

Item 4.**Development Application: 375 Glebe Point Road, Glebe - D/2018/1586**

File No.: D/2018/1586

Summary**Date of Submission:** 19 December 2018**Applicant:** Environa Studio**Architect/Designer:** Environa Studio**Owner:** Mr. Lawrence Luk**Cost of Works:** \$625,267**Zoning:** B2 - Local Centre

Proposal Summary: The application seeks consent for alterations and additions to an existing mixed use building. The building currently incorporates a ground level retail liquor shop, a ground level wine bar, and three upper level residential apartments. The building is a locally listed heritage item under the Sydney LEP 2012 and is located within a heritage conservation area.

The proposal does not seek to amend the existing housing mix or commercial use of the site. It will retain ground level retail and wine bar and incorporate three upper level apartments.

Works include :

- lowering of existing basement floor and excavation works to extend the ground floor of the existing small bar;
- internal alterations to the residential apartments;
- addition of rear balconies to apartments within levels 2 and 3; and
- addition of front and rear dormers and conversion of roof space to create an upper level to Apartment 4 and creation of roof top terraces.

**Proposal Summary
(continued):**

The proposal also includes a strata subdivision consisting of five strata units.

The application is reported to the Local Planning Panel for determination as the proposal exceeds the height development standard and the floor space ratio development standard by more than 10%.

The Sydney LEP 2012 allows for a maximum building height of 9m. The existing building exceeds the height control by 3.9m at its highest point. The proposal will exacerbate the extent of non-compliance.

The proposed development results in works up to a height of 12.1m and exceeds the 9m height control by 34% or 3.1m. A request to vary the height of buildings development standard has been made pursuant to Clause 4.6 of the Sydney LEP 2012. The request to vary the height development standard is not supported in this instance for the reasons outlined in this report.

The Sydney LEP 2012 allows for a maximum FSR of 1.5:1. The existing building exceeds the control and has a current gross floor area of 394.5sqm equating to an FSR of 1.7:1 and a 13% variation from the control. The proposal will exacerbate this non-compliance

The proposed development results in a gross floor area of 477.7sqm equating to an FSR of 2.06:1 and a 37% variation from the control. A request to vary the floor space ratio development standard has been made pursuant to Clause 4.6 of the Sydney LEP 2012. The request to vary the floor space ratio development standard is not supported in this instance for the reasons outlined in this report.

The proposed Clause 4.6 variations are not supported and the proposal results in unsympathetic alterations and additions to a heritage item and will have unacceptable amenity impacts on neighbouring properties.

SEPP 65 does not apply as the proposal does not include more than four residential apartments.

The application was notified for a period of 14 days between 09 January 2019 and 25 January 2019. One submission was received. The issues raised relate to privacy and noise impact from the rooftop balconies and unsympathetic additions to a heritage item.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Regulation 2000
- (ii) State Environmental Planning Policy (BASIX) 2004
- (iii) Sydney Local Environmental Plan 2012 ('LEP 2012')
- (iv) Sydney Development Control Plan 2012 ('DCP 2012')

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request - Height of Building
- C. Clause 4.6 Variation Request - Floor Space Ratio

Recommendation

It is resolved that consent be refused for Development Application No. D/2018/1586 for the following reasons:

- (A) The development exceeds the height development standard prescribed under Clause 4.3 of *Sydney Local Environmental Plan 2012* by 34%. Based upon the material available at the time of determining this application, the consent authority is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3), that compliance with the height development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.3 and as such the proposal is not considered to be in the public interest.
- (B) The development exceeds the floor space ratio development standard prescribed under Clause 4.4 of *Sydney Local Environmental Plan 2012* by 37%. Based upon the material available at the time of determining this application, the consent authority is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3), that compliance with the floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.4 and as such the proposal is not considered to be in the public interest.
- (C) The proposal results in unsympathetic alterations and additions to a heritage item located within a conservation area. The proposal will adversely alter significant heritage fabric, elements and spaces, and will not enhance the character and heritage significance of the heritage item. The proposal therefore fails to comply with:
 - (i) Clause 1.2(k) expressed in the Aims of the Plan *Sydney Local Environmental Plan 2012*;
 - (ii) Clause 5.10 of *Sydney Local Environmental Plan 2012*;
 - (iii) Section 3.9(1) of *Sydney Development Control Plan 2012*; and
 - (iv) Section 3.9(b) of *Sydney Development Control Plan 2012*.
- (D) The development results in a 4 storey building and exceeds the 2 storey height in storeys control, contrary to Section 4.2.1 of the *Sydney Development Control Plan 2012*.
- (E) The proposed development fails to demonstrate design excellence in accordance with Clause 6.21 of *Sydney Local Environmental Plan 2012* as it results in adverse bulk, detrimental impacts on the heritage significance of the heritage item and the character of the conservation area, and adverse impacts on the amenity of neighbouring properties.
- (F) The proposal does not maintain or enhance visual privacy to neighbouring properties, and is therefore inconsistent with Aim 1.2(h) of *Sydney Local Environmental Plan 2012* and the objectives of Section 4.2.3 of *Sydney Development Control Plan 2012*.

- (G) The proposed development fails to demonstrate adequate waste management for the residential and commercial uses and is contrary to Section 3.14 and Section 4.2.6 of *Sydney Development Control Plan 2012*.
- (H) The proposed development is not in keeping with the future desired character of the area and is not considered to be in the public interest.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 18 February 2019 and 4 July 2019.
2. The corner site is rectangular, with an area of approximately 232sqm. The site has a 6 metre primary street frontage to Glebe Point Road, a 38 metre secondary frontage to Forsyth Street and a 6 metre secondary frontage to Charlton Way.
3. A part two, part three storey mixed use building is contained within the site. Levels fall approximately 3.5m from the front (west) to the rear (east) of the site.
4. The mixed use building is currently comprised of a retail liquor shop at the ground floor with access from Glebe Point Road, a small bar at ground floor with access from Forsyth Street, and three residential apartment units in the upper levels accessed from Forsyth Street. A single garage is located to the rear of the site accessed from Forsyth Street.
5. Surrounding land uses are residential and commercial. Neighbouring buildings along Glebe Point Road to the north and south are similarly characterised with ground floor commercial uses with residential uses in the upper floors. Multi-residential buildings are located to the east and west of the site.
6. The site is a local heritage item (I766) under the LEP 2012 and is located within the Glebe Point Road conservation area. The site forms part of a group of three heritage buildings known as 'Bayview Flats' and 'Diana Flats' (the application site). The terraces were constructed c 1889 - 1901 and additions were added to the front in 1930s accommodating shops at ground floor and residential flats above.
7. Diana Flats at 375 Glebe Point Road has a textured rendered facade with parapet to the corner with Forsyth Street with a small gable to the splay with a cartouche. It adjoins the gable of the original terrace, also with a cartouche in the apex, and then a parapet to the rear lane. The corner shop has a suspended awning above an altered shopfront. Fenestration within the building is predominantly timber framed, double hung sash windows. The building has an inter-war appearance although the gable alludes to the fact that the building was originally a terrace.
8. Significant internal features of the group include the original/early room layout, plaster ceilings, stairs, timber joinery (incl. doors, flooring, architraves, picture rails, skirtings and letter boxes) and fireplaces.
9. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area.



Figure 2: Site viewed from Glebe Point Road. To the north along Glebe Point Road is No 377-379 and 381, which form part of the same heritage listing.



Figure 3: Site viewed from corner of Glebe Point Road and Forsyth Street.



Figure 4: Site viewed from Forsyth Street noting existing entry points.



Figure 5: Rear of site viewed from Forsyth Street.



Figure 6: Site viewed Charlton Way.



Figure 7: Rear view of subject site and adjoining heritage items.



Figure 8: Charlton Way streetscape noting residential uses east of the site.



Figure 9: Mixed use building located to the south of the site at No. 373 Glebe Point Road



Figure 10: Residential uses located to the west of the site at No. 232 and No. 230 Glebe Point Road



Figure 11: Existing level 2 terrace looking east, currently used as common open space and waste storage.



Figure 12: Looking north from the level 2 terrace.



Figure 13: Looking south from the level 2 terrace.



Figure 14: Typical apartment unit entrance unit (right) and common corridor leading to the level 2 terrace (left).



Figure 15: Common internal residential stairwell.

Summary of Proposal

10. The proposal primarily seeks to extend the existing wine bar, add balconies and outdoor terrace areas to each apartment and convert the roof space to add an additional level to the top floor apartment (labelled as 'Apartment 4').
11. The proposal will retain the existing use mix on the site including a ground level retail liquor shop and wine bar and three upper level shop top apartments. It is noted that the plans label the apartments as 'Apartments 2 - 4', for the purposes of future strata subdivision, however, only three residential apartments are proposed.
12. A strata subdivision into five strata units is proposed.

Detailed Proposed

13. The following works are proposed:
 - (a) **Level 1:**
 - (i) lowering of existing basement floor (basement currently attached to retail tenancy) and additional excavation to enable an extension of the existing small bar floor area by 34.1sqm;
 - (ii) removal of existing delivery door to basement facing Forsyth Street;

- (iii) internal alterations to the small bar use including demolition of internal staircase between the basement and first floor, resulting in no separation between the extended wine bar and residential foyer; and
- (iv) the proposal retains the existing entrance from Forsyth Street and does not seek to change the existing use or management of the unit.

(b) Level 2:

- (i) internal alterations to existing liquor retail shop fronting Glebe Point Road including demolition of existing storage and cooler room;
- (ii) internal alterations to apartment 2 including demolition of common corridor wall and associated cornices/ceilings, front door and associated architrave, two existing laundry rooms and incorporation of space into apartment;
- (iii) demolition of external stair from laneway leading to the terrace;
- (iv) addition of new rear balcony to apartment 2 comprised of glass balustrades and introduction of full width aluminium framed sliding doors to apartment; and
- (v) the existing shared terrace is proposed for the sole use of apartment 2 with the removal the shared access corridor and external stair.

(c) Level 3:

- (i) removal of existing rear windows to apartment 3;
- (ii) addition of new rear balcony to apartment 3 comprised of glass balustrades and aluminium framed sliding doors to apartment bedrooms;
- (iii) internal alterations to apartment 4 including demolition of walls and addition of new staircase leading to a new upper level (level 4); and
- (iv) removal of existing common internal staircase to rooftop.

(d) Level 4:

- (i) addition of front and rear dormers to create an upper level for apartment 4, resulting in an additional floor area of 49.1sqm;
- (ii) Creation of new front rooftop terrace (23.4sqm) accessed from the front dormer, for the sole use of apartment 4; and
- (iii) Creation of new rear rooftop terrace (45.6sqm) with planter bed around accessed from the rear dormer, for the sole use of apartment 4.

- (e) Strata subdivision into five strata units (retail tenancy, small bar and three apartments).

14. Plans of the proposed development are provided below.

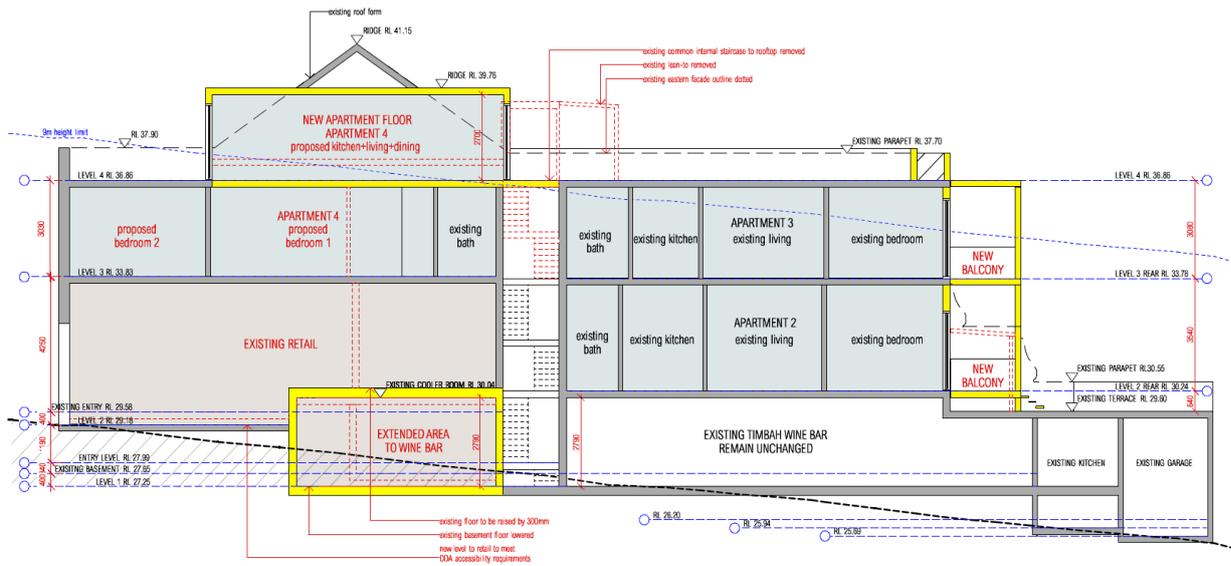


Figure 16: Proposed Section

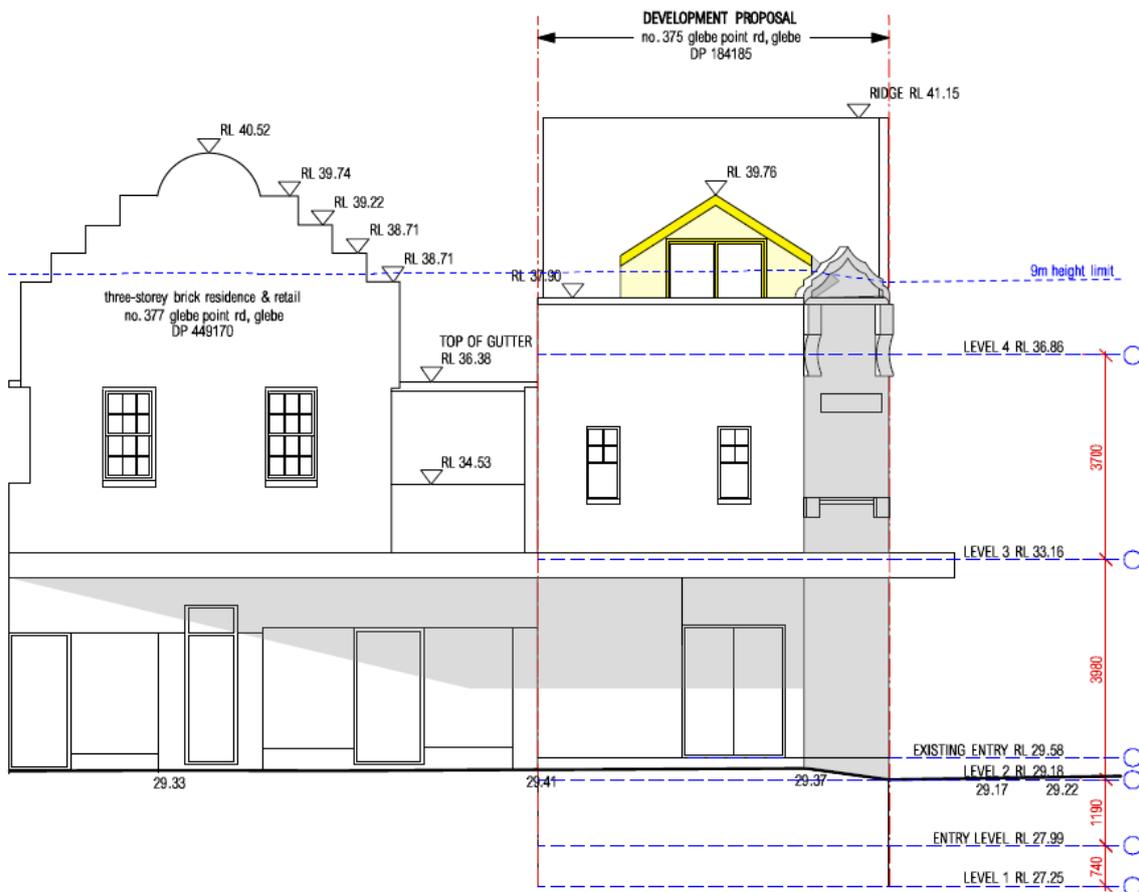


Figure 17: Proposed Glebe Point Road (Front) Elevation



Figure 18: Proposed Charlton Way (Rear) Elevation



Figure 19: 3D Perspective view



Figure 20: 3D Perspective view

Site Development Application History Relevant to the Subject Site

15. Development Application DA 289 was approved on 8 September 1971 for alterations and additions to shop and dwellings including change of use to a liquor retail shop.
16. Development Application D/2009/136 was approved on 23 April 2009 for use of the rear part of the premises facing Forsyth Street as a small wine bar/café, with internal and external alterations, including new walls, windows and doors. The approved hours of operation area 10.00am - 9.00pm Monday to Thursday; 10.00am - 10.00pm Friday and Saturday; and 10.00am - 8.00pm on Sunday. A one year trial period was granted between 10.00pm and 12midnight on Friday and Saturday, and has since lapsed. The venue has not submitted to continue the trial period hours.

History Relevant to the Current Development Application

17. Council officers requested further details and design amendments from the application on two occasions. The most recent letter was sent on 27 May 2019 and advised the applicant that the application was not supported due to the LEP FSR and height non-compliance, adverse heritage impact and privacy impact. The applicant was requested to withdraw the application.

18. At the time of preparing this report the applicant responded advising that the proposal will not be withdrawn. The applicant has not addressed the issues raised and as such, the application is not supported as discussed in detail in this report.

Economic/Social/Environmental Impacts

19. 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.

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

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

State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65)

22. SEPP 65 does not apply to the proposed development as the building concerned does not contain four or more dwellings.

Sydney Local Environmental Plan 2012

23. The site is located within the B2 Local Centre zone. The proposal is permitted with consent.
24. 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	<p>A maximum height of 9m is permitted. The existing building is 12.9m in height at its highest point. The proposal will further exacerbate this non-compliance.</p> <p>The proposed development results in works up to a height of 12.1m and as such, exceeds the 9m height control by 34% or 3.1m.</p> <p>Refer to issues section of the report.</p>

Development Control	Compliance	Comment
4.4 Floor Space Ratio	No	<p>A maximum FSR of 1.5:1 is permitted.</p> <p>The existing building exceeds the control and has a current gross floor area of 394.5sqm equating to an FSR of 1.7:1 and a 13% variation from the control. The proposal will further exacerbate this non-compliance</p> <p>The proposed development results in a gross floor area of 477.7sqm equating to an FSR of 2.06:1 and a 37% variation from the control.</p> <p>Refer to issues section of the report.</p>
4.6 Exceptions to development standards	No	<p>The proposal seeks to vary the development standard prescribed under Clause 4.3 in relation to building height by 34%.</p> <p>The proposal seeks to vary the development standard prescribed under Clause 4.4 in relation to floor space ratio by 37%.</p> <p>The proposed non compliances are not supported.</p> <p>Refer to issues section of the report.</p>
5.10 Heritage conservation	No	<p>The subject site forms part of a group of three local heritage items (I766) and is located in the Glebe Point Road heritage conservation area (C29).</p> <p>Refer to issues section of the report.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	No	<p>The proposal is not considered to exhibit design excellence.</p> <p>Refer to issues section of the report.</p>
Part 7 Local Provisions - General	Compliance	Comment

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
7.14 Acid Sulphate Soils	Yes	The site is identified as containing class 5 Acid Sulphate Soil. As the works do not involve excavation within 500m of Class 1-4 soils, no further action is required.
7.15 Flood planning	Yes	The site is not identified as flood prone land.

Sydney Development Control P 2012

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

3. General Provisions	Compliance	Comment
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The proposal includes a strata subdivision into five strata units. The proposed strata subdivision is acceptable in principle; however, the development is not supported for other reasons outlined in this report.
3.9 Heritage	No	The subject site forms part of a group of local heritage items (1766) and is located in the Glebe Point Road heritage conservation area (C29). Refer to issues section of the report.
3.14 Waste	No	It has not been demonstrated that the proposed development can comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development. Refer to issues section of the report.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	<p>The subject site is identified as a 2 storey character area. The existing building presents as a 2 storey building to Glebe Point Road and a 3 storey building to Forsyth Street and Charlton Way. The proposal will further exacerbate this non-compliance.</p> <p>The proposal includes the addition of front and rear dormers and lowering of the existing ceiling to provide an additional level (level 4) to the residential accommodation. The proposal includes lowering of the existing basement floor and additional excavation (level 1) to the commercial space.</p> <p>The development results in a 4 storey building contrary to the building height in storeys map and the objectives of Section 4.2.1 and is not supported.</p> <p>Refer to the issues section of the report.</p>

4.2.3 Amenity	Partial compliance	<p><i>Solar access</i></p> <p>The solar access diagrams demonstrate that the private open space (balconies) of the three apartments will receive a minimum of 2 hours solar access on 21 June.</p> <p>The development will not provide the required solar access to the living rooms within apartments 2 and 3 given the layout of the units. Bedrooms are located to the rear of the apartments benefiting from additional solar access from the new balconies. The living area maintains a single south east facing window for apartments 2 and 3.</p> <p>Solar access to the living area of apartment 4 is improved through the addition of an additional level with east and west facing dormers.</p> <p>Majority of additional overshadowing resulting from the proposal will fall on Forsyth Street and Arden Lane. Some additional overshadowing falls on the private open space area of the apartments at No. 373 Glebe Point Road at 2.00pm and 3.00pm on 21 June. Notwithstanding, the balconies will receive 2 hours of solar access on 21 June.</p> <p><i>Private open space</i></p> <p>The proposal provides private open space areas for all three apartments. The balconies/terraces will exceed the minimum consolidated area and dimensions required and will improve the amenity of future occupants. As such, the proposal will result in adequate private open space area for the three residential units in accordance with Section 4.2.3.7.</p> <p>However, the additional terrace/balcony areas to rear contribute to adverse overlooking and privacy impacts.</p>
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4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
		<p>The new terraces/balconies and associated window openings will result in some adverse heritage impact. The upper level terraces/balconies also breach the LEP height control.</p> <p>Refer to issues section of the report.</p> <p><i>Common open space</i> The existing building has a common open space area located on the roof terrace of level 2. The proposal will result in the removal of the common open space area by removing the common corridor on level 2 and removing the external stair from Charlton Way. The proposal does not provide any common open space for the residential units. The existing common space accommodates the bins for the existing apartments. Details of new waste storage facilities are not shown in the proposed plans.</p> <p>Refer to issues section of the report.</p>
4.2.6 Waste and Recycling Management	No	<p>The application has not demonstrated compliance with the Waste and Recycling Management controls.</p> <p>Refer to issues section of the report.</p>

Issues

Clause 4.6 request to vary a development standard - Height

26. The site is subject to a maximum height control of 9m. The existing building exceeds this control and has a maximum height to the top of the roof parapet of 12.9m, which is a 43% variation of the control.
27. The proposed development results in works up to 12.1m in height, which is a 34% variation of the control. The front and rear dormers and the third level rear balcony exceed the height control.
28. Figures 21 and 22 below illustrate the built form of the existing building and proposed new works in relation to the 9m height control:

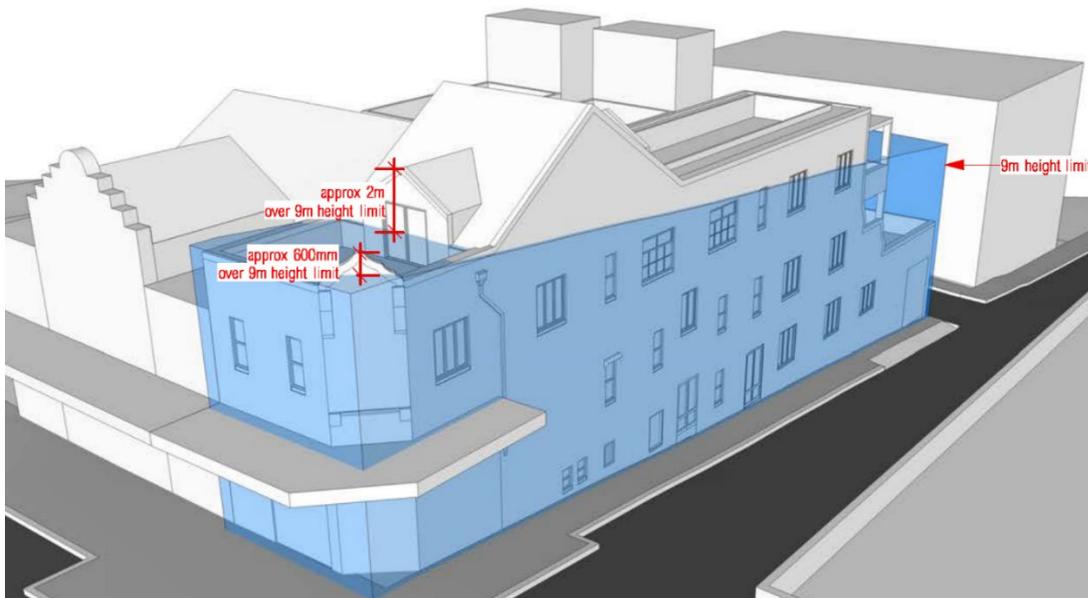


Figure 21: Front axonometric view illustrating height exceedance

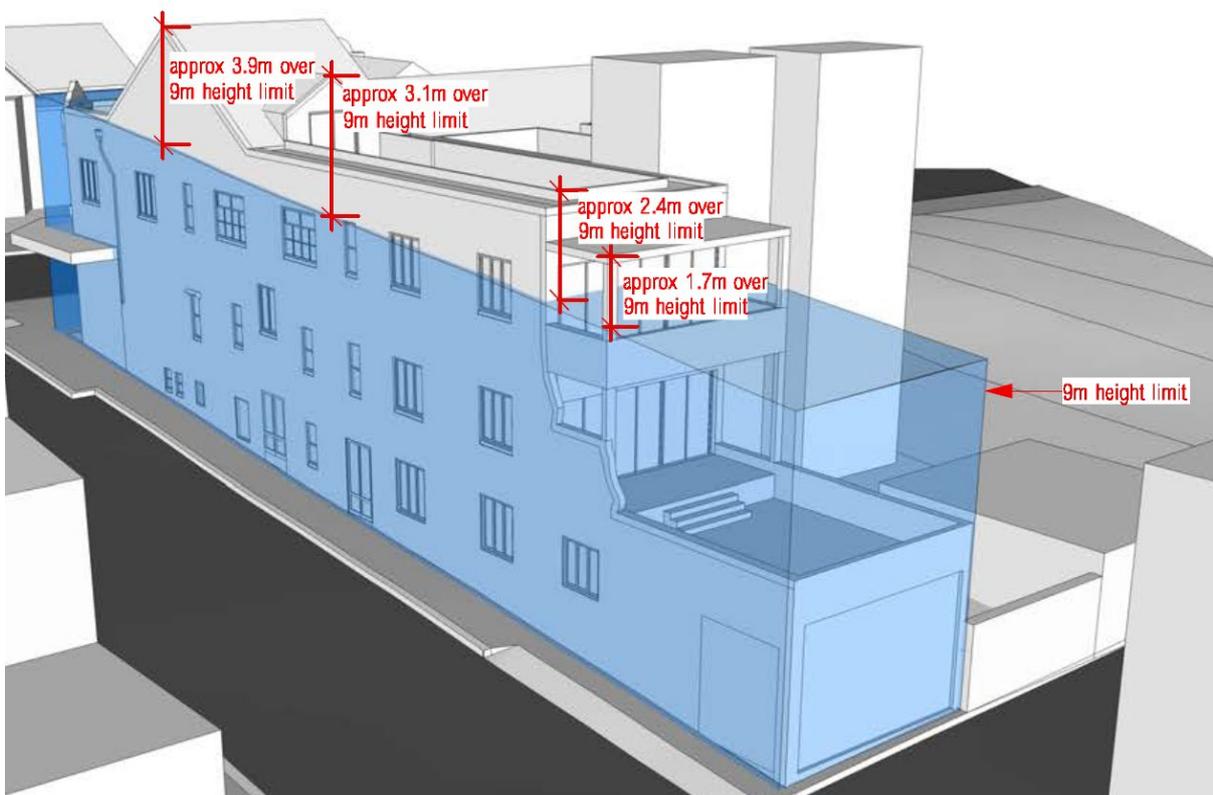


Figure 22: rear axonometric view illustrating height exceedance

29. 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.

30. A copy of the applicant's written request is provided at Attachment B.

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

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

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case on the following basis:
 - (i) Careful consideration has been given to the massing and height of the proposed development to ensure that a high-quality outcome will be achieved which will sit comfortably within the streetscape. The elements of the building that exceed the height limit are contextually appropriate.
 - (ii) The proposed development is consistent with the objectives of the height standard as the proposed height is compatible with the existing scale of the buildings, which are listed as heritage items and the Glebe Point Road Heritage Conservation Area. The proposed additions will sit comfortably with the context of the site with no unreasonable impacts to adjacent properties.
 - (iii) Strict compliance with the height control would not deliver an improvement to the streetscape or the amenity of the adjoining properties. Strict compliance would reduce the amenity of the development for occupants as the usability of the balcony would be reduced by not providing any shade or weather protection to the balcony. Strict compliance would also prevent the north-east facing rooftop terrace from being provided and the conversion of the existing roof space to a habitable space for apartment 4. Strict compliance would encourage a less desirable outcome for the site.
 - (iv) Council has historically adopted a relatively flexible approach to the implementation of the height control in circumstances where the objectives of the control are achieved, particularly where the variation is minor.
 - (v) The height of buildings standard does not accurately reflect the height of the existing building on the site or the heights of the other buildings in the heritage group. As such, strict compliance with the standard is unnecessary as it does not reasonably relate to the heritage item on the site.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The height of buildings standard does not relate to the existing building on the site that is a listed heritage item. The existing building exceeds the height standard by up to 3.9 meters and the majority of the length of the building exceeds the height standard. Compliance with the standard therefore has little relevance to the attainment of the objectives of the control.

- (ii) The proposed works will not result in an unacceptable impact on the significance of the heritage item or conservation area despite the variation to the height standard.
- (iii) The scale of the proposed development does not result in any unreasonable impacts on the surrounding properties in terms of loss of solar access, loss of privacy or visual impact.
- (iv) Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.
- (v) The proposal will achieve a higher level of residential amenity for the apartments on the site and without any significant adverse impact to adjacent sites or the heritage significance of the item or conservation area.

Consideration of Applicants Written Request

32. 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)?

33. Whilst the applicant has addressed all of the required issues at Clause 4.6(3)(a) it has not adequately demonstrated that it is unreasonable or unnecessary to further contravene the control.

Whilst the existing building is over the height control, adding additional bulk above the height standard in a form that has adverse impacts on the significance of the item is not considered to be necessary or reasonable. Does the written request adequately address those issues at Clause 4.6(3)(b)?

- 34. The written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the standard as proposed.
- 35. The proposal will result in unsympathetic alterations and additions to a heritage item located within a conservation area. The extent of the additions to the heritage item, in particular the front and rear dormers comprised of aluminium framed doors, rather than timber framed windows, will have an adverse impact on the heritage significance of the building and conservation area. The extensive glazed openings are uncharacteristic of the building and conservation area. The design and heritage impacts of the proposal are discussed further elsewhere in this report.

36. The addition of new front and rear balconies presents increased opportunity for overlooking and privacy impacts to the neighbouring residential properties. Whilst it is acknowledged that a form of privacy treatment would alleviate the overlooking impact, this would in turn increase the bulk of the building. In particular, the rooftop balcony presents opportunity for structures such as sun shade devices resulting in adverse heritage impact and added bulk. This is discussed further elsewhere in this report.
37. It is considered that there are insufficient environmental planning grounds to justify a 34% variation from the development standard.

Is the development in the public interest?

38. The objectives of the height development standard include:
 - (a) *to ensure the height of development is appropriate to the condition of the site and its context;*
 - (b) *to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservations areas or special character areas;*
 - (c) *to promote the sharing of views; and*
 - (d) *to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining area.*
39. The proposed development is contrary to the objectives of the development standard. In particular, the height of the development is inappropriate to the condition of the site and its context.
40. The objectives of the B2 Local Centre zone include:
 - (a) *To provide a range of retail, business, entertainments and community uses that serve the needs of people who live in, work in and visit the local area.*
 - (b) *To encourage employment opportunities in accessible locations.*
 - (c) *To maximise public transport patronage and encourage walking and cycling.*
 - (d) *To allow appropriate residential uses so as to support the vitality of local centres.*
41. The proposed development is not contrary to the objectives of the zone.
42. The non-compliance with the development standard, is not considered to be in the public interest due to the lack of environmental planning grounds for its variation as detailed above.

Conclusion

43. For the reasons provided above the requested variation to the height development standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012. In addition, the proposed development is not in the public interest as it has not provided sufficient environmental planning grounds to vary the development standard.

Clause 4.6 request to vary a development standard - Floor Space Ratio

44. The site is subject to a maximum floor space ratio control of 1.5:1. The proposed development results in a gross floor area of 477.7sqm equating to an FSR of 2.06:1 and a 37% variation from the control.
45. 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.
46. A copy of the applicant's written request is provided at Attachment C.

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

47. The applicant seeks to justify the contravention of the 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:
 - (i) The proposal seeks only minor increases to the floor space. The proposal does not increase the number of apartments or commercial tenancies it only seeks to increase the size of the existing wine bar and improve the amenity of an existing apartment.
 - (ii) The additional floor space is contained within the existing building and existing roof form, will have limited bulk and scale impact and will not result in any impact on the character of the locality or the amenity of the surrounding properties.
 - (iii) The existing building exceeds the applicable floor space ratio standard and compliance cannot therefore be attained. If no greater floor space was permitted the growth of the existing business on the site would be constrained despite there being no streetscape, heritage or amenity impacts associated with the additional floor space. If no greater floor space was permitted then the roof space of the existing building could not be used and the amenity of apartment 4 could not be improved through the addition of both additional floor area and access to private open space.
 - (iv) Council has previously varied the floor space ratio standard in circumstances where the objectives of the standard are achieved.
 - (v) The proposal is consistent with the objectives of the floor space ratio standard and therefore the development standard is considered to be unreasonable and unnecessary in the circumstances of the case.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:

- (i) The proposal allows for the growth of the existing business that occupies the non-residential floor space on the site and improves the amenity of the three apartments within the building. The improvements do not result in any adverse impacts on the significance of the heritage item or heritage conservation area or the amenity of the surrounding properties.
- (ii) Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.

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

48. 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)?

- 49. Whilst the applicant has addressed all of the required issues at Clause 4.6(3)(a) it has not adequately demonstrated that it is unreasonable or unnecessary to further contravene the control.
- 50. Whilst the existing building is over the maximum FSR control, the proposal will add unnecessary additional bulk that will adversely impact the heritage significance of the building. It is unreasonable to further exacerbate the non compliance with the floor space ratio control as proposed.

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

- 51. The written request has presented an argument that there are sufficient environmental planning grounds for contravention of the height development standard, namely, that the variation from the development standard will result in an improved amenity outcome for occupants of the site.
- 52. The written request is not considered to have adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the standard. It is considered that the amenity could be improved without compromising the bulk, scale and heritage significance of the building and conservation area in the way proposed.
- 53. It is acknowledged that the existing floor space ratio of the site exceeds the development standard. However, additional floor space will contribute additional bulk and scale that is uncharacteristic of the heritage listed group and will create an undesirable precedent.
- 54. There are insufficient environmental planning grounds to justify a 36% variation from the development standard.

55. Is the development in the public interest?
56. The objectives of the floor space ratio development standard include:
- (a) *To provide sufficient floor space to meet anticipated development needs for the foreseeable future.*
 - (b) *To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.*
 - (c) *To provide for an intensity of development that is commensurate with the capacity of existing and planning infrastructure.*
 - (d) *To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.*
57. The proposed development is contrary to the objectives of the development standard. In particular, the proposal does not reflect desired character of the locality in that it has adverse impacts minimise adverse impacts on the heritage item.
58. The objectives of the B2 Local Centre zone include:
- (a) *To provide a range of retail, business, entertainments and community uses that serve the needs of people who live in, work in and visit the local area.*
 - (b) *To encourage employment opportunities in accessible locations.*
 - (c) *To maximise public transport patronage and encourage walking and cycling.*
 - (d) *To allow appropriate residential uses so as to support the vitality of local centres.*
59. The proposed development is not contrary to the objectives of the zone.
60. The non-compliance with the development standard is not considered to be in the public interest due to the lack of environmental planning grounds for its variation as detailed above.

Conclusion

61. For the reasons provided above the requested variation to the height development standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012. In addition, the proposed development is not in the public interest as it has not provided sufficient environmental planning grounds to vary the development standard.

Heritage

62. The subject site is a local heritage item, listed as part of a group of two and three storey attached shop and residences known as 'Bayview Flats' and 'Diana Flats' (the application site), No. 363 - 381 Glebe Point Road and is located within the Glebe Point Road conservation area.

63. The subject building is characterised by a textured rendered facade with parapet to the corner with Forsyth Street, with a small gable to the splay with a cartouche. It adjoins the gable of the original terrace, also with a cartouche in the apex, and then a parapet to the rear lane. Fenestration within the building is predominately timber framed double hung sash windows. Significant internal features of the group include the original/early room layout, plaster ceilings, timber joinery, stairs and fireplaces.
64. The proposal will result in unsympathetic alterations and additions to the heritage item, more specifically, the following works are not supported from a heritage perspective:
- (a) The front and rear dormer additions are uncharacteristic of the building; in particular, the dormers include aluminium frames doors providing access to a front and rear roof terrace. Dormers on heritage items within conservation areas are to have timber framed vertically proportioned windows.
 - (b) The alterations to apartment 4, including wall removal, new walls and stairs to the upper level result in extensive changes, notably removing the existing door and architrave traditional of the period, altering the traditional room layout and removing a wall with a recessed arch. Refer to Figure 23.



Figure 23: Existing recessed arch in apartment 4 located between the existing kitchen and living room. The proposed works remove the wall and will have an adverse heritage impact.

- (c) The new balcony to apartment 3 including wall removal to provide new full width aluminium framed doors and balcony with glass balustrades. This element will have an adverse impact as it will result in the loss of two sets of early windows. The extent of the glazed openings and glass balustrades is out of character with the building and will be visually prominent from the streetscape.
- (d) The new balcony to apartment 2 including wall removal to provide new full width aluminium framed sliding doors will provide adverse impact, particularly with the extent of the wall removal and extensive new glazed openings. The new awning to the balcony will impact the side horizontal parapet wall on the south elevation

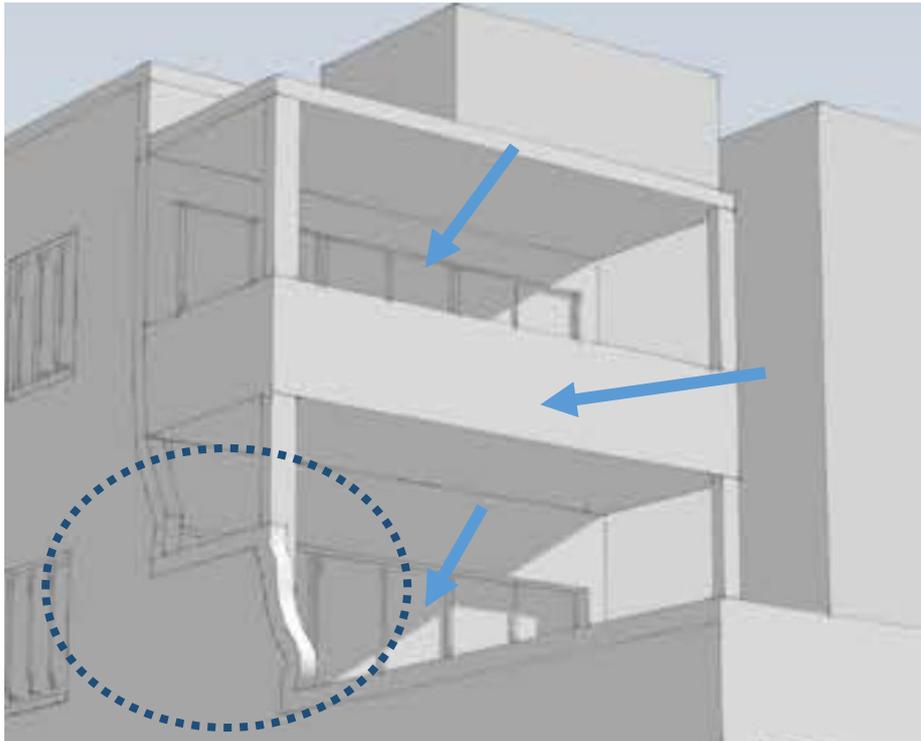


Figure 24: Illustrating extensive new glazed openings, glass balustrades, and impact to side horizontal parapet wall on the south elevation (bubbled).

- (e) Removal of wall between apartment 2 and common corridor will remove the existing cornices/ceilings and the front door and architrave which dates from the 1930s.
- 65. The proposal will have an adverse impact on significant fabric and spaces of the heritage listed building, contrary to Clause 5.10 in *Sydney Local Environmental Plan 2012*.
 - 66. The proposal is not consistent with Section 3.9(1)(a) of *Sydney Development Control Plan 2012* as the extent of the changes to significant fabric, elements or spaces of the heritage item has not been minimised. The cumulative impact of the changes proposed will have an adverse impact on the significance of the building. The proposal is contrary to Section 3.9(1)(h) as it will not enhance the character and heritage significance of the heritage item.

67. The proposal is contrary to Clause 3.9.5 (1)(h) of Sydney DCP 2012 which requires that development affecting a heritage item is to be consistent with policy guidelines contained in the Heritage Inventory Assessment Report. The recommended management for the heritage item includes:
- The principal room layout and planning configuration as well as significant internal original/early features including ceilings, cornices, timber joinery, stairs, flooring and fireplaces should be retained and conserved; and
 - Retain and conserve significant fabric.
68. Whilst some alteration to the heritage item may be permissible, the proposed alterations are excessive and are of a basic design quality that will have an adverse impact on the significance of the item. Neither is the application proposing any works in relation to making good previous unsympathetic alterations to the building such as those to the Glebe Point Road shop front.

Height in Storeys

69. The subject site is identified as a 2 storey character area in accordance with the height in storeys map in the Sydney Development Control Plan 2012.
70. The existing building presents as a 2 storey building to Glebe Point Road and a 3 storey building to Forsyth Street and Charlton Way. The proposal will further exacerbate this non-compliance.
71. The proposal includes the addition of front and rear dormers and lowering of the existing ceiling to provide an additional level (level 4) to the residential accommodation. The proposal includes lowering of the existing basement floor and additional excavation (level 1) to the commercial space.

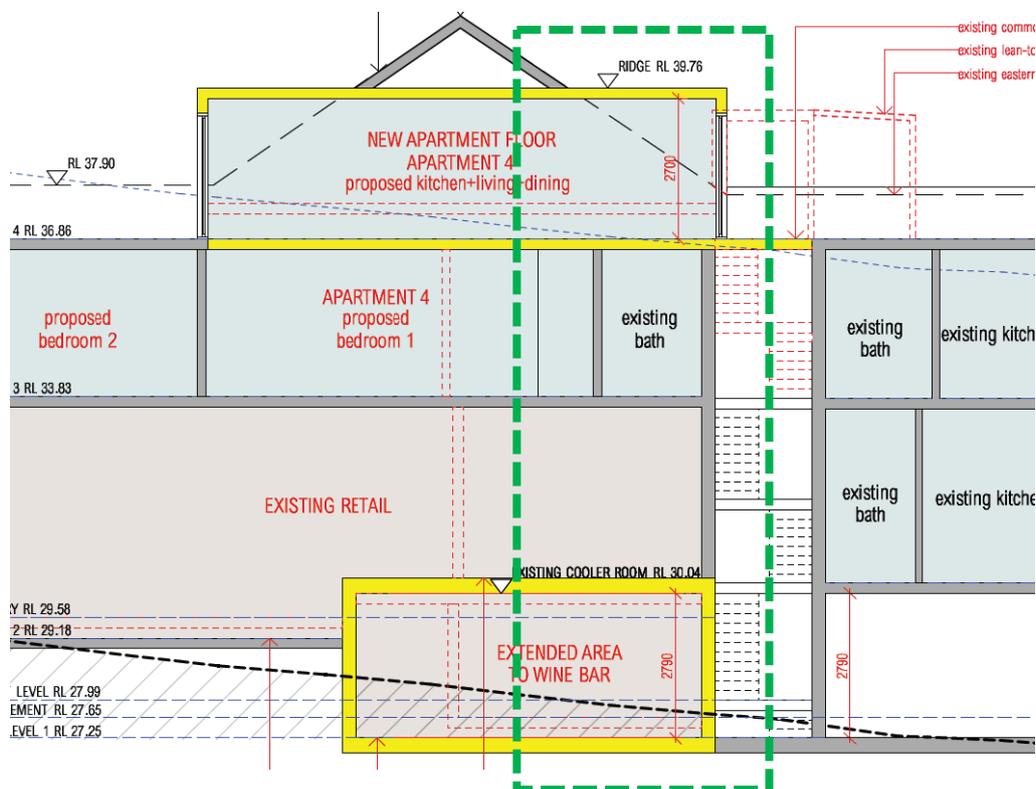


Figure 25: illustrating 4 storey form

72. The proposal is inconsistent with the objectives and provisions of Section 4.2.1 Building height in the Sydney Development Control Plan 2012.
73. The additional height exceedance does not reinforce the existing and desired neighbourhood character and does not retain or conserve the principle building form.
74. The additional height exceedance will be highly visible from Glebe Point Road, Forsyth Street and Charlton Way, further detracting from the significance of the conservation area and streetscape.

Design Excellence

75. The proposed development is not considered to exhibit design excellence. Specifically, the proposal does not demonstrate a high quality of architectural design, and is unsympathetic to the heritage conservation area and the heritage significance of the buildings.
76. The proposal will result in unacceptable overlooking and visual privacy to adjoining properties and does not address waste management issues. This is discussed in more detail throughout the report.
77. The proposal is considered to include inappropriate and poorly designed/detailed alterations to a heritage item and will result in an overdevelopment of the property.
78. The proposal is not considered to exhibit design excellence and does not comply with the requirements of Clause 6.21(4) of the Sydney LEP 2012 and is recommended for refusal.

Privacy and Overlooking

79. The proposed development includes a new balcony area to the rear of level 2 and 3 accessed from apartment 2 and 3, a new front rooftop terrace accessed from the front dormer of apartment 4, and a rear rooftop terrace accessed from the rear dormer of apartment 4.
80. Refer to the Figures below.

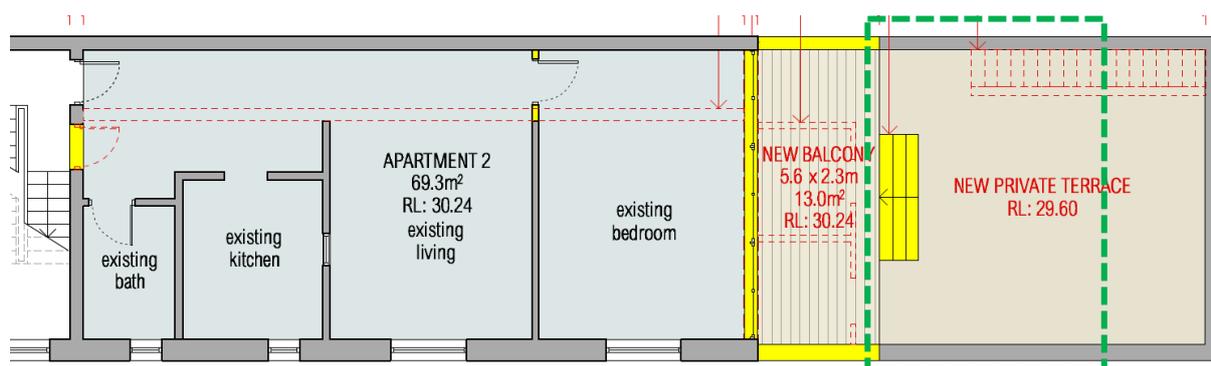


Figure 26: Illustrating level 2 rear balcony

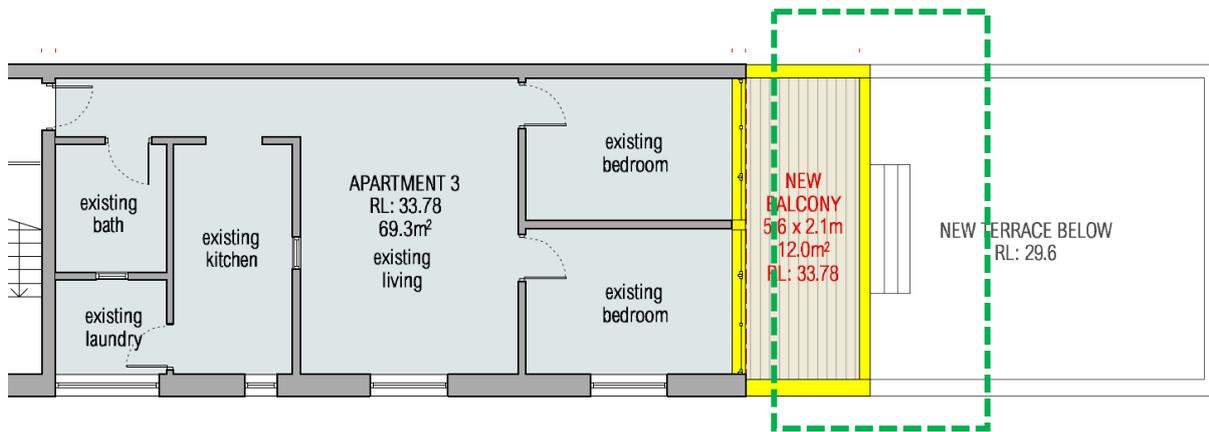


Figure 27: Illustrating level 3 rear balcony

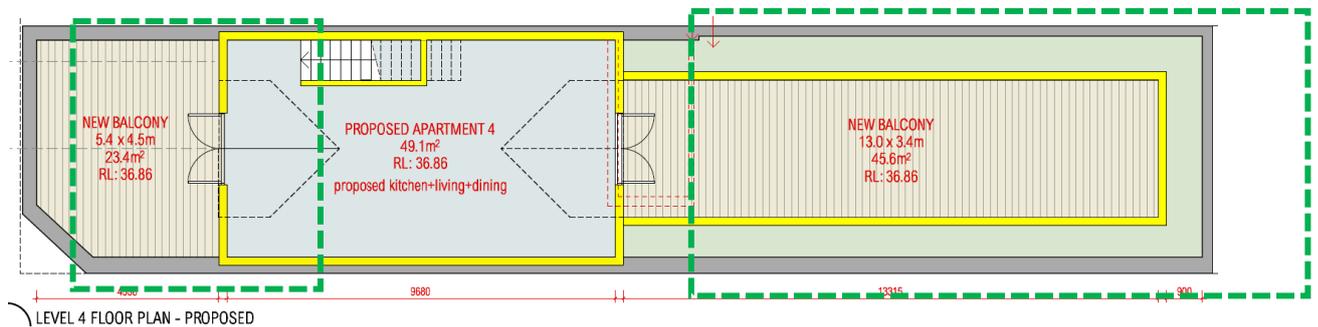


Figure 28: Illustrating level 4 front and rear balconies

81. The new balcony/terrace areas adversely impact on overlooking and visual privacy to adjoining residential properties.
82. Whilst a form of privacy treatment to the rear balconies on levels 2 and 3 may alleviate the overlooking impact, and could potentially be supported, this has not been demonstrated with the proposal.
83. Notwithstanding, the level 3 rear balcony breaches the LEP height control and is not supported, as discussed above. Additionally, the extent of the glazing proposed is not supported from a heritage perspective, as discussed elsewhere in this report.
84. Privacy screening to the rooftop balconies would not be supported as it would further increase the bulk of the building and heritage impacts. Additionally, allowing a rooftop balcony presents opportunity for additional structures, such as sun shading devices, to be erected on the roof. The rooftop balconies provide for a significant breach of the LEP height control and is not supported.

Waste and Recycling Management

85. The proposed development presents concerns with waste and recycling management and the application has not adequately demonstrated compliance with Section 3.14 and Section 4.2.6 of Sydney Development Control Plan 2012 and the City of Sydney Guidelines for Waste Management in New Development.
86. The existing residential waste storage area is located on the level 2 terrace accessed through a common area corridor. The proposed works include removal of the corridor wall resulting in sole use of the terrace area for apartment 2. No additional waste storage areas have been proposed for apartment 3 and apartment 4.

87. The absence of common waste storage area for the residential units presents issues with accessibility to a waste storage area and a clear path of travel to the street for collection. Waste bins stored on the street or balcony areas are not supported.

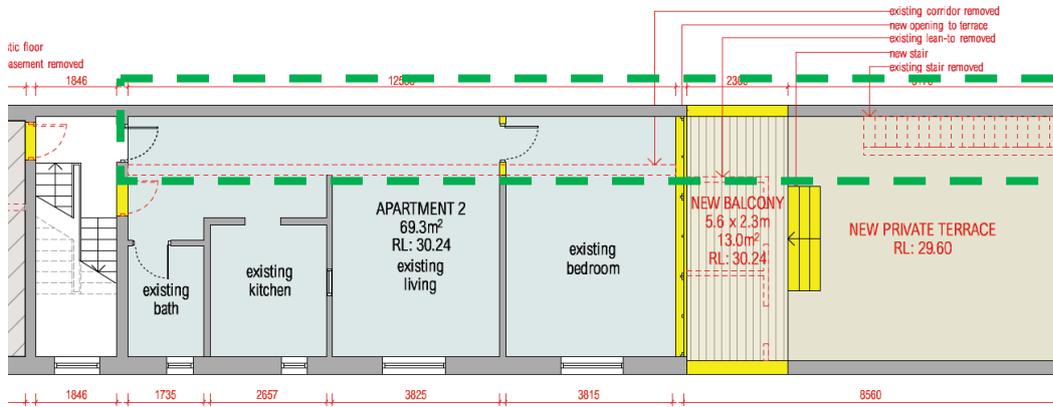


Figure 29: illustrating the removal of the existing common corridor that provides access to waste storage for all three residential units.



Figure 30: Existing common waste storage area located on the level 2 terrace. The terrace is proposed for the sole use of apartment 2 and as such will remove the common waste storage area for the remaining apartments. No additional waste storage area is proposed.

88. Additionally, waste and recycling management has not been addressed for the commercial tenancies and as such it cannot be ensured that the residential amenity will not be impacted by waste systems resulting from the additional floor space and altered area.
89. The above issues were raised with the applicant, however a response was not provided.

Other Impacts of the Development

90. The proposed development is capable of complying with the BCA.

Suitability of the site for the Development

91. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed.

Internal Referrals

92. The application was discussed with Heritage and Urban Design Specialists who were not in support of the proposal in its current form. The issues raised have been discussed in detail under the heading Issues.
93. The application was discussed with Building Services Unit and Specialist Surveyor; who advised that the proposal can be acceptable. Notwithstanding this, the proposal is not supported for the reasons outlined in this report.

External Referrals

Notification, Advertising and Delegation

94. In accordance with Schedule 1 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 9 January 2019 and 25 January 2019. As a result of this notification a total of 60 properties were notified and there was one submission received. The submission raised the following concerns:
 - (a) Rooftop gardens contribute privacy and noise impacts to neighbouring properties.
Response: Privacy impact has been considered throughout the assessment of the proposal and forms a contributing factor for refusal.
 - (b) New dormers on Glebe Point Road should be of wooden construction with wooden windows and should blend in with the architecture of the street and area.
Response: The proposed dormers are considered to be unsympathetic to the heritage item and forms a contributing factor for refusal.
 - (c) The site is heritage and should not have new aluminium windows/doors.

Response: The proposed materials and finishes are unacceptable for a heritage item located within a heritage conservation area and forms a contributing factor for refusal.

Public Interest

95. For the reasons discussed above, the application is not in the public interest and is not supported.

S7.11 Contribution

96. If the proposal were supported, the development would be subject to a Section 7.11 development contribution, as it increases the floor space of the existing small bar by 47.7sqm. Food and drink premises including bars are calculated as one additional worker per 45sqm.

Relevant Legislation

97. The Environmental Planning and Assessment Act 1979.

Conclusion

98. The proposed development results in a works up to a height of 12.1m and as such, exceeds the 9m height control by 34% or 3.1m. A request to vary the height of buildings development standard has been made pursuant to Clause 4.6 of the Sydney LEP 2012. The request to vary the height development standard is not supported and is recommended for refusal.
99. The proposed development results in a floor space ratio of 2:1 and as such, exceeds the 1.5:1 FSR control by 36%. A request to vary the floor space ratio development standard has been made pursuant to Clause 4.6 of the Sydney LEP 2012. The request to vary the floor space ratio development standard is not supported and is recommended for refusal.
100. The proposal results in unsympathetic alterations and additions to a heritage item located within a heritage conservation area. The proposal is considered not to be compliant with the relevant heritage objectives and controls of the Sydney LEP 2012 and Sydney DCP 2012. Whilst some alteration to the heritage item may be permissible, the proposed alterations are excessive and are of a basic design quality that will have an adverse impact on the significance of the item. Neither is the application proposing any works in relation to making good previous unsympathetic alterations to the building such as those to the Glebe Point Road shop front.
101. The proposal fails to comply with the design excellence provisions of the Sydney LEP 2012 and results in unacceptable bulk, adverse amenity impact and waste management issues. The level of architectural design is not considered to be of a high standard in accordance with the Sydney LEP 2012.

- 102. The development is not in keeping with the desired future character of the area and is not considered to be in the public interest.
- 103. The application is recommended for refusal.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Christina Robinson, Planner