

Item 5.**Development Application: 2-4 Raper Street, Surry Hills - D/2024/214**

File No.: D/2024/214

Summary

| | |
|-----------------------------|--|
| Date of Submission: | 3 April 2024 |
| Applicant: | Mr Matt Lippiatt (Art Gallery of NSW) |
| Architect/Designer: | Tonkin Zulaikha Greer |
| Owner: | Art Gallery of New South Wales Trust |
| Planning Consultant: | Architectus |
| Heritage Consultant: | TZG Heritage |
| Cost of Works: | \$2,342,379.85 |
| Zoning: | SP2 Infrastructure (Community Facility) Zone. The development is permitted with consent in the zone. |
| Proposal Summary: | <p>The proposal seeks consent for alterations and additions to the existing Brett Whiteley Art Studio including:</p> <ul style="list-style-type: none">• minor excavation to enable construction of a new lift between ground and level 1;• construction of a new roof with a plant room to be concealed within the new form;• facade conservation works;• minor internal demolition works; and• reconfiguration of the ground floor and level 1 to enable accessibility upgrades. |

Notification

The application was notified for a period of 28 days between 16 April 2024 and 15 May 2024. A total of 165 properties were notified and 6 submissions were received. Issues raised in the submissions include:

- Bulk & Scale
- Overshadowing & Solar Access
- Acoustic Impacts
- Privacy
- Sustainability
- Heritage

The application has been amended to address the following issues raised by Council during the assessment:

- Privacy Concerns
- Acoustic Impacts
- Overshadowing & Solar Access
- Privacy
- Drainage Issues

In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2023, the amended architectural plans were not required to be re-notified, as the amendments would not result in significant additional environmental impacts.

Overall, the amendments address Council Officer's concerns, and the development will not result in adverse environmental impacts to the site or neighbouring properties. The proposal will enable critical restoration works and ensure Disability Discrimination Act (DDA) compliance to safeguard the ongoing use of the building as a public art gallery.

Reason for referral to LPP

The application has been referred to the Local Planning Panel for determination as it seeks consent for a 15.6% variation to the height of building control.

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

Development Controls:

- (i) Sydney Local Environment Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Resilience and Hazards) 2021

Attachments:

- (A) Recommended Conditions of Consent
- (B) Selected Drawings
- (C) Clause 4.6 Variation Request - Height of Buildings
- (D) Solar Access and Overshadowing Diagrams
- (E) Submissions

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 Number D/2024/214 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 generally complies with the relevant controls of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
- (B) The proposal will enable critical restoration works and ensure Disability Discrimination Act (DDA) compliance to safeguard the ongoing use of the building as a Community Facility.
- (C) The proposed development uses high quality materials, achieves the principles of ecologically sustainable development, and has an acceptable environmental impact. As such, the proposal is considered to exhibit design excellence.
- (D) Based upon the material available to the Panel at the time of determining this application, the Panel can be satisfied that:
 - (i) the applicant has demonstrated those matters at 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; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the SP2 Infrastructure Zone and Height of Buildings development standard.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 11 in DP 63 and Lot 12 in DP 63 and is known as 2-4 Raper Street, Surry Hills. It is irregular in shape with an area of approximately 349sqm. The site has three frontages, with the primary frontage measuring 17m to Raper Street. The secondary frontages to Davies Lane and Austin Lane measure 22m and 14m respectively. Levels on the site fall slightly from west to east.
2. The site is located at the intersection of Raper Street, Davies Lane and Austin Lane.
3. The site contains a two-storey former warehouse building. The existing building is built to its boundaries and adjoins a two-storey residential terrace to the south.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential. The surrounding properties are mostly two storey residential Victorian terraces. The site is bound by streets and footpaths to the immediate north, east and west. To the south, the site adjoins a two-storey residential terrace.
5. The site is not a heritage item and is identified as a neutral building within the C60 Bourke Street South Heritage Conservation Area.
6. The site is located within the Surry Hills Central locality and is not identified as being subject to flooding.
7. A site visit was carried out on 9 May 2024.
8. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from the corner of Raper Street and Davies Lane



Figure 3: View of subject site to the north on Davies Lane



Figure 4: Existing northern elevation - windows and signage



Figure 5: View of the subject site from Austin Lane



Figure 6: View of rear garages on Austin Lane



Figure 7: View of neighbouring terraces to the south (6 and 8 Raper Street)



Figure 8: View of residential dwelling further south (1 Esther Street)



Figure 9: View of residential terraces opposite the site to the west on Raper Street

History Relevant to the Development Application

Development Applications

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

- **D/1994/987** – Development consent was granted on 21 December 1994 to use the premises as an Art Gallery.
- **D/2004/1408** – Development consent was granted on 10 March 2005 to use the existing art museum as Place of Public Entertainment and change the hours of use to 10.00am to 9.00pm Thursday, 10.00am to 4.00pm Friday to Sunday and up to 10 occasional events to 9.00pm per year.
 - **D/2004/1408/A** – A modification application was granted consent on 21 May 2009 to extend the Public Entertainment (POPE) license for the premises.
 - **D/2004/1408/B** – A modification application was granted consent on 5 June 2012 to increase the number of days that the gallery is open from 4 days to 5 days.
 - **D/2004/1408/C** – A modification application was granted consent on 7 July 2014 to amend the approved development description to include the number of additional and occasional events from 10 to 12 per annum.

Amendments

10. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 28 May 2024.

11. The applicant responded to the request on 5 June 2024 and submitted the following information:
- (a) **Council Request:** overshadowing diagrams in plan at hourly intervals between 9am and 3pm on June 21 to enable a complete and thorough assessment of the overshadowing impacts of the proposal.
- Response:** The applicant provided additional overshadowing plans at hourly intervals between 9am and 3pm on June 21 to assist with Council's assessment. Refer to 'Solar Access & Overshadowing' subheading in the 'Discussion' section below for further details.
- (b) **Council Request:** An amended Acoustic Report to include further assessment of the proposed acoustic impacts of the proposed mechanical plant.
- Response:** An updated Acoustic Report was submitted and reviewed by Council's Health and Building team who advised that subject to conditions the proposal is considered acceptable
- (c) **Council Request:** Amendments to the Construction Waste Management Plan and Architectural Plans to include waste collection requirements and indicate the location of the required designated waste storage area/s.
- Response:** The scheme has been amended to provide sufficient space for waste storage and collection.

Proposed Development

12. The application seeks consent for upgrade works to the Brett Whiteley Studio to address age-related deterioration of building elements, and the need for accessibility and usability upgrades. In particular, the application proposes the following:
- Minor excavation within the existing building footprint to enable the construction of a lift to service ground level and the first floor.
 - External alterations including the replacement of the existing roof and minor facade conservation works.
 - Construction of a new plant room to be concealed within a new curved roof form.
 - Minor demolition and reconfiguration of both levels to enable accessibility upgrades to comply with DDA requirements.
- The proposal does not seek to alter any operational arrangements of the premises.
13. Plans and elevations of the proposed development are provided below.

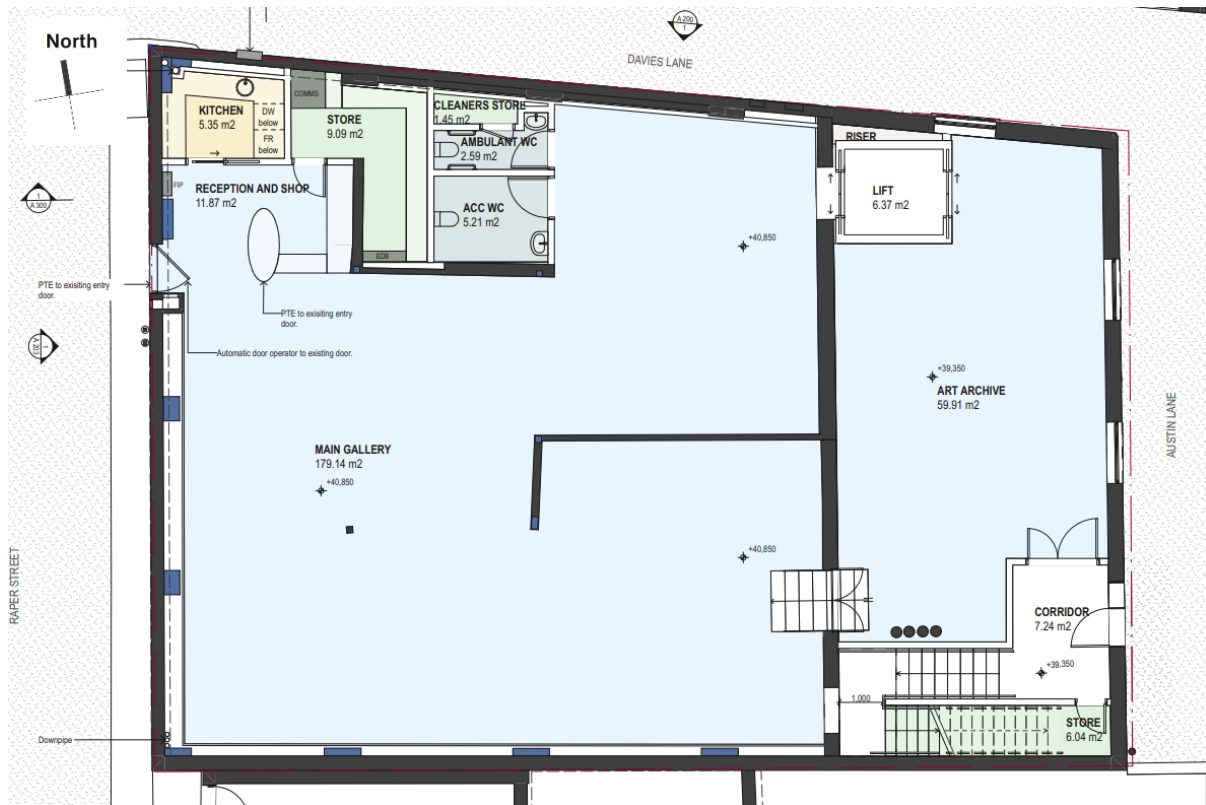


Figure 10: Proposed Ground Floor Plan



Figure 11: Proposed First Floor Plan

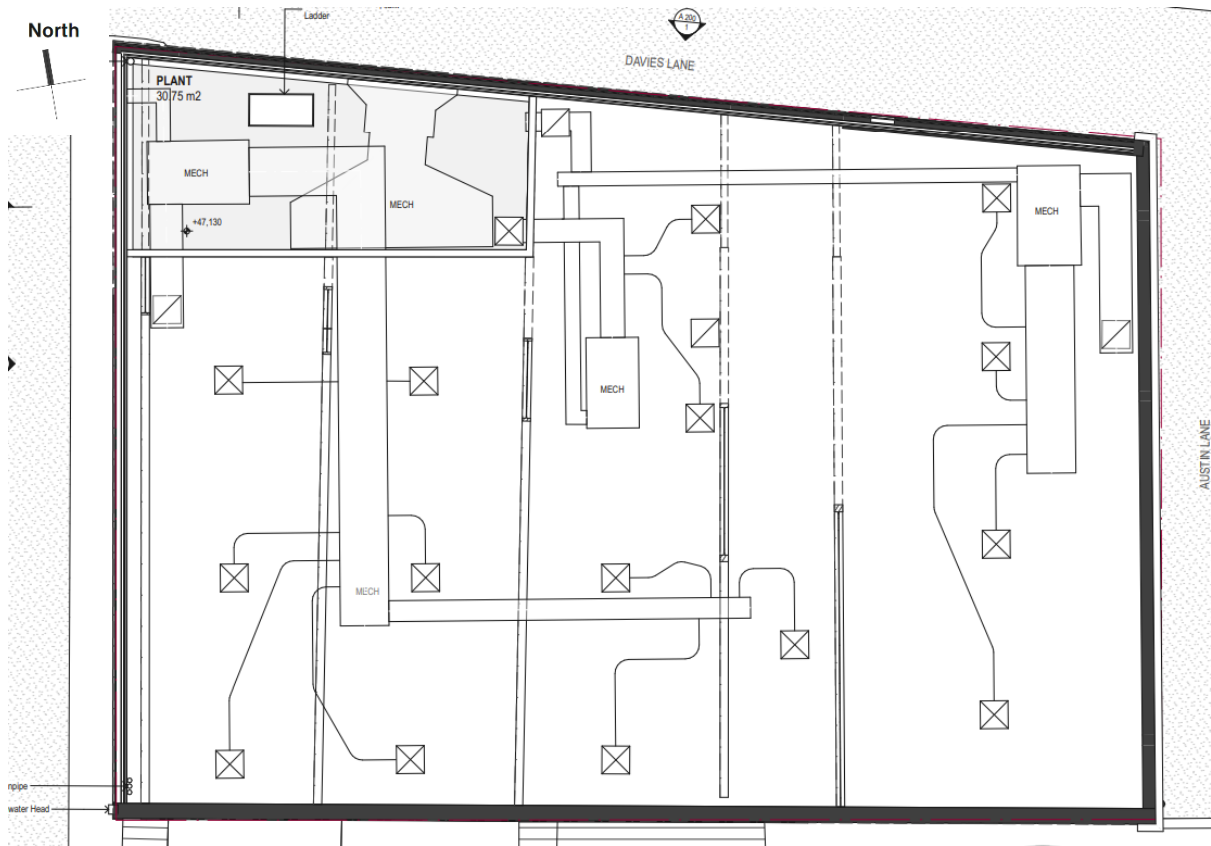


Figure 12: Proposed Plant Plan

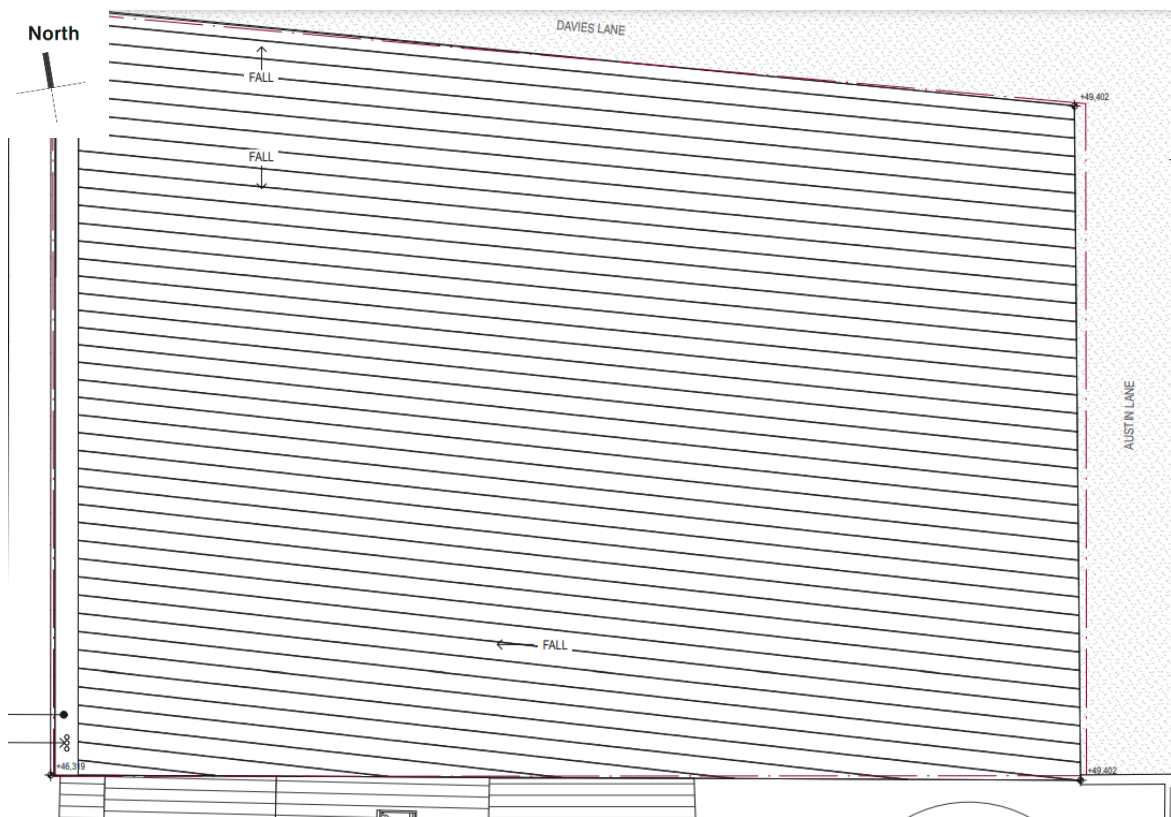


Figure 13: Proposed Roof Plan



Figure 14: Proposed North (Davies St) Elevation



Figure 15: Proposed East (Austin Lane) Elevation

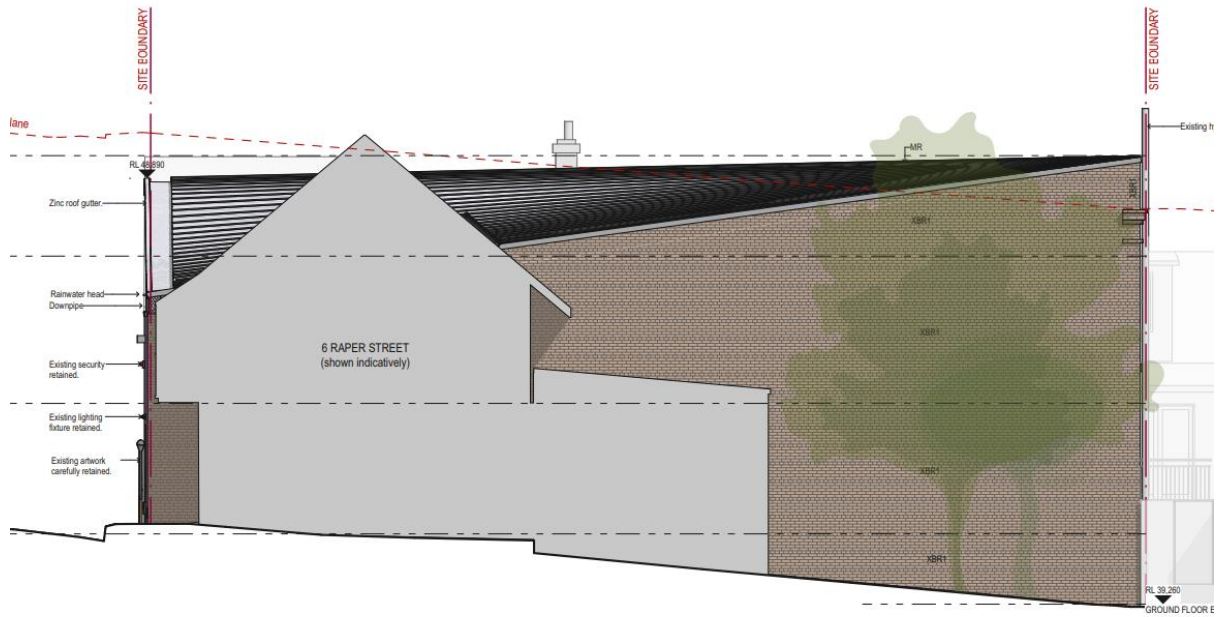


Figure 16: Proposed South Elevation

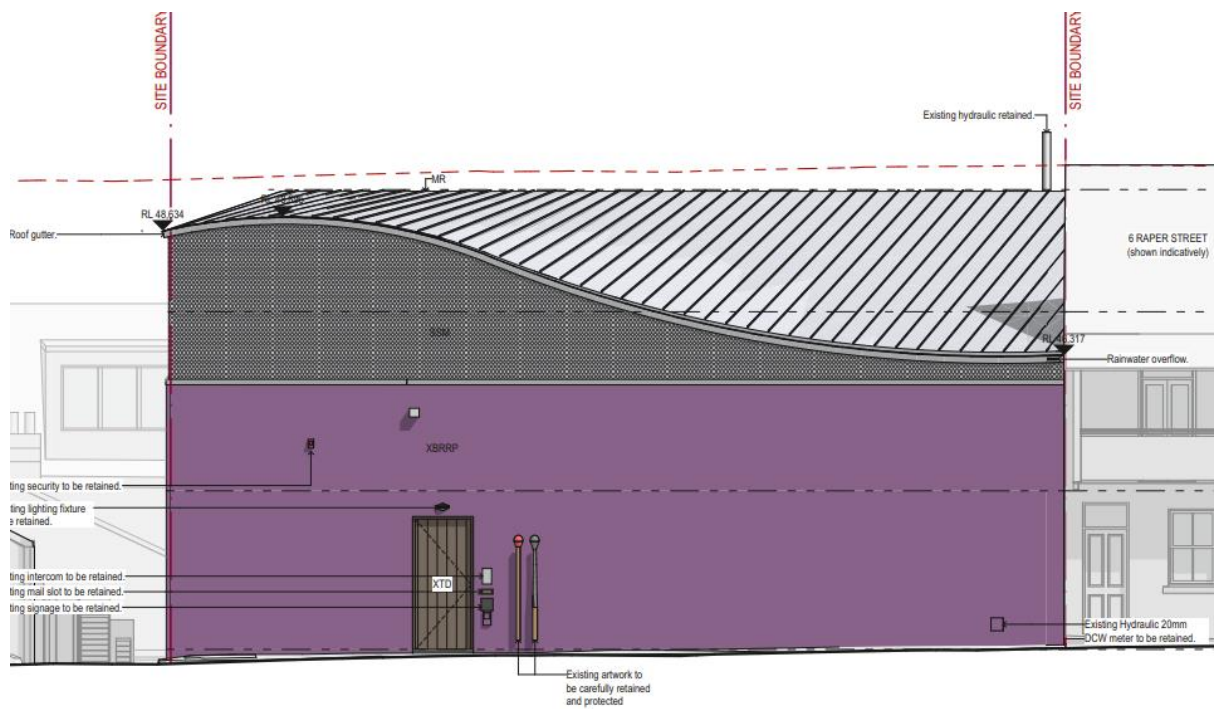


Figure 17: Proposed West (Raper St) Elevation

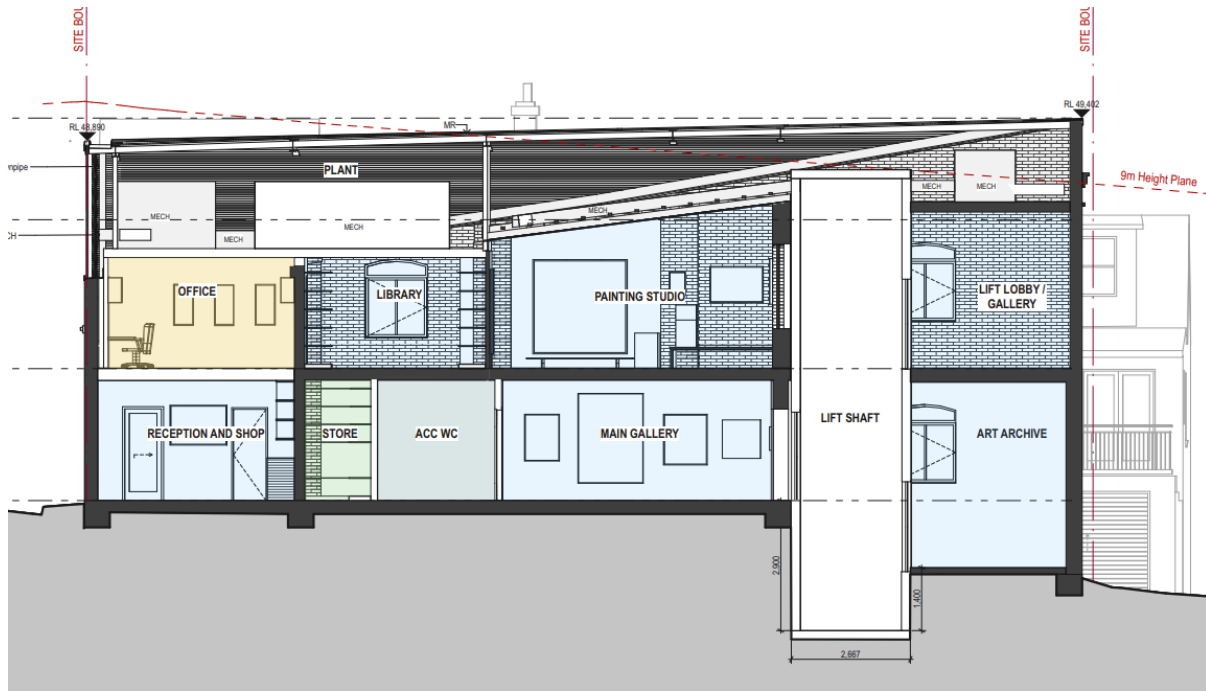


Figure 18: Proposed Section 01 Plan Looking North

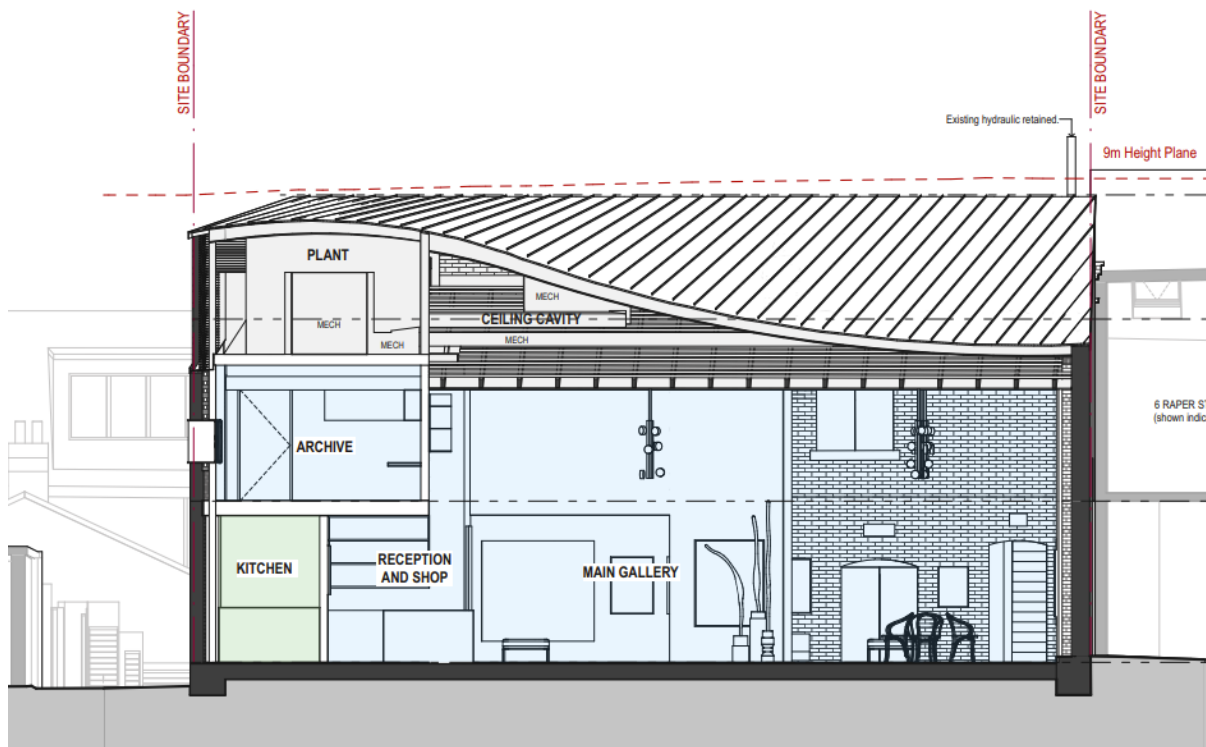


Figure 19: Proposed Section 02 Plan Looking East

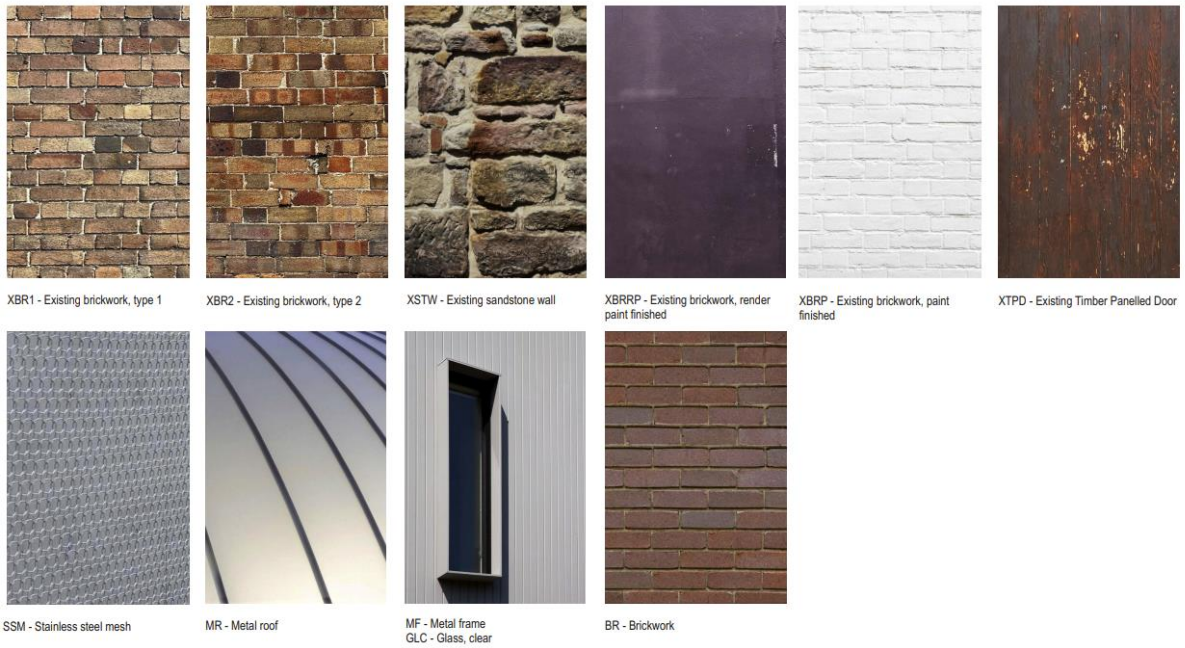


Figure 20: Proposed Materials and Finishes



Figure 21: Photomontage Looking South Down Raper Street



Figure 22: Photomontage Aerial View

Assessment

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

Crown Development Applications

The Art Gallery of NSW is constituted as a corporation under the Art Gallery of NSW Act 1980. The Art Gallery is also part of the Department of Enterprise, Investment and Trade, the responsible Minister being the Minister for the Arts.

15. This application has been made by or on behalf of a public authority (not being a Council) and is therefore to be assessed as a Crown development application.
16. Pursuant to section 4.33(1) of the EP&A Act, a consent authority (other than the Minister) must not:
 - (a) refuse its consent to a Crown development application, except with the approval of the NSW Minister for Planning and Public Spaces; or
 - (b) impose a condition on its consent to a Crown development application, except with the approval of the applicant, or the NSW Minister for Planning and Public Spaces.
17. Draft conditions of consent were provided to the applicant on 4 July 2024.
18. The Art Gallery NSW (AGNSW) provided their response on 17 July 2024 and approved of the draft conditions.

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

19. 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. It is noted that the proposal does not seek to alter the approved land use of the site.
20. The proposal includes very minor, localised excavation for the new lift pit. As such, a Geotechnical Report prepared by ARUP was submitted with the application.
21. The Geotechnical Report states that the proposed excavation is unlikely to encounter land contamination and that the sub surface conditions are likely to comprise of dune facies overlying Ashfield Shale (residual soil and bedrock). Groundwater level is anticipated to be several metres below surface level and is not expected to be encountered during the proposed shallow excavation.
22. Councils Health and Building team have reviewed the Geotechnical Report and support the findings and recommendations of the Report. Conditions of consent have been recommended to ensure compliance with the recommendations of the report and that Council is notified should there be any contamination identified.

Local Environmental Plans

Sydney Local Environmental Plan 2012

23. 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 located in the SP2 Infrastructure (Community Facility) zone. The proposed development is defined as a community facility 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 | The proposed development does not comply with the maximum height of buildings development standard. |

| Provision | Compliance | Comment |
|---|------------|---|
| | | <p>A maximum building height of 9m is permitted.</p> <p>A maximum height of 10.4m is proposed.</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 | Yes | <p>A maximum floor space ratio of 1.5:1 is permitted.</p> <p>The existing floor space ratio is 1.36:1.</p> <p>A floor space ratio of 1.30:1 is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p> |
| 4.6 Exceptions to development standards | Yes | <p>The proposed development seeks to vary the development standard prescribed under Clause 4.3. 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 Bourke Street South Heritage Conservation Area (C60). The building is identified as being of neutral contribution.</p> <p>The proposed roof addition has been designed as a contemporary response to differentiate from the primary form of the existing masonry warehouse building. The proposal includes conservation works such as brick repairs, repointing, and repainting of significant elements.</p> <p>The proposed roof form has been carefully shaped to ensure appropriate height transitions are achieved between the addition and neighbouring</p> |

| Provision | Compliance | Comment |
|-----------|------------|---|
| | | <p>contributory terrace houses within the Heritage Conservation Area.</p> <p>The proposed conservation works will improve the overall presentation of the existing building and enhance its contribution to the Bourke Street South Heritage Conservation Area.</p> <p>Overall, the proposed development will not have detrimental impact on the heritage significance of the heritage conservation area and is acceptable.</p> |

Part 6 Local provisions – height and floor space

| Provision | Compliance | Comment |
|------------------------------|------------|---|
| Division 4 Design excellence | | |
| 6.21 Design excellence | Yes | <p>The proposed high quality detailing and simplistic materials palette ensures a positive response to the historic context of the building. The proposed stainless steel mesh is contemporary in nature, providing a sympathetic contrast to the existing warehouse fabric.</p> <p>The curved roof form minimises overshadowing impacts to surrounding residential properties and prevents water ingress risks.</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.</p> <p>The overall materiality and architectural articulation of the proposal is considered to exhibit design excellence to satisfy this clause.</p> |

Part 7 Local provisions – general

| Provision | Compliance | Comment |
|---|------------|---|
| Division 1 Car parking ancillary to other development | | |
| Other land uses | Yes | The proposed development does not include any car parking spaces and complies with the development standards which are expressed as a 'maximum'. |
| 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**

24. 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

25. 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.

Section 3 – General Provisions

| Provision | Compliance | Comment |
|--|------------|--|
| 3.5 Urban Ecology | Yes | The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology. |
| 3.6 Ecologically Sustainable Development | Yes | The proposal satisfies environmental and sustainability requirements. |
| 3.7 Water and Flood Management | Yes | The site is not identified as being on flood prone land. |

| Provision | Compliance | Comment |
|---|------------|--|
| 3.9 Heritage | Yes | <p>The site is located within the Bourke Street South Heritage Conservation Area (C60). The building is identified as being of neutral contribution.</p> <p>Refer to Section 5.10 above.</p> |
| 3.10 Significant Architectural Building Types | Yes | <p>The existing building is more than 50 years old. The proposal retains and conserves the main features and facades of the building. The proposed new roof will read as a contemporary feature of the existing building whilst also being sympathetic to the existing characteristics of the site.</p> <p>The Structural Report submitted as part of the proposal confirms that the proposed alterations and additions will not jeopardise the structural integrity of the building. The existing geometric form, floor levels and all original windows will be retained.</p> |
| 3.10.5 Public and community buildings older than 50 years | Yes | <p>Whilst the building is older than 50 years old, it was not originally designed as a community building. Nonetheless, the proposed alterations and additions are sympathetic to the existing fabric and design of the building from all periods of construction.</p> <p>Significant fabric, building elements, internal features and spaces are all proposed for retention.</p> <p>Overall, the proposal will enable the ongoing use of the Brett Whiteley Studio and Gallery by the community and therefore satisfies the provision.</p> |
| 3.11 Transport and Parking | Yes | <p>The proposal will not alter the existing entry and egress arrangements for the site.</p> |
| 3.12 Accessible Design | Yes | <p>A BCA compliance statement was submitted with the application. The report confirms that the proposed development will comply with the relevant Australian Standards in respect of accessibility.</p> |

| 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 | 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. |

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 | Yes | The site is permitted a maximum building height of 2 storeys with a maximum street frontage height of 2 storeys to Raper Street. The proposed development is 2 storeys in height with a street frontage height of 2 storeys and complies. |
| 4.2.2 Building setbacks | Yes | The proposed development retains the existing nil setbacks and is acceptable. |
| 4.2.3 Amenity | | |
| 4.2.3.1 Solar access | Yes | Refer to 'Solar Access and Overshadowing' subheading in the 'Discussion' section below. |
| 4.2.3.5 Landscaping | Yes | The proposal retains the existing full site coverage. As such, the provision of landscaping is not required. |
| 4.2.3.6 Deep Soil | Yes | The proposal retains the existing full site coverage. As such, the provision of deep soil planting is not required. |
| 4.2.6 Waste and recycling Management | Yes | 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. |

Discussion

Clause 4.6 Request to Vary a Development Standard

26. The site is subject to a maximum height of building control of 9m.
27. The existing building has a height of 10.4m. The volume of the existing building above the 9m height plane is approximately 50 cubic metres. The proposed development has a maximum building height of 10.4m. The volume of the proposed building above the 9m height plane is approximately 95 cubic metres. The Figures below provide a visual comparison between the existing and proposed building envelopes.



Figure 233: Aerial perspective of existing building, with 9m height shown in red



Figure 244: Aerial perspective of proposal, with 9m height plane shown in red

28. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;

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

29. The applicant seeks to justify the contravention of the height of building development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) In *Wehbe* (at 43-48), Preston CJ established five potential ways for determining whether a development standard could be considered to be unreasonable or unnecessary and that approval of the objection may be consistent with the aims of the policy.
 - (ii) Relevant to the proposed development, the first method "The objectives of the standard are achieved notwithstanding non-compliance with the standard" is considered to be most appropriate in establishing that compliance with the development standard is unreasonable or unnecessary. As such, an assessment against the objectives of the Height of Buildings development standard is provided as follows:

(a) to ensure the height of development is appropriate to the condition of the site and its context

- (iii) The design has considered the condition of the site and its context to ensure that the development can exist in harmony with its surroundings.
- (iv) There is a proposed height increase in built form at the northern and western portion of the roof towards Raper Street and Davies Lane, however, due to the topography of the site, this portion of the roof largely complies with the maximum height limit of 9m.
- (v) The proposed new roof will exceed the maximum building height at the north-eastern portion of the site towards Austin Lane and Davies Lane, at 10.4m (exceedance of 1.4m). The proposed maximum height has been designed to match the current maximum building height of the Brett Whiteley Studio building.
- (vi) The built form of the new plant level and building form will align with the height of adjoining terraces.
- (vii) The facade will be treated to match the existing warehouse building until it reaches plant level.
- (viii) The plant level and roof will be of more contemporary appearance to be complementary to the original warehouse building and also to reflect the subject of the building:
 - The facade of the plant level will be mesh stretched taut, with acoustic louvres behind, and the roof will be metal. The mesh will allow for air conditioning intake and exhaust within, while the louvres will acoustically and visually screen plant operation behind;
 - The form of the roof is a curve, reminiscent of Brett Whiteley's art. The curved roof form will hide the air conditioning plant, lift overrun and other plant.
- (ix) There will be conservation repairs made to the exterior of the warehouse building. These, together with other proposed alterations and additions, have been supported by the heritage consultant (Tonkin Zulaikha Greer in their Statement of Heritage Impact), and found by the consultant to enhance the character of the conservation area.
- (x) The design has also been carefully designed to reduce overshadowing to neighbouring properties. The Solar Access Diagrams prepared by TZB Architects demonstrate that the proposed development will not result in any significant changes to shadow impacts to surrounding properties, as additional overshadowing at 9am and 12pm during the winter solstice is limited to the public domain and the roof of the neighbouring property at 6 Raper Street.
- (xi) The proposed roof form has considered neighbouring views, with no impacts anticipated given the change is relatively minor. Therefore, despite a slight height exceedance, the proposed height limit is compatible with its surrounds given there is no change to the current maximum height of the building.

(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas

- (xii) The proposed new roof is curved in shape towards Raper Street. It rises up to the north to accommodate the acoustically attenuated plant room and slopes down to the south to meet the height of roofs of the adjacent terrace houses, to ensure an appropriate height transition is achieved within the heritage conservation area.

(c) to promote the sharing of views outside Central Sydney,

- (xiii) There are no significant views relevant to the site as referenced under Sydney LEP 2012 or Sydney DCP 2012.
- (xiv) Notwithstanding, consideration has been given to how the proposed development may affect views of neighbouring properties, by aligning the proposed maximum height to the current maximum building height.
- (xv) The impact on view sharing of surrounding properties from the proposed development, specifically attributed to the height exceedance over the 9m height limit, is demonstrated by comparing the existing and proposed built form in the height plane diagrams. In summary, there will be only minor impact overall to existing view sharing.

(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas

- (xvi) Not relevant.

(e) in respect of Green Square—

(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and

(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

- (xvii) Not relevant.

- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
- (i) In the case *Four2Five vs Ashfield Council* [2015] NSW LEC 90, Pain J held that a Clause 4.6 must also demonstrate that there are environmental planning grounds to justify contravening the development standard, in addition to meeting the objectives of the standard.
- (ii) Moreover, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Court stated that the phrase 'environmental planning grounds' is not defined but would refer grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act 1979 (EP&A Act), including the objects in Section 1.3 of the Act.

- (iii) With the achievement of the objectives of Clause 4.3, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard because it meets the objectives of the development standard, the objectives of the zone, the objects of Section 1.3 of the EP&A Act, and the variation does not result in any adverse impacts as detailed below.
- (iv) The design has considered the condition of the site and its context to ensure that the development can exist in harmony with its surroundings. Refer to response to “Height of Buildings” development standard above.
- (v) Consistency is achieved with objectives of the SP2 Infrastructure zone, as that part of the development resulting in the proposed height exceedance is maintaining and supporting the purpose of the approved community facility infrastructure (a museum).
- (vi) The amenity of adjoining development is expected to be maintained considering it results in the following acceptable impacts:
- Negligible overshadowing to surrounding properties;
 - Reduces noise impact from plant by concealing new plant and lift overrun in new roof form;
 - Only minor additional view sharing impacts to windows of surrounding buildings;
 - Visually improves views of roof by concealing plant and lift overrun with addition of an attractive curved roof form;
 - Architectural merit of the proposed addition; and
 - Is compatible with the building and the conservation area.
- (vii) There would indeed be a negative public benefit from upholding the height limit as it means that the upgrade would not be able to proceed or proceed in a severely compromised form. The current built form of Brett Whiteley Studio exceeds the maximum height control. Hence, it would involve significant unnecessary changes including demolition, to the existing gallery to comply with the applicable maximum building height control.
- (viii) The proposed development will provide for a future development which is responsive to the site and context and maintains a high level of amenity within the site and to surrounds. It represents the orderly and economic use of land and good design and amenity of the built environment, as identified by Section 1.3 of the Environmental Planning and Assessment (EP&A) Act 1979.
- (ix) Overall, it results in better environmental planning outcomes for the surrounding context and also the subject premises, being a public museum/art gallery that is for the purpose of furthering the social, cultural and intellectual development of the community.

Consideration of Applicant's Written Request - Clause 4.6 (3)

30. Development consent must not be granted unless the consent authority is satisfied that 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.

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

31. The applicant has referred to the tests established in *Wehbe v Pittwater Council* to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of this particular site because the objectives of the height development standard are achieved notwithstanding the non-compliance with the standard.
32. The variation results in a height that is appropriate for the site and its context. The development provides an appropriate height transition and positively responds to the site's location.
33. As such, it has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

34. The written request demonstrates that there are sufficient environmental planning grounds to justify contravening the development standards as the additional height will not result in adverse environmental impacts including excessive bulk and visual privacy and overshadowing.
35. The resultant height, bulk and scale of the finished building envelope results in a development that is consistent with the LEP objectives and existing character of the locality.

Conclusion

36. For the reasons provided above the requested variation to the height 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.

Bulk & Scale

37. As demonstrated in Figures 25 and 26 below, the maximum height of the building will be retained at 10.4m. It is noted that the extent of building bulk located above the 9m height limit will increase as a result of the new roof form. However, the new roof has been designed to locate the highest points of the curved roof to the north to ensure the majority of additional overshadowing is cast on the subject sites roof.
38. The new metal roof form respects the existing character of the warehouse and responds positively to the architectural language of the built form. The new roof will conceal all plant and mechanical elements from neighbouring views. The curved form minimises visual bulk and avoids valley gutters which will enable a continuous waterproof surface. The materiality of the rooftop addition is contemporary yet sympathetic to the original characteristics of the warehouse.
39. To ensure the construction of a high quality facade, a condition of consent is recommended requiring the submission of detailed design information prior to certification. The condition also requires the facade to be designed to minimise reflectivity to neighbouring properties.

40. There are no views identified under Sydney LEP 2012 or Sydney DCP 2012 requiring protection. As the proposal aligns with the existing height of the building and adjoining terraces, the impacts to view sharing of surrounding properties will be minimal and therefore acceptable.



Figure 255: Existing Height Plan Diagram

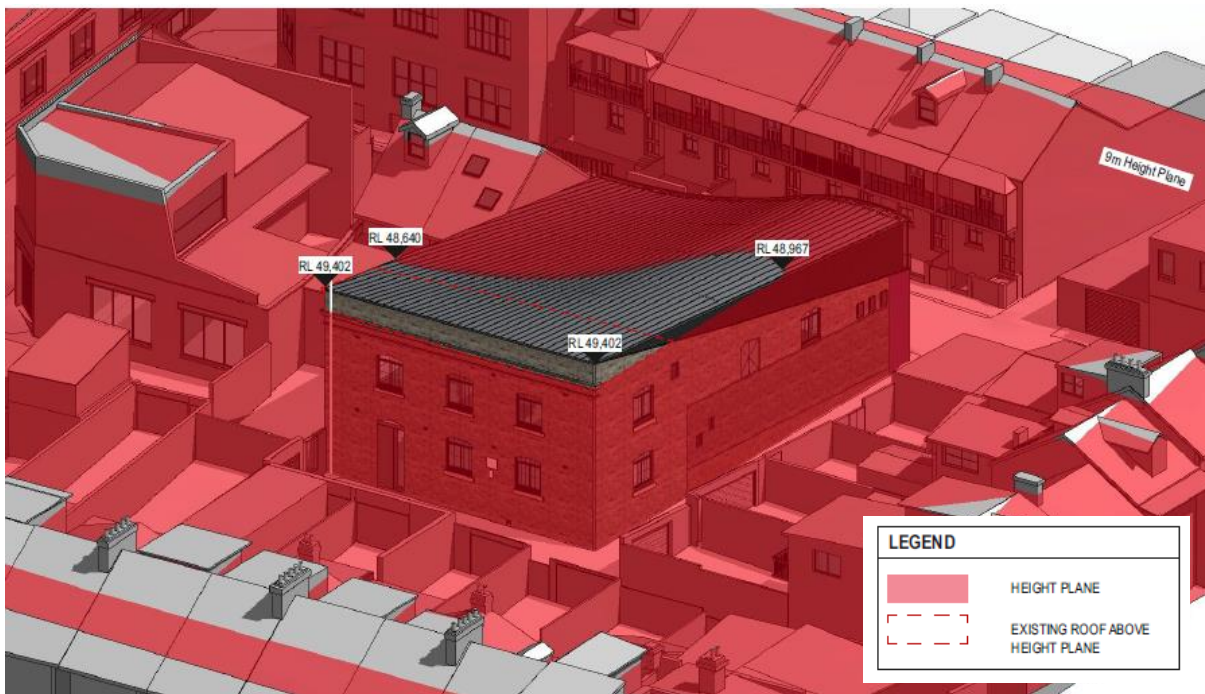


Figure 266: Proposed Height Plan Diagram

Acoustic Amenity

41. An Acoustic Report was submitted as part of the original application. As noted in the 'Amendments' section above, Council's Environmental Health Unit requested the submission of an amended Acoustic Report to include further assessment in relation to the City's standard noise condition for commercial plant/industrial noise and predicted noise levels for the proposed mechanical plant equipment.
42. An amended Acoustic Report was submitted and reviewed by Council's Environmental Health Unit. The amended Report has addressed the City's standard noise condition in relation to commercial plant/industrial noise and includes predicted noise levels for equipment. The report recommends the installation of acoustic barriers and attenuators to reduce the potential noise impacts of the proposal.
43. From an acoustic amenity perspective, subject to the implementation of the proposed attenuation measures, the proposal will have satisfactory acoustic outcomes.

Privacy

44. The proposal includes the provision of three new windows on the Davies Lane (north) elevation to provide light to the new office space.
45. Council officers requested the amendment of the new windows to ensure privacy to the surrounding residential properties was maintained. As illustrated in **Figure 27** below, the proposed new windows have been amended to include deep reveals, opaque film and blinds.
46. The applicant has also advised that despite being existing, opaque film has been applied to the majority of main glazed panels of the remaining windows. All windows also contain opal blinds to ensure sufficient screening and privacy.

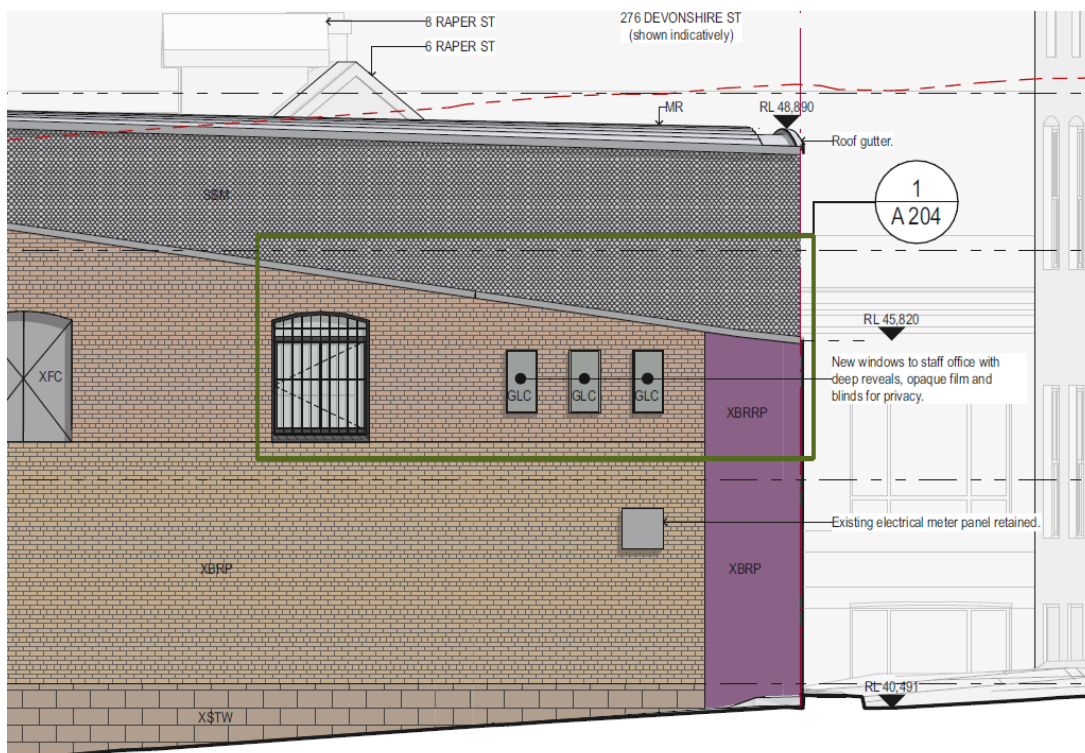


Figure 277: View of new windows on Northern Elevation



Figure 288: View of new windows on Northern Elevation

Solar Access & Overshadowing

47. The Sydney DCP requires neighbouring (residential) developments to receive a minimum of two hours' direct sunlight between 9am and 3pm on June 21 (the winter solstice) onto at least 1sqm of living room window and at least 50% of the minimum amount of private open space. Where a neighbouring dwelling currently receives less than this, new developments must not create any additional overshadowing to that dwelling.

North

48. The proposal will not result in any additional overshadowing of properties to the north on the opposite side of Davies Lane.

East

49. To the east of the site on the other opposite side of Austin Lane is the rear of a number of residential properties including 601, 603, 605, 607, 609, 611, 613 and 615 Bourke Street. As the proposal does not alter the height of the building along its eastern edge, the proposal will not result in any additional overshadowing of these Bourke Street properties - refer **Figures 28 to 34** below.

South

50. To the immediate south of the site are two residential terraces (6 & 8 Raper Street) which have primary frontages to Raper Street. Both properties have private open space to the rear. The proposal will result in some additional overshadowing of the rear roof of both properties. However, as illustrated in **Figures 28 to 34** below, the private open space of number 6 Raper Street is already completely overshadowed between 9am and 3pm on June 21. Similarly, number 8 Raper Street's private open space only receives direct sunlight for one hour at 10am to less than 2sqm of space. The proposal will not result in any additional overshadowing of the private open space of either property.
51. As evident in the suns eye diagrams included at **Appendix D**, the proposal will not result in any additional overshadowing of the primary living room windows of both number 6 and 8 Raper Street which currently receive 1.5 hours of direct solar access between 12.30pm and 2pm on June 21.
52. Further south of the subject site is 1 Esther Street which is a three-storey residential dwelling. As evident in **Figures 28 to 34** below, the courtyard which is located between the entrance to the dwelling on Raper Street and the carport to Violet Street is already completely overshadowed between 9am and 3pm on June 21.

West

53. To the west of the site on the opposite side of Raper Street is a row of residential terraces including 1, 3, 5, 7, 9 and 11 Raper Street. The proposal will not result in any additional overshadowing of the private open space of these dwellings which are located to the rear of the sites on Davies Lane.
54. The proposal will cause some minor additional overshadowing of the front yard of number 11 Raper Street at 9am. However, as illustrated in **Figure 28** below, the shadow does not reach the windows of the dwelling. The proposal will result in no additional overshadowing of these dwellings windows between 10am and 3pm on June 21.

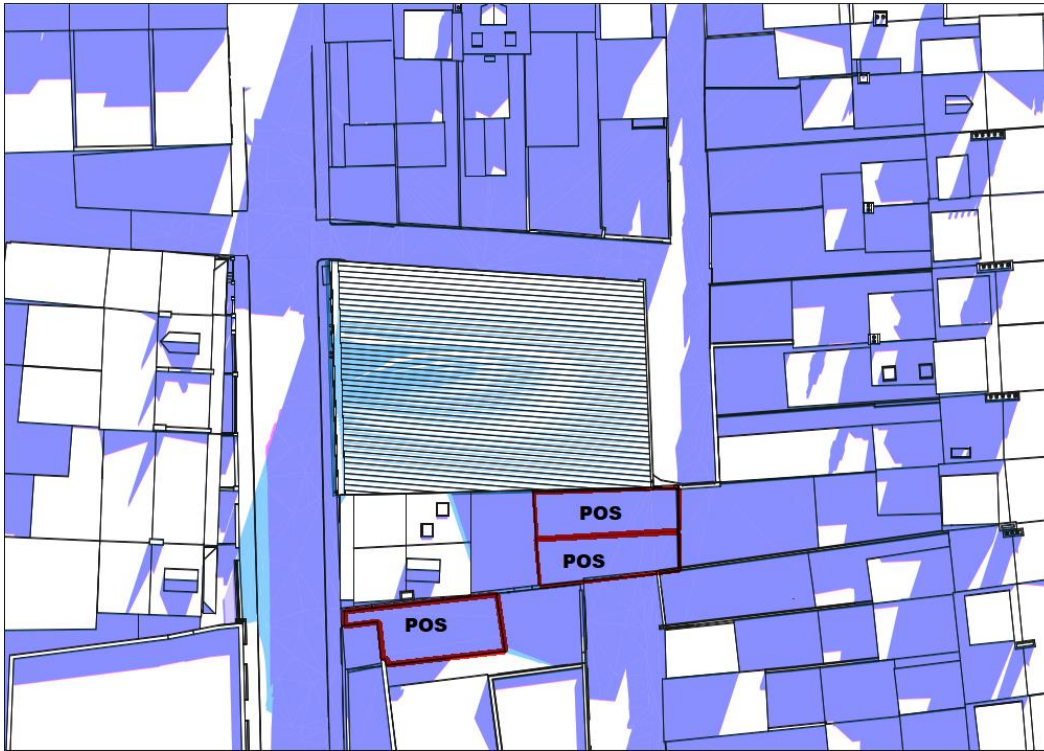


Figure 298: 9am Overshadowing Diagram



Figure 309: 10am Overshadowing Diagram



Figure 3031: 11am Overshadowing Diagram



Figure 32: 12pm Overshadowing Diagram



Figure 332: 1pm Overshadowing Diagram



Figure 343: 2pm Overshadowing Diagram

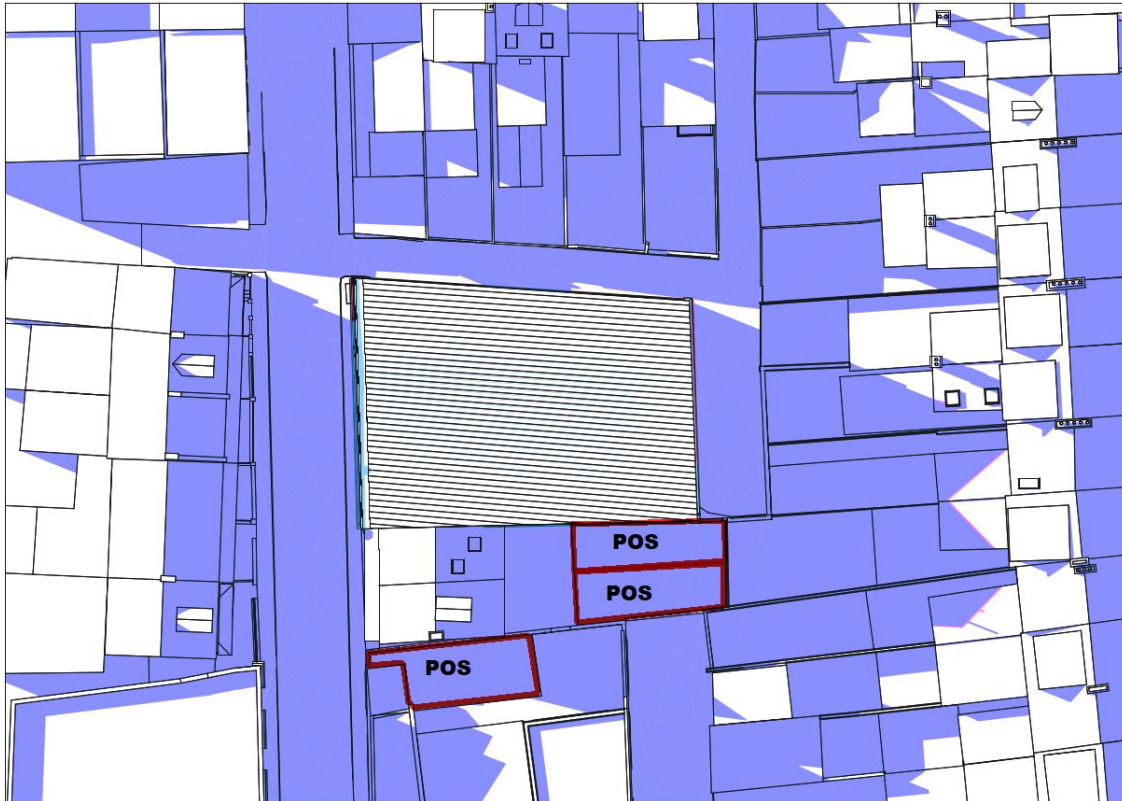


Figure 354: 3pm Overshadowing Diagram

Consultation

Internal Referrals

55. The application was discussed with Council's:

- (a) Environmental Health Unit;
- (b) Heritage and Urban Design Unit;
- (c) Public Domain Unit; and
- (d) Waste Management Unit.

56. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

Advertising and Notification

57. In accordance with the City of Sydney Community Participation Plan 2023, the proposed development was notified for a period of 28 days between 16 April 2024 and 15 May 2024. A total of 165 properties were notified and six submissions were received.

58. As per Appendix C of the City of Sydney Community Participation Plan 2023, the amended architectural plans were not required to be re-notified, as the amendments would not result in significant additional environmental impacts.
59. The submissions raised the following issues:
- (a) **Issue:** The proposal should include upgrades to Raper Street including additional landscaping and better directional signage to the Gallery.
- Response:** The proposal is not required to provide upgrades to surrounding public spaces.
- (b) **Issue:** Insufficient modelling has been provided to ascertain view and overshadowing impacts to properties located further away from the subject site.
- Response:** As noted in the 'Amendments' section above, the applicant provided additional solar access and overshadowing diagrams to enable a thorough and complete assessment of the potential impacts of the proposal. Refer to the 'Solar Access and Overshadowing' subheading in the 'Discussion' section above for further details.
- (c) **Issue:** The proposal will result in overshadowing impacts to surrounding properties.
- Response:** Refer to the 'Solar Access and Overshadowing' subheading in the 'Discussion' section above for further details.
- (d) **Issue:** The proposal will result in additional acoustic impacts which will have a negative impact on the residential amenity of the surrounding streets.
- Response:** Refer to the 'Acoustic Amenity' subheading in the 'Discussion' section above for further details.
- (e) **Issue:** The proposed new roof is inconsistent with the heritage characteristics of the building and surrounding streetscape.
- Response:** Refer to heritage assessment under 'Section 5.10' above.
- (f) **Issue:** The additional height is not necessary and will set a precedent for non-compliant buildings within the streetscape.
- Response:** The proposal is of an appropriate scale and exhibits the principles of design excellence. Refer to 'Bulk and Scale' subheading in the 'Discussion' section above for further details.
- (g) **Issue:** The new mechanical equipment will be located too close to habitable rooms of adjoining properties and will result in negative acoustic impacts.
- Response:** The plant room is in the north-western corner of the roof, away from the closest residential properties being the adjoining residential terrace to the south. The proposed new roof will include an acoustic mechanical plenum to minimise acoustic impacts from the new plant system on neighbouring properties. Furthermore, as noted in the 'Acoustic Amenity' discussion above, the

recommendations of the Acoustic Report have been reviewed by Council's Heath and Building team and are deemed to satisfy Council's requirements.

- (h) **Issue:** The proposal should be amended to locate the mechanical plant and drainage away from the residential properties.

Response: The plant room is in the north-western corner of the roof, away from the closest residential properties being the adjoining residential terrace to the south. All mechanical equipment is to be located within the new roof form including old services previously located on the roof top. This will enable the acoustic isolation of plant equipment and minimise impacts to surrounding residential properties.

- (i) **Issue:** The proposed materiality may result in excessive reflectivity. A reflectivity report should be required.

Response: The facade is not constructed of glass and therefore high reflectivity is not considered a design risk. However, a condition of consent is recommended to ensure the reflectivity of the stainless steel mesh is minimised.

- (j) **Issue:** The roof should include solar panels to ensure the ongoing sustainability of the proposal.

Response: The proposal is not required to provide solar panels.

- (k) **Issue:** The overshadowing diagrams are deceptive and misleading.

Response: As discussed in the 'Amendments' section above, the applicant submitted amended solar access and overshadowing diagrams to clarify the proposed impacts of the proposal. Refer to the 'Solar Access and Overshadowing' subheading in the 'Discussion' section above for further details.

- (l) **Issue:** The proposal results in excessive building bulk which is unjustified.

Response: The proposal is of an appropriate scale and exhibits the principles of design excellence. Refer to 'Bulk and Scale' subheading in the 'Discussion' section above for further details.

- (m) **Issue:** The proposed new additional windows on the northern facade will reduce visual privacy of neighbouring residential properties.

Response: As discussed in the 'Privacy' Discussion above, the proposed new windows have been amended to include deep reveals, opaque film and blinds to minimise visual privacy impacts to surrounding properties.

- (n) **Issue:** Windows should be treated to ensure privacy for neighbouring residential properties is maintained.

Response: As discussed in the 'Privacy' Discussion above, the proposed new windows have been amended to include deep reveals, opaque film and blinds to minimise visual privacy impacts to surrounding properties.

- (o) **Issue:** The additional air-conditioning units and mechanical ventilation can be housed within the existing built form.

Response: The existing built form cannot accommodate the required mechanical plant. However, the new plant room will be in the north-western corner of the roof, away from the closest residential properties being the adjoining residential terrace to the south. All mechanical equipment has been located within the new roof form including old services previously located on the roof top. This will enable the acoustic isolation of plant equipment and minimise impacts to surrounding residential properties.

- (p) **Issue:** The proposed materiality of the new roof and louvres does not match the existing characteristic of the building or surrounding streetscape.

Response: The proposed material palette, which is predominately stainless steel and metal, provides a sympathetic yet distinctive contrast to the existing warehouse building. The proposed materiality ensures that the new addition responds positively to both the original building and heritage context of the surrounding conservation area.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

60. The City of Sydney Development Contributions Plan 2015 applies to the site. The development is not subject to a section 7.11 local infrastructure contribution as the proposal is reducing the overall floor space of the site and is not changing the use of the premises.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

61. The site is located within the Residual Lands affordable housing contribution area. The proposed development reduces the overall floor space of the site and therefore a contribution under this Plan is not required.

Housing and Productivity Contribution

62. The development is not subject to a Housing and Productivity Contribution under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

Relevant Legislation

63. Environmental Planning and Assessment Act 1979.

Conclusion

64. The application includes a request to vary the height of buildings development standard. The request to vary the standard is supported in this instance within the context of the site.
65. The proposal will not result in significant environmental or social impacts, will enable critical restoration works and ensure DDA compliance to safeguard the ongoing use of the building as a Community Facility. The proposal is therefore considered to be in the public interest.
66. The proposed development uses high quality materials, achieves the principles of ecologically sustainable development, and has an acceptable environmental impact. As such, the proposal is considered to exhibit design excellence.
67. The proposal is recommended for approval as it generally complies with the relevant controls of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012, provides a land use compatible with the locality and does not result in significant environmental impacts to the site or neighbouring sites.

ANDREW THOMAS

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