

Attachment A

**Report Prepared by External Planning
Consultant**

Recommendation

It is resolved that consent be granted to Development Application D/2017/1652, subject to the following:

- (A) the variation sought to Clause 6.19 Overshadowing of certain public places in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be supported in this instance; and
- (B) the requirement under Clause 6.21 of the Sydney Local Environmental Plan 2012 requiring a competitive design process be waived in this instance; and
- (C) the requirement under Clause 7.20 of the Sydney Local Environmental Plan 2012 requiring the preparation of a development control plan be waived in this instance;

Reasons for Recommendation

The reasons for the recommendation are as follows:

- (A) The proposal, subject to recommended conditions, is consistent with the objectives of the planning controls for the site and is compatible with the character of the area into which it will be inserted. It will provide a new unique element in the public domain which has been specifically designed to highlight Sydney's main boulevard and the important civic precinct of Town Hall and the Queen Victoria Building.
- (B) The proposed artwork is permissible on the subject land and complies with all relevant planning controls with the exception of overshadowing of Sydney Town Hall steps. While the proposal will result in some additional shadowing of the steps this impact will be minor and is outweighed by the positive impacts of the proposal.
- (C) The proposal is of a nature compatible with the overall function of the locality as a civic precinct in the heart of the Sydney CBD. The site is suitable for the proposed artwork and its construction will not give rise to any significant impacts either during construction or once commissioned.
- (D) The proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.
- (E) The 'Cloud Arch' will become an iconic symbol of Sydney and will both attract visitors and enhance the City's cultural life. It is consistent with the Sustainable Sydney 2030 Strategy which aims to increase street life in the city centre and will form an integral part of the planned transformation of Sydney.

Background

The Site and Surrounding Development

1. A site visit was carried out on 22 December 2017.
2. The site of the proposed 'Cloud Arch' artwork is the intersection of Park, Drutt and George Streets in the heart of the Sydney CBD. The intersection is adjoined by the Queen Victoria Building to the north-west, the Sydney Town Hall to the south west, the Woolworth's Building to the south east and the Galleries building to the north east. Uses surrounding the intersection are predominantly retail and commercial with the Sydney Town Hall forming a notable exception.
3. The site encompasses part of the intersection at George and Park streets and has an area of approximately 1,493sqm. The approved footings on which the artwork is to be supported, referred to as 'Footing A' and 'Footing B', are situated adjacent the Queen Victoria Building (QVB) at George Street and the Woolworths building adjacent to Park Street.
4. The site forms part of the broader CBD Light Rail project to be delivered by the NSW State Government. The project includes a future pedestrian boulevard along George Street between Hunter and Bathurst streets. Footing A is located adjacent to the light rail corridor and the Queen Victoria Building (QVB) at George Street. Footing B (the southern footing) is located within the Park Street roadway adjacent to the Woolworth's buildings at the north-eastern corner of George and Park Streets (refer Figure 1 below).
5. The proposed artwork is to be attached to the footings which have previously been approved by Council under development application D/2015/1891 on 15 August 2016 and a modification (D/2015/1891B) approved on 22 August 2017. The approved footings are entirely below ground.
6. The site itself is not a heritage item but is adjacent to a number of heritage items including the Queen Victoria Building, Bicentennial Plaza, Sydney Square plaza, Sydney Town Hall, Ward boundary marker, Hong Kong House (Former Gresham Hotel) and the St Andrews Cathedral group.

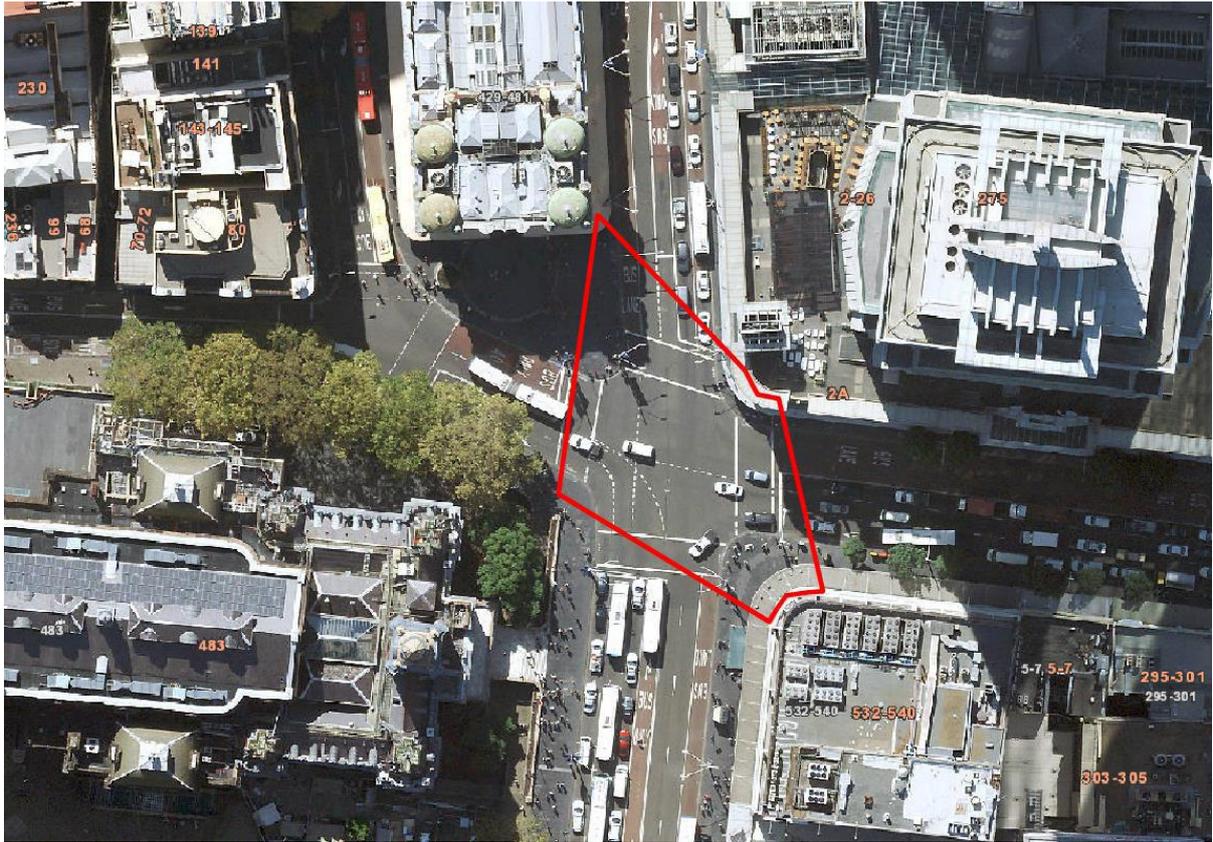


Figure 1: Aerial image of subject site and surrounding area

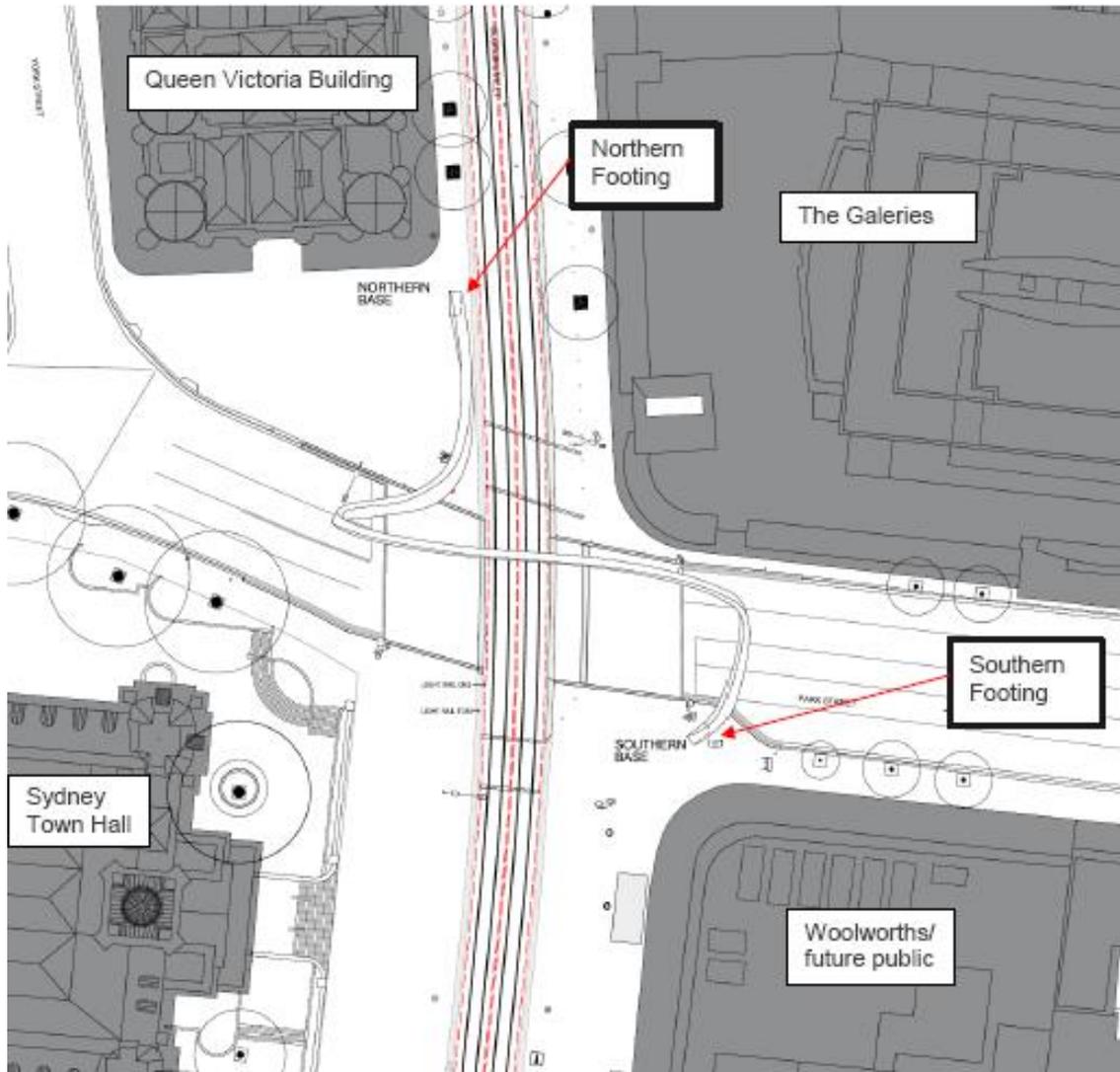


Figure 2: Location plan showing approved footings

Photos of the site and surrounds are provided below:



Figure 3: Site looking north west to Queen Victoria Building



Figure 4: Site looking south along George Street



Figure 5: Site looking north from Sydney Town Hall



Figure 6: Site looking east along Druiitt Street

Proposal

7. The application seeks consent for the construction of a public art sculpture known as the 'Cloud Arch' spanning over the intersection of George, Park and Druitt Streets. The Cloud Arch has been designed by renowned Japanese architect Junya Ishigami who in his design statement describes the artwork as follows:

"Sydney is about to be reborn as we look toward 2030. George Street will change significantly.

To plan a vehicle-free, pedestrian-only space at such a large scale in the heart of a major metropolis is considered progressive even at the global scale.

Green, Global and Connected are the characteristics of the new Sydney, and this new public space about to be created in George Street will be the exact manifestation of these qualities.

In disseminating this new image to the world, Sydney will be reborn as a new city in the consciousness of people everywhere.

Good public policy is not, in itself, enough – there is a need for a new symbol to embody and communicate these qualities to the world.

The new symbol should be something that allows the three qualities of Green, Global and Connected to be easily understood, shared, and remembered by every individual in this world.

The Cloud is that new symbol, comprehensible to all. The Cloud evokes comfort, openness and freedom.

Through freedom, it is connected to cloud computing which, in turn, links to the quality of a connected city so important to Sydney."

8. The artwork is to be constructed of steel box girders (16-28mm thick) with a white painted finish, and will taper as it rises, twisting and turning as it spans the street. The footings for the artwork are to be located below the ground and will be flush with the street surface. All underground works for the footings, form part of a separate development approval as noted above. The Cloud Arch will have a maximum height of 58.610m, with an approximate linear meterage of 159m and weight of 140 tonnes.
9. The artwork is proposed to be illuminated via recessed in-ground and adjustable up lights that will create the initial illumination from close-range as well as through pole mounted spot-lights which will progressively trace the path of the arch up and over the intersection. The pole mounted lights are required to illuminate the artwork above 10m in height.
10. Maintenance of the artwork is proposed as set out below:

Scope	Occurrence	Scope
Initial Inspection	6 month (initial)	Initial inspection 6-month post construction
Annual Inspection	Annually	First annual inspection 12 months after initial inspection.
Annual Wash Down	Annually	Lower 15m of arch to be washed down in conjunction with annual inspection.
Significant Inspection	Year 5 Year 15 and every 5 years after	Significant inspection of full arch. First significant inspection after 5 years. Next significant inspection after a further 10 years.

11. Plans and artist's perspectives of the proposed artwork are provided below.

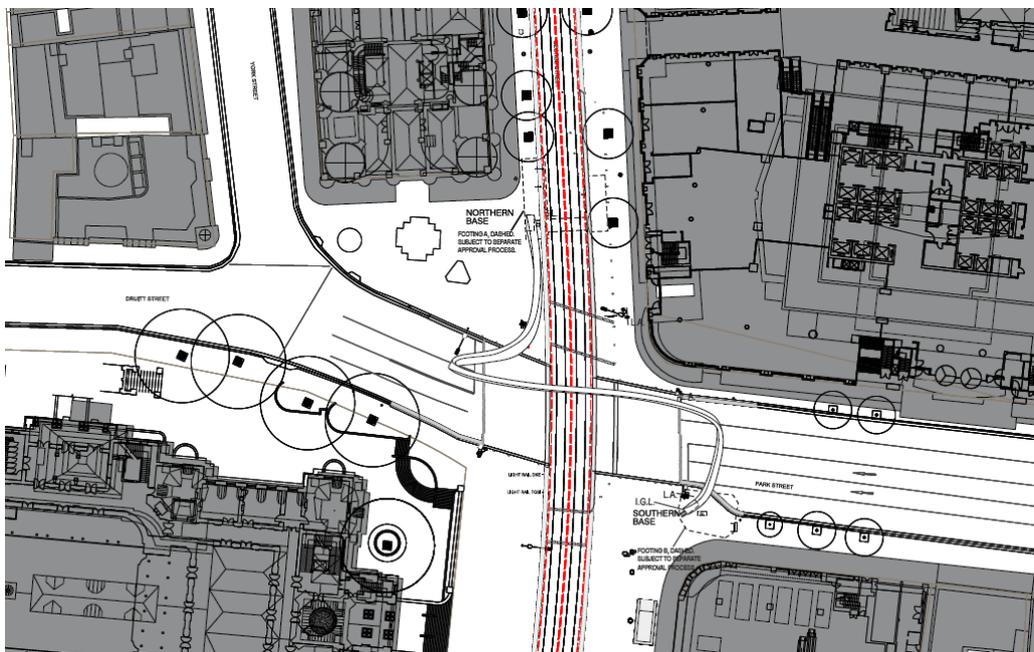


Figure 7: Plan aerial view

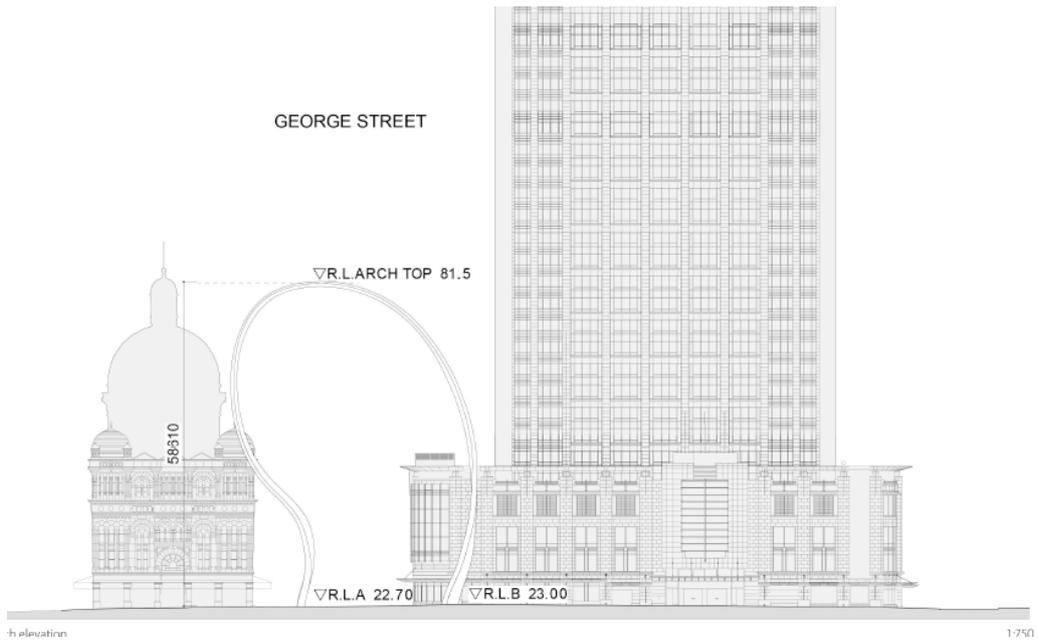


Figure 8: South Elevation

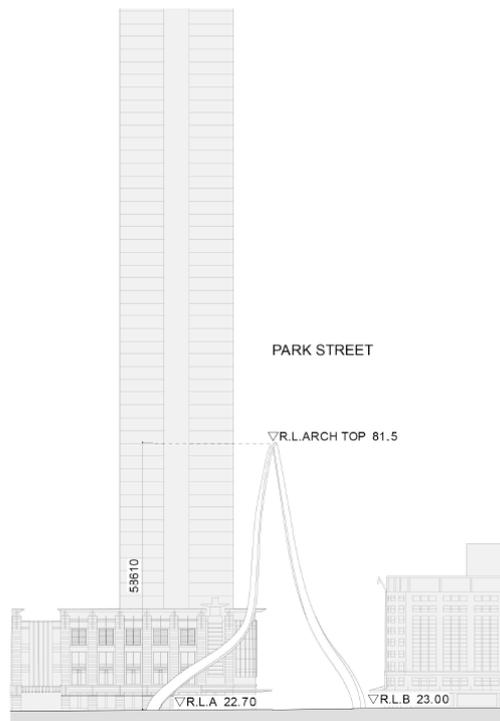


Figure 9: West Elevation

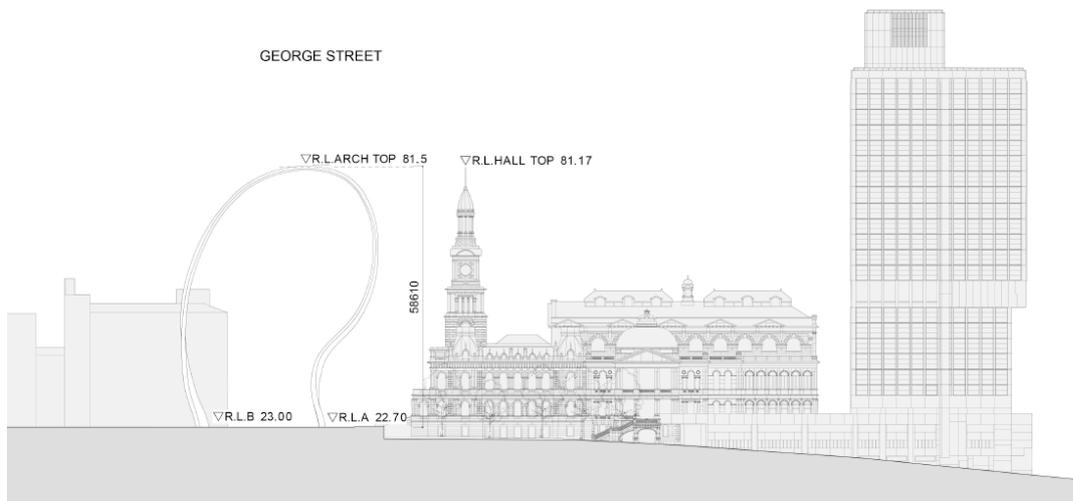


Figure 10: North Elevation

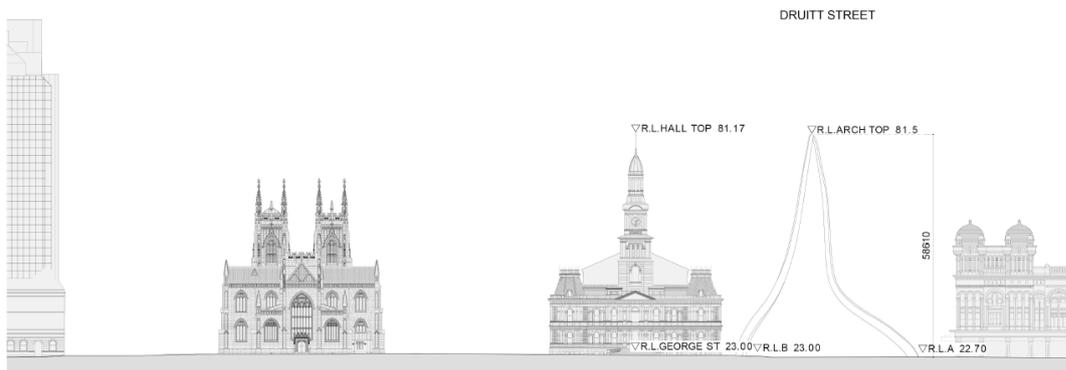


Figure 11: East Elevation

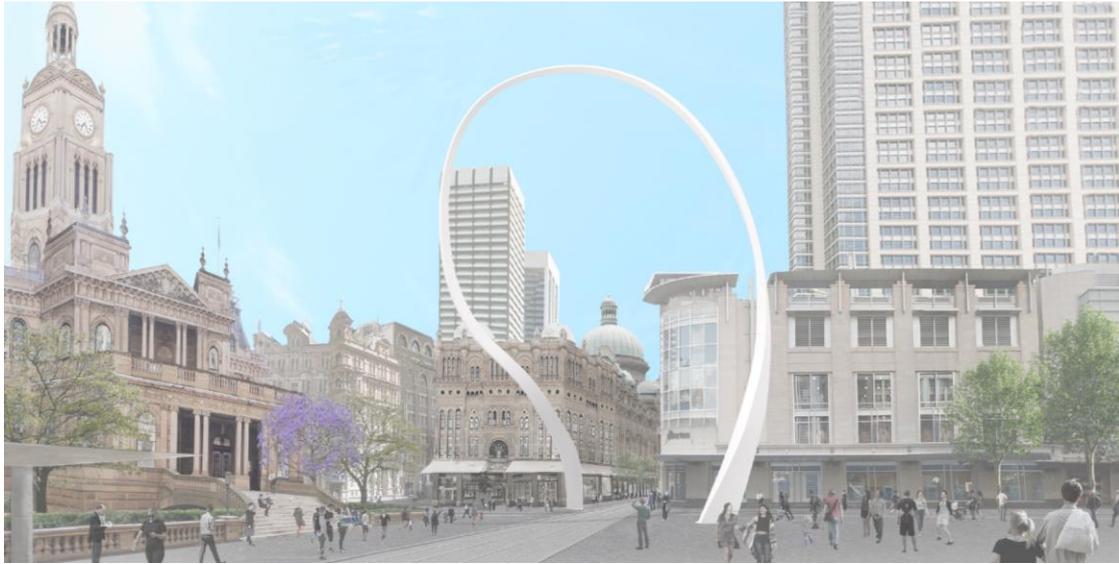


Figure 12: Artist's impression 1

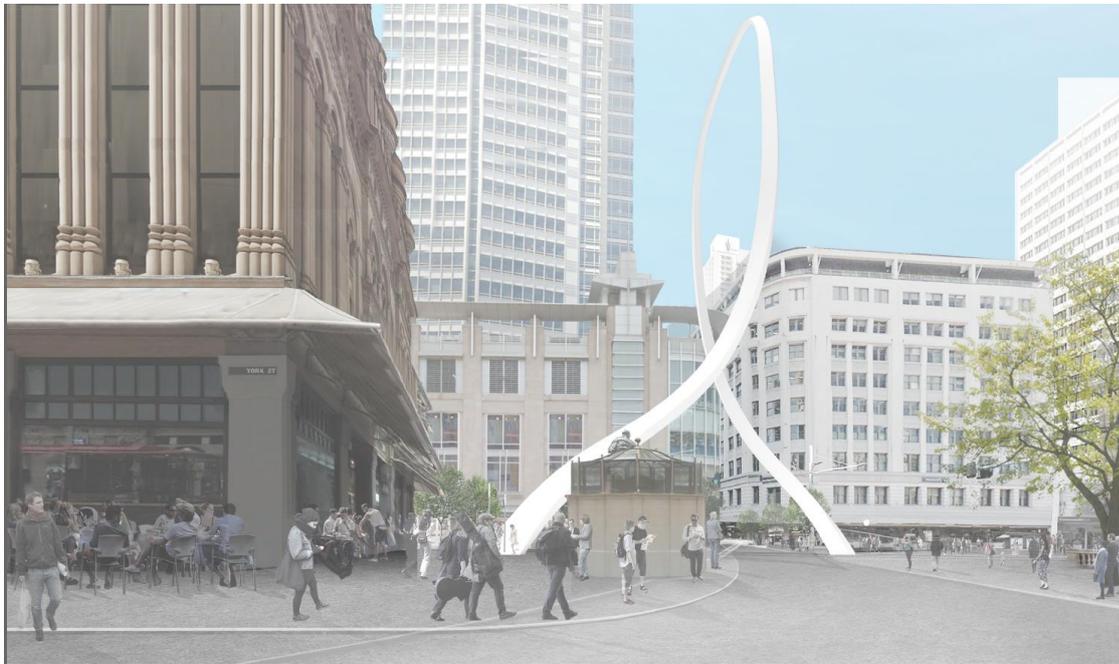


Figure 13: Artist's impression 2

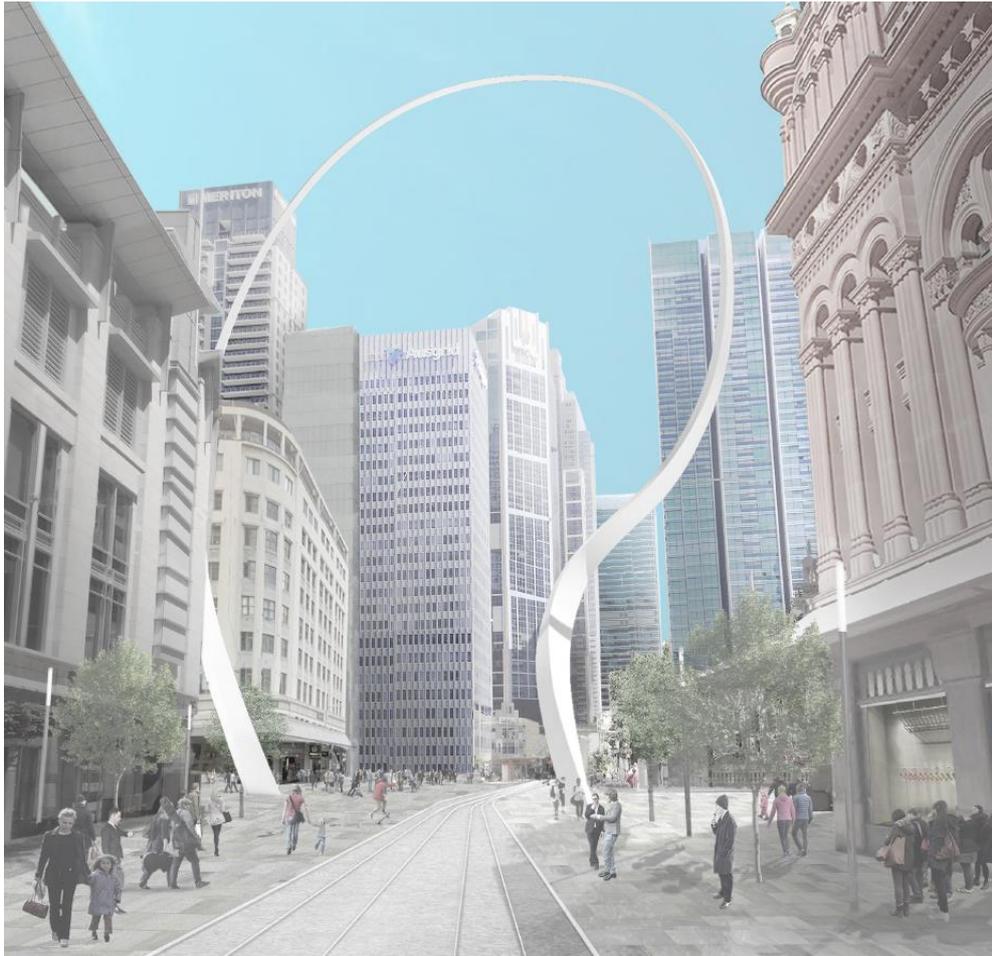


Figure 14: Artist's impression 3

History Relevant to the Development Application

12. As noted above the footings for the proposed artwork were approved by Council under development application D/2015/1891 on 15 August 2016. Originally only Footing A was approved as it was considered that Footing B was prohibited within the SP2 – Infrastructure zone.
13. D/2015/1891/A - On 20 December 2016, the original development consent was amended to incorporate Condition 2A, Footing A Conditions. As conditions were imposed by Roads and Maritime Services (RMS) and Transport for NSW (TfNSW) that applied to both Footing A and Footing B, the modification sought to clarify conditions that did not apply to the construction of Footing A.
14. D/2015/1891/C - On 15 August 2017, the development consent was further amended to permit minor design modifications to Footing A. The modifications were required to accommodate Light Rail works and specifically, related to the construction of the track slab on George Street. The modified design of Footing A was developed in association with TfNSW and CBD Light Rail Project affiliates.
15. D/2015/1891/B - On 22 August 2017, the development consent was finally amended to provide approval for Footing B following amendment of Sydney LEP 2012 to include

clause 7.26 'Public Art' which provides that development for the purpose of public art is permitted with consent on land in Zone SP2 Infrastructure.

Economic/Social/Environmental Impacts

16. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

State Environmental Planning Policy (Infrastructure) 2007

17. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

Clause 45

18. The application is subject to Clause 45 (Subdivision 2 Development likely to affect an electricity transmission or distribution network) of the SEPP as the development will be carried immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
19. In accordance with the Clause, the application was referred to Ausgrid which has provided its consent to the proposal subject to recommended conditions of consent. These conditions are included in the recommended conditions of consent.

Clause 85

20. The application is subject to Clause 85 (Development adjacent to a rail corridor) of the SEPP as the development has the potential to have an adverse effect on rail safety and will involve the use of a crane in air space above a rail corridor. In accordance with the Clause, the application was referred Sydney Trains for a period of 21 days and no objection was raised subject to the imposition of recommended conditions of consent.

Clause 101

21. The application is also subject to Clause 101 of the SEPP as the site has frontage to Park Road / Druitt Street / Cross City Tunnel, which is a classified road under Sydney LEP 2012. The application is considered to satisfy Clause 101 of the Infrastructure SEPP subject to conditions of consent, as it does not require site access, will not affect the safe or efficient operation of the road and is not a form of development sensitive to road noise or vehicle emissions.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

22. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
23. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;

- (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off;
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
24. The site is within the Sydney Harbour Catchment and eventually drains into the 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 SREP are not applicable to the proposed development.
25. The development is consistent with the controls contained with the deemed SEPP.

Sydney LEP 2012

26. The site is located part within the B8 Metropolitan Centre zone and part within the SP2 Infrastructure - Classified Road zone. The proposed use is defined as public art and is permissible in accordance with the land use table for the B8 zone and clause 7.26 Public Art which makes public artwork permissible in the SP2 zone.
27. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.6 Exceptions to development standards	Yes	<p>The proposal seeks to vary the development standard prescribed under Clause 6.19 Overshadowing of certain public places.</p> <p>See discussion under the heading Issues.</p>
5.10 Heritage conservation	Yes	<p>The subject site is located within the vicinity of a number of heritage items including The Queen Victoria Building, Bicentennial Plaza, Sydney Square plaza, Sydney Town Hall, Ward boundary marker, Hong Kong House (Former Gresham Hotel) and the St Andrews Cathedral group.</p> <p>See discussion under the heading Issues.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
<p>Division 3 Height of buildings and overshadowing</p> <p>6.16 Erection of tall buildings in Central Sydney</p>	Yes	<p>This provision technically applies as the artwork is defined as a building and has a height greater than 55m. The artwork complies with the relevant provisions and will not result in any adverse impact on the amenity of neighbouring buildings or public places and is compatible with its context.</p>
<p>6.19 Overshadowing of certain public places</p>	No	<p>The proposal will result in some additional overshadowing of Sydney Town Hall steps between the hours of 10.30–16.00 between 14 April and 31 August in any year contrary to the clause. Accordingly the application seeks to vary the development standard in accordance with clause 4.6 Exceptions to development standards.</p> <p>See discussion under the heading Issues.</p>
<p>Division 4 Design excellence</p> <p>6.21 Design excellence</p>	Yes	<p>The proposed development satisfies the requirements of this provision and is considered to represent design excellence having been selected following an international City Centre Public Art open expression of interest and tender in 2014. The EOI resulted in over 600 submissions from artists across the globe. The Cloud Arch was selected along with two other artworks by the expert evaluation panel. In addition Council's Design Advisory Panel has also indicated its support for the proposal which is considered to be 'world-class' public art.</p> <p>It is considered that the proposed design is contemporary and will provide an artistic insertion into the CBD that has been designed specifically to relate to its surroundings. It will comprise a new unique element in the public domain that will highlight Sydney's main boulevard and the important civic precinct of the Town Hall and the Queen Victoria Building as well as acting as a gateway for the new light rail. Its form and materiality represent design excellence</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
		<p>and will significantly contribute to the urban landscape of the CBD. It therefore represents design excellence as required.</p> <p>Having regard to the selection process undertaken it is considered that a competitive design process is unnecessary in the circumstances. Accordingly it is recommended that this requirement be waived in this instance.</p>

Part 7 Local Provisions - General	Compliance	Comment
7.20 Development requiring or authorising preparation of a development control plan	Yes	This clause applies as the proposed artwork is considered to be a building and has a height of greater than 55m. The preparation of a DCP is unnecessary in the circumstances and accordingly this requirement should be waived in this instance.
7.24 Development near Cross City Tunnel ventilation stack	Yes	This clause requires that consent must not be granted unless the consent authority is satisfied that a proposal will not adversely affect the dispersal of emissions from the Cross City Tunnel ventilation stack, and persons using a proposed development will not be unduly affected by those emissions. The proposed artwork will not adversely affect the dispersal of emissions nor will persons visiting the artwork be affected by the emissions.
7.26 Public Art	Yes	This clause provides that public art is permissible with consent in the SP2 zone subject to specified matters. In accordance with the clause the artwork will not result in any adverse impact on a heritage item or heritage conservation area and further will not have a significant adverse impact on the amenity of the public domain, including by overshadowing, wind or noise as outlined herein.

Sydney DCP 2012

28. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – Central Sydney

The subject site is located in the Central Sydney locality area and straddles the York Street and Sydney Square / Town Hall / St Andrews Special Character Areas. The proposed public artwork is considered to be compatible with the unique character of the area and design principles in that it will provide a new unique element in the public domain which has been specifically designed to highlight Sydney's main boulevard and the important civic precinct of Town Hall and the Queen Victoria Building. The Cloud Arch is intended to cement Sydney's reputation for creativity and culture in the 21st Century and to reinforce the visibility of the City's cultural life in the public realm. Further it will contribute to the establishment of Sydney as a cultural and creative city both nationally and internationally.

It is considered that the scale and sensitive design is appropriate to this important heritage precinct and will create a new iconic tourist destination for Sydney. The proposed artwork has been design with Council's plans for a new square opposite the Town Hall between George and Pitt Streets in mind and is intended to act as a focus for the civic life of the City into the future.

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements	Yes	The proposed public artwork is consistent with the DCP requirements for public art and the City Centre Public Art Plan which specifically provides for the artwork. It will form a creative and innovative part of the future streetscape and will make a positive contribution to the public domain.
3.2 Defining the Public Domain	Partial compliance	<p>The proposed development will enhance the public domain by the introduction of a new creative and highly sculptural artwork which will form a new iconic element within the City Centre. It will however result in some minor additional overshadowing of the Sydney Town Hall steps which is inconsistent with the DCP controls. The minor additional overshadowing is however considered acceptable given the limited impact, short duration of the additional shadows and the positive impacts of the proposal (refer discussion under issues section below).</p> <p>The proposal will not impede significant</p>

3. General Provisions	Compliance	Comment
		<p>views to heritage items and rather will frame these views and the new light rail being installed in George Street.</p> <p>The proposed artwork will not affect wind conditions within the area and has been designed to be structurally sound and able to withstand prevailing wind conditions.</p> <p>Concept level detail of the proposed lighting of the artwork has been submitted with the application however this information is noted to be subject to change. Accordingly it is considered that insufficient information has been provided to enable assessment of the proposed lighting and any associated impacts. It is therefore recommended that the proposed lighting not be approved and instead be subject to separate development approval. A condition to this effect is proposed.</p>
3.9 Heritage	Yes	<p>The proposed artwork is to be located in the vicinity of a number of significant heritage items. Accordingly a heritage impact statement has been submitted with the application. The application has also been referred to the NSW Heritage Office for comment.</p> <p>See further discussion under the heading Issues below.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed artwork will have a positive social impact as it will enhance the quality of the public domain and contribute to the cultural life of the City.</p>

5. Specific Areas	Compliance	Comment
Central Sydney	Partial compliance	<p>A minimum street frontage height of 20m and maximum of 45m is set for the Sydney Square Town Hall and St. Andrews Special Character Area. This requirement is not however considered to be relevant to the proposed artwork. The proposed artwork complies with</p>

5. Specific Areas	Compliance	Comment
		requirements for building exteriors and is generally consistent with other relevant provisions.

Issues

Setting and context

29. The proposed artwork is to be located in the heart of the Sydney CBD immediately adjacent to some of the City's most iconic heritage items. Further the intersection above which it is to 'float' is one of the busiest in the city centre, is highly active and a thoroughfare for pedestrians, buses, cyclists and the future light rail currently being installed in George Street. As conceived it is proposed that the 'Cloud Arch' will form a 'gateway' under which the activity of George Street will continue. It is intended that the artwork will reinforce the space as a space for people in the civic heart of the City where they are enveloped by an elegant cloud-like arch that tapers and twists as it rises about this important intersection that connects the City north-south and also east-west.
30. The 'Cloud Arch' is a modern structure which is clearly not consistent with the existing setting and context into which it is to be inserted. However, whilst the artwork is not considered to be 'consistent' with the existing context of the intersection, it is considered to be 'compatible' with it. The new structure will be a modern addition to a location which is currently characterised by heritage buildings and used primarily for retail, commercial and public purposes. The addition of the light rail to George Street and the pedestrianisation of the section of the street where the artwork is proposed (and where the future Town Hall Square is to be located) will ultimately change the existing context and character of the setting. In this context the artwork will form a modern insertion which will quickly become a significant feature in the precinct.
31. It is considered that the new artwork will 'frame' the light rail and the existing heritage buildings and will form a new attraction in the streetscape. It will become an iconic symbol of Sydney and, being highly visible from a wide area around, will draw people to it and the future Town Hall Square. This is consistent with the Sustainable Sydney 2030 Strategy which aims to increase street life in the city centre, with an emphasis on George Street itself. The Cloud Arch will thereby form an integral part of the planned transformation of Sydney.

Height, Scale and Bulk

32. The proposed artwork will have a maximum height of 58.610m (RL 81.5) above existing ground level which is just above the maximum height of the Sydney Town Hall spire (RL 81.17). It will therefore be significantly higher than nearby historic buildings however will be very limited in both bulk and scale given that it is constructed of steel box girders (16-28mm thick) and will taper as it rises and spans the street. Having regard to submitted elevations and artist's perspectives it is considered that the height bulk and scale of the proposal, while unique, is appropriate to the artwork's purpose and location. No adverse impacts will result.

Heritage

33. The site of the proposed artwork is not a heritage item nor is it in a heritage conservation area however it is located within close proximity of a number of significant heritage items including the Queen Victoria Building, Bicentennial Plaza, Sydney Square plaza, Sydney Town Hall, Ward boundary marker, Hong Kong House (Former Gresham Hotel) and the St Andrews Cathedral group. These items are all listed under Sydney LEP 2012 as heritage items and in addition the Queen Victoria Building, Sydney Town Hall and the St Andrews Cathedral group are all listed on the State Heritage Register.
34. To address the heritage impact of the proposal a heritage impact statement has been prepared by Urbis and submitted with the application. The assessment concludes that:

"Though it is acknowledged that Cloud Arch will have a degree of visual impact, the design is such that it maintains a commanding visual presence within the precinct without obscuring or dominating heritage items in the vicinity. The tapered and narrow form of Cloud Arch means that although it will form part of views to and from heritage items, it will not dominate or overwhelm them, and the items themselves remain able to be appreciated within their existing setting and from numerous vantage points.

Although a permanent artwork, it is reversible.

The proposed artwork will not diminish the identified historic character of the precinct; which exemplifies government, commercial and ecclesiastical architecture in Sydney in the Victorian and Federation periods. Rather, it will form a contemporary layer, reflecting the evolution of the city and reinforcing its landmark character as the city's civic and cultural centre, with Cloud Arch serving as the gateway to the new pedestrian street.

Although unapologetically contemporary, the artwork considers the proximate heritage items in its siting and form. In recognition of the significance of the Town Hall, Ishigami sought from the outset to emphasise and wrap around the building in designing the artwork, which spans the north-western and southeast corners of the intersection. Essential to this was a minimum height in excess of 56m to enable the arch to frame the clock tower. The dramatic cantilever was similarly employed to frame and engage with other important elements of the city.

Cloud Arch will be a contemporary injection into a historic and mixed-use cityscape, and a bold statement for this central city civic space. This aligns with world's best practice for central city public art pieces, as demonstrated in Section 4.2 of this report, and this installation will promote Sydney as a global city, and a leader in the public art sphere. The proposed art installation will also enhance the civic character of the immediate precinct and the heritage items in association."

35. The application has been referred to the NSW Heritage Office for comment given the heritage significance of adjacent buildings. The Heritage Office responded on 12 February 2018 stating that "the proposed Cloud Arch is not on land listed on the NSW State Heritage Register (SHR), but adjoins the eastern curtilage boundary of the Queen Victoria Building (QVB) and is close to the Sydney Town Hall, two items listed on the SHR". The letter further notes that "therefore, Heritage Council does not have an approval role in this instance".

36. Council's heritage specialist has provided advice on the proposal and has concluded that:

"The sculpture is sited on the key civic intersection of George and Druiitt/Park Streets. This is the location of a group of very significant, high quality, and prestigious buildings and art works..... Each of these buildings represent characteristic periods in the development of this high quality civic core of Sydney. The sculpture will have no direct physical impacts on the fabric or curtilage of the existing significant heritage buildings and art works. The artwork will, however, have significant visual impacts on the settings of these heritage buildings. This is clearly demonstrated in the plans and photomontages.

It is a large-scale and its sinuous form and white painted steel fabric is in sharp contrast to the traditional masonry forms of the buildings surrounding the intersection.

In particular, the sculpture will cut across views of the QVB from the south in George Street and from the east in Park Street. There will also impacts on views of the Town Hall from Park Street. These impacts are intrinsic to the artist's intent for the work. It is intended as a civic place maker as a successor and foil to the earlier grand monuments in the place. While it disrupts views from some locations, it also frames views of the heritage buildings. It has been intentionally designed at a scale commensurate with that of the QVB dome and Town Hall clock tower, but it is a sculpture, not a building, and would be clearly read as such.

The visual impacts cannot be readily ameliorated by adjustment to its siting as the proposed footings for the work are in the only available locations due to the network of pedestrian, services and transport tunnels under this place. The footings already have planning consent. Reducing the scale of the work would be counterproductive, as it would lose its ability to frame views and would merely disrupt.

The success or failure of this bold work in its context will depend on the highest quality of construction and the elimination of potential negative impacts such as harmonic vibration of the structure. The engineering details and construction management plan appear to anticipate and deal with these issues.

The lighting design appears to use existing smart poles and this is acceptable in principle. Given the significant impact of the work, it would be undesirable to introduce new ancillary lighting poles as these would further clutter the setting and detract from the new work.

The proposed work has a significant impact on the setting of the Town Hall, QVB, and Hong Kong House with a lesser impact on the setting of St Andrew's Cathedral. This impact only becomes acceptable if the artwork is resolved and constructed as documented in the application in order to meet or exceed the high standards of these existing civic monuments so that it can take its place among them. If it fails in future – either technically or aesthetically – it can readily be removed from the place with no physical impact on the heritage items.

As the work involves major change to the place, its current state needs to be archivally recorded prior to the construction of the sculpture. A consent condition is attached."

37. Having regard to the above it is considered that the heritage impact of the proposal is generally acceptable subject to it being constructed and maintained to a high standard. The heritage advice notes that the proposal will result in visual impacts on the existing setting of heritage items but that these will generally be acceptable given that the

proposal provides for the introduction of a contemporary addition to the street. Having regard to the heritage advice, and recommended conditions of consent, it is considered that the positive benefits of the proposal outweigh any negative visual impacts on heritage items and historic views.

Visual impact

38. The visual impact of the proposed Cloud Arch has been addressed by the applicant in both the heritage impact statement and in a separate visual impact assessment submitted with the application. The visual impact statement concludes:

"In summary, while the proposal is visually prominent and of a high magnitude, located within an area of high visual sensitivity, the high visual impact of the proposal must be considered in the context of the historical role of art.

The striking visual contrast between the proposed development and the surrounding buildings is readily understood as being intentional, not accidentally out of place. It is a bold gesture which draws attention to the scale, rhythm and geometry of the adjacent buildings because of its contrast, not in spite of it.

Similar to the Pyramide du Louvre by I.M. Pei, and the misunderstood (at the time) Vault by Ron Robertson-Swann, initially installed at the Melbourne City Square, these reflections of society and cultural change are an accepted part of our cities."

39. Council's Urban Design team has similarly concluded that the proposed artwork will not result in any significant adverse impact in terms of view loss and accordingly no objection to the proposal has been raised from an urban design perspective.
40. The design of the proposed Cloud Arch is intended to draw the attention of visitors to the City and to be a celebratory element in the street framing surrounding heritage buildings and acting as a gate through which the new light rail will pass and underneath which the activity of the City will transpire. While it will inevitably change the character of the existing intersection and views to nearby heritage items, it will not adversely affect these views. The artwork will add an unashamedly modern element to the intersection and to the wider City with existing views being generally maintained albeit with some minor alterations given the insertion of a new element. Where views are affected by the Cloud Arch the nature of the structure (slim line and floating) will ensure that any view obstruction is minor only. Accordingly it is concluded that on balance the visual impact of the proposal is acceptable.

Overshadowing and Solar Access

41. The proposed artwork will result in some additional shadowing of the Sydney Town Hall steps and Sydney Square although it is noted that due to the slender and narrow nature of the Cloud Arch form, the resultant shadow will be slim and fast moving.
42. Clause 6.19 Overshadowing of certain public places of Sydney LEP 2012 provides that "development consent must not be granted to development that results in any part of a building causing additional overshadowing, at any time between 14 April and 31 August in any year of Sydney Town Hall steps—between 10.30–16.00 and Sydney Square—between 11.00–16.00. The clause goes on to state that "development results in a building causing additional overshadowing if the total overshadowing of the relevant location during the specified times would be greater after the development is carried out than the overshadowing of that location during the specified times caused by buildings existing on the commencement of this Plan".

43. Shadow diagrams submitted with the application indicate that in relation to Sydney Square the proposal will not result in 'additional' overshadowing to the Square between 11.00–16.00 at any time between 14 April and 31 August in any year when compared to that which was cast at the date of the making of the plan (i.e. 14 December 2012). This is due to shadows that were cast by a temporary structure which was located around the Town Hall Clock Tower at that time and which is included in the definition of a 'building'. The temporary structure has since been removed and hence the prevailing shadow reduced from that which existed on 14 December 2012 when Sydney LEP 2012 was gazetted. When considering this reduction in shadow and the minor shadows that would be cast by the Cloud Arch, the overall impact will be a net reduction in shadow to Sydney Square.
44. This is demonstrated in the table below which has been extracted from the SEE submitted with the application. The table shows that there will be a net reduction in shadow. Accordingly it is considered that the proposal complies with clause 6.19 in respect of Sydney Square.

Date	Time	M ² of shadow from temporary structure on Clock Tower at commencement of SLEP (21 June 2012)	M ² of proposed shadow of <i>Cloud Arch</i>	Additional shadow (when comparing 21 June 2012 and proposed)
21 June	10:30am	33sqm	0sqm	Nil
21 June	11am	145sqm	31sqm	Nil (145-31= 114sqm)
21 June	11:30am	196sqm	23sqm	Nil (196-23 = 173sqm)
21 June	12midday	276sqm	0sqm	Nil (276sqm)
21 June	1pm	Nil	Nil	No change
21 June	2pm	Nil	Nil	No change
21 June	3pm	Nil	Nil	No change
21 June	4pm	Nil	Nil	No change

45. In relation to Sydney Town Hall steps, the shadows plans illustrate that the Cloud Arch will result in additional shadowing of the steps between 10.30–16.00 between 14 April and 31 August in any year. The additional shadow impact is summarised in the table below (also extracted from the SEE):

• 14 April	• Between 11am and 12pm	• At 11:30am - 10.6m ²
• 21 June	• Between 11am and 11:45am	• At 11:00am – 8m ² • At 11:30am – 14.9m ²
• 31 August	• Between 11am and 12pm	• At 11:30 - 11.2m ²

46. As stated in the SEE the maximum additional shadow that would be cast by the Cloud Arch on the Town Hall Steps is 14.9m² at 11.30am on 21 June. This represents 21% of the total area of the steps (approximately 71m²). The applicant claims that this impact is minor and that the shadows are fast moving given the nature of the Cloud Arch structure. A Clause 4.6 variation request has therefore been submitted seeking to vary the development standard contained in Clause 6.19 which states that approval must not be granted to any building that results in additional overshadowing of the steps between 10.30–16.00 between 14 April and 31 August in any year.
47. Clause 4.6(8) states that the clause does not allow development consent to be granted for development that would contravene...."(cg) clause 6.19 (Overshadowing of certain public places), except in respect of Australia Square Plaza, Chifley Square, First Government House Place and Sydney Town Hall steps". Accordingly it is available to Council to vary the development standard under clause 6.19 in relation to additional overshadowing of Sydney Town Hall steps.
48. The following environmental planning grounds have been put forward by the application to justify contravening the development standard:
- "any impacts associated with the proposed development are acceptable, particularly as the length of time and area of affected land is minimal
- the quality and usability of the public domain is unchanged by this minor non-compliance
- the variation does not result in unreasonable adverse amenity impacts on adjacent land
- the variation does not diminish the development potential of adjacent land, and
- the unique nature of the proposal in this important civic precinct contributes to the acceptability of the additional shadow."
49. The applicant has also argued that the variation is well founded for the following reasons:
- "Cloud Arch forms part of the City of Sydney's City Centre Public Art Plan that is intended to complement the NSW Government's Light Rail Project aimed at transforming the public domain.
- Cloud Arch will signify George Street, the civic spine of the City, drawing people from the harbour into the heart of the City centre. An international competitive process was undertaken by the City and since the design competition, the detailed design has progressed to refine the materials and finishes and overall improve the design outcome for the site and its relationship to its location.
- It is our view that to force compliance in this circumstance would be antipathetic to the inherent flexibility provided by clause 4.6, thereby hindering the attainment of its objectives."
50. The submitted clause 4.6 variation request is considered to be well founded. The objective of clause 6.19, although not specifically stated in the LEP, is considered to be to ensure that appropriate levels of sunlight access is maintained to Sydney Town Hall Steps during the mid-morning to early afternoon period throughout the year for the enjoyment of users of the significant public place. While the proposal will result in

some additional shadow during this period, the impact of the additional shadow is minor and will move quickly due to the nature of the proposed artwork structure. The impact will be limited to a small part of the steps only (at worst case 21% of the area of the steps) and will only occur for the single hour between 11am and 12 noon between mid-April and the end of August (i.e. 4.5 months). It is therefore considered that the proposal is consistent with the objectives of the zone.

51. The proposal will not give rise to any matters of State or regional significance and is not contrary to the public interest. There would therefore be no public benefit in maintaining the standard in this instance. Further it is considered that requiring compliance with the standard in this instance would hinder attainment of the objectives of the Act. Site specific circumstances also exist which justify the variation in this instance.
52. On balance then it is considered that the public domain enhancement benefits that will result from the proposed artwork would adequately offset the minor adverse shadow impact that will result from the proposal. The proposal is consistent with the zone objectives, and is in the public interest. The proposed variation is considered to be justified in the circumstances and is well founded. Accordingly it is considered that the proposal is acceptable in the circumstances of the case and accordingly the development standard should be varied in this instance in accordance with clause 4.6 of Sydney LEP 2012.

Lighting

53. Lighting of the Cloud Arch is proposed to be through a number of recessed in-ground lights at low base locations with adjustable up lights to create the initial illumination from close-range. Pole mounted spot-lights are also proposed which progressively trace the path of the arch up and over the intersection for heights above 10m.
54. As outlined in the lighting concept report submitted with the application the proposed lighting is intended to emphasise the sinuous form of the artwork together with its flowing and spiralled path, by capturing the visible underside and allowing the opposing surface to sit in contrast. This is intended to allow the viewer to appreciate the movement of the arch from anywhere on the ground plane, as well as changes in the form when travelling around or underneath the sculpture.
55. The lighting concept report however notes that the proposed lighting design is subject to change and does not provide sufficient detail to enable an assessment of the impact of the proposed lighting. Council's Senior Engineer - Lighting has raised concerns that "the proposed spot lighting is likely to produce unacceptable amount of waste light that will spill into the night sky" and that "further details are required to enable an assessment of light spill impacts". Accordingly it is considered that the proposed lighting should not be approved as part of the subject application and rather should be subject to a separate development approval. A condition of consent to this effect is therefore recommended.

Transport

56. The proposed Cloud Arch will float above the intersection of Park and George Streets and will be supported by the approved footings located outside of the road reservation to the north-west and south east of the intersection. The footing locations have been agreed by RMS and TfNSW (subject to recommended conditions) as part of DA/2015/1891.

57. Transport for NSW (TfNSW) has raised some concerns in relation to the proposal, specifically in relation to road safety and the need for further assessment of the safety impacts of the proposal for all modes of transport both during construction and operation. Concerns have also been raised regarding the impact of wind movement on the structure and implications for clearance dimensions, timing of construction and potential impact on the Sydney Light Rail construction program, construction management requirements and matters which should be referred for Sydney Trains approval. TfNSW has recommended conditions of consent to address these concerns and has indicated that subject to the imposition of these conditions it does not object to the proposal.
58. Partly addressing matters raised by TfNSW, a road safety audit (TTPP, 4 May 2018) has been submitted as additional information to support the application in response to issues raised. The audit concludes that generally the proposed sculpture represents a low risk to road safety however there is a medium to high risk that the location of the southern base of the sculpture immediately adjacent to the traffic signal lantern in Park Street will obscure motorists views to the traffic signal and no left turn and local traffic only sign. This may result in motorists not stopping on a red light or turning left where this is not allowed and may lead to incidents with other road users. The road safety audit notes that this issue is being dealt with by widening the kerb blister in this location by 500mm, moving the signal pole 500mm north, and including an outreach arm to the signal pole to ensure the signal will be within view of motorists. The no left turn and local authorised vehicles only signs will also be located on the outreach arm to ensure visibility. This is being coordinated between City of Sydney and TfNSW and RMS and is considered appropriate to address the safety risk. The traffic safety audit does not identify any other significant traffic risks as a result of the proposed sculpture.
59. Council's transport planner has also reviewed the proposal and has noted that the application can be supported on traffic and transport grounds. A concern has however been raised that no protective measures are proposed to restrict pedestrians or vehicles going close to the foundation or lower part of the structure and regarding the pedestrian head clearance. A condition of consent has been recommended requiring that further details of pedestrian head clearance above the footpath level and details of measures to prevent pedestrians going too close to the structure be submitted for approval prior to the issue of a construction certificate.
60. Council's road safety officer has also reviewed the application and has concurred with issues raised in the traffic safety audit and by the RMS in relation to crash impacts. Given the intersection's crash history it has been recommended that in ground pedestrian lights be installed at the location. A concern has also been raised regarding urban climbing and whether there is a need to install security features in this regard. A condition of consent is also proposed in relation to these matters.
61. RMS has advised that subject to implementation of the design measures proposed in the traffic safety audit and the submitted Statement of Structural Design Intent (and a condition requiring compliance with these matters) it does not object to the proposal.
62. In summary subject to recommended conditions of consent it is considered that the proposal is acceptable from a transport, traffic and road safety perspective.

Construction Management

63. It is proposed that the Cloud Arch would be fabricated in sub-sections approximately 20m maximum in length, which would be transported to site. The sub-sections are to be site welded on the ground into compound sections which would then be erected in 5 lifts and site welded together above the ground. Construction is proposed to be

scheduled over six weekends and is intended to be coordinated with bus operations and the commissioning and testing of the light rail which would be undertaken concurrently.

64. To address the construction impacts a detailed construction methodology has been prepared and is provided in the construction management plan submitted with the application.
65. The construction methodology has further been considered by RMS / TfNSW who has recommended conditions of consent in relation to the timing of construction (and need to program to minimise impact on the Sydney Light Rail Project) and requirements for a detailed Construction Pedestrian and Traffic Management Plan. It is proposed that these conditions be applied to any consent.

Other Impacts of the Development

66. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

67. The proposal is of a nature compatible with the overall function of the locality as a civic precinct in the heart of the Sydney CBD. The site is suitable for the proposed artwork and its construction will not give rise to any significant impacts either during construction or once commissioned.

Internal Referrals

68. The conditions of other sections of Council have been included in the proposed conditions.
69. Council's Design Advisory Panel also reviewed the proposal and indicated that it supports the artwork whilst recommending that clarification be sought regarding the coordination of permanent fixtures and fittings in the public domain delivered as part of the Sydney Light Rail Project at the base of the artwork is recommended. A condition of consent to this effect is proposed.
70. The Panel has also identified that lighting of the Cloud Arch is a fundamental concern which requires further design development. In this regard it is noted that due to insufficient information being included in the application lighting is to be excluded from any approval and be subject to a separate development application.
71. The Panel further indicated that resolution of the junction between the ground and arch structure requires further design development and recommended prototyping of the 'white' paint finish under natural and artificial lighting conditions during the day and at night. Conditions of consent are recommended in relation to these matters.

External Referrals

Notification, Advertising and Delegation (Submission(s) Received)

72. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and

advertised for a period of 40 days between 11 December 2017 and 19 January 2018 (Note: additional days allowed as advertised over the holiday period) in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification there were seven (7) submissions received. Issues raised in the submissions are discussed below:

- (a) Object to the design and aesthetic qualities of the proposed artwork which are considered to be unacceptable and unattractive. Final artwork is not as originally exhibited, is inconsistent with ribbon-like concept and has lost its lightness and fluidity.

Response - The design and aesthetic quality of any artwork is necessarily a subjective matter. Whilst a number of objectors have raised concerns regarding the design of the artwork, it has been selected by a panel of experts in accordance with Council's City Centre Public Art Strategy. The proposal has also been reviewed by Council's Public Art Advisory Panel (which provides expert independent advice on public art to Council) on a number of occasions and which has indicated its ongoing support for the proposal.

- (b) Artwork does not perform any functional purpose which is a requirement of all the recognised beautiful structures in the world.

Response - Many iconic artworks across the world have no functional purpose other than to beautify a space and contribute to the cultural life of a city. Some such examples include: Anish Kapoor's 'Cloud Gate' in Chicago and Eero Saarinen's Gateway Arch at the Jefferson National Expansion Memorial in St Louis.

- (c) The proposed artwork will present a risk of terrorism or catastrophic failure to the City.

Response - The proposed design has been structurally certified by a qualified structural engineer and is therefore understood to be structurally sound. Conditions of consent will also be applied to this effect. Whether or not the proposed artwork would become a target for terrorism is not a matter that can be considered under this planning assessment.

- (d) The proposed artwork is a waste of money which should be spent on Council services. The argument that the artwork is reversible is not valid given the cost.

Response - The cost of the proposed artwork is not a relevant consideration for the planning assessment and rather is a matter for Council as the applicant. The artwork has been assessed to be appropriate regardless of the fact that it is reversible.

- (e) The proposal is inconsistent with the heritage character of the area and will adversely impact on views to nearby State significant heritage items. The proposal is also inconsistent with basic principles of heritage planning and practice as detailed in the Burra Charter. Other less sensitive sites exist on which the Arch could be sited.

Response - As outlined above it is considered that the proposal is compatible with the context and setting into which it is to be inserted. It has been concluded that it will not result in any significant adverse impact on neighbouring heritage

items. Whilst alternate sites may exist the application has been submitted for the subject site and is therefore assessed herein.

- (f) The proposed artwork is not in the public interest. Concern raised that public opinion should be carefully considered in location of artworks in the public realm.

Response - Having regard to the subject assessment, it has been concluded that the proposed artwork is in the public interest and will result in significant benefits to the City and its visitors. Submissions made in respect of the proposed artwork have been carefully considered herein.

- (g) There is a lack of greenery in the City and too many structures.

Response - The proposal does not result in the removal of any existing landscaping in what is a highly urban location in the centre of the Sydney CBD. The replacement of the proposed artwork with trees or other landscaping is not considered appropriate in the subject location.

- (h) Is the proposed artwork lighting to be solar powered and if not why not?

Response - The proposed lighting of the artwork is not to be solar powered and rather comprises recessed in-ground lights and a number of pole mounted spot lights. These forms of lighting are not suited to solar power however are appropriate given the intent and nature of the proposed public artwork and the specific requirements applicable to lighting within the public domain. Notwithstanding approval of the proposed lighting is not proposed as part of the subject application as insufficient information has been provided to enable a proper assessment.

- (i) The proposed footings are intrusive, large and clunky and along with the base of the arch will intrude on views to the QVB, Town Hall and Gresham Hotel?

Response - The footings have previously been approved and are not the subject of the current DA. View impacts have been addressed above and are not considered on balance to be adverse.

- (j) Examples of public artworks elsewhere cited in the application as precedents are not relevant to the current context. Sydney has poor track record of commissioning public artworks.

Response - The proposed artwork has been assessed to be appropriate on its merit. Sydney's track record in relation to public art is not a relevant consideration in the subject assessment.

- (k) Proposed artwork will adversely affect pedestrian flows in the City.

Response - This matter has been carefully considered and conditions of consent are proposed to ensure pedestrian safety. The artwork itself will not significantly impede pedestrian flow paths however a condition is proposed in relation to head height for pedestrians.

- (l) Proposed artwork should not be commissioned prior to final design of Town Hall Square.

Response - The artwork design and location has had regard to the future development of Town Hall Square and will not prejudice or impede future designs for the Square given the proposed location.

Public Interest

73. It is considered that the proposed artwork will have no detrimental effect on the public interest, subject to appropriate conditions being proposed. The proposed artwork will enhance the public domain and will provide a new iconic element in the heart of the Sydney CBD which will both attract visitors and enhance the City's cultural life. It is therefore considered that it is in the public interest.

S61 Contribution

74. The cost of the development is in excess of \$200,000 and is therefore subject to a development levy pursuant to the Central Sydney (Section 61) Contributions Plan 2003. Under the Plan a contribution of \$113,000 is required (1% of the development cost).

Relevant legislation

75. The Environmental Planning and Assessment Act 1979, Heritage Act 1977 and Roads Act 1993.

Conclusion

76. The proposed 'Cloud Arch' artwork to be installed at the intersection of Park/Druitt and George Streets in the heart of the Sydney CBD is considered to be compatible with the character of the area into which it will be inserted and will provide a new unique element in the public domain which has been specifically designed to highlight Sydney's main boulevard and the important civic precinct of Town Hall and the Queen Victoria Building. It is intended that the Cloud Arch will cement Sydney's reputation for creativity and culture in the 21st Century and reinforce the visibility of the City's cultural life in the public realm. Further it seeks to contribute to the establishment of Sydney as a cultural and creative city both nationally and internationally.
77. The proposed artwork is permissible on the subject land and complies with all relevant planning controls with the exception of overshadowing of Sydney Town Hall steps. While the proposal will result in some additional shadowing of the steps this impact will be minor and is outweighed by the positive impacts of the proposal.
78. It is considered that over time the 'Cloud Arch' will become an iconic symbol of Sydney and will both attract visitors and enhance the City's cultural life. The proposal is consistent with the Sustainable Sydney 2030 Strategy which aims to increase street life in the city centre and will form an integral part of the planned transformation of Sydney.

79. Accordingly it is recommended that the proposal be approved subject to recommended conditions of consent.

A handwritten signature in black ink, appearing to read 'H. Miller', with a long horizontal flourish extending to the right.

HELENA MILLER, MG PLANNING PTY LTD