


# **Attachment B**

<p><b>Clause 4.6 Variation Request - Maximum Height of Buildings</b></p>
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**Clause 4.6 Variation Request  
Maximum Building Height (Clause 4.3) Sydney  
LEP 2012  
Oxford Hotel  
134 Oxford Street, Darlinghurst**

**Prepared by Planning Lab  
Issued 2 October 2025**

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# 1 Introduction

This request to vary a development standard has been prepared in accordance with Clause 4.6 (cl 4.6) of Sydney Local Environmental Plan 2012 (SLEP 2012) which accompanies a Development Application (DA) to modify development consent U92-00273 granted by Sydney City Council on 29 May 1992 for the installation of an externally illuminated, static, roof top advertising sign that has since been constructed above the Oxford Hotel, 134 Oxford Street, Darlinghurst ('the site'). This application seeks development consent to modify various conditions of consent of U92-00273 under Section 4.17(1)(b) of the Environmental Planning & Assessment Act 1979 to digitise the existing sign's display and for other minor associated works related to the existing advertising structure.

This request specifically seeks to vary the maximum 15m building height development standard contained in Clause 4.3 of SLEP 2012 in respect of the proposed rooftop digital sign.

This request report should be read in conjunction with the Statement of Environmental Effects and other supporting technical documents that accompany the DA.

The objectives of cl 4.6 provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

This request has been prepared having regard to the following considerations:

- The Department of Planning and Environment's Guide to Varying Development Standards (November 2023);
- The objectives of Clause 4.3 of the SLEP 2012, being the development standard to which a variation is sought; and
- Relevant case law in the New South Wales Land and Environment Court and New South Wales Court of Appeal including *Wehbe v. Pittwater Council* [2007] NSWLEC 827.

This variation request provides an assessment of the development standard and the extent of variation proposed to the standard. The variation is then assessed in accordance with the principles set out in the *Wehbe* matter.

## 2 Clause 4.6 Exceptions to development standards

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

However, clause 4.6(3) states that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written



request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

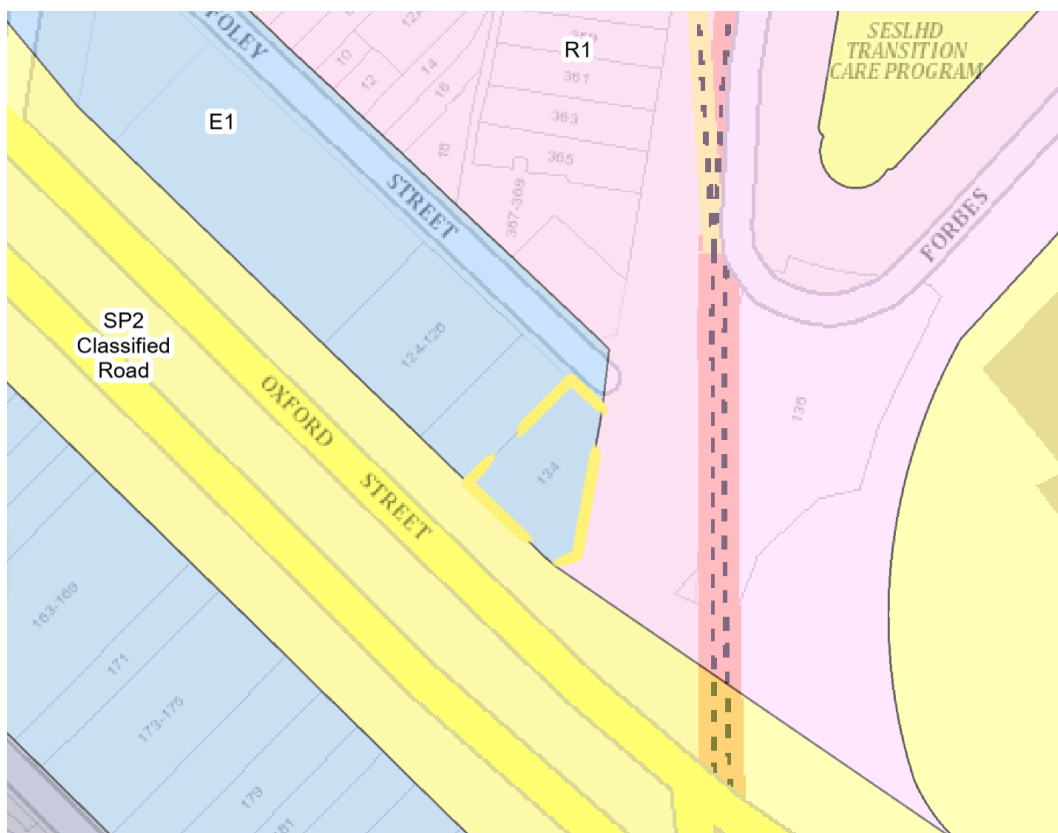
In accordance with clause 4.6(3) the applicant requests that the maximum height of building development standard be varied.

### 3 What is the Environmental Planning Instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is Sydney Local Environmental Plan 2012 (SLEP 2012).

### 4 What is the zoning of the land?

The site is zoned E1 Local Centre pursuant to the SLEP 2012. Refer to **Figure 1**.



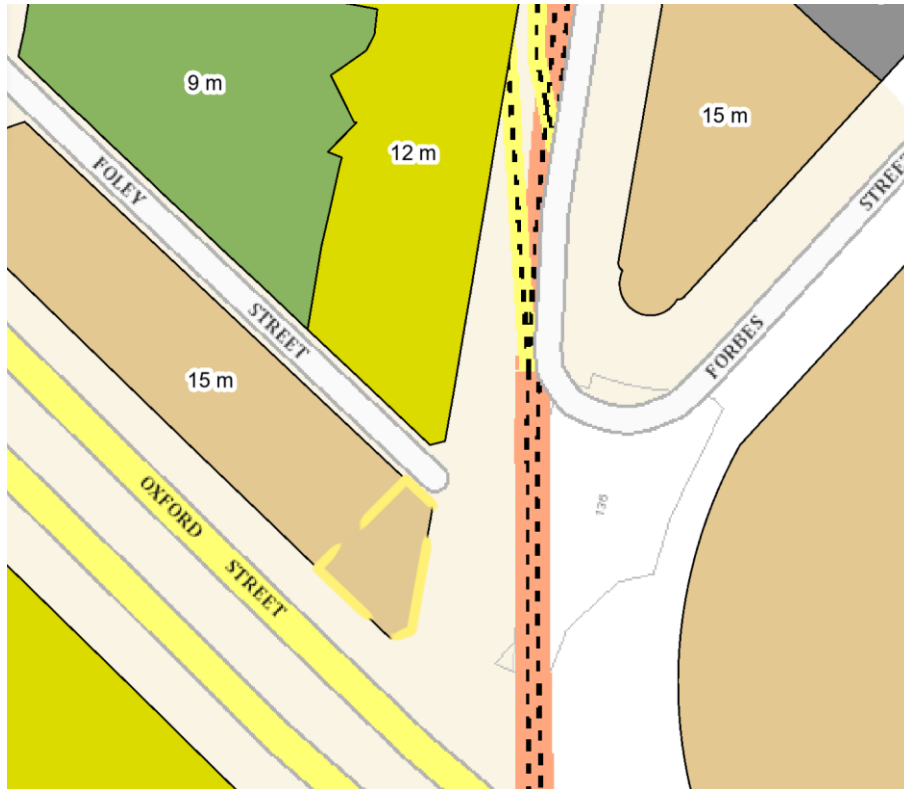
**Figure 1:** Extract of Land Use Zoning Map SLEP 2012 (subject site shown with yellow outline) Source: NSW Planning Portal Spatial Viewer



## 5 What is the development standard being varied?

### Sydney Local Environmental Plan 2012

Clause 4.3 of the SLEP 2012 provides that the height of a building on any land is not to exceed that shown for the land on the Height of Buildings Map. The site is affected by a maximum height of building of 15m, as shown below in **Figure 2**.

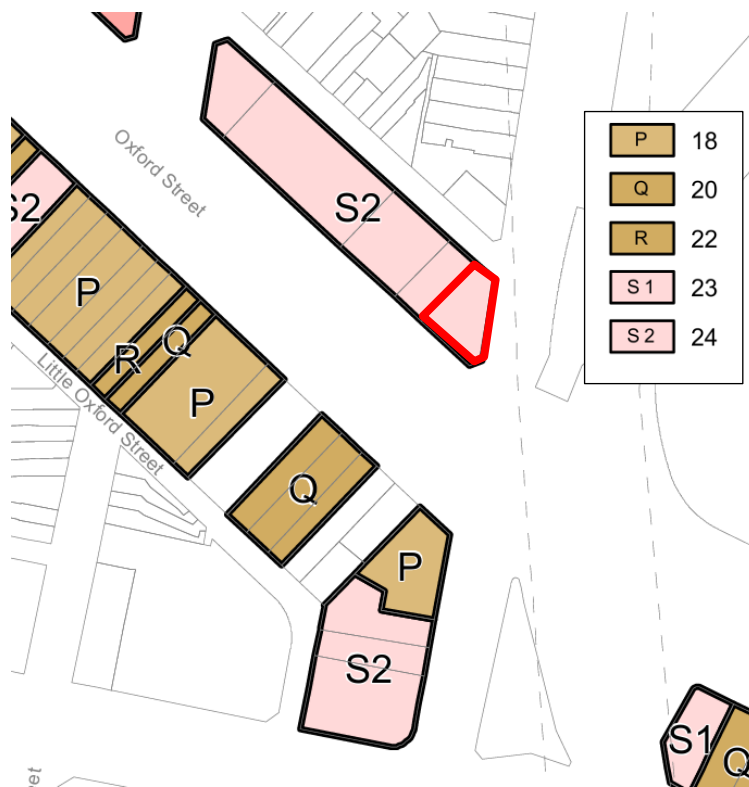


**Figure 2:** Extract of Height of Building Map SLEP 2012 (subject site shown with yellow outline) Source: NSW Planning Portal Spatial Viewer

Clause 6.60D applies to the Oxford Street Cultural and Creative Precinct, for which the subject site is located.

Clause 6.60D (3) enables a development to achieve a maximum building height shown on the LEP's Alternative Height of Buildings Map, subject to satisfying other sub-clauses of 6.60D, including the provision of cultural and creative uses. As shown in an extract below, the Map identifies a maximum building height of S2 – 24m.





**Figure 3:** Extract of Alternative Height of Building Map SLEP 2012 (subject site shown with red outline)  
 Source: NSW Planning Portal Spatial Viewer

The subject proposal is not seeking to vary the mapped Alternative Height of Buildings control.

## 6 Is the development standard excluded from the operation of Clause 4.6 of the EPI?

Cl 4.6(2) states that development consent may be granted for development even though the development would contravene a development standard. However, this does not apply to a development standard that is specifically excluded under cl 4.6(8) of the SLEP 2012. Given the maximum building height development standard is not identified under subclause 4.6(8), it is therefore not specifically excluded from the operation of cl 4.6 of SLEP 2012.

## 7 The site and its context

### 7.1 The Site

The subject site is legally described as Lot 1 in Deposited Plan 107573 and is commonly referred to as 134 Oxford Street, Darlinghurst. It is an irregular shaped allotment with an approximate area of 195m<sup>2</sup>. The site has frontages to Oxford Street, Bourke Street and Foley Street.

The subject site is located on the north-western corner of the public space known as Taylor Square and is occupied by a three storey building, commonly known as the Oxford Hotel, which



was erected on or about 1911. An aerial image of the site is provided below in **Figure 4**.



*Figure 4: Aerial image identifying the site (Six Maps)*

## 7.2 The Existing Advertising Structure

A large single-sided advertising billboard structure is prominently located on the roof level of the existing Oxford Hotel. The current advertising display area is approximately 94.55 square metres (15.5m by 6.1m, and 410mm wide), which occupies the whole sign structure. This structure is externally illuminated and has a south-eastern orientation (looking out towards Taylor Square).

The roof of the Oxford Hotel has consistently displayed large format advertising for more than 70 years, as evident in a range of consents and approvals during this period.

Current photos of the sign structure are provided below in **Figure 5**.

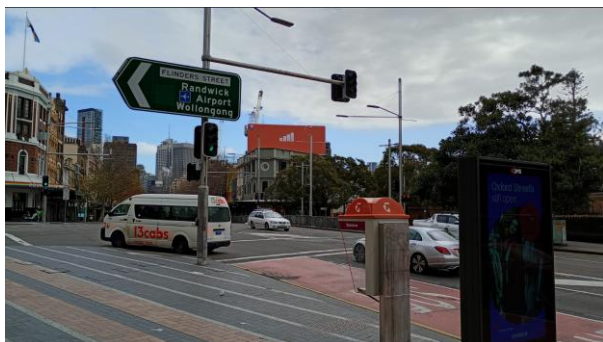




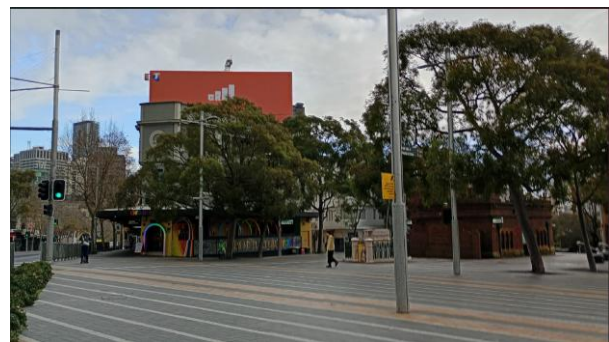
View from the south-east, opposite Oxford Street



View from the south, side view, opposite Oxford Street.



View from the south-eastern edge of Taylor Square



View from the eastern edge of Taylor Square.

**Figure 5** – Photos of various views of the existing sign structure (Source: Planning Lab).



### 7.3 Adjoining and Surrounding Context

To the east of the site is the public plaza of Taylor Square and centrally within this area is a small structure which was formerly occupied as substation. Further to the east is the large Darlinghurst Court House compound. To the south of the site, Taylor Square continues across Oxford Street past the four storey Courthouse Hotel. To the west of the site, Oxford Street continues towards the City’s CBD and is primarily occupied by three/four storey commercial buildings.

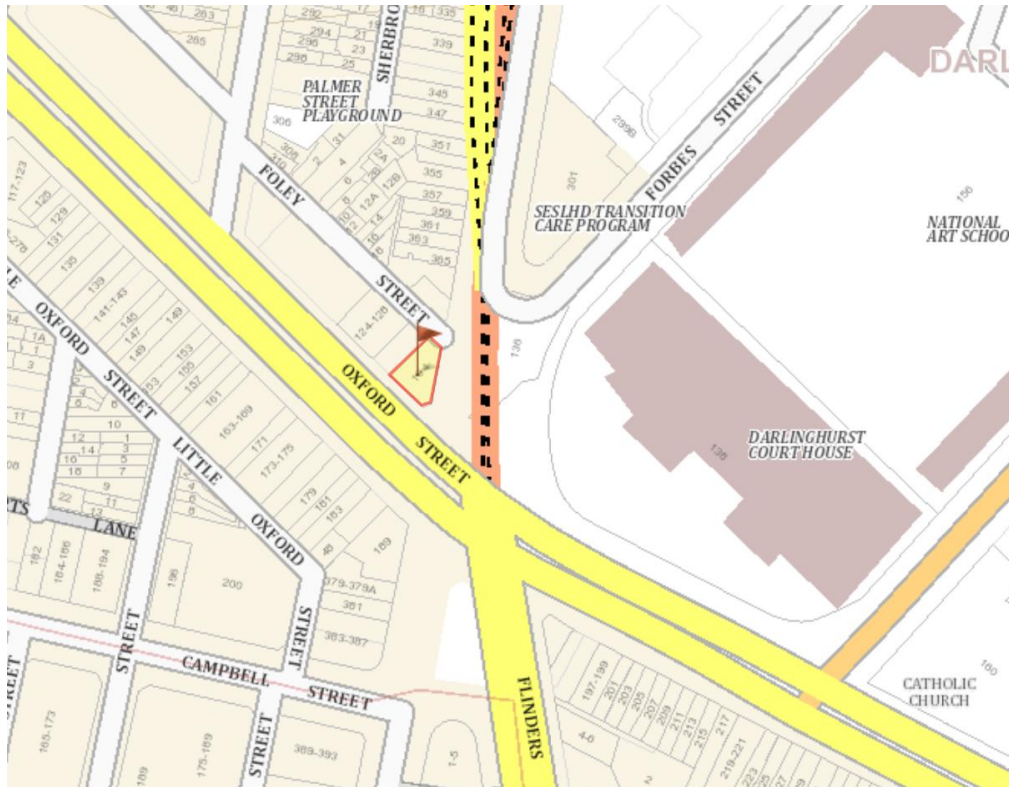


Figure 6 – Locality Map (Source: SIX Maps).

Two other advertising billboards of a similar scale are located in close proximity to the site at 191-195 Oxford Street and 217 Oxford Street, as shown in **Figures 7 and 8** below.





**Figure 7** – View of existing roof advertising sign on 195 Oxford Steet (Source: Google Maps).



**Figure 8** – View of existing roof advertising sign on 217 Oxford Steet (Source: Google Maps).

Whilst not listed as a heritage item, the building on which the sign is identified as contributory within the Oxford Street Heritage Conservation Area – Area 17 (HCA) under SLEP 2012. A number of significant heritage items and other contributory buildings are located within close proximity and in vicinity of the site, the closest of these items include the neighbouring former substation



within Taylor Square, the Darlinghurst Court House to the east and the Court House Hotel opposite the site to the south on Oxford Street.

It is noted that Council has recently publicly exhibited a Draft Planning Proposal to amend SLEP 2012 for the inclusion of three buildings as individual heritage items under Schedule 5 (Environmental heritage), Part 1 (Heritage items), of the LEP, including the subject site, 134 Oxford Street, Darlinghurst – Oxford Hotel. At the time of finalising this SEE, a report back to Council on the outcomes of this public exhibition had not occurred. The supporting technical reports for this Planning Proposal do not contain any assessment or recommendations relating to the existing roof advertising structure.

The site is also located within the Oxford Street Cultural and Creative Precinct under Section 5.11 of the Sydney Development Control Plan 2012 (SDCP 2012). This Section recognises Oxford Street as an important place for the LGBTIQ+ community in Sydney, nationally and internationally, as well as the character of its diverse use, activities, heritage and building forms.

The surrounding area is characterised by a mixture of commercial, retail, recreational and entertainment premises, with residential development to the rear and north. Oxford Street/Taylor Square has historically been known as a late-night entertainment area. There are a number of hotels which operate 24 hours a day and also a number of nightclubs with extended operating hours in the area. Sydney City Council has recognised this as a special area for late night entertainment and has specifically identified the strip as a Late-Night Management Area under of the SDCP 2012.

Public transport is available in the form of trains from Museum Station (850m), Town Hall Station (1000m) or Central Station (1100m) and the Sydney light rail line running along George Street. On average trains run from 4.30 am to 1.00 am the following day. Night-ride buses are available 24 hours a day from Broadway Bus Terminal. Bus services are available 24 hours a day to Watsons Bay, Bondi Junction or Circular Quay from a number of pick-up points along Oxford Street. Taxis also frequent the area.





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

Clause 4.6(3)(a) of the SLEP 2012 requires that the request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case.

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

In *Wehbe* at [42] – [51] and repeated in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [17]-[21] the Chief Judge identified five alternative ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established.

Although *Wehbe* concerned a SEPP 1 objection, it remains relevant to requests under clause 4.6 (as confirmed by Preston CJ in *Initial Action* at [16]).

The five potential methods established under *Wehbe* are that:

1. the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. the objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. the development standard has been virtually abandoned or destroyed by the Council's actions in granting consents departing from the standard and hence the standard is unreasonable; or,
5. the zoning of the land is unreasonable or inappropriate.

The five ways are not exhaustive, and it may be sufficient to establish only one to satisfy cl 4.6(3)(a).

For completeness, this request addresses the first of the five alternative tests established - in *Wehbe v Pittwater Council* [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.



## 9.1 the objectives of the standard are achieved notwithstanding non-compliance with the standard;

Compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of this case because, as explained in **Table 1** (below), the objectives of the development standard are achieved, notwithstanding non-compliance with the standard.

Demonstrating that the proposal will have no adverse amenity impacts is, therefore, one way of showing consistency with the objectives of a development standard.

*Table 1: Achievement of Development Standard Objectives*

Objective	Discussion
<p><b>(a) to ensure the height of development is appropriate to the condition of the site and its context,</b></p>	<p>The subject site is located on the north-west corner on the intersection of Bourke and Oxford Street, Taylor Square, Darlinghurst. Situated on the site is the Oxford Hotel, a three-storey building that serves as one of the ‘anchor’ buildings on the northern side of Oxford Street which were erected when the street was widened in 1911, and constructed between 1913-1914.</p> <p>Advertising signage was first erected on the front façade of the Hotel in the 1930’s, with a subsequent progression to the erection of a framed neon roof top sign structure in the 1970’s, through to the erection of a static billboard advertising sign in the early 1980’s, in which its size, form and use has been generally retained, subject to relatively minor modifications.</p> <p>The proposed works of the current DA includes the replacement of the existing signage with digital LED signage of a similar scale, height and dimension. This proposal remains highly compatible with the existing and future character of the streetscape with the immediate visual context of the Hotel surrounded by a variety of static and digital signage, and advertisements of varying style, height, scale and location.</p> <p>At a maximum height of 19.13m above the existing ground level, the proposed digital sign retains a suitable scale between the LEP Maximum Building Height of 15m and the LEP Alternative Building Height of 24m, within the Oxford Street Creative and Cultural Precinct.</p>



Objective	Discussion
<p><b>(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</b></p>	<p>The Oxford Hotel is situated in a prominent position of high heritage significance whereby it is bordered by heritage buildings (and associated heritage listings) listings on all frontages. Located on the border of two significant state heritage curtilages, alongside its location within a Heritage Conservation Area with vantage points and views to vicinity heritage items, the setting and relationship of the Oxford Hotel to the heritage items are of high significance.</p> <p>As identified in point (a) above, the retention of the size and scale of the existing roof top advertising structure as part of the digital conversion DA, maintains a respectful and compatible relationship with the LEP permissible maximum building heights of this site and the surrounding Oxford Street Creative and Cultural Precinct.</p>
<p><b>(c) to promote the sharing of views outside Central Sydney,</b></p>	<p>Several documented views are located within the immediate visual context of the site relating to a range of Local and State heritage items such as Taylor Square, Busby’s Bore, Darlinghurst Courthouse and the Sydney Mardi Gras Parade Route. Whilst there are no documented views that relate specifically to the building at 134 Oxford Street, it does form part of the visual setting in views across the intersection between significant heritage buildings.</p> <p>As verified by the Heritage Impact Statement:</p> <p><i>The proposal does not block views to surrounding Heritage Items, and does not negatively affect any identified view corridors. The proposed signage will not detract from the significance or views of these vicinity local and state items, but will increase engagement, activity and popularity of the Oxford Hotel and surrounds. The Heritage Items, and the cultural and historical significance of the intersection and setting will not be negatively impacted by the replacement of signage.</i></p>
<p><b>(d) to ensure appropriate height</b></p>	<p>Oxford Street (and its surrounds) is a regionally significant retail, entertainment and local business district in immediate vicinity of the Sydney CBD, bound at its western end by the</p>



Objective	Discussion
<p><b>transitions from Central Sydney and Green Square Town Centre to adjoining areas,</b></p>	<p>south-eastern corner of Hyde Park. The street accommodates a range of daytime and night-time activities, and is central to Sydney’s (and, indeed, Australia’s) LGBTIQ+ community.</p> <p>The current digital sign maintains a maximum height level compatible with the LEP maximum heights specified for the Oxford Street Creative and Cultural Precinct, which have been designed to respond to the more sensitive, lower scaled residential areas of surrounding parts of Darlinghurst.</p>
<p><b>(e) in respect of Green Square—</b></p> <p><b>(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and</b></p> <p><b>(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.</b></p>	<p><i>Not applicable.</i></p>

Compliance with the maximum building height development standard is unreasonable or unnecessary in the circumstances of this case because the objectives of the standard are achieved, and the non-compliance will not result in any major adverse environmental impacts.

The requirements of clause 4.6(3)(a) of the SLEP 2012 are therefore satisfied.



## 10 Clause 4.6(3)(b) Are there any sufficient environmental planning grounds to justify contravening the development standard?

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 the Land and Environment Court (Preston CJ) said that:

- for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

As identified earlier in Section 8 of this report, this Clause 4.6 request specifically seeks to vary the 15m maximum building height development standard contained in Clause 4.3 of SLEP 2012 in respect of the proposed rooftop digital sign.

The proposal seeks approval for the replacement of an existing externally illuminated static rooftop advertising structure with an internally illuminated digital advertising sign utilising the existing support steelwork and gantry.

Whilst the height of the current sign structure is not being increased, as identified in the plan extracts below, its highest point measured above the existing ground level is **19.13m**, which exceeds the LEP’s maximum **15m** building height limit, a variation margin of **4.13m**, or **27.5%**.

This section of the Clause 4.6 Variation Request report is required to focus on the extent of environmental impacts specifically related to the proposed components of height variations.

It is considered that these varied building components will have minimal environmental impacts on adjoining and surrounding properties for the following reasons:

### Compatibility of Scale in Broader Urban Context

The main building form of the Oxford Hotel has a height above ground level of approximately 13m, which falls within the current maximum LEP building height of 15m. The longstanding rooftop advertising sign structure above adds a further 6m height to the building, resulting in a current and proposed overall height of 19.13m.

The focus of this assessment is the proposed 4.13m variation to the LEP maximum height limit.

Historical photos of the subject site, and adjoining site along Oxford Street, the former McIlraith’s grocery store demonstrate the longstanding presence of large-scale advertising signs



on this corner of the site's intersection with Taylor Square. The form, scale and use of the current billboard advertising structure above the Oxford Street have essentially been maintained since the early 1980's.

The proposed digital conversion of the existing sign structure therefore maintains a scale and commercial use character consistent with both the longstanding advertising history of the site, as well as the more recent planning controls introduced for the Oxford Street Creative and Cultural Precinct, which includes the SLEP 2012 incentive to enable an Alternative Maximum Building Height of 24m on the subject site, provided that supporting provisions of Clause 6.60D of the LEP are satisfied.

## **Heritage**

As identified in Section 9 of this report, the Oxford Hotel is situated in a prominent position of high heritage significance whereby it is bordered by heritage buildings (and associated heritage listings) listings on all frontages. Located on the border of two significant state heritage curtilages, alongside its location within a Heritage Conservation Area with vantage points and views to vicinity heritage items, the setting and relationship of the Oxford Hotel to the heritage items are of high significance.

The current DA is accompanied by a Heritage Impact Statement prepared by Urbis which provides a comprehensive analysis of the impacts of both the existing static and proposed digital roof sign.

The HIS concludes that the proposed digitisation will have a minimal and acceptable heritage impact on the Oxford Hotel. It also notes that the proposal is for the replacement of an existing static billboard sign and that it remains consistent with the setting of the item and is characteristic of existing development along Oxford Street, as well as the desired character of the Oxford Street Creative and Cultural Precinct

On that basis, the assessment of the proposed height variation of 4.13m is considered to satisfy the relevant heritage and conservation objectives and controls of SLEP 2012, Sydney Development Control Plan 2012 and State Environmental Planning Policy (Industry and Employment) 2021.

## **Visual and View Impacts**

The Visual Impact Assessment report prepared by Urbis that accompanies this DA verifies the following:

- *The proposal seeks to replace an existing sign and does not introduce new or additional physical elements into existing compositions.*
- *The proposal will remain the only signage displayed on the rooftop of 134 Oxford Street where there is no proliferation of signs, and no risk of visual clutter or visual congestion.*



- *Signs of a similar height and scale will not be visible within the same composition as the proposal. The proposal will not visually compete with similar, surrounding signage within the immediate visual context.*
- *The proposal is a common type of advertising typically seen in similar contexts, it remains spatially separated from other signage and is differentiated in character so as to be individually perceived by viewers.*
- *The proposal satisfies all relevant planning policies and regulatory controls including the Industry & Employment SEPP 2021, Transport Corridor Outdoor Advertising & Signage Guidelines 2017 and the Sydney LEP 2012.*
- *The proposal does not block documented views, unique views to icons, heritage items or natural scenic and highly valued areas or features.*
- *The proposal is highly compatible with the desired future character for the Oxford Street Cultural and Creative Precinct, under Section 5.11 of the Sydney DCP.*

On that basis, the proposed LEP height variation of 4.13m, is considered to have minimal implications for the visual quality and view access of the Oxford Hotel and surrounding properties in this Precinct.

### **Overshadowing**

Given the limited bulk of the proposed sign structure, its south-east facing orientation, and setback from the street frontage, it is anticipated that varied height amount of 4.13m will have relatively minimal impact on the solar access of residential properties located to the north behind Oxford Street, as well as the adjoining public domain of Taylor Square and commercial properties opposite.

### **Privacy Impacts**

The advertising structure does not create any privacy impacts.

### **Building Bulk**

The retention of the existing structure, and the 4.13m height variation of the proposed digital sign, generates no additional building floor space or bulk above the Oxford Hotel building.

In summary, there are sufficient environmental planning grounds to justify the variation of the maximum building height development standard.



## 11 Conclusion

Strict compliance with the maximum building height development standard contained within clause 4.3 of the SLEP 2012 has been found to be unreasonable and unnecessary in the circumstances of the case. There are sufficient environmental planning grounds to justify the proposed variation. In this regard, it is reasonable and appropriate to vary the maximum building height development standard to the extent proposed. The proposed development is consistent with the objectives of the zone and the Secretary's concurrence is to be assumed.



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