

**Item 5.****Development Application: 215A Thomas Street, Haymarket, D/2024/14****File No.: D/2024/14****Summary****Date of Submission:** 04/01/2024**Applicant:** Basalt Studio Pty Ltd**Artist:** Jason Wing**Owner:** Kylro Pty Ltd**Cost of Works:** \$37,000

**Zoning:** The site is zoned SP5 - Metropolitan Centre. The existing commercial land use is not proposed to change. The application seeks development consent for the purpose of a mural, being a form of public art. The proposal is permissible with development consent.

**Proposal Summary:** The proposal is for the installation of a mural on the ground floor of the northern facade of the building.

As Council has resolved to provide a grant for the proposed development there is a perceived conflict of interest. The perceived conflict is considered to be a 'medium risk'. In order to manage the risk the application has been assessed by Council Staff not involved in preparing the DA or the determination of the separate grant request and it has been decided that the DA be determined by the Local Planning Panel.

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

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012

**Attachments:**

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

**Recommendation**

It is resolved that consent be granted to Development Application Number D/2024/14 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, subject to conditions, is consistent with the objectives of the SP5 Metropolitan Centre zone.
- (B) The development is compatible with the character of the Haymarket/Chinatown Special Character Area.
- (C) The development is consistent with the objectives of the relevant planning controls.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 6 in Deposited Plan 108424, and is known as 215A Thomas Street, Haymarket. It is rectangular in shape with an area of approximately 297sqm. It has a primary street frontage of 11.8m to Thomas Street and a secondary street frontage of 25.1m to Ultimo Road. The site is located on the south-eastern corner of the intersection of Thomas Street and Ultimo Road. The site is relatively flat, with a slight fall in a north-westerly direction.
2. The site contains a three-storey commercial building with basement storage, retail uses at ground floor and commercial offices above. The proposed mural is to be installed at the ground floor level on the Ultimo Road frontage.
3. The surrounding area is characterised by a mixture of land uses, including commercial, retail, educational and residential. The site is near the University of Technology Haymarket campus. The western side of Ultimo Road is dominated by the Market City/Paddy's Markets complex.
4. The site is not a heritage item, nor is it located within a heritage conservation area.
5. The site is identified as being subject to flooding.
6. A site visit was carried out on 31 January 2024. Photos of the site and surrounds are provided below:



**Figure 1:** Aerial view of site and surrounds





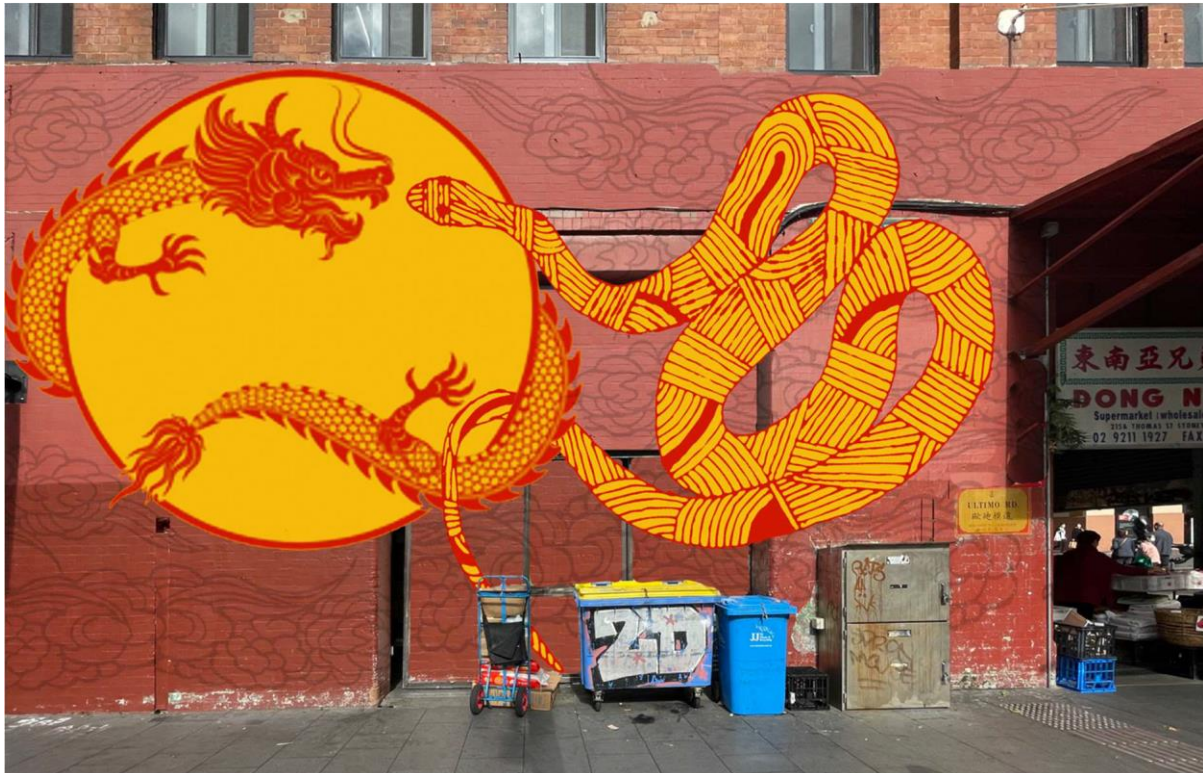
**Figure 2:** Site viewed from the intersection of Thomas Street and Ultimo Road, looking south-east



**Figure 3:** Northern facade viewed from Ultimo Road (mural to be installed at ground level)

## Proposed Development

7. The application seeks development consent for the installation of a painted mural on the ground floor of the northern facade of the building. The mural depicts a dragon and a serpent and is entitled 'We Have Serpent and Dragon Blood in Our Veins'. The applicant states that the mural is a celebration of Aboriginal and Chinese relationships before and after the European colonisation of Australia. The mural is proposed to be approximately 10m wide and 4m high. Parts of the mural are proposed to be illuminated using LED neon and PAR lights.
8. An artist's impression of the proposed artwork is provided below.



**Figure 4:** Artist's impression of the proposed mural

## Assessment

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

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

10. 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	<p>The site is in the SP5 Metropolitan Centre zone.</p> <p>The proposed development is permissible with consent in the zone.</p>

**Part 6 Local provisions – height and floor space**

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>Subject to conditions, the proposed mural is considered appropriate given the context of the site, which is located within Chinatown in a busy commercial precinct.</p> <p>In considering whether the proposal demonstrates design excellence, and having regard to the relevant elements of 6.21(C) (a) to (d):</p> <p>(a) The proposed mural is of a high standard and uses materials and detailing which are compatible with the existing building.</p> <p>(b) The appearance of the mural will markedly improve the quality and amenity of the public domain in this location.</p> <p>(c) The mural has no impact on view corridors.</p> <p>(d) As relevant:</p> <ul style="list-style-type: none"> <li>The site, being in Chinatown, is suitable for a mural celebrating Aboriginal and Chinese relationships.</li> <li>There is no change to the existing commercial use.</li> <li>There are no heritage concerns arising from the proposal and the</li> </ul>

Provision	Compliance	Comment
		<p>proposed mural will enhance the quality of the streetscape.</p> <ul style="list-style-type: none"> <li>There are no significant environmental impacts arising from the proposal, and where they may arise, they are minor and mitigated through conditions of consent.</li> <li>The proposal has a positive impact upon the quality of the public domain.</li> <li>The proposal is consistent with the design principles applicable to the Special Character Area, as outlined elsewhere in this report.</li> <li>The development achieves the principle of ecologically sustainable development.</li> </ul> <p>In conclusion, the proposal has an acceptable environmental impact with regard to the amenity of the surrounding area and the development therefore achieves design excellence.</p>

#### Part 7 Local provisions – general

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.26 Public art	Yes	<p>The proposal is public art as defined by the clause. Development consent may be permitted given, the proposal does not involve the display of an advertisement, there is no increase in Gross Floor Area within the host building, there are no heritage impacts, and there are no adverse impacts to the quality of the public domain.</p> <p>The land is not subject to a Plan of Management that would need to be considered.</p>



## Development Control Plans

### Sydney Development Control Plan 2012

11. 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

12. The site is located within the Haymarket/Chinatown Special Character Area. The proposal is consistent with the general objectives for the Special Character Areas. Specifically:
- (a) The proposal retains and enhances the unique character of the Special Character Area through the provisions of culturally relevant public art;
  - (b) The proposal has sufficient regard to, and strengthens, the fabric and character of Chinatown through the provision of culturally relevant public art;
  - (c) The proposal has no impact on heritage items and their settings;
  - (d) The proposal has no impact upon daylight access;
  - (e) The proposal encourages active street frontages to the public domain through the provision of a point of visual interest; and
  - (f) The proposal has no impact upon existing views and vistas to buildings and places of historic and aesthetic significance.
13. In addition, the proposal is consistent with the detailed principles relevant to the Haymarket/Chinatown Special Character Area as there are no changes proposed to the built form of the host building.

### Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	Section 3.1.5 relates to Public Art. The proposal is consistent with the relevant objectives, in that it increases the number of public artworks provided in private developments.
3.16.4 Illuminated Signage	Yes	The mural does not meet the definition of signage as per the Sydney LEP 2012, and therefore the signage provisions of the DCP do not apply. Nevertheless, the Illuminated Signage provisions of Section 3.16.4 are a useful tool to ensure the proposed illumination of the mural does not result in unacceptable impacts to local amenity.  Accordingly, the external illumination from the PAR light proposed to be attached to the awning is acceptable as

Provision	Compliance	Comment
		<p>this is a downward facing light source pointed directly at the artwork.</p> <p>The proposed chasing of the LCD neon strips around the dragon and the serpent are permitted as this is part of a public artwork.</p> <p>A condition of consent is recommended to ensure luminance complies with the recommended values of AS 4282-2019 and the maximum nighttime luminance does not exceed 300 cd/sqm.</p>

## Discussion

The submitted Plan of Management indicates the mural has an expected lifespan of 10 years. Given the status of the mural after this period is uncertain, it is recommended that development consent be time limited for 10 years. If the lifespan of the mural is proposed to be extended, a further application will be required prior to 22 May 2034.

## Consultation

### Internal Referrals

14. The application was discussed with Council's:
  - (a) Heritage and Urban Design Unit; and
  - (b) Public Art Unit.
15. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

## Advertising and Notification

16. The application was lodged without disclosing that Council had resolved to provide a grant, thus making the proposal subject to the Council-Related Development Application Policy. Accordingly, the application was incorrectly notified for a period of 14 days between 22 January and 6 February. Council related DAs are required to be notified for a period of 28 days.
17. In accordance with the City of Sydney Community Engagement Strategy and Participation Plan 2023, the proposed development was re-notified for a period of 28 days between 6 February 2024 and 6 March 2024.
18. A total of 781 properties were notified and three (3) submissions were received. Two (2) submissions were in support.

19. The third submission commented that the design could be improved, with particular concern raised that the colours used for the serpent did not appear to be Aboriginal. In response, it is noted that the application has been reviewed by the City's Public Art team and no concern has been raised with respect to the artistic merit of the proposal.

## **Financial Contributions**

### **Levy under Section 7.12 of the Environmental Planning and Assessment Regulation 2000**

### **Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012**

20. As the development is development for purposes other than residential accommodation that will result in the creation of less than 60 square metres of gross floor area, the development is excluded and is not subject to a Section 7.13 affordable housing contribution.

### **Housing and Productivity Contribution**

21. The development is not subject of a Housing and Productivity Contribution under the provisions of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

## **Relevant Legislation**

22. Environmental Planning and Assessment Act 1979.

## **Conclusion**

23. Having regards to all of the above matters, the proposed development will not result in any adverse impacts on both the natural and built environment and the locality, is suitable for the site, and is in the public interest, subject to appropriate conditions of consent being imposed.
24. The proposed development generally satisfies the relevant provisions of the applicable planning controls for the site and is acceptable.
25. Issues raised in all submissions have been taken into account in the assessment, and, where appropriate, conditions of consent have been recommended to address these issues.
26. The development application is recommended for approval subject to the recommended conditions.

## **ANDREW THOMAS**

Executive Manager Planning and Development

Christopher Ashworth, Area Planning Coordinator