

Item 3.**Development Application: 227 Victoria Street, Darlinghurst - D/2021/1538****File No.: D/2021/1538****Summary**

Date of Submission:	29 December 2021
Applicant:	Authority Presents Pty Ltd
Architect/Designer:	Authority Creative
Developer:	Top of the Town (Strata Plan No 70059) and Gucci
Owner:	The Owners - Strata Plan No 70059
Planning Consultant:	Authority Creative
Heritage Consultant:	GML Heritage
Cost of Works:	\$143,000
Permissibility:	<p>The site is located in the B4 Mixed Use zone. The proposed development is defined as an advertisement which is permissible with consent in the zone.</p> <p>However, the proposed advertisement is prohibited under Clause 3.8 of the State Environmental Planning Policy (Industry and Employment) 2021 as it is located within a heritage area.</p>
Proposal Summary:	<p>Development consent is sought for the display of an advertisement of approximately 640sqm in size on the northern wall of the existing building changing every 12 weeks for a period of 24 months. The application is described by the applicant as 'an evolving hand-painted mural' and is part of the Gucci 'Art Walls' series.</p> <p>The proposal is inconsistent with a number of planning controls under Chapter 3 (Advertising and Signage) of the State Environmental Planning Policy (Industry and Employment) 2021, including being prohibited under Clause 3.8 of the SEPP as it is display of an advertisement in a heritage area.</p>

A Clause 4.6 request for an exception to the wall advertisements development standard under Clause 3.20 of the SEPP has been submitted. The development standard requires that the wall advertisement does not exceed 10 per cent of the elevation. The proposed advertisement is 100 per cent of the elevation and results in a 900 per cent departure of the development standard.

The proposal is inconsistent with Clause 5.10 (Heritage Conservation) and 6.21C (Design Excellence) of the Sydney Local Environmental Plan 2012.

The proposal is inconsistent with Sections 3.9 (Heritage) and 3.16 (Signs and Advertisements) of the Sydney Development Control Plan 2012.

The application was notified for 21 days. A total of seven submissions were received (five objections and two submissions in support). The issues raised include visual pollution and the inappropriate location.

The application has been referred to the Local Planning Panel for determination as it results in the departure from development standards that exceeds 10 per cent.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Industry and Employment) 2021
- (iv) SEPP (Biodiversity and Conservation) 2021

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request - Wall Advertisements

Recommendation

It is resolved that consent be refused for Development Application No. D/2021/1538 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) The proposal is prohibited under Clause 3.8 (advertising and signage) of the State Environmental Planning Policy (Industry and Employment) 2021.
- (B) Notwithstanding that the development is prohibited, the proposal is inconsistent with the wall advertisements development standard under Clause 3.20 of the State Environmental Planning Policy (Industry and Employment) 2021, resulting in a 900 per cent non-compliance with the standard. The submitted Clause 4.6 request for an exception to the development standard has not adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney Local Environmental Plan 2012.
- (C) Notwithstanding that the development is prohibited, the proposal is inconsistent with Clause 3.11 of the State Environmental Planning Policy (Industry and Employment) 2021 as no public benefits are provided in connection with the display of the advertisement.
- (D) Notwithstanding that the development is prohibited, the proposal is inconsistent with Clause 3.15(2), of the State Environmental Planning Policy (Industry and Employment) 2021, pertaining to assessment criteria. The proposal is not acceptable in terms of its impacts when assessed against the assessment criteria in Schedule 5.
- (E) The proposal results in an adverse heritage impact on the heritage conservation area and to the heritage item in the vicinity, being Darlinghurst Fire Station, and is inconsistent with Clause 5.10 of the Sydney Local Environmental Plan 2012 and Section 3.9 of the Sydney Development Control Plan 2012.
- (F) The proposal has not demonstrated design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012.
- (G) The proposal is inconsistent with the objectives and provisions of Sections 3.16.1, 3.16.3, 3.16.7, 3.16.11, 3.16.12 of the Sydney Development Control Plan 2012 relating to signage.
- (H) The proposal is not in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP1049625 (Strata Plan 70059), known as 227 Victoria Road Darlinghurst. It is irregular in shape with area of approximately 921.3sqm. It has a primary street frontage to Victoria Street to the east and a secondary street frontage to Darlinghurst Road to the west. The site is located close to the intersection of Victoria Street and Darlinghurst Road with William Street and Craighend Street.
2. The site contains an 18-storey mixed use building with retail at ground level, commercial at first floor and residential above. The building is known as "Top of the Town". The northern face of the building currently includes an existing artwork known as 'As One Door Closes, Another Opens' which has been installed for a temporary period of 16 months as public art.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial. Victoria Street and Darlinghurst Road consists of primarily commercial food and drink premises at street level.
4. The site is not a heritage item. It is located within the Oxford Street and Victoria Street heritage conservation area (C12) under the Sydney Local Environmental Plan 2012. The site is identified as a detracting building under the Sydney Development Control Plan 2012.
5. The site is located to the south and forms a backdrop to a heritage item located on the corner of Victoria Street and Darlinghurst Road. This is the Darlinghurst Fire Station including interior (I278) located at 100-102 Darlinghurst Road.
6. The site is near an advertising sign facing William Street at 169-173 Darlinghurst Road, this was approved in 1977 (reference DA 497/77).
7. The site is located within the Darlinghurst West locality.
8. A site visit was carried out on 27 June 2022. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds, with the northern wall indicated in red



Figure 2: Site viewed from the intersection of William Street, Darlinghurst Road and Victoria Street, including the Darlinghurst fire station



Figure 3: Site viewed from Victoria Street, displaying an existing artwork known as 'As One Door Closes, Another Opens'



Figure 4: Site viewed from Darlinghurst Road



Figure 5: Site viewed from the intersection of William Street, Darlinghurst Road and Victoria Street



Figure 6: Advertisements displayed on buildings in William Street



Figure 7: Site as viewed prior to the existing artwork being displayed

History Relevant to the Development Application

Development Applications

9. The following applications are relevant to the current proposal:

- **D/1999/1396** – Deferred commencement consent was granted on 22 March 2000 by South Sydney Council for the conversion of a hotel into a residential flat building (95 units) including additional floors and new retail space. The consent was subsequently modified, however the modifications do not relate to the subject of this development application.
- **D/2021/472** – Development consent was granted on 27 May 2021 for a temporary mural artwork to the north elevation. Condition 2 (Temporary Artwork) permitted the artwork to be displayed until 1 October 2021. Prior to the development application being lodged the artist had pre-DA consultation with Council's Public Art team, and the artwork 'As One Door Closes, Another Opens' by Will Cooke was considered by the Public Art Advisory Panel (PAAP) and supported by the Panel.

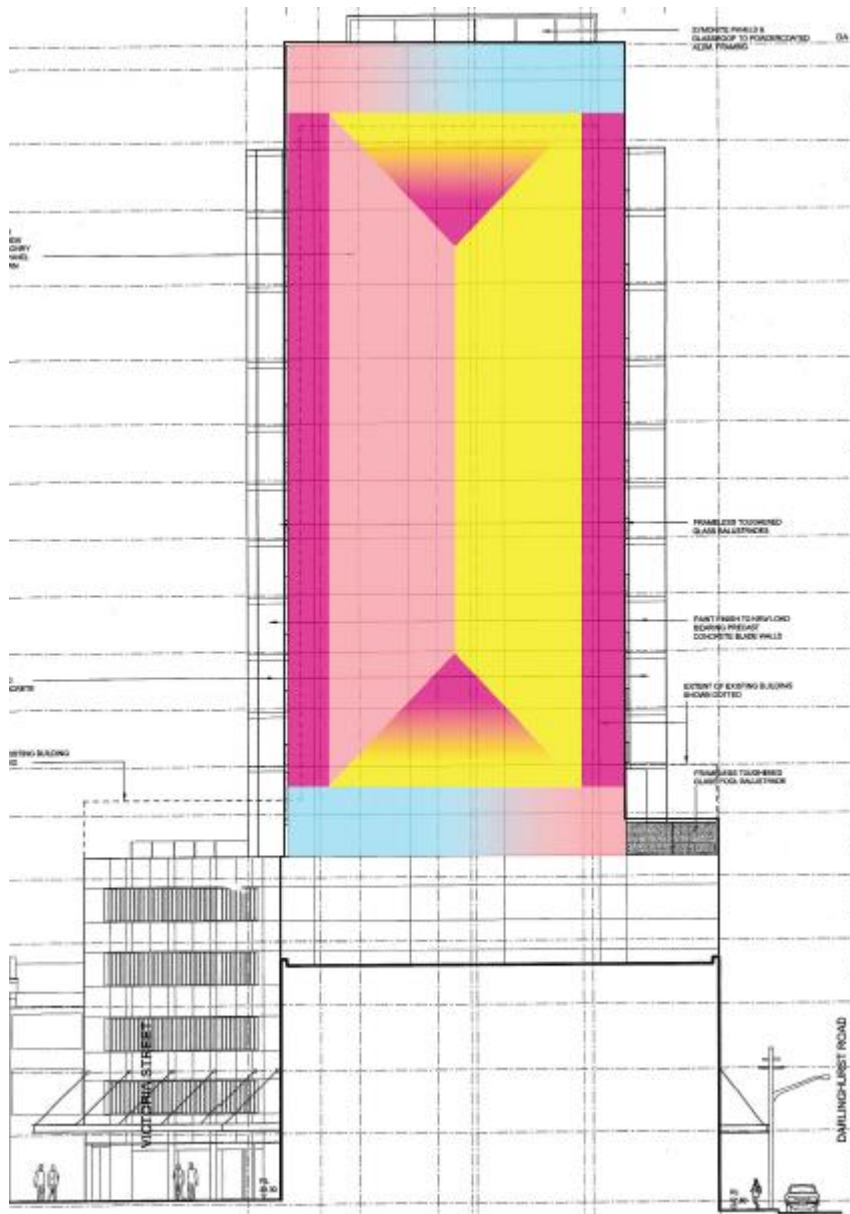


Figure 8: Approved temporary artwork under D/2021/472

- **D/2021/472/A** – The development consent for a temporary mural artwork (artwork 'As One Door Closes, Another Opens' by Will Cooke) to the north elevation was modified on 7 October 2021 to amend Condition 2 (Temporary Artwork) to increase the period of time for which the artwork can be displayed from 1 October 2021 to 30 September 2022. Condition 2 requires that the artwork be removed after that time.
- 169-173 Darlinghurst Road has an approved advertising sign facing William Street, as shown in Figures 2, 5, 6 and 7 above.
 - This was approved in 1977 (reference DA 497/77) prior to the introduction of SEPP 64 in 2001, when advertising signage became prohibited within the heritage conservation area.
 - D/2011/2123 on 9 January 2013 consent was granted for replacement of existing roof top sign on the northern elevation with electronic LED static digital display sign.
 - D/2022/911 proposes removal of the existing LED panel containing digital advertising signage and installation of a new LED panel containing digital advertising signage. This development application was lodged on 5 September 2022 and is under assessment.

Compliance Action

10. The site is subject of a recent history relating to the display of unauthorised advertisements.
11. The site is subject to an ongoing compliance action relating the unauthorised display of an advertisement for Australian Avocados. The defendant, 'Apparition Media' pled guilty in court on 31 October 2022. It is listed for sentencing at the Downing Centre Local Court on 21 November 2022.
12. An unauthorised advertisement showing Nicole Kidman advertising a television show on 'Binge' was previously displayed on the wall. These images are shown below.



Figures 9 and 10: The unauthorised display of an advertisement for Australian Avocados, and the unauthorised display of an advertisement showing an image of Nicole Kidman for a television show on 'Binge' streaming service

Amendments

13. Following a preliminary assessment of the proposed development by Council Officers, a request for withdrawal of the application was sent to the applicant on 22 February 2022 as the proposal is prohibited. A meeting was held with the applicant and their clients on 7 April 2022.
14. The applicant responded to the request on 19 May 2022, and advised that the application would not be withdrawn.

Proposed Development

15. The application seeks consent for the display of an advertisement, and includes the following:
 - the advertisement is described by the applicant as 'An evolving hand-painted mural' and is part of the Gucci 'Art Walls' series;
 - located on the northern facade of the upper 13 storeys of the building, approximately 40 metres high by 16 metres wide (640 square metres);

- changing every 12 weeks over a maximum of 24 months (amounting to eight advertisements over the 24 month period);
- the applicant has advised that each mural occurs all over the world alongside the release of each Gucci collection;
- the words "Gucci" to be displayed;
- examples of the advertisement have been provided, as shown below, however the exact content of the eight advertisements has not been provided; and
- the Plan of Management states that no more than five per cent of the total "artwork" area will contain corporate markings, logos, or branding.

16. Elevations of the proposed development are provided below.

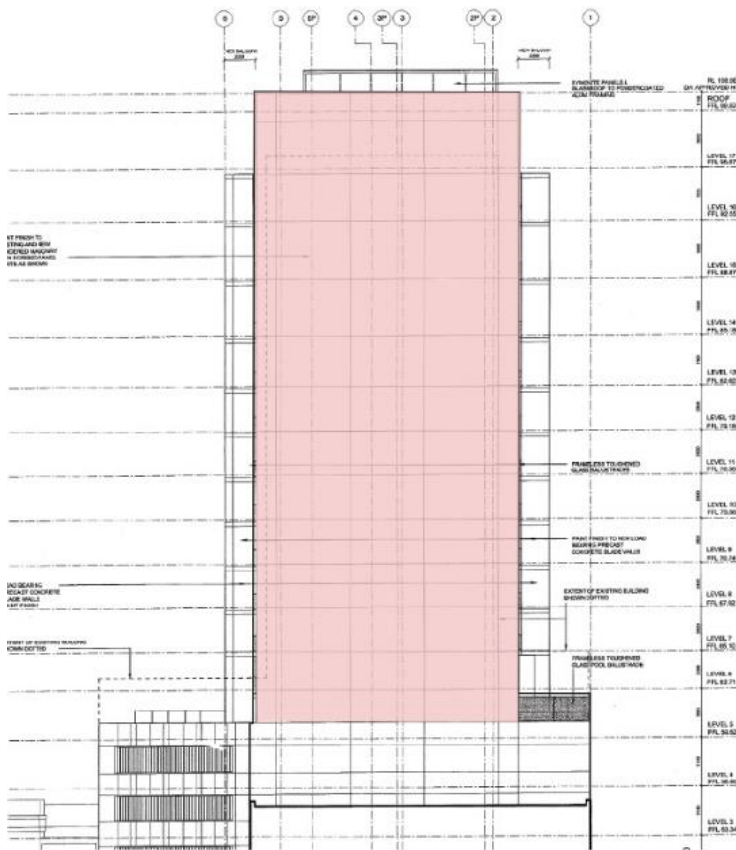


Figure 11: Elevation showing the proposed advertisement area

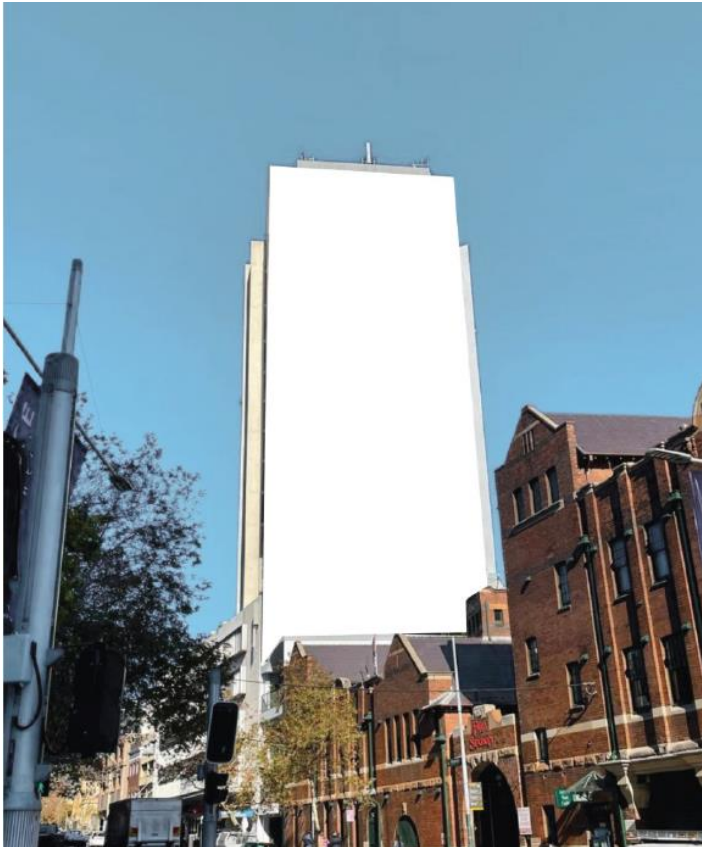


Figure 12: The proposed location of the advertisement



Figure 13: Proposed photomontage showing examples on other buildings



Figure 14: Proposed photomontage showing examples on other buildings



Figure 15: Proposed photomontage showing examples on other buildings

Assessment

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

State Environmental Planning Policies

State Environmental Planning Policy (Industry and Employment) 2021 – Chapter 3 Advertising and Signage

18. The aim of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage is to ensure that signage (including advertising) is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.
19. An advertisement is defined as a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water. The proposal is defined as an advertisement.
20. As discussed below, the proposal does not comply with a number of provisions of the SEPP and is not consistent with the aims of Chapter 3 of the SEPP.

Clause 3.1 Preliminary

21. It is noted that Part 3.1, Clause 3.1(2) states that this Chapter does not regulate the content of signage and does not require consent for a change in the content of signage. This means that the content of the proposed advertisement cannot be regulated.

Clause 3.8 Prohibited advertisements

22. Part 3.3 Division 1 Clause 3.8 of the SEPP prohibits the display of an advertisement in a heritage area. The site is located within the heritage conservation area and therefore the display of an advertisement is prohibited. As the proposal is prohibited the application is recommended for refusal.

Clause 3.11 Matters for Consideration

23. Part 3.3 Division 3 Clause 3.11 of the SEPP outlines matters for consideration for the consent authority to be satisfied of prior to granting consent.
24. The site is greater than 20 square metres and within 250 metres of, and visible from, a classified road, being William Street. Therefore Clause 3.16 applies, and in accordance with Clause 3.11(2)(b)(iii) the consent authority must be satisfied that the proposal is acceptable in terms of the public benefits to be provided in connection with the display of an advertisement. Additionally, in accordance with Clause 3.11(3) the consent authority must not grant consent unless arrangements that are consistent with the Guidelines have been entered into for the provision of the public benefits to be provided in connection with the display of the advertisement.
25. The applicant has not proposed that public benefits be provided and have not submitted a Public Benefit Offer in association with the application. Therefore, consent cannot be granted.

Clause 3.15 Advertisements with display area greater than 20 square metres or higher than 8 metres above ground

26. Part 3.3 Division 3 Clause 3.15 of the SEPP applies to an advertisement that has a display area greater than 20 square metres or that is higher than 8 metres above the ground. The proposed advertisement is approximately 640 square metres in size and is higher than 8 metres above the ground and the clause applies.
27. Clause 3.15(2) states that the consent authority must not grant consent to an application to display an advertisement to which this section applies unless:
- (a) the applicant has provided the consent authority with an impact statement that addresses the assessment criteria in Schedule 5 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and
 - (b) the consent authority gave a copy of the application to Transport for NSW (TfNSW) before the application is exhibited if the application is an application for the display of an advertisement to which section 3.16 applies.
28. The proposed signage has been considered against the objectives of the policy and an assessment against the provisions within the assessment criteria set out in Schedule 5 of the SEPP is provided in the table below.

Provision	Compliance	Comment
1. Character of the area	No	The sign is located within a heritage conservation area. The proposal to display an advertisement is not compatible with the existing or desired future character of the area and is prohibited within the heritage conservation area.
2. Special areas	No	The site is located within a heritage conservation area. The City's Heritage Specialist has advised that the proposal will detract from the visual quality of the heritage conservation area, as the Darlinghurst Fire Station is more prominent against the neutral white backdrop, which blends into a cloudy sky above. Whilst public art is currently displayed on the side wall, this is approved on a temporary basis and provides a social benefit.

Provision	Compliance	Comment
3. Views and vistas	No	The advertisement is 13 storeys in height and will dominate the skyline and reduce the quality vistas. The proposed advertisement does not obscure or compromise any important views or impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	No	The proposal creates additional visual clutter.
5. Site and building	No	The advertisement is not consistent with the maximum provisions for wall advertisements and is of an inappropriate scale and proportion that will dominate the building.
6. Associated devices and logos	Not applicable	No safety devices, platforms, lighting devices or logos have been proposed.
7. Illumination	Not applicable	No illumination is proposed.
8. Safety	Yes	The proposed advertisement will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

29. As outlined above, the proposal results in a number of non-compliances with the assessment criteria specified in Schedule 5 of the SEPP. It is recommended that the development application be refused.

Clause 3.16 Advertisements greater than 20 square metres and within 250 metres of, and visible from, a classified road

30. Clause 3.16(2) states that the consent authority must not grant development consent to the display of an advertisement to which this section applies without the concurrence of TfNSW. The site is within 250 metres of, and visible from, William Street, which is a classified road.

31. TfNSW has granted its concurrence.

Clause 3.17 Advertising display area greater than 45 square metres

32. The consent authority must not grant consent to the display of an advertisement with an advertising display area greater than 45 square metres unless a development control plan is in force that has been prepared on the basis of an advertising design analysis for the relevant area or precinct.
33. The advertising display area is approximately 640 square metres and the clause applies.
34. The Sydney Development Control Plan 2012 is the DCP in force for the site. As the site is in a heritage conservation area and is prohibited development, an advertising design analysis for the relevant area or precinct had not been prepared in the preparation of this DCP. Therefore, the consent authority must not grant consent.

Clause 3.20 Wall advertisements

35. The consent authority may grant consent to a wall advertisement only if, for a building with an above ground elevation of 200 square metres or more, the advertisement does not exceed 10 per cent of the above ground elevation.
36. The application proposes that the advertisement is 100 per cent of the northern wall of the building above the podium. A Clause 4.6 request to vary the development standard has been submitted and is discussed further under the 'Discussion' heading below.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment

37. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
38. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

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

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B4 Mixed Use zone. The proposed development is defined as an advertisement which is permissible with consent in the zone.

Provision	Compliance	Comment
		However, as discussed elsewhere in the report, the proposed advertisement is prohibited in accordance with Clause 3.8 of the SEPP (Industry and Employment) 2021 as the site is located within a conservation area.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	N/A	<p>A maximum building height of 30m is permitted.</p> <p>The existing building exceeds the maximum building height and the northern wall of the existing building has a height of approximately 57.09m.</p> <p>The proposed advertisement is to the northern wall of the existing building and does not alter the height of the building or the nature or extent of the exceedance of the development standard.</p>
4.4 Floor space ratio	N/A	<p>A maximum floor space ratio of 11:1 is permitted.</p> <p>The proposed development does not result in a change to the FSR of the building.</p>
4.6 Exceptions to development standards	No	<p>The proposed development seeks to vary the development standard prescribed under Clause 3.20 (Wall Advertisements) of the State Environmental Planning Policy (Industry and Employment) 2021. This outlines that the consent authority may grant consent to a wall advertisement only if, for a building with an above ground elevation of 200 square metres or more, the advertisement does not exceed 10% of the above ground elevation.</p> <p>The application proposes that the advertisement is 100% of the northern wall of the building above the podium.</p> <p>A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is located within the Oxford Street and Victoria Street heritage conservation area (C12) and is a detracting building. It is also within the vicinity of a heritage item being the Darlington Fire Station including interior (I278) located at 100-102 Darlington Road.</p> <p>It has not been demonstrated that the proposed development will not have a detrimental impact on the heritage significance of the heritage conservation area and Darlington Fire Station. The exact content of the various advertisements has not been submitted.</p> <p>Council's Heritage Specialist has advised that the Darlington Fire Station is more prominent against the neutral white backdrop, which blends into a cloudy sky above (as shown in Figure 7). Whilst public art is currently displayed on the side wall, this is only approved on a temporary basis and provides a social benefit to the area.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21C Design excellence	No	<p>The proposal includes an external alteration to an existing building that alters its external appearance.</p> <p>The proposed development does not demonstrate design excellence, as it does not address heritage issues and streetscape constraints as required under Clause 6.21C(2)(d)(iii). The exact content of the various advertisements has not been submitted.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.26 Public art	No	The proposal is not defined as public art under the definition under Clause 7.26 of the LEP. This is discussed further in the 'Discussion' section below.

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

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

Section 2 – Locality Statements

41. The site is located within the Darlinghurst West locality. The DCP requires the development to respond to and complement heritage items and contributory buildings within heritage conservation areas. The SEPP prohibits advertisements in heritage conservation areas.

Section 3 – General Provisions

Provision	Compliance	Comment
3.9 Heritage	No	Refer to the heritage discussion under Clause 5.10 of the LEP above.
3.16.1 Signage strategy	No	The DCP requires that a signage strategy be prepared for all signage applications in a heritage conservation area. A signage strategy has not been submitted for the building.

Provision	Compliance	Comment
3.16.3 General requirements for signage	No	<p>The proposal is inconsistent with:</p> <ul style="list-style-type: none"> • Section 3.16.3(4) as the signage will detract from the heritage conservation area. • Section 3.16.3(5) as the signage will result in unacceptable visual clutter due to the cumulative effect of existing signs in the vicinity • Section 3.16.3(6) which states that signs should allow the main facade of buildings from the first floor to the rooftop or parapet to be uncluttered and generally free of signage.
3.16.7 Advertising structures and third party advertisements	No	<p>Section 3.16.7.1(1) states that, generally, new advertising signage and third party advertisements are not permitted. It also sets out the criteria for exceptional circumstances where advertising signs and third party advertisements are permitted.</p> <p>The proposal is inconsistent with these provisions because:</p> <ul style="list-style-type: none"> • the sign is not advertising a civic or community event in the City of Sydney area • the sign can not be considered as public art in accordance with the City's policies in relation to public art. This is discussed further under the 'Discussion' heading below. • the sign is not consistent with the other provisions for signage under the DCP • the number of existing signs in the vicinity cumulatively create unacceptable visual clutter.

Provision	Compliance	Comment
3.16.11 Signage related to heritage items and conservation areas	No	The work does not comply with Section 3.16.11 (13) of the Sydney DCP 2012 as third party advertisements are not permitted on heritage items or within heritage conservation areas. This site is located within a heritage conservation area so the proposal does not comply.
3.16.12 Signage precincts	N/A	The site is not located in the Darlinghurst Road Kings Cross signage precinct or the William Street signage precinct.

Discussion

Characterisation of development as an advertisement

42. On 21 February 2013, the Department of Planning and Infrastructure released a planning circular (PS 13-001) titled "How to characterise development". The purpose of the Circular is to provide assistance in determining whether a particular development is permitted on land in a specific zone under a Standard Instrument Local Environmental Plan.
43. In order to determine which category a development falls into, consideration must be given to the particular purpose for which the development is being carried out. The Circular explains the terms 'development for a particular purpose', 'ancillary uses' and 'principal purpose'.
44. The submitted development application form and Statement of Environmental Effects describes the development as "a painted mural artwork/ advertisement", "an evolving hand-painted mural" and part of "the Art Walls series".
45. The Sydney LEP 2012 states that an "advertisement" has the same meaning as in the Act. This defines an advertisement as "a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water.
46. The State Environmental Planning Policy (Industry and Employment) 2021 defines:
 - (a) "advertisement" as "signage to which Part 3.3 applies and includes any advertising structure for the advertisement"
 - (b) "product image" as "any words, letters, symbols or images that identify a product or corporate body, but does not include an object to which the words, letters, symbols or images are attached or appended"

- (c) "signage" as "all signs, notices, devices, representations and advertisements that advertise or promote any goods or services or events and any structure of vessel that is principally designed for, or that is used for, the display of signage and includes -
 - (a) building identification signs, and
 - (b) business identification signs, and
 - (c) advertisements to which Part 3.3 applies,but does not include traffic signs or traffic control facilities"
47. Clause 7.26 of the Sydney LEP 2012 defines public art as "an artwork located in a public space".
48. The City of Sydney Public Art Policy includes the following definitions:
- (a) Art - The term "art" is defined as the product of practitioners who intend their work and activities to be seen and read as art. It embraces material and immaterial products and concepts emanating from the imaginative and creative thinking of artists.
 - (b) Public art - The term "public art" is defined in the broadest sense as artistic works or activities accessible to the public. The work may be of a temporary or permanent nature. Located in or part of a public space or facility provided by both the public and private sector, public art also includes the conceptual contribution of an artist to the design of public spaces and facilities.
 - (c) City art - The Public Art Policy and Public Art Strategy, use the term "City Art" to define a new program for public art at the City of Sydney drawing on Sustainable Sydney 2030, embracing permanent and temporary installations and artworks reflecting the changing ways artists and artworks engage with the life of the city, its communities and visitors.
49. In this instance the proposed development is characterised as an advertisement, for the following reasons:
- (a) The proposal is advertising a brand 'Gucci' and the design includes the words 'Gucci'.
 - (b) The images used in the examples provided are associated with the Gucci brand, being a fashion company selling handbags, clothing, footwear, accessories, fragrance and cosmetics.
 - (c) The proposal has been reviewed by Council's Public Art Program Manager who has advised that the proposal is not public art as defined by Council's policies for the reasons outlined in (a) and (b) above.
50. The existing art work on the wall is consistent with the definitions for public art and was granted development consent through D/2021/472. Prior to the development application being lodged the artist had pre-DA consultation with Council's Public Art team, and the artwork 'As One Door Closes, Another Opens' by Will Cooke was considered by the Public Art Advisory Panel (PAAP) and supported by the Panel. The Public Art Advisory Panel has a membership of prominent visual arts professionals.

Prohibition of an advertisement

51. Under Part 3.3 Division 1 Clause 3.8 of the SEPP (Industry and Employment) 2021 an advertisement is prohibited in a heritage area. The site is located within a heritage conservation area and therefore the development is prohibited.
52. The applicant has not submitted any information asserting that existing use rights under the provisions of the Environmental Planning and Assessment Act, and there is no record of any advertisement being approved on the site. Additionally, the applicant has not put forward justification on planning grounds in relation to the prohibition.
53. It is noted that historic photos of the site (as shown below) show that signage has previously been displayed on the side wall of the building. This signage relates to business identification signage relating to hotel, restaurant and garage uses that previously operate on the site. These historic photos do not to overcome the prohibition.
54. It is also noted that there are other advertising signs within the vicinity of the site, including advertising signs associated with Council street furniture that benefit from existing use rights, and billboard advertisements on William Street that were approved prior to the commencement of State Environmental Planning Policies that prohibited advertisements in heritage areas. The site is near an advertising sign facing William Street at 169-173 Darlinghurst Road, this was approved in 1977 (reference DA 497/77) prior to the introduction of SEPP 64 in 2001, when advertising signage became prohibited within the heritage conservation area.



Figure 16: Historic photo showing business identification signage

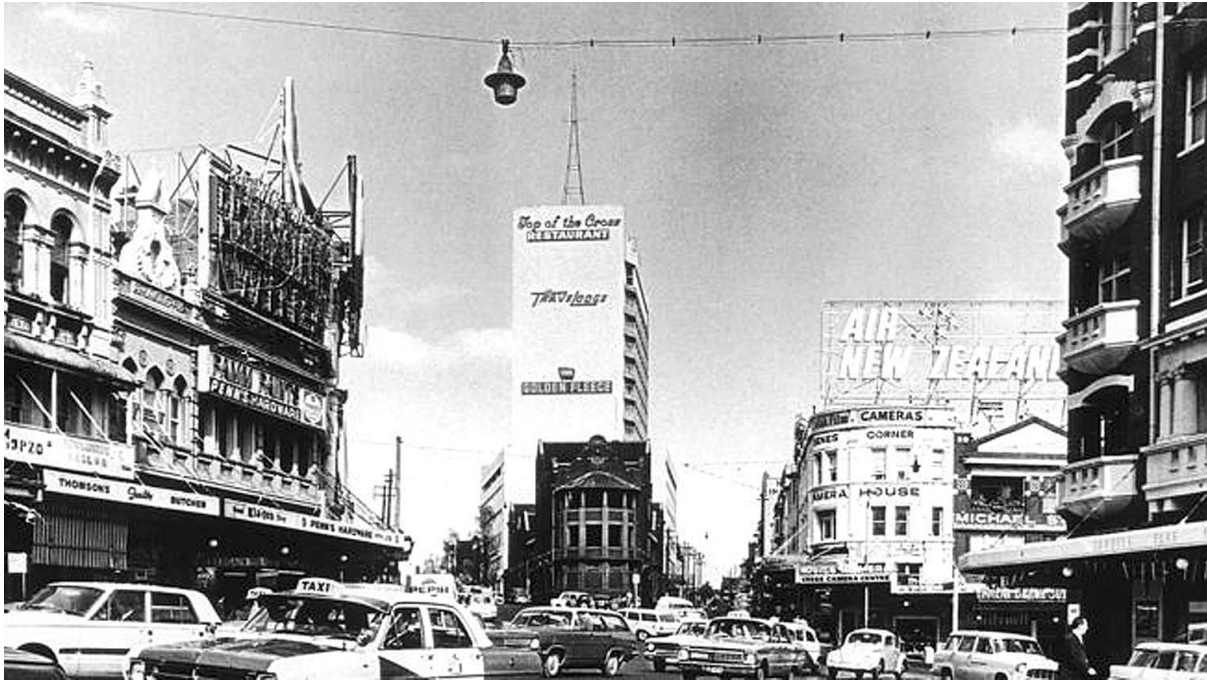


Figure 17: Historic photo showing business identification signage

Clause 4.6 Request to Vary a Development Standard - Wall Advertisements

55. If it were not prohibited the proposed wall advertisement would be subject to maximum size controls under Clause 3.20(2)(b)(i) (Wall Advertisements) of SEPP (Industry and Employment) 2021, which states:

The consent authority may grant consent to a wall advertisement only if -

- (b) for a building having
 - (i) an above ground elevation of 200 square metres or more, the advertisement does not exceed 10 per cent of the above ground elevation.

56. The northern wall of the existing building above the podium is 640sqm, and the 10 per cent development standard permits a wall advertisement with a maximum size of 64sqm.
57. The application proposes that the advertisement is 100 per cent (640sqm) of the northern wall of the building above the podium, which exceeds the 10 per cent development standard. This results in a 900 per cent variation to the development standard.
58. A Clause 4.6 request to vary the development standard has been submitted. It is noted that Clause 22(2)(b)(i) of SEPP 64 (Advertising and Signage) included the same provision as above, but this SEPP was repealed on 1 March 2022 as part of the consolidation of a number of SEPP's. This occurred after this development application was lodged as such the submitted Clause 4.6 request refers to the SEPP 64 provision.

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

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

60. The applicant seeks to justify the contravention of the wall advertisements development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) It represents an exceptional circumstance by which the proposed development is closely aligned with the City of Sydney's criteria for Public Art and of intrinsic social value to the public.
 - (ii) Strict compliance would significantly obscure the artistic intent and reduce the potential positive impact on the community, tourism and local traders in the immediate area.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposed development will provide for Gucci Art Walls to be readily identified as public art and determining it as such is correlated with the artistic intent, subject matter and scale.
 - (ii) In the context of 'Public Art' as outlined by the City of Sydney 2030 Public Art Policy, there are sufficient environmental planning grounds and significant benefits to justify contravening the maximum permissible coverage area.
 - (c) The proposed development will be consistent with the objectives of the zone;
 - (i) The context in which the sign would be viewed is consistent with the objectives of SEPP64 and it is compatible with the objectives of the B4 Mixed Use Zone, specifically to support the viability of centres and to encourage walking and cycling.
 - (ii) the development will enhance the character of the area, as well as facilitate the conservation of items and areas of heritage significance.

- (iii) The proposed development can be considered cerebral and thought-provoking as well as artistic, as such it has been assessed that viewers will predominantly respond positively
- (d) The proposed development will be consistent with the objectives of the standard;
 - (i) The context in which the sign would be viewed is consistent with the objectives of the SEPP
 - (ii) The proposal is consistent with the desired amenity and visual character of Darlinghurst West and the B4 Mixed Use Zone
 - (iii) The Proposed Development is aligned with the City of Sydney's criteria for Public Art and deemed of intrinsic social value to the public
 - (iv) The proposal enhances the Darlinghurst West area
 - (v) The exceedance of development standard will allow for a larger portion of hand-painted artwork and more effective communication
 - (vi) Gucci Art Walls will be of high quality design and finish

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

61. 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)?

62. The submitted Clause 4.6 request has not adequately justified that the non-compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and is therefore inconsistent with Clause 4.6(3)(a).
63. The Clause 4.6 request states that the proposed advertisement is consistent with the City's Public Art Policies, which is incorrect.
64. It is also not agreed that the proposed advertisement will have a positive impact on the community, tourism and local traders.
65. Therefore the Clause 4.6 written request has not adequately addressed the matters required under Clause (3)(a) and this is inconsistent with Clause 4.6(4)(a)(i).

Does the written request adequately address those issues at clause 4.6(3)(b)?

66. The submitted Clause 4.6 request has not adequately justified that there are sufficient environmental planning grounds to justify contravening the development and is therefore inconsistent with Clause 4.6(3)(b).
67. The applicants request relies on the proposal being viewed as public art, which is not the case.
68. Therefore the Clause 4.6 written request has not adequately addressed the matters required under Clause (3)(b) and this is inconsistent with Clause 4.6(4)(a)(i).

Is the development in the public interest?

69. The proposal is not in the public interest because it is inconsistent with the objectives of the particular standard. The proposal is inconsistent with the objectives of Chapter 3 (Advertising and Signage) of the SEPP, as:
 - (a) The advertisement is not 'compatible with the desired amenity and visual character of an area' as it is highly visible and results in an adverse visual impact on the character of the heritage conservation area, in which it is prohibited.
 - (b) The advertisement does not 'Provide effective communication in suitable locations' as an advertisement that is so large at 640sqm in size is not an effective way to communicate and it will clearly be perceived as advertising. It is not in a suitable location as it is located within a heritage conservation area.
 - (c) It has not been demonstrated that the advertising 'is of high quality design and finish' as only example designs of advertising images have been submitted.
 - (d) No public benefits have been proposed in relation to the advertising which is adjacent to a transport corridor.
70. The proposal results in a significant 900 per cent variation to the development standard and this is not in the public interest.

Conclusion

71. Notwithstanding that the proposal is prohibited the requested variation to the wall advertisements development standard would not be supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012.
72. In addition, the proposed development is not in the public interest because it is inconsistent with the objectives of the wall advertisements development standard and does not provide a public benefit.

Consultation

Internal Referrals

73. The application was discussed with Council's:
 - (a) Heritage Specialist;

- (b) Public Art Program Manager.
74. The Heritage Specialist raised concerns with the proposed development as the proposal is considered to result in an adverse heritage impact on the heritage conservation area and adjacent heritage item at the Darlinghurst Fire Station as it is more prominent against the neutral white backdrop, which blends into a cloudy sky above. Whilst public art is currently displayed on the side wall, this is only approved on a temporary basis and provides a social benefit to the area.
75. The Public Art Program Manager raised concerns with the proposed development and notes that it can not be considered or assessed as public art as it is an advertisement and is not consistent with Council's public art policies.

External Referrals

Transport for NSW

76. Pursuant to Section 3.16 of the SEPP (Transport and infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for concurrence.
77. Concurrence was received on 11 July 2022.

Advertising and Notification

78. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 4 January 2022 and 24 January 2022. A total 7 submissions were received with 2 in support and 5 objecting to the proposal.
79. The submissions raised the following issues:
- (a) **Issue:** Support for the proposal due to giving a lift to the north wall of the building and following on from the existing mural. These projects are expensive to plan and instigate so Gucci are putting their profits back into the local community.
- Response:** The comments are noted.
- (b) **Issue:** Support for the proposal as this is a prominent landmark, and as a brand like this represents the renewal, vibrancy and return of confidence in the area, and represents great creativity and playfulness.
- Response:** The comments are noted.
- (c) **Issue:** The enormous billboard results in visual pollution
- Response:** The advertisement is inconsistent with a number of planning controls, is prohibited, and the development application is recommended for refusal.

(d) **Issue:** The proposal is advertising, and not art

Response: As discussed above, the proposal is defined as an advertisement and has been assessed accordingly.

(e) **Issue:** Inappropriate location

Response: The advertisement is in an unacceptable location and is inconsistent with a number of planning controls, is prohibited, and the development application is recommended for refusal.

(f) **Issue:** Previously the wall has been used for light projections, patterns and art work. They are easily removable displays that only function at night. The subject wall should be preserved for these uses.

Response: The advertisement is inconsistent with a number of planning controls, is prohibited, and the development application is recommended for refusal.

(g) **Issue:** The application is for advertising purposes to gain revenue, not for public domain enhancement, and would diminish the appearance of the building.

Response: The advertisement is inconsistent with a number of planning controls is prohibited, and the development application is recommended for refusal.

(h) **Issue:** Although it is for two years, once established it would be difficult to stop.

Response: In this instance the development is proposed for a two year period, and any continuation would require a further application to be submitted and assessed.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

80. The development is not subject to a Section 7.11 development contribution as it is a type of development listed in Table 2 of the City of Sydney Development Contributions Plan 2015 and is excluded from the need to pay a contribution.

Relevant Legislation

81. Environmental Planning and Assessment Act 1979.

Conclusion

82. Development consent is sought for the display of an advertisement of approximately 640sqm in size on the northern wall of the existing building changing every 12 weeks for a period of 24 months. The exact content of the advertisements has not been submitted; however examples have been provided.

83. The proposal is inconsistent with a number of planning controls under Chapter 3 (Advertising and Signage) of the State Environmental Planning Policy (Industry and Employment) 2021, including being prohibited under Clause 3.8 of the SEPP as it is display of an advertisement in a heritage area.
84. A Clause 4.6 request for an exception to the wall advertisements development standard under Clause 3.20 of the SEPP has been submitted. The development standard requires that the wall advertisement does not exceed 10 per cent of the elevation. The proposed advertisement is 100 per cent of the elevation and results in a 900 per cent departure of the development standard.
85. The proposal is inconsistent with Clause 5.10 (Heritage Conservation) and 6.21C (Design Excellence) of the Sydney Local Environmental Plan 2012.
86. The proposal is inconsistent with Sections 3.9 (Heritage) and 3.16 (Signs and Advertisements) of the Sydney Development Control Plan 2012.
87. The proposal is recommended for refusal.

ANDREW THOMAS

Executive Manager Planning and Development

Matthew Girvan, Area Coordinator