

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

File No.: D/2020/1071

Summary

Date of Submission:	15 October 2020 Amended plans and information was submitted in November 2020, and in April, June, July, August, October and November 2021, and April 2022
Applicant:	AM Darlinghurst Investment Pty Ltd c/o TOGA Project Services Pty Ltd
Architect:	FJMT
Developer:	AM Darlinghurst Investment Pty Ltd c/o TOGA Project Services Pty Ltd
Owner:	City of Sydney Council, and is subject to a 99-year lease with AM Darlinghurst (2019-2118)
Planning Consultant:	Ethos Urban
Heritage Consultant:	Urbis
DAP:	12 November 2020
Cost of Works:	\$44,085,318.00
Zoning:	The site is located in the B2 Local Centre zone. The proposed development is defined as a 'mixed use development', comprising 'office premises', 'retail premises', 'food and drink premises' and a 'community facility', all of which are permissible with development consent in the zone.
Proposal Summary:	Development consent is sought for the alterations and additions to the existing buildings at 58-78 Oxford Street (Group 1) and 82-106 Oxford Street (Group 2) for a mixed use development.

The proposed mix of land 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.

A development application (D/2020/1072) for 110-122 Oxford Street was lodged simultaneously by the applicant for use of the existing building as a mixed use development and associated alterations and additions with a signage strategy. The proposed mix of land 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. D/2020/1072 has been assessed concurrently and is subject to a separate report to the Local Planning Panel.

The development application was considered by the Local Planning Panel at the meeting of 22 September 2021 and was deferred. Amended plans have been submitted to address the recommendations of the Local Planning Panel.

The application has also been amended to address recommendations made by the Design Advisory Panel and 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.

The application was notified and advertised for 28 days. A total of 29 submissions were received (28 objections and 1 submission in support). The issues raised in the objections include height, heritage, design, amenity impacts, view loss, 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 has been prepared and has been placed on public exhibition for a period of 28 days between 21 April and 19 May 2022.

The 'Oxford Street Cultural and Creative Precinct' planning proposal was exhibited between 10 September and 4 November 2021, approved by the Central Sydney Planning Committee on 7 April 2022, and approved by Council on 11 April 2022. The proposed instrument is therefore a matter for consideration under Clause 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act, 1979.

This means that the proposed changes to the development controls outlined in the planning proposal, including the additional height, can be considered as part of the development application.

The proposed planning instrument provides an alternative height of building development standard, which increases the height control from 15 metres under the current Sydney LEP 2012, to a range of heights between 23 metres and 25 metres for Group 1 (58-78 Oxford Street), and of 25 metres for Group 2 (82-106 Oxford Street).

The proposed development has a floor space ratio (FSR) of 4.3:1 and is compliant with the maximum permitted FSR of 4.3:1 under Sydney Local Environmental Plan 2012 (Sydney LEP 2012).

The development exceeds the current 15 metre height of buildings standard by between 62.6 per cent (9.4 metres) and 66.3 per cent (9.95 metres), however, is generally consistent with the alternative building height control of the planning proposal for the site, of between 23 metres and 25 metres (Group 1) and 25 metres (Group 2) outlined in the planning proposal. 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. The Clause 4.6 variation 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 it is noted that 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 per cent
- 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) Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021
- (iii) State Environmental Planning Policy (Resilience and Hazards) 2021
- (iv) State Environmental Planning Policy (Transport and Infrastructure) 2021
- (v) Sydney Local Environmental Plan 2012
- (vi) Planning Proposal: Oxford Street Cultural and Creative Precinct
- (vii) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings - Group 1
- C. Selected Drawings - Group 2
- D. Clause 4.6 Variation Request - Height of Buildings
- E. Planning Report to the 22 September 2021 Local Planning Panel Meeting
- F. Heritage Committee Report
- G. Public Benefit Offer
- H. View Loss Study
- I. Design Report

Recommendation

It is resolved that:

- (A) the Panel consider the amended plans and additional information, including the amended Clause 4.6 request, submitted since the meeting of the Local Planning Panel held on 22 September 2021;
- (B) the Panel consider the previous recommendation for deferred commencement approval, and the updated set of recommended conditions reflecting the amended plans which are set out in Attachment A to the subject report;
- (C) the variation requested to Clause 4.3 '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
- (D) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act, 1979, a deferred commencement consent be granted to Development Application Number D/2020/1071 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

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

- (A) The development, subject to conditions, is consistent with the objectives of the B2 Local Centre zone pursuant to the 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 Local Environmental Plan 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 Local Environmental Plan 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 buildings' development standard.
- (C) The development conserves the heritage significance of the heritage items on site and satisfies Clause 5.10 of the Sydney Local Environmental Plan 2012.
- (D) The development exhibits design excellence to satisfy Clause 6.21 of the Sydney Local Environmental Plan 2012.

- (E) The development is consistent with the character and principles identified in the locality statement for Oxford Street Darlinghurst under Section 2.4.10 of the Sydney Development Control Plan 2012.
- (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

Oxford Street

1. The north side of Oxford Street the subject of this development application, and for the concurrent development application D/2020/1072, 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.
2. As a result of the resumptions and road widening the City had ownership of three of the main commercial properties in Oxford Street, being 56-76 Oxford Street (Group 1), 82-106 Oxford Street (Group 2), both subject of this development application, and 110-122 Oxford Street (Group 3), which is the subject of development application D/2020/1072.



Figure 1: Aerial image of Group 1 and Group 2 the subject site (outlined in red) and the surrounding area (Note: Group 3 is not the subject of this report)

3. Oxford Street has been impacted by a high level of retail vacancy, noisy road environment, underused public spaces and the impact of the now repealed lockdown laws. More recently the Covid-19 pandemic further impacted on the patronage of Oxford Street. A range of strategies have been implemented, including:
 - (a) The City's Economic Development Strategy recognised that, as a land owner, the City can influence the quality, amenity and character of a neighbourhood. The amount of floor space and its strategic location under Council ownership means it can be a catalyst for the revitalisation of Lower Oxford Street. A private sector repositioning of the properties, on a long term ground lease resulted in an opportunity to create a significant local and international destination while maintaining the City's commitment to an affordable cultural offering. The following steps were taken for the City's three main commercial properties in Oxford Street 56-76 Oxford Street, 82-106 Oxford Street, and 110-122 Oxford Street:
 - (i) On 7 August 2017 Council resolved to endorse an Expression of Interest to identify entities with the expertise and capacity to reposition these investment properties on a long-term ground lease.
 - (ii) On 19 November 2018 Council resolved to endorse Proponent A as the preferred entity to acquire, implement and manage a successful transformation of the Properties on a long term ground lease (comprising a Development Lease and an Operational Lease for a combined period of 99 years).
 - (iii) These sites are now subject to a 99-year lease with AM Darlinghurst until 2118.
 - (b) The 'Oxford Street Cultural and Creative Precinct' planning proposal was exhibited between 10 September and 4 November 2021, approved by the Central Sydney Planning Committee on 7 April 2022, and approved by Council on 11 April 2022 (Planning Proposal). The Planning Proposal is the result of a review of planning controls applying to Oxford Street. The planning proposal complements the Locality Statement for Oxford Street Darlinghurst of the Sydney DCP 2012. It characterises Oxford Street as a regionally significant retail and entertainment street and a local business centre for surrounding neighbourhoods.
 - (c) A proposed cycleway on Oxford and Liverpool Streets was exhibited between 28 October and 25 November 2021. The design proposes a permanent, higher quality bi-directional cycleway on the north side of Oxford and Liverpool streets. This project is part of the City's program to make Sydney a safer place for people to walk and ride and provide more options for people to travel around the city.

Development Application Deferral

4. Development applications D/2020/1071 and D/2020/1072 were considered by the Local Planning Panel on 22 September 2021. The planning assessment reports submitted to the panel recommended deferred commencement approvals.
5. Development application D/2020/1072 has been assessed concurrently and is subject to a separate report to the Local Planning Panel.

6. The Panel deferred determination of the development application and provided the following comments:

The Panel deferred consideration of Development Application No. D/2020/1071 until a subsequent meeting of the Local Planning Panel to enable further consideration of issues raised by the Design Advisory Panel and the Heritage Committee, particularly in relation to variety of roof forms, streetscape, setbacks in particular the benefit of observing a 3 metre setback behind the Oxford Street parapets, amenity, privacy, outlook, and environmental performance.

Restoration Works Development Application

7. A development application D/2021/1550 was granted consent by the Local Planning Panel on 6 April 2022 for restoration works to the three groups of buildings. The development consent relates to Groups 1, 2 and 3.
8. The proposal did not include new additions to the buildings.
9. The approved work includes:
 - (a) Facade paint stripping of all existing painted finishes from the buildings' exteriors.
 - (b) Repointing, repair and replacement of stonework and brickwork.
 - (c) Hazardous material removal, including lead-based paint.
 - (d) Internal demolition of non-load bearing walls, existing fire stairs and lift cores.
 - (e) Removal of non-significant lightweight partitions in Buildings 1 and 3. Heritage significant lightweight partitions in Building 2 to be retained.
 - (f) Removal of some non-original and non-significant ceiling, wall, and floor linings throughout the buildings such as acoustic ceilings, carpet and vinyl flooring.
 - (g) Removal of redundant internal and external services, while retaining operational occupant safety systems, plumbing and electrical supply.
 - (h) Removal of services such as mechanical plant, condensers, exhaust fans, ductwork, fan coil units and ceiling diffusers.
 - (i) Removal of select sections of masonry walls throughout the buildings.
 - (j) Conservation of original and/or significant joinery, including repair and like-for-like replacement of joinery.
 - (k) Minor excavation at basement levels to introduce new footings and underpinning.
 - (l) Construction of newly-located building cores including fire stairs and lifts to suit fire and access compliance requirements.
 - (m) Installation of new structural components such as plywood diaphragms, and concrete lift and stair bases, to improve seismic strengthening.

- (n) Restoration or removal and replacement of existing ground floor shopfronts and replacement of some upper storey windows.
- (o) Erection of hoarding and scaffold around all three buildings to carry out detailed heritage and investigatory surveys and cataloguing of existing external building fabric such as windows, bricks, sandstone etc.
- (p) The resulting buildings to remain secure, watertight and habitable subject to occupant fitouts.
- (q) Upper storey windows are proposed to be removed and replaced at the following locations in Group 1.
- (r) Restoration works are proposed to all existing ground floor shopfronts, which will either be removed/replaced, interpreted, reinstated or conserved.

Subject Development Application Amendments

- 10. Subsequent to the deferral of the application, a set of amended plans were submitted to address the comments made by the Local Planning Panel. An amended Clause 4.6 variation request, view loss study and design report were also submitted. The amendments to each group are summarised below:
- 11. Group 1
 - (a) Adjustment to the heights of the new rooftop additions above 62-64, 66 and 74-76 Oxford Street, to achieve stepping of the roof heights relevant to the existing Oxford Street facade.
 - (b) Adjustment to the extent of glazed skylights to the new rooftop additions above 62-64, 66, 68-70, 72 and 74-76 Oxford Street. The glazed skylights are to have a metal mesh interlayer applied to the glass, in lieu of a frit.
 - (c) Roof sheeting and external wall cladding to the new addition amended to zinc. The finish of the zinc roof sheeting is to vary across the length of the buildings as indicated on the elevations.
 - (d) Realignment of the southern facade on Level 3 to achieve an average setback of 3 metres from the Oxford Street boundary, and reduction of commercial floor area.
 - (e) Increase of commercial floor area on Level 4 and reconfiguration of plant rooms.
 - (f) Amendments to retain further original fabric, including:
 - (i) Retention of the stair within 74 Oxford Street
 - (ii) Retention of the ground floor masonry wall between 58 and 60 Oxford Street
 - (iii) Re-design of the shopfronts to 72, 74 and 76 Oxford St
 - (iv) Relocation of the interconnecting lift on Level 1 and 2
 - (v) Retention of the existing masonry wall on Levels 1 and 2

12. Group 2

- (a) Levelling of the heights of the new rooftop additions above 92-96 Oxford Street, creating a relationship with the central masonry pier above 94 Oxford Street.
- (b) Reduction in the extent of glazed skylights to the new rooftop additions above 90-98 Oxford Street. The glazed skylights are to have a metal mesh interlayer applied to the glass, in lieu of a frit.
- (c) Roof sheeting and external wall cladding to the new addition changed to natural finish zinc.
- (d) Realignment of the southern facade on Level 3 to achieve an average setback of 3 metres from the Oxford Street boundary, and reduction of commercial floor area.
- (e) Increase in commercial floor area on Level 4 and an additional plant area at the eastern end of the building.
- (f) Amendments to retain further original fabric, including:
 - (i) Reinstatement of the former flagpole above 94 Oxford Street
 - (ii) Retention of the existing stairs at 82 and 100 Oxford Street
 - (iii) Retention of the existing masonry wall in the entry corridor of 94 Oxford Street
 - (iv) Addition of recessed entry porches to shopfronts of 88 and 102 Oxford Street
 - (v) Removal of previously proposed openings to masonry walls across Levels 1 and 2

13. A summary of how the amended plans have addressed the Local Planning Panel's recommendations is provided within the table below:

Local Planning Panel Recommendations	Design response
Further consideration of issues raised by the Design Advisory Panel and the Heritage Committee	A detailed response in relation to the issues raised by the Design Advisory Panel (DAP) and the Heritage Committee is provided under the 'Discussion' heading below.
Variety of roof forms and Streetscape	<p>The roof form of the previous design provided a stepped approach, with each module stepping from either end of the group to a central module. This design was consistent across all three building groups.</p> <p>Amendments to the stepped height of the roof additions makes a closer relationship to the parapet heights of the individual buildings within each building group. The heights of the</p>

Local Planning Panel Recommendations	Design response
	<p>additions reflect the scale and stepping of the existing Oxford Street facade.</p> <p>The roof form has been amended to include different tones of zinc across each building group, providing further variation and directly incorporating the materiality recommended by the DAP. The amendments to reduce the extent of glazing and skylight windows also increase the solidity and reading of the variation in roof forms.</p> <p>The amendments result in three distinct roof forms across the three building groups while maintaining a suitable streetscape outcome.</p> <p>The amendments have not increased the height of the buildings.</p>
<p>Setbacks in particular the benefit of observing a 3m setback behind the Oxford Street parapets</p>	<p>Groups 1 and 2 have been amended to provide an increased setback to the new addition by approximately 500mm, resulting in a 3 metre average setback from Oxford Street.</p> <p>Due to the stepped nature of the roof additions, the central modules are closer to the street while the end modules are provided with a further setback, which is an appropriate outcome as it minimises the visual impact of the additions when viewed from Oxford Street. This is assessed further under the 'Discussion' heading below.</p>
<p>Amenity, Privacy and Outlook</p>	<p>The proposal is amended to provide a series of louvres to the north-eastern facade, with a depth of 450mm, to provide additional screening and privacy to neighbouring properties and prevent downward overlooking, while maintaining a suitable outlook from the proposed development.</p> <p>The properties located on the opposite side of Foley Street are generally lower than the proposed addition except for the upper level of the residential flat building at 265 Palmer Street. Opaque glazing is proposed to parts of the north-eastern facade to prevent direct overlooking to the neighbouring property.</p>

Local Planning Panel Recommendations	Design response
Environmental Performance	<p>The extent of glazing and detailing of the glazing is refined to enhance the environmental performance of the building.</p> <p>The amendments include:</p> <ul style="list-style-type: none"> • Increased sun shading on the northern facade to 450mm louvres. • Reduced roof glazing, minimising the heat loads on the internal office space through reduced window openings. • The integration of metal mesh interlayer in the roof glazing to enhance the passive sun shading of the glazing, further reducing heat loads and need for air conditioning. <p>The proposal achieves a 4.5 star NABERS rating. This is consistent with the requirements of Section 3.6 of the Sydney DCP 2012, which outlines that a 5 star NABERS rating is not required where the upgrade works would negatively impact on significant heritage fabric or the heritage significance of a heritage item.</p>

14. An assessment of the amended proposal against the recommendations made by the Design Advisory Panel, Heritage Committee, as well as an assessment of the amended Clause 4.6 request and view loss assessment, are outlined under the 'Discussion' heading below.
15. The previous Planning Report has been attached at Attachment E, and items that are not specifically relevant to the amended plans have not been repeated in this report. This includes:
- (a) Site and surrounding development description and photos.
 - (b) History relevant to the development application.
 - (c) Assessment against the planning controls.
 - (d) Discussion, on 'Impacts to Foley Street', 'Voluntary Planning Agreement', 'Staged Construction'.
 - (e) Consultation.
 - (f) Responses to submissions.
 - (g) Financial contributions.

Proposed Development

16. The amended application seeks approval for alterations and additions to existing buildings for a mixed-use development, comprising the following:
 - (a) Lower Ground and Ground Levels:
 - (i) Tenancies for retail, food and drink, and cultural and creative uses fronting Oxford Street and Foley Street
 - (ii) Through site link connecting Oxford Street and Foley Street
 - (iii) Retention of the existing substation
 - (iv) End of trip facilities, other services and storage areas
 - (b) Levels 1-4:
 - (i) Commercial offices with external terrace space; and
 - (ii) Mechanical plant
17. The works to Group 1 (58-76 Oxford Street) include:
 - (a) Partial removal of existing fit outs to existing tenancies across all levels
 - (b) Conversion of existing commercial tenancies at basement level to new retail, ancillary and storage spaces with access from Foley Street, including creation of new external openings to previously modified fabric
 - (c) Creation of new retail with cultural and creative spaces at ground floor, including new central lobby space
 - (d) Creation of open commercial office space at Level 1 and Level 2, including retention of bulk heads and nibs to original inter-tenancy walls
 - (e) Installation of two new staircases and lifts to connect all levels
 - (f) Construction of a new two storey addition across the whole of the buildings, with roof top plant
18. The works to Group 2 (82-106 Oxford Street) include:
 - (a) Partial removal of existing fit outs to existing tenancies across all levels
 - (b) Conversion of existing commercial tenancies at basement level to new retail, cultural and creative spaces, foyer, end of trips facilities and ancillary and storage spaces with access from Foley Street, including creation of new external openings to previously modified fabric
 - (c) Creation of new retail and cultural and creative spaces at ground floor, including new lobby space
 - (d) Conversion of existing ground floor foyer into a new seating area, including one new opening on western wall

- (e) Construction of a new two storey addition for commercial use across the whole of the building, with roof top plant
 - (f) Installation of new staircase and lifts to connect all levels
19. The application also includes a signage strategy for each building group.
 20. The application proposes five stages of construction.
 21. A set of selected architectural drawings are provided in Attachments B and C.
 22. Selected drawing extracts of the proposed development for Group 1 and Group 2 are reproduced in the figures provided below.



Figure 2: The original proposal of Group 1 at the left, Group 2 in the centre (both proposed under D/2020/1071) and Group 3 at the right (proposed under D/2020/1072) viewed from Oxford Street (Note: Group 3 is not the subject of this report)



Figure 3 and 4: The original (top) and amended DA proposal (bottom) for Group 1



Figure 5 and 6: The original (top) and amended DA proposal (bottom) for Group 2



Figure 7: Reduction in skylight glazing to Group 1 (outlined in red)

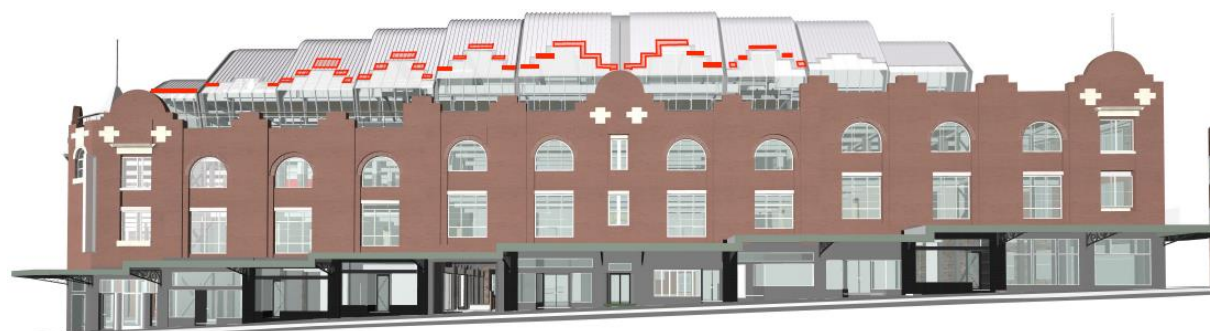


Figure 8: Reduction in skylight glazing to Group 2 (outlined in red)

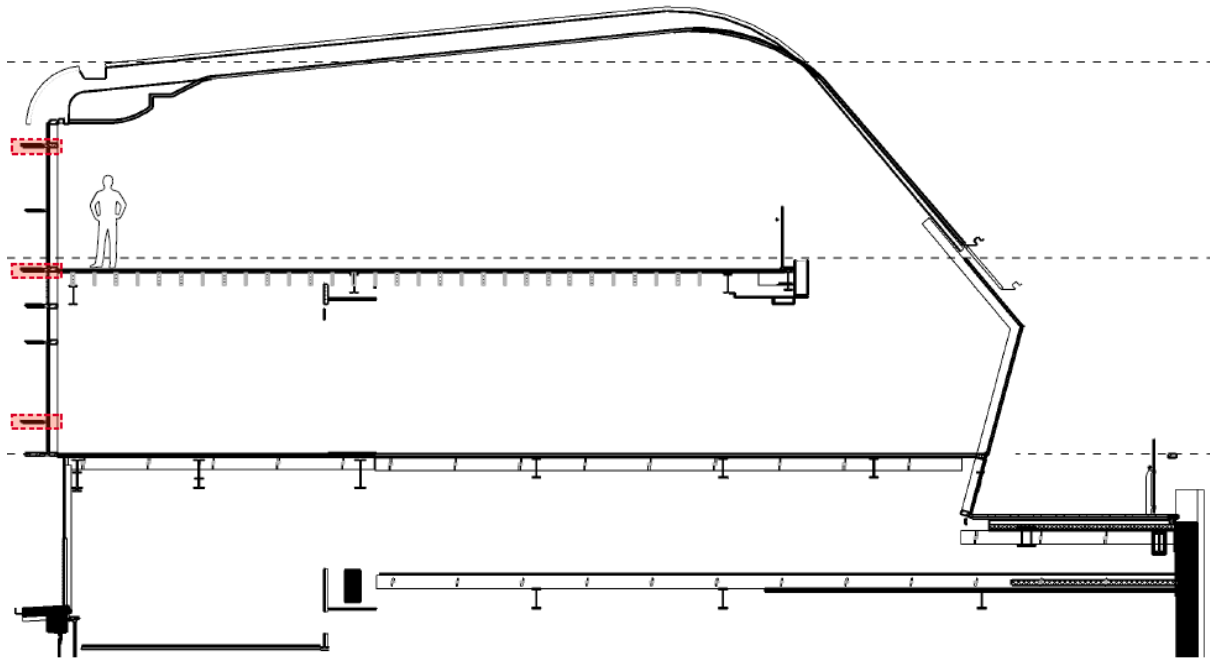


Figure 9: External louvres (outlined in red)

Assessment

23. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

State Environmental Planning Policies

- 24. An assessment of the relevant SEPPs is outlined in the previous assessment report at Attachment E.
- 25. On 1 March 2022 a number of SEPPs were consolidated, however, for the purpose of the assessment of this application, the change to SEPPs was administrative with no policy changes made. The equivalent SEPP's are outlined in the table below. The previous assessment against the provisions of the SEPPs remains relevant.

Previous SEPPs	Consolidated SEPPs
State Environmental Planning Policy No 55 - Remediation of Land	State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land
State Environmental Planning Policy (Infrastructure) 2007	State Environmental Planning Policy (Transport and Infrastructure) 2021
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment

Local Environmental Plans

Sydney Local Environmental Plan 2012 (Sydney LEP 2012)

26. An assessment of the proposed development, as amended, against the relevant provisions of the Sydney LEP 2012 is provided in the following table sections.
27. An assessment of the provisions not directly affected by the amendments to the proposal are discussed in the previous Planning Report at Attachment E.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 15 metres is permitted.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A height of 24.4 metres is proposed for Group 1.</p> <p>A height of 24.95 metres is proposed for Group 2.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.</p> <p>The additional height is recommended for support and this is assessed further in the 'Discussion' section below.</p>
4.4 Floor space ratio (FSR)	Yes	<p>A maximum FSR of 4:1 is permitted for the site as per clause 4.4 of the Sydney LEP 2012.</p> <p>Additional FSR the equivalent to any proposed end of journey floor space is permitted in accordance with Clause 6.13 (End of journey floor space) of the Sydney LEP 2012.</p> <p>A building on land that is used only for the purposes of commercial premises and that has all of the following facilities together in one area of the building, is eligible for an amount of additional floor space equal to the floor space occupied by those facilities, being showers, change rooms, lockers, and bicycle storage areas.</p>

Provision	Compliance	Comment
		<p>The amount of end of journey floor space cannot be more than the amount of floor space that can be achieved by applying a floor space ratio of 0.3:1 to the building.</p> <p>The applicant requested an additional amount of floor space of 0.3:1 for both Group 1 and Group 2. Floor plans were submitted of the proposed end of journey floor space which demonstrate that the proposed development is eligible for end of journey floor space equivalent to 0.3:1 for both Group 1 and Group 2.</p> <p>An FSR of 4.3:1 is permitted for Group 1, and an FSR of 4.3:1 is proposed.</p> <p>An FSR of 4.3:1 is permitted for Group 2, and an FSR for 4.3:1 is proposed.</p> <p>The proposed FSR complies with the relevant controls.</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. An amended Clause 4.6 variation request has been submitted with the amended application.</p> <p>This is assessed further in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>Group 1 comprises 5 locally listed heritage items pursuant to Schedule 5 of the Sydney LEP 2012, being:</p> <p>58-60 Oxford Street – (item number I385) commercial building including interior</p> <p>62-66 Oxford Street – (item number I386) commercial building including interior</p>

Provision	Compliance	Comment
		<p>68-70 Oxford Street – (item number I387) being commercial building "Daniel's" including interior</p> <p>72-72A Oxford Street – (item number I388) commercial building "Nelson Leong" including interior</p> <p>74-78 Oxford Street – (item number I389) commercial building including interior</p> <p>Group 2 is a locally listed heritage item pursuant to Schedule 5 of Sydney LEP 2012 (item number I392), being the former Oxford Street Municipal Chambers including interior.</p> <p>The site is located within the Oxford Street heritage conservation area (C17).</p> <p>Group 1 is adjacent to a state listed heritage item at 56 Oxford Street (SHR item number 00658, LEP item number I384), being commercial building "GA Zink and Sons including interior.</p> <p>Group 1 is also adjacent to two locally listed heritage items at 52-54 Oxford Street (item number I383) being former commercial building "London Chamber" including interior, and at 80 Oxford Street (item number I391) being former Kelso's Hotel including interior.</p> <p>Subject to the carrying out of conservation works, and subject to the recommended conditions in Attachment A, the proposed development, as amended, will have acceptable impacts on the heritage significance of the heritage conservation area and the heritage items.</p> <p>This is assessed 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, as amended, is of a high standard and uses materials and detailing which are compatible with the existing development along the street. As a result, the proposed development will contribute positively to the character of the area.</p> <p>The development, as amended, complies with the provisions of Clause 6.21 of the Sydney LEP 2012 and exhibits design excellence, subject to the recommended conditions in Attachment A.</p>

Development Control Plans**Sydney Development Control Plan 2012 (Sydney DCP 2012)**

28. An assessment of the proposed development against the relevant provisions within the Sydney DCP 2012 is outlined in the previous Planning Report at Attachment E.
29. Subsequent amendments to the scheme under assessment are in response to the Design Advisory Panel report and do not affect the assessment contained in Attachment E.

Discussion**Design Advisory Panel**

30. 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.

31. The proposal is amended to address the recommendations of the Panel as outlined in the table below.

Design Advisory Panel Recommendations	Design response
<p>The Panel noted that Foley Street and the built form adjoining Foley Street should be included in the City's Urban Design Study for Oxford Street.</p>	<p>Parts of Foley Street have been included in the Planning Proposal Precinct.</p>
<p>The Panel in principle is supportive of the proposal as it could make a significant and positive contribution to Oxford Street. However, given its prominence and major departure from the current LEP, further detailed design refinement is required.</p>	<p>The in-principle support of the panel is noted. Further design refinements have been made as discussed below.</p>
<p>The Panel is concerned about the lack of variety of the roof form for the three blocks. The roof forms should respond to the varied detailed character of the individual blocks rather than the proposed uniform response. The materiality and detailing of the roof need to be of high quality, e.g. folded zinc panels.</p>	<p>The roof form of the previous design provided a stepped approach, with each module stepping from either end of the group to a central module. This design was consistent across all three building groups.</p> <p>Amendments to the stepped height of the roof additions adopt a closer relationship to the parapet heights of the individual buildings within each building group. The heights of the additions reflect the scale and stepping of the existing Oxford Street facade.</p> <p>The roof form has been amended to include different tones of zinc across each building group, providing further variation and directly incorporating the materiality recommended by the DAP.</p> <p>The amendments to reduce the extent of glazing and skylight windows also assist to increase the solidity and reading of the variation in roof forms.</p> <p>The amendments have resulted in three distinct roof forms across the three building groups while maintaining a suitable streetscape outcome.</p>
<p>The Panel is also concerned about the amenity and environmental performance of the building. Investigations should include treatments / setback on Foley Street to achieve better environmental performance. Investigations could include the provision of roof terraces on Foley</p>	<p>The extent of glazing and detailing of the glazing is amended to enhance the environmental performance of the building.</p>

Design Advisory Panel Recommendations	Design response
Street to capitalise on the potential views to the harbour.	<p>The amendments include:</p> <ul style="list-style-type: none"> • Increased sun shading on the northern facade to 450mm louvres • Reduced roof glazing, minimising the heat loads on the internal office space through reduced window openings • The integration of metal mesh interlayer in the roof glazing to enhance the passive sun shading of the glazing, further reducing heat loads and need for mechanical conditioning <p>The proposal achieves a 4.5 star NABERS rating. This is consistent with the requirements of Section 3.6 of the Sydney DCP 2012 which outlines that a 5 star NABERS rating is not required where the upgrade works would negatively impact on significant heritage fabric or the heritage significance of a heritage item. The proposal was reviewed by Council's environmental advisor and is satisfactory.</p> <p>The louvres provide additional screening and privacy to neighbouring properties and prevent downward overlooking, while maintaining a suitable outlook from the proposed development.</p> <p>A provision of a roof terrace facing Foley Street is inconsistent with the draft DCP provisions, which allow a nil setback to the Foley Street frontage and was therefore not pursued.</p>
The Panel also considers the facades to Oxford Street require further refinement in character.	Amendments to the stepped height of the roof additions adopt a closer relationship to the parapet heights of the individual buildings within each building group and have been re-designed so that the stepped form relates to each individual building.
There needs to be a mechanism for the enduring dedication of community and cultural spaces throughout the three sites	A condition is recommended in Attachment A to ensure that the proposed cultural and creative space is retained into the future.

32. The amended proposal achieves an appropriate design outcome that responds to the issues raised by the Panel and is therefore recommended for approval.

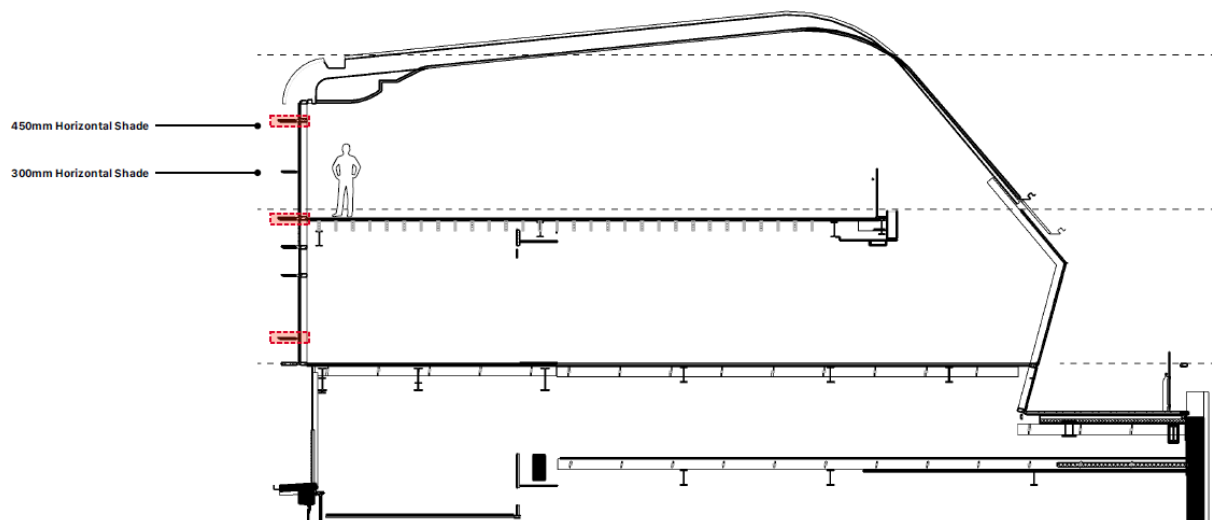


Figure 12: Proposed louvres in section (indicated in red)

Heritage Committee

33. The buildings were constructed circa 1911-1912.
34. All existing buildings are subject to heritage controls under the Sydney LEP 2012 and Sydney DCP 2012. The sites are heritage items and are located within a heritage conservation area (see below).
35. 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 13: Sydney LEP 2012 Heritage Map (subject sites outlined in blue)

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

(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 per cent;
- (b) an increase in the size of the building envelope of the heritage item by more than 20 per cent; or
- (c) building over more than 20 per cent 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.
37. The Committee was made of three members with heritage and structural expertise, being:
- (a) Scott Robertson, Robertson and Hindmarsh
- (b) Hari Gohil, Shreeji Consultant
- (c) Otto Cserhalmi, OCP Architects
38. The Committee provided a report on 12 March 2021. The Committee did not support the proposal, and provided a number of recommendations, which are outlined in the table below.
39. 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 and a site inspection were held with the applicant's consultants to resolve the issues identified by the independent Heritage Committee.
40. The applicant then submitted amended plans and additional information, including amended Conservation Management Plans.
41. An assessment of the amended plans and information against the recommendations of the Heritage Committee is provided in the table below.

Heritage Committee Recommendations	Response
<p>The development applications D/2020/1071 and D/2020/1072 for the redevelopment of the three blocks at 58-76, 82-106 and 110-122 Oxford Street should be rejected.</p>	<p>The Committee provided their report on 12 March 2021.</p> <p>Since that time a significant amount of work has been undertaken to document the heritage fabric, and an amended proposal has been submitted to address the Committee's recommendations.</p> <p>Additionally, the Oxford Street Cultural and Creative Precinct planning proposal was approved by the Central Sydney Planning Committee on 7 April 2022, and approved by Council on 11 April 2022 and amongst other provisions increases height and floor space allowing for vertical additions to existing heritage listed buildings where heritage fabric is retained.</p> <p>The majority of the precinct is located within a heritage conservation area, and it contains 52 heritage items and 132 contributory buildings.</p>

Heritage Committee Recommendations	Response
	The development application is assessed in this context.
<p>The Conservation Management Plan prepared by Urbis in December 2020 should be extensively revised with input from a skilled team of heritage professionals, including a heritage architect, structural engineer with heritage experience, archaeologist, and historian. The Conservation Management Plan should include:</p> <ul style="list-style-type: none"> - All relevant information from the CMP prepared for all three sites by Rod Howard and Associates in 2008. Where the updated CMP seeks to deviate from the earlier CMP, a thorough discussion and justification must be provided; - Thorough and accurate fabric analysis (room by room, element by element) which records all original and significant building elements and later modifications (it should be noted that some non-original fabric may form part of a significant phase of development and may have heritage significance); - Original architectural drawings as well as drawings detailing later additions; - A thorough condition assessment of the building fabric and structure, including identification of conservation and maintenance issues; - Thorough significance assessment of the spaces, fabric and structure that comprise each of the buildings on the subject site. The significance gradings should follow the NSW Heritage Office criteria whereby original intact fabric is considered to be of at least High heritage significance; - Analysis of opportunities and constraints for the site, including constraints arising out of the statutory heritage listing of the buildings. This should address the recommended management that forms 	<p>The Conservation Management Plan by Urbis dated November 2020 was amended and resubmitted in July 2021.</p> <p>As requested by Council Officers, the report has been restructured into separate reports to pertain to each group of the buildings and have substantially addressed the issues raised by the Heritage Committee.</p> <p>Council's Heritage Specialists have carried out a number of site inspections and undertaken a comparative assessment with the previous CMP by Rod Howard and Associates Pty Limited, commissioned and adopted by Council in 2008. These identified that opportunities remain to improve upon the level of information contained within the CMP's and to more accurately value various components of the fabric of the buildings.</p> <p>Therefore, a condition is recommended in Attachment A requiring further amendments to ensure the CMP's document the heritage significance of the buildings, including:</p> <ul style="list-style-type: none"> • The historical evidence should include high resolution reproductions of the original and early plans of the buildings. • The physical evidence should include results of site investigation to understand where significant fabric such as original or early fabric remains. • The assessment of significance under the NSW Heritage Criteria, the gradings of significance and the statement of significance must be re-evaluated in consultation with Council's heritage specialist. • A number of the conservation policies are to be revised based upon a revised assessment of significance

Heritage Committee Recommendations	Response
<p>part of the statutory heritage listing of the buildings;</p> <p>- Detailed conservation policies, including policies for the conservation and maintenance of original fabric, policies for the integration of new work into the buildings, archaeology, signage, services, and interpretation.</p> <p>This document should be reviewed by the City of Sydney and finalised prior to the planning of any development works on the site.</p>	
<p>Any future development proposals for the site should be developed with greater consideration of the heritage buildings on the site. In general, all building fabric which is of moderate, high or exceptional significance should be retained and conserved. Based on the heritage committee's inspection of the site, the following fabric is either original or early and contributes to the significance of the site (Note: this is NOT an exhaustive list. Further detailed fabric analysis and significance assessment is required):</p> <ul style="list-style-type: none"> - External and internal building structure - Original face-brick and stonework on facades - Original/early shopfront details - Original windows and glazing - Original foyer, stairs, lifts (Note – the entrance and foyer at 82-106 Oxford Street, including tiled walls, terrazzo floor, timber letterboxes, ceiling, lift and stairs is highly intact and significant) - Corridors with early panelling and highlight windows (present in all floors at 82-106 Oxford Street) 	<p>The interiors of Group 1 have been modified over time, however, existing heritage fabric includes party and dividing walls, timber posts and beams, original floors, some pressed metal ceiling systems, bullnose brick piers, plaster finishes, joinery trim, and timber stairs.</p> <p>The interiors of Group 2 are remarkably intact and have the original entrance foyer with all interior finishes including original lift and stair. The commercial office floors on the first and second floors are also remarkably intact with Kauri pine floorboards, pressed metal and decorative plaster ceilings, masonry dividing walls and Edwardian period timber partitions defining the corridor.</p> <p>The quantum of proposed demolition was reduced during discussions with the applicant.</p> <p>The amount of internal demolition first proposed that was assessed by the Heritage Committee 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.</p> <p>The extent of internal works, including demolition of existing building fabric has been reduced and the scope of works ensures the retention of significant building fabric.</p>

Heritage Committee Recommendations	Response
<p>- Any original/early toilet features (early toilet partitioning present at 82-106 Oxford Street)</p> <p>- Original or early timber floor structure and floorboards (175mm Kauri floorboards present at 82-106 Oxford Street)</p> <p>- Pressed metal ceilings</p> <p>- Inter War light fittings</p> <p>- Pavement lights</p> <p>- Light wells (group 1 and 3 buildings)</p> <p>- In addition, the consistency of awnings along Oxford Street is significant to the streetscape and should be retained.</p>	<p>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 recommended in Attachment A. The changes to the design required by the specific conditions described below provide certainty for the development.</p> <p>Conditions recommended to retain significant components include:</p> <ul style="list-style-type: none"> • Retaining large sections of the party walls and dividing walls throughout the buildings, which are proposed to be demolished in order to alter the cellular nature of the interiors into open planned space. • The retention of these walls is to conserve the spatial integrity and character and to preserve the structural integrity of the buildings. • Retaining original wall tiling to a section of the central entrance corridor of 82-106 Oxford Street. • Retaining original timber framed and glazed office partitions on Levels 1 and 2 of 82-106 Oxford Street. • Retaining original masonry and joinery that interpret the original lightwells on Levels 1 and 2 of 82-106 Oxford Street. • Retaining various original timber stairs. • Retaining specific areas of decorative plaster ceilings at of 82-106 Oxford Street. • Demolished footprints to be expressed for floors and ceilings required for the insertion and assembly of the new structural steel elements and steel columns and bracing within the heritage items.

Heritage Committee Recommendations	Response
	<ul style="list-style-type: none"> The distinctive existing central roof form at the street parapet of no 58-60 Oxford Street is retained. <p>The latest set of amended plans has made some changes to the proposed layout to respond the draft heritage conditions. However, as the demolition plans and reflected ceiling plans have not been updated to reflect these layout changes this report recommends that these conditions remain.</p>
<p>The form and fabric of original/early shopfronts and building entrances should be retained and conserved. Where possible, early shopfronts should be reinstated based on documentary evidence.</p>	<p>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.</p> <p>Conditions are recommended in Attachment A to resolve the final shopfront design, including addressing the following issues:</p> <ul style="list-style-type: none"> 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. 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 the recommended conditions.
<p>As a general rule, no vertical additions should be made to the buildings. The external form and presentation, including</p>	<p>The assessment has considered the impact of vertical additions to the heritage significance of</p>

Heritage Committee Recommendations	Response
<p>the original facades parapets and trafficable roofs are of high significance. Any visible addition above roof level is not considered to be appropriate. Detailed visual modelling giving consideration to views from all surrounding streets, as well as the long views along Oxford Street, would be required to ascertain whether or not a roof addition could be accommodated above any of the buildings on blocks 1, 2 or 3 without being visible from the surrounding streets. Furthermore, the extent of the impact of any additions on the structure of the building, as well as fire safety, access and services requirements, would need to be thoroughly understood. Any rooftop addition should not impact, or cause changes to, significant fabric on the floors below.</p>	<p>the buildings as well as the structural impact of the additions on the existing heritage fabric.</p> <p>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.</p> <p>The proposal was reviewed by the Design Advisory Panel who provided their support in principal for the proposal.</p> <p>As discussed elsewhere in this report, 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. The planning proposal increases height and floor space controls allowing for vertical additions to existing heritage listed buildings where heritage fabric is retained.</p> <p>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.</p> <p>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</p>

Heritage Committee Recommendations	Response
	<p>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.</p> <p>A deferred commencement condition is recommended in Attachment A 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.</p>
<p>If further development of the site is considered, it should be done in a manner that recognises that the buildings are individual and separate (both externally and internally). Any proposal to consolidate floor space internally must provide thorough consideration of fire safety and structural issues.</p>	<p>Group 1 comprises a number of different buildings, while Group 2 is one building.</p> <p>Amendments to the stepped height of the roof additions adopt a close relationship to the parapet heights of the individual buildings within each building group and have been re-designed so that the stepped form relates to each individual building.</p> <p>The roof form has been amended to include different tones of zinc across each building group, providing further variation. The amendments have resulted in three distinct roof forms across the three building groups.</p> <p>The upper levels of Group 1 were previously consolidated. Amended plans and the recommended conditions ensure the retention of additional building fabric so that each individual building can be recognised internally.</p>
<p>The applicant should consider a range of options for the redevelopment of the site, including the option of maintaining the existing buildings, their external and internal form, existing uses, and all significant fabric. If this option is not possible, considerable justification should be provided to support the proposed changes to the building.</p>	<p>The option of maintaining the existing building in its current form is not reasonable in this instance, given the Oxford Street Cultural and Creative Precinct planning proposal which seeks to revitalise Oxford Street by permitted additional height to existing buildings subject to an appropriate heritage analysis. This analysis includes deferred commencement and detailed design amendment conditions. These ensure the retention of significant heritage fabric occurs when adding the extra height in a manner consistent with the Oxford Street Cultural and Creative planning proposal.</p>

Heritage Committee Recommendations	Response
<p>A long term costed maintenance plan should be prepared for all the buildings across all three sites, including a detailed analysis of fabric, room by room. The plan should be prepared with input from a heritage architect, structural engineer and quantity surveyor. The minimum long-term cycle would be 25 years (i.e. next cycle for re-scaffolding building). The maintenance plan should include catch-up maintenance, cyclical maintenance and preventative maintenance for both heritage fabric and new elements including services.</p>	<p>A condition is recommended in Attachment A requiring a costed heritage asset maintenance plan to be provided prior to the issue of an Occupation Certificate.</p>
<p>Any future development applications should incorporate the conservation and restoration of the heritage elements to be retained and this work should be fully documented as part of the DA. For example, the façades of 82-106 Oxford Street was originally face-brick. The paint should be removed from the brickwork and the facade should be restored (Note – this is one example of conservation work only. Conservation works should be undertaken in accordance with a long term costed maintenance plan).</p>	<p>A Schedule of Conservation Works was provided for each group.</p> <p>These are generally acceptable, subject to a condition requiring the submission of further detailed schedules prior to the issue of the Stage 1 Construction Certificate.</p>
<p>Documentation in support of a revised proposal for the site should include:</p> <ul style="list-style-type: none"> - An updated Conservation Management Plan; - accurate site survey and scaled measured drawings of all the existing buildings in their current form; - Documentation and analysis of various options for the proposed works which considers the significant aspects of the site (both exteriors and interiors) and ways that these aspects can be retained. The best option is the one which retains the significance aspects the buildings whilst allowing for the ongoing use - Documentation of conservation works to be undertaken as part of the proposal; 	<p>Additional documentation has been submitted and reviewed since the Heritage Committee provided their report. This includes:</p> <ul style="list-style-type: none"> • Updated Conservation Management Plans for each building group • Amended demolition plans, reflected ceiling plans, and proposed plans. • Analysis of options • Schedule of Conservation Works for each building group • Various heritage response letters • Heritage Interpretation Strategy

Heritage Committee Recommendations	Response
<ul style="list-style-type: none"> - A heritage impact statement; - A heritage interpretation strategy. 	

42. The amended proposal has addressed the recommendations of the Heritage Committee and is recommended for approval.
43. In summary, given the heritage significance of the buildings within the context of Oxford Street, and the controls and objectives of the Sydney LEP 2012, Sydney DCP 2012 and planning proposal, a very high quality of heritage conservation is required.
44. This requires more resolution in detail and appropriate consent conditions are recommended in Attachment A.
45. The recommended conditions ensure that the additions to the buildings, and the structural and services interventions necessary to support them, can be built while maintaining the heritage significance of the place.
46. This includes a deferred commencement condition requiring 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.

Height and Oxford Street Cultural and Creative Precinct Planning Proposal

47. 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 land use and patronage of Oxford Street.
48. The planning proposal complements the Locality Statement for Oxford Street Darlinghurst of the Sydney DCP 2012 which characterises Oxford Street as a regionally significant retail and entertainment street and a local business centre for surrounding neighbourhoods.

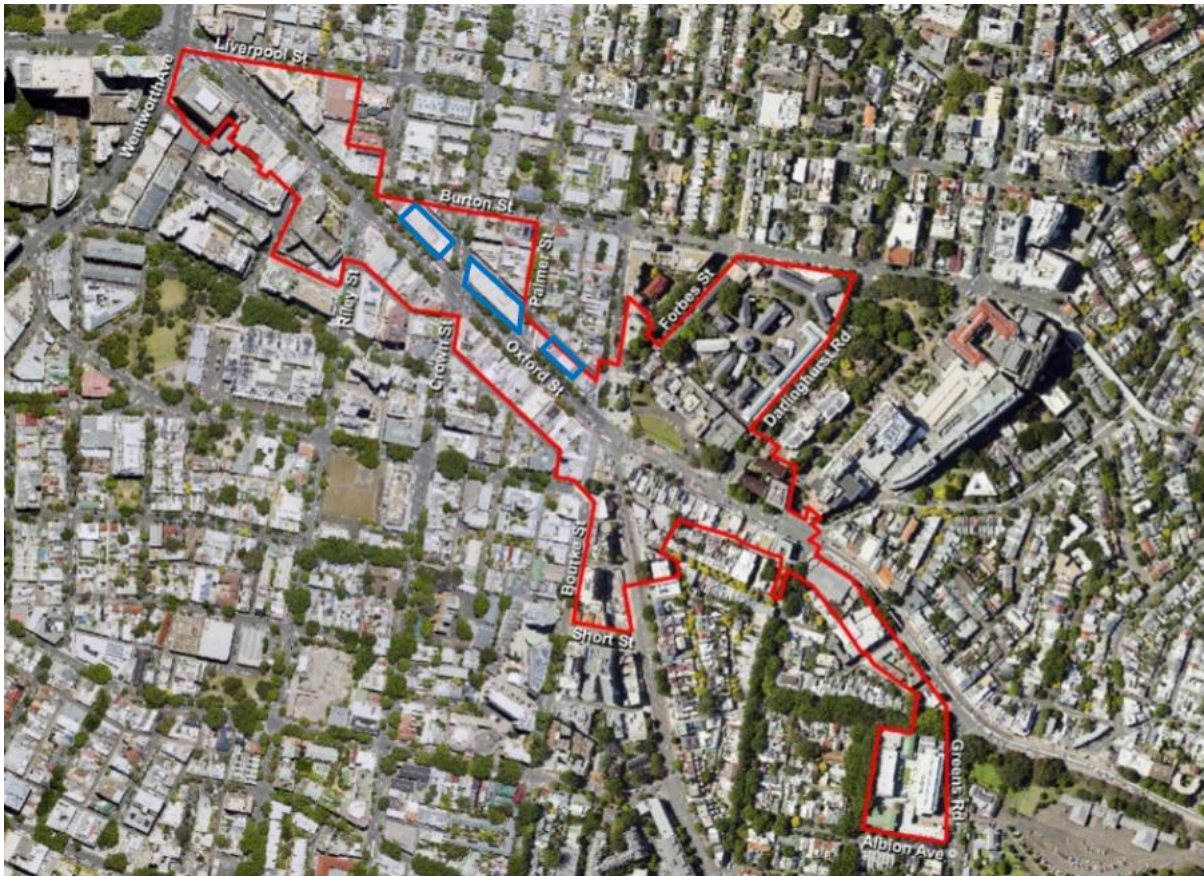


Figure 14: The Oxford Street Cultural and Creative Precinct (red) and sites (blue)

49. The 'Oxford Street Cultural and Creative Precinct' planning proposal was exhibited between 10 September and 4 November 2021.
50. The outcomes of the consultation and post-exhibition amendments were reported to, and approved by, the Central Sydney Planning Committee on 7 April 2022, and by Council on 11 April 2022. The planning proposal is to be referred to the Department of Planning, Industry and Environment for approval and gazettal during May 2022.
51. The proposed instrument is a matter for consideration Clause 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act, 1979. The Court has developed a body of case law to provide guidance as to the appropriate amount of weight that ought to be given to a planning proposal as part of its consideration when assessing a development application.
52. In short, the case law indicates that the controls in a draft instrument should be given greater weight when the instrument is 'certain and imminent'. Although the term 'certain and imminent' does not appear anywhere in the Environmental Planning and Assessment Act or the Environmental Planning and Assessment Regulations, it is still a relevant consideration as it provides guidance as to the appropriate amount of weight to be given to draft controls.
53. Draft controls will be considered to be more 'certain and imminent' the closer they are to being made. Following the approval by the Central Sydney Planning Committee and Council the 'Oxford Street Cultural and Creative Precinct' planning proposal is now considered to be 'certain and imminent'.

54. The proposed planning instrument provides an alternative height of building development standard, which increases in the height control from 15 metres under the current Sydney LEP 2012 development standard, to a range of heights between 23 metres and 25 metres for Group 1, and of 25 metres for Group 2.
55. 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 per cent of the total Gross Floor Area (GFA) of the development is provided for cultural and creative uses. This is discussed below under the 'Cultural and Creative Floor Space' heading.
 - (b) That the proposal does not undermine the heritage significance of the item or the structural stability of the item. This is discussed in this report under the 'Heritage Committee' heading.
56. The clause, as approved by Council, 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.

- (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;***
- (vii) ***metres and do not exceed 3.3:1 FSR.***
- (viii) ***Additional height and floor space is not available under this clause to a building on 21-25 Oxford Street, Darlinghurst (lot 1 DP 84976) and 27-33 Oxford Street, Darlinghurst (Lot 1 DP 1045284) unless the buildings are on land with a site area of more than 1,142.5 square metres and do not exceed 3.44:1 FSR.***
- (ix) ***Additional height and floor space is not available under this clause to a building on 1-19 Oxford Street, Darlinghurst, however development may exceed the FSR by 1.825sqm only if it is located in a 5 storey podium on the Wentworth Avenue and Oxford Street frontages to a height of RL52.223.***
57. The proposed height of Group 1 is 24.4 metres and is consistent with the maximum height controls, except for a 400mm increase above the 24 metre height control of Group 1, which is the result of the lift overrun.
58. This is demonstrated in the figures provided below.
59. The proposed height of Group 2 is 24.95 metres and complies with the 25 metre control.
60. As the proposal exceeds the current 15 metre height of the Sydney LEP 2012, a Clause 4.6 request to vary a development standard has been submitted, which is discussed below.

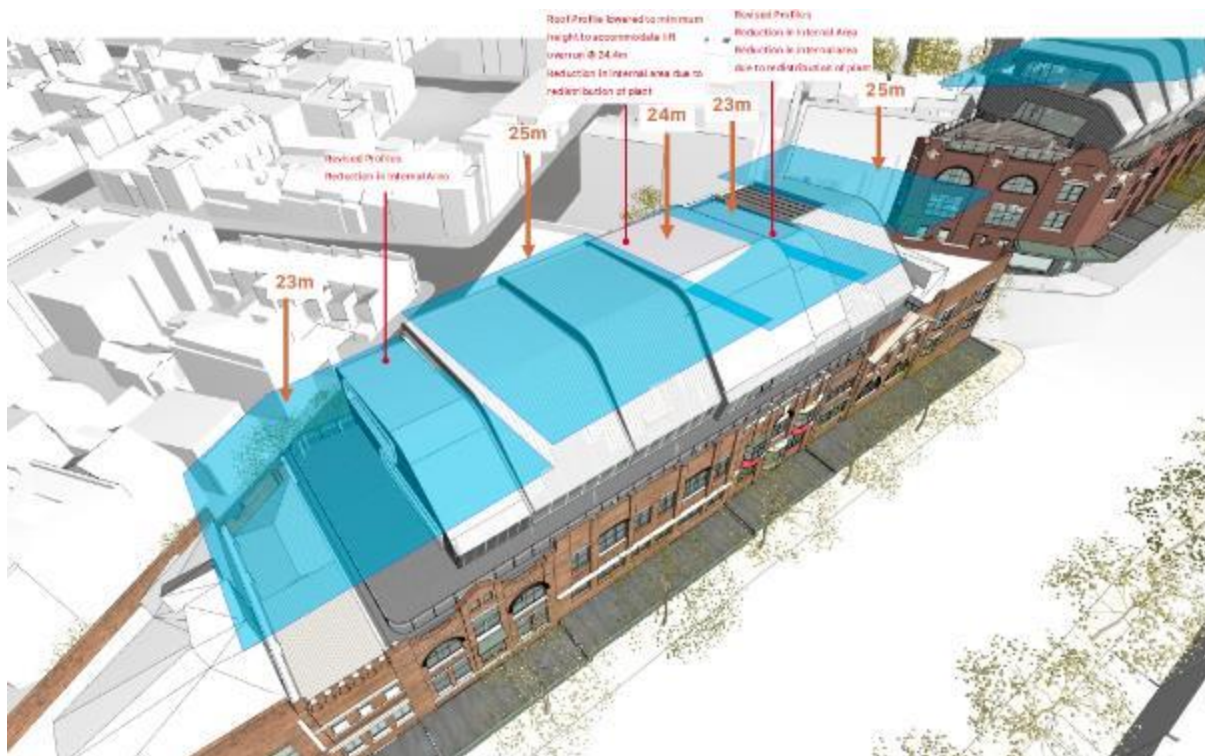


Figure 15: Planning proposal height planes for Group 1 (Note: this image has not been amended since the roof forms have changed, however the height up to 24.4 metres has not changed)

Clause 4.6 Request to vary a Development Standard

- 61. The site is subject to a maximum height of buildings control of 15 metres under the Sydney LEP 2012.
- 62. The proposed development has a height of up to 24.4 metres (Group 1) and 24.95 metres (Group 2).
- 63. Details of the non-compliance with the 15 metre height control are shown in the figures provided below.



Figure 16: Existing height planes of Groups 1-3 viewed from Oxford Street and Foley Street



Figure 17: Elevation drawings of Groups 1 and 2, with the 15 metre Sydney LEP 2012 height control shown in red, as viewed from Oxford Street (Note: this image has not been amended since the roof forms have changed, however the heights have not increased)

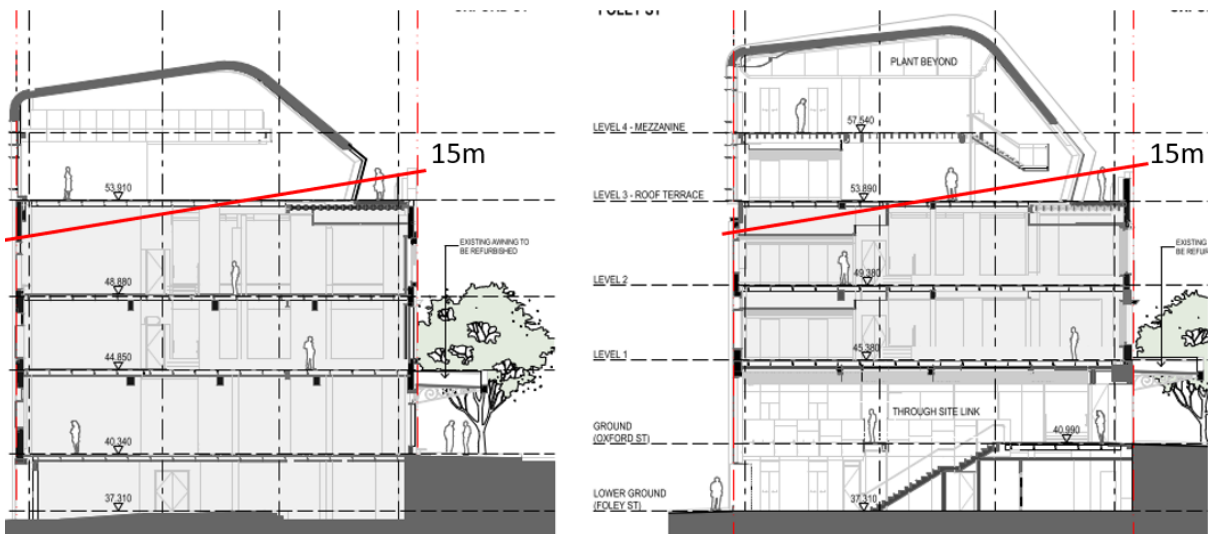


Figure 18: Sections through Group 1. The red lines indicate the current Sydney LEP 2012 height control.

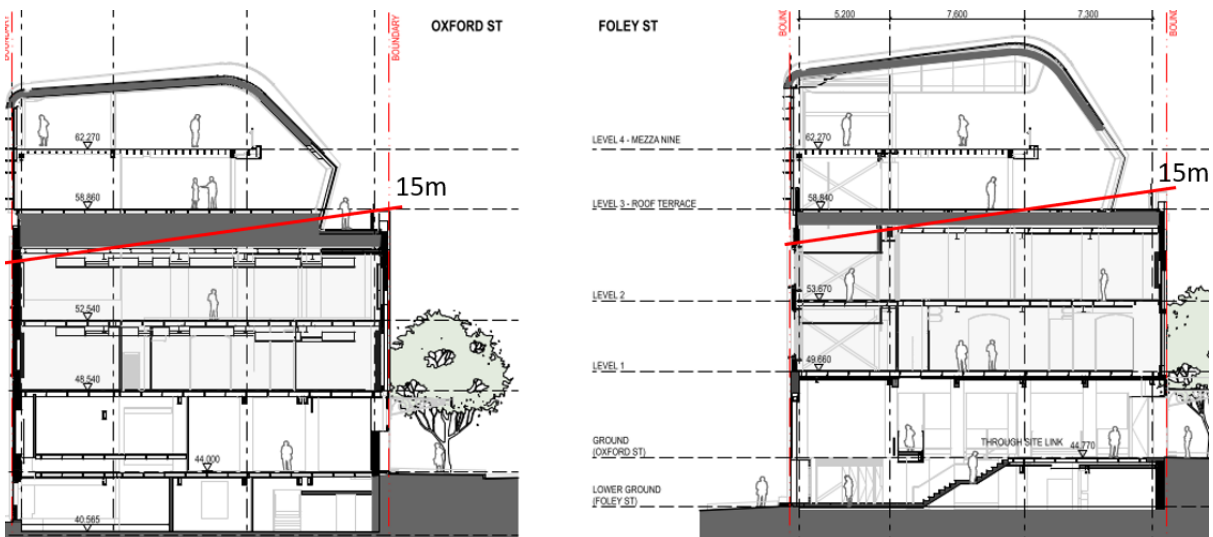


Figure 19: Sections through Group 2. The red lines indicate the current Sydney LEP 2012 height control.

64. A written request has been submitted on 20 April 2022, in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012, seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard
 - (c) The proposed development will be consistent with the objectives of the zone
 - (d) The proposed development will be consistent with the objectives of the standard

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

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

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The new additions are appropriate to the site and are in keeping with the broader context of Oxford Street. The Oxford Street precinct provides a diverse and eclectic array of building forms and heights, and it is further anticipated that this context will evolve as Council seeks to make changes to the existing regulatory framework to encourage a creative and cultural precinct around Oxford Street as identified in the City of Sydney Local Strategic Planning Statement (City Plan 2036). The proposal will contribute to this built form diversity through appropriately scaled and massed building additions at a maximum height consistent with the spread of heights along Oxford Street, and likely consistent with the prevailing built form opportunities arising from changes to encourage cultural and creative floor space within the precinct.
 - (ii) The adaptive re-use of the existing buildings and the new commercial office space delivered through the height variation will assist in creating a commercial hub and vibrant area for people to work during the day and enjoy in the evenings 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 Environmental Planning and Assessment Act, 1979, and that has been notified to the consent authority.
 - (iv) The overall height, form and materiality are sympathetic to the heritage items, in particular, the upper level setback of the contemporary additions and sloped form.
 - (v) The new rooftop additions will be contemporary and architecturally interesting, achieving design excellence through their form, materiality, heritage relationship and overall design.
 - (vi) If the redevelopment proposal were limited to a refurbishment of the existing heritage buildings, a high standard of sustainability would not be achievable due to cost and heritage constraints, therefore the proposed rooftop additions will deliver higher sustainability outcomes.
 - (vii) The proposed development, facilitated by the new additions, will achieve a viable height and floorspace to contribute to the commercial floor space and employment requirements and expectations of Darlinghurst.
 - (viii) The proposed development does not cause significant additional environmental impact which would render it incompatible with its surrounding land uses and ensures the proposal is appropriate for the site context.

- (c) The proposed development will be consistent with the objectives of the zone;
 - (i) The proposal provides a range of cultural/creative, food and beverage, retail, and commercial office space uses which will directly service the needs of the community who live, work, and visit the Oxford Street precinct.
 - (ii) The proposal seeks to deliver increased employment opportunities across a range of job types, with the mix of cultural/creative, food and beverage, retail, and commercial office space providing a variety of employment opportunities.
 - (iii) The proposed inclusion of the height variation will facilitate new commercial office space, providing new jobs in a location well-served by public transport.
 - (iv) The proposal does not include residential uses, consistent with the continuation of the historic non-residential uses on the site.
- (d) The proposed development will be in the public interest because:
 - (i) Consistency with the objectives of the development standard and the objectives of the zone make the proposed development in the public interest.
 - (ii) The proposed development is consistent with the objectives of the height of buildings development standard as discussed under (a) above.
 - (iii) The proposed development is consistent with the objectives of the B2 Local Centre Zone as discussed under (c) above.

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

66. 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)?

67. 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 considered to be 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?

68. Under 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. The proposed instrument is a matter for consideration Clause 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act, 1979. The planning proposal is 'certain and imminent' and can be given considerable weight in the assessment.
- (d) The proposed development includes a mix of compatible land uses that are appropriate to the B2 Local Centre zone.
- (e) The site is located 650m from the Museum railway station and close to multiple bus stops. The location and accessibility and the connection between the public domain and the subject development creates a highly permeable access arrangement which promotes pedestrian movement.

Conclusion

69. 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 Clause 4.6 of the Sydney Local Environmental Plan 2012. The proposed development, as amended, 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

70. The site contains existing cultural and creative uses and would be subject to Clause 3(iii) of the draft LEP controls, which requires that the existing cultural and creative uses be maintained and an additional 10 per cent of the total GFA of the development is provided for cultural and creative uses.

71. This includes 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.
72. The draft DCP outlines that there was 3,055 square metres of cultural and creative floor space as at 10 September 2021 (when the planning proposal commenced exhibition). Information on Council's records provides a breakdown between each building group for this GFA.
73. A summary of the existing and required cultural and creative floor space is outlined in the table below.

	Existing	10% Required	Total Required
Group 1	1,553sqm	531sqm	2,084sqm
Group 2	1,502sqm	717sqm	2,219sqm
Total	3,055sqm	1,248sqm	4,303sqm

74. The floor plans indicate 8.31 per cent (Group 1) and 10.65 per cent (Group 2) of the GFA for each development site has been provided 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. However, the applicant has advised that their proposal is capable of complying with the LEP and DCP requirements.
75. A condition is recommended that the existing cultural and creative floor space is maintained, and that 10 per cent of the total GFA be provided as additional cultural and creative floor space. A deferred commencement condition is recommended that requires that the cultural and creative floor space be allocated on the floor plans.
76. The draft LEP also requires a condition of consent be imposed requiring a restriction on the use of land pursuant to Section 88E of the Conveyancing Act, 1919 to be registered on the title of the land that prevents the additional GFA from being used for any purpose other than a cultural or creative purpose. An appropriate condition has been recommended in Attachment A.

Setbacks and Draft DCP controls

77. It is noted that the planning proposal is supplemented by site specific provisions to the Sydney DCP 2012. The draft DCP includes a provision stating that:
- "above the street wall, additional storeys on heritage listed and contributory buildings are to be set back a minimum of 3 metres".
78. The draft DCP permits additions to have a nil setback to Foley Street.
79. The objectives of the controls include:
- (a) Establish an appropriate scale, massing and modulation for new development which respects and responds to the architectural character, rhythm and grain of the existing built fabric of the high street.

- (b) Achieve a street wall height that reinforces the human scale in the public domain and protects the view corridor along Oxford Street towards Hyde Park and the City skyline.
 - (c) Reduce the visual dominance of upper storey additions and protect the integrity of traditional parapets.
 - (d) Ensure any upper storey additions which seek a reduced setback display exceptional design quality which results in a complementary relationship with the architectural language of the existing building.
 - (e) Protect solar access in neighbouring residential properties with appropriate building setbacks from all boundaries.
80. The proposal was amended to provide an increased setback to the new addition by approximately 500mm, resulting in an average 3 metre setback to both Group 1 and Group 2. The setbacks to the apex of the additions are:
- (a) Group 1 - 3.3 metres (western end), 2.65 metres (centre), and 3.3 metres (eastern end)
 - (b) Group 2 - 4.709 metres (western end), 2.14 metres (centre), and 3.6 metres (eastern end)
81. This has been achieved by providing a greater setback at each end of the addition which minimises visibility at the street corners, while the reduced setbacks in the centre of each group is where the visual impact is less sensitive.
82. This is assessed as being an appropriate design strategy and is consistent with the objectives of the draft DCP control and is acceptable on this basis.
83. 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.

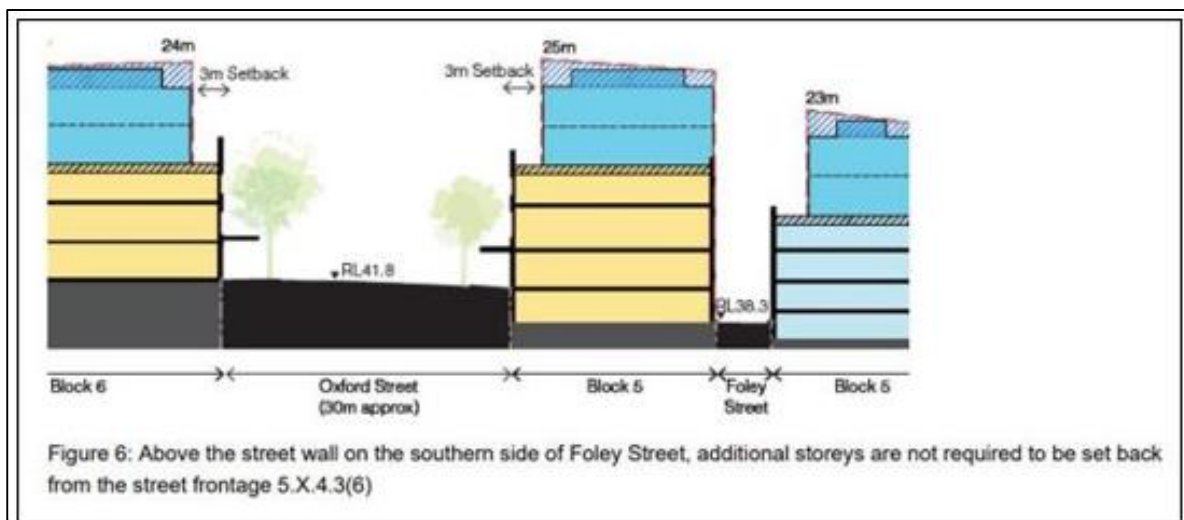


Figure 20: Image from the draft DCP indicating required setbacks (this image relates to Group 1)

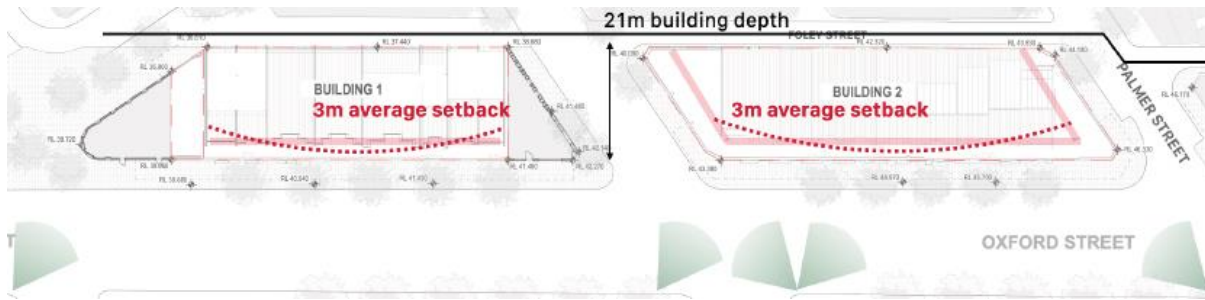


Figure 21: Proposed setback strategy for Groups 1 and 2 (3 metre average setback indicated in red)

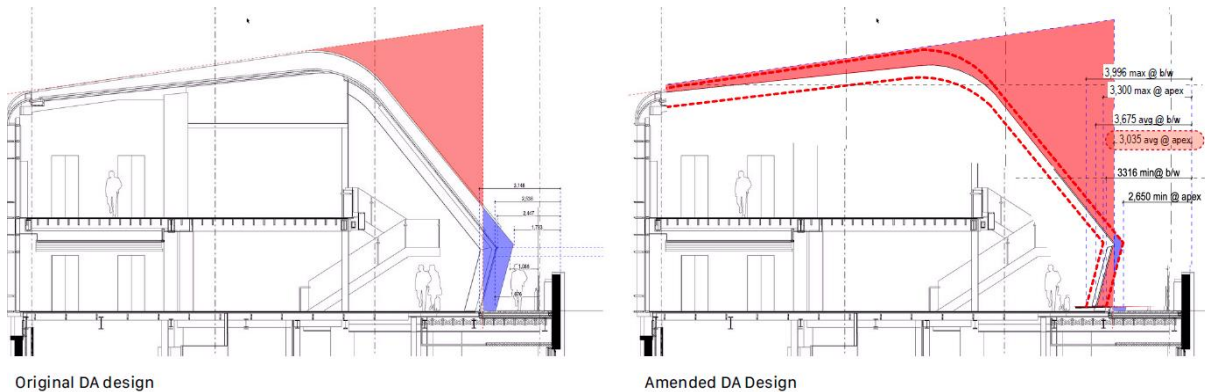


Figure 22: Original (left) and proposed (right) setbacks for Group 1. The purple indicates the part of the proposal within the 3 metre setback and the red indicates the volume of a compliant height and setback.

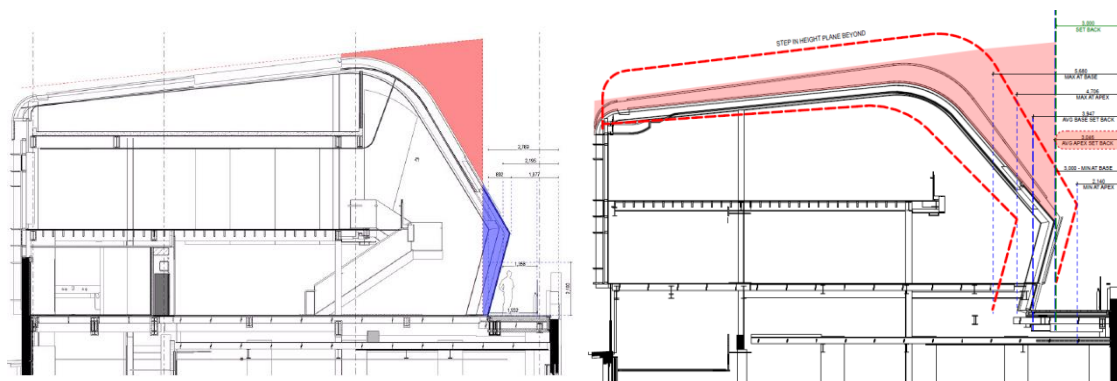


Figure 23: Original and proposed setbacks for Group 2. The purple indicates the part of the proposal within the 3 metre setback and the red indicates the volume of a compliant height and setback.

View sharing

- 84. An amended view loss study was submitted to reflect the amended proposal. It is noted that the amendments have not increased the height of any parts of the proposed additions, and in some cases the heights have been lowered. Therefore, the view loss impacts are no greater than the previous proposal.
- 85. A number of submissions raised concerns with the loss of views towards the City skyline, Sydney Harbour, the Opera House, the, Sydney Harbour Bridge, St Marys Cathedral, and Hyde Park.

86. 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.
87. The impacts to 130-132 Oxford Street are discussed in the Planning Report for D/2020/1072.



Figure 24: Group 1 and 2, the subject site, (blue), Group 3 (purple), and objectors with view loss concerns (red)

88. 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".
89. The applicant submitted a view loss study to analyse the view sharing impacts of the proposal. An amended view loss study (included in Attachment H) was submitted with the amended proposal.

90. Assessment of view impacts is undertaken based on the principles of view sharing established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. In the Tenacity case, Senior Commissioner Roseth notes that:

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

91. 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.
92. An assessment for each property against the four steps is outlined below.

80 Oxford Street

93. 80 Oxford Street is located adjoining Group 1.
- (a) Views to be affected: Views of the city skyline, and partial and distant views of Sydney Harbour, Opera House (top of one sail), the Sydney Harbour Bridge (half), St Marys Cathedral, and Hyde Park (top of trees).
 - (b) Part of property viewed from: Views are from a communal roof terrace to residential apartments below.
 - (c) Extent of impact: The City skyline and the partial views of the Opera House, Sydney Harbour Bridge, St Marys Cathedral and Hyde Park are obstructed. Views to the harbour are retained from some vantage points of the roof terrace.
 - (d) Reasonableness: The views are obtained directly over the side boundary with Group 1, and accordingly views are more difficult to retain with any increase in height of the subject site. It is also noted that 80 Oxford Street also benefits from an alternative height of buildings control under the planning proposal. In the above context, the view impacts of the proposal are reasonable in this instance.



Figure 25: Views from roof terrace of 80 Oxford Street



Figure 26: Views from roof terrace of 80 Oxford Street



Figure 27: Modelling from applicant's view loss study, as viewed from roof terrace of 80 Oxford Street

107-111 Oxford Street

94. 107-111 Oxford Street is located on the southern side of Oxford Street.
- (a) Views to be affected: Views are to the City skyline and partial views of the Opera House (top of one sail), Sydney Harbour Bridge (half) and St Marys Cathedral.
 - (b) Part of property viewed from: Views are from the balcony of the upper level residence.
 - (c) Extent of impact: Partial views of the city skyline, including 'Sydney Tower eye' tower, are retained. Views of the Opera House, Sydney Harbour Bridge, and St Marys Cathedral are obstructed.
 - (d) Reasonableness: The applicant's modelling has demonstrated that these views would be obstructed regardless of a one storey or two storey increase in height on the site. It is also noted that 107-111 Oxford Street also benefits from an alternative height of buildings control under the planning proposal. The protection of these views is not reasonable in this instance.



Figure 28: Existing views from 107-111 Oxford Street



Figure 29: Modelling from applicant's view loss study, as viewed from 107-111 Oxford Street

302 Crown Street

95. 302 Crown Street is located approximately 130 metres to the south of Group 2.
- (a) Views to be affected: A partial view of the Sydney Harbour Bridge and St Marys Cathedral
 - (b) Part of property viewed from: North facing apartments
 - (c) Extent of impact: The applicant's modelling has demonstrated that the views of the Sydney Harbour Bridge and the spires of St Marys Cathedral from Levels 7 and 8 will be retained. This has been verified by Council's model makers. Views from Level 6 are already obstructed, and will be further interrupted by the proposal.
 - (d) Reasonableness: The proposal would have a negligible impact on views from this property and as such, is considered reasonable.



Figure 30: Existing views from 302 Crown Street

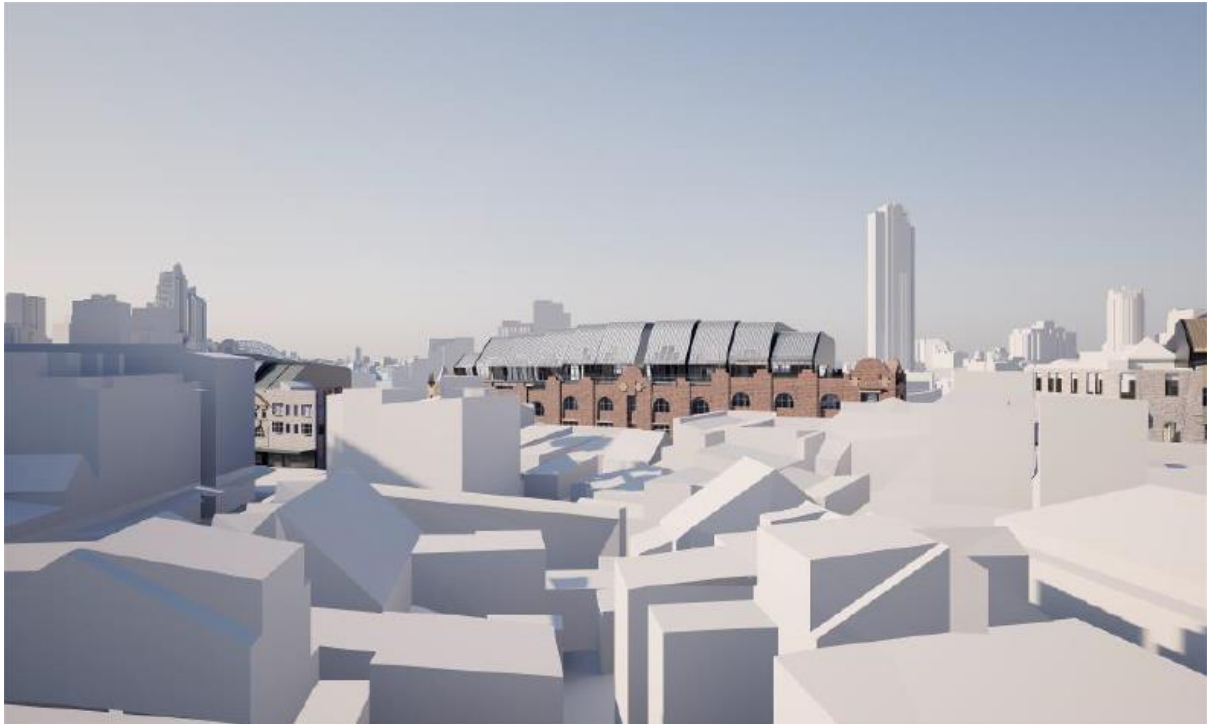


Figure 31: Modelling from applicant's view loss study, as viewed from Level 6 of 302 Crown Street



Figure 32: Modelling from applicant's view loss study, as viewed from Level 7 of 302 Crown Street

200 Campbell Street

96. 200 Campbell Street is located approximately 105 metres to the south of Group 2.

- (a) Views to be affected: The city skyline, a partial view of the Sydney Harbour Bridge, Sydney Harbour, St Marys Cathedral, and Hyde Park (trees).
- (b) Part of property viewed from: apartments with a northerly and north-west aspect, and a communal roof terrace.
- (c) Extent of impact: The applicant's modelling demonstrates the following:
 - (i) Level 4: the views of the City skyline are retained. The views of the Sydney Harbour Bridge, St Marys Cathedral and Hyde Park (trees) are currently obscured and these views will not be retained.
 - (ii) Level 5: the views of the City skyline are retained. The views of the Sydney Harbour Bridge are currently obscured, and this view will be retained in part. The views of St Marys Cathedral and Hyde Park (trees) will not be retained.
 - (iii) Level 6: the views of the City skyline and Sydney Harbour Bridge are retained. Partial views to Sydney Harbour are retained. The views of St Marys Cathedral and Hyde Park (trees) will not be retained, except for the spires of the Cathedral.
 - (iv) Level 7 (communal roof terrace): the views of the City Skyline, Sydney Harbour Bridge, Sydney Harbour, and will be retained. Views to St Marys Cathedral and Hyde Park (trees) will be partly retained.
- (d) Reasonableness: The view impacts of the proposal vary depending on the level of the building. Both sides of Oxford Street benefit 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 33: Existing views from Unit 402 of 200 Campbell Street



Figure 34: Existing views from Unit 602 of 200 Campbell Street



Figure 35: Existing views from Unit 602 of 200 Campbell Street

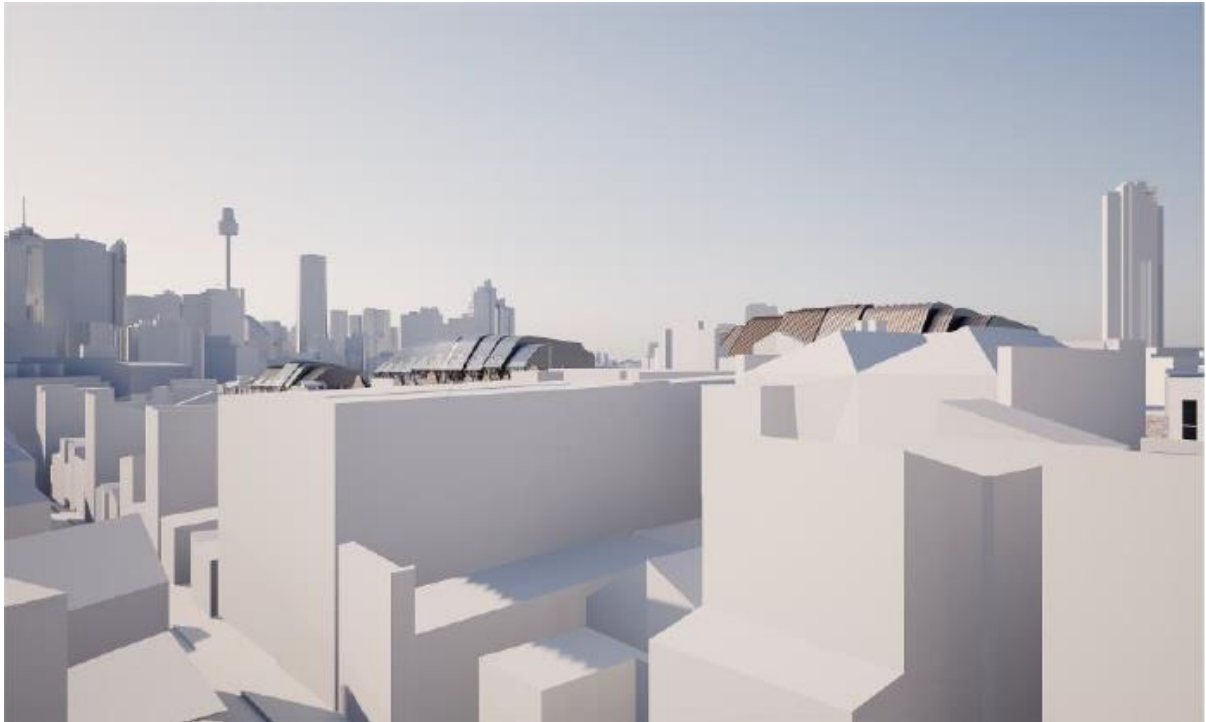


Figure 36: Modelling from applicant's view loss study, as viewed from Level 4 of 200 Campbell Street



Figure 37: Modelling from applicant's view loss study, as viewed from Level 5 of 200 Campbell Street



Figure 38: Modelling from applicant's view loss study, as viewed from Level 6 of 200 Campbell Street



Figure 39: Modelling from applicant's view loss study, as viewed from Level 7 of 200 Campbell Street

View sharing - Conclusion

97. The proposed additions will be visible from a number of adjoining buildings to varying degrees.

98. The view sharing assessment found that the protection of views from adjoining properties is not 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:
 - (i) 80 Oxford Street retaining views towards Sydney Harbour;
 - (ii) 107-111 Oxford Street retaining views to the City skyline;
 - (iii) 302 Crown Street retaining views to the City skyline and Sydney Harbour Bridge; and
 - (iv) 200 Campbell Street retaining views to the City skyline, Sydney Harbour Bridge and Sydney Harbour to varying degrees from each apartment.
 - (b) Only partial views of the Sydney Harbour Bridge, Opera House and St Marys Cathedral are currently achieved, with the nearest objector being 2.35 kilometres from the Opera House, 2.75 kilometres from the Sydney Harbour Bridge, and 800 metres from St Marys Cathedral.
 - (c) Both sides of Oxford Street benefit from an alternative height of buildings control under the planning proposal.
 - (d) Opportunities for a more skilful design to reduce the view impact would result in other impacts, such as streetscape and heritage impacts.
99. 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.

Consultation

100. Discussion relating to internal and external referrals is outlined in the previous Planning Report at Attachment E.

Advertising and Notification

101. In accordance with the City of Sydney Community Participation Plan 2020, the proposed development was notified and advertised for a period of 28 days between 12 November 2020 and 11 December 2020.
102. A total of 1448 properties were notified and 29 submissions were received, with one in support and 28 objections.
103. The amended proposal was not required to be renotified in accordance with the City of Sydney Community Participation Plan 2020, as the amendments do not result in significant additional environmental impacts.

104. Discussion relating to issues raised in submissions is outlined in the previous Planning Report at Attachment E.

Financial Contributions

Contribution under Section 7.11 of the Environmental Planning and Assessment Act 1979

105. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
106. This is discussed in the previous Planning Report at Attachment E.

Relevant Legislation

107. Environmental Planning and Assessment Act, 1979.
108. Conveyancing Act, 1919.

Conclusion

109. The proposal seeks consent for alterations and additions to existing buildings at 58-78 Oxford Street (Group 1) and 82-106 Oxford Street (Group 2) for mixed use development. The proposed mix of land 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.
110. The development application was considered by the Local Planning Panel at the meeting of 22 September 2021 and was deferred. Amended plans have been submitted to address the recommendations of the Local Planning Panel.
111. The proposal was reviewed by the Design Advisory Panel and amended plans have been submitted to address their recommendations.
112. 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.
113. While 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.
114. 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 instrument is a matter for consideration Clause 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act, 1979. The planning proposal is now 'certain and imminent' and it is to be given considerable weight in the assessment.

115. Conditions are recommended in Attachment A ensuring that relevant heritage, structural and amenity impacts are addressed, and that cultural and creative uses are provided, consistent with the Oxford Street Cultural and Creative Precinct planning proposal.
116. 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.
117. A public benefit offer has been submitted that involves creating a shared zone in Foley Street between Crown Street and Bourke Street (adjacent to Groups 2 and 3). This continues the shared zone along Foley Street that has been completed between Burton Street and Crown Street.
118. A draft Voluntary Planning Agreement (VPA) has been prepared and has been placed on public exhibition for a period of 28 days between 21 April and 19 May 2022 in accordance with the requirements of Section 7.5 of the Environmental Planning and Assessment Act, 1979.
119. 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

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Matthew Girvan, Area Coordinator