

Item 5.**Development Application: 22-24 Billyard Avenue, Elizabeth Bay**

File No.: D/2018/1286

Summary

| | |
|----------------------------|---|
| Date of Submission: | 25 October 2018 Amended plans received 5 December 2018 |
| Applicant: | Ms Prudence Williams |
| Architect/Designer: | TKD Architects |
| Developer: | - |
| Owner: | Del Rio Flats Pty Limited |
| Cost of Works: | \$82,995.00 |
| Zoning: | The site lies within a R1 Residential Zone. The proposed modifications are permissible within the R1 Residential zone. |
| Proposal Summary: | <p>The application is referred to the Local Planning Panel for determination due to the proposed development exceeding the height of the buildings standard by 35.3%.</p> <p>The application proposes alterations to the balcony area of apartment 5 within the Del Rio building. Work includes removal of the windows enclosing the existing balcony, reconstruction of the balcony openings to their original detail, addition of a new a sliding glass door to access the balcony and adjustment of the roof pitch to raise the height of the eaves by 335mm.</p> <p>Amendments have been made to the application to address concerns regarding the design of the balcony openings as well as further resolution of the roof details and their intersection with the adjacent Spanish mission detailing.</p> |

**Proposal Summary
(continued):**

Amended details were submitted that generally reinstate the balcony openings to original details based on the original 1929 drawings by John Spencer Stansfield and roof details were submitted to the satisfaction of Council's Heritage and Urban Design specialists.

The Sydney LEP 2012 allows for a maximum building height of 15m and the Sydney DCP 2012 allows four storeys in height.

The application proposes alterations at a maximum building height of 20.3 metres (which is a 5.3m or 35.3% exceedance to the LEP height standard). The elements of the building which exceed the LEP height control are limited to the roof pitch over the existing balcony and sit below the overall height of the existing building.

The application seeks a variation to the height control under Clause 4.6. This variation is supported.

The Sydney LEP 2012 permits a maximum floor space ratio (FSR) of 1:1. The proposal reduces the overall floor space area by 16sqm by removing the existing balcony enclosure. The application proposes a FSR of 0.7:1 which complies with the LEP standard.

Summary Recommendation:

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings

Recommendation

It is resolved that:

- (A) the variation requested to Clause 4.3 Height of Buildings in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application No. D/2018/1286 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) It is consistent with the objectives of the R1 Residential zone.
- (B) The requested variation to the Clause 4.3 height of buildings standard is upheld because the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of Clause 4.3 Height of Buildings and the R1 Residential zone.
- (C) As conditioned, it is generally consistent with the objectives of the relevant controls for the site.
- (D) For reasons outlined in the report to the Local Planning Panel.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 9 January 2019.
2. The site is an irregular shape with an area of approximately 1478sqm. It has a primary street frontage to Billyard Avenue and also fronts onto Elizabeth Bay and Keltie Bay to the north east of the site. The site is located in front of the intersection of Billyard Avenue and Onslow Avenue. A five storey residential flat building known as Del Rio, approved by Council in 1929 is contained within the site. Surrounding land uses are predominantly residential.
3. The site is not a heritage item but is located within the Elizabeth and Rushcutters Bay Conservation area (C20).
4. An aerial map of the site and photographs of the subject building both external and internal are provided as follows:

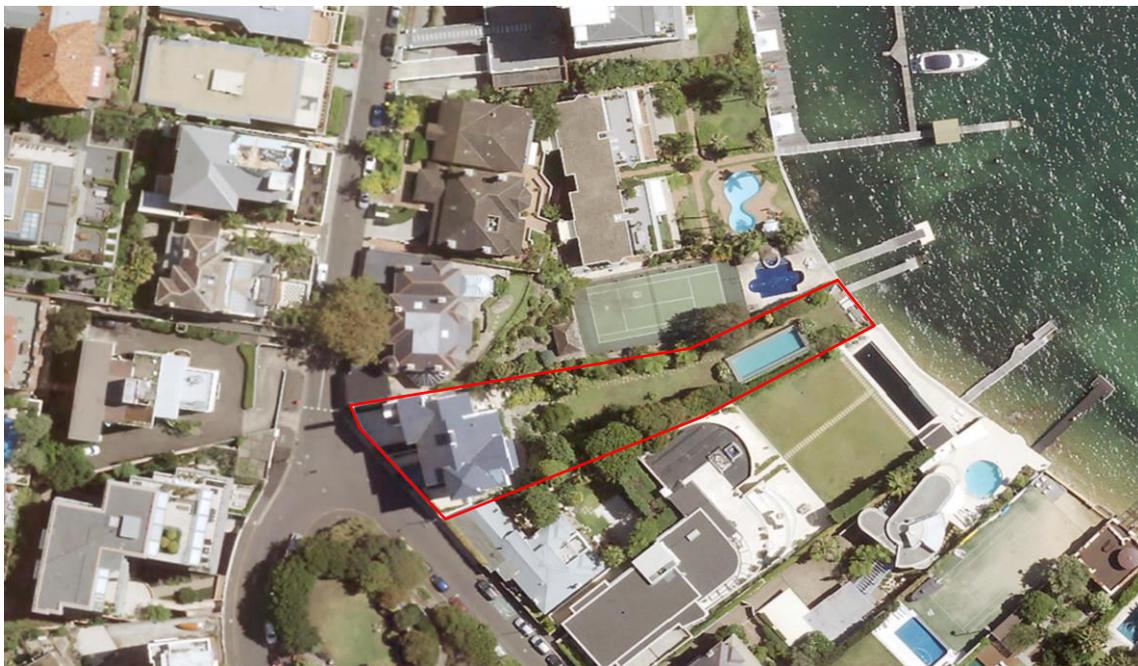


Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site looking east as viewed from the rear. Subject site is located on the uppermost level



Figure 3: Subject site - existing enclosed balcony



Figure 4: Internal - Existing enclosed balcony

Proposal

5. The application seeks consent for the following alterations to an existing apartment no. 5 within the Del Rio building:
 - (i) remove the existing windows enclosing the existing balcony;
 - (ii) reconstruct the balcony openings to the original details;
 - (iii) addition of a new sliding glass door to access the balcony;
 - (iv) adjustment of the roof pitch to raise the height of the eaves by 335mm.
6. The development application has been amended during the course of the assessment. Council staff requested amendments to the proposed development in relation to the recreation of the original balcony openings. It was requested that the new balcony openings match the original 1929 approved Council drawings. See Figure 8. Further clarification was also required in relation to the roof details and their intersection with the adjacent Spanish mission detailing.
7. Amended details were submitted that reinstate the balcony openings to original details based on the original 1929 drawings by John Spencer Stansfield and roof details were submitted to the satisfaction of Council's Heritage and Urban Design specialists.
8. Plans of the proposed development (as amended) and the 1929 elevation of the building are provided below.

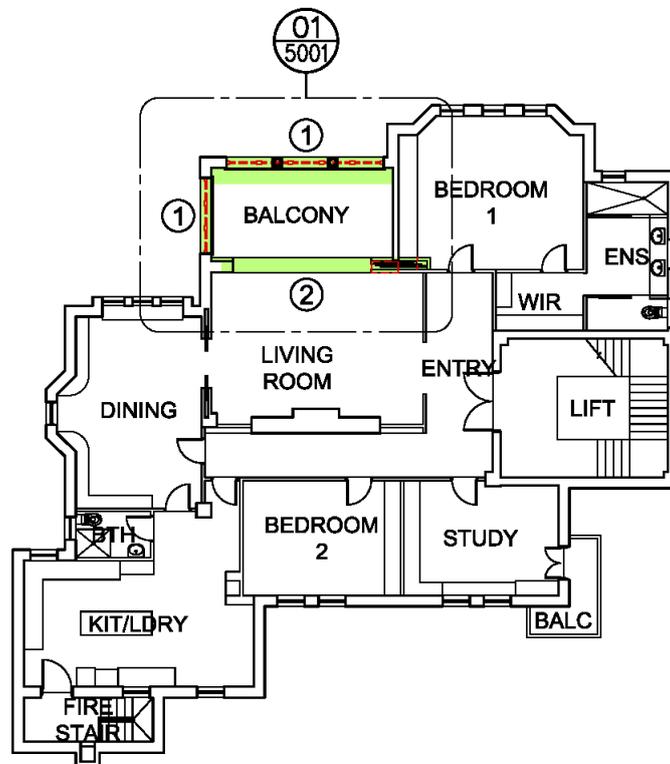


Figure 5: Proposed floor plans

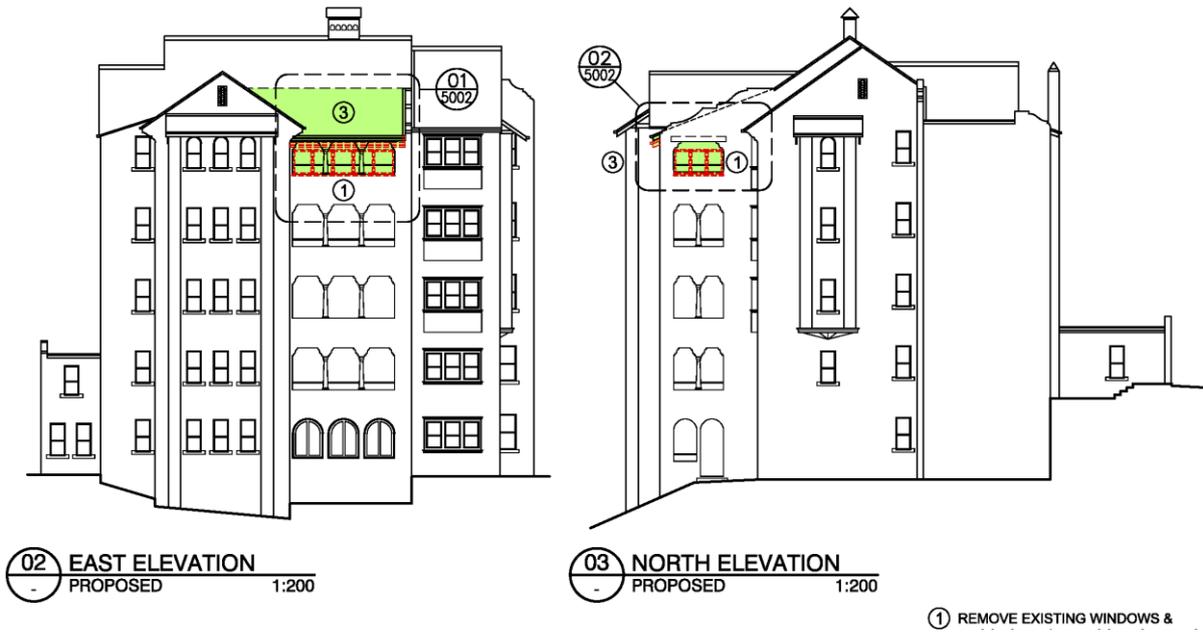


Figure 6: Proposed east and north elevation

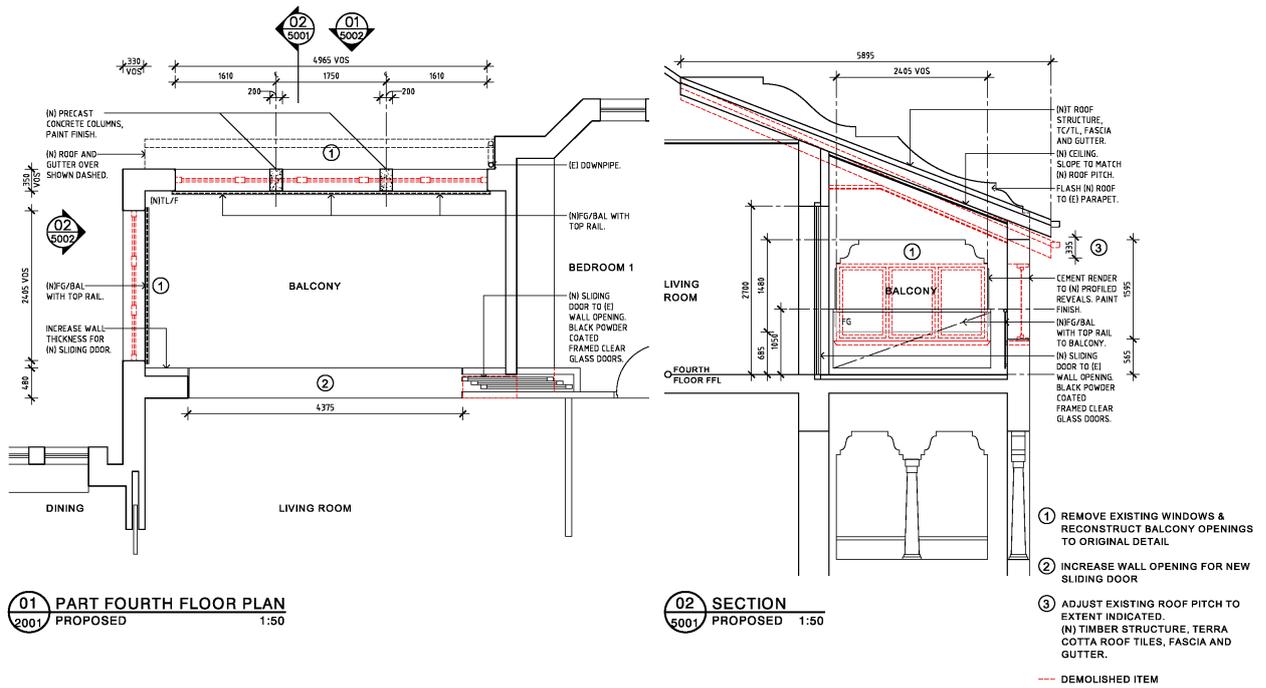


Figure 7: Proposed balcony and roof details



Figure 8: Original drawings by John Spencer Stansfield approved by Council in 1929



Figure 9: Left - Photo of the existing building; Right - Photomontage - proposed new openings

History Relevant to the Development Application

9. There are no development applications on file in relation to the subject site. It is unknown when the existing balcony was enclosed.

Economic/Social/Environmental Impacts

10. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

11. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
12. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off;
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
13. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. The site is also located within in the Foreshores Waterways Area. The development does not entail any works which would affect the local hydrology and therefore the development is consistent with the environmental controls contained within the deemed SEPP.
14. The works are also considered to be acceptable with regard to visual quality to the waterway to the east, as the materials and colours proposed will match those used on the remainder of the façade. In addition, the proposed roof pitch and glass doors feature a large setback from both the waterway and the rear building line.
15. The development is consistent with the controls contained with the deemed SEPP.

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

16. A BASIX Certificate has not been submitted with the development application.
17. As the development falls under BASIX excluded development as defined under the Environmental Planning and Assessment Regulation 2000, i.e. the alterations result in a space that cannot be fully enclosed, a BASIX certificate is not required in this instance.

Sydney LEP 2012

18. The site is located within the R1 Residential zone. The proposed use is defined as residential and is permissible with consent.
19. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

| Development Control | Compliance | Comment |
|---|------------|---|
| 4.3 Height of Buildings | No | A maximum height of 15m is permitted. The proposed work sits at a maximum height of 20.3m. See discussion under the heading issues. |
| 4.4 Floor Space Ratio | Yes | A maximum FSR of 1:1 is permitted. A FSR of 0.7:1 is proposed. |
| 4.6 Exceptions to development standards | Yes | The proposal seeks to vary the development standard prescribed under Clause 4.3 for height of buildings. See discussion under the heading Issues. |
| 5.10 Heritage conservation | Yes | The subject site is not a heritage item but is located within a heritage conservation area. Amended details were submitted that reinstate the balcony openings to the original details based on the original 1929 drawings by John Spencer Stansfield and roof details were submitted to the satisfaction of Council's Heritage and Urban Design Specialists. The building reinstates the balcony openings back to its original 1920's design which is considered an improvement on the existing enclosed balcony and the façade on the east elevation. |

| Part 6 Local Provisions - Height and Floor Space | Compliance | Comment |
|---|-------------------|--|
| Division 3 Height of buildings and overshadowing | Yes | The minor alterations to the roof pitch will have no identifiable impact in terms of overshadowing. |
| Division 4 Design excellence | Yes | The proposed development satisfies the requirements of this provision as the proposal exhibits a high standard of architectural design, material and detailing appropriate to the building type and location; the form and external appearance of the proposed development will improve the quality and amenity of the public domain as the building reinstates the balcony openings back to its original 1920's design which is considered an improvement to the existing enclosed balcony. |

| Part 7 Local Provisions - General | Compliance | Comment |
|--|-------------------|--|
| Division 2 Foreshore development | Yes | <p>The proposed alterations are set back considerably from the waterway to the east and are physically recessed from the rear building line. Therefore, the works are not considered visually prominent and therefore do not have adverse impacts to the façade or cause environmental harm to the waterway.</p> <p>The proposal also aims to use the same paint finish to match the existing façade and is therefore compatible with the building and the surrounding area.</p> |

Sydney DCP 2012

20. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – The Bays

The subject site is located in the 'The Bays' locality. The proposal for a new sliding door, altered roof pitch and removal of the existing balcony enclosure is considered to be in keeping with the unique character of the area and design principles in that it responds to and complements the buildings within the conservation area, preserves the diversity of building types, architectural periods and heights in the area and maintains view corridors between the harbour and Elizabeth Bay House which is located on Onslow Avenue.

| 3. General Provisions | Compliance | Comment |
|--|------------|--|
| 3.6 Ecologically Sustainable Development | Yes | A BASIX certificate is not required |
| 3.9 Heritage | Yes | <p>The existing building is not a heritage item but is located within a conservation area.</p> <p>Amended details were submitted that reinstate the balcony openings to the original details based on the original 1929 drawings by John Spencer Stansfield and roof details were submitted to the satisfaction of Council's Heritage and Urban Design Specialists.</p> <p>The building reinstates the balcony openings back to its original 1920's design which is considered an improvement to the existing enclosed balcony and the façade on the east elevation.</p> |
| 3.12 Accessible Design | Yes | The site has access via an internal lift shaft for occupants with a disability and numerous waiting spaces on the landings within the fire stairs. |
| 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 has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development. |

| 4. Development Types 4.2 Residential flat, commercial and mixed use developments | Compliance | Comment |
|---|------------|---|
| 4.2.1 Building height | No | <p>The Sydney DCP 2012 specifies a maximum height of 4 storeys.</p> <p>The existing 1920's building already exceeds 4 storeys and consists of 5 storeys. The proposed work within the fifth storey does not detract from the character and significance of the existing building.</p> <p>Reinstatement of the original balcony and openings is a positive contribution to the character of the existing building.</p> |

Issues

Height - Clause 4.6 request to vary a development standard

21. The Sydney LEP 2012 permits a maximum height control of 15m. The proposed alterations will occur at a maximum height of 20.3m. The variation to the building height LEP control results in an exceedance of up to 5.3m, or 35.3%. See Figure 10 below.

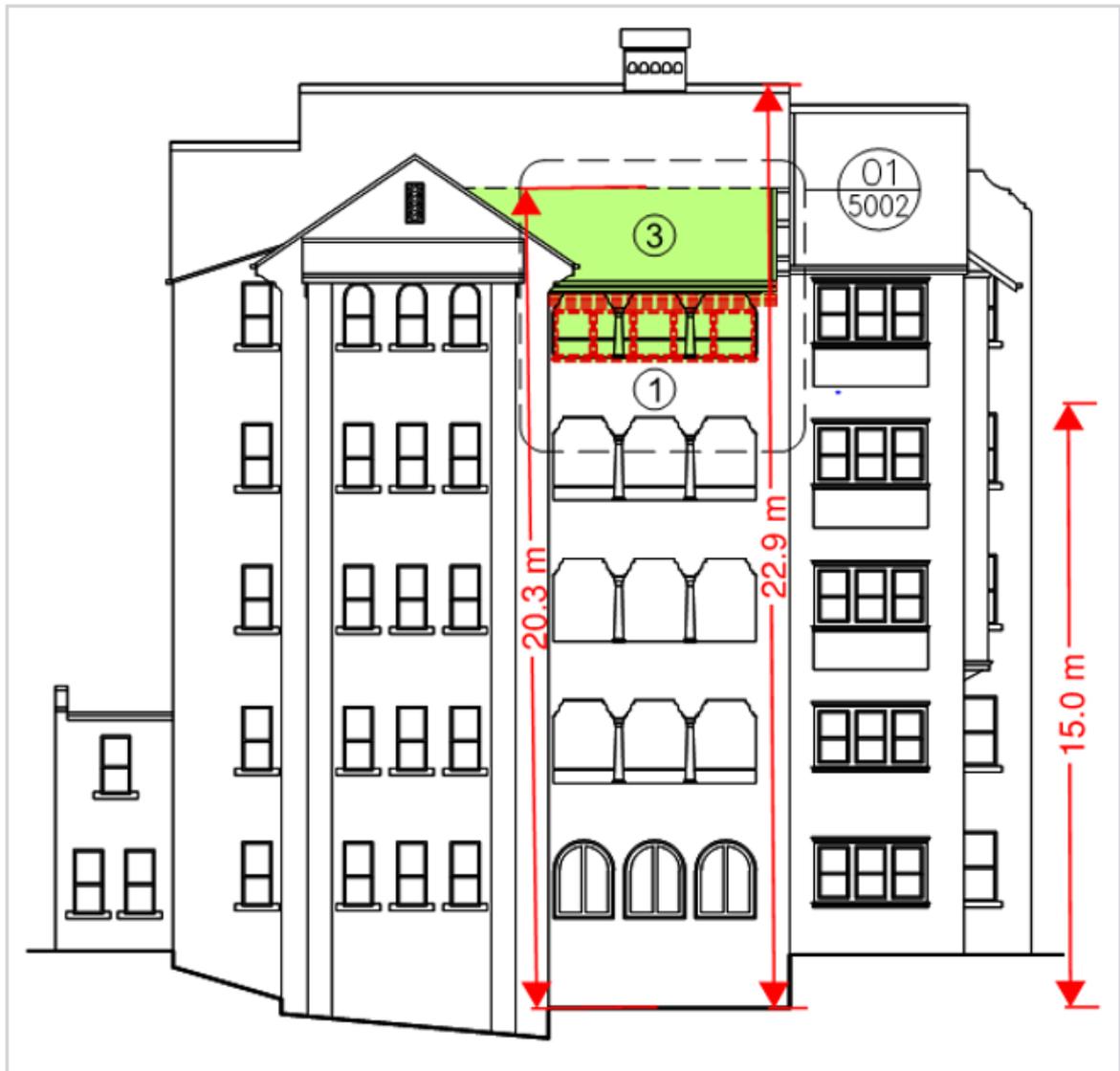


Figure 10: Height of proposed work and existing building

22. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- 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.

Applicants Written Request - Clause 4.6(3)(a) and (b)

23. The applicant seeks to justify the contravention of the height development standard on the following basis:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

- (i) As the proposal involves a technical variation of the maximum building height standard as the proposal will not alter the maximum height of the existing building but will involve new work above the 15m height limit.
- (ii) The alteration of the roof pitch has a maximum height of approximately 20.3m as measured from the existing ground level.
- (iii) The removal of the existing windows and reinstatement of the balcony has a maximum height of approximately 17.8m as measured from the existing ground level.
- (iv) The variation does not exceed the maximum height of the current building.
- (v) The proposal does not involve a variation to the maximum allowable floor space ratio for the development under the Sydney Local Environmental Plan 2012.
- (vi) Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development.

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

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

- (a) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
- (b) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

25. The written statement provided by the applicant has sufficiently justified that strict numeric compliance with the development standard is unreasonable and unnecessary in this instance.

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

26. For the reasons outlined above, there are sufficient environmental planning grounds to justify contravening the building height development standard and it is recommended that a Clause 4.6 be granted.

Is the development in the public interest?

27. The proposed development is in the public interest because it is consistent with the objectives of Clause 4.3 Height of Buildings, in that the height of the development is appropriate to the condition of the site and its context as the height of the building predates the height controls; and in accordance with the objectives of the R1 Residential zone, the proposal provides for the housing needs of the community and maintains the existing land use pattern of the predominantly residential uses in that it enhances the existing residential use and reinstates the development back to its original form.

Conclusion

28. For the reasons provided above the requested variation to the height control is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the height controls and the R1 Residential zone.

Other Impacts of the Development

29. The proposed development is capable of complying with the BCA. It is Class 2.
30. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

31. 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.

Internal Referrals

32. The conditions of other sections of Council have been included in the proposed conditions.

The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; who advised that the proposal is acceptable subject to the recommended conditions.

External Referrals

Notification, Advertising and Delegation (No Submissions Received)

33. In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 14 days between 29 October 2018 and 13 November 2018, no submissions were received.

Public Interest

34. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S61 Contribution

35. The cost of the development is under \$200,000. The development is therefore not subject to a levy under the Central Sydney Development Contributions Plan 2013.

Relevant Legislation

36. The Environmental Planning and Assessment Act 1979.

Conclusion

37. The proposal is for alterations to the balcony area of apartment 5 within the Del Rio building. Work includes removal of the windows enclosing the existing balcony, reconstruction of the balcony openings to their original detail, addition of a new a sliding glass door to access the balcony and adjustment of the roof pitch to raise the height of the eaves by 335mm.
38. The proposal has been amended to address concerns regarding the design of the balcony openings as well as further resolution of the roof details and their intersection with the adjacent Spanish mission detailing.
39. Amended details were submitted that reinstate the balcony openings to original details based on the original 1929 drawings by John Spencer Stansfield and roof details were submitted to the satisfaction of Council's Heritage and Urban Design specialists.
40. The applicant has submitted a Clause 4.6 variation to height under the Sydney LEP 2012. The variation to the development standard is supported.
41. Overall, the amended proposal is generally consistent with the objectives, standards and guidelines of the relevant planning controls.
42. Accordingly, the Development Application is recommended for approval, subject to conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Hannah Del Duca, Planner