

23 November 2022

At 5.00 pm

Local Planning Panel



Agenda

1. **Disclosures of Interest**
2. **Confirmation of Minutes**
3. **Development Application: 227 Victoria Street, Darlinghurst - D/2021/1538**



As part of our democratic process, the City invites members of the community to speak directly to Members of the Local Planning Panel (LPP) about items on a meeting agenda.

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1. Register to speak by calling Secretariat on 9265 9702 or emailing secretariat@cityofsydney.nsw.gov.au before 12.00 noon on the day of the meeting.
2. Check the recommendation in the LPP report before speaking, as it may address your concerns so that you just need to indicate your support for the recommendation.
3. Note that there is a three minute time limit for each speaker and prepare your presentation to cover your major points within that time.
4. Avoid repeating what previous speakers have said and focus on issues and information that the LPP may not already know.
5. If there is a large number of people interested in the same item as you, try to nominate three representatives to speak on your behalf and to indicate how many people they are representing.

At the start of each LPP meeting, the Chair may re-order agenda items so that those items with speakers can be dealt with first.

LPP reports are on line at www.cityofsydney.nsw.gov.au

Item 1.

Disclosures of Interest

In accordance with section 4.9 of the Code of Conduct for Local Planning Panel Members, all Panel members are required to sign a declaration of interest in relation to each matter on the agenda.

Pursuant to the provisions of Clause 15 of Schedule 4B of the Environmental Planning and Assessment Act 1979, members of the Local Planning Panel are required to disclose pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

Panel members are also required to disclose any non-pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

In both cases, the nature of the interest must be disclosed.

Item 2.

Confirmation of Minutes

Minutes of the following meeting of the Local Planning Panel, which have been endorsed by the Chair of that meeting, are submitted for noting:

Meeting of 2 November 2022

Item 3.**Development Application: 227 Victoria Street, Darlinghurst - D/2021/1538****File No.: D/2021/1538****Summary**

Date of Submission:	29 December 2021
Applicant:	Authority Presents Pty Ltd
Architect/Designer:	Authority Creative
Developer:	Top of the Town (Strata Plan No 70059) and Gucci
Owner:	The Owners - Strata Plan No 70059
Planning Consultant:	Authority Creative
Heritage Consultant:	GML Heritage
Cost of Works:	\$143,000
Permissibility:	<p>The site is located in the B4 Mixed Use zone. The proposed development is defined as an advertisement which is permissible with consent in the zone.</p> <p>However, the proposed advertisement is prohibited under Clause 3.8 of the State Environmental Planning Policy (Industry and Employment) 2021 as it is located within a heritage area.</p>
Proposal Summary:	<p>Development consent is sought for the display of an advertisement of approximately 640sqm in size on the northern wall of the existing building changing every 12 weeks for a period of 24 months. The application is described by the applicant as 'an evolving hand-painted mural' and is part of the Gucci 'Art Walls' series.</p> <p>The proposal is inconsistent with a number of planning controls under Chapter 3 (Advertising and Signage) of the State Environmental Planning Policy (Industry and Employment) 2021, including being prohibited under Clause 3.8 of the SEPP as it is display of an advertisement in a heritage area.</p>

A Clause 4.6 request for an exception to the wall advertisements development standard under Clause 3.20 of the SEPP has been submitted. The development standard requires that the wall advertisement does not exceed 10 per cent of the elevation. The proposed advertisement is 100 per cent of the elevation and results in a 900 per cent departure of the development standard.

The proposal is inconsistent with Clause 5.10 (Heritage Conservation) and 6.21C (Design Excellence) of the Sydney Local Environmental Plan 2012.

The proposal is inconsistent with Sections 3.9 (Heritage) and 3.16 (Signs and Advertisements) of the Sydney Development Control Plan 2012.

The application was notified for 21 days. A total of seven submissions were received (five objections and two submissions in support). The issues raised include visual pollution and the inappropriate location.

The application has been referred to the Local Planning Panel for determination as it results in the departure from development standards that exceeds 10 per cent.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Industry and Employment) 2021
- (iv) SEPP (Biodiversity and Conservation) 2021

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request - Wall Advertisements

Recommendation

It is resolved that consent be refused for Development Application No. D/2021/1538 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) The proposal is prohibited under Clause 3.8 (advertising and signage) of the State Environmental Planning Policy (Industry and Employment) 2021.
- (B) Notwithstanding that the development is prohibited, the proposal is inconsistent with the wall advertisements development standard under Clause 3.20 of the State Environmental Planning Policy (Industry and Employment) 2021, resulting in a 900 per cent non-compliance with the standard. The submitted Clause 4.6 request for an exception to the development standard has not adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney Local Environmental Plan 2012.
- (C) Notwithstanding that the development is prohibited, the proposal is inconsistent with Clause 3.11 of the State Environmental Planning Policy (Industry and Employment) 2021 as no public benefits are provided in connection with the display of the advertisement.
- (D) Notwithstanding that the development is prohibited, the proposal is inconsistent with Clause 3.15(2), of the State Environmental Planning Policy (Industry and Employment) 2021, pertaining to assessment criteria. The proposal is not acceptable in terms of its impacts when assessed against the assessment criteria in Schedule 5.
- (E) The proposal results in an adverse heritage impact on the heritage conservation area and to the heritage item in the vicinity, being Darlinghurst Fire Station, and is inconsistent with Clause 5.10 of the Sydney Local Environmental Plan 2012 and Section 3.9 of the Sydney Development Control Plan 2012.
- (F) The proposal has not demonstrated design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012.
- (G) The proposal is inconsistent with the objectives and provisions of Sections 3.16.1, 3.16.3, 3.16.7, 3.16.11, 3.16.12 of the Sydney Development Control Plan 2012 relating to signage.
- (H) The proposal is not in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP1049625 (Strata Plan 70059), known as 227 Victoria Road Darlinghurst. It is irregular in shape with area of approximately 921.3sqm. It has a primary street frontage to Victoria Street to the east and a secondary street frontage to Darlinghurst Road to the west. The site is located close to the intersection of Victoria Street and Darlinghurst Road with William Street and Craighend Street.
2. The site contains an 18-storey mixed use building with retail at ground level, commercial at first floor and residential above. The building is known as "Top of the Town". The northern face of the building currently includes an existing artwork known as 'As One Door Closes, Another Opens' which has been installed for a temporary period of 16 months as public art.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial. Victoria Street and Darlinghurst Road consists of primarily commercial food and drink premises at street level.
4. The site is not a heritage item. It is located within the Oxford Street and Victoria Street heritage conservation area (C12) under the Sydney Local Environmental Plan 2012. The site is identified as a detracting building under the Sydney Development Control Plan 2012.
5. The site is located to the south and forms a backdrop to a heritage item located on the corner of Victoria Street and Darlinghurst Road. This is the Darlinghurst Fire Station including interior (I278) located at 100-102 Darlinghurst Road.
6. The site is near an advertising sign facing William Street at 169-173 Darlinghurst Road, this was approved in 1977 (reference DA 497/77).
7. The site is located within the Darlinghurst West locality.
8. A site visit was carried out on 27 June 2022. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds, with the northern wall indicated in red



Figure 2: Site viewed from the intersection of William Street, Darlinghurst Road and Victoria Street, including the Darlinghurst fire station



Figure 3: Site viewed from Victoria Street, displaying an existing artwork known as 'As One Door Closes, Another Opens'



Figure 4: Site viewed from Darlinghurst Road

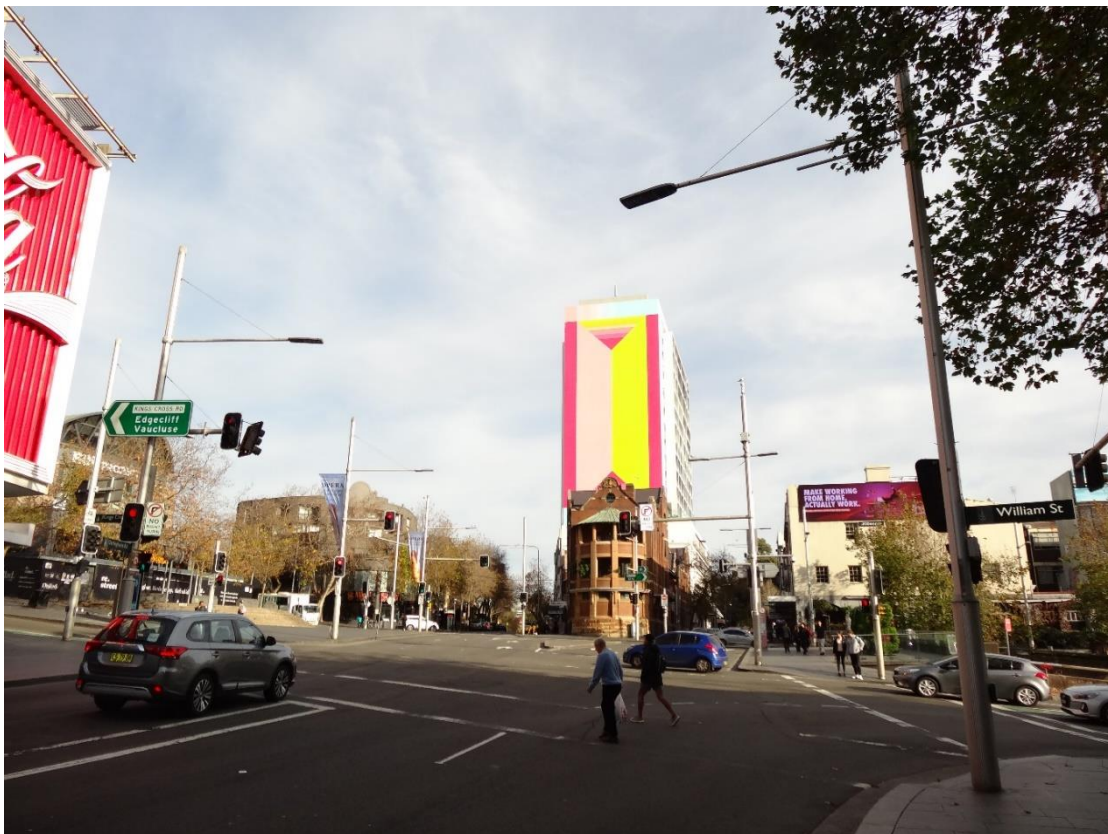


Figure 5: Site viewed from the intersection of William Street, Darlinghurst Road and Victoria Street



Figure 6: Advertisements displayed on buildings in William Street



Figure 7: Site as viewed prior to the existing artwork being displayed

History Relevant to the Development Application

Development Applications

9. The following applications are relevant to the current proposal:

- **D/1999/1396** – Deferred commencement consent was granted on 22 March 2000 by South Sydney Council for the conversion of a hotel into a residential flat building (95 units) including additional floors and new retail space. The consent was subsequently modified, however the modifications do not relate to the subject of this development application.
- **D/2021/472** – Development consent was granted on 27 May 2021 for a temporary mural artwork to the north elevation. Condition 2 (Temporary Artwork) permitted the artwork to be displayed until 1 October 2021. Prior to the development application being lodged the artist had pre-DA consultation with Council's Public Art team, and the artwork 'As One Door Closes, Another Opens' by Will Cooke was considered by the Public Art Advisory Panel (PAAP) and supported by the Panel.

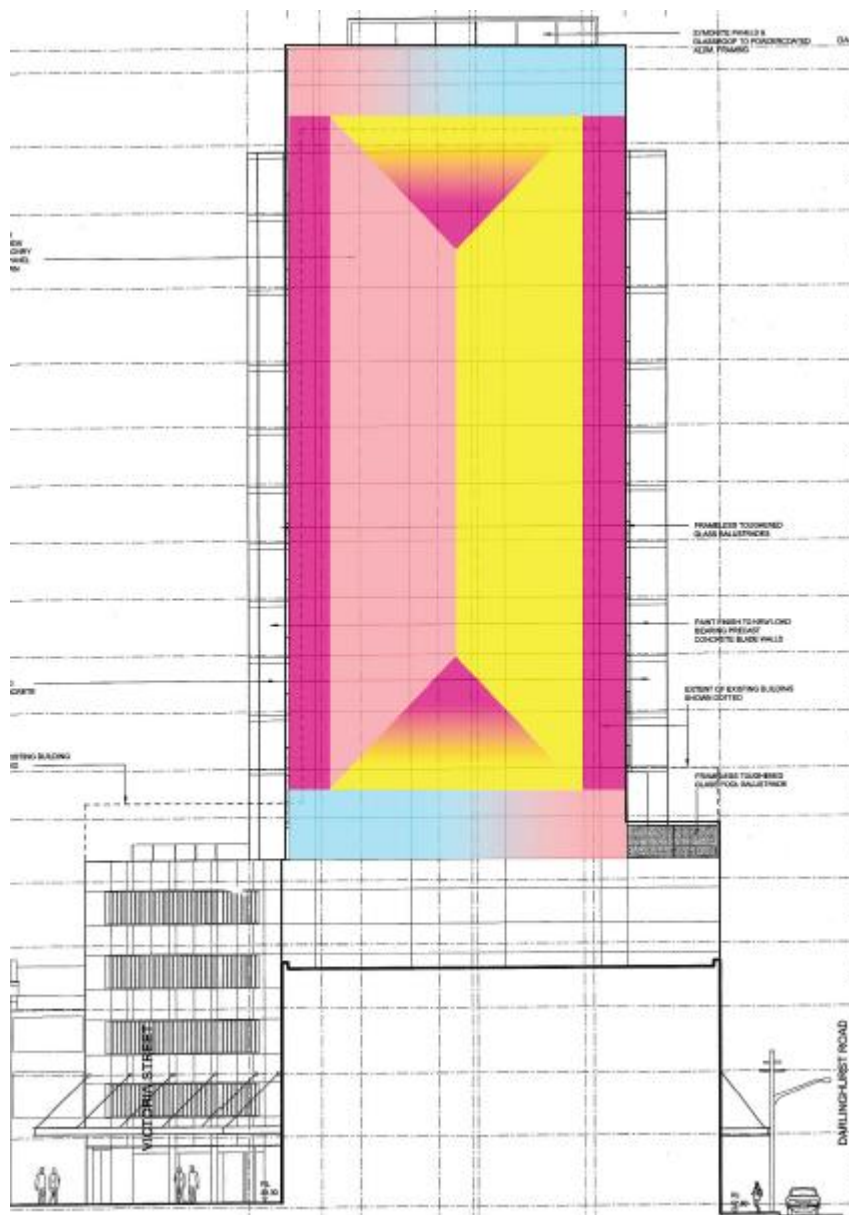


Figure 8: Approved temporary artwork under D/2021/472

- **D/2021/472/A** – The development consent for a temporary mural artwork (artwork 'As One Door Closes, Another Opens' by Will Cooke) to the north elevation was modified on 7 October 2021 to amend Condition 2 (Temporary Artwork) to increase the period of time for which the artwork can be displayed from 1 October 2021 to 30 September 2022. Condition 2 requires that the artwork be removed after that time.
- 169-173 Darlinghurst Road has an approved advertising sign facing William Street, as shown in Figures 2, 5, 6 and 7 above.
 - This was approved in 1977 (reference DA 497/77) prior to the introduction of SEPP 64 in 2001, when advertising signage became prohibited within the heritage conservation area.
 - D/2011/2123 on 9 January 2013 consent was granted for replacement of existing roof top sign on the northern elevation with electronic LED static digital display sign.
 - D/2022/911 proposes removal of the existing LED panel containing digital advertising signage and installation of a new LED panel containing digital advertising signage. This development application was lodged on 5 September 2022 and is under assessment.

Compliance Action

10. The site is subject of a recent history relating to the display of unauthorised advertisements.
11. The site is subject to an ongoing compliance action relating the unauthorised display of an advertisement for Australian Avocados. The defendant, 'Apparition Media' pled guilty in court on 31 October 2022. It is listed for sentencing at the Downing Centre Local Court on 21 November 2022.
12. An unauthorised advertisement showing Nicole Kidman advertising a television show on 'Binge' was previously displayed on the wall. These images are shown below.



Figures 9 and 10: The unauthorised display of an advertisement for Australian Avocados, and the unauthorised display of an advertisement showing an image of Nicole Kidman for a television show on 'Binge' streaming service

Amendments

13. Following a preliminary assessment of the proposed development by Council Officers, a request for withdrawal of the application was sent to the applicant on 22 February 2022 as the proposal is prohibited. A meeting was held with the applicant and their clients on 7 April 2022.
14. The applicant responded to the request on 19 May 2022, and advised that the application would not be withdrawn.

Proposed Development

15. The application seeks consent for the display of an advertisement, and includes the following:
 - the advertisement is described by the applicant as 'An evolving hand-painted mural' and is part of the Gucci 'Art Walls' series;
 - located on the northern facade of the upper 13 storeys of the building, approximately 40 metres high by 16 metres wide (640 square metres);



Figure 12: The proposed location of the advertisement



Figure 13: Proposed photomontage showing examples on other buildings



Figure 14: Proposed photomontage showing examples on other buildings



Figure 15: Proposed photomontage showing examples on other buildings

Assessment

17. 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 (Industry and Employment) 2021 – Chapter 3 Advertising and Signage

18. The aim of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage is to ensure that signage (including advertising) is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.
19. An advertisement is defined as a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water. The proposal is defined as an advertisement.
20. As discussed below, the proposal does not comply with a number of provisions of the SEPP and is not consistent with the aims of Chapter 3 of the SEPP.

Clause 3.1 Preliminary

21. It is noted that Part 3.1, Clause 3.1(2) states that this Chapter does not regulate the content of signage and does not require consent for a change in the content of signage. This means that the content of the proposed advertisement cannot be regulated.

Clause 3.8 Prohibited advertisements

22. Part 3.3 Division 1 Clause 3.8 of the SEPP prohibits the display of an advertisement in a heritage area. The site is located within the heritage conservation area and therefore the display of an advertisement is prohibited. As the proposal is prohibited the application is recommended for refusal.

Clause 3.11 Matters for Consideration

23. Part 3.3 Division 3 Clause 3.11 of the SEPP outlines matters for consideration for the consent authority to be satisfied of prior to granting consent.
24. The site is greater than 20 square metres and within 250 metres of, and visible from, a classified road, being William Street. Therefore Clause 3.16 applies, and in accordance with Clause 3.11(2)(b)(iii) the consent authority must be satisfied that the proposal is acceptable in terms of the public benefits to be provided in connection with the display of an advertisement. Additionally, in accordance with Clause 3.11(3) the consent authority must not grant consent unless arrangements that are consistent with the Guidelines have been entered into for the provision of the public benefits to be provided in connection with the display of the advertisement.
25. The applicant has not proposed that public benefits be provided and have not submitted a Public Benefit Offer in association with the application. Therefore, consent cannot be granted.

Clause 3.15 Advertisements with display area greater than 20 square metres or higher than 8 metres above ground

26. Part 3.3 Division 3 Clause 3.15 of the SEPP applies to an advertisement that has a display area greater than 20 square metres or that is higher than 8 metres above the ground. The proposed advertisement is approximately 640 square metres in size and is higher than 8 metres above the ground and the clause applies.
27. Clause 3.15(2) states that the consent authority must not grant consent to an application to display an advertisement to which this section applies unless:
- (a) the applicant has provided the consent authority with an impact statement that addresses the assessment criteria in Schedule 5 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and
 - (b) the consent authority gave a copy of the application to Transport for NSW (TfNSW) before the application is exhibited if the application is an application for the display of an advertisement to which section 3.16 applies.
28. The proposed signage has been considered against the objectives of the policy and an assessment against the provisions within the assessment criteria set out in Schedule 5 of the SEPP is provided in the table below.

Provision	Compliance	Comment
1. Character of the area	No	The sign is located within a heritage conservation area. The proposal to display an advertisement is not compatible with the existing or desired future character of the area and is prohibited within the heritage conservation area.
2. Special areas	No	The site is located within a heritage conservation area. The City's Heritage Specialist has advised that the proposal will detract from the visual quality of the heritage conservation area, as the Darlinghurst Fire Station is more prominent against the neutral white backdrop, which blends into a cloudy sky above. Whilst public art is currently displayed on the side wall, this is approved on a temporary basis and provides a social benefit.

Provision	Compliance	Comment
3. Views and vistas	No	The advertisement is 13 storeys in height and will dominate the skyline and reduce the quality vistas. The proposed advertisement does not obscure or compromise any important views or impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	No	The proposal creates additional visual clutter.
5. Site and building	No	The advertisement is not consistent with the maximum provisions for wall advertisements and is of an inappropriate scale and proportion that will dominate the building.
6. Associated devices and logos	Not applicable	No safety devices, platforms, lighting devices or logos have been proposed.
7. Illumination	Not applicable	No illumination is proposed.
8. Safety	Yes	The proposed advertisement will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

29. As outlined above, the proposal results in a number of non-compliances with the assessment criteria specified in Schedule 5 of the SEPP. It is recommended that the development application be refused.

Clause 3.16 Advertisements greater than 20 square metres and within 250 metres of, and visible from, a classified road

30. Clause 3.16(2) states that the consent authority must not grant development consent to the display of an advertisement to which this section applies without the concurrence of TfNSW. The site is within 250 metres of, and visible from, William Street, which is a classified road.
31. TfNSW has granted its concurrence.

Clause 3.17 Advertising display area greater than 45 square metres

32. The consent authority must not grant consent to the display of an advertisement with an advertising display area greater than 45 square metres unless a development control plan is in force that has been prepared on the basis of an advertising design analysis for the relevant area or precinct.
33. The advertising display area is approximately 640 square metres and the clause applies.
34. The Sydney Development Control Plan 2012 is the DCP in force for the site. As the site is in a heritage conservation area and is prohibited development, an advertising design analysis for the relevant area or precinct had not been prepared in the preparation of this DCP. Therefore, the consent authority must not grant consent.

Clause 3.20 Wall advertisements

35. The consent authority may grant consent to a wall advertisement only if, for a building with an above ground elevation of 200 square metres or more, the advertisement does not exceed 10 per cent of the above ground elevation.
36. The application proposes that the advertisement is 100 per cent of the northern wall of the building above the podium. A Clause 4.6 request to vary the development standard has been submitted and is discussed further under the 'Discussion' heading below.

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

37. 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.
38. 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**

39. 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 B4 Mixed Use zone. The proposed development is defined as an advertisement which is permissible with consent in the zone.

Provision	Compliance	Comment
		However, as discussed elsewhere in the report, the proposed advertisement is prohibited in accordance with Clause 3.8 of the SEPP (Industry and Employment) 2021 as the site is located within a conservation area.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	N/A	<p>A maximum building height of 30m is permitted.</p> <p>The existing building exceeds the maximum building height and the northern wall of the existing building has a height of approximately 57.09m.</p> <p>The proposed advertisement is to the northern wall of the existing building and does not alter the height of the building or the nature or extent of the exceedance of the development standard.</p>
4.4 Floor space ratio	N/A	<p>A maximum floor space ratio of 11:1 is permitted.</p> <p>The proposed development does not result in a change to the FSR of the building.</p>
4.6 Exceptions to development standards	No	<p>The proposed development seeks to vary the development standard prescribed under Clause 3.20 (Wall Advertisements) of the State Environmental Planning Policy (Industry and Employment) 2021. This outlines that the consent authority may grant consent to a wall advertisement only if, for a building with an above ground elevation of 200 square metres or more, the advertisement does not exceed 10% of the above ground elevation.</p> <p>The application proposes that the advertisement is 100% of the northern wall of the building above the podium.</p> <p>A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is located within the Oxford Street and Victoria Street heritage conservation area (C12) and is a detracting building. It is also within the vicinity of a heritage item being the Darlington Fire Station including interior (I278) located at 100-102 Darlington Road.</p> <p>It has not been demonstrated that the proposed development will not have a detrimental impact on the heritage significance of the heritage conservation area and Darlington Fire Station. The exact content of the various advertisements has not been submitted.</p> <p>Council's Heritage Specialist has advised that the Darlington Fire Station is more prominent against the neutral white backdrop, which blends into a cloudy sky above (as shown in Figure 7). Whilst public art is currently displayed on the side wall, this is only approved on a temporary basis and provides a social benefit to the area.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21C Design excellence	No	<p>The proposal includes an external alteration to an existing building that alters its external appearance.</p> <p>The proposed development does not demonstrate design excellence, as it does not address heritage issues and streetscape constraints as required under Clause 6.21C(2)(d)(iii). The exact content of the various advertisements has not been submitted.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.26 Public art	No	The proposal is not defined as public art under the definition under Clause 7.26 of the LEP. This is discussed further in the 'Discussion' section below.

Development Control Plans**Sydney Development Control Plan 2012**

40. 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

41. The site is located within the Darlinghurst West locality. The DCP requires the development to respond to and complement heritage items and contributory buildings within heritage conservation areas. The SEPP prohibits advertisements in heritage conservation areas.

Section 3 – General Provisions

Provision	Compliance	Comment
3.9 Heritage	No	Refer to the heritage discussion under Clause 5.10 of the LEP above.
3.16.1 Signage strategy	No	The DCP requires that a signage strategy be prepared for all signage applications in a heritage conservation area. A signage strategy has not been submitted for the building.

Provision	Compliance	Comment
3.16.3 General requirements for signage	No	<p>The proposal is inconsistent with:</p> <ul style="list-style-type: none"> • Section 3.16.3(4) as the signage will detract from the heritage conservation area. • Section 3.16.3(5) as the signage will result in unacceptable visual clutter due to the cumulative effect of existing signs in the vicinity • Section 3.16.3(6) which states that signs should allow the main facade of buildings from the first floor to the rooftop or parapet to be uncluttered and generally free of signage.
3.16.7 Advertising structures and third party advertisements	No	<p>Section 3.16.7.1(1) states that, generally, new advertising signage and third party advertisements are not permitted. It also sets out the criteria for exceptional circumstances where advertising signs and third party advertisements are permitted.</p> <p>The proposal is inconsistent with these provisions because:</p> <ul style="list-style-type: none"> • the sign is not advertising a civic or community event in the City of Sydney area • the sign can not be considered as public art in accordance with the City's policies in relation to public art. This is discussed further under the 'Discussion' heading below. • the sign is not consistent with the other provisions for signage under the DCP • the number of existing signs in the vicinity cumulatively create unacceptable visual clutter.

Provision	Compliance	Comment
3.16.11 Signage related to heritage items and conservation areas	No	The work does not comply with Section 3.16.11 (13) of the Sydney DCP 2012 as third party advertisements are not permitted on heritage items or within heritage conservation areas. This site is located within a heritage conservation area so the proposal does not comply.
3.16.12 Signage precincts	N/A	The site is not located in the Darlinghurst Road Kings Cross signage precinct or the William Street signage precinct.

Discussion

Characterisation of development as an advertisement

42. On 21 February 2013, the Department of Planning and Infrastructure released a planning circular (PS 13-001) titled "How to characterise development". The purpose of the Circular is to provide assistance in determining whether a particular development is permitted on land in a specific zone under a Standard Instrument Local Environmental Plan.
43. In order to determine which category a development falls into, consideration must be given to the particular purpose for which the development is being carried out. The Circular explains the terms 'development for a particular purpose', 'ancillary uses' and 'principal purpose'.
44. The submitted development application form and Statement of Environmental Effects describes the development as "a painted mural artwork/ advertisement", "an evolving hand-painted mural" and part of "the Art Walls series".
45. The Sydney LEP 2012 states that an "advertisement" has the same meaning as in the Act. This defines an advertisement as "a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water.
46. The State Environmental Planning Policy (Industry and Employment) 2021 defines:
 - (a) "advertisement" as "signage to which Part 3.3 applies and includes any advertising structure for the advertisement"
 - (b) "product image" as "any words, letters, symbols or images that identify a product or corporate body, but does not include an object to which the words, letters, symbols or images are attached or appended"

- (c) "signage" as "all signs, notices, devices, representations and advertisements that advertise or promote any goods or services or events and any structure of vessel that is principally designed for, or that is used for, the display of signage and includes -
 - (a) building identification signs, and
 - (b) business identification signs, and
 - (c) advertisements to which Part 3.3 applies,but does not include traffic signs or traffic control facilities"
47. Clause 7.26 of the Sydney LEP 2012 defines public art as "an artwork located in a public space".
48. The City of Sydney Public Art Policy includes the following definitions:
- (a) Art - The term "art" is defined as the product of practitioners who intend their work and activities to be seen and read as art. It embraces material and immaterial products and concepts emanating from the imaginative and creative thinking of artists.
 - (b) Public art - The term "public art" is defined in the broadest sense as artistic works or activities accessible to the public. The work may be of a temporary or permanent nature. Located in or part of a public space or facility provided by both the public and private sector, public art also includes the conceptual contribution of an artist to the design of public spaces and facilities.
 - (c) City art - The Public Art Policy and Public Art Strategy, use the term "City Art" to define a new program for public art at the City of Sydney drawing on Sustainable Sydney 2030, embracing permanent and temporary installations and artworks reflecting the changing ways artists and artworks engage with the life of the city, its communities and visitors.
49. In this instance the proposed development is characterised as an advertisement, for the following reasons:
- (a) The proposal is advertising a brand 'Gucci' and the design includes the words 'Gucci'.
 - (b) The images used in the examples provided are associated with the Gucci brand, being a fashion company selling handbags, clothing, footwear, accessories, fragrance and cosmetics.
 - (c) The proposal has been reviewed by Council's Public Art Program Manager who has advised that the proposal is not public art as defined by Council's policies for the reasons outlined in (a) and (b) above.
50. The existing art work on the wall is consistent with the definitions for public art and was granted development consent through D/2021/472. Prior to the development application being lodged the artist had pre-DA consultation with Council's Public Art team, and the artwork 'As One Door Closes, Another Opens' by Will Cooke was considered by the Public Art Advisory Panel (PAAP) and supported by the Panel. The Public Art Advisory Panel has a membership of prominent visual arts professionals.

Prohibition of an advertisement

51. Under Part 3.3 Division 1 Clause 3.8 of the SEPP (Industry and Employment) 2021 an advertisement is prohibited in a heritage area. The site is located within a heritage conservation area and therefore the development is prohibited.
52. The applicant has not submitted any information asserting that existing use rights under the provisions of the Environmental Planning and Assessment Act, and there is no record of any advertisement being approved on the site. Additionally, the applicant has not put forward justification on planning grounds in relation to the prohibition.
53. It is noted that historic photos of the site (as shown below) show that signage has previously been displayed on the side wall of the building. This signage relates to business identification signage relating to hotel, restaurant and garage uses that previously operate on the site. These historic photos do not to overcome the prohibition.
54. It is also noted that there are other advertising signs within the vicinity of the site, including advertising signs associated with Council street furniture that benefit from existing use rights, and billboard advertisements on William Street that were approved prior to the commencement of State Environmental Planning Policies that prohibited advertisements in heritage areas. The site is near an advertising sign facing William Street at 169-173 Darlinghurst Road, this was approved in 1977 (reference DA 497/77) prior to the introduction of SEPP 64 in 2001, when advertising signage became prohibited within the heritage conservation area.



Figure 16: Historic photo showing business identification signage

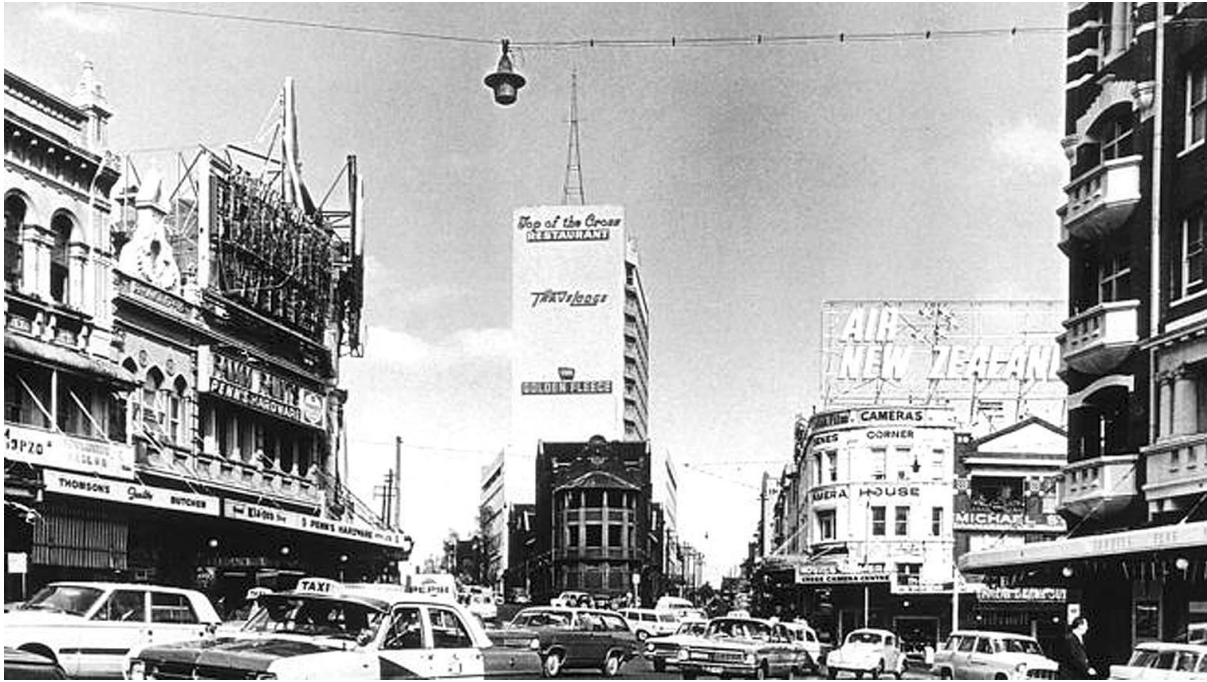


Figure 17: Historic photo showing business identification signage

Clause 4.6 Request to Vary a Development Standard - Wall Advertisements

55. If it were not prohibited the proposed wall advertisement would be subject to maximum size controls under Clause 3.20(2)(b)(i) (Wall Advertisements) of SEPP (Industry and Employment) 2021, which states:

The consent authority may grant consent to a wall advertisement only if -

(b) for a building having

- (i) an above ground elevation of 200 square metres or more, the advertisement does not exceed 10 per cent of the above ground elevation.

56. The northern wall of the existing building above the podium is 640sqm, and the 10 per cent development standard permits a wall advertisement with a maximum size of 64sqm.
57. The application proposes that the advertisement is 100 per cent (640sqm) of the northern wall of the building above the podium, which exceeds the 10 per cent development standard. This results in a 900 per cent variation to the development standard.
58. A Clause 4.6 request to vary the development standard has been submitted. It is noted that Clause 22(2)(b)(i) of SEPP 64 (Advertising and Signage) included the same provision as above, but this SEPP was repealed on 1 March 2022 as part of the consolidation of a number of SEPP's. This occurred after this development application was lodged as such the submitted Clause 4.6 request refers to the SEPP 64 provision.

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 wall advertisements development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) It represents an exceptional circumstance by which the proposed development is closely aligned with the City of Sydney's criteria for Public Art and of intrinsic social value to the public.
 - (ii) Strict compliance would significantly obscure the artistic intent and reduce the potential positive impact on the community, tourism and local traders in the immediate area.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposed development will provide for Gucci Art Walls to be readily identified as public art and determining it as such is correlated with the artistic intent, subject matter and scale.
 - (ii) In the context of 'Public Art' as outlined by the City of Sydney 2030 Public Art Policy, there are sufficient environmental planning grounds and significant benefits to justify contravening the maximum permissible coverage area.
 - (c) The proposed development will be consistent with the objectives of the zone;
 - (i) The context in which the sign would be viewed is consistent with the objectives of SEPP64 and it is compatible with the objectives of the B4 Mixed Use Zone, specifically to support the viability of centres and to encourage walking and cycling.
 - (ii) the development will enhance the character of the area, as well as facilitate the conservation of items and areas of heritage significance.

- (iii) The proposed development can be considered cerebral and thought-provoking as well as artistic, as such it has been assessed that viewers will predominantly respond positively
- (d) The proposed development will be consistent with the objectives of the standard;
 - (i) The context in which the sign would be viewed is consistent with the objectives of the SEPP
 - (ii) The proposal is consistent with the desired amenity and visual character of Darlinghurst West and the B4 Mixed Use Zone
 - (iii) The Proposed Development is aligned with the City of Sydney's criteria for Public Art and deemed of intrinsic social value to the public
 - (iv) The proposal enhances the Darlinghurst West area
 - (v) The exceedance of development standard will allow for a larger portion of hand-painted artwork and more effective communication
 - (vi) Gucci Art Walls will be of high quality design and finish

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 submitted Clause 4.6 request has not adequately justified that the non-compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and is therefore inconsistent with Clause 4.6(3)(a).
63. The Clause 4.6 request states that the proposed advertisement is consistent with the City's Public Art Policies, which is incorrect.
64. It is also not agreed that the proposed advertisement will have a positive impact on the community, tourism and local traders.
65. Therefore the Clause 4.6 written request has not adequately addressed the matters required under Clause (3)(a) and this is inconsistent with Clause 4.6(4)(a)(i).

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

66. The submitted Clause 4.6 request has not adequately justified that there are sufficient environmental planning grounds to justify contravening the development and is therefore inconsistent with Clause 4.6(3)(b).
67. The applicants request relies on the proposal being viewed as public art, which is not the case.
68. Therefore the Clause 4.6 written request has not adequately addressed the matters required under Clause (3)(b) and this is inconsistent with Clause 4.6(4)(a)(i).

Is the development in the public interest?

69. The proposal is not in the public interest because it is inconsistent with the objectives of the particular standard. The proposal is inconsistent with the objectives of Chapter 3 (Advertising and Signage) of the SEPP, as:
 - (a) The advertisement is not 'compatible with the desired amenity and visual character of an area' as it is highly visible and results in an adverse visual impact on the character of the heritage conservation area, in which it is prohibited.
 - (b) The advertisement does not 'Provide effective communication in suitable locations' as an advertisement that is so large at 640sqm in size is not an effective way to communicate and it will clearly be perceived as advertising. It is not in a suitable location as it is located within a heritage conservation area.
 - (c) It has not been demonstrated that the advertising 'is of high quality design and finish' as only example designs of advertising images have been submitted.
 - (d) No public benefits have been proposed in relation to the advertising which is adjacent to a transport corridor.
70. The proposal results in a significant 900 per cent variation to the development standard and this is not in the public interest.

Conclusion

71. Notwithstanding that the proposal is prohibited the requested variation to the wall advertisements development standard would not be supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012.
72. In addition, the proposed development is not in the public interest because it is inconsistent with the objectives of the wall advertisements development standard and does not provide a public benefit.

Consultation

Internal Referrals

73. The application was discussed with Council's:
 - (a) Heritage Specialist;

- (b) Public Art Program Manager.
74. The Heritage Specialist raised concerns with the proposed development as the proposal is considered to result in an adverse heritage impact on the heritage conservation area and adjacent heritage item at the Darlinghurst Fire Station as it is more prominent against the neutral white backdrop, which blends into a cloudy sky above. Whilst public art is currently displayed on the side wall, this is only approved on a temporary basis and provides a social benefit to the area.
75. The Public Art Program Manager raised concerns with the proposed development and notes that it can not be considered or assessed as public art as it is an advertisement and is not consistent with Council's public art policies.

External Referrals

Transport for NSW

76. Pursuant to Section 3.16 of the SEPP (Transport and infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for concurrence.
77. Concurrence was received on 11 July 2022.

Advertising and Notification

78. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 4 January 2022 and 24 January 2022. A total 7 submissions were received with 2 in support and 5 objecting to the proposal.
79. The submissions raised the following issues:
- (a) **Issue:** Support for the proposal due to giving a lift to the north wall of the building and following on from the existing mural. These projects are expensive to plan and instigate so Gucci are putting their profits back into the local community.
- Response:** The comments are noted.
- (b) **Issue:** Support for the proposal as this is a prominent landmark, and as a brand like this represents the renewal, vibrancy and return of confidence in the area, and represents great creativity and playfulness.
- Response:** The comments are noted.
- (c) **Issue:** The enormous billboard results in visual pollution
- Response:** The advertisement is inconsistent with a number of planning controls, is prohibited, and the development application is recommended for refusal.

- (d) **Issue:** The proposal is advertising, and not art

Response: As discussed above, the proposal is defined as an advertisement and has been assessed accordingly.

- (e) **Issue:** Inappropriate location

Response: The advertisement is in an unacceptable location and is inconsistent with a number of planning controls, is prohibited, and the development application is recommended for refusal.

- (f) **Issue:** Previously the wall has been used for light projections, patterns and art work. They are easily removable displays that only function at night. The subject wall should be preserved for these uses.

Response: The advertisement is inconsistent with a number of planning controls, is prohibited, and the development application is recommended for refusal.

- (g) **Issue:** The application is for advertising purposes to gain revenue, not for public domain enhancement, and would diminish the appearance of the building.

Response: The advertisement is inconsistent with a number of planning controls is prohibited, and the development application is recommended for refusal.

- (h) **Issue:** Although it is for two years, once established it would be difficult to stop.

Response: In this instance the development is proposed for a two year period, and any continuation would require a further application to be submitted and assessed.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

80. The development is not subject to a Section 7.11 development contribution as it is a type of development listed in Table 2 of the City of Sydney Development Contributions Plan 2015 and is excluded from the need to pay a contribution.

Relevant Legislation

81. Environmental Planning and Assessment Act 1979.

Conclusion

82. Development consent is sought for the display of an advertisement of approximately 640sqm in size on the northern wall of the existing building changing every 12 weeks for a period of 24 months. The exact content of the advertisements has not been submitted; however examples have been provided.

83. The proposal is inconsistent with a number of planning controls under Chapter 3 (Advertising and Signage) of the State Environmental Planning Policy (Industry and Employment) 2021, including being prohibited under Clause 3.8 of the SEPP as it is display of an advertisement in a heritage area.
84. A Clause 4.6 request for an exception to the wall advertisements development standard under Clause 3.20 of the SEPP has been submitted. The development standard requires that the wall advertisement does not exceed 10 per cent of the elevation. The proposed advertisement is 100 per cent of the elevation and results in a 900 per cent departure of the development standard.
85. The proposal is inconsistent with Clause 5.10 (Heritage Conservation) and 6.21C (Design Excellence) of the Sydney Local Environmental Plan 2012.
86. The proposal is inconsistent with Sections 3.9 (Heritage) and 3.16 (Signs and Advertisements) of the Sydney Development Control Plan 2012.
87. The proposal is recommended for refusal.

ANDREW THOMAS

Executive Manager Planning and Development

Matthew Girvan, Area Coordinator

Attachment A

Selected Drawings

34

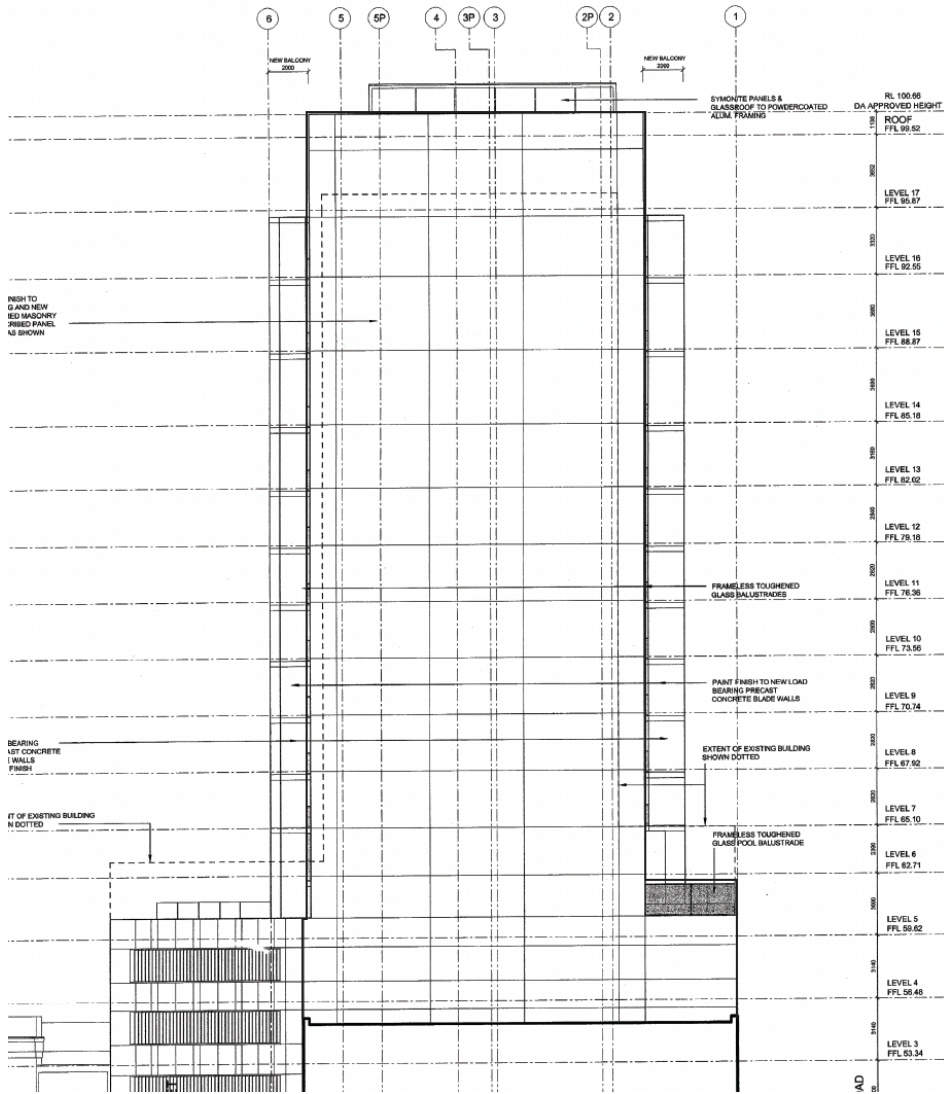


Figure 2. Western Elevation

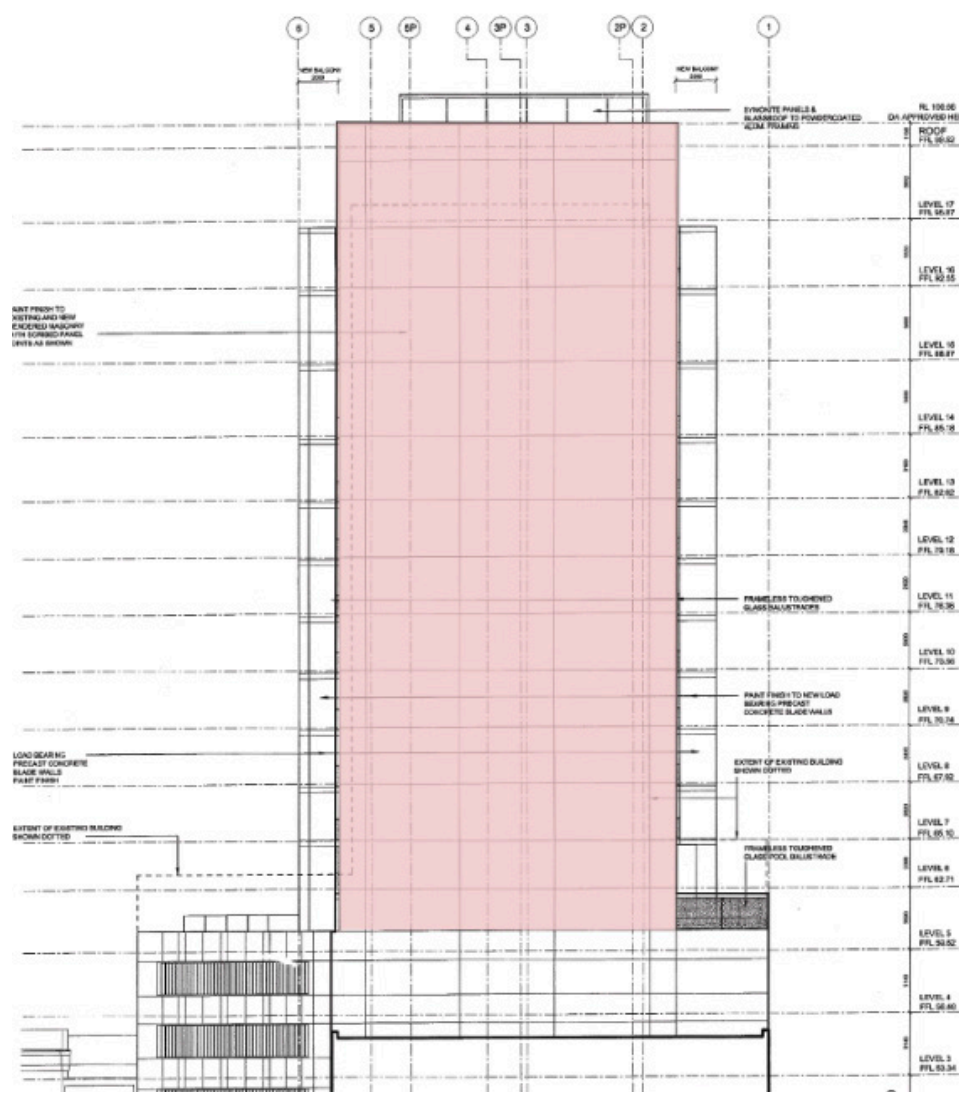


Figure 3. Mural area

35



Figure 5. Western Facade artwork zone

36



Keeping in mind no more than 5% branding or logos will be displayed

18

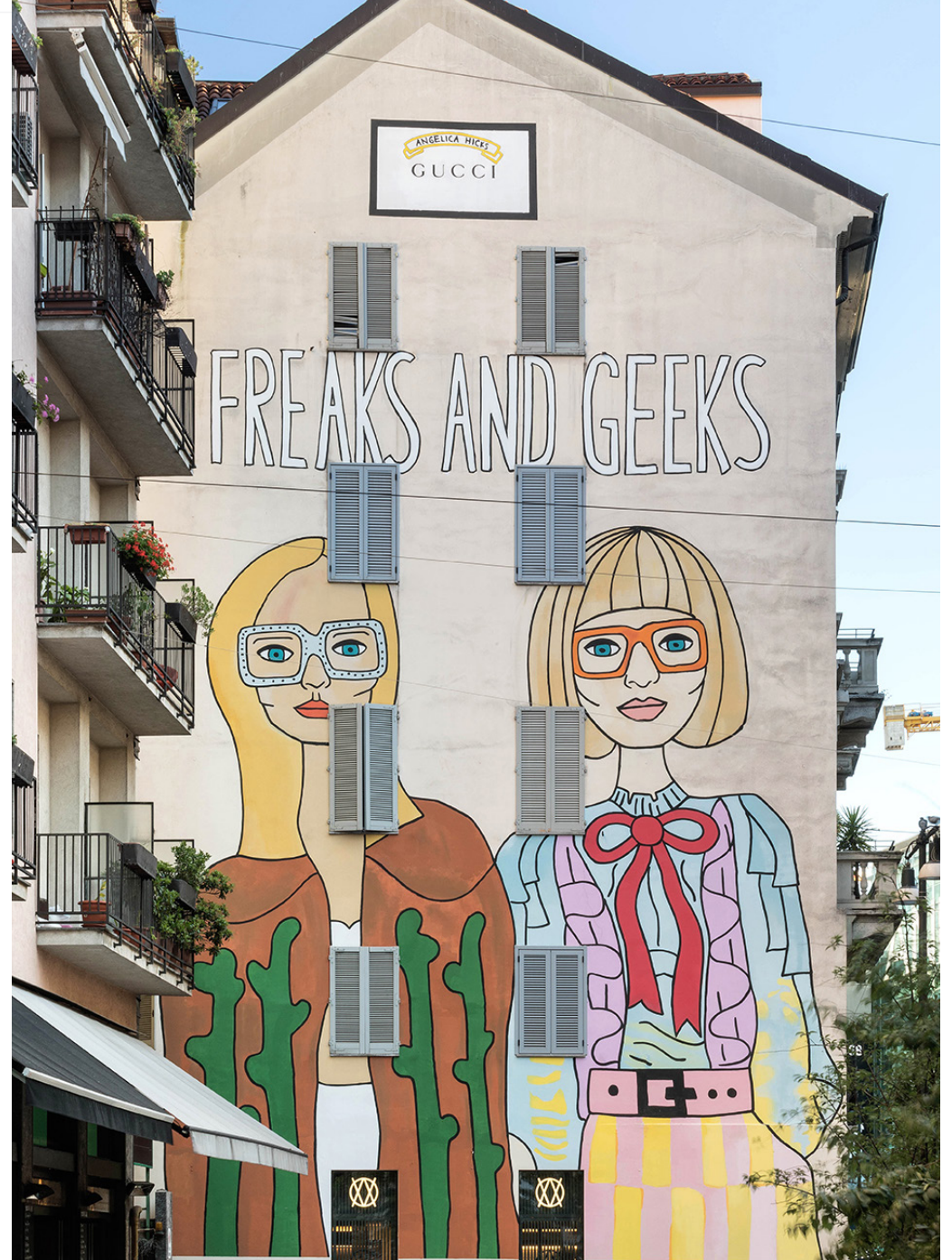


AUTHORITY CREATIVE



Keeping in mind no more than 5% branding or logos will be displayed





Attachment B

**Clause 4.6 Variation Request – Wall
Advertisements**

AUTHORITY CREATIVE

227 Victoria Street, Darlinghurst | Clause 4.6
Request to vary the development standard (**PAN-177717**)
Prepared by Authority Creative for City of Sydney

22 December 2021

www.authoritycreative.com | chris@authoritycreative.com

Planning Assessments Team
City of Sydney
Town Hall House Level 2,
456 Kent Street Sydney
NSW 2000

Dear Planning Assessments Team,

227 Victoria Street, Darlinghurst 2010 – Clause 4.6 Request to vary a Development Standard (PAN-177717)

This 4.6 Request to vary the development standard Part 3, Division 3, Clause 22, 2(b)(i) of State Environmental Planning Policy No 64.

This Request has considered;

- The Sydney Local Environmental Plan 2012 (SLEP 2012),
- Sydney Development Control Plan 2012,
- State Environmental Planning Policy No 64—Advertising and Signage,
- Environmental Planning and Assessment Act 1979,
- NSW SEPP 1 Guideline ‘Varying Development Standards: A Guide – August 2011’,
- State Environmental Planning Policy No 1—Development Standards
- City of Sydney Public Art Policy 2030
- Notice of Determination Authority Presents Pty Ltd D/2020/321

In doing so it addresses the relevant findings and established principles of the following judgements of the NSW Land and Environment Court (NSW LEC):

- Apparition Media Pty Ltd v The Council of the City of Sydney [2018] NSWLEC 1590;
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118
- Brigham v Canterbury–Bankstown Council [2018] NSWLEC 1406.
- Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe) at [42] – [48].
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [25]

This Request assesses the implications of the proposed variation to the standard on the outcome of the proposed development. As such, it will demonstrate that an exception to Clause 22, 2(b)(i) of SEPP 64 is reasonable in this unique instance and will ensure a better design outcome, namely design excellence. Thus contravening the standard will provide greater public benefit than a strictly compliant development.

Sincerely,

Christopher Skyner

Christopher Skyner
Director
Authority Creative

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CLAUSE 4.6 VARIATION STATEMENT UNDER THE SYDNEY LEP 2012

The application is seeking to vary Part 3, Division 3, Clause 22, 2(b)(i) of State Environmental Planning Policy No 64 – Advertising and Signage “Wall Advertisements” which states that Council cannot grant consent to a wall advertisement on an above ground elevation of 200 square metres or more, which exceeds more than 10% of the elevation. Consequently, we will require a Clause 4.6 Variation Statement which seeks to contravene this control.

This 4.6 aims to demonstrate that compliance with the development standard is unreasonable or unnecessary under this circumstance, thus specifies the grounds of that objection. While there are no specific objectives of the Wall Advertisement Development Standard, Advertising and Signage SEPP does contain aims and objectives against which we will measure the case.

SUMMARY

Proposed Development

The proposed development is for the installation of a painted mural artwork on the Western façade of the existing 18 storey building at 227 Victoria Street, Darlinghurst (SP 70059) for a maximum of 24 months.

Planning, Legislation and Proposed Numerical Variation

<p>1. Planning Instrument Sydney Local Environmental Plan 2012 (SLEP 2012) and State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64)</p> <p>2. Zoning B4 Mixed Use Zone under the SLEP 2012</p> <p>3. Objectives of the Zone Please see page 5</p> <p>4. Development Standard to be Varied Wall advertisements</p> <p>5. Nature of the Development Standard A numerical control for the advertising area of wall advertisements on the above ground elevation.</p> <p>6. Relevant Development Standard Clause Clause 22, 2(b)(i) of SEPP 64</p>	<p>7. Objectives of the Development Standard ‘Wall Advertisement Development Standard, Advertising and Signage’ SEPP since there are no specific objectives in SEPP 64 for the development standard *See Page 6</p> <p>8. Numeric value of the development standard in the environmental planning instrument An above ground elevation of 200 square metres or more — the advertisement does not exceed 10% of the above ground elevation.</p> <p>9. Proposed Numeric Value The subject site has an above ground elevation of 660m2. The proposed sign is 660m2, resulting in approximately 100% of the Western elevation.</p> <p>10. Percentage Variation Between the Proposal and the Planning Instrument above ground elevation An exceedance of 100% of the requirement under Clause 22, 2(b)(i) of SEPP 64</p>
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3.1. Clause 4.6 Exceptions to development standards

Clause 4.6 of the SLEP 2012 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The SLEP 2012 continues to apply to 227 Victoria Street, Darlinghurst. In deciding whether a contravention of a development standard will result in an improved planning outcome, the consent authority is to consider the public interest, environmental outcomes, social outcomes or economic outcomes.

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows—

- (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.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) 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 circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless—

- (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) 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, and
- (b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) n/a

7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

B4 MIXED USE ZONE

OBJECTIVES OF THE MIXED USE ZONE

The objectives of the Zone B4 Mixed Use are —

1)

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To ensure uses support the viability of centres.

2) Permitted without consent

Home occupations

3) Permitted with consent

Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Seniors housing; Shop top housing; Tank-based aquaculture; Any other development not specified in item 2 or 4

4 Prohibited

Extractive industries; Heavy industrial storage establishments; Heavy industries; Pond-based aquaculture

OBJECTIVES OF THE DEVELOPMENT STANDARD

State Environmental Planning Policy No 64—Advertising and Signage

Part 1 | Clause 3

3 Aims, objectives etc

(1) This Policy aims —

(a) to ensure that signage (including advertising):

(i) is compatible with the desired amenity and visual character of an area, and

(ii) provides effective communication in suitable locations, and

(iii) is of high quality design and finish, and

(b) to regulate signage (but not content) under Part 4 of the Act, and

(c) to provide time-limited consents for the display of certain advertisements, and

(d) to regulate the display of advertisements in transport corridors, and

(e) to **ensure that public benefits may be derived from advertising** in and adjacent to transport corridors.

(2) This Policy does not regulate the content of signage and does not require consent for a change in the content of signage.

LOCALITY STATEMENTS

2.4.12 DARLINGHURST WEST

Sydney Development Control Plan (DCP) 2012

This locality is bounded by Forbes Street to the west, the rear of the southern lots that have frontage to William Street to the north, the rear of the eastern lots with a frontage to Victoria Street to the east, Burton Street to the south and Liverpool Street to the southwest.

Darlinghurst West will continue to be a vibrant and diverse area, energised by its unique café and restaurant opportunities and the quieter residential areas and heritage buildings within a landscaped setting. The main activity centre for this area is the existing Darlinghurst Road/Victoria Street retail spines between Burton and William Streets. These retail spines will reinforce the predominant built form character of buildings with vertical articulation that reflects the small lot subdivision pattern and low scale streetwall heights with awnings.

The built form is characterised by variety of residential buildings, consistent streetscape and a strong presence of interwar buildings. The residential precinct at the north of the area (Kirketon Road, Farrell Avenue and Clapton Place) is to maintain its predominant character of taller buildings in a landscape setting. New infill buildings in terrace housing areas are to maintain the predominant building setbacks, streetwall heights and alignments.

The objectives of Darlinghurst West locality are;

- (a) Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.
- (b) Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.
- (c) Maintain the vertically articulated small lot pattern and low street wall height along Victoria Street.
- (d) Provide awnings along Victoria Street, Darlinghurst Road and Burton Street.
- (e) Maintain the predominant street setback and alignment of rows and areas with a consistent character.
- (f) Formalise the existing informal through-site pedestrian link in any development of the St. Johns Church site and adjoining car rental site.
- (g) Promote active commercial and retail building frontages facing Green Park and buildings on Burton Street.
- (h) Encourage ground level retail and commercial uses along Victoria Street, for example, galleries and medical suites.
- (i) Encourage entertainment uses above ground level on Darlinghurst Road and Victoria Street (between Liverpool and William Streets).
- (j) Encourage outdoor dining for restaurants and cafes along Victoria and Burton Streets.

LOCALITY STATEMENTS

2.4.1 CITY EAST WILLIAM STREET

Sydney Development Control Plan (DCP) 2012

This locality includes the lots fronting William Street from Cook and Phillip Park and the Australian Museum in the west to the crossing of Victoria Street and Darlinghurst Road in the east.

As William Street continues to evolve, its amenity and commercial viability will improve. It is to be a pedestrian orientated boulevard linking Central Sydney to Kings Cross with a high quality commercial spine, supported with active uses at ground level. The existing built form asymmetry of William Street is to be maintained. The south side of William Street is to remain lower in scale with a consistent street height relative to the predominant heritage buildings and to protect sunlight to residential properties to the south. The north side is to continue to develop with taller buildings to the west and lower buildings to the east where the topography rises to the Kings Cross ridge. The view corridor to the Kings Cross skyline with its crown of towers and landmark Coca-Cola sign is to be maintained and preserved.

The objectives of City East locality are;

- (a) Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.
- (b) Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.
- (c) Preserve the view corridor to the Kings Cross skyline with its crown of high-rise and significant signage.
- (d) Maintain the asymmetrical built form in the streetscape of William Street with taller buildings along the north side and lower buildings along the south.
- (e) Promote William Street as a high quality commercial spine with appropriate uses and support the street as a pedestrian orientated location with active frontages to the ground floor.
- (f) Support William Street as a pedestrian oriented boulevard with active frontages to the ground floor.
- (g) Create a transition in building height with taller buildings located on the northern side and lower buildings at the rear.
- (h) Generally maintain a predominantly 3-4 storey street wall height to William Street south in response to the heritage value of the inter-war character.
- (i) Encourage the redevelopment of vacant sites along William Street an important entry into Kings Cross.
- (j) Encourage public art at 1 Kings Cross Road, Darlinghurst in accordance with the City's Public Art Strategy.
- (k) Improve ground floor activity along Crown, Palmer, Bourke, and Forbes Streets to create high quality pedestrian amenity into surrounding neighbourhoods.

ACHIEVEMENT OF OBJECTIVES | B4 MIXED USE ZONE

OBJECTIVES OF THE MIXED USE ZONE	Achievement of Objectives
To provide a mixture of compatible land uses.	The proposal is consistent with this objective. The proposal highlights and enhances the transition between zones especially between retail, mixed-use and residential, and commercial.
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling	The proposal is consistent with this objective. The proposal encourages walking and cycling
To ensure uses support the viability of centres.	The proposal contributes to the vision for the area and zone for Sydney city as a vibrant cultural area and night time economy to support the viability of centres.

OBJECTIVES DARLINGHURST WEST	Achievement of Objectives
Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.	The proposal is consistent with this objective. The proposal highlights and enhances the character of the precinct as vibrant and diverse area
Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.	The proposal is consistent with this objective. The proposal is of a premium quality that which complement heritage items and streetscapes
Maintain the vertically articulated small lot pattern and low street wall height along Victoria Street.	n/a
Provide awnings along Victoria Street, Darlinghurst Road and Burton Street.	n/a
Maintain the predominant street setback and alignment of rows and areas with a consistent character.	n/a
Formalise the existing informal through-site pedestrian link in any development of the St. Johns Church site and adjoining car rental site.	n/a
Promote active commercial and retail building frontages facing Green Park and buildings on Burton Street.	The proposed development is consistent with this objective, as it will enhance the perception and profile of the area
Encourage ground level retail and commercial uses along Victoria Street, for example, galleries and medical suites.	The proposed development actively encourages this
Encourage entertainment uses above ground level on Darlinghurst Road and Victoria Street (between Liverpool and William Streets).	The proposal is consistent with this objective.
Encourage outdoor dining for restaurants and cafes along Victoria and Burton Streets.	The proposal is consistent with this objective as it will encourage visitors to the area and add to the vibrancy of Darlinghurst / Kings Cross

3 / OBJECTIVES

OBJECTIVES CITY EAST	Achievement of Objectives
Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.	The proposal is consistent with this objective as a commercially viable centre
Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.	TThe proposal is consistent with this objective. The proposal is of a premium quality that which complement heritage items and streetscapes
Preserve the view corridor to the Kings Cross skyline with its crown of high-rise and significant signage.	The proposal is consistent with this objective. The proposal enhances the Kings Cross skyline
Maintain the asymmetrical built form in the streetscape of William Street with taller buildings along the north side and lower buildings along the south.	n/a
Promote William Street as a high quality commercial spine with appropriate uses and support the street as a pedestrian orientated location with active frontages to the ground floor.	The proposal is consistent with this objective. The proposal enhances the profile of the area as a pedestrian orientated location
Support William Street as a pedestrian oriented boulevard with active frontages to the ground floor.	The proposal is consistent with this objective.
Create a transition in building height with taller buildings located on the northern side and lower buildings at the rear.	The proposal is consistent with this objectiv by enhancing the transition between building heights
Generally maintain a predominantly 3-4 storey street wall height to William Street south in response to the heritage value of the inter-war character.	n/a
Encourage public art at 1 Kings Cross Road, Darlinghurst in accordance with the City's Public Art Strategy.	The proposal is consistent with this objective. The proposal meets some of City of Sydney's criteria for public art
Improve ground floor activity along Crown, Palmer, Bourke, and Forbes Streets to create high quality pedestrian amenity into surrounding neighbourhoods.	The proposal is consistent with this objective.

ACHIEVEMENT OF OBJECTIVES | SEPP64

State Environmental Planning Policy No 64— Advertising and Signage	Achievement of Objectives
to ensure that signage (including advertising):	
(i) is compatible with the desired amenity and visual character of an area	<ul style="list-style-type: none"> • The proposal is consistent with the desired amenity and visual character of Darlinghurst West and the B4 Mixed Use Zone • the Proposed Development is aligned with the City of Sydney’s criteria for Public Art and deemed of intrinsic social value to the public • The proposal enhances the Darlinghurst West area
(ii) provides effective communication in suitable locations	<ul style="list-style-type: none"> • The proposed development is consistent with this • The exceedance of development standard will allow for a larger portion of hand-painted artwork and more effective communication
(iii) is of high quality design and finish	All Gucci Art Walls will be of high quality design and finish
(b) to regulate signage (but not content) under Part 4 of the Act	Not Applicable
(c) to provide time-limited consents for the display of certain advertisements	The proposal seeks 24 months consent
(d) to regulate the display of advertisements in transport corridors	Not Applicable
(e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors	Not Applicable
(2) This Policy does not regulate the content of signage and does not require consent for a change in the content of signage.	Taken into account

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

Advertisement / Sign

The term is defined as a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water.

The term is defined as a structure used or to be used principally for the display of an advertisement.

CITY OF SYDNEY PUBLIC ART POLICY 2030

Art

The term “art” is defined as the product of practitioners who intend their work and activities to be seen and read as art. It embraces material and immaterial products and concepts emanating from the imaginative and creative thinking of artists.

Public Art

The term “public art” is defined in the broadest sense as artistic works or activities accessible to the public. The work may be of a temporary or permanent nature. Located in or part of a public space or facility provided by both the public and private sector, public art also includes the conceptual contribution of an artist to the design of public spaces and facilities.

GUIDELINES AND CRITERIA FOR PUBLIC ART

Evaluation and approval of all public artworks proposed by the City of Sydney, other public authorities, individuals and other groups in the City of Sydney local government area will be based on the following criteria:

- Relevance to the objectives and actions of Sustainable Sydney 2030, the City Art Public Art Strategy, Acquisition and Deaccession Guidelines, Public Art in Private Development

Guidelines and the principles of this Public Art Policy;

- Standards of excellence and innovation;
- The integrity of the work;
- Relevance and appropriateness of the work to the context of its site;
- Consistency with current planning, heritage and environmental policies;
- Plans of Management;
- Consideration of public safety and the public’s access to and use of the public domain;
- Consideration of maintenance and durability requirements;
- Evidence of funding source and satisfactory budget including an allocation for ongoing maintenance;
- Non-duplication of monuments commemorating the same or similar events; and
- Consideration for a holistic approach to public art in the City

Assessment of the variation to the development standard

The proposal seeks to increase the maximum 10% elevation coverage control to approximately 100% of the Western facade to afford a better outcome visually, viscerally and intellectually thus promoting design excellence.

Part 3, Division 3, Clause 22, 2(b)(i) of State Environmental Planning Policy No 64 – Advertising and Signage “Wall Advertisements” states that Council cannot grant consent to a wall advertisement on an above ground elevation of 200 square metres or more, which exceeds more than 10% of the elevation.

The following assessment comprehensively considers the provisions of Clause 4.6;

Clause 4.6 (3)(a) – Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Strict adherence to the 10% elevation coverage is unreasonable and unnecessary in this case because it represents an exceptional circumstance by which the Proposed Development is closely aligned with the City of Sydney’s criteria for Public Art and of intrinsic social value to the public. Strict compliance, would significantly obscure the artistic intent and reduce the potential positive impact on the community, tourism and local traders in the immediate area.

Clause 4.6 (3)(b) – Grounds to justify contravening the development standard (there are sufficient environmental planning grounds to justify contravening the development standard) there are sufficient environmental planning grounds to justify contravening the development standard

The proposed development will provide for Gucci Art Walls to be readily identified as public art and determining it as such is correlated with the artistic intent, subject matter and scale. In the context of ‘Public Art’ as outlined by the City of Sydney 2030 Public Art Policy, there are sufficient environmental planning grounds and significant benefits to justify contravening the maximum permissible coverage area on a wall advertisement on an above ground elevation of 200 square metres or more.

Clause 4.6 (4) a (ii) – 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

The context in which the sign would be viewed is consistent with the objectives of SEPP64 and it is compatible with the objectives of the B4 Mixed Use Zone, specifically to support the viability of centres and to encourage walking and cycling. Over and above this, the development will enhance the character of the area, as well as facilitate the conservation of items and areas of heritage significance. The proposed development can be considered cerebral and thought-provoking as well as artistic, as such it has been assessed that viewers will predominantly respond positively.

Clause 4.6 (3)(a)

Strict compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Strict adherence to the 10% elevation coverage is unreasonable and unnecessary in this case because the proposed development represents an exceptional circumstance by which the contravention of the development standard will incur a far better outcome for the following reasons;

1) Provides inherent social value to the public that, if scaled to the development standard, will be significantly minimised since SEPP 64 did not anticipate a branded mural artwork which meets the criteria for both public art and advertising

Social Value, Public Benefit, Design Excellence;

- i. Gucci are committed to generate positive change for people and the planet. Dominant ethical, cultural, and socially responsible messages overlay each Gucci Art Wall (the proposed development). With this in mind, the viewer is afforded both an aesthetic experience as well as a chance to engage in hyper-relevant cultural discourse. In this way, Gucci Art Walls are intended as thought-provoking works of art, of which scale is fundamental to the communication and reception of messages generated for; the inclusion and greater understanding of particular communities and the promotion of more ethical and socially sustainable living. For this reason, traditional advertising takes a peripheral role. These priorities are directly reflected in the Sustainable Sydney 2030 strategy.
- ii. Gucci Art Walls promote humanitarian values; equality, social justice, diverse and inclusive attitudes. Through fashion and imagery, they address complex local and global issues, and help people to participate in the community for example; amplifying Gen Z voices, uniting activists, or empowering refugees. The proposed development raises dialogues around bodies, gender stereotypes, norms, womens rights, ethical trading, sustainability, unrealistic beauty standards, racism and climate change to name only a few.
- iii. Additionally, the proposed development is analogous with local events such as Mardi Gras, engages small local businesses as suppliers, and commissions local Australian artists over and above professional artist rates as outlined by the National Association of the Visual Arts (NAVA).
- iv. Moreover, the deeply humanitarian message conveyed by each wall is backed by organisational action exemplified through *Gucci Equilibrium* and *Chime for Change* whereby campaign artwork is interwoven with events, sustainability innovation initiatives, combating racism, child labor, forced labor, gender inequality, reducing waste and so forth. The proposed development directly feeds into ancillary humanitarian programs that support vulnerable communities and impact the environment.

Public benefit minimised if strictly compliant with the development standard of 10%

- i. The scale of Gucci Art Walls is relatively consistent globally and highly curated based on visibility and the community within which it is situated. We define 'scale' not by the size of the artwork but the relational principle derived through the ratio of the artwork to the viewer, to the facade, and the intended information, meaning and significance thereby imbued and conveyed. To strictly comply with a 10% scale is to restrict the capacity for meaning exchange therefore defeating or thwarting the underlying purpose of the standard.
- ii. Unlike traditional advertising, which focuses on foot and vehicular traffic alone, Gucci Art Walls is centred around carefully chosen locations and thoughtful relationships between the site, the area's existing identity and the community who reside there. The visibility of the proposed development within this site is paramount to the relationship with the surrounding community.

- iii. As such, a strictly compliant sign would reduce the capacity for socially valuable information to be shared as well as its perception as public art. The scale of the work defines its meaning and determines the role of the viewer thus directing attention to the relation between the proposed development, place and community. Therefore, scale is a crucial aspect of the proposed development that affects its reception as actual artwork. Strict compliance to the development standard would obscure the artistic intent and social value of the proposed development thus defeating the underlying purpose of the development standard.
- iv. Relational Aesthetics regards “art as information exchanged between the artist and the viewers” within which it postulates the “theoretical and practical point of departure the whole of human relations and their social context, rather than an independent and private space”. That is to say “the goal of most relational aesthetics art is to create a social circumstance; the viewer experience of the constructed social environment becomes the art”, in this sense the scale is fundamental to fostering an environment whereby the meaning of each wall is conveyed¹.
- v. The development standard does not consider relational aesthetics, nor public art that also shares the criteria for advertising. Moreover, the development standard does not consider that branding (Gucci) does not preclude the definition of art, beauty, social value and aesthetics. Sometimes, the brand is precisely what enables an image to be perceived as art. Consider, for example, what can happen to an artist’s career when they are endorsed by a brand. For this reason, contravening the standard would allow for a unique circumstance to unfold and provide a sign that significantly enhances the intent and objectives of the development standard notwithstanding noncompliance.
- vi. The perception of Gucci Art Walls as ‘public art’ or as ‘socially valuable’ is evidenced through hundreds of thousands of instagram hashtags and geo-tags for each Gucci Art Walls site. The sign, its affiliate brand, Gucci’s humanitarian and philanthropic endeavours enable them to attract a strong global following of individuals from all over the world who reshare the imagery on their personal and professional social media platforms. This illustrates the public perception of Gucci Art Walls as art and the consequent negative implications of reducing its scale to a strictly compliant 10%.

2) Will generate small local events in accordance with the main objectives of SEPP64 ‘Advertising and Signage,’ Sustainable Sydney 2030 and OPEN Sydney 2013-2030

- i. At least one wall will be analogous with or relevant to the promotion of a local Sydney event, for example, Mardi Gras.
- ii. The launch of each wall (up to 8) will coincide with a launch event designed to provide; effective communication, a thoughtful, high-quality and multi-layered approach to design, foster public relations opportunities for media, local artists, Darlinghurst and local retailers to participate in.
- iii. Events will provide public benefit, stimulate the local economy, bring visibility to Darlinghurst and Kings Cross as a safe and welcoming cultural destination, restore confidence in the public domain in the wake of Covid, as well as create further paid opportunities for local artists, musicians performers, creatives and suppliers.
- iv. Supplementary launch events will allow for venues around Darlinghurst to forge new corporate and community based partnerships as well as garner significant media attention and foot traffic to illuminate the existing offering, retailers and surrounding businesses.

A strictly compliant wall at 10% of the facade would not be of sufficient scale, visibility or impact to warrant hosting ancillary events. Therefore, the relevant objectives of the standard would not be achieved or would be thwarted by a complying development.

¹ Bourriard, Nicholas. *Relational Aesthetics* 2002

3) Bolsters the careers of local Australian artists financially, technically and creatively;

- i. According to National Association of the Visual Arts (NAVA) due to Covid 19 arts initiative are being “downscaled, postponed, or cancelled” as a result individual artists “are facing unexpected income losses, some of which amount to a year or even two years’ worth of work.” The proposed development would provide individual artist/s with up to two years worth of guaranteed work immediately following the pandemic.
- ii. Lead artist, David Lee Periera was chosen via a shortlist of local Australian artists, he was then commissioned to paint a private artwork for Gucci as a part of the selection process.
- iii. The scale of the work is directly proportional to the artist’s opportunity. Through this project, David will have the chance to engage in a variety of practices that will enhance and support his professional artistic career. This includes, but is not limited to; colour mixing and matching, managing and mentoring other local artists, project management, attending networking events associated with the sign, meeting potential future clients and participating in marketing and PR opportunities.
- iv. David and his assistant/s will directly benefit through 12-24 months of paid commission artwork that would otherwise be difficult to find during Covid 19, very competitive through council funding processes, the majority of which requires much unpaid time to apply for and often short term and small scale gain.
- v. Unlike other painted mural advertisements, the lead artist will be paid as a commissioned professional artist. Each painted mural will become a portfolio piece for David and his assistant/s.

A strictly compliant development would detrimentally impact the potential portfolio, experience and professional creative work opportunity of local Australian artist. The scale of the work, and consequently the remuneration, would be much lower. Accordingly, since events would not be feasible, networking and PR opportunities would also be diminished.

4) Reinforces and supports the overall Darlinghurst West Vision (page7) and is consistent with the objectives of the development standard and the B4 Mixed Use Zone zone in which the development is proposed to be carried out.

- i. Gucci Art Wall will assist in the cultural regeneration of Sydney City, specifically, Kings Cross and Darlinghurst and build public confidence in returning back to urban space following the pandemic.
- ii. The visual effects generated by the artwork would be positive, celebrating and enhancing the visual and intrinsic character of the site and the heritage surrounds
- iii. visually compatible with the architecture and heritage value of the site, the proposed development will embrace and draw attention to the existing features of the facade
- iv. Located in a high pedestrian and dwelling zone, the artwork may create a more atmospheric, interesting and inspiring place for tourists, residents and locals to dwell than the imminent blank facade.

Therefore, strict compliance would hinder the attainment of the objects specified in Clause 3 (a)(i) (ii) (iii) and (e) and significantly reduce the potential impact for positive affect garnered by the community including local traders in the immediate area

5) Facilitate the conservation of items and areas of heritage significance

- i. The installation of the sign will facilitate the conservation of the 227 Victoria Street facade and exterior works thus contributing to the enhancement of areas of heritage significance by ensuring the extant building is maintained to an exceptional standard which may not have been possible to obtain by the Strata Committee for the Owner's Corporation without sufficient funding.
- ii. Will assist the City in meeting the time limited consent of D/2021/472 approved until October 2021 which has been unable to be removed and restored against the condition that new materials for making good and repairs match the existing in terms of colours, finishes, sizes, profile and properties.

The proposed increase in the advertising area is considered to result in a superior outcome for the following reasons:

- SEPP 64 did not anticipate a branded mural artwork which meets the criteria for both public art and advertising, as such the public benefit of a larger sign outweighs that of a strictly compliant development
- The proposal is consistent with the relevant provisions and intent of City of Sydney Council's City Art Public Art Strategy and Public Art Policy 2030 and Sydney DCP 2012 'Section 3 - General Provisions'.
- The sign is deemed a positive contribution to the streetscape that will temporarily contribute to and enhance the visual identity and intrinsic character of the immediate and surrounding area, including the heritage qualities of the site.
- Complies to the 5% limit of corporate markings, logos, branding or similar of the total sign area
- The sign will align with a civic or community event in the City of Sydney area at least once per annum
- The increase will enhance the visual impact of the sign insofar as it is more integrated into the architectural surroundings so as to reduce unappealing visual clutter
- Encourages the area to become a creative and lively destination that builds upon the location being in the vicinity of National Art School, UNSW Art & Design, William St Creative Hub, as well as the famous Coca Cola sign.
- Is more compatible than the development standard with the desired amenity, visual character of the site insofar as it provides the highest design excellence, more effective communication and enhances the perceived quality of the proposed development.
- Thus, results in a significantly better design and aesthetic outcome than a smaller sign tacked onto the subject site
- The audience is likely to find the character and subject matter of the artwork interesting, surprising, thought-provoking, engaging and exciting as opposed to either 1) a blank space or 2) traditional advertising
- The sign will showcase the artistic skill of local Australian artists to the degree with which it is visible to the public
- The proposed development will remain compatible with the architecture, materials, finishes and colours of the building and the streetscape
- Taking into consideration the local character, demographic of residents, workers and tourists to the site this project is considered to be of high interest to those who frequent the immediate and surrounding areas.
- It leaves the original facade exposed in order to draw attention to the original architectural and complements heritage elements of the facade
- There are no other signs of this nature within the precinct, this has been carefully selected by all stakeholders and identified as the most aligned and suitable project for the subject site
- May draw local and global attention to Darlinghurst and Kings Cross as a destination through events, social media and public relations
- Will not to conceal or detract from integral architectural features or cover any mechanical ventilation systems.
- The visual effects generated by the artwork would be positive, celebrating and enhancing the visual and intrinsic character of the site and the heritage surrounds
- Supplementary intimate events and media activity will allow for Darlinghurst and Kings Cross venues and retailers to forge new corporate and community based partnerships as well as garner significant global attention and foot traffic to illuminate the existing offering, retailers and surrounding businesses.

Strict compliance with the development standard is considered to result in an inferior outcome for the following reasons:

- Compliance would deliver a deficient outcome for the urban design and local character of the site
- Obscure the meaning of the artwork and therefore decrease the visual impact and design quality
- A contravening sign would deliver a much more well integrated sign therefore improving the community benefits
- Because it is unlikely that a typical mural artwork would be commissioned at only 10% of a wall therefore decreasing the public perception of the sign as public art and increasing the chances of appearing as traditional advertising
- Complying would conflate the artistic intent and content of the proposed development with traditional advertising signage
- Strict compliance would not reinforce the unique character and vision for Darlinghurst, Kings Cross and B4 Mixed Used zones as a cultural and innovation incubators
- Compliance would result in ineffective communication of the sign and its capacity to enrich and enliven the area
- It would result in a design outcome that is of lesser quality than contravention therefore decreasing public benefit
- The proposal complies with Clause 3.16.12.10 (1) of the Sydney Development Control Plan 2012, inclusive, regarding Darlinghurst Road Kings Cross signage precinct as it is visually interesting and consistent with role of Darlinghurst as a night-time activity and entertainment precinct
- The proposal complies with Clause 3.16.12.12 (1) of the Sydney Development Control Plan 2012, inclusive, regarding William Street signage precinct as it contributes to the vision of the precinct as a retail and business area and will result in an aesthetically pleasing sign that complements the heritage significance and eclectic cultural history of the locality
- A contravening sign is in the public interest for the reasons outlined in Section 6;
- Therefore, 10% results in a sign of approximately 66m², thus delivering a subpar outcome in terms of the scale of the existing wall and decreasing the potential for public benefit and intrinsic aesthetic value.

The court provided five tests as follows that can be used as prompts to answer the above questions in relation to this application.

The 'five part test', established by the NSW Land and Environment Court is employed in addition to the the principles of Clause 4.6 and SEPP1 to determine whether the objection to the development standard is well founded. The Five Part Test remains helpful despite being developed for Clause 4.6.

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

While no specific objectives are laid out in SEPP 64 for artwork advertisements the 'Justification of Variation to Development Standard' in Section 5 responds to the objectives of SEPP 64 regarding 'Advertising and Signage'. Herein, it is established that the objectives of the SEPP are achieved notwithstanding, and in lieu of, non-compliance to the 10% standard.

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

The underlying purpose of the standard is relevant in this case as it pertains to the numeric control regarding the size of signs and advertising on facades above 200m². Accordingly, the underlying purpose functions to ensure the quality and public benefit of the sign is of the highest standard. Considering this, the increase in numeric control for the development standard affords a substantially more positive urban design impact due to the artistic intent, aesthetic features and socially valuable subject matter conveyed. Therefore, the purpose of the standard is better achieved through contravention.

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

Strict compliance to the development standard, as adressed in section 5, would defeat the purpose of the standard.

A strictly adherent sign would result in a sign of approximately 66m², as opposed to 660m², the latter which would retain the artistic intent of the sign and therefore greatly increase the perception of the sign as public art and consequently convey the overlaying meaning of the work to the public more effectively.

A strictly compliant sign would be less visually appealing and aesthetically pleasing to the extent that it would appear as an afterthought attached to the building rather than an integrated artwork that harmonises with the character of the site and the architectural design of the streetscape. In this way, it would defeat the purpose of the standard.

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

The proposed numeric increase of 100% of the total facade relates to the unique circumstance upon which the request is being made, it will not require that the development standard is virtually abandoned or destroyed.

5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The proposed development and increase in the development standard is consistent with the objectives of the zone. The proposed variation to the maximum permissible coverage area under SEPP 64 would sufficiently achieve the objectives of the B4 Mixed Use Zone far more than a strictly compliant scheme under this exceptional circumstance.

Therefore, a strictly compliant scheme would fail to deliver a development of sufficiently high quality and would not provide adequate public benefit and, for these reasons, compliance is unreasonable.

Ultimately, the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.

Thank you