

**Item 3.****Development Application: 58-78, 82-106 Oxford Street, Darlinghurst - D/2020/1071**

File No.: D/2020/1071

**Summary**

<b>Date of Submission:</b>	15 October 2020  Amended plans and information were submitted in November 2020 and in April, June, July and August 2021
<b>Applicant:</b>	AM Darlinghurst Investment Pty Ltd c/o TOGA Project Services Pty Ltd
<b>Architect:</b>	FJMT
<b>Developer:</b>	AM Darlinghurst Investment Pty Ltd c/o TOGA Project Services Pty Ltd
<b>Owner:</b>	City of Sydney Council, and is subject to a 99-year lease with AM Darlinghurst (2019-2118)
<b>Planning Consultant:</b>	Ethos Urban
<b>Heritage Consultant:</b>	Urbis
<b>DAP:</b>	12 November 2020
<b>Cost of Works:</b>	\$44,085,318.00
<b>Zoning:</b>	The site is located in the B2 Local Centre zone. The proposed development is defined as a 'office premises', 'retail premises', 'food and drink premises' and 'community facility' development and is permissible with consent in the zone.
<b>Proposal Summary:</b>	Development approval is sought for the alterations and additions to existing buildings at 58-78 Oxford Street (Group 1) and 82-106 Oxford Street (Group 2) for a mixed use development. The proposed uses include retail premises, food and drink premises, and tenancies for cultural and creative uses on the lower ground and ground levels, and commercial offices above.

The application was notified and advertised for 28 days. A total of 29 submissions were received (28 objections and one submission in support). The issues raised in the objections include height, heritage, design, amenity impacts, conflict of interest, contamination, use, waste, traffic and construction impacts.

The applicant submitted a public benefit offer on 10 September 2021 for the conversion of Foley Street to a shared zone. A draft Voluntary Planning Agreement is being prepared and will shortly be placed on public exhibition for a period of 28 days.

The application was amended during the assessment with further information provided on the existing fabric of the buildings, and addressing issues raised by the Heritage Committee, required under the Sydney DCP 2012. Council engaged an external heritage consultant and external structural consultant to review additional information provided by the applicant. The revised design is satisfactory subject to conditions ensuring the retention of significant heritage fabric.

On 10 September 2021 the 'Oxford Street Cultural and Creative Precinct' planning proposal commenced exhibition. It is on exhibition until 4 November 2021. The proposed instrument is therefore a matter for consideration under Clause 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979. The proposed planning instrument provides an alternative height of building development standard, which increases the height control from 15m under the current Sydney LEP 2012 to a range of heights between 23m and 25m for Group 1 (58-78 Oxford Street), and of 25m for Group 2 (82-106 Oxford Street).

The proposed development is compliant with the permitted floor space ratio (FSR) control under Sydney Local Environmental Plan 2012 (Sydney LEP 2012). The development exceeds the 15m height of buildings standard by between 62.6% (9.4m) and 66.3% (9.95m), however is generally consistent with the alternative building height control of the planning proposal for the site, of between 23m and 25m (Group 1) and 25m (Group 2). The variation to the Sydney LEP 2012 height standard is subject to a clause 4.6 variation request, due to the exceedence of the current standard, and the Clause 4.6 request is supported.

The application is referred to the Local Planning Panel for determination for the following reasons:

- Conflict of interest - Development for which the land owner is the council. The site is subject to a 99-year lease with AM Darlinghurst until 2118.
- Contentious development - Development that is the subject of 25 or more unique objections
- Departure from development standards - development that contravenes a development standard imposed by an environmental planning instrument by 10%
- Sensitive development - Development applications for which the developer has offered to enter into a planning agreement

**Summary Recommendation:** The development application is recommended for deferred commencement approval.

**Development Controls:**

- (i) Environmental Planning and Assessment Act 1979
- (ii) State Environmental Planning Policy No 55 - Remediation of Land
- (iii) State Environmental Planning Policy (Infrastructure) 2007
- (iv) Sydney Local Environmental Plan 2012
- (v) Planning Proposal: Oxford Street Cultural and Creative Precinct (exhibited on 10 September 2021)
- (vi) Sydney Development Control Plan 2012

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings - Group 1
- C. Selected Drawings - Group 2
- D. Clause 4.6 Variation Request - Height of Buildings
- E. Perspectives
- F. Heritage Committee Report
- G. Public Benefit Offer
- H. View Loss Study

## Recommendation

It is resolved that:

- (A) the variation requested to Height of Buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2020/1071 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

The application is recommended for deferred commencement approval for the following reasons:

- (A) The development, subject to conditions, is consistent with the objectives of the B2 Local Centre zone pursuant to Sydney Local Environmental Plan 2012.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
  - (i) the applicant's written request adequately addresses the matters required by clause 4.6(3) of the Sydney LEP 2012, in that compliance with the height of building development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012; and
  - (ii) the proposal is in the public interest because it is consistent with the objectives of the B2 Local Centre zone and the height of building development standard.
- (C) The development conserves the heritage significance of the heritage items on site and satisfies Clause 5.10 of Sydney Local Environmental Plan 2012.
- (D) The development exhibits design excellence to satisfy Clause 6.21 of Sydney Local Environmental Plan 2012.
- (E) The development is consistent with the character and principles identified in the locality statement for Oxford Street Darlinghurst.
- (F) The development will not result in unacceptable amenity impacts on surrounding properties and public domain and does not unreasonably impact upon any significant view corridors.

## Background

### The Site and Surrounding Development

1. The site comprises two building groups on the northern side of Oxford Street, between Oxford Square and Palmer Street identified as Group 1 and Group 2. The buildings are part of an architecturally consistent group of buildings constructed as the result of the resumption by the Council at the time and widening of Oxford Street between Whitlam Square and Taylor Square in c1909. These buildings are a fine example of Federation Freestyle architecture and make an important contribution to the streetscape. The buildings are owned by the City, but part of a 99-year lease until the year 2118.
2. Group 1 is part of the block bounded by Foley Street, Crown Street, Oxford Street and Oxford Square. It comprises Lots 3-12 in DP6520, commonly known as 58-78 Oxford Street, Darlinghurst, and has a site area of 1,234sqm. It excludes:
  - (a) the two lots at either end of the block
  - (b) the Zink Tailors building (Lot 2 in DP 6520) at 56 Oxford Street Darlinghurst, which is also owned by the City and part of the same 99-year lease.
3. Group 2 is an entire street block bounded by Foley Street, Palmer Street, Oxford Street and Crown Street. It has a legal description of Lot 1 in DP 815188, commonly known as 82-106 Oxford Street, Darlinghurst, and has a site area of 1,668sqm.
4. The site is located within the Oxford Street heritage conservation area (C17).
5. The two building groups are identified in the aerial image below.
6. Site visits were carried out in November 2020, February and May 2021.



**Figure 1:** Aerial image of subject site and surrounding area (Note: Group 3 is not the subject of this report)

### ***Group 1 (58-76 Oxford Street)***

7. Group 1 comprises five separate brick buildings and presents as three storeys to Oxford Street and four storeys to Foley Street. The buildings are interconnected on the lower ground floor, level 1 and level 2. Each building has a distinct and individual appearance but collectively they present as a cohesive streetscape of federation style.
8. The five buildings were constructed c1911-12, and are individually listed local heritage items, as follows:
  - (a) 58-60 Oxford Street – (item number I385) commercial building including interior
  - (b) 62-66 Oxford Street – (item number I386) commercial building including interior
  - (c) 68-70 Oxford Street – (item number I387) commercial building "Daniel's" including interior
  - (d) 72-72A Oxford Street – (item number I388) commercial building "Nelson Leong" including interior
  - (e) 74-78 Oxford Street – (item number I389) commercial building including interior

9. There are some retail tenancies to Foley Street, which is a shared zone between Burton Street and Crown Street.
10. To the west, at 56 Oxford Street, is a three-storey brick commercial building known as “GA Zink & Sons”. That building is both a state heritage item (SHR 00658) and local heritage item (I384). Further to the west, at 52-54 Oxford Street, is a three-storey triangular brick building which is a local heritage item. It accommodates a cafe and a cocktail bar on the ground and lower ground levels, and residential above.
11. To the east, at 80 Oxford Street, is a three-storey brick and sandstone corner building that is a local heritage item (I390) known as the ‘Former Kelso’s Hotel’. It accommodates retail uses on the lower levels, and residential uses above.
12. To the north is a four-storey mixed use building on the opposite side of Foley Street, with ground floor retail and residential above.
13. To the south, on the opposite side of Oxford Street, is a row of three to four storey retail and commercial buildings.
14. Photos of Group 1 and surrounds are provided below:



**Figure 2:** Group 1 as viewed from Oxford Street



**Figure 3:** Group 1 as viewed from Foley Street



**Figure 4:** The site looking south east along Foley Street from Oxford Square



**Figure 5:** The neighbouring property 80 Oxford Street in foreground (not part of this DA), and the Foley Street frontage of the site in the background



**Figure 6:** Group 1 shopfronts along Oxford Street and 56 Oxford Street (GA Zink & Sons), which is not part of the DA, shown in the foreground



**Figure 7:** Original shopfront configuration (84 Oxford Street)



**Figure 8:** Evidence of original interiors within 74 and 76 Oxford Street and interpretive timber truss

**Group 2 (82-106 Oxford Street)**

15. Group 2 is a brick commercial building with a basement level and presents as three storeys to Oxford Street and four storeys to Foley Street. The building was constructed c1912 and is a local heritage item known as the 'former Oxford Street Municipal Chambers' (I392). The building was refurbished in c1940 in an interwar functionalist style. The original lobby, stairs, and lift remain highly intact. The ground floor accommodates retail and food and drink premises, and the upper levels are used as commercial offices.
16. To the north, on the opposite side of Foley Street, is a three-storey mixed use commercial/residential building fronting Crown Street and a five-storey residential building fronting Palmer Street. A part-six part-seven storey residential building is located further north along Crown Street, while a row of two-storey terraces and a two-to three-storey residential building are along Palmer Street.
17. To the east, at 108 Oxford Street, is a three-storey hotel with a bottle shop on the ground floor. Further east is a related development application (D/2020/1072) at 110-122 Oxford Street.
18. To the south, on the other side of Oxford Street, is a row of two to four storey retail and commercial buildings.
19. Photos of the Group 2 and surrounds are provided below:



**Figure 9:** Group 2 as viewed from Crown Street



**Figure 10:** Group 2 as viewed from the corner of Oxford Street and Crown Street



**Figure 11:** Group 2 as viewed from the corner of Oxford Street and Palmer Street



Figure 12: Group 2 as viewed from Palmer Street



Figure 13: Shopfronts of Group 2



Figure 14: Group 2 as viewed from Foley Street



Figure 15: Looking north-west along Foley Street as viewed from Palmer Street, with Group 2 on the left and 265 Palmer Street on the right



Figure 16: Original entry and letterboxes of Group 2



**Figure 17:** Original entrance hall of Group 2



**Figure 18:** Original lift shaft and stairs of Group 2



**Figure 19:** Original hallway of Group 2 (Level 1)



Figure 20: Hallway of Group 2 (Level 2)



**Figure 21:** Example of a Group 2 tenancy



**Figure 22:** Original ceilings within Group 2



**Figure 23:** Feature pyramidal base to flagpole on Group 2 roof

## History Relevant to the Development Application

### History of Oxford Street

20. The north side of Oxford Street was rebuilt in the early 20th century following resumptions and road widening by the Council. This major public work resulted in a fundamental change to the nature and scale of Oxford street. The architectural cohesiveness of this side of the street is a direct result of the rebuilding of the streetscape on the northern side of Oxford Street over a relatively short period of time in the contemporary free classical architectural style using a unified palette of local brick and sandstone.

### Development Applications

#### D/2020/1072

21. A development application (D/2020/1072) for 110-122 Oxford Street was lodged simultaneously by the applicant for use of the existing building as a mixed use development and associated alterations and additions with a signage strategy. The proposed uses include a 75-room hotel, retail premises, food and drink premises, and tenancies for cultural and creative uses on the lower ground and ground levels.
22. D/2020/1072 has been assessed concurrently and is subject to a separate report to the Local Planning Panel.
23. There are a range of development applications for retail and commercial uses for the subject site. These applications are not relevant to the subject DA.

**Oxford Street Cultural and Creative Precinct - Planning Proposal**

24. The Oxford Cultural and Creative Precinct Planning Proposal (Planning Proposal) commenced exhibition on 10 September 2021. The Planning Proposal is on exhibition until 4 November 2021. The Planning Proposal reviews planning controls applying to Oxford Street. The review responds to the high level of retail vacancy, noisy road environment, underused public spaces and the impact of the now repealed lockout laws and the Covid-19 pandemic on the activation of Oxford Street. In summary, the Planning Proposal allows for additional height to buildings, where cultural and creative floor space is maintained and enhanced, and heritage fabric is retained.
25. The Planning Proposal is informed by extensive consultation with the community and consultant studies. Consultation commenced in October 2020 and concluded in December 2020. This demonstrated significant support for precinct activation, improving amenity of public domain, reviewing planning controls, including additions to heritage buildings and controls for increased affordable creative space.
26. On 13 May 2021 the Central Sydney Planning Committee approved the planning proposal for:
  - (a) submission to the Department of Planning, Industry and Environment with a request for a Gateway Determination;
  - (b) public authority consultation and public exhibition in accordance with any conditions imposed under the Gateway Determination
27. On 6 July 2021, the Planning Proposal (PP 2021-3542) received Gateway determination to amend Sydney LEP 2012 to provide an alternative building height subject to site specific provisions.
28. The proposed planning instrument provides an alternative height of building development standard, which increases in the height control from 15m under the current Sydney LEP 2012 development standard, to a range of heights between 23m and 25m for Group 1, and of 25m for Group 2. The alternative height control is subject to the provision of cultural and creative space, and subject to not undermining heritage significance or structural stability of the existing buildings.
29. The implications of the Planning Proposal upon this development application, and an assessment against the planning proposal, are discussed under the 'Discussion' heading below.

**Amendments**

30. A number of meetings between the applicant and the City's staff were held during the assessment process to resolve heritage and urban design issues.
31. Following a preliminary assessment of the proposal by Council Officers, requests for additional information and amendments was sent to the applicant.
32. Additional plans, heritage information, structural assessment, loading information, a signage strategy, Waste Management Plans, Acoustic Reports, an Environmental Efficiency report, a Construction Management Plan and Land Contamination information were submitted in November and December 2020.
33. Additional structural drawings, a view sharing study, and amended Acoustic Reports and Waste Management Plans were submitted in April 2021.

34. Amended plans were submitted in June 2021.
35. Amended plans, shopfront drawings, a structural report and drawings, and additional heritage information including amended Conservation Management Plans, Schedule of Conservation Works and Heritage Interpretation Strategy were submitted in July 2021.
36. An amended view sharing study was submitted in August 2021.
37. An amended public benefit offer relating to the Foley Street shared zone was submitted on 10 September 2021.
38. Following the commencement of the exhibition of the Oxford Street Cultural and Creative Precinct planning proposal, an amended statement justifying the variation to the height of buildings development standard under Clause 4.6 of the Sydney LEP 2012 was submitted on 14 September 2021.
39. The amended plans and the additional information form the subject of assessment within this report.

### **Proposed Development**

40. Approval is sought for alterations and additions to existing buildings for a mixed-use development comprising the following:
  - (a) Lower Ground and Ground Levels:
    - (i) Tenancies for retail, food and drink, and cultural and creative uses fronting Oxford Street and Foley Street;
    - (ii) Through site link connecting Oxford Street and Foley Street;
    - (iii) Retain existing substation; and
    - (iv) End of trip facilitates, other services and storage areas
  - (b) Levels 1-4:
    - (i) Commercial offices with external terrace space; and
    - (ii) Mechanical plant
41. The works to Group 1 (58-76 Oxford Street) include:
  - (i) Part removal of existing fit outs to existing tenancies across all levels
  - (ii) Conversion of existing commercial tenancies at basement level to new retail, ancillary and storage spaces with access from Foley Street, including creation of new external openings to previously modified fabric
  - (iii) Creation of new retail with cultural and creative spaces at ground floor, including new central lobby space
  - (iv) Creation of open commercial office space at Level 1 and Level 2, including retention of bulk heads and nibs to original inter-tenancy walls

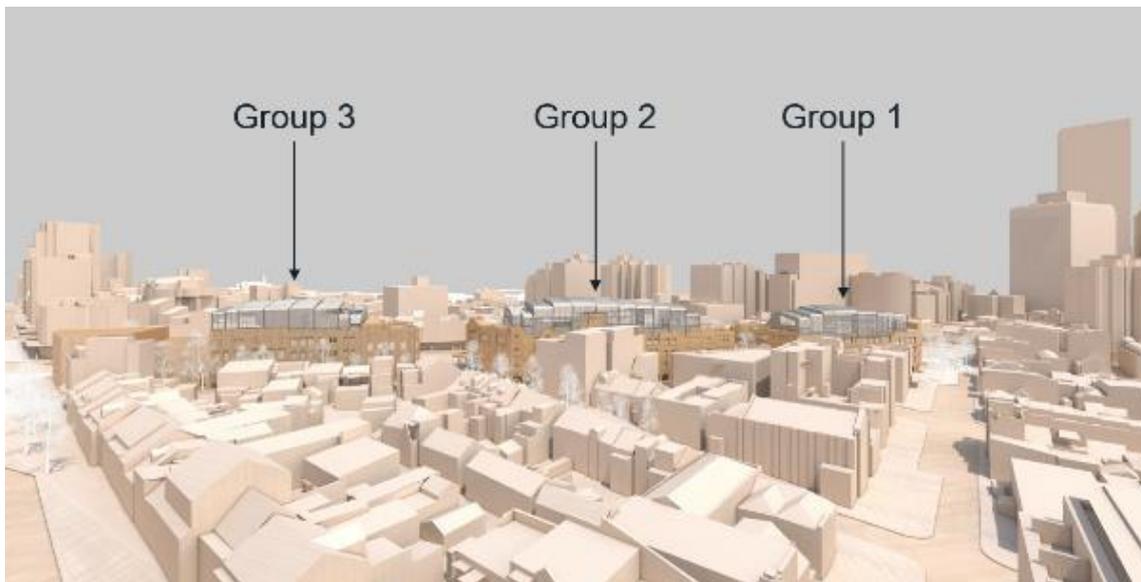
- (v) Installation of two new staircases and lifts to connect all levels
  - (vi) Construction of a new two storey addition across the whole of the buildings, with roof top plant.
42. The works to Group 2 (82-106 Oxford Street) include:
- (i) Part removal of existing fit outs to existing tenancies across all levels
  - (ii) Conversion of existing commercial tenancies at basement level to new retail, cultural and creative spaces, foyer, end of trips facilities and ancillary and storage spaces with access from Foley Street, including creation of new external openings to previously modified fabric
  - (iii) Creation of new retail and cultural and creative spaces at ground floor, including new lobby space.
  - (iv) Conversion of existing ground floor foyer into a new seating area, including one new opening on western wall.
  - (v) Construction of a new two storey addition for commercial use across the whole of the building, with roof top plant
  - (vi) Installation of new staircase and lifts to connect all levels
43. The application also includes a signage strategy for each building group.
44. The application proposes 5 stages of construction.
45. Selected drawings of the proposed development for Group 1 and Group 2 are provided below.



**Figure 24:** Groups 1, Group 2 (both D/2020/1071) and Group 3 (D/2020/1072) viewed from Oxford Street (Note: Group 3 is not the subject of this report)



**Figure 25:** An aerial view of Group 1, Group 2 and Group 3 viewed from the south-west (Note: Group 3 is not the subject of this report)



**Figure 26:** An aerial view of Group 3, Group 2 and Group 1 viewed from the north-east (Note: Group 3 is not the subject of this report)



**Figure 27:** An aerial view of Group 1, Group 2 and Group 3 viewed from the south-west (Note: Group 3 is not the subject of this report)



**Figure 28:** Perspective of Group 1 as viewed from Oxford Street



**Figure 29:** Perspective of Group 1 as viewed from Oxford Street



**Figure 30:** Perspective of Group 1 as viewed from Crown Street near Foley Street



Figure 31: Section through Group 1



Figure 32: Photomontage of Group 2 as viewed from Oxford Street



Figure 33: Perspective of Group 2 as viewed from Oxford Street

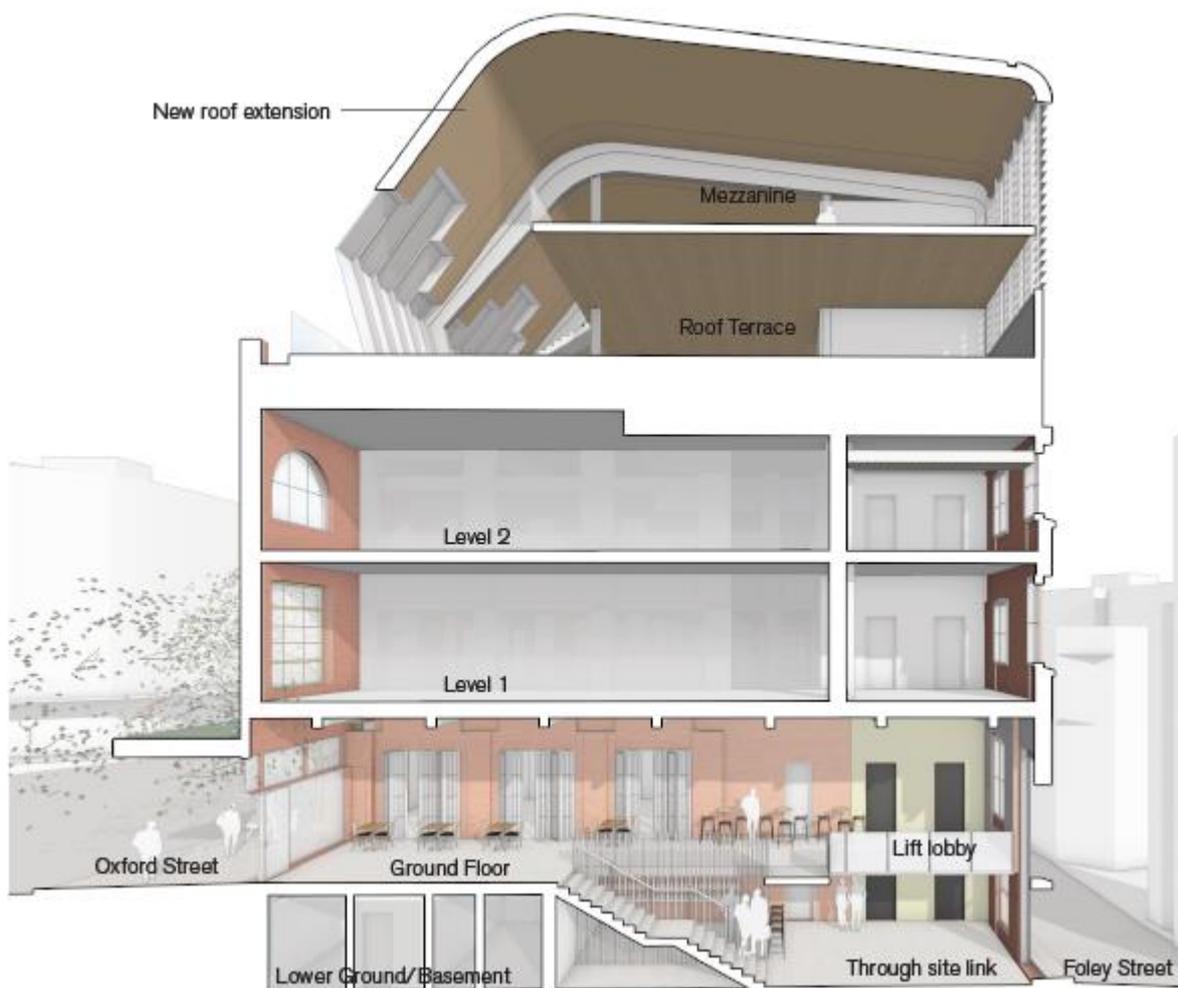


Figure 34: Section through Group 2

## Assessment

46. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## **State Environmental Planning Policies**

### **State Environmental Planning Policy No 55 - Remediation of Land**

47. The aim of State Environmental Planning Policy (SEPP) No 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
48. The buildings in Group 1 are currently used for commercial uses, and the proposed development will not increase the land use sensitivity. The submitted Preliminary Contamination Assessment was reviewed by the City's Environmental Health Unit.
49. Group 2 is currently used for retail and commercial uses. However, preliminary investigation identified the potential of contamination from a historic dry-cleaning business. A Detailed Site Investigation and Remedial Action Plan (RAP) was submitted.
50. The Council's Health Unit has reviewed the information provided, recommending conditions of consent to ensure compliance with the recommended remediation measures, and for Council to be notified should there be any changes to the strategy for remediation.
51. The Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

### **State Environmental Planning Policy (Infrastructure) 2007**

52. The provisions of SEPP (Infrastructure) 2007 are considered in the assessment of the development application.

### **Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network**

#### **Clause 45 Determination of development applications – other development**

53. The application is subject to Clause 45 of the SEPP as the development will be carried out immediately adjacent to an electricity substation.
54. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

### **Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations**

#### **Clause 101 – Development with frontage to classified road**

55. The application is subject to Clause 101 of the SEPP as the site has frontage to Oxford Street which is a classified road.
56. The proposed development satisfies the provisions of Clause 101 subject to conditions of consent, as vehicle access to the site is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, subject to the recommended conditions of consent.

**Clause 104 – Traffic Generating Development**

57. The application is subject to Clause 104 of the SEPP as the site is adjacent to Oxford Street and is for a commercial premise with more than 2,500sqm in gross floor area.
58. The application was referred to Transport for NSW who raised no objection, subject to conditions.

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

59. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
60. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, except for the objective of improved water quality, the objectives of the SREP are not applicable to the proposal. The development is consistent with the controls contained within the deemed SEPP.

**Local Environmental Plans****Sydney Local Environmental Plan 2012**

61. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

**Part 2 Permitted or prohibited development**

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The site is located in the B2 Local Centre zone. The proposed development is defined as 'office premises', 'retail premises', 'food and drink premises' and are all permissible with consent in the zone.</p> <p>The proposed development also proposes 'cultural and creative space.' This is defined within the Planning Proposal, on exhibition from 10 September 2021, as uses including 'live entertainment, performing arts, fine arts and craft, design (fashion, industrial or graphic), media film and television, photography or publishing or museums and archives dedicated to these purposes'.</p>

Provision	Compliance	Comment
		<p>'Cultural and creative space' is not directly defined in the LEP 2012 land use table, however such uses, as defined in the planning proposal, meet the definitions of commercial, light industry, and community facilities.</p> <p>Commercial and community facilities are permissible within the zone however light industry is currently prohibited, but will be permissible under the planning proposal. A condition is recommended to specify that the 'cultural and creative space' must be permissible under the LEP.</p> <p>The proposal generally meets the objectives of the zone.</p>

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 15m is permitted.</p> <p>The proposed development does not comply with the maximum height of buildings development standard. A height of 24.4m is proposed for Group 1.</p> <p>A height of 24.95m is proposed for Group 2.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.</p> <p>The additional height is recommended for support and this is discussed further in the 'discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 4:1 is permitted for the site as per clause 4.4 of the Sydney LEP 2012.</p>

Provision	Compliance	Comment
		<p>An additional FSR the equivalent to any proposed end of journey floor space is permitted in accordance with Clause 6.13 (End of journey floor space) of the Sydney LEP 2012. A building on land that is used only for the purposes of commercial premises and that has all of the following facilities together in one area of the building, is eligible for an amount of additional floor space equal to the floor space occupied by those facilities, being showers, change rooms, lockers, and bicycle storage areas.</p> <p>The amount of end of journey floor space cannot be more than the amount of floor space that can be achieved by applying a floor space ratio of 0.3:1 to the building.</p> <p>The applicant requested an additional amount of floor space of 0.3:1 for both Group 1 and Group 2. Floor plans were submitted of the proposed end of journey floor space which show that the proposed development is eligible for end of journey floor space equivalent to 0.3:1 for both Group 1 and Group 2.</p> <p>An FSR of 4.3:1 is permitted for Group 1, and an FSR of 4.22:1 is proposed.</p> <p>An FSR of 4.3:1 is permitted for Group 2, and an FSR for 4.3:1 is proposed.</p> <p>The proposed floor space complies.</p>
4.5 Calculation of floor space ratio and site area	Yes	<p>Clause 4.5(6) states "The site area for proposed development must not include a lot additional to a lot or lots on which the development is being carried out unless the proposed development includes significant development on that additional lot.</p> <p>Lot 2 of Group 1 is excluded from the development application, and no works are proposed on that lot. As such, the site area for Group 1 excludes Lot 2, and is 1,234sqm.</p>

Provision	Compliance	Comment
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3 height of buildings. A Clause 4.6 variation request has been submitted with the application.</p> <p>This is discussed further in the 'discussion' section below.</p>

#### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>Group 1 comprises 5 locally listed heritage items pursuant to Schedule 5 of the Sydney LEP 2012, being:</p> <p>58-60 Oxford Street – (item number I385) commercial building including interior</p> <p>62-66 Oxford Street – (item number I386) commercial building including interior</p> <p>68-70 Oxford Street – (item number I387) being commercial building "Daniel's" including interior</p> <p>72-72A Oxford Street – (item number I388) commercial building "Nelson Leong" including interior</p> <p>74-78 Oxford Street – (item number I389) commercial building including interior</p> <p>Group 2 is a locally listed heritage item pursuant to Schedule 5 of Sydney LEP 2012 (item number I392), being the former Oxford Street Municipal Chambers including interior.</p> <p>The site is located within the Oxford Street heritage conservation area (C17).</p> <p>Group 1 is adjacent to a state listed heritage item at 56 Oxford Street (SHR item number 00658, LEP item number I384), being commercial building "GA Zink &amp; Sons including interior.</p>

Provision	Compliance	Comment
		<p>Group 1 is also adjacent to two locally listed heritage items at 52-54 Oxford Street (item number I383) being former commercial building "London Chamber" including interior, and at 80 Oxford Street (item number I391) being former Kelso's Hotel including interior.</p> <p>Subject to the carrying out of conservation works, and subject to conditions, the proposed developments have acceptable impacts on the heritage significance of the heritage conservation area and the heritage items.</p> <p>This is discussed further in the 'discussion' section below.</p>

#### Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	Refer to discussion under Clause 4.4 (Floor Space Ratio) above.
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area. The development adheres to Clause 6.21 of Sydney LEP 2012 and therefore achieves design excellence subject to the recommended conditions.</p>

**Part 7 Local provisions – general**

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	Development consent must not be granted to development that includes car parking spaces if the total number of car parking spaces provided on the site would be greater than the maximum set out in this Division.  No office car parking spaces are proposed and the proposal complies with the relevant development standards.
7.7 Retail premises	Yes	Development consent must not be granted to development that includes car parking spaces if the total number of car parking spaces provided on the site would be greater than the maximum set out in this Division.  No retail car parking spaces are proposed and the proposal complies with the relevant development standards.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.15 Flood planning	Yes	The site is identified as being subject to flooding. The existing floor levels at the ground and lower ground floors are not proposing to change. The current floor levels are acceptable for cultural and creative uses and retail uses proposed on the street facing floors.

**Development Control Plans****Sydney Development Control Plan 2012**

62. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

**Section 2 – Locality Statements**

63. The site is located within the Oxford Street Darlinghurst locality. The locality statement says:
- (a) Oxford Street, Darlinghurst is to continue to provide uses that reflect its role as a regionally significant retail and entertainment street and a local business centre for surrounding neighbourhoods. The area has a range of day-time and night-time activities.
  - (b) There are a number of strategies developed by the City of Sydney which focus on strengthening Oxford Street as a 24 hour entertainment, tourism and retail precinct. The Oxford Street Cultural Quarter Plan prepared in 2009, builds on and responds to these broader strategies and policies to maintain and develop a healthy and competitive economy, a vibrant community, support the local economy and integrate with overarching Council strategies.
  - (c) New development will conserve and complement the context established by the heritage fabric and ensure new development while not mimicing heritage styles, but responds to the urban context and contributes to the established built form patterns of the street.
  - (d) Future development along Oxford Street is to reinforce the established heritage character of narrow shop frontages and consistent awnings.
64. The principles are as follows:
- (a) Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.
  - (b) Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.
  - (c) Retain and enhance the existing heritage buildings along Oxford Street.
  - (d) Development is to respect the prevailing scale, character and form of the street, as defined by the Victorian, Federation and Inter-war heritage buildings.
  - (e) Ensure that new development reinforces the individuality of different precincts that characterise Oxford Street.
  - (f) Significant shop fronts are to be retained and conserved. The design of new shopfronts should take their cues from traditional shopfronts.
  - (g) Maintain the mix of uses that contribute to Oxford Street as entertainment, tourism and retail precinct.
  - (h) Maintain Oxford Streets retail, commercial, entertainment and tourism uses and encourage these uses to occur both at and above the street level.
65. The proposed development is in keeping with the unique character and the design principles of the Oxford Street Darlinghurst locality in that it will contribute towards the revitalisation of Oxford Street as an entertainment, tourism and retail precinct, and local business centre.

66. The impact of the proposed development in relation to heritage is discussed under the issues section below.

### Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements		
3.1.2.2 Through site links	Yes	<p>A through site link is proposed for both Group 1 and Group 2 through the existing buildings that connect Oxford Street to Foley Street, and is to be open between 7am and 10pm Monday to Sunday.</p> <p>This will contribute to the pedestrian network.</p>
3.1.5 Public art	Yes	A condition is recommended requiring public art to be provided as part of the development.
3.2. Defining the Public Domain		
3.2.1.1 Sunlight to publicly accessible spaces	Yes	<p>The control requires that overshadowing effects of new buildings on publicly accessible open space are minimised between the hours of 9am and 3pm on 21 June.</p> <p>The submitted shadow diagrams demonstrate that the proposed additions result in a loss of mid-winter solar access to the footway along the south side of Oxford Street opposite between 9am and 11am, with solar access being maintained to the footway on the southern side of Oxford Street between 11am and 3pm.</p> <p>This is acceptable as Oxford Street is not defined as open space.</p>

Provision	Compliance	Comment
3.2.2 Addressing the street and public domain	Yes	<p>The proposal essentially maintains or enhances the interfaces with the public domain at ground floor and lower ground floor. The detail, design quality and signage strategy are addressed by conditions.</p> <p>The through site links will provide improved access and permeability.</p>
3.2.3 Active frontages	Yes	<p>The site is subject to an active street frontage control along Oxford Street, as well as along the Crown and Palmer Street frontages of Group 2.</p> <p>The existing fine grain retail tenancy pattern is retained to contribute to the vibrancy of Oxford Street.</p>
3.2.4 Footpath awnings	Yes	<p>The existing continuous awnings of Group 1 and Group 2 are maintained and are satisfactory subject to recommended conditions for the retention of heritage fabric.</p>
3.2.7 Reflectivity	Yes	<p>A condition is recommended that visible light reflectivity from building materials used on the facade of the building does not exceed 20%.</p>
3.5 Urban Ecology	Yes	<p>The proposal will not affect existing street trees on Oxford Street. Conditions are recommended relating to tree protection and pruning.</p>
3.6 Ecologically Sustainable Development	Yes	<p>The DCP requires a 5 star NABERS rating for alterations and additions to existing office premises, however 5 stars is not required where the upgrade works would negatively impact on significant heritage fabric or the heritage significance of a heritage item.</p> <p>A 4.5 star NABERS rating is proposed, as a 5 star rating couldn't be achieved due to constraints of the existing buildings.</p>

Provision	Compliance	Comment
3.7 Water and Flood Management	Yes	The site is identified as being subject to flooding. The existing floor levels at ground and lower ground floor are not proposing to change, which is acceptable for retail use.
3.9 Heritage		
3.9.1 Heritage impacts statements	Yes	A Heritage Impact Statement (HIS) was submitted by a suitably qualified heritage consultant following the HNSW guidelines. The HIS has addressed relevant matters required by the provision.
3.9.4 Development of sites of State heritage significance or containing more than one heritage item	Yes	<p>The provisions require that a Heritage Committee be appointed to examine and advise on the merits of the proposal. The consent authority can only grant consent for development after considering the advice of the committee.</p> <p>A heritage committee was formed and provided a report on 12 March 2021. The comments of the heritage committee are discussed further under the 'discussion' heading below.</p>
3.9.5 Heritage items	Yes	<p>The controls require that development affecting a heritage item is to minimise the extent of change to significant fabric, elements or spaces.</p> <p>Development is to be consistent with an appropriate Heritage Conservation Management Plan for the item.</p> <p>Development should enhance the heritage item by removing unsympathetic alterations and additions and reinstating missing details.</p> <p>This is discussed further under the 'discussion' heading below.</p>

Provision	Compliance	Comment
3.9.6 Heritage conservation areas	Yes	The new additions are designed to respect the heritage conservation area and the neighbouring buildings. The new building additions complement the existing character but are modern and not replicas. The building form is compatible with the anticipated built form envisaged in the Planning Proposal. The proposal is also consistent with the existing built form and urban pattern subject to recommended conditions.
3.9.10 Building materials for heritage items and buildings within heritage conservation areas	Yes	The proposed materiality of the existing buildings is generally maintained and enhanced. The new materials are modern and sympathetic in their quality, colours and finishes subject to recommended conditions.
3.9.11 Conservation of public domain features in heritage conservation areas	Yes	Features like stone kerbing, guttering and paving will be retained along all street frontages.
3.10.4 Significant shopfronts	Yes	<p>A condition is recommended to ensure that the significant shopfronts are retained and preserved.</p> <p>Refer to discussion under the 'Heritage' heading below.</p>
3.11 Transport and Parking	Yes	<p>An existing loading space within Group 2 is maintained. A condition is recommended that the loading dock depth be increased to 6m to accommodate a 5.4m vehicle width plus 0.3m clearance to the front and rear.</p> <p>There is no other on-site parking or loading proposed, which is consistent with the existing site conditions.</p> <p>The proposal includes 57 bike parking spaces for Group 1 and 70 bike parking spaces for Group 2. Conditions are recommended to ensure the proposed bike parking complies with the Australian Standards and Sydney DCP 2012.</p>

Provision	Compliance	Comment
		Conditions are recommended that require a Transport Access Guide be prepared.
3.12 Accessible Design	Yes	The development is able to comply with the relevant Australian Standards and the BCA.
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p> <p>The application does not propose a type of development that requires a Social Impact Assessment Report under the DCP criteria.</p>
3.14 Waste	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Yes	<p>Late night trading is not proposed.</p> <p>The site is located within a 'Late Night Management Area' which permits indoor hours of operation between 6am to 2am for Category B premises, such as restaurants and cafes, and 24 hours' operation for Category C premises, such as unlicensed retail uses.</p> <p>Hours of operation between 7am and 10pm are proposed for the retail uses, which is acceptable.</p> <p>It is noted that any additional trading hours will be subject to further applications for the specific uses within the site.</p>

Provision	Compliance	Comment
3.16 Signage and Advertising	Able to comply	<p>A signage strategy has been submitted with the development application.</p> <p>A condition is recommended that a revised signage strategy is to be provided that interprets traditional forms of signage according to the period and style of the buildings. The condition specifies how each signage zone should be amended to reflect and appropriate heritage outcome, and that the vertical building signage zone is not approved.</p>

## Section 4 – Development Types

### 4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No	<p>The site is permitted a maximum building height of 3 storeys.</p> <p>There is no specific street frontage height control for the site.</p> <p>The proposed development is a total of 6 storeys in height and due to the slope of the site is 5 storeys as viewed from Oxford Street.</p> <p>See further details under the sub-heading height in the 'discussion' section below.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	<p>The proposed development maintains the existing floor to ceiling heights at lower ground, ground, first and second floor levels.</p>

Provision	Compliance	Comment
		<p>The new addition provides a floor to ceiling height of 3.3m for the majority of Level 3, with the remainder being a double height space. Level 4 has a minimum floor to ceiling height of 2.9m. Whilst the above is below the 3.6m floor to ceiling height specified by the DCP, this is acceptable because the additions are in a mezzanine style design and results in an increased perception of light and air and allows for shared services.</p>
4.2.2 Building setbacks	Yes	<p>There is no specific setback control.</p> <p>The existing buildings are built boundary to boundary and the proposed additions are compatible with the front and rear setback patterns within the street. This is discussed further under the 'discussion' heading below.</p>
4.2.2.2 Setbacks above the street frontage height	Yes	<p>An upper level setback is provided to the new addition along the Oxford Street frontage.</p> <p>The addition has been designed with a sloping form which helps reduce the visual impact and respects the heritage items and conservation area.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The controls require 2 hours of solar access to private open space and living room windows of neighbouring residential properties.</p> <p>Given the proposed development is uphill and south of its immediate residential neighbours, there is no impact on the direct solar access to windows or private open space areas of these neighbours..</p>

Provision	Compliance	Comment
		<p>The proposal results in some overshadowing impacts to the communal residential roof terrace of 80 Oxford Street, but maintains direct solar access for 2 hours between 9am (46sqm) and 11am (approx 42sqm), and with smaller amounts of solar access maintained for the remainder of the day, at midwinter.</p>
<p>4.2.3.4 Design features to manage solar access</p>	<p>Able to comply</p>	<p>The control requires that extensive glazing that is unprotected from mid-summer sunlight is to be avoided and reliance upon high performance tinting or glazing as a mid-summer sun control device is not appropriate.</p> <p>The large stepped skylights characteristic of the south facing roof additions are shown as fritted glass. Given the south west orientation of these skylights, additional operable or passive sun control is required for energy efficiency and occupant comfort.</p> <p>This could be achieved using glazing with an expanded metal interleave as recently used on the domed roof addition of 48-50 Martin Place, Sydney. In daylight, this material has the added benefit of reading as contiguous with the roofing. This would potentially result in a more uniform and recessive visual impact during daylight hours.</p> <p>A condition is recommended requiring further details of sun control performance measures to these skylights and north facing windows.</p>
<p>4.2.3.6 Deep Soil</p>	<p>No</p>	<p>The sites are currently built boundary to boundary with no deep soil. In this context, the proposal is acceptable.</p>

Provision	Compliance	Comment
4.2.3.8 Common open space	Yes	<p>Common open space is proposed through roof terraces.</p> <p>Group 1 has a roof terrace of approximately 232sqm which is proposed along the Oxford Street frontage and northern western side of Level 3.</p> <p>Group 2 has a roof terrace of approximately 437sqm along the Oxford Street frontage and each end of Level 3.</p> <p>These roof terraces are located to minimise adverse privacy impacts to nearby residential uses, particularly on Foley Street. The roof terraces also aid in setting back the roof additions and reducing its visual impacts.</p>
4.2.3.11 Acoustic privacy	Yes	<p>An acoustic report was submitted with the application and conditions are recommended to ensure that the proposal satisfies the relevant noise criteria, so that the amenity of surrounding uses is preserved.</p>
4.2.6 Waste and recycling Management	Yes	<p>A condition is recommended ensuring the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

## Discussion

### Height and Oxford Street Cultural and Creative Precinct Planning Proposal

67. The Oxford Street Cultural and Creative Precinct planning proposal is the result of a review of planning controls applying to Oxford Street. The review responds to the high level of retail vacancy, noisy road environment, underused public spaces and the impact of the now repealed lockout laws and the Covid-19 pandemic on the patronage of Oxford Street. The Planning Proposal complements the Locality Statement for Oxford Street Darlinghurst of the Sydney DCP 2012 which characterises Oxford Street as a regionally significant retail and entertainment street and a local business centre for surrounding neighbourhoods.

68. On 10 September 2021 the 'Oxford Street Cultural and Creative Precinct' planning proposal commenced exhibition. The planning proposal is on exhibition until 4 November 2021. The proposed instrument is a matter for consideration Clause 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979.
69. The proposed planning instrument provides an alternative height of building development standard, which increases in the height control from 15m under the current Sydney LEP 2012 development standard, to a range of heights between 23m and 25m for Group 1, and of 25m for Group 2.
70. The alternative height of buildings control is subject to the following requirements:
- (a) That the existing cultural and creative uses be maintained and an additional 10% of the total GFA of the development is provided for cultural and creative uses. This is discussed further below under 'Cultural and Creative'.
  - (b) That the proposal does not undermine the heritage significance of the item or the structural stability of the item. This is discussed further below under 'Heritage'.
71. The exhibited clause which is contained in the planning proposal is outlined below:

- (3) The clause is to allow development on the subject land that will result in a building with the maximum FSR and heights shown on the alternative HOB and FSR maps (included in section 7 of this document), provided that:
- (i) Development includes one or more of the following: entertainment facility, health services facility, information and education facilities, hotel and motel accommodation, community facility, education facility, light industry, commercial premises
  - (ii) in developments where there are no existing cultural and creative activities - it includes a minimum of 10 per cent of the total GFA within the development for a creative purpose that involves live entertainment, performing arts, fine arts and craft, design (fashion, industrial or graphic), media, film and television, photography or publishing, or museums and archives dedicated to these purposes
  - (iii) in developments where there are existing cultural and creative activities - the existing floor space for a cultural and creative purpose must be maintained and an additional 10 per cent of the total GFA is provided within the development for a creative purpose that involves live entertainment, performing arts, fine arts and craft, design (fashion, industrial or graphic), media, film and television, photography or publishing, or museums and archives dedicated to these purposes
  - (iv) Does not undermine heritage significance of any heritage item or of the heritage conservation area, or endanger the structural stability of the existing heritage building or any heritage items on or under the land
  - (v) Additional height and floor space is not available under this clause to a building on the Courthouse Hotel and Kinselas site at 189 Oxford Street, Darlinghurst (Lot 1 DP 33381), 379-379A Bourke Street Darlinghurst (Lot 2 DP 51864), 381 Bourke Street Darlinghurst (Lot 1 DP 57383) or 383-387 Bourke Street Darlinghurst (Lot 1 DP 193949, Lot 2 DP 193949) unless there is a consolidated site with a minimum site area of 1,000sqm.

72. The proposed height of Group 1 is 24.4m and consistent with the maximum height controls except for a 400mm increase above the 24m height control of Group 1, which is the result of the lift overrun. This is shown in the figures below.

- 73. The proposed height of Group 2 is 24.95m and complies with the 25m control.
- 74. As the proposal exceeds the current 15m height of the Sydney LEP 2012 a Clause 4.6 request to vary a development standard has been submitted, which is discussed below.

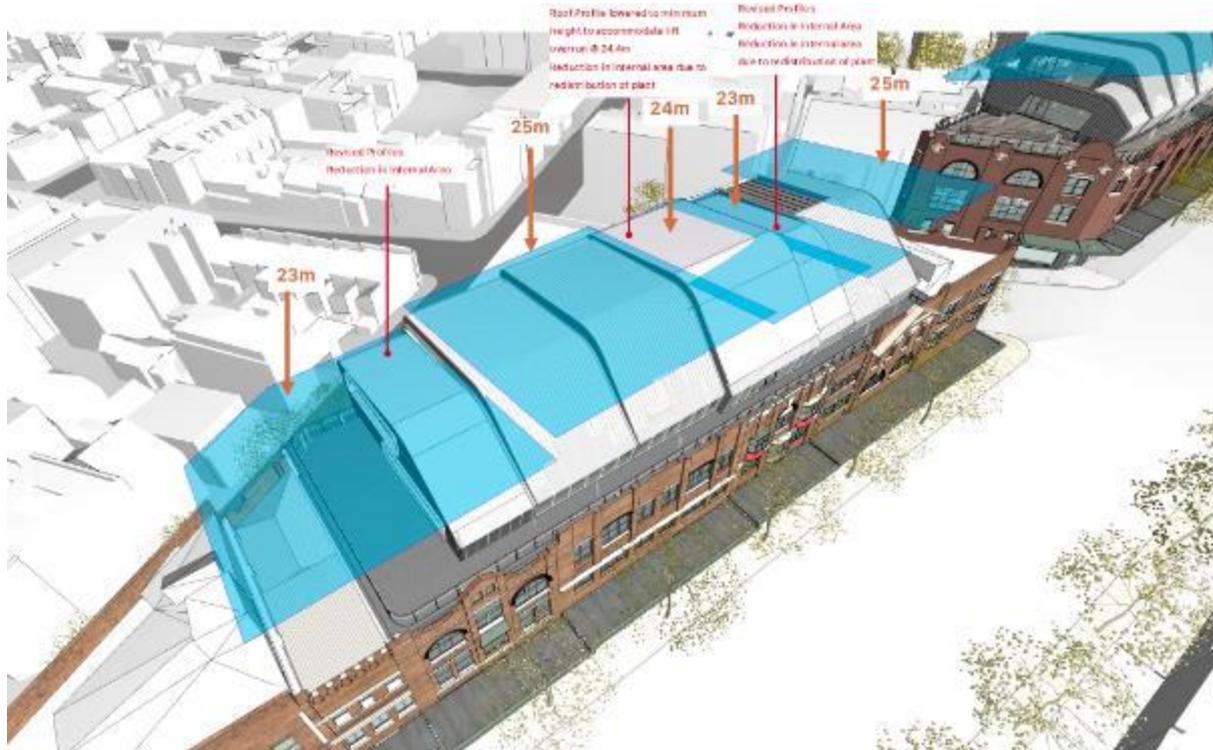


Figure 35: Planning proposal height planes for Group 1

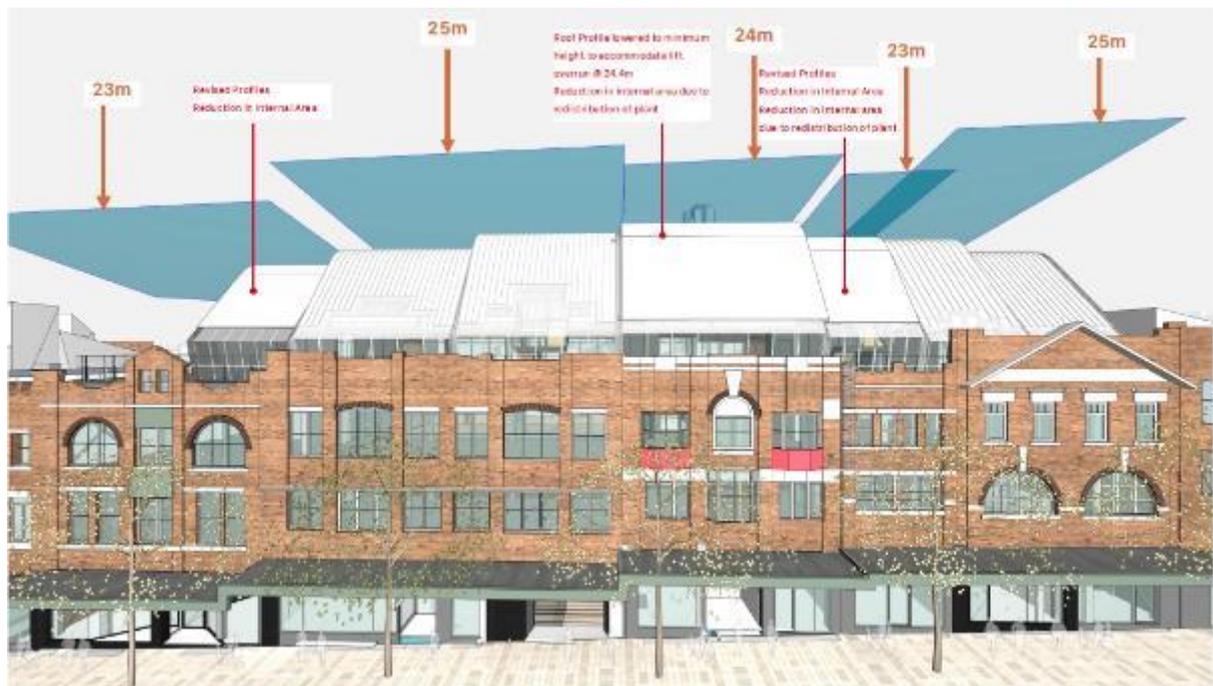


Figure 36: Planning proposal height planes for Group 1

75. It is noted that the planning proposal is supplemented by amendments by way of site specific provisions to the Sydney DCP 2012. The draft DCP includes a requirement for any additions to have a 3m setback from Oxford Street. It is noted that the nose of the additions are within 3m of the Oxford Street frontage, however it is considered that the design of the curved roof form achieves the objectives of the draft DCP control. The draft DCP permits any additions to have a nil setback to Foley Street. It is noted that the draft DCP provisions are not a matter for consideration under Clause 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979.

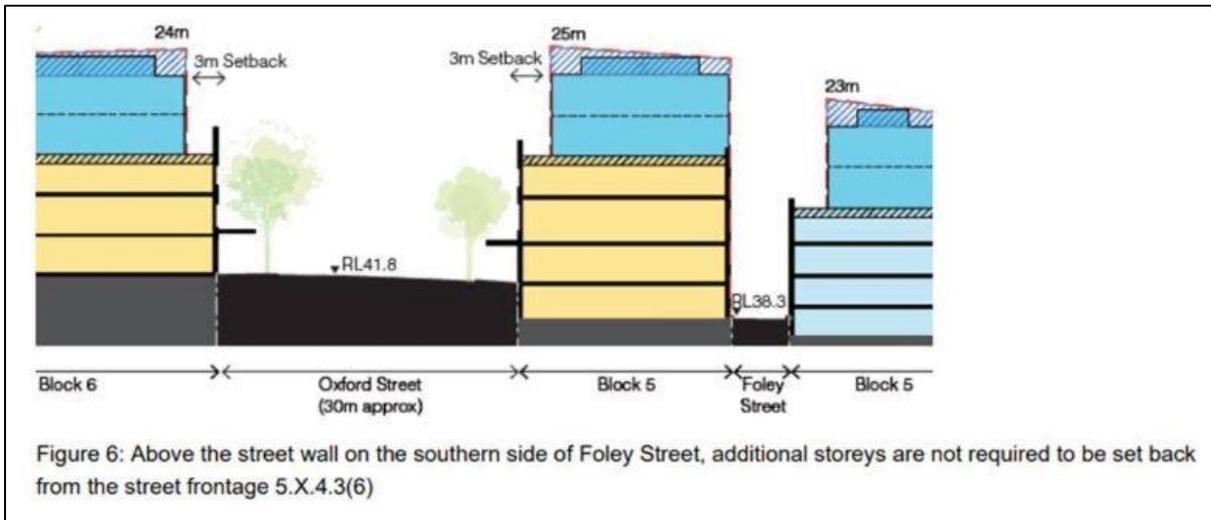


Figure 37: Image from the Draft DCP indicating required setbacks (this image relates to Group 1)

**Clause 4.6 Request to vary a Development Standard**

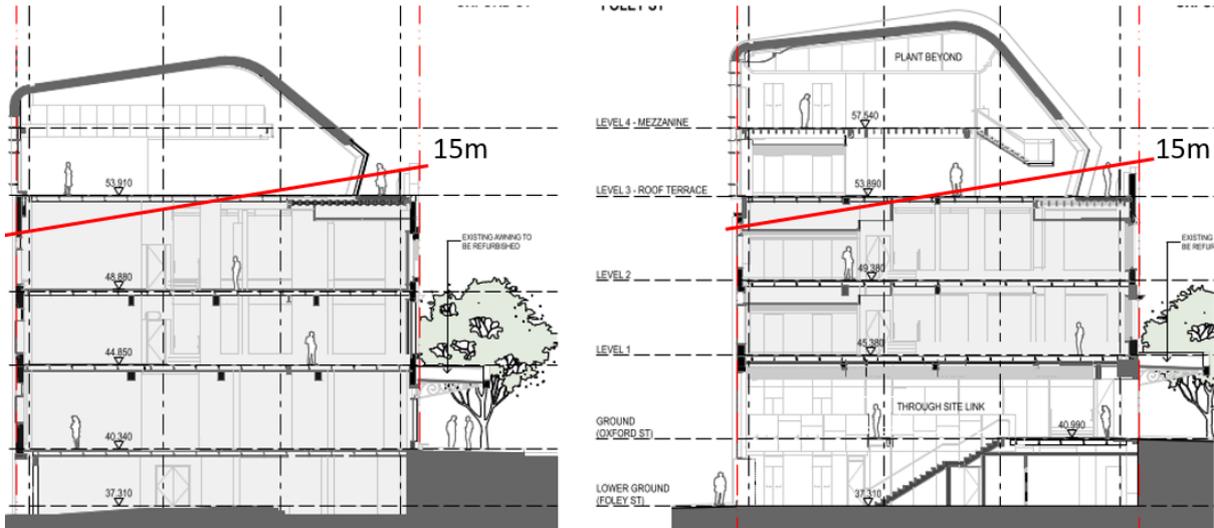
76. The site is subject to a maximum height of buildings control of 15m under the Sydney LEP 2012. The proposed development has a height of up to 24.4m (Group 1) and 24.95m (Group 2).
77. The proposals non compliance with the 15m height control is shown in the figures below.



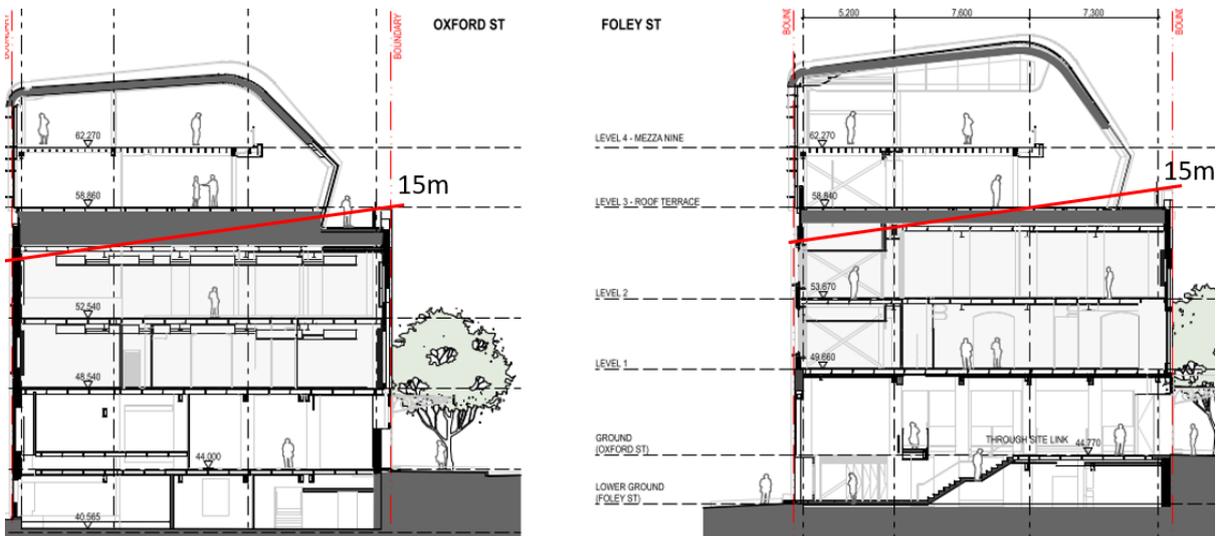
Figure 38: Existing height planes of Groups 1-3 viewed from Oxford Street and Foley Street



**Figure 39:** Elevation of Groups 1 and 2 with the 15m Sydney LEP 2012 height control as viewed from Oxford Street



**Figure 40:** Sections through Group 1



**Figure 41:** Sections through Group 2

78. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
  - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
  - (c) The proposed development will be consistent with the objectives of the zone; and
  - (d) The proposed development will be consistent with the objectives of the standard.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

79. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the height of buildings development standard are achieved notwithstanding the non-compliance, as follows:
    - (i) The new contemporary additions will necessitate a variation to the height of buildings standard, but are appropriate to the condition of the site and its context as they contribute to the variety of buildings heights in the Oxford Street precinct, and do not disrupt the reading of the existing datum line along Oxford Street set by the existing heritage listed buildings on the site.
    - (ii) The setback and sculptured additions on the rooftop of the heritage buildings ensure that the existing datum along Oxford Street remains legible in the streetscape, with a transition of height from the street frontage to the new additions setback from the street. The new additions are also setback and scaled in height at either end of Group 1 and Group 2, resulting in a transition in height when viewing the additions from the east or west along Oxford Street.
    - (iii) The submitted view study illustrates that the rooftop additions sit well within the context of Oxford Street when viewed from key vantage points along the ground plane.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The new additions are appropriate to the site and are in keeping with the broader context of Oxford Street. The Oxford Street precinct provides a diverse and eclectic array of building forms and heights, and it is further anticipated that this context will evolve as Council seeks to make changes to the existing regulatory framework to encourage a creative and cultural precinct around Oxford Street as identified in the City of Sydney Local Strategic Planning Statement (City Plan 2036). The proposal will contribute to this built form diversity through appropriately scaled and massed building additions at a maximum height consistent with the spread of heights along Oxford Street, and likely consistent with the prevailing built form opportunities arising from changes to encourage cultural and creative floor space within the precinct.
  - (ii) The adaptive re-use of the existing buildings and the new commercial office space delivered through the height variation will assist in creating a commercial hub and vibrant area for people to work during the day and enjoy after dark and on weekends as a premier locality for food, drink and entertainment.
  - (iii) The proposed development is consistent with the draft site-specific height of buildings development standard proposed in the Oxford Street Creative and Cultural Precinct Planning Proposal. The proposal's consistency with this draft amendment to the Sydney LEP 2012 is a relevant environmental planning ground as the consent authority must take into consideration the provisions of any proposed instrument that is or has been the subject of public consultation under the EP&A Act and that has been notified to the consent authority.
  - (iv) The overall height, form and materiality are sympathetic to the heritage items, in particular, the upper level setback of the contemporary additions and sloped form.
  - (v) The new rooftop additions will be contemporary and architecturally interesting, achieving design excellence through their form, materiality, heritage relationship and overall design.
  - (vi) If the redevelopment proposal were limited to a refurbishment of the existing heritage buildings, a high standard of sustainability would not be achievable due to cost and heritage constraints, therefore the proposed rooftop additions will deliver higher sustainability outcomes.
  - (vii) The proposed development, facilitated by the new additions, will achieve a viable height and floorspace to contribute to the commercial floor space and employment requirements and expectations of Darlinghurst.
  - (viii) The proposed development does not cause significant additional environmental impact which would render it incompatible with its surrounding land uses and ensures the proposal is appropriate for the site context.

- (c) The proposed development will be consistent with the objectives of the zone;
  - (i) The proposal provides a range of cultural/creative, food and beverage, retail, and commercial office space uses which will directly service the needs of the community who live, work, and visit the Oxford Street precinct.
  - (ii) The proposal seeks to deliver increased employment opportunities across a range of job types, with the mix of cultural/creative, food and beverage, retail, and commercial office space providing a variety of employment opportunities.
  - (iii) The proposed inclusion of the height variation will facilitate new commercial office space, providing new jobs in a location well-served by public transport.
  - (iv) The proposal does not include residential uses, consistent with the continuation of the historic non-residential uses on the site.
- (d) The proposed development will be consistent with the objectives of the standard as discussed under (a) above.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

80. Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a) and (b)?

81. The applicant's written request adequately addresses the matters required for demonstration by Clause 4.6(3)(a) and (b) of Sydney LEP 2012. A detailed discussion with regard to the objectives of the height of buildings development standard has been provided and satisfies the test under Clause 4.6(3)(a), in that compliance with the standard is both unreasonable and unnecessary, to the extent of the variations proposed. The applicant has satisfactorily demonstrated that there are sufficient environmental planning grounds to contravene the development standard which satisfies the test under Clause 4.6(3)(b). As such, the requirement of clause 4.6(4)(a)(i) of Sydney LEP 2012 is met.

Is the development in the public interest?

82. As per clause 4.6(4)(a)(ii) of the Sydney LEP 2012, the proposed development is also in the public interest because it is consistent with the objectives of the height of buildings standard and the objectives of the B2 Local Centre zone. That is:
- (a) The height of the development is appropriate to the site conditions. The height, when considered with the proposed building form and setbacks, allows for an appropriate relationship with the heritage items on site, adjacent to the site, and the surrounding heritage conservation area.
  - (b) The height of the development does not unreasonably compromise views or outlook.
  - (c) The proposed heights are consistent with the desired future character as reflected by the Oxford Street Creative and Cultural Precinct Planning Proposal.
  - (d) The proposed development includes a mix of compatible land uses that are appropriate to the B2 Local Centre zone.
  - (e) The site is located 650m from the Museum railway station and close to multiple bus stops. The location and accessibility and the connection between the public domain and the subject development creates a highly permeable access arrangement which promotes pedestrian movement.

Conclusion

83. For the reasons above the requested variation to the height of buildings development standard is supported as the applicant's written request adequately addresses the matters in cl 4.6 of the Sydney Local Environmental Plan 2012 . The proposed development is in the public interest because it is consistent with the objectives of height of buildings development standard and the B2 Local Centre zone.

### **Cultural and Creative Floor Space**

84. The site contains existing cultural and creative uses and would be subject to Clause 3(iii) of the draft controls, which requires that the existing cultural and creative uses be maintained and an additional 10% of the total GFA of the development is provided for cultural and creative uses.
85. In 2017 a Floor Space Employment Survey was carried out, which identified significant cultural and creative floor space on these sites.
86. The application proposes 8.31% (Group 1) and 10.65% (Group 2) of the GFA for each development site for cultural and creative uses. This would result in a significant reduction in cultural and creative floorspace across the sites and is not consistent with the draft controls. A condition is recommended that the existing cultural and creative floor space is maintained, and that 10% additional cultural and creative floor space is provided. As some time has passed since the 2017 survey was carried out, it is recommended that a new survey be carried out based upon the cultural and creative uses at the time of the DA determination, and that this be subject to a deferred commencement condition.

87. A summary of the existing (as of 2017), proposed and required cultural and creative floor space is outlined in the table below.

	Existing (2017)	Proposed	Required
Group 1	1,553sqm	432.75sqm (8.31%)	1,553sqm + 520.4 (10%) = 2,073.4sqm (39.8%)
Group 2	1,502sqm	763.92sqm (10.65%)	1,502sqm + 717.2 (10%) = 2,219.2sqm (30.9%)
Total	3,055sqm	1,196.67sqm	4,292.6sqm

### Heritage

88. The buildings were constructed c1911-1912. All existing buildings are subject to heritage controls under the Sydney LEP 2012 and Sydney DCP 2012. The sites are heritage items and are located within a heritage conservation area (see below).
89. Additionally, the alternate height control of the Oxford Street Cultural and Creative Precinct Planning Proposal requires that any proposal "*does not undermine heritage significance of any heritage item or of the heritage conservation area, or endanger the structural stability of the existing heritage building or any heritage items on or under the land*".



Figure 42: SLEP 2012 Heritage Map (Sites in blue)



Figure 43: Archival photo of Group 1 taken in 1982



**Figure 44:** Archival photo of Group 2 taken in 1920

90. A Heritage Committee was formed to consider the application in accordance with Section 3.9.4 of the Sydney DCP 2012, which requires that:

(1) This provision applies to development that will introduce major changes to a heritage item identified in Schedule 5 of the Sydney LEP 2012 as being of State heritage significance or to a site containing more than one heritage item, if the development involves:

- (a) demolition that will result in a reduction of the building envelope of the heritage item by more than 35%;
- (b) an increase in the size of the building envelope of the heritage item by more than 20%; or
- (c) building over more than 20% of a heritage item's building footprint within the airspace above the item, but not within the airspace next to the item.

(2) When considering an application for development to which this provision applies, the consent authority is to:

- (a) appoint a committee that includes heritage professionals to examine and advise on the merits of the proposal;
- (b) be satisfied that that committee has followed an appropriate public process for the purpose of that examination; and

- (c) consider the advice of the committee, but is not bound by the advice of the committee.
91. The Committee was made of three members with heritage and structural expertise, being:
- (a) Scott Robertson, Robertson & Hindmarsh
  - (b) Hari Gohil, Shreeji Consultant
  - (c) Otto Cserhalmi, OCP Architects
92. The Committee provided a report on 12 March 2021. The Committee did not support the proposal, and raised a number of concerns, including:
- (a) The Conservation Management Plans should be revised to provide a thorough and accurate fabric analysis, providing significance gradings in accordance with NSW Heritage Office criteria, and to provide detailed conservation policies.
  - (b) All building fabric of moderate, high or exceptional significance should be retained and conserved.
  - (c) The form and fabric of original/early shopfronts and building entrances should be retained and conserved. Early shopfronts should be re-instated based on documentary evidence.
  - (d) Any visible additions above the roof level are not appropriate. The extent of the impact of any additions on the structure of the building, as well as fire safety, access and service requirements requires thorough understanding, so that any addition does not impact, or cause changes to, significant fabric on the floors below.
  - (e) Any development should recognise that the buildings are individual and separate (both externally and internally).
  - (f) The applicant should consider a range of options for the redevelopment, including the option of maintaining the existing buildings.
  - (g) A long term costed maintenance plan should be prepared.
  - (h) The conservation and restoration of the heritage elements to be retained should be fully documented.
93. Following the Heritage Committee's report, Council engaged external heritage and structural consultants to review additional information provided by the applicant and a number of meetings were held with the applicant's consultants to resolve the issues identified by the independent Heritage Committee.
94. The applicant submitted amended plans and additional information including amended Conservation Management Plans. The amended plans and additional information have gone some way to addressing the concerns raised by the Heritage Committee.

95. Given the heritage significance of the buildings within the context of Oxford Street, and the controls and objectives of the LEP, DCP and Planning Proposal, a very high quality of heritage conservation is required. This requires more resolution in detail and appropriate consent conditions are recommended. The recommended conditions ensure that the additions to the buildings, and the structural and services interventions necessary to support them, can be built whilst maintaining the heritage significance of the place. This includes a deferred commencement condition that requires the structural solution to be further developed prior to the consent becoming operative. It is noted that in imposing these conditions, they do not defer consideration of an essential element of the proposal.
96. Specific heritage elements are discussed in more detail below:

***Vertical additions***

97. The assessment has considered the impact of vertical additions to the heritage significance of the buildings as well as the structural impact of the additions on the existing heritage fabric. A number of conditions are recommended to ensure that the vertical additions do not result in the loss of significant internal fabric or undermine the structural stability of the buildings. The proposal was reviewed by the Design Advisory Panel who provided their support in principal for the proposal. As discussed earlier the proposed vertical additions are generally consistent with the alternative height of buildings control of the Oxford Street Cultural and Creative Precinct Planning Proposal, and they are acceptable in that context.
98. The subject sites are substantial buildings constructed by Council in the early 20th century following street widening on the north side of Oxford street. This makes this set of buildings unique. It is noted that much of the heritage building stock on the south side of the Oxford Street is of earlier and less substantial masonry and timber construction, featuring a rich and more heterogenous architectural detail reflecting the fine-grained subdivision pattern of 19th Century Oxford Street.

***Retention of heritage roof features***

99. The initially lodged design was amended to reduce the loss of distinctive original roof features of the pyramidal spires on Group 2. A condition is recommended to ensure that the distinctive existing central roof form at the street parapet of no 58-60 Oxford Street is retained as shown in figure 45 below.



**Figure 45:** Existing roof form of 58-60 Oxford Street, conditioned to be retained

***Internal demolition works***

100. The interiors of Group 1 have been modified over time, however existing heritage fabric includes party and dividing walls, timber posts and beams, original floors, some pressed metal ceiling systems, bullnose brick piers, plaster finishes, joinery trim, and timber stairs.
101. The interiors of Group 2 are remarkably intact and have the original entrance foyer with all interior finishes including original lift and stair. The commercial office floors on the first and second floors are also remarkably intact with Kauri pine floorboards, pressed metal and decorative plaster ceilings, masonry dividing walls and Edwardian period timber partitions defining the corridor.
102. The quantum of proposed demolition was reduced during discussions with the applicant.

103. The amount of internal demolition first proposed would have resulted in the loss of internal spatial configuration, structural integrity, internal character and loss of components of high significance. Consequently, the result would have diminished the heritage significance of the heritage items. The recommended detailed conditions will retain heritage fabric in accordance with the heritage significance outlined in the Sydney LEP 2012 controls and associated Planning Proposal. The amount of demolition will be acceptable, subject to the conditions of consent. It is noted that the changes to the design required by the conditions described below do not lead to uncertainty of the eventual outcome of the development.
104. Conditions recommended to retain significant components include:
- (a) Retaining large sections of the party walls and dividing walls throughout the buildings, which are proposed to be demolished in order to alter the cellular nature of the interiors into open planned space. The retention of these walls is to conserve the spatial integrity and character and to preserve the structural integrity of the buildings.
  - (b) Retaining original wall tiling to a section of the central entrance corridor of 82-106 Oxford Street.
  - (c) Retaining original timber framed and glazed office partitions on Levels 1 and 2 of 82-106 Oxford Street.
  - (d) Retaining original masonry and joinery that interpret the original lightwells on Levels 1 and 2 of 82-106 Oxford Street.
  - (e) Retaining various original timber stairs.
  - (f) Retaining areas of decorative plaster ceilings at of 82-106 Oxford Street.
  - (g) Demolished footprints to be expressed for floors and ceilings required for the insertion and assembly of the new structural steel elements and steel columns and bracing within the heritage items.



**Figure 46:** Perspectives of proposed openings within Group 2



**Figure 47:** Perspectives of proposed openings within Group 2

**Structural**

105. The structural drawings by Robert Bird Group submitted by the applicant remain conceptual. The structural drawings state that floor upgrade requirements in relation to Fire Resistance, Seismic Stability and Vertical Load Capacity are still under assessment. It also states that fire protection or acoustic treatment will need to be considered and that this may require strengthening of the floors or operational measures. The drawings state that the resolution of the floor diaphragms can be achieved by potential use of steel strapping, ply or horizontal bracing but will depend on what currently exists on site. The final approach to Fire Resistance (FRLs), Seismic Stability and Vertical Load Capacity is still being resolved. The integration of floor diaphragms, fire separation between floors, fire rating of existing structural timber post and beams, within heritage constraints will need further careful consideration.
106. A deferred commencement condition is recommended to ensure appropriate solutions are resolved that enable significant historic fabric within the interiors to remain exposed to view. This is particularly relevant for timber posts and beams, pressed metal and decorative plaster ceilings, and timber floorboards and floor joists.

**Shopfronts**

107. The buildings were originally designed with shopfronts that comprised shopfront glazing above a stallboard, a recessed entry and highlight glazing above a transom rail extending up to the underside of the beam supporting the facade above. The design of new shopfronts and conservation of early shopfronts are generally supported. Opportunities to reconstruct and to reinterpret earlier shopfronts and to reinvigorate the streetscape will further enhance the viability of the retail tenancies.
108. Conditions are recommended to resolve the final shopfront design, including addressing the following issues:
  - (a) The proposed mechanical air handling systems are reliant upon air intake and air exhaust at shopfront level below the street awnings, resulting in the proposed deletion of highlight glazing at a number of locations. This would result in a detrimental impact upon the historic streetscape character. The proposed air conditioning systems are recommended for revision by condition.
  - (b) There has been insufficient investigation of concealed shopfront components such as highlight glazing and early cladding to resolve the conservation approach, potentially resulting in demolition of early shopfront components. This is resolved through recommended conditions.

**Conservation Management Plans**

109. The Conservation Management Plan by Urbis dated November 2020 was amended and submitted in July 2021. As requested by Council Officers, the report has been restructured into two reports to pertain to each group of the buildings that are subject of this development application.
110. A condition is recommended requiring further amendments to ensure the report provides an adequate framework in which decisions can be made about the conservation of the cultural heritage significance of the buildings, including:
  - (a) The historical evidence should include high resolution reproductions of the original and early plans of the buildings to provide greater clarity. These are available from City of Sydney Archives.

- (b) The physical evidence should include results of site investigation to understand where significant fabric such as original or early fabric remains.
- (c) The assessment of significance under the NSW Heritage Criteria, statements of significance and the gradings of significance undervalue some aspects of the heritage items. Various components are undervalued when compared with the Conservation Management Plan by Rod Howard and Associates Pty Limited, commissioned and adopted by Council in 2008. Consequently, a number of heritage conditions are recommended to retain significant intact fabric in both Group 1 and Group 2 buildings.
- (d) A number of the conservation policies are to be revised based upon a revised assessment of significance, as discussed in (c) above.

### **Design Excellence**

- 111. Clause 6.21 of the Sydney LEP 2012 requires alterations and additions to an existing building to exhibit design excellence.
- 112. In assessing design excellence, a key consideration is the ability to deliver both the conservation of heritage significance and fabric of the heritage items, as well as the detailed design and construction of the new additions.
- 113. The proposal was considered by the Design Advisory Panel (DAP) on 12 November 2020. The Panel noted their support in principle for the proposal due to the significant and positive contribution it could make to Oxford Street.
- 114. The Panel raised concern with:
  - (a) The lack of variety of the roof form across the three blocks (including Group 3, assessed under D/2020/1072)
  - (b) The materiality and detailing of the roof and its need to be of high quality
  - (c) Environmental performance of the building
  - (d) The need for a mechanism for the enduring dedication of cultural and creative space
- 115. The common design language adopted for the roof additions across groups 1, 2 and 3 is consistent with the original development of these buildings in that they were built in concert in a common design language and materials palette. The stepping of the forms up the hill are appropriate to the topography of the sites already exhibited in the stepped parapets. They also interpret the subdivision pattern of the constituent heritage buildings. Therefore, the uniform roof design approach is acceptable in this context.
- 116. The most significant feature of this proposal is the stepped metal roof enclosing two additional floors. The material for the roof is documented as 'metal.' This is uncertain and offers no guarantee of a high-quality appearance for these new roof forms. Given that all renderings in the applications show a light-coloured roof, and that the original roof material of the building was hot dipped galvanised steel, a natural zinc finish is recommended. This would oxidise to an appropriate finish commensurate in quality to the heritage items. A condition is recommended requiring a fully detailed materials and finishes schedule is required.

117. In relation to environmental performance, a 4.5 star NABERS rating is proposed. A 5 star rating couldn't be achieved due to constraints of the existing buildings. The proposal was reviewed by Council's environmental advisor and is satisfactory. Conditions are recommended to address passive solar gain from the windows and skylights of the addition.
118. A condition is recommended to ensure that the proposed cultural and creative space is retained into the future.
119. As outlined above, the proposal is capable of achieving design excellence subject to the recommended conditions.



**Figure 48:** Section through Group 1

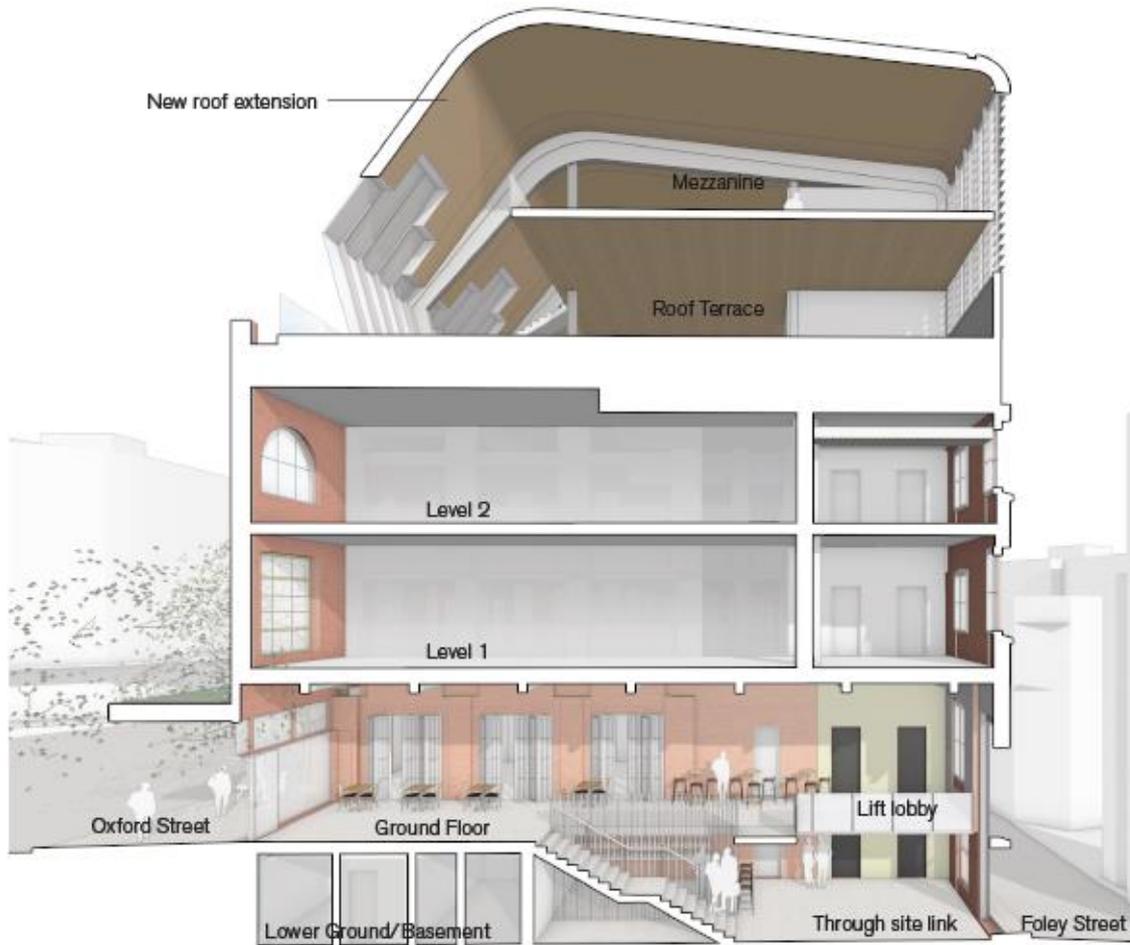


Figure 49: Section through Group 2

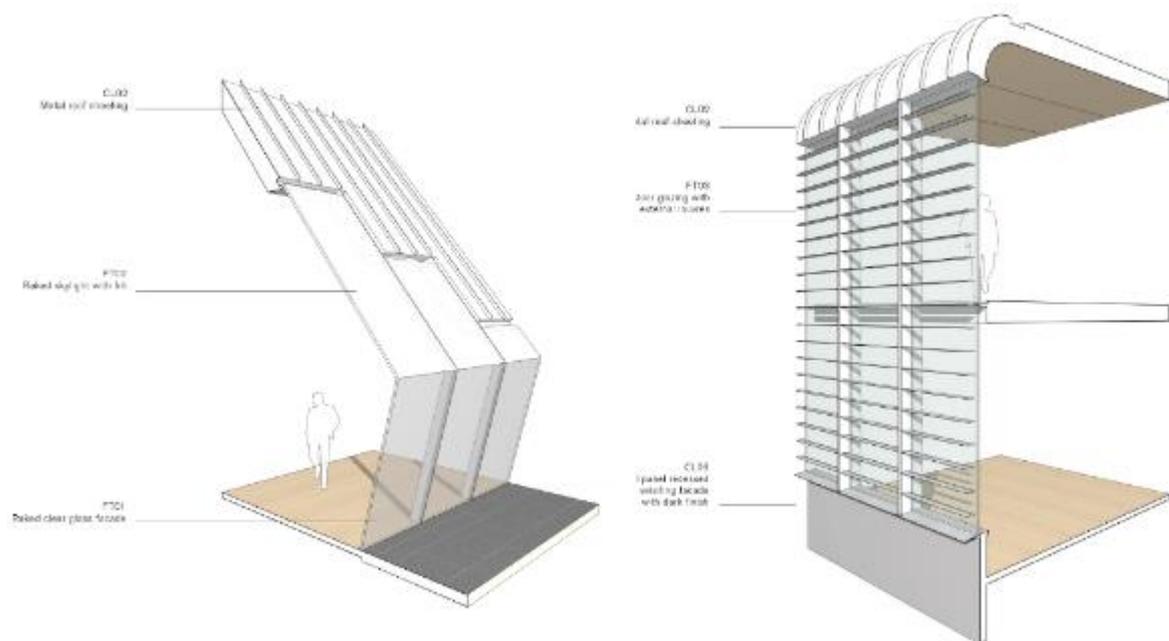


Figure 50: Images of the proposed facade system of the new addition

**Impacts to Foley Street**

120. Foley Street is a narrow street with active facades above street level on both the subject site and the neighbouring buildings opposite on the north side of the street. These include commercial buildings and apartments that have windows that overlook the rear of the subject site. The rear of the subject site is highly visible from Foley Street. The proposed design includes a significant additional building bulk with a two storey fully glazed north facade sitting atop of the existing building parapet. This increases the street wall height of the subject site.
121. The overlooking condition between the longstanding windows of existing buildings on both sides of the street are existing conditions but may be exacerbated by the increased intensity of use associated with the subject development. To minimise overlooking impacts from these windows a condition is recommended requiring that operable blinds and/or curtains be provided.
122. The impacts of the proposed glazed north facades off the additional floors have a potentially more serious impact on privacy. A condition is recommended to ensure that the external louvres shown on the north elevation upper facade are designed and detailed to deal with both privacy and passive solar gain, including fixed horizontal sun control shelves that are designed to a depth and vertical pitch that eliminates the ability of occupants of these floors to look down into residential windows on the north side of Foley Street.
123. The Planning Agreement relating to the enhancement of Foley Street adjacent to Group 2 is discussed further below. This will improve the pedestrian amenity on Foley Street.

**View sharing**

124. A number of submissions raised concerns with the loss of views towards the City skyline, Sydney Harbour, the Opera House, and Sydney Harbour Bridge.
125. The concerns relate to roof top terraces on the same side of Oxford Street (80 Oxford Street and 130-132 Oxford Street), views from the upper level apartment of 107-111 Oxford Street located on the southern side of Oxford Street, and views from taller residential flat buildings at 302 Crown Street and 200 Campbell Street. The location of these properties is shown in the figure below.
126. It is noted that the impacts to 130-132 Oxford Street are discussed in the assessment report for D/2020/1072.



**Figure 51:** Group 1 and 2, the subject site, (blue), Group 3 (purple), and objectors with view loss concerns (red)

127. The proposal must satisfy the objectives of the building height control, including objective 4.3(1)(c) which states "to promote the sharing of views". The proposal must also satisfy the design excellence provisions including Clause 6.21(4)(c) which states "whether the development detrimentally impacts on view corridors".
128. The applicant submitted a view loss study (Attachment H) to analyse the view sharing impacts of the proposal.
129. Assessment of view impacts is undertaken based on the principles of view sharing established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. In the *Tenacity* case, Senior Commissioner Roseth notes that:

*The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.)*

130. To decide whether view sharing is reasonable or not, Senior Commissioner Roseth developed a four step assessment, which is summarised in part below:
- (a) The first step is the assessment of views to be affected. Water views are valued more highly than land views. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.
  - (b) The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. The expectation to retain side views is often unrealistic.
  - (c) The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas.
  - (d) The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.

### **80 Oxford Street**

131. 80 Oxford Street is located adjoining Group 1.
- (a) Views to be affected: Views of the city skyline, and partial and distant views of Sydney Harbour, Opera House (top of one sail) and the Sydney Harbour Bridge (half).
  - (b) Part of property viewed from: Views are from a communal roof terrace to residential apartments below.
  - (c) Extent of impact: The City skyline and the partial views of the Opera House and Sydney Harbour Bridge are obstructed. Views to the harbour are retained from some vantage points of the roof terrace.
  - (d) Reasonableness: The views are obtained directly over the side boundary with Group 1, and therefore views are more difficult to retain with any increase in height of the subject site. It is also noted that 80 Oxford Street also benefits from an alternative height of buildings control under the planning proposal. In the above context, the view impacts of the proposal are reasonable in this instance.



**Figure 52:** Views from roof terrace of 80 Oxford Street



**Figure 53:** Views from roof terrace of 80 Oxford Street



**Figure 54:** Modelling from applicant's view loss study, as viewed from roof terrace of 80 Oxford Street

### ***107-111 Oxford Street***

132. 107-111 Oxford Street is located on the southern side of Oxford Street.

- (a) Views to be affected: Views are to the City skyline and partial views of the Opera House (top of one sail) and Sydney Harbour Bridge (half).
- (b) Part of property viewed from: Views are from the balcony of the upper level residence.
- (c) Extend of impact: Partial views of the city skyline, including 'Sydney Tower eye' tower, are retained. Views of the Opera House and Sydney Harbour Bridge are obstructed.
- (d) Reasonableness: The applicant's modelling has demonstrated that these views would be obstructed regardless of a one storey or two storey increase in height on the site. It is also noted that 107-111 Oxford Street also benefits from an alternative height of buildings control under the planning proposal. The protection of these views is not considered to be reasonable in this instance.



**Figure 55:** Existing views from 107-111 Oxford Street



**Figure 56:** Modelling from applicant's view loss study, as viewed from 107-111 Oxford Street

**302 Crown Street**

133. 302 Crown Street is located approximately 130m to the south of Group 2.

- (a) Views to be affected: A partial view of the Sydney Harbour Bridge
- (b) Part of property viewed from: North facing apartments
- (c) Extend of impact: The applicant's modelling has demonstrated that the views of the Sydney Harbour Bridge from Levels 7 and 8 will be retained. This has been verified by Council's model makers. Views from Level 6 are already obstructed, and will be further interrupted by the proposal.
- (d) Reasonableness: The proposal would have a negligible impact on views from this property and as such, is considered reasonable.



**Figure 57:** Existing views from 302 Crown Street



**Figure 58:** Modelling from applicant's view loss study, as viewed from Level 6 of 302 Crown Street

### ***200 Campbell Street***

134. 200 Campbell Street is located approximately 105m to the south of Group 2.

- (a) Views to be affected: The city skyline, a partial view of the Sydney Harbour Bridge, and Sydney Harbour
- (b) Part of property viewed from: apartments with a northerly and north-west aspect.
- (c) Extend of impact: The applicant's modelling has demonstrated that the views of the City Skyline, Sydney Harbour Bridge, and Sydney Harbour will be retained to the top level. Council's model makers have advised that the proposal will result in the loss of any bridge views to levels below.
- (d) Reasonableness: The proposal would have a negligible impact on views from this property and as such, is reasonable.



Figure 59: Existing views from 200 Campbell Street



Figure 60: Modelling from applicant's view loss study, as viewed from Level 5 of 200 Campbell Street

**View sharing - Conclusion**

135. The proposed additions will be visible from a number of adjoining buildings to varying degrees.
136. The view sharing assessment found that the protection of views from adjoining properties is not considered reasonable in this instance. This is due to several reasons outlined below:
- (a) Despite the proposal obscuring views from some buildings, the value of views that would be retained from these properties from other vantage points remains high, with 80 Oxford Street retaining views towards Sydney Harbour, and 107-111 Oxford Street retaining views to the City skyline;
  - (b) Only partial views of the Sydney Harbour Bridge and Opera House are currently achieved, with the nearest objector being 2.35km from the Opera House and 2.75km from the Sydney Harbour Bridge.
  - (c) Opportunities for a more skilful design to reduce the view impact would result in other impacts, such as streetscape and heritage impacts.
137. While it is acknowledged that the proposal is not without view sharing impacts, the results of the *Tenacity Consulting v Warringah Council [2004]* NSWLEC 140 assessment conclude that view loss from adjoining properties as a result of the proposed addition are reasonable for the reasons described above.

**Voluntary Planning Agreement**

138. On 10 September 2021, the applicant submitted an offer to enter into a Voluntary Planning Agreement (VPA) with Council in conjunction with the assessment of the subject application, pursuant to Section 7.4 of the Environmental Planning and Assessment Act 1979.
139. The offer involves creating a shared zone in Foley Street between Crown Street and Bourke Street (adjacent to Groups 2 and 3), at a capital cost of approximately \$1,479,000, including:
- (a) Creating a shared zone from Langley Street to Taylor Square for pedestrians and motorists to share at all times
  - (b) Pedestrianising Foley Street between Crown Street and Langley Street
  - (c) New paving and kerb treatments to Foley Street
  - (d) Extending the footpath across Foley Street near the intersection with Crown Street and Palmer Street, but maintaining the same treatment of the existing footpaths either side
  - (e) Tie in works to the remainder of Foley Street
  - (f) Installing removable bollards on Foley Street between Crown and Palmer Streets
  - (g) Stormwater works relating directly to Foley Street upgrades

140. The proposed works will result in the enhancement of the public domain along Foley Street, and are a continuation of the shared zone to Foley Street between Burton Street and Crown Street that was completed in May 2013 (adjacent to Group 1).

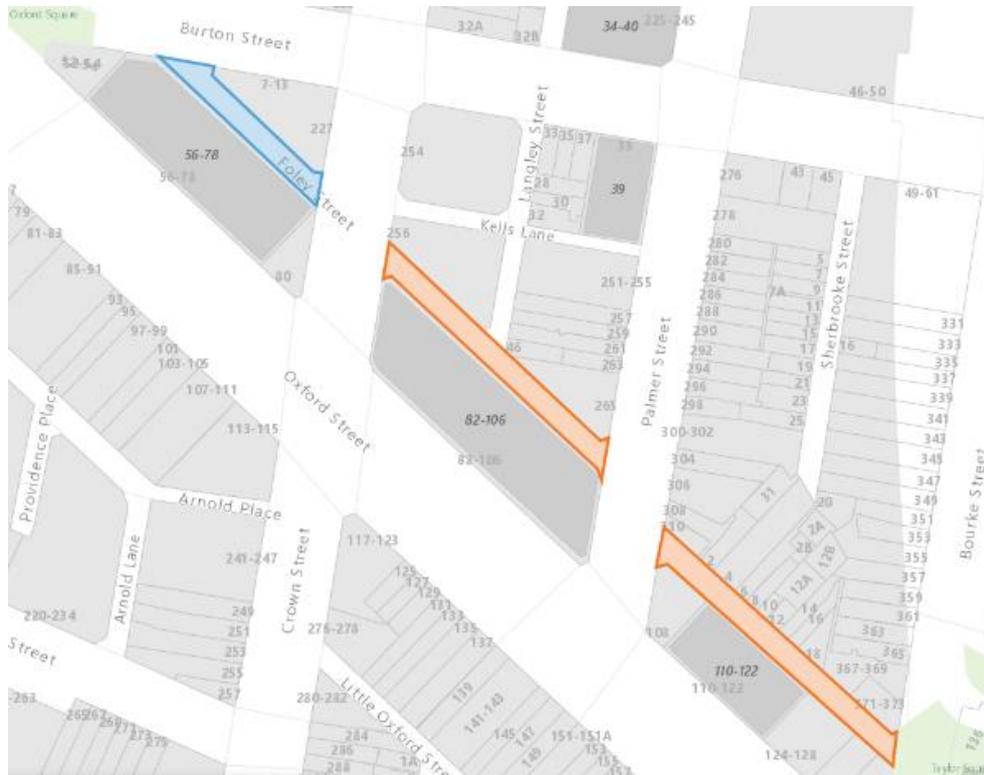


Figure 61: Proposed shared zones (orange) and existing shared zone (blue)



**Figure 62:** Existing Foley Street shared zone adjacent to Group 1

141. The planning agreement with Council is for the developer to provide works in kind instead of paying a monetary contribution under the City of Sydney Development Contributions Plan 2015. The development for Group 1 and 2 (D/2020/1071) is subject to a contribution of \$581,541.51 and the development for Group 3 (D/2020/1072) is subject to a contribution of \$510,989.12, which is a total of \$1,092,530.63. The proponent has submitted a Public Benefit Offer of \$1,479,000. A Section 7.11 Contributions condition is recommended. As the cost of the works in kind exceeds the development contribution the applicant is eligible for a full offset in contributions and the condition has been structured to allow this to occur.
142. The public benefit offer is generally acceptable, and a draft Voluntary Planning Agreement is being prepared. The draft VPA will undergo a 28-day public exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. It is expected that the draft VPA will be placed on public exhibition soon.
143. Given the above, the application is recommended for deferred commencement consent to require the drafting, exhibition, and execution of this planning agreement and its register on title prior to the consent becoming operational.

### Staged Construction

144. The application seeks approval for the staged construction of the proposed development. The proposed staging is as follows:

Stage	Works
1	Site Establishment Demolition Hazardous material removal Structure associated with demolition
2	In ground services Excavation and footings, including OSD tanks and underpinning
3	Structure
4	Services above ground Remainder of works (main architectural works)
5	Public Domain

145. The recommended conditions have been formulated having regard to the proposed staging. The conditions ensure that heritage fabric is identified and conserved prior to the demolition phase of the project and documented in the relevant staged Construction Certificate.

### Consultation

#### Internal Referrals

146. The application was discussed with the following units within Council:

- (a) Building Services Unit;
- (b) Environmental Health Unit;
- (c) Heritage and Urban Design Unit;
- (d) Public Domain Unit;
- (e) Environmental Advisor;
- (f) Surveyors;
- (g) Transport and Access Unit;

- (h) Tree Management Unit; and
- (i) Waste Management Unit.

147. The above generally advised that the proposal is acceptable subject to conditions. Where concerns were raised with the proposed development these are discussed in the 'Discussion' section above.

## External Referrals

### Ausgrid

148. Pursuant to Section 45 of the SEPP (Infrastructure) 2007, the application was referred to Ausgrid for comment.
149. A response was received raising no objections to the proposed development, subject to conditions.

### Transport for NSW

150. Pursuant to Section 101 of the SEPP (Infrastructure) 2007, the application was referred to Transport for NSW (TfNSW) for comment.
151. Comments were received on 11 November 2020. Conditions of consent were recommended which are included in the Recommended Conditions of Consent

## Advertising and Notification

152. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 28 days between 12 November 2020 and 11 December 2020. A total of 1448 properties were notified and 29 submissions were received, with 1 in support and 28 objections.
153. The submissions raised the following issues:
- (a) Issue: The proposal results in a significant exceedance to the height control of the Sydney LEP 2012 and the Clause 4.6 is not justified.  
  
Response: As discussed above, the proposed height is acceptable and the Clause 4.6 request has been supported.
  - (b) Issue: The proposal results in a significance exceedance of the height in storeys control of the Sydney DCP 2012  
  
Response: As discussed above, the proposed height is acceptable subject to recommended conditions.

- (c) Issue: No vertical additions should be supported to these buildings

Response: The assessment considered the impact of vertical additions to the heritage significance of the buildings as well as the structural impact of the additions on the existing heritage fabric. A number of conditions are recommended to ensure that the vertical additions do not result in the loss of significant internal fabric or undermine the structural stability of the buildings. The proposal was reviewed by the Design Advisory Panel who provided their support in principal for the proposal. The proposed vertical additions are generally consistent with the alternative height of buildings control of the Oxford Street Cultural and Creative Precinct Planning Proposal. The proposed vertical additions are acceptable subject to conditions.

- (d) Issue: View loss from properties at 80 Oxford Street, 107-111 Oxford Street, 130-132 Oxford Street, 302 Crown Street and 200 Campbell Street

Response: As discussed above, the proposal is consistent with established view sharing planning principles.

- (e) Issue: The proposed additions dominate the heritage items, and are not compatible with the character of the heritage items and conservation area

Response: The proposed additions are compatible with the existing heritage buildings as they differentiate between the existing building and new additions and do not mimic heritage styles. The form of the addition is designed with a sloping roof form to minimise the perceived bulk and scale of the addition. Conditions are recommended to ensure that the roof form achieves a high-quality finish.

- (f) Issue: The proposal will have a significant impact on the streetscape of Oxford Street, which is of high heritage significance.

Response: The proposal will enhance the streetscape at ground level through the restoration of the shopfronts and street frontage and provides conservation works to the facade. The proposed additions are designed in a modulated roof form that results in an acceptable streetscape outcome that follows the contours of the existing built form and the topography of Oxford Street.

- (g) Issue: The proposal will result in a significant impact upon the heritage items including their internal features.

Response: A detailed assessment has been carried out to the internal fabric of the buildings and conditions are recommended to ensure that significance internal fabric is retained.

- (h) Issue: The proposed design lacks diversity.

Response: The common design language adopted for the roof additions across groups 1, 2 and 3 is consistent with the original development of these buildings in that they were built in a single strategic move in a common design language and materials palette. Whilst the style of the addition is consistent across all buildings, it has been modulated to relate to the grain of each individual building.

- (i) Issue: The choice of materials is out of character with the surroundings.
- Response: The proposed materials are generally acceptable, subject to recommended conditions to ensure a final materials schedule provides high quality materials.
- (j) Issue: The proposed design does not respond to the existing buildings along Foley Street and no setback is provided.
- Response: The impacts to neighbouring properties on the other side of Foley Street are acceptable and are discussed in more detail above.
- (k) Issue: The development does not do enough to activate Foley Street.
- Response: The application provides retail frontages to Foley Street which will provide an appropriate level of street activation. Additionally, a public benefit offer is provided to convert Foley Street into a shared zone, which will result in an enhanced pedestrian experience along the street.
- (l) Issue: The development should not front onto Foley Street and should address only Oxford Street.
- Response: The existing buildings currently have tenancies that front onto Foley Street. The retention and enhancement of these tenancies is acceptable in the context of the existing heritage built form. These openings will also activate Foley Street and increase passive surveillance and safety along this street.
- (m) Issue: Lack of green space and vegetation, such as green roofs or green walls.
- Response: It is appropriate in this instance that green roofs or green walls are not provided, particularly due to heritage constraints.
- (n) Issue: The impacts of the two development applications (D/2020/1071 and D/2020/1072) should be assessed cumulatively.
- Response: Both development applications are concurrently assessed.
- (o) Issue: Visual privacy impacts to properties along Langley Street, Foley Street, 265 Palmer Street, and the roof terrace of 80 Oxford Street.
- Response: As discussed above, conditions are recommended to minimise privacy impacts to surrounding properties. The proposal to Group 1 was amended to remove an opening facing the roof terrace of 80 Oxford Street.
- (p) Issue: Overshadowing impacts to neighbouring properties.
- Response: Due to the orientation of the site, the proposal will not result in adverse overshadowing impacts to living room windows or private open space areas of adjoining properties.
- (q) Issue: Noise impacts associated with mechanical plant, waste collection, and increased traffic.
- Response: Council Officers have assessed the submitted acoustic information and advised that the proposal is capable of satisfying the relevant noise criteria subject to conditions.

- (r) Issue: There was no true consultation with surrounding residents prior to the DA being lodged.

Response: There is no requirement under the EP&A Act for applicants to consult with neighbours prior to submitted DA's.

- (s) Issue: The notification period was insufficient to digest the amount of information submitted with the DA.

Response: The proposal was notified for a period of 28 days. Where submitters made requests for additional time to provide their submission, these requests were granted.

- (t) Issue: Failure to apply development standards for a Council development.

Response: The assessment of the proposal against the relevant development standards and Planning Proposal has been discussed in detail above and is acceptable.

- (u) Issue: Conflict of interest, as the properties are owned by Council.

Response: The development application is reported to the Local Planning Panel for determination as the properties are owned by Council.

- (v) Issue: Asbestos must be carefully managed

Response: Conditions are recommended to ensure the safe removal of any asbestos from the site.

- (w) Issue: Risk of lead in the ceiling cavity.

Response: Conditions relating to hazardous material are recommended.

- (x) Issue: The area is already well serviced by office uses.

Response: The proposed offices are a permissible land use, meet the zone objectives and are acceptable.

- (y) Issue: Offices do not contribute to the cultural precinct.

Response: The application proposes a range of land uses including cultural and creative floor space.

- (z) Issue: Affordable housing or uses for the LGBTQI+ community would be more appropriate.

Response: The proposed land uses are permissible within the zone, are consistent with the Oxford Street Cultural and Creative Precinct Planning Proposal and are acceptable.

- (aa) Issue: Uniform hours of operation should be approved for the whole building.

Response: The application proposes hours of operation between 7am and 10pm for the retail uses. The proposed hours are acceptable and relevant conditions are recommended.

- (bb) Issue: Additional waste will exacerbate existing vermin problems.

Response: Waste rooms are to be provided on site and conditions are recommended that they are designed to appropriate standards, to ensure vermin issues can be managed appropriately.

- (cc) Issue: Insufficient space for waste collection is proposed.

Response: Waste rooms of sufficient size are proposed and meet Council's requirements.

- (dd) Issue: The hours for waste collection should not be late at night.

Response: A condition is recommended to ensure that waste collection is done within appropriate hours.

- (ee) Issue: Surrounding streets are already congested and cannot handle more traffic or impacts to on-street parking.

Response: The site is located in close proximity to public transport and no on-site parking is proposed, which will ensure that the proposal does not result in any unreasonable impacts through traffic congestion.

- (ff) Issue: The traffic impact of the proposal has not been adequately addressed.

Response: The proposal has been reviewed by Transport for NSW and Council's Transport Planner's and is acceptable subject to recommended conditions.

- (gg) Issue: The hours of construction must be restricted

Response: Conditions are recommended to restrict construction to Council's standard construction hours.

- (hh) Issue: Use of heavy vehicles on Foley Street may impact upon buildings on the other side of Foley Street.

Response: Conditions are recommended requiring that dilapidation reports be prepared in relation to surrounding buildings.

- (ii) Issue: The construction will result in noise and impact upon neighbouring residents and the use of Foley Street by pedestrians.

Response: A number of conditions are recommended to minimise the construction impacts from the proposal.

## **Financial Contributions**

### **Contribution under Section 7.11 of the EP&A Act 1979**

154. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

155. The applicant has provided a public benefit offer to enter into a planning agreement with Council to provide works in kind instead of paying a monetary contribution under this plan. The development for Group 1 and 2 (D/2020/1071) is subject to a contribution of \$581,541.51 and the development for Group 3 (D/2020/1072) is subject to a contribution of \$510,989.12, which is a total of \$1,092,530.63. The proponent has submitted a Public Benefit Offer of \$1,479,000. This is discussed above under the 'discussion' heading.

### Relevant Legislation

156. Environmental Planning and Assessment Act 1979.

### Conclusion

157. The proposal seeks consent for the alterations and additions to existing buildings at 58-78 Oxford Street (Group 1) and 82-106 Oxford Street (Group 2) for mixed use development. The proposed uses include retail premises, food and drink premises, and tenancies for cultural and creative uses on the lower ground and ground levels, and commercial offices above.
158. The proposal was reviewed by the Design Advisory Panel who provided their support in principal for the proposal. An independent Heritage Committee was appointed to assess the heritage impacts of the proposal, and a detailed assessment has been carried out to ensure that the proposed works do not impact upon the heritage significance of the buildings.
159. The site is subject to the Oxford Street Cultural and Creative Planning Proposal.
160. The proposed vertical additions are generally consistent with the alternative height of buildings control of the Oxford Street Cultural and Creative Precinct Planning Proposal. Whilst the proposed development results in a numerical non-compliance with the height of buildings development standard of the Sydney LEP 2012, in this instance, the written request submitted by the applicant to justify the departure under the provisions of Clause 4.6 of the LEP is supported.
161. Conditions are recommended ensuring that relevant heritage, structural and amenity impacts are addressed and cultural and creative uses are provided consistent with the planning proposal.
162. The proposal incorporates Cultural and Creative uses and a condition is recommended to ensure that these are consistent with the Oxford Street Cultural and Creative Precinct Planning Proposal.
163. The proposed development is considered to respond appropriately to the desired future character of the area and is considered to achieve a satisfactory design outcome.

164. A public benefit offer has been submitted that involves creating a shared zone in Foley Street between Crown Street and Bourke Street (adjacent to Groups 2 and 3). This continues the shared zone along Foley Street that has been completed between Burton Street and Crown Street. A draft VPA associated with the application will undergo a 28-day public exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979.
165. Deferred commencement conditions are recommended to enable the VPA to be exhibited, executed, and registered on title, and requiring the final structural solution to be submitted.

**ANDREW THOMAS**

Executive Manager Planning and Development

Matthew Girvan, Senior Planner