

# **Attachment C**

**Clause 4.6 Variation Request - Advertising  
Display Area**



**Clause 4.6 Variation Request**  
**Section 3.17 – State Environmental Planning**  
**Policy (Industry and Employment) 2021**  
**Oxford Hotel**  
**134 Oxford Street, Darlinghurst**

**Prepared by Planning Lab**  
**Issued 12 December 2025 (Updated)**

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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, 45m<sup>2</sup>, advertising sign display area provision of Section 3.17 of the State Environmental Planning Policy (Industry and Employment) 2021, otherwise known as the Industry and Employment SEPP.

This request report should be read in conjunction with the Statement of Environmental Effects and other supporting technical reports that accompanies 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);
- Section 3.17 of the Industry and Employment SEPP, 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.

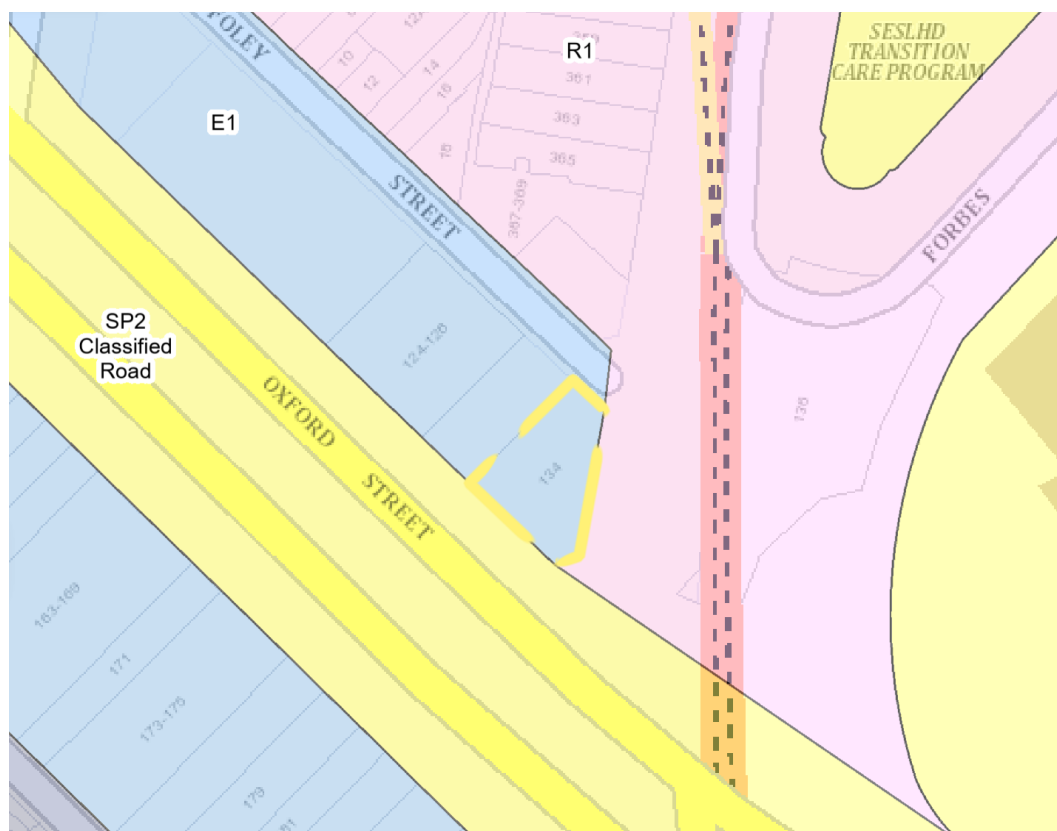
In accordance with clause 4.6(3) the applicant requests that the maximum advertising sign display area development standard be varied.

### 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?

Section 3.17 of the Industry and Employment SEPP states:

### **3.17 Advertising display area greater than 45 square metres**

*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) 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, or*

*(b) in the case of the display of an advertisement on transport corridor land, the consent authority is satisfied that the advertisement is consistent with the Guidelines.*

Whilst this control would ordinarily be considered as a prohibition for a display area of a sign, as identified in the Statement of Environmental Effects for the DA, the existing roof sign on the subject site has existing use rights under the Act, and that the proposed modifications can be considered under the Environmental Planning and Assessment Regulation 2021.

## 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 advertising sign display area development standard of Section 3.17 of the Industry and Employment SEPP 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 2**.





*Figure 2: 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 3**.

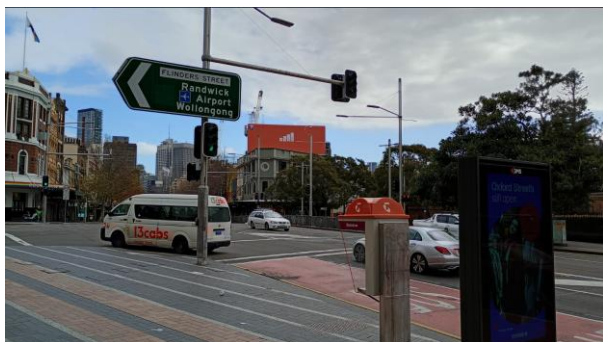




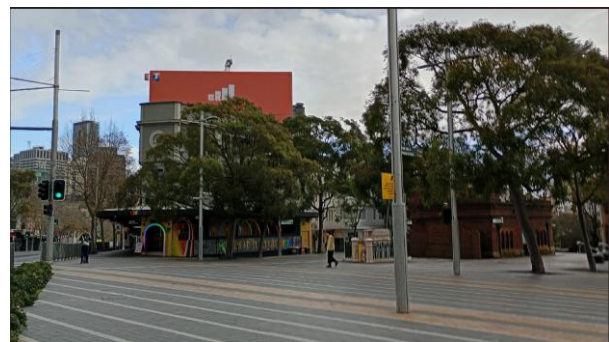
View from the south-east, opposite Oxford Street



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 3** – 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.

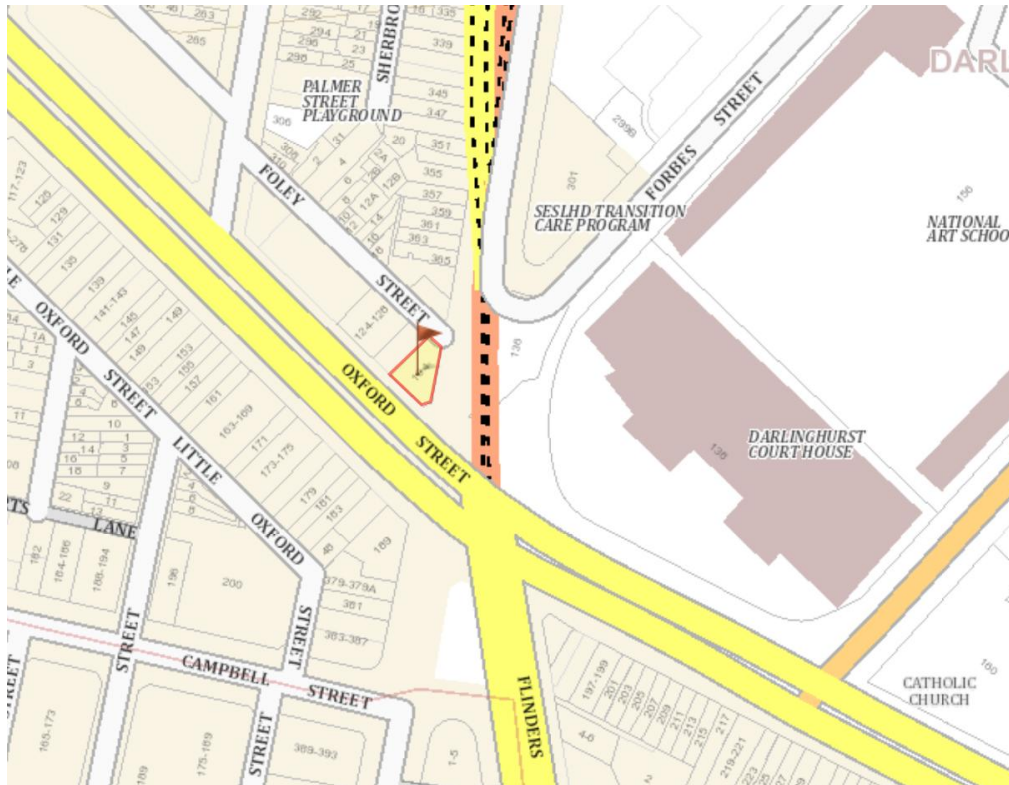


Figure 4 – Locality Map (Source: SIX Maps).

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 5 and 6 below.





**Figure 5** – View of existing roof advertising sign on 195 Oxford Steet (Source: Google Maps).



**Figure 6** – 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.



## 8 Extent of Variation to the Development Standard

This Variation Request accompanies a 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 45m<sup>2</sup> advertising sign display area development standard of Section 3.17 of the Industry and Employment SEPP 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 advertising display area of the current sign structure is not being increased, as identified in the plan extracts below, the proposed digital display area is **94m<sup>2</sup>**, which exceeds the SEPP maximum of **45m<sup>2</sup>**, a variation margin of **49m<sup>2</sup>**, or **108%**.



Figure 8 – Proposed Plan Elevations and Section (Source: oOh!Media)



## 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 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).

The above judgement focused on the determination of a DA lodged to Council involving a variation request of a development standard of a Council Local Environmental Plan.

Given that the subject development standard of this Clause 4.6 variation request is Section 3.17 of the Industry and Employment SEPP, the main focus of the *Wehbe* assessment for this DA



variation is the underlying intent and purpose of the roof sign size restriction sub-clauses, and demonstrating why strict compliance with the numerical development standard is unreasonable and unnecessary in the circumstances of the digital sign proposal.

As identified earlier in Section 8 of this report, this Clause 4.6 request specifically seeks to vary the maximum 45m<sup>2</sup> advertising sign display area development standard of Section 3.17 of the Industry and Employment SEPP in respect of the proposed rooftop digital sign.

Whilst the advertising display area of the current sign structure is not being increased, as identified in the plan extracts below, the proposed digital display area is **94m<sup>2</sup>**, which exceeds the SEPP maximum of **45m<sup>2</sup>**, a variation margin of **49m<sup>2</sup>**, or **108%**.

Section 3.17 of the Industry and Employment SEPP states:

**3.17 Advertising display area greater than 45 square metres**

*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) 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, or*

*(b) in the case of the display of an advertisement on transport corridor land, the consent authority is satisfied that the advertisement is consistent with the Guidelines.*

Whilst this control would ordinarily be considered as a prohibition for a display area of a sign, as identified in the Statement of Environmental Effects for the DA, and also verified in the Land and Environment Court matter, *oOh! Media Assets Pty Ltd v The Council of the City of Sydney and anor [2015] NSWLEC 1269*, the existing roof sign on the subject site has existing use rights under the Act established through a series of development consents granted by the City of Sydney Council, and that the proposed modifications can be considered under the Environmental Planning and Assessment Regulation 2021.

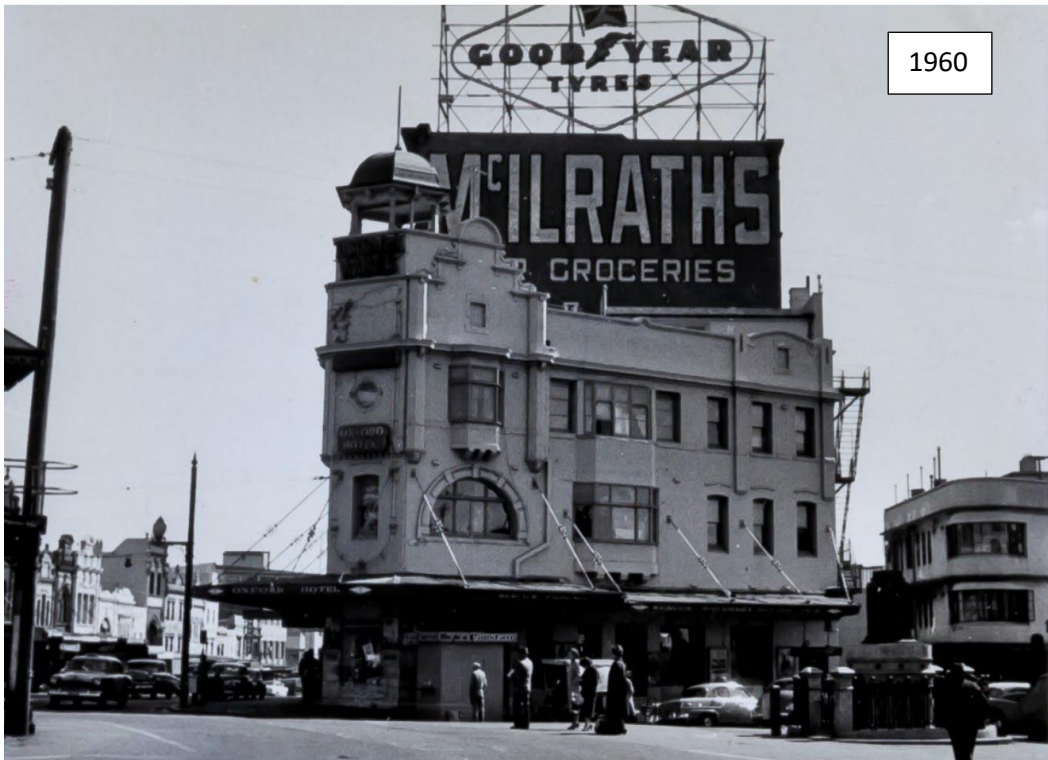
The sign's existing use rights is an important matter to consider under Clause 4.6(3)(a) in terms of the reasonableness of strictly complying with SEPP maximum size of 45m<sup>2</sup>, as compliance would effectively require an almost 50% reduction in the size of the current roof sign.

To fully consider the reasonableness and fairness of this compliance, it is important recognise that large scale advertising signage above the Oxford Hotel and the adjoining site of the the former McIlraths groceries building has been a prominent feature of the commercial enterprise character of this major intersection for over 70 years. The progressive images of this signage provided below highlight the scale of this signage:





1930



1960





1970



1992

**Figure 9** – Historical Images of Signage Above and Adjoining the Oxford Hotel (Source: City of Sydney)

Given the longstanding role that this large scale commercial signage has played in the history of this part of Oxford Street and Sydney, and the legitimate history of prior planning and Council approvals and licensing, it is considered unreasonable and unnecessary to require any proposal



to modify the existing roof sign above the Oxford Hotel to reduce the current size by up to 50% in order to strictly comply with Section 3.17 of the SEPP.

In addressing Section 3.17 (a) of the SEPP, it can be confirmed that the subject site is identified in the Oxford Street West Signage Precinct on the Signage Precincts Map under Section 3.16 of Sydney Development Control Plan 2012, and therefore the following provisions apply:

*(1) Signage is to be visually interesting and respond to the role of the Oxford Street as a retail and night-time activity precinct, as outlined in the locality statement in section 2 of this DCP and any relevant heritage significance statement.*

*(2) Signage is not to be located above awning level, or 4m where no awning exists. This may be varied where upper level signage is an integral part of the significance of a heritage building.*

*(3) The replacement, modification or conversion of an existing approved advertising structure to an electronic variable content advertising structure may be permitted subject to consent and compliance with Section 3.16.7 (Advertising structures and third party advertisements).*

The Statement of Environmental Effects prepared for the current DA provides a more detailed assessment of the digital sign proposal against these Precinct controls, as well as other signage related controls of the DCP and the Industry and Employment SEPP. The assessment identifies the following for the Oxford Street West Signage Precinct provisions:

As identified in the assessment comments for the Section 2 Locality Statement and Section 3.16.7, the proposed digital replacement of the existing static advertising sign is highly consistent with Council's objectives of promoting Oxford Street as a retail and night-time activity precinct, whilst also maintaining a respectful and complementary relationship with the heritage significance of the Oxford Hotel building and the heritage and character of the adjoining Taylor Square and Oxford Street precinct.

This assessment is supported by the comprehensive Heritage Impact Statement and Visual Impact Assessment reports that accompany the DA.

In terms of Section 3.17 (b) of the SEPP, whilst the proposed digital sign is not located within "transport corridor land", the subject site adjoins Oxford Street, a State Classified Road, and is therefore subject to the key assessment of Chapter 3 of the Industry and Employment SEPP, and the NSW Department of Planning and Environment's Transport Corridor Advertising and Signage Guidelines.

The Statement of Environmental Effects prepared for the current DA provides a detailed assessment of the environmental impacts, traffic safety and suitability of the location of the existing digital sign under the SEPP provisions. The assessment identifies the following consistency of the digital sign proposal with the aims of Section 3 of the SEPP:



The proposed digital signage is replacing a previously approved static sign and is compatible with the desired amenity of the area. The proposed sign effectively communicates an advertisement in a suitable location, indicated by the location of the sign being previously approved in relation to the static sign being replaced. The proposed digital signage is of a high-quality design and finish, removing the need for external lighting and manual replacement of advertisements.

Further technical studies accompany the DA, a Traffic Safety Assessment and a Lighting Impact Assessment, which both verify that the proposed digital sign will meet all appropriate safety and environmental performance standards, and support for the proposal.

On the basis of the above assessment, it is considered that the subject proposal has satisfactorily addressed *Wehbe test* “1. objectives of the development standard are achieved notwithstanding non-compliance with the standard” and therefore demonstrates that strict compliance with Section 3.17 of the SEPP through a reduction in the current size of the sign is unnecessary and unreasonable.

## **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.

In addition to the above assessment, 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 the advertising display area variation.

It is considered that the varied display area variation component of 49m<sup>2</sup> will have minimal environmental impacts on adjoining and surrounding properties for the following reasons:



## **Compatibility of Scale in Broader Urban Context**

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 illuminated advertising structure above the Oxford Hotel 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 and Alternative Maximum Floor Space Ratio of 4.5:1 (as compared to the current LEP maximums of 15m and 4:1) 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 Hotel and is characteristic of existing development along Oxford Street, as well as the desired character of the Oxford Street Creative and Cultural Precinct.

It is noted that the supporting technical reports for a current Draft Planning Proposal to list the Oxford Hotel building as a local heritage item do not contain any assessment or recommendations relating to the existing roof advertising structure.

On that basis, the assessment of the proposed advertising display area variation of 49m<sup>2</sup> 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 advertising display area variation of 49m<sup>2</sup> 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 display area 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 display area 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 the maximum 45m2 advertising sign display area development standard of Section 3.17 of the Industry and Employment SEPP.

## 11 Conclusion

Strict compliance with the the maximum 45m2 advertising sign display area development standard of Section 3.17 of the Industry and Employment SEPP 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 display area 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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