

Item 6.**Development Application 16-18 Meagher Street, Chippendale - D/2022/274**

File No.: D/2022/274

Summary

Date of Submission:	1 April 2022 Amended plans - 1 September 2022
Applicant:	Mr Robert Keldoulis
Architect/Designer:	Smart Design Studio
Owner:	BARA Nominees Pty Ltd
Planning Consultant:	Ethos Urban
Heritage Consultant:	Urbis
Cost of Works:	\$10,422,762.00
Zoning:	The site is located within the B4 - Mixed Use zone. The use is defined as art gallery, and art studio, and is permissible with consent within the zone.
Proposal Summary:	<p>Approval is sought for alterations and additions to an existing commercial building, comprising internal fitout of the ground floor for use as an art gallery with an internal garage, fitout of level 1 for use as a commercial office, and additions to level 2 for an office/art studio.</p> <p>The application is being reported to the Local Planning Panel for determination as the development exceeds the height of buildings development standard.</p> <p>A maximum building height of 9m is permitted under clause 4.3 of the Sydney Local Environmental Plan 2012. A maximum height of 12.395m is proposed for the new works, which represents an exceedance of 37.7%. The application seeks a variation to the height control under clause 4.6. The proposed variation to the development standard has merit and is supported in this instance.</p>

A floor space ratio (FSR) of 1.97:1 is proposed which complies with the maximum floor space ratio of 2:1 under clause 4.4 of the SLEP 2012.

Following a preliminary review of the application, the applicant was requested to provide additional landscaping information, and amend the proposal to increase tree canopy coverage, re-design level 2 to incorporate translucent glazing and to be setback from the site boundaries, retain existing level 1 windows, and redesign ground floor windows.

Amended plans were submitted on 2 September 2022. Key amendments included additional landscaping to the level 2 terraces, increased 650mm setback of level 2 to all boundaries and incorporate privacy treatment to the glazing, redesign of ground floor windows to be set above the footpath.

The application was initially notified for a period of 14 days from 5 April 2022 to 19 April 2022, and re-notified with an updated description of the proposal for 28 days from 8 April 2022 to 6 May 2022. The amended plans submitted on 1 September 2022 were not re-notified, as the amendments to the design were relatively minor changes requested by Council, and did not result in any additional environmental impacts. Three submissions were received. Issues raised in the submissions include potential amenity impacts (overshadowing, overlooking and outlook) to neighbouring residential properties, adverse impacts to the heritage characteristics of the heritage conservation area, and bulk and scale of the proposal. The public submissions have been addressed within this report.

The proposal is generally consistent with the relevant objectives and provisions of the Sydney LEP 2012. Subject to the recommended conditions at Attachment A, the development application is recommended for approval.

Subject to design modifications relating to minor amendments to the fenestration and internal works, the proposed alterations and additions to the existing commercial building responds satisfactorily to surrounding development in terms of bulk and scale, does not result in any significantly adverse amenity impacts and is consistent with the desired future character of the area. The proposal is considered to be in the public interest.

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

Development Controls:

Sydney Local Environmental Plan 2012

Sydney Development Control Plan 2012

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Industry and Employment) 2021

State Environmental Planning Policy (Transport and Infrastructure) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Planning Systems) 2021

Attachments:

A - Recommended Conditions of Consent

B - Selected Drawings

C - Clause 4.6 Variation Request - Height of Buildings

Recommendation

It is resolved that:

- (A) the variation requested to Clause 4.3 Height of Buildings in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application No. D/2022/274 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 proposed development is consistent with the objectives of the B4 Mixed Use zone.
- (B) The proposed development satisfies the relevant objectives and provisions of the Sydney Development Control Plan 2012.
- (C) 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 Local Environmental Plan 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; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone and the height of buildings development standard.
- (D) Having considered the matters in Clause 6.21 of the Sydney LEP 2012, the building displays design excellence because:
 - (a) The alterations and additions to the existing building are sympathetic and respond to the heritage fabric and features of the existing building.
 - (b) The proposed level 2 additions are of a high architectural quality.
 - (c) The proposal does not result in unreasonable amenity impacts to neighbouring properties.
- (E) The proposal provides for uses that are compatible with the surrounding area. The proposal is in keeping with the future desired character of the area and is considered to be in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 11 in DP 1104505, and is known as 16-18 Meagher Street, Chippendale. It is rectangular in shape with an area of approximately 323 sqm. It has a primary street frontage to Meagher Street to the south, and secondary street frontages to Balfour Street to the east, and Teggs Lane to the north. The site is located at the intersection of Meagher Street and Balfour Street. Levels on the site fall by approximately 1.15m from the south-western corner (Meagher and Balfour streets) to the north-western corner (Teggs Lane).
2. The site contains a three storey commercial building with an upper level terrace. The existing building is a former warehouse building circa 1914, with the previous use being a commercial office. The existing building has on-site ground floor car spaces with vehicle access via Teggs Lane. The building is currently unoccupied.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial. Development along Meagher St mainly comprises 2-3 storey commercial buildings, and rows of two storey residential terraces.
4. The adjoining property to the west at 12-14 Meagher St is a three storey commercial building that was previously part of the larger subject site known as 12-18 Meagher St, before being subdivided into two separate lots. The adjoining building at No.12-14 is of the same architectural style as the subject building. Directly opposite the site along the southern side of Meagher St is a row of three 2 storey residential terraces from 11A-13A Meagher St. A three storey commercial building is located to the east on the opposite side of Balfour St at 20-40 Meagher St. A four storey building used as an educational establishment is located directly opposite the site to the north on the opposite side of Teggs Lane, at 53-55 Balfour St.
5. The site is located within the Chippendale Heritage Conservation Area (C9). The site is identified as a contributing building.
6. The site is located within the Chippendale locality and is not identified as being subject to flooding.
7. A site visit was carried out on 5 May 2022. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from intersection of Meagher St and Balfour St



Figure 3: Site viewed from Meagher St



Figure 4: Site viewed from Meagher St



Figure 5: Site viewed from Balfour St



Figure 6: Site viewed from near corner of Balfour St and Teggs Ln



Figure 7: Photomontage of amended proposed development viewed from south-eastern side of intersection of Meagher St and Balfour St

History Relevant to the Development Application

Development Applications

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

- **D/2005/267** – Development consent was granted on 31 October 2005 for the demolition of existing building and construction of a three- storey mixed use building at 12-18 Meagher St, containing residential, commercial and retail uses. This consent has since lapsed.
- **D/2005/267/A** – A modification application was refused on 24 February 2006 for changes to the approved residential component, including altering the unit mix.
- **D/2006/387** – Development consent was granted on 2 May 2006 for the subdivision of the site and existing three storey rendered brick building into two new lots being No.12-14 and No.16-18.
- **D/2007/1573** – Development consent was granted on 29 October 2007 for alterations and additions to the existing commercial building, including a new third floor, retail uses on the ground floor and office space above and three car parking spaces with access from Teggs Lane. This consent was not implemented and lapsed on 29 October 2009.
- **D/2007/2446** – Development consent was granted on 7 March 2008 for alterations and additions to the existing commercial building, including internal works, three car spaces on the ground floor, and a partly covered roof terrace facing Balfour St.
- **D/2007/2446/A** – A modification application was granted on 10 July 2008 to delete Conditions 2(b) and (c) with the effect of installing a double width roller door at the Teggs Lane elevation and installing timber framed sliding windows at the ground floor. The double roller door was approved, and amendments to condition 2(c) to require the transom of the windows to be set higher within the arches.
- **P/2021/2109** – A Complying Development Certificate (21021/01) was issued on 26 November 2021 for internal alterations to an existing office premises.
- **PDA/2021/303** – Pre-development application advice was given on 9 November 2021 for alterations and additions to the existing building. The current proposal is based on the pre-DA scheme.

The key matters for consideration raised in the pre-DA advice were:

- Further consideration of the existing building condition and its relationship within the heritage conservation area and with the adjoining building to the west at No.12-14 Meagher St, should be explored within a heritage impact assessment.
- The additional bulk and scale from the proposed additions to the third storey.

- Alterations to the existing windows change the expression and would alter the relationship to the adjoining building and the heritage conservation area.
- Variations to development standards pursuant to Clause 4.6 of Sydney Local Environmental Plan 2012 would be required to demonstrate that the objectives of the controls and the zone are achieved despite the non-compliance.

Compliance Action

9. The site has previously been subject to compliance action relating to fire safety standards in October 2021 and is not relevant to the subject application.

Amendments

10. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 22 July 2022. The following additional information and amendments were requested:
 - Additional landscaping details, including a structural engineers' report to confirm that loads from wet soil and tree planters can be supported, and how planting will be accessed and maintained.
 - Additional privacy treatment to the glazing of the level 2 western elevation.
 - Further setbacks to the upper level from the site boundaries.
 - Maintaining the first floor windows with only replacement glazing.
 - Increase sill height of ground floor windows to be above the footpath, and have generous vertical masonry interface.
 - Sketch designs illustrating how 12-14 Meagher Street could have an additional storey that is compatible with any development on the subject site.
 - A sample board with examples of render, plinth stone and window frames.
11. The applicant responded to the request on 1 September 2022, and submitted revised landscape plans, architectural plans and a statement from a structural engineer. Minor amendments were made to the design, including incorporating privacy treatment to the western elevation upper level glazing, increasing the upper level setbacks to 650mm from each boundary, and amending the ground floor windows to raise the sill height above the footpath.
12. A construction noise and vibration management plan was submitted on 22 November 2022.
13. Updated design documentation including updated Clause 4.6 written variation, shadow diagrams and waste management plan were submitted on 13 December 2022.
14. Revised existing and proposed GFA plans were submitted on 25 January 2023.

Proposed Development

15. The application seeks consent for the following:

- Fitout and use of the ground floor as a commercial art gallery with ancillary retail and two car spaces.
- Installation of new pedestrian entrances, doors and windows on ground level and level 1.
- Remove the existing garage door to Teggs Lane, and install a new garage door of slightly reduced width.
- Fitout and use of level 1 and 2 for an art studio.
- Complete demolition of the existing outdoor terrace and roof of level 2.
- Alterations and additions to level 2, including a new vaulted roof structure, and outdoor terraces with landscaping.
- Restoration and application of new finishes to the external facade.

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

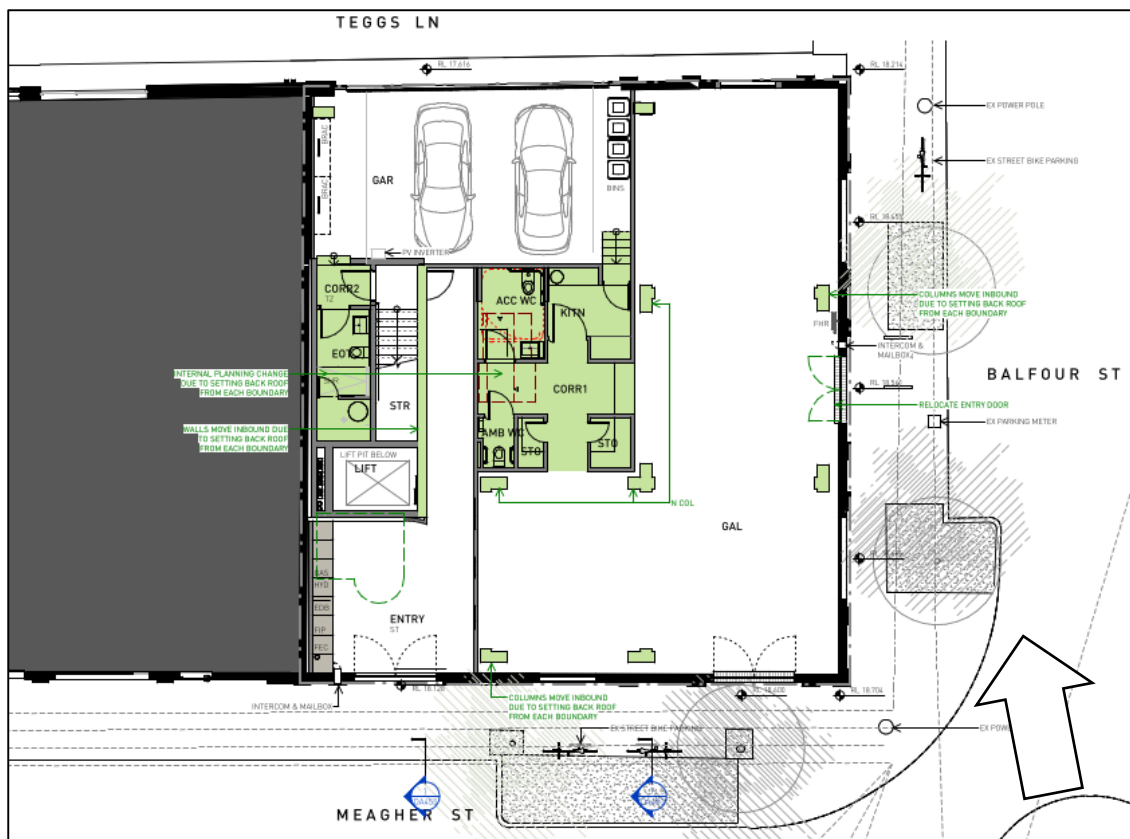


Figure 8: Proposed ground floor plan



Figure 9: Proposed level 1 plan

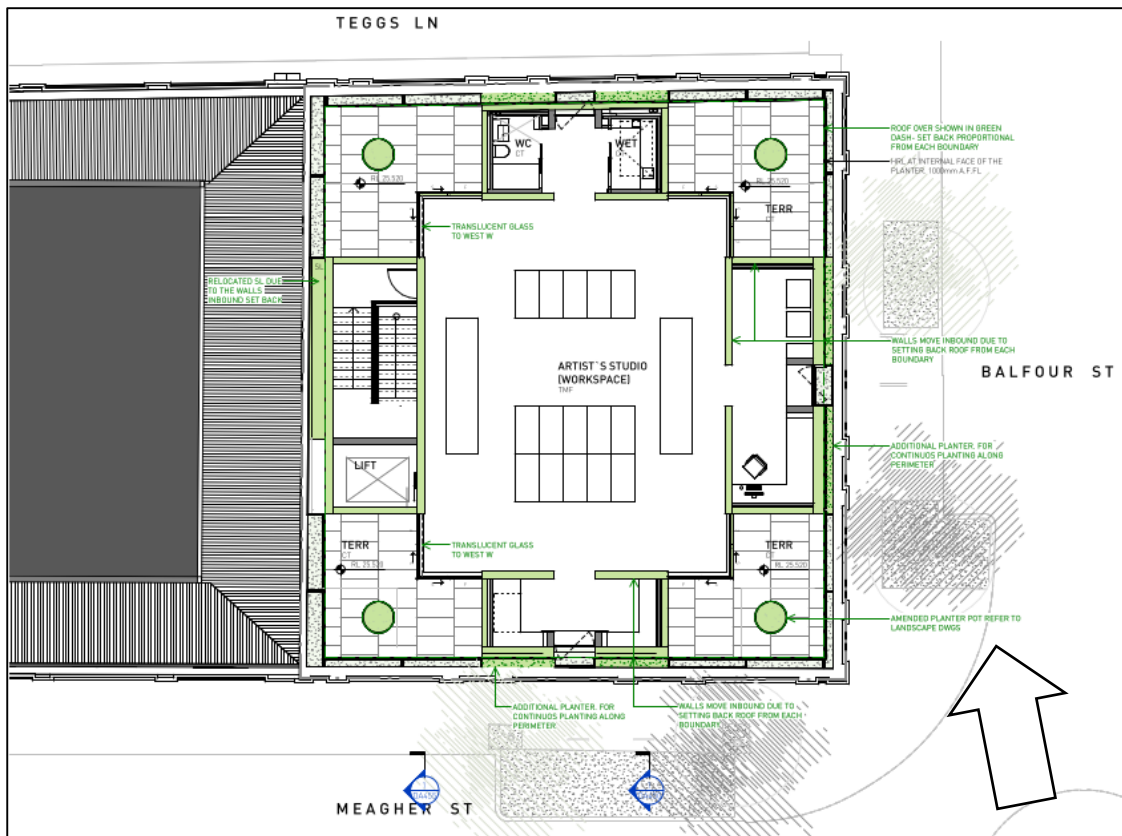


Figure 10: Proposed level 2 plan

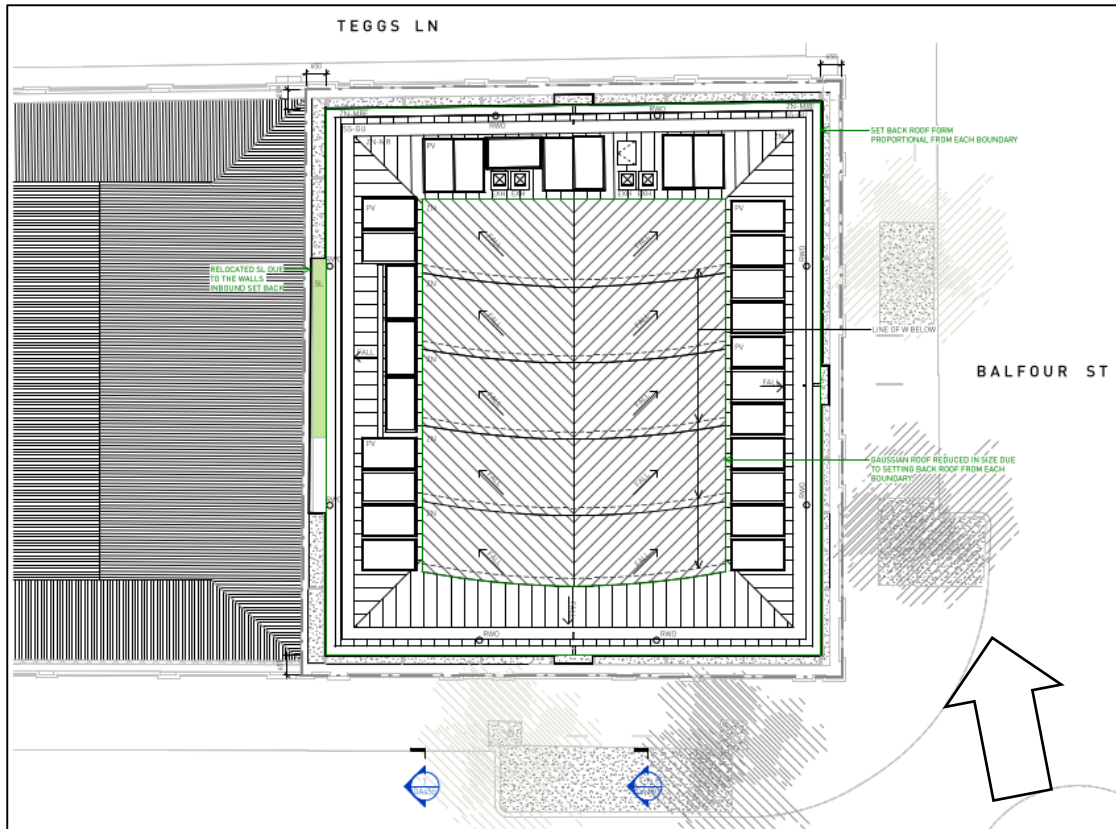


Figure 11: Proposed roof plan



Figure 12: Proposed Meagher St (south elevation)

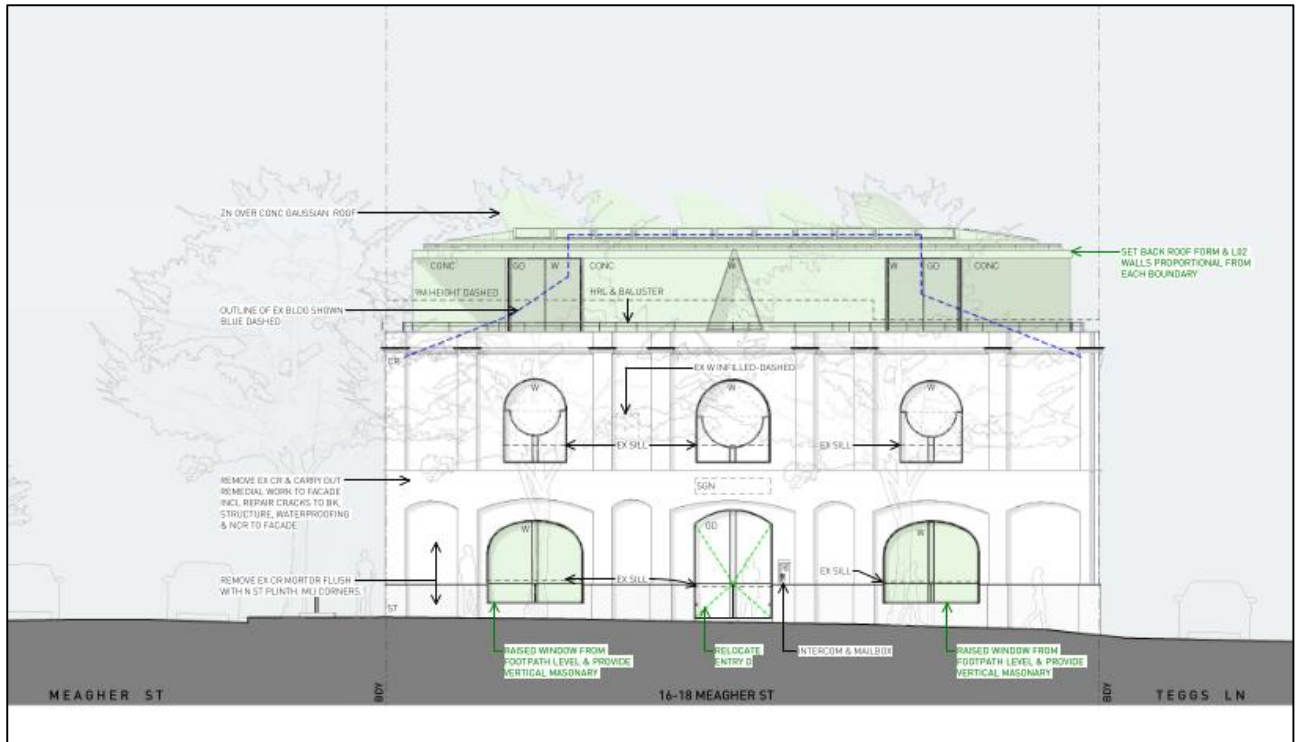


Figure 13: Proposed Balfour St (east elevation)

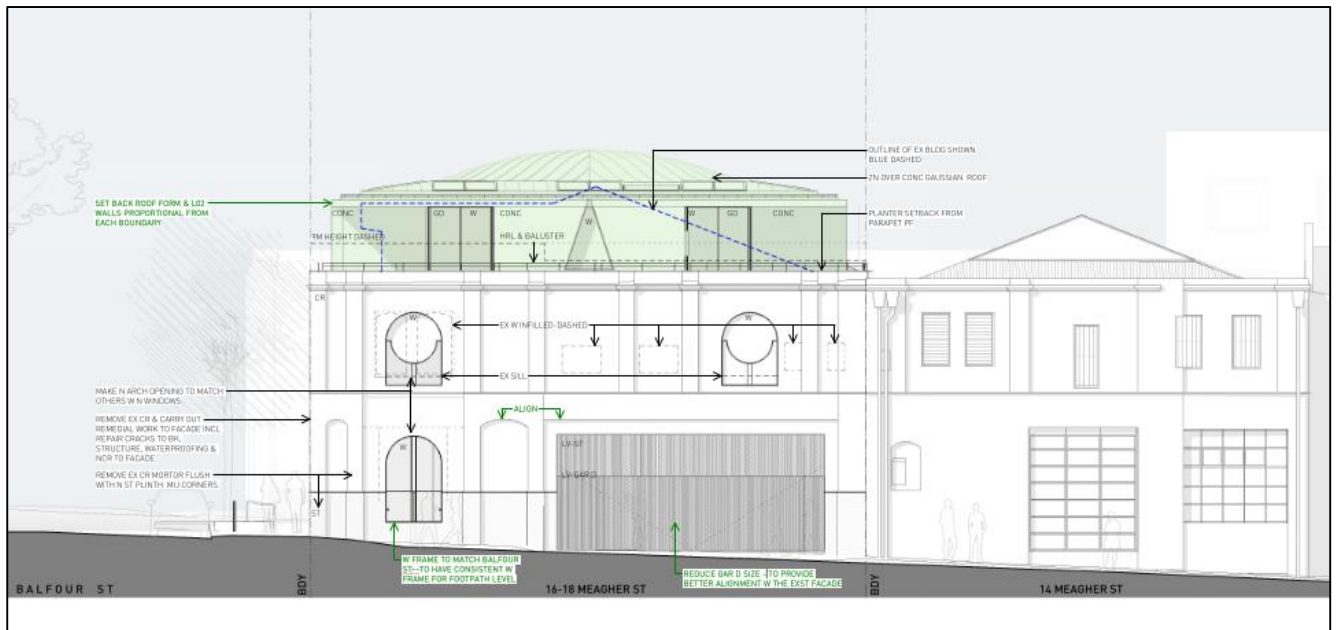


Figure 14: Proposed Teggs Lane (north elevation)

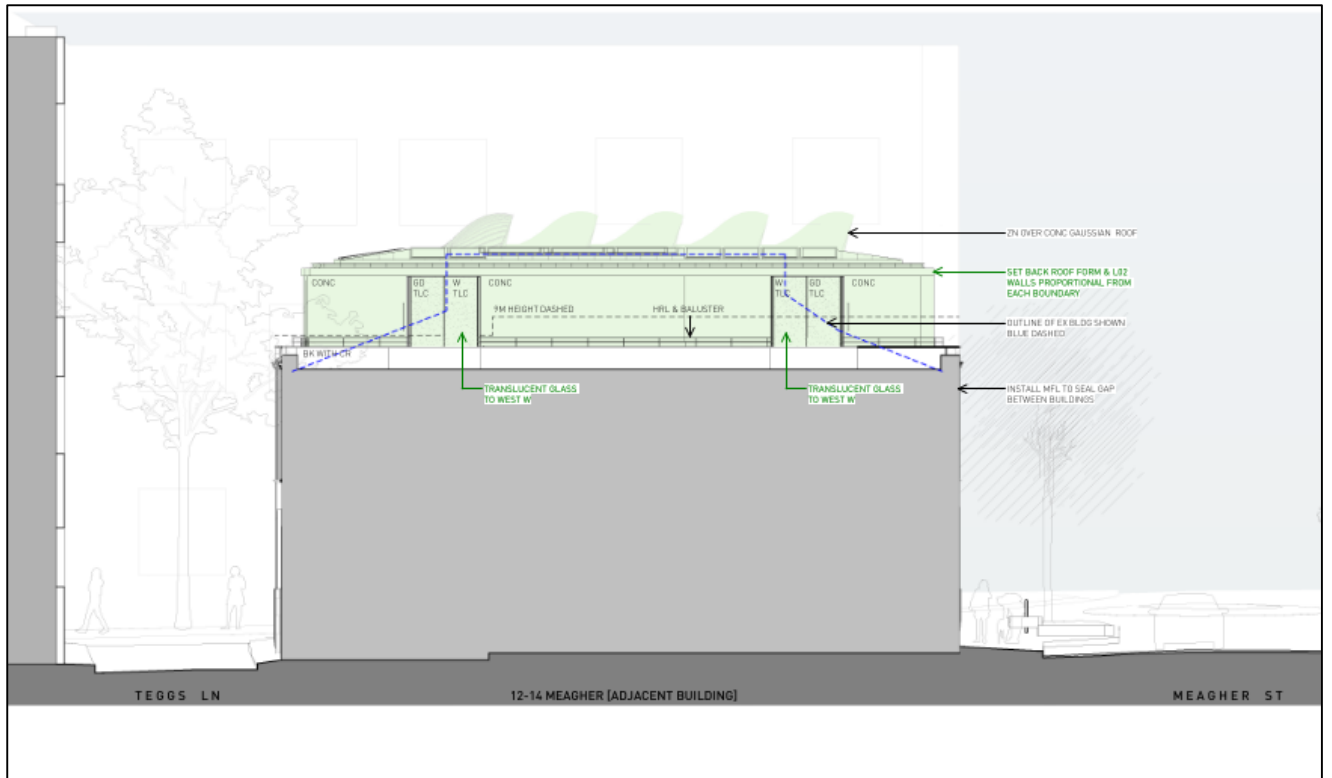


Figure 15: Proposed west elevation



Figure 16: Proposed 3D section



Figure 17: Proposed Meagher St perspective



Figure 18: Proposed 3D southern perspective



Figure 19: Proposed perspective showing the proposal within the context of the streetscape

Assessment

17. 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 (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land 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.
33. While the proposal does not include a change of use from a commercial building, and does not have a history of high risk uses, below ground excavation is proposed for the lift pit.
34. A Phase 1 Preliminary Site Contamination Investigation Report, prepared by Getex, dated 15 December 2022, was submitted, and stated that "there is potential for the site to contain below ground contamination that is a potential health risk to human and

ecological receptors". The report recommended that a Phase 2 Contamination Investigation be undertaken prior to commencing construction/excavation works to confirm the extent of any contamination within the site. The report also noted that a Remedial Action Plan (RAP) may be required if remediation of the site is needed.

35. The Contamination Investigation Report has been reviewed by Council's Environmental Health and Building team, who recommend that a Detailed Environmental Site Investigation (DESI) be carried out prior to issue of a Construction Certificate, and where the DESI states that the affected area requires remediation, a Remediation Action Plan (RAP) is to be prepared by a suitably qualified and competent environmental consultant in accordance with the NSW Government Office of Environment and Heritage, Guidelines for Consultants Reporting on Contaminated Sites and the Contaminated Land Management Act 1997. The requirement for a DESI is included as a recommended condition of consent prior to obtaining a Construction Certificate.

State Environmental Planning Policy (Transport and Infrastructure) 2021

36. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network

Clause 2.48 Determination of development applications – other development

37. The application is subject to Clause 2.48 of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.
38. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised. Ausgrid submitted standard recommendations for safework practices regarding underground cables and overhead powerlines.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment

39. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
40. The site is within the Sydney Harbour Catchment and eventually drains into Sydney 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 SEPP are not applicable to the proposed development.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments

41. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.

42. The site is within the Sydney Harbour Catchment and eventually drains into Sydney 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 SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

43. 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	<p>The site is located in the B4 Mixed Use zone. The proposed ground floor art gallery is defined as "information and educational facility" with ancillary shop, under the LEP. Level 1 and 2 are to be used as a photography studio and workspace, which fall under the definition of "creative industry", which is a type of light industry under the LEP.</p> <p>The uses are permissible with consent in the zone. The proposal generally meets the objectives of the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 9m is permitted.</p> <p>A maximum height of 12.395m is proposed for the new roof.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</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>

Provision	Compliance	Comment
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 2:1 or 631.2 sqm is permitted.</p> <p>A floor space ratio of 1.97:1 or 622 sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</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 Clause 4.3 - Height of Buildings. A Clause 4.6 variation request has 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 Chippendale Heritage Conservation Area (C9).</p> <p>The proposed development will not have a detrimental impact on the heritage significance of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
5.21 Flood planning	Yes	<p>The site is not identified as being subject to flooding.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		

Provision	Compliance	Comment
6.13 End of journey floor space	Yes	<p>The proposed development is eligible for a maximum additional floor space 0.3:1 or 187.71 sqm for end of trip facilities.</p> <p>The proposal provides 3.7 sqm of floor space for end of trip facilities located on the ground floor adjacent to the garage.</p>
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The proposed external changes to the ground and level 1 windows, changes to the wall finishes including re-rendering and plinth stone are considered appropriate within the context of the existing building, and matching building at 12-14 Meagher St.</p> <p>The vaulted form of the new roof is centrally located within a flat apron that extends to the perimeter walls of the building. The roof sits comfortably on the existing building. The extended flat edge relates to the external walls and produces a deep shadow line between the roof and the lower levels of the building. The height of the addition is in proportion to the overall height of the building. The ridged vault form of the roof defines a ripple effect that relates to and reinforces the horizontality of the building.</p> <p>The design of the level 2 addition is integrated into the design of the existing building, is setback from the site boundaries to reduce the perceived bulk and scale of the upper level, and is well-proportioned. The additional bulk from the additions to level 2 and the new roof do not result in any unreasonable amenity impacts to neighbouring</p>

Provision	Compliance	Comment
		<p>residential uses subject to appropriate conditions of consent.</p> <p>It is recommended that a physical materials and samples board be submitted to Council prior to the issue of a Construction Certificate, and that all transparent glazing is to be clear to achieve a high level of transparency to provide visual depth and have a neutrality of colour.</p> <p>The development is considered to be of an appropriate bulk and scale within the context of the subject site and streetscape, and has an acceptable environmental impact with regard to the amenity of the surrounding area. The development therefore achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
<p>7.8 Industry and warehouse or distribution centres</p> <p>7.9 Other land uses - Information and education facilities</p>	Yes	<p>A maximum of 2.8 car parking spaces are permitted for the level 1 and 2 art studio use (falls under the definition of creative industry).</p> <p>A maximum of 0.87 car parking spaces are permitted for the ground floor art gallery (falls under the definition of information and education facilities).</p> <p>A maximum total of 3.67 car spaces are permitted for the proposed uses of the site.</p> <p>The proposed development includes two car parking spaces and complies with the development standard.</p>
Division 3 Affordable housing		

Provision	Compliance	Comment
7.13 Contribution for affordable housing	Yes	<p>The site is identified as being on 'residual lands' under this clause.</p> <p>Clause 7.13(1)(a) of the LEP advises that where there is alterations to an existing building that will result in the creation of more than 60 square metres of gross floor area that is intended to be used for a purpose other than residential accommodation, or a change of use of existing floor area from other than residential accommodation to residential accommodation or tourist and visitor accommodation, a contribution is required to be made for the purpose of affordable housing.</p> <p>The proposal includes alterations to the existing building which results in the creation of less than 60 sqm (53.7 sqm) for a purpose other than residential accommodation and does not involve a change of use to residential or tourist and visitor accommodation. As such, a contribution is not required under this clause</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils and is not in close proximity to any other classes of soil, and the watertable is not likely to be lowered. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.</p>

Development Control Plans

Sydney Development Control Plan 2012

44. 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

45. The site is located within the Chippendale locality. The proposed development is in keeping with the unique character and the design principles of the Chippendale locality. The proposal encourages the adaptive re-use of the existing warehouse building, and the proposed art gallery and art studio uses are considered appropriate within the context of the existing building and locality. The restoration and refurbishment of the building and changes to the fenestration are considered to complement and be sympathetic to the existing building. Although the level 2 additions result in additional massing and the existing roof is not retained, the bulk and scale of the upper level is setback from the site boundaries to reduce the perceived bulk, and the new vaulted roof is considered appropriate as the form of the roof relates to and reinforces the horizontality of the building.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	<p>The proposal will contribute to the activity, safety, amenity, and quality of the street and will not result in any adverse impacts to the public domain.</p> <p>The proposal provides legible and accessible entry to the ground floor art gallery via Balfour St, and to the main entry to the upper levels via Meagher St.</p> <p>The site is not identified as requiring an active frontage.</p>
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.</p> <p>Appropriate tree protection conditions are recommended to ensure that the proposal does not impact the existing street trees along Meagher St and Balfour St.</p>
3.7 Water and Flood Management	Yes	<p>The site is not identified as being on flood prone land.</p>
3.9 Heritage	Yes	<p>The site is located within the Chippendale Heritage Conservation Area (C9). The building is identified as a contributing building.</p> <p>Refer to cl 5.10 of the LEP 2012, and "Discussion" section.</p>

Provision	Compliance	Comment
3.10 Significant Architectural Building Types	Yes	<p>The subject building is a warehouse building older than 50 years.</p> <p>The proposed alterations and additions are sympathetic to the existing fabric and design of the building. The proposed changes to the fenestration are compatible with the characteristics of the existing building, and the new additions at the upper level and roof, are designed to relate appropriately to the contributory nature of the warehouse building.</p>
3.11 Transport and Parking	Yes	<p>The DCP requires 4 bike spaces for employees and 3 bike spaces for visitors, (2 spaces for the art gallery use, and 5 spaces for the commercial office/art studio) for a total of 7 bike spaces.</p> <p>One personal locker for each bike space (7) is required as well as a shower and change facility.</p> <p>One motorcycle space is also required.</p> <p>The proposal provides end of trip facilities on the ground floor, and two bike spaces within the garage, which is a shortfall of five spaces. It is noted that there are three existing bike rings along the Meagher St and Balfour St frontages of the site. Given that the site benefits from existing street bike parking and is within 800m of both Central and Redfern Train Stations, a lower number of bike spaces and no motorbike parking can be accepted. Council's Transport team support the proposal.</p> <p>A condition is recommended for 4 bike spaces to be provided, along with 4 personal lockers and a shower and change facility.</p>
3.12 Accessible Design	Yes	<p>The relocated pedestrian entrances to Meagher St, and Balfour St are accessible with a slight crossfall to the footpath to account for the topography of the site. The internal areas, facilities and floors are accessible via lift access.</p> <p>An Accessibility Report has been submitted to confirm that the proposal</p>

Provision	Compliance	Comment
		can comply with all relevant BCA accessibility requirements.
3.13 Social and Environmental Responsibilities	Yes	The proposed replacement and relocated ground floor windows and doors to the Meagher St and Balfour St elevations allow for passive surveillance of the ground floor art gallery and ancillary shop.
3.14 Waste	Yes	<p>The proposal includes waste storage areas on the ground floor, and bins are able to be accessed for collection via the rear roller door to Teggs Lane.</p> <p>Appropriate conditions are recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
3.15 Late Night Trading Management	Yes	<p>The art gallery and art studio uses are Category C premises, and the site is not located within a late night trading area.</p> <p>The permitted operating hours under the DCP are between 7am to 12pm midnight.</p> <p>The proposed operating hours for the entire premises are between 7am to 10pm, Monday to Sunday, and are within the permitted DCP hours.</p> <p>The ground floor art gallery will be open to the public, with the upper level art studio and roof terrace being private access only, as outlined in the submitted Plan of Management prepared by Smart Design Studio, and dated 1 September 2022.</p> <p>A condition of consent is recommended to ensure the premises operates according to the approved Plan of Management.</p>
3.16 Signage and Advertising	Yes	The proposed development does not include any signage. An advisory condition of consent is recommended to

Provision	Compliance	Comment
		outline that any signage that is not exempt will need to be the subject of a future development application.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No	<p>The site is permitted a maximum building height of two storeys.</p> <p>The proposed development is three storeys in height and does not comply.</p> <p>See further details under the 'Discussion' section below.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	<p>The existing building has a floor to floor height of 3.6m for the ground floor and first floor.</p> <p>The proposal reduces the floor to floor heights to 3.5m for the ground floor, and 3.38m for the first floor, with the second floor having a floor to ceiling height of 2.7m.</p> <p>While the floor to floor heights are less than the minimum required floor to floor heights of 4.5m for the ground floor and 3.6m for upper level commercial floors, under the DCP, the proposed floor to floor heights are considered acceptable given the constraints of the existing building, and that the proposal achieves minimum 2.7m floor to ceiling heights.</p>
4.2.2 Building setbacks	Yes	<p>The existing building has a nil setback to all side boundaries on the ground and first floor, with the third storey having a 3m setback from the site boundaries, except for the open terrace area along the eastern elevation.</p> <p>The proposal retains the nil setbacks to the first two levels, with the</p>

Provision	Compliance	Comment
		<p>reconstructed third storey having a 650mm setback from the site frontages.</p> <p>The subject building is part of a pair of warehouse buildings with No.12-14 Meagher St, and is a corner building.</p> <p>The site is not identified as requiring specific setbacks as shown on the "Building Setbacks and alignment map" under the DCP.</p> <p>The DCP specifies that "(1) where no setback or alignment is shown on the map, the setback and alignment must be consistent with adjoining buildings", and "(4) In areas where corner buildings are typically built to the street boundary on one or more frontages, new development on a corner may also build to the street boundary".</p> <p>The reduced setbacks of the third storey are considered acceptable within the context of the subject site, noting that the proposal retains the existing third storey 3m setbacks to the four corners of the subject site with the provision of open terraces. The reduced upper level setbacks are not considered to result in any adverse impacts to the heritage conservation area, or amenity of neighbouring properties as discussed elsewhere in this report.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The submitted shadow diagrams and view from the sun diagrams indicate that the proposal will create additional overshadowing to the north facing ground floor residential windows of No.11, 11A and 13 Meagher St, between 9am to 10:15am mid-winter.</p> <p>See further details under the 'Discussion' section below.</p>
4.2.3.5 Landscaping	No	The DCP requires 15% tree canopy coverage for development sites.

Provision	Compliance	Comment
		<p>The existing building fully covers the site, and there is no existing landscaping.</p> <p>The proposal includes additional soft landscaping in the form of planters along the level 2 perimeter and small trees to the level 2 terraces.</p> <p>While the proposal does not meet the required 15% tree canopy coverage, given that the site is constrained by the existing built form, and that the proposal represents an improved landscaping outcome over the existing conditions, the proposed level 2 landscaping is supported in principle.</p> <p>Council's Landscaping officers have raised concerns regarding adequate soil depth, drainage design and how green waste will be removed.</p> <p>A condition of consent is recommended for amended landscaping plans to be submitted, including increased soil depth of 450mm to perimeter planters, additional drainage details, and a green roof maintenance plan.</p>
4.2.3.6 Deep Soil	No	<p>The DCP requires 10% (31.56 sqm) of the site to be dedicated deep soil area.</p> <p>The proposed planters on level 2 do not meet the definition of deep soil under Council's Landscape Code, which specifies that deep soil zones must not be located above a structure. The objectives of the control is to ensure adequate drainage, and soil depths are provided for tree planting.</p> <p>Conditions of consent are recommended to ensure that adequate soil depths and drainage is provided for the proposed level 2 plantings.</p>
4.2.3.10 Outlook	Yes	<p>The additional bulk from the level 2 additions are not considered to result in any unreasonable impacts to outlook or views from nearby residential properties.</p>

Provision	Compliance	Comment
		See further details under the 'Discussion' section below.
4.2.3.11 Acoustic privacy	Yes	<p>The proposed art gallery and art studio uses are not anticipated to result in any unreasonable noise impacts to the nearby residential uses along the southern side of Meagher St, and to the west along Meagher St and Teggs Lane.</p> <p>The art gallery use is limited to the ground floor and the proposed operating hours from 7am to 10pm are within the permitted base hours under the DCP. The level 1 and 2 art studio uses feature private access and are comparable to a commercial office in terms of intensity of the use. The level 2 terraces are not publicly accessible and will provide amenity to the art studio staff only. No events are anticipated to be held in the level 2 terraces. The four terraces are to each corner of the building and are physically separated with each terrace having an area of approximately 18 sqm, preventing large numbers of persons occupying a single terrace. No mechanical plant equipment or mechanical ventilation is proposed to be located within the outdoor terraces.</p> <p>It is also noted that although the proposal is not assessed against the requirements of the Apartment Design Guide, the minimum separation distance between the terraces from the closest residential properties along the southern side of Meagher St is approximately 16m, which would comply with the minimum separation distance between balconies and habitable rooms under the Apartment Design Guide.</p> <p>A condition of consent is recommended to restrict the use of the level 2 terrace areas from 7am to 8pm, as well as prohibiting the use of speakers and noise amplification equipment to the outdoor terraces as well as standard conditions requiring the overall noise levels to be within the requirements of</p>

Provision	Compliance	Comment
		the NSW EPA Noise Policy for Industry 2017.
4.2.6 Waste and recycling Management	Yes	A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.

Discussion

Clause 4.6 Request to Vary a Development Standard - Building Height

- 46. The site is subject to a maximum height control of 9m.
- 47. The existing building has a maximum height of 10.855m. The proposed development includes the demolition of the existing roof and level 2, and construction of a new third storey and vaulted roof that exceed the height control, with a maximum height of 12.4m above existing ground level, resulting in a variation of 3.4m or 37.7% from the development standard.

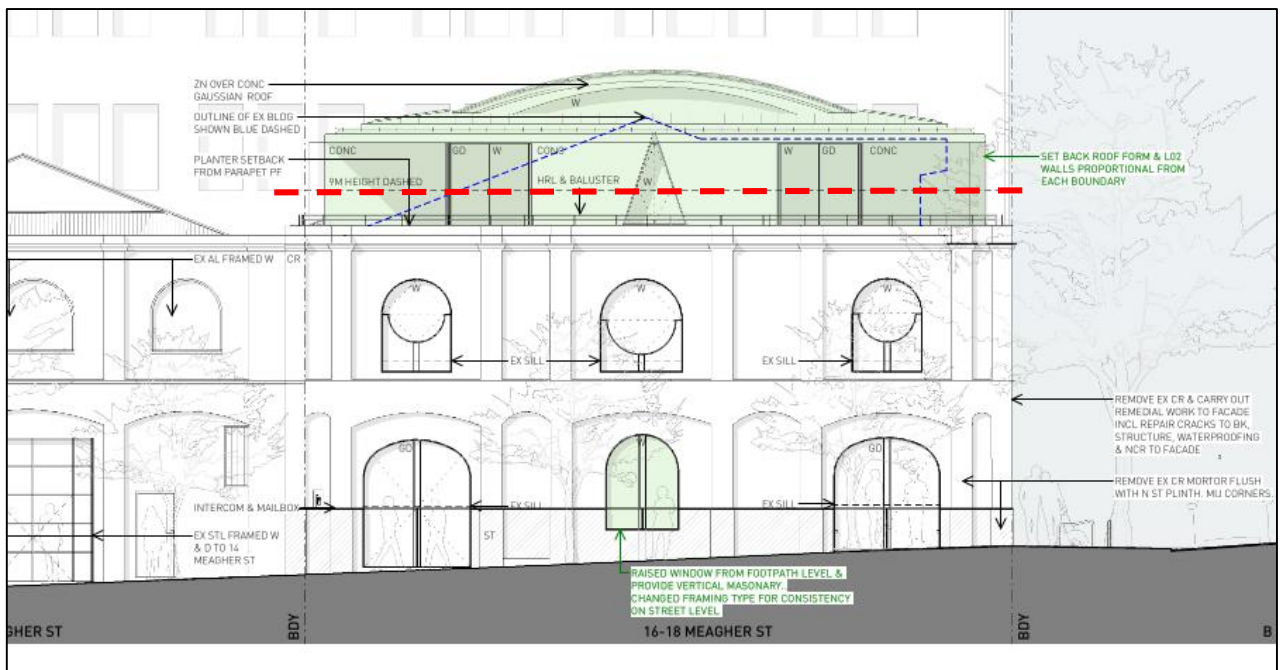


Figure 20: Southern elevation showing the 9m height control and existing roof form dashed

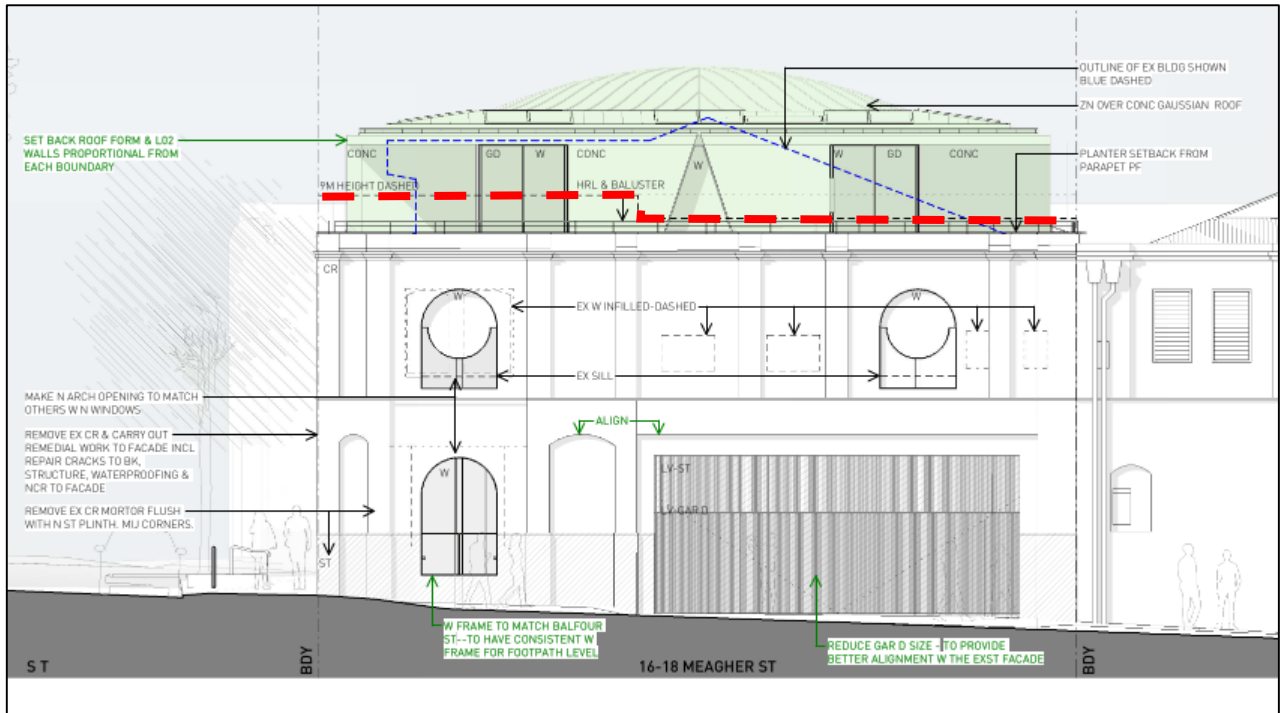


Figure 21: Eastern elevation showing the 9m height control and existing roof form dashed

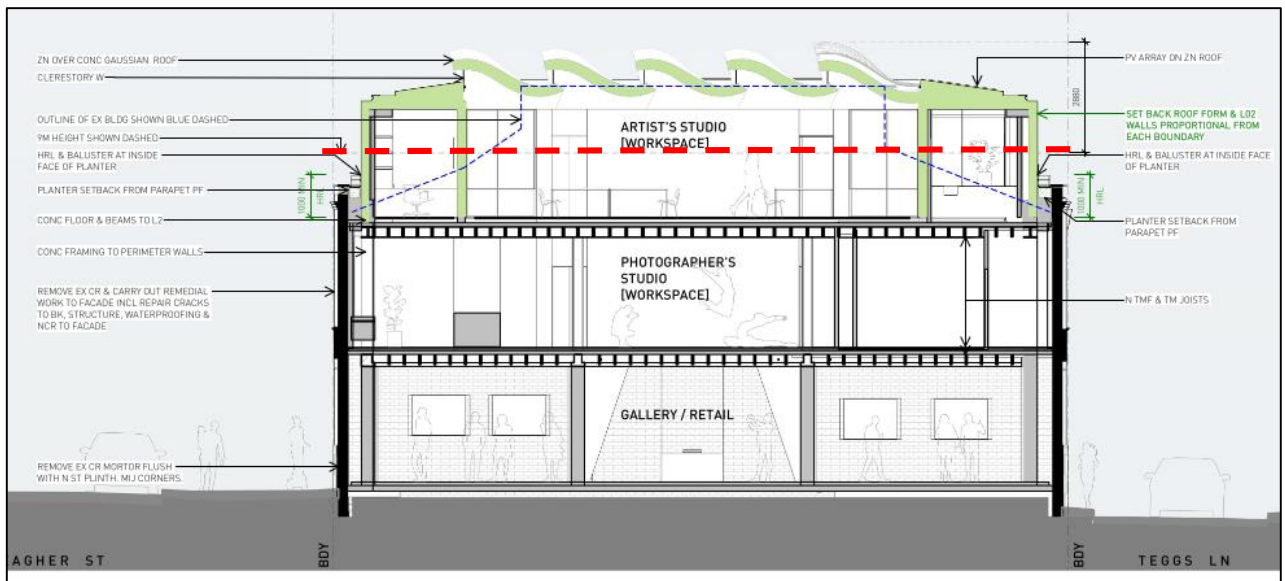


Figure 22: Section showing the 9m height control and existing roof form dashed

48. 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)

49. The applicant seeks to justify the contravention of the building height 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 variation results in a height that is appropriate for the site and its context, which will better transition heights in the locality and respond to the site's location as a corner building.
 - (ii) An appropriate transition to surrounding heritage items is achieved, notwithstanding the variation.
 - (iii) Views from key public vantage points and surrounding buildings will not be negatively impacted.
 - (iv) The proposal remains lower in height than many of the surrounding buildings and therefore does not impact height transitions between Central Sydney and Green Square.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The variation results in a better height transition and streetscape than a compliance development would.
 - (ii) The variation is of a scale that is consistent with the site's location and locality.
 - (iii) The existing building exceeds the height limit.
 - (iv) The variation promotes good design through an innovative roof design and is consistent with object (g) of the EP&A Act.
 - (v) The variation results in acceptable overshadowing impacts, with the majority of the shadows cast during mid-winter falling on the roof of 12-14 Meagher Street and the road surface or southern footpath of Meagher Street.
 - (vi) The variation responds appropriately to heritage values, not overwhelming the existing building's predominant two-storey scale or its presentation as a remnant late-Federation warehouse, as well as not impacting the height

transition to surrounding heritage items or within the conservation area itself.

- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The proposal seeks approval for gallery and commercial office uses, both of which are permissible in the B4 Zone. The proposed uses are complimentary to each other in that they are both of a creative, artistic nature, as well as being complimentary to the locality, which includes a mix of offices, co-working spaces and galleries and other creative spaces (White Rabbit, Harrington Street Gallery, Sydney Theatre School, etc.). Therefore, the proposal provides a mixture of compatible land uses and is compatible with objective (a).
 - (ii) The proposal includes office and gallery uses in a highly accessible location in the fringe areas outside Sydney's CBD. The site is located within walking distance of both Central and Redfern rail stations, as well as City Road, Cleveland Street and Broadway – all of which are major bus corridors. Meagher and Balfour Streets are both City of Sydney cycling routes (on-road) which circumnavigate the site, and on-street public bike parking is provided out the front of the site. No additional car parking beyond what is already provided in the existing building is proposed on site. The proposal is also co-located with many other creative uses that already operate in Chippendale, so it will both benefit from, and contribute to, the ease of accessibility for staff and patrons.
 - (iii) The proposed uses will support the viability of Chippendale. These uses are of an employment and creative nature, which is consistent with the existing nature of business in the Chippendale locality. Chippendale is home to many small offices, co-working facilities, art and other creative spaces. The addition of a new creative and employment development in this area will ensure the viability of Chippendale as a creative and employment hub on the fringe of the CBD. The proposal also retains the heritage components of the existing site and contributes a contemporary addition that is in keeping with the type, quality and scale of development within the area. The proposed innovative roof further contributes to the viability of Chippendale as a creative centre.
- (d) The proposed development will be consistent with the objectives of the standard
- (i) The site is at a transitional location, where the neighbourhood steps down from the taller buildings in the north and east to the lower buildings in the south and west. The proposed development includes a third storey addition, which will provide a better transition from these tall areas to the two-storey terrace housing to the south and west of the site, improving the streetscape and mediating the height differential between north and south Chippendale. The proposed development will bring the height of the existing building in line with the height of surrounding corner buildings, resulting in a slight increase in height from the remainder of the Meagher Street streetscape. Therefore, the proposal achieves objective (a) by providing a better transition in height and providing the corner location with a scale of development that is commensurate with the existing corner buildings throughout the locality.

- (ii) The proposed development results in a better transition in heights between key elements of the heritage conservation area. The proposal will add to the character and transition within the conservation area. The new roof-level addition will maintain the existing relationship between the subject site and the nearby heritage item, I163. It is noted that the heritage item – which is located to the south-east of the site, on the other side of the road intersection – is significantly taller in scale than the subject building. While the new addition will be visible, it will not alter this established relationship with the nearby heritage item.
- (iii) The top of the new roof is curved, with its highest points setback from the street edge. This minimises any potential view loss from the surrounding public domain and from any surrounding residences. The addition remains lower than many surrounding buildings and therefore it will not have any significant impacts on views. Some views from the commercial buildings to the north and east will be impacted. These views are from offices and are not considered to be of high value. The extent of these impacts is minimal due to the minimal additional height proposed. Views from residential dwellings on Level 1 and 2 located on the south-eastern corner of Balfour and Meagher Streets will not be significantly impacted, due to the distance between the building and the proposed development.
- (iv) The resulting building will be lower than many surrounding buildings, including those directly to the north, east and south-east of the site. Therefore, the proposal is in keeping with the heights in the area, and is lower than many surrounding buildings, meaning that the height transitions from Central Sydney to Green Square Town Centre will remain unchanged.

Consideration of Applicant's 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 has adequately addressed Clause 4.6(3) in that compliance with the building height development standard is unreasonable and unnecessary in the circumstances of this case, and that there are sufficient environmental planning grounds to justify contravening the standard.
- (a) The request demonstrates the objectives of the development standard are achieved notwithstanding non-compliance with the standard; and

- (b) It has been established that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

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

52. The applicant has demonstrated that there are sufficient environmental planning grounds for justifying the standard in that the proposed new third storey and roof form are sympathetic to the heritage qualities of the existing building, provides an appropriate height transition within the context of the surrounding buildings, and does not result in any unreasonable amenity impacts to neighbouring properties or adverse heritage impacts to the existing warehouse building.

Is the development in the public interest?

53. Pursuant to Clause 4.6 (4) (a) (ii), the proposed development is in the public interest because it is consistent with both the objectives of the height standard and the objectives for development within the B4 - Mixed Use zone, in that:
- (a) The objectives of the development standard (cl 4.3) are achieved notwithstanding the non-compliance as the new third storey and roof provides an appropriate height transition from the taller commercial building to the north and east, to the smaller two storey residential terraces to the south and west.
 - (b) The design of the new third storey is designed to reduce the perceived bulk and scale, through a 650mm setback from the site boundaries, incorporating soft landscaping around the perimeter of the upper level, incorporating open terraces to the four corners of the building to break up the massing of the third storey, and designing the new roof so that the highest point is setback towards the centre of the site.
 - (c) The third storey which breaches the height control is not considered to result in unreasonable visual privacy impacts, as the use of the third storey is a commercial art studio/office, and the majority of adjoining buildings are commercial. The roof terraces on the southern portion of the building are sufficiently separated (minimum 16m) from the openings of the residential terraces on the southern side of Meagher St.
 - (d) The height breach of the third storey is not considered to adversely impact on the heritage significance of the existing building, given the existing bulk of the third storey breaches the height control (10.9m), the historic character of the area which is partly typified by 'the contrast in scale between one to three storey terraces and the larger cubic forms of warehouses'; the critically poor condition of the footings and brickwork of the building for which the proposal provides a structural resolution; and the architectural merit of the proposal.
 - (e) The additional bulk of the third storey does not result in any unreasonable overshadowing impacts to the neighbouring terraces to the south as discussed elsewhere in this report.
 - (f) The proposal is in keeping with the objectives of the B4 Mixed Use Zone, as it will provide compatible commercial uses within an accessible area.
 - (g) The proposal is of an appropriate bulk and scale for the site, and is within the permitted FSR for the site.

Conclusion

54. 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 development standard and the B4 Mixed Use zone.

Height in Storeys

55. The site is subject to a 9m height control under Cl 4.3 of the Sydney LEP 2012, and a two storey height control under Section 4.2.1 of the Sydney DCP 2012. The proposal includes level 2 additions and a new vaulted roof form which have a maximum height of 12.4m and facilitate a third storey. The objective of Section 4.2.1 of the DCP is "(a) *Ensure the height in storeys and street frontage height in storeys reinforces the existing or future neighbourhood character*".
56. The site is not subject to a street frontage height control.
57. An analysis of the surrounding built form demonstrates that the site is within an established mixed-use zone, and nearby buildings generally range from two storey terraces to the south and east, to a larger three and four storey buildings to the south, east and north. This is illustrated in the below figure.

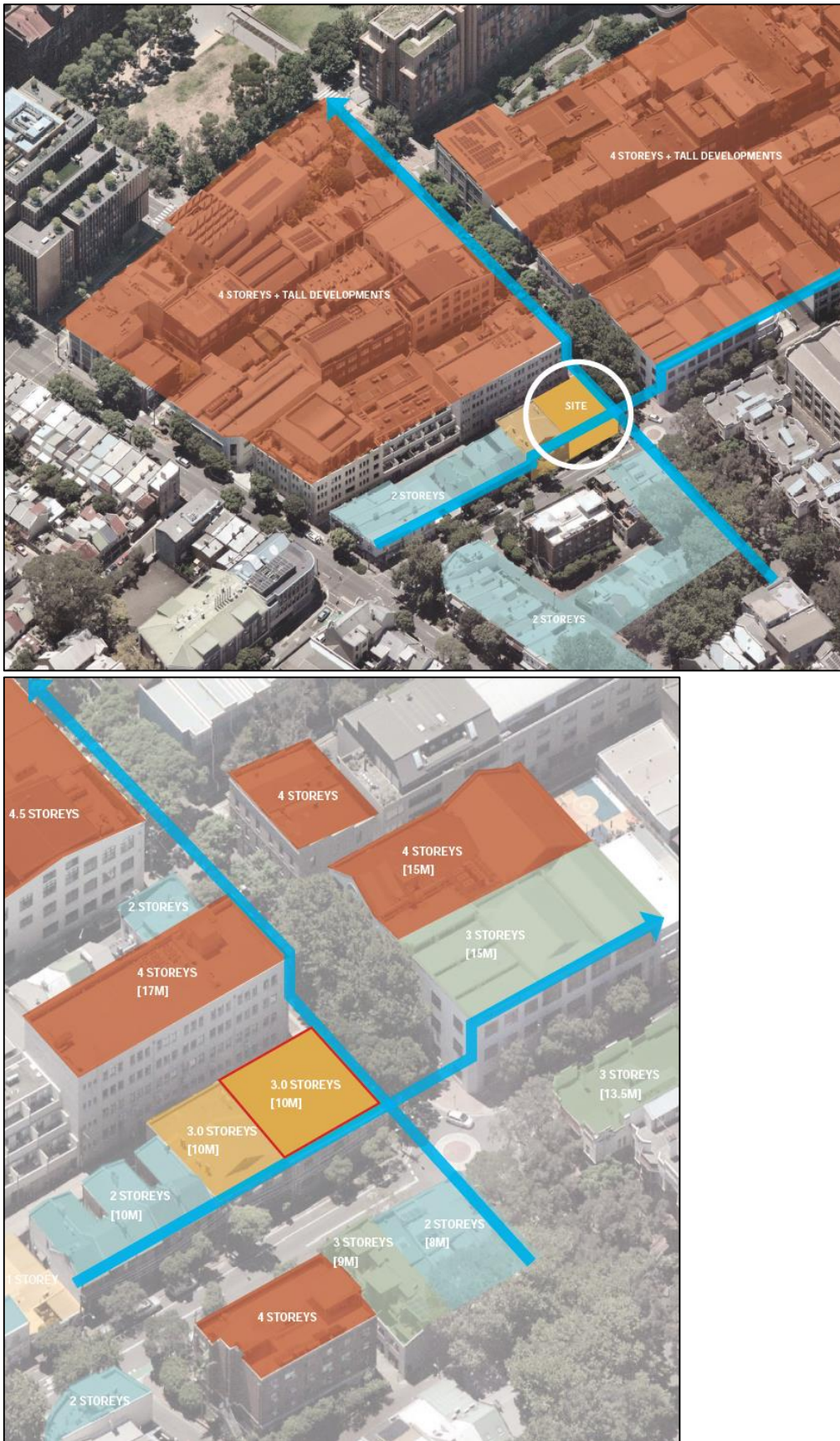


Figure 23: Context drawings indicating height of surrounding buildings

58. It is noted that the surrounding two storey buildings are generally residential terraces houses, and the majority of the surrounding commercial and mixed-use buildings range from three to four storeys in height. Of particular note is the three storey commercial office building directly to the east at 20-40 Meagher St, and the four storey educational building at 53-55 Balfour St directly to the north.
59. It is also noted that the existing building is three storeys, although the existing third storey is recessed and largely contained within the pitched roof, and has limited visibility from the public domain. The proposed additions and new roof form to level 2 will result in a third storey that is more visually prominent as demonstrated in the below perspectives.



Figure 24: Existing view from the intersection of Meagher St and Balfour St looking north-east



Figure 25: Proposed view from the intersection of Meagher St and Balfour St looking north-east

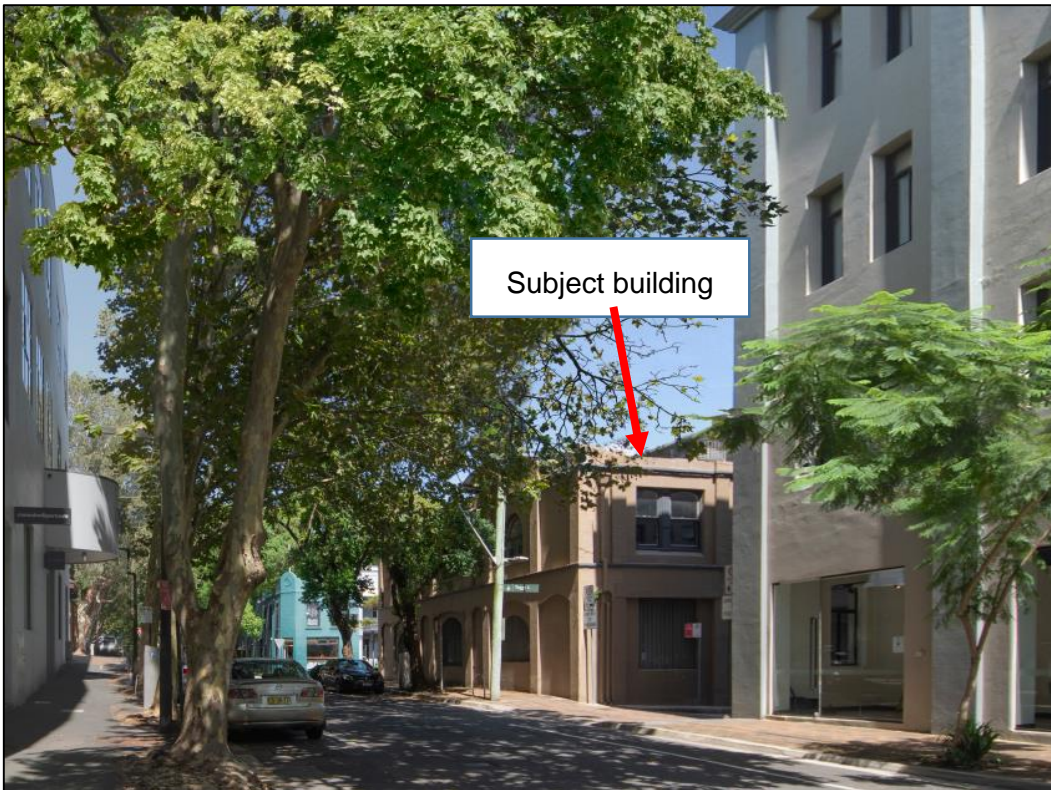


Figure 26: Existing view from Meagher St looking west



Figure 27: Proposed view from Meagher St looking west

60. Given that the proposed use of the building is for non-residential purposes, a three storey building is considered appropriate within the context of the surrounding buildings within the locality, subject to heritage and amenity considerations as discussed below.

Heritage

61. The site is identified as a contributory building under the Sydney DCP 2012, and is within the Chippendale (C9) Heritage Conservation Area. The subject site is a modest, modified example of an early-20th century warehouse building. The interiors and exteriors of the building have been altered since its initial construction, however, the original form and scale of the building remain largely legible and, as such, contribute to the prevailing character of the Chippendale Heritage Conservation Area. It is part of a pair of warehouses, the other being 12-14 Meagher Street. The pair of buildings were initially part of the larger site of 12-18 Meagher St, before being subdivided in 2006 (D/2006/387).
62. The proposal has been reviewed by Council's Senior Heritage Specialist, who also conducted a site inspection on 14 September 2022. The inspection revealed that the external brickwork facades of the building are in extremely poor condition, and that a number of the ground floor openings have been modified (more so than the openings to 12-14 Meagher St) including the central opening on the Meagher Street frontage.
63. The proposal includes lowering the sill of the existing first floor windows by approximately 200mm, and replacing the glazing with a more contemporary window style. The site inspection revealed that the brickwork below the first floor arched

windows is generally cracked vertically down from the stiles of each window such that the brickwork below each window is not continuous. The window joinery of all the arched windows has been heavily modified and could be removed and replaced by a contemporary robust solution as proposed. On the basis of the discontinuous brickwork, the lowering of window sills on the first floor level is supported by Council's Heritage team. In addition, the sills of the ground floor have also been altered progressively over time, and lowering the sills of the ground floor openings is not considered to adversely impact the heritage values and fabric of the existing building. The proposed alterations to the ground floor fenestration will assist to visually unify the facades as the current fenestration is a result of progressive alterations.

64. The internal restoration works, including the retention and conservation of the original hardwood structure of the ground floor posts, beams, bolsters and the first floor joists and floorboards; and replacement of the first floor roof framing, is supported, subject to the detailing of the proposed strengthening of the timber structure being submitted to Council for approval prior to the issue of a Construction Certificate, and a condition that the timber should be salvaged and reutilised where possible.
65. The State Heritage Inventory for the Chippendale Heritage Conservation Area states "*Part of the distinctive character of the area is the contrast in scale between one to three storey terraces and the larger cubic forms of warehouses and industrial development*". The bulk of the new third storey additions is considered appropriate within the context of the existing building, given:
 - (a) The existing bulk of the second floor level;
 - (b) The historic character of the area which is partly typified by 'the contrast in scale between one to three storey terraces and the larger cubic forms of warehouses';
 - (c) The critically poor condition of the footings and brickwork of the building for which the proposal provides a structural resolution; and
 - (d) The architectural merit of the proposal.
66. The new third floor is setback 600mm from the site boundaries, in order to reduce the visual impact of the additional bulk. Whilst a larger setback from the street frontages would assist to reduce the impact upon the heritage conservation area, an increased setback would result in vertical supports interrupting the spatial clarity of the ground floor and the first floor of the building. The proposed new internal structure adjacent to the external walls offers an important opportunity to stabilise the external brickwork facades of the building that are in extremely poor condition.
67. In addition, the applicant has submitted sketch designs illustrating how 12-14 Meagher St could have an additional storey that is compatible with any development on the subject site, as shown below:



Figure 28: Concept sketch showing an additional storey at 12-14 Meagher St

68. The above figure demonstrates that the adjoining property at 12-14 Meagher St could be developed in the future to support a similar third storey addition, in order to maintain the symmetry of the pair of buildings.

Amenity Impacts

Solar access:

69. Section 4.2.3.1 of the DCP requires that "(2) neighbouring developments must achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and a minimum 50% of the required minimum area of private open space area" and "(3) New development must not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June".
70. The submitted shadow diagrams and view from the sun diagrams indicate that the additional bulk from the third storey additions will create additional overshadowing to the ground floor north facing windows of the residential properties along the southern side of Meagher St at 11-13 Meagher St, from 9am to 10:15am, mid-winter. As demonstrated in the below view from the sun diagrams, the ground floor windows of No.11 will be overshadowed from 9am to 10:15am mid-winter, while the ground floor windows of No.11A will be partially overshadowed from 9am to 9:45am mid-winter, and there will be very minor overshadowing to the ground floor windows of No.13 from 9:30am to 9:45am mid-winter.

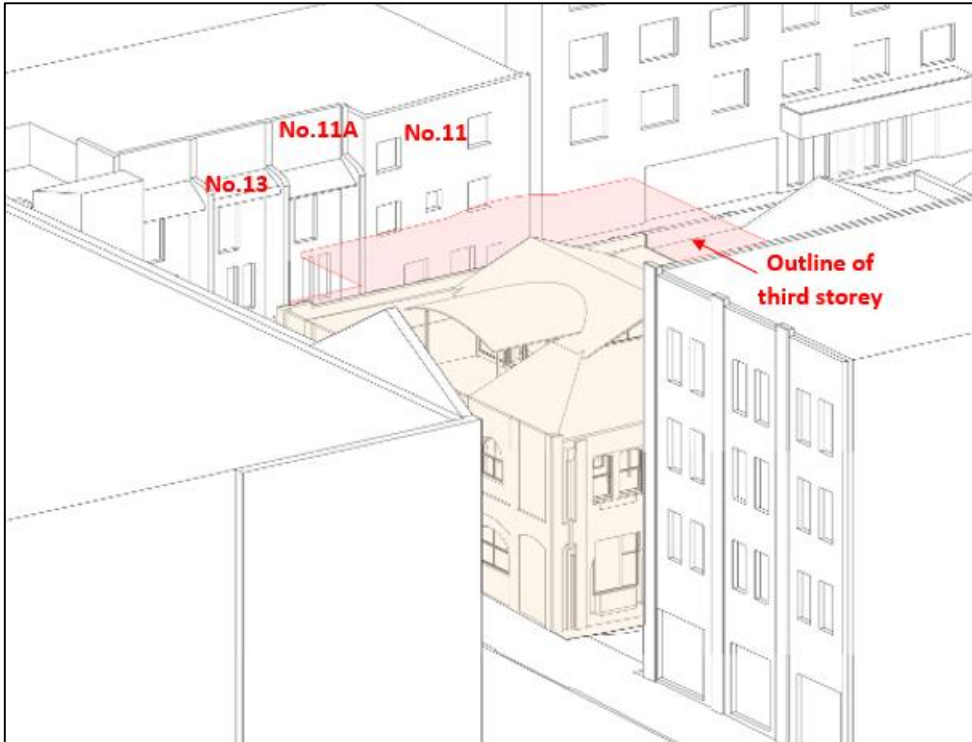


Figure 29: View from the sun at 9am mid-winter

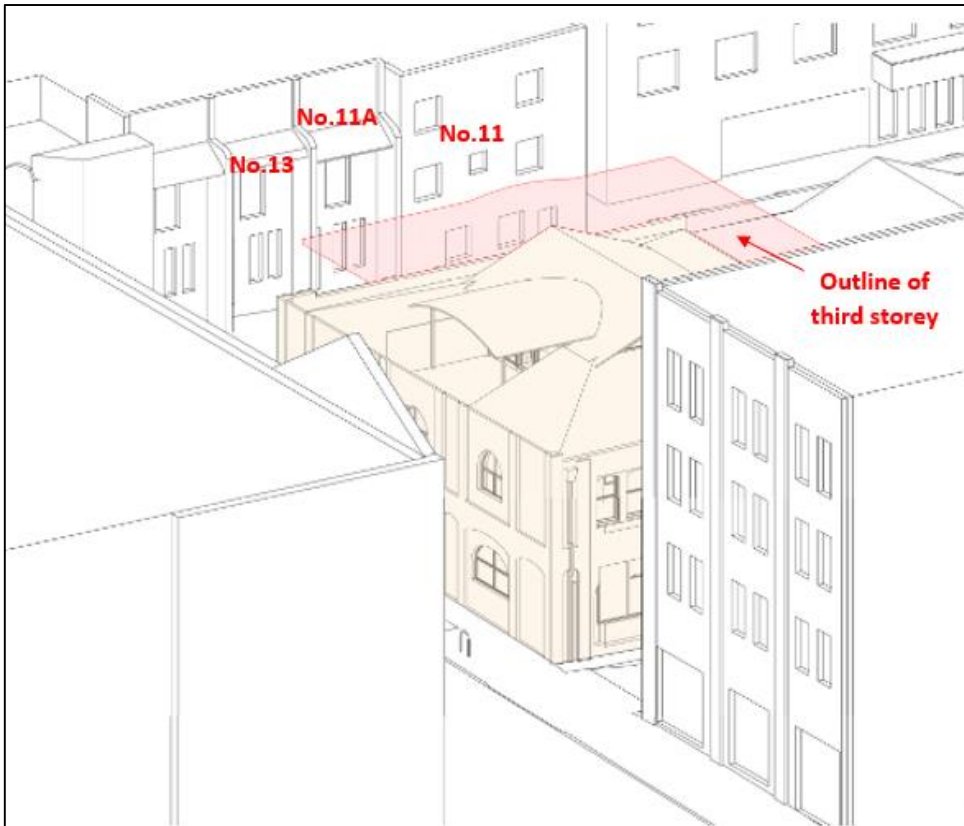


Figure 30: View from the sun at 9:15am mid-winter

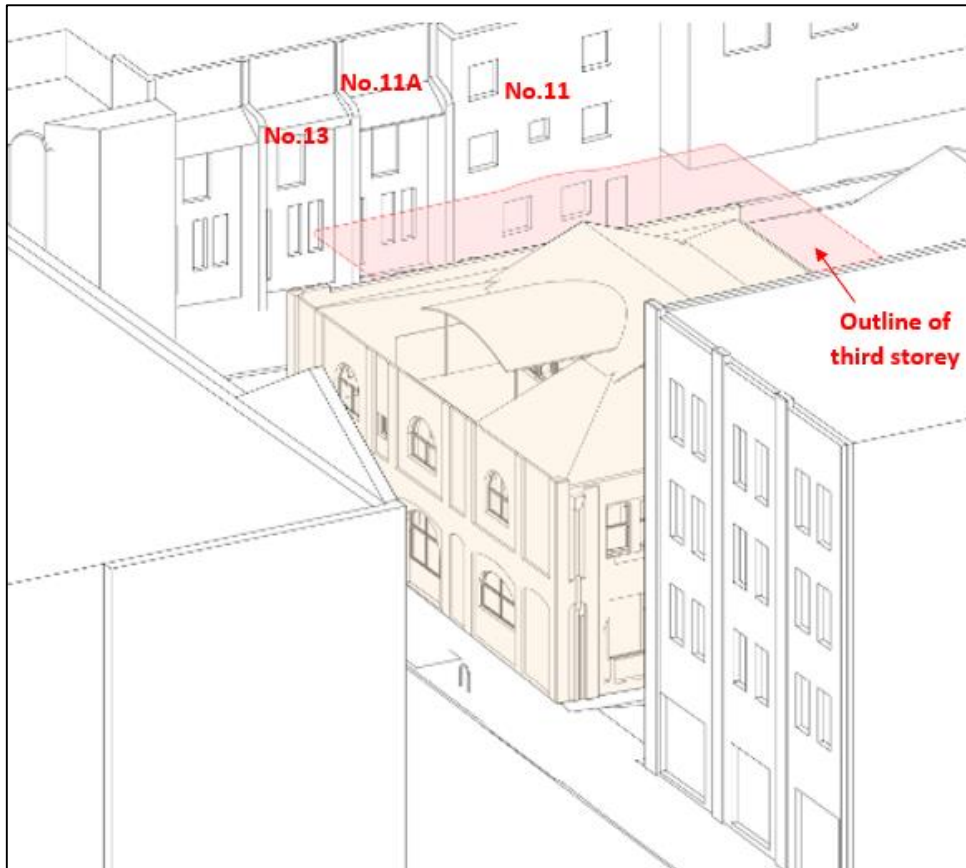


Figure 31: View from the sun at 9:30am mid-winter

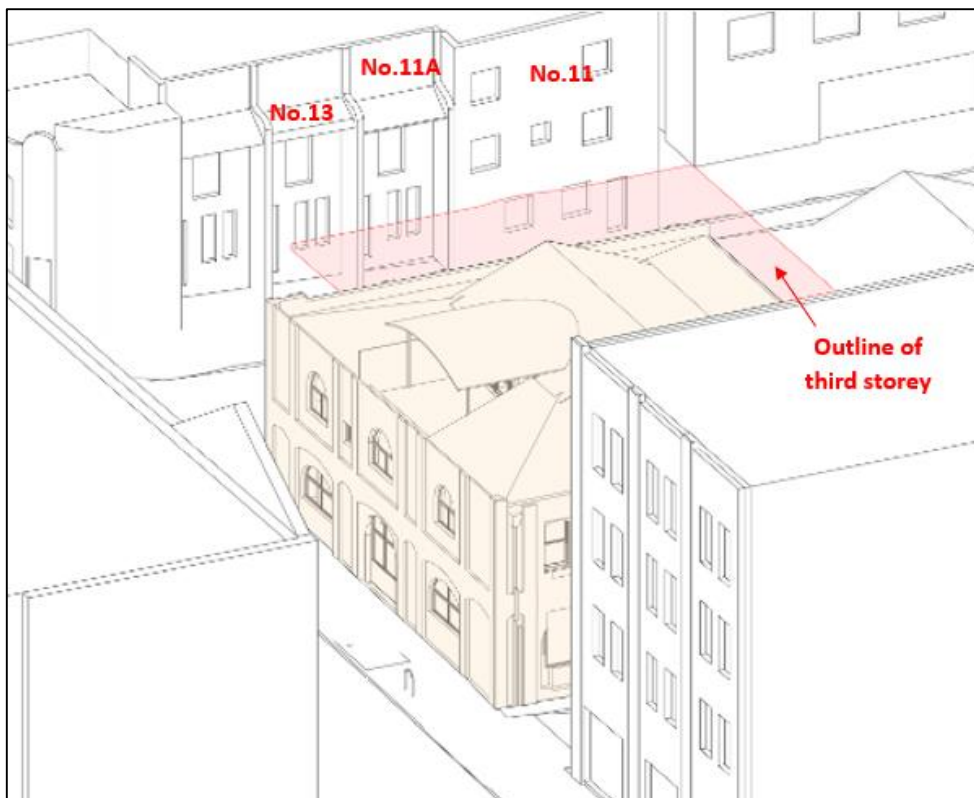


Figure 32: View from the sun at 9:45am mid-winter

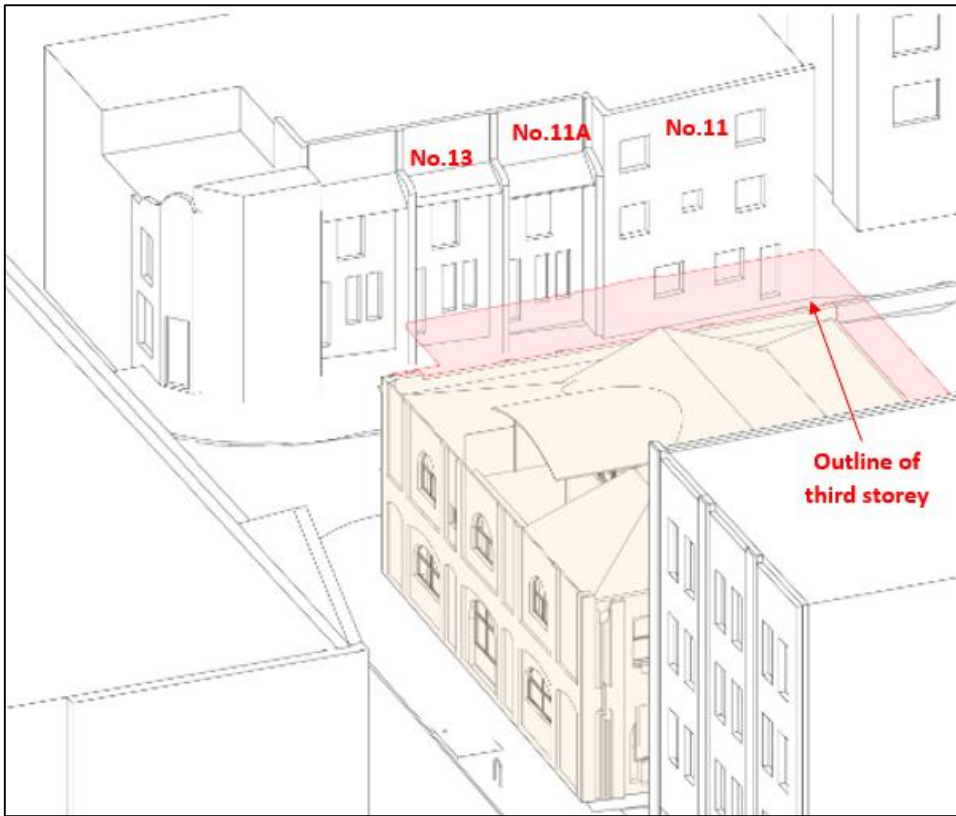


Figure 33: View from the sun at 10am mid-winter

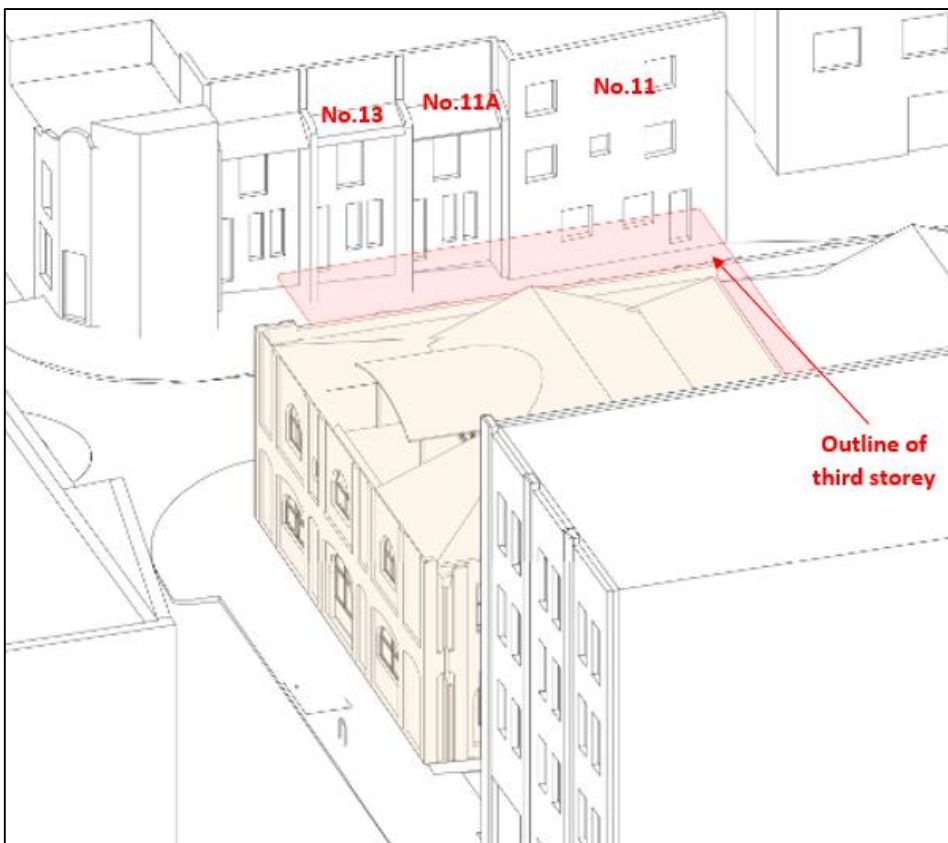


Figure 34: View from the sun at 10:15am mid-winter

71. The submitted view from the sun diagrams demonstrate that although the proposal overshadows the ground floor windows of No.11, 11A and 13 in the morning during mid-winter, these properties maintain solar access to the windows of habitable rooms for at least 2hrs, from 10:30am to 1pm mid-winter, in accordance with the controls.
72. The proposal therefore does not result in any unreasonable overshadowing impacts to neighbouring residential properties.

Visual privacy/overlooking:

73. The proposal includes a third storey addition which feature outdoor terraces along the southern frontage as well as lowering the sills of the first floor windows, which may result in visual privacy and overlooking impacts to the residential terraces directly to the south at 11-13A Meagher St. It is noted that the eastern and northern frontages of the building both face commercial buildings.
74. The existing third storey includes a south facing window within the pitched roof, setback approximately 3m from the southern boundary, and an east facing terrace, setback approximately 6.5m from the southern boundary. The reduced setback of level 2 and the new level two terraces will intensify potential overlooking impacts.
75. The proposed art studio use of the first and second floor is not considered to be a significant intensification from the previously approved office use. The lowering of the first floor window sill heights by between 460mm to 550mm, is not considered to result in any unreasonable additional overlooking impacts to the southern terraces given that they are located on the opposite side of Meagher St, with an approximate 16m separation distance as demonstrated in the below figure.

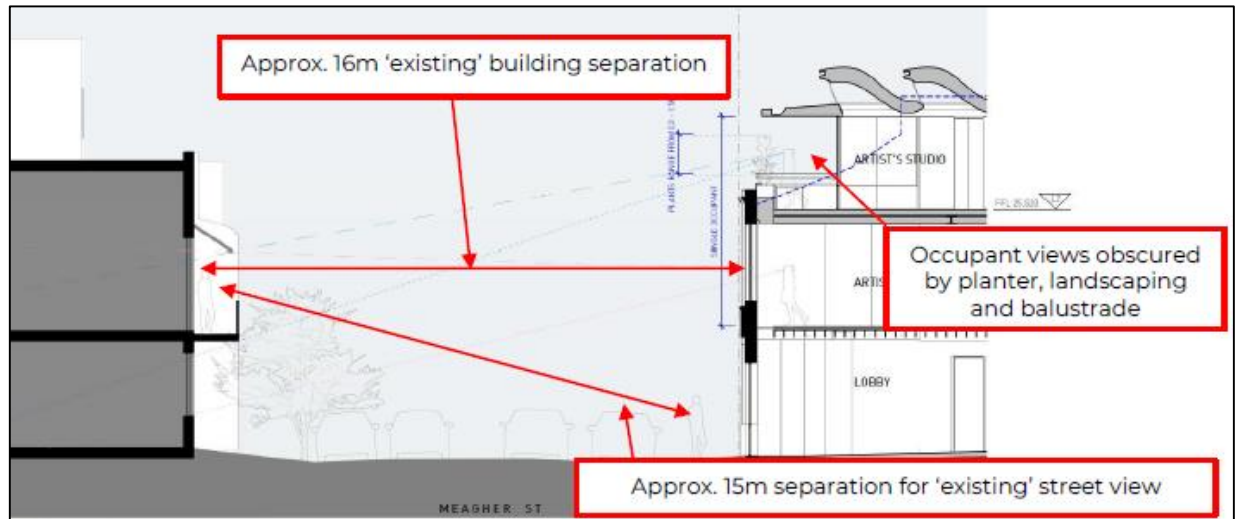


Figure 35: Separation distances from the subject building to the southern side of Meagher St

76. An approximate 16m separation distance is also achieved to the commercial buildings on the eastern side of Balfour St, and an approximate 8m separation distance to the educational establishment on the opposite side of Teggs Lane. Given that the nearest buildings to the east (20-40 Meagher St), and to the north (53-55 Balfour St) are established non-residential buildings, being approved office uses to the east, and educational uses to the north, the overlooking impacts are considered acceptable.

77. In addition, the redesign of the first floor windows and lowering of the sill height will allow greater natural light and ventilation to the first floor and result in improved amenity for future employees and visitors, as demonstrated in the below figure:

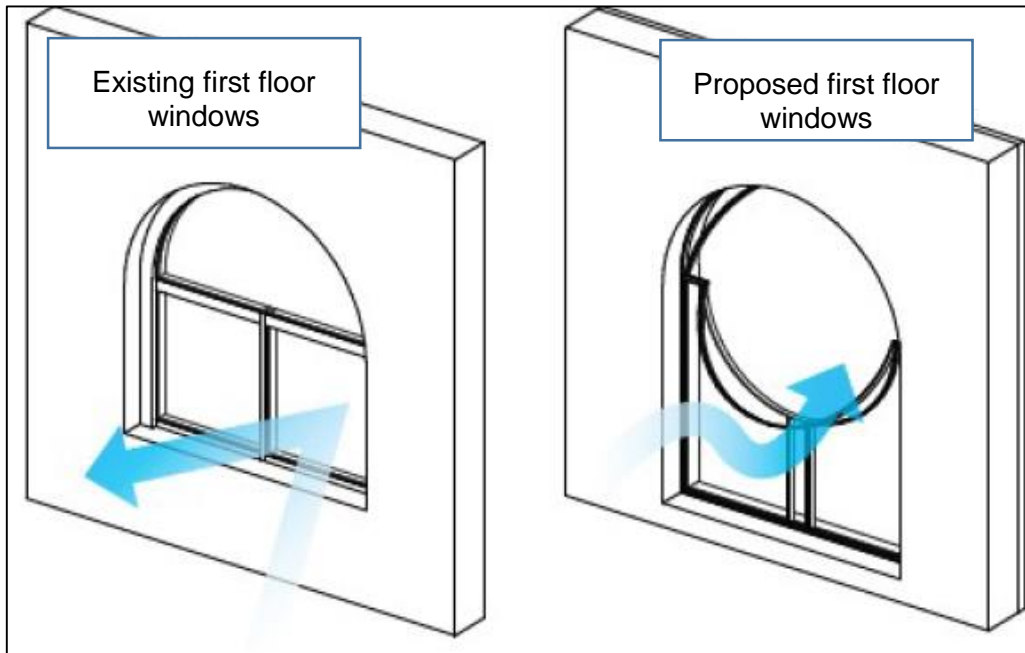


Figure 36: Comparison in design of existing and proposed first floor windows

78. A minimum 16m separation distance is also provided to the third storey roof terraces and opening along the southern facade. The parapet is approximately 750mm high, with the planters around the perimeter of Level 2 providing additional screening and separation. The upper level art studio is not publicly accessed, and the roof terraces (18 sqm each) are not anticipated to be occupied by a high volume of persons or used for events. The use of level 2 and the terraces is not considered to result in any unreasonable overlooking impacts to the neighbouring residential properties.
79. It is noted that although the proposal has not been assessed against the Residential Apartment Guidelines, the 16m separation distance to the openings of habitable rooms of neighbouring properties is compliant with the ADG required separation distances for a three storey development. No additional privacy treatment is considered necessary.

View loss/ outlook:

80. The Sydney Local Environmental Plan 2012 and Development Control Plan 2012 make no provision for the protection of private views. The planning principles established by the Land and Environment Court decision of Tenacity Consulting v Waringah [2004] NSWLEC 140 (Tenacity) relate to assessments of view loss.
81. As detailed below, in a submission received in response to the public exhibition of the proposal, concerns were raised with regard to loss of view and outlook from the neighbouring residential property at No.11A Meagher St, which is the neighbouring property to the south of the subject site on the opposite side of Meagher St.
82. The proposal involves the demolition of the existing third storey and construction of a new third storey with a vaulted roof, which is of an increased bulk and scale than the existing third storey which is largely contained within the exiting pitched roof form.



Figure 37: View from the second floor northern bedroom of No.11A Meagher St, with approximate outline of the level 2 additions

83. The proposal's impacts upon the views from the residential property noted above is assessed according to the four-step process established in Tenacity as follows:
- 1) What are the views to be affected?
84. As shown in the above figure, views to the north from the ground and first floor of 11A Meagher St can be described as views of top of buildings, trees and open sky without icons. According to Tenacity, this is an outlook rather than a view and is not rated as having a high value as it does not include icons or interface between land and water.
- 2) From what part of the property are the views obtained?
85. Existing outlook from 11A Meagher St is from the ground floor living room and first floor bedroom.
- 3) What is the extent of the impact?
86. The above figure demonstrates the indicative impact of the level 2 additions. Tenacity states "*the impact of views from living areas is more significant than from bedrooms or service areas.*"
87. The extent of the impact is considered to be minor. As shown in the above figure, the level 2 additions will obstruct the existing outlook of buildings and towers which are already partially obstructed by the building directly north of the subject site at 53-55 Balfour St. There are still views of the sky possible and a general district outlook of neighbouring buildings is retained. It is also noted that outlook from the first floor bedroom is of a lesser value under Tenacity.
- 4) What is the reasonableness of the proposal causing the impact?
88. While the proposal is compliant with the maximum floor space ratio control, it is acknowledged that the level 2 additions are over the 9m height control. While the proposal has a minor impact on views that are a result of a non-compliance with the 9m height control, the impact of the subject development is considered acceptable

given that the view is mainly from an upper level bedroom which is of lesser significance, and the view of distant towers and buildings is already partially obstructed by the existing neighbouring built form. The outlook of neighbouring buildings, vegetation and the sky will still be retained in a varied form.

Consultation

Internal Referrals

89. The application was discussed with Council's:
- (a) Environmental Health Unit;
 - (b) Heritage and Urban Design Unit;
 - (c) Public Domain Unit;
 - (d) Transport and Access Unit;
 - (e) Landscaping
 - (f) Tree Management Unit; and
 - (g) Waste Management Unit.
90. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Ausgrid

91. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
92. A response was received raising no objections to the proposed development, and recommending standard safework conditions regarding underground and overhead power cables.

Advertising and Notification

93. In accordance with the City of Sydney Community Participation Plan 2022, the proposed development was notified for a period of 28 days between 8 April 2022 and 6 May 2022. A total of 278 properties were notified and three submissions were received.
94. The amended plans submitted on 1 September 2022 were not re-notified, as the amendments to the design were relatively minor changes requested by Council, and did not result in any additional environmental impacts.
95. The submissions raised the following issues:

- **Issue:** Why was the exhibition period only 14 days, when the proposal is seeking a substantive variation in terms of height, and the proposal is also over \$10 million in terms of works?

Response: The application was re-notified for a period of 28 days in accordance with Council's Community Participation Plan 2020.

- **Issue:** As part of the review for the 2012 LEP, the height limit of the site was reduced to 9 metres to ensure any future development would be retained within its primarily existing two storey massing, ideally without the addition that is on top but setback. This followed advice from heritage experts and the like about the importance of retaining the existing cubic form, and the significance any variation would have, particularly given the very small street grid, and the role the existing cubic form plays in terms of Chippendale's uniqueness in terms of its Heritage Conservation Area.

Moreover, the site specific considerations were later reinforced by another Land and Environment Court decision where the proponent's argument for a 'transitional' step down in terms of height between Central Park and the Heritage Conservation Area, specifically on the east side of Chippendale was rejected, i.e. 58-64 Abercrombie Street, where the evidence presented by the community to the Commissioner was considered crucial.

Furthermore, the argument that this part of Chippendale is largely 4 storeys or taller as indicated in the EIS, and previously presented by consultants, was rejected by the Court. Moreover, the two nearby buildings i.e. the former 'City Gold' building as it is historically known that sits opposite has long been considered an anomaly as has the adjacent five storey building at 53 Balfour Street.

While many of the features proposed by Smart Studio have architectural merit, it was essential that the heritage form and scale for the whole of the building, i.e. 12 – 18 is retained, despite the subdivision. It was also important that the height and scale not detract from Strickland Building which is diagonally opposite and on the National Heritage Register.

Response: Whilst the history of the site is acknowledged, the proposal has been assessed on its own merits, and the breach to the 9m height control and the submitted CI 4.6 written variation is supported as detailed within this report, taking into account the historical and heritage context of the subject building.

- **Issue:** There is concern about the proposed operating hours. While the hours reflect changes to the controls in the last year, given this part of Meagher Street is essentially residential homes, without the benefit of setbacks from the street, and between buildings, where any noise reverberation is considerable, particularly as is the case afterhours, where there is little if any background noise. Hence the proposed operating hours are not appropriate. Instead, the hours should be limited to a number of days per month, or alternatively close earlier.

Response: As discussed elsewhere in this report, the proposed 7am to 10pm operating hours are within the permitted base operating hours under the DCP, for a Category C premises. The site is within a B4 Mixed Use zone, and the proposed operating hours are considered appropriate given the type of use proposed, and are not considered to result in any unreasonable amenity impacts to nearby residential properties.

- **Issue:** Potential overlooking impacts to the terraces to the south from the upper level windows and terraces on the southern elevation.

Response: As discussed elsewhere in this report, there is a minimum separation distance of 16m from the subject building to the residential terraces to the south on the opposite side of Meagher St. The separation distance is considered adequate to mitigate potential overlooking impacts. The intensification of overlooking impacts from the additions to level 2, and lowering the sill heights of the existing level 1 windows are not considered unreasonable given the separation distances.

- **Issue:** The sheer volume of the additional third storey with little to no relief from the setback creates very unpleasant impacts on local residences. The upper level should be further setback from the southern boundary similar to 1-7 Wellington St.

Response: 1-7 Wellington St is located approximately 100m to the north-east of the subject site, and has a different context and built form controls to the subject site, and is not considered relevant to the subject application. The subject application has been assessed on its own merits within the context of the subject site.

The amended scheme incorporates a 650mm setback to the level 2 additions, as well as soft landscaping around the perimeter. As discussed elsewhere in this report, the proposal is not considered to result in unreasonable amenity impacts to neighbouring properties.

- **Issue:** The reasoning for the acceptability of the proposal breaching the 9m height control in the submitted cl 4.6 written variation, based on the existing building breaching the control, the proposal providing an appropriate height transition, and innovative roof design, are not valid arguments to support the additional height breach.

Response: The submitted cl 4.6 written variation to the LEP 9m height control has been assessed against the relevant provisions of cl 4.6 of the SLEP 2012, as detailed in the discussion section of this report.

- **Issue:** New third storey addition adds around 40-50% extra cubic space comparing existing building cubic space.

Response: The proposal complies with the maximum floor space ratio control under cl 4.4 of the LEP. The bulk and scale of the level 2 additions are considered acceptable within the context of the subject site, given that the design of the additional storey integrates with the existing building, the resulting 3 storey building is well-proportioned, the building is of a scale consistent with many buildings in the immediate context and the height on 16-18 Meagher Street assists in defining the intersection and balancing the height around the space formed at the intersection of Meagher Street and Balfour Street. The increase in the height has been justified by a Clause 4.6 written variation and the building is surrounded by significantly higher 4 storey buildings to the north and east.

- **Issue:** The level 2 art studio and terraces could potentially be used for functions, or converted into a dwelling.

Response: The proposed use of the upper levels is a commercial art studio, which is defined as a type of "creative industry" under the LEP and is permissible within the B4 Mixed Use zone. Consent is not granted or implied for the use of the upper levels for residential purposes. The submitted Plan of Management states that the level 2 terraces will not be available to the public or used to host events. A condition of consent is recommended for the use of the level 2 terraces to be restricted after 8pm.

- **Issue:** The proposed contemporary additions to level 2 are not suitable within the context of the heritage conservation area.

Response: As detailed in the "Discussion" section of this report, the proposal is supported by Council's Senior Heritage Officer. The contemporary level 2 additions are supported from a heritage perspective, given the existing bulk of the second floor, the historic character of the area which is partly typified by 'the contrast in scale between one to three storey terraces and the larger cubic forms of warehouses', and the architectural merit of the proposal.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

96. The development is subject to the provisions of the City of Sydney Development Contributions Plan 2015, as it involves the change of use from commercial offices to art gallery and art studio.
97. Under the SLEP 2012, art gallery is a form of "information and educational facility", and art studio is a form of "creative industry", which is a type of "light industry". Under the City of Sydney Development Contributions Plan 2015, the population rates for "business premises" are considered more appropriate for the art gallery use than the rates for "educational establishment". The rates for "light industry" are considered appropriate for the art studio use.
98. Credits have been applied for the most recent approved use of the site as a commercial office.
99. As the proposed business premises and creative industry uses are considered less intense and generate fewer workers than the existing office use, Section 7.11 contributions are not applicable.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

100. The site is located within the residual lands affordable housing contribution area. As the proposed development does not include alterations to an existing building that will result in the creation of more than 60 square metres of gross floor area that is intended to be used for a purpose other than residential accommodation and does not involve a change of use of existing floor area from other than residential accommodation to residential accommodation or tourist and visitor accommodation, a contribution is not required.

Relevant Legislation

101. Environmental Planning and Assessment Act 1979.

Conclusion

102. The application seeks approval for alterations and additions and an existing commercial building, and change of use of the ground floor to an art gallery, and first and second floors to an art studio.
103. The applicant has submitted a written request pursuant to Clause 4.6 of the Sydney LEP 2012 which relates to the building height development standard (Clause 4.3 of the Sydney LEP 2012). The request to vary the development standard is supported.
104. Additional information and amendments submitted during the assessment of the application to address a number of matters identified by Council staff. The amended scheme has provided a 650mm setback from all site boundaries to level 2, and increased the sill heights of the ground floor windows.
105. The amended scheme has satisfactorily demonstrated that the proposal will not have any unreasonable adverse impact in terms of overshadowing or visual privacy, and is of an appropriate bulk and scale within the context of the existing building and streetscape.
106. The proposed development is considered to exhibit design excellence in accordance with the provisions of Clause 6.21C of the Sydney LEP 2012.
107. Subject to conditions, the development is in the public interest and recommended for approval.

ANDREW THOMAS

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