

Item 4.**Development Application: 375 Glebe Point Road, Glebe - D/2021/1498**

File No.: D/2021/1498

Summary

Date of Submission:	The application was lodged on 29 December 2021. Amended plans were submitted for assessment on 29 March 2022 and 3 May 2022.
Applicant:	Mr Tone Wheeler c/- Environa Studio Pty Limited
Architect:	Environa Studio Pty Limited
Owners:	Mr Lawrence Luk and Ms Fanny Cheng
Planning Consultant:	Sutherland and Associates Planning
Heritage Consultant:	Matt Devine and Co
Cost of Works:	\$451,937.00
Zoning:	The site is located in the B2 Local Centre zone. Alterations and additions to mixed-use developments, including "small bars" and "shops" (which are both a type of "commercial premises") and "residential accommodation", are permissible in the B2 zone with consent.
Proposal Summary:	<p>The subject application seeks consent for alterations and additions to an existing mixed-use development, including minor excavation and expansion of a small wine bar/café to increase the maximum number of patrons from 50 to 76, internal alterations to a retail bottle shop, demolition of two external laundries at the Level 2 terrace, alterations to three residential apartments including the introduction of private open space to two of the dwellings, and minor changes to the external facades of the building.</p> <p>No change is proposed to the existing approved trading hours of the small bar, being between 10am and 10pm, Monday to Saturday (inclusive), and 10am and 9pm, Sunday.</p>

The proposal is referred to the Local Planning Panel for determination as the development is reliant on a clause 4.6 variation request to vary the building height development standard of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) by more than 10%.

The applicant has lodged a written statement addressing the provisions of clause 4.6 of the Sydney LEP 2012 with regard to non-compliances with both the building height and floor space ratio development standards. The non-compliance with the building height development standard relates to a 15.4% variation and the non-compliance with the floor space ratio development standard relates to a reduction of the existing floor space ratio from a 26% variation down to a 24.7% variation.

The application was notified for a period of 14 days from 7 to 24 January 2022. Three submissions were received. Issues raised in the submissions relate to additional parking demands, hours of operation, noise disturbances and permitted use of the Level 2 terrace.

The proposed development was re-notified for a further 14 days between 21 February 2022 and 8 March 2022 to correct an error to the notified hours of operation. No further submissions were received as a result of this process.

Amended plans were submitted during the assessment process to address issues relating to potential overlooking, the design of the balcony balustrade, the external materials and finishes, design and heritage impacts, upgrading of the building to satisfy an outstanding Fire Safety Order, and waste management.

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

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

- Development Controls:**
- (i) Environmental Planning and Assessment Act 1979
 - (ii) SEPP (Resilience and Hazards) 2021
 - (iii) SEPP (Building Sustainability Index: BASIX) 2004
 - (iv) SEPP (Transport and Infrastructure) 2021
 - (v) SEPP (Biodiversity and Conservation) 2021
 - (vi) Sydney Local Environmental Plan 2012
 - (vii) Sydney Development Control Plan 2012
 - (viii) City of Sydney Development Contributions Plan 2015

- Attachments:**
- A. Recommended Conditions of Consent
 - B. Selected Plans
 - C. Clause 4.6 Variation Request - Height of Buildings
 - D. Clause 4.6 Variation Request - Floor Space Ratio

Recommendation

It is resolved that:

- (A) the variation requested to the Sydney LEP 2012 building height development standard in accordance with clause 4.6 'exceptions to development standards' of the Sydney LEP 2012 be upheld;
- (B) the variation requested to the Sydney LEP 2012 floor space ratio development standard in accordance with clause 4.6 'exceptions to development standards' of the Sydney LEP 2012 be upheld; and
- (C) consent be granted to Development Application No. D/2021/1498 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development complies with the objectives of the B2 Local Centre zone pursuant to the Sydney LEP 2012.
- (B) 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 requests have each adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard and floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clauses 4.3 and 4.4 of the Sydney LEP 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B2 Local Centre zone and the objectives of the height of buildings development standard and the floor space ratio development standard.
- (C) Having considered the matters in Clause 6.21C(2) of the Sydney LEP 2012, the building displays design excellence because:
 - (i) the materials and detailing are compatible with existing heritage building and will contribute positively to the character of the conservation area;
 - (ii) the alterations and additions will not impact on any view corridors and will not result in any detrimental environmental impacts in terms of overshadowing, visual privacy or noise; and
 - (iii) the proposed bulk, massing and modulation of the subject building is acceptable.

- (D) The development is generally consistent with the objectives of the Sydney Development Control Plan 2012 (Sydney DCP 2012).
- (E) Suitable conditions of consent have been applied and the development is considered to be in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 in DP 184185 and is known as 375 Glebe Point Road, Glebe. It is rectangular in shape with an area of approximately 232.3sqm. The site is located on the north-east corner of the intersection of Glebe Point Road and Forsyth Street. It has a primary street frontage of 6.12 metres to Glebe Point Road, a secondary street frontage of 38.1 metres to Forsyth Street and a rear lane frontage of 6.095 metres to Charlton Way. Levels on the site fall by approximately 3.5 metres from the front (west) to the rear (east) boundary.
2. The site contains a part two, part three storey mixed-use building. The building comprises a small bar at the lower ground floor level with access from Forsyth Street, a retail liquor shop at the ground floor level with access from Glebe Point Road and three residential apartments at the upper levels with entry from Forsyth Street. A single garage is located to the rear of the site and is accessed from Forsyth Street.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial. Neighbouring buildings along Glebe Point Road to the north and south are similarly characterised with ground floor commercial uses and residential uses at the upper floor levels. Multi-residential buildings are located to the east and west of the site.
4. The site is a local heritage item (I766) and is identified as a neutral building within the Glebe Point Road heritage conservation area (C29). The site forms part of a group of three heritage buildings known as 'Diana Flats' (the subject application site) and 'Bayview Flats'. The terraces were originally constructed c 1889 - 1901. Additions were added in the 1930s to accommodate shops at the ground floor and residential flats above.
5. '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.
6. Significant internal features of the group include the original/early room layout, plaster ceilings, stairs, timber joinery (including doors, flooring, architraves, picture rails, skirtings, and letter boxes) and fireplaces.
7. The site is located within the Glebe Point Road locality and is not identified as being subject to flooding.
8. A site visit was carried out on 12 January 2022. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds, site shaded in blue



Figure 2: Site viewed from corner of Glebe Point Road and Forsyth Street



Figure 3: Site and residential apartment building at 2-4 Avona Avenue as viewed from the corner of Forsyth Street and Arden Lane



Figure 4: Rear of site and laneway viewed from Charlton Way



Figure 5: Neighbouring heritage building (377-376 Glebe Point Road) as viewed from Charlton Way

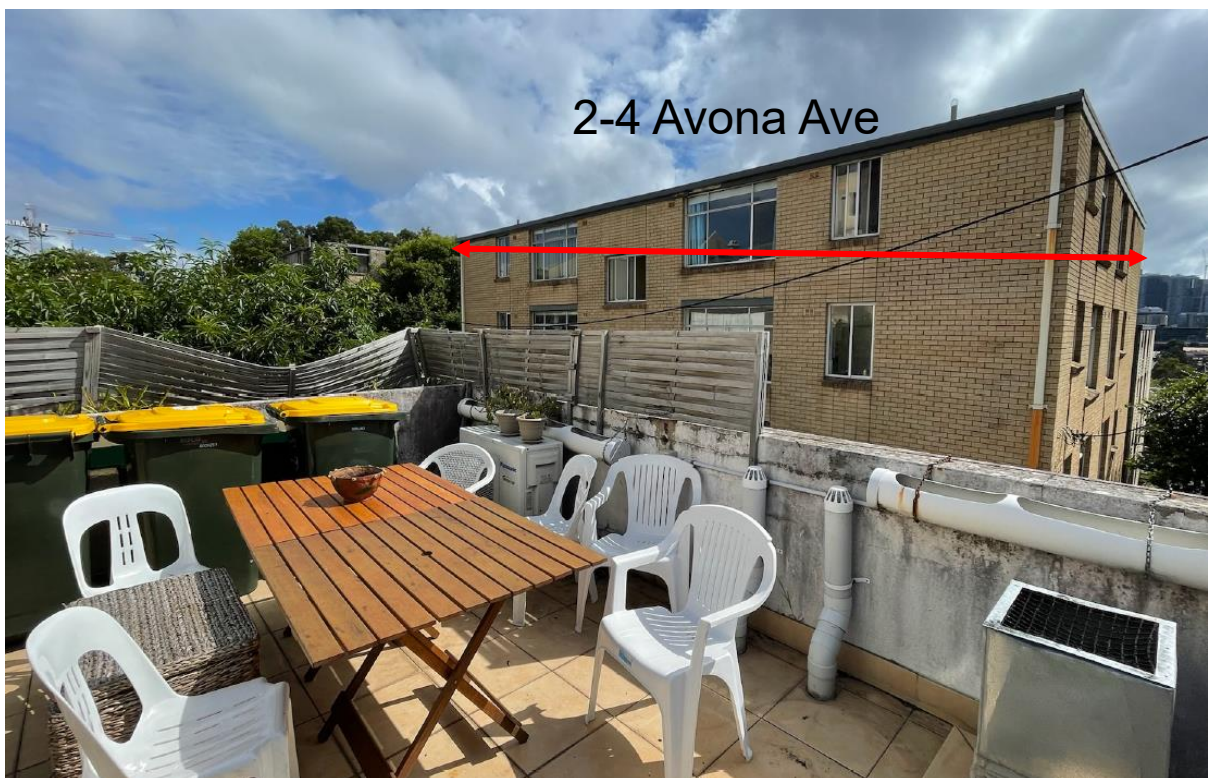


Figure 6: Apartment building (2-4 Avona Avenue) on the opposite side of Charlton Way as viewed from the Level 2 terrace of the subject site



Figure 7: View to 2 Forsyth Street and 373 Glebe Point Road as viewed from the Level 2 terrace of the subject site



Figure 8: Rear of building and laundries as viewed from Level 2 terrace of the subject site



Figure 9: View of internal common residential stairwell



Figure 10: View of existing Level 1 retail storage area

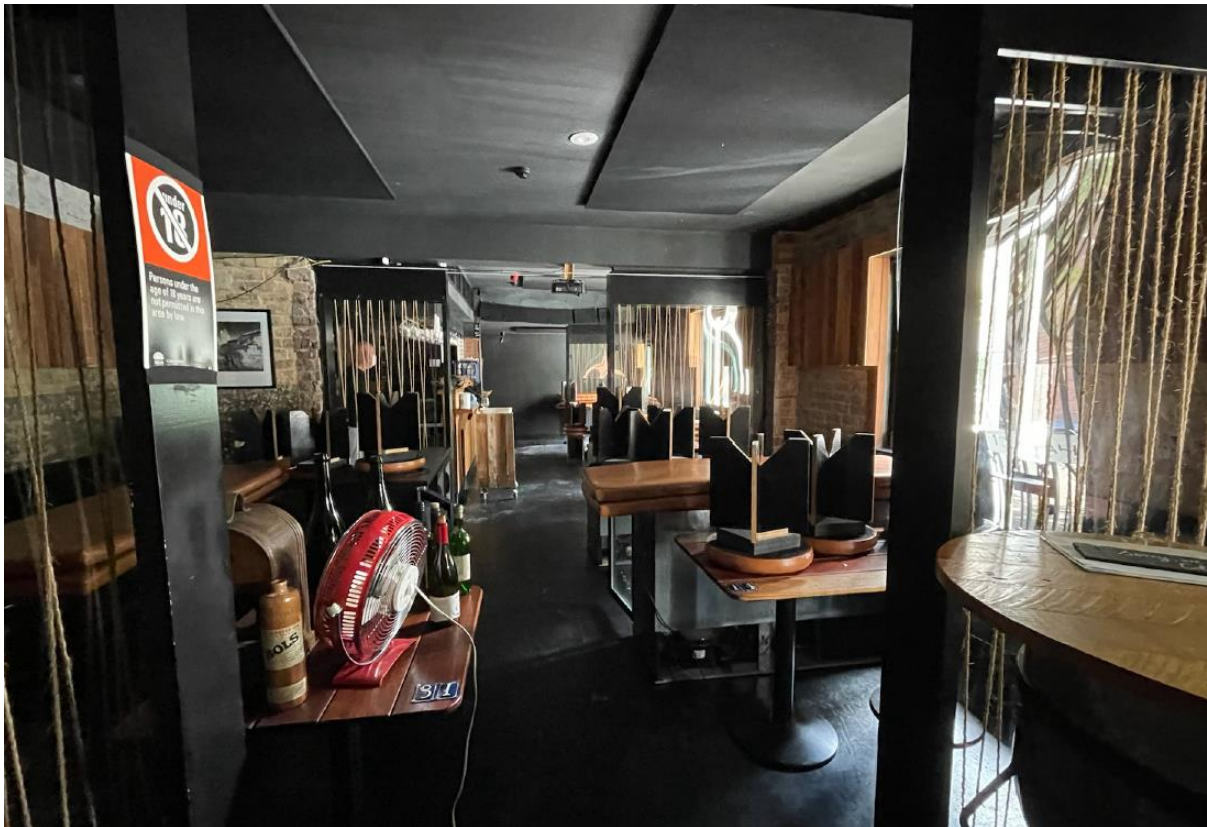


Figure 11: View of existing small wine bar/café at Level 1



Figure 12: View of existing retail bottle shop at Level 2

History Relevant to the Development Application

Development Applications

9. The following applications are relevant to the current proposal:
- **DA 289** – Development consent was granted on 8 September 1971 for alterations and additions to a shop and dwellings including change of use to a liquor retail shop.
 - **D/2009/136** – Development consent was granted on 23 April 2009 for use of the lower ground floor level as a small wine bar/café, with internal and external alterations, including new walls, windows and doors. The capacity of the premises is limited to 50 patrons. The approved hours of operation are 10am - 9pm Monday to Thursday; 10am - 10pm Friday and Saturday; and 10am - 8pm on Sunday. A one year trial period was granted to allow trading between 10pm and 12 midnight on Fridays and Saturdays.
 - **Modification Application D/2009/136/A** – Development consent was granted on 3 December 2009 to delete a condition requiring the upgrade of the whole building in accordance with BCA requirements.
 - **Modification Application D/2009/136/B** – Development consent was granted on 18 February 2011 for the inclusion of a mechanical ventilation system.
 - **Modification Application D/2009/136/C** – Development consent was granted on 14 February 2012 to extend the approved hours of operation till 10pm, Monday to Thursday and till 9pm on Sundays subject to the submission of an amended Plan of Management. A further one year trial period was granted to allow trading between 10pm and 12 midnight on Fridays and Saturdays, but this has since lapsed.
 - **D/2018/1586** – Development consent was refused on 7 August 2019 for alterations and additions to the existing mixed-use development including an additional apartment within the attic of the existing building and additional excavation to extend the lower ground level to the east.

The proposed development is similar to D/2018/1586, but does not include the proposed additions at Level 4, including the creation of a roof top terrace, and does not seek to enlarge the Level 1 building footprint. A section plan of the refused development is provided below.

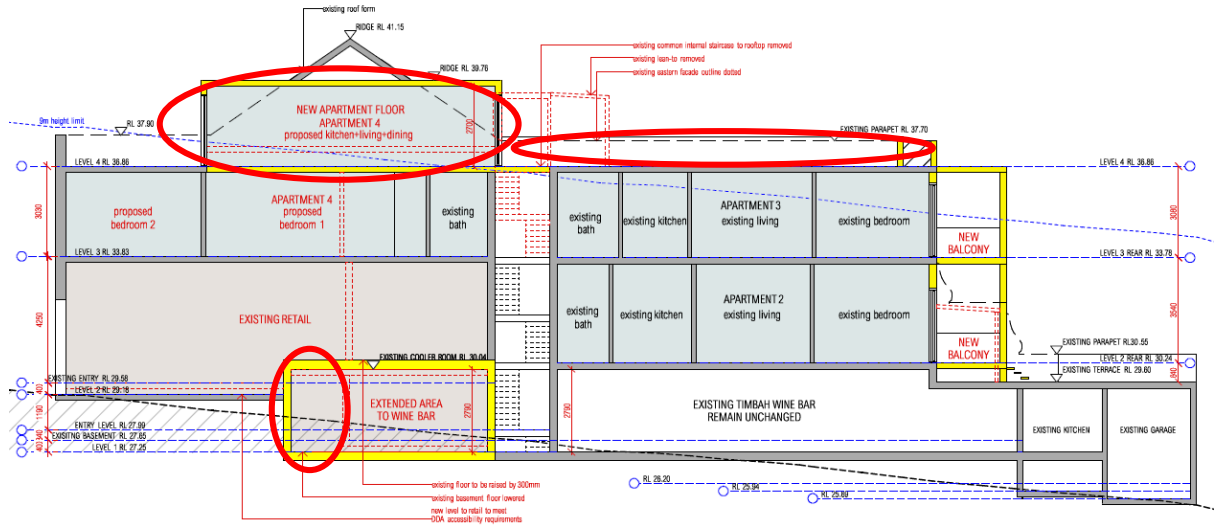


Figure 13: Extract of refused Section AA Plan (additional works that were proposed under D/2018/1586 that are not part of the subject application are circled in red)

Compliance Action

10. The site has been subject to ongoing compliance action which is relevant to the subject application.
11. An inspection of the building by Council Investigation Officers on 2 October 2019 revealed that the premises is deficient in fire safety and egress facilities.
12. Council's Health and Building Unit has advised that a Fire Safety Order (FIRE/2019/154) was issued, however, some of the required works to the building remain outstanding. See further details in the 'Discussion' section below.

Amendments

13. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 22 February 2022. The following was requested:
 - updated height plane diagrams, updated shadow diagrams and an updated Clause 4.6 variation request to address the proposed works at Level 4 and the roof;
 - updated gross floor area (GFA) calculation diagrams and a Clause 4.6 variation request to support any variation to the floor space ratio (FSR) standard;
 - clarification regarding the site area calculation;
 - details of all privacy screening and measures to prevent direct overlooking from Level 3 to the terrace below;
 - updated BASIX certificates;
 - a structural report outlining the methodology for the proposed excavation and basement/lower ground level construction works;

- amended plans and details to address heritage concerns relating to the removal of internal walls, the width of the external balcony door openings, the internal and external materials and finishes, the design of the balcony balustrade, and the works to be undertaken as part of the Fire Safety Order;
 - an acoustic statement to address the revised operations;
 - an updated plan of management to address the revised operations; and
 - waste management details.
14. The applicant responded to the request on 29 March 2022, and submitted the following information:
- amended architectural plans (version 2) including deletion of the proposed works at Level 4 and the roof, relocation of the commercial waste storage area, and additional details to address heritage related and Fire Safety Order issues;
 - updated GFA calculation diagrams and a Clause 4.6 variation request (FSR);
 - an email from the surveyor clarifying the inconsistency with the site area calculation;
 - additional privacy measures including the provision of privacy screens on the northern and southern sides of the east facing balconies, and planter boxes;
 - updated BASIX certificates for Apartments 1 and 2;
 - a copy of a structural engineer's report prepared for a previous development application, noting the current application proposes a reduced scope of works;
 - a waste management plan;
 - an acoustic statement; and
 - a copy of the original plan of management, noting that the plan reflects the proposed operations with the exception of the operating hours.
15. Following a review of the additional information and amendments by Council Officers, a further request for additional information and amendments was sent to the applicant on 26 April 2022. The following was requested:
- amendments to the GFA calculation diagrams and submitted Clause 4.6 variation request (FSR);
 - additional amended plans and details to address on-going heritage concerns relating to the width of the new opening between the living room and kitchen of Apartment 3, the external materials and finishes, and the design of the balcony balustrade; and
 - amendments to the submitted acoustic statement to reflect the proposed patron numbers.
16. The applicant responded to the request on 3 and 4 May 2022, and submitted the following information:

- a revised GFA calculation plan and updated Clause 4.6 variation request (FSR);
 - amended architectural plans (version 3) addressing various heritage concerns; and
 - a revised acoustic statement.
17. On 6 May 2022, the applicant submitted a revised plan of management.
18. The final DA submission, as amended by the revisions summarised above, is the subject of this assessment report.

Proposed Development

19. The proposed development involves alterations and additions to an existing mixed-use development comprising a small bar, retail bottle shop and three residential apartments.
20. The existing uses within the building are to be retained and no change is proposed to the operation of the retail bottle shop or to the existing approved trading hours of the small bar, being between 10am and 10pm, Monday to Saturday (inclusive), and 10am and 9pm, Sunday.
21. The application seeks consent for the following:

Level 1

- conversion of the existing lower ground level bottle shop storage area and redundant WC into an additional seating area and storeroom for the existing 'Timbah' wine bar, resulting in an additional 31.5sqm of floor space for the wine bar and an increase to the maximum capacity from 50 to 76 patrons;
- creation of a new opening to provide internal access from the existing wine bar to the proposed extended seating area;
- removal of existing delivery door to the existing retail lower ground level storeroom facing Forsyth Street and replacement with a fixed infill panel;
- internal alterations to the small bar use including demolition of the internal staircase to remove access between the existing lower ground level retail storeroom and the ground floor retail tenancy above;
- lowering of the existing retail storeroom floor level by 400mm (from RL27.65 to RL27.25) to assist in providing an increased ceiling height to the extended wine bar area;
- demolition of the external stairs leading from the rear laneway to the existing Level 2 communal terrace, provision of a commercial waste storage area in the location of the existing external stairs, and relocation of the residential waste storage area from the Level 2 terrace to the Level 1 residential foyer;

- replacement/refurbishment of the existing garage roller door facing Forsyth Street and replacement of the gate facing the rear laneway;
- upgrades to the residential foyer, including new stairway balustrade and non-slip strips to stairs, to address existing BCA non-compliances; and
- retention of the existing wine bar and residential entrances from Forsyth Street.

Level 2

- internal alterations to the front half of the existing retail bottle shop fronting Glebe Point Road, including lowering of the existing floor level by 210mm (from RL29.58 to RL29.37), adjustments to the front entry door and provision of new acoustic flooring;
- internal alterations to the rear half of the existing retail bottle shop including demolition of the existing storage (RL29.93) and cooler room (RL30.04), raising of the existing storage and cooler room floor levels by 610mm-720mm (to RL30.65) to provide a retail mezzanine area and to assist in increasing the ceiling height within the extended wine bar area below, construction of replacement steps to the retail mezzanine area and provision of new acoustic flooring;
- internal alterations to Apartment 1 including conversion of the existing communal corridor into a private hallway and provision of a new entry door, provision of new openings from the hallway into the apartment, and removal of existing doorways and associated cornices/ceilings and architrave;
- demolition of two existing communal laundry rooms at the rear (north-east) of Apartment 1 and replacement with of a new private deck, including new steps down to the terrace area and new timber framed glazed doors connecting the internal living area of Apartment 1 to the new deck. The external laundries are not required as each apartment is provided with its own internal laundry facilities;
- installation of privacy screen on the northern and southern sides of the new deck, and to the northern end of the terrace; and
- conversion of the existing communal open space at the rear of Apartment 1 into a private terrace area for the sole use of Apartment 1, with the removal the shared access corridor and external stairs.

Level 3

- construction of a new balcony to the rear (east) of Apartment 2 including installation of privacy screens on the northern and southern sides of the balcony, removal of the existing bedroom windows, and provision of new timber framed glazed doors opening on to the new balcony; and
- internal alterations to Apartment 3 including provision of a new opening between the kitchen and living room.

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

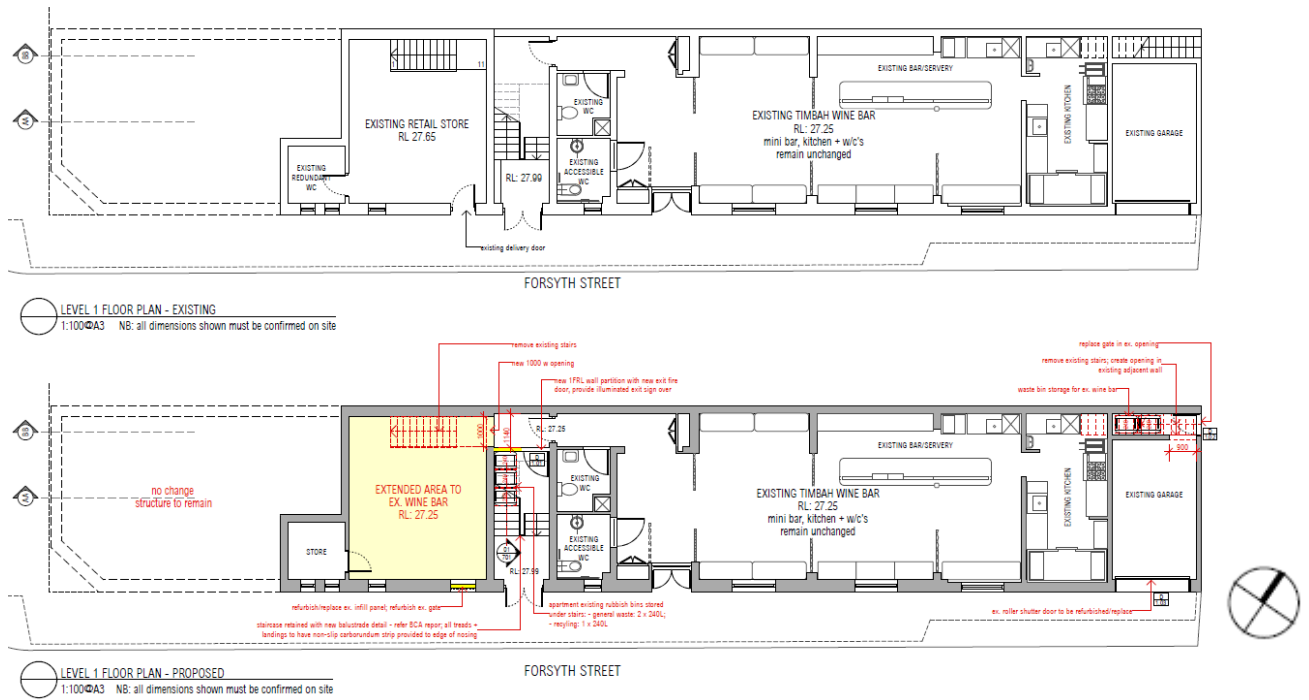


Figure 14: Existing and proposed lower ground (Level 1) floor plan

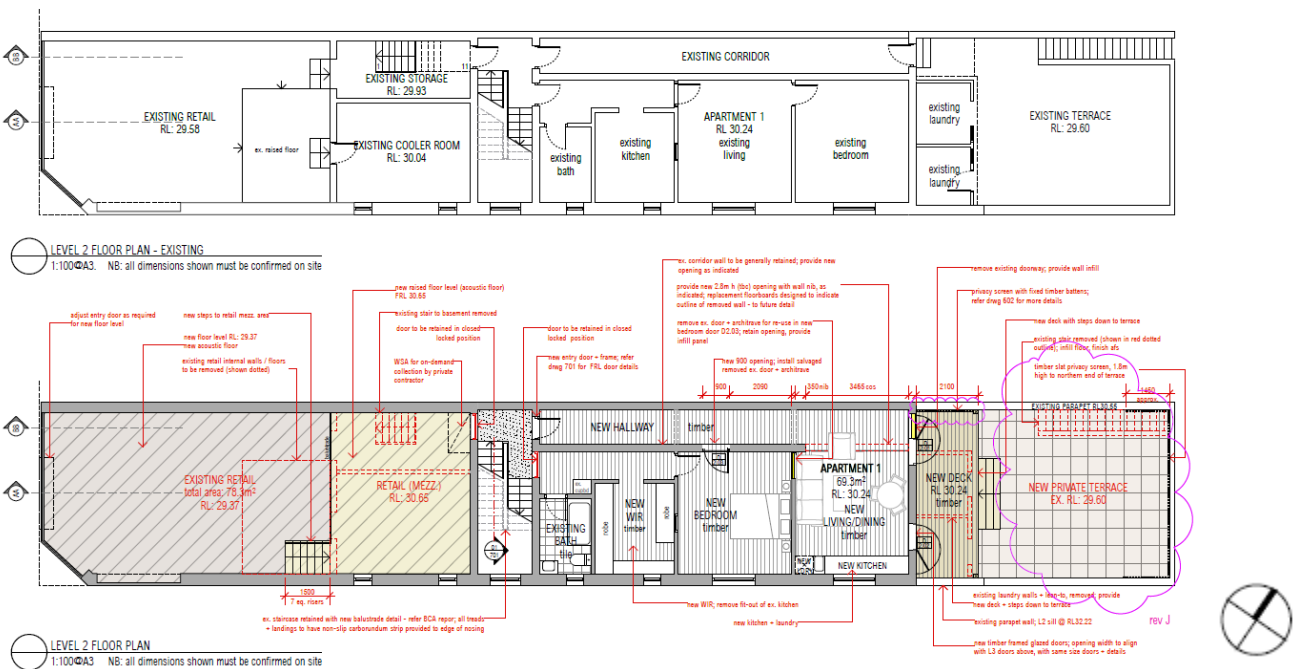


Figure 15: Existing and proposed ground (Level 2) floor plan

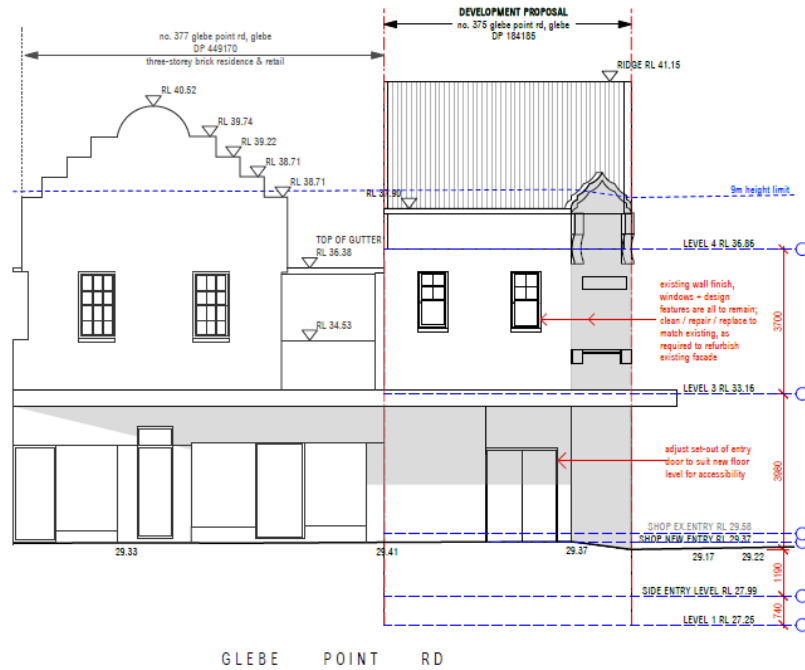


Figure 18: Proposed front south-west elevation (Glebe Point Road)

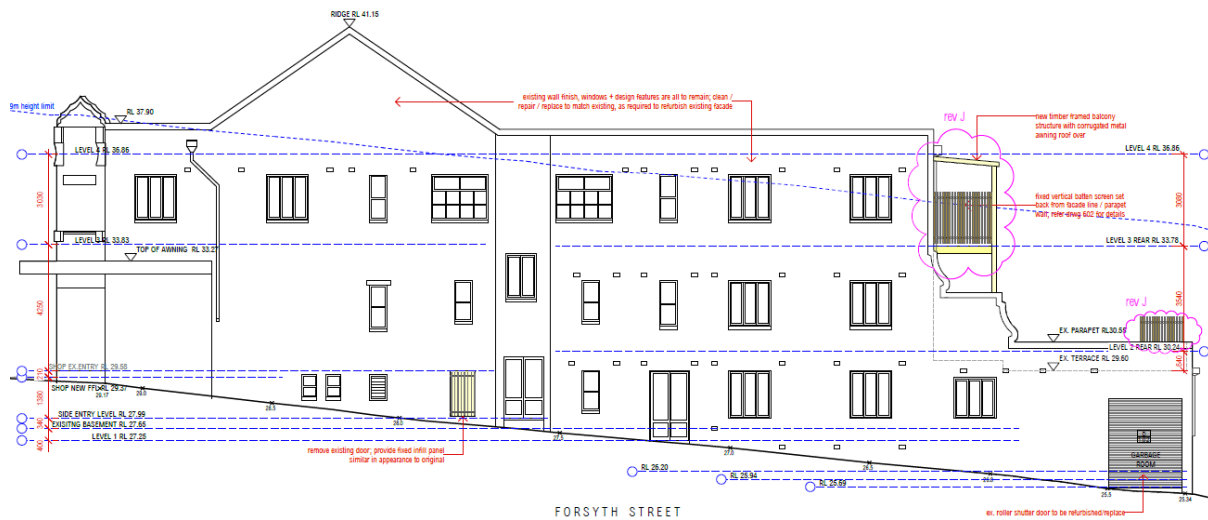


Figure 19: Proposed south-east elevation (Forsyth Street)



Figure 22: Perspective viewed from Glebe Point Road



Figure 23: Perspective Viewed from Forsyth Street

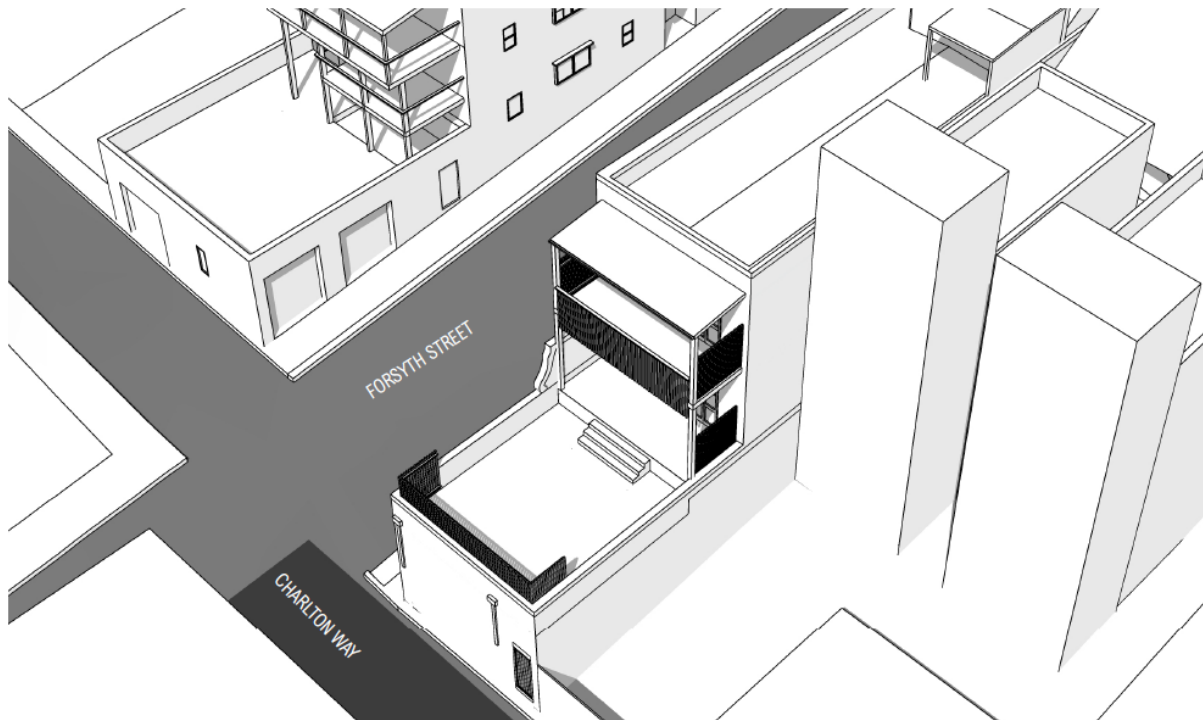


Figure 24: Aerial perspective from Charlton Way

Assessment

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

State Environmental Planning Policies

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

24. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
25. No change of land use is proposed. However, given excavation works are proposed within the existing lower ground level retail storeroom, it is recommended that a standard condition be imposed on any consent granted to address any unexpected contamination finds. Conditions have also been recommended to address demolition and disposal of any asbestos materials.

State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development

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

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

27. BASIX Certificates have been submitted with the development application for each of the three apartments (A336507_03, A336531_03 and A336525_02).
28. The BASIX certificates list measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended to ensure the measures detailed in each BASIX certificate are implemented.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network**Clause 2.48 Determination of development applications – other development**

30. The application is subject to Clause 2.48 of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.
31. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised. Conditions have been recommended to address Ausgrid's statutory requirements during construction.

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

32. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
33. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

Local Environmental Plans**Sydney Local Environmental Plan 2012**

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B2 Local Centre zone. The proposed development, being for alterations and additions to a 'small bar', 'shop' and 'residential accommodation', is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A maximum building height of 9 metres is permitted.</p> <p>The existing building has a maximum height of 12.9m.</p> <p>A maximum height of the proposed alterations and additions is 10.39m.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>The proposed development does not comply with the maximum floor space ratio development standard.</p> <p>A maximum floor space ratio of 1.5:1 or 348.3sqm is permitted.</p> <p>The existing development has a floor space ratio of 1.9:1 or 440.1sqm.</p> <p>A floor space ratio of 1.87:1 or 434.3sqm is proposed, which is a reduction of 5.8sqm.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.6 Exceptions to development standards	Yes	<p>Separate Clause 4.6 variation requests have been submitted with the application to vary the height of building development standard prescribed under Clause 4.3 by 15.4% and the floor space ratio development standard prescribed under Clause 4.4 by 24.7%.</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 forms part of a group of three local heritage items (1766 being 'shop and residence group including interiors') and is located within the Glebe Point Road heritage conservation area (C29).</p> <p>Subject to the imposition of appropriate conditions of consent, the proposed development will not have a detrimental impact on the heritage significance of the heritage item or the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21C Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with existing development and will contribute positively to the character of the area.</p> <p>The development improves the amenity of the existing apartments and has an acceptable environmental impact with regard to the amenity of the surrounding area.</p>

Provision	Compliance	Comment
		The proposed additions are sympathetic to the heritage significance of the building and the heritage conservation area.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	A maximum of three residential car parking spaces are permitted. The proposed development includes no residential car parking spaces and complies with the relevant development standards.
7.7 Retail premises	Yes	A maximum of four retail car parking spaces are permitted. The proposed development includes one existing retail car parking space and complies with the relevant development standards.
Division 3 Affordable housing		
7.13 Contribution for purposes of affordable housing	Yes	The application will not result in the creation of 200 square metres or more of residential gross floor area (GFA) and will not result in 60 square metres or more of non-residential GFA. The development is therefore excluded and is not subject to a Section 7.13 affordable housing contribution.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils and seeks to lower the lower ground floor level by 400mm.

Provision	Compliance	Comment
		The proposed development is located within approximately 250 metres of Class 1 land and within approximately 300 metres of Class 2 land. The nature and extent of excavation proposed, however, is unlikely to lower the watertable in the nearby Class 1 and 2 land below 1 metre Australian Height Datum. Accordingly, the preparation of an Acid Sulfate Soils Management Plan is not required.

Development Control Plans

Sydney Development Control Plan 2012

35. 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

36. The site is located within the 'Glebe Point Road' locality. The proposed development is in keeping with the unique character and the design principles of the locality as follows:
- The development retains the appearance of the development as a part 2 and part 3 storey building.
 - The development maintains the existing active retail uses at the ground and lower ground floor levels.
 - The expansion of the existing small bar will contribute to the vibrancy of the local centre.
 - The alterations and additions provide an appropriate response to the heritage item on the site and the conservation area, with the new covered balconies to the rear of the building not resulting in any significant change to the visual bulk or scale of the existing building.
 - The proposed development will not impact on any views towards Central Sydney as the proposed balconies site below the parapet of the existing building.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The proposal does not significantly change the building's relationship with the street or the public domain.

Provision	Compliance	Comment
		<p>The proposal retains the existing openings on the Glebe Point Road and Forsyth Street frontages, with the exception of an existing delivery door to the lower ground floor retail storeroom. The doorway will be replaced with a fixed infill panel that is similar in appearance to the current door. The conversion of the existing lower ground floor retail storeroom to an extended wine bar area will provide some additional street level activation.</p> <p>The existing stairs, accessed from the rear laneway, are to be deleted and the existing unsympathetic metal gate is to be replaced with a new timber gate.</p> <p>The DCP requires an awning to the Glebe Point Road frontage and corner of the site. No change is proposed to the existing awning.</p>
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	The proposal seeks to retain and upgrade the existing uses on site. The proposed alterations and additions satisfy BASIX and environmental requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	There is no subdivision proposed as part of the application.
3.9 Heritage	Yes	<p>The site forms part of a group of three local heritage items (I766) and is identified as a neutral building within the Glebe Point Road heritage conservation area (C29).</p> <p>Other local heritage items are located opposite and to the north and south of the site along Glebe Point Road.</p> <p>See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
3.11 Transport and Parking	No, but assessed as acceptable	<p>The existing retail uses do not provide on-site bike parking spaces, end of trip facilities, motorbike parking or loading/unloading facilities.</p> <p>Given the heritage limitations of the site, the proposal is unable to accommodate these facilities. The existing operations will be maintained.</p>
3.12 Accessible Design	Yes	<p>The proposed development complies with the relevant Australian Standards; the Building Code of Australia access requirements and the Disability Discrimination Act 1992.</p> <p>The proposed development includes less than eight dwellings and is therefore not required to provide any adaptable dwellings.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p> <p>The conversion of the existing lower ground floor retail storeroom to an extended wine bar area will provide additional activation at the street.</p> <p>The Plan of Management has been updated to reflect the amended operations.</p>
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.</p> <p>See further details in response to the mixed-use DCP requirements below.</p>
3.15 Late Night Trading Management	Yes	<p>The premises is not located within a late night trading area and the use is defined as a category B premises. The permitted base hours for an indoor category B premises, which is located outside of a late night trading area, are 7am to 10pm.</p>

Provision	Compliance	Comment
		<p>No change is proposed to the existing approved trading hours of 10am and 10pm, Monday to Saturday (inclusive), and 10am and 9pm, Sunday. These hours do not exceed the permitted base trading hours for the area.</p> <p>The existing consent (D/2009/136/C) limits the capacity of the small bar to 50 patrons. The proposal will provide capacity for an additional 26 patrons. Council's Licensed Premises Unit reviewed the application and has advised that the proposed plans and design of the venue do not indicate any apparent adverse impacts on the amenity of the surrounding urban environment. A view of Council's records confirms the operational performance of the existing venue to be satisfactory.</p> <p>The continued liquor licensing of the premises will comply with the provisions of the Liquor Act.</p> <p>Appropriate conditions are recommended to ensure the appropriate operation of the expanded small wine bar/café. This will require a Notice of Modification to amend both the floor plans and some operational conditions on the base consent for the use of the premises (i.e. modification to DA D/2009/136).</p>
3.15.5 Plans of Management	Yes	<p>Development consent D/2009/136 requires that the use must always be operated in accordance with the Plan of Management (PoM), prepared by Hosking Munro Pty Ltd and dated January 2009.</p> <p>A review of the existing PoM revealed that despite approval being granted in 2012 for extended the hours of operation (under Modification Application D/2009/136/C), the PoM had not been updated for the premises since 2009.</p>

Provision	Compliance	Comment
		<p>The applicant has submitted an updated PoM reflecting the increased patron numbers proposed as part of the subject application and the hours of operation approved as part of the modification granted on 14 February 2012.</p> <p>Conditions are recommended to ensure continued compliance with the approved hours of operations of the existing base consent and with the updated PoM, dated May 2022.</p>
3.16 Signage and Advertising	Yes	The proposed development seeks to retain the existing signage. No new signage is proposed.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No, but assessed as acceptable	<p>The subject site is identified as a 2 storey character area in accordance with the height in storeys map.</p> <p>The existing building presents as a 2 storey building to Glebe Point Road and a 3 storey building to Forsyth Street and Charlton Way.</p> <p>No change is proposed to the height of the development when measured in storeys or to the street frontage heights.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No, but assessed as acceptable	<p>The existing and proposed retail uses do not achieve the minimum floor to floor height of 4.5 metres at the ground and lower ground levels. Strict compliance would require demolition of the existing heritage building, which is inappropriate and impractical.</p> <p>The existing wine bar has a floor to ceiling height of 2.69 metres. With a floor to floor height of 3.4 metres (or 3.1 metre floor to ceiling height), the extended area of the wine bar has</p>

Provision	Compliance	Comment
		<p>greater ceiling heights than those existing.</p> <p>The floor to floor height of the existing bottle shop is also proposed to be increased by an additional 210mm to 4.46 metres. This is generally consistent with the minimum DCP requirement. The new retail mezzanine, however, has a proposed floor to floor height of 3.18 metres. This is considered acceptable given the heritage limitations and that it is limited to a portion of the bottle shop only.</p>
4.2.2 Building setbacks	Yes	<p>The 'Building setback and alignment map' does not provide a specific setback for the subject site. Accordingly, the setbacks must be consistent with the adjoining buildings.</p> <p>The proposed external building works are limited to the Level 2 deck and Level 3 balcony. At Level 2, the proposed deck will replace an existing laundry and lean-to and will maintain the existing building setbacks.</p> <p>While the balcony will reduce the existing rear setback at Level 3, a rear building setback of over six metres will be retained.</p> <p>The proposed Level 3 balcony is consistent with many other balconies in the area, and will have no unreasonable privacy, overlooking or heritage impacts.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The proposed and neighbouring developments will continue to achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June to at least 1sqm of living room windows and at least 50% of the required minimum area of private open space area.</p> <p>See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.2.3.3 Internal common areas	Yes	No significant changes are proposed to the existing internal common areas and corridors. The building does not contain a lift.
4.2.3.4 Design features to manage solar access	Yes	<p>The proposed balcony and deck provide sun protection of the north-east facing openings to Apartments 1 and 2.</p> <p>The fixed privacy screens to the northern end of the terrace and to the side elevations of the deck and balcony, will not restrict access to natural daylight or outlook.</p>
4.2.3.5 Landscaping	Yes, subject to condition	<p>No landscape open space is currently provided on the site and the development does not propose any new areas of landscaping.</p> <p>An opportunity exists, however, to provide on planter boxes within the Level 2 terrace area which would provide increased amenity for the occupants of Apartment 1 and the surrounding neighbours.</p> <p>A condition is recommended requiring that this design modification be made to the plans.</p>
4.2.3.6 Deep Soil	No, but assessed as acceptable	No deep soil is currently provided on the site, nor can any deep soil be proposed based on the existing footprint of the development on site.
4.2.3.7 Private open space and balconies	No, but assessed as acceptable	<p>The development currently does not provide any private open space for the dwellings and therefore does not comply with the 75% requirement.</p> <p>The proposed development seeks to provide a north-east facing open space area to Apartments 1 and 2 (i.e. 66.6% of the dwellings).</p>

Provision	Compliance	Comment
		<p>The private open space for Apartment 1 will be directly accessible from the living area. No change is proposed to the existing layout of Apartment 2 and as such, the proposed new private open space does not directly adjoin the living room.</p> <p>The proposed private open spaces have dimensions that exceed two metres and areas exceeding 10sqm in compliance with the DCP.</p>
4.2.3.8 Common open space	No, but assessed as acceptable	<p>The existing building has a common open space area located on the roof terrace of level 2. The common open space is provided to the rear of the existing building and currently is a service area for the three apartments rather than a quality outdoor recreation space. The terrace is currently used to store the garbage bins and provides access to two communal laundries.</p> <p>The proposal seeks to convert the terrace into a private open space for the exclusive use of Apartment 1 and will no longer provide common open space on the site.</p> <p>The reallocation of the common open space to private open space is considered appropriate in this instance given the building only contains three units, two of which will have their own private open space as a result of the development. As noted above, the existing common terrace is not utilised as a recreational area for all residents rather a service and storage space. The proposed scheme is considered a better design outcome and a better reuse of the existing built form on a heritage listed property. Based on the small-scale nature of the existing building (three apartments), the lack of communal open space is acceptable in this instance.</p>
4.2.3.9 Ventilation	Yes	All three apartments are currently all corner apartments and therefore receive natural cross ventilation.

Provision	Compliance	Comment
4.2.3.10 Outlook	Yes	The proposed amendments will improve the outlook of the apartments.
4.2.3.11 Acoustic privacy	Yes	<p>A Noise Impact Statement has been submitted for the proposed enlargement of the wine bar. Subject to appropriate conditions and compliance with the Plan of Management, the proposed increase to patron numbers by an additional 26 persons is considered acceptable.</p> <p>No further or additional acoustic attenuation works are required to the existing residential apartments to reduce noise transmission from the wine bar within the building (in order to comply with acoustic criteria).</p> <p>See further details in the 'Discussion' section below</p>
4.2.6 Waste and recycling Management	No, but assessed as acceptable	<p>There is currently no designated waste storage area provided for the commercial uses.</p> <p>The demolition of the existing external stairs to the Level 2 terrace, will provide an area at the rear of the garage to store the commercial waste bins. The bins will be wheeled to the street by a private waste contractor via the existing gate that opens onto the laneway.</p> <p>A regular private cardboard collection services the bottle shop. The cardboard is stored at the back of the shop until it is ready for collection. This arrangement will be maintained.</p> <p>The residential waste bins are currently stored within the Level 2 communal open space and are taken down a flight of stairs for collection. The current arrangement is considered unsafe. The residential bins will be relocated to the ground level foyer to an area under the stairs. The bins are currently wheeled by the building caretaker to the street for Council collection. This arrangement will be maintained.</p>

Provision	Compliance	Comment
		Given the heritage constraints of the site and that the proposal seeks minor changes to the existing on-site operations, the proposed waste storage arrangements are considered satisfactory.

Discussion

Clause 4.6 Request to Vary a Development Standard - Height

- 37. The site is subject to a maximum height of buildings control of 9 metres. The existing building exceeds the height standard by 3.9 metres. The proposed development has a maximum height of 10.39 metres equating to a variation of 15.4 per cent.
- 38. The figures below show the elements of the proposed alterations and additions to the building that breach the height limit. The proposed elements that breach the height limit are limited to a portion of the Level 3 balcony, including its roof covering and portions of the privacy screens.

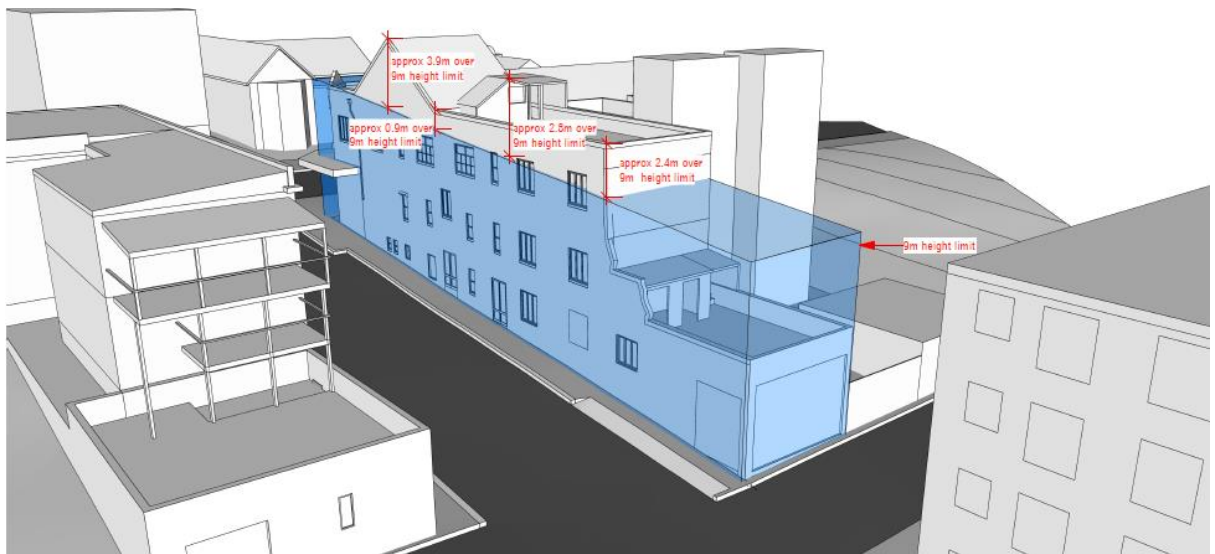


Figure 25: Height plane diagram showing the existing elements above the 9m height limit



Figure 26: Height plane diagram showing the proposed elements above the 9m height limit

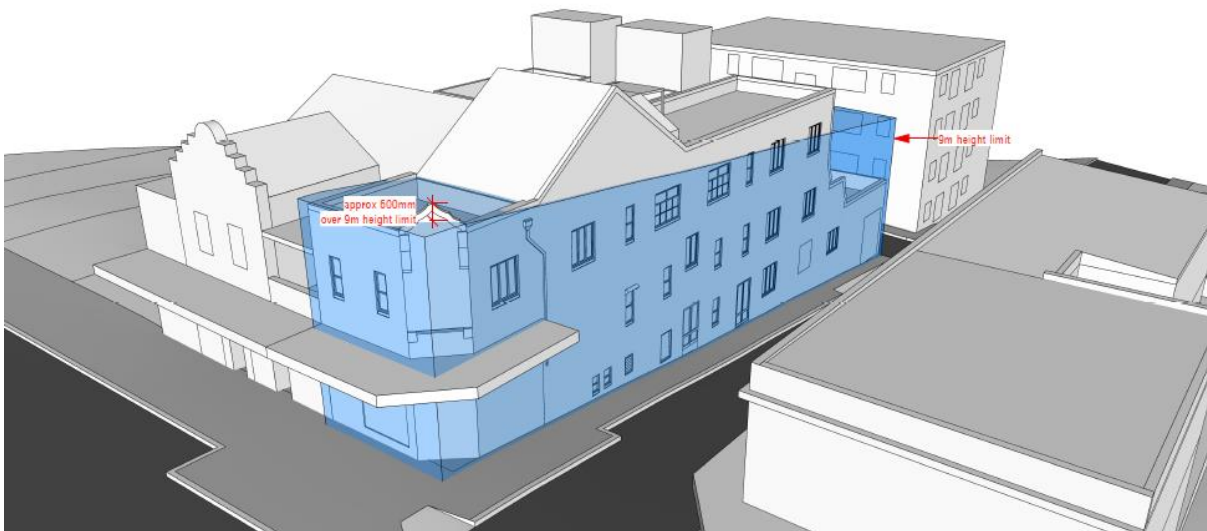


Figure 27: Height plane diagram showing the existing elements above the 9m height limit



Figure 28: Height plane diagram showing the proposed elements above the 9m height limit

39. 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;
 - That there are sufficient environmental planning grounds to justify contravening the standard;
 - The proposed development will be consistent with the objectives of the zone; and
 - The proposed development will be consistent with the objectives of the standard.

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

40. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - The applicant's statement refers to the five tests established in *Wehbe V Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary.

While it is sufficient to demonstrate only one test to satisfy clause 4.6(3)(a), the applicant's statement refers to all five tests. Test 1 seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. Test 2 seeks to demonstrate that the underlying objective or purpose is not relevant to the development. Test 3 seeks to demonstrate that the objective would be defeated or thwarted if compliance was required. Test 4 seeks to demonstrate that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard. Test 5 seeks to demonstrate that the zoning of the land is unreasonable or inappropriate. The applicant's justification against the objectives of the height of buildings development standard is provided in (d) below, while the applicant's justification against the remaining tests is provided as follows:

- (i) The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
 - i. The underlying objectives and purpose of the height standard is relevant to the proposed development. However, the proposed development is consistent with those objectives on the basis that 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 addition will sit comfortably with the context of the site with no unreasonable impacts on adjacent properties.
- (ii) The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
 - i. The underlying objective of the height control is to achieve an appropriate height on the site which is compatible with the context of the site, provides an appropriate height transition between new developments and heritage items and maintains scenic or iconic views.
 - ii. Due to the design, location and configuration of the proposed addition, the proposal successfully achieves these objectives. Strict compliance with the height control would not deliver a necessary improvement to the streetscape or the amenity of the adjoining properties as such compliance with the standard is unnecessary.
 - iii. Strict compliance would reduce the amenity of the development as the usability of the balcony of Apartment 2 would be reduced by not providing any shade or weather protection to the balcony. The amenity of the properties to the north and south would also be affected as privacy screens could not be provided on the balcony of Apartment 2.
 - iv. Accordingly, it is considered that strict compliance would likely result in the defeat of the underlying object and purpose of the height control because it would encourage a less desirable outcome for the site.

- (iii) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary;
 - i. 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.
 - (iv) The zoning of the land is unreasonable or inappropriate;
 - i. The proposed zoning of the land is considered to be reasonable and appropriate.
- (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 already exceeds the height standard by up to 3.9 metres and the majority of the length of the building exceeds the height standard.
 - (ii) Many of the surrounding buildings exceed the height standard. Compliance with the numeric standard therefore has little relevance to the attainment of the objectives of the control.
 - (iii) The variation does not hinder the attainment of the objects of the Environmental Planning and Assessment Act 1979. Specifically, the development remains consistent with objects (f) and (g) as follows:
 - (i) The supporting Heritage Impact Statement demonstrates that 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. In this regard the development is consistent with object (f) which seeks to promote the sustainable management of built and cultural heritage.
 - (ii) The variation is necessary to provide weather protection to the proposed area of private open space to Apartment 2 (which currently does not have any private open space). The variation is also necessary to provide privacy screens on the northern and southern sides of the balcony, which is necessary to minimise potential privacy impacts to the adjoining properties. In this regard the development is consistent with object (g) of the Act which seeks to promote good design and amenity of the built environment.
 - (iv) 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.

- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The applicant has provided the following justification in their written statement to demonstrate that the proposed development will be consistent with the objectives of the B2 Local Centre zone:
 - (i) The proposed development seeks to expand the wine bar on the site by converting a storage room to part of the wine bar. The proposed works will allow for the growth of the existing wine bar that serves the needs of people who live in, work in and visit the local area.
 - (ii) The proposal will improve the amenity of the existing residential accommodation on the site.
 - (iii) No additional onsite parking is proposed and in this regard the development will support the use of public transport and walking and cycling.
- (d) The proposed development will be consistent with the objectives of the standard;
- (i) With regard to objective 4.3(1)(a) of the standard, which requires the height of the development to be appropriate to the condition of the site and its context:
 - (i) The applicant has advised that 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 of Glebe Point Road, Forsyth Street and Charlton Way. The element of the building that exceeds the height limit is contextually appropriate in that the covered balcony to the rear of Level 3 sits 1.01 metres below the parapet of the existing building and 3.27 metres below the height of the adjoining building. As the covered balcony component of the new work is a modestly sized structure with a lightweight and open design, and sits below the parapet of the existing building, it will not result in excessive visual bulk. The balcony will provide some articulation of the rear façade of the building and will provide visual interest through creating a play of light and shade on the rear of the building.
 - (ii) With regard to objective 4.3(1)(b), which is to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas:
 - (i) The building on the site and the buildings at 377-379 and 381 Glebe Point Road are listed as a heritage item pursuant to Schedule 5 of the SLEP. The site is also located within the C29 Glebe Point Road Heritage Conservation Area. The Heritage Impact Statement, prepared by Matt Devine, addresses the impact of the new works to the significance of the heritage item and heritage conservation area, and concludes that the proposed works will result in little to no impact on the significance of the heritage item and the conservation area.

- (iii) With regard to objective 4.3(1)(c) which is to promote the sharing of views:
 - (i) The proposed development will not impact on any scenic or iconic views as the rear balcony sits below the parapet height of the existing building.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

41. 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)?

42. The applicant has referred to the five tests established by Preston CJ in *Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. While it is sufficient to demonstrate only one test to satisfy clause 4.6(3)(a), for completeness the applicant's statement has addressed all five tests.
43. It is considered that tests 2, 3, 4 and 5 cannot be relied on because:
- (a) The underlying objectives and purpose of the height standard is relevant to the proposed development.
 - (b) The objective would not be defeated or thwarted if the proposed development was required to comply with the height of building standard.
 - (c) While Council has granted variations to the height of building standard, the development standard has not been virtually abandoned or destroyed by the Council.
 - (d) The B2 zoning of the land is reasonable and appropriate.
44. The applicant's statement has correctly referred to test 1 and has demonstrated that the development meets the objectives of Clause 4.3, notwithstanding non-compliance with the numerical standard.
45. The applicant has identified that the existing building exceeds the height standard by up to 3.9 metres. The additional height, proposed by the development, sits below the maximum height of the existing building on the site and below the height of the other buildings in the heritage listed group. The area of non-compliance is limited to the roof of the proposed Level 3 balcony and to small portions of the privacy screens attached to the side elevations of the balcony.

46. Strict compliance with the standard would mean that the proposed balcony would need to be uncovered and that the privacy screens would need to be reduced in height or removed.
47. The encroaching elements of the balcony are located at the rear of the building and sit below the building parapet height, ensuring that they do not detract from the heritage significance of the existing building and do not result in any loss of views. The open design of the balcony further ensures that it does not add excessive visual bulk when viewed from the public domain.
48. The proposed alterations and additions result in a building that is consistent with the built form and height of surrounding developments and will not have a detrimental impact on the significance of the heritage item or the heritage conservation area.

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

49. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the building height development standard. Specific reference is made to the Initial Action Pty Ltd v Woollahra Municipal Council case, noting that a development should have a neutral or beneficial effect relative to a compliant development.
50. The written request indicates that the majority of the length of the existing building on the site already exceeds the height standard, and that the proposed balcony roof and privacy screens will not result in any adverse impacts on the heritage significance of the item or surrounding heritage conservation area. Additionally, the proposed variation is necessary to provide weather protection to the introduced area of private open space to Apartment 2 and to ensure suitable privacy measures are provided, which will achieve a higher level of residential amenity for the occupants of the apartment and the adjoining neighbours.
51. The applicant has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of variation proposed.

Is the development in the public interest?

52. The objectives of the height of buildings development standard relevant to the proposal 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 conservation areas or special character areas,
 - (c) to promote the sharing of views outside Central Sydney.

53. The proposal is consistent with the relevant objectives of the height of buildings development standard as follows:
- (a) The height exceedance does not detract from the existing neighbourhood character and does not significantly alter the existing building form. The existing building exceeds the height standard by up to 3.9 metres. The height of the proposed alterations and additions is considered appropriate to the site given that the exceeding element sits 1.01 metres below the parapet of the building and 3.27 metres below the maximum height of the adjoining building.
 - (b) The elements that exceed the height standard are limited to roof of the Level 3 balcony and to portions of the privacy screens, and do not create unreasonable additional bulk when viewed from the surrounding public domain.
 - (c) The proposed covered balcony is similar to the upper floor balcony provided at the rear of the building on the opposite side of Forsyth Street, and is therefore appropriate in the context.
 - (d) The height is appropriate given the balcony will not result in any unreasonable privacy, overlooking or overshadowing impacts. The balcony is setback more than 12m from the buildings on the opposite side of Charlton Way and Forsyth Street, with the majority of the additional shadows falling within the road reserve.
 - (e) Strict compliance with the height standard would require deletion of the balcony roof and portions of the privacy screen, noting that these elements maximise the useability of the balcony and provide increased amenity for the occupants and adjoining neighbours.
 - (f) The balcony roof and balcony screens do not add any discernible bulk or massing to the rear of the building and will not detract from the significance of the heritage item or the surrounding heritage conservation area.
 - (g) The balcony roof and screens that breach the height standard do not affect any view sharing.
54. Objectives of the B2 Local Centre zone
- (a) To provide a range of retail, business, entertainment 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.
55. The proposed development is consistent with the relevant objectives of the B2 Local Centre zone as follows:
- (a) The proposal seeks to upgrade and expand the existing commercial uses on the site and will continue to serve the needs of people who live in, work in and visit the local area.
 - (b) The site is in a highly accessible location. The expansion of the small bar may provide additional employment opportunities.

- (c) The proposal does not provide any additional on-site parking in order to encourage public transport patronage, cycling and walking to the site.
- (d) The proposal will improve the amenity of the existing residential use and will further support the vitality of the local centre.

Conclusion

56. For the reasons provided above the requested variation to the height of buildings development standard is supported as 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 the height of buildings development standard and the B2 Local Centre zone.

Clause 4.6 Request to Vary a Development Standard - Floor Space Ratio

57. The site is subject to a maximum floor space ratio control of 1.5:1. Based on a site area of 232.2sqm, the site has a maximum permissible gross floor area of 348.3sqm.
58. The existing development has a gross floor area of 440.1sqm. As a result of the alterations and additions, the gross floor area will decrease by 5.8sqm to 434.3sqm. The existing floor space ratio is 1.9:1. The proposed development has a maximum floor space ratio of 1.87:1, which constitutes a 24.7 per cent variation.
59. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
 - (c) The proposed development will be consistent with the objectives of the zone; and
 - (d) The proposed development will be consistent with the objectives of the standard.

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

60. 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 applicant's statement refers to the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. While it is sufficient to demonstrate only one test to satisfy clause 4.6(3)(a), the applicant's statement refers to all five tests. Test 1 seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. Test 2 seeks to demonstrate that the underlying objective or purpose is not relevant to the development. Test 3 seeks to demonstrate that the objective would be defeated or thwarted if compliance was required. Test 4 seeks to demonstrate that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard. Test 5 seeks to demonstrate that the zoning of the land is unreasonable or inappropriate. The applicant's justification against the objectives of the height of buildings development standard is provided in (d) below, while the applicant's justification against the remaining tests is provided as follows:
- (i) The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
 - i. The underlying objective of the floor space ratio standard is to provide sufficient floor space to meet the development needs within the capacity of existing and planned infrastructure and with minimal adverse impacts on the amenity of the locality. The objectives of the standard are relevant to the proposal.
 - (ii) The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
 - i. The existing building exceeds the applicable floor space ratio standard and compliance cannot therefore be attained, without significant changes to the existing building which is a heritage item.
 - ii. The proposed development seeks to reduce the floor space ratio of development on the site from 1.9:1 to 1.87:1 through minor changes to the building, including the demolition of two laundries. Requiring compliance would reduce the floor space in the area and impact on the character of the locality by altering key elements of a heritage building. In this regard, requiring compliance is unreasonable as the underlying objective of the standard would be defeated.
 - (iii) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary;

- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The applicant has provided the following justification in their written statement to demonstrate that the proposed development will be consistent with the objectives of the B2 Local Centre zone:
 - (i) The proposed development seeks to expand the wine bar on the site by converting a storage room to part of the wine bar. The proposed works will allow for the growth of the existing wine bar that serves the needs of people who live in, work in and visit the local area.
 - (ii) The proposal will improve the amenity of the existing residential accommodation on the site.
 - (iii) No additional onsite parking is proposed and in this regard the development will support the use of public transport and walking and cycling.
- (d) The proposed development will be consistent with the objectives of the standard;
- (i) With regard to objective 4.4(1)(a) of the standard, which requires that sufficient floor space is provided to meet anticipated development needs for the foreseeable future:
 - (i) The development provides housing and employment floor space in a location where there is demand for housing and employment generating uses. The demand for floor space in this area is driven by the unique and extensive range of services, facilities and opportunities available in the City.
 - (ii) The development application results in a minor reduction in the floor area of the building on the site yet maintains sufficient floor space on the site to meet the development needs in the area.
 - (ii) With regard to objective 4.4(1)(b) which seeks to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic:
 - (i) The proposed development results in a minor reduction of 5.8 square metres to the floor area of the building and as such the density of development on the site remains similar despite the proposed modifications. The proposal does not increase the number of apartments or commercial tenancies. No additional car parking spaces are proposed.
 - (ii) The application seeks consent to convert an existing ground level storage area (which is included in the gross floor area calculation) to additional floor area for the wine bar to more comfortably accommodate the patrons to the wine bar/cafe. As the proposal seeks to more comfortably accommodate the number of patrons for which consent was originally granted the proposal will result not result in any significant change to the number of pedestrians accessing the building.

- (iii) With regard to objective 4.4(1)(c) which seeks to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure:
 - (i) The development can be adequately serviced by utilities and existing and planned infrastructure.
- (iv) With regard to objective 4.4(1)(d) which seeks to ensure that new development reflects the desired character of the locality in which it is located and minimise adverse impacts on the amenity of that locality:
 - (i) The proposed change to the gross floor area of the building is generally related to the changes to the circulation spaces and the removal of two laundries. The changes to the floor space of the building occur within the existing building envelope will not therefore result in any adverse impact on the character of the locality or the amenity of the locality.
 - (ii) The minor additional shadow cast by the proposed development is a result of the balconies to the rear of the building. Also, the changes to the floor space ratio of the building do not result in any privacy impacts on the surrounding properties.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

61. 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)?

62. The applicant has referred to the five tests established by Preston CJ in *Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. While it is sufficient to demonstrate only one test to satisfy clause 4.6(3)(a), for completeness the applicant's statement has addressed all five tests.
63. It is considered that tests 2, 4 and 5 cannot be relied on because:
- (a) The underlying objectives and purpose of the floor space ratio standard is relevant to the proposed development.
 - (b) Although the existing building on the site does not comply with the floor space ratio standard, this does not mean that the development standard has been virtually abandoned or destroyed by the Council.
 - (c) The B2 zoning of the land is reasonable and appropriate.

64. The applicant's statement has correctly referred to test 1 and has demonstrated that the development meets the objectives of Clause 4.4, notwithstanding non-compliance with the numerical standard.
65. The applicant has identified that the calculated gross floor area will decrease by 5.8sqm. The proposed change to the gross floor area of the building is related to the changes to the circulation spaces and the demolition of two laundries at the Level 2 terrace. The changes to the floor space of the building occur within the existing building envelope. The new deck and balcony at Levels 2 and 3 are not included as additional floor space.
66. The existing wine bar will also be extended into an existing storage area. The storage area is located at existing ground level and does not meet the definition of a basement because the floor area of the storey immediately above is more than 1 metre above the existing ground level. This storage area is therefore already included as existing floor space and its change of use to a seating area for the wine bar will not generate any additional floor space. While the land use intensity will increase marginally with the proposed expansion of the wine bar, the size of the wine bar (i.e. a maximum of 76 patrons) is appropriate in a local commercial centre.
67. The overall built form will also generally remain the same, ensuring that the character of the heritage building is maintained. Given the gross floor area is being decreased, there will be no adverse impacts on the amenity of the locality as a result of the changes to the floor space ratio.
68. Furthermore, the applicant's statement has demonstrated that the underlying object of purpose would be defeated if the existing heritage building was required to comply with the floor space ratio standard. The existing building exceeds the applicable floor space ratio standard by 90.5sqm. Compliance could therefore only be achieved if significant changes to the existing heritage building were made, which would impact on the significant elements of the building and its overall character.

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

69. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the floor space ratio development standard. Specific reference is made to *Eather v Randwick City Council* [2021] NSWLEC 1075 and *Petrovic v Randwick City Council* [2021] NSW LEC 1242 which indicates that the small departure from the actual numerical standard and the lack of any material impacts are environmental grounds.
70. The written request indicates that the floor space ratio will decrease from 1.9:1 to 1.87:1. Given the proposed variation to the floor space ratio is the result of changes to the use of the floor space within the existing building and that the calculated gross floor area is being reduced, the proposed departure to the floor space ratio standard will not result in any additional environmental planning impacts in terms of overshadowing, loss of amenity, overlooking, view loss or streetscape presentation. The proposed changes to the existing floor space will improve the amenity of the dwellings and will use the existing floorspace more efficiently and economically.
71. The applicant has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of variation proposed.

Is the development in the public interest?

72. The objectives of the floor space ratio development standard relevant to the proposal 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 planned 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.
73. The proposal is consistent with the relevant objectives of the floor space ratio development standard as follows:
- (a) The reduction to the floor space ratio is related to the changes to the internal circulation spaces and the demolition of two laundries at the Level 2 terrace. The proposed alterations and additions to the building will result in only minor changes to the existing building envelope and will therefore continue to be compatible with the built form and density of surrounding developments.
 - (b) The proposed increase to the wine bar capacity will result in a commercial premises that is consistent with other types of development in the area and will not result in significant additional volumes of vehicle or pedestrian traffic.
 - (c) The development proposed alterations and additions to the building fit comfortably within the existing streetscape in terms of scale and function. The proposed additions will positively complement the existing character of the heritage building and surrounding heritage conservation area.
 - (d) The proposed variation to the floor space ratio standard will not result in any additional environmental planning impacts, including overshadowing, overlooking or view loss, and will not negatively impact on the amenity of the locality.
74. Objectives of the B2 Local Centre zone:
- (a) To provide a range of retail, business, entertainment 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.
75. The proposed development is consistent with the relevant objectives of the B2 Local Centre zone as follows:
- (a) The proposal seeks to upgrade and expand the existing commercial uses on the site and will continue to serve the needs of people who live in, work in and visit the local area.

- (b) The site is in a highly accessible location. The expansion of the small bar may provide additional employment opportunities.
- (c) The proposal does not provide any additional on-site parking in order to encourage public transport patronage, cycling and walking to the site.
- (d) The proposal will improve the amenity of the existing residential use and will further support the vitality of the local centre.

Conclusion

76. For the reasons provided above the requested variation to the floor space ratio development standard is supported as 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 floor space ratio development standard and the B2 Local Centre zone.

Fire Safety Order

77. Council's Health and Building Unit identified that the existing building contains significant fire deficiencies. A subsequent Fire Safety Order (FIRE/2019/154) was issued, however it has been confirmed that several terms of the order remain outstanding. Required new works include:

- remedial work to the exit stair balustrades and handrails;
- non-slip finish to the stair treads;
- construction of a switchboard;
- upgrades to the fire doors to the residential units and other areas;
- wall and floor services penetrations;
- evidence of fire stopping materials and assemblies;
- fire rating to the ceiling of the retail tenancy (bottle shop); and
- fire rating of the ceilings to the residential sole occupancy units.

78. It has been requested that various conditions be imposed as part of any consent granted to ensure that the outstanding work is completed and complies with the BCA. Demonstrated compliance is to be assessed at the Construction Certificate stage. A condition is recommended to address this matter.

Heritage

79. 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.

80. 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.
81. The submitted Heritage Impact Statement (HIS) relates to a previous proposal (D/2018/1586) which included an extension of Level 1, in a westerly direction, to provide a larger wine bar area, and additions at Level 4 to create a second storey for Apartment 3. Given that the works proposed by the current application are also assessed within the existing report, it was considered by Council's Heritage Specialist that a revised HIS was not required.
82. The submitted Structural Report also relates to the previous application (D/2018/1586). Unlike the previous proposal, minimal excavation is proposed by the current application and is limited to the lowering of the existing floor levels within the Level 1 retail storeroom and the Level 2 bottle shop. Given the current application is seeking to implement a similar excavation methodology and that the current proposal will have a significantly less impact on the heritage item than the previous proposal, it was agreed by Council's Heritage Specialist that that a revised Structural Report was not required for the development assessment. It has been recommended, however, that a condition be imposed requiring that an updated structural design report, that specifically reflects the proposed development, be provided to and reviewed by Council's Area Planning Manager prior to the issue of a Construction Certificate.
83. During the assessment process, Council's Compliance/Fire Safety Team requested that various conditions be imposed to ensure that the outstanding items under an issued Fire Safety Order (FIRE/2019/154) are completed as part of the development application. Given that the building, including its interiors, is a listed heritage item (I766), Council's Heritage Specialist was requested to review the required upgrade works to ensure they did not have an adverse impact on the significant heritage fabric of the building.
84. While the majority of the required upgrades will not impact on the fabric of the heritage item, the decorative ceilings in the residential section of the building are significant fabric which should be retained and not removed or concealed. The applicant was therefore requested to specify how the decorative ceiling would be fire rated. The plans have been updated to indicate that an intumescent painted finish will be provided. Intumescent paint is a solution often used on ceilings in heritage buildings which allows them to be retained and fire-rated without the removal of the existing ceilings.
85. The plans have been updated to ensure the exit stairs and balustrade will be upgraded in accordance with the drawings that were prepared in response to the Fire Order with input from the applicant's heritage consultant. The design treatment of the fire doors to the residential units have also been updated to reflect earlier details prepared in response to the Fire Order and resemble the appearance of the existing high waisted panelled doors. Any required replacement of the door architraves will be in timber and will match the details of the existing architraves.

86. At the request of Council's Heritage Specialist, the following additional amendments have been made to the proposal:
- (a) The opening between the kitchen and living room in Apartment 3 has been reduced.
 - (b) The rear external door openings to Apartments 1 and 2 have been reduced in width, are now of a similar detailing to the existing Level 3 windows, and are provided in timber materials.
 - (c) The large panels of painted fibre cement sheeting to the Level 3 balcony have been replaced with a vertical timber balustrade which complement the privacy louvres proposed to the balcony. The timber balustrade extends below the floor level of the Level 3 balcony as this provide a protective element to the ceiling of the balcony underneath.
 - (d) The balcony roofing has been replaced with a corrugated roof profile.
 - (e) The aluminium frames to the proposed privacy screens and the steel framing to the balcony have been updated to a timber finish.
87. The above amendments result in a sympathetic design solution for the heritage item and the HCA. Where appropriate, conditions have been recommended to ensure that the above design changes are implemented and appropriately delivered.
88. While the proposed built form elements are considered satisfactory, the existing exterior is dilapidated. The applicant seeks to repair and clean the external facade of the building and to match the new works to the existing colour scheme. The applicant has advised that the existing building colours, of off-white with dark green trim, are consistent with the interwar colours from the period of this heritage building and that these colours are proposed to be employed on the new elements to match the existing.
89. Council's Heritage Specialist does not support the colour scheme stating that it does not enhance the character of the building. Given the financial benefit of the redevelopment, Council's Heritage Specialist has requested that the building facades be repaired and repainted. While the off-white colour ("snow drift") is nominated on the National Trust colour chart, Council's Heritage Specialist does not agree that it is appropriate for the walls of such a large heritage building and in an HCA. A condition has been recommended that a schedule of colours be submitted to and approved prior to the issue of any Construction Certificate. The proposed colours must respond to the Interwar character of the building and the broader heritage conservation area with buildings of all periods.
90. The proposed alterations and additions are considered to be consistent with the requirements of Section 3.9 of Sydney Development Control Plan 2012. The proposed changes will not have an adverse impact on the significance of the building and subject to an appropriate schedule of external colours being provided, it is considered that the proposal will enhance the character and heritage significance of the heritage item.

Visual privacy

91. The proposed development seeks to reallocate the existing communal terrace area at Level 2 as private open space for Apartment 1. The two external common laundry rooms at Level 2 are proposed to be demolished and replaced with a raised covered deck adjoining the internal living area of Apartment 1. At Level 3, the proposal seeks to introduce a new covered balcony for Apartment 2.
92. At Level 2, a privacy screen is currently attached to the top of the perimeter terrace wall. The screen is limited to only part of the north-west side boundary and part of the rear boundary, is unsympathetic to the character of the building and is in a poor state of repair as shown in Figure 6.
93. The proposal seeks to replace the screen with a timber slat privacy screen that extends from the terrace floor level to an overall height of 1.8 metres. The replacement screening extends across the width of the rear boundary and wraps around the corners of the terrace. The replacement screening will in the same finish as the balcony balustrades and balcony screens and will provide additional privacy benefits for the subject premises and the apartments on the opposite side of Charlton Way. Council's Heritage Specialist has raised no objection to the height or finish of the replacement screening.
94. The Level 2 deck and Level 3 balcony are setback approximately 6.65m from the rear boundary and approximately 14.35m from the residential flat building to the north-east on the opposite side of Charlton Way. Although State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) does not apply to the subject application, the separation distance between the habitable rooms and balconies exceeds the minimum distance of 12 metre.

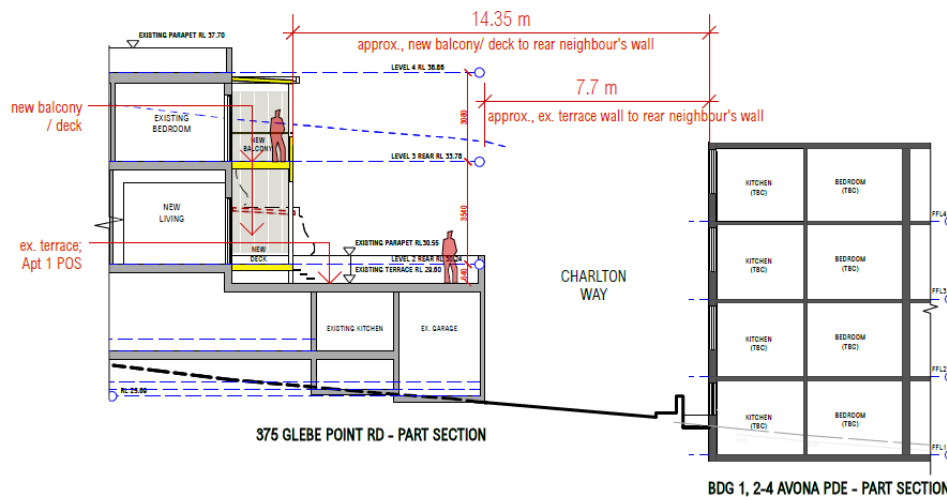


Figure 29: Section plan showing separation between the proposed balconies and the residential apartment building on the opposite side of Charlton Way

95. The subject site adjoins one property to the north-west. The adjoining building is setback further from the rear laneway than the subject building and provides garaging, service areas and a landscape area within the rear setback. The private open space areas of the adjoining apartments are located at the rooftop level and cannot be seen from the subject site. Fixed timber privacy screens will be attached to the north-west edge of the new deck and balcony to further ensure that there will be no unreasonable privacy impacts to the adjoining property. The road reserve (approximately 13 metres) ensures that there is suitable separation between the proposed deck and balcony and the properties to the south-east on the opposite side of Forsyth Street.
96. The height of the privacy screens, to each side of the Level 3 balcony and to the north-west side of the Level 2 deck, are currently nominated at 1.8 metres high. Following discussions with Council's Heritage Specialist, a condition has been recommended that the privacy screens be reduced to a height of 1.6 metres. This will maintain the same level of privacy, while reducing the extent of screening provided.
97. During the assessment of the application, consideration was given to the introduction of privacy measures to lessen overlooking opportunities within the site (i.e. from the Level 3 balcony down onto the Level 2 terrace). After a review of possible options and the impact both on useability and functionality of the Level 3 balcony and the desired aesthetic and heritage outcomes of the balustrade treatment, no further screening measures have been proposed or conditioned.
98. In this instance, the Level 3 balcony adjoins two existing bedrooms and does not serve as an extension of the living area. While there is some potential for overlooking from the proposed Level 3 balcony down to the Level 2 private terrace area below, this is not an unreasonable outcome in a dense inner city environment and it is noted that there are areas of the Level 2 open space that are screened and afforded privacy.

Solar access and overshadowing

99. The submitted shadow diagrams, in plan and elevation, demonstrate that the proposed and neighbouring development will continue to achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June to at least 1sqm of living room windows and at least 50 per cent of the required minimum area of private open space area.
100. The existing development contains three apartments. It is proposed that Apartments 1 and 2 will be provided with a newly introduced north-east facing private open space areas, which will increase the amenity of these apartments. The proposed works will further increase the solar access to the living room of Apartment 1 by relocating the living room to the north-eastern side of the building and providing glazed doors that open to the area of private open space. Currently the living room of Apartment 1 only has one south-east facing window. No change is proposed to the solar access available to Apartment 3.
101. The shadow diagrams demonstrate that only minimal shadows will be cast by the proposed works and that the development will not result in any non-complying shadow impacts on the surrounding properties:
 - (a) Between 9am and 12 noon during mid-winter, the additional shadow predominantly falls over the Forsyth Street road reserve and footpath.
 - (b) After 12 noon, there will be some additional overshadowing to the northern facade of 373 Glebe Point Road located on the opposite side of Forsyth Street. The additional shadows, however, predominantly fall on the blank walls and garage doors of the building.

- (c) While a small part of the terrace area above the garage will be in shadow at 2pm, the majority of the open space will receive direct sunlight from 9am to 2pm.
- (d) There will be no additional shadow impact to living room rooms or private balconies of the neighbouring developments.

Acoustic privacy

- 102. A Category B - Low Impact Premises includes premises that have a capacity of 120 patrons or less where the primary purpose is the sale or supply of liquor for consumption on the premises. Standard indoor trading hours between 7am and 10pm apply in business zones for Category B premises.
- 103. The existing consent for the small wine bar/café (D/2009/136/C), permits the premises to operate from 10am to 10pm Mondays to Saturdays; and 10am to 9pm on Sundays, which is within standard trading hours. The consent limits the capacity of the wine bar to a maximum of 50 patrons.
- 104. Conditions imposed on this existing consent specifies:
 - (a) that the use of the premises has not been approved as an entertainment venue;
 - (b) that music is not permitted to be played in any outdoor area and that any speakers located within the premises must not be placed so as to direct the playing of music towards the outdoor areas;
 - (c) patrons are not permitted to take or consume drinks outside the premises; and
 - (d) Council's standard noise/acoustic criteria conditions are imposed on this existing consent.
- 105. The proposal seeks to increase the capacity of the wine bar by creating an additional seating area. The extension will increase the existing capacity by an additional 26 patrons.
- 106. A search of Council's records found that as of 14 April 2022, there were no noise-related complaints regarding the premises. To reduce the potential noise impacts from the extended wine bar area to the residents of the building, the proposal seeks to install acoustic flooring above the proposed extended area.
- 107. The submitted Acoustic Statement, prepared by West and Associates Pty Ltd and dated 4 May 2022, verifies that noise from an additional 26 patrons is expected to be well within the requirements and that the acoustic privacy of the residents and surrounding local area would not be negatively impacted.
- 108. Council's Health and Building Unit have reviewed the proposal, including the Acoustic Statement, and have raised no objections, subject to appropriate conditions to ensure the existing operational restrictions and noise criteria is met.

Modification of the base development consent for use of the wine/small bar

- 109. The subject application seeks to increase the floor area of the small wine bar/café premises which in turn will increase the patron capacity by an additional 26 persons.

110. To ensure the existing base development consent D/2009/136 (as amended), dated 23 April 2009, accurately reflects the updated plans and operational conditions being proposed by this application, it is recommended that a condition be imposed requiring the modification of development consent D/2009/136 under the provisions of Section 4.17(1)(b) and (c) of the Environmental Planning and Assessment Act, 1979. This will require a Notice of Modification to the existing wine bar/ small bar consent to adopt all the new or update conditions to ensure consistency. The applicant will be required to give written notice to Council requesting that the existing base consent be modified prior to the issue of an Occupation Certificate for the expanded small wine bar/café.

Consultation

Internal Referrals

111. The application was discussed with Council's:
- (a) Building/Compliance Unit;
 - (b) Environmental Health Unit;
 - (c) Licenced Premises Unit;
 - (d) Heritage and Urban Design Unit; and
 - (e) Waste Management Unit.
112. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.
113. See further details under the sub-headings 'Fire Safety Order', 'Heritage' and 'Acoustic Privacy' in the 'Discussion' section above.

External Referrals

Ausgrid

114. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
115. A response was received raising no objections to the proposed development. Ausgrid's standard advice regarding construction works within the proximity of existing electrical network assets has been included as a recommended condition of consent.

NSW Police

116. The application was referred to NSW Police for comment on 16 February 2022. The referral requested that any feedback or conditions be provided within 21-days of the referral. At the time of writing of this report, no response had been received, and is taken to be no objection in relation to the expansion in capacity of the wine bar.

Advertising and Notification

117. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 7 January 2022 and 24 January 2022. As a result of this notification a total of 180 properties were notified and three submissions were received.
118. The proposed development was re-notified for a further 14 days between 21 February 2022 and 8 March 2022 to correct an error in relation to the notified hours of operation. No further submissions were received as a result of this process.
119. The submissions raised the following issues:

- (a) **Issue:** The submitter supports the development overall but is concerned that an increase in patron numbers will create additional parking demands. The submitter has advised that after 7pm parking in the area is already at a premium.

Response: Clause 7.7 of the Sydney Local Environmental Plan 2012 permits a maximum of 4 retail car parking spaces for the commercial components of the development. The development includes 1 on-site retail car parking space and therefore complies with the planning controls. No additional on-site parking can be accommodated.

Council's planning controls specify a maximum parking requirement, rather than a minimum requirement, to encourage the use of public transport, walking and cycling. Parking controls in and around the commercial area further encourage turnover that is consistent with the local business mix and expected duration of stay by customers and increase the efficiency and sustainability of the transport network.

- (b) **Issue:** Although the opening hours are limited to 9pm Monday to Thursday, and 10pm Friday and Saturday, and 8pm Sunday, the business often trades beyond these hours.

Response: The application was originally notified as proposing no change to the existing approved trading hours, being between 10am and 9pm, Monday to Thursday, 10am and 10pm Friday and Saturday, and 10am and 8pm, Sunday.

During the assessment of the application it was revealed that a modification was granted to the original consent allowing the premises to operate from 10am - 10pm Mondays to Saturdays; and 10am - 9pm on Sundays. The application was therefore re-notified with the updated approved hours. No further submissions were received as a result of the re-notification.

Conditions are recommended to ensure that the proposed development operates in accordance with the existing approved hours and the updated Plan of Management.

- (c) **Issue:** The submitter has requested that a condition be imposed requiring that windows remain closed, and noisy waste disposal activities not occur between 8pm and 9am so as to minimise noise disturbance for surrounding residents.

Response: Condition 9 of the existing consent (D/2009/136/C) states that if Council receives consistent complaints about the noise being generated within the premises, they may request that the bi-fold windows be closed at 9pm, daily.

A search of Council's records found that as of 14 April 2022 there were no noise-related complaints regarding the premises. In the event of consistent complaints this condition could be enforced. Standard conditions have also been recommended to address noise from glass removal.

- (d) **Issue:** The submitter has requested that a condition be imposed requiring that the rooftop not be used as an entertainment place.

Response: Condition 13 of the existing wine bar/small bar consent (D/2009/136/C) states that any use of the premises as an "entertainment venue" must not commence unless separately approved by Council. The existing base development consent will remain valid and in place (as modified), and as such, continued compliance with this condition will be required.

The proposed development seeks to reallocate the Level 2 communal open space to private open space for the exclusive use of Apartment 1. The terrace will therefore be used for private purposes and will not accommodate any activities associated with the commercial activities on site.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

120. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
121. The contribution has been calculated based on the proposed increase to the gross floor area of the small bar use (31.5sqm) and the proposed decrease to the gross floor area of the retail shop (28.7sqm). While the expansion of the wine bar results is calculated to require 1 additional worker, a credit of 0.5 workers is provided for the retail shop. The additional demand is therefore 0.5 workers.
122. A contribution does not apply to the residential component of the application given there is no change proposed to the existing number of apartments or the existing number of bedrooms.
123. A condition relating to this development contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

124. As the development is for alterations to an existing building that will not result in the creation of 200 square metres or more of residential gross floor area (GFA) and will not result in 60 square metres or more of non-residential GFA, the development is excluded and is not subject to a Section 7.13 affordable housing contribution.

Relevant Legislation

125. Environmental Planning and Assessment Act 1979.

Conclusion

126. The application seeks approval for alterations and additions to an existing mixed-use development comprising a small wine bar/café, a retail bottle shop, and three residential apartments.
127. The applicant has submitted two written requests pursuant to Clause 4.6 of the Sydney LEP 2012 which relate to the height of buildings development standard (clause 4.3 of the Sydney LEP 2012) and the floor space ratio development standard (clause 4.4 of the Sydney LEP 2012). The requests to vary these development standards are supported.
128. The proposal has been amended to address a number of issues identified by Council staff during the assessment of the application, including comments raised by Council's Heritage Specialist. These issues relate to potential overlooking and privacy impacts, the external materials and finishes, heritage impacts, upgrading of the building to satisfy an outstanding Fire Safety Order, and waste management.
129. The amended alterations and additions are considered to be consistent with the heritage requirements of Section 3.9 of Sydney Development Control Plan 2012 and result in a sympathetic design solution for the heritage building and heritage conservation area. The proposed changes will not have an adverse impact on the significance of the building and will exhibit design excellence in accordance with the provisions of Clause 6.21 of the Sydney LEP 2012.
130. Subject to conditions, the development is in the public interest and recommended for approval.

ANDREW THOMAS

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Rebecca Gordon, Specialist Planner