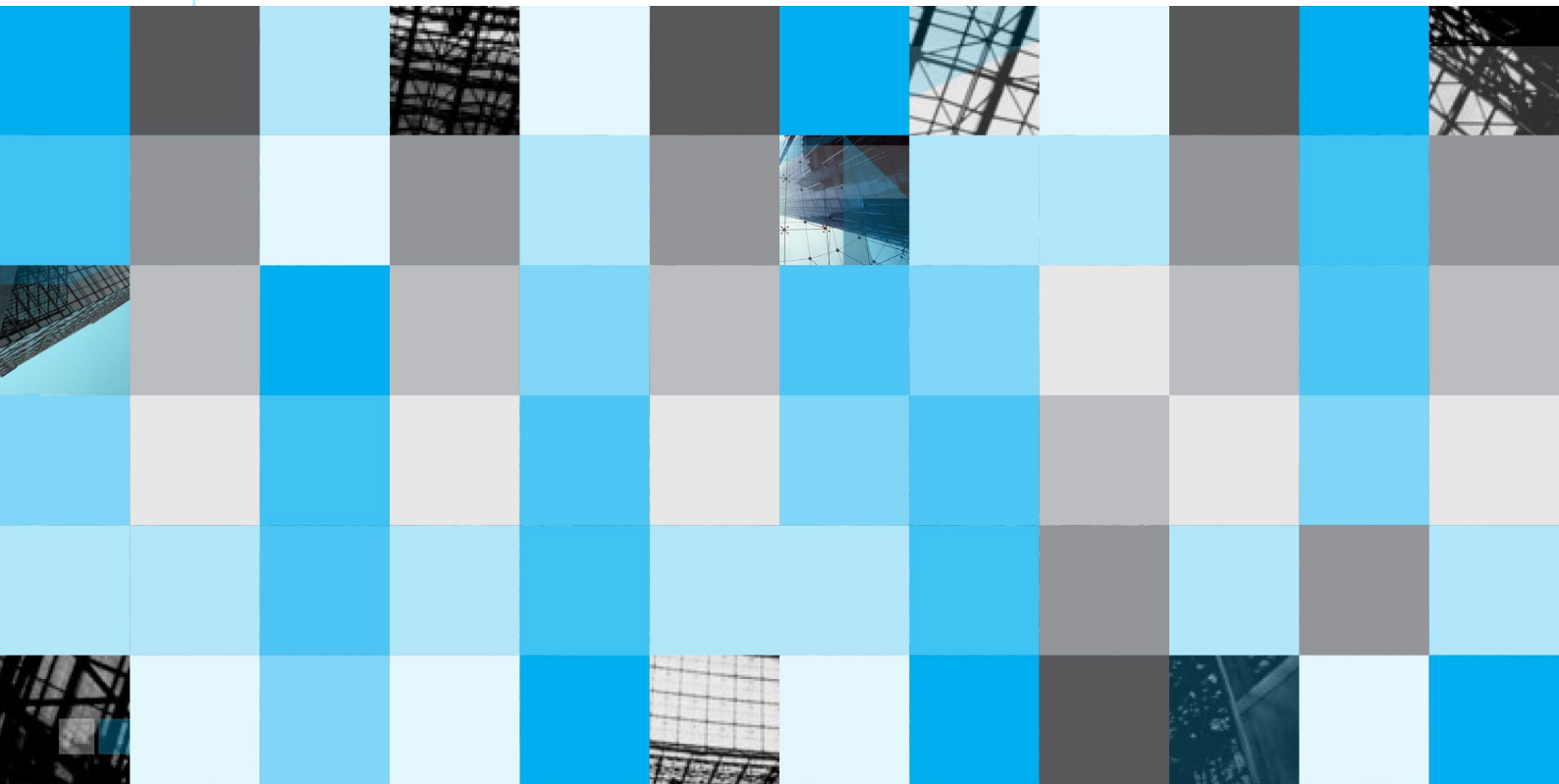


Attachment C

Clause 4.6 Variation Request – Height of Buildings



375 Glebe Point Road, Glebe

Clause 4.6 Height of Buildings

Clause 4.6 Height of Buildings

375 GLEBE POINT ROAD, GLEBE

Alterations and additions to an existing mixed-use
development

9 May 2022

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CLAUSE 4.6 REQUEST FOR AN EXCEPTION TO THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

Introduction

This request for an exception to a development standard is submitted in respect of the development standard contained within Clause 4.3 of the Sydney Local Environmental Plan 2012. The request relates to an application for alterations and additions to the existing mixed use-building at 375 Glebe Point Road, Glebe.

Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the Sydney Local Environmental Plan 2012 provides that development consent may be granted for development even though the development would contravene a development standard imposed by the Sydney Local Environmental Plan 2012, or any other environmental planning instrument.

However, clause 4.6(3) states that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the applicant requests that the height of buildings development standard be varied.

Development Standard to be varied

In accordance with clause 4.3 'Height of Buildings' of the SLEP the height of a building on any land is not to exceed the maximum height shown for the land on the 'Height of Buildings Map'. The maximum height shown for the site is 9 metres as shown in Figure 1.



Figure 1:

Extract from the SLEP
Height of Buildings Map

Building height (or height of building) is defined as the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Extent of Variation to the Development Standard

The existing building exceeds the height limit as shown on the sections and elevations prepared by Environa Studio. The existing ridge of the pitched roof over the western side of the building exceeds the height limit by 3.9 metres. The parapet of the existing building exceeds the height limit by 2.4 metres.

The proposed development results in the following additional areas of non-compliance:

- The roof over the balcony to the rear of Level 3 exceeds the height limit by up to 1.39 metres which equates to a variation of 15.4%.

The following height plane diagram (included as Drawing 903) shows the extent of the existing and proposed non-compliance with the height of buildings standard



Figure 1:

Height Plane Diagram Sheet 1 (Source: Drawing 903 prepared by Environa Studio)

Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council*. [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

This was re-affirmed in the matter of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

Whilst it is only necessary to address the first method of the five-part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827, which alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement, all five tests are addressed below followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;

The specific objectives of the height of buildings development standard, as specified in clause 4.3 of the Sydney Local Environmental Plan 2012 are identified below. A comment on the proposal’s consistency with each objective is also provided.

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

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 are 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 balconies 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.

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

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 SOHI prepared by Matt Devine addresses the impact of the new works to the significance of the heritage item and heritage conservation area. The SOHI concludes that the proposed works will result in little to no impact on the significance of the heritage item and the conservation area.

(c) to promote the sharing of views,

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.

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

Not applicable.

(e) in respect of Green Square:

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

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

This objective is irrelevant to the subject proposal as it is not located within Green Square.

2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

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.

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

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.

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.

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.

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.

4. the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

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.

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

The proposed zoning of the land is considered to be reasonable and appropriate.

Strict compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case in that:

- The height of buildings standard does not accurately reflect the height of the existing building on the site or the heights of the other buildings in the heritage listed group. As such, strict compliance with the standard is unnecessary as it does not reasonably relate to the heritage item on the site.
- The SOHI prepared by Matt Devine assesses the impact of the proposed works on the heritage significance of the item and the heritage conservation area. The SOHI concludes that the proposed works will have little to no heritage impact upon the heritage item or the Heritage Conservation Area.
- The existing building exceeds the height standard by up to 3.9 metres. The proposed additions only exceed the standard by a maximum of 1.39 metres and the additions sit below the parapet height. The existing building exceeds the height standard by a greater amount than is proposed.
- The proposed balconies sit below key elements of the building and are modestly sized balconies that are located to the rear of the building. The covered balconies sit 1.01 metres below the existing parapet height. In this regard the new works do not overwhelm or detract from the existing building.
- The proposal complies with the objectives of the standard notwithstanding the variation to the height standard as detailed above.
- The component of the development which exceeds the height control increase the usability and amenity of the apartments for residents.
- There are no unreasonable impacts in terms of overshadowing, views, visual and acoustic privacy impacts to adjacent sites resulting from the proposed variation to the height development standard which would warrant strict compliance. Shadow diagrams prepared by Environa Studio demonstrate that the proposed non-compliance does not result in any non-complying shadow impacts on the adjoining development.
- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.

As the proposal is consistent with the objectives of the height of buildings control, compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

[Clause 4.6\(3\)\(b\) Are there are sufficient environmental planning grounds to justify contravening the development standard?](#)

The Land & Environment Court matter of *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.
- the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature. The adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the Environmental Planning & Assessment Act 1979 (EP&A Act).

The environmental planning grounds relevant to the standard that is to be varied are:

- The height of buildings standard does not relate to the existing building on the site that is a listed heritage item. The existing building exceeds the height standard by up to 3.9 metres and the majority of the length of the building exceeds the height standard. Many of the surrounding buildings also exceed the height standard. Compliance with the numeric standard therefore has little relevance to the attainment of the objectives of the control. As such, compliance with the numeric standard is unreasonable and unnecessary.
- 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) despite the variation as follows:
 - The SOHI prepared by Matt Devine 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.
 - 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.

In this particular circumstance there are sufficient environmental planning grounds to warrant the proposed variation to the height control as 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.

[Clause 4.6\(4\)\(a\)\(i\) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6\(3\)](#)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five-part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

[Clause 4.6\(4\)\(a\)\(ii\) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives](#)

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

Objective of the Development Standard

The consistency of the proposed development with the specific objectives of the building height development standard is addressed above.

Objectives of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the B2 Local Centre zone. The objectives of the B2 Local Centre zone are:

- 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.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To allow appropriate residential uses so as to support the vitality of local centres.

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. The proposal will improve the amenity of the existing residential accommodation on the site. No additional onsite parking is proposed and in this regard the development will support the use of public transport and walking and cycling. or the reasons given the proposal is consistent with the objectives of the B2 zone.

Objectives of Clause 4.6

The specific objectives of Clause 4.6 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Requiring strict compliance with the height of buildings development standard on the subject site would involve applying a numeric standard that does not reflect the height of the existing building that is to be retained. As the standard does not reasonably relate to the existing development on the site, and the existing building is listed as a heritage item, it is not necessary to strictly apply the standard in this circumstance.

The architectural package which accompanies the subject application illustrates the relationship of the proposed development within the context of the site. It demonstrates a high-quality outcome for the site will be achieved in that it will deliver improved internal amenity in both the residential and non-residential components of the development without any unacceptable impacts on the heritage significance of the heritage item or heritage conservation area.

Accordingly, it is considered that the consent authority can be satisfied that the proposal meets objective 1(a) of Clause 4.6 in that allowing flexibility in relation to the height of buildings development standard will achieve better urban design and amenity outcomes in this instance in accordance with objective 1(b).

Conclusion

Strict compliance with the height of buildings development standard contained within clause 4.3 of the Sydney Local Environmental Plan 2012 has been found to be unreasonable and unnecessary in the circumstances of the case. Further there are sufficient environmental planning grounds to justify the proposed variation. In this regard it is reasonable and appropriate to vary the height of buildings development standard to the extent proposed.