

**Item 4.****Development Application: 110-122 Oxford Street, Darlinghurst - D/2020/1072****File No.:** D/2020/1072**Summary**

<b>Date of Submission:</b>	15 October 2020  Amended plans and information was 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>	\$16,104,915
<b>Zoning:</b>	The site is located in the B2 Local Centre zone. The proposed development is defined as a 'hotel or motel accommodation', '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 110-122 Oxford Street (Group 3) as a mixed use development and associated alterations and additions with 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.

The application was notified and advertised for 28 days. A total of 31 submissions were received (30 objections and 1 submission in support). The issues raised 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 building, 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 height of 24m for Group 3.

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 46% (6.9m), however is consistent with the alternative building height control of the planning proposal for the site, of 24m (Group 3). The variation to the Sydney LEP 2012 height standard is subject to a clause 4.6 variation request, due to the exceedance 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 although 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 3
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Perspectives
- E. Heritage Committee Report
- F. Public Benefit Offer
- G. 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/2020/1072 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 a building group on the northern side of Oxford Street, between Palmer Street and Taylor Square identified as Group 3. 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 3 is part of the block bounded by Foley Street, Palmer Street, Oxford Street and Taylor Square. It comprises Lots 2 in DP815188, commonly known as 110-122 Oxford Street, Darlinghurst, and has a site area of 604 square metres.
3. The site is located within the Oxford Street heritage conservation area (C17).
4. The building groups are identified in the aerial image below.
5. Site visits were carried out in November 2020, February and May 2021.



**Figure 1:** Aerial image of subject site and surrounding area (Note: Groups 1 and 2 are not the subject of this report)



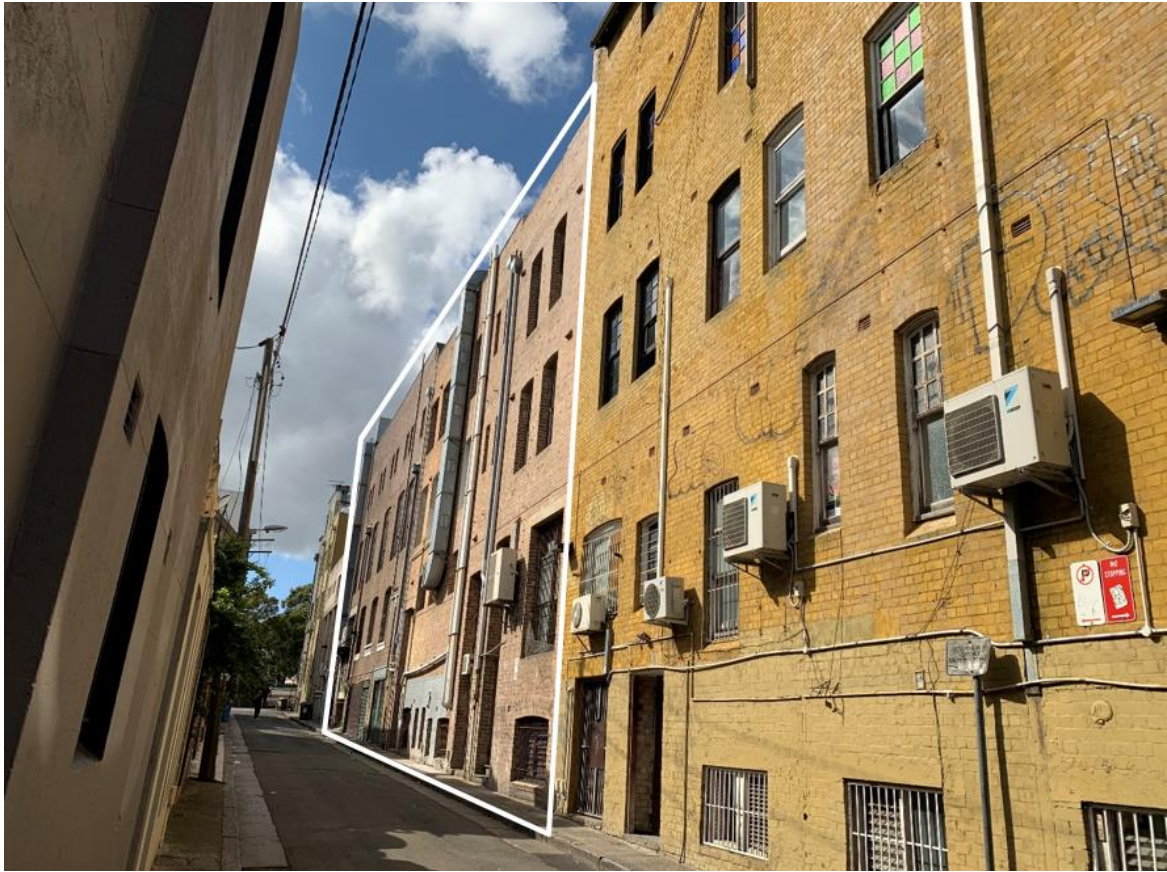
**Group 3 (110-122 Oxford Street)**

6. Group 3 comprises three separate brick buildings and present as three storeys to Oxford Street and four storeys to Foley Street. Each building has a distinct and individual appearance but collectively they present as a cohesive streetscape of federation style.
7. The buildings were constructed c1911-12, and are local heritage items including one individually listed building and a building group, as follows:
  - (a) 110 Oxford Street – LEP no. I396 Commercial Building including interior
  - (b) 112-122 Oxford Street – LEP no. I397 Commercial Building Group including interior
8. To the west, at 108 Oxford Street, is a three-storey local heritage item (I395) known as 'former Crecy Hotel'. Further to the west, at 82-106 Oxford Street, is Group 2 of the associated development application D/2020/1071. To the east, are a series of two and three storey commercial buildings that form the remainder of the street block.
9. To the north on the opposite side of Foley Street is residential terrace housing of predominantly two storeys in height.
10. To the south, on the opposite side of Oxford Street, is a row of two to three storey retail and commercial buildings.
11. Photos of Group 3 and surrounds are provided below:



**Figure 2:** The site viewed from Oxford Street





**Figure 3:** The site viewed from Foley Street



**Figure 4:** Residential dwellings located on the opposite side of Foley Street





**Figure 5:** Residential dwellings located on the opposite side of Foley Street



**Figure 6:** Foley Street as viewed from Taylor Square





**Figure 7:** Interiors of 112-114 Oxford Street.



**Figure 8:** Interiors of 116-122 Oxford Street



**Figure 9:** View from existing roof level to residential terraces on Foley Street

## History Relevant to the Development Application

### History of Oxford Street

12. 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/2020/1071

13. A development application (D/2020/1071) 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 was lodged simultaneously by the applicant. 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.
14. D/2020/1071 is assessed concurrently and is subject to a separate report to the Local Planning Panel.

15. There are a range of development applications for retail, residential and commercial uses for the subject site. These applications are not relevant to the subject DA.

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

16. 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.
17. 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 the public domain, reviewing planning controls, including additions to heritage buildings and controls for increased affordable creative space.
18. 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
19. 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.
20. 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.
21. 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**

22. 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.
23. Following a preliminary assessment of the proposal by Council Officers, request for additional information and amendments was sent to the applicant.
24. 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.



25. Additional structural drawings, a view sharing study, and amended Acoustic Reports and Waste Management Plans were submitted in April 2021.
26. Amended plans were submitted in June 2021.
27. 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.
28. An amended view sharing study was submitted in August 2021.
29. An amended public benefit offer relating to the Foley Street shared zone was submitted on 10 September 2021.
30. 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.
31. The amended plans and the additional information form the subject of assessment within this report.

### **Proposed Development**

32. Approval is sought for a mixed-use development, including 75-room hotel, 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) Hotel lobby and hotel rooms; and
    - (iii) Other services and storage areas
  - (b) Levels 1-4:
    - (i) Hotel rooms
    - (ii) Hotel bar, swimming pool and terrace; and
    - (iii) Mechanical plant
33. The works include:
  - Part removal of existing fit outs to existing tenancies across all levels
  - Conversion of existing commercial tenancies at basement level to new hotel lobby, and associated hotel facilities, retail, cultural and creative space. This includes creation of new external openings at Foley Street to previously modified fabric.

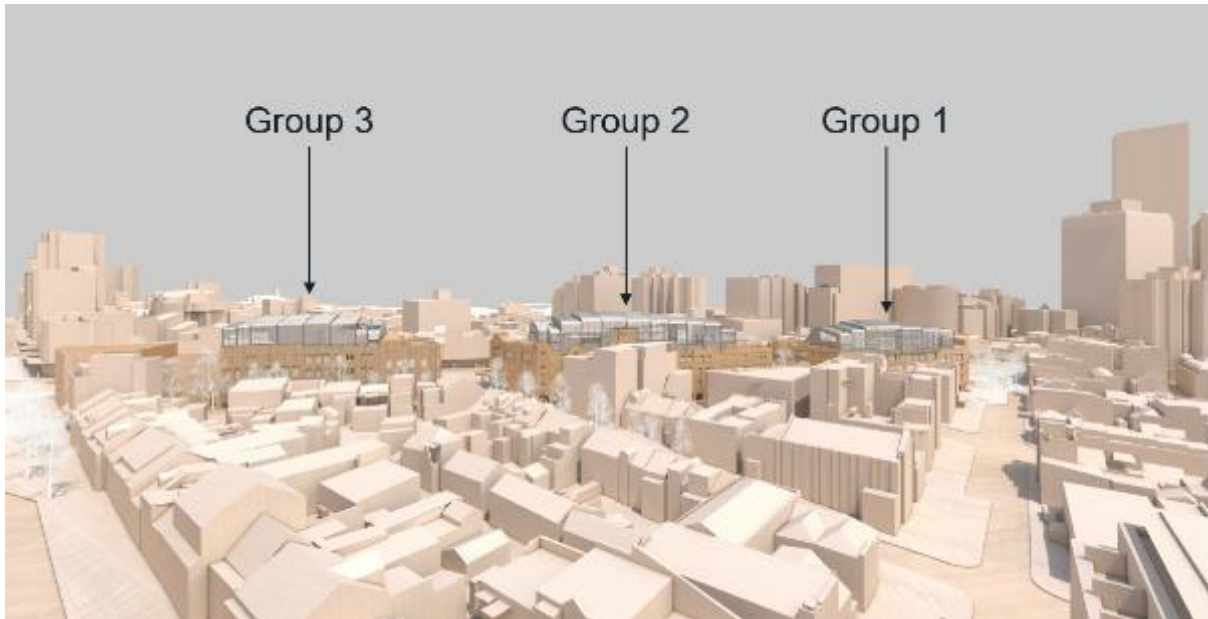
- Creation of new retail tenancies at ground floor onto Oxford Street, and creation of hotel rooms to Foley Street
  - Creation of two floors of hotel rooms at Levels 1 and 2
  - Installation of new staircases and lifts to connect all levels
  - Construction of a two storey rooftop additions across the whole of the building, with hotel rooms, swimming pool and roof top deck.
34. The application also includes a signage strategy for each building group.
35. The application proposes 5 stages of construction.
36. Selected drawings of the proposed development for Group 3 are provided below.



**Figure 10:** Groups 1, Group 2 (both D/2020/1071) and Group 3 (D/2020/1072) viewed from Oxford Street (Note: Groups 1 and 2 are not the subject of this report)



**Figure 11:** An aerial view of Group 1, Group 2 and Group 3 viewed from the south-west (Note: Groups 1 and 2 are not the subject of this report)



**Figure 12:** An aerial view of Group 3, Group 2 and Group 1 viewed from the north-east (Note: Groups 1 and 2 are not the subject of this report)



**Figure 13:** An aerial view of Group 1, Group 2 and Group 3 viewed from the south-west (Note: Groups 1 and 2 are not the subject of this report)

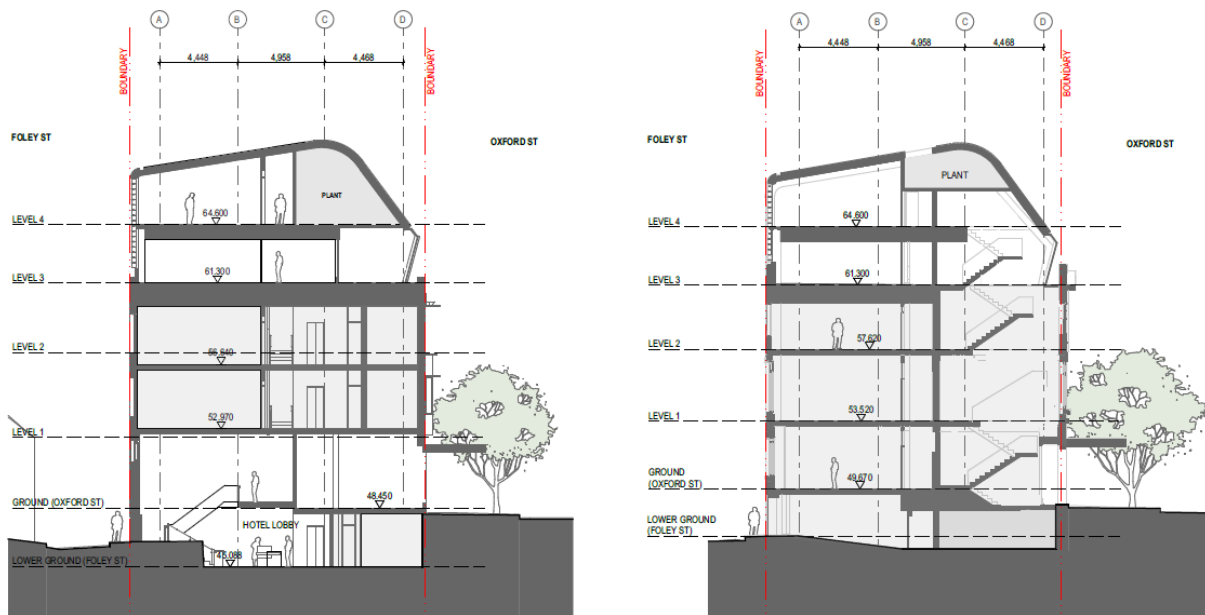




**Figure 14:** A perspective of Group 3 viewed from Oxford Street near the corner with Palmer Street



**Figure 15:** A perspective of Group 3 viewed from Oxford Street



**Figure 16: Sections through Group 3**

## Assessment

37. 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

38. 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.
39. The buildings in Group 3 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.
40. 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.
41. 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 (Affordable Rental Housing) 2009

42. Part 3 of the Affordable Housing SEPP deals with the retention of existing affordable housing and applies to the Sydney region.
43. Part 3 only applies to boarding houses or residential flat buildings that were lawfully used as low rental dwellings 5 years before the development application was lodged.

44. The site has not been used as a boarding house or for low rental dwellings 5 years before the development application was lodged, therefore Part 3 does not apply.
45. Conditions requiring contributions for the loss of affordable housing can only be imposed on development applications which are subject to Part 3. As Part 3 does not apply to the site, it is not possible to impose conditions requiring contributions for the loss of affordable housing.

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

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

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

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

47. The application is subject to Clause 101 of the SEPP as the site has frontage to Oxford Street which is a classified road.
48. 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.

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

49. 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.
50. 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**

51. 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 'hotel or motel accommodation', '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> <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>A height of 21.9m is proposed for Group 3.</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> <p>An FSR of 4:1 is proposed, which complies.</p>
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 3 comprises 2 locally listed heritage items pursuant to Schedule 5 of the Sydney LEP 2012, being:</p> <p>110 Oxford Street – LEP no. I396 Commercial Building including interior</p> <p>112-122 Oxford Street – LEP no. I397 Commercial Building Group including interior</p>

Provision	Compliance	Comment
		<p>Group 3 is also adjacent to a locally listed heritage item at 108 Oxford Street (I395), being the 'former Crecy Hotel including interior'.</p> <p>Subject to the carrying out of conservation works, and subject to conditions, the proposed development has 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 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		
7.7 Retail premises	Yes	<p>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.</p> <p>No retail car parking spaces are proposed and the proposal complies with the relevant development standards.</p>
Other land uses	Yes	<p>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.</p> <p>No hotel or motel accommodation car parking spaces are proposed and the proposal complies with the relevant development standards.</p>
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 floor are not proposing to change. The current floor levels are acceptable for cultural and creatives uses, retail uses, and hotel lobby proposed on the street facing floors.

## Development Control Plans

### Sydney Development Control Plan 2012

52. 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

53. 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.

54. 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.

55. The proposed development is in keeping with the unique character and the design principles of the Oxford Street Darlington locality in that it will contribute towards the revitalisation of Oxford Street as an entertainment, tourism and retail precinct, and local business centre.
56. 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		
3.1.5 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 solar access from the proposed additions results 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>
3.2.2 Addressing the street and public domain	Yes	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.
3.2.3 Active frontages	Yes	<p>The site is subject to an active street frontage control along Oxford Street.</p> <p>The existing fine grain retail tenancy pattern is retained to contribute to the vibrancy of Oxford Street.</p>



Provision	Compliance	Comment
3.2.4 Footpath awnings	Yes	The existing continuous awnings of Group 3 are maintained and are satisfactory subject to recommended conditions for the retention of heritage fabric.
3.2.7 Reflectivity	Yes	A condition is recommended that visible light reflectivity from building materials used on the facade of the building does not exceed 20%.
3.5 Urban Ecology	Yes	The proposal will not affect existing street trees on Oxford Street. Conditions are recommended relating to tree protection and pruning.
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 star NABERS rating is proposed, as a 5 star rating couldn't be achieved due to constraints of the existing buildings.</p>
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.

Provision	Compliance	Comment
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>
3.9.6 Heritage conservation areas	Yes	<p>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.</p>
3.9.10 Building materials for heritage items and buildings within heritage conservation areas	Yes	<p>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.</p>

Provision	Compliance	Comment
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>There is no on-site parking or loading proposed, which is consistent with the existing site conditions.</p> <p>The application proposes to provide bike parking and facilities with the nearby development at Group 2 (82-106 Oxford Street).. A condition is recommended that the Plan of Management be updated to indicate the availability of bicycle parking within Group 2.</p> <p>Conditions are recommended that require a Transport Access Guide be prepared.</p>
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	Yes	Late night trading is not proposed.

Provision	Compliance	Comment
Management		<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> <p>The hotel is proposed to have a manager on site 24 hours per day.</p>
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	Yes	<p>The proposed development maintains the existing floor to ceiling heights at lower ground, ground, first and second floor levels.</p> <p>The new addition provides a minimum floor to ceiling height of 2.4m at upper levels which is acceptable for hotel use.</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>

Provision	Compliance	Comment
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>
4.2.3.4 Design features to manage solar access	Able to comply	<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>
4.2.3.6 Deep Soil	No	<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 3 has a roof terrace of approximately 42sqm, inclusive of swimming pool, at the north-western end of Level 4.</p> <p>The roof terrace is small in size and located to minimise adverse privacy impacts to nearby residential uses, particularly on Foley Street.</p>
4.2.3.11 Acoustic privacy	Yes	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.
4.2.6 Waste and recycling Management	Yes	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.

#### 4.4 Other Development Types and Uses

##### 4.4.8 Visitor accommodation

Provision	Compliance	Comment
4.4.8.1(1) No common access ways with adjoining properties	Yes	The hotel accommodation is self-contained and does have common access ways with adjoining properties.
4.4.8.1(2) Site Manager	Yes	<p>Beds for 150 persons are proposed and the DCP requires a site manager to be on-site when guests have access to the premises (i.e. 24-hours) for any hotel with 20 guests or more.</p> <p>A condition is recommended that a hotel manager be on site 24-hours per day.</p>
4.4.8.1(3) Safety	Yes	Sleeping rooms do not contain triple bunks or cooking facilities.

Provision	Compliance	Comment
4.4.8.1(4) Partitions	Yes	Each room contains one double-bed and internal partitions are not required.
4.4.8.1(5) Toilet and shower facilities	Yes	Each room is provided with toilet and shower facilities that are appropriately screened for privacy.
4.4.8.1(6) Plan of Management	Yes	A Plan of Management (POM) has been submitted.  A condition is recommended that the Plan of Management (POM) be submitted to reflect all relevant conditions of consent and to ensure that the use is operated in accordance with the POM.
4.4.8.3(1) Maximum number of persons accommodated in a bedroom	Yes	All rooms exceed 11sqm for 2 guests that stay more than 28 days.
4.4.8.3(2) Maximum permitted length of stay	Yes	The Plan of Management outlines that the maximum permitted stay will be 3 months, which complies with the DCP.
4.4.8.3(3) Accommodation of more than 28 consecutive days	Yes	The Plan of Management outlines that no more than two adults and one child are permitted per room where accommodation is provided more than 28 consecutive days.
4.4.8.3(4) Storage facilities	Yes	Storage facilities are shown in each room. A condition is recommended requiring a minimum of 0.6 cubic metres of storage per person in each room.
4.4.8.3(5) Kitchenettes	Yes	Kitchenettes are not provided in rooms.

## Discussion

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

57. 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.



58. 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.
59. The proposed planning instrument provides an alternative height of building development standard, increasing the height control from 15m under the current Sydney LEP 2012 development standard, to height of 24m for Group 3.
60. 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 the 'Cultural and Creative' heading.
  - (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'.
61. 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.

62. The proposed height of Group 3 is 21.9m and complies with the 24m control.
63. 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.

64. 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.

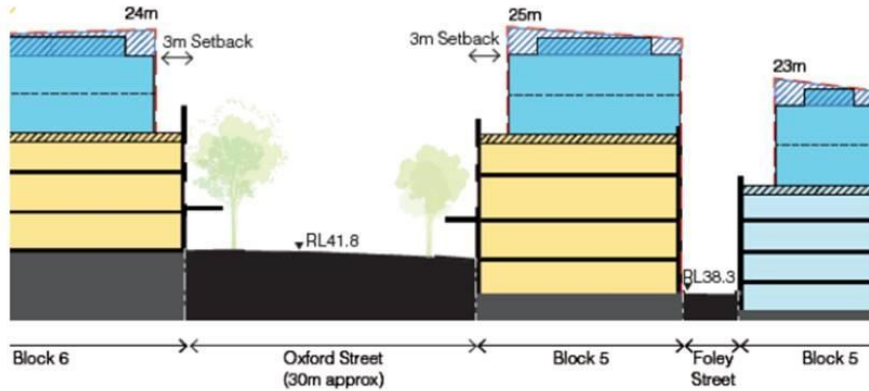


Figure 6: Above the street wall on the southern side of Foley Street, additional storeys are not required to be set back from the street frontage 5.X.4.3(6)

**Figure 17:** Image from the Draft DCP indicating required setbacks (this image relates to Group 1)

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

65. 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 21.9m.

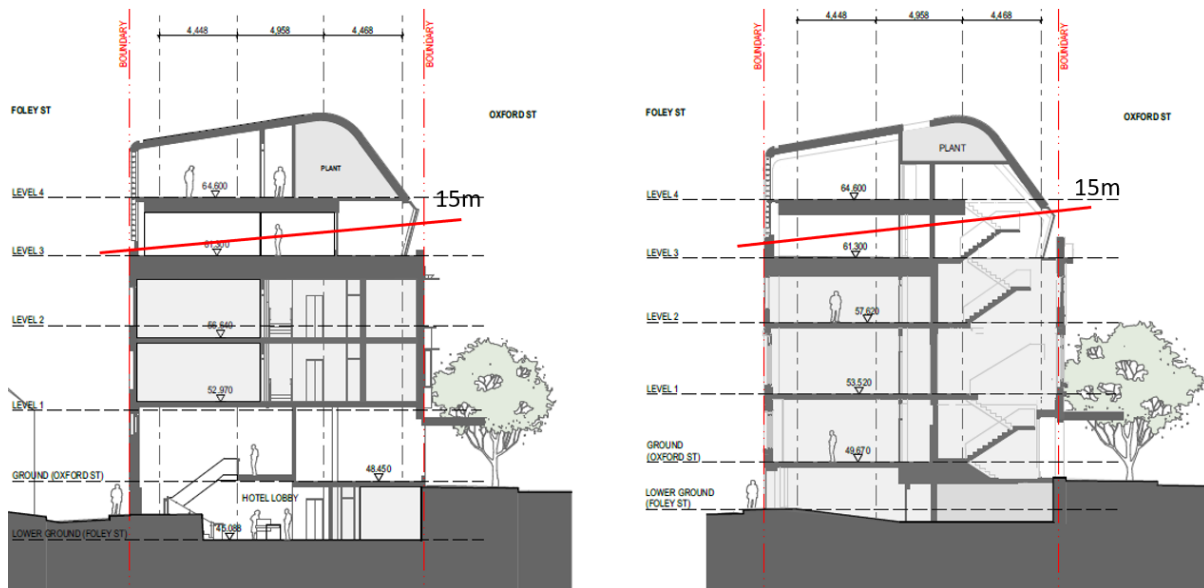
66. The proposals non compliance with the 15m height control is shown in the figures below.



**Figure 18:** Existing height planes of Group 3 viewed from Oxford Street and Foley Street



**Figure 19:** Elevation of Group 3 with the 15m Sydney LEP 2012 height control as viewed from Oxford Street



**Figure 20:** Sections through Group 3

67. 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:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
  - That there are sufficient environmental planning grounds to justify contravening the standard;
  - The proposed development will be consistent with the objectives of the zone; and
  - The proposed development will be consistent with the objectives of the standard.

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

68. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
- 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:
    - 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 3, 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 hotel rooms delivered through the height variation will assist in creating a tourism destination and vibrant area for people to visit 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 tourist and visitor floor space and tourist 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 hotel uses which will directly services 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 hotel space providing a variety of employment opportunities.
  - (iii) The proposed inclusion of the height variation will facilitate new visitor accommodation 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)

69. 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)?

70. 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?

71. 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 800m 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

72. 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**

73. 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.
74. In 2017 a Floor Space Employment Survey was carried out, which identified significant cultural and creative floor space on these sites.
75. The application proposes 2.95% of the GFA for the 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.

76. 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 3	280sqm	63.4sqm (2.95%)	280sqm + 241.6 (10%) = 521.6sqm (21.5%)

### Heritage

77. The buildings were constructed c1911-1912. All existing buildings on site 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).
78. 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 21: SLEP 2012 Heritage Map (Sites in blue)





**Figure 22:** Archival photo of Group 3 taken in the 1980s

79. 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.

80. 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
81. 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.
82. 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.
83. 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.

84. 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.
85. Specific heritage elements are discussed in more detail below:

***Vertical additions***

86. 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.
87. 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.

***Internal demolition works***

88. The interiors of Group 3 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.
89. The quantum of proposed demolition was reduced during negotiations with the applicant.
90. 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.

91. Conditions recommended to retain significant components include:
- (a) Retention of a number of the party walls including between Nos 112 and 114 and between Nos 116 and 118 Oxford Street. The retention of these walls to conserve the spatial integrity and character and to preserve the structural integrity of the buildings.
  - (b) Retention of the original stair at No 120 Oxford Street.
  - (c) Salvage and reuse of original pressed metal ceilings at 110-122 Oxford Street.
92. The conservation of entrance vestibule, stairwell and stair of 120 Oxford Street requires detailed re-design including consideration of a fire engineered performance solution, and therefore it is recommended that this information be submitted as a deferred commencement condition.



**Figure 23:** Existing stair of 120 Oxford Street

### **Structural**

93. 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.
94. 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**

95. 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.
96. 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**

97. 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 three reports to pertain to each group of the buildings that are subject of this and the related development application.
98. 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 the Group 3 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**

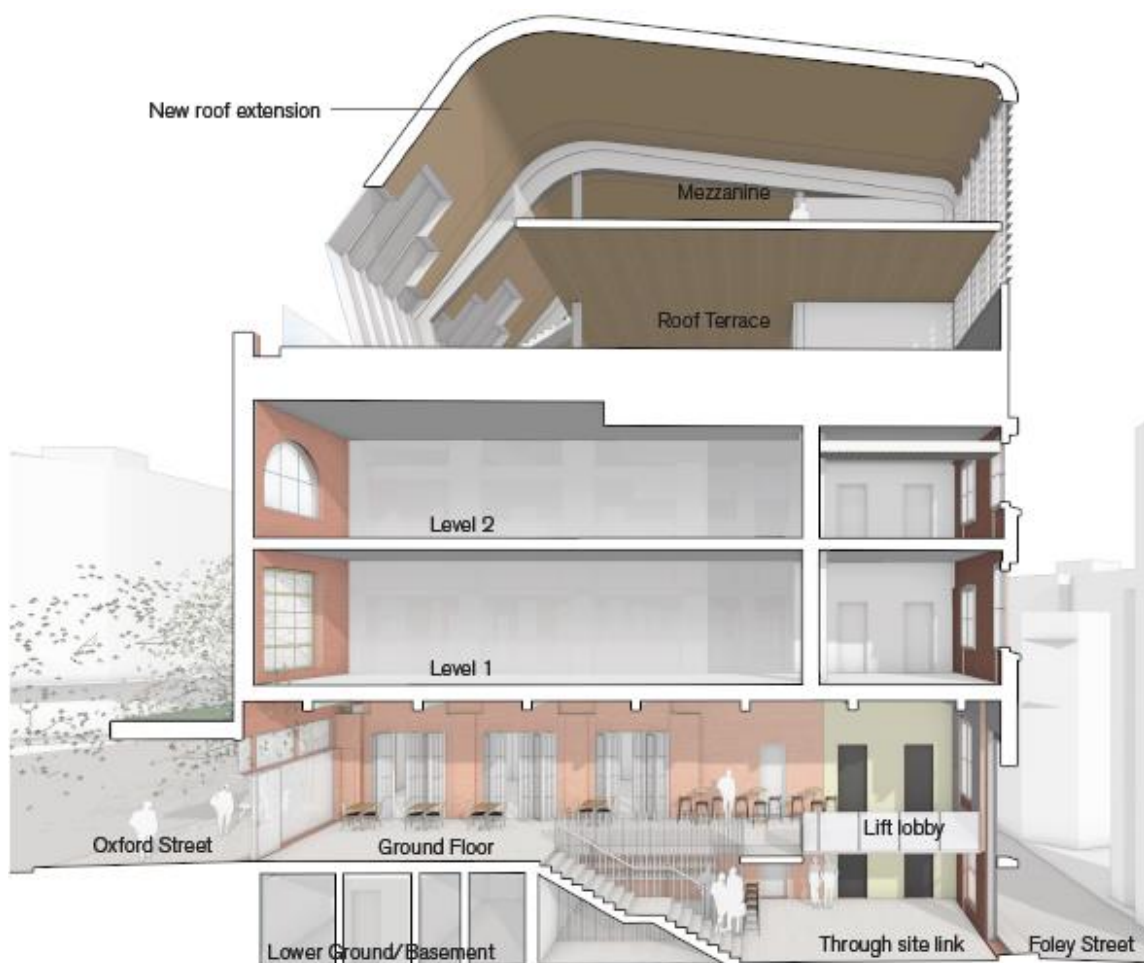
99. Clause 6.21 of the Sydney LEP 2012 requires alterations and additions to an existing building to exhibit design excellence.



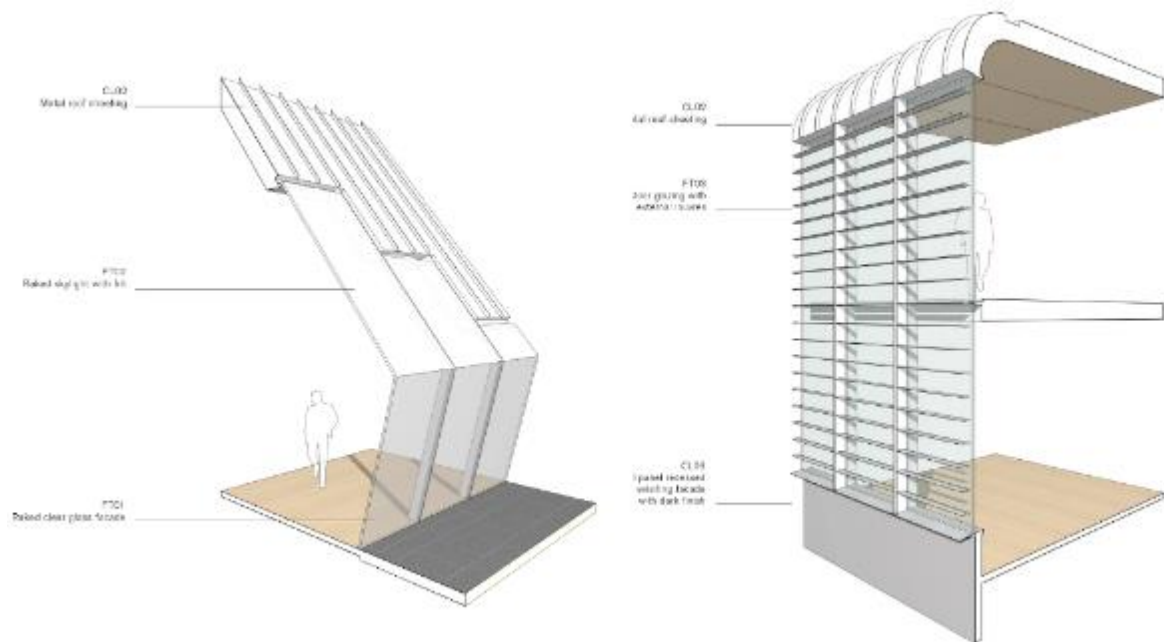
100. In assessing design excellence, a key consideration is the ability to deliver both the conservation of heritage significance and fabric of the heritage items, as well as the detailed design and construction of the new additions.
101. The proposal was considered by the Design Advisory Panel (DAP) 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.
102. The Panel raised concern with:
  - (a) The lack of variety of the roof form across the three blocks (including Groups 1 and 2, assessed under D/2020/1071)
  - (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
103. 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.
104. 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.
105. In relation to environmental performance, a 4 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.
106. A condition is recommended to ensure that the proposed cultural and creative space is retained into the future.
107. As outlined above, the proposal is capable of achieving design excellence subject to the recommended conditions.



**Figure 24:** Section through Group 1



**Figure 25:** Section through Group 2



**Figure 26:** Images of the proposed facade system of the new addition

### Impacts to Foley Street

108. 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.
109. 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.
110. The impacts of the proposed glazed north facades off the additional floors have a potentially more serious impact on privacy, although in the case of Group 3 the new additions are significantly above the height of buildings opposite. A condition is recommended to ensure that the external louvres shown on the north elevation upper façade 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.
111. The application originally proposed that the hotel lobby be accessed from Foley Street. The proposal was amended during the assessment to provide dual access to the hotel lobby from both Oxford Street and Foley Street. A condition is recommended that guest access be provided by Oxford Street only between 10pm and 7am the following day. This condition will reduce the impact of guest access to Foley Street on the residential terraces on the opposite side of the street.

112. The applicant has proposed that a residential bin room be provided within the development site, and available for use of the residential terraces on the opposite side of Foley Street. This will improve the amenity within Foley Street, as bins will not need to be left on the street for Council collection. The design and location of the bin room has been reviewed by Council's Waste Management Unit who have advised that the ramp grade is not consistent with Council's *Guidelines for Waste Management in New Development* and is unable to be used by Council's Waste Collection unit. Therefore a condition is recommended that the residential waste room be relocated to a location consistent with the Guidelines.
113. The Planning Agreement relating to the enhancement of Foley Street adjacent to Group 3 is discussed further below. This will improve the pedestrian amenity on Foley Street.

**View sharing**

114. A number of submissions raised concerns with the loss of views towards the City skyline, Sydney Harbour, the Opera House, and Sydney Harbour Bridge.
115. 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.
116. It is noted that the impacts to 80 Oxford Street, 107-111 Oxford Street and 302 Crown Street are discussed in the assessment report for D/2020/1071.



**Figure 27:** Group 1 and 2 (blue), Group 3, the subject site, (purple), and objectors with view loss concerns (red)

117. 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".
118. The applicant submitted a view loss study (Attachment G) to analyse the view sharing impacts of the proposal.
119. Assessment of view impacts is undertaken based on the principles of view sharing established in *Tenacity Consulting v Warringah Council* [2004] NSW LEC 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.)*



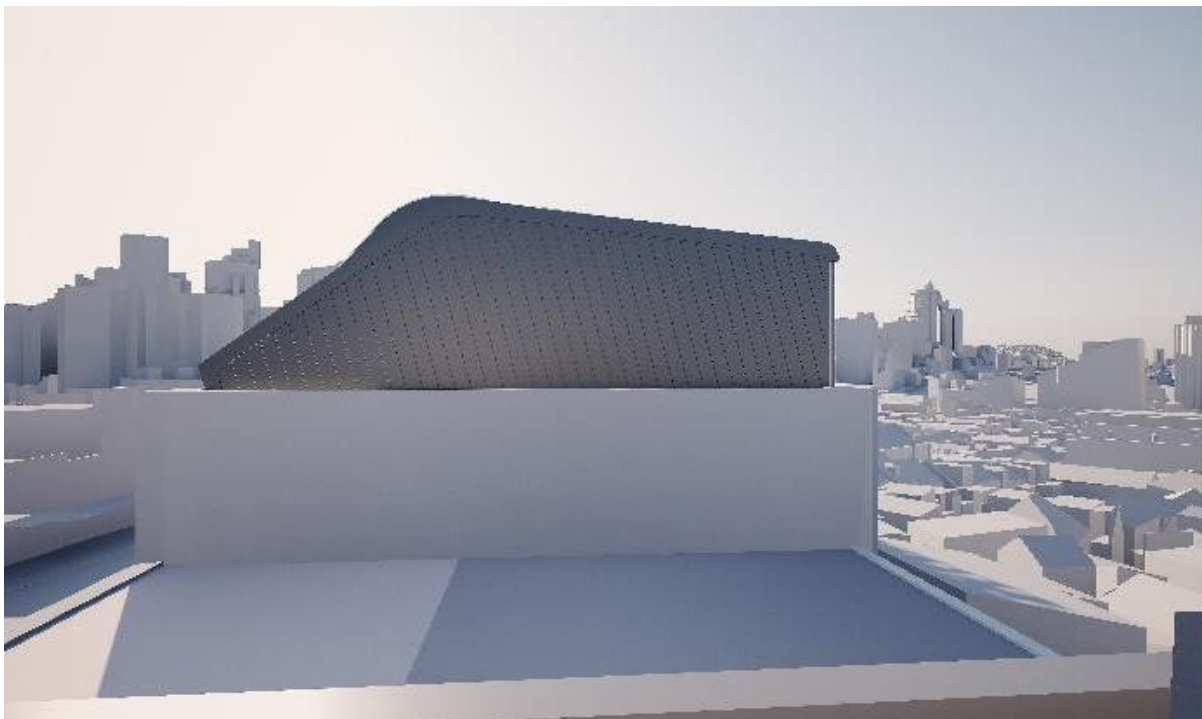
120. To decide whether view sharing is reasonable or not, Senior Commissioner Roseth developed a four step assessment, which is summarised in part below:
- (a) The first step is the assessment of views to be affected. Water views are valued more highly than land views. Whole views are valued more highly 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.

**130-132 Oxford Street**

121. 130-132 Oxford Street is located 17m to the east of Group 3.
- (a) Views to be affected: Views of the city skyline.
  - (b) Part of property viewed from: Views are from a communal roof terrace to hotel below.
  - (c) Extent of impact: The City skyline is obstructed. Views to the Sydney Harbour Bridge are retained from some vantage points of the roof terrace.
  - (d) Reasonableness: The views are obtained directly over the side boundary towards Group 3, and therefore views are more difficult to retain with any increase in height of the subject site. It is also noted that 130-132 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 28:** Views from roof terrace of 130-132 Oxford Street (note the proposed overlay was provided by the objector)



**Figure 29:** Modelling from applicant's view loss study, as viewed from roof terrace of 130-132 Oxford Street

**200 Campbell Street**

122. 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 30:** Existing views from 200 Campbell Street



**Figure 31:** Modelling from applicant's view loss study, as viewed from Level 5 of 200 Campbell Street

### ***View sharing - Conclusion***

123. The proposed additions will be visible from a number of adjoining buildings to varying degrees.
124. 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 130-132 Oxford Street retaining views towards Sydney Harbour Bridge;
  - (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.
125. 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**

126. 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.

127. 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
128. 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 32:** Proposed shared zones (orange) and existing shared zone (blue)





**Figure 33:** Existing Foley Street shared zone adjacent to Group 1

129. 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.
130. 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.
131. 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**

132. 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

133. 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**

134. 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

135. 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**

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

### **Transport for NSW**

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

## **Advertising and Notification**

140. 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 436 properties were notified and 31 submissions were received, with 1 in support and 30 objections.
141. 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 principle 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 hotel, due to the nature of the use, operates for 24 hours per day, however conditions are recommended to ensure that amenity is maintained for neighbouring residents within Foley Street. The proposed hours are acceptable and relevant conditions are recommended.

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

Response: Waste rooms are 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

142. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
143. 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

144. Environmental Planning and Assessment Act 1979.

## Conclusion

145. The proposal seeks consent for the alterations and additions to existing buildings at 110-122 Oxford Street (Group 3) as a mixed use development and associated alterations and additions with 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.
146. 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.
147. The site is subject to the Oxford Street Cultural and Creative Planning Proposal.
148. 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.
149. Conditions are recommended ensuring that relevant heritage, structural and amenity impacts are addressed in accordance with the Oxford Street Cultural and Creative Precinct Planning Proposal.
150. 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.

151. 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.
152. 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 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.
153. 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