

Item 5.**Development Application: 110-122 Oxford Street, Darlinghurst - D/2022/810**

File No.: D/2022/810

Summary

Date of Submission: 9 August 2022 (additional information received 25 October 2022)

Applicant: Toga Project Services Pty Ltd

Architect: FJMT Studio

Developer: Toga Project Services Pty Ltd

Owner: City of Sydney Council, and is subject to a 99-year lease with AM Darlinghurst

Planning Consultant: Ethos Urban

Heritage Consultant: Urbis

Cost of Works: \$15,224,224.00

Zoning: The site is located in the B2 Local Centre Zone. The proposed development is a mixed use development including retail, commercial, and cultural and creative uses which are permissible with consent in the zone.

Proposal Summary: Approval is sought to amend the approved mixed use development under D/2020/1072 (as modified). The proposed amendments are to replace the approved hotel use for commercial use across all levels. Associated amendments include changes to the internal configuration and external design and the signage strategy. The amending application does not seek additional height or built form, but does result in additional floorspace associated with design changes for the change of use.

Development Consent D/2020/1072 was approved by the Local Planning Panel on 18 May 2022 for 'Use of the existing building as a mixed use development and associated alterations and additions, and signage strategy. The proposed uses include a 75 room hotel, retail premises, food and drink premises and tenancies for cultural and creative uses on the lower ground and ground levels'.

A planning agreement between the developer and Council has been executed in connection with the development as part of the original consent. The planning agreement relates to the conversion of Foley Street to a shared zone.

The 'Oxford Street Cultural and Creative Precinct' planning proposal was exhibited between 10 September and 4 November 2021, approved by the Central Sydney Planning Committee on 7 April 2022, and approved by Council on 11 April 2022. The amendment has not yet been gazetted. The proposed instrument is a matter for consideration under clause 4.15(1)(a)(ii) of the Environmental Plan.

The proposed planning instrument includes an increased alternative height of buildings development standard which increases the current height control from 15 metres to 24 metres. The proposed planning instrument also provides for an alternative floor space ratio which increases the floor space control from 4:1 to up to 4.5:1.

The development exceeds the current 15 metre height of buildings standard by 6.9 metres (46 per cent variation), however is compliant with the alternative height of buildings standard of 24 metres for the site under the planning proposal. The applicant has submitted a request to vary the standard pursuant to clause 4.6 of Sydney Local Environmental Plan 2012. This variation was previously considered and approved by the Panel under D/2020/1072. The request to vary the standard is supported in the circumstances of the application.

The development proposes to exceed the current floor space ratio control of 4:1 by 0.27:1 (6.7 per cent variation), however is compliant with the alternative floor space ratio standard of 4.5:1 for the site under the planning proposal. The applicant has submitted a request to vary the standard pursuant to clause 4.6 of Sydney Local Environmental Plan 2012. Additional floor area is proposed within the approved building envelope - as compared to the approved development. The request to vary the standard is supported in the circumstances of the application.

The subject application was notified for 28 days. One submission was received. Issues raised in the submission are that a 5 star NABERS rating should be required for the proposal.

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

- Conflict of interest - Development for which the land is owned by the Council (although it is noted that the site is subject to a 99-year lease with AM Darlinghurst until 2118).
- Departure from development standards - development that contravenes a development standard imposed by an environmental planning instrument by 10 per cent or more.

Summary Recommendation: The development application is recommended for approval subject to conditions.

- Development Controls:**
- (i) Environmental Planning and Assessment Act 1979
 - (ii) State Environmental Planning Policy (Resilience and Hazards) 2021
 - (iii) State Environmental Planning Policy (Industry and Employment) 2021
 - (iv) State Environmental Planning Policy (Housing) 2021
 - (v) State Environmental Planning Policy (Transport and Infrastructure) 2021
 - (vi) State Environmental Planning Policy (Biodiversity and Conservation) 2021
 - (vii) Sydney Local Environmental Plan 2012
 - (viii) Draft Planning Proposal: Oxford Street Cultural and Creative Precinct
 - (ix) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Conditions of Consent - D/2020/1072/A
- C. Selected Drawings
- D. Approved Plans - D/2020/1072
- E. Clause 4.6 Variation Request - Height of Buildings
- F. Clause 4.6 Variation Request - Floor Space Ratio

Recommendation

It is resolved that:

- (A) the variation requested to clause 4.3 'Height of buildings' development standard in accordance with clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld;
- (B) the variation requested to clause 4.4 'Floor space ratio' development standard in accordance with clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (C) consent be granted to Development Application No. D/2022/810 subject to the recommended conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development, subject to conditions, is consistent with the objectives of the B2 Local Centre zone pursuant to Sydney Local Environmental Plan 2012.
 - (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B2 Local Centre zone and the height of buildings development standard.
 - (iii) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.4 of the Sydney Local Environmental Plan 2012; and
 - (iv) the proposal is in the public interest because it is consistent with the objectives of the B2 Local Centre zone and the floor space ratio development standard.
 - (C) The development conserves the heritage significance of the heritage items on site and satisfied clause 5.10 of the Sydney Local Environmental Plan 2012.
 - (D) The development exhibits design excellence to satisfy clause 6.21 of the Sydney Local Environmental Plan 2012.
 - (E) The development is consistent with the executed planning agreement for the site.
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Background

The Site and Surrounding Development

1. The site is located on the northern side of Oxford Street between Palmer Street to the west and Taylor Square to the east and is known as 'Group 3' in terms of the redevelopment of three building blocks along Oxford Street.
2. The site is identified as Lot 2 in DP 815188 and is located at 110-122 Oxford Street, Darlinghurst. The site is irregular in shape and has an area of 604 square metres.
3. Group 3 comprises three separate brick buildings which present as three storeys to Oxford Street and four storeys to Foley Street. Each building has a distinct and individual appearance but collectively they present as a cohesive streetscape of federation style.
4. The buildings are part of an architecturally consistent group of buildings constructed as the result of land resumption by the Council at the time and widening of Oxford Street between Whitlam Square and Taylor Square in c1909. These buildings are a fine example of Federation Freestyle architecture and make an important contribution to the streetscape. The buildings are owned by the City, but part of a 99-year lease until the year 2118.
5. The buildings were constructed c1911-12, and are local heritage items including one individually listed building and a building group, as follows:
 - (a) 110 Oxford Street – LEP No. I396 Commercial Building including interior.
 - (b) 112-122 Oxford Street – LEP No. I397 Commercial Building Group including interior.
6. To the west, at 108 Oxford Street, is a three-storey local heritage item (I395) known as 'Former Crecy Hotel'. Further to the west, at 82-106 Oxford Street, is Group 2 of the associated development application D/2020/1071. To the east, are a series of two and three storey commercial buildings that form the remainder of the street block.
7. To the north on the opposite side of Foley Street is residential terrace housing of predominantly two storeys in height.
8. To the south, on the opposite side of Oxford Street, is a row of two to three storey retail and commercial buildings.
9. The site is located within the Oxford Street Heritage Conservation Area (C17).
10. A site visit was carried out on 15 November 2022. The building groups are identified in the aerial image and photos below. Only Group 3 is the subject of this report.



Figure 1: Aerial image of subject site and surrounding area (Note: Group 3 only is the subject of this report)



Figure 2: Site viewed from Oxford Street (prior to the installation of hoardings)



Figure 3: Site viewed from Foley Street



Figure 4: Development to the north at 4 to 18 Foley Street



Figure 5: Foley Street as viewed from Taylor Square

History Relevant to the Development Application

Development Applications

11. The following applications are relevant to the current proposal. These consents pertain to the group of buildings known as Group 1 at 58-76 Oxford Street, Group 2 at 82-106 Oxford Street, and Group 3 (the subject site) at 110-122 Oxford Street, Darlinghurst :

D/2020/1072 - Group 3 approval

- Deferred commencement development consent was granted by the Local Planning Panel on 18 May 2022 for 'Use of the existing building as a mixed use development and associated alterations and additions, and signage strategy. The proposed uses include a 75 room hotel, retail premises, food and drink premises, and tenancies for cultural and creative uses on the lower ground and ground levels.'
- This included a two storey addition above the existing buildings as a distinct sculpted form.
- The development included an offer to enter into a planning agreement, which included developer works to convert sections of Foley Street to a shared zone.

- Deferred commencement conditions were included in the approval requiring the following:
 - the execution and registration of the planning agreement;
 - documentation of cultural and creative floor space on plans;
 - submission of structural solutions for floor upgrades requirements; and
 - submission of plans for the retention of an internal stairwell.

The deferred commencement conditions have been satisfied and a letter sent confirming the operative date of the consent as 14 November 2022.

- **D/2020/1072/A** – s4.55(1A) modification was approved on 9 November 2022 to delete and amend a range of deferred commencement and design modification conditions, including amendments to the staging of the submission of information to Council. The design amendments were of a technical nature in relation to specific heritage conservation measures (for example extension of a retained internal stairwell) and did not materially change the approved development.
- The amendments to the design modification conditions were reviewed and supported by Council's heritage officer. The consent as modified is included in Attachment B.

D/2020/1071 – Groups 1 and 2

- Deferred commencement consent was granted by the Local Planning Panel on 18 May 2022 for 'Alterations and additions to 2 groups of existing buildings for mixed use development and associated signage strategy. The proposed uses include retail premises, food and drink premises, and tenancies for cultural uses on the lower ground and ground levels, and commercial offices on the levels above.'
- This consent relates to the 'Group 1' and 'Group 2' development sites at 58-78 Oxford Street and 82-106 Oxford Street respectively, which are not the subject of the current application, but which form part of the planning agreement with the developer.

Planning Agreement

12. A planning agreement (VPA) was entered into by the developer in relation to consents D/2020/1072 and D/2020/1071. The VPA provides for the delivery of an upgrade to Foley Street to a shared zone in lieu of payment of Section 7.11 contributions.
13. The VPA has been executed and is registered on the title of the land. Deferred commencement Condition 1 'Voluntary Planning Agreement', requires the execution and registration of the VPA on the title of the land, which has occurred.
14. Condition 31 within the existing consent is to be updated to reference the executed VPA.

Oxford Street Cultural and Creative Precinct - Planning Proposal

15. The Oxford Street Cultural and Creative Precinct planning proposal is the result of a review of planning controls applying to Oxford Street. The review responds to the high level of retail vacancy, noisy road environment, underused public spaces and the impact of the now repealed lockout laws and the Covid-19 pandemic on the land use and patronage of Oxford Street.
16. The Planning Proposal complements the Locality Statement for Oxford Street Darlinghurst of the Sydney DCP 2012 which characterises Oxford Street as a regionally significant retail and entertainment street and a local business centre for surrounding neighbourhoods.
17. The 'Oxford Street Cultural and Creative Precinct' planning proposal was exhibited between 10 September and 4 November 2021. The outcomes of the consultation and post-exhibition amendments were reported to, and approved by, the Central Sydney Planning Committee on 7 April 2022, and by Council on 11 April 2022. The planning proposal has been referred to the Department of Planning, Industry and Environment for approval and gazettal. At the time of the writing of this report, the gazettal is yet to occur.
18. The proposed instrument is a matter for consideration under Clause 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act, 1979. The Court has developed a body of case law to provide guidance as to the appropriate amount of weight that ought to be given to a planning proposal as part of its consideration when assessing a development application.
19. In short, the case law indicates that the controls in a draft instrument should be given greater weight when the instrument is 'certain and imminent'. Although the term 'certain and imminent' does not appear anywhere in the Environmental Planning and Assessment Act or the Environmental Planning and Assessment Regulations, it is still a relevant consideration as it provides guidance as to the appropriate amount of weight to be given to draft controls. Draft controls will be considered to be more 'certain and imminent' the closer they are to being made. Following the approval by the Central Sydney Planning Committee and Council the 'Oxford Street Cultural and Creative Precinct' planning proposal is now considered to be 'certain and imminent'.
20. The proposed planning instrument provides an alternative height of building development standard, which increases the height control from 15 metres under the current Sydney LEP 2012, to a height of 24 metres for Group 3 (subject site). The proposed planning instrument provides an alternative floor space ratio development standard, which increases the maximum permitted floor space ratio from 4:1 under the current Sydney LEP 2012 to 4.5:1 for Group 3.
21. As the proposal exceeds the current height and floor space ratio development standards, requests to vary the standard pursuant to clause 4.6 of Sydney LEP have been submitted and are considered within this report under the heading 'Discussion'. The variation to the height of buildings standard was previously supported by the Local Planning Panel.

Amendments

22. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 22 August 2022 and 5 October 2022 requesting a physical and CAD model, acoustic report and amendments to the lower ground level waste area.
23. The applicant responded to the requests on 8 September and 25 October 2022 submitting a CAD model, acoustic report and amended lower ground floor plan.

Proposed Development

24. The application seeks approval to amend the approved mixed use development under consent D/2020/1072 (as modified). The amendments are to replace the approved hotel use for commercial use. Associated design amendments include internal re-configuration, external amendments to building design and amendment of the signage strategy. The amending application does not seek additional height or built form, but does result in an additional 231sqm of gross floor area through design changes relating to the change of use including the provision of bicycle parking and end of trip facilities, deletion of the Level 4 pool, amendments to building plant throughout, and the deletion of a small void on Level 3.
25. The resulting development would include:
 - (a) Lower ground level: cultural and creative floor space, bicycle parking and end of trip facilities, waste room, plant rooms and services.
 - (b) Ground level: retail tenancies, cultural and creative floor space, commercial floor space.
 - (c) Levels 1-4: commercial floor space and Level 4 outdoor terrace.
 - (d) A signage strategy including retail blade signs, retail under awning lightbox signs, retail awning fascia signs and a building façade sign.
26. A more detailed comparison between the approved development under D/2020/1072 and the proposed amendments is included within this report under the heading 'Discussions'.
27. Plans and elevations of the proposed development are provided below.

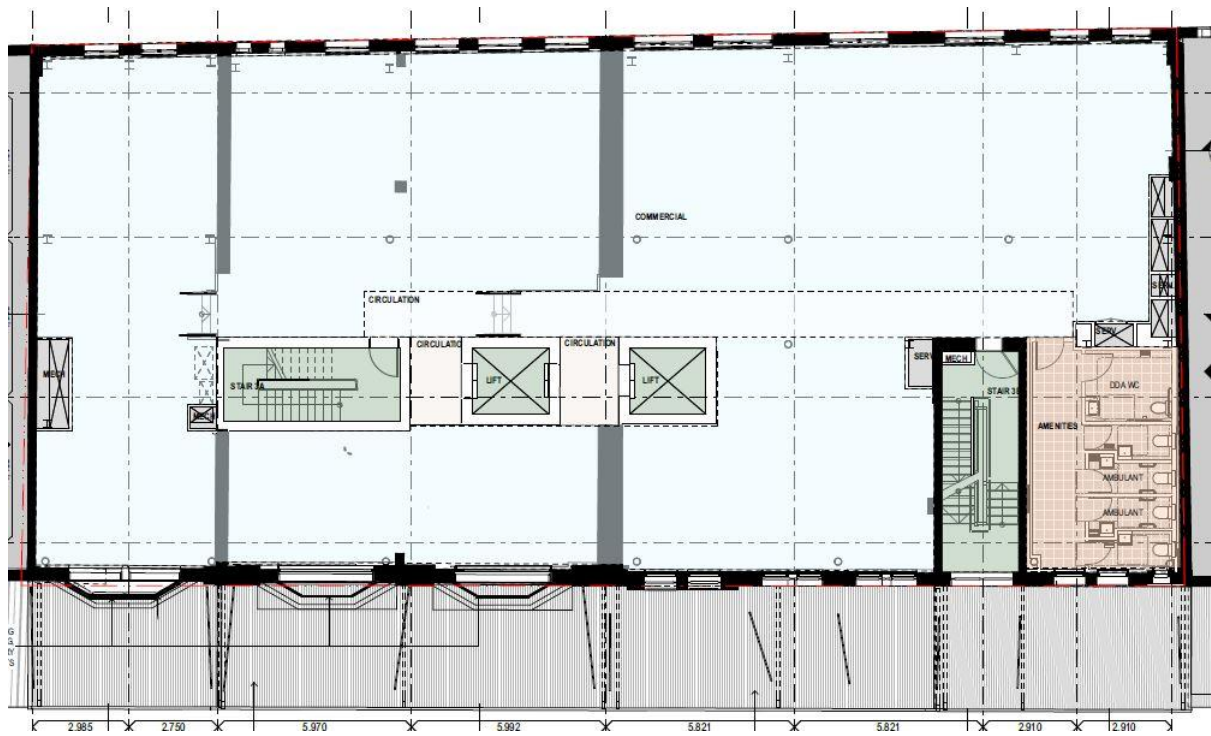


Figure 8: Level 1 floor plan

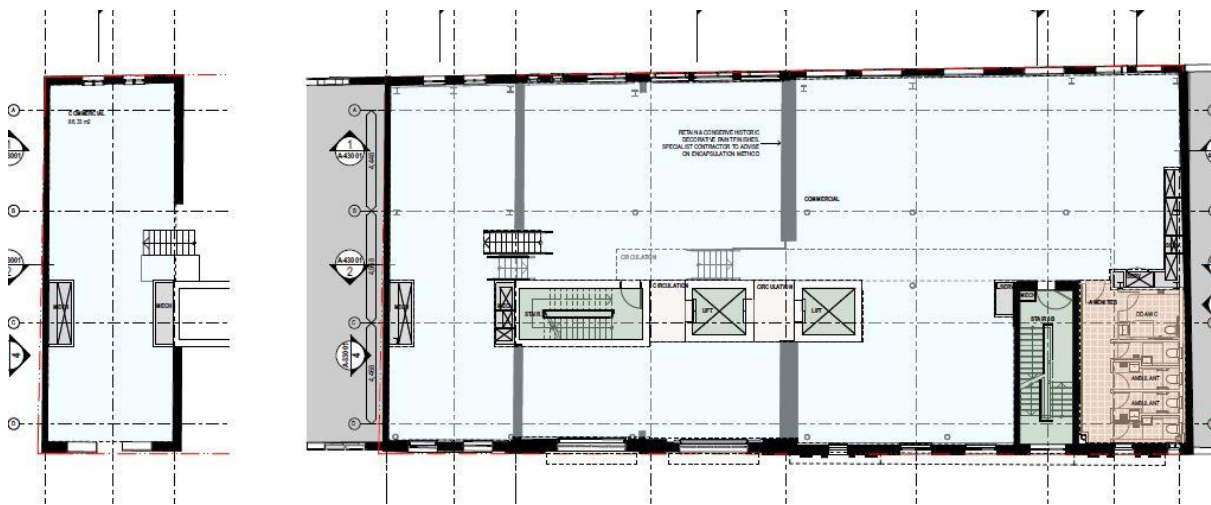


Figure 9: Level 2 floor plans

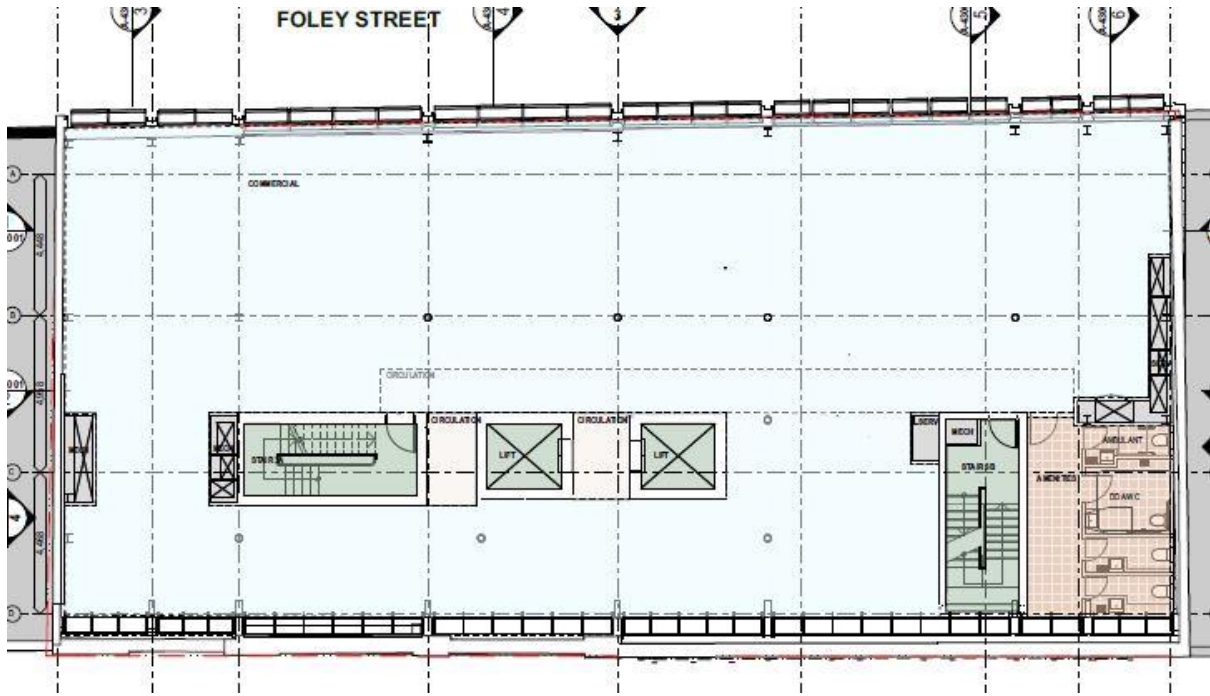


Figure 10: Level 3 floor plan

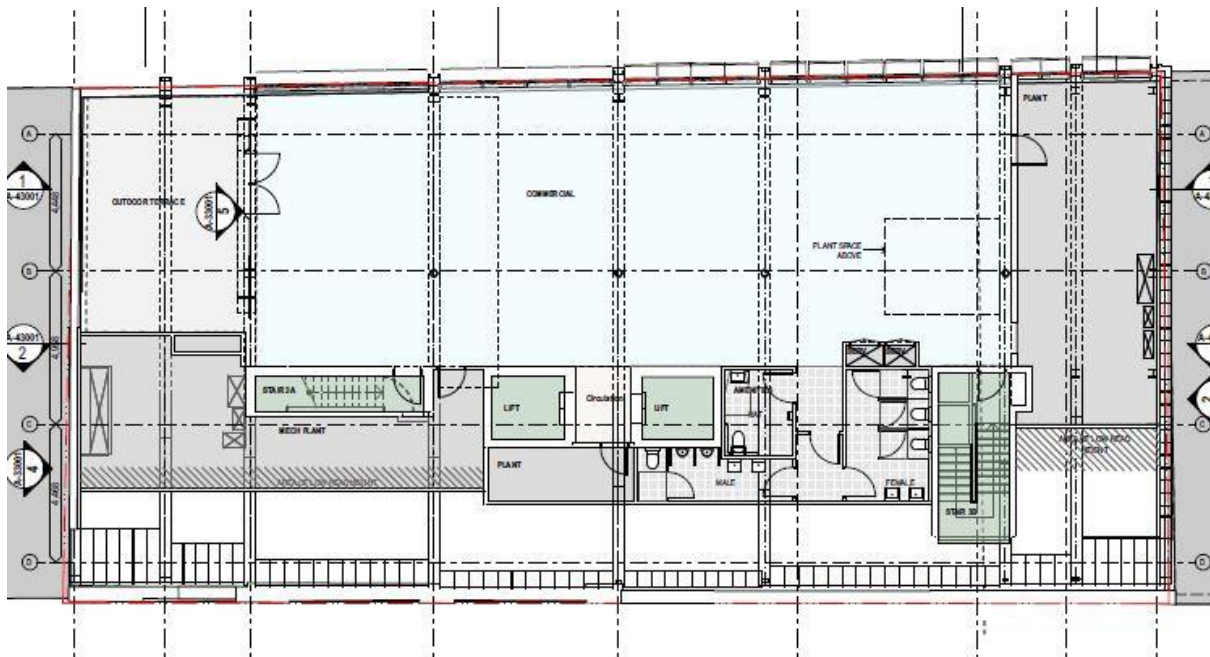


Figure 11: Level 4 floorplan

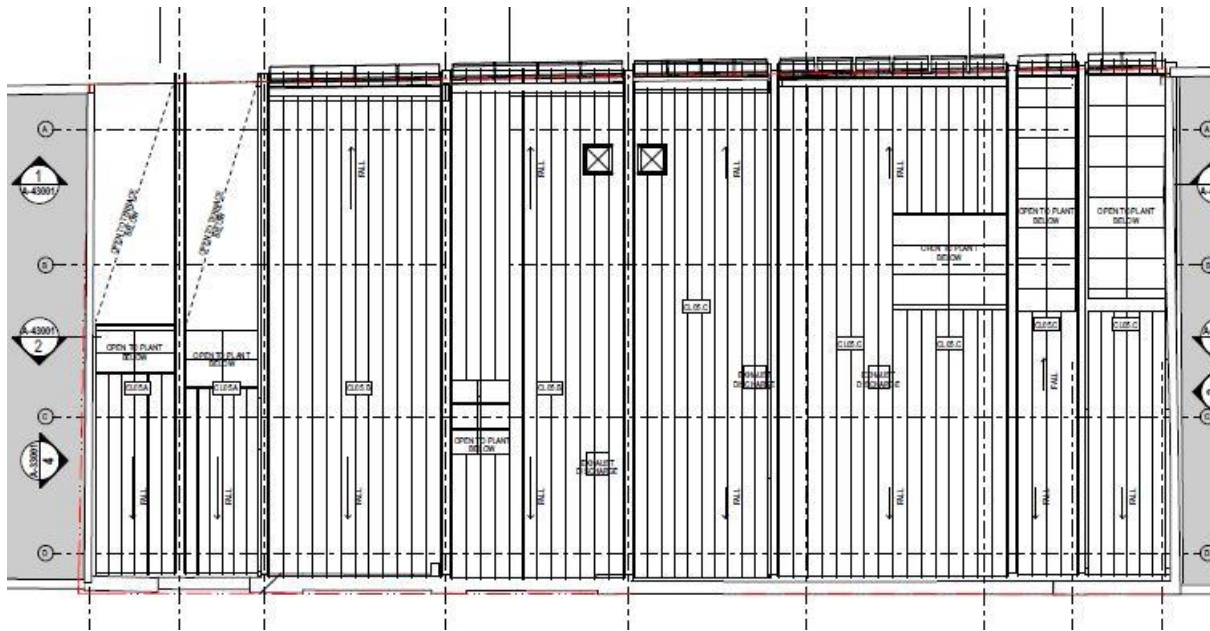


Figure 12: Roof plan



Figure 13: Oxford Street elevation



Figure 14: Foley Street elevation

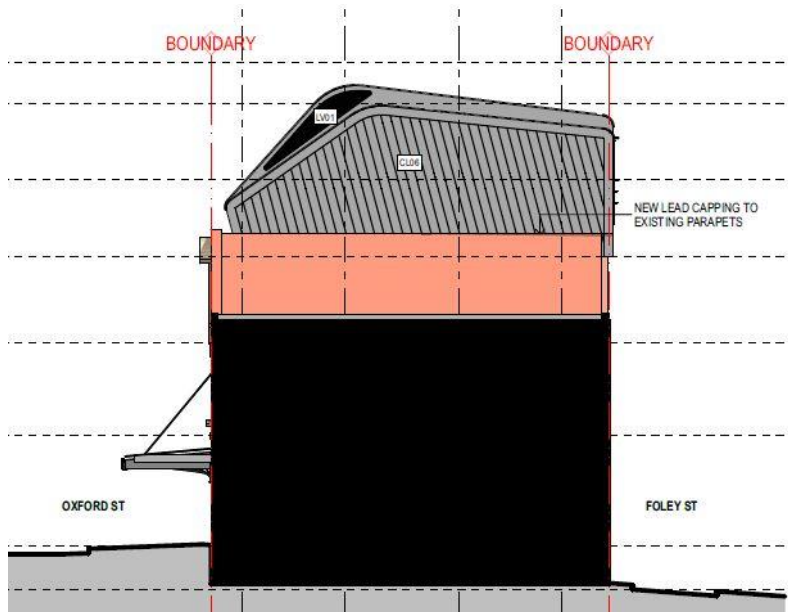


Figure 15: East elevation

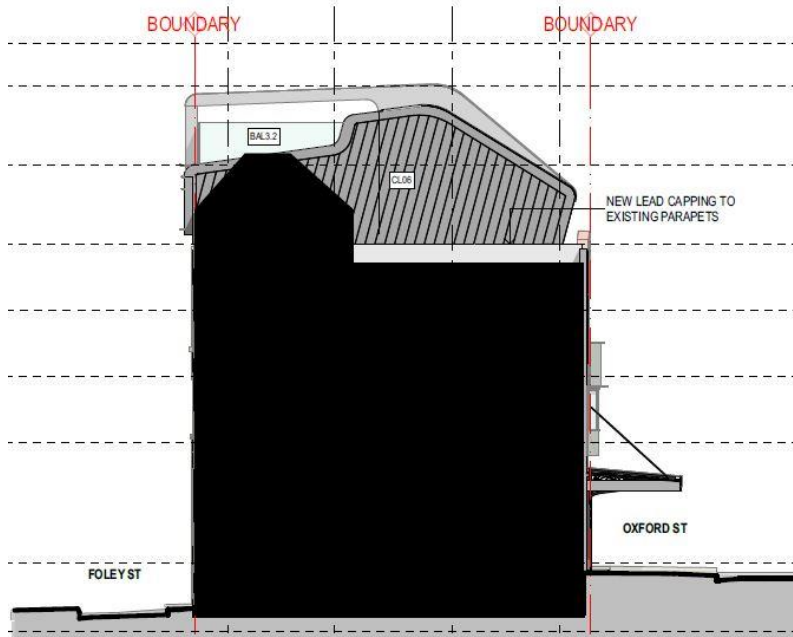


Figure 16: West elevation

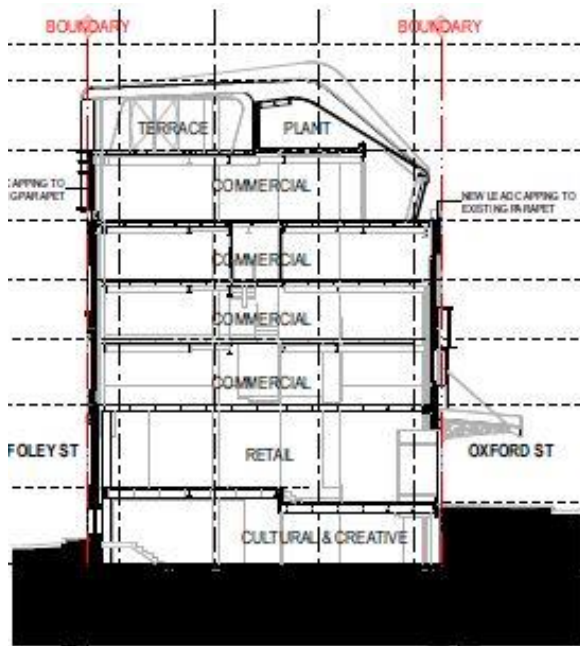


Figure 17: Section plan



Figure 18: Long section plan



Figure 19: Montage image of proposal

Assessment

28. 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 (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

29. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
30. The approved remediation measures for the site remain applicable to the proposal.

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

31. The aim of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage is to ensure that outdoor 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.
32. A signage strategy was not approved as part of D/2020/1072, however Condition 81 'Signage Strategy' states that a proposed signage strategy must be amended and submitted to Council for approval. The current application includes a revised signage strategy including details of:
 - Retail blade signs: metal square signs sized 400mm x 400mm located on the Foley Street building façade.
 - Retail under awning signs: metal panel rectangular under awning signs sized 400mm x 1800mm located under the Oxford Street building awning. One per retail tenancy.
 - Retail fascia signs: adhesive individual letter and logo signs to the awning edge (custom height and width). One per retail tenancy.
 - Building façade sign: one metal plate rectangular sign attached to the Oxford Street building façade above the street awning, between the level 1 and 2 windows. Size not specified.
33. The proposal has been reviewed by Council's Heritage Specialist who has advised that the proposed retail blade signs, retail under awning signs and retail fascia signs are generally in accordance with the design requirements of Condition 81. The proposed building façade sign however is incompatible with the subject building and is not supported and should therefore not form part of the consideration of Condition 81.
34. 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 1 is provided in the table below.

Provision	Compliance	Comment
1. Character of the area	Partial compliance	<p>The proposed signage is generally consistent with the character of the area, subject to conditions.</p> <p>The proposed building façade sign is not supported due to its impact on the subject building.</p>
2. Special areas	Partial compliance	<p>The proposed signage does not detract from the amenity or visual quality of the locality or the Oxford Street Heritage Conservation Area subject to conditions.</p> <p>The proposed building façade sign is not supported due to its impact on the subject building.</p>
3. Views and vistas	Yes	<p>The proposed signage does not obscure or compromise any important views. It does not dominate the skyline and has no impact on the viewing rights of other advertisers.</p>
4. Streetscape, setting or landscape	Partial compliance	<p>The proposed signage is of an appropriate scale, proportion and form and provides a positive contribution to the streetscape and setting of the area.</p> <p>The proposed building façade sign is not supported due to its impact on the subject building.</p>
5. Site and building	Partial compliance	<p>The scale, proportion and positioning of the proposed signage is acceptable and the materiality is compatible with the finishes and colours of the building.</p> <p>The proposed building façade sign is not supported due to its impact on the subject building.</p>
6. Associated devices and logos	N/A	Not applicable.
7. Illumination	N/A	<p>No illumination is currently proposed. This would be the subject of a detailed application.</p>

Provision	Compliance	Comment
8. Safety	Yes	The proposed signage will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

35. With the exception of the building facade sign, the proposed signage strategy, is generally consistent with the objectives of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage as set out in Clause 3.1 and satisfies the assessment criteria specified in Schedule 5.

State Environmental Planning Policy (Housing) 2021

Part 3 Retention of existing affordable rental housing

36. Part 3 of the SEPP addresses the reduction in the availability of low rental residential accommodation arising from a development.
37. As noted under the original assessment report, the site has not been used as a boarding house or for low rental dwellings within five years before the development application was lodged and a contribution under these provisions does not apply.

State Environmental Planning Policy (Transport and Infrastructure) 2021

38. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations

Clause 2.119 – Development with frontage to classified road

39. The application is subject to Clause 2.119 of the SEPP as the site has frontage to Oxford Street which is a classified road.
40. The proposed development satisfies the provisions of Clause 2.119 subject to conditions of consent, as vehicle access to the site is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, subject to the recommended conditions of consent.

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

10 Sydney Harbour Catchment

41. 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.
42. 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

43. 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	<p>The site is located in the B2 Local Centre zone. The proposed development is defined as 'commercial' and 'retail premises' and are permissible with consent in the zone.</p> <p>The proposed development also proposes 'cultural and creative space'. This is defined within the Oxford Street Planning Proposal, as uses including 'live entertainment, performing arts, fine arts and craft, design (fashion, industrial or graphic), media, film and television, photography or publishing, or museums and archives dedicated to these purposes'.</p> <p>'Cultural and creative space' is not currently directly defined in the SLEP 2012 land use table, however such uses, as defined in the planning proposal, meet the definitions of commercial, light industry, and community facilities.</p> <p>Commercial and community facilities are permissible within the zone however light industry is currently prohibited, but will be permissible under the planning proposal. Condition 7 of D/2020/1072 states that the 'cultural and creative space' must be permissible under the LEP.</p> <p>The proposal generally meets the objectives of the zone.</p>

Part 4 Principal development standards

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

Provision	Compliance	Comment
		<p>A height of 21.9m is proposed for Group 3 (consistent with approval).</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 4.11:1 is permitted for the site (4:1 plus end of journey).</p> <p>A FSR of 4.38:1 is proposed (4.27:1 +0.11:1)</p> <p>(Approved as 4:1 under D/2020/1072)</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standards prescribed under Clause 4.3 Height of buildings and Clause 4.4 Floor space ratio. 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	Yes	<p>Group 3 comprises 2 locally listed heritage items pursuant to Schedule 5 of the Sydney LEP 2012, being:</p> <ul style="list-style-type: none"> (a) 110 Oxford Street – (I396) Commercial Building including interior (b) 112-122 Oxford Street (I397) Commercial Building Group including interior <p>Group 3 is also adjacent to a locally listed heritage item at 108 Oxford Street (I395), being the 'Former Crecy Hotel including interior'.</p>

Provision	Compliance	Comment
		The proposal remains consistent with the approved conservation works and the heritage conditions included within D/2020/1072 remain applicable.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	End of journey floor space for a FSR of 0.11:1 is proposed.
Division 4 Design excellence		
6.21 Design excellence	Yes	The development as proposed to be amended retains the high standard of materials and detailing of the development as approved. The development continues to achieve design excellence in accordance with clause 6.21.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises 7.7 Retail premises	Yes	Car parking is not proposed for the development.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Provision	Compliance	Comment
7.15 Flood planning	Yes	The site is identified as being subject to flooding. The proposal remains consistent with the approved floor levels and the use of the building as compared to the approval does not increase the risk for building occupants.

Development Control Plans

Sydney Development Control Plan 2012

44. 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

45. The site is located within the Oxford Street Darlinghurst locality. The locality statement states:
- (a) Oxford Street, Darlinghurst is to continue to provide uses that reflect its role as a regionally significant retail and entertainment street and a local business centre for surrounding neighbourhoods. The area has a range of day-time and night-time activities.
 - (b) There are a number of strategies developed by the City of Sydney which focus on strengthening Oxford Street as a 24 hour entertainment, tourism and retail precinct. The Oxford Street Cultural Quarter Plan prepared in 2009, builds on and responds to these broader strategies and policies to maintain and develop a healthy and competitive economy, a vibrant community, support the local economy and integrate with overarching Council strategies.
 - (c) New development will conserve and complement the context established by the heritage fabric and ensure new development while not mimicking heritage styles, but responds to the urban context and contributes to the established built form patterns of the street.
 - (d) Future development along Oxford Street is to reinforce the established heritage character of narrow shop frontages and consistent awnings.
46. The principles are as follows:
- (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) Retain and enhance the existing heritage buildings along Oxford Street.
 - (d) Development is to respect the prevailing scale, character and form of the street, as defined by the Victorian, Federation and Inter-war heritage buildings.

- (e) Ensure that new development reinforces the individuality of different precincts that characterise Oxford Street.
 - (f) Significant shop fronts are to be retained and conserved. The design of new shopfronts should take their cues from traditional shopfronts.
 - (g) Maintain the mix of uses that contribute to Oxford Street as entertainment, tourism and retail precinct.
 - (h) Maintain Oxford Streets retail, commercial, entertainment and tourism uses and encourage these uses to occur both at and above the street level.
47. The proposed development is in keeping with the unique character and the design principles of the Oxford Street Darlinghurst locality in that it will contribute towards the revitalisation of Oxford Street as an entertainment, tourism and retail precinct, and local business centre.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	Proposal consistent with approval and VPA commitments.
3.2. Defining the Public Domain	Yes	Proposal consistent with approval.
3.5 Urban Ecology	Yes	The proposal is consistent with the approval and will not affect the existing street trees on Oxford Street. Conditions relating to tree protection and pruning remain applicable.
3.6 Ecologically Sustainable Development	Yes	<p>The DCP requires a 5 star NABERS rating for alterations and additions to existing office premises, however 5 stars is not required where the upgrade works would negatively impact on significant heritage fabric or the heritage significance of a heritage item.</p> <p>A concession was approved under the clause as part D/2020/1072 for a 4 start NABERS rating due to the existing constraints of the site.</p> <p>A 4.5 star energy rating is proposed as part of this application and is considered appropriate given the heritage constraints of the site.</p>
3.7 Water and Flood Management	Yes	The site is identified as being subject to flooding. The proposal remains consistent with the approved floor levels, and the use of the building as compared

Provision	Compliance	Comment
		to the approval does not increase the risk for building occupants.
3.9 Heritage	Yes	<p>Group 3 comprises 2 locally listed heritage items pursuant to Schedule 5 of the Sydney LEP 2012, being:</p> <ul style="list-style-type: none"> (a) 110 Oxford Street – (I396) Commercial Building including interior. (b) 112-122 Oxford Street (I397) Commercial Building Group including interior. <p>Group 3 is also adjacent to a locally listed heritage item at 108 Oxford Street (I395), being the 'former Crecy Hotel including interior'.</p> <p>The proposal remains consistent with the approved conservation works and the heritage conditions included within D/2020/1072 remain applicable.</p>
3.11 Transport and Parking	Yes	<p>Loading arrangements remain consistent with the approved development with no on-site parking or loading provided.</p> <p>24 new bicycle parking and end of journey facilities are provided at the lower ground level.</p> <p>Condition 88 of consent D/2020/1071 (for Groups 1 and 2) currently requires 10 bicycle parking spaces be provided for Group 3 within the Group 2 buildings. This requirement could be reduced as part of a separate application.</p>
3.12 Accessible Design	Yes	Remains able to comply with relevant Australian Standards and the BCA.
3.13 Social and Environmental Responsibilities	Yes	The proposed development retains adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	Proposal remains consistent with approval. Waste areas at lower ground amended as part of change of use.

Provision	Compliance	Comment
3.15 Late Night Trading Management	Yes	Late night trading not proposed as part of application.
3.16 Signage and Advertising	Able to comply	<p>A signage strategy has been submitted that is generally consistent with the approved development and the design requirements of Condition 81 'Signage Strategy'. An additional building facade signage zone is proposed midway on the facade of the building, above the awning, akin to a 'top of building sign' under the provisions, which are not permitted on heritage items except where the consent authority is satisfied the sign is compatible with the heritage significance of the building.</p> <p>This additional signage location on the heritage item is not supported on heritage grounds based on the submitted information and is recommended to not form part of the approval. The existing signage strategy Condition 81 is recommended to be updated.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No	<p>The site is permitted a maximum building height of 3 storeys. There is no street frontage height control.</p> <p>The amended height and building form remains consistent with the approved 5-6 storey building height.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	<p>The development retains the existing floor to ceiling heights and the lower ground, ground, first and second floor levels.</p> <p>The new levels (previously approved) including a new mezzanine provide 2.4m</p>

Provision	Compliance	Comment
		floor to ceiling height consistent with the approved development.
4.2.2 Building setbacks	Yes	Approved building setbacks maintained.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	Solar impacts of proposal remain consistent with approval.
4.2.3.4 Design features to manage solar access	Yes	Sun control devices remain consistent with approval. Upper level shading devices to north façade.
4.2.3.6 Deep Soil	No	Proposal remains consistent with approval. The site is built to boundary with no deep soil provided and contains existing heritage buildings.
4.2.3.8 Common open space	Yes	Approved pool and deck area on Level 4 have been removed. This has been replaced with an outdoor terrace adjacent to commercial space. Minor amendments to design.
4.2.3.11 Acoustic privacy	Yes	A revised acoustic report has been submitted that demonstrates the proposal remains capable of satisfying the relevant noise criteria.
4.2.6 Waste and recycling Management	Yes	Proposal remains consistent with approval. Waste areas at lower ground amended in as part of change of use.

Discussion

Oxford Street Cultural and Creative Precinct - Planning Proposal

48. The 'Oxford Street Cultural and Creative Precinct' planning proposal was exhibited between 10 September and 4 November 2021. The outcomes of the consultation and post-exhibition amendments were reported to, and approved by, the Central Sydney Planning Committee on 7 April 2022, and by Council on 11 April 2022. The planning proposal has been referred to the Department of Planning, Industry and Environment for approval and gazettal. At the timing of the writing of this report, the gazettal is yet to occur.

49. The proposed planning instrument provides an alternative height of building development standard, which increases in the height control from 15 metres under the current Sydney LEP 2012, to a height 24 metres for Group 3 (subject site). The proposed planning instrument provides an alternative floor space ratio development standard, which increases the maximum permitted floor space ratio from 4:1 under the current Sydney LEP 2012 to 4.5:1 for Group 3.
50. The draft instrument requires that for these alternative height or floor space ratio (FSR) standards to apply to an alteration of an existing building, at least 10 per cent of the gross floor area of the building will be used for creative purposes (for buildings with no floor space used for creative purposes before the development).
51. Deferred Commencement Condition 2 'Cultural and Creative Space' of D/2020/1072 identifies that there is no existing cultural and creative floor space for the site, and that amended plans are to be provided demonstrating that 10 per cent of the GFA (265sqm) is to be provided as cultural and creative space. The proposal has included plans demonstrating that 10 per cent of GFA will be provided for a creative purposes and the condition is recommended to be amended to reflect the amended proposal.

Clause 4.6 Request to Vary a Development Standard - Height

52. The site is subject to a maximum height of buildings development standard of 15m. The proposed development has a height of up to 21.9m which is an exceedance of the standard by 6.9m (46 per cent).
53. The proposed amending application remains consistent with the approved maximum height. Minor amendments are proposed to the building above the height limit relating to the deletion of a pool for the outdoor terrace area, amended roof openings relating to plant reconfigurations and internal replanning.
54. 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)

55. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The objectives of the standard are achieved notwithstanding non-compliance with the standard.
 - (ii) The site is located in mixed use area with a pattern of differing heights and densities including mid-rise, high-rise and terrace buildings.
 - (iii) The approved additions retain the reading of the existing datum line along Oxford Street set by the existing heritage listed buildings on the site.
 - (iv) There is no change to the maximum height of the approved additions and the development remains in keeping with the broader context of Oxford Street.
 - (v) The built form, scale and massing of the approved addition is consistent with the approval and continues to appropriately sit within its context with the heritage items on the site, the heritage conservation in which it is located and the nearby heritage items.
 - (vi) The minor amendments proposed do not alter the visual impacts of the development.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposed amendments will not result in changes to the approved built form of the development.
 - (ii) The building form as approved, is in accordance with the exhibited and endorsed Oxford Street Cultural and Creative Precinct Planning Proposal.
 - (iii) The proposed change of use to the floorspace including minor building amendments is consistent with the objectives of the planning proposal to facilitate the expansion of commercial floor space and cultural and creative floorspace.
- (c) The proposed development will be consistent with the objectives of the zone;
 - (i) The proposal provides a range of cultural/creative, food and beverage, retail, and commercial uses which will directly services the needs of the community who live, work, and visit the Oxford Street precinct.
 - (ii) The proposal seeks to deliver increased employment opportunities across a range of job types, with the mix of cultural/creative, food and beverage, retail, and commercial space providing a variety of employment opportunities.

- (iii) The proposed inclusion of the height variation will facilitate commercial uses a location well-served by public transport.
 - (iv) The proposal does not include residential uses, consistent with the continuation of the historic non-residential uses on the site.
- (d) The proposed development will be consistent with the objectives of the standard:
- (i) The site is located in mixed use area with a pattern of differing heights and densities including mid-rise, high-rise and terrace buildings.
 - (ii) The approved additions retain the reading of the existing datum line along Oxford Street set by the existing heritage listed buildings on the site.
 - (iii) There is no change to the maximum height of the approved additions and the development remains in keeping with the broader context of Oxford Street.
 - (iv) The built form, scale and massing of the approved addition is consistent with the approval and continues to appropriately sit within its context with the heritage items on the site, the heritage conservation in which it is located and the nearby heritage items.
 - (v) The minor amendments proposed do not alter the visual impacts of the development.

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

56. 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)?

57. The submitted request is considered to demonstrate that compliance with the height of buildings development standard is unreasonable or unnecessary in the particular circumstances of the case and that the objectives of the development standard are achieved despite the non-compliance.
58. The proposed amending application remains consistent with the approved maximum height. Minor amendments are proposed to the building above the height limit relating to the deletion of a pool for the outdoor terrace area, amended roof openings relating to plant reconfigurations and internal replanning. These changes are minor and do not result in additional impacts to neighbouring developments or the public domain.

59. The proposed floor space is in accordance with the height of buildings controls contained within the Oxford Street Cultural and Creative Precinct Planning Proposal which is considered to be certain and imminent.
60. The height of the development as approved continues to be appropriate to the condition of the site and its context. Appropriate height transitions between new development, heritage items and buildings within the heritage conservation area are maintained. The minor building amendments to not result in additional view impacts.

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

61. The application has demonstrated there are sufficient environmental planning grounds to justify contravening the height of buildings development standard in the circumstances of the application.
62. The proposed amending application remains consistent with the approved maximum height. Minor amendments are proposed to the building above the height limit relating to the deletion of a pool for the outdoor terrace area, amended roof openings relating to plant reconfigurations and internal replanning. These changes are minor and do not result in additional impacts to neighbouring developments or the public domain.
63. The proposed floor space is in accordance with the height of buildings controls contained within the Oxford Street Cultural and Creative Precinct Planning Proposal which is considered to be certain and imminent.

Is the development in the public interest?

64. The proposed development is in the public interest as it is consistent with the objectives of the height of buildings standard and the objectives of the B2 Local Centre zone. That is:
 - (a) The height of the development is appropriate to the site conditions. The height, when considered with the proposed building form and setbacks, allows for an appropriate relationship with the heritage items on site, adjacent to the site, and the surrounding heritage conservation area.
 - (b) The height remains consistent with the approved development.
 - (c) The proposed heights are consistent with the desired future character as reflected by the Oxford Street Creative and Cultural Precinct Planning Proposal.
 - (d) The proposed development includes a mix of compatible land uses that are appropriate to the B2 Local Centre zone.
 - (e) The site is located 800m from the Museum railway station and close to multiple bus stops. The location and accessibility and the connection between the public domain and the subject development creates a highly permeable access arrangement which promotes pedestrian movement.

Conclusion

65. For the reasons provided above the requested variation to the height of buildings development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of buildings development standard and the B2 Local Centre zone.

Clause 4.6 Request to Vary a Development Standard - FSR

66. The site is subject to a maximum floor space ratio control of 4:11 (4:1 plus end of journey). The proposed development has a floor space ratio of 4.38:1 (4.27:1 plus 0.11 end of journey), a variation of 0.27:1 (6.57 per cent) to the maximum permissible. The original proposed was approved with an FSR of 4:1. The internal changes relating to the change of use including the provision of bicycle parking, end of trip facilities, deletion of the Level 4 pool, amendments to building plant throughout and the deletion of a small void on Level 3 result in an additional 231sqm as compared to the original approval.
67. 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)

68. The applicant seeks to justify the contravention of the floor space ratio development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The objectives of the standard are achieved notwithstanding the non-compliance as follows:
 - (i) The proposal will provide for additional commercial floorspace on the City fringe in accordance with the projections contained with City Plan 2036.
 - (ii) The proposed change of use does not result in changes to the built form, height or bulk of the approved development. The proposal continues to reflect the overall scale and massing of the development as approved.

- (iii) The proposal will contribute to achieving the goals of the Oxford Street Cultural and Creative Precinct Planning Proposal for rejuvenation of the precinct with an increase to FSR available to facilitate.
 - (iv) The variation will not result in adverse impacts to vehicular or pedestrian traffic with the site being located in close proximity to multiple modes of public transport.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The additional floor area sought is contained within the approved building envelope.
 - (ii) The proposal is in accordance with the draft Oxford Street Creative and Cultural Precinct Planning Proposal. The planning proposal is a matter for consideration as a proposed planning instrument that has been the subject of public consultation, and is considered to be certain and imminent after endorsement by Council.
 - (iii) The additional floor area will assist in providing cultural and creative floor space in accordance with the objectives of the planning proposal.
 - (iv) The proposal remains consistent with the principles of heritage conservation for the building as contained within the conservation management plan for the building.
 - (v) The proposal does not result in significant additional environmental impacts despite the contravention of the standard. There is no change to the approved built form that result in overshadowing, visual or privacy impacts.
- (c) The proposed development will be consistent with the objectives of the zone:
 - (i) The proposal provides floorspace for cultural and creative, food and drink, retail and commercial office space which will serve the needs of the community. The additional cultural and creative floorspace and uses will support the rejuvenation of the Oxford Street precinct.
 - (ii) The proposal will deliver increased employment opportunities in a highly accessible City fringe location within close proximity of public transport.
 - (iii) The proposal will provide commercial office space in an accessible location and provides bicycle parking and end of journey facilities. It will encourage active modes of transport including walking and cycling.
- (d) The proposed development will be consistent with the objectives of the standard:
 - (i) The proposal will provide for additional commercial floorspace on the City fringe in accordance with the projections contained within City Plan 2036.
 - (ii) The proposed change of use does not result in changes to the built form, height or bulk of the approved development. The proposal continues to reflect the overall scale and massing of the development as approved.

- (iii) The proposal will contribute to achieving the goals of the Oxford Street Cultural and Creative Precinct Planning Proposal for rejuvenation of the precinct with an increase to FSR available to facilitate.
- (iv) The variation will not result in adverse impacts to vehicular or pedestrian traffic with the site being located in close proximity to multiple modes of public transport.

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

69. 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)?

70. The submitted request is considered to demonstrate that compliance with the FSR development standard is unreasonable or unnecessary in the particular circumstances of the case and that the objectives of the development standard are achieved despite the non-compliance.
71. The increase in floorspace is associated with the design changes resulting from the change of use from a hotel to a commercial office including the deletion of the Level 4 pool, amendments to building plant throughout, and the deletion of a small void. The changes are minor in relation to the overall development and do not result in additional building form.
72. The proposed floor space is in accordance with the FSR controls contained within the Oxford Street Cultural and Creative Precinct Planning Proposal which is considered to be certain and imminent.
73. The proposal provides a density of development appropriate for the site, consistent with the approved built form for the site and in a location that is able to accommodate the generation of transport and pedestrian traffic.
74. The proposal retains an appropriate built form in the location that reflects the desired character of the locality and minimises the adverse impacts to the amenity of the locality.

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

75. The application has demonstrated there are sufficient environmental planning grounds to justify contravening the FSR development standard in the circumstances of the application.
76. The proposed floor space is in accordance with the FSR controls contained within the Oxford Street Cultural and Creative Precinct Planning Proposal which is considered to be certain and imminent.

77. The additional floor area sought is contained within the approved building envelope and results from changes throughout the building associated with the change from the approved hotel use to a commercial office use.
78. The additional floor area is minor overall and does not result in impacts to adjoining developments, or the approved heritage conservation measures for the building.

Is the development in the public interest?

79. The development is in the public interest as it is consistent with the objectives of the FSR standard and the objectives of the B2 Local Centre zone in which the site is located.
80. The written request has demonstrated that the objectives of the FSR standard are achieved despite the non-compliance.
81. The proposal provides floor space to meet the anticipated development needs for the Oxford Street precinct. The density of development is suitable for the City fringe location of the site which is located in proximity of a range of public transport options and promotes bicycle use. The character of the development remains as approved.
82. The development is consistent with the objectives of the B2 Local Centre zone. The proposal provides for retail, commercial and creative and cultural uses for the site within an accessible location. The proposal will promote the use of public transport and cycling and provide activation within the Oxford Street precinct.

Conclusion

83. For the reasons provided above the requested variation to the floor space ratio development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of floor space ratio development standard and the B2 Local Centre zone.

Consistency with original approval and design amendments

84. The proposed amendments in this application remain consistent with the approved envelope of the building additions including both height and building setbacks.
85. The proposed physical design amendments to the approved development include the following:
 - (a) internal reconfiguration of hotel rooms to commercial space on levels ground to level 4;
 - (b) additional cultural and creative floor space on lower ground and ground levels;
 - (c) additional retention of an existing window on the lower ground level;
 - (d) addition of end of trip facilities on lower ground level;
 - (e) replacement of plant area on Level 2 Mezzanine to commercial space;

- (f) replacement of level 4 pool and pool deck with an outdoor terrace associated with commercial space;
- (g) reconfiguration of circulation, amenities, and plant on all levels;
- (h) reconfiguration of roof openings on roof level for replanned plant and amenities; and
- (i) reduced fire rating requirements due to change from hotel to commercial use.

86. The plans also separately include updates to address design modifications required under D/2020/1072 (as amended) (Conditions 13 to 28). Approval is not sought as part of this application to satisfy these conditions. Condition 12 of D/2020/1072 requires that a consolidated set of plans incorporating all required design amendments be approved prior to the issue of a construction certificate and it is recommended this condition be updated to incorporate the amendments of this consent.

87. A comparison of the approved floor plans and elevations to the proposed amending application plans is provided below.

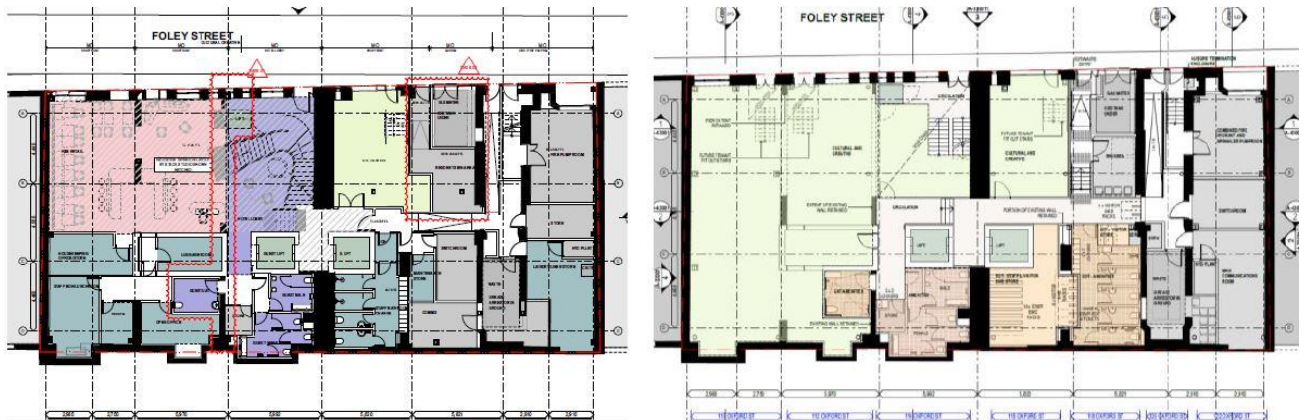


Figure 20: Lower ground level plans as approved (left), and amended (right)

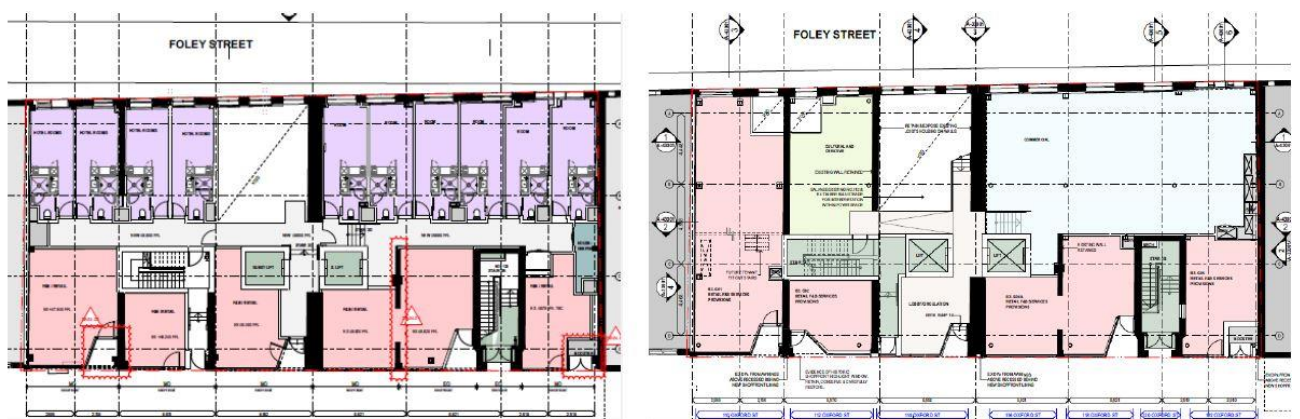


Figure 21: Ground level plans as approved (left), and amended (right)

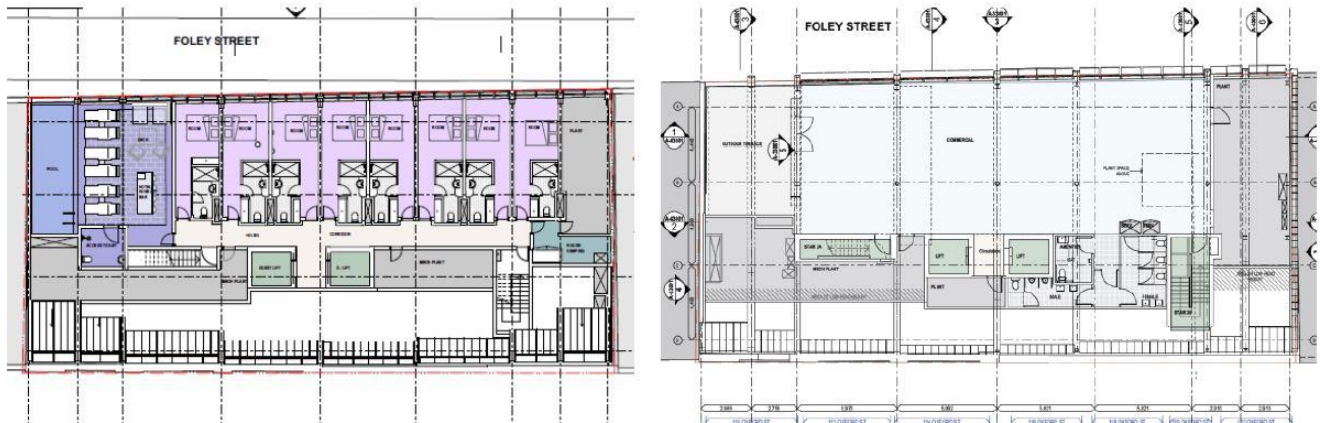


Figure 25: Level 4 plans as approved (left), and amended (right)



Figure 26: Oxford Street elevation - approved D/2020/1072



Figure 27: Oxford Street elevation - amending application



Figure 28: Foley Street elevation - approved D/2020/1072



Figure 29: Foley Street elevation - amending application

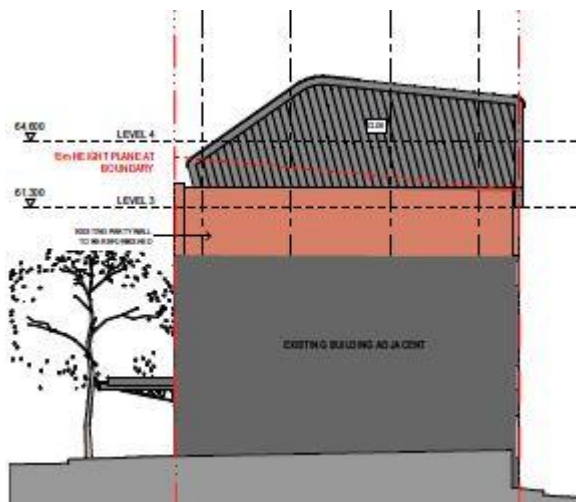


Figure 30: East elevation - approved D/2020/1072

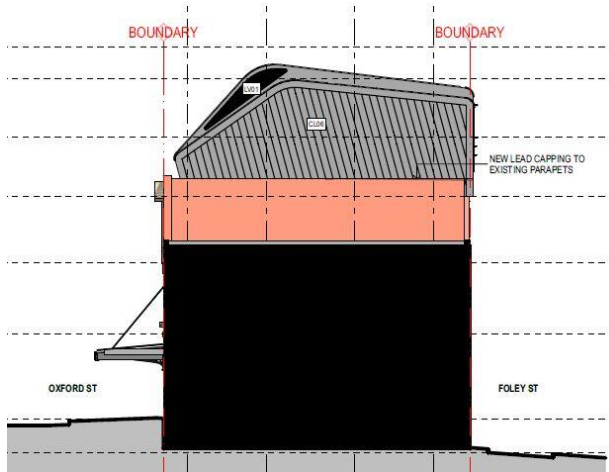


Figure 31: East elevation - amending application

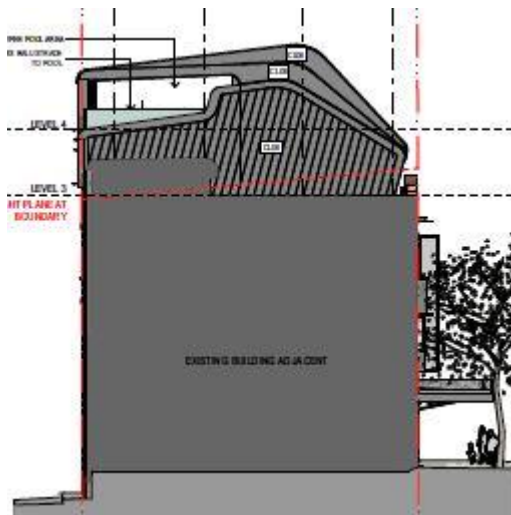


Figure 32: West elevation - approved D/2020/1072

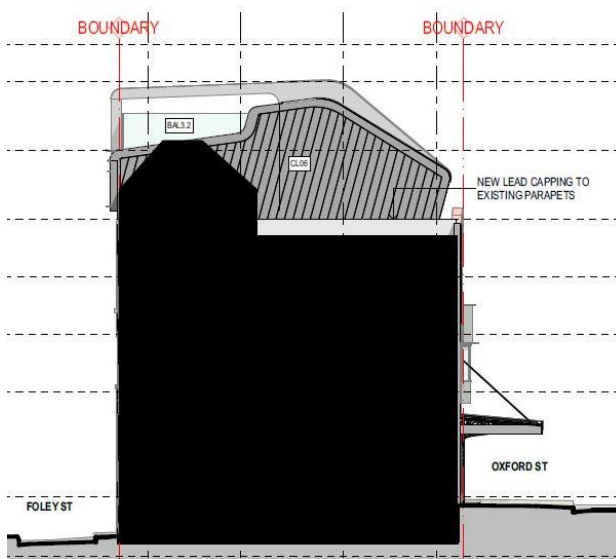


Figure 33: West elevation - amending application

88. The proposed amendments are minor changes to the building form as approved and will not result in additional impacts to neighbouring developments. Council's Heritage Officer has reviewed the proposal and has commented that the proposal remains consistent with the approved heritage conservation strategy and conditions contained within D/2020/1072 and that these conditions remain applicable. Condition 12 of D/2020/1072 requires a consolidated set of plans to be submitted including all design modifications and as previously noted it is recommended this condition be amended to incorporate changes in this amending application.

Consultation

Internal Referrals

89. The application was discussed with Council's:
- (a) Planning Agreements Unit;
 - (b) Environmental Health Unit;
 - (c) Heritage and Urban Design Unit,
 - (d) Public Domain Unit;
 - (e) Transport and Access Unit;
 - (f) Environmental Projects Unit; and
 - (g) Waste Management Unit.
90. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Recommended Conditions of Consent shown at Attachment A.

Advertising and Notification

91. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 23 August 2022 and 21 September 2022. A total of 252 properties were notified and one submission was received.

92. The submission raised the following issue:

(a) Issue: NABERS Target

Concern was expressed that the proposal should be required to target a 5 star NABERS rating, rather than 4.5 Star.

Response: As noted above, SDCP 2012 states that a 5 star target is not required in circumstances where the upgrade works would negatively impact on significant heritage fabric or the heritage significance of a listed building, or the costs associated would be unreasonable. Council's Heritage Unit and Environmental Projects Unit have reviewed the proposal and advised that in the circumstances a rating of 4.5 stars is appropriate. A 4.5 star NABERS rating is consistent with the approval for D/2020/1071 for the associated buildings in Group 1 and 2.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

93. A condition requiring a Section 7.11 development contribution under the City of Sydney Development Contributions Plan 2015 is included in consent D/2020/1072 and forms part of the planning agreement. This has not been sought to be amended as part of the application.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

94. The site is located within the residual affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of \$11,599.74 per square metre of total residential floor area 1,274sqm (representing the additional total floor area for the building additions) totalling \$147,780.69. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Relevant Legislation

95. Environmental Planning and Assessment Act 1979.

Conclusion

96. The application seeking to amend the approved mixed use development under D/2020/1072 (as modified) as an amending development application has been considered and assessed against the relevant planning instruments and development controls. The proposed amendments include to replace the approved hotel use for commercial use across all levels with associated amendments to the internal configuration, external amendments to building design, and to the signage strategy to support the change of use. The amending application does not seek additional height or built form, but does result in additional floorspace associated with design changes for the change of use.

97. The 'Oxford Street Cultural and Creative Precinct' Planning Proposal has been exhibited and approved by Council and is a matter for consideration in the assessment of the application. The proposed planning instrument includes an increased alternative height of building development standard which increases the current height control for the site from 15 metres to 24 metres. The proposed planning instrument also provides for an alternative floor space ratio standard which increase the floor space control from 4:1 to up to 4.5:1 for the site.
98. The development exceeds the current 15 metre height of buildings standard by 6.9 metres (46 per cent variation), however is compliant with the alternative height of buildings standard of 24 metres for the site under the planning proposal.
99. The development exceeds the current floor space ratio control of 4:11:1 by 0.27:1 (6.57 per cent variation), however is compliant with the alternative floor space ratio standard of 4.5:1 for the site under the planning proposal.
100. The applicant has submitted a request to vary the height of buildings standard pursuant to clause 4.6 of Sydney Local Environmental Plan 2012. This variation was previously considered and approved by the Panel under D/2020/1072. The request to vary the standard is supported in the circumstances of the application.
101. The application has submitted a request to vary the floor space ratio development standard pursuant to clause 4.6 of Sydney Local Environmental Plan 2012. Additional floor area is proposed within the approved building envelope (as compared to the previous approval). The request to vary the standard is supported in the circumstances of the application.
102. The proposed change of use and associated internal configurations will not impact on the heritage significance and the approved conservation strategy for the heritage item. The change of use is supported, subject to conditions as discussed within the report. The amending application is supported, subject to conditions contained in Attachment A.

ANDREW THOMAS

Executive Manager Planning and Development

Shannon Rickersey, Area Coordinator