

Item 5.**Development Application: 104 Pitt Street, Redfern - D/2023/1179**

File No.: D/2023/1179

Summary

Date of Submission:	21 December 2023
Applicant:	CRAFT ARCHITECTURE SYDNEY
Architect/Designer:	CRAFT ARCHITECTURE SYDNEY
Owner:	Alexander Cox
Heritage Consultant:	Edwards Heritage Consultants
Cost of Works:	\$1,091,519.55
Zoning:	E1 - Local Centre The proposed works include alterations and additions to the existing residential terrace. The proposed use is permitted with consent.
Proposal Summary:	<p>The application seeks development consent for the alterations and additions to the existing residential terrace dwelling.</p> <p>This involves the partial demolition of the ground floor internal and external walls, Level 1 western facade bedroom wall and timber balcony adjacent to Bedroom 2, and the Level 2 western facade.</p> <p>The proposed alterations and additions involve a ground floor extension to the kitchen and living area, a new southern boundary masonry wall, a Level 1 bedroom, 3 new western facade windows and roof garden, a Level 2 ensuite addition, alterations to glazing and door openings at the western facade and a new planted bed to the west of the elevated terrace. Additionally, two new skylights are proposed in the existing skillion roof over the stairwell and shower.</p> <p>The proposal results in a net increase in 11.5sqm of GFA.</p> <p>Additionally, an existing timber fencing on the land of 98 Pitt Street is proposed to be demolished and a new</p>

masonry fence is proposed to be constructed on the land of 98 Pitt Street Redfern. The specific area where works to the existing and new fencing are proposed are within an existing Right of Footway easement.

This work, both the demolition and construction, is not permitted on the land of 98 Pitt Street Redfern as no landowner's consent has been obtained or lodged with this development application. Conditions are recommended that require the deletion of this work from the development application.

The application is referred to the City of Sydney Local Planning Panel (SLPP) pursuant to the Minister of Planning and Public Spaces Local Planning Panel direction (dated 6 March 2024) under Section 9.1 of the Environmental Planning and Assessment Act 1979. Subject to Schedule 3, Section 3 of this direction, development for the purpose of dwelling houses which exceeds a development standard by more than 25% is a trigger for the delegation of the SLPP.

The site has a site area of 114.2sqm and a maximum permitted FSR of 1.25:1 (equating to 142.75sqm). The existing dwelling occupying the site has an FSR of 1.56:1 (178.5sqm). The proposed alterations and additions to the dwelling result in an FSR of 1.66:1 (190sqm). This equates to an exceedance of the development standard by 47.25sqm (a 33% variation).

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

Development Controls: Sydney Local Environmental Plan 2012
Sydney Development Control Plan 2012
SEPP (Sustainable Buildings) 2021

Attachments: A - Recommended Conditions of Consent
B - Selected Drawings
C - Clause 4.6 Variation Request - Floor Space Ratio
D - Submission

Recommendation

It is resolved that:

- (A) the variation requested to Clause 4.4 Floor Space Ratio 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/2023/1179 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:

- (C) The development is consistent with the objectives of the E1 Local Centre zone of the Sydney Local Environmental Plan 2012.
- (D) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the Clause 4.4 Floor Space Ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify the contravention.
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the E1 Local Centre zone and the Clause 4.4 Floor Space Ratio development standard.
 - (iii) the proposed works relate and are located wholly on the subject property, being 104 Pitt Street, Redfern.
- (E) The development has been designed to be sympathetic to the character of the locality and is visually unobtrusive when viewed from the Pitt Street and Turner Street frontages.
- (F) The development will not result in any significant adverse environmental impacts to the streetscape or to the amenity of adjoining neighbours.
- (G) The development is generally consistent with the relevant objectives and controls of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 4 in Deposited Plan 201387, known as 104 Pitt Street Redfern. It is rectangular in shape with area of approximately 114.2sqm. It has a primary street frontage of 5.375m to Pitt Street and a side boundary depth of approximately 21.94m. The site is located one allotment north of the intersection of Pitt Street by Turner Street. The site is generally flat, falling by 300mm from the western rear boundary to the eastern Pitt Street frontage.
2. The site as existing is occupied by a 3-level terrace dwelling house with access provided off Pitt Street and via a Right of Footway easement that is approximately 1m along the western rear of the property. This Right of Footway easement burdens 98 Pitt Street and benefits several properties being 100 Pitt Street, 102 Pitt Street, 104 Pitt Street and 106 Pitt Street.
3. The surrounding area is characterised by a mixture of land uses, predominantly comprised of other similar 3-level terrace dwellings and commercial businesses - mostly food and drink premises.
4. The terrace dwelling has been in place since approximately 1895 and forms part of the 19th Century housing character within Pitt Street. The site does not contain a heritage item. It is, however, located within a heritage conservation area, being the C56 Redfern Estate Conservation Area. The dwelling is a contributory building within the conservation area.
5. The site is zoned E1 Local Centre pursuant to SLEP 2012.
6. A site visit was carried out on 20 February 2024. Photos of the site, surrounds and the internals of the dwelling are provided below:

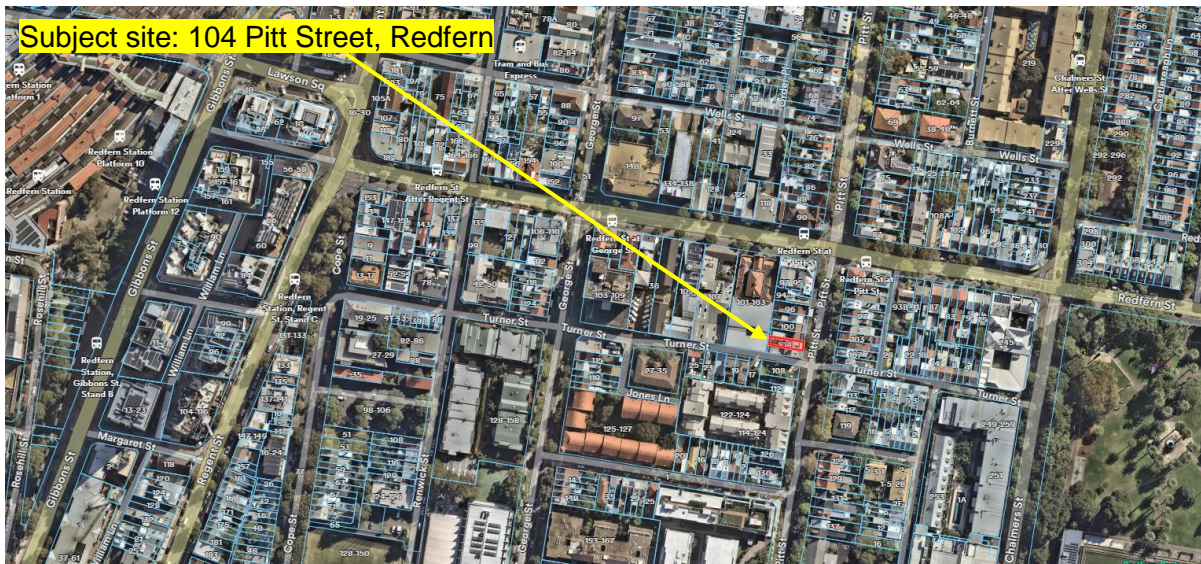


Figure 1: Aerial view of site and surrounds (source: Nearmap 2024)

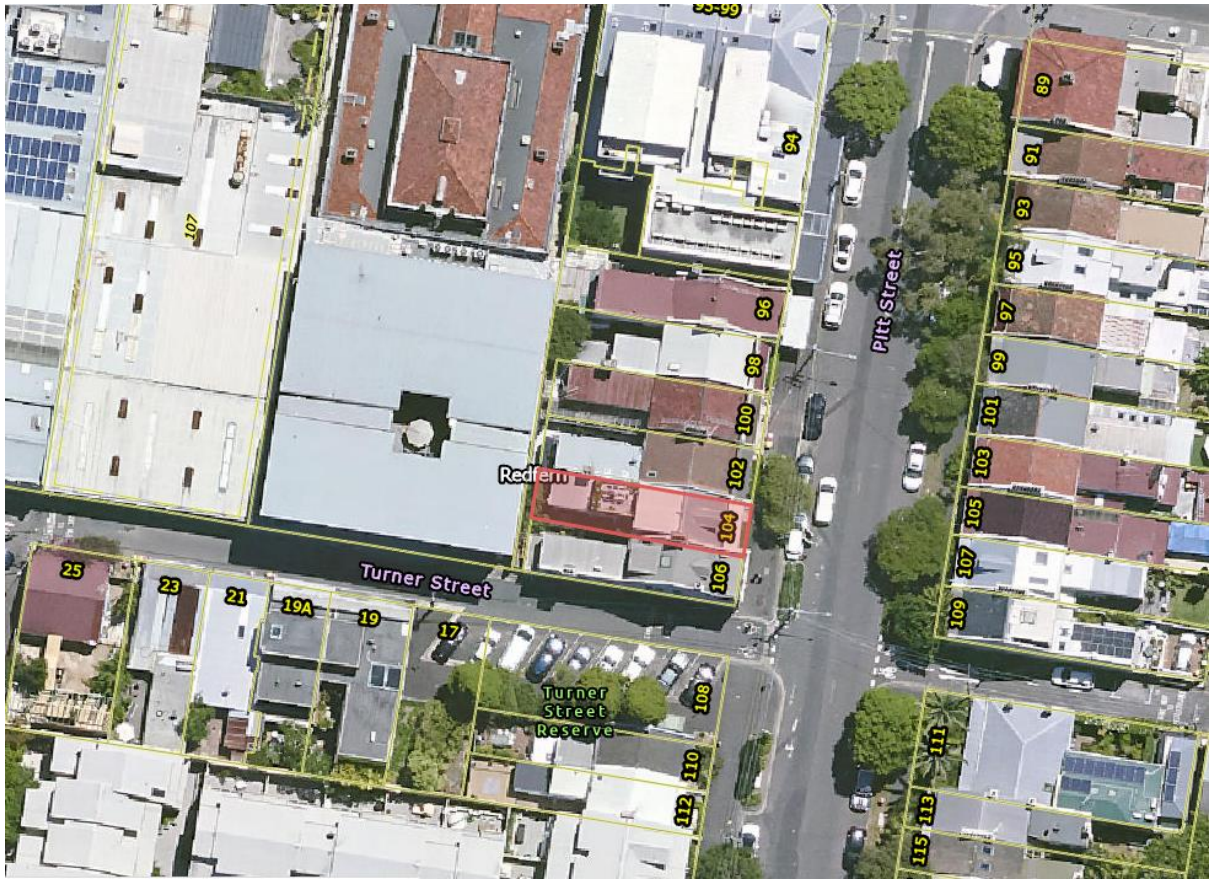


Figure 2: Oblique site view (source: CoS Geocortex 2024)

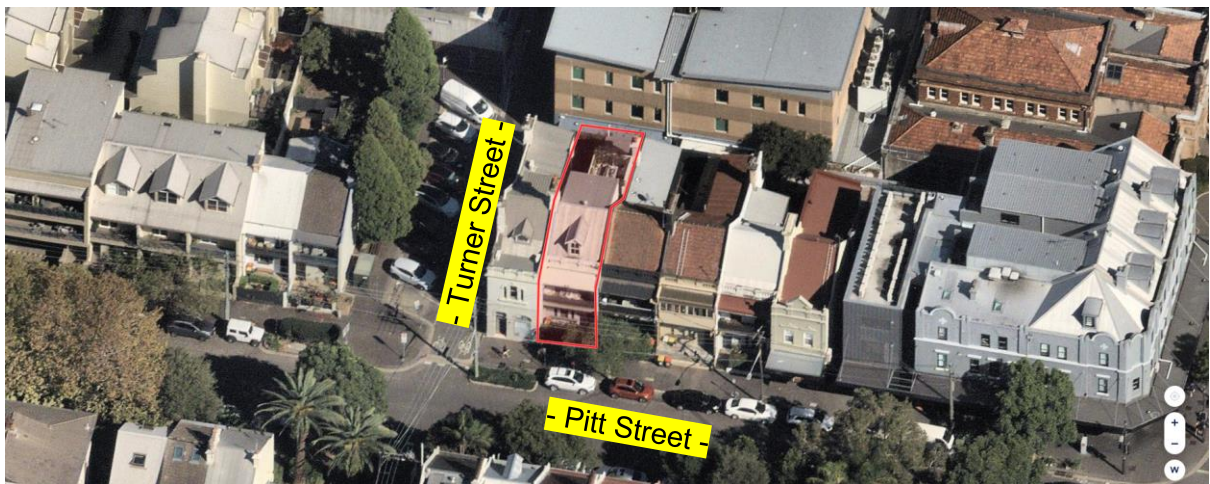


Figure 3: Oblique site view (source: Nearmap 2024)



Figure 4: Site viewed from Pitt Street (source: Council Planning Officer - 20 February 2024)



Figure 5: Pitt Street facade (source: Council Planning Officer - 20 February 2024)



Figure 6: Subject site open space at the ground floor courtyard and Level 1 balcony which is proposed to be demolished (source: Council Planning Officer - 20 February 2024)



Figure 7: Subject site kitchen and dining with outlook to ground floor POS (source: Council Planning Officer - 20 February 2024)

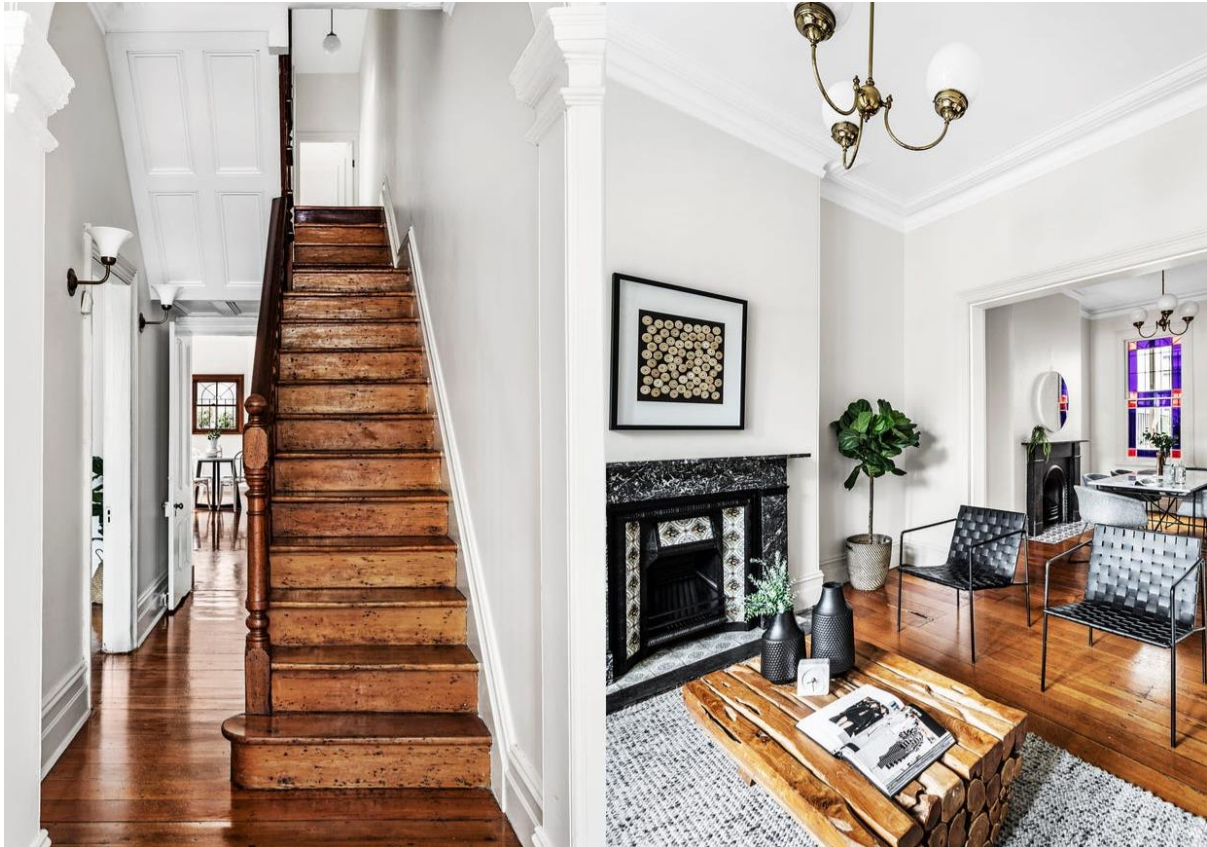


Figure 8: Subject site existing staircase from ground to Level 1 and ground floor living and dining area (source: <https://www.realestate.com.au/sold/property-house-nsw-redfern-133145686>)



Figure 9: Level 2 terrace private open space (source: Council Planning Officer - 20 February 2024)



Figure 10: Level 2 floor area currently used as a living area / area of proposed Bedroom at Level 2 (source: Council Planning Officer - 20 February 2024)



Figure 11: Level 2 floor area looking west to the outdoor terrace private open space (source: Council Planning Officer - 20 February 2024)

History Relevant to the Development Application

Development Applications

7. The following applications are relevant to the current proposal:
 - **D/2002/645** – Development consent was granted on 17 October 2002 for "alterations and additions to existing dwelling including attic conversion & upper-level deck".

Compliance Action

8. The site is not subject to any compliance action or compliance history.

Amendments

9. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 2 April 2024. Requested changes included retaining the existing ground floor staircase given the heritage contribution, reduce the depth of the upper floor outdoor terrace to maintain the existing depth and allow the view corridor of the existing chimney from Turner Street to be maintained. Additionally, further plan details were requested to clearly depict the proposed extent of demolition and proposed materials and finishes.
10. The applicant responded to the request on 20 May 2024, by the submission of revised architectural plans.
11. The applicant provided an updated Clause 4.6 variation request for the FSR exceedance on 11 July 2024.

Proposed Development

12. The application seeks consent for the following:
 - Partial demolition of the existing terrace dwelling, involving;
 - the ground floor internal and external walls, and
 - the ground floor southern boundary timber fencing, including the portion of fencing that extends within the Right of Footway easement / over the land of 98 Pitt Street, Redfern, and
 - Level 1 western façade bedroom wall and timber balcony adjacent to Bedroom 2, and
 - Level 2 western facade glazing and door to the outdoor terrace.
 - The proposed alterations and additions, involving;
 - ground floor extension to the kitchen and living area, and
 - ground floor western facade sliding doors opening onto the Right of Footway easement, and

- ground floor southern boundary masonry wall to RL.40.35mAHD (approximate height of 2.4m). This extends into the Right of Footway easement / over the land of 98 Pitt Street, Redfern, and
- planting within the Right of Footway easement, and
- Level 1 Bedroom 3 new western façade windows and roof garden, and
- Level 2 ensuite addition, and
- Level 2 glazing and door openings at the western façade, and
- Level 2 planter bed to the west of the elevated terrace and perimeter balustrading, and
- two skylights added to the skillion roof form over the upper floor stairwell and shower.
- The proposal results in a net increase in GFA by 11.5sqm. This additional GFA is wholly located at the ground floor.

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

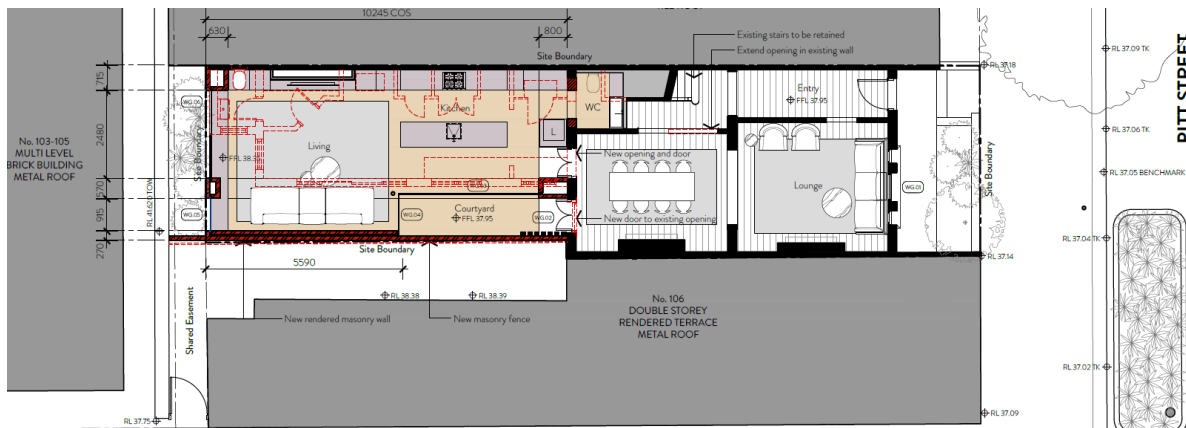


Figure 12: Proposed ground floor plan

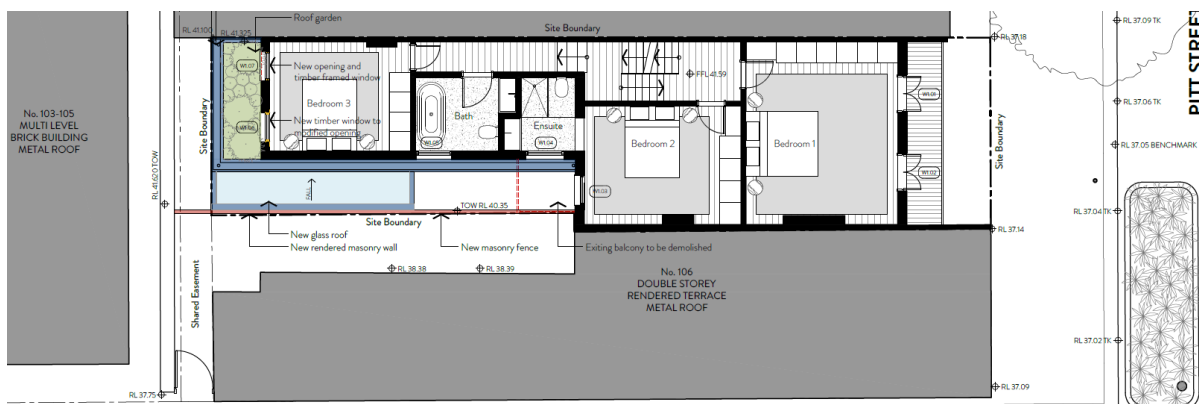


Figure 13: Proposed Level 1 floor plan

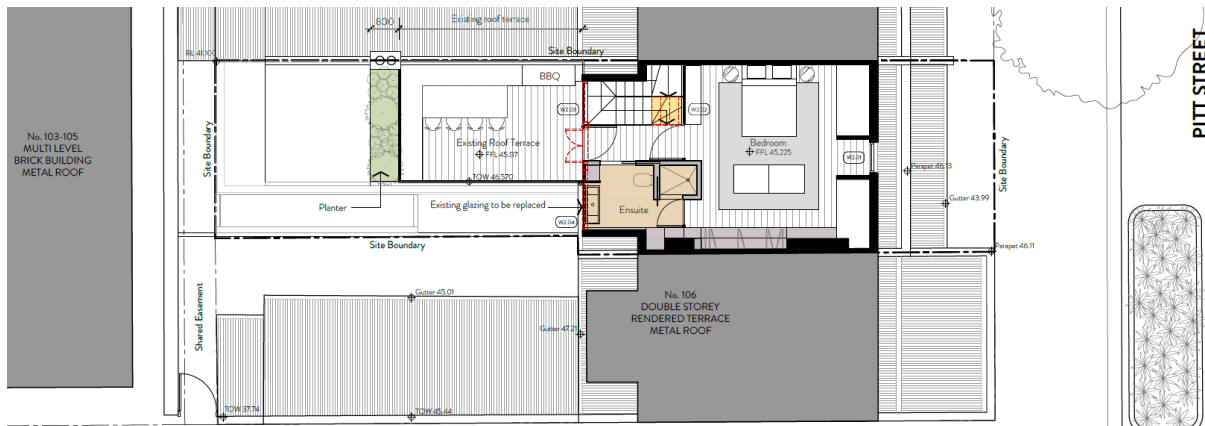


Figure 14: Proposed Level 2 floor plan

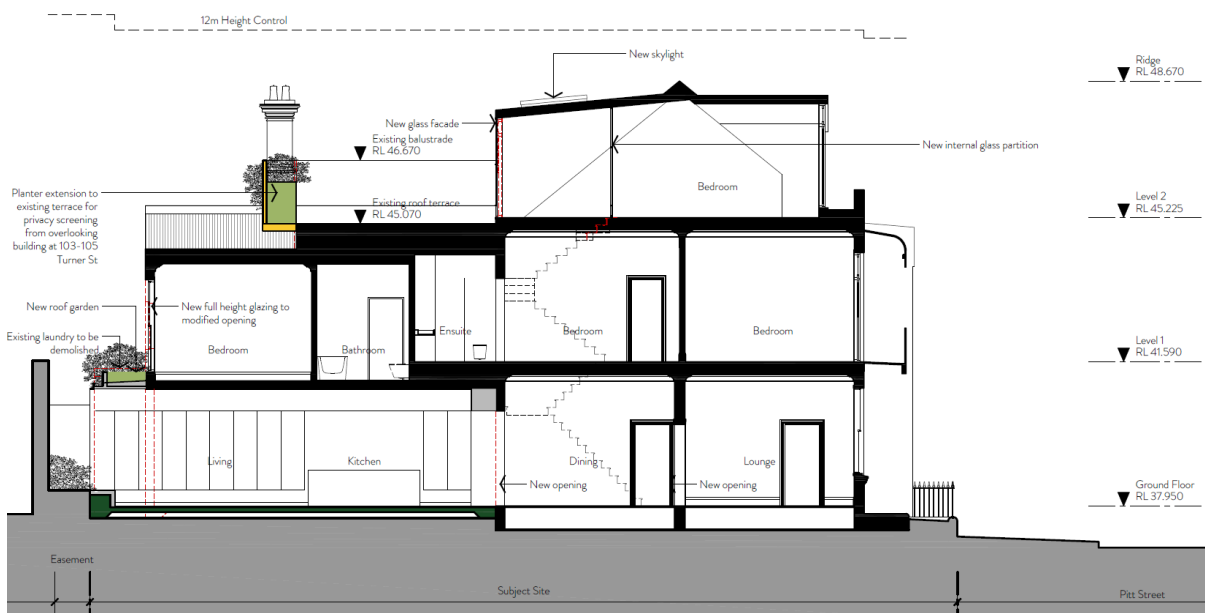


Figure 15: Proposed section plan

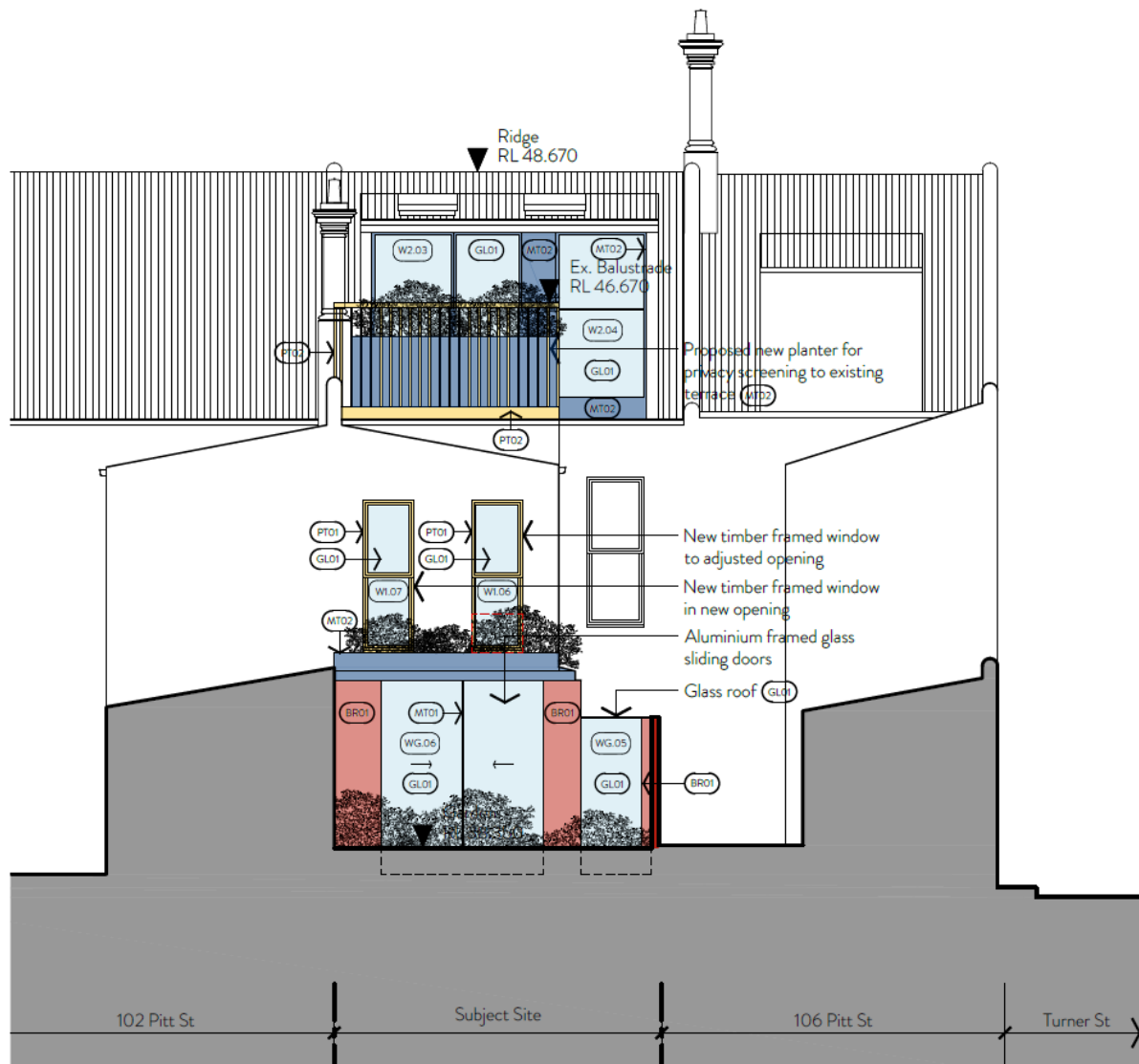


Figure 16: Proposed western elevation plan

Assessment

14. 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 (Sustainable Buildings) 2022

15. The aims of this Policy are as follows—
- (a) to encourage the design and delivery of sustainable buildings,
 - (b) to ensure consistent assessment of the sustainability of buildings,
 - (c) to record accurate data about the sustainability of buildings, to enable improvements to be monitored,

- (d) to monitor the embodied emissions of materials used in construction of buildings,
- (e) to minimise the consumption of energy,
- (f) to reduce greenhouse gas emissions,
- (g) to minimise the consumption of mains-supplied potable water,
- (h) to ensure good thermal performance of buildings.

Chapter 2 Standards for residential development - BASIX

16. A BASIX Certificate (no.A1377181_02) has been submitted with the development application.
17. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in to the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The site is located in the E1 Local Centre zone. The proposed development is defined as a dwelling house which is a use that is not expressly specified as prohibited and is therefore permitted with consent in the zone.</p> <p>The proposal generally meets the objectives of the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	<p>A maximum building height of 12m is permitted.</p> <p>A height of 10.72m (RL.48.670) is existing and all proposed works are located at a lesser than the existing dwelling ridge.</p>

Provision	Compliance	Comment
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 1.25:1 or 142.75sqm is permitted for the site.</p> <p>The existing dwelling occupying the site has a FSR of 1.56:1 (178.5sqm).</p> <p>The application proposes a floor space ratio of 1.66:1 (190sqm).</p> <p>The proposed development does not comply with the maximum floor space ratio development standard.</p> <p>It exceeds the standard by 47.25sqm in GFA and is a variation of 33%.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted - refer to Attachment C.</p> <p>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 4.4 Floor Space Ratio.</p> <p>A Clause 4.6 variation request has been submitted with the application - refer to Attachment C.</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 does not contain a heritage item.</p> <p>The site is located within the C56 Redfern Estate heritage conservation area. The building is a contributory building within the heritage conservation area. The dwelling represents the 19th Century Victorian period. Whilst the terrace style dwelling is characteristic of</p>

Provision	Compliance	Comment
		the housing typology within the street, it is not visually or aesthetically distinctive on its own. The proposed alterations and additions will not have any detrimental impact on the heritage significance of the heritage conservation area.

Part 6 Local provisions – height and floor space

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

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.4 Dwelling houses, attached dwellings and semi-detached dwellings	Yes	<p>A maximum of 2 car parking spaces are permitted for the site.</p> <p>No onsite car parking is proposed, therefore the design is compliant with the relevant development standards.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with Class 5 Acid Sulfate Soils. The application does not proposed works require the

Provision	Compliance	Comment
		preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Development Control Plan 2012

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

Section 2 – Locality Statements

20. The site is located within the Redfern Park West locality. The proposed development is in keeping with the unique character and the design principles of the locality under Section 2.13.11 of the Sydney DCP 2012 in that:

- The development responds to and complements the contributory heritage buildings within the conservation area, and
- Vistas are protected and the proposed works do not contribute to any greater obstruction of view corridors, and
- The Pitt Street terrace character is maintained and conserved.

2.13.11 Redfern Park West



Figure 17: Locality map - Redfern Park West

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Partial compliance	<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>However, the proposed development does not incorporate any new tree planting on site to achieve a minimum 15% canopy coverage of the site.</p> <p>See further details in the 'Discussion' section below.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements. Refer to SEPP (Sustainable Buildings) section.
3.9 Heritage	Yes	<p>The site does not contain a heritage item.</p> <p>The site is located within the C56 Redfern Estate heritage conservation area. The building is a contributory building within the heritage conservation area. The dwelling represents the 19th Century Victorian period. Whilst the terrace style dwelling is characteristic of the housing typology within the street, it is not visually or aesthetically distinctive on its own. The proposed alterations and additions will not have any detrimental impact on the heritage significance of the heritage conservation area.</p> <p>The Applicant has submitted a Heritage Impact Statement prepared by Edwards Heritage Consultants dated November 2023.</p>
3.11 Transport and Parking	Yes	<p>The proposed development does not include any onsite car parking, and therefore does not exceed the maximum car parking controls.</p> <p>There is adequate storage space within the dwelling to be able to accommodate bike storage.</p>

Provision	Compliance	Comment
3.14 Waste	Yes	<p>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.</p> <p>The proposed development has adequate area at the Pitt Street frontage to accommodate waste storage bins.</p>

Section 4 – Development Types

4.1 Single Dwellings, Terraces and Dual Occupancies

Provision	Compliance	Comment
4.1.1 Building height	Yes	<p>The site is permitted a maximum building height of 3-storeys.</p> <p>The proposed development is 3-storeys in height and complies.</p>
4.1.2 Building setbacks	Yes	<p>The proposed development maintains the existing setback to Pitt Street, which is slightly more recessed compared to the two adjoining properties of 106 and 102 Pitt Street.</p> <p>The proposed development involves a ground floor extension which has a nil setback and is consistent with the setbacks of the two adjoining properties of 106 and 102 Pitt Street.</p> <p>At the Level 1 and Level 2 floors, the existing setback of the dwelling is maintained and the proposed works do not extend any further towards the rear western boundary.</p> <p>It should be noted that during the assessment of this application, the proposal was amended so that the Level 2 upper floor terrace was reduced in depth so that the terrace area does not encroach any further into the rear and the existing setback alignment is maintained.</p>

Provision	Compliance	Comment
<p>4.1.3 Residential amenity</p> <p>As demonstrated below, the proposed development will have acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties.</p>		
4.1.3.1 Solar access	No	<p>Due to the terrace character and east-west orientation of the subject dwelling and immediately adjoining dwellings, solar access to internal living areas and ground floor POS is not achieved.</p> <p>However, the Level 2 upper floor terrace will receive greater than 2 hours' solar access. This space, whilst not connected to the primary living area, is expected to be the primary POS for the dwelling.</p> <p>The proposed development includes extension of the floor plate at the ground floor, however, at the Level 1 and Level 2 floor plate there are no changes in the height of the building or expansion on the building envelope. Therefore, the proposed development will not contribute to any greater solar access impacts compared to the exiting situation.</p>
4.1.3.3 Landscaping	Yes	<p>No new landscaping aside from the planter beds at the Level 1 exterior and Level 2 terrace are proposed.</p> <p>The planting at the ground floor within the Right of Footway easement / over the land of 98 Pitt Street, Redfern cannot be proposed or approved as no land owners consent has been obtained.</p>
4.1.3.4 Deep soil planting	Yes	The site is less than 150sqm in area and therefore compliance with a minimum 15% deep soil is not required.
4.1.3.5 Private open space	Yes	The existing development provides 17sqm of private open space (POS) at the ground floor and has an additional 16.5sqm POS at the Level 2 terrace area.

Provision	Compliance	Comment
		<p>The proposed development seeks to reduce the ground floor POS to 6sqm and maintain the Level 2 terrace POS of 16.5sqm.</p> <p>Whilst this Level 2 terrace POS is not directly accessible from the ground floor living, the terrace POS offers a greater level of amenity in terms of natural light, ventilation and views compared to the ground floor POS.</p>
4.1.3.6 Visual privacy	Yes	<p>The proposed development does not introduce any new windows to the development aside from the Level 1 Bedroom 3 western façade windows which looks to the adjoining health care building. No adverse privacy impacts arise from this window.</p>
4.1.4 Alterations and additions		
4.1.4.1 General	Yes	<p>The proposed development does not remove significant building elements and respects the form, scale and setbacks of the dwelling and terrace row.</p> <p>The extent of additions is contained to a minor increase in GFA at the ground floor for the extension of the living and kitchen area. At the Level 1 and Level 2 floor plates, there is no additional GFA being proposed and the works relate to internal changes or changes to glazing at the western façade. No change to the existing roof form is proposed aside from the introduction of 2 new skylights.</p> <p>When viewed from the Pitt Street frontage, none of the proposed works will be visible as they are situated at a lower RL than the existing roof ridge.</p>
4.1.5 Roof alterations and additions		
4.1.5.6 Skylights	Yes	<p>The proposed 2 skylights are located at the rear roof pane of the existing roof and are not visible from the Pitt Street frontage.</p>

Provision	Compliance	Comment
4.1.7 Fences	No	<p>The existing southern side boundary fencing consists of timber paling panels. This existing fencing is located on the subject site and extends to the rear western boundary to be located within the Right of Footway easement / over the land of 98 Pitt Street, Redfern.</p> <p>This existing timber fence is proposed to be demolished.</p> <p>The proposed southern side boundary masonry fence is proposed to replace this existing timber fence.</p> <p>The newly proposed masonry fencing measures to be approximately 2.4m in height (maximum RL.40.35mAHD) above the courtyard floor level (RL.37.95mAHD).</p> <p>Under this provision, side boundary fencing should not exceed 1.8m in height. The applicant has not provided any justification as to why a 2.4m fence is required in this location. A 2.4 high fence adjacent to the narrow courtyards for the subject site and the southern neighbour at 106 Pitt Street, would be visually imposing, contribute to additional overshadowing to the 106 Pitt Street private open space and is not a suitable outcome.</p> <p>However, as this application has not been accompanied by landowners consent for the demolition of construction of new fencing within the Right of Footway easement / over the land of 98 Pitt Street, Redfern, these works cannot be approved. Refer to discussion section.</p>
4.1.9 Car parking	Yes	The proposed development does not include any onsite car parking, and therefore does not exceed the maximum car parking controls.

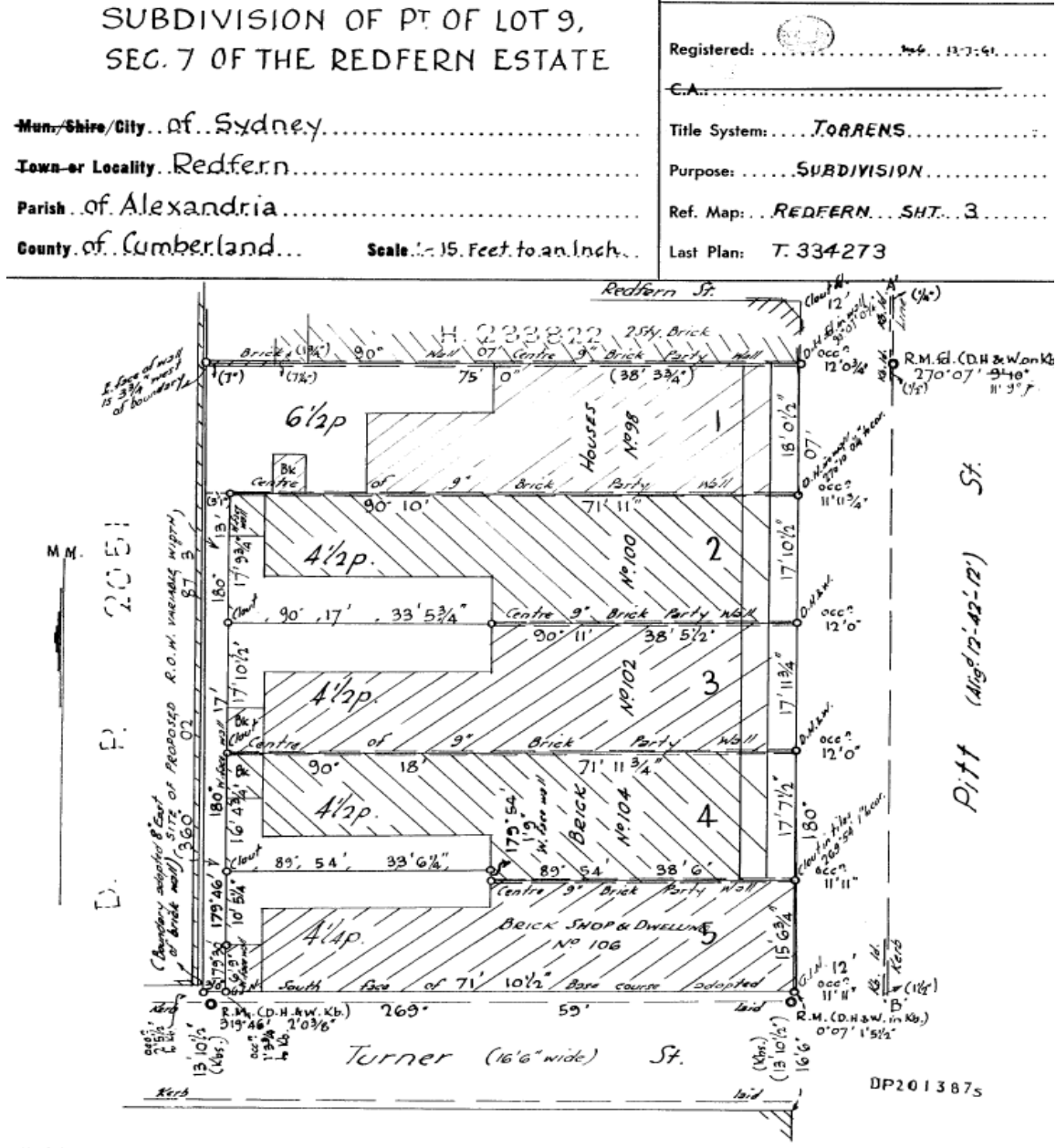
Discussion

Structures Proposed within the Right of Footway Easement / Adjoining Land of 98 Pitt Street Redfern

21. The development proposes demolition and new works and structures on the neighbouring land of 98 Pitt Street Redfern. Specifically, within a Right of Footway easement that runs along the western rear boundary. The Right of Footway easement burdens the landowner, 98 Pitt Street (Lot 1) and benefits several properties being 100 Pitt Street (Lot 2), 102 Pitt Street (Lot 3), 104 Pitt Street (Lot 4) and 106 Pitt Street (Lot 5).
22. An extract of this easement as registered on Deposited Plan 201387 is provided below at Figure 18. A Right of Footway as per Schedule 8 Part 2 of the Conveyancing Act 1919 is described as:

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person, to go, pass and repass on foot at all times and for all purposes, without animals or vehicles to and from the said dominant tenement or any such part thereof.
23. Based on a review of the adjoining sites and survey plans prepared between 2017 and 2023, it would appear that each neighbour has constructed over time, solid masonry walls which extend into this Right of Footway easement and essentially block north-south pedestrian access in the easement. It does not appear that any landowners consent from 98 Pitt Street Redfern has been obtained by these properties which have constructed the fencing.
24. The subject site has an existing timber panel fence which extends and blocks this easement as shown in the site photo provided below at **Figure 19**. As a result, each property (100, 102, 104 and 106 Pitt Street) have privatised the area of the Right of Footway easement despite the easement existing on title. Extract of a survey plan in Council's records dated 2017 is provided below at **Figure 20** - area of the easement is in the left-hand side of the extract with the easement shaded blue and the masonry walls prohibiting access are in red.
25. As this easement exists on title, and no landowners consent from 98 Pitt Street Redfern has been submitted with this subject development application for any demolition or construction works on the land of 98 Pitt Street, Redfern, this development application cannot approve the works outside of the subject site's boundaries.
26. Therefore, a design change condition of consent is recommended that requires (a) the existing timber fence is untouched and maintained, (b) the proposed masonry southern boundary fence is deleted from the application and (c) that no structures or works is permitted within or over the easement / 98 Pitt Street Redfern.

27. Furthermore, the proposed western facade glazing at the ground level living includes floor to ceiling sliding doors (WG.06). This design is not compatible with the interface to the easement. Therefore, a design change conditions has been imposed that requires the ground floor western facade to comply with Volume 2 Part 3.7.2 Fire Separation of External Walls. This may require the glazing to be constructed to FRL 60/60/60, or redesigned to be masonry construction that is 90mm thick, or require a performance solution.



Signatures, Seals and Statements of Dedications and Easements.

NOTE: It is intended to grant a Right of Way of variable width over that part of lot 1 shown on plan as "Site of proposed R.O.W. variable width" as appurtenant to lots 2 to 5 inclusive.

I, JOHN EDWIN STABLETON,
of 123 Pitt Street, Sydney,
a surveyor registered under the Surveyors Act, 1929, as amended, hereby certify that the survey represented in this plan is accurate and has been made (1) by me (2) under my immediate supervision, in accordance with the Survey Practice

Figure 18: Deposited Plan 201387



Figure 19: Subject site ground floor courtyard POS (left) and Right of Footway easement viewed from 106 Pitt Street (right) where the existing fencing encroaches into the Right of Footway easement / over the land of 98 Pitt Street, Redfern (source: Council Planning Officer - 20 February 2024 and 16 July 2024)

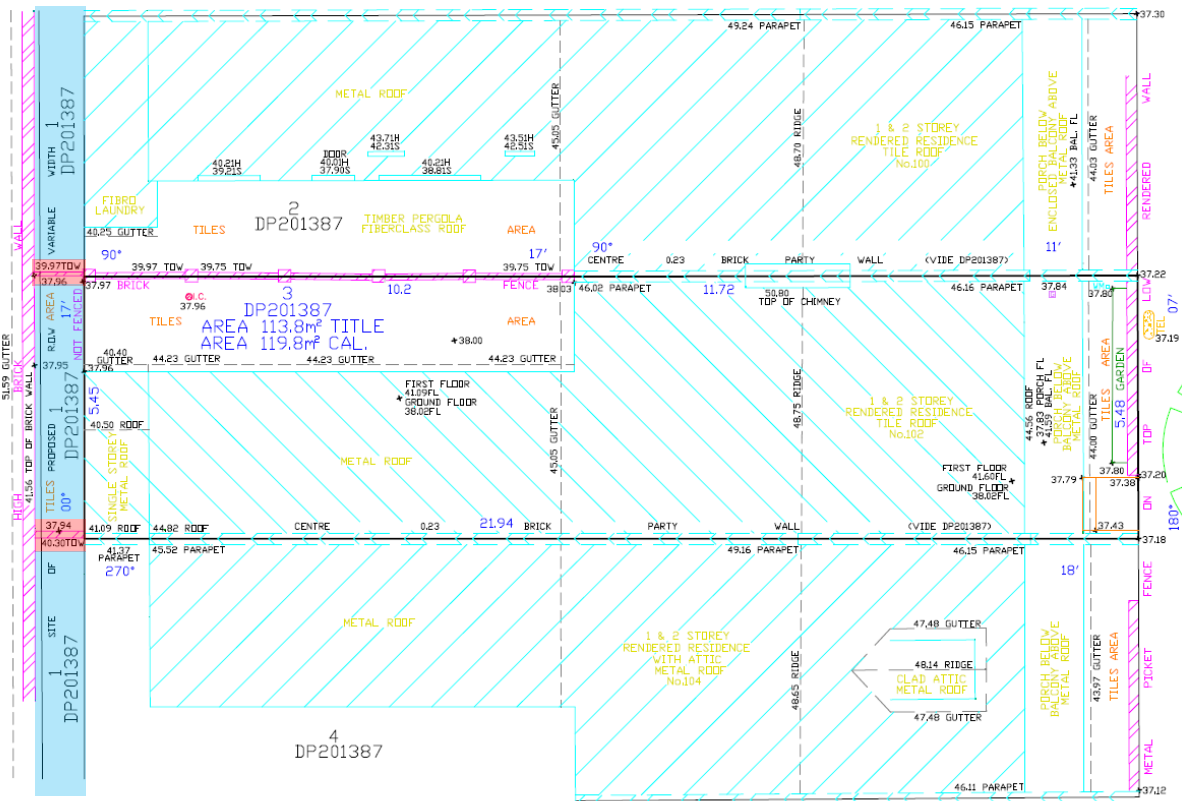


Figure 20: Survey Plan dated 2017 (source D/2022/783)

Clause 4.6 Request to Vary a Development Standard

Clause 4.4 Floor Space Ratio

28. The site is subject to a maximum FSR of 1.25:1 under Clause 4.4 Floor Space Ratio of SLEP 2012. Refer to the aerial map below with maximum permitted FSR for the site and surrounding area.
29. The site is 114.2sqm in area and an FSR of 1.25:1 equates to 142.75sqm.
30. The proposed development seeks approval for an FSR of 1.66:1, which is 190sqm. This exceeds the maximum permitted FSR by 47.25sqm and is a variation of 33%. As the variation exceeds 25%, the application is required to be determined by the Sydney Local Planning Panel.

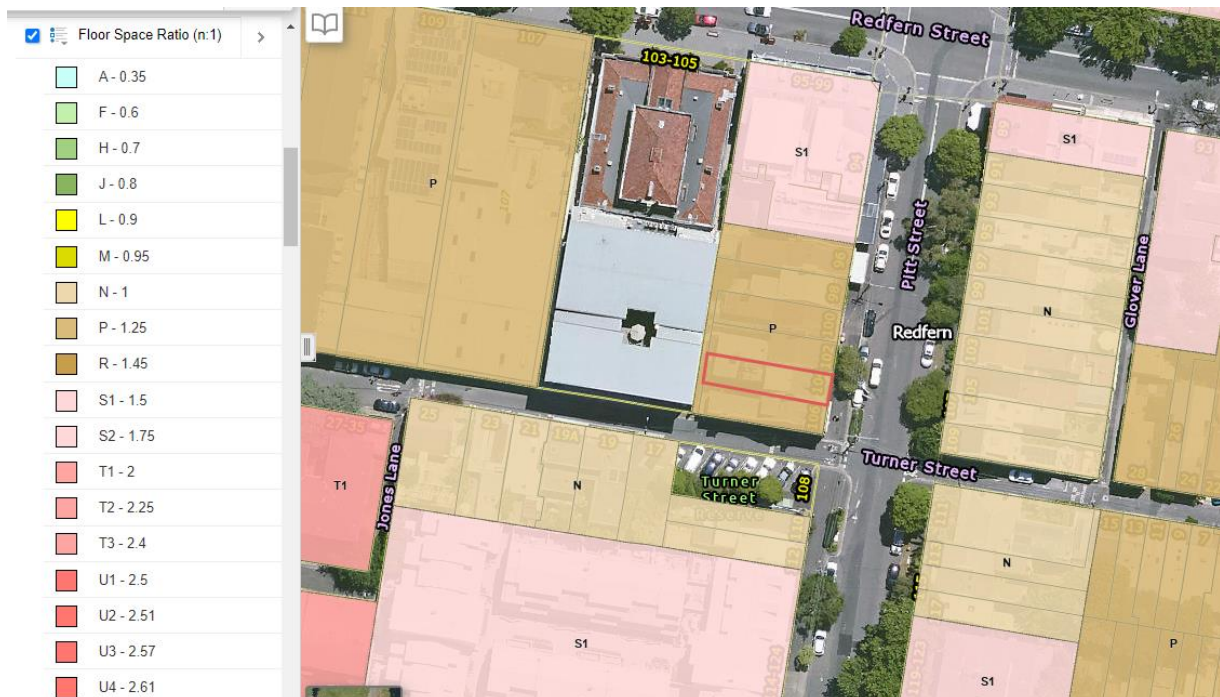


Figure 21: Locality map - Redfern Park West

31. 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)

32. The applicant seeks to justify the contravention of Clause 4.4 Floor Space Ratio development standard on the following basis:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

- It is considered that the proposal will have no detrimental effect relating to environmental, social or economic impacts on the locality
 - The additional floorspace does not result in any unreasonable amenity impacts regarding overshadowing or privacy...no additional overshadowing occurs to the adjoining dwellings. The proposal results in improved privacy to 106 Pitt Street and the subject site. No surrounding properties are adversely affected.
 - The proposal is of a nature in keeping with the overall function of the site. The premises are in a residential surrounding and amongst similar uses to that proposed.
 - It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.
 - The proposed FSR is consistent with surrounding development. The existing terrace to the south (106 Pitt Street) has an equivalent density with an estimated FSR of 1.63:1. The Redfern Community Health Centre immediately to the west has a built form consistent with an FSR of 2-2.5:1.
- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
- The proposed alterations and additions to the existing terrace create an open plan living, kitchen and dining space, increasing the habitable area and amenity of the terrace.
 - The proposed alterations and additions will not increase the land use intensity or result in additional vehicle or pedestrian traffic. It will not result in any additional impact on the existing or planned infrastructure. No change of use or increased occupancy is proposed.
 - The additional floorspace does not result in any adverse impacts regarding overshadowing or privacy. The additions reduce the overlooking of surrounding dwellings by removing a non-sympathetic balcony and locating new structures below the new shared masonry fence.
 - The proposed density and built form is consistent with the surrounding context. The form and layout of the original terrace has been retained, consistent with the neighbouring dwellings. No change to the building form is visible from the public domain.
 - The proposed FSR is consistent with surrounding development. The existing terrace to the south (106 Pitt Street) has an equivalent density with an estimated FSR of 1.63:1. The Redfern Community Health Centre immediately to the west has a built form consistent with an FSR of 2-2.5:1.

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

33. 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)?

34. The applicant has not explicitly referred to the five tests established by Preston CJ in *Wehbe v Pittwater*, on how to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. However, from Council's interpretation of the submitted Clause 4.6, it is presumed that it is based on Test 1, being that despite the non-compliance with the numerical development standard, that the objectives of the Clause 4.4 and the zone are achieved.
35. The proposal results in a net increase of 11.5sqm where the GFA is located wholly at the ground floor plate. There is not additional GFA proposed at either Level 1 or Level 2 of the terrace dwelling.
36. The additional 11.5sqm of GFA is proposed to improve the amenity and usability of the dwelling's kitchen and living areas, therefore satisfying Objective (1)(a) of Clause 4.4 Floor Space Ratio.
37. The additional 11.5sqm of GFA does not contribute to any adverse pedestrian or vehicle traffic generation or control, therefore satisfying Objective (1)(b) of Clause 4.4 Floor Space Ratio.
38. The additional 11.5sqm of GFA does not adversely impact on the existing or planned infrastructure for the locality, therefore satisfying Objective (1)(c) of Clause 4.4 Floor Space Ratio.
39. The additional 11.5sqm of GFA does not contribute to any greater perceived density or bulk and the form is consistent with the adjoining terrace housing along this block. Furthermore, the net increase in GFA does not contribute to any adverse amenity impacts in terms of solar access, noise, or privacy to adjoining properties or to the streetscape as the GFA is located wholly at the ground floor level. Therefore, Objective (1)(d) of Clause 4.4 Floor Space Ratio is satisfied.

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

40. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the floor space ratio development standard.
41. The existing dwelling already exceeds the permissible floor space ratio development, (existing GFA of 175.8sqm equate to a FSR of 1.56:1). The additional GFA of 11.5sqm to extend the ground floor dining and living areas is a modest addition that does not compromise residential amenity for adjoining properties or adversely impact on the character or forms within the streetscape.
42. The proposal maintains the contributory front building façade in the C56 Redfern Estate heritage conservation area and the proposed works are not visible from the public domain, so there is no perceivable change to the built form when observed from the public domain.
43. The applicant has demonstrated there are sufficient environmental planning grounds to support the minor additional GFA proposed.

Conclusion

44. For the reasons provided above the requested variation to the Clause 4.4 Floor Space Ratio development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012.

Urban Ecology

45. The proposed development generally satisfies the relevant provisions within Section 3.5 Urban Ecology, however it is noted that the proposed development does not include any new on-site tree planting to achieve a tree canopy coverage of 15% of the site area.
46. Whilst no new tree planting is proposed, the existing terrace dwelling footprint does not allow for adequate space for deep soil areas to allow for a thriving environment for trees. The proposed alterations and additions to the terrace dwelling result in a minor increase in GFA at the ground floor plate which further reduces any area availability for tree planting.
47. Whilst the proposed development does not satisfy provision 3.5.2 (2) of the SDCP 2012, in the case of the context of the site and built-up areas of the terrace character along this section of Pitt Street, the proposal is acceptable.

Solar Access

48. The proposed development fails to satisfy provision 4.1.3.1(1) of SDCP 2012 as the proposed dwelling and neighbouring southern dwelling at 106 Pitt Street is not afforded a minimum of 2 hours' solar access to internal living areas and at least 50% of POS areas.
49. The failure to achieve a minimum of 2 hours' solar access to the proposed living area of the subject dwelling is due to the east-west orientation and attached terrace dwelling character. It should be noted that the existing living area does not achieve direct solar access and the proposed extension in GFA has the opportunity to increase indirect natural light and improve residential amenity.
50. The proposed dwelling will not receive the minimum 2 hours' direct solar access to the ground floor POS (courtyard adjacent to the living and dining area) however the elevated Level 2 terrace POS will receive direct solar access to 50% of this POS area between 9:30am to 2pm.
51. In relation to solar access to the southern adjoining neighbour at 106 Pitt Street, the POS is located at the ground floor and access via the bi-fold doors from the study and the living area is located at Level 1 fronting Pitt Street - refer to floor plan below for reference. The POS area is already overshadowed by the existing subject site dwelling and the living area receives unobstructed eastern sun during the morning period. As per provision 4.1.3.1 (2) new development must not create any additional overshadowing impacts where solar access is less than 2 hours and as the proposed development does not result in any greater overshadowing impacts to living areas and POS, the application is acceptable in this regard.

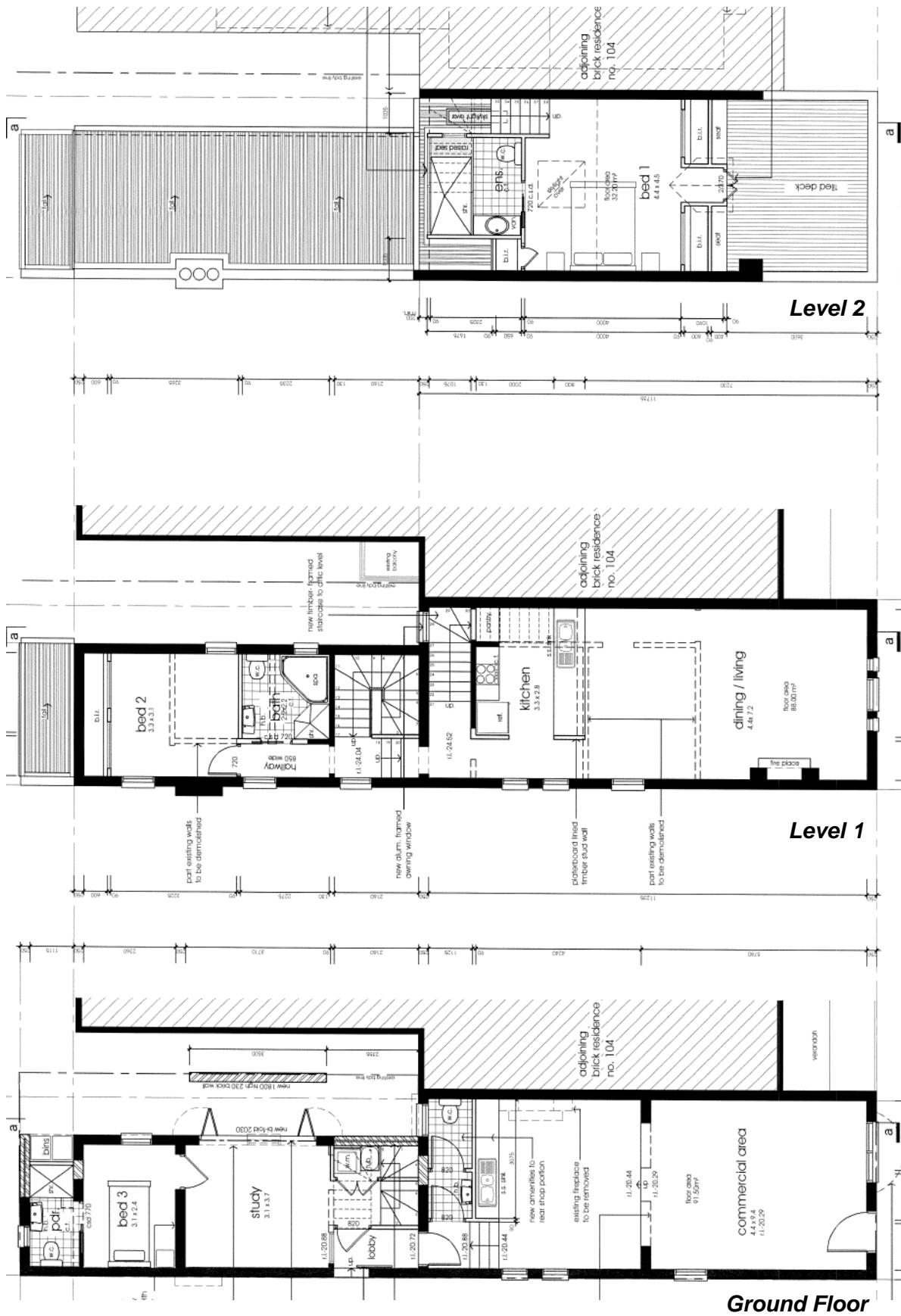


Figure 22: Floor plans for 106 Pitt Street Redfern (source: D/2006/1159)

Private Open Space

52. The proposed development seeks to reduce the ground floor POS from 17sqm to 6sqm and maintain the existing Level 2 terrace POS which is 16.5sqm. Whilst the Level 2 terrace POS is not directly accessible from the ground floor living, the terrace POS offers a greater level of amenity in terms of natural light, ventilation and views compared to the ground floor POS and is considered to be the primary POS compared to the ground floor courtyard. For these reasons the proposed design is acceptable.

Fencing

53. The proposal seeks to demolish existing timber fencing and construct new masonry fencing along the southern boundary and extend the new fencing to be within the Right of Footway easement and over the land of 98 Pitt Street Redfern.
54. No landowners consent from 98 Pitt Street Redfern has been submitted with this application to allow either the demolition of the existing fencing or construction of the new fencing.
55. Therefore, there are no powers to approve such works or structures outside of the subject sites property boundaries. Conditions of consent are recommended that require the deletion of the demolition of existing fencing and the deletion of new fencing at the southern side boundary and over the land of 98 Pitt Street Redfern. With these recommended conditions, the existing fencing arrangement will be maintained.
56. Furthermore, if landowners consent was obtained from 98 Pitt Street Redfern for the demolition and reconstruction of fencing, the proposed 2.4m high masonry fencing would not be suitable for the site. The proposed new fencing measures to be approximately 2.4m in height (maximum RL.40.35mAHD) above the courtyard floor level (RL.37.95mAHD). A 2.4m high fence would contribute to some additional overshadow impacts to the neighbouring private open space as well as present a visually dominant structure in the small private open space area.
57. However, as no landowners consent has been obtained for the works over 98 Pitt Street Redfern, no fencing can be demolished or constructed by this development application.

Consultation

Internal Referrals

58. The application was referred to Council's Heritage and Urban Design Unit.
59. It was requested that the applicant submit a demolition plan, new works are identified by shading, a materials and finishes schedule submitted, the existing / original internal terrace staircase be retained as it will preserve the terrace heritage character and features, the Level 2 terrace be reduced in depth to maintain the terrace character, reduce overlooking and maintain highlights to the existing chimney.
60. The applicant submitted additional information 20 May 2024 to address the above.

External Referrals

61. No external referrals were required in the assessment of this application.

Advertising and Notification

62. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 11 January 2024 and 26 January 2024.
63. A total of 46 properties were notified and 1 submission in support of the development was received from the neighbouring property of 106 Pitt Street Redfern on 26 January 2024.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

64. The City of Sydney Development Contributions Plan 2015 applies to the site. However, the development is for alterations and additions to an existing dwelling, which is a type of development listed in Table 2 of the Plan which is excluded from the need to pay a contribution.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

65. The site is located within the Residual Lands affordable housing contribution area.
66. Section 7.13 is not applicable and therefore no affordable housing contributions are levied, as the proposed development:
- (i) Is not for the erection of a new building with a GFA greater than 200sqm, as stated at S.7.13(1)(a)(i),
 - (ii) Is not for the alterations to an existing building that results in the creation of more than 200sqm of GFA, as stated at S.7.13(1)(a)(ii),
 - (iii) Is not for alterations to an existing building that will result in the creation of more than 60sqm of GFA for a purpose other than residential accommodation, as stated at S.7.13(1)(a)(iii),
 - (iv) Is not for the demolition or and subsequent creation of 200sqm of GFA, as stated at S.7.13(a)(iv),
 - (v) Is not for a change of use from non-residential to residential, as stated at S.7.13(c).

Housing and Productivity Contribution

67. The development is not subject to a Housing and Productivity Contribution under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023. While the site is located with the Greater Sydney region, the development is not a type of residential development described in Section 5 to which the Housing and Productivity Contribution applies.

Relevant Legislation

68. Environmental Planning and Assessment Act 1979.

Conclusion

69. The application seeks consent for the alterations and additions to the existing residential terrace and is consistent with the E1 Local Centre zone objectives contained in Sydney Local Environmental Plan 2012.
70. The proposed plans seek consent for works, of the ground floor planting and ground floor southern boundary fence and demolition of the existing timber fencing which is on the land under the ownership of 98 Pitt Street Redfern. This area of land on 98 Pitt Street Redfern is subject to a Right of Footway easement that is registered on title. The easement burdens 98 Pitt Street and benefits 100, 102, 104 and 106 Pitt Street. This subject development application includes landowners consent from 104 Pitt Street only. No landowners consent from 98 Pitt Street Redfern has been submitted for the demolition of existing timber fencing or construction of new masonry fencing on the land of 98 Pitt Street Redfern. As no landowners consent has been submitted for the works outside of the subject site boundary, those works cannot be approved under this development application. Recommended conditions of consent require the deletion of the proposed scope of demolition of existing fencing and construction of new fencing.
71. The applicant has submitted a written request pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012 which relates to the floor space ratio development standard (Clause 4.4 of Sydney Local Environmental Plan 2012). The request to vary the development standard is supported.
72. The proposed development generally satisfies the relevant controls contained with the Sydney Development Control Plan 2012 and there are no greater adverse amenity impacts to neighbouring properties or the streetscape.
73. The proposal has been amended during assessment of the application to reduce the depth of the Level 2 terrace area and therefore responds positively to concerns raised by Council's assessing officers and the development is sympathetic to the streetscape character and the heritage conservation area.
74. The proposal is recommended for approval, subject to conditions.

ANDREW THOMAS

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