

Item 5.**Development Application: 26-28 Rainford Street, Surry Hills - D/2021/759****File No.:** D/2021/759**Summary**

Date of Submission:	7 July 2021
Applicant:	SJB Planning
Architect:	SJB
Owner:	G Buttery
Planning Consultant:	SJB Planning
Heritage Consultant:	John Outram Heritage & Design
Cost of Works:	\$1,355,200.00
Zoning:	R1 General Residential. The proposed dwelling is permissible with consent within the zone.
Proposal Summary:	<p>The application proposes alterations and additions to the existing former warehouse building for a residential dwelling across four storeys. The proposal includes a mansard style roof addition to the building to approximately the same height as an existing rooftop addition.</p> <p>The application includes a request to vary the height of buildings and floor space ratio development standards. The application proposes a maximum height of 12.37 metres which represents a variation of 37 per cent to the standard, therefore the application is referred to the Local Planning Panel for determination. The application proposes a floor space ratio of 1.87:1 which represents a variation of 7 per cent to the standard.</p> <p>The proposed development was notified for a period of 14 days between 9 July 2021 and 24 July 2021. Two submissions were received. Issues raised in submissions include noise from demolition, car parking and privacy.</p>

The issues raised are addressed in design amendments and the recommended conditions of consent.

Following a preliminary assessment of the application, a request for additional information and minor amendments was sent to the applicant. Amended plans and further information were received on 13 October 2021 including:

- a Preliminary Environmental Site Investigation for the site;
- increased front and side setbacks for the Level 3 additions;
- amended stormwater design with side setbacks for maintenance access;
- revised balustrade and louvres to address privacy concerns to the rear; and
- landscaping details for canopy coverage.

The amendments have generally addressed the issues raised and the proposal is recommended for approval subject to conditions.

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

Development Controls:

- (i) State Environmental Planning Policy No. 55 - Remediation of Land
- (ii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iii) Sydney Local Environmental Plan 2012
- (iv) Sydney Development Control Plan 2012
- (v) City of Sydney Development Contributions Plan 2015

Attachments:

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

Recommendation

It is resolved that:

- (A) the variation requested to the height of buildings standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld;
- (B) the variation requested to the floor space ratio standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (C) consent be granted to Development Application No. D/2021/759 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is consistent with the objectives of the R1 General Residential Zone.
- (B) The proposal generally satisfies the controls relating to dwellings.
- (C) The proposal subject to conditions satisfies the provisions of clause 6.21 of Sydney Local Environmental Plan 2012 and demonstrates a high level of design excellence.
- (D) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012;
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the R1 General Residential Zone and the height of buildings development standard;
 - (iii) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.4 of the Sydney LEP 2012; and
 - (iv) the proposal is in the public interest because it is consistent with the objectives of the R1 General Residential Zone and the floor space ratio development standard.

Background

The Site and Surrounding Development

1. The site is identified as Lot 1 in DP 7007 and Lot 1 in DP 1043715 and is located at 26-28 Rainford Street, Surry Hills. The site is located on the northern side of Rainford Street between Collins Lane to the west and Arthur Lane to the east. The site has a frontage of 8.6m to Rainford Street, an average depth of 19.8m and an area of 173sqm.
2. The site currently contains a two-storey warehouse style building with a 'pop up' style roof terrace addition that formerly featured a mezzanine area. The building is built to all site boundaries. The site has a history of previous industrial / light industrial use.
3. Development adjoining and near to the site includes:
 - to the east at 30 Rainford Street, a two storey plus attic residential terrace;
 - to the west at 22-24 Rainford Street, a three-storey former warehouse building converted to residential use;
 - to the north at 57 and 59 Arthur Street, two storey terrace dwellings with rear yards that adjoin the subject site; and
 - to the south at 14-40 Davies Street, is a three-storey residential apartment building.
4. The site is located within the Bourke Street South Heritage Conservation Area.
5. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Aerial view of site and surrounds



Figure 3: Site viewed from Rainford Street. Construction works under previous consent D/2020/1148 have commenced.



Figure 4: Site viewed from Rainford Street (prior to construction works commencing)

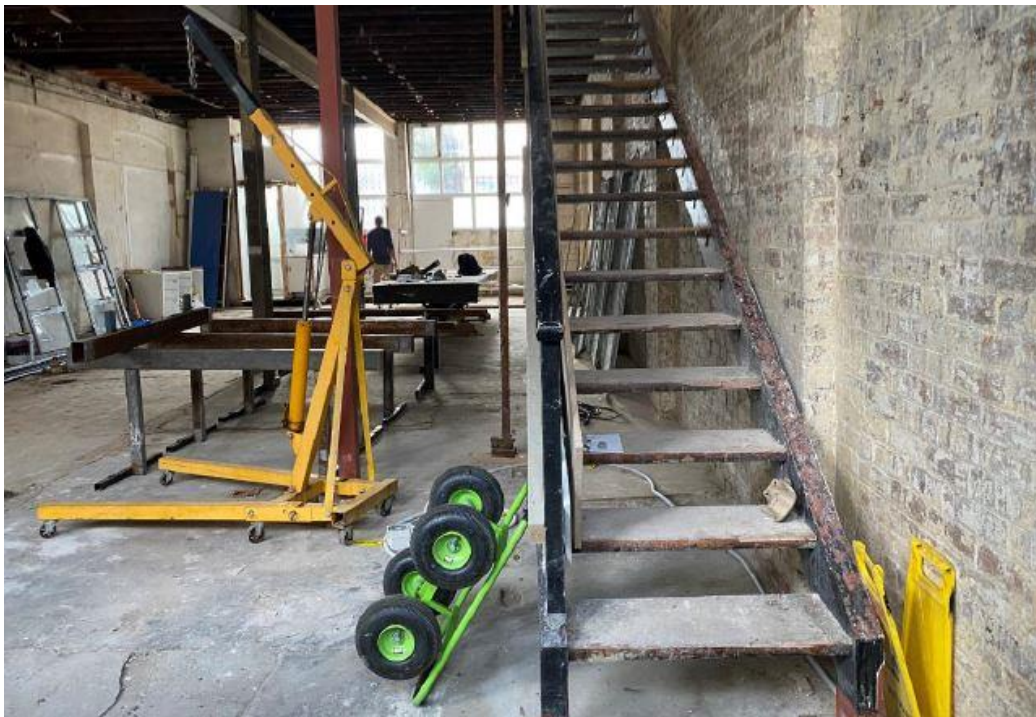


Figure 5: Internal view of ground level looking north



Figure 6: Internal view of first floor looking north



Figure 7: View of outdoor rooftop decking area looking north

History Relevant to the Development Application

Development Applications

6. The following applications are relevant to the current proposal:
 - **D/2020/1148** – Development consent was granted on 12 January 2021 for 'Alterations and additions to building including new car parking'. This consent approved the provision of onsite parking to the ground floor including a new garage door, and changes to the front elevation window and door configurations. Works pursuant to this consent have commenced and are under construction.

Compliance Action

7. The site has previously been subject to compliance investigations regarding construction noise where the outcome was that no action was taken and is now closed.

Amendments

8. Following a preliminary assessment a request for additional information and amendments was sent to the applicant on 16 September 2021. The additional information and amendments requested included:
 - (a) a Preliminary Environmental Site Investigation for the site;
 - (b) an increased front setback for the level 3 additions;
 - (c) an amended stormwater design that can be maintained from the site;
 - (d) amended fixed privacy measures for the northern elevation which adjoins the rear yards of dwellings to the north; and
 - (e) amendments to the landscaping design.
9. The applicant responded to the request on 13 October 2021, and submitted the following information:
 - (a) preliminary Environmental Site Investigation for the site;
 - (b) an increased front and side setbacks for the level 3 additions;
 - (c) amended stormwater design with increased side setbacks to the roof additions;
 - (d) revised balustrade and louvre designs to address privacy concerns; and
 - (e) landscaping details for canopy coverage.

Proposed Development

10. The application seeks consent for alterations and additions to the existing building for residential use including the following.
 - demolition works;
 - internal alterations and additions for a residential dwelling layout over four levels including the provision of a lift;
 - alterations and additions for a fourth storey in a mansard roof style; and
 - alterations to front and rear elevations.
11. Plans and elevations of the proposed development are provided below.

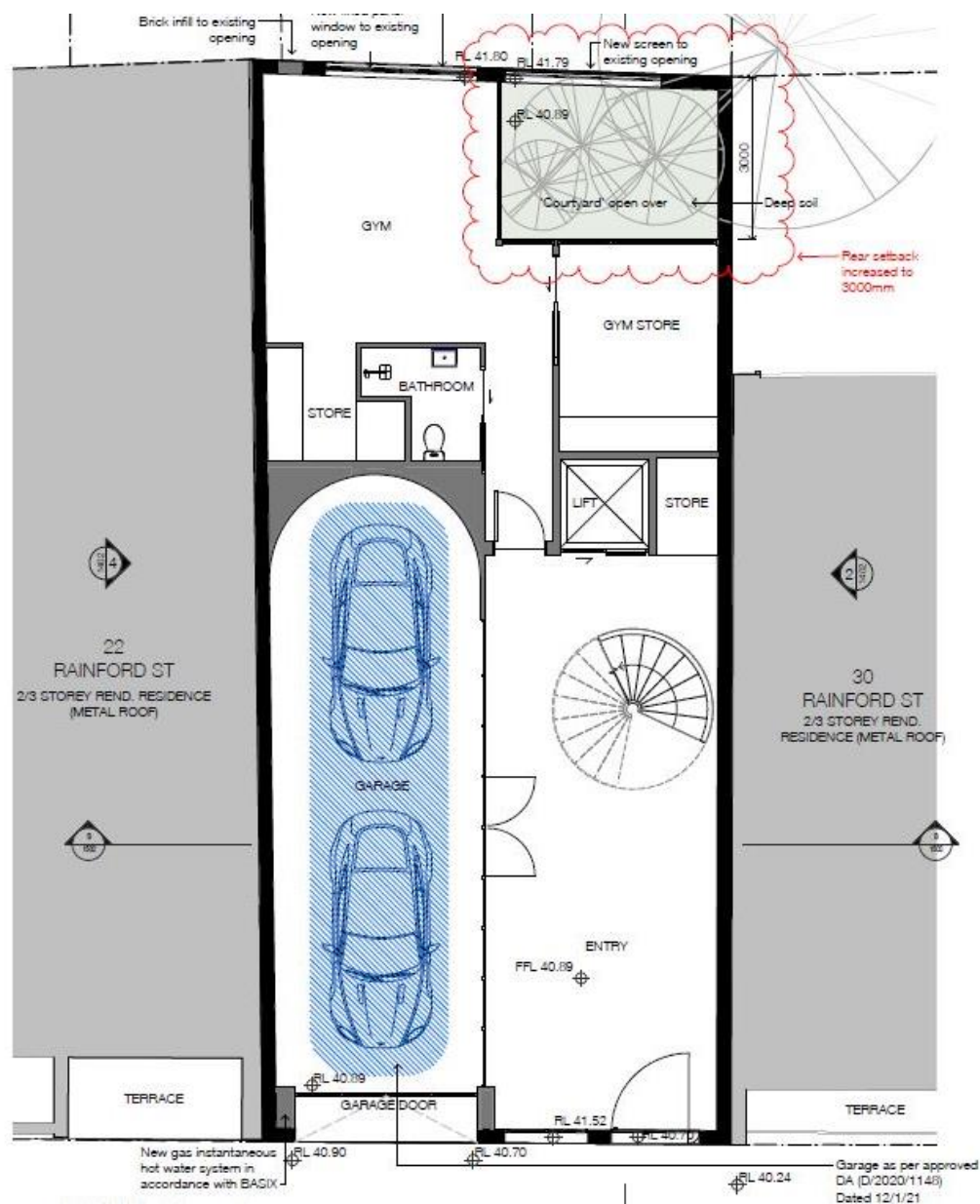


Figure 8: Ground floor plan

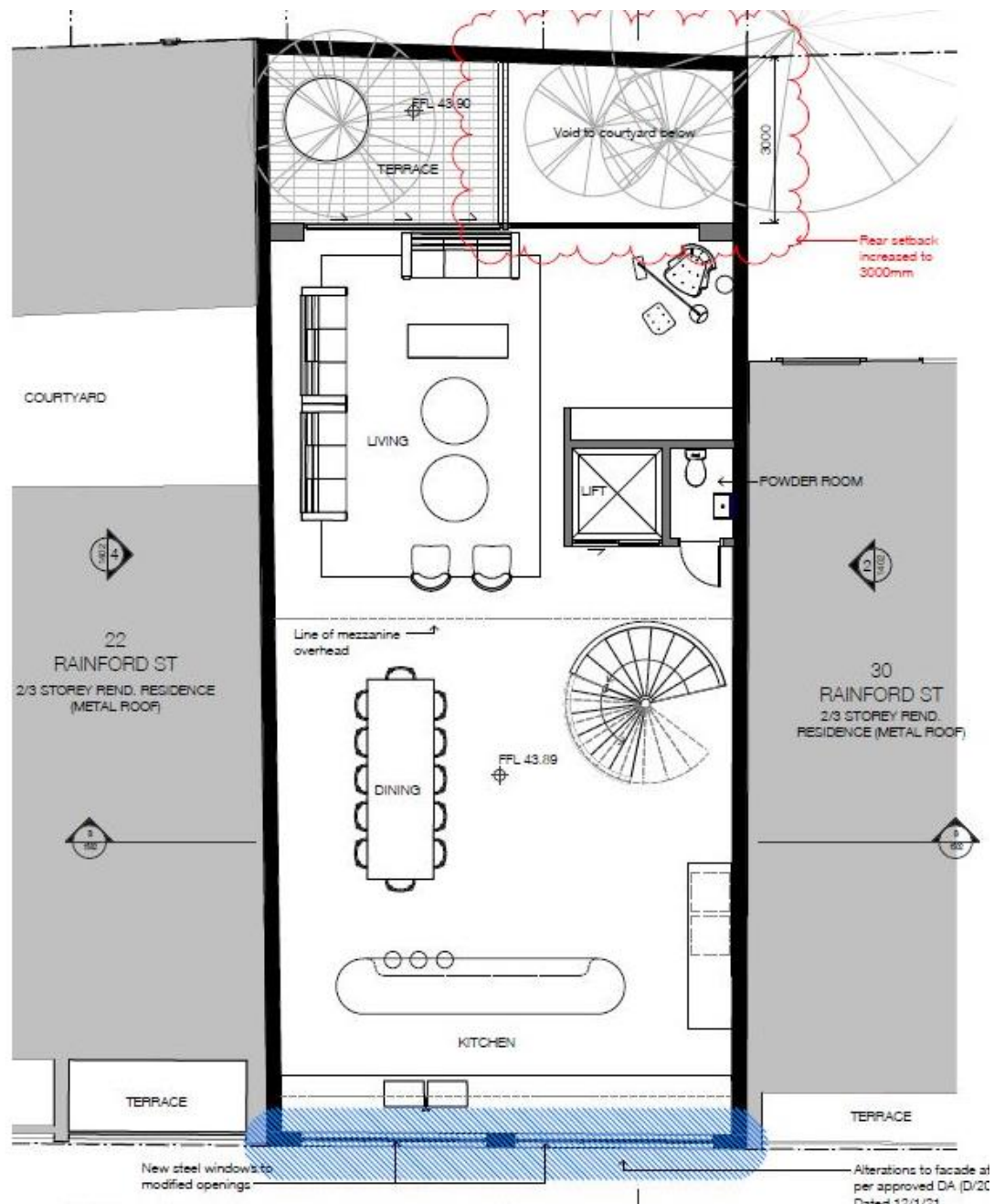


Figure 9: Level 1 plan

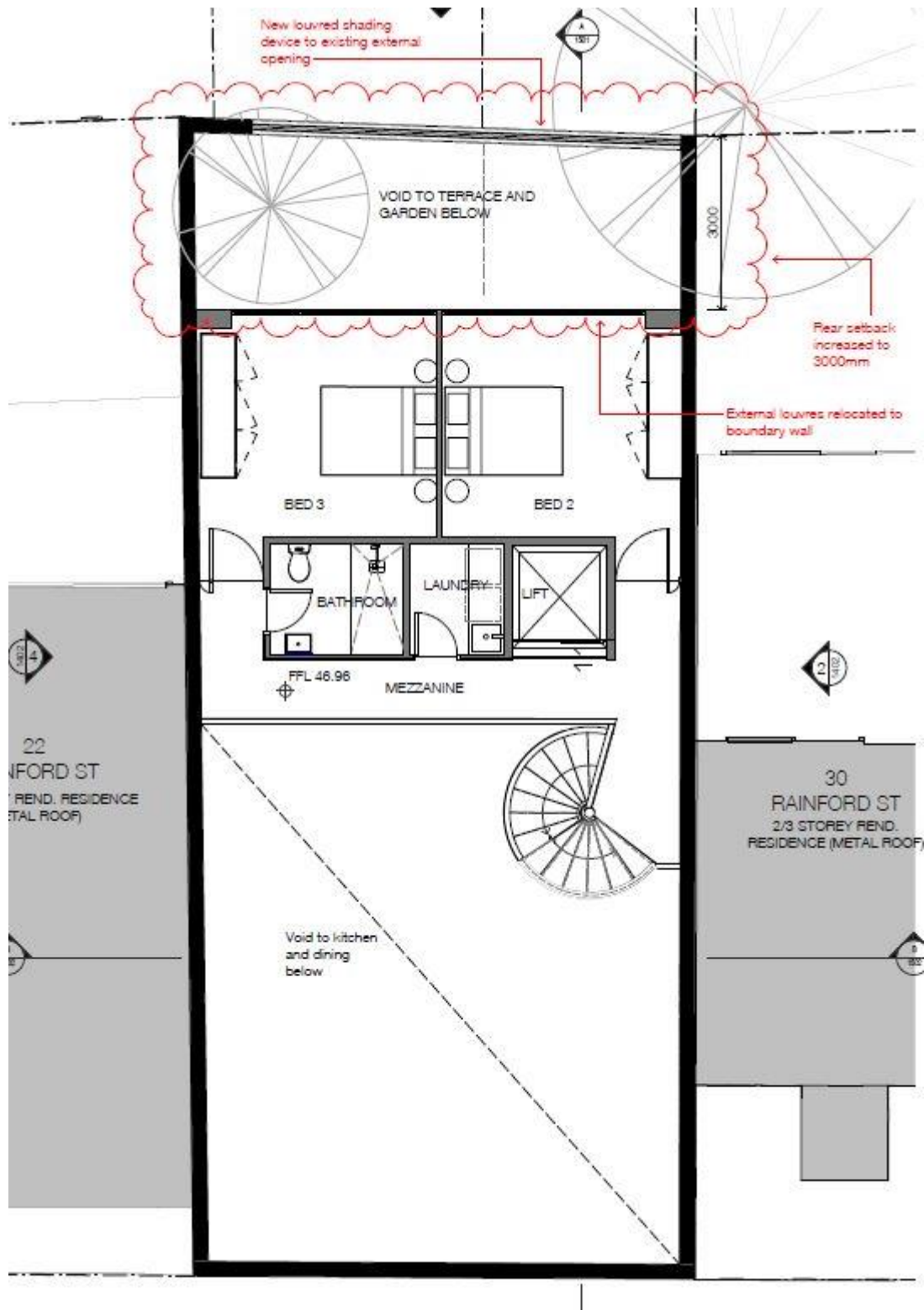


Figure 10: Level 2 plan

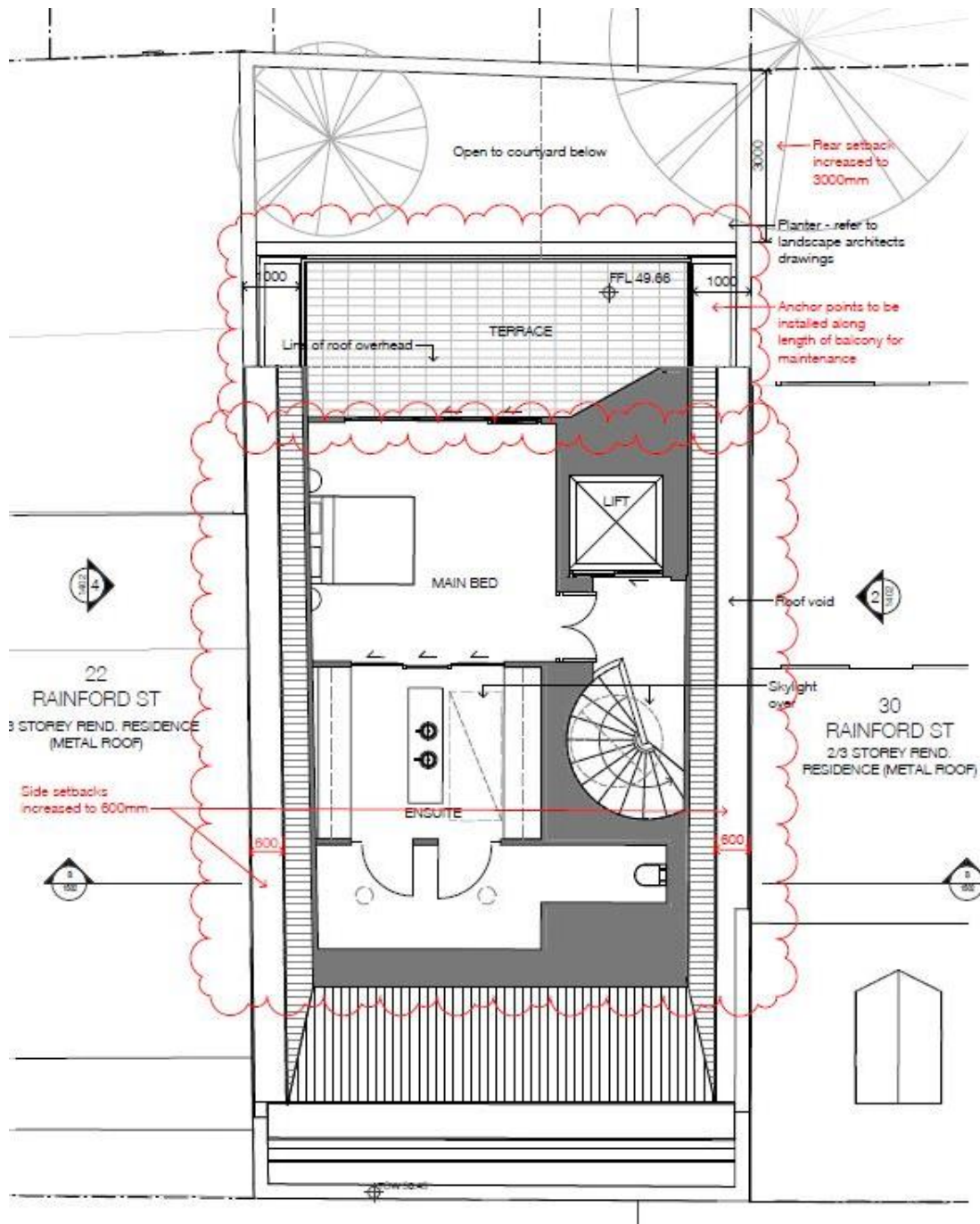


Figure 11: Level 3 plan

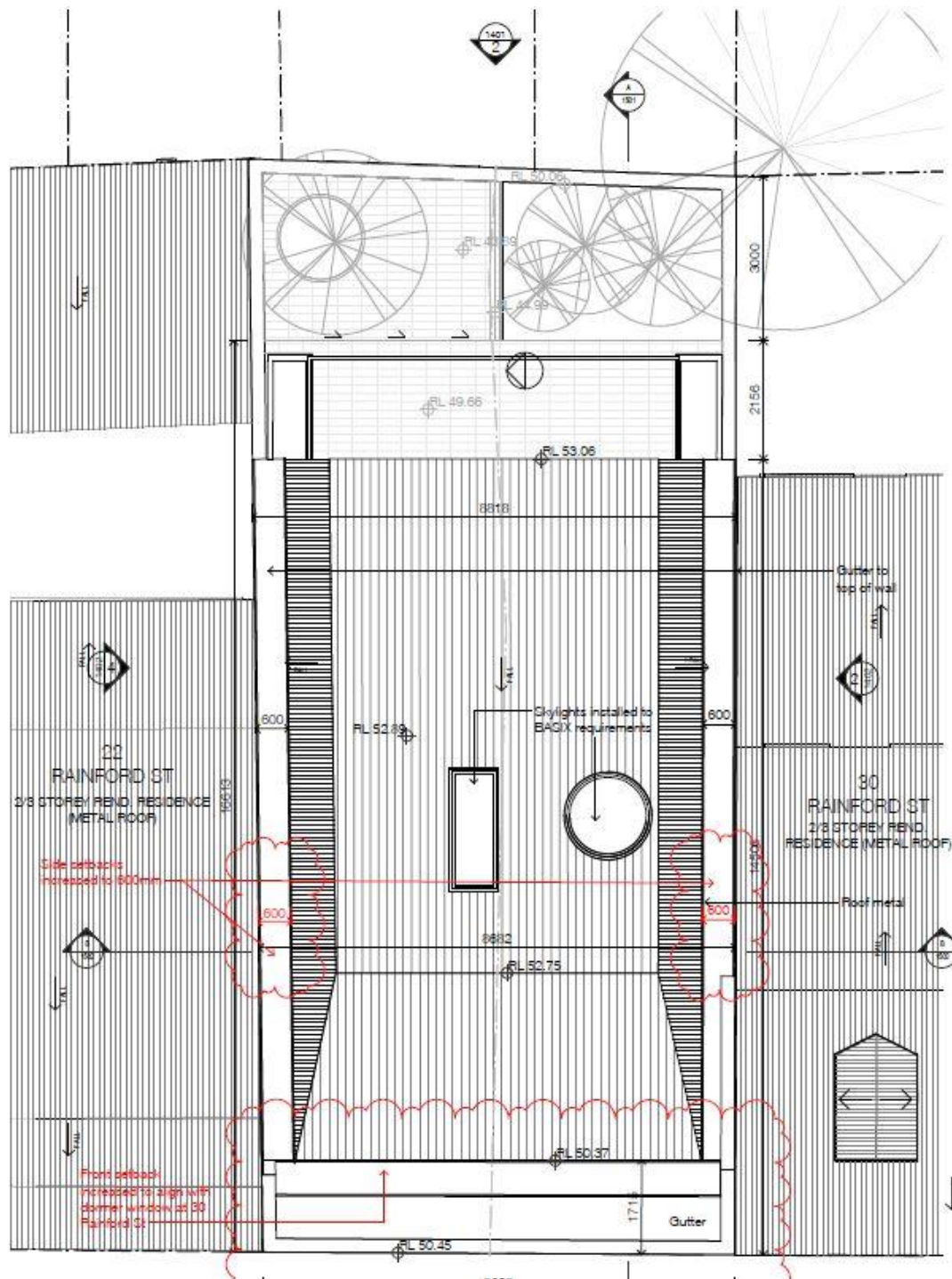


Figure 12: Roof plan



Figure 13: South (street) elevation

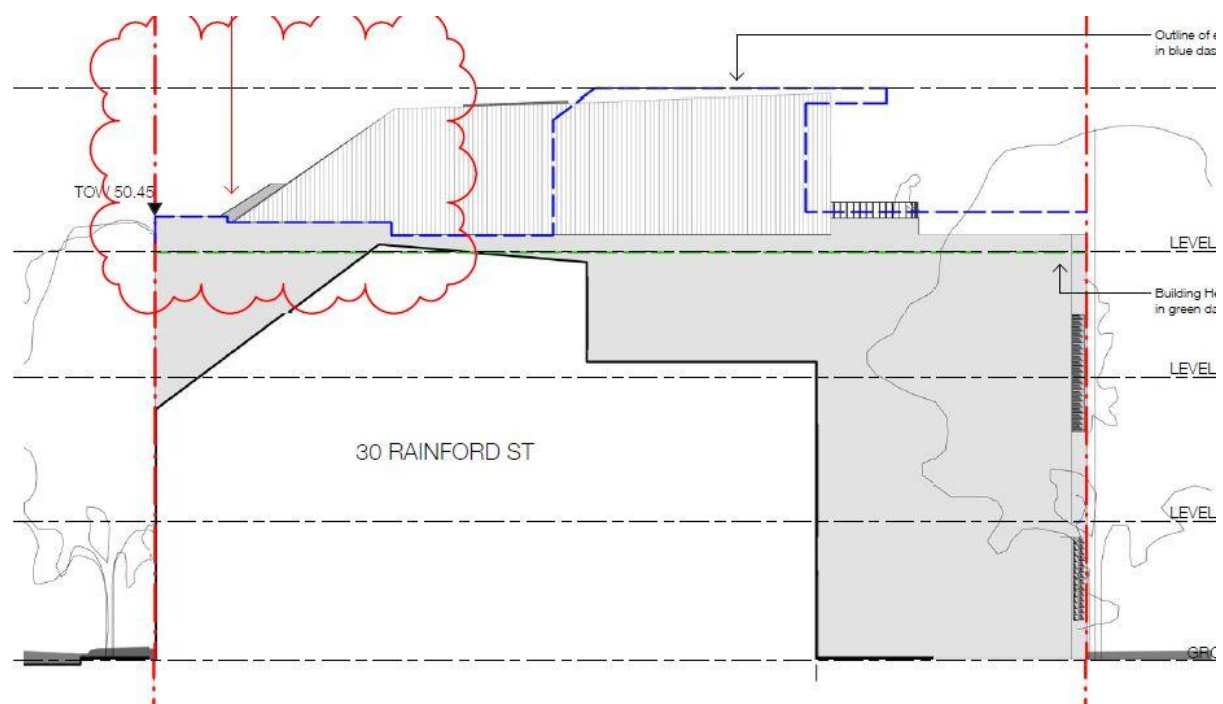
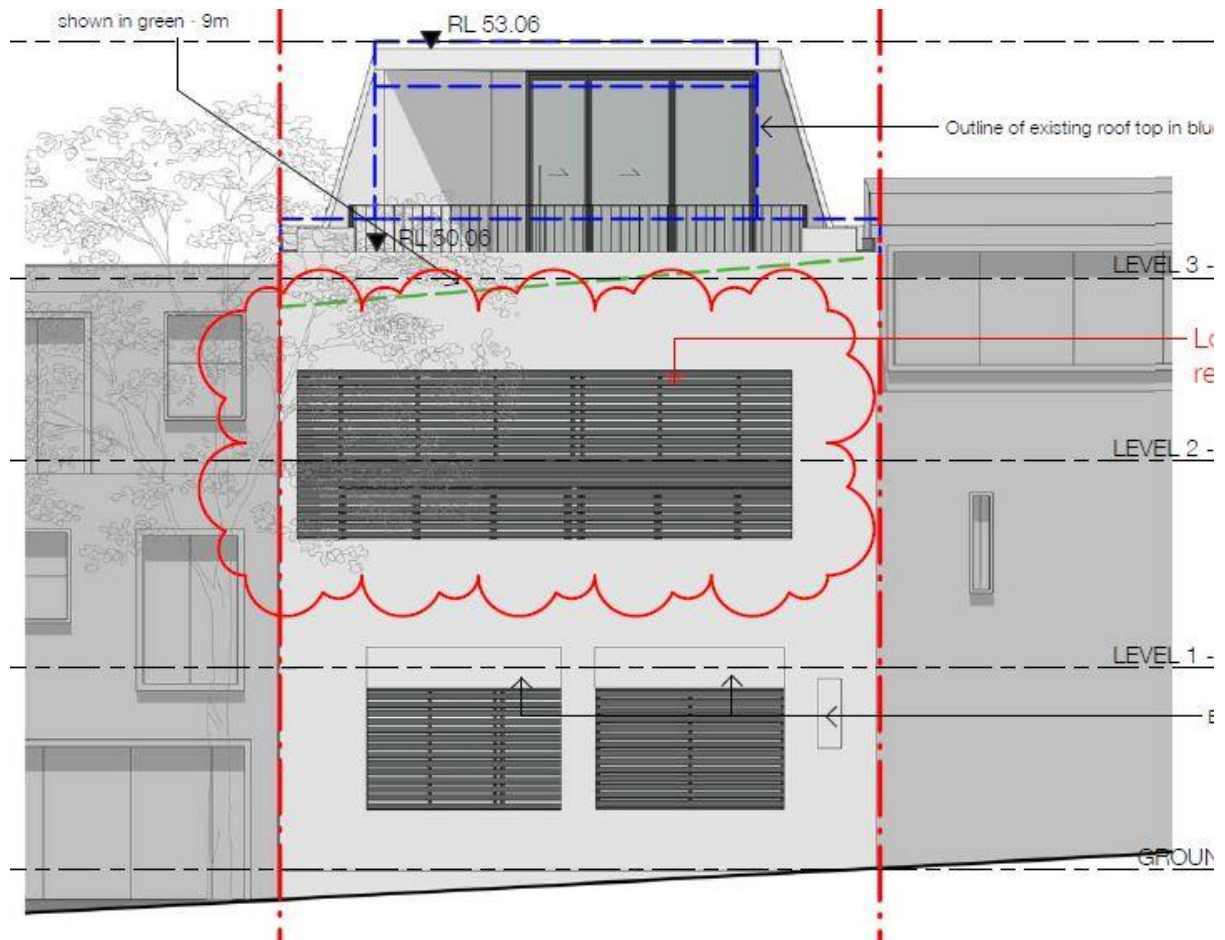
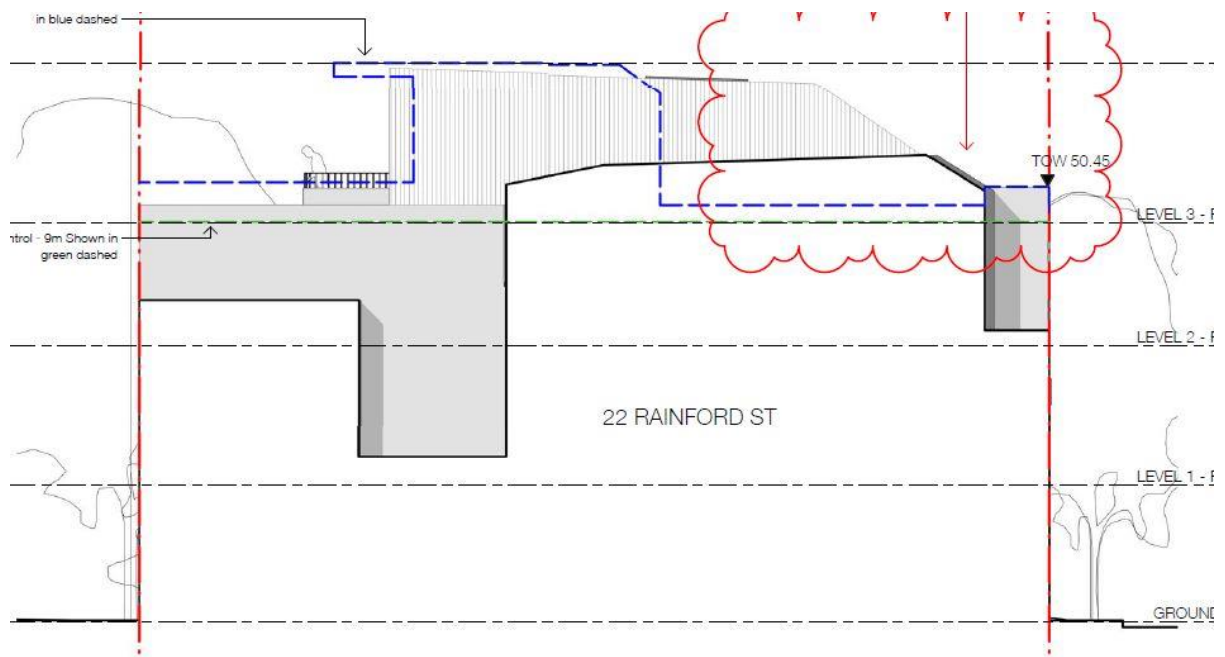


Figure 14: East elevation

**Figure 15:** North elevation**Figure 16:** West elevation

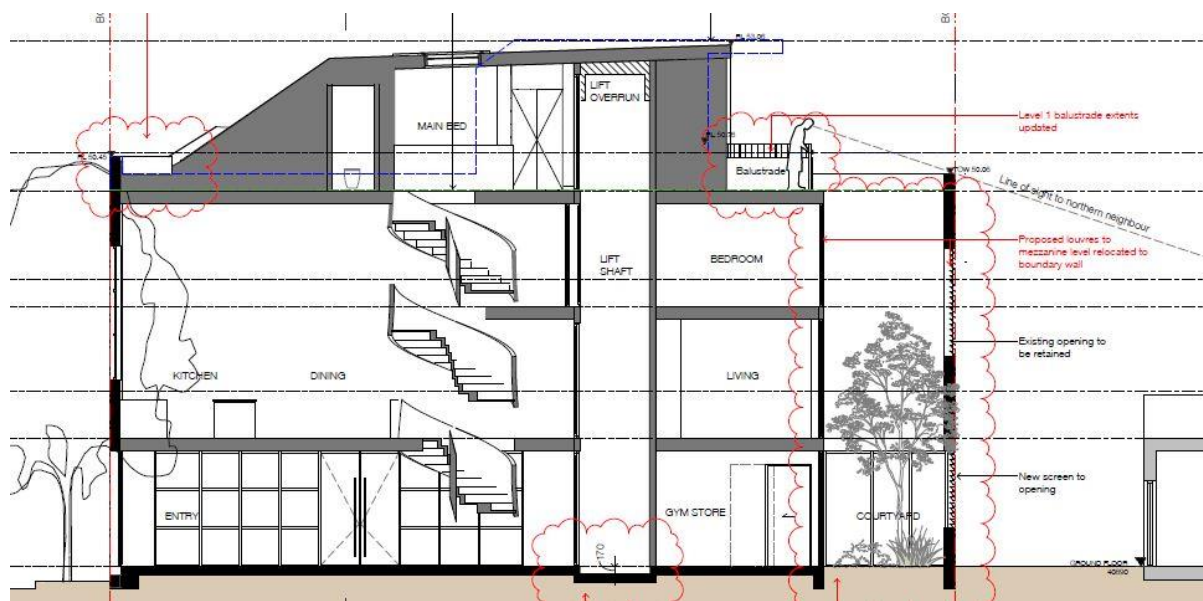


Figure 17: Section A plan

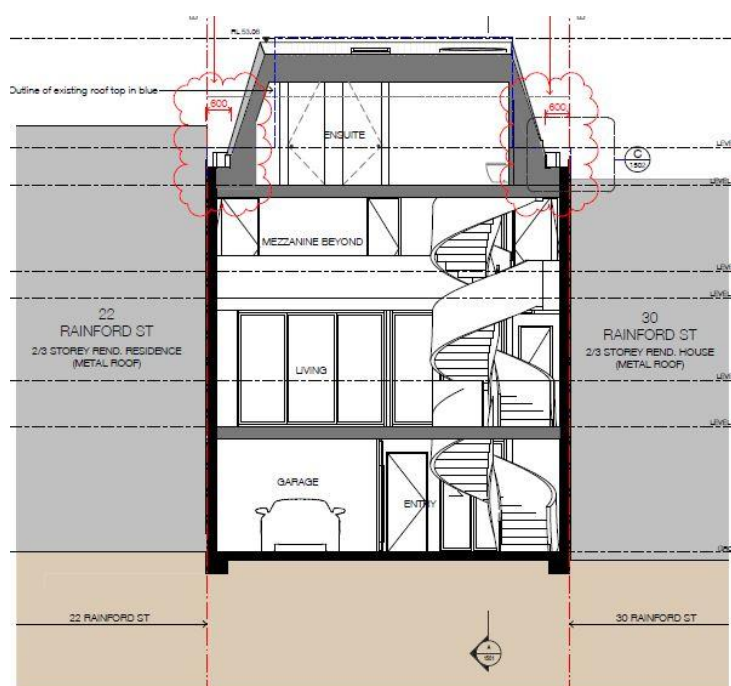


Figure 18: Section B plan

Assessment

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

State Environmental Planning Policies

State Environmental Planning Policy No 55 - Remediation of Land

13. The aim of State Environmental Planning Policy (SEPP) No 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
14. The application has included a Preliminary Environmental Site Investigation (PESI) for the site which has considered the site history and the scope of works proposed including the demolition of parts of the ground floor slab. The report concludes that the site is suitable for residential use.
15. The Council's Health Unit has reviewed the information provided, and is satisfied that, subject to conditions, the site is suitable for the proposed use.

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

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

Local Environmental Plans

Sydney Local Environmental Plan 2012

18. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is in the R1 General Residential zone. The proposed development is defined as a dwelling and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	A maximum building height of 9m is permitted. The existing building has a maximum height of 12.48m.

Provision	Compliance	Comment
		<p>The proposed development has a maximum height of 12.37m (to a different mansard roof form).</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 1.75:1 is permitted.</p> <p>The existing building has a floor area with an FSR of 1.93:1.</p> <p>The proposed floor space ratio is 1.87:1</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clauses 4.3 and 4.4. Clause 4.6 variation requests have been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the Bourke Street South Heritage Conservation Area.</p> <p>Subject to conditions, the proposed development will not have detrimental impact on the heritage significance of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing building and other development along the street and will contribute positively to the character of the area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.4 Dwelling houses, attached dwellings and semi-detached dwellings	Yes	<p>A maximum of two car parking spaces are permitted.</p> <p>The proposed development includes two car parking spaces previously approved.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with Class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.15 Flood planning	Yes	The site is not identified as being subject to flooding.

Development Control Plans**Sydney Development Control Plan 2012**

19. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

20. The site is located within the Surry Hills Central locality. The proposed development is in keeping with the unique character and the design principles of the locality. The proposal will retain the warehouse building appearance within the streetscape which features other converted former warehouse buildings.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The proposal retains the existing building address to the street.
3.5 Urban Ecology	Yes	<p>The existing site is currently built to boundary with no deep soil or canopy cover.</p> <p>The application proposes demolition of a portion of the ground floor slab to introduce deep soil for the planting of a tree.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.9 Heritage	Yes	<p>The site is located within the Bourke Street South Heritage Conservation Area.</p> <p>The building is identified as a neutral building.</p> <p>The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
3.10 Significant Architectural Building Types	Yes	<p>The existing warehouse building is located within a heritage conservation area.</p> <p>The proposed alterations retain the geometric form of the existing building which features large glazing openings to the street façade.</p>
3.11 Transport and Parking	Yes	Parking design in accordance with controls.

Provision	Compliance	Comment
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	Provision for residential waste to be stored on site. A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

Section 4 – Development Types

4.1 Single Dwellings, Terraces and Dual Occupancies

Provision	Compliance	Comment
4.1.1 Building height	Acceptable	The site is permitted a maximum building height of two storeys. The existing building contains three stories (and previously included a mezzanine level). The proposed development is four storeys in height contained within a similar (slightly less) height as the existing building and is therefore considered to be acceptable in the circumstances. Potential impacts of the building form have been considered and are considered to be acceptable.
4.1.2 Building setbacks	Yes	Existing building setbacks retained.
4.1.3 Residential amenity As demonstrated below, the proposed development will have acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties.		
4.1.3.1 Solar access	Yes	The proposed first floor living area and terrace will receive more than 2 hours of sunlight midwinter. The proposal will result in some minor additional overshadowing at 10am to an apartment located opposite to the south at 14-40 Davies Street. The apartment will continue to retain more than 2 hours of sunlight.

Provision	Compliance	Comment
4.1.3.2 Solar collectors	Yes	No additional overshadowing of solar collectors.
4.1.3.3 Landscaping	Yes	<p>A landscaping plan is submitted with the application.</p> <p>Council's Landscaping Unit has reviewed the plan and provided recommendations for some amendments to the design including the raising of the Level 3 planter to the height of the balustrade for both ease of maintenance, structural design and to provide additional privacy. This is included as a recommended design modification condition.</p>
4.1.3.4 Deep soil planting	Acceptable	<p>The site is over 150sqm in size and is required to provide 15% of the site area as deep soil.</p> <p>The site currently is built to all boundaries with no deep soil.</p> <p>The proposal includes demolition of the ground floor slab to introduce a deep soil area sized 11sqm (6%).</p> <p>Given the existing non-provision of deep soil, the proposed increase is considered to be a positive outcome for the site.</p>
4.1.3.5 Private open space	Acceptable	<p>In addition to the ground floor deep soil planting two new terrace areas are proposed. A Level 1 terrace sized 10.7sqm and Level 3 terrace sized 21.7sqm.</p> <p>The Level 1 terrace does not achieve the required minimum 16sqm but is located adjacent to the main living area and will provide good amenity. The Level 3 terrace exceeds the minimum 16sqm requirement and is located adjacent to the main bedroom area.</p> <p>Both areas are considered to achieve the objective of providing usable outdoor areas with good amenity and the proposed private open space configuration is supported.</p>

Provision	Compliance	Comment
4.1.3.6 Visual privacy	Yes	<p>The proposal as amended has included setbacks to the Level 3 terrace area of 3m to the north and 1m to the east and west. A landscaping planter bed is proposed along the northern side of the terrace area and this is recommended to be raised to the balustrade height to offer additional privacy.</p> <p>Privacy louvres are included to the windows and the deep soil area on the northern boundary.</p> <p>The ground floor gym area has boundary windows with louvres in the location of existing boundary windows. The first-floor terrace is located at the boundary but is orientated towards the landscaped courtyard to its east and does not feature an opening to the northern elevation. The Level 2 bedrooms are setback 3m from the northern boundary windows which include louvres.</p> <p>Subject to further detailing of the proposed louvres it is considered that an appropriate level of privacy is provided both internally and externally for the proposal.</p>
4.1.4 Alterations and additions		
4.1.4.1 General	Yes	The proposed development does not remove significant building elements and retains the form, scale and setbacks of the existing building.
4.1.4.6 Additional storeys	Yes	<p>The application includes a rooftop mansard addition as level 3 in a location similar to that of an existing rooftop addition.</p> <p>The proposed addition would be set back 780mm from the front elevation, 600mm from each side elevation, and the terrace setback 3m from the north elevation.</p> <p>Perspective views from the public domain and view from the sun diagrams have been submitted that demonstrate the proposal will not result in unacceptable impacts in terms of its visibility and overshadowing.</p>

Provision	Compliance	Comment
4.1.8 Balconies, verandahs and decks	Yes	<p>The application includes a terrace area at Level 1 and a rooftop terrace at Level 3.</p> <p>The Level 1 terrace area is contained within the building and orientated to the landscaped courtyard - both open to the sky and with louvred openings above to Level 2 that would provide additional light and air to these areas.</p> <p>The Level 3 roof terrace area is setback 3m from the northern building elevation and 1m from the side elevations.</p> <p>The location of both terrace areas minimises opportunities for overlooking to surrounding buildings and private open space areas. The location of the roof terrace off the main bedroom reduces the likelihood of excessive noise generation.</p>
4.1.9 Car parking	Yes	Two car spaces approved under consent D/2020/1148 are included for the proposal.

Discussion

Clause 4.6 Request to Vary a Development Standard - Height

21. The site is subject to a maximum height of buildings development standard of 9 metres. The proposed development has a maximum building height of 12.37 metres. This represents a variation of 37 per cent to the standard.
22. 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;
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
 - (c) The proposed development will be consistent with the objectives of the zone; and
 - (d) The proposed development will be consistent with the objectives of the standard.

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

23. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The proposal is consistent with the objectives of the height of buildings standard and the objectives of the R1 General Residential Zone.
 - (ii) The existing building has a maximum height of 12.48m. The proposed alteration to the third storey will sit below this height and reduce this non-compliance.

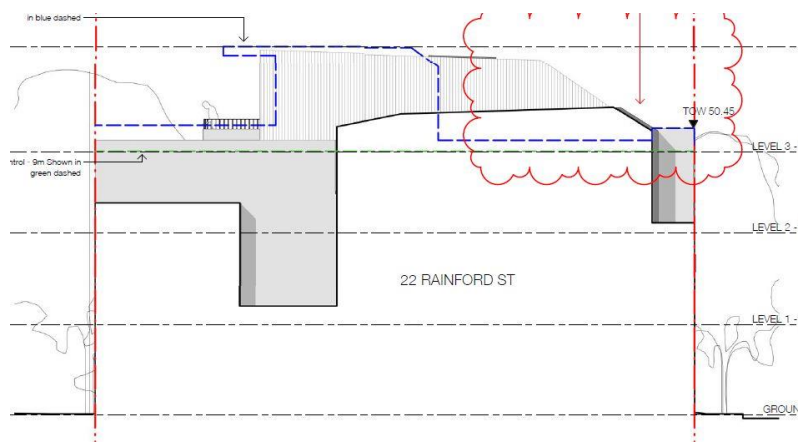


Figure 19: Proposed west elevation. Existing building line shown dashed blue.

- (iii) The variation to the standard does not contribute to unreasonable impacts in terms of overshadowing, privacy, visual impacts or view loss to adjoining or surrounding properties.
- (iv) The existing building parapet to Rainford Street is to a height of 10.2m exceeds the height control.
- (v) The proposed alterations above the parapet are setback from the front side and rear and the existing building retains its current scale within the streetscape.
- (vi) The proposed alterations do result in adverse impacts on the heritage conservation area.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposal maintains the existing scale of the building to the streetscape with the alterations and additions setback from the front, back and side elevations of the existing building.
 - (ii) The context of the site along Rainford Street includes a variety of building types including residential terraces, commercial buildings and more recent townhouse style developments.

- (iii) The existing building currently exceeds the height standard including the parapet of the existing building which is to a height of 10.2m and the existing roof addition which is to a height of 12.48m. The proposal would result in a lower addition over a larger floor plate. The proposed mansard roof design has been angled away from Rainford Street to minimise the bulk and visibility from Rainford Street. The visibility is comparable to that of the existing building.



VIEW 1 - Existing



VIEW 1 - Proposed

Figure 20: Montage view study as viewed from Rainford Street looking east



Figure 21: Montage view study as viewed from Rainford Street looking west

- (c) The proposed development will be consistent with the objectives of the zone;
 - (i) The proposed alterations and addition will facilitate the use of the building for residential purposes with improved amenity.
 - (ii) The proposal contributes to a variety of housing types and densities within Surry Hills.
 - (iii) The site is located within proximity of a range of facilities and services.
 - (iv) The proposal will contribute to maintaining the pattern of predominantly residential uses within the area.
- (d) The proposed development will be consistent with the objectives of the standard
 - (i) The height of the development is appropriate to the condition of the site and its context. The proposal will result in a reduced height for the building in a form that is setback from boundaries. The building will retain its existing scale within the context of Rainford Street.
 - (ii) The proposal does not impact on existing height transitions across the conservation area. The subject building currently exceeds the height control as a former warehouse building. The proposal results in additional building form to a height lower than the existing building form within the conservation area.
 - (iii) The proposal does not adversely impact on views.

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

24. 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)?

25. The written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that the objectives of the height of buildings development standard are achieved despite the non-compliance.
26. The height of the proposal is appropriate to the site and context having regard to the existing building on the site. The existing former warehouse building currently exceeds the height of buildings standard and the proposal will reduce the building height non-compliance, with an alternative building form in a mansard style addition setback from the building elevations.
27. The proposed building form retains the existing transitions of varied building heights in the context with a variety of different building forms along the streetscape.
28. The proposal promotes the sharing of views and does not impact on important views from neighbouring properties or views within the public domain.

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

29. The application has demonstrated there are sufficient environmental planning grounds to justify contravening the height of buildings development standard in the circumstances of the application.
30. The existing building currently exceeds the height control and the proposal will reduce the building height non-compliance, with an alternative building form in a mansard style addition setback from the building elevations. The proposal does not result in unacceptable overshadowing or visual bulk impacts as demonstrated in the submitted view from the sun diagrams and view study images. The proposed additions generally comply with the relevant DCP controls as discussed above.

Is the development in the public interest?

31. The development is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
32. The written request has demonstrated that the objectives of the height of buildings standard are achieved despite the non-compliance.

33. The height of the proposal is appropriate to the site and context having regard to the existing building on the site. The existing former warehouse building currently exceeds the height of buildings standard and the proposal will reduce the building height non-compliance, with an alternative building form in a mansard style addition setback from the building elevations.
34. The proposed building form retains the existing transitions of varied building heights in the context with a variety of different building forms along the streetscape.
35. The proposal promotes the sharing of views and does not impact on important views from neighbouring properties or views within the public domain.
36. The development is consistent with the objectives of the R1 General Residential Zone. The proposal provides for residential housing for the needs of the community and contributes to the variety of housing types and densities. The proposal will contribute to the pattern of predominantly residential use in the locality.

Conclusion

37. For the reasons provided above the requested variation to the height of buildings 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 height of buildings standard and the R1 General Residential zone.

Clause 4.6 Request to Vary a Development Standard - Floor Space Ratio

38. The site is subject to a maximum floor space ratio (FSR) standard of 1.75:1. The proposed development has a FSR of 1.87:1. This represents a variation of 7 per cent to the standard.
39. 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;
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
 - (c) The proposed development will be consistent with the objectives of the zone; and
 - (d) The proposed development will be consistent with the objectives of the standard.

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

40. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The proposal is consistent with the objectives of the FSR standard and the objectives of the R1 General Residential Zone.
 - (ii) The existing building on the site has a FSR of 1.94:1. The proposal will result in a reduced FSR of 1.87:1. The introduction of deep soil areas, voids and setbacks have resulted in an overall reduction of FSR for the development on the site.
 - (iii) The proposal will provide sufficient floorspace for the proposed residential use that provides high amenity.
 - (iv) The proposal does not increase the density or intensity of the development on the site or generate additional traffic.
 - (v) The proposal does not increase the GFA or FSR or the intensity of the development on the site which is commensurate with the capacity of existing infrastructure.
 - (vi) The proposal maintains the existing scale of development on the site within the locality in which it is located in Rainford Street and Surry Hills. Additions have been setback from the building elevations and designed to result in minimal overshadowing or visual impacts.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposal maintains the existing scale of the building to the streetscape with the alterations and additions setback from the front, back and side elevations of the existing building.
 - (ii) The existing building on the site has a FSR of 1.94:1. The proposal will result in a reduced FSR of 1.87:1. The introduction of deep soil areas, voids and setbacks have resulted in an overall reduction of FSR for the development on the site.
 - (iii) The context of the site along Rainford Street includes a variety of building types including residential terraces, commercial buildings and more recent townhouse style developments.
 - (iv) The proposed mansard roof design has been angled away from Rainford Street to minimise the bulk and visibility from Rainford Street. The visibility of additions above the warehouse building is comparable to that of the existing building (refer to submitted montage images above).
- (c) The proposed development will be consistent with the objectives of the zone;
 - (i) The proposed alterations and addition will facilitate the use of the building for residential purposes with improved amenity.

- (ii) The proposal contributes to a variety of housing types and densities within Surry Hills.
 - (iii) The site is located within proximity of a range of facilities and services.
 - (iv) The proposal will contribute to maintaining the pattern of predominantly residential uses within the area.
- (d) The proposed development will be consistent with the objectives of the standard
- (i) The existing building on the site has a FSR of 1.94:1. The proposal will result in a reduced FSR of 1.87:1. The introduction of deep soil areas, voids and setbacks have resulted in an overall reduction of FSR for the development on the site.
 - (ii) The proposal will provide sufficient floorspace for the proposed residential use that provides high amenity.
 - (iii) The proposal does not increase the density or intensity of the development on the site or generate additional traffic.
 - (iv) The proposal does not increase the GFA or FSR or the intensity of the development on the site which is commensurate with the capacity of existing infrastructure.

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

41. 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)?

42. The written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that the objectives of the FSR development standard are achieved despite the non-compliance.
43. The FSR of the development is appropriate to the site and context having regard to the existing building on the site. The existing former warehouse building currently exceeds the FSR standard and the proposal will reduce the FSR non-compliance.
44. The proposal will provide sufficient floorspace for the proposed residential use that provides high amenity.

45. The proposal does not increase the density or intensity of the development on the site or generate additional traffic. The intensity of the development on the site is commensurate with the capacity of existing infrastructure.

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

46. The application has demonstrated there are sufficient environmental planning grounds to justify contravening the FSR development standard in the circumstances of the application.
47. The existing building currently exceeds the FSR standard and the proposal will reduce the non-compliance, with an alternative building form in a mansard style addition setback from the building elevations. The proposal does not result in unacceptable overshadowing or visual bulk impacts as demonstrated in the submitted view from the sun diagrams and view study images. The proposed additions generally comply with the relevant DCP controls as discussed above.

Is the development in the public interest?

48. The development is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
49. The written request has demonstrated that the objectives of the FSR standard are achieved despite the non-compliance.
50. The FSR of the development is appropriate to the site and context having regard to the existing building on the site. The existing former warehouse building currently exceeds the FSR standard and the proposal will reduce the FSR non-compliance.
51. The proposal will provide sufficient floorspace for the proposed residential use that provides high amenity.
52. The proposal does not increase the density or intensity of the development on the site or generate additional traffic. The intensity of the development on the site is commensurate with the capacity of existing infrastructure.
53. The development is consistent with the objectives of the R1 General Residential Zone. The proposal provides for residential housing for the needs of the community and contributes to the variety of housing types and densities. The proposal will contribute to the pattern of predominantly residential use in the locality.

Conclusion

54. For the reasons provided above the requested variation to the FSR 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 FSR standard and the R1 General Residential zone.

Heritage

55. The site is located within the Bourke Street South Heritage Conservation Area. The building is identified as a neutral building within the conservation area under the provision of Sydney DCP 2012.

56. The conservation area inventory describes Rainford Street as follows:

A narrow street with substantial tree plantings (paperbark and eucalyptus species), 2 storey late Victorian terraces mixed with some early 20th century warehouses, a group of single storey brick Federation Queen Anne style terraces (no. 36 to 54 Rainford St), some modern detracting development (rear of 14-40 Davies St) generally of appropriate scale, but with some use of detracting materials. Street trees reduce impact of modern development on the street. Street Rating: B.

57. The former warehouse building was built circa 1928. There have been various additions made to the building including the construction of a 'pop up' roof addition with an outdoor terrace and former mezzanine area within the building.
58. The proposal including the proposed amended roof addition in a mansard style has been reviewed by Council's Heritage Specialist. The proposal was generally supported with amendments recommended to provide an increased setback from the street to align with the front dormer at No. 30 Rainford Street, and for the mansard roof to be further set in from the side boundaries to allow for a gutter design that would allow for maintenance access. The proposal was amended in response to this feedback with an increased front setback of 1.7m that aligns with the front dormer at 30 Rainford Street and side setbacks of 600mm that allows for a gutter with maintenance access. The amendments have addressed these issues. The proposal is considered to conserve the heritage significance of the conservation area and the proposed development will improve the presentation of the neutral item within the conservation area.

Consultation

Internal Referrals

59. The application was discussed with Council's:

- Environmental Health Unit;
- Heritage and Urban Design Unit;
- Landscaping Unit;
- Transport and Access; and
- Tree Management Unit

who advised the proposal is acceptable subject to conditions.

60. Where appropriate, these conditions are included in the Recommended Conditions of Consent.

Advertising and Notification

61. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 9 July 2021 and 24 July 2021. A total of 128 properties were notified and two submissions were received.

62. The submissions raised the following issues:

(a) **Issue:** Demolition Works

A concern has been expressed that the extent of demolition works will result in unacceptable construction impacts to surrounding residents.

Response: Construction works would be limited to within standard permitted hours for construction activities. Given the scope of works and site context it is also recommended that a dilapidation report, and construction and demolition noise management plan be required to be prepared as part of the recommend conditions.

(b) **Issue:** Car Parking

A concern has been expressed that the proposal may impact on street parking within the area.

Response: The provision of two onsite parking spaces was approved as part of consent D/2020/1148 which is incorporated into the proposal. The proposed development will not have any additional impacts on street parking over that already approved.

(c) **Issue:** Privacy

A concern has been expressed that the ground level glazing to the rear elevation have a privacy treatment to ensure privacy to adjoining neighbours.

Response: The proposal includes external louvres to the ground level to provide privacy between the site and the neighbour to the rear. A condition is recommended to ensure that further details of louvres are provided to ensure the privacy is fixed, and that the louvres are located within the subject site.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

63. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

64. Credits have been applied for the most recent approved use of the site and as such a contribution is not required for the proposal.

Relevant Legislation

65. Environmental Planning and Assessment Act 1979.

Conclusion

66. The application for alterations and additions to the existing former warehouse building for a residential dwelling across four storeys has been assessed against the relevant planning controls. The proposal includes a mansard style roof addition to the building to approximately the same height as an existing rooftop addition.
67. The application includes a request to vary the height of buildings and floor space ratio development standards. The application proposes a maximum height of 12.37 metres which represents a variation of 37 per cent to the standard. The application proposes a floor space ratio of 1.87:1 which represents a variation of 7 per cent to the standard. The requests to vary the standards are supported in the circumstances of the proposal.
68. The application was amended in response to Council feedback in relation to the setback of additions, privacy measures and stormwater design. The amended design is considered to address the key issues raised and the proposal is recommended for approval subject to conditions.

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