

Relevant Information for Council

FILE: X026153 **DATE:** 7 April 2022

TO: Lord Mayor and Councillors

FROM: Graham Jahn, Director City Planning, Development and Transport

SUBJECT: Information Relevant To Item 8.3 - Post Exhibition – Planning Proposal – Oxford Street Creative and Cultural Precinct – Sydney Local Environmental Plan 2012 and Draft Sydney Development Control Plan 2012 - Public Exhibition - Draft LGBTIQ+ Oxford Street Social and Cultural Place Strategy

Alternative Recommendation

It is resolved that:

- (A) Council note matters raised in response to the public exhibition of the Amended Planning Proposal: Oxford Street Cultural and Creative Precinct and draft Sydney Development Control Plan 2012: Oxford Street Cultural and Creative Precinct as described in this report and as shown in Attachment G to the subject report;
- (B) Council approve the Planning Proposal: Oxford Street Cultural and Creative Precinct as shown at Attachment A to the subject report and amended in response to submissions, and request that the Department of Planning and Environment make it as a local environmental plan under Section 3.36 of the Environmental Planning and Assessment Act 1979, **subject to the following amendments:**
 - (a) **Amendment of AHOB_022 and AFSR_022 maps to include a FSR of 4:1 and HOB of 23m at 265-267 Oxford Street (the Beacham Hotel).**

- (b) Amendment of Explanation of Provisions and Appendix 2 drafting instructions (3)(vi) and Example Clause (10) relating to the ARQ sites to allow the total permitted gross floor area to be distributed across an amalgamated site as follows:
- (vi) Drafting Instructions: Additional height and floor space is ~~not~~ available under this clause to a building on 4-6 Flinders Street, Darlinghurst (Lot 100 DP 746537), 10-16 Flinders Street, Darlinghurst (Lot 1 DP 9347), 18- 26 Flinders Street Darlinghurst (Lot 2 DP 9347). 4-6 Taylor Street, Darlinghurst (Lot 3 DP 9347), 8-10 Taylor Street, Darlinghurst (Lot 4 DP 9347) and 2 Sturt Street, Darlinghurst (Lot 5 DP 9347 and Lot 1 DP 819569), ~~unless the building is on land with a site area of more than 1,500 square metres and do not exceed 3.3:1 FSR. if the total gross floor area of development does not exceed the combined floor space ratio for the site;~~
- Example Clause: (10) Development consent ~~must not be~~ *may* be granted under subsection (3) for development on any of the following sites: 4-6 Flinders Street, Darlinghurst (Lot 100 DP 746537), 10-16 Flinders Street, Darlinghurst (Lot 1 DP 9347), 18- 26 Flinders Street Darlinghurst (Lot 2 DP 9347). 4-6 Taylor Street, Darlinghurst (Lot 3 DP 9347), 8-10 Taylor Street, Darlinghurst (Lot 4 DP 9347) and 2 Sturt Street, Darlinghurst (Lot 5 DP 9347 and Lot 1 DP 819569), ~~unless the building is on land with a site area of more than 1,500 square metres and do not exceed 3.3:1 FSR. if the total gross floor area of development does not exceed the combined floor space ratio for the site.~~
- (c) *Amendment of AFSR_022 map to include a FSR of 3.75:1 at 203-209 Oxford Street (the Bookshop sites).*
- (d) *Amendment of AFSR_015 and AHOB_015 maps to include a FSR of 3.8:1 and HOB of 24 metres at 1-5 Flinders Street (the former T2 building).*
- (e) *Amendment to the AFSR_015 and AHOB_015 maps to include a FSR of 3.75:1 and height of building control of 18 metres at 163-169 Oxford Street.*
- (f) *Amendment to AHOB_015 maps to include a height of building control of 18 metres at 171 Oxford Street.*
- (g) *Amendment of Appendix 2 Drafting Instructions (1) and Example Clause (2) to remove all addresses listed after the National Art School at 156 Forbes Street.*
- (h) *Amendment of Appendix 2 Drafting Instruction and Example Clause to clarify that development in the precinct which does not seek use the additional height or FSR under the alternative planning provisions:*
- (i) *can continue to utilise LEP clause 4.6 Exceptions to Development Standards, and*
- (ii) *can access the provision that allows for up to 0.8:1 FSR for live entertainment and cinema uses in a basement.*

- (C) Council approve the draft Sydney Development Control Plan 2012: Oxford Street Cultural and Creative Precinct as shown at Attachment B to the subject report and amended in response to submissions, noting that it will come into effect on the date of publication of the subject local environmental plan, in accordance with Clause 21 of the Environmental Planning and Assessment Regulation 2000 ***subject to the following amendments:***
- (a) ***Amendment of the alternative height in storeys maps 015 and 022 to show 5 storeys at 197-199, 203--215 Oxford Street.***
 - (b) ***Amendment of the alternative height in storeys maps 015 to show 6 storeys at 381 and 379 Bourke Street (Kinselas).***
 - (c) ***Amendment of the alternative height in storeys maps 015 and 022 to show 5 storeys at 1-5 Flinders Street (T2) and insert a control for a required setback at level 3 only.***
 - (d) ***Amendment of the alternative height in storeys map 022 to show 5 storeys at 265-267 Oxford Street (the Beacham Hotel).***
 - (e) ***Amendment of the alternative height in storeys maps 015 to show 4 storeys at 163-169 & 171 Oxford Street and insert a site specific control for a 6.5 metre setback above the existing buildings at 163-169 & 171 Oxford Street.***
- (D) Council approve the Draft LGBTIQA+ Social and Cultural Place Strategy as shown at Attachment C to the subject report for public exhibition;
- (E) Council note the Transport Study - Oxford Street Cultural and Creative precinct shown at Attachment D to the subject report;
- (F) Council note the matters raised in response to the early consultation on options for taller buildings at Taylor Square as detailed in Attachment H to the subject report, and that these proposals will not proceed at this time; and
- (G) authority be delegated to the Chief Executive Officer to make any minor amendments to the Planning Proposal: Oxford Street Cultural and Creative Precinct and draft Sydney Development Control Plan 2012: Oxford Street Cultural and Creative Precinct to correct any minor errors or omissions prior to finalisation.

Additions shown in ***bold italics***, deletions shown in ~~strikethrough~~.

Background

At the meeting of the Transport, Heritage, Environment and Planning Committee on 4 April 2021 further information was sought on the following issues:

- the approach to heritage conservation in the Oxford Street precinct and any measures to improve heritage protection,
- responses to matters raised by speakers, including:
 - a resident concerned about impact on residential amenity including sun access, daylight and views/outlook,

- representations to committee made by landowners for 265-267 Oxford Street (the Beacham Hotel); 4-6, 10-16 and 18-26 Flinders street, 4-6 and 8-10 Taylor Street and 2 Sturt Street (the ARQ sites); 1-5 Flinders Street (the former T2 site); 379-379A and 381 Bourke Street and 383-387 Bourke Street (Kinselas); 197-215 Oxford Street , and 163-171 Oxford Street,
- the number of site visits undertaken by staff to specific properties,
- the involvement of City staff in the project, considering that City-owned properties are included in the precinct,
- further information on public benefit to be realised through the proposal, including for Three Saints Square, and
- the number of sites 'down-zoned' as a result of the proposal.

Heritage in the Oxford Street Precinct

The Transport, Heritage, Environment and Planning Committee requested further information on heritage in the precinct including the number of heritage items and contributory buildings, the City's commitment to heritage conservation on Oxford Street, any additional measures for protection of heritage on Oxford Street, availability of the most recent cultural heritage study for Oxford Street and the City's current cultural heritage management strategy for Oxford Street.

There are five State heritage items, 52 local heritage items, and 132 contributory buildings in the precinct. Note that there is significant overlap as the State items are all locally listed, and most of the locally listed items are also identified as contributory.

Oxford Street has changed considerably over time, with new waves of rebuilding and investment incrementally adding to its character and history. The heritage significance lies principally in the collection of buildings demonstrating its evolution through periods of the City's development. It has buildings of different periods, scales and styles, from the mid-19th Century through the Federation period and on to early 21st century. Buildings generally range in scale from two to four storeys, with some later buildings even taller.

Cultural Heritage Management Strategies are not part of the NSW statutory framework for heritage management, and the City has not adopted such a strategy for Oxford Street. The City manages heritage through the planning controls in Sydney Local Environmental Plan (LEP) and Development Control Plan (DCP).

Existing controls in the LEP identifies the places of significance and requires the consent authority to consider the impact on that significance from development before granting consent. The DCP provides guidance on heritage matters that should be addressed in a development application including information to be provided to enable an assessment of impact and general policies for the treatment of heritage items and contributory, neutral and detracting buildings of a conservation area.

In addition to the existing controls, the City has prepared additional heritage controls for the precinct to ensure its heritage values and significant fabric are conserved, and that well-designed additions to buildings make a positive contribution to the character of Oxford Street. These additional controls will apply to all development in Oxford Street, whether vertical additions are proposed or not. They can be found in the draft Development Control Plan at Attachment B to the subject report. The proposed locality statement describes the heritage character and importance of the street and sets a principle for the conservation of heritage fabric.

The additional controls are explicit about the particular heritage fabric that needs to be conserved. This includes structural walls, internal and external openings and windows, parapets and roof features, internal floor arrangements, pressed metal ceilings and façade details. It makes clear that vertical additions are not to be visually dominant when compared to the original building but are to be recessive and lightweight, that facadism will not be supported and significant roofscapes must be retained.

There is a new requirement for a Statement of Heritage Principles to be agreed between the City and a proponent during the pre-Development Application process. This will ensure that all significant fabric and heritage elements are identified and agreed early in the design process.

Another additional heritage requirement means that a Heritage Structural Impact Statement needs to be submitted with a development application. This statement needs to be consistent with the Statement of Heritage Principles and will ensure that the design and construction will maintain the structural integrity of the heritage building.

The draft DCP outlines the City's commitment to heritage in the precinct with the second paragraph of section 5.X.4 Heritage Conservation stating:

The DCP requires proposals for development on individual sites to demonstrate that heritage significance, retention of fabric and the structural stability on individual sites are a central consideration informing the design of additions and alterations to heritage buildings. The presumption for development is that all significant fabric and spatial arrangements of heritage items and contributory buildings must be conserved.

Landowner Submissions and Representations to the Transport, Heritage and Planning Committee

265-267 Oxford Street (The Beacham Hotel)

Landowners of the Beacham Hotel seek the reinstatement of the exhibited opt-in planning controls. They state that the exhibited proposal for two additional storeys is needed to provide additional local centre uses as well as the cultural and creative floor space.

The Beacham Hotel is a three-storey heritage item and contributory building in the conservation area. It was exhibited with a FSR of 4:1, a maximum building height control of 23 metres and a height in storeys control of 5 storeys. In response to submissions a post-exhibition change proposed to reduce the alternative controls for this building to allow a one storey addition with a FSR of 3.25:1 and height of 18m and 4 storeys. This was intended to provide a contextual transition from the two storey buildings at 217-263 Oxford Street, which were excluded from uplift under the proposal. On review, it is recommended to maintain the height and floor space that was publicly exhibited.

A well-designed taller building of 5 storeys could establish a stronger corner element addressing Three Saints Square at the corner of Oxford and South Dowling Streets. The heritage provisions in the draft Development Control Plan could ensure that a two storey addition is well designed, retains heritage fabric, structure and stability, creates an appropriate visual and physical setting that retains the significance of the heritage item and has minimal impact on the surrounding development, including residences at Sturt Street.

An alternative recommendation reinstates the exhibited controls of 4:1 FSR, 23 metre maximum building height and 5 storey height of building.

4-6, 10-16 and 18-26 Flinders Street, 4-6 and 8-10 Taylor Street and 2 Sturt Street (the ARQ sites)

The owners of the group known as the ARQ sites seek flexibility to amalgamate some or all of these sites in a consolidated development and distribute the permitted floor space across an amalgamated site. As currently drafted the permitted floor space cannot be distributed in a development unless all the six sites are developed together. These sites are an opportunity for the delivery of significant cultural and creative floor space at Taylor Square.

An alternative recommendation amends this provision to ensure that the permitted floor space can be distributed across a development site that amalgamates more than one lot.

1-5 Flinders Street (the former T2 site)

The owners of the T2 building at 1-5 Flinders Street have requested an additional storey beyond that placed on public exhibition.

The building is a two-storey heritage item and contributory building on the conservation area. The exhibited controls allowed two additional storeys with 20m and 4 storey height controls and an FSR of 3.25:1.

The request is for an additional storey, which would require an FSR of 3.8:1 and height controls of 24 metres and 5 storeys. They advise that the existing levels and configuration of the building prevent substantial investment in the existing building that would provide additional activation and the required contributions of floor space for cultural and creative purposes. An option reflecting this was part of consultation package as 'Taylor Square alternatives'.

The additional storey has been reconsidered in the context of the constrained floor plate and the opportunity to provide a landmark building on a prominent site in Taylor Square. The Oxford Street early consultation identified Taylor Square as a landmark and place of significance for LGBTIQ+ communities. A taller, well-designed building could provide increased cultural and creative floor space and a landmark building and act as a focal point and better visually and physically frames the public space of Taylor Square.

The submission demonstrates that solar access to surrounding residential properties is not unduly affected by the additional storey. The proposed nil setback for levels 4 and 5 and indented level 3 will separate the existing two storey heritage building from a contemporary addition consistent with the new DCP heritage provisions and are supported as appropriate treatments for this heritage building.

An alternative recommendation amends the planning proposal to allow an FSR of 3.8:1 and a building height of 24 metres and 5 storeys to unlock potential to establish commercial uses, local centre uses and cultural and creative spaces on the site.

197-215 Oxford Street

Representations from the owners of these sites request an increase in the height of storey control from 4 storeys to 5 storeys without changing the height of building.

The buildings are contributory buildings in the heritage conservation area. The exhibited proposals considered these buildings to be two storey and therefore allowed an additional two storeys equating to a four storeys height of buildings control and height in buildings control of 18m.

The landowners advise that the sites are not two storeys and have identified the presence of a third storey setback from the parapet.

An alternative recommendation amends the draft DCP to show 5 storeys for these sites. 5 storeys can be achieved in the 18 metre height limit if a proposal is for tourist and visitor accommodations uses. No change to the maximum height in metres control or FSR control is requested.

203-209 Oxford Street (the Bookshop)

This group of four sites seek to change from 4 storeys to 5 storeys, the owner has requested an increase in FSR to 3.75:1.

This group of sites contain the LGBTIQ+ Bookshop which could be retained in the redevelopment as well as delivering cultural and creative floor space. The proponent has demonstrated that there are no overshadowing impacts as a result of the increased development, and that the increased floor space can be accommodated within the 5 storey and 18 metre height controls. The additional floor space is acceptable given the minimal impact of the proposals and the scope to create cultural and creative floor space and retain a valued LGBTIQ+ business in the precinct.

An alternative recommendation amends the FSR of 3.75:1 for these four sites.

381 Bourke Street and 383-387 Bourke Street (Kinselas and the Courthouse)

The landowner has raised an error with the draft DCP height in storey maps. The map should read 6 storeys, but instead reads 5 storeys.

This should be corrected to read 6 storeys as originally intended.

The buildings at 189 Oxford Street and 379 Bourke Street are contributory buildings in the heritage conservation area. The Kinselas/Courthouse site allows for consolidation of development on 381 and 379 Bourke Street and Kinselas so that the heritage-listed Courthouse Hotel is free from development, bringing the total height at 381 and 379 Bourke Street to 6 storeys.

An alternative recommendation amends the error by showing 6 storeys in the draft DCP alternative height in storeys map.

163-169 and 171 Oxford Street

The owner of the buildings at 163-169 and 171 Oxford Street has requested the reinstatement of the exhibited controls.

These buildings were exhibited with a two-storey addition, leading to a 24 metre and 18 metre height of building control respectively. 169 Oxford Street had an exhibited FSR of 3.75:1 and not additional FSR was exhibited for 171 Oxford Street. Both buildings are heritage items and contributory buildings, with 171 being a mid-19th century building with some intact interior sandstone walls. 163-169 Oxford Street has a large and extravagant parapet visible against the sky. Submissions considered that this parapet should remain visible with no development behind it, and a post exhibition change removed the additional 2 storeys from both of these buildings.

The landowner has made representations indicating that a 1 storey addition above 163-169 Oxford Street, set back 6.5 metres from the street, can achieve the desired outcome of preserving the parapet view against the sky. City staff agree that this can be achieved, however a 2 storey addition could not achieve the same effect and is not recommended.

An alternative recommendation proposes to allow a 1 storey addition, and an increase in height to 18 metres and 4 storeys for 163-169 & 171 Oxford Street, and an increase in FSR to 3.75:1 for 163-169 Oxford Street only.

Site Visits to Specific Sites

Site visits undertaken by staff after the exhibition of the draft controls included 203-209 Oxford Street, 265-267 Oxford Street (the Beacham Hotel), 163-171 Oxford Street and 200 Campbell Street (a resident apartment).

Site visit to 200 Campbell Street

A resident in an apartment building at 200 Campbell Street indicated in submissions and at committee that the Oxford Street proposal would cause amenity loss for his apartment from overshadowing and loss of daylight, privacy, views and outlook.

City staff visited the apartment on 6 April 2022. The apartment block in question is to the south of Oxford Street where it meets Flinders Street. It is built to the boundary of Little Oxford Street and is approximately six metres from the rear boundary of the properties on Oxford Street. The resident's apartment is close to the rear boundary of Kinselas at 383-387 Flinders Street. Development above and adjacent to Kinselas would cause loss of views from the occupant's bedroom (not a living area) to the east, and development to the north and west would cause loss of a small part of that view.

Private views are not protected by planning legislation. Solar analysis undertaken for the urban design study show the north and west elevations of 200 Campbell Street achieving good levels of sun access and some loss of sun to the eastern elevation in the early morning with a future development likely to be capable of complying with sun access controls using good design.

As a result of this submission, the nearest buildings at 183-183 Oxford Street and 48 Little Oxford Street have been excluded from the proposal. This is to minimise the amenity impacts on this apartment building and this resident in particular. On review and after the site visit, it is recommended to allow one 1 storey to a height of 18 metres setback 6.5 metres from Oxford Street at 163-169 and 171 Oxford Street which will appear lower than the exhibited heights along northern side of Oxford Street (Ashe Morgan sites) and not contribute to further view loss.

Approach to City Owned Properties

The Transport, Heritage, Environment and Planning Committee sought further information about City staff undertaking the work and making recommendations, given that the precinct includes City-owned properties.

In February 2020, Council approved City Plan 2036, the City's 2020 Local Strategic Planning Statement which identified Oxford Street as a future hub within the Eastern Creative Precinct. Action L1.5 of City Plan 2036 directs the City to investigate planning approaches to support a creative and cultural precinct around Oxford Street and Taylor Square in collaboration with institutions, businesses and other stakeholders in the precinct. As a consequence, City staff embarked on a review of the planning framework, which led to the preparation of the Planning Proposal and draft Development Control Plan for the precinct.

The planning controls placed on public exhibition in October and November 2021 were informed by consultation, collaboration, research and reports prepared by independent external consultants. They apply a uniform approach of permitting a two-storey increase in height, irrespective of the ownership of the property.

There is substantial external oversight for the City's planning proposals. They must be approved by the NSW Department of Planning and Environment (DPE) for exhibition and approved by the Central Sydney Planning Committee (CSPC) before and after exhibition. Four of the seven CSPC members are appointed by the NSW Government. The Minister for Planning (or delegate) decides on whether to finalise the planning proposal.

Public Benefit

The Transport, Heritage, Environment and Planning Committee requested further details on public benefit to be realised as part of the proposal. Development which makes use of the alternative height and floor space controls is required to provide 10 per cent of the total floor area of the building for cultural and creative uses. This will contribute toward the goal in City Plan 2036 to promote Oxford Street as a cultural and creative hub and the new target for at least 40,000m² of new cultural production floor space in the City of Sydney local area by 2036 compared to 2017 in draft Sustainable Sydney 2030-2050 Continuing the Vision.

Developer contributions will be collected in accordance with City of Sydney Development Contributions Plan 2015 to help fund public domain improvements, community facilities and other works as part of the City's ongoing program of capital works.

Down-Zoned Sites

The Transport, Heritage, Environment and Planning Committee asked for details of sites 'down-zoned' as part of the revised proposal.

No sites have been 'down-zoned'. All sites can continue to make use of the existing controls in Sydney LEP 2012 and DCP 2012, including the sites that have been excluded from the alternative planning controls in response to submissions.

Minor Drafting Changes

Landowners have requested that the planning proposal be amended to ensure that sites which do not make use of the alternative height and floor space controls:

- can make use of the provision for up to 0.8:1 FSR for live entertainment and cinema uses in a basement, and
- can continue to make use of Clause 4.6 of Sydney LEP 2012, which allows for minor variations in development standards at the development application stage.

This outcome is supported as it contributes to the objectives of the planning proposal, and ensures that development under existing planning controls is not unnecessarily constrained. An alternative recommendation proposes allowing both.

Memo from Graham Jahn AM, Director City Planning, Development and Transport

Prepared by: Julie Prentice, Senior Specialist Planner

Approved



GRAHAM JAHN AM

Director City Planning, Development and Transport