

Attachment B

**Clause 4.6 Variation Request – Wall
Advertisements**

AUTHORITY CREATIVE

227 Victoria Street, Darlinghurst | Clause 4.6
Request to vary the development standard (**PAN-177717**)
Prepared by Authority Creative for City of Sydney

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Planning Assessments Team
City of Sydney
Town Hall House Level 2,
456 Kent Street Sydney
NSW 2000

Dear Planning Assessments Team,

227 Victoria Street, Darlinghurst 2010 – Clause 4.6 Request to vary a Development Standard (PAN-177717)

This 4.6 Request to vary the development standard Part 3, Division 3, Clause 22, 2(b)(i) of State Environmental Planning Policy No 64.

This Request has considered;

- The Sydney Local Environmental Plan 2012 (SLEP 2012),
- Sydney Development Control Plan 2012,
- State Environmental Planning Policy No 64—Advertising and Signage,
- Environmental Planning and Assessment Act 1979,
- NSW SEPP 1 Guideline ‘Varying Development Standards: A Guide – August 2011’,
- State Environmental Planning Policy No 1—Development Standards
- City of Sydney Public Art Policy 2030
- Notice of Determination Authority Presents Pty Ltd D/2020/321

In doing so it addresses the relevant findings and established principles of the following judgements of the NSW Land and Environment Court (NSW LEC):

- Apparition Media Pty Ltd v The Council of the City of Sydney [2018] NSWLEC 1590;
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118
- Brigham v Canterbury–Bankstown Council [2018] NSWLEC 1406.
- Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe) at [42] – [48].
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [25]

This Request assesses the implications of the proposed variation to the standard on the outcome of the proposed development. As such, it will demonstrate that an exception to Clause 22, 2(b)(i) of SEPP 64 is reasonable in this unique instance and will ensure a better design outcome, namely design excellence. Thus contravening the standard will provide greater public benefit than a strictly compliant development.

Sincerely,

Christopher Skyner

Christopher Skyner
Director
Authority Creative

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CLAUSE 4.6 VARIATION STATEMENT UNDER THE SYDNEY LEP 2012

The application is seeking to vary Part 3, Division 3, Clause 22, 2(b)(i) of State Environmental Planning Policy No 64 – Advertising and Signage “Wall Advertisements” which states that Council cannot grant consent to a wall advertisement on an above ground elevation of 200 square metres or more, which exceeds more than 10% of the elevation. Consequently, we will require a Clause 4.6 Variation Statement which seeks to contravene this control.

This 4.6 aims to demonstrate that compliance with the development standard is unreasonable or unnecessary under this circumstance, thus specifies the grounds of that objection. While there are no specific objectives of the Wall Advertisement Development Standard, Advertising and Signage SEPP does contain aims and objectives against which we will measure the case.

SUMMARY

Proposed Development

The proposed development is for the installation of a painted mural artwork on the Western façade of the existing 18 storey building at 227 Victoria Street, Darlinghurst (SP 70059) for a maximum of 24 months.

Planning, Legislation and Proposed Numerical Variation

<p>1. Planning Instrument Sydney Local Environmental Plan 2012 (SLEP 2012) and State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64)</p> <p>2. Zoning B4 Mixed Use Zone under the SLEP 2012</p> <p>3. Objectives of the Zone Please see page 5</p> <p>4. Development Standard to be Varied Wall advertisements</p> <p>5. Nature of the Development Standard A numerical control for the advertising area of wall advertisements on the above ground elevation.</p> <p>6. Relevant Development Standard Clause Clause 22, 2(b)(i) of SEPP 64</p>	<p>7. Objectives of the Development Standard ‘Wall Advertisement Development Standard, Advertising and Signage’ SEPP since there are no specific objectives in SEPP 64 for the development standard *See Page 6</p> <p>8. Numeric value of the development standard in the environmental planning instrument An above ground elevation of 200 square metres or more — the advertisement does not exceed 10% of the above ground elevation.</p> <p>9. Proposed Numeric Value The subject site has an above ground elevation of 660m2. The proposed sign is 660m2, resulting in approximately 100% of the Western elevation.</p> <p>10. Percentage Variation Between the Proposal and the Planning Instrument above ground elevation An exceedance of 100% of the requirement under Clause 22, 2(b)(i) of SEPP 64</p>
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3.1. Clause 4.6 Exceptions to development standards

Clause 4.6 of the SLEP 2012 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The SLEP 2012 continues to apply to 227 Victoria Street, Darlinghurst. In deciding whether a contravention of a development standard will result in an improved planning outcome, the consent authority is to consider the public interest, environmental outcomes, social outcomes or economic outcomes.

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows—

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks 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, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless—

- (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) 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, and
- (b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) n/a

7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

B4 MIXED USE ZONE

OBJECTIVES OF THE MIXED USE ZONE

The objectives of the Zone B4 Mixed Use are —

1)

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To ensure uses support the viability of centres.

2) Permitted without consent

Home occupations

3) Permitted with consent

Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Seniors housing; Shop top housing; Tank-based aquaculture; Any other development not specified in item 2 or 4

4 Prohibited

Extractive industries; Heavy industrial storage establishments; Heavy industries; Pond-based aquaculture

OBJECTIVES OF THE DEVELOPMENT STANDARD

State Environmental Planning Policy No 64—Advertising and Signage

Part 1 | Clause 3

3 Aims, objectives etc

(1) This Policy aims —

(a) to ensure that signage (including advertising):

(i) is compatible with the desired amenity and visual character of an area, and

(ii) provides effective communication in suitable locations, and

(iii) is of high quality design and finish, and

(b) to regulate signage (but not content) under Part 4 of the Act, and

(c) to provide time-limited consents for the display of certain advertisements, and

(d) to regulate the display of advertisements in transport corridors, and

(e) to **ensure that public benefits may be derived from advertising** in and adjacent to transport corridors.

(2) This Policy does not regulate the content of signage and does not require consent for a change in the content of signage.

LOCALITY STATEMENTS

2.4.12 DARLINGHURST WEST

Sydney Development Control Plan (DCP) 2012

This locality is bounded by Forbes Street to the west, the rear of the southern lots that have frontage to William Street to the north, the rear of the eastern lots with a frontage to Victoria Street to the east, Burton Street to the south and Liverpool Street to the southwest.

Darlinghurst West will continue to be a vibrant and diverse area, energised by its unique café and restaurant opportunities and the quieter residential areas and heritage buildings within a landscaped setting. The main activity centre for this area is the existing Darlinghurst Road/Victoria Street retail spines between Burton and William Streets. These retail spines will reinforce the predominant built form character of buildings with vertical articulation that reflects the small lot subdivision pattern and low scale streetwall heights with awnings.

The built form is characterised by variety of residential buildings, consistent streetscape and a strong presence of interwar buildings. The residential precinct at the north of the area (Kirketon Road, Farrell Avenue and Clapton Place) is to maintain its predominant character of taller buildings in a landscape setting. New infill buildings in terrace housing areas are to maintain the predominant building setbacks, streetwall heights and alignments.

The objectives of Darlinghurst West locality are;

- (a) Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.
- (b) Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.
- (c) Maintain the vertically articulated small lot pattern and low street wall height along Victoria Street.
- (d) Provide awnings along Victoria Street, Darlinghurst Road and Burton Street.
- (e) Maintain the predominant street setback and alignment of rows and areas with a consistent character.
- (f) Formalise the existing informal through-site pedestrian link in any development of the St. Johns Church site and adjoining car rental site.
- (g) Promote active commercial and retail building frontages facing Green Park and buildings on Burton Street.
- (h) Encourage ground level retail and commercial uses along Victoria Street, for example, galleries and medical suites.
- (i) Encourage entertainment uses above ground level on Darlinghurst Road and Victoria Street (between Liverpool and William Streets).
- (j) Encourage outdoor dining for restaurants and cafes along Victoria and Burton Streets.

LOCALITY STATEMENTS

2.4.1 CITY EAST WILLIAM STREET

Sydney Development Control Plan (DCP) 2012

This locality includes the lots fronting William Street from Cook and Phillip Park and the Australian Museum in the west to the crossing of Victoria Street and Darlinghurst Road in the east.

As William Street continues to evolve, its amenity and commercial viability will improve. It is to be a pedestrian orientated boulevard linking Central Sydney to Kings Cross with a high quality commercial spine, supported with active uses at ground level. The existing built form asymmetry of William Street is to be maintained. The south side of William Street is to remain lower in scale with a consistent street height relative to the predominant heritage buildings and to protect sunlight to residential properties to the south. The north side is to continue to develop with taller buildings to the west and lower buildings to the east where the topography rises to the Kings Cross ridge. The view corridor to the Kings Cross skyline with its crown of towers and landmark Coca-Cola sign is to be maintained and preserved.

The objectives of City East locality are;

- (a) Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.
- (b) Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.
- (c) Preserve the view corridor to the Kings Cross skyline with its crown of high-rise and significant signage.
- (d) Maintain the asymmetrical built form in the streetscape of William Street with taller buildings along the north side and lower buildings along the south.
- (e) Promote William Street as a high quality commercial spine with appropriate uses and support the street as a pedestrian orientated location with active frontages to the ground floor.
- (f) Support William Street as a pedestrian oriented boulevard with active frontages to the ground floor.
- (g) Create a transition in building height with taller buildings located on the northern side and lower buildings at the rear.
- (h) Generally maintain a predominantly 3-4 storey street wall height to William Street south in response to the heritage value of the inter-war character.
- (i) Encourage the redevelopment of vacant sites along William Street an important entry into Kings Cross.
- (j) Encourage public art at 1 Kings Cross Road, Darlinghurst in accordance with the City's Public Art Strategy.
- (k) Improve ground floor activity along Crown, Palmer, Bourke, and Forbes Streets to create high quality pedestrian amenity into surrounding neighbourhoods.

ACHIEVEMENT OF OBJECTIVES | B4 MIXED USE ZONE

OBJECTIVES OF THE MIXED USE ZONE	Achievement of Objectives
To provide a mixture of compatible land uses.	The proposal is consistent with this objective. The proposal highlights and enhances the transition between zones especially between retail, mixed-use and residential, and commercial.
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling	The proposal is consistent with this objective. The proposal encourages walking and cycling
To ensure uses support the viability of centres.	The proposal contributes to the vision for the area and zone for Sydney city as a vibrant cultural area and night time economy to support the viability of centres.

OBJECTIVES DARLINGHURST WEST	Achievement of Objectives
Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.	The proposal is consistent with this objective. The proposal highlights and enhances the character of the precinct as vibrant and diverse area
Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.	The proposal is consistent with this objective. The proposal is of a premium quality that which complement heritage items and streetscapes
Maintain the vertically articulated small lot pattern and low street wall height along Victoria Street.	n/a
Provide awnings along Victoria Street, Darlinghurst Road and Burton Street.	n/a
Maintain the predominant street setback and alignment of rows and areas with a consistent character.	n/a
Formalise the existing informal through-site pedestrian link in any development of the St. Johns Church site and adjoining car rental site.	n/a
Promote active commercial and retail building frontages facing Green Park and buildings on Burton Street.	The proposed development is consistent with this objective, as it will enhance the perception and profile of the area
Encourage ground level retail and commercial uses along Victoria Street, for example, galleries and medical suites.	The proposed development actively encourages this
Encourage entertainment uses above ground level on Darlinghurst Road and Victoria Street (between Liverpool and William Streets).	The proposal is consistent with this objective.
Encourage outdoor dining for restaurants and cafes along Victoria and Burton Streets.	The proposal is consistent with this objective as it will encourage visitors to the area and add to the vibrancy of Darlinghurst / Kings Cross

3 / OBJECTIVES

OBJECTIVES CITY EAST	Achievement of Objectives
Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.	The proposal is consistent with this objective as a commercially viable centre
Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.	TThe proposal is consistent with this objective. The proposal is of a premium quality that which complement heritage items and streetscapes
Preserve the view corridor to the Kings Cross skyline with its crown of high-rise and significant signage.	The proposal is consistent with this objective. The proposal enhances the Kings Cross skyline
Maintain the asymmetrical built form in the streetscape of William Street with taller buildings along the north side and lower buildings along the south.	n/a
Promote William Street as a high quality commercial spine with appropriate uses and support the street as a pedestrian orientated location with active frontages to the ground floor.	The proposal is consistent with this objective. The proposal enhances the profile of the area as a pedestrian orientated location
Support William Street as a pedestrian oriented boulevard with active frontages to the ground floor.	The proposal is consistent with this objective.
Create a transition in building height with taller buildings located on the northern side and lower buildings at the rear.	The proposal is consistent with this objectiv by enhancing the transition between building heights
Generally maintain a predominantly 3-4 storey street wall height to William Street south in response to the heritage value of the inter-war character.	n/a
Encourage public art at 1 Kings Cross Road, Darlinghurst in accordance with the City's Public Art Strategy.	The proposal is consistent with this objective. The proposal meets some of City of Sydney's criteria for public art
Improve ground floor activity along Crown, Palmer, Bourke, and Forbes Streets to create high quality pedestrian amenity into surrounding neighbourhoods.	The proposal is consistent with this objective.

ACHIEVEMENT OF OBJECTIVES | SEPP64

State Environmental Planning Policy No 64— Advertising and Signage	Achievement of Objectives
to ensure that signage (including advertising):	
(i) is compatible with the desired amenity and visual character of an area	<ul style="list-style-type: none"> • The proposal is consistent with the desired amenity and visual character of Darlinghurst West and the B4 Mixed Use Zone • the Proposed Development is aligned with the City of Sydney’s criteria for Public Art and deemed of intrinsic social value to the public • The proposal enhances the Darlinghurst West area
(ii) provides effective communication in suitable locations	<ul style="list-style-type: none"> • The proposed development is consistent with this • The exceedance of development standard will allow for a larger portion of hand-painted artwork and more effective communication
(iii) is of high quality design and finish	All Gucci Art Walls will be of high quality design and finish
(b) to regulate signage (but not content) under Part 4 of the Act	Not Applicable
(c) to provide time-limited consents for the display of certain advertisements	The proposal seeks 24 months consent
(d) to regulate the display of advertisements in transport corridors	Not Applicable
(e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors	Not Applicable
(2) This Policy does not regulate the content of signage and does not require consent for a change in the content of signage.	Taken into account

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

Advertisement / Sign

The term 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 term is defined as a structure used or to be used principally for the display of an advertisement.

CITY OF SYDNEY PUBLIC ART POLICY 2030

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.

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.

GUIDELINES AND CRITERIA FOR PUBLIC ART

Evaluation and approval of all public artworks proposed by the City of Sydney, other public authorities, individuals and other groups in the City of Sydney local government area will be based on the following criteria:

- Relevance to the objectives and actions of Sustainable Sydney 2030, the City Art Public Art Strategy, Acquisition and Deaccession Guidelines, Public Art in Private Development

Guidelines and the principles of this Public Art Policy;

- Standards of excellence and innovation;
- The integrity of the work;
- Relevance and appropriateness of the work to the context of its site;
- Consistency with current planning, heritage and environmental policies;
- Plans of Management;
- Consideration of public safety and the public’s access to and use of the public domain;
- Consideration of maintenance and durability requirements;
- Evidence of funding source and satisfactory budget including an allocation for ongoing maintenance;
- Non-duplication of monuments commemorating the same or similar events; and
- Consideration for a holistic approach to public art in the City

Assessment of the variation to the development standard

The proposal seeks to increase the maximum 10% elevation coverage control to approximately 100% of the Western facade to afford a better outcome visually, viscerally and intellectually thus promoting design excellence.

Part 3, Division 3, Clause 22, 2(b)(i) of State Environmental Planning Policy No 64 – Advertising and Signage “Wall Advertisements” states that Council cannot grant consent to a wall advertisement on an above ground elevation of 200 square metres or more, which exceeds more than 10% of the elevation.

The following assessment comprehensively considers the provisions of Clause 4.6;

Clause 4.6 (3)(a) – Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Strict adherence to the 10% elevation coverage is unreasonable and unnecessary in this case because 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. 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.

Clause 4.6 (3)(b) – Grounds to justify contravening the development standard (there are sufficient environmental planning grounds to justify contravening the development standard) there are sufficient environmental planning grounds to justify contravening the development standard

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. 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 on a wall advertisement on an above ground elevation of 200 square metres or more.

Clause 4.6 (4) a (ii) – 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

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. Over and above this, the development will enhance the character of the area, as well as facilitate the conservation of items and areas of heritage significance. 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.

Clause 4.6 (3)(a)

Strict compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Strict adherence to the 10% elevation coverage is unreasonable and unnecessary in this case because the proposed development represents an exceptional circumstance by which the contravention of the development standard will incur a far better outcome for the following reasons;

1) Provides inherent social value to the public that, if scaled to the development standard, will be significantly minimised since SEPP 64 did not anticipate a branded mural artwork which meets the criteria for both public art and advertising

Social Value, Public Benefit, Design Excellence;

- i. Gucci are committed to generate positive change for people and the planet. Dominant ethical, cultural, and socially responsible messages overlay each Gucci Art Wall (the proposed development). With this in mind, the viewer is afforded both an aesthetic experience as well as a chance to engage in hyper-relevant cultural discourse. In this way, Gucci Art Walls are intended as thought-provoking works of art, of which scale is fundamental to the communication and reception of messages generated for; the inclusion and greater understanding of particular communities and the promotion of more ethical and socially sustainable living. For this reason, traditional advertising takes a peripheral role. These priorities are directly reflected in the Sustainable Sydney 2030 strategy.
- ii. Gucci Art Walls promote humanitarian values; equality, social justice, diverse and inclusive attitudes. Through fashion and imagery, they address complex local and global issues, and help people to participate in the community for example; amplifying Gen Z voices, uniting activists, or empowering refugees. The proposed development raises dialogues around bodies, gender stereotypes, norms, womens rights, ethical trading, sustainability, unrealistic beauty standards, racism and climate change to name only a few.
- iii. Additionally, the proposed development is analogous with local events such as Mardi Gras, engages small local businesses as suppliers, and commissions local Australian artists over and above professional artist rates as outlined by the National Association of the Visual Arts (NAVA).
- iv. Moreover, the deeply humanitarian message conveyed by each wall is backed by organisational action exemplified through *Gucci Equilibrium* and *Chime for Change* whereby campaign artwork is interwoven with events, sustainability innovation initiatives, combating racism, child labor, forced labor, gender inequality, reducing waste and so forth. The proposed development directly feeds into ancillary humanitarian programs that support vulnerable communities and impact the environment.

Public benefit minimised if strictly compliant with the development standard of 10%

- i. The scale of Gucci Art Walls is relatively consistent globally and highly curated based on visibility and the community within which it is situated. We define 'scale' not by the size of the artwork but the relational principle derived through the ratio of the artwork to the viewer, to the facade, and the intended information, meaning and significance thereby imbued and conveyed. To strictly comply with a 10% scale is to restrict the capacity for meaning exchange therefore defeating or thwarting the underlying purpose of the standard.
- ii. Unlike traditional advertising, which focuses on foot and vehicular traffic alone, Gucci Art Walls is centred around carefully chosen locations and thoughtful relationships between the site, the area's existing identity and the community who reside there. The visibility of the proposed development within this site is paramount to the relationship with the surrounding community.

- iii. As such, a strictly compliant sign would reduce the capacity for socially valuable information to be shared as well as its perception as public art. The scale of the work defines its meaning and determines the role of the viewer thus directing attention to the relation between the proposed development, place and community. Therefore, scale is a crucial aspect of the proposed development that affects its reception as actual artwork. Strict compliance to the development standard would obscure the artistic intent and social value of the proposed development thus defeating the underlying purpose of the development standard.
- iv. Relational Aesthetics regards “art as information exchanged between the artist and the viewers” within which it postulates the “theoretical and practical point of departure the whole of human relations and their social context, rather than an independent and private space”. That is to say “the goal of most relational aesthetics art is to create a social circumstance; the viewer experience of the constructed social environment becomes the art”, in this sense the scale is fundamental to fostering an environment whereby the meaning of each wall is conveyed¹.
- v. The development standard does not consider relational aesthetics, nor public art that also shares the criteria for advertising. Moreover, the development standard does not consider that branding (Gucci) does not preclude the definition of art, beauty, social value and aesthetics. Sometimes, the brand is precisely what enables an image to be perceived as art. Consider, for example, what can happen to an artist’s career when they are endorsed by a brand. For this reason, contravening the standard would allow for a unique circumstance to unfold and provide a sign that significantly enhances the intent and objectives of the development standard notwithstanding noncompliance.
- vi. The perception of Gucci Art Walls as ‘public art’ or as ‘socially valuable’ is evidenced through hundreds of thousands of instagram hashtags and geo-tags for each Gucci Art Walls site. The sign, its affiliate brand, Gucci’s humanitarian and philanthropic endeavours enable them to attract a strong global following of individuals from all over the world who reshare the imagery on their personal and professional social media platforms. This illustrates the public perception of Gucci Art Walls as art and the consequent negative implications of reducing its scale to a strictly compliant 10%.

2) Will generate small local events in accordance with the main objectives of SEPP64 ‘Advertising and Signage,’ Sustainable Sydney 2030 and OPEN Sydney 2013-2030

- i. At least one wall will be analogous with or relevant to the promotion of a local Sydney event, for example, Mardi Gras.
- ii. The launch of each wall (up to 8) will coincide with a launch event designed to provide; effective communication, a thoughtful, high-quality and multi-layered approach to design, foster public relations opportunities for media, local artists, Darlinghurst and local retailers to participate in.
- iii. Events will provide public benefit, stimulate the local economy, bring visibility to Darlinghurst and Kings Cross as a safe and welcoming cultural destination, restore confidence in the public domain in the wake of Covid, as well as create further paid opportunities for local artists, musicians performers, creatives and suppliers.
- iv. Supplementary launch events will allow for venues around Darlinghurst to forge new corporate and community based partnerships as well as garner significant media attention and foot traffic to illuminate the existing offering, retailers and surrounding businesses.

A strictly compliant wall at 10% of the facade would not be of sufficient scale, visibility or impact to warrant hosting ancillary events. Therefore, the relevant objectives of the standard would not be achieved or would be thwarted by a complying development.

¹ Bourriard, Nicholas. *Relational Aesthetics* 2002

3) Bolsters the careers of local Australian artists financially, technically and creatively;

- i. According to National Association of the Visual Arts (NAVA) due to Covid 19 arts initiative are being “downscaled, postponed, or cancelled” as a result individual artists “are facing unexpected income losses, some of which amount to a year or even two years’ worth of work.” The proposed development would provide individual artist/s with up to two years worth of guaranteed work immediately following the pandemic.
- ii. Lead artist, David Lee Periera was chosen via a shortlist of local Australian artists, he was then commissioned to paint a private artwork for Gucci as a part of the selection process.
- iii. The scale of the work is directly proportional to the artist’s opportunity. Through this project, David will have the chance to engage in a variety of practices that will enhance and support his professional artistic career. This includes, but is not limited to; colour mixing and matching, managing and mentoring other local artists, project management, attending networking events associated with the sign, meeting potential future clients and participating in marketing and PR opportunities.
- iv. David and his assistant/s will directly benefit through 12-24 months of paid commission artwork that would otherwise be difficult to find during Covid 19, very competitive through council funding processes, the majority of which requires much unpaid time to apply for and often short term and small scale gain.
- v. Unlike other painted mural advertisements, the lead artist will be paid as a commissioned professional artist. Each painted mural will become a portfolio piece for David and his assistant/s.

A strictly compliant development would detrimentally impact the potential portfolio, experience and professional creative work opportunity of local Australian artist. The scale of the work, and consequently the remuneration, would be much lower. Accordingly, since events would not be feasible, networking and PR opportunities would also be diminished.

4) Reinforces and supports the overall Darlinghurst West Vision (page7) and is consistent with the objectives of the development standard and the B4 Mixed Use Zone zone in which the development is proposed to be carried out.

- i. Gucci Art Wall will assist in the cultural regeneration of Sydney City, specifically, Kings Cross and Darlinghurst and build public confidence in returning back to urban space following the pandemic.
- ii. The visual effects generated by the artwork would be positive, celebrating and enhancing the visual and intrinsic character of the site and the heritage surrounds
- iii. visually compatible with the architecture and heritage value of the site, the proposed development will embrace and draw attention to the existing features of the facade
- iv. Located in a high pedestrian and dwelling zone, the artwork may create a more atmospheric, interesting and inspiring place for tourists, residents and locals to dwell than the imminent blank facade.

Therefore, strict compliance would hinder the attainment of the objects specified in Clause 3 (a)(i) (ii) (iii) and (e) and significantly reduce the potential impact for positive affect garnered by the community including local traders in the immediate area

5) Facilitate the conservation of items and areas of heritage significance

- i. The installation of the sign will facilitate the conservation of the 227 Victoria Street facade and exterior works thus contributing to the enhancement of areas of heritage significance by ensuring the extant building is maintained to an exceptional standard which may not have been possible to obtain by the Strata Committee for the Owner's Corporation without sufficient funding.
- ii. Will assist the City in meeting the time limited consent of D/2021/472 approved until October 2021 which has been unable to be removed and restored against the condition that new materials for making good and repairs match the existing in terms of colours, finishes, sizes, profile and properties.

The proposed increase in the advertising area is considered to result in a superior outcome for the following reasons:

- SEPP 64 did not anticipate a branded mural artwork which meets the criteria for both public art and advertising, as such the public benefit of a larger sign outweighs that of a strictly compliant development
- The proposal is consistent with the relevant provisions and intent of City of Sydney Council's City Art Public Art Strategy and Public Art Policy 2030 and Sydney DCP 2012 'Section 3 - General Provisions'.
- The sign is deemed a positive contribution to the streetscape that will temporarily contribute to and enhance the visual identity and intrinsic character of the immediate and surrounding area, including the heritage qualities of the site.
- Complies to the 5% limit of corporate markings, logos, branding or similar of the total sign area
- The sign will align with a civic or community event in the City of Sydney area at least once per annum
- The increase will enhance the visual impact of the sign insofar as it is more integrated into the architectural surroundings so as to reduce unappealing visual clutter
- Encourages the area to become a creative and lively destination that builds upon the location being in the vicinity of National Art School, UNSW Art & Design, William St Creative Hub, as well as the famous Coca Cola sign.
- Is more compatible than the development standard with the desired amenity, visual character of the site insofar as it provides the highest design excellence, more effective communication and enhances the perceived quality of the proposed development.
- Thus, results in a significantly better design and aesthetic outcome than a smaller sign tacked onto the subject site
- The audience is likely to find the character and subject matter of the artwork interesting, surprising, thought-provoking, engaging and exciting as opposed to either 1) a blank space or 2) traditional advertising
- The sign will showcase the artistic skill of local Australian artists to the degree with which it is visible to the public
- The proposed development will remain compatible with the architecture, materials, finishes and colours of the building and the streetscape
- Taking into consideration the local character, demographic of residents, workers and tourists to the site this project is considered to be of high interest to those who frequent the immediate and surrounding areas.
- It leaves the original facade exposed in order to draw attention to the original architectural and complements heritage elements of the facade
- There are no other signs of this nature within the precinct, this has been carefully selected by all stakeholders and identified as the most aligned and suitable project for the subject site
- May draw local and global attention to Darlinghurst and Kings Cross as a destination through events, social media and public relations
- Will not to conceal or detract from integral architectural features or cover any mechanical ventilation systems.
- The visual effects generated by the artwork would be positive, celebrating and enhancing the visual and intrinsic character of the site and the heritage surrounds
- Supplementary intimate events and media activity will allow for Darlinghurst and Kings Cross venues and retailers to forge new corporate and community based partnerships as well as garner significant global attention and foot traffic to illuminate the existing offering, retailers and surrounding businesses.

Strict compliance with the development standard is considered to result in an inferior outcome for the following reasons:

- Compliance would deliver a deficient outcome for the urban design and local character of the site
- Obscure the meaning of the artwork and therefore decrease the visual impact and design quality
- A contravening sign would deliver a much more well integrated sign therefore improving the community benefits
- Because it is unlikely that a typical mural artwork would be commissioned at only 10% of a wall therefore decreasing the public perception of the sign as public art and increasing the chances of appearing as traditional advertising
- Complying would conflate the artistic intent and content of the proposed development with traditional advertising signage
- Strict compliance would not reinforce the unique character and vision for Darlinghurst, Kings Cross and B4 Mixed Used zones as a cultural and innovation incubators
- Compliance would result in ineffective communication of the sign and its capacity to enrich and enliven the area
- It would result in a design outcome that is of lesser quality than contravention therefore decreasing public benefit
- The proposal complies with Clause 3.16.12.10 (1) of the Sydney Development Control Plan 2012, inclusive, regarding Darlinghurst Road Kings Cross signage precinct as it is visually interesting and consistent with role of Darlinghurst as a night-time activity and entertainment precinct
- The proposal complies with Clause 3.16.12.12 (1) of the Sydney Development Control Plan 2012, inclusive, regarding William Street signage precinct as it contributes to the vision of the precinct as a retail and business area and will result in an aesthetically pleasing sign that complements the heritage significance and eclectic cultural history of the locality
- A contravening sign is in the public interest for the reasons outlined in Section 6;
- Therefore, 10% results in a sign of approximately 66m², thus delivering a subpar outcome in terms of the scale of the existing wall and decreasing the potential for public benefit and intrinsic aesthetic value.

The court provided five tests as follows that can be used as prompts to answer the above questions in relation to this application.

The 'five part test', established by the NSW Land and Environment Court is employed in addition to the the principles of Clause 4.6 and SEPP1 to determine whether the objection to the development standard is well founded. The Five Part Test remains helpful despite being developed for Clause 4.6.

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard

While no specific objectives are laid out in SEPP 64 for artwork advertisements the 'Justification of Variation to Development Standard' in Section 5 responds to the objectives of SEPP 64 regarding 'Advertising and Signage'. Herein, it is established that the objectives of the SEPP are achieved notwithstanding, and in lieu of, non-compliance to the 10% standard.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The underlying purpose of the standard is relevant in this case as it pertains to the numeric control regarding the size of signs and advertising on facades above 200m². Accordingly, the underlying purpose functions to ensure the quality and public benefit of the sign is of the highest standard. Considering this, the increase in numeric control for the development standard affords a substantially more positive urban design impact due to the artistic intent, aesthetic features and socially valuable subject matter conveyed. Therefore, the purpose of the standard is better achieved through contravention.

3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Strict compliance to the development standard, as adressed in section 5, would defeat the purpose of the standard.

A strictly adherent sign would result in a sign of approximately 66m², as opposed to 660m², the latter which would retain the artistic intent of the sign and therefore greatly increase the perception of the sign as public art and consequently convey the overlaying meaning of the work to the public more effectively.

A strictly compliant sign would be less visually appealing and aesthetically pleasing to the extent that it would appear as an afterthought attached to the building rather than an integrated artwork that harmonises with the character of the site and the architectural design of the streetscape. In this way, it would defeat the purpose of the standard.

4: The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

The proposed numeric increase of 100% of the total facade relates to the unique circumstance upon which the request is being made, it will not require that the development standard is virtually abandoned or destroyed.

5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The proposed development and increase in the development standard is consistent with the objectives of the zone. The proposed variation to the maximum permissible coverage area under SEPP 64 would sufficiently achieve the objectives of the B4 Mixed Use Zone far more than a strictly compliant scheme under this exceptional circumstance.

Therefore, a strictly compliant scheme would fail to deliver a development of sufficiently high quality and would not provide adequate public benefit and, for these reasons, compliance is unreasonable.

Ultimately, the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.

Thank you