C9). The proposal is therefore contrary to the requirements of Clause 5.10 of the Sydney LEP 2012 and Section 3.9 of the Sydney DCP 2012.
- (C) The proposal fails to demonstrate design excellence in accordance with Clause 6.21 of the Sydney LEP 2012 as it is excessive in bulk and scale, will have detrimental impacts on the character of the contributory building and wider heritage conservation area, and will have adverse impacts on the amenity of neighbouring buildings.
- (D) The proposal will have detrimental impacts on the amenity of neighbouring properties by way of unacceptable visual privacy impacts, and as such is inconsistent with the provisions of Section 4.2.3 of the Sydney DCP 2012.
- (E) The proposal is not in keeping with the desired future character of the area and is not considered to be in the public interest.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 20 November 2018.
2. 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 mansard attic addition, is contained within the site.
3. 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.
4. 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.
5. The site is not a heritage item but is identified as a contributory building within the Chippendale Conservation Area (C9).
6. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from O'Connor Street



Figure 3: Site viewed from Smithers Street

Proposal

7. The application seeks consent for alterations and additions to the existing mixed-use building including:
 - (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. While the application does not seek approval for subdivision, the proposal could facilitate future subdivision of the building. Each of the three levels are accessible from the internal courtyard via an external stair and are capable of being self-contained, with no internal connectivity.
9. It is noted that strata subdivision of the building was sought by the current owners and approved in 2016. The consent was then surrendered in 2018.
10. 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:
 - (i) Request to delete the new roof terrace and stair and amend the form of the addition to maintain an attic-like addition.
 - (ii) Request to retain the window frames to the north of the building.

- (iii) Request for further information on overlooking and overshadowing impacts, materials and finishes, ventilation and tree.

11. Amended plans were received on 23 January 2019 and form the basis of this assessment.
12. Plans of the proposed development (as amended) are provided below.

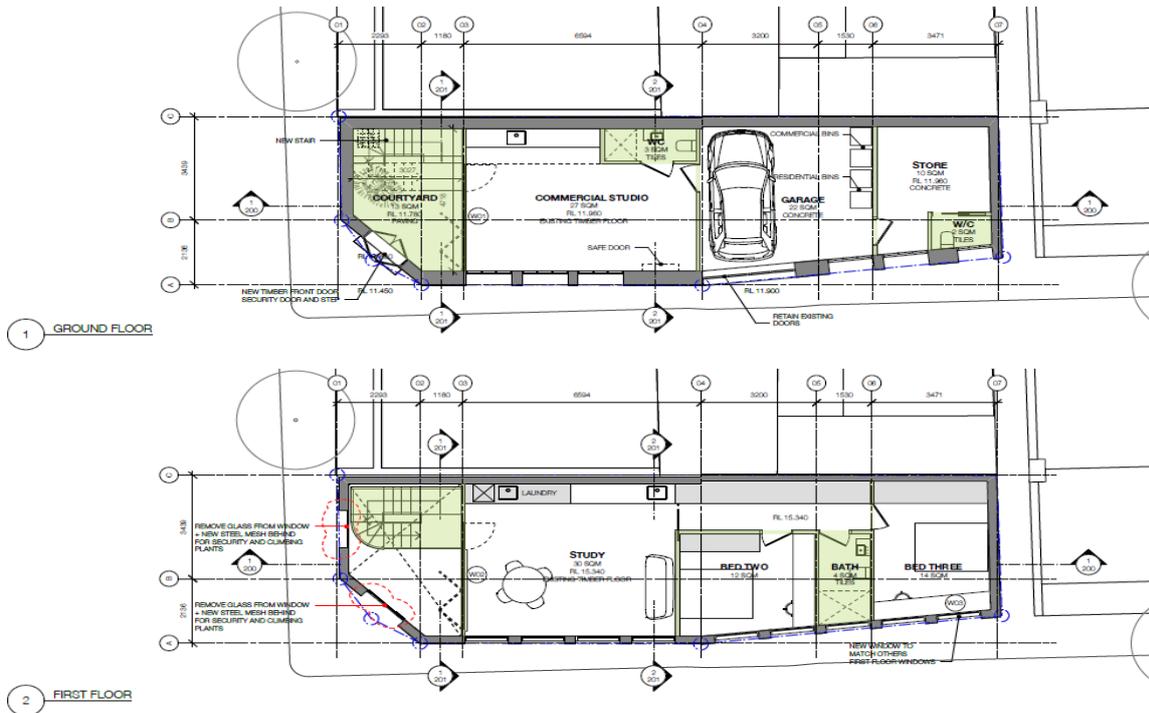


Figure 4: Proposed ground and first floor plans

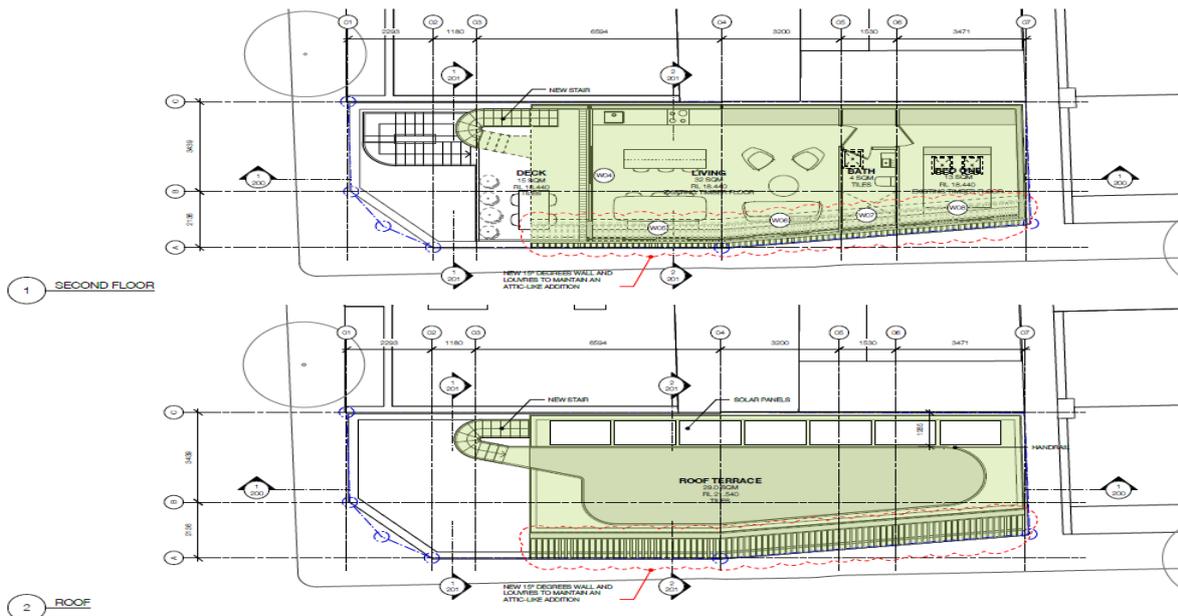


Figure 5: Proposed second floor and roof terrace plans



Figure 6: Proposed west elevation

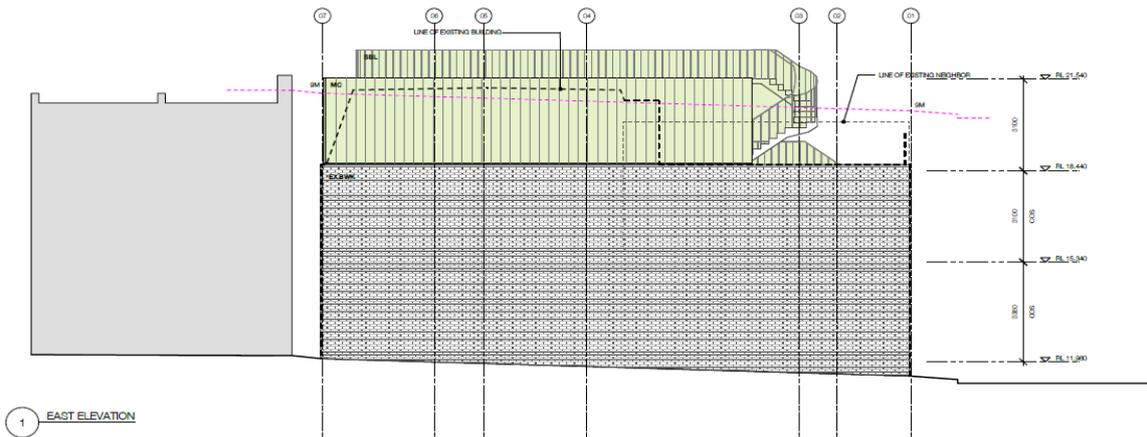


Figure 7: Proposed east elevation

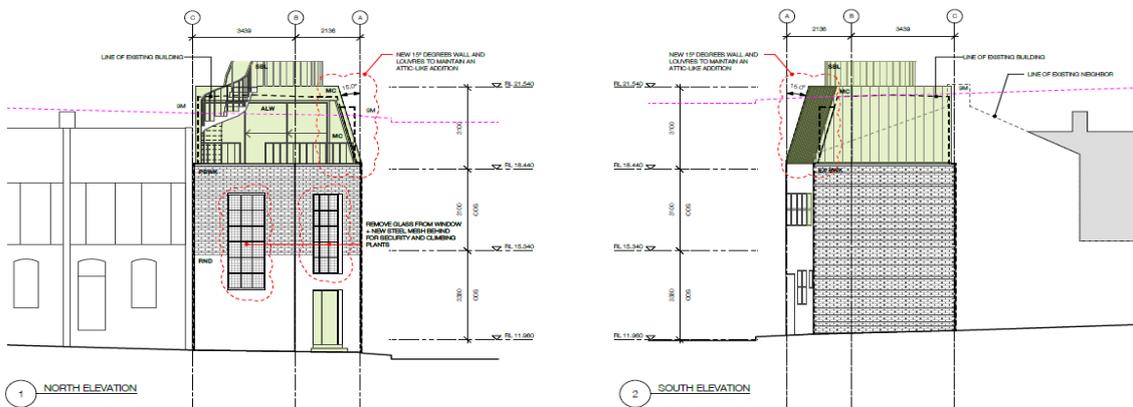


Figure 8: Proposed north elevation (left) and south elevation (right)



Figure 9: Materials and finishes



Figure 10: Photomontage

History Relevant to the Development Application

13. On 26 August 2013, D/2013/897 was approved for demolition of the existing rooftop level and replacement with a new mansard roof addition.
14. On 5 December 2016, D/2016/1214 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.

Economic/Social/Environmental Impacts

15. 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)

16. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.

17. 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.

18. 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 SREP.

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

19. A BASIX Certificate has been submitted with the development application.

20. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal.

Sydney LEP 2012

21. The site is located within the B4 Mixed Use zone. The use is defined as commercial and residential and is permissible.

22. 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>A height of 10.83m is proposed to the top of the balustrade and 10.11m to the top of the addition.</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. The proposal includes a net reduction in GFA of 16.52sqm with an FSR of 1.93:1.</p> <p>See discussion under the heading Issues.</p>
4.6 Exceptions to development standards	No	<p>The proposal seeks to vary the development standards prescribed under Clause 4.3 and Clause 4.4.</p> <p>See discussion under the heading Issues.</p>
5.10 Heritage conservation	No	<p>The site is not a heritage item but is identified as a contributory building within the Chippendale Conservation Area (C9).</p> <p>The bulk and scale of the proposed addition, roof terrace and external stair are not considered to be sympathetic to the existing contributory item and overwhelm the integrity of the host building. The proposal does not provide an appropriate height transition to the neighbouring two storey terraces.</p> <p>The application was reviewed by the City's Heritage Specialist, who raised concerns with the form of the addition, the roof terrace and external stair. The application is not supported.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	No	<p>The application proposes to utilise appropriate quality materials and detailing, including gold 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, dark grey coloured painted brickwork on the first floor level and gold matte coloured doors.</p> <p>However, the form and scale of the addition, roof terrace and external stair are excessive in height and bulk and will have unacceptable impacts on the heritage conservation area and to the visual privacy of the neighbouring properties.</p> <p>The proposed development fails to satisfy the requirements of this provision.</p>

Sydney DCP 2012

23. 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 existing mixed-use building are not considered to be in keeping with the unique character of the area and design principles in that they do not respond to or complement the contributory building and heritage conservation area, and are inappropriate in height, scale, design and form.

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	<p>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. The application has been reviewed by the City's Landscape Assessment Officer, who raised no objection.</p>

3. General Provisions	Compliance	Comment
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.9 Heritage	No	<p>The site is not a heritage item but is identified as a contributory building within the Chippendale Conservation Area (C9).</p> <p>The 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 proposed works retain the form and detail of the original two storey warehouse building. The proposed addition, roof terrace and external stair are considered to be excessive in height, bulk and scale and will overwhelm the contributory building.</p> <p>The application was reviewed by the City's Heritage Specialist, who raised concerns with the form of the addition, the roof terrace and external stair. The application is not supported.</p>
3.10 Significant Architectural Building Types	No	The proposal retains the form and detail of the original two storey warehouse building. However, the upper level addition is unsympathetic in scale and style to the existing building, dominates the original building, and is not simple in form. The application is not supported.

3. General Provisions	Compliance	Comment
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 raised no objection.</p> <p>The proposal attracts a requirement for two bike parking spaces, as per Table 3.5. In the event of an approval, a condition of consent would be recommended for these two bike parking spaces to be provided.</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 two storeys is permitted.</p> <p>The existing building is two storeys, with a mansard attic addition. The proposed addition is not recessed from the parapet, and reads as a third storey.</p> <p>The DCP requires a minimum floor to floor height of 4.5m for the ground floor, and 3.6m for each storey above.</p> <p>The proposal maintains the ground floor level floor to floor height of 3.38m and first floor level floor to floor height of 3.1m. Given the building is a contributory building and the non-compliances are existing, they are considered acceptable.</p> <p>The second floor level floor to floor height is 3.1m with a floor to ceiling height of 2.9m. Acceptable internal amenity is provided on this level.</p> <p>See discussion under heading Issues.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.2 Building setbacks	Yes	The existing rear and side setback alignments are maintained, which is consistent with the adjoining buildings.
4.2.3 Amenity	Partial compliance	<p>As discussed earlier in the report, each of the three levels are accessible from the internal courtyard via an external stair and are capable of being self-contained, with no internal connectivity. Each of the three levels provide acceptable internal amenity in regards to solar and daylight access, natural ventilation, ceiling heights, size and layouts, access to private open space and storage. The subdivision of the building was not sought under this application.</p> <p>Solar Access</p> <p>The shadow diagrams show additional overshadowing to the front private open space and windows of the properties opposite Smithers Street at 10.00am and the private open space of the eastern neighbours at 3.00pm. It is noted that the extent of additional shadows cast by the proposal is minor, and that the affected properties maintain a minimum of two hours solar access, as per DCP requirements. The shadow diagrams show additional overshadowing to the roofs of various neighbouring properties at different stages of the day. As such the proposal is not considered to result in significant adverse impacts in relation to solar access.</p> <p>Privacy</p> <p>The proposal includes a roof terrace above the new addition, which will result in unacceptable privacy impacts to the neighbouring private open space and is inconsistent with DCP provisions. Refer to Figure 14.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
		<p>The proposed outdoor terrace at the first floor is considered to replicate the existing site conditions and as such does not exacerbate privacy impacts on neighbouring properties.</p> <p>See discussion under heading Issues.</p> <p>Private Open Space</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. A 15sqm terrace is provided at the first floor, and a 29sqm roof terrace is provided above the third storey addition. The roof terrace is considered excessive given the detrimental visual impacts and privacy impacts on neighbouring properties. The application is not supported.</p>
4.2.4 Fine grain, architectural diversity and articulation	No	<p>The proposed third storey addition is not recessed from the parapet of the existing warehouse building and its form and scale does not provide an appropriate transition between the neighbouring terraces and commercial buildings. The application is not supported.</p>

Issues

Clause 4.6 Variation to the Height Development Standard

24. The site is subject to a maximum height of buildings control of 9m. The proposal has a height of 10.83m to the top of the roof terrace balustrading, and 10m to the top of the third storey addition.
25. The existing building has a maximum height of 9.3m. The variation sought to the height control results in an exceedance to the development standard by 1.83m (or an 18.45% variation). The red arrow in Figure 11 indicates the 9m height control.

26. During the assessment of the application, the applicant was advised that the proposed addition was considered excessive, and the roof terrace was not supported. It was recommended that the roof terrace be deleted and the form of the addition be amended to maintain an attic form. In response, the applicant submitted amended plans which provided a hipped wall to the western elevation of the addition (15 degrees from the vertical) while retaining the roof terrace above and external stair.



Figure 11: West elevation with the 9m height limit plane indicated by the red arrow and the existing addition indicated by the dashed red line

27. 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.
28. A copy of the applicant's written request is provided at Attachment C.

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

29. The applicant seeks to justify the contravention of the height development standard on the following basis:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - Compliance with the development standard would compromise the amenity of the upper level with no additional benefit for neighbouring properties or in terms of the overall bulk of the building as presented to the public domain.

- (ii) Exceedance of the height control will not create additional building bulk that results in environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy, loss of visual amenity and a reduction in this bulk would not create additional benefits for adjoining properties or the locality.
 - (iii) The development is consistent with the objectives of the development standard notwithstanding the non-compliance.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The proposal seeks to provide open space at roof level and improved amenity for the upper level habitable space, with no adverse impacts on the area. The proposal is considered to be an appropriate response for the site and the non-compliant elements would not affect the amenity of adjoining properties, whilst improving the amenity of the subject property.
 - (ii) The proposed height can be achieved without adverse impacts and the proposal will provide a suitable design and of suitable amenity.
 - (iii) Reduction in the height of the second floor level will not improve solar access to windows or open space of adjoining properties, as the additional impact from the proposal is limited to minor additional overshadowing of Smiths Street and the roofs of adjoining residential dwellings.
 - (iv) The provision of the second floor addition as proposed will not result in any additional loss of privacy, noting that the balustrade to the front deck at this level is compliant in terms of height.
 - (v) The visual bulk of the component above the height control has been reduced by providing a 15 degree wall hipped away from the street.
 - (vi) 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 not 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 Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

30. 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.

- (c) Does the written request adequately address those issues at Clause 4.6(3)(a)? - That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

31. The applicant's written request has failed to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as they have failed to demonstrate that the development satisfies the objectives of the standard. The written request instead relies on the claim that compliance with the height of buildings development standard would not improve amenity to adjoining sites or reduce the visual bulk of the proposal, and would result in reduced amenity of the subject site. No information has been provided to support these claims, noting that the third storey addition exceeds the minimum floor to ceiling height required under the National Construction Code. Furthermore, the development is in fact considered to be inconsistent with the objectives of the height of buildings development standard as it is not considered to be appropriate to the condition of the site and its context and does not provide an appropriate height transition between the site and surrounding heritage items and contributory items within the heritage conservation area.



Figure 12: The north elevation (left) and east elevation (right) illustrating the difference in scale between the subject site and the neighbouring terraces

32. The written request has therefore failed to demonstrate that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard. Accordingly, it is considered that the applicant has failed to demonstrate that strict compliance with the standard is unreasonable or unnecessary for the proposal.

Does the written request adequately address those issues at clause 4.6(3)(b)? - That there are sufficient environmental planning grounds to justify contravening the standard.

33. The written request states that the proposal will not result in unacceptable impacts in terms of privacy or solar access. This is not accepted, particularly with respect to the new roof terrace, which is likely to result in significant privacy impacts on surrounding properties. Furthermore, the development does not respond appropriately to the existing conditions of the site and its context, and is considered to result in a detrimental heritage and streetscape outcome.
34. Accordingly, it is considered that the applicant has not adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.

Is the development in the public interest?

35. 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.
36. The form and scale of the third storey addition and roof terrace is not considered to be appropriate to the site and its context and does not provide an appropriate transition between the existing contributory item, and surrounding contributory and heritage items.
37. 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.
38. 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. The proposal is consistent with the objectives of the B4 Mixed Use zone.
39. The proposal is not considered to be in the public interest because it is inconsistent with the objectives of the height of buildings development standard.

Conclusion

40. For the reasons provided above the requested variation to the height standard is not supported as the applicant's written request has failed to address the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012 and the proposed development would not be in the public interest because it is inconsistent with the objectives of the development standard.

Clause 4.6 Variation to the Floor Space Ratio Development Standard

41. The site is subject to a floor space ratio control of 1.5:1. The proposed development has a floor space ratio of 1.93:1.
42. The existing building has an FSR of 2.11:1. The proposal results in a net decrease of 16.52sqm of floor space as a result of the creation of a void at the first and second floor and provision of a car parking space within the ground floor. Despite the reduction in floor space, the development still represents an exceedance of 0.43:1 (25% over the standard).

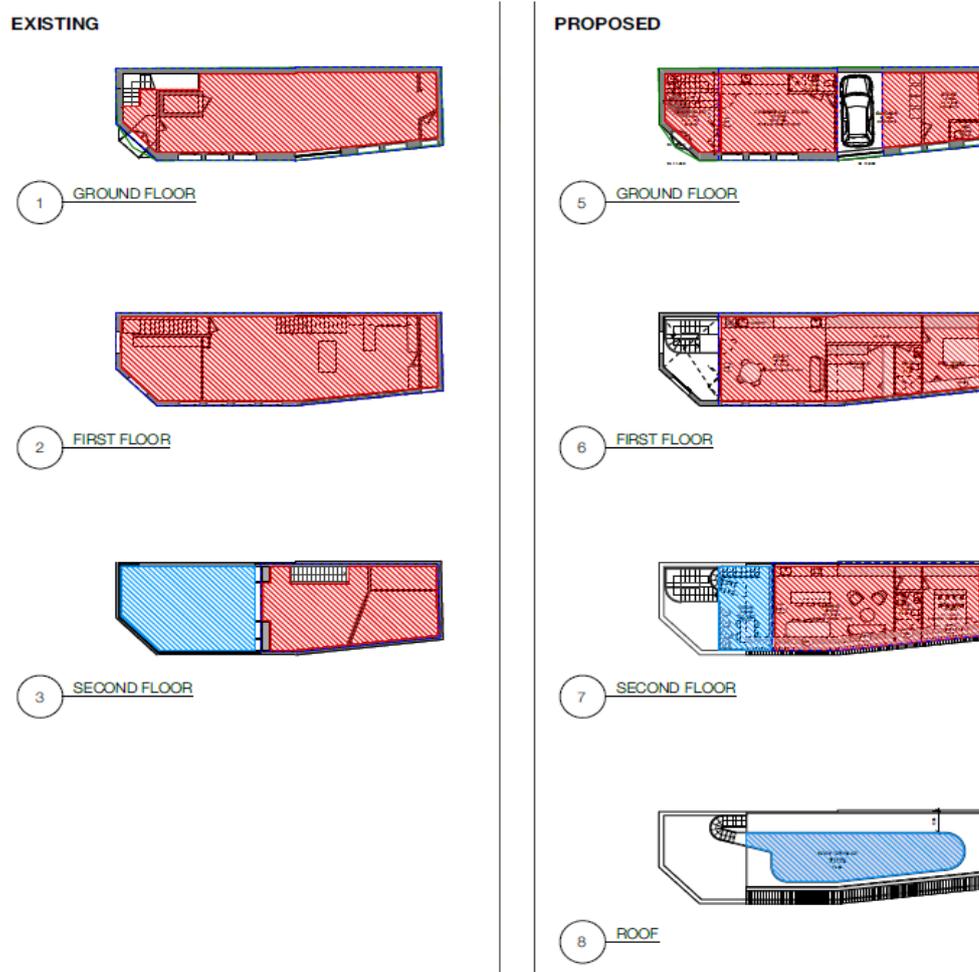


Figure 13: The applicant's FSR calculations showing existing FSR (left) and proposed FSR (right). FSR is shown in red and private open space in blue.

43. 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.
44. A copy of the applicant's written request is provided at Attachment C.

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

45. The applicant seeks to justify the contravention of the floor space ratio (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) Compliance with the standard is unreasonable and unnecessary as the proposal results in a reduction in FSR.

- (ii) Exceedance of the control will not create additional bulking 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 benefits for adjoining properties or the locality.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The proposed FSR can be achieved without adverse impacts as the alterations reflect the desired character of the locality and minimises adverse impacts on the locality.
 - (ii) The intensity of the development is appropriate and acceptable.
 - (iii) The non-compliance does not contribute to adverse environmental impacts.
 - (iv) The proposal achieves compliance with the relevant objectives of the standard and of the zone.
 - (v) The proposal will provide a suitable design and of suitable amenity in terms of the built environment.
 - (vi) The proposal will not result in adverse impacts in terms of solar access, privacy, view loss and visual bulk.

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

46. 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)? - That compliance with the development standard is unreasonable or necessary in the circumstances of the case.

47. The written request has failed to demonstrate 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.
48. The development results in a small reduction in overall FSR due to internal changes on the ground and first floor levels. Notwithstanding, the proposal results in increased bulk at the third storey which is considered to result in an unsympathetic built form. Furthermore, the roof terrace above, is likely to result in significant privacy impacts to the neighbouring properties.

49. Accordingly, it is considered that the applicant has failed to demonstrate that strict compliance with the standard is unreasonable or unnecessary for the proposal.

Does the written request adequately address those issues at clause 4.6(3)(b)? - That there are sufficient environmental planning grounds to justify contravening the standard.

50. The request has failed to demonstrate that the density, scale and intensity of the development are appropriate to the existing building and within the context of surrounding development. The proposed addition is considered to result in unsympathetic bulk and scale which is considered to result in detrimental impacts to the wider heritage conservation area, and adversely impacts on the amenity of the neighbouring properties.

51. Accordingly, it is considered that the applicant has failed to demonstrate that there are sufficient environmental planning grounds to justify the contravention to the standard.

Is the development in the public interest?

52. 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.

53. The proposal is inconsistent with the desired future character of the locality as it does not respond to or complement the contributory building and heritage conservation area, and is inappropriate in height, scale, design and form. The proposal will impact on the amenity of the neighbouring buildings, in particular, privacy and visual bulk.

54. 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.

55. 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. The proposal is consistent with the objectives of the B4 Mixed Use zone.

56. The proposal is not in the public interest because it is inconsistent with the objectives of the floor space ratio development standard.

Conclusion

57. For the reasons provided above the requested variation to the floor space ratio standard is not supported as the applicant's written request has failed to address the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012 and the proposed development would not be in the public interest because it is inconsistent with the objectives of the floor space ratio standard.

Height, Scale and Bulk

58. The site is subject to a 9m height control under Clause 4.3 of the Sydney LEP 2012. The existing building is 9.3m in height.
59. The site is subject a two storey height control under Section 4.1.1 of the Sydney DCP 2012. The existing building is two storeys in height with a mansard attic addition above.
60. The proposal includes the demolition of the existing mansard attic level and construction of a new third storey addition with roof terrace above. Concern was raised with the applicant that the addition was excessive and as such, should be amended to provide an attic-like form and delete the roof terrace.
61. In response to these concerns, the applicant submitted amended plans which provide a pitched wall (15 degrees from the vertical) on the western elevation of the additional storey with the roof terrace and external stair retained.
62. The addition is not recessed from the parapet to the building and still presents as a third storey, failing to comply with the LEP and DCP height controls. The proposal is considered to be unsympathetic to the character, scale and form of the existing building and surrounding buildings within the heritage conservation area. The site is adjoined by two storey terrace rows to the north, south and east.
63. The roof terrace will result in an unacceptable privacy impact, and the external stair and balustrade create additional bulk and overshadowing. As illustrated in Figure 13, the roof terrace overlooks the private open space of several neighbouring properties.
64. The proposal results in approximately an additional 17sqm to the living room of existing dwelling. The extent of non-compliance to the height standard for the purpose of additional living space and an additional roof terrace is considered unreasonable. The existing building already exceeds the height and FSR standards and contains a large area of private open space that is accommodated within the height plane.
65. In light of the above considerations, the application is not supported.



Figure 14: Photo supplied by the applicant looking from the roof towards the east

Other Impacts of the Development

66. The proposed development is capable of complying with the BCA.
67. It is considered that the proposal will have a significant detrimental effect relating to environmental, social or economic impacts on the locality, and is not supported.

Suitability of the site for the Development

68. 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

69. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Transport and Access; and Tree Management.
70. The Heritage and Urban Design Specialists do not support the form of the new addition, roof terrace or external stair.
71. The other units have advised the proposal could be acceptable subject to the recommended conditions relating to the construction and operation of the proposal.

External Referrals

Notification, Advertising and Delegation

72. 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 9 November 2018 and 24 November 2018. As a result of this notification there were two submissions received. The issues raised in the submissions are outlined below:

- (a) Excessive height, bulk and scale of additional storey, roof terrace and stair which is out of character with the streetscape.

Response - The form of the new addition, roof terrace and external stair is excessive in bulk and scale and is unsympathetic to the contributory building and wider conservation area. The application is not supported.

- (b) Overshadowing concerns

Response - The shadow diagrams submitted in support of the application show minor additional overshadowing to the neighbouring properties. The proposal satisfies the solar access requirements of the DCP, however the application is not supported

- (c) Privacy concerns from roof terrace

Response - The roof terrace would result in unacceptable privacy impacts to the neighbouring private open space. The application is not supported.

S7.11 Contribution

73. If the application was recommended for approval, the development would be subject to the following S7.11 contributions. The following calculation has been based on the proposed three bedrooms in the building with a credit of one bedroom applied.

(a) Open Space	\$2,382.12
(b) Community Facilities	\$473.55
(c) Traffic and Transport	\$604.30
(d) Stormwater Drainage	\$239.29
Total	\$3,699.25

Relevant Legislation

74. The Environmental Planning and Assessment Act 1979.

Conclusion

75. The application proposes 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, and new third storey addition with roof terrace above.
76. Amended plans have been submitted in response to concerns raised by City staff during the assessment relating to height, bulk and scale.
77. 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 not in the public interest and are not supported.
78. The form of the third storey addition, roof terrace and external stair are not supported as they exceed the height controls, are excessive in bulk and scale, result in unsympathetic additions to a contributory item and will result in adverse privacy impacts to the neighbouring properties.
79. The application is recommended for refusal.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Zeb McInnes, Planner