

SECTION 96 APPLICATION ASSESSMENT

- Application No:** D/2013/272/A
- Site:** 177A Albion Street, Surry Hills
- Proposal:** Section 96 (2) modification of the approved residential alterations and additions to existing building as follows:
- Modification of approved rear first floor balcony of residential dwelling, consisting of an increase in the size of the planter box, deletion of privacy screen, replacement of obscure glazing with transparent glass to window facing the balcony, and an increase in the height of the rear ground level eastern wall.

BACKGROUND

D/2013/272

On 25 June 2013, development consent was granted for alterations and additions to an existing three storey brick terrace to accommodate a change of use from commercial to residential. Works to the southern wing of the terrace included a new living/kitchen area at ground floor, removal of non-original windows on the western and southern facades, new glazed atrium on the third floor with stair cover above, and minor internal works on all levels. Other works included a new pool, and a carport with a trafficable green roof/terrace above at the south western corner of the site.

SITE AND SURROUNDING DEVELOPMENT

The site is located on the southern side of Albion Street and has an area of approximately 515.8m². The site has an irregular 'L' shape and accommodates a three storey brick terrace and a two storey sandstone stable at the rear of the site.

Surrounding properties are predominantly residential in use. There are also some commercial properties in the vicinity of the site. Fronting Albion Street, the site adjoins a group of three storey residential terraces to the east, and a row of two storey residential terraces to the west. Southwest of the site is Nos. 8-10 Fitzroy Place which is a three storey commercial building. South of the site is the Figtree Gardens residential apartment complex which contains a number of three storey buildings with approximately 25-30 residential units.

The site is a heritage item, and is located within a row of heritage items along the south side of Albion Street. The site is located within the Bourke Street North Heritage Conservation Area (C59).

Photos of the site are below:



Figure 1: Aerial view of subject site and surrounding development



Figure 2: Subject site viewed from Albion Street



Figure 3: Original rear wing of the terrace building

THRESHOLD TEST

The development as proposed to be modified is considered to be substantially the same as that originally approved.

MERITS ASSESSMENT

Amendment:

Condition 2 of D/2013/272 required the following amendments to be made to the approved development:

- The proposed eastern boundary wall is to be modified to be a minimum of 1.8 metres in height from the ground level of the courtyard;
- The western end of the proposed first floor balcony of the gallery/study is to incorporate a fixed planter with the appropriate dimensions of 1 metre (length) x 1 metre (width) x 1 metre (height);
- The obscure glazed window behind is to be a semi operable 'sash window' which primarily functions as a means to maintain the planter box; and
- The first floor windows and glass door of the stables building are to be treated to ensure no overlooking onto neighbouring properties.

The application proposes the following changes in response to the above condition:

- The proposed eastern wall is to be increased in height to approximately 2 - 2.5m (measured from the ground FFL and the approximate ground level of No. 179);
- The approved privacy screen to the first floor balcony of the gallery/study is to be removed. A planter with dimensions of 2.6 metres (length) x 1 metre (width) x 0.8 metres (height) is to contain a planter to limit access to the balcony; and
- The obscure glazed window facing the first floor balcony gallery/study is to be replaced with clear glazing and access to the planter box will be from a door rather than the previously conditioned semi operable sash window.

No changes are proposed to the first floor windows and glass door of the stables building.

Applicant's Submission: The applicant submits that there will be minimal, if any environmental impact resulting from the changes as they are minor.

The obscure glazing in particular is unnecessary as there is a void behind the window at this level. The privacy screen at first floor is also not required as the planter box extends across the balcony with access being required for planter servicing and cleaning of windows only.

Assessment: The amendment has merit and is supported in part and is discussed as follows:

SYDNEY DCP 2012

Section 4.1 – Single Dwellings, Terraces and Dual Occupancies

Visual Privacy

The rear wing of No. 179 Albion Street (located to the east of the subject site) is completely glazed and has borrowed much of its amenity from the subject site. In response to this, the original application was conditioned to address privacy concerns.

The current application seeks to modify the first floor rear balcony by removing the approved privacy screen; increase the size of the planter box and reconfigure access

to it from a door rather than a window; and remove the obscure glazed window with clear glazing. Each modification is discussed as follows:

- Planter box

Condition 2 of D/2013/272 required a fixed planter box to be positioned on the western end of the first floor balcony with dimensions of 1m x 1m x 1m to restrict views into No. 179. The application proposes to increase the size of the planter box to 2.6m (l) x 1.0m (w) x 0.8m (h). The planter box is to be positioned so that there is no balustrade, and access within the planter box area is to be provided to enable watering of the plants and cleaning of windows.

The increase in the size of the planter box is considered appropriate in this instance as it will further restrict access to the balcony, which will increase privacy to No. 179. However, the planter is depicted as not having a balustrade and is not specified as being fixed. It is recommended that Condition 2(b) be modified so that the planter fixed, and that the area occupied by the planter cannot be used as a trafficable space. An appropriate condition has previously been imposed regarding safety requirements under the BCA. No further specific BCA conditions are required.

- Obscure glazed window

The application proposes to remove the requirement for obscure glazing to the window and replace it with clear glazing. This is considered acceptable given that the planter box has increased in size (as discussed above), and there is a void directly behind the window, with no opportunity for persons to stand behind for direct viewing into adjoining properties.

- Privacy screen

The privacy screen located on the eastern side of the balcony is to be removed as part of this application. The applicant has advised that it is no longer required as the planter box has been extended.

Whilst the planter box has increased in size, all other privacy measures in place have been removed and the semi operable window to the balcony has been replaced with a door. This allows the balcony to become an accessible area. It is recommended that a privacy screen be retained to the balcony; however it can be hinged above the balustrade to provide visual privacy between the properties. An appropriate condition is to be imposed.

Fences

A wall is proposed to the eastern boundary of the subject site. The wall is to be wholly contained within the boundary of No. 177A, but will act as a fence between the site and No. 179. The height of the wall is measured from the ground level of No. 179 at 2 – 2.2m and extends to 2.5m within the subject site due to the sloping of the land.

Whilst Clause 4.1.7.2 of the DCP requires side fences to be a maximum of 1.8m high, the proposed boundary wall is considered acceptable in this instance as it provides additional privacy to both the subject site and No. 179, and results in minimal overshadowing impacts given its location at ground level.

SECTION 79C ASSESSMENT

Besides the other matters discussed in this report, the previous assessment against the provisions of Section 79C of the EP & A Act are still relevant.

Internal Referrals

The application was discussed with Council's Heritage and Urban Design Specialists who advised that a hinged privacy screen should be included as part of the development to protect both the subject site and the neighbouring property.

The recommendation has been discussed in detail above, and an appropriate condition is to be imposed.

CONSULTATION

NOTIFICATION, ADVERTISING AND DELEGATION

As a Section 96(2) modification, the application was notified for a period of 14 days in accordance with Schedule 1 under the Sydney DCP 2012. As a result of this notification there was 1 submission received.

- (a) *Excessive height of the boundary wall – it will be significantly greater than 2m and will result in a loss of amenity. It is requested that the new fence be rendered and painted on the side facing the neighbour, and that rectification works be carried out to the existing timber deck of No. 179 as the position of the wall on the boundary will change as a result of the proposal.***

Response: The plans indicate that the proposed brick wall is to be 2 - 2.2m in height as measured from the existing ground floor level of No. 179 Albion Street. The proposed increase in height is considered to be reasonable and would protect both the subject site and the neighbour from any adverse privacy impacts at ground floor.

The proposed wall is to be contained wholly within the boundary of the subject site. It is noted that no part of the proposed works are to encroach onto adjoining properties as per Condition 33 of D/2013/272.

Any works to the presentation of the wall within No. 179 Albion Street (or rectification works) is a private matter between the owner/occupier of the subject site and the neighbour. A condition of consent cannot be imposed requiring works to a different parcel of land.

- (b) *Door access to the first floor balcony will provide opportunity for intrusive overlooking. The planter should be full width, height and depth as previously proposed.***

Response: Condition 2(b) of D/2013/272 originally required the western corner of the balcony to incorporate a fixed planter box only – not the entire balcony. The proposed planter box is in fact the full width and depth of the balcony, with the exception of the door to allow for access. This is considered to be more appropriate as it would restrict the use of the balcony.

- (c) ***Obscure fixed glazing provides visual privacy and visual separation. Reverting to clear glazing would have an adverse impact on privacy, allowing the occupants to look into the first floor bedroom, deck area and garden of the neighbour.***

Response: Due to the full height windows and orientation of the first floor of No. 179, the adjoining property is already overlooking the garden and stable building of the subject site. It is noted that the removal of obscure glazing would not result in a direct view of the first floor of No. 179 given that there is a void directly behind the window of the first floor balcony.

- (d) ***Provided that the planter box remains at full width, the proposed access door is removed and glazing remains fixed and obscured, a discussion regarding the privacy screen can be made between the applicant and the neighbour.***

Response: As discussed above and within the report, a privacy screen is to be retained.

CONCLUSION AND RECOMMENDATION

Having regard to all of the above matters, it is considered that the modification generally satisfies the relevant strategy, objectives and provisions of the Sydney LEP 2012 and the Sydney DCP 2012, is acceptable and is recommended for approval subject to conditions as shown in the attached Decision Notice.

The application is approved under delegated authority of Council.

The undersigned declare, to the best of their knowledge that they have no interest, pecuniary or otherwise, in this development application or persons associated with it and have provided an impartial assessment.

Report Prepared by:

Application determined by:

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