

## Item 9.

### Post Exhibition - Planning Proposal – 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 a creative and cultural precinct both locally and internationally. The area's land use and diverse built form 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 Local Strategic Planning Statement. It aims to support existing and emerging employment clusters within the area and capitalise on the area's proximity to long term establishments including the National Art School and St Vincent's Hospital.

A Planning Proposal for 1-11 Oxford Street, Paddington was endorsed by Council and the Central Sydney Planning Committee to go on public exhibition in August 2019. The Planning Proposal seeks to increase the height and floor space ratio applying to the former Academy Twin Cinema site for a medical hotel and medical and educational facilities related to St Vincent's Hospital.

A collaboration between the landowner and St Vincent's Hospital, the purpose-built hotel accommodation is intended to suit the needs of patients and their families, along with floor space dedicated to health services facilities located in a lower basement. At the same time, it also embraces the provision of a performance space to contribute to the creative precinct vision for Oxford Street. The proposed controls will conserve 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.

This report includes the outcomes of exhibition and details changes made to the Development Control Plan in response to submissions and further internal consideration. It recommends approval of the finalised controls which incorporate post-exhibition amendments, comprising of a planning proposal to amend Sydney Local Environmental Plan 2012 at Attachments A, and an amendment to Sydney Development Control Plan 2012, at Attachment B.

The Planning Proposal was granted Gateway determination on 11 December 2019 with Council being delegated the plan-making authority, subject to no outstanding objections from public authorities.

The Planning Proposal, draft DCP and other supporting documents were publicly exhibited from 17 February 2020 to 16 March 2020 to owners and occupiers, relevant stakeholder community and industry groups and adjoining Woollahra Council. Five public agencies were also consulted as required by the Gateway determination. Around 23 submissions were received from nearby landowners, residents and a local society and two submissions were received from public agencies. Of the submissions received, five object to the proposal, nine support the proposal, ten raise a mixture of supporting comments and issues requiring consideration and Woollahra Council noted they had no comments to provide at this stage.

There was strong support from many submissions for increasing the height and density of the site and generally for City Fringe locations, to increase population density to support revitalisation and urban life, particularly given the good access to public and active transport.

Many submissions raised the need for this, to enable the revitalisation of Oxford Street, which needs significant investment, such as high-quality landmark development (such as proposed) containing world class hotels; hospitality; architecture and retail, to attracting more residents, visitors and businesses.

Many of the submissions, while raising valid matters, are matters which are required to be considered at the development application stage, instead of at the planning proposal stage. The key concerns raised during the public exhibition relate to traffic, access and servicing, construction impacts, loss of yard access and plum tree removal, overshadowing, privacy, noise and security impacts. The issues are discussed in detail in this report.

The draft DCP has been amended to restrict access into the site for the loading area to be left-in-left out movements to minimise traffic impacts. Provision of pick-up and set-down is addressed by the draft DCP requiring a transport management plan, incorporating all operations and servicing, with Transport for NSW recommending investigating provision on South Dowling Street.

The draft DCP requires setback of the excavations and structures from the boundary with Rose Terrace properties and the concept design generally shows a 2m setback to a wall and raised garden, understood to be made available for private recreation for each terrace. The draft DCP has been amended to specifically include protection of the adjoining residential structures in the required detailed structural report.

To limit overshadowing 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. The shadow diagrams, based on the concept design, demonstrate the massing under the planning proposal and draft DCP will comply with DCP controls and not cause any detrimental overshadowing impacts.

This report recommends approving the Planning Proposal and note the associated site-specific DCP, which includes changes to address access, structural stability of adjoining buildings and the setback from the rear of the Marshall Street terraces, as discussed in this report.

If approved by Council and the Central Sydney Planning Committee, the City will work with Parliamentary Counsel to prepare the LEP amendment, which will come into effect when it is published on the NSW Legislation website. The site-specific DCP will come into effect at the same time as the LEP is published.

## Recommendation

It is resolved that:

- (A) the Central Sydney Planning Committee note matters raised in response to the public exhibition of the Planning Proposal: 1-11 Oxford Street, Paddington and draft Sydney Development Control Plan 2012: 1-11 Oxford Street, Paddington, as detailed in this report and as shown in Attachment E to the subject report;
- (B) the Central Sydney Planning Committee approve the Planning Proposal: 1-11 Oxford Street, Paddington, as shown at Attachment A, to be made as a local environmental plan under S3.36 of the Environmental Planning and Assessment Act 1979;
- (C) the Central Sydney Planning Committee note the recommendation to Council's Transport, Heritage and Planning Committee on 11 May 2020 that Council approve the draft Sydney Development Control Plan 2012: 1-11 Oxford Street, Paddington, as shown at Attachment B, noting that it will come into effect on the date of publication of the subject local environmental plan, in accordance with Clause 21 of the Environmental Planning and Assessment Regulation 2000; and
- (D) authority be delegated to the Chief Executive Officer to make any minor amendments to Planning Proposal: 1-11 Oxford Street, Paddington and draft Sydney Development Control Plan 2012: 1-11 Oxford Street, Paddington to correct any minor errors or omissions prior to finalisation.

## Attachments

- Attachment A.** Planning Proposal: 1-11 Oxford Street, Paddington
- Attachment B.** Draft Sydney Development Control Plan 2012: 1-11 Oxford Street, Paddington (as amended)
- Attachment C.** Resolution of Council and Central Sydney Planning Committee
- Attachment D.** Gateway Determination, Letter to Council and Approval to Exhibit
- Attachment E.** Summary of Matters Raised in Submissions

## Background

1. This report seeks the Central Sydney Planning Committee's approval of the Planning Proposal at Attachment A. The Planning Proposal is to amend Sydney Local Environmental Plan 2012 (LEP) as it relates to 1-11 Oxford Street, Paddington (the site).
2. This report also notes that Council approval of the draft Sydney Development Control Plan for 1-11 Oxford Street, Paddington (DCP) at Attachment B is being sought.
3. In August 2019, the Planning Proposal was endorsed by Council and the Central Sydney Planning Committee (CSPC), as shown at Attachment C, for submission to the Department of Planning, Infrastructure and Environment (DPIE) with a request for Gateway determination, and for public exhibition in accordance with any conditions imposed under the Gateway determination, and to seek delegation of plan-making functions.
4. The DPIE granted Gateway determination on 11 December 2019. The Gateway determination is shown at Attachment D
5. The Planning Proposal and DCP were publicly exhibited from 16 February to 16 March 2020. During that time 25 submissions were received from nearby landowners and residents and public authorities.
6. This report details the outcomes of public exhibition, and the changes made to the DCP in response to submissions and further internal consideration. No changes are made to the Planning Proposal as exhibited.

## Site details and context

7. 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.
8. The site is occupied by a three-storey Federation Free Style picture theatre building originally built in 1911. 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 and South Dowling Street sides. Facades present to Oxford and South Dowling Street, constructed from brick external walls that have been rendered and painted.
9. 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.

10. 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.
11. 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.
12. 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 terrace additions and terrace yards extending over the site boundary (see Figure 3 and 5).
13. The south-eastern side of the site adjoins a residential flat building at 13-15 Oxford Street, which is built to the common boundary with the site. The residential flat building has groups of apartments on the north-west and south-east side fronting onto a central courtyard.
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 and Design and the Victoria Barracks are located close-by to the south-east.

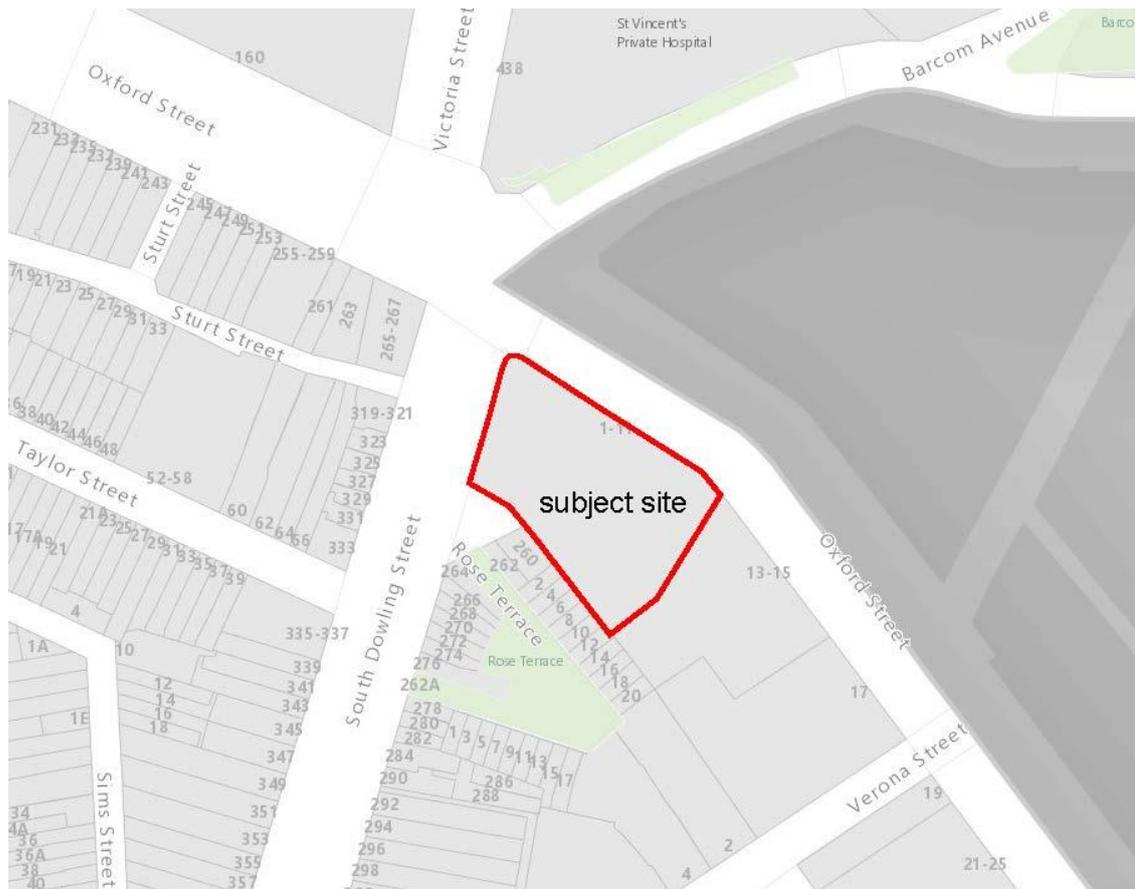
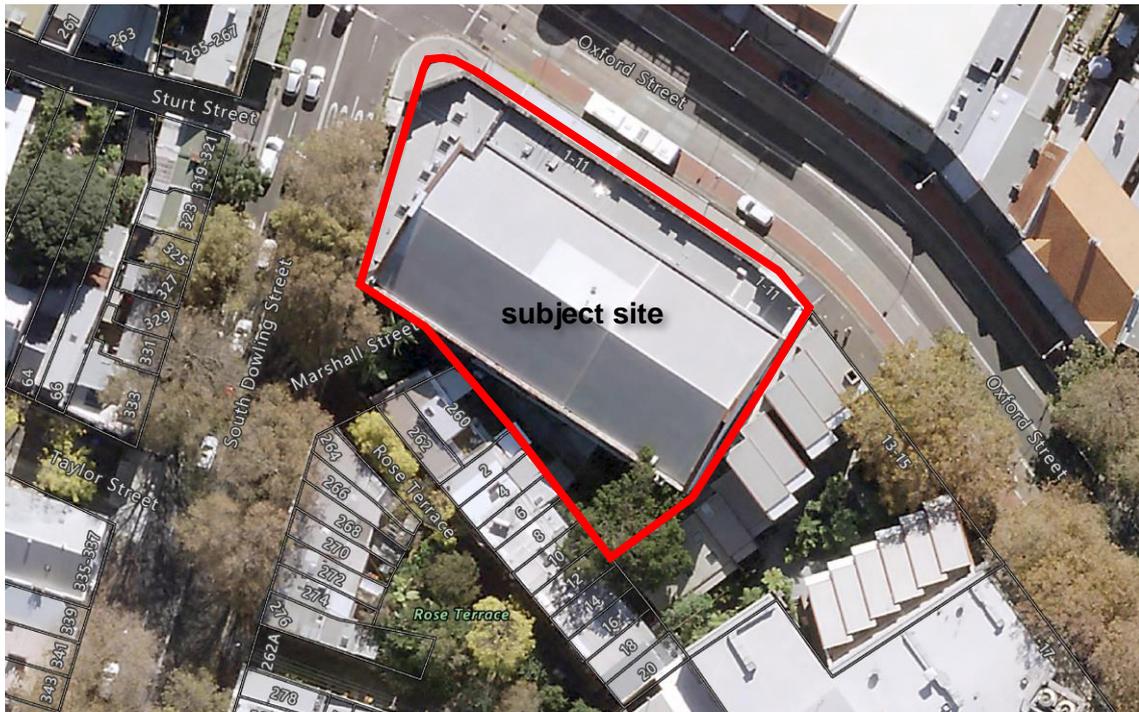


Figure 1. The subject site in the neighbourhood context



Figure 2. View of site to corner of Oxford Street and South Dowling Street, Paddington



**Planning history**

20. On 29 November 2018 the proponent submitted a formal Planning Proposal which requested 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.
21. 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.
22. Following amendments to address issues raised by the City, the concept submitted by the proponent showed 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 4. Photomontage of amended concept scheme with reduction in height

23. At the meetings of 15 August 2019 and 19 August 2019, the prepared Planning Proposal and draft DCP were endorsed by the CSPC and Council for submission to the DPIE with a request for Gateway determination, and for public exhibition in accordance with any conditions imposed under the Gateway determination, and to seek delegation of plan making functions.
24. The DPIE, under delegation of the Greater Sydney Commission, granted Gateway determination on 11 December 2019. The Gateway determination is at Attachment D.
25. The Gateway determination required some minor amendments to the Planning Proposal, relating to the draft DCP reference; some additional justification; clarifying ground floor definition affecting the measurement of the proposed floor space ratio control; changing the measurement of the entertainment facility and health services facility control to be based on gross floor area; and adjusting the project timeline.
26. The Gateway determination required public exhibition for a minimum of 28 days and consultation with 5 State Government agencies, giving them a minimum of 21 days to comment. The Gateway determination set the completion date for the planning proposal as 11 December 2020. The DPIE also granted delegation to Council to make the local plan.
27. The required amendments were submitted and DPIE corresponded on 14 January 2020 that they were satisfied with these amendments and the City could proceed to public exhibition.

**Current planning controls**

28. The planning controls applying to the site under the LEP are:
29. Land Zoning: B2 – Local Centre, which permits the proposed uses;
  - (a) Height of Building: Maximum of 15 metres;
  - (b) Floor Space Ratio: Maximum of 2.5:1, and
  - (c) 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).
30. 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.

**Exhibited LEP controls**

31. The exhibited Planning Proposal seeks to amend the LEP, adding a new site-specific clause to allow:
  - (a) a maximum floor space ratio of 2.95:1 above ground level (reduced level 47.455 metres);
  - (b) a maximum height to reduced level 68.655 metres (enabling up to 6 storeys above ground level), provided:
  - (c) the entire site is primarily for the purposes of 'hotel or motel accommodation';
  - (d) the inclusion at basement level of an 'entertainment facility' with a minimum gross floor area of 300 square metres and a 'health services facility' with a minimum gross floor area of 300 square metres; and
  - (e) 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.
32. The site-specific clause will also exclude the application of Clause 4.6 Exceptions to development standards when applying the site specific provisions.

### Exhibited DCP controls

33. The exhibited draft DCP provides additional site-specific controls to ensure redevelopment responds to the unique characteristics of the site. These deal with built form, heritage conservation, public domain, loading, servicing, access and sustainability.
34. The draft DCP controls:
  - (a) define a maximum building envelope, including heights, setbacks and envelope planes, to deliver a high-quality built form that respects the contributory building and local context and minimises amenity impacts, including overshadowing, visual privacy and noise;
  - (b) conserves and enhances the heritage significance of the contributory building within the Paddington Urban Heritage Conservation Area by retaining significant elements of the building, restoring or reconstructing altered or missing fabric, protecting Busby's Bore and requiring additional reports and investigations as part of development of the site;
  - (c) designates acceptable vehicle access point, loading and servicing facilities and required public domain improvements; and
  - (d) requires design measures to meet the energy and water target commitments made by the proponent to achieve ecologically sustainable development.

### Outcomes of public exhibition and public authority consultation

35. The Planning Proposal, draft DCP and other supporting documents were publicly exhibited from 17 February 2020 to 16 March 2020.
36. Letters were sent to owners and occupiers within approximately a 100 metre radius of the subject site. Relevant stakeholder community and industry groups and adjoining Woollahra Council were directly notified. Five public agencies were also consulted as required by the Gateway determination.
37. Notification of the public exhibition was advertised in Sydney Morning Herald, Wentworth Courier and on the Sydney Your Say website. Hard copies of the Planning Proposal, draft DCP and other supporting documents were also made available at the Town Hall Customer Service Centre and the Kings Cross Customer Service Centre.
38. In response, 23 submissions were received from nearby landowners, residents and a local society. Two submissions were received from public authorities. Woollahra Council submitted that they had no comments at this stage. Of the submissions making comment, five entirely object to the proposal, nine fully support the proposal and ten raise a mixture of supporting comments and issues requiring consideration.
39. A summary of the points raised in support of the proposal is provided below. This is followed by a discussion of issues raised. Changes are proposed to the draft DCP to address the issues raised and are shown with insertions as bold italics and deletions as strikethrough.

**Summary of submissions fully in support of the proposal**

40. Ten submissions fully support the height, with one submission believing that the higher height as lodged would even be acceptable and that higher height should be allowed in other surrounding areas that are located on the City Fringe, to increase density so there are more people to support urban life.
41. Two submissions raised that revitalisation and increased density was appropriate given the location has good access to public and active transport.
42. Eight submissions raised that they were very supportive of revitalisation of building given the current depressed situation of Oxford Street, with 60% of shops closed. They raised that the area needs significant investment to get the retail performing, attracting more residents, visitors and businesses.
43. Three submissions raised in particular that the area needs world class hotels, hospitality, architecture and retail. The area desperately needs revitalisation of high-quality landmark developments such as this type of venue, which offers hotel accommodation, entertainment and hospitality.
44. One submission raised that while heritage is good, sites must evolve so they can support revitalisation, allowing development to greater height and density to attract investment, such as this site, which has been underutilised for many years.

**Traffic management**

45. Six submissions raised the need for a traffic impact study. Three submissions also requested that South Dowling Street should be investigated to be made one-way, to better manage traffic, including access to the proposed redevelopment.
46. A submission from Transport for NSW (TfNSW) does not object to the proposal or the provision of a new vehicle access of South Dowling Street. However, they require that the vehicle access point be located as far away as possible from the Oxford Street and South Dowling Street intersection. The access point should be for service vehicles only (as proposed) and is to be restricted to left-in-left-out movements. Signposting and a splayed driveway to enforce left-in-left-out movements should be explored in any future development application (DA).

**Officer's response**

47. A traffic and transport assessment report was submitted in support of the original proposal. The Planning Proposal does not significantly increase the floor space and there is no increase to the amount of parking, and consequently traffic, being generated as a result of this planning proposal. The transport assessment that accompanied the planning proposal found there is adequate capacity to accommodate trips generated by future development on site without compromising safety and operation of nearby intersections.
48. Action I1.2 of the City's Planning Statement identifies Oxford Street as corridor it will work with the NSW Government to plan for its transition to a 'people first' place, applying the NSW Government's Movement and Place framework so it is healthier, quieter, cleaner and greener with increased footpath capacity. This advocacy extends to respective side streets and will be explored as part of the City's Oxford Street Strategic Review.

49. Requests for changes to local traffic conditions and arrangements have been noted. Changes to traffic conditions involves other stakeholders, chiefly TfNSW who is the controlling authority for Oxford Street and South Dowling Street being State Roads, not just a decision of the City. The City has started investigations about this and with TfNSW. This will be fully explored as part of the Oxford Street Strategic Review.
50. In response to the TfNSW submission, the draft DCP has been amended to incorporate the requirement that the service access to be restricted to left-in-left-out movements. Otherwise the access matters raised had already been included in the exhibited draft DCP.

#### **On-street pick up and set down**

51. Five submissions questioned how on-street pick-up and set-down would occur, particularly in relation to the operation of the hotel use and related to medical patient transportation. On this matter TfNSW raised that a future DA needs to identify demands associated with the development and consider making a change from No Stopping to a partial No Parking restriction on South Dowling Street, within the vicinity of Rose Terrace, with appropriate consultation with any affected parties.

#### **Officer's response**

52. This matter would be required to be addressed at the DA stage and does not alter the Planning Proposal. The draft DCP requires that a transport management plan incorporating all operations and servicing on the site shall be submitted with the development application. TfNSW has supported the potential to change stopping restrictions to accommodate pick-up and set-down, subject to further investigation and consultation, who are the controlling authority of South Dowling Street, which is a State Road. Given the heritage constraints, on-site drop-off and pick-up facilities could not be provided. Alternative pick-up and drop-off could occur from surrounding locations, including no stopping zones on South Dowling and Oxford streets, which is allowed for taxis under (NSW) Road Rules r187. Also, public transport could be used given the accessible location.

#### **Street trees and road safety**

53. TfNSW raised that while it supports increasing tree canopy to provide shade along key walking and cycling routes and assist in combating the heat island effect, the species within the kerbside clear zone of arterial roads should be frangible for road safety reasons and have adequately setback from trafficable lanes, but ensure adequate pedestrian clear widths are maintained. This is to protect heavy vehicle overhang, including bus mirrors.

#### **Officer's response**

54. The land is under the care and control of the City, the matter will be reviewed at the detailed design phase and does not require any amendment to the draft DCP.

#### **Waste and loading management**

55. Two submissions raised the need for all loading of waste and service vehicles to occur on-site, not as currently occurs on Oxford Street. The submission from TfNSW has also required this. The future DA should identify service vehicle requirements and should be supported by an assessment of the service vehicle access arrangements and swept paths for the longest design vehicle to access the site demonstrating that these vehicles can safely enter and exit the subject site in a forward direction as well as manoeuvre throughout the site.

## Officer's response

56. The supporting concept design submitted, incorporates a new access off South Dowling Street, vehicle entry, truck lift, turntable and loading area for on-site waste and deliveries. It has been designed to accommodate a small rigid vehicle entering and exit the site in a forward direction.
57. The draft DCP already includes controls to ensure servicing on site is provided with the DA and that this would be limited to a small rigid vehicle, which is acceptable to service the uses proposed and considering the heritage constraints. The DCP control also ensures that this includes servicing of the entertainment facility from the same level.

**Overdevelopment and precedent for further overdevelopment, gentrification and lowering affordability of the area**

58. One submission raised concern over "incentivising" development by granting the increased planning controls as this would inevitably be used as a precedent in demands for further such increases by investors and developers of Oxford Street properties. This would be to the detriment of the heritage character of the street and amenity of the neighbourhood, cause further gentrification and increase pressure on housing affordability.

## Officer's response

59. Under planning legislation, proponents can submit planning proposal requests to Council. If they are not determined by Council the proponent can then seek a 'rezoning review' from the Independent Planning Commission. Any planning proposal request lodged with Council must be considered on its strategic and site-specific merit, which includes heritage and amenity issues among others. This proposal was assessed on its merit. With changes to the proposal and appropriate planning controls it was recommended to increase the height and floor space. The planning proposal and draft DCP delivers strategically important land uses that will support the precinct and a built form that respects the heritage values of the site and area.

**Structure and water impact and safety of adjoining housing during construction**

60. Eight submissions raised concerns about the structural impact of the proposal on adjoining properties. Protection was requested, noting the very close location and deep excavation proposed, particularly the fragile building structures of the adjoining heritage listed Rose Terraces.
61. Also, safety concerns were raised regarding excavating and stabilising of the existing theatre rear wall, with some directly adjoining residents recommending that the excavation be pushed back to be within the main building. Three submissions recommended that structural assessments should include Rose Terraces.

## Officer's response

62. A structural report was submitted by the proponent in support of proposal and concept design that identifies in relation to excavation near the southern boundary that "To mitigate chance of undermining at these locations introducing closely spaced piles will assist to avoid material from under or adjacent footings moving. It is anticipated that one row of temporary anchors will be required to restrain the retention walls."

63. Given the vulnerability of the early existing structures, the City engaged an external heritage structural engineer to peer review the structural report submitted. The peer review notes the challenging aspects of the site, including the close proximity of neighbouring properties to the site boundaries. It recommended that a future DA needs to be supported by a detailed structural report with an existing structural condition report that determines 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 and protection of adjoining residential structures is now specifically included in the amended draft DCP.
64. Detailed consideration of the structural retention of the building and excavation will be considered at the DA and construction certificate (CC) stage. Also the standard requirement for a dilapidation report that will survey the existing condition of the adjoining buildings will provide a baseline to compare against if there are claims of damages caused by the construction.

### **Substation impact to neighbours**

65. Two submissions raised concerns over the placement of the substation. No. 260 South Dowling Street (shown as No. 10 Marshall Street on the concept design) raised concerns that the exclusion zone around the substation extends into the backyard of the submitter's property, which incorrectly does not show their property boundary on the concept plans and needs to be setback. They also raised that a 2 metre setback to the raised garden bed was not provided on the concept plan like other Rose Terrace properties.

### **Officer's response**

66. An additional control has been included in the amended draft DCP, that any on-site substation associated with the development is to be located and designed to manage any potential impacts on neighbouring properties.
67. The minor discrepancies identified have not affected the assessment of the draft controls. The necessary information will be required to be accurately provided as part of a development application to enable detailed assessment and ensure impacts are managed. However, the correct location of Deposited Plan (DP) boundaries, has been approximately shown on Figure 5.
68. The difference in setback reflects the angled nature of the southern boundary and it is noted that the original main building on this property is setback greater than other properties adjacent to the southern boundary (approximately 3 metres), which provides adequate private open space within their property, as shown on Figure 5.

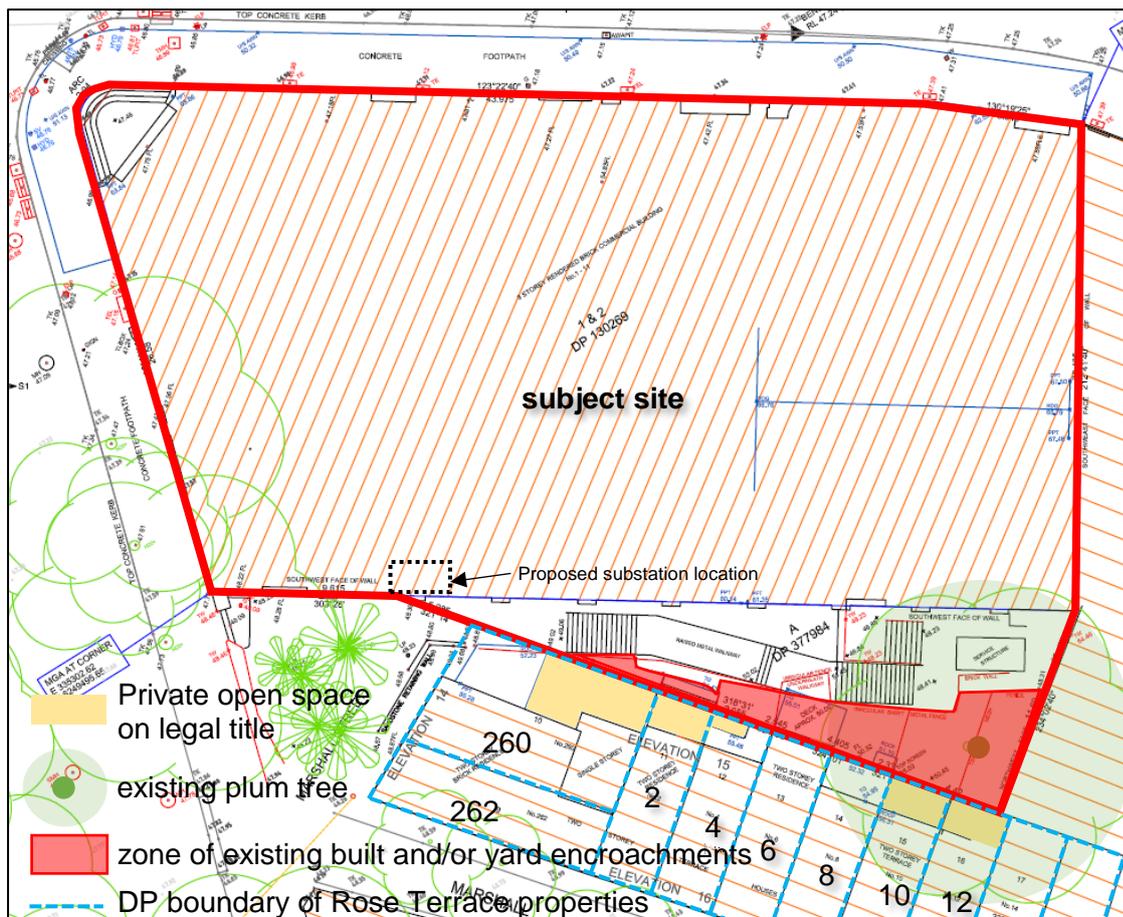


Figure 5. Survey of subject site and existing encroachments of 2 to 12 Rose Terrace, Paddington

### Substation impact to public domain

69. One submission also raised concerns that access for the construction and operation of the substation will destroy or damage the established public domain adjacent to the properties at No. 260-264 South Dowling Street, which were achieved through strong community participation and highly valued by the community.

#### Officer's response

70. The implications of the provision of any new substation proposed in the redevelopment of the site will need to be considered as part of a future DA for the site. However, an additional control has been included in the amended draft DCP, that any on-site substation associated with the development is to be located and designed to manage any potential impacts on neighbouring properties and the public domain.

### Loss of yard and landscape amenity for No. 12 Rose Terrace

71. The owner of No. 12 Rose Terrace has raised that her property has included use of a much larger area (3 metre x 7 metre) of the subject site for many years and that she has occupied it since 2001. She has established and maintained a garden, installed a deck and has strong sentimental connection with the much-loved plum tree, which provides shade, landscape amenity, and is the site where she has sprinkled the ashes of a loved one. The submission objects to the loss of this space, amenity and biodiversity in this existing area. She recommends that the excavation be pushed back (i.e. to be within the main building) to preserve this amenity.

Officer's response

72. While the owner of No. 12 Rose Terrace has informally enjoyed and maintained the space within 1-11 Oxford Street, as shown in Figure 5, it is reasonable that the proponent seeks to redevelop the site. This space could be redeveloped under the current planning controls, regardless of this planning proposal. The supporting concept design has taken the approach of generally providing a 2 metre setback of land (apart from 260 South Dowling Street discussed above), which is understood will be made available for private recreation for each terrace, as shown in Figure 6 and 7. The amended draft DCP now includes a 2m dimension on 'Figure 6.xx: 1-11 Oxford Street, Paddington – Maximum building envelope plan', to provide certainty on the required setback from the allowed envelope to the southern boundary adjoining the Rose Terrace properties, apart from 260 South Dowling Street.
73. The concept design also shows the residences will be provided outlook onto a more attractive landscaped roof garden above a normal fence height wall edge, unlike the current situation, where the residences overlook an old cooling tower, elevated fire stair and aging wall. To ensure this green roof area is provided, an additional control has been included in the amended draft DCP that a green roof with a minimum area of 90 square metres is to be provided south of the existing main building structure within the green area, as shown in 'Figure 6.xx: 1-11 Oxford Street, Paddington – Public domain, loading, servicing and access'.

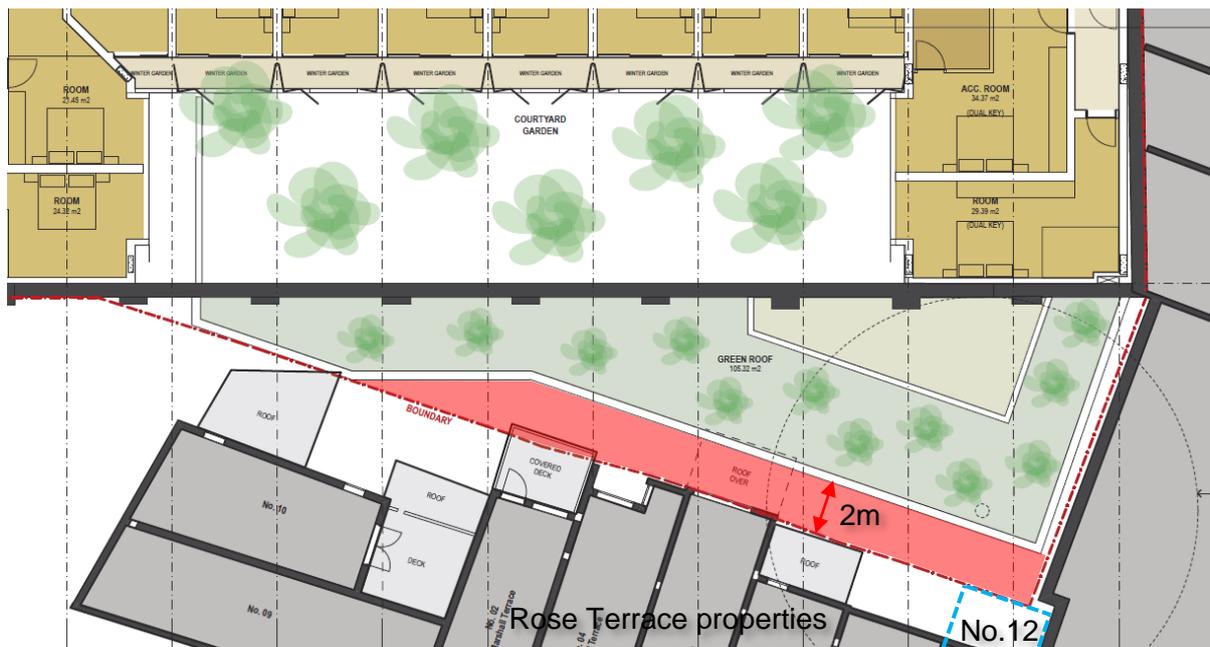


Figure 6. Concept first floor plan - relationship to Rose Terrace properties, 2 metre setback provided and space available for private recreation

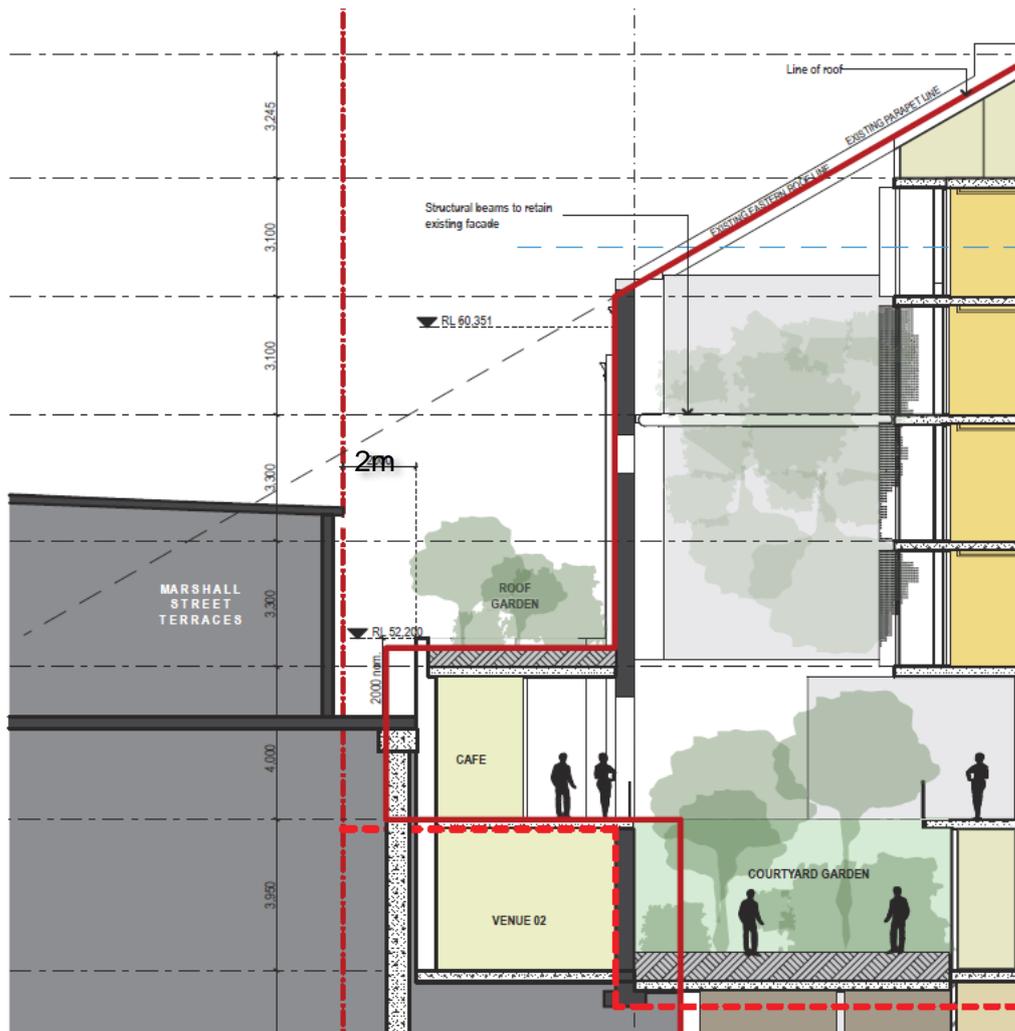


Figure 7. Concept cross section - relationship to Rose Terrace properties and 2 metre setback provided

### Removal of attractive plum tree reducing Rose Terraces rear amenity

74. One submission raised the amenity value of the plum tree, which is proposed for removal to enable extension of the proposal to the south of the southern theatre wall, arguing that it should be protected. However, two submissions from 13-15 Oxford Street apartments, have requested that the tree be trimmed back.

#### Officer's response

75. The removal of the tree identified as a *Harpephyllum caffrum* (Wild Plum) shown in Figure 5, was assessed by the City's Tree Management Officer, who considered that, given the defects noted in the Arborist Impact Assessment and observed during the site inspection, and provided there was adequate compensatory planting and meet require canopy as required under the principle DCP as indicated on the concept design and concept landscape plan, there would be no objection to the removal of the tree.

**Rose Terrace properties be provided right of carriageway to the rear**

76. Two submissions raise that each title for the Rose Terraces should be afforded right of carriageway as part of any planning changes, so that the residents can access the rear of their premises.

## Officer's response

77. The concept design shows a 2 metre setback to a wall and raised garden as shown in Figures 6 and 7. The draft DCP now includes a 2m dimension on 'Figure 6.xx: 1-11 Oxford Street, Paddington – Maximum building envelope plan', to provide certainty on the required setback from the allowed envelope to the southern boundary adjoining the Rose Terrace properties, apart from 260 South Dowling Street discussed above. The establishment of right of way over this land is a private property matter to be negotiated between the proponent and Rose Terrace properties and not a matter that may be imposed by Council.

**Noise, vibration and security concerns from rooftop bar and entertainment facility**

78. Two submissions raised noise, vibration and security concerns over the operation of the entertainment facility and roof-top bar and sought assurances that adequate sound proofing, appropriate hours and management of patrons and access control would occur to not impact adjoining residences.

## Officer's response

79. Given the complete rebuild the uses generating noise, vibration and security concerns will need to fully comply with required standards. These matters will be considered as part of the assessment of a future DA and controlled through conditions on any consent granted. It is noted that entertainment facilities and food and drink premises can occur under the current planning controls regardless of the planning proposal.

**Noise, vibration and dust impact during construction**

80. Three submissions raised concerns about the amenity and health impact from construction for residents directly adjoining the site, particularly considering how close the excavation is.

## Officer's response

81. These matters will be considered as part of the assessment of a future DA and also controlled through conditions of any consent granted to minimise impacts during construction. This will require particular care managing the retention of the main structure of the existing building and construction next to the southern and eastern boundary, given the very close proximity to it. This will also be guided by a more detailed structural report, addressing the additional structural matters required, which are already included in the proposed draft DCP.

**Reduction in solar access**

82. Three submissions raised concerns over the potential loss of solar access and that there should be no less solar access as a result of the increased controls.

## Officer's response

83. Any future development application will be assessed against current overshadowing controls in the DCP. 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.
84. Assessment of shadow analysis of the concept design, which the maximum building envelope permitted within the amended draft DCP has been modelled on, at 21 June demonstrates:
- (a) the windows at the rear of properties at 2-20 Rose Terrace (marked as Marshall Street on the shadow analysis) 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) minor additional overshadowing of properties at 264 to 276 South Dowling Street. However, given the south-east orientation of the rear windows, any additional overshadowing would be limited to window frames, window reveals and walls and the affected windows are ground floor kitchen and first floor bedroom windows, which the solar access controls in the principle DCP does not protect.
  - (c) there is no additional shadowing of windows to properties at 1-17 Rose Terrace;
  - (d) apartment Nos. 1-6 in the residential flat building at 13-15 Oxford Street to the east of the site, has minor additional overshadowing but will receive greater than two hours solar access from 11 am to 1pm;
  - (e) there is no additional shadowing of the Rose Terrace park.
85. Based on the shadow analysis, it is concluded that the maximum building envelope permitted with the amended draft DCP will satisfy the solar access controls within the principle DCP.

**Privacy impacts**

86. Three submissions raised that there must be no loss of privacy from the rear rooms, rooftop bar or other windows looking into adjoining residential.

## Officer's response

87. Clause 6.21(4)(d)(vii) of the Design Excellence provisions within the LEP requires consideration of how proposed development addresses inter-alia visual and acoustic privacy. The detail of this matter will be addressed at the DA stage. However, the supporting concept design demonstrates there will be no visual privacy impacts to the Rose Terrace properties due to the rear theatre wall, required to be retained, blocking any views from hotel rooms into adjoining residential properties, which instead will view into a heavily landscaped internal courtyard with trees. The retention of the high wall will also attenuate acoustic privacy impact.

88. The concept design demonstrates how visual privacy can be protected between any roof-top bar into apartments at No. 13-15 Oxford Street by the design of the roof and the provision of large planter on the eastern side. Visual and acoustic privacy protection of these residential properties could also be managed with the provision of further privacy screening and baffling and on the eastern side of any roof-top bar or other management conditions being imposed on any consent granted.
89. There are no other existing windows, proposed windows or potential windows on the eastern wall facing adjoining No. 13-15 Oxford Street, given the existing wall is located on the boundary, due to fire rating constraints and retention of heritage fabric.

#### **Removal of awnings to Oxford Street**

90. The Paddington Society, while supportive of the revitalisation of this significant site at the western gateway of Paddington, raised that it did not support the removal of the continuous awnings to Oxford Street as it would have a negative impact on pedestrian amenity for sun and rain protection.

#### **Officer's response**

91. Documentary evidence in the heritage impact statement shows that the original 1911 picture theatre had no awning along Oxford Street, therefore it is acceptable from a heritage perspective to change the building to have separate awnings associated with entries. This also allows for planting of trees in between the new awnings, providing space for the tree canopy that will improve the visual and physical amenity of the area through shade, urban cooling and enhanced biodiversity.

#### **On-site parking**

92. One submission, while strongly supportive of the proposal, thought the plan needed on-site parking to be able to attract customers for an entertainment venue.

#### **Officer's response**

93. The City adopts maximum car parking rates to encourage alternatives to private motor vehicles, such as public transport, walking or cycling. It does not require on-site car parking, except space for servicing. Car parking within the maximum permitted under the current controls will need to manage heritage issues such as retaining the main structure of the existing building and the corner location on two busy State controlled roads. The site is well served by frequent bus services along Oxford Street and there is a significant local catchment that would also provide patronage to the entertainment venue, who can walk and cycle to the venue and support sustainability goals.

#### **Fire protection**

94. One submission raised that significant fire protection steps should be arranged, noting the significant fire risk at the moment with the building.

#### **Officer's comment**

95. This is a critical process of the DA and CC stage and not relevant to the planning proposal process. A complete rebuilding of the site will occur such that full compliance with fire regulations will be required, that will completely address any fire risks relevant to the specific proposal put forward.

**Strategic Alignment - Eastern City District Plan**

96. The Eastern City District Plan 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.
97. 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. The future DA will need to address meeting the current DCP control of providing 15 per cent tree canopy cover on the site, such as through the provision of new tree canopy in a courtyard, as indicated in the concept design.
  - (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

98. 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.

### Strategic Alignment - Local Strategic Planning Statement

99. The Planning Statement sets out the City's land use planning vision, priorities and actions to guide the growth and change of the local area over the next twenty years to 2036. The Planning Statement has been prepared to give effect to the Eastern City District Plan and is informed by our local characteristics and opportunities, the directions in Sustainable Sydney 2030 as well as various local plans and strategies. The Act requires planning proposals to give effect to the priorities, objectives and actions in the Planning Statement.

100. This Planning Proposal gives effect to the following planning priorities:
- (a) Priority I1 - Movement for walkable neighbourhoods and a connected city - This planning proposal will encourage greater sustainable and active transport use through not providing on-site car parking and a new end of journey facility.
  - (b) Priority L1 - A creative and socially connected city - The continuation of an entertainment facility on the site required by an LEP provision will help provide a new fit for purpose space to help address the shortage of small to medium sized performance and rehearsal space venues, ranging from 200-500 people.
  - (c) Priority L2 - Creating great places - This planning proposal will facilitate the renewal of this landmark contributing building in the Paddington Heritage Conservation Area and the interpretation of the building's heritage significance as an early 1911 picture theatre and State listed Busby Bore running under the site; continuation of an entertainment venue on the site; continuation of retail and commercial spaces on the Oxford Street edge; and the provision of an anchor hotel use with major new restaurant and roof top bar; and new street trees, which will assist making this part of Oxford Street a great revitalised place.
  - (d) Priority P2 - Developing innovative and diverse business clusters in City Fringe - This planning proposal will facilitate the refurbishment of this site for a medical based hotel and a health services facility next to St Vincent's hospital, which will assist 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. Also, the provision of a high-quality new hotel, supported by major restaurant, roof top bar and adjoining entertainment venue and mix of retail will support the visitor, hospitality, night time and retail economy. Also, the proposal will provide a significant contribution to achieving the objectives of the Eastern Creative Precinct, to create a thriving, regionally significant cluster of creative sector business, arts and cultural enterprises.
  - (e) Priority S2 - Creating better buildings and places to reduce emissions and waste and use water efficiently - The improved building delivered by this planning proposal delivers a positive sustainable outcome through the retention of the main building structure and design measures to achieve 5 star Green Star Design & As Built certification, 4.5 stars NABERS Energy rating for the whole hotel building and 4 star NABERS Water whole building rating.

### Relevant Legislation

- 101. Environmental Planning and Assessment Act 1979,
- 102. Environmental Planning and Assessment Regulation 2000.

**Critical Dates / Time Frames**

103. The Gateway determination requires the amendment to Sydney LEP 2012 to be completed by 11 December 2020.
104. The Gateway determination authorises Council to exercise plan-making delegation and liaise directly with Parliamentary Counsel to draft and make the LEP.
105. If approved by Council and the CSPC, the City will commence the drafting and plan making process. Once completed, the amendment to Sydney LEP 2012 will come into effect when published on the NSW legislation website.
106. If approved by Council and the CSPC, the amendment to Sydney DCP 2012 will come into effect on the same day as the LEP.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

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