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## **Planning Proposal – Public Exhibition – 1-11 Oxford Street, Paddington – Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendment**

**File No: X021737**

### **Summary**

Oxford Street and its vicinity has long been appreciated as a creative and cultural precinct both locally and internationally. The areas land use and built form diversity contributes significantly to this character, hosting a real mix of businesses, educational institutions, health facilities, workers and visitors. The City of Sydney recognises this by proposing an Eastern Creative Precinct centred on Oxford Street as part of its draft Local Strategic Planning Statement. It aims to support existing and emerging employment clusters within the area and capitalise on the areas proximity to long term establishments including the National Art School and St Vincent's Hospital.

November 2018, the proponent requested site-specific amendments to Sydney Local Environmental Plan 2012 (the LEP) and Sydney Development Control Plan 2012 (the DCP) for 1-11 Oxford Street, Paddington, the former Academy Twin Cinema. The request sought to increase the height and floor space ratio for a medical hotel and medical and educational facilities related to St Vincent's Hospital.

The proposed increase in height and floor space ratio (FSR) is to incentivise redevelopment of 1-11 Oxford Street for visitor accommodation, health services facility and entertainment facility in a manner that conserves the building's contribution to the heritage significance and character of the Paddington Urban Conservation Area and retains the structural integrity of the State listed Busby's Bore which runs underneath the site.

The proposal retains the existing facade and rooms fronting Oxford and South Dowling Streets, with excavation and new development limited generally to the footprint of the two cinema spaces, which have been heavily modified over time. The proposed development standards permit a two, part three storey rooftop addition setback within an angled roof plane to respect the existing three storey character of 1-11 Oxford Street when viewed from the street. The proposal indicates the controls will facilitate a mid-scale hotel with approximately 102 rooms with supporting medical infrastructure.

The planning proposal, shown at Attachment A, seeks to amend the FSR from a maximum of 2.5:1 to 2.95:1 above ground. A minimum of 300 square metres and 400 square metres of additional floor space is required at basement level for entertainment facility and health services facility use respectively, in order to provide for future theatre or live music space and medical or health services space. The entertainment space is consistent with the proponent's request, the City's proposed Eastern Creative Precinct and the Resolution of Council from 10 December 2018 identifying the need for additional small to medium sized performance spaces. The planning proposal also amends the maximum height control to the approximate height of the existing building. The existing building height is 20 metres and the control will be amended from 15 metres to RL 68.655 metres equivalent to 21.6 metres. These increased development standards will only apply to hotel or motel accommodation uses, with entertainment facility and health services facility uses at basement levels.

To deliver an appropriate urban design, heritage, sustainability and public domain outcome, it is also proposed to amend the DCP to include site-specific provisions as shown at Attachment B. The draft DCP building envelope will provide for lower street frontage heights and setbacks for the top two levels and protect neighbouring terraces to the south from additional overshadowing. Further provisions in the draft DCP for built form, heritage conservation, public domain, loading, servicing, access and sustainability will guide appropriate outcomes when the detailed design is resolved at subsequent stages.

This report seeks approval from the Central Sydney Planning Committee to submit a planning proposal to amend Sydney Local Environmental Plan 2012, as it applies to the site, to the Department of Planning, Infrastructure and Environment for Gateway Determination. Approval is also sought to publicly exhibit the planning proposal in accordance with the gateway determination alongside an associated draft amendment to Sydney Development Control Plan 2012.

## Recommendation

It is resolved that:

- (A) the Central Sydney Planning Committee approve Planning Proposal: 1-11 Oxford Street, Paddington shown at Attachment A to the subject report, for submission to the Department of Planning, Infrastructure and Environment with a request for Gateway Determination;
- (B) the Central Sydney Planning Committee approve Planning Proposal: 1-11 Oxford Street, Paddington shown at Attachment A for public authority consultation and public exhibition in accordance with any conditions imposed under the Gateway Determination;
- (C) the Central Sydney Planning Committee note the recommendation to Council's Transport, Heritage and Planning Committee on 12 August 2019 that Council seek authority from the Department of Planning, Infrastructure and Environment to exercise the delegation of all the functions under section 3.36 of the Environmental Planning and Assessment Act 1979 to make the local environmental plan to put into effect Planning Proposal: 1-11 Oxford Street, Paddington;
- (D) the Central Sydney Planning Committee note the recommendation to Council's Transport, Heritage and Planning Committee on 12 August 2019 that Council approve the draft Sydney Development Control Plan 2012 - 1-11 Oxford Street, Paddington, shown at Attachment B to the subject report for public authority consultation and public exhibition concurrent with the Planning Proposal;
- (E) authority be delegated to the Chief Executive Officer to make any minor variations to Planning Proposal: 1-11 Oxford Street, Paddington, following receipt of the Gateway Determination; and
- (F) authority be delegated to the Chief Executive Officer to make any minor variations to Draft Sydney Development Control Plan 2012 - 1-11 Oxford Street, Paddington, to correct any drafting errors or to ensure it is consistent with the Planning Proposal following the Gateway Determination.

**Attachments**

**Attachment A1.** Planning Proposal: 1-11 Oxford Street, Paddington

**Attachment A2.** Planning Proposal: Urban Design Report

**Attachment A3.** Planning Proposal: Concept Design Plans

**Attachment B.** Draft Sydney Development Control Plan 2012 - 1-11 Oxford Street, Paddington

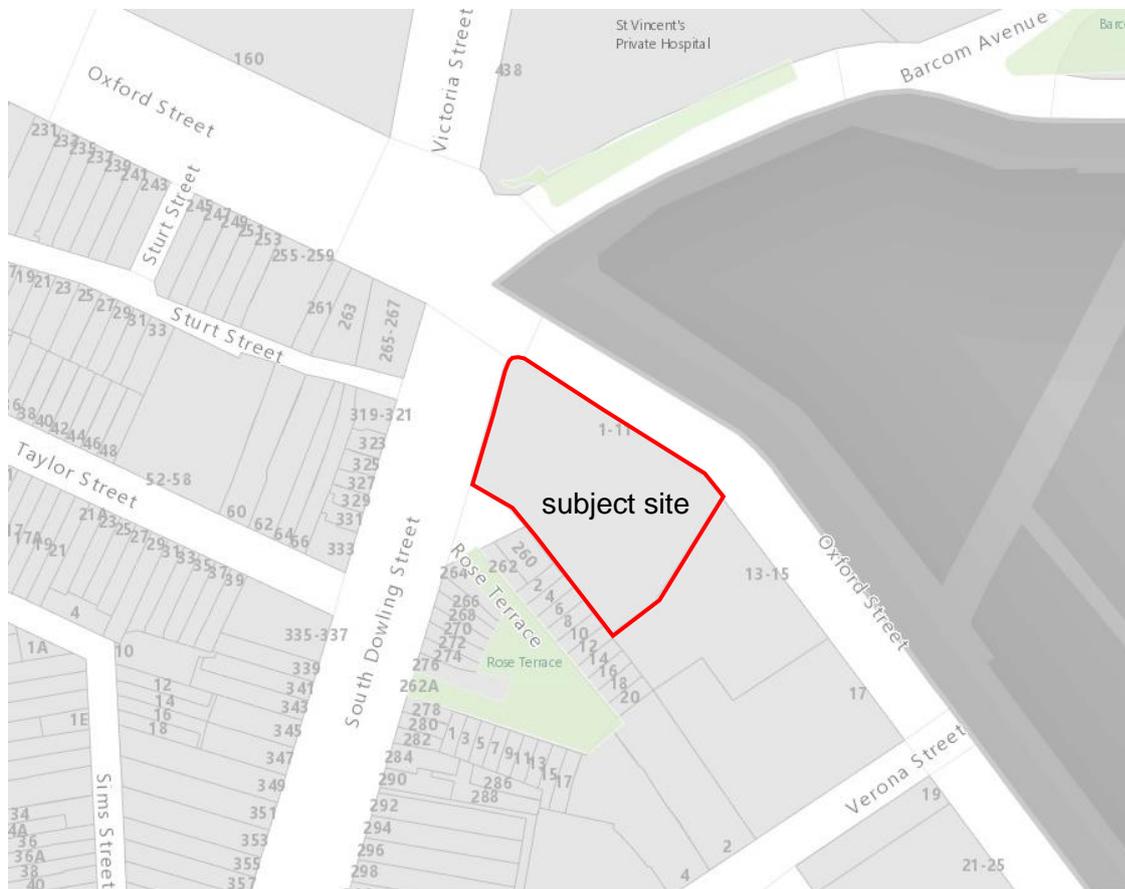
## Background

1. Oxford Street and its vicinity has long been appreciated as a creative and cultural precinct both locally and internationally. The areas land use and built form diversity contributes significantly to this character, hosting a real mix of businesses, educational institutions, health facilities, workers and visitors.
2. The City of Sydney (the City) recognises this by proposing an Eastern Creative Precinct centred on Oxford Street as part of its draft Local Strategic Planning Statement. It aims to support existing and emerging employment clusters within the area and capitalise on the areas proximity to long term establishments including the National Art School and University of NSW Art and Design. St Vincent's Hospital is another significant institution in the area that anchors the cluster of health care and social services that characterise the Oxford Street village area.
3. The purpose of this report is to seek the Central Sydney Planning Committee's (CSPC) approval of the Planning Proposal for 1-11 Oxford Street, Paddington (the Planning Proposal), at Attachment A, for submission to the Department of Planning, Infrastructure and Environment with a request for a Gateway Determination, and to proceed to public exhibition. The planning proposal seeks to amend the maximum building height and floor space ratio controls in Sydney Local Environmental Plan 2012 (LEP) to facilitate visitor accommodation and a minimum area of 300 square metres of entertainment facility and a minimum area of 400 square metres of health services facility at basement level.
4. This report also notes that Council approval is sought for public exhibition of the draft Sydney Development Control Plan 2012: 1-11 Oxford Street, Paddington (draft DCP) at Attachment B. The draft DCP includes specific provisions for the built form, heritage conservation, public domain, loading, servicing, access and sustainability.
5. In support of the proposal, St Vincent's Hospital have provided a written statement outlining ongoing discussions with the proponent to establish a medical hotel on the site with *purpose-built accommodation for patients and their families, an integrated medical facility and associated multi-use function room(s)*.
6. The establishment of a medical hotel, as outlined by the proponent and St Vincent's Hospital, and medical facilities presents the opportunity to support and grow the established health and education cluster within the local area. The establishment of a hotel and entertainment facility supports emerging and established creative and cultural industries within the Precinct.
7. This Planning Proposal was submitted to the City in November 2018 with a request to increase the maximum building height to around 23.7 metres, and to increase the maximum floor space ratio (FSR) to 3.19:1 above ground. Through an extensive review of the submitted documentation and subsequent amendments, the City has worked with the proponent, heritage specialists and an external structural engineer to amend the proposal to ensure the proposed building envelope respects heritage and streetscape value of the existing contributory building and the Paddington Urban Heritage Conservation Area. The proposed increase to the maximum building height and FSR have been reduced to a maximum height of 21.6 metres, and a maximum FSR of 2.95:1 above ground.

## Site details and context

8. The site of 1-11 Oxford Street, Paddington, legally identified as Lots 1 and 2 in DP130269 and Lot A in DP377984, is an irregular shaped block, located on the corner of Oxford and South Dowling Streets. It has approximately a 52 metre frontage to Oxford Street, a 27 metre frontage to South Dowling Street, a 3 metre wide splay corner at the junction of these streets and a site area of 1,574 square metres. The site is wholly owned by CE Boston Hotels Pty Ltd and has been since June 2018. The site is shown in Figure 1.
9. The site is occupied by a three-storey Federation Free Style picture theatre building, originally built in 1911, covering most of the site area. The building consists of a main rectangle auditorium space, which is constructed from brick and concrete walls extending up to gable ends at the eastern and western ends. A three storey narrow band of rooms wraps between the auditorium walls and the facades on the Oxford Street and South Dowling Street sides. Facades present to Oxford Street and South Dowling Street, constructed from brick external walls that have been rendered and painted.
10. The building has successively been remodelled over its life, with a major alteration occurring in the late 1960s, relocating the cinema entrance from the splay corner to the middle of the building off Oxford Street, to enable it to operate as a twin cinema. The most recent public cinema use was as the Academy Twin Cinema, operating from 1973 until it closed in 2010. The use of the space was used for a year in 2014 for a rock musical theatre use but was vacant from mid-2015 to 2019.
11. In February 2019 the two auditoriums were approved for internal alterations and temporary use of the vacant cinemas as a private film and television screening space for a 24 month period by Foxtel. The auditorium spaces have now been fitted out and are being used to screen films and television shows to representatives of television stations, streaming service providers or prospective advertisers. Screenings are via invitation only, and are not open to the general public.
12. The original cinema entrance on the corner of Oxford and South Dowling Streets provides access to an upper level bar and restaurant. The staircase originally provided access to the upper levels of the original picture theatre. At the ground floor, retail tenancies line Oxford Street providing an active frontage and are occupied by a guitar school, cafe and computer repair shop. The upper level commercial spaces fronting Oxford Street are accessed off a central stairway off an Oxford Street entrance, which are currently occupied by two separate artist studios and an office suite. There is also a two level operating night club (over the ground and a basement level), accessed from an entrance at the western end of the Oxford Street frontage.
13. Fire exits from the night club access the small area to the south of building, which rises over the auditorium toilets, located in a small part of the building to the south of the auditorium, to discharge to South Dowling Street. This space abuts the rear of a heritage listed group of terrace houses (Item Nos 1103 and 1105 at 2-20 Rose Terrace and 260-262 South Dowling Street). The terraces are positioned very close to the site boundary, with some additions extending over the site boundary.
14. Surrounding land uses are a combination of residential and commercial, with residential accommodation to the south, a residential flat building to the immediate south-east along Oxford Street and various types of retail premises, shop top housing and commercial uses along Oxford Street.

15. The site is opposite the heritage listed item 'Beauchamp Hotel including interiors' (Item No. 416 at 265-267 Oxford Street) located directly to the west across South Dowling Street. St Vincent's Hospital and The University of Notre Dame is located directly to the north. The Supreme Court of NSW Darlinghurst Courthouse and the National Art School is located close-by to the north-west. The Palace Verona cinema, the UNSW Art & Design and the Victoria Barracks are located close-by to the south-east.



**Figure 1.** The subject site in the neighbourhood context

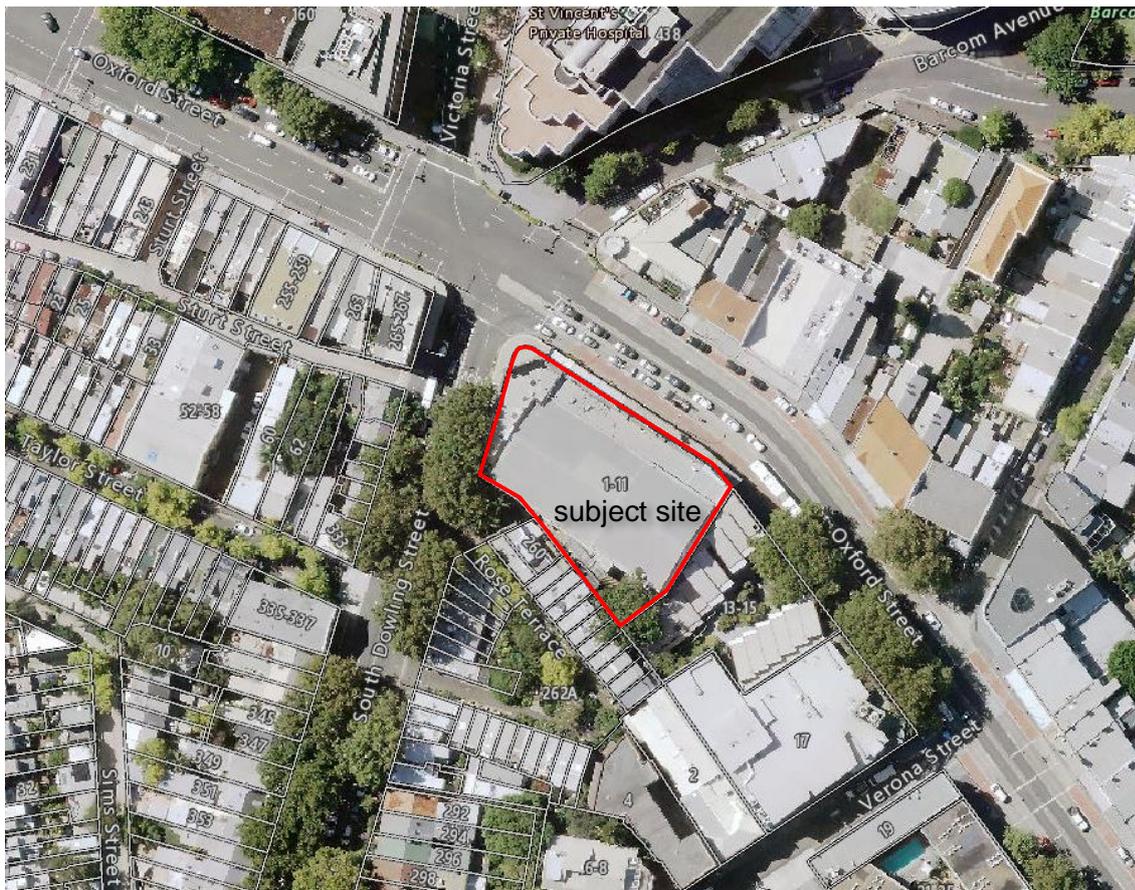


Figure 2. Aerial image of subject site and immediate surrounds



Figure 3. View of site to corner of Oxford Street and South Dowling Street, Paddington

## Planning history

16. The City was approached by the proponent in early 2018 about a potential planning proposal request for the site. This involved increasing the current height control from 15 metres to approximately 22.6 metres to accommodate a part 6, part 7 storey building. It also proposed increasing the site's FSR from 2.5:1 to 4:1 as well the retention and restoration of the building's facades.
17. The City responded in a letter 21 May 2018 raising a number of issues with the potential planning proposal: impact of the proposed height and scale of the new development dominating the original building; the impact on the character of the Paddington Urban Conservation Area; impact upon the building heritage value both externally and internally, given the substantial internal demolition proposed; impacts on low scale heritage terraces to the south; and vehicle access at a busy intersection. It also recommended a full heritage assessment be undertaken to establish the significance of the building as a whole.
18. On 29 November 2018 the Proponent submitted a formal planning proposal which requests the City amend the LEP and the DCP to allow additional height and floor space ratio to facilitate development at 1-11 Oxford Street, Paddington for a new medical-hotel and health services facilities, with opportunities for entertainment facility and food and drink premises as part of the development and future operation.



**Figure 4.** Photomontage of original submitted concept scheme

19. The proposal is the result of collaboration between the proponent, CE Boston Hotels and St Vincent's Hospital. The proposal is positioned as assisting St Vincent's Hospital by providing purpose-built accommodation to suit the needs of patients and their families, along with floor space dedicated to health services facilities.

20. The City sent a response to the proponent on the submitted planning proposal on 25 March 2019. In the correspondence, the City reiterated that the building is a contributory building in the Paddington Urban Conservation Area and has potential heritage significance. It raised issues with the planning proposal about heritage and streetscape impact from the massing resulting from the proposed height and floor area. It also raised concerns with the basement floor areas due to the extent of demolition, underpinning, basement excavation and additions, posing a risk to the structural integrity of the building. Also that the proposed approach would limit the ability to express and interpret the heritage significance of the former cinema use. It recommended a reduction in height (to maximum RL 67.5 m) and building massing to Oxford Street. It also recommended retention, adaptation and interpretation of the wall and floor structure of spaces between the theatre space and the facade as well as a sufficient setback, of the basement levels from the structural foundations of the main theatre space to ensure the retention of above ground fabric.
21. In response to this correspondence, the proponent submitted an amended planning proposal and concept design, lowering the height and massing of one storey (with the majority of the envelope below RL 67.5m, except for lift overruns). However, the amended planning proposal did not incorporate retention and adaptive reuse in the planning proposal package as recommended, citing design functionality and feasibility reasons, although they did reduce the extent of basement level 2 under the southern wall.
22. The City engaged a structural engineer with expertise in heritage conservation to provide a peer review. This was to enable the City to evaluate the risk of the proposal in comparison to City's preferred retention approach and provide recommendations to minimise risk to the structural and heritage integrity of the existing structure.

### Current planning controls

23. The planning controls applying to the site under the LEP are:
  - (a) Land Zoning: B2 – Local Centre, which permits the proposed uses;
  - (b) Height of Building: Maximum of 15 metres;
  - (c) Floor Space Ratio: Maximum of 2.5:1, and
  - (d) Heritage: Within C50 Paddington Urban Heritage Conservation Area and above State Significant heritage item I1 (Busby's Bore) (and listed on the State Heritage Register No. SHR00568).
24. Key planning controls applying to the site under the DCP are:
  - (a) the site is a contributing site within the Paddington Urban Heritage Conservation Area;
  - (b) the site allows a maximum building height of three storeys under the *Height in storeys map*;
  - (c) the site is required to provide a continuous awning under the *Footpath awnings and colonnades map*, and
  - (d) the site is within a local centre area under the *Late night trading areas map*.

## Proposal

### Amended Concept Design and Supporting Documentation

25. An indicative concept design prepared by Tonkin Zulaikha Greer Architects and other supporting documents has been submitted to justify the planning proposal and demonstrate the type of development that it will facilitate.
26. The amended concept design includes retention of the external facade to Oxford Street, South Dowling Street and some walls and staircase in the northern-western corner of the building, demolition of the remainder of the building and construction of six storeys above ground (including a new mansard type roof and roof bar terrace) and two basement levels (one more than existing).
27. The concept design shows the following accommodation:
  - (a) Basement level 2: St Vincent's Hospital medical facilities of 419 square metres, for research, education or other medical related uses (with separate access) plus waste areas accessed via a small rigid vehicle truck lift and turntable and other storage;
  - (b) Basement level 1: Two multi-purpose venue rooms of 222 square metres (300 people) and 157 square metres (50 people) and access to courtyard garden with entrance off Oxford Street; staff amenities; and service facilities;
  - (c) Ground floor: Hotel lobby accessed off the original entry on the corner of Oxford and South Dowling Streets; ground floor restaurant of 273 square metres; ground level café of 119 square metres; courtyard garden; and servicing access off South Dowling Street;
  - (d) Floors 1-4: 102 hotel rooms over 4 levels; and
  - (e) Floor 5: Rooftop food and drink premises of 159 square metres (200 people).



**Figure 5.** Photomontage of amended concept scheme with reduction in height

28. Any redevelopment of the site or use of the subject site under the subject proposal would require a separate development application with appropriate public consultation.

### **Planning Proposal - Amendments to Sydney LEP 2012**

29. The planning proposal seeks to amend the LEP:
- (a) adding a new site-specific clause to allow a maximum building height of RL 68.655 metres and a maximum floor space ratio of 2.95:1 above ground, provided:
    - (i) the site is developed predominantly for hotel or motel accommodation;
    - (ii) a minimum of 300 square metres entertainment facility and 400 square metres health services facility are provided at basement level;
    - (iii) the development will not endanger the structural stability of 1-11 Oxford Street, Paddington or State-significant Busby's Bore heritage item running under the site, and
    - (iv) that the development will not be used for the purpose of residential accommodation or serviced apartments.
  - (b) Clause 4.6 Exceptions to development standards, to exclude the subject site from the operation of this clause.

### **Draft Development Control Plan**

30. Site specific provisions, contained in the draft DCP at Attachment B, provide detailed design guidance. These provisions relate to matters including: built form, heritage conservation, public domain, loading, servicing, access and sustainability. These matters are addressed in more detail below.
31. The provisions are proposed to be contained in a new site-specific section at 'Section 6 – Specific Sites' of Sydney DCP 2012. Associated amendments to maps are also proposed.

## **Key Implications**

### **Strategic Merit**

32. The planning proposal demonstrates strategic merit. It will support an existing health and education cluster, the tourism industry and will strengthen the economic and cultural role and character of the proposed Eastern Creative Precinct. The site is in an accessible location, and the building is of appropriate design with good environmental performance. The site-specific merits of the proposal are discussed below, followed by consistency with the Eastern City District Plan, and the City's Sustainable Sydney 2030 strategy.

### **Health and Education**

33. The planning proposal is supported by a letter from St Vincent's Hospital, stating that:

*"The Site is located immediately adjacent to SVPHS and we have been working collaboratively with the proponent, CE Boston Hotels, to identify important synergistic opportunities afforded by the proposed development. Potential benefits to SVPHS and the community include, but are not necessarily limited to:*

- *co-location of high-quality, purpose-built accommodation for patients and their families;*
- *integrating specialised medical facilities into the proposed multi-use function rooms, with optic fibre connection to SVPHS for live video streaming, to facilitate global state of the art medical education and training; and*
- *bringing much needed economic activity from international visitors and patients, doctors, nurses, specialists and others associated with SVPHS to reinvigorate the site and broader Oxford Street retail precinct.*

*St Vincent's Private is a leading centre for education and research and we are committed to the ongoing training and development of healthcare professionals. We view this development as a very exciting and real opportunity to effect global innovation in health and education."*

34. The Eastern District Plan states in relation to health and education precincts that:

*There is a need to:*

- *plan for the diversification and expansion of these precincts*
- *protect surrounding employment areas for health, education, research, innovation and creative industry land uses*
- *explore flexible zoning to accommodate ancillary and complementary uses such as health and medical research activities, private hospitals, allied health, start-ups, innovation and creative industries, ancillary retail, visitor, carer and aged accommodation, in the right locations.*

35. While the site is not within an identified health and education precinct in the District Plan, the health sector uses that cluster around St Vincent's hospital in this area are important to the local and city economy. The planning proposal provides the opportunity for the site to meet some of these health and education needs, providing educational facilities, health and medical research activities and visitor accommodation, associated with the existing health and education cluster. Accordingly, the planning proposal has strategic merit to meet health and education strategic outcomes.

### **Visitor accommodation**

36. Sydney's tourism industry makes a significant contribution to the local and state economy. During the 2017/18 financial year, 6.09 million international and domestic overnight visitors stayed in commercial accommodation located in the City of Sydney council area. Analysis by the City of Sydney in 2013 found that a sustainable supply of visitor accommodation is needed to support projected tourism growth.

37. The City's Sustainable Sydney 2030 and Visitor Accommodation Action Plan (2015) aim to facilitate development of additional visitor accommodation. This planning proposal will provide for a new mid-range hotel use in a highly accessible and central location, contributing to accommodation supply.
38. The proposal's medical hotel focus, with rooms having basic medical facilities, in proximity to St Vincent's Hospital will provide access to suitable and convenient accommodation for patients prior to treatment and during the latter part of their convalescence. The hotel can also accommodate patient's families, medical staff and others associated with St Vincent's Hospital.
39. The location near Oxford Street and Darlinghurst, also provides opportunities for visitors to access food and drink premises, boutique retailing, entertainment venues, Moore Park sports facilities, Centennial Park, creative and cultural venues and major events such as the Sydney Gay and Lesbian Mardi Gras.
40. The site's location on Oxford Street has five bus routes passing, with frequent services linking to Central Sydney, Bondi Junction and the eastern Sydney beaches, such that a future hotel will be well-connected by public transport to key tourist locations.
41. The planning proposal to facilitate the concept design provides the opportunity for the well placed site to provide visitor accommodation for this area of Sydney. Accordingly, the planning proposal has strategic merit to support the tourism industry.

#### **Entertainment Facilities**

42. The draft Local Strategic Planning Statement (the Planning Statement) being reported concurrently to this Council meeting proposes an Eastern Creative Precinct centred on Oxford Street which aims to support existing and emerging employment clusters within the area and capitalise on the areas proximity to long term establishments including the National Art School and UNSW Art and Design. This includes investigating planning approaches to support creative industries, the cultural and performance sector and night-time businesses.
43. The Planning Statement includes an action to strengthen the economic and cultural role of the Eastern Creative Precinct by protecting and enhancing the entertainment, arts, performance and cultural role of areas and high streets within the Precinct, including through the provision of space for cultural performance and production.
44. At the 10 December 2018 Council Meeting, a Minute (Item 3.2) by the Lord Mayor was resolved by Council. The Minute discussed the challenge of making space for creativity and culture, but how vital having a rich creative and cultural community was to the creation of a strong, thriving and prosperous city. It outlined the need for clusters of new creative activities. It also outlined that there is a shortage of small to medium sized performance and rehearsal space venues, ranging from 200-500 people.
45. While this planning proposal involves the loss of the former cinema spaces, the planning proposal requires a minimum 300 square metre entertainment facility indicatively capable of accommodating 300 people. Although the new space will not match the size of the existing entertainment facility being removed, development facilitated by the planning proposal requires the provision of a small to medium facility. This may be a more viable long term use, noting that the former twin cinema was closed for many years before being used for a temporary private commercial use.

46. There is the opportunity for this space to be used for a variety of functions, such as being associated with the operation of the hotel, medical educational use, and as an entertainment facility which includes theatre, cinema and music hall uses.
47. As a comparison, the nearby City owned East Sydney Community and Arts Centre is a good example of a successful multi-purpose facility, with the upper floor being comparable in size to the 300 square metres required by this proposal.
48. To ensure that a future development of the site incorporates entertainment facility, it is recommended that the proposed site specific LEP clause requires that development incorporate an entertainment facility, with a minimum 300 square metres in area, at basement level and the draft DCP controls require there be separate entry and lift and stair access off Oxford Street and access to a loading dock to ensure adequate functionality.

### Structural Peer Review

49. The Structural Peer Review commissioned by the City includes comments that the structural proposal provided in the BG&E report submitted with the planning proposal is considered to be theoretically a structurally feasible solution for the retention of the facade. However, it identifies risks associated with this structural proposal in terms of the extent of demolition and excavation. It also evaluates that that the City's recommended development approach is a lower risk option compared to the structural proposal of the concept design as it retains the main structural form of the building, limits major demolition and excavation to the auditorium space and adaptively reuses fabric.

50. The Structural Peer Review Report makes the following key comments:

*The retention of the internal walls provide structural stability to the facade of the building, in a manner that the original structure was designed.*

*By retaining the internal walls, it would be possible to relocate the proposed external bracing for the facade to within the property boundaries. By moving the bracing to within the property boundaries, the support framing can be designed to work in conjunction with the existing internal walls to provide the structural stability required to retain the facade.*

51. The Structural Peer Review Report recommends the preferred development approach outlined by City is adopted for the development of this site. The report also outlines additional structural information that should be provided to minimise risk to the structure. These include an existing structural condition report; determining existing footing depths and types; an existing condition report of Busby's Bore; a detailed geotechnical inspection; and risk management plan. The recommendations of the structural peer review have been incorporated into the heritage conservation controls in the site specific draft DCP.

### Heritage

52. The building is a contributory building in the Paddington Urban Conservation Area. It presents a three storey Federation Free Style former "Picture Hall" street facade to Oxford Street and South Dowling Street with a stepped parapet form and curved cornice feature defining the prominent corner. The facades are largely intact externally above ground floor level although it has lost its entry portico with dome roof lantern.

53. Internally the building has been substantially altered to accommodate a twin cinema complex, with concrete brutalist elements in the 1970s. There are some original surviving elements including the configuration of the main stair and some walls and rooms adjoining the street elevations.
54. The supporting heritage impact statement submitted with the planning proposal concludes that "the property does not meet the threshold for individual heritage listing. The subject building is a heavily modified example of a Federation period former 'picture hall', which has been subject to numerous conversions, changes of use, and alterations over its lifetime. The building still makes an aesthetic and historic contribution to the Paddington Urban Heritage Conservation area, and the traditional low-scale built form of Oxford Street, however the building has lost a range of its original features and has a low level of intactness and integrity."
55. Council's assessment of the building is that despite alterations, the building remains recognisable as a theatre/cinema. The site has heritage significance as a rare, surviving early theatre or cinema, dating from 1911, which through its construction and phases of alterations, demonstrates the history of cinema throughout the 20th century.
56. While this planning proposal is not seeking the heritage listing for the site, as a contributory building in the Conservation Area and as the building has some heritage significance, it is appropriate that the key aspects of the building be retained, protected, adaptively reused, reconstructed and interpreted, to ensure appropriate heritage conservation of the site.
57. The proposed development standards are based on retaining the existing facade and front rooms fronting Oxford and South Dowling. Excavation and new development is generally limited to the footprint of the two cinema spaces, which have been heavily modified over time.
58. Greater retention of the building structure and reduced excavation, as recommended by the Structural Peer Review Report, will also reduce the risk to its structural integrity, compared to the proposal for the basement retaining walls being located directly adjacent to the potentially fragile original footing/foundation of the street facades, which could become destabilised and in the worst case precipitate demolition.



**Figure 6.** Draft DCP extract - required building retention and permitted excavation plan

59. Part of the State Significant heritage item of Busby's Bore (State Heritage Register No: SHR00568) is located diagonally underground across the site. Designed by John Busby and constructed between 1827 and 1837, the Bore was developed to provide clean water to the colony of Sydney, as the Tank Stream had become dangerously polluted by this time, running between what are now Centennial Park and Hyde Park. Busby's Bore State Heritage Register curtilage map has a physical curtilage extending to 3 metres from any external surface of Busby's Bore.
60. The documentation supporting the planning proposal estimates that the bore is located approximately 3 metres below the proposed basement and footing excavation on the boundary of the listing curtilage. So any variation from the estimate could trigger consent requirements and notwithstanding consent, impact on the structural stability of the bore. Given the uncertainty of its position and its potentially fragile structure it is critical to ensure any excavation of the site protects the heritage item and that the risk is appropriately managed.
61. To assist this, preliminary consultation with the Heritage Council of NSW was sought on the matter by the proponent. A letter from the Delegate of Heritage Council of NSW states "if the planning proposal is supported further archaeological and geotechnical work must be undertaken to gain an accurate indication of both the alignment and depth of the Bore beneath the subject site. Once ground-truthed data is collected about the alignment and depth of Busby's Bore, modifications should be made to any development application proposed to be lodged if required to avoid damage to this SHR listed item."

62. The letter also notes that "the subject site retains an overall moderate to high archaeological potential, and the redevelopment of the site proposes the construction of two basement levels, as such it is likely that development will impact on potential relics on the site." The Heritage Council supports the proposed s140 Application for an excavation permit but also states that "any application should include a Research Design and Excavation Methodology that seeks to conserve archaeological resources of potential State significance."
63. Given the uncertainty of the exact depth and conditions of Busby's Bore, as well as the various structural aspects surrounding the retention of the main aspects of the existing building, the site specific LEP clause should include a requirement that redevelopment of the site as proposed only be allowed if the development retains the structural integrity of the subject building and Busby's Bore.
64. Draft DCP will set controls to ensure heritage conservation outcomes including to ensure protection of the subject building and Busby's Bore and require the additional reports and investigations to occur as part of development of the site.

### **Height and building envelope**

65. The planning proposal requests a maximum height of RL 68.655 m Australian Height Datum (AHD), which is considered acceptable. In the supporting concept design this height only relates to the height of two lift overruns, with the majority of the building's higher elements being at lower level of RL 67.5 m (AHD).
66. The massing of the concept design is acceptable within the scale of the streetscape and maintains the contribution of the building to the significance of the conservation area. The scale is generally within the maximum height of the existing building and the draft DCP establishes the building envelope and setbacks to retain the prominence of the original façade and corner element. Revision to the window treatments and other detail aspects will be addressed at the development application stage.
67. The draft DCP provides controls to ensure an acceptable outcome in relation to the heritage significance of the building, the conservation area, surrounding heritage items and the streetscape. The draft DCP also includes controls and a building envelope to protect the adjoining residential amenity, consistent with the concept design, so that the terrace houses to the south do not receive any additional overshadowing.

### **Floor Space**

68. This area on the southern side of Oxford Street predominantly has a mix of 2.5:1 and 3:1 FSR. It appears the 2.5:1 FSR has been designated where it relates to existing 2 storey commercial terrace forms and/or interfaces at the rear with low scale single dwelling residential. The subject site similarly is adjacent to low scale single dwelling residential. It is therefore appropriate that additional density and resulting built form should be massed predominantly to the Oxford Street side and within basement excavation and any massing to the rear be minimise. This reflects what is proposed in the concept design, with the additional FSR above ground massed towards Oxford Street.

### **Overshadowing**

69. While the detailed assessment of overshadowing will be considered at development application stage a preliminary assessment has been considered at this planning proposal stage. To limit any impact on the residential areas to the south of the site, the majority of the building has been massed to the Oxford Street side with only minor increase in height at the rear.

70. Assessment of shadow analysis of the concept design at 21 June demonstrates:
- (a) the windows at the rear of properties at 2-20 Marshall Street and 260-262 South Dowling Street directly south of the site, either do not currently receive solar access due to shadowing from the existing building on the site or will be unaffected;
  - (b) there is minor overshadowing to first floor bedroom windows and ground floor kitchen windows at the rear of property at 264-276 South Dowling Street between 9 and 10 am. This impact will be a matter for consideration at detailed development application stage, but the principle DCP does not protect solar access to bedroom and kitchen windows;
  - (c) there is no additional shadowing of windows to properties at 1-17 Rose Terrace; and
  - (d) apartment 1-6 in the residential flat building at 13-15 Oxford Street to the east of the site will receive greater than two hours solar access from 11 am to 1pm.

### **Traffic and Transport**

71. Vehicle access is to be provided from South Dowling Street towards the southern edge of the site. South Dowling Street and Oxford Street are State Roads under Roads and Maritime Services (RMS) control, requiring RMS approval for new access. The planning proposal includes a Transport Impact Assessment (TIA) which notes that RMS has reviewed a pre-development application enquiry and raises no objection in principle provided the driveway is the furthest away from the traffic signals with Oxford Street, and be restricted to be left-in left out, which is proposed. The TIA demonstrates that the site can accommodate appropriate loading, waste and access arrangements.
72. In terms of transport and parking given the site and heritage constraints, it will not be possible to provide on-site parking or passenger pick up and set down areas, given there is a bus lane on Oxford Street and no stopping parking controls on Oxford Street and South Dowling Street. The proposed uses would need to rely on individual transport access, which is considered acceptable given the boutique type of hotel being proposed and the accessible location. A management plan to manage this and operation of a single loading bay for multiple uses and functions would be required at the development application stage.

### **Sustainability**

73. The proponent has committed to the hotel being developed to achieve 5 star Green Star Design & As Built certification, exceeding the minimum energy and water credits. The owner of the hotel development will also execute a Commitment Agreement of 4.5 stars National Australian Built Environment Rating System (NABERS) Energy for the whole hotel building with the NSW Office of Environment and achieve 4 star NABERS Water whole building rating. The draft site-specific DCP includes provisions for the development to specify design measures and achieve the targets for energy and water.

**Public Domain and Landscaping**

74. The provision of a new vehicular access proposed in the south-western corner of the building in the concept design will require the removal of one London Plane Tree and construction of a new driveway crossover to accommodate a small rigid truck. The concept design also proposes the planting of four new medium sized trees in the Oxford Street footpath, enabled by the removal of the continuous awning and replacement with entry awning to better reflect the original presentation of the building for heritage conservation outcome. The concept design also proposes the creation of a courtyard garden, with the provision of a number of substantial trees.
75. The proposed public domain and landscaping has been reviewed by the City's Arboriculture Services, who do not object to the removal of this tree and providing the driveway is in this location given the suppressed canopy of this tree due to competition from adjoining trees. The provision of four new trees on Oxford Street is supported.
76. The principal DCP requires at least 15% canopy coverage of a site within 10 years from the completion of development. It is assessed that the current tree species of trees within the courtyard garden, as indicated on the landscape plan are suitable, however the plan may need to be amended to ensure the minimum cover is achieved and there is adequate soil volume to support the proposed trees.
77. The draft site-specific DCP includes provisions for the required public domain and landscaping.

**Strategic Alignment - Eastern City District Plan**

78. The Eastern City District Plan, completed in March 2018, sets the planning context for the City of Sydney local government area. It provides a 20-year plan to manage growth and achieve the 40-year vision of the Greater Sydney Region Plan at a district level and is a bridge between regional and local planning.
79. This planning proposal gives effect to these planning priorities and actions:
  - (a) Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage – This Planning Proposal will support food and drink and entertainment activities providing night-time businesses, creative uses and performance venues to contribute to a vibrant Oxford Street local centre. It will also protect the heritage significance of the site by including heritage conservation considerations in the site specific LEP clause and heritage conservation controls in the site specific DCP amendment.
  - (b) Planning Priority E8. Growing and investing in health and education precincts and the Innovation Corridor – Although the site is not within the identified health and education precinct, it is within the Harbour CBD strategic centre and adjoins a health employment cluster supporting St Vincent's Hospital. This Planning Proposal provides the opportunity for the site to meet some of the health and education needs, providing educational facilities, health and medical research activities and visitor accommodation, associated with the St Vincent's Hospital health and education cluster.
  - (c) Productivity Priority E13: Supporting growth of targeted industry sectors – This Planning Proposal will support and contribute to the visitor economy by facilitating the redevelopment of the site for a hotel use in the under-supplied mid-range market.

- (d) Planning Priority E17: Increasing urban tree canopy cover and delivering Green Grid connections – This draft DCP requires four new medium sized trees in the Oxford Street footpath and 15 per cent tree canopy cover on the site.
- (e) Sustainability Priority E19: Reducing carbon emissions and managing energy, water and waste efficiently – This Planning Proposal and site-specific draft DCP will ensure sustainability benchmarks for hotel or motel accommodation use are achieved.

### **Strategic Alignment - Sustainable Sydney 2030 Vision**

80. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. The Planning Proposal and amendment to the DCP are aligned with the following Sustainable Sydney 2030 strategic directions and objectives:
- (a) Direction 1 - A Globally Competitive and Innovative City - The proposed amendments to planning controls for the site will facilitate redevelopment of the site for a hotel and entertainment facilities. This will support Sydney's tourist industry, which is a sector of critical importance to Sydney's economy and contributes to making Sydney attractive to global investors.
  - (b) Direction 3 - Integrated Transport for a Connected City - The potential future use of the site as a hotel will take advantage of good proximity to public transport links, on a high capacity bus routes running along Oxford Street, connecting the area to Central Sydney, Bondi Junction and eastern Sydney beaches.
  - (c) Direction 5 - A Lively and Engaging City Centre - Redevelopment of the site will provide publicly accessible active uses, with a ground floor restaurant and cafe, roof top bar and a new multi-purpose entertainment facility in the basement. This will continue long-term activation on the site and for the eastern part of Oxford Street, contributing to the night time economy.
  - (d) Direction 6 - Vibrant Local Communities and Economies - The planning proposal facilitates the expansion of health and education needs, providing health and medical research facilities and visitor accommodation to support the St Vincent's health and education cluster.
  - (e) Direction 7 - A Cultural and Creative City - The planning proposal will contribute to and strengthen the economic and cultural role and character of the Eastern Creative Precinct, enhancing the entertainment, arts, performance and cultural role of areas and high streets by requiring as part of the development to be a new entertainment facility, helping to meet the identified shortage of small to medium sized performance and rehearsal space venues.
  - (f) Direction 9 - Sustainable Development, Renewal and Design - The planning proposal commits to higher performance measures for the future development of the hotel use (5 star Green Star rating, 4.5 star NABERS Energy and 4 star NABERS Water rating). The proposal is also consistent with the principle of transit oriented development by co-locating accommodation and employment opportunities in an accessible location.

## Relevant Legislation

81. Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulations 2000.

## Critical Dates / Time Frames

82. Should Council and the Central Sydney Planning Committee endorse the planning proposal for exhibition and consultation, the proposal will be sent to the Department of Planning, Industry and Environment in accordance with Section 3.34 of the Environmental Planning and Assessment Act 1979 seeking a Gateway Determination. The Department will then provide a Gateway Determination to either proceed to consultation, with or without variation, or to resubmit the planning proposal.
83. Typical public exhibition timeframes, are 28 days for public authority consultation and public exhibition. The Gateway Determination will specify any conditions for consultation and public exhibition as well as a date by which the Local Environmental Plan amendment should be finalised.
84. Following public authority consultation and public exhibition, issues raised in submissions will be reported back to Council and the Central Sydney Planning Committee.
85. In October 2012, the then Minister for Planning and Infrastructure delegated his planmaking sections to councils to improve the local plan-making process. In December 2012, Council resolved to accept the delegation.
86. Council needs to receive an authorisation on a case by case basis to exercise the delegation. The authorisation is given through the Gateway process and means a faster plan-making process. This report notes that Council will seek authority to exercise this delegation.

## Public Consultation

87. The public exhibition process and requirements will be informed by the Gateway Determination. It is proposed to publicly exhibit the planning proposal and draft DCP amendment concurrently for a period of 28 days with notification on the City of Sydney website, in newspapers that circulate in the local area and in writing to neighbours, landowners, relevant community groups and stakeholders in the vicinity of the site.
88. Exhibition documents will be available for viewing on the City of Sydney website and the One Stop Shop at Town Hall House.

## GRAHAM JAHN, AM

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