

Item 3.

**Development Application: 191-195, 197-199 and 201 Oxford Street,
Darlinghurst - D/2022/327**

File No.: D/2022/327

Summary

Date of Submission: 14 April 2022

Applicant / Architect: Neeson Murcutt + Neille

Owner: Save the Robots Trust

Planning Consultant: Mersonn Pty Ltd

Heritage Consultant: John Oultram Heritage and Design

DAP: 1 September 2022

Cost of Works: \$14,682,745.00

Zoning: The subject sites are located within the B2 Local Centre zone. The proposed mixed use development, comprising food and drink premises, information and education facility (art gallery), and a hotel or motel accommodation, is permissible with consent.

Proposal Summary: The proposal involves alterations and additions to the existing building at 191-195 Oxford Street, substantial demolition of 197-199, 201 Oxford Street, and construction of a 6 storey mixed use development.

The development includes a basement level that will contain a hospitality tenancy and back of house services of the hotel and the ground floor cafe and restaurant. It also includes art gallery spaces, hotel accommodation, and a rooftop bar.

Notification

The application was notified and advertised for 28 days between 1 and 30 June 2022. As a result, 22 submissions were received by the City in response. The submissions raised the following concerns:

- the proposed design fails to respond to the existing or desired character for the locality, including to address the corner and frame the terminating vista of Oxford Street;
- the proposed height exceedance would set an undesirable precedent and results in unreasonable view impacts;
- the application fails to demonstrate existing rights to rely on the private laneway for access and servicing;
- the existing billboard should be removed, and the corner turret be reinstated;
- failure to consult with and retain existing LGBTQIA+ premises; and
- potential impact to Busby Bore.

The application is recommended for refusal as it, amongst other matters, fails to deliver a design that is consistent with the design criteria for the newly created Oxford Street Cultural and Creative Precinct (Precinct).

Reason for referral to LPP

The application is referred to the Local Planning Panel for determination as the variation to the 'height of buildings' development standard prescribed by clause 4.3 of Sydney LEP 2012 exceeds 25 per cent.

Assessment

The planning controls for the Oxford Street Cultural and Creative Precinct were gazetted on 2 December 2022. They are contained in clause 6.60D of Sydney LEP 2012 and section 5.11 of Sydney DCP 2012.

This assessment finds that the proposal does not meet the desired future character of the Precinct. The proposal fails to establish a strong visual and physical edge to Taylor Square. It also breaches the height controls for the site and undermines the intent of newly established Precinct-specific planning controls.

This assessment is consistent with the comments made by Council's Design Advisory Panel on 1 September 2022. The Panel concluded that the proposal does not exhibit design excellence as it erodes the corner presentation and weakens the definition of Taylor Square. The Panel's advice reinforces the underpinning principles of the Precinct-specific planning controls.

The applicant was advised of the concerns with the design, including the advice provided by the Design Advisory Panel. Given the need for a comprehensive redesign, the applicant was advised to withdraw the application and submit revised scheme for pre-lodgement discussions. The applicant subsequently requested that the application be determined based on the information submitted.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) State Environmental Planning Policy (Resilience and Hazards) 2021
- (ii) State Environmental Planning Policy (Transport and Infrastructure) 2021
- (iii) State Environmental Planning Policy (Biodiversity and Conservation) 2021
- (iv) Sydney Local Environmental Plan 2012
- (v) Sydney Development Control Plan 2012
- (vi) Sydney Landscape Code Volume 2: All Development Except for Single Dwellings
- (vii) City of Sydney Interim Floodplain Management Policy
- (viii) City of Sydney Guidelines for Waste Management in New Developments (Waste Guidelines) 2018
- (ix) City of Sydney Public Art Policy
- (x) City of Sydney Interim Guidelines for Public Art in Private Developments
- (xi) City of Sydney Development Contributions Plan 2015
- (xii) City of Sydney Affordable Housing Program 2020

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request - Height of Buildings
- C. Design Advisory Panel Advice Sheet
- D. Submissions (Confidential)

Recommendation

It is resolved that consent be refused for Development Application No. D/2022/327 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

Inappropriate building height and inadequate Clause 4.6 variation request

- (A) The applicant's written request has not adequately demonstrated that compliance with the 'heights of building' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening the development standard.

The non-compliance with the 'heights of building' development standard also undermines the operation of the site-specific controls for the Oxford Street Creative and Cultural Precinct to encourage redevelopment by providing additional height and floor space, and to ensure that the additional height and floor space reflects the desired character of the area.

As such, the proposed development is contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aims at parts (b), (d), and (i);
- (ii) Clause 4.6(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b);
- (iii) Clause 4.6(3) of the Sydney Local Environmental Plan 2012;
- (iv) Clause 6.60D(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a), (b), and (c); and
- (v) Section 5.11 of the Sydney Development Control Plan 2012, including the objectives and provisions of sections 5.11.3 and 5.11.5.1, 5.11.5.2 and 5.11.5.3.

Failure to exhibit design excellence

- (B) The proposed development fails to demonstrate design excellence, as it:
- (i) fails to deliver a high standard of architectural and urban design that is appropriate for the location;
 - (ii) has a form and external appearance that will detract from the quality and amenity of the public domain;
 - (iii) detrimentally impacts on the view corridor of Oxford Street and results in unreasonable view loss impact to neighbouring private property to the south;

- (iv) fails to respect the heritage fabric of the retained corner building or provide appropriate awning and shopfront design that is appropriate for the Oxford Street conservation area;
- (v) prevents the delivery of the desired future character of the Oxford Street Cultural and Creative Precinct; and
- (vi) fails to integrate high-quality landscape design.

As such, the proposed development is contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aims at parts (h), (j), and (k);
- (ii) Clause 6.21(1) of the Sydney Local Environmental Plan 2012, including the objective of the clause; and
- (iii) Clause 6.21C(2) of the Sydney Local Environmental Plan 2012; including the matters for consideration at parts (a), (b), (c) and (d).

Unacceptable impacts on significance of the heritage conservation area

(C) The proposed development fails to:

- (i) establish, and respond to, a set of heritage principles that are specific to the subject buildings;
- (ii) provide an adequate structural impact statement that includes a methodology to retain and maintain existing fabrics;
- (iii) respect and respond to the fine-grain nature, and the character, detailing and design of traditional shopfronts;
- (iv) retain the existing window opening on the Taylor Square elevation of the corner building and the surviving pressed metal ceilings within the existing awnings;
- (v) reinstate the awning with a design appropriate for the style of the building and using appropriate materials and finishes; and
- (vi) remove inappropriate elements, that is, the existing billboard.

As such, the proposed development is contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (k);
- (ii) Clause 5.10(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b);
- (iii) Clause 5.10(4) of the Sydney Local Environmental Plan 2012;
- (iv) 6.21C(2)(d)(iii) of the Sydney Local Environmental Plan 2012;

- (v) Section 3.9 of the Sydney Development Control Plan 2012, including the objectives at parts (a) and (b), and the provisions at sections 3.9.6(1) and 3.9.7(1)-(4);
- (vi) Section 5.11.1 of the Sydney Development Control Plan 2012, including the principles at parts (6), (8), (9), and (16);
- (vii) Section 5.11.4 of the Sydney Development Control Plan 2012, including the objectives at parts (a), (b), (c), (d), (e) and (g), and the provisions at sections 5.11.4.1, 5.11.4.2 and 5.11.3; and
- (viii) Section 5.11.5.4 of the Sydney Development Control Plan 2012, including the objective at part (c).

Unacceptable landscape design

- (D) The proposed development does not demonstrate:
- (i) that 15 per cent canopy cover can be achieved at 10 years post-completion; and,
 - (ii) that excellence and integration of landscape design has been achieved.

As such, the proposed development is contrary to and fails to satisfy:

- (i) Clause 6.21C(2)(d)(xiii) of the Sydney Local Environmental Plan 2012;
- (ii) Section 3.5.2 of the Sydney Development Control Plan 2012, including the objective at part (a) and the provision at part (2); and
- (iii) the relevant guidelines in the City of Sydney's 'Sydney Landscape Code volume 2: All Development Except for Single Dwellings'.

Incompatibility with the locality

- (E) The proposed development is incompatible with the desired character of the Oxford Street Darlinghurst locality and the Oxford Street Cultural and Creative Precinct as the proposed development fails to:
- (i) respond to and complement the existing contributory buildings, including their existing pattern of stepped building heights;
 - (ii) reinforce the fine-grain pattern of ground floor tenancies and provide new shopfronts that take cues from traditional shopfronts;
 - (iii) establish nor is guided by an agreed set of heritage principles specific for the existing buildings; and
 - (iv) support the realisation of the Precinct strategies, including the provision of a strong visual and physical edge to define and enhance the quality of Taylor Square, and to provide new cultural and creative floor space that is designed to meet appropriate operational requirements and support the Precinct's LGBTQIA+ cultural identity.

As such, the proposed development is contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (j);
- (ii) Clause 6.60D(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b);
- (iii) the locality statement in section 2.4.10 of the Sydney Development Control Plan, including the supporting principles at parts (a), (b), (d), (e), and (f); and,
- (iv) the locality statement in section 5.11.1 of the Sydney Development Control Plan, including the supporting principles at parts (1), (7), (8), (10) and (12).

Unacceptable likely impacts

(F) The proposed development fails to:

- (i) clearly identify the nature, capacity, operating hours, and operational management of each of the premises;
- (ii) provide an adequate acoustic report to demonstrate compliance with the relevant noise criteria considering the cumulative impact of all the mechanical equipment, operation, and patrons of all of the premises;
- (iii) provide an adequate Plan of Management to outline robust operational management practices to minimise adverse impacts on the amenity of sensitive land uses; and
- (iv) include in the Plan of Management a set of Diversity and Inclusion principles and guidelines, and a commitment to ongoing staff training.

As such, the proposed development is contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (h);
- (ii) Section 3.15 of the Sydney Development Control Plan 2012, including the objectives at parts (a), (b), (c), (h), (k), (l) and (o), and the provisions at sections 3.15.3, 3.15.4 and 3.15.5;
- (iii) Section 5.11.2 of the Sydney Development Control Plan 2012, including the objectives at parts (d) and (i), and the provision at part (10); and
- (iv) Schedule 3 of the Sydney Development Control Plan 2012.

Unacceptable servicing and waste management provision

(G) The proposed development does not demonstrate:

- (i) adequate waste storage area; and
- (ii) sufficient detail on servicing of the site and waste collection.

As such, the proposed development is contrary to and fails to satisfy:

- (i) Section 5.11.8 of the Sydney Development Control Plan 2012, including the objectives at parts (a) and (b), and the provisions at parts (1), (2), and (3);
- (ii) Section 3.14 of the Sydney Development Control Plan 2012, including the objective at part (c) and the provisions at sections 3.14.1(1) and 3.14.3(1);
- (iii) Section 4.2.6 of the Sydney Development Control Plan 2012, including the objectives at parts (b) and (c) and the provisions at sections 4.2.6.1, 4.6.3.3 and 4.2.6.4; and
- (iv) the relevant guidelines in the City of Sydney's 'Guidelines for Waste Management in New Developments 2018'.

Site unsuitable for the development

- (H) The application fails to demonstrate:
- (i) that the land can be made suitable in accordance with State Environmental Planning Policy (Resilience and Hazards) 2021 for the purpose of the proposed development; and
 - (ii) that flood risks have been fully detailed and managed.

As such, the proposed development is contrary to and fails to satisfy:

- (i) Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*;
- (ii) Section 4.6 (Remediation of Land) of the State Environmental Planning Policy (Resilience and Hazards) 2021;
- (iii) Section 3.17 of Sydney Development Control Plan 2012, including the objective at part (a) and the provision at part (1);
- (iv) Clause 5.21 of Sydney Local Environmental Plan 2012;
- (v) Section 3.7 of the Sydney Development Control Plan 2012, including the objectives at parts (d), (e) and (f) and the provisions in section 3.7.1 parts (1), (2) (3) and (4); and
- (vi) the City of Sydney Interim Floodplain Management Policy.

Lack of public art provision

- (I) The application fails to include the provision of public art as part of the proposed development.

As such, the proposed development is fails to satisfy:

- (i) Section 3.1.5 of the Sydney Development Control Plan 2012, including the objectives at parts (a) and (c);
- (ii) the City of Sydney Public Art Policy; and
- (iii) the City of Sydney Interim Guidelines for Public Art in Private Developments.

Not in the public interest

(J) The application fails to demonstrate:

- (i) that the proposed development is in the public interest having regard to the matters above.

As such, the proposed development is contrary to and fails to satisfy:

- (i) Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

Background

The Site and Surrounding Development

1. The site comprises of three parcels of land, with the legal descriptions and street addresses as below:
 - (a) Lot 1 DP 934462 and Lot 1 DP 61238 - 191-195 Oxford Street Darlinghurst
 - (b) Lot 1 DP 945258 - 197-199 Oxford Street Darlinghurst
 - (c) Lot A DP 9258 - 201 Oxford Street Darlinghurst
2. The site is irregular in shape, with a total area of approximately 481.6m².
3. The site is also identified as being flood-affected.
4. The site is located at the corner of Oxford Street and Flinders Street, being the terminating view of Oxford Street from the Emden Gun at the southeast corner of Hyde Park. In addition to the two street frontages, the site also addresses the pedestrianised area at the street corner.
5. The site does not contain any heritage item. However, it is located within the Oxford Street heritage conservation area (C17), and all existing buildings are identified as contributory buildings to the conservation area.
6. The site is also located within the Oxford Street locality and forms part of the Oxford Street Creative and Cultural Precinct (Precinct). A set of Precinct-specific controls came into force, on 2 December 2022, being clause 6.60D of Sydney LEP 2012 (LEP) and section 5.11 of Sydney DCP 2012 (DCP).
7. 191-195 Oxford Street contains a three storey federation style corner building with continuous awning along its three frontages. A static billboard, approximately 4m high and 13.5m wide, also sits behind the roof parapet, addressing the street corner.
8. 197-199 and 201 Oxford Street contain three (3) two-storey terraces, that have been significantly modified to accommodate a three storey addition behind the roof parapet. The rear portion of the two terraces at 197-199 Oxford Street, in particular, have been completely re-constructed.
9. A private laneway runs along the site's southern boundary. It forms part of 2 Sturt Street, and provides pedestrian access to the existing building on 2 Sturt Street from Flinders Street. The laneway was secured by a locked gate at the time of the site visit. While the existing buildings have doors opening to the laneway, access and servicing rely on the street frontages. The submitted survey plan also does not clearly demonstrate that the site benefits from an existing easement for access.
10. The surrounding area is characterised by a mixture of land uses, including a range of commercial and retail premises, cafes and restaurants, and a range of residential uses, including boarding houses and apartment buildings.
11. The surrounding area also includes multiple heritage items, including the Darlinghurst Courthouse to the north, the Sacred Heart Catholic Church to the east, the Courthouse hotel and Kinselas to the west, and the T2 building and the 'Belgenny' apartment building to the south-east.

- 12. A site visit was carried out on 26 July 2022. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds, with Taylor highlighted in yellow



Figure 2: Site viewed from Oxford Street



Figure 3: Site viewed from Taylor Square, including existing billboard

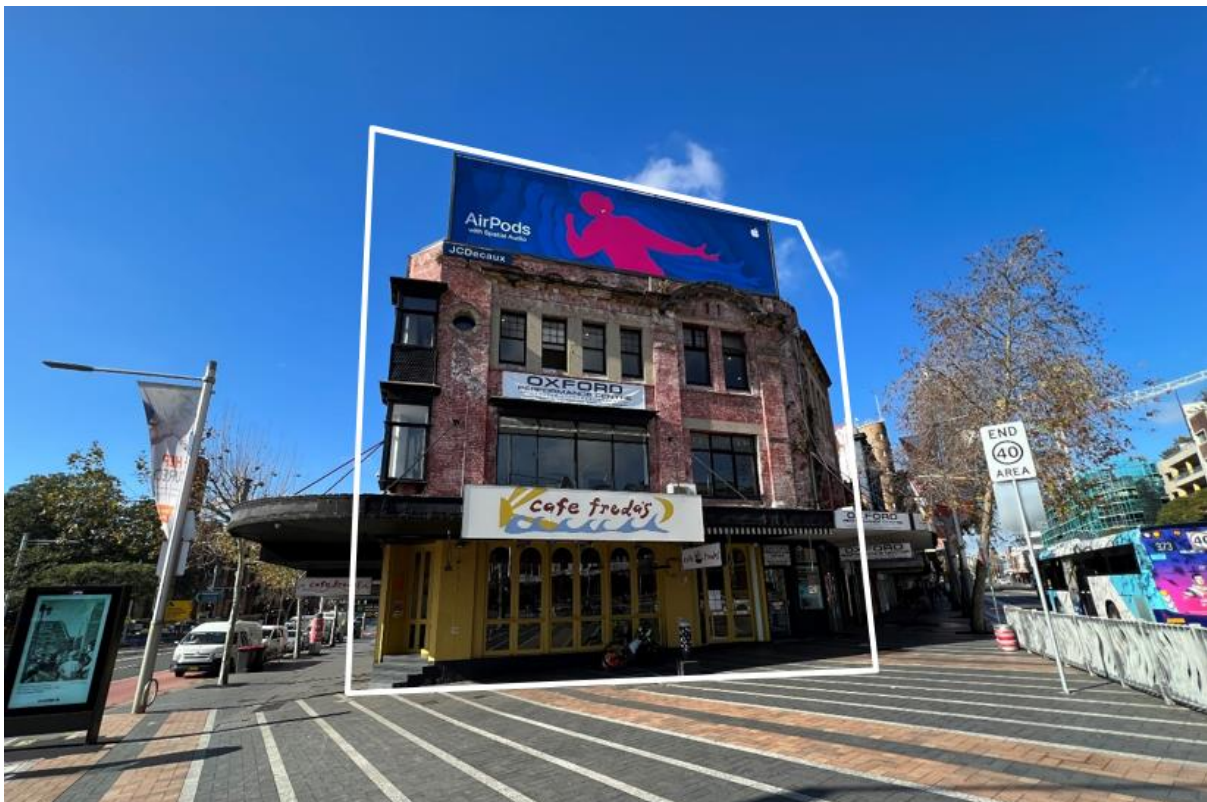


Figure 4: Site viewed from the corner of Oxford and Flinders Streets, including existing billboard



Figure 5: Site viewed from Flinders Street, and neighbouring buildings to the south



Figure 6: The Darlinghurst Courthouse and Taylor Square to the north



Figure 7: Neighbouring terraces to the east along Oxford Street



Figure 8: the Courthouse Hotel and Kinselas to the west



Figure 9: The 'T2' building (foreground) and the 'Belgenny' apartments (background) to the southeast



Figure 10: The Oxford Hotel to the northwest



Figure 11: Existing view along Oxford Street, facing east

History Relevant to the Development Application

Existing Billboard atop 191-195 Oxford Street

13. According to Council's records, a billboard has existed on the corner building at 191-195 Oxford Street since 1948.
14. A five-year time-limited development consent was granted by Council on 27 September 1979 to retain the existing billboard and change its content.
15. A further consent was granted by the Land and Environment Court on 3 February 1986 for the billboard to remain until 3 February 1991 on the basis that time-limited consents will allow periodic review of the suitability to retain the billboard in its current location. Development consent U89/00372 was later approved on 3 October 1989 to change the content of the billboard and require the billboard and any associated structures to be removed by 3 February 1991.
16. Further time-limited consents have been granted in 1991 (U91/00544) and 1995 (U95/00164) to retain the existing billboard.
17. Development consent U98/01314 was approved on 10 February 1999 to retain the existing billboard for one year. The consent was later modified on 11 August 1999 to allow the existing billboard to be retained until 10 February 2001. A condition was imposed to require:

“That the sign and all associated supporting structures including any pre-existing structures, on the roof be fully removed and the roof made and cleared of all debris associated in any way with advertising immediately upon expiry of this consent.”

18. No further applications have been received seeking to retain the existing billboard.
19. The billboard appears not to have development consent and may not benefit from existing use rights.

Applicant's Submission to the Oxford Street Cultural and Creative Precinct Planning Proposal

20. The Oxford Street Cultural and Creative Precinct planning proposal resulted from a review of planning controls applying to Oxford Street.
21. The review responded 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.
22. The planning proposal complements the Locality Statement for Oxford Street Darlinghurst of the DCP which characterises Oxford Street as a regionally significant retail and entertainment street and a local business centre for surrounding neighbourhoods.
23. The planning proposal was exhibited between 10 September and 4 November 2021.
24. During the exhibition period, the applicant submitted an Urban Design Submission prepared by the project architect, Neeson Murcutt + Neille.
25. The submission outlines a development proposal for the subject site with a consolidated six storey development at the rear of 197-199 and 201 Oxford Street, and sought to amend the draft planning controls as follows:
 - (a) increase the alternative maximum building height from 20m to 27m for 197-199, 201 Oxford Street;
 - (b) correspondingly, increase the height in storey control to six storeys;
 - (c) reduce the alternative maximum building height from 23m to 20m for 191-195 Oxford Street, to the top of the existing billboard); and
 - (d) increase the Oxford Street setback from 3m to 8m.
26. The development proposal outlined in the submission is substantially the same as the subject application, and the sketch illustrating that proposal is reproduced in Figure 12 below.
27. The submission was considered in the post exhibition report to the Central Sydney Planning Committee and Council with the following comments:
 - (a) 191-195 Oxford Street is not a heritage listed item, but a contributory building in the heritage conservation area.

- (b) The site occupies a prominent position, and its future redevelopment has a significant contribution to make on Oxford Street and Taylor Square. A strong corner presentation to Taylor Square is preferred and is one of the principles underpinning the exhibited proposal. The request to modify the draft planning controls would erode that corner and weaken the overall presentation to Taylor Square.
- (c) No amendments to the draft planning controls are recommended.

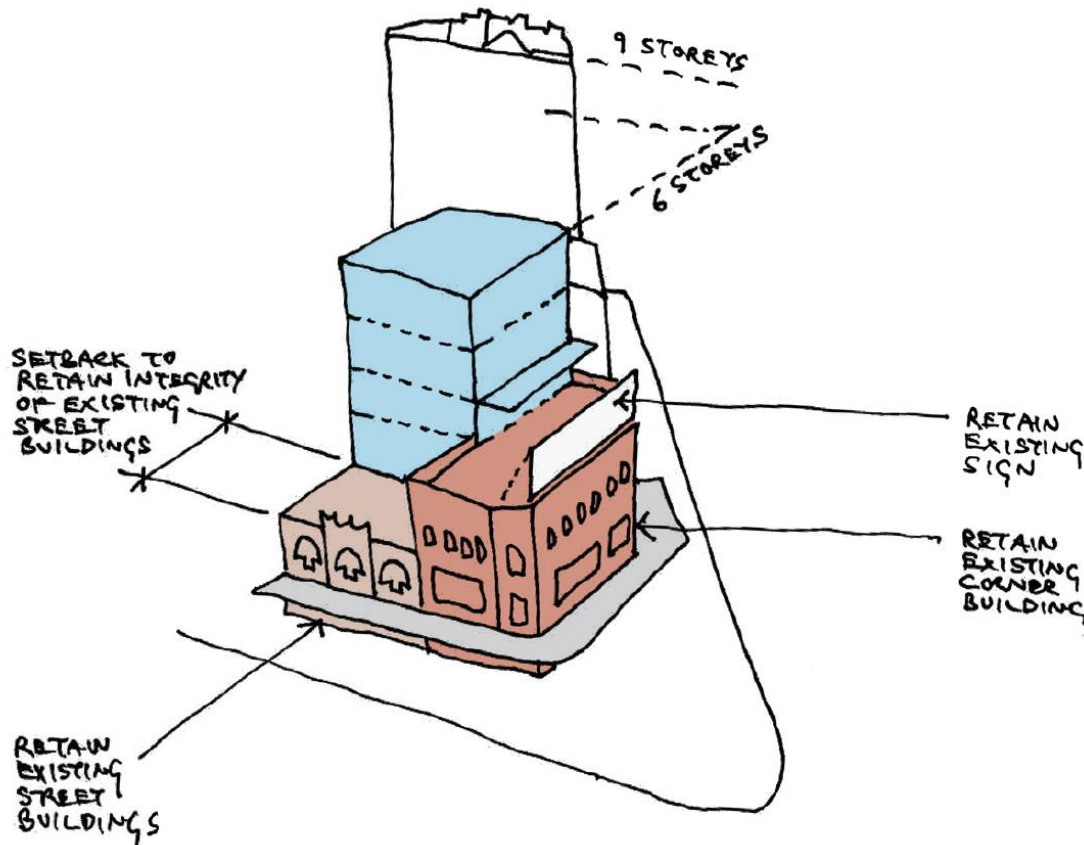


Figure 12: Development proposal outlined in the Urban Design Submission (source: NEESON MURCUTT + NEILLE)

28. The report on the consultation outcomes and post-exhibition amendments were subsequently approved by the Central Sydney Planning Committee on 7 April 2022, and by Council on 11 April 2022. The planning proposal was referred to the Department of Planning, Industry and Environment for approval in May 2022.
29. The planning proposal controls came into force on 2 December 2022.

Development Application - Request for Withdrawal

30. An assessment by Council officers concluded that the development proposal failed to comply with planning controls for Oxford Street. A request for withdrawal was sent to the applicant on 13 October 2022.
31. It was noted that a substantially different development was required on the site that would reinforce and reflect the desired future character of the Oxford Street precinct and Taylor Square:

"The proposal creates excessive bulk behind the corner buildings and does not sufficiently engage with the street corner and define Taylor Square. The increased setback to Oxford Street is not warranted and will create a missing tooth on the new, recessed, upper street wall that is intended by the draft planning controls.

The proposal has also missed the opportunity to address the existing billboard that dominates the corner and detracts from the existing building and views from the public domain. The preferred stance of council officers is for the billboard to be removed. If the intention is to justify retention of the billboard, it should at minimum be reduced in size and be fully incorporated into the architecture. It is noted that any changes to the billboard will also require discussion with Transport NSW given its proximity to a major intersection.

The investigatory nature of the proposal lends itself to a pre-DA process. This will enable an alternative design, that is reflective of Council's design intent for the precinct, to be investigated"

32. The applicant responded on 23 October 2022, confirming that the application will not be withdrawn, and that the application be determined based on the information currently submitted.

Proposed Development

33. The application seeks consent for the following:
- alterations and additions to the existing corner building at 191-195 Oxford Street;
 - partial demolition, retaining the facade and first floor balconies, excavation for 1 level of basement, and construction of a 6-storey building at 197-199, 201 Oxford Street; and
 - replacement of existing awnings.
34. The development will accommodate the following:
- a 19-room hotel, with a lobby on the ground floor fronting Flinders Street and back of house facilities in the basement;
 - art gallery spaces on levels 2 and 3, with a total area of 233.79m² (14 per cent of total GFA); with a shared entrance with the hotel and proposed hours of operation between 7.00am - 12.00 midnight, Monday to Sunday;
 - a hospitality tenancy in the basement, the use, fitout and hours of operation of which is subject to a separate development application;
 - a cafe on the ground floor fronting the corner of Oxford and Flinders Street with proposed hours of operation between 7.00am - 10.00pm, Monday to Sunday;
 - a restaurant on the ground floor fronting Oxford Street with proposed hours of operation between 12.00 midday - 12.00 midnight, Monday to Sunday;

- a roof terrace on level three fronting Oxford Street with proposed hours of operation between 7.00am - 12.00 midnight, Monday to Sunday;
 - a rooftop bar on level four that opens to the roof of 191-195 Oxford Street with proposed hours of operation between 12.00 midday - 1.00am (the following day), Monday to Sunday; the roof terrace would sit behind the existing bill board; and,
 - a consolidated plant area on the roof, fully concealed by the proposed roof parapet.
35. The maximum patron capacity for each of the premises has not been identified.
 36. The application does not include any new signage. However, the application requests the existing billboard atop 191-195 Oxford Street be retained.
 37. The proposed six storey building will be constructed of mottled face brick and glass brick. The curved awning over the level three roof terrace will be constructed of brick splits, while the awning to the level five terrace will be of steel plate. New steel palisade balustrade will also be provided to the roof terraces and balconies.
 38. Servicing to the proposed hotel and individual tenancies will rely on the street, including the existing loading zones on Oxford and Flinders Streets.
 39. Selected drawings of the proposed development are provided below.

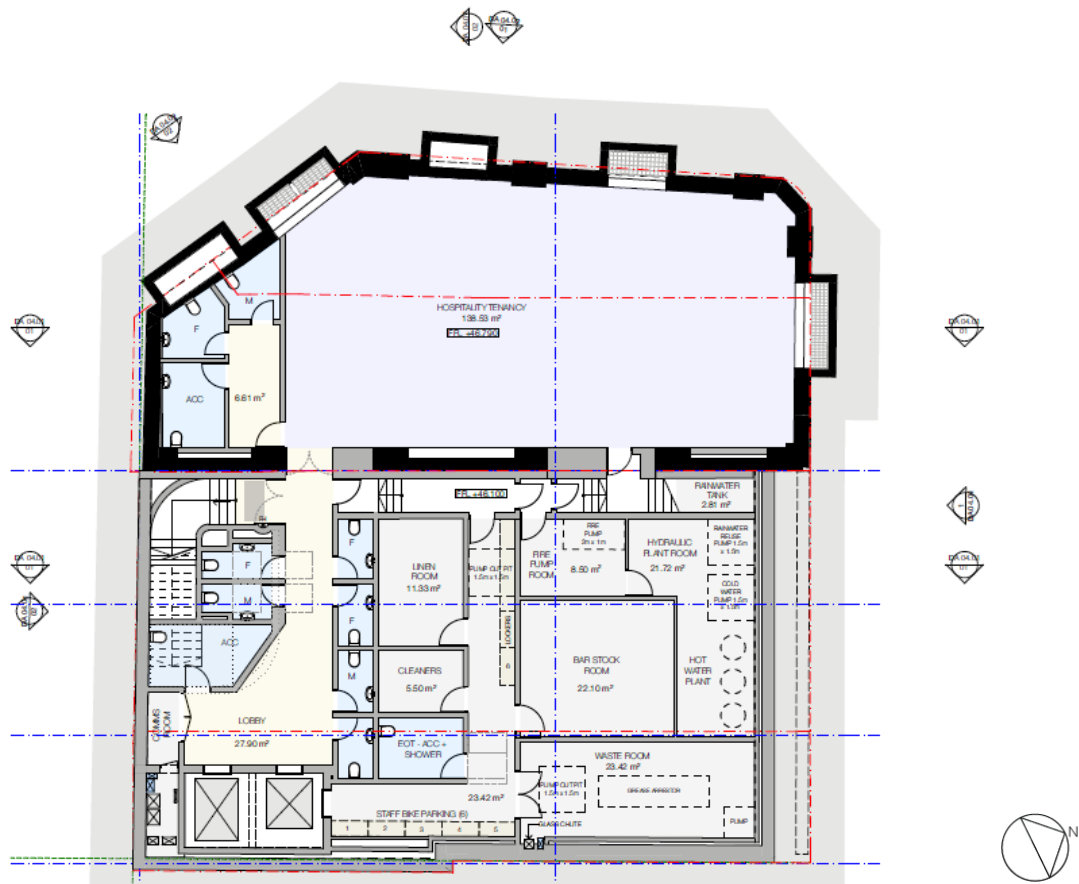


Figure 13: Proposed basement

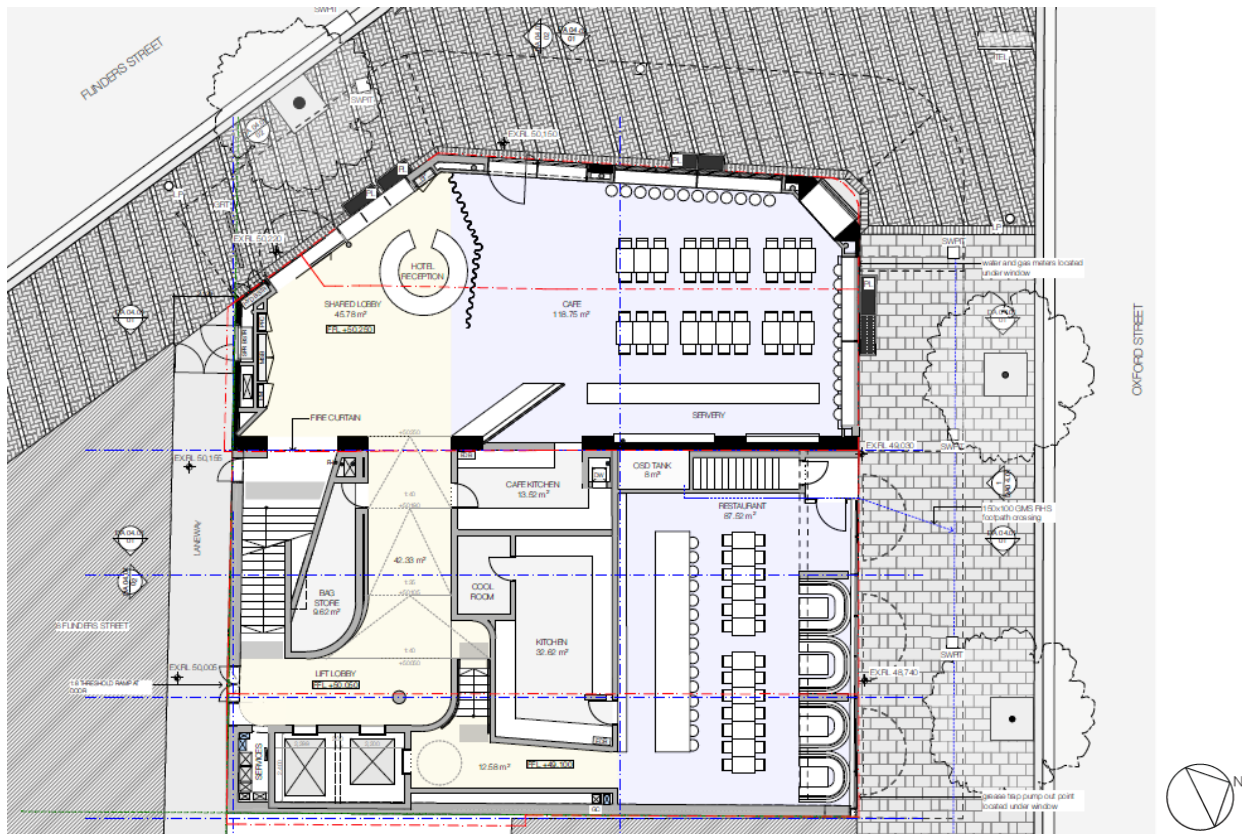


Figure 14: Proposed level 1 (ground floor)

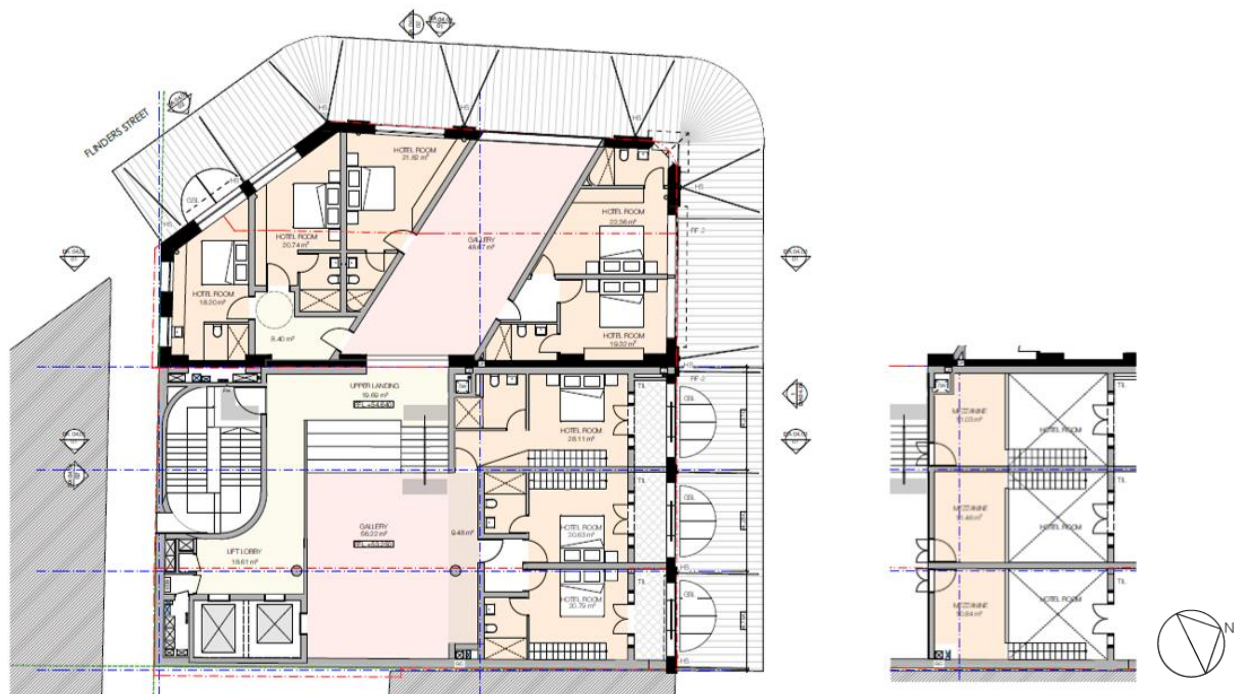


Figure 15: Proposed level 2

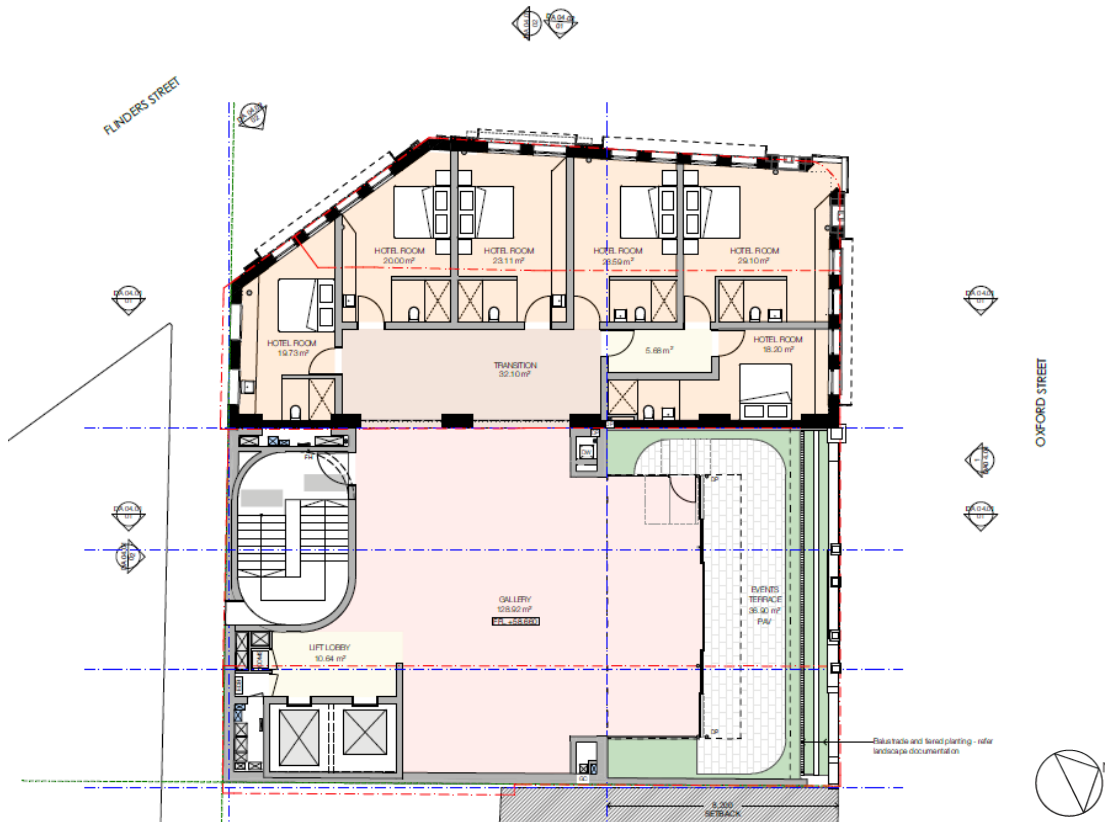


Figure 16: Proposed level 3

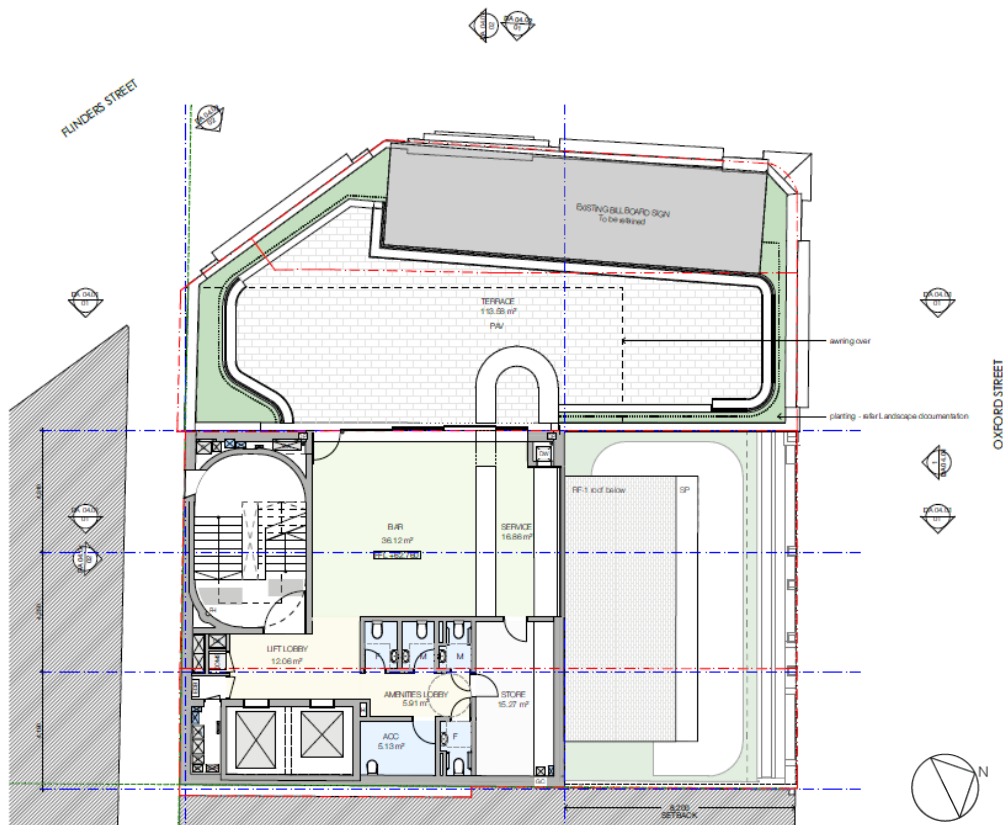


Figure 17: Proposed level 4

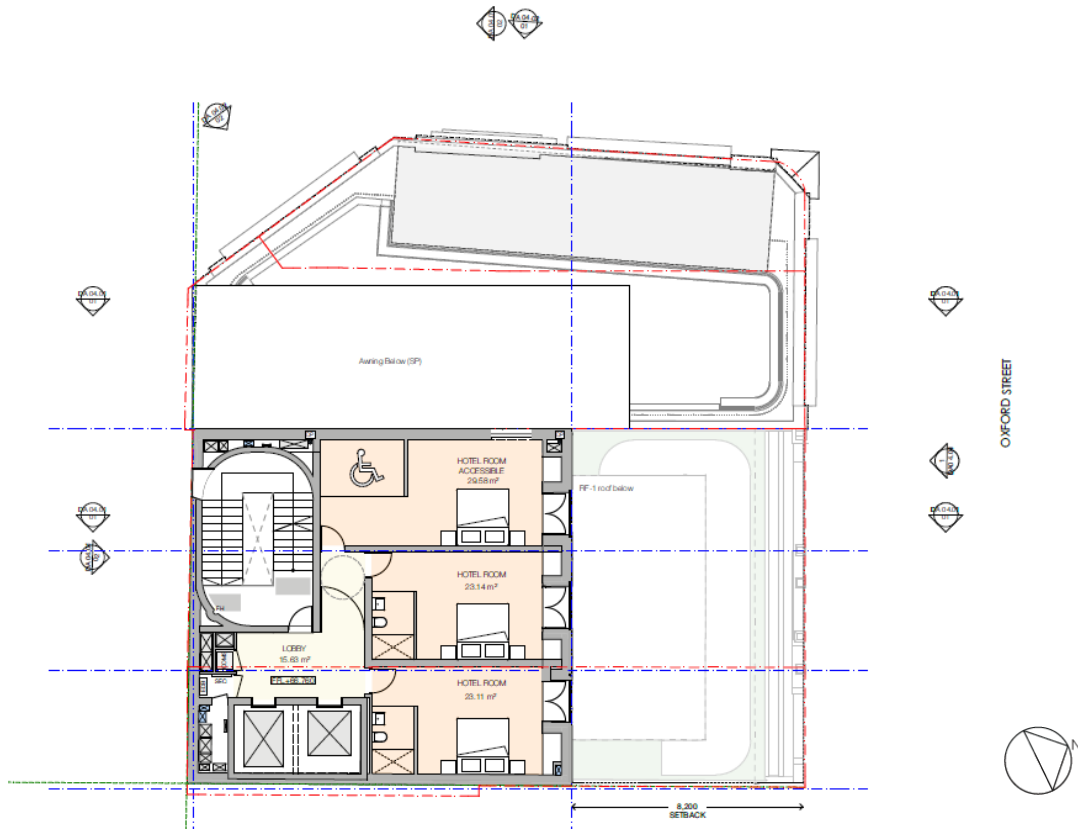


Figure 18: Proposed level 5

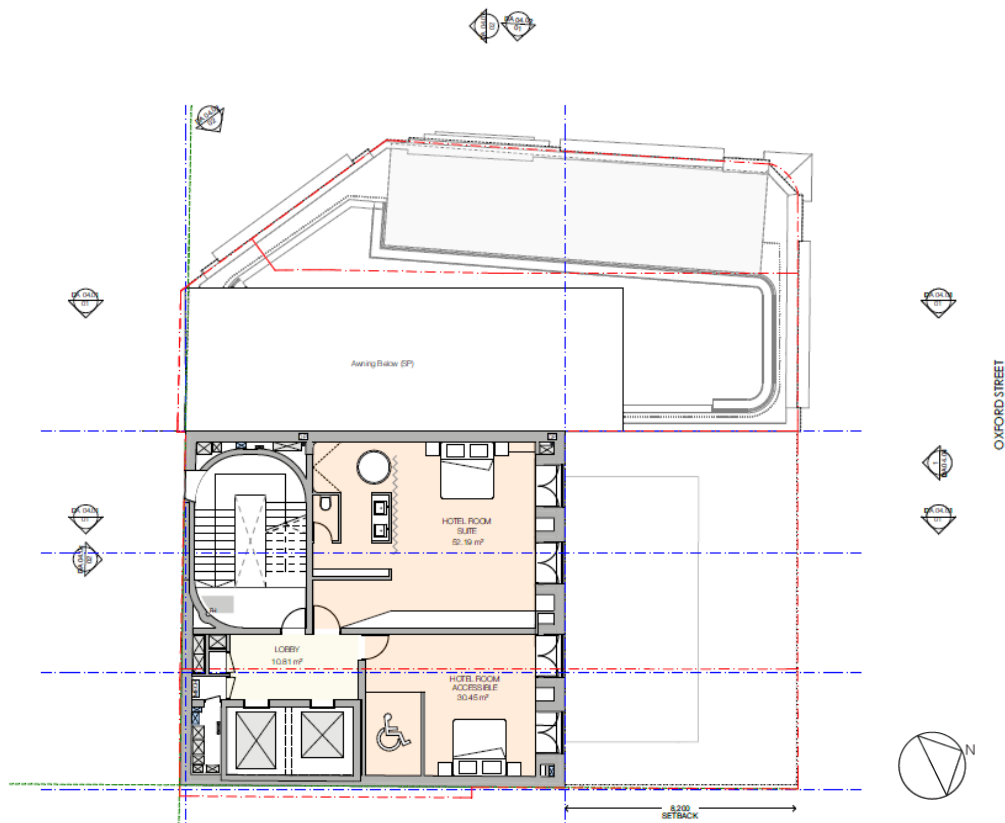


Figure 19: Proposed level 6

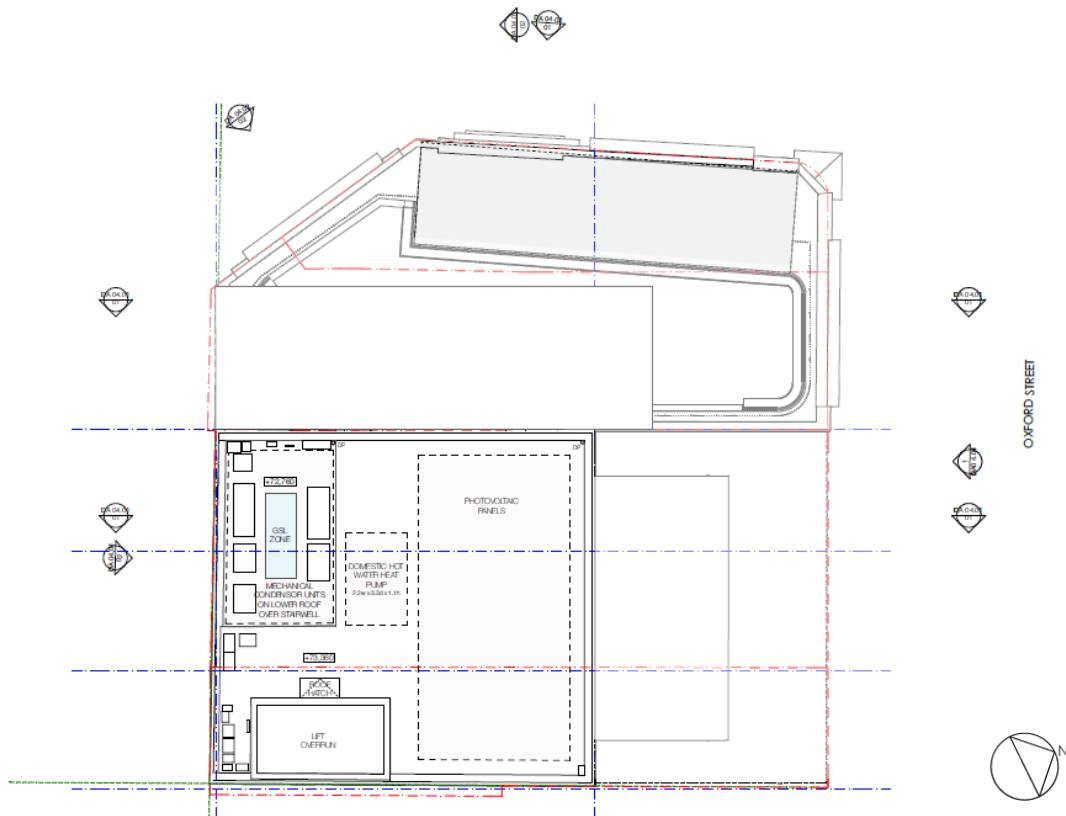


Figure 20: Proposed roof



Figure 21: Proposed north (Oxford Street) elevation

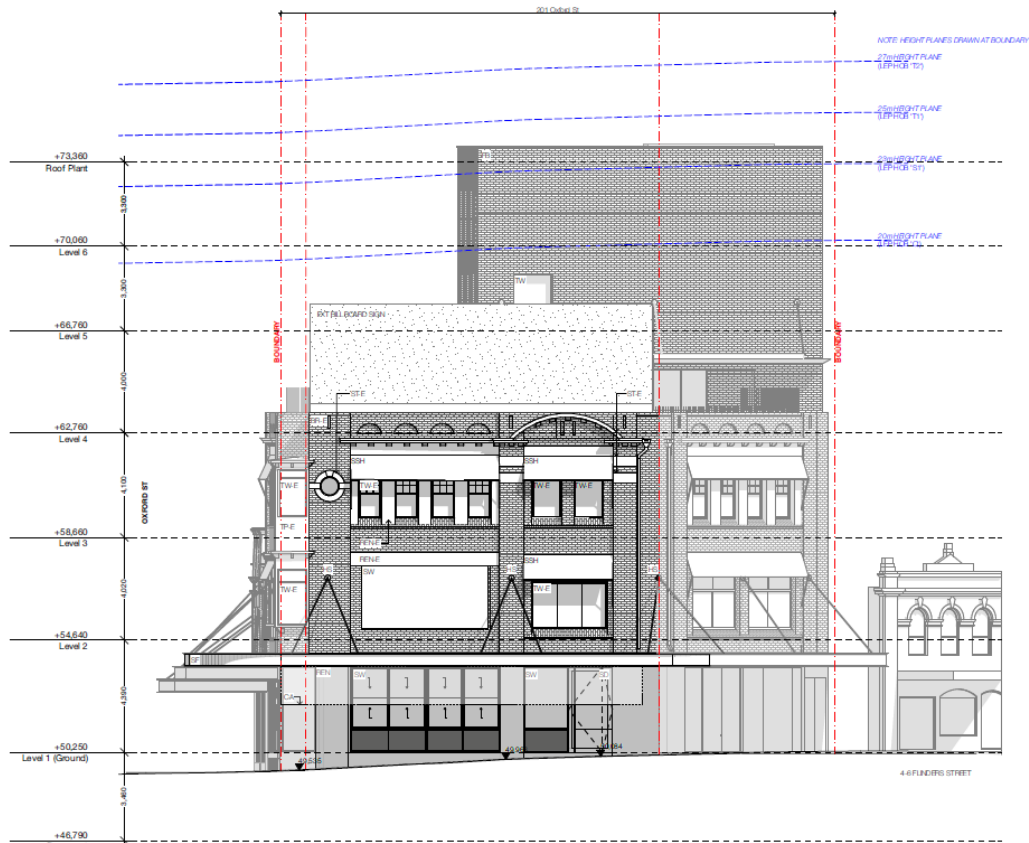


Figure 22: Proposed northwest elevation



Figure 23: Proposed west elevation

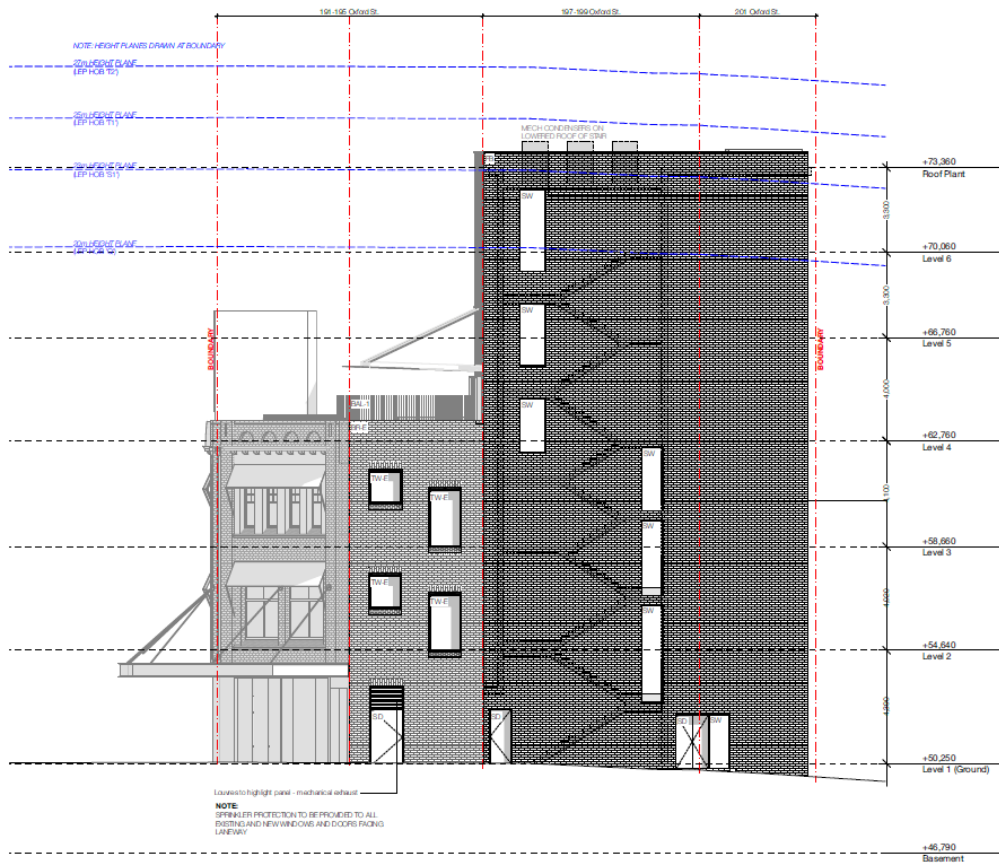


Figure 24: Proposed south elevation

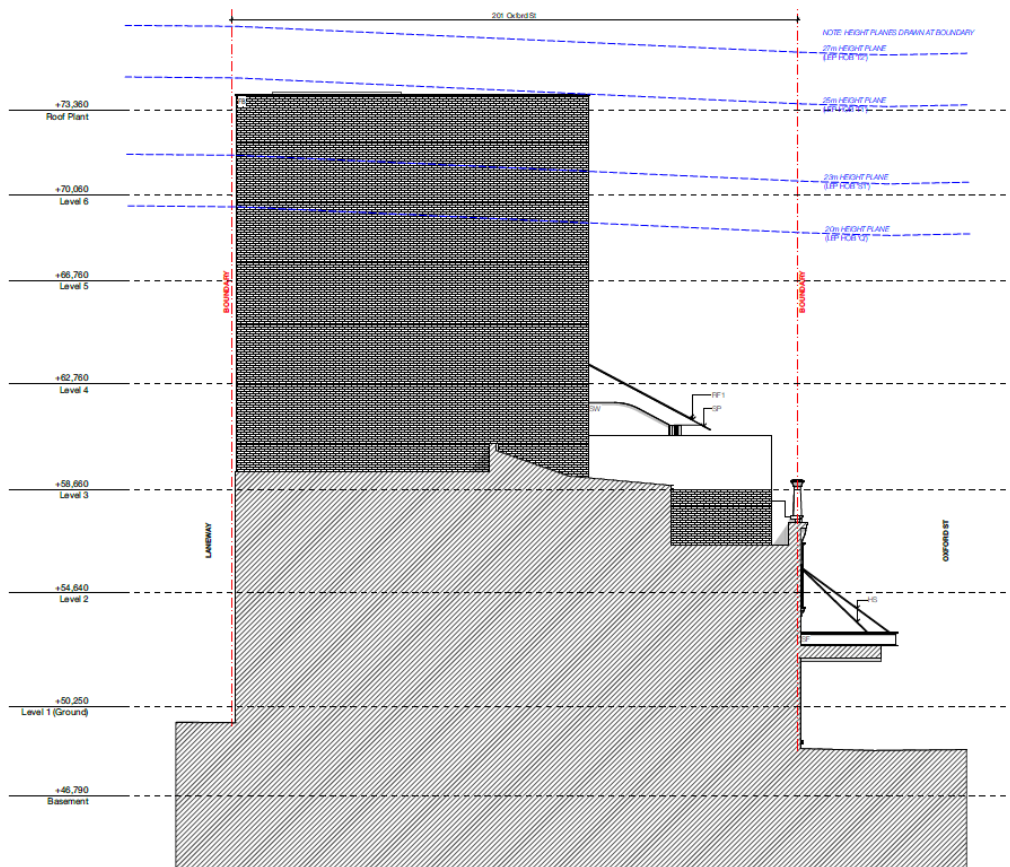


Figure 25: Proposed east elevation

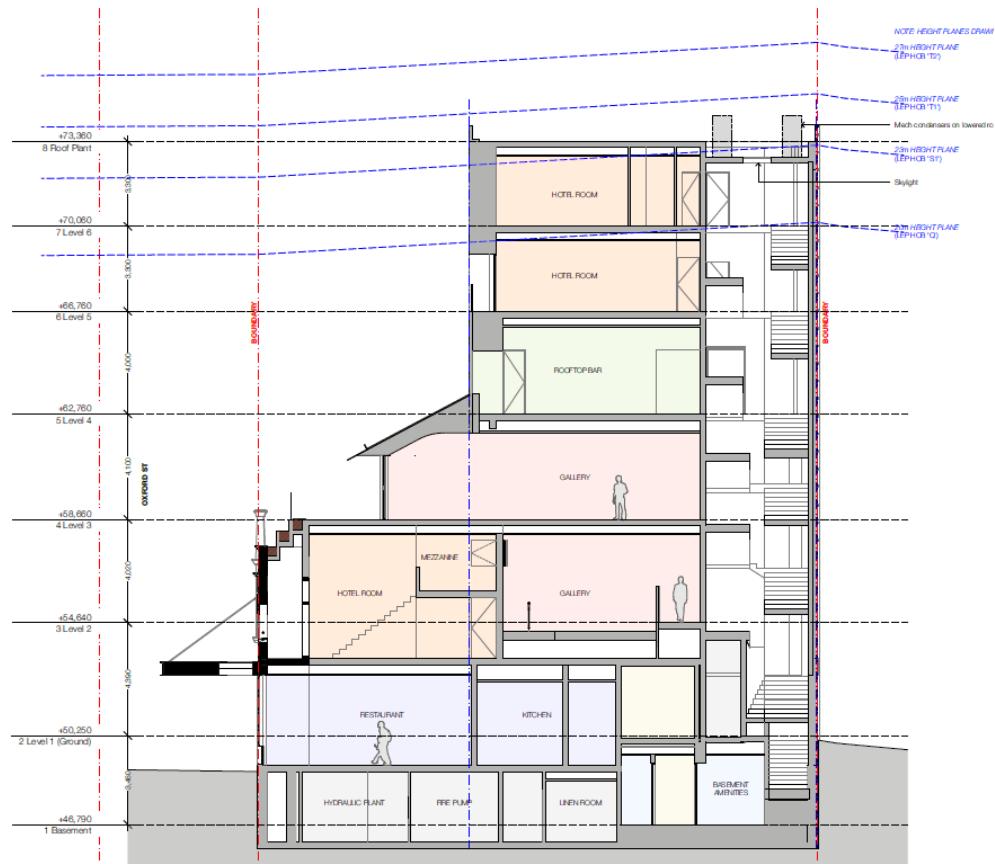


Figure 26: Proposed section A

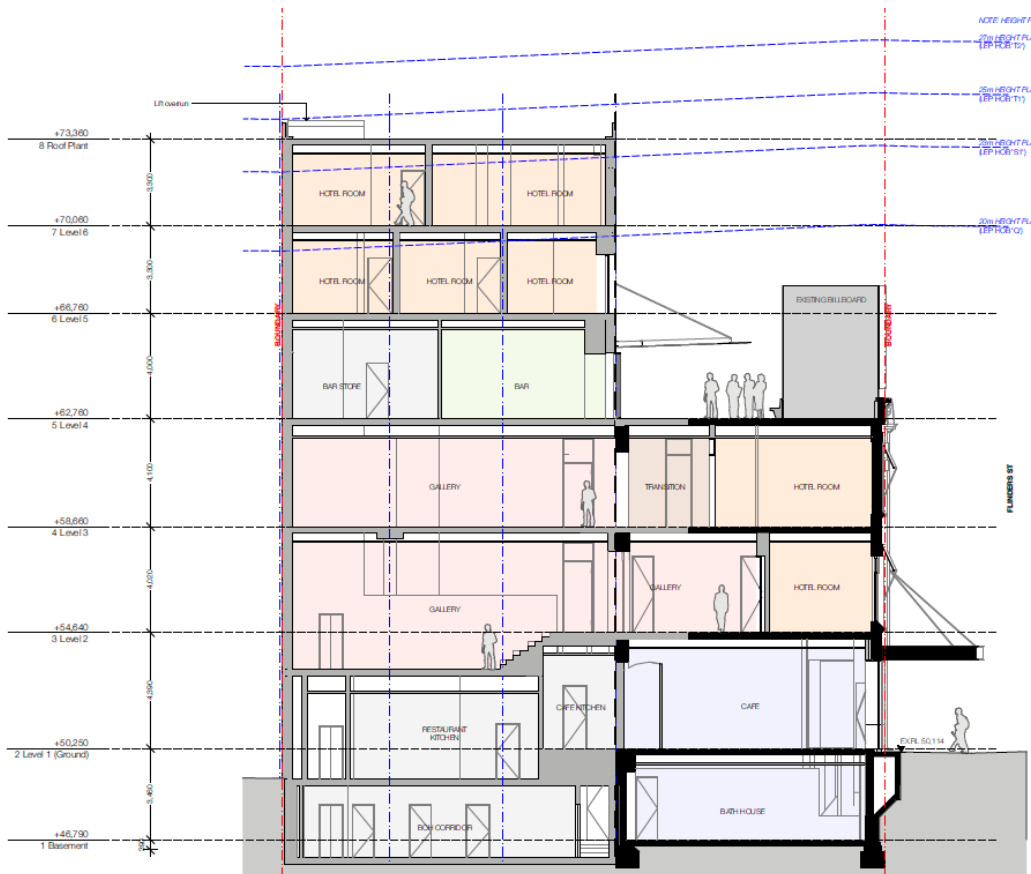


Figure 27: Proposed section B



Figure 28: Proposed photomontage, viewed from the corner of Oxford and Palmer Streets



Figure 29: Proposed photomontage, viewed from Oxford Street, facing east



Figure 30: Proposed photomontage, viewed from Flinders Street, facing north

Assessment

40. 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

41. Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 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.
42. A preliminary site investigation (PESI) has been submitted to demonstrate that the site has continuously been used for photography printing and dry cleaning purposes, which may cause contamination. Furthermore, the site is also in close proximity to several current and former dry cleaner, dye manufacturing and motor garage/service station businesses, which are activities that may cause contamination. As such, the PESI recommended the following:
 - (a) a preliminary intrusive investigation be carried out to inform the scope of a detailed site investigation (DESI); and
 - (b) a DESI be prepared to establish if the site is suitable for the proposed development and whether remediation is required.

43. While a preliminary intrusive investigation has been undertaken to make an initial assessment of the soil, soil vapour and groundwater contamination conditions to better inform the scope of a DESI, a DESI has not been undertaken.
44. Therefore, there is insufficient information to confirm that the site can be made suitable for the proposed development in accordance with the SEPP (Resilience and Hazards) 2021. Consequently, development consent cannot be granted as per section 4.6 of the SEPP (Resilience and Hazards) 2021.

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

45. 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.
46. 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

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B2 Local Centre zone. The proposed development is defined as a mixed use development, comprising food and drink premises, information and education facility (art gallery), and a hotel or motel accommodation (hotel), which are permissible with consent in the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<i>191-195 Oxford Street</i>
6.60D Oxford Street Cultural and Creative Precinct		A standard maximum building height of 15m and an alternative maximum height of 23m is permitted.

Provision	Compliance	Comment
		<p>A maximum height of 18.7m is proposed, which is compliant with the alternative maximum building height.</p> <p><i>197-199, 201 Oxford Street</i></p> <p>A standard maximum building height of 12m and an alternative maximum height of 20m is permitted.</p> <p>A maximum height of 24.8m is proposed. Clause 4.6 does not allow the contravention of the alternative maximum height. Therefore, the proposed height represents a variation of 12.8m (106.7 per cent) to the standard maximum height.</p> <p>A request to vary the 'height of buildings' development standard in accordance with clause 4.6 has been submitted. See details in the 'Discussion' section below.</p>
<p>4.4 Floor space ratio (FSR)</p> <p>6.60D Oxford Street Cultural and Creative Precinct</p>	Yes	<p>A standard maximum FSR of 3:1 is permitted under clause 4.4.</p> <p>An alternative maximum FSR of 4:1 is permitted for 191-195 Oxford Street and an alternative maximum FSR of 3.75:1 is permitted for 197-199, 201 Oxford Street.</p> <p>An FSR of 3.41:1 is proposed for 191-195 Oxford Street, while a FSR of 3.5:1 is proposed for 197-199, 201 Oxford Street, which are compliant with the alternative maximum FSR.</p> <p>Consequently, the submitted request to vary the standard FSR is not necessary.</p>
<p>4.6 Exceptions to development standards</p>	Yes, but the request is not supported	<p>The proposed development seeks to vary the 'height of buildings' development standard prescribed under clauses 4.3. A clause 4.6 variation request has been submitted.</p> <p>See details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Partial compliance	See details in the ' <i>Discussion - Heritage</i> ' section below.
5.21 Flood planning	Insufficient information	The site is identified as being flood-affected. A site-specific flood report is required to inform the proposed development, and to demonstrate compliance with the City's <i>Interim Floodplain Management Policy</i> .

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	No	The proposed development does not demonstrate design excellence. See details in the ' <i>Discussion - Built Form and Design Excellence</i> ' section below.
Division 5 Site specific provisions		
6.60D Oxford Street Cultural and Creative Precinct	No	<p>The proposed development may rely on the alternative height and/or FSR available under subclause (3) as it includes hotel or motel accommodation, and the use of at least 10 per cent of the GFA for cultural or creative purposes.</p> <p>However, the alternative height and FSR are excluded from the operation of clause 4.6 under clause 4.6(8)(cl) of the LEP. The proposal does not comply with the alternative height and is therefore assessed against the 'standard' height.</p> <p>However, the height non-compliance is considered to be contrary to the objectives of this clause. It undermines the intent of the clause to provide additional height and floor space to encourage redevelopment. It also results in a development that is not consistent with the desired future character of the area.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.7 Retail premises 7.9 Other land uses	Yes	The proposed development includes no car parking spaces and complies with the relevant development standards.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	If recommended for approval, an affordable housing contribution would be payable. See details under 'Financial Contributions' section below.
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.

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

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

Locality Statements

49. The site is located within the Oxford Street Darlinghurst locality (section 2.4.10) and the Oxford Street Cultural and Creative Precinct (section 5.11.1). The proposed development is partially in keeping with the character statement and principles of the locality statements in that it:
- (a) retains the significant fabric of the existing contributory buildings to the Oxford Street conservation area;
 - (b) maintains a fine-grain shop fronts and continuous awnings;
 - (c) provides cafes and restaurants along the street frontages and at the street corner; and
 - (d) contributes towards Oxford Street as an entertainment, tourism and retail precinct.

However, the proposed development:

- (a) fails to provide new shopfronts that take cues from traditional shopfronts;
- (b) is not guided by any agreed heritage principles nor sought to establish any as part of the application; and
- (c) is considered to have a detrimental impact to the desired streetscape of Oxford Street, Taylor Square, and the corner of Oxford and Flinders Streets as detailed in the '*Discussion - Built Form and Design Excellence*' section below.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	No	As the proposed development has a construction value greater than \$10 million, the provision of public art is required. A preliminary public art plan has not been provided, nor an indicative location proposed for public art.
3.2. Defining the Public Domain	Yes	The proposed development will provide active frontages, being food and drink premises and the entrance to a hotel, to all street frontages. It will also maintain the provision of a continuous awning.
3.5 Urban Ecology	Partial compliance	The subject site contains no existing trees, and all existing street trees are to be retained. Appropriate conditions would be recommended to ensure appropriate protection of the existing street trees if recommended for approval. However, the submitted landscape plan fails to provide any new trees to achieve 15 per cent canopy cover.
3.6 Ecologically Sustainable Development	Yes	The proposal is accompanied by a ESD statement, demonstrating satisfaction of the environmental requirements of this section. If recommended for approval, the implementation of the ESD statement would be required by conditions.
3.7 Water and Flood Management	No	See details under clause 5.21 of the LEP above.
3.8 Subdivision, Strata Subdivision and Consolidation	No	The application was referred to Council's Surveyor, who raised concerns with the reliance on the private laneway along

Provision	Compliance	Comment
		the site's southern boundary for fire egress and site servicing. The submitted survey plan does not demonstrate any existing easement/right of way benefiting the subject site. Additional information is therefore required.
3.9 Heritage	Partial compliance	See details in the ' <i>Discussion - Heritage</i> ' section below.
3.11 Transport and Parking	Partial compliance	<p>The proposed development will provide 6 staff bicycle parking spaces in the basement. However, 10 visitors bicycle parking spaces have not been provided within the site.</p> <p>The reliance of on-street servicing, and pick-up/drop-off is considered acceptable given the site's context. However, a transport management plan required by section 5.11.8 of the DCP has not been provided.</p>
3.12 Accessible Design	Additional information required	<p>The proposed development can comply with the relevant Australian Standards and the Nation Construction Code.</p> <p>However, future flood assessment may require an adjustment to floor level and access points.</p>
3.13 Social and Environmental Responsibilities	Yes	The proposed development can achieve adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	No	The size of the waste storage area and the information contained within the waste management plan are considered by the City's Waste Management Unit to be inadequate to satisfy the City's <i>Guidelines for Waste Management in New Development</i> .
3.15 Late Night Trading Management	Partial compliance	The majority of the site, being 191-195 and 197-199 Oxford Street, is located in a Late Night Management Area, while 201 Oxford Street is located in a Local Centre Area. The proposed cafe,

Provision	Compliance	Comment
		<p>restaurant, and roof terrace (level 3) are defined as Category B premises, while the rooftop bar (level 4) could be either a category A or B premises depending on the patron capacity. However, as the Plan of Management fails to identify the proposed patron capacity for each premises, an assessment against the recommended hours cannot be carried out.</p> <p>Furthermore, the Plan of Management fails to include all the information required by schedule 3.2 of the DCP, including but not limited to:</p> <ul style="list-style-type: none"> • a statement to identify the nature and license type of each premises; • the patron capacity for each of premises, including any reduction in capacity during late night hours; and, • relevant noise minimisation measures recommended by the acoustic report.
3.16 Signage and Advertising	No	<p>The proposal does not include any new signage. The existing billboard sign, which appears to be subject of a lapsed consent however, is proposed to be retained.</p> <p>A signage strategy is required, as the proposal will result in a development with more than 4 tenancies. A strategy has not been provided.</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	See details in the ' <i>Discussion - Built Form and Design Excellence</i> ' section below.

Provision	Compliance	Comment
4.2.1.2 Floor to ceiling heights and floor to floor heights	Partial compliance	The proposed development maintains the existing floor to floor height of the corner building, and the new infill building responds to those floor to floor heights, which is appropriate.
4.2.2 Building setbacks	No	See details in the ' <i>Discussion - Built Form and Design Excellence</i> ' section below.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	Sun's eye diagrams have been provided to demonstrate that the proposed development will only result in additional overshadowing to the roof and side elevations of non-residential uses.
4.2.3.5 Landscaping	No	The submitted landscape plan fails to include any new tree planting to achieve 15 per cent canopy cover. The design of the stepped planter behind the retained parapet of 197-199, 201 Oxford Street also presents difficulties in maintenance, and unacceptable heritage impacts.
4.2.3.6 Deep Soil	No, but acceptable	The existing buildings currently have full site coverage with no deep soil. In this context, the proposal is acceptable. This could be compensated for through high-quality landscaping of rooftop areas.
4.2.6 Waste and recycling Management	No	Refer to section 3.14 above for details
4.2.7 Heating and cooling infrastructure	Yes	The proposed development provides a consolidated roof plant area that is fully concealed by the roof parapet.

4.4 Other Development Types and Uses

4.4.8 Visitor accommodation

Provision	Compliance	Comment
4.4.8.1 General	Yes	The proposed hotel has direct access from Flinders Street and does not rely

Provision	Compliance	Comment
		<p>on any common access ways shared with adjoining properties.</p> <p>The hotel will be staffed 24 hours a day, and a management plan has been provided.</p>
4.4.8.3 Additional provisions for hotels, private hotels and motels	Yes	<p>The proposed hotel rooms are appropriately sized, and the required facilities can be accommodated within each room.</p> <p>The maximum length of stay would be subjected to standard conditions if recommended for approval.</p>

Section 5 – Specific Areas

Provision	Compliance	Comment
5.11.2 Cultural and creative spaces	Partial compliance	<p>No existing floorspace for cultural and creative purpose have been identified within the existing buildings.</p> <p>The proposal will provide approximately 14 per cent of the total GFA as art gallery spaces. However, the gallery spaces are partly within the circulation space to hotel rooms and poorly separated from the hotel room entrances. As such, the proposal does not clearly demonstrate that the floorspace provided meets the operational requirements of the art gallery while being compatible with the operational requirements of the hotel.</p> <p>Furthermore, the Plan of Management fails to include Diversity and Inclusion principles, guidelines and a commitment to ongoing staff training.</p>
5.11.3 Built form and high quality design on Taylor Square and other public spaces on Oxford Street	No	See details in the ' <i>Discussion - Built Form and Design Excellence</i> ' section below.
5.11.5 Built form and design		

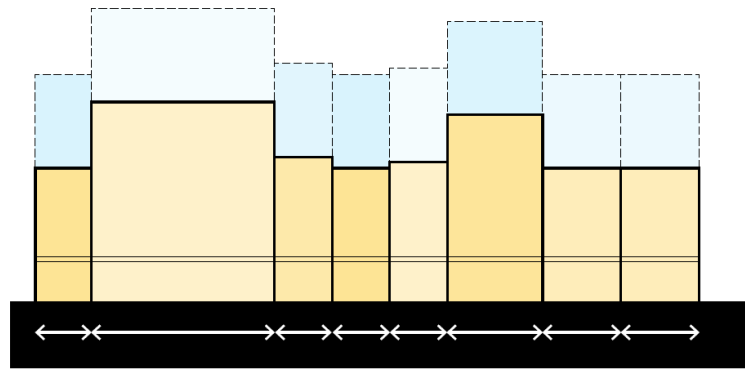
Provision	Compliance	Comment
5.11.4 Heritage conservation	No	See details in the ' <i>Discussion - Heritage</i> ' section below.
5.11.6 Active frontages and street level tenancy design	Partial compliance	<p>The proposed development will provide food and drink premises along its frontages to Taylor Square and Oxford Street. The tenancy width is appropriate and has a fine-grain shopfront, although the design fails to take cues from traditional shopfronts nor include the identified design elements, being stall risers, pilasters, and clerestory windows. Notwithstanding, the size of each tenancy at street level is no greater than 300m².</p> <p>A self-contained basement tenancy is proposed, and has a separate and direct access from Oxford Street.</p>
5.11.8 Servicing and access	No	As discussed under section 3.11 above, a transport management plan has not been provided to provide an acceptable consolidated approach to servicing and access.

Discussion

Built Form and Design Excellence

50. Under the newly created Precinct-specific controls, clause 6.60D of the LEP allows additional height and FSR to encourage development for cultural or creative purposes.
51. It is supported by detailed built form controls contained in sections 5.11.3 and 5.11.5 of the DCP to ensure the additional height and FSR delivers future development that reflects the desired character of the area. The intent of the controls is summarised below:
- (a) A maximum of two additional storeys is permitted to achieve an overall maximum height of five storeys for the site. The additional storeys must not exceed 10m, measured from the uppermost ceiling of the existing building.
 - (b) The additional FSR must be wholly contained within the identified maximum height, suggesting that the overall height of the development is of primary concern.
 - (c) The vertical addition is to reflect the existing pattern of stepped heights and vertical articulation to reflect the original phase of development of Oxford Street, as shown in Figure 5.273 of the DCP, reproduced below:

Figure 5.273
Additions are
to reflect the
individually
distinctive massing
on Oxford Street
5.11.5.2(1)



- (d) The vertical addition must set back a minimum 3m from the street frontage. However, a reduced setback, including nil setback, may be considered to the corner building at 191-195 Oxford Street to establish a strong visual and physical edge to Taylor Square, which is strongly desired by the controls.

52. The desired built form is illustrated in Figure 31 below:



Figure 31: Massing model provided by Council's Strategic Planning Unit to illustrate the desired built form for the Precinct, showing new built form reinforcing the street corners, including on top of the heritage-listed 'T2' building to the southwest

53. Contrary to the intent of the controls:

- (a) The proposed development is six storeys in height (24.8m), exceeding the maximum five storey height control and the alternative maximum height of 20m. The additional FSR sought under clause 6.60D of the LEP is also not wholly contained within the identified maximum height.
- (b) The six storey height and the lack of vertical addition to the corner building at 191-195 Oxford Street, fails to respect the existing pattern of stepped heights. The resultant building heights will step up from the corner building instead of stepping down towards the east along Oxford Street as shown in Figure 30.
- (c) The lack of vertical addition at 191-195 Oxford Street also misses the critical opportunity to provide a strong visual and physical edge to Taylor Square.

54. The proposed development was also presented to the Council's Design Advisory Panel (Panel) on 1 September 2022. Advice was sought particularly on the built form and the architectural language of the proposed development, and the Panel's advice is provided at Attachment C.
55. The Panel's advice is consistent with, and reinforces, the intent of the Precinct-specific controls. The proposed built form was considered to be inappropriate for the prominent corner position of the site, and that the proposed form fails to contribute to the quality and amenity of the public domain. The muted language of the design, and the blank wall presentation to Taylor Square, are also considered to be inappropriate for the site.
56. Considering the intent of the Precinct-specific controls and the Panel's advice, the proposed development fails to satisfy the design excellence considerations listed under clause 6.21C(2)(a), (b), (d)(iii), (d)(v), (d)(x) and (d)(xi).
57. Further to the above, a submission received has raised view loss concerns associated with the height exceedance. The proposed development also fails to address the relevant heritage requirements for the site (as discussed below) nor integrate high-quality landscape design that contributes to the urban canopy. The proposed retention of the billboard also prevents a design that provides a strong visual and physical edge to Taylor Square to be delivered. As such, the proposed development also fails to satisfy the design excellence considerations listed under clause 6.21C(2)(c), (d)(iii), (d)(xiii).
58. The development therefore fails to satisfy design excellence provisions.

Clause 4.6 Request to Vary a Development Standard - Height of Buildings

59. The site is subject to a maximum 'height of buildings' development standard of 15m at 191-195 Oxford Street and 12m at 197-199, 201 Oxford Street under clause 4.3 of the LEP.
60. Clause 6.60D(3) of the LEP allows an alternative maximum height of 23m at 191-195 Oxford Street, and 20m at 197-199, 201 Oxford Street. Clause 4.6 does not allow an exceedance of the alternative maximum height.
61. The proposed development has a maximum height of 18.7m at 191-195 Oxford Street and a maximum height of 24.8m at 197-199, 201 Oxford Street.
62. As the proposed height of 24.8m at 197-199, 201 Oxford Street exceeds the alternative maximum height of 20m, and that clause 4.6 does not allow the contravention of the alternative maximum height, the proposed height represents a variation of 12.8m (106.7 per cent) to the standard maximum height prescribed by clause 4.4 of the LEP.
63. The area above the maximum 12m height plane, denoted by a red line, is identified in the section in Figure 32 below. The alternative 20m height plane is denoted in light green for reference.
64. A written request has been submitted in accordance with Clause 4.6(3)(a) and (b) of the LEP 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; and
- (b) that there are sufficient environmental planning grounds to justify contravening the standard.

65. A copy of the applicant's written request is provided at Attachment B.

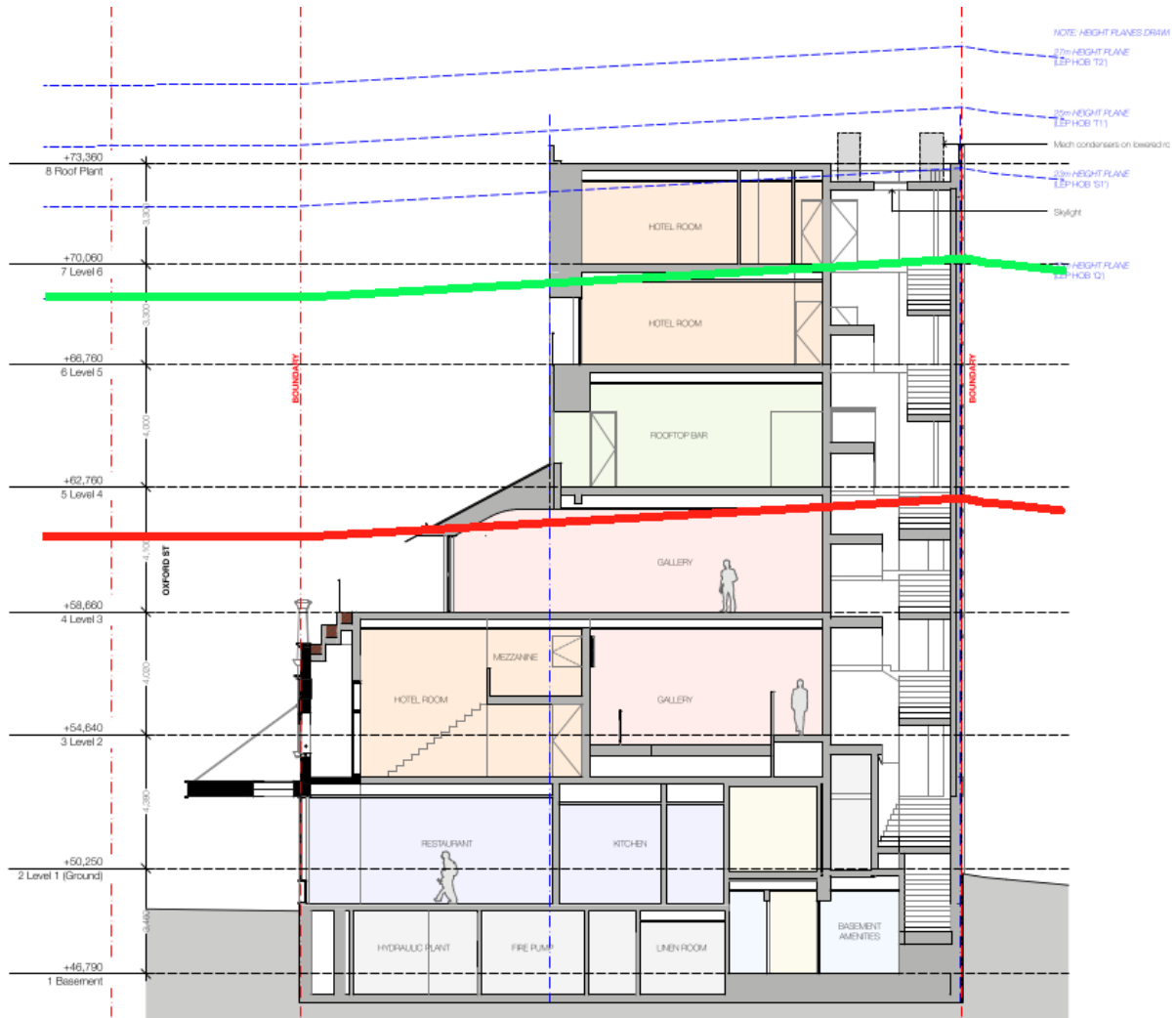


Figure 32: Height exceedance shown on a section through 197 Oxford Street - the maximum 12m height plane is shown in red, and the alternative 20m height plane is shown in light green

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

66. 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 statement referred to the first method of the five part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the development

standard are achieved notwithstanding non-compliance with the numerical standard.

- (ii) A summary of the applicant's assessment against the objectives of the development standard is provided below:

Objective (a): to ensure the height of development is appropriate to the condition of the site and its context

- (iii) The proposed hotel tower is significantly recessed from the Oxford Street frontage to present a predominantly compliant frontage height, and that the siting of the hotel tower responds to other high rise residential towers in the immediate context to contribute to the conservation area.

- (iv) The proposal to contain the hotel tower at the rear of 197-199, 201 Oxford Street, which have been substantially altered over time, allows the unification of the three terraces while allowing the substantial retention of 191-195 Oxford Street, which is largely intact.

Objective (b): to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas

- (v) Appropriate height transitions between the proposed development and adjoining buildings in the conservation area is achieved by the 8.2m from Oxford Street and the 10m from Taylor Square.

Objective (c) to promote the sharing of views outside Central Sydney

- (vi) It is not anticipated that any significant view loss will arise from the proposal given the siting of the building and the distance of the high rise residential flat buildings to the north and east, and that the neighbouring buildings to the west and south are predominantly one to three storeys.

Objective (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas

Objective (e) in respect of Green Square a. to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and b. to ensure the built form contributes to the physical definition of the street network and public spaces.

- (vii) The site is not located in or adjacent to Central Sydney or the Green Square Town Centre. Therefore, these objectives are not relevant.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:

- (i) The flexibility sought for a building that is consistent in bulk and scale with the desired future character and that the height exceedance results from the reduced footprint of the hotel tower to allow oversized setback to the Oxford Street streetwall.

- (ii) The proposed building, despite the height exceedance, will not result in additional amenity impacts to the neighbours, including overshadowing, view, or visual bulk.
- (iii) The proposed extensive setbacks provide for high amenity and high levels of solar access and outlook.
- (iv) The proposed development does not reduce public views or significantly reduce solar access to public spaces as demonstrated by the submitted shadow diagrams.
- (v) A compliant building would unnecessarily fail to provide good solar access, amenity and equitable access to the upper level of the building.

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

67. 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(a) of clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - (b) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3(b) of clause 4.6 being that there are sufficient environmental planning grounds to justify contravening the standard;
 - (c) The proposed development will be in the public interest because it is consistent with the objectives of the development standard in question; and
 - (d) The proposed development will be in the public interest because it is consistent with the objectives of the zone within which the development is proposed to be carried out.
68. The four matters are addressed individually below.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

- (a) A summary of the applicant's submission with regard to the objectives of the development standard is provided above. The written request has addressed how the objectives of the 'height of buildings' development standard is achieved despite the non-compliance with the numerical standard.
- (b) However, the opinions are poorly founded and fail to demonstrate that compliance with the development standard is unreasonable or unnecessary as discussed below:

Objective (a): to ensure the height of development is appropriate to the condition of the site and its context

- (i) The applicant's written request makes reference to the Precinct-specific controls. The height exceedance results in a development that is contrary to the intent of the built form controls contained in section 5.11 of the DCP, as discussed under Paragraph 49 above.

Objective (b): to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas

- (ii) The proposed 6 storey height fails to respect the existing pattern of stepped heights observed along Oxford Street and Flinders Street, where building heights step down from the corner building at 191-195 Oxford Street towards the east and southeast. The proposed increased setbacks to Oxford Street and Taylor Square do not adequately mitigate the adverse impacts to the streetscape associated with the height exceedance.

Objective (c) to promote the sharing of views outside Central Sydney

- (iii) That claim that no significant view loss is anticipated is not supported by any view analysis.

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

- (c) A summary of the applicant's submission with regard to environmental planning grounds to justify contravening the development standard is provided above. The environmental planning grounds established are specific to the circumstances of the site.
- (d) However, the applicant's opinions are poorly founded and fail to demonstrate sufficient environmental planning grounds to justify contravening the development standard.
- (e) The claim that the proposed bulk and scale is consistent with the desired future character ignores the intent of the Precinct-specific built form controls as previously discussed, which include:
 - (i) the desire to manage the overall heights of developments by excluding the alternative maximum height from the operation of clause 4.6, the 10m height restrictions for any vertical addition, and the written directive requiring any additional FSR to be contained within the alternative maximum height;
 - (ii) the strong desire to establish a strong visual and physical edge to Taylor Square where a reduced setback to the upper level addition may be considered, instead of an increased setback as proposed; and
 - (iii) the desire to maintain the existing pattern of stepped heights.
- (f) The claim that the height exceedance will have no view impact is also unsubstantiated as no view loss analysis was submitted.
- (g) The claim that the proposed development does not impact public views is unsubstantiated. On the contrary, the height exceedance is considered to have adverse impact to the streetscape quality due to the poor height relation with neighbouring predominantly two to three storey buildings.
- (h) Finally, the claim that a complaint building would fail to provide good solar access, amenity and equitable access is unsubstantiated as solar access and good internal amenity can be achieved by good architectural design, and equitable access can continue to be achieved by the provision of lift access.

Is the development in the public interest by being consistent with the objectives of the development standard in question?

- (i) With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the development standard sought to be varied.
- (j) As discussed above, the proposed development is not considered to be consistent with the objectives of Clause 4.3 and is therefore not in the public interest.

Is the development in the public interest by being consistent with the objectives of the zone within which the development is proposed to be carried out?

- (k) Similarly, the public interest is conceived as being protected where a development is consistent with the objectives of the B2 Local Centre zone, in which the development is proposed to be carried out. The objectives of the zone are discussed below.

First objective to provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.

- (i) The proposed development includes multiple retail tenancies and provides cultural and creative spaces to service the local area. It also provides short-term accommodation for visitors.

Second objective to encourage employment opportunities in accessible locations.

- (ii) The subject site is located in close proximity to Sydney CBD and is well serviced by public transport and the dedicated bike network. The proposed development will increase employment opportunities in this accessible location.

Third objective to maximise public transport patronage and encourage walking and cycling.

- (iii) The proposed development will provide active frontages and continuous awning to improve the pedestrian environment to encourage walking. It can also (subject to redesign) accommodate the required number of bicycle parking.

Conclusion

69. For the reasons provided above, the requested variation to the 'height of buildings' development standard is not supported. While the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6(3) of the LEP, the proposed development is not in the public interest because it is inconsistent with the objectives of the 'height of buildings' development standard despite achieving the objectives of the B2 Local Centre zone.

Heritage

70. The existing buildings are identified as contributory buildings to the Oxford Street heritage conservation area (C17). In addition to section 5.10 of the LEP and section

- 3.9 of the DCP, this application is also subject to the locality statement and heritage provisions for the Precinct contained in sections 5.11.1 and 5.11.4 of the DCP.
71. The following elements of the proposal are considered to result in adverse heritage impacts to the significance of the existing buildings and to the character and streetscape quality of the conservation area. These elements include:
- (a) the proposed replacement of the existing first floor window of 191-195 Oxford Street fronting the street corner with a single paned window, which is not in keeping with the character of the fenestration and styling of the building;
 - (b) the proposed ground floor shopfronts to 191-195 Oxford Street fail to respond to the original design identified in the Heritage Impact Statement, and removes the corner entry door, which is a typical feature of the building;
 - (c) the proposed new shopfronts to 197-199, 201 Oxford Street fail to interpret the original three-bay division, extend the masonry character to the ground floor, or take cues from traditional shopfronts; and
 - (d) the replacement and realignment of the existing awnings, while supported in principle, fails to retain any surviving pressed metal ceiling and introduces new semi-circular skylights, which are uncharacteristic of the style and period of the buildings or that of the streetscape of the conservation area.
72. In addition to the above, the application is not supported by, nor seeks to establish, a set of heritage principles to satisfy section 5.11.4.2 of the DCP. Consequently, the submitted structural statement is not guided by a set of heritage principles as required by section 5.11.4.3 of the DCP. Furthermore, the structural statement fails to provide specific methodologies to demonstrate how the facade and front balconies of 197-199, 201 Oxford Street will be retained, supported, and not undermined by the proposed development, particularly during excavation for the proposed basement.
73. The existing billboard (which appears to be subject of an expired development consent) atop 191-195 Oxford Street is identified by the Heritage Impact Statement as "rather dominant and intrusive" for the building. In accordance with section 3.9.7(3)(e) of the DCP, unsympathetic building elements should be removed.
74. This requirement reinforces the recommendation made by the Design Advisory Panel to remove the existing billboard to better achieve the desired streetscape outcome.
75. The retention of the existing billboard is preventing design options that will deliver the desired streetscape outcome from being investigated. As such, the retention is contrary to the following:
- (a) the aim of State Environmental Planning Policy (Industry and Employment) 2021 - Chapter 3 Advertising and Signage in section 3.1(1)(a)(i) to "ensure signage (including advertising) is compatible with the desired visual character of an area"; and
 - (b) the objectives of section 3.16 of the DCP to ensure signage contributes to the character of identified precincts and that upgrades to existing advertising structures deliver improved design quality to contribute to the quality of the public domain.

76. It is considered that the intent of the Precinct-specific controls, as discussed in paragraph 47, can be achieved while minimising adverse impacts to the significance of the existing buildings, particularly, the corner building at 191-195 Oxford Street.
77. Any future design exploration must however be developed and guided by a set of site-specific heritage principles agreed with Council, and with early input from a suitably qualified and experienced structural engineer, as recommended by sections 5.11.4.2 and 5.11.4.3 of the DCP respectively.

Consultation

Internal Referrals

78. The application was discussed with Council's Tree Management Unit, Transport and Access Unit, Traffic Operations Unit, Public Domain Unit, environmental Health Unit, Licensed Premises Unit, Safe City unit, Waste Management Unit, Heritage and Urban Design Unit, Landscape Architect, and Surveyor. Relevant comments have been included in this report.

External Referrals

Ausgrid

79. Pursuant to section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
80. A response was received raising no objections to the proposed development, subject to advisory notes being included in any notice of determination for approval.

Transport for NSW

81. Pursuant to section 2.119 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for comment.
82. A response was received on 24 June 2022 raising no objections to the proposed development subject to recommended conditions being included in any notice of determination for approval.

NSW Police

83. The application was referred to NSW Police for comment. No response was received.

Advertising and Notification

84. In accordance with the City of Sydney Community Participation Plan 2020, the proposed development was notified and advertised for a period of 28 days between 1 June and 30 June 2022. A total of 199 properties were notified and 22 submissions were received.
85. The submissions raised the following issues:

- (a) **Issue:** The proposal does not demonstrate design excellence, including its contribution to the long vista up Oxford Street, the framing of Taylor Square, and the skyline given the site's location on a ridge.

Response: The proposal is considered inappropriate for the subject site. See '*Discussion - Design Excellence*' section above for details.

- (b) **Issue:** The existing billboard atop 191-195 Oxford Street should be removed, and the corner turret should be reinstated.

Response: The billboard is proposed to be retained. However, it is recommended that any future schemes investigate opportunities to remove the billboard. The reinstatement of the corner turret does not form part of the proposal.

- (c) **Issue:** The proposed height exceeds the standard maximum building height or the alternative building height for the Precinct. The exceedance will set an undesirable precedent for other terraces to the East, and results in unreasonable view loss to 28-30 Flinders Street.

Response: The proposed variation to the 'height of buildings' development standard is not supported.

- (d) **Issue:** It is unclear if the subject site benefits from an existing right of way over the private laneway for emergency access and site servicing.

Response: The insufficiency of the submitted survey plan is acknowledged under section 3.8 of Sydney DCP 2012.

- (e) **Issue:** The proposed excavation has potential impact on the Busby's Bore.

Response: Busby's Bore lies to the north of the premises under Oxford Street. The extent of excavation proposed does not encroach into the zone of influence of the Busby's Bore and is not considered to have a likely impact.

- (f) **Issue:** The applicant has not consulted with, or seek to retain, an existing LGBTQIA+ premises currently occupying the basement tenancy.

Response: The submitted Plan of Management has failed to include a set of Diversity and Inclusion principles and guidelines, which are required to assist in retaining and providing for new LGBTQIA+ businesses and organisations.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

86. The proposed development, if recommended for approval, would be subject to a section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

Contribution under Clause 7.13 of the Sydney Local Environmental Plan 2012

87. The site is located within the 'residual land' affordable housing contribution area. The proposed development, if recommended for approval, would be subject to an affordable housing contribution under the City of Sydney Affordable Housing Program 2020.

Relevant Legislation

88. Environmental Planning and Assessment Act 1979.

Conclusion

89. The application fails to demonstrate that the site can be made suitable for the purpose of the proposed development to satisfy section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021.
90. The application also fails to demonstrate that the proposed development is compatible with the flood function and behaviour on the land so as to minimise the flood risk to life and property.
91. The proposed development is incompatible with the desired character of the Oxford Street Darlinghurst locality and the Oxford Street Cultural and Creative Precinct.
92. The proposed development exceeds the 'height of buildings' development standard prescribed under clause 4.3 and the applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening the development standard.
93. The proposed height exceedance would also undermine the operation of the site-specific controls for the Oxford Street Creative and Cultural Precinct contained in clause 6.60D of Sydney LEP 2012 and section 5.11 of Sydney DCP 2012. These controls encourage redevelopment by providing additional height and floor space, while ensuring that the additional height and floor space delivers the desired character of the area.
94. The proposed development fails to demonstrate design excellence, in that it does not deliver a high standard of architectural, urban and landscape design. The proposed built form and architectural language is inappropriate for the site, and would prevent the delivery of the desired future character of the Oxford Street Creative and Cultural Precinct.
95. The proposed development is considered to result in adverse impact on the significance of the Oxford Street heritage conservation area, in that it fails to establish a set of heritage principles for the existing building, the submitted structural statement is inadequate, and that the design of the fenestration, awning and shopfronts are incompatible with the style of the existing building.
96. The application does not include sufficient information to demonstrate legal rights over the private laneway along the site's southern boundary for emergency egress and site

servicing, and that the application has not provided sufficient information to establish acceptable site servicing and waste management arrangements and procedures.

97. The application also has not provided any information regarding the provision of public art.
98. Having regard to the above, the development is not in the public interest and is recommended for refusal.

ANDREW THOMAS

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