

Item 4.**Development Application: 110-122 Oxford Street, Darlinghurst - D/2020/1072**

File No.: D/2020/1072

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:	\$16,104,915
Zoning:	The site is located in the B2 Local Centre zone. The proposed development is defined as a 'mixed use development', comprising 'hotel or motel accommodation', '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 110-122 Oxford Street (Group 3) as a mixed use development and associated alterations and additions with 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.

A development application (D/2020/1071) for 58-78 Oxford Street (Group 1) and 82-106 Oxford Street (Group 2) 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 retail premises, food and drink premises, and tenancies for cultural and creative uses on the lower ground and ground levels, and commercial offices above. D/2020/1071 is concurrently assessed with 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 was 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 31 submissions were received (30 objections and 1 submission in support). The issues raised include height, heritage, design, amenity impacts, conflict of interest, contamination, use, waste, traffic and construction impacts.

The applicant submitted a public benefit offer on 10 September 2021 for the conversion of Foley Street to a shared zone. A draft Voluntary Planning Agreement 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 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 height of 24 metres for Group 3.

The proposed development has a floor space ratio (FSR) of 4:1 and is compliant with the maximum permitted FSR of 4:1 under Sydney Local Environmental Plan 2012 (Sydney LEP 2012).

The development exceeds the current 15 metre height of buildings standard by 46% (6.9 metres), however, is compliant with the alternative building height control of the planning proposal for the site, of 24 metre (Group 3). The variation to the Sydney LEP 2012 height standard is subject to a Clause 4.6 variation request, due to the exceedance of the current standard, and the Clause 4.6 request is supported.

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

- Conflict of interest - Development for which the land owner is the Council (although 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%
- 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 3
 - C. Clause 4.6 Variation Request - Height of Buildings
 - D. Planning Report to the 22 September 2021 Local Planning Panel Meeting
 - E. Heritage Committee Report
 - F. Public Benefit Offer
 - G. View Loss Study
 - H. Design Report

Recommendation

It is resolved that:

- (A) the Panel note 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 note 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/2020/1072, subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

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

- (A) The development, subject to conditions, is consistent with the objectives of the B2 Local Centre zone pursuant to 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/2020/1071, 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 development application D/2020/1071, and 110-122 Oxford Street (Group 3), which is the subject of this development application.



Figure 1: Aerial image of Group 3 the subject of this report (outlined in red) and the surrounding area

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 lockout laws.

4. More recently the Covid-19 pandemic further impacted on the land use and patronage of Oxford Street. A range of strategies have been implemented, including:
 - (a) The City's Economic Development Strategy recognises 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.
 - (b) 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.
 - (c) 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 Oxford Street Cultural and Creative Precinct 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.
 - (d) 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

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

8. The Panel deferred determination of the development application and provided the following comments:
 - (a) The Panel deferred consideration of Development Application No. D/2020/1072 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

9. 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.
10. The proposal did not include new additions to the buildings.
11. 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

12. Subsequent to the deferral of the application a set of amended plans were submitted to address the comments made by the Local Planning Panel.
13. An amended Clause 4.6 variation request, view loss study and design report were also submitted. The amendments to Group 3 are summarised below:
 - (a) The stepping of the new rooftop additions amended to relate to the existing Oxford Street facade.
 - (b) Rooftop additions to be clad in a copper coloured zinc sheeting to differentiate Group 3 from Groups 1 and 2.
 - (c) The skylight strips removed from the roof/facade junction and replaced with a curved profile clad in the roof sheeting.
 - (d) Relocation of residential bin room at lower ground floor level.
 - (e) Amendments to retain further original fabric, including:
 - (i) Retention of the masonry wall and masonry nibs at lower ground and ground floor level.
14. 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	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.

Local Planning Panel Recommendations	Design response
	<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 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 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>It is noted that 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>Group 3 has been designed with a 500mm-550mm upper level setback from Oxford Street which does not comply.</p> <p>It is noted that the proposed height is currently 21.9 metres within a 24 metre draft control, and this results in a proposed massing that is significantly smaller than a compliant building envelope.</p> <p>This is shown in Figures 14-22 under the 'Discussion' heading below.</p> <p>The applicant has explored the option of providing a compliant 3 metre setback and repositioning the floor space to within an alternative built form. The alternative built form would increase the height of the proposal to utilise the full 24 metre draft control.</p> <p>Setback analysis has been outlined in the figures under the 'Discussion' heading below, and these provide comparisons between the proposed development and the alternative built form.</p>

Local Planning Panel Recommendations	Design response
	<p>The increased alternative built form results in an undesirable streetscape outcome due to height, bulk and visibility from the public domain and surrounding properties. The modelling provided by the applicant demonstrates that the proposed scheme with a lower height and 500mm-550mm setback is a superior outcome in comparison to a scheme that maximises the height and was compliant with the setback control. Therefore the proposed non-compliance is acceptable.</p>
Amenity, Privacy and Outlook	<p>The proposal is amended to provide a series of louvres to the north-eastern facade, with a depth of 450mm. This provides additional screening and privacy to neighbouring properties and prevents downward overlooking, while maintaining a suitable outlook from the proposed development.</p> <p>The properties located on the opposite side of Foley Street are lower than the proposed addition.</p>
Environmental Performance	<p>The extent of glazing and detailing of the glazing is refined to enhance the environmental performance of the building. 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 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>

15. 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.
16. The previous Planning Report is attached at Attachment D, 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

17. Approval is sought for a mixed-use development, including 75-room hotel in the Group 3 set of buildings, comprising the following:
 - (a) Lower Ground and Ground Levels:
 - (i) Tenancies for retail, food and drink, and cultural and creative uses fronting Oxford Street and Foley Street
 - (ii) Hotel lobby and hotel rooms
 - (iii) Other services and storage areas
 - (b) Levels 1-4:
 - (i) Hotel rooms
 - (ii) Hotel bar, swimming pool and terrace; and
 - (iii) Mechanical plant
18. The works include:
 - (a) Part removal of existing fit outs to existing tenancies across all levels
 - (b) Conversion of existing commercial tenancies at basement level to new hotel lobby, and associated hotel facilities, retail, cultural and creative space. This includes creation of new external openings at Foley Street to previously modified fabric.

- (c) Creation of new retail tenancies at ground floor onto Oxford Street, and creation of hotel rooms to Foley Street
 - (d) Creation of two floors of hotel rooms at Levels 1 and 2
 - (e) Installation of new staircases and lifts to connect all levels
 - (f) Construction of a two storey rooftop additions across the whole of the building, with hotel rooms, swimming pool and roof top deck.
19. The application also includes a signage strategy.
 20. The application proposes five stages of construction.
 21. A set of selected architectural drawings are provided in Attachments B and C.
 22. Selected drawings extracts of the proposed development for Group 3 are reproduced in the figures provided below.

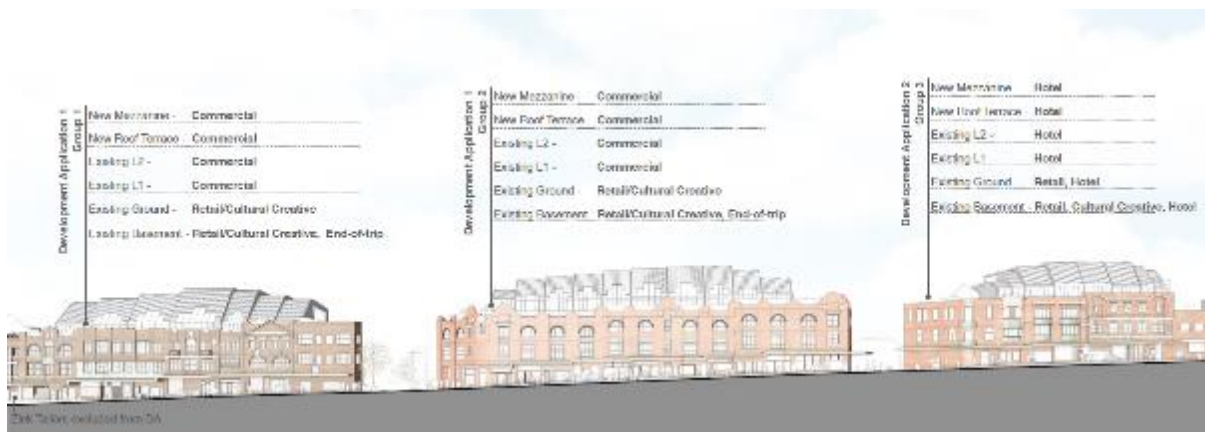


Figure 2: The original proposal of Group 1 at the left, Group 2 in the centre (both proposed under D/2020/1071) and Group 3 at the right (proposed under D/2020/1072) viewed from Oxford Street (Note: Groups 1 and 2 are not the subject of this report)



/Original DA Proposal



/Amended DA Proposal

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

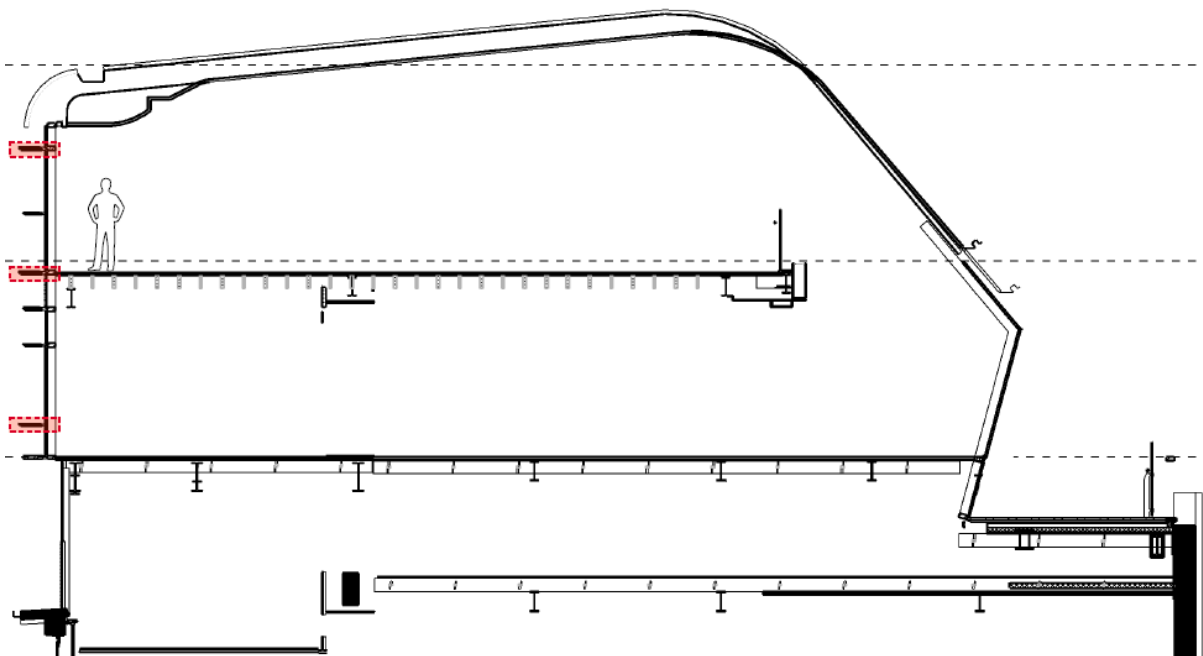


Figure 5: External louvres (outlined in red)

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 D.
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 SEPPs 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 (Affordable Rental Housing) 2009	State Environmental Planning Policy (Housing) 2021
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 impacted by the amendments to the proposal are discussed in the previous Planning Report at Attachment D.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	A maximum building height of 15 metres is permitted.

Provision	Compliance	Comment
		<p>A height of 21.9 metres is proposed for Group 3.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.</p> <p>The additional height is recommended for support and this is 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>A FSR of 4:1 is proposed, which complies with the relevant standard.</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.</p> <p>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 3 comprises 2 locally listed heritage items pursuant to Schedule 5 of the Sydney LEP 2012, being:</p> <p>110 Oxford Street – LEP no. I396 Commercial Building including interior</p> <p>112-122 Oxford Street – LEP no. I397 Commercial Building Group including interior</p> <p>Group 3 is also adjacent to a locally listed heritage item at 108 Oxford Street (I395), being the 'former Crecy Hotel including interior'.</p>

Provision	Compliance	Comment
		<p>Subject to the carrying out of conservation works, and subject to the recommended conditions in Attachment A, the proposed development, as amended, has 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 D.
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 D.

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
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.	Parts of Foley Street have been included in the Planning Proposal Precinct, as exhibited.
The Panel is 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.	The in-principle support of the panel is noted. Further design refinements have been made as discussed below.
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>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>

Design Advisory Panel Recommendations	Design response
<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 Street to capitalise on the potential views to the harbour.</p>	<p>The extent of glazing and detailing of the glazing is amended to enhance the environmental performance of the building. 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 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>
<p>The Panel also considers the facades to Oxford Street require further refinement in character.</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 and have been re-designed so that the stepped form relates to each individual building.</p>
<p>There needs to be a mechanism for the enduring dedication of community and cultural spaces throughout the three sites</p>	<p>A condition is recommended in Attachment A to ensure that the proposed cultural and creative space is retained into the future.</p>

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

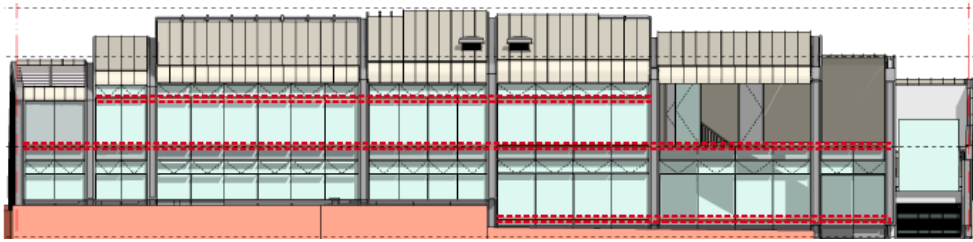


Figure 6: Location of louvres for Group 3 (outlined in red)

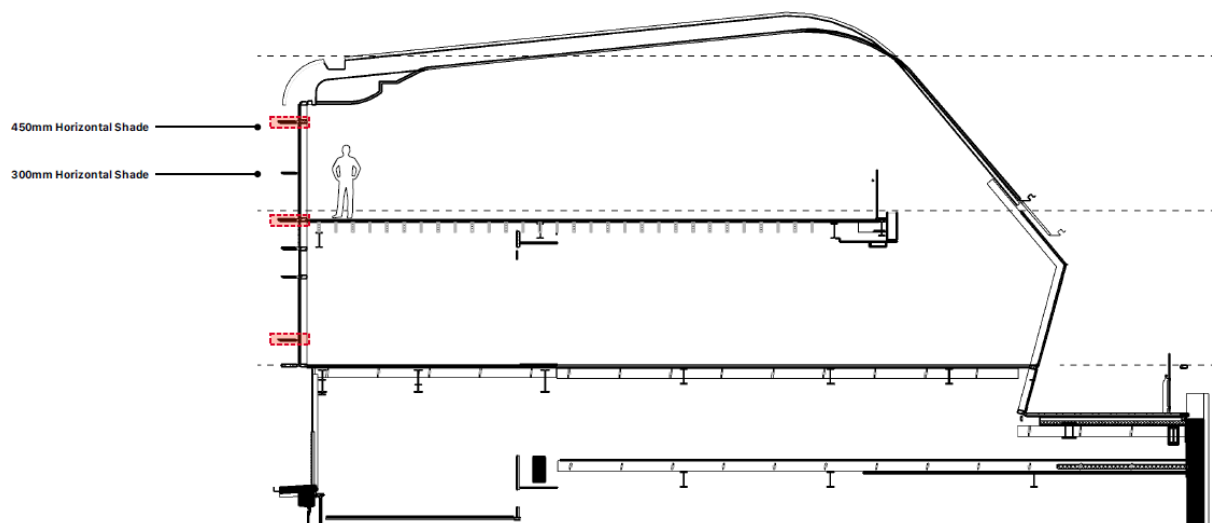


Figure 7: Proposed louvres in section (indicated in red)

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 as exhibited 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 8: 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 requires that:

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

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

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

- (a) appoint a committee that includes heritage professionals to examine and advise on the merits of the proposal;
- (b) be satisfied that that committee has followed an appropriate public process for the purpose of that examination; and
- (c) consider the advice of the committee, but is not bound by the advice of the committee.

37. The Committee was made of three members with heritage and structural expertise, being:
- (a) Scott Robertson, Robertson & Hindmarsh
 - (b) Hari Gohil, Shreeji Consultant
 - (c) Otto Cserhalmi, OCP Architects
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 provide 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> <p>The planning proposal as exhibited allows additional height to existing buildings where heritage fabric is retained.</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.</p> <p>The Conservation Management Plan (CMP) 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> <ul style="list-style-type: none"> - 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>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) - Any original/early toilet features (early toilet partitioning present at 82-106 Oxford Street) 	<p>The interiors of Group 3 have been modified over time, however existing heritage fabric includes party and dividing walls, timber posts and beams, original floors, some pressed metal ceiling systems, bullnose brick piers, plaster finishes, joinery trim, and timber stairs.</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> <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>

Heritage Committee Recommendations	Response
<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>Conditions recommended to retain significant components include:</p> <ul style="list-style-type: none"> • Retention of a number of the party walls including between Nos 112 and 114 and between Nos 116 and 118 Oxford Street. The retention of these walls to conserve the spatial integrity and character and to preserve the structural integrity of the buildings. • Retention of the original stair at No 120 Oxford Street. • Salvaging and reusing original pressed metal ceilings at 110-122 Oxford Street. <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

Heritage Committee Recommendations	Response
	<p>conditioning systems are recommended for revision by condition.</p> <ul style="list-style-type: none"> 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 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 assessment has considered the impact of vertical additions to the heritage significance of the buildings as well as the structural impact of the additions on the existing heritage fabric.</p> <p>A number of conditions are recommended in Attachment A 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 as exhibited, 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</p>

Heritage Committee Recommendations	Response
	<p>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.</p> <p>The final approach to Fire Resistance (FRLs), Seismic Stability and Vertical Load Capacity is still being resolved. The integration of floor diaphragms, fire separation between floors, fire rating of existing structural timber post and beams, within heritage constraints will need further careful consideration.</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 3 comprises a number of different buildings.</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>Amended plans and the recommended conditions ensure the retention of additional building fabric so that each individual building can be recognised internally.</p>

Heritage Committee Recommendations	Response
<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.</p> <p>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>
<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>	<p>Additional documentation has been submitted and reviewed since the Heritage Committee provided their report. This includes:</p>

Heritage Committee Recommendations	Response
<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; - A heritage impact statement; - A heritage interpretation strategy. 	<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

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.

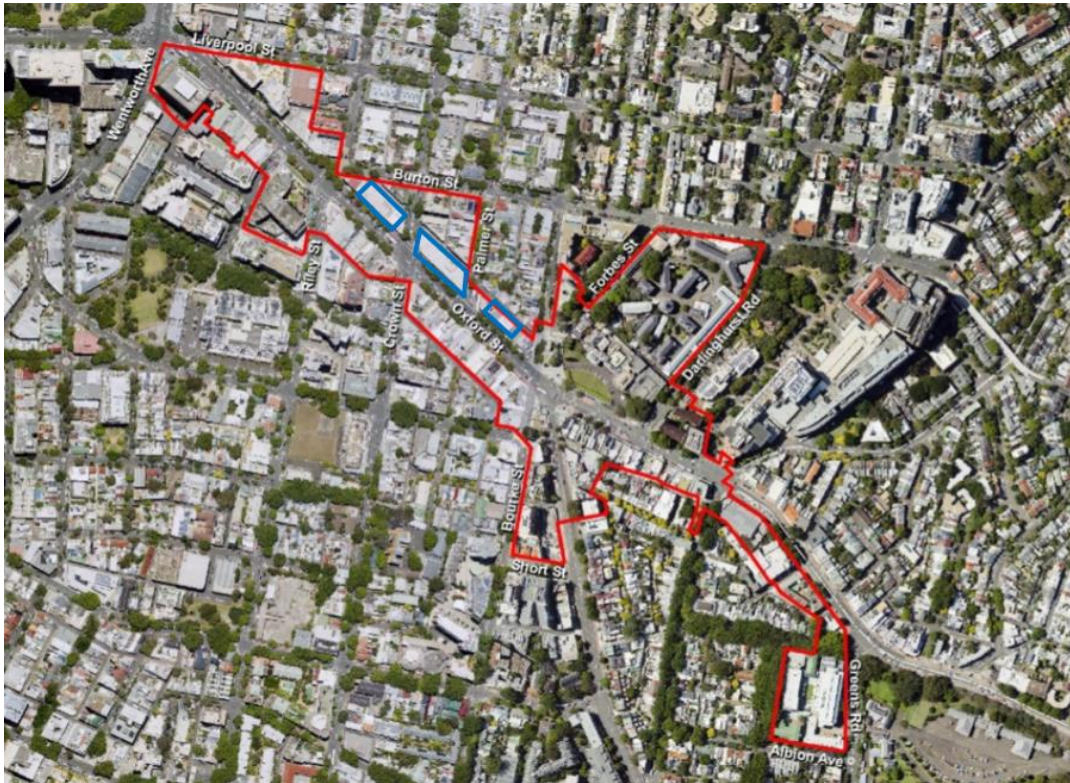


Figure 9: The Oxford Street Cultural and Creative Precinct (red) and sites (blue)

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 height 24 metres for Group 3.
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% 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 3 is 21.9 metres and complies with the 24 metre control.
58. 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.

Clause 4.6 Request to vary a Development Standard

59. The site is subject to a maximum height of buildings control of 15 metres under the Sydney LEP 2012. The proposed development has a height of up to 21.9 metres.
60. Details of the non-compliance with the 15 metre height control are shown in the figures provided below.



Figure 10: Existing height planes of Groups 1-3, shown in red, viewed from Oxford Street and Foley Street



Figure 11: Elevation drawings of Group 3 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)

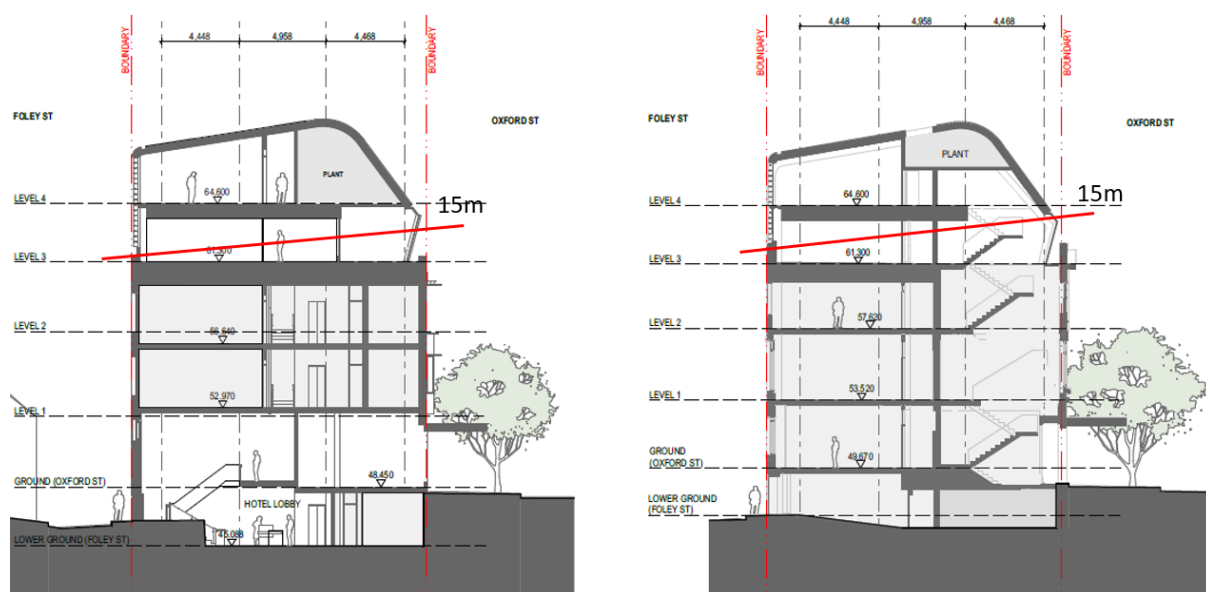


Figure 12: Sections through Group 3. The red lines indicate the current Sydney LEP 2012 height control.

61. 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)

62. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the height of buildings development standard are achieved notwithstanding the non-compliance, as follows:
 - (i) The new contemporary additions will necessitate a variation to the height of buildings standard, but are appropriate to the condition of the site and its context as they contribute to the variety of buildings heights in the Oxford Street precinct, and do not disrupt the reading of the existing datum line along Oxford Street set by the existing heritage listed buildings on the site.
 - (ii) The setback and sculptured additions on the rooftop of the heritage buildings ensure that the existing datum along Oxford Street remains legible in the streetscape, with a transition of height from the street frontage to the new additions setback from the street. The new additions are also setback and scaled in height at either end of Group 3, resulting in a transition in height when viewing the additions from the east or west along Oxford Street.
 - (iii) The submitted view study illustrates that the rooftop additions sit well within the context of Oxford Street when viewed from key vantage points along the ground plane.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The new additions are appropriate to the site and are in keeping with the broader context of Oxford Street. The Oxford Street precinct provides a diverse and eclectic array of building forms and heights, and it is further anticipated that this context will evolve as Council seeks to make changes to the existing regulatory framework to encourage a creative and cultural precinct around Oxford Street as identified in the City of Sydney Local Strategic Planning Statement (City Plan 2036). The proposal will contribute to this built form diversity through appropriately scaled and massed building additions at a maximum height consistent with the spread of heights along Oxford Street, and likely consistent with the prevailing built form opportunities arising from changes to encourage cultural and creative floor space within the precinct.
 - (ii) The adaptive re-use of the existing buildings and the new hotel rooms delivered through the height variation will assist in creating a tourism destination and vibrant area for people to visit during the day and enjoy after dark and on weekends as a premier locality for food, drink and entertainment.

- (iii) The proposed development is consistent with the draft site-specific height of buildings development standard proposed in the Oxford Street Creative and Cultural Precinct planning proposal. The proposal's consistency with this draft amendment to the Sydney LEP 2012 is a relevant environmental planning ground as the consent authority must take into consideration the provisions of any proposed instrument that is or has been the subject of public consultation under the 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 tourist and visitor floor space and tourist requirements and expectations of Darlinghurst.
 - (viii) The proposed development does not cause significant additional environmental impact which would render it incompatible with its surrounding land uses and ensures the proposal is appropriate for the site context.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The proposal provides a range of cultural/creative, food and beverage, retail, and hotel uses which will directly services the needs of the community who live, work, and visit the Oxford Street precinct.
 - (ii) The proposal seeks to deliver increased employment opportunities across a range of job types, with the mix of cultural/creative, food and beverage, retail, and hotel space providing a variety of employment opportunities.
 - (iii) The proposed inclusion of the height variation will facilitate new visitor accommodation in a location well-served by public transport.
 - (iv) The proposal does not include residential uses, consistent with the continuation of the historic non-residential uses on the site.
- (d) The proposed development will be 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)

63. 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)?

64. The applicant's written request adequately addresses the matters required for demonstration by Clause 4.6(3)(a) and (b) of Sydney LEP 2012.
65. A detailed discussion regarding the objectives of the height of buildings development standard has been provided and satisfies the test under Clause 4.6(3)(a), such that compliance with the standard is considered to be both unreasonable and unnecessary, to the extent of the variations proposed.
66. 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?

67. 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.
68. 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 800m from the Museum railway station and close to multiple bus stops. The location and accessibility and the connection between the public domain and the subject development creates a highly permeable access arrangement which promotes pedestrian movement.

Conclusion

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.
70. 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

71. 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% of the total GFA of the development is provided for cultural and creative uses.
72. 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.
73. The draft DCP outlines that there was no cultural and creative floor space within Group 3 as at 10 September 2021 (when the planning proposal commenced exhibition).
74. A summary of the existing and required cultural and creative floor space is outlined in the table below.

	Existing	10% Required	Total Required
Group 3	0sqm	242sqm	242sqm

75. The floor plans indicate 2.95% (63.4 square metres) of the GFA has been provided for cultural and creative uses. This would result in a significant reduction below the requirement for 10% of GFA for 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.
76. A condition is recommended that 10% 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.
77. 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

78. 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".
79. The draft DCP permits additions to have a nil setback to Foley Street.
80. 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.
81. A 500mm-550mm upper level setback is proposed from Oxford Street which does not comply. It is noted that the proposed height is currently 21.9 metres, which is below the 24 metre draft control, and this results in a proposed massing that is significantly smaller than a compliant building envelope.
82. The applicant has explored the option of providing a compliant 3 metre setback and repositioning the floor space to within an alternative built form. The alternative built form would increase the height of the proposal to utilise the full 24 metre draft control.
83. Setback analysis has been outlined in the figures below, and these provide comparisons between the proposed development and the alternative built form.
84. The increased alternative built form is considered to result in an undesirable streetscape outcome. The modelling provided by the applicant has demonstrated that the proposed scheme with a lower height and 500mm-550mm setback is a superior design strategy in comparison to a scheme that maximised the height and was compliant with the setback control. Therefore the proposed non-compliance is acceptable.
85. 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.

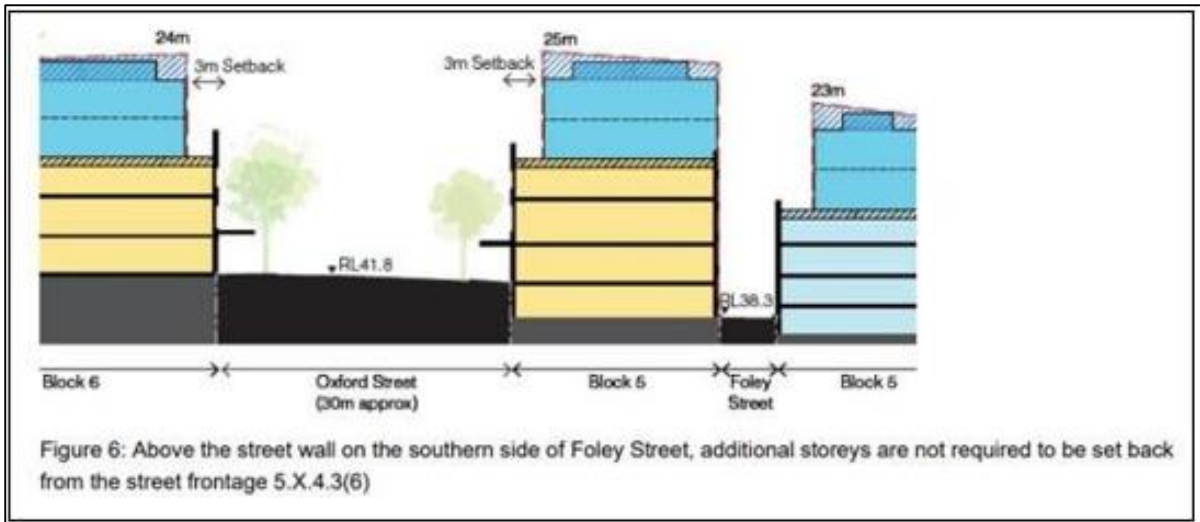


Figure 13: Image from the draft DCP indicating required setbacks (this image relates to Group 1)

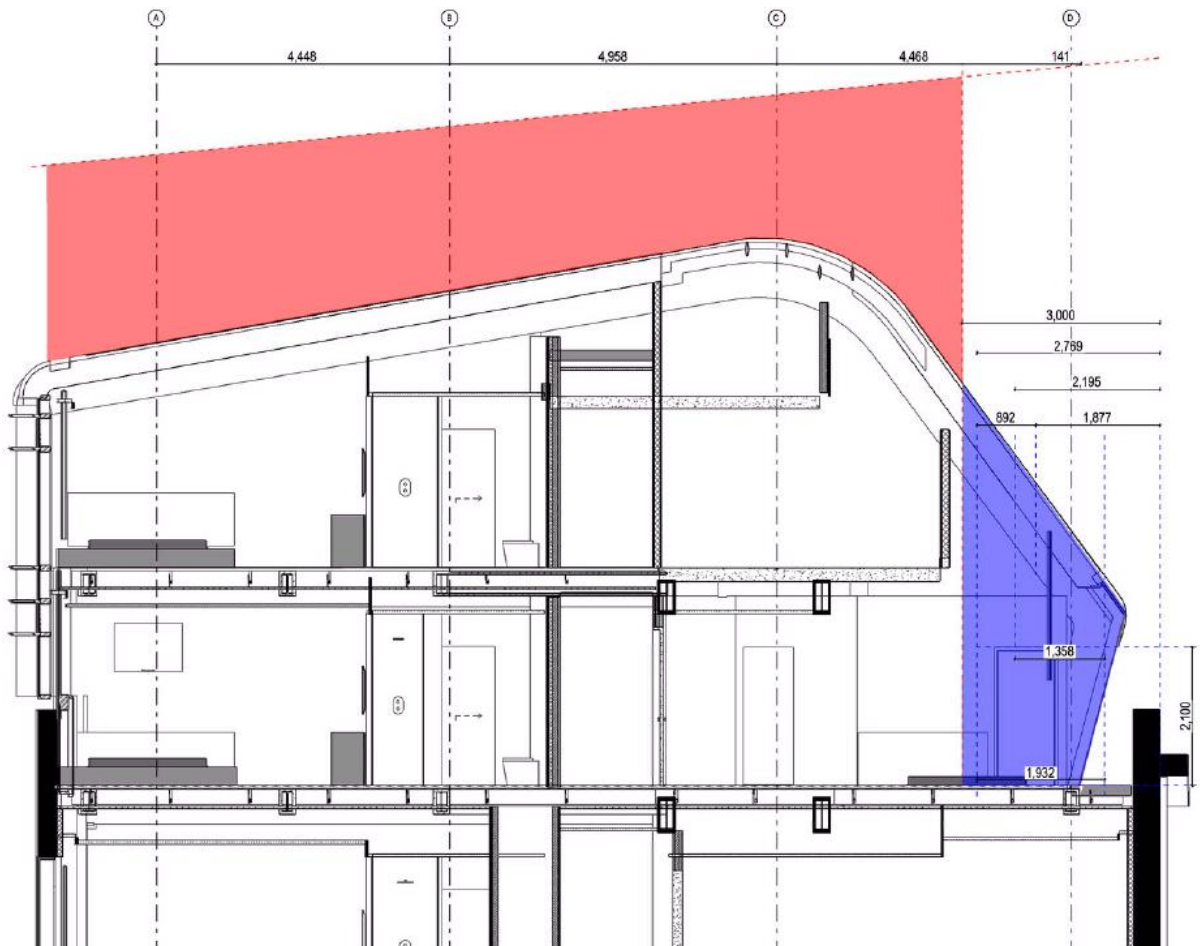


Figure 14: A typical setback for Group 3, with the area of setback non-compliance shown in purple, and the maximum draft height shown in red

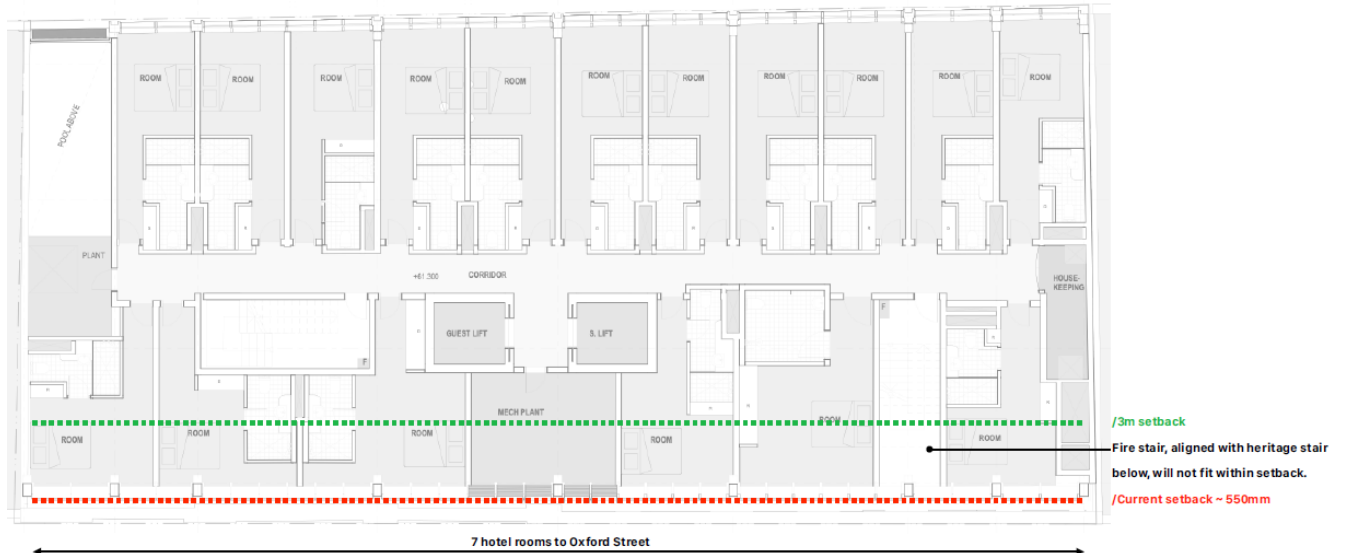


Figure 15: Setback analysis - proposed Level 3 plan. The red line indicates the proposed setback and the green line indicates the 3 metre setback.



Figure 16: Setback analysis - alternative Level 3 plan. The red line indicates the proposed setback and the green line indicates the 3 metre setback.



Figure 17: Setback analysis - alternative Level 4 plan. The green line indicates the 3 metre setback.

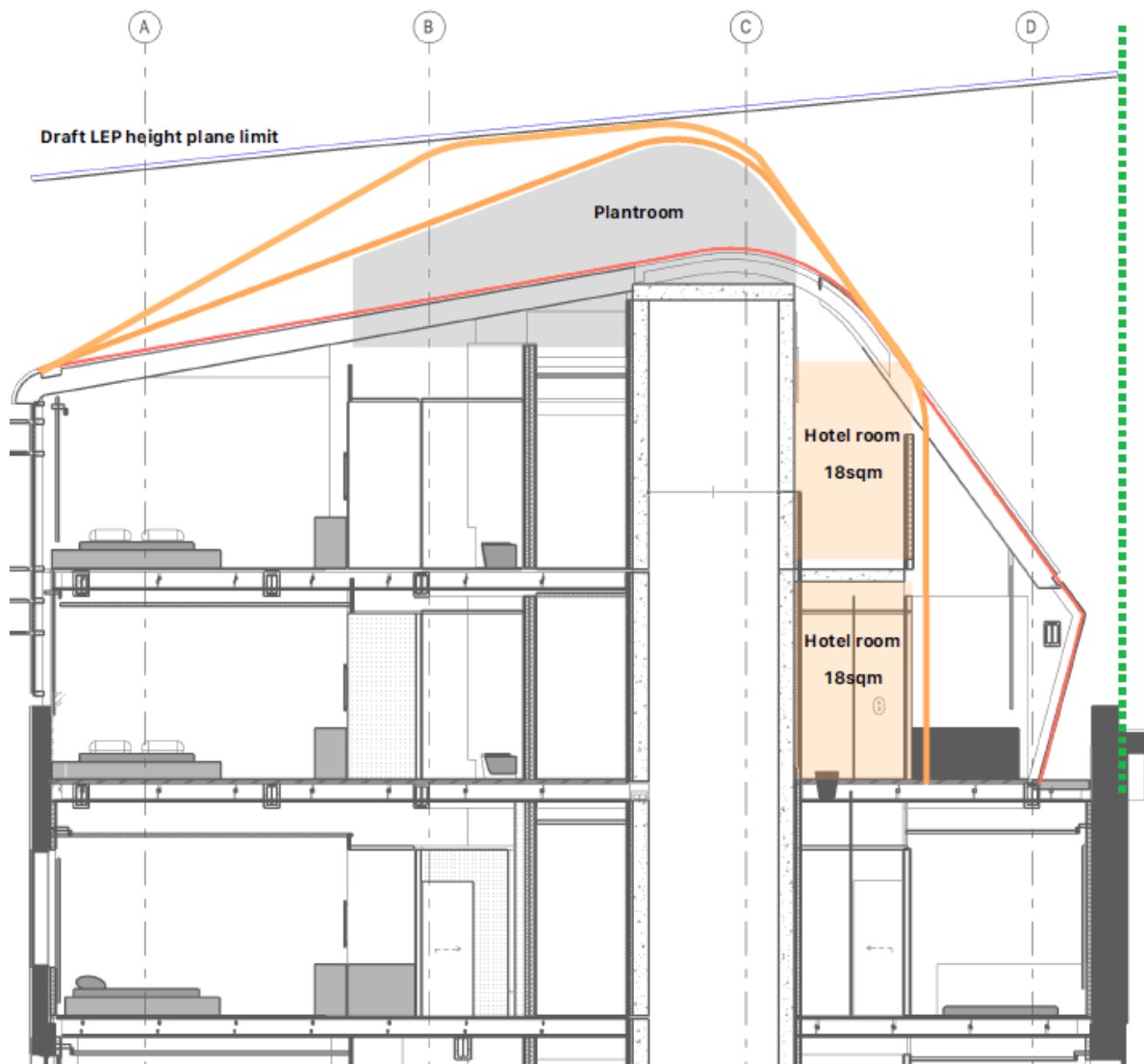


Figure 18: Group 3 setback analysis, with proposed envelope (red), and alternative setback and height compliant envelope (orange). The green line is the site boundary and the blue line is the draft LEP 24 metres height control.



Figure 19: The current proposal shown with the draft DCP maximum envelope overlay (grey wireframe)



Figure 20: The alternative roof form shown with the draft DCP maximum envelope overlay (grey wireframe)



Figure 21: The current proposal shown with the draft DCP maximum envelope overlay (grey wireframe)



Figure 22: The alternative roof form shown with the draft DCP maximum envelope overlay (grey wireframe)

View sharing

86. 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.
87. 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.
88. 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.

89. It is noted that the impacts to 80 Oxford Street, 107-111 Oxford Street and 302 Crown Street are discussed in the Planning Report for D/2020/1071.



Figure 23: Group 1 and 2 (blue), Group 3, the subject site (purple), and objectors with view loss concerns (red)

90. 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".
91. 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".
92. The applicant submitted a view loss study to analyse the view sharing impacts of the proposal. An amended view loss study (included in Attachment G) was submitted with the amended proposal.

93. 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.)

94. 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.
95. An assessment against the four steps for each property is outlined below.

130-132 Oxford Street

96. 130-132 Oxford Street is located 17 metres to the east of Group 3.
- (a) Views to be affected: Views of the city skyline.
 - (b) Part of property viewed from: Views are from a communal roof terrace to hotel below.
 - (c) Extent of impact: The City skyline is obstructed. Views to the Sydney Harbour Bridge are retained from some vantage points of the roof terrace.
 - (d) Reasonableness: The views are obtained directly over the side boundary towards Group 3, and accordingly views are more difficult to retain with any increase in height of the subject site. It is also noted that 130-132 Oxford Street also benefits from an alternative height of buildings control under the exhibited planning proposal. In the above context, the view impacts of the proposal are reasonable in this instance.



Figure 24: Views from roof terrace of 130-132 Oxford Street (note the proposed overlay was provided by the objector)

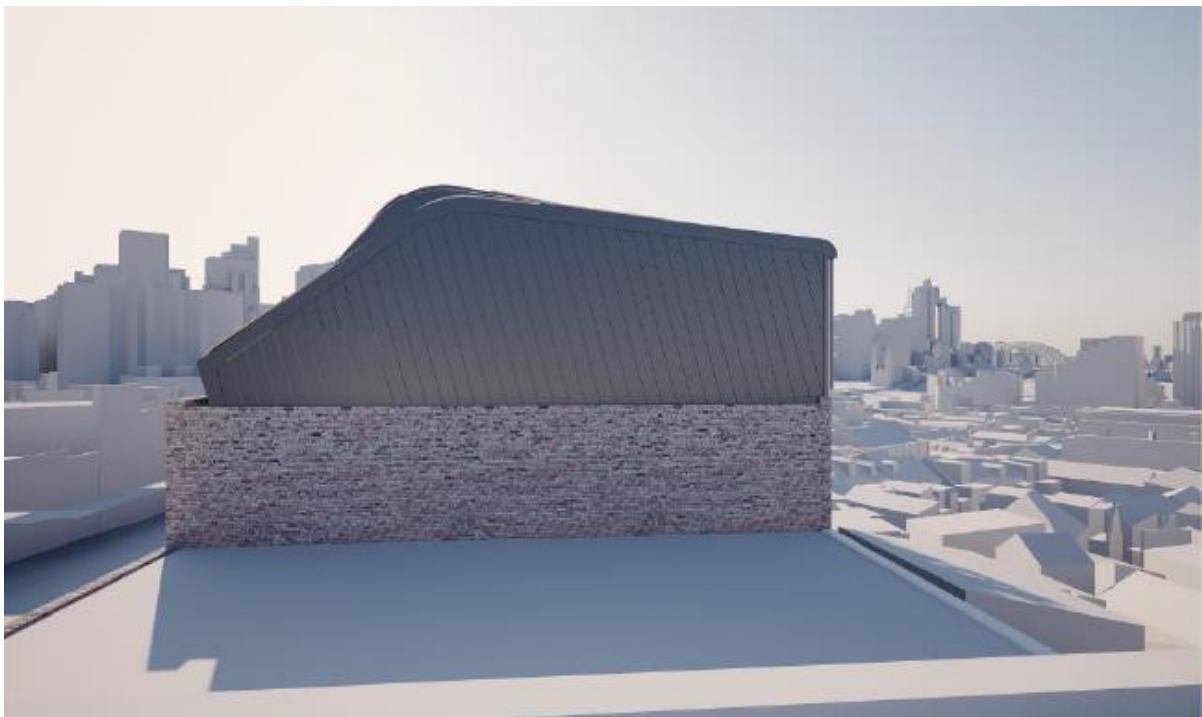


Figure 25: Modelling from applicant's view loss study, as viewed from roof terrace of 130-132 Oxford Street

200 Campbell Street

97. 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 exhibited planning proposal. In the above context, the view impacts of the proposal are reasonable in this instance.



Figure 26: Existing views from Unit 402 of 200 Campbell Street



Figure 27: Existing views from Unit 602 of 200 Campbell Street



Figure 28: Existing views from Unit 602 of 200 Campbell Street

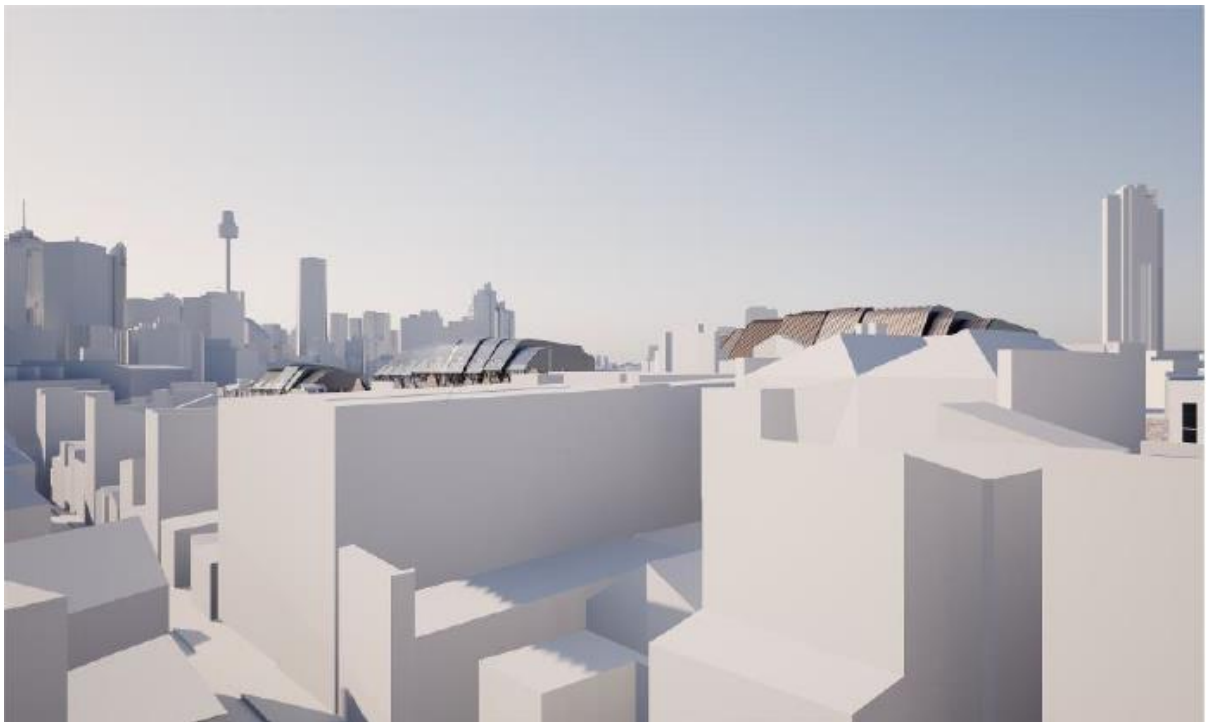


Figure 29: Modelling from applicant's view loss study, as viewed from Level 4 of 200 Campbell Street



Figure 30: Modelling from applicant's view loss study, as viewed from Level 5 of 200 Campbell Street



Figure 31: Modelling from applicant's view loss study, as viewed from Level 6 of 200 Campbell Street



Figure 32: Modelling from applicant's view loss study, as viewed from Level 7 of 200 Campbell Street

View sharing - Conclusion

98. The proposed additions will be visible from a number of adjoining buildings to varying degrees.
99. The view sharing assessment found that the protection of views from adjoining properties is not reasonable in this instance.
100. 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) 130-132 Oxford Street retaining views towards Sydney Harbour Bridge;
 - (ii) 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 exhibited 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.

101. 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

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

Advertising and Notification

103. 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.
104. A total of 436 properties were notified and 31 submissions were received, with 1 in support and 30 objections.
105. The amended proposal was not required to be re-notified in accordance with the City of Sydney Community Participation Plan 2020, as the amendments do not result in significant additional environmental impacts.
106. Discussion relating to issues raised in submissions is outlined in the previous Planning Report at Attachment D.

Financial Contributions

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

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

Relevant Legislation

109. Environmental Planning and Assessment Act, 1979.
110. Conveyancing Act, 1919.

Conclusion

111. The proposal seeks consent for the alterations and additions to existing buildings at 110-122 Oxford Street (Group 3) as a mixed use development and associated alterations and additions with signage strategy. The proposed 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.

112. 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.
113. The proposal was reviewed by the Design Advisory Panel who provided their support in principal for the proposal and amended plans have been submitted to address their recommendations.
114. 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.
115. 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.
116. 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.
117. 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.
118. 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.
119. 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.

120. 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.
121. Deferred commencement conditions are recommended to enable the VPA to be exhibited, executed, and registered on title, and requiring the final structural solution to be submitted.

ANDREW THOMAS

Executive Manager Planning and Development

Matthew Girvan, Area Coordinator