

Item 5.**Development Application: 169-173 Darlinghurst Road, Darlinghurst - D/2022/911****File No.:** D/2022/911**Summary****Date of Submission:** 15 September 2022**Applicant:** Urbis**Designer:** Dennis Bunt**Owner:** PG Wealth Pty Ltd**Planning Consultant:** Urbis**Heritage Consultant:** Urbis**Cost of Works:** \$425,000**Zoning:** MU1 - Mixed Use

Proposal Summary: The development application (DA) seeks consent for the continued operation of a digital advertising sign and the alteration of the existing digital sign. This includes removal of the existing LED panel and installation of a new LED panel. The sign area will be slightly reduced in size from 44.9 square metres to 42.5 square metres.

The continued use of the sign relies on existing use rights. A rooftop sign has been in place on the site since 1992. This was upgraded to a digital sign through a Land and Environment court consent granted in 2013. A condition of consent required a new DA to be lodged prior to the expiration of a 10 year period from the granting of consent in order to extend the life of the sign. The subject DA has been lodged prior to the expiration of the 10 year period.

The DA is referred to the City of Sydney Local Planning Panel as it includes the adoption of a Voluntary Planning Agreement (VPA) to provide a public benefit in accordance with State Environmental Planning Policy (Industry and Employment) 2021.

The applicant has offered to enter into a VPA to facilitate one-sixth (approximately 16 per cent) of the advertising time available free of cost for use by the City of Sydney to display public information, community messages and promotion of Council events and initiatives. The VPA was on public exhibition for 28 days ending 25 March 2023. The VPA application has been approved by the City's Chief Executive Officer.

No public submissions for the subject DA nor the VPA were received. The application is recommended for deferred commencement approval to enable registration of the VPA on the title of the subject land.

As per the previous approval an appropriate condition of consent has been included in Attachment A to require the consent to be limited for a maximum period of 10 years.

**Summary
Recommendation:**

The development application is recommended for deferred commencement approval.

Development Controls:

Sydney Local Environmental Plan 2012 (Sydney LEP 2012)

Sydney Development Control Plan 2012 (Sydney DCP 2012)

State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP)

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Draft Voluntary Planning Agreement
- D. Plan of Management
- E. Current Consent Notice D/2011/2123/A

Recommendation

It is resolved that deferred commencement consent be granted to Development Application Number D/2022/911 subject to the 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 continued use and associated works of the sign relies upon existing use rights that are preserved within the existing development consent. The replacement sign is of similar size and design to the existing sign, it will not result in an increase in the intensity of the use or expansion beyond what was previously permitted. Therefore, the proposed replacement of the sign complies with the existing use requirements of the Environmental Planning and Assessment Act, 1979.
- (B) Conditions of consent are recommended to address the dwell times and the transition of the electronic content to address the visual impact of the sign. Conditions are also recommended regarding the illumination and compliance with the submitted management plan addressing the operation of the sign's content.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot B in Deposited Plan 387870, which is commonly known as 169-173 Darlinghurst Road Darlinghurst. It is rectangular in shape with area of approximately 169 square metres. It has a primary street frontage of 7.1 metres to Darlinghurst Road and a secondary street frontage of 24.12 metres to William Street. The site is located at the southwestern corner of the intersection of William Street, Craigend Street and Darlinghurst Road.
2. The site contains a three storey attached masonry building with ground floor commercial premises and residential apartments within the upper levels. The proposal relates to the northern facade of this building that sits above William Street and at the intersection of Darlinghurst Road and Victoria Street.
3. The surrounding land uses predominantly consist of residential and commercial properties. Across the intersection, there exist larger-scale developments comprising three towers, containing both residential and hotel uses. Notably, among these developments is a residential tower with a facade featuring a large-scale Coca-Cola sign, accompanied by an associated advertisement. A large-scale artwork is prominently displayed on the upper northern facade of the neighbouring building to the immediate west at 13 Kirketon Road. The northern facade of the building at 227 Victoria Street also includes a substantial art work.
4. The site is located within the William Street locality and the Rosebank heritage conservation area (C14). The site is identified as having a neutral contribution within the heritage conservation area.
5. A site inspection visit was carried out on 12 September 2022. Photographs of the subject site and surroundings are reproduced in the figures provided below.

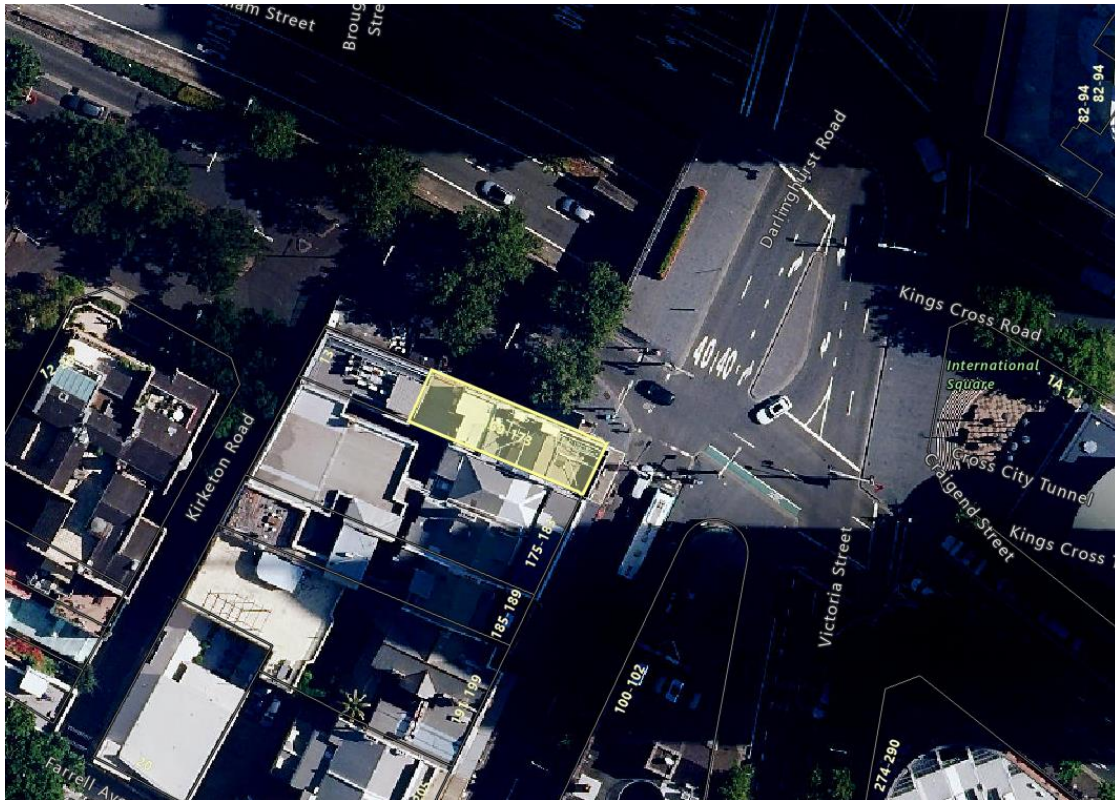


Figure 1: Aerial photographic view of the subject site (shown shaded in yellow) and surroundings



Figure 2: Site and existing LED sign viewed from corner of Craigend Street and Victoria Road



Figure 3: Site and existing LED sign (centre) viewed from William Street and Darlinghurst Road. Building art works at 227 Victoria Street and 13 Kirketon Road can also be seen adjoining the site.



Figure 4: Looking south toward the subject site from the pedestrian thoroughfare over Cross City Tunnel

History Relevant to the Development Application

Development Applications

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

- (a) **U91/00189** – Development consent was granted on 12 July 1991 for rooftop signage with dimensions of 15.9 metres in width and 5.8 metres in height.

A photograph of the previous sign is reproduced in the figure provided below.



Figure 5: Previous signage at subject site approved under development consent U91/00189 (Source: Kann Finch)

- (b) **D/2011/2123** – Development consent was refused on 23 February 2012 to replace an existing roof top sign on the northern elevation with an electronic LED static digital display sign measuring 15.2 metres in width and 5.6 metres in height, with a display area of 85.12 square metres, and new LED panels on the facade to appear as mosaic pieces. The proposed sign was proposed to provide for a sequence of static images.
- (c) **RD/2011/2123/A** – Amended drawings were lodged as part of a Section 82A review application. The amended drawings reduced the size of the sign from 85 square metres to 43 square metres in area and sought to increase the height of the parapet facing Darlinghurst Road. The review application was refused on 18 October 2012.
- (d) **Land and Environment Court Determination - APN Outdoor Pty Ltd v Council of the City of Sydney [2013] NSWLEC1002** – An appeal was lodged with NSW Land and Environment Court 3 against the above refusal. The proposal was amended to reduce the size of the sign from 85sqm to 44.9sqm. The appeal was upheld 9 January 2013

A number of conditions of relevance were included in the approval:

- Condition 3 required that the sign and any associated structure must be removed, and the site reinstated, within a period of 10 years from the date of the consent, or on termination of the subject lease of the property, whichever occurs first.

If the sign is to be retained after this period, a new development application must be lodged with Council before the expiration of the consent.

The approval date was the 9 January 2013 and therefore the expiration date of the 10 year period is 9 January 2023. The development application complies with the condition as it was lodged on 5 September 2022.

- Condition 8 required one sixth of advertising time to be dedicated to Council for the purpose of community messaging. The advertising must be every sixth advertising sequenced in order to ensure that community messaging occurs consistently through the day.
 - RMS concurrence conditions required the following:
 - i. Each advertisement must be displayed statically, for a minimum of 45 seconds where the posted speed limit is less than 80 km/h;
 - ii. The display must be completely static from its first appearance to the commencement of a change to another display;
 - iii. The transition time between advertisements must not be greater than 0.1 seconds;
 - iv. No advertisement displayed must be dominated by red, yellow, white or green, or any shape or pattern, so as to result in it being readily mistaken for a rail or traffic or road sign or signal;
 - v. Light levels are to be consistent with Section 3.2.5 "Illumination and Reflective" of the Transport Corridor Outdoor Advertising and Signage Guidelines.
 - Condition 10 requiring a Safety Audit and Risk Analysis on the first anniversary of the erection of the signage was satisfied on 27 October 2015.
- (e) **D/2011/2123/A** – A 96AA(1) modification was approved on 17 July 2013 to recess the approved signage into the wall of the subject building and within the boundary of the site.

Proposed Development

7. The application seeks consent for the following:

- (a) The continued operation of a digital advertising sign and the alteration of the existing digital sign. This includes removal of the existing LED panel and installation of a new LED panel. The sign area will be slightly reduced in size from 44.9 square metres to 42.5 square metres. The existing structure to which the LED panel is fastened is proposed to remain as is.
- (b) The content of the sign will not flash, scroll, or move but is proposed to change static images every 45 seconds (dwell time) with a 0.1 second transition time.
- (c) The development application is accompanied by a public benefit offer for the use of advertising space for public messaging by the City of Sydney Council.

- (d) A VPA has been approved by the City's Chief Executive Officer and has been publicly exhibited. The VPA will secure one-sixth (approximately 16 per cent) of the advertising time available free of cost for use by the City of Sydney to display public information, community messages and promotion of Council events and initiatives. The VPA was on public exhibition for 28 days ending 25 March 2023. The VPA as executed, must be registered on the title of the land.
8. Elevation, plan section detail and photomontage drawing extracts of the proposed development are reproduced in the figures provided below.

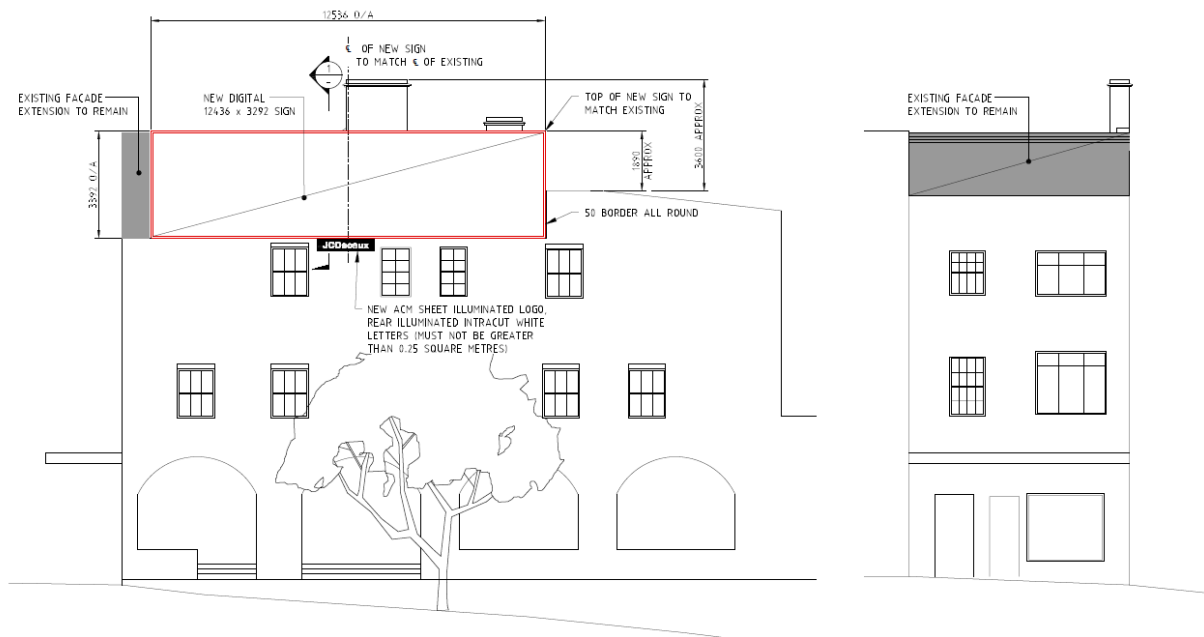


Figure 6: Proposed William Street (left) and Victoria Road (right) elevations

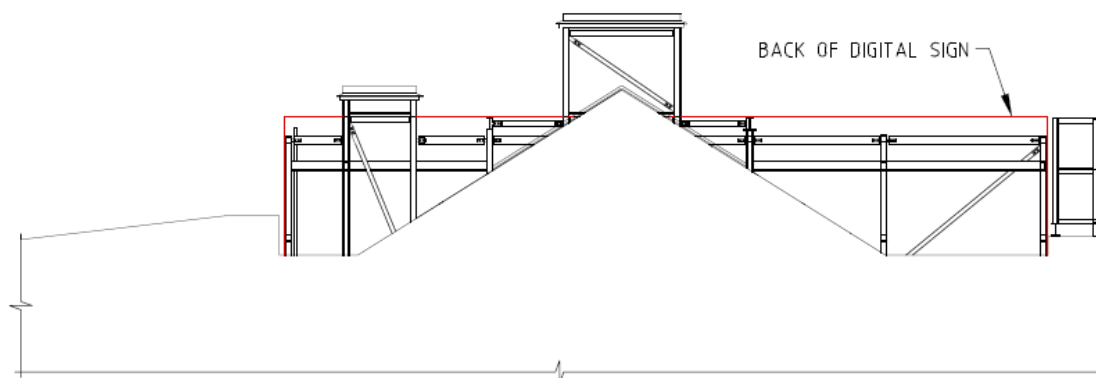


Figure 7: Proposed rear of sign elevation

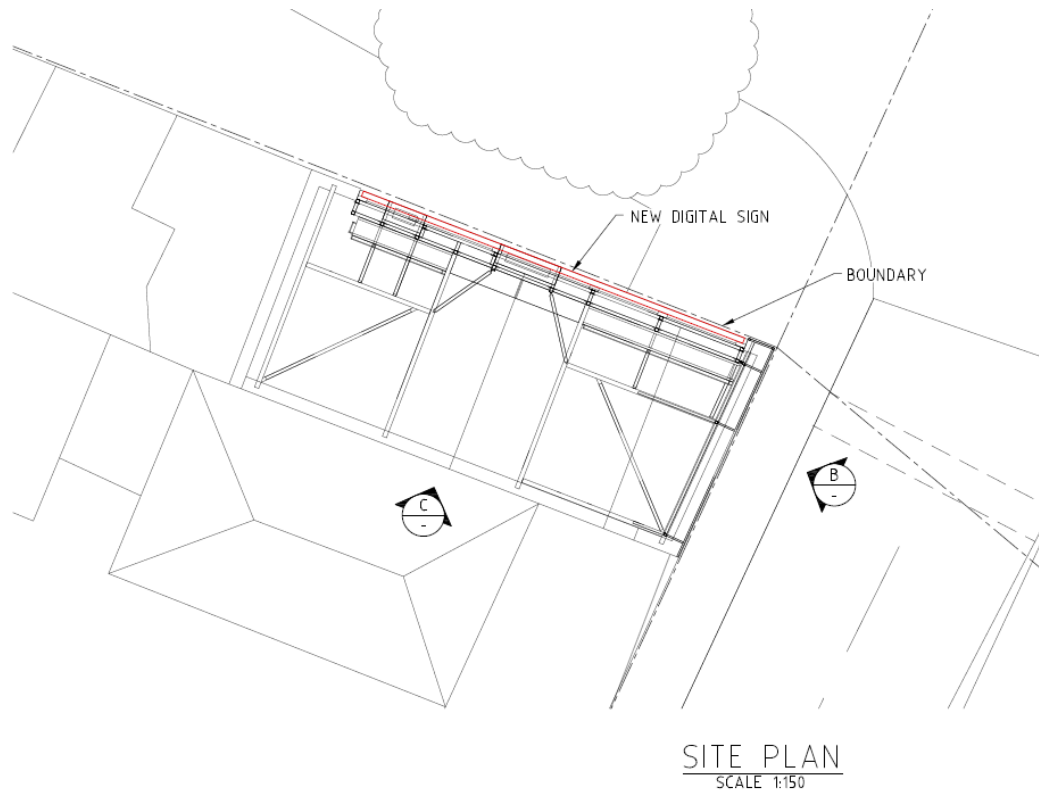


Figure 8: Proposed site plan

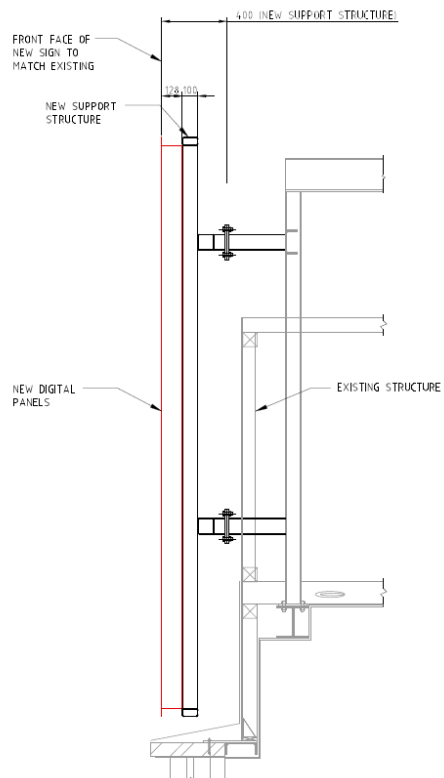


Figure 9: Proposed section detail



Figure 10: Photomontage

Assessment

9. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

State Environmental Planning Policies

State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP)

Existing Use Rights

10. The proposed signage is subject to the provisions of Part 3.3 of the Industry and Employment SEPP as it is not a building, nor a business identification sign.
11. Clause 3.8 in Chapter 3 of the Industry and Employment SEPP identifies that the display of an advertisement is prohibited on land that, under an environmental planning instrument, is within a 'heritage area (excluding railway stations)'.
12. The subject site is located within the Rosebank Heritage Conservation Area (Map reference C14) under the Sydney LEP 2012, thereby making the subject advertisement prohibited.
13. The sign benefits from existing use rights for the existing digitally illuminated LED third party advertising signage under development consent D/2011/2123, as modified by D/2011/2123/A.

14. Refer to the issues section of the report for further discussion.

Clause 3.11 - Matters for consideration

15. As the advertisement is greater than 20 square metres and within 250 metres of, and visible from, a classified road (in accordance with Section 3.16 of the SEPP) the application is subject to Section 3.11(3), which requires compliance with the Transport Corridor Outdoor Advertising Signage Guidelines in terms of the public benefits to be provided in connection with the display of the advertisement.
16. The proposal includes a VPA to address the public benefits envisaged by the Employment and Industry SEPP, thereby satisfying Sections 3.11(2)(b)(iii) and 3.11(3).
17. Further discussion and assessment regarding compliance is provided below under the heading Transport Corridor Outdoor Advertising and Signage Guidelines 2017 (TCOAS Guidelines 2017).
18. The proposal has been reviewed by the City's Transport Planning Unit, who have raised no concerns in relation the design of the advertisement or road safety.
19. Furthermore, Transport for New South Wales have made no objections to the proposed development, subject to a number of conditions which have been included in Attachment A.

Clause 3.12 - Duration of consents

20. In accordance with Section 3.12(2)(c) of the Industry and Employment SEPP, the roof advertisement is proposed to be displayed for a maximum period of 10 years.
21. An appropriate condition of consent has been included in Attachment A to require the consent to be limited in this regard.

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

22. The proposal is located more than 8 metres above ground level in accordance with Section 3.15(1)(b) of the Industry and Employment SEPP.
23. The application was accompanied by a Statement of Environmental Effects which includes an impact statement which addresses Schedule 5 of the SEPP
24. As noted above however, the sign benefits from existing use rights for the existing digitally illuminated LED third party advertising signage. Refer to issues section of this report for further discussion.
25. The application has been notified in accordance with Clause 7, Division 2 of Schedule 1 (formerly Section 79A) of the Environmental Planning and Assessment Act, 1979.
26. A copy of the application was referred to Transport for New South Wales (TfNSW) at the same time the application was notified.

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

27. The proposal is subject to Clause 3.16 of the Industry and Employment SEPP, as it is within 250 metres of William Street, which is a State classified main road and is visible from the classified road, in accordance with Section 3.16(1) of the SEPP.

28. Transport for New South Wales granted concurrence to the proposal on 5 October 2022, in accordance with Section 3.16(2) of the Industry and Employment SEPP.

Clause 3.19 - Roof or Sky advertisements

29. The development is defined as a roof advertisement and is subject to Section 3.19 of Industry and Employment SEPP. An assessment against the relevant provisions in this section of the SEPP are provided in the table below:

Provision	Compliance	Comment
The advertisement replaces one or more existing roof or sky advertisements and that the advertisement improves the visual amenity of the locality in which it is displayed	Partial compliance	The proposed signage replaces the existing roof advertisement approved per development consent D/2011/2123, as modified by D/2011/2123/A.
The advertisement is no higher than the highest point of any part of the building that is above the building parapet	Yes	The proposed signage will be located below the highest point of the building, being the pitched roof and chimney structure of the subject terrace building.
The advertisement is no wider than the highest point of any part of the building that is above the building parapet	No	The proposed signage extends in width beyond the pitched roof and chimney structure.

30. The proposed signage is partially compliant with the aims and objectives of Section 3.19 of the Industry and Employment SEPP applying to roof advertisements.
31. As mentioned above the sign benefits from existing use rights for the existing digitally illuminated LED third party advertising signage. Refer to issues section of this report for further discussion.

Transport Corridor Outdoor Advertising and Signage Guidelines 2017 (TCOAS Guidelines)

32. The proposed signage is consistent with the aims and objectives of the TCOAS Guidelines.
33. The Guidelines outline best practice for the planning and design of outdoor advertisements in transport corridors, such as along or adjacent to classified roads, freeways, tollways, transit ways and railway corridors, or on bridges or road and rail overpasses.
34. Section 2 of the Guidelines addresses sign placement, clutter, design excellence in its scale and compatibility with buildings and the site.
35. As addressed above in the assessment provided in relation to Chapter 3 of the Industry and Employment SEPP, the proposed sign is appropriately located and designed to respond to its context of the MU1 Mixed Use Zone.

36. The proposed sign satisfactorily addresses the Digital Sign Criteria under Section 2.5.8 of the Guidelines for signs greater than 20 square metres in area by proposing dwell times not less than 45 sec where the speed limit is below 80km/h, and transition times no longer than 0.1 seconds.
37. The maintenance and content of the signage will be consistent with the design criteria to address road safety and is supported by a Road Safety Check. The ongoing management of the sign has been addressed in a condition included in Attachment A requiring a road safety audit.
38. The following table sets out how the proposal addresses the relevant criteria in Section 3 and 4 of the TCOAS Guidelines:

Provision	Compliance	Comment
3.2.1 Road Clearance		
The advertisement must not create a physical obstruction or hazard.	Yes	The proposed development is located on the wall of an existing building over 15 metres above the roadway. As such, the sign does not obstruct the movement of pedestrians, bicycle riders or any vehicles along William Street.
Where the sign supports are not frangible (breakable), the sign must be placed outside the clear zone in an acceptable location in accordance with Austroads Guide to Road Design (and RMS supplements) or behind an RMS-approved crash barrier.	Yes	The proposed development is within an acceptable location as reviewed and supported by Transport for New South Wales.
To ensure adequate clearance for pedestrian and wheel chair access, the sign must be positioned so that an absolute minimum envelope of 900mm x 2000mm of unobstructed clear path of travel is maintained for the entire length of the advertising structure.	Yes	The proposed development does not obstruct pedestrian or wheel chair access along William Street.
3.2.2 Line of Sight		
An advertisement must not obstruct the driver's view of the road, particularly of other	Yes	The proposed development is located adjacent to William Street and does not

Provision	Compliance	Comment
vehicles, bicycle riders or pedestrians at crossings.		obstruct a driver's view of the classified road.
An advertisement must not obstruct a pedestrian or cyclist's view of the road.	Yes	The proposed development does not obstruct a pedestrian or cyclist's view of any adjacent roads.
The advertisement should not be located in a position that has the potential to give incorrect information on the alignment of the road. In this context, the location and arrangement of signs' structures should not give visual clues to the driver suggesting that the road alignment is different to the actual alignment. An accurate photomontage should be used to assess this issue.	Yes	The proposed development does not provide incorrect information on the alignment of the road.
The advertisement should not distract a driver's attention away from the road environment for an extended length of time.	Yes	<p>The proposed development is elevated and to the side of William Street.</p> <p>Visibility of the proposed sign will be limited to south-facing traffic in the vicinity of the intersection of Darlinghurst Road and Kings Cross Road.</p> <p>Drivers would not be required to turn away from the road to view the sign and would be able to see the road and traffic stream in their peripheral vision while viewing the sign.</p> <p>The proposal would not cause headlight reflections in the driver's line of sight due to the elevation of the sign, and as the LED sign would be fitted with automatic sensors to reduce illumination during twilight and night-time hours.</p>
<p>The sign should not be located:</p> <p>i less than the safe sight distance from an intersection,</p>	Yes	Within the 150 metre exposure distance of the advertisement is the Victoria Street and William Street signalised intersection, including a pedestrian crossing.

Provision	Compliance	Comment
<p>merge point, exit ramp, traffic control signal or sharp curves</p> <p>ii less than the safe stopping sight distance from a marked foot crossing, pedestrian crossing, pedestrian refuge, cycle crossing, cycleway facility or hazard within the road environment</p> <p>iii so that it is visible from the stem of a T-intersection.</p>		<p>Given the height of the proposed advertisement and 45 second dwell time of the advertisements the content of the sign would not conflict with the traffic control signal. This proximity has been assessed and supported by RMS subject to conditions of consent.</p>
<p>The placement of a sign should not distract a driver at a critical time. In particular, signs should not obstruct a driver's view:</p> <p>i of a road hazard</p> <p>ii to an intersection</p> <p>iii to a prescribed traffic control device (such as traffic signals, stop or give way signs or warning signs)</p> <p>iv to an emergency vehicle access point or Type 2 driveways (wider than 6-9 metres) or higher.</p>	Yes	<p>The Road Safety Check has concluded that the proposed development would not obstruct a driver at a critical time and its elevation above the roadway conjunction with the 45 second dwell time would not obstruct a driver's view of a road hazard, intersection or traffic control device.</p>
3.2.4 Sign spacing		
<p>The proposed site should be assessed to identify any road safety risk in relation to visual clutter and the proximity to other signs.</p>	Yes	<p>The proposed signage does not obstruct or reduce the visibility and effectiveness of, directional signs, traffic signals, prescribed traffic control devices, regulatory signs or advisory signs or obscure information about the road alignment.</p>

Provision	Compliance	Comment
<p>The advertisement must not distract a driver from, obstruct or reduce the visibility and effectiveness of, directional signs, traffic signals, prescribed traffic control devices, regulatory signs or advisory signs or obscure information about the road alignment.</p>	Yes	<p>There is limited road safety risk in relation to visual clutter and proximity of the advertisement to other signs given that the only other large format being the static Coca-Cola sign located on the western side of the 84 Darlinghurst Road which is not observed within the same view corridor.</p> <p>The proposed sign is not located at street level and therefore does not impede traffic control signs or devices.</p>
<p>The advertisement must not interfere with stopping sight distance for the road’s design speed or the effectiveness of a prescribed traffic control device.</p>		
3.3.2 Dwell time and transition time		
<p>Each advertisement must be displayed in a completely static manner, without any motion, for the approved dwell time.</p>	Yes	<p>The proposed development complies with the digital signage requirements and is addressed in the recommended conditions of consent.</p> <p>The proposed sign is not visible from a school zone.</p>
<p>Dwell times for image display must not be less than:</p> <p>i. 10 seconds for areas where the speed limit is below 80km/h.</p> <p>ii. 25 seconds for areas where the speed limit is 80km/h and over.</p>		
<p>Any digital sign that is within 250 metres of a classified road and is visible from a school zone must be switched to a fixed display during school zone hours.</p>		

Provision	Compliance	Comment
Digital signs must not contain animated or video/movie style advertising or messages including live television, satellite, Internet or similar broadcasts.		
The transition time between messages must be no longer than 0.1 seconds, and in the event of image failure, the default image must be a black screen.		
3.3.3 Illumination and reflectance		
Advertisements must comply with the luminance requirements in Table 5.	Yes	<p>The proposed development has been supported by a Lighting Assessment Report considered the proposed digital signage has been found to comply with all relevant requirements of AS 4282-2019 Control of the Obtrusive Effects of Outdoor Lighting, and the TCOAS Guidelines.</p> <p>Conditions of consent are included in Attachment A to ensure that the illumination does not result in unacceptable glare, affect safety or detract from the amenity of any residential accommodation.</p> <p>In complying with the above requirements, the proposed signage should not result in unacceptable glare nor should it adversely impact the safety of pedestrians, residents or vehicular traffic. Additionally, the proposed signage should not cause any reduction in visual amenity to nearby residences or accommodation.</p>
For night time use, the sign (whether internally illuminated or lit from its exterior) must not cast a shadow on areas that were previously lit and that have a special lighting requirement, e.g. pedestrian crossings.		
<p>The light sources for illuminated signs must focus solely on the sign and:</p> <p>i be shielded so that glare does not extend beyond the sign</p> <p>ii with the exception of back lit neon signs, have no light source visible to passing motorists with a light output greater than that of a 15W fluorescent/LED bulb.</p>		

Provision	Compliance	Comment
The level of reflectance of an advertisement, and its content, is not to exceed the 'Minimum coefficients of Luminous intensity per unit area for Class 2A Material', as set out in Australian Standard AS/NZS 1906.1:2007. Flashing illuminated advertisements will not be approved.		
3.3.4 Interaction and sequencing		
The advertisement must not incorporate technology which interacts with in-vehicle electronic devices or mobile devices. This includes interactive technology or technology that enables opt-in direction communication with road users.	Yes	The proposed development does not involve any interactive technology. The proposed development does not involve any message sequencing.
Message sequencing designed to make a driver anticipate the next message is prohibited across images presented on a single sign and across a series of signs.		
4.1 What is the public benefit test?		
The Statement of Environmental Effects (SEE) submitted with a development application must outline arrangements for an appropriate public benefit.	Yes	The submitted SEE: <ul style="list-style-type: none">Includes an offer to enter into a VPA to facilitate the public benefit arrangements. The VPA was exhibited for a period of 28 days concluding on the 25 March 2023 with no submissions. A copy of the VPA is included in Attachment C.

Provision	Compliance	Comment
		<ul style="list-style-type: none"> The VPA includes 16% of the advertising time available free of cost for use by the City of Sydney to display public information, community messages and promotion of Council events and initiatives.
4.2 What is an appropriate public benefit?		
Public benefit can be provided as a monetary contribution or as an 'in-kind' contribution, linked to improvements in local community services and facilities.	Yes	The public benefit proposed is consistent with that outlined in Section 4.2.3 of the TCOAS Guidelines, given that it provides for free advertising time.

Local Environmental Plans

Sydney Local Environmental Plan 2012

39. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided under the following headings and table 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 MU1 Mixed Use zone.</p> <p>The proposed use is defined as an advertisement and is permissible.</p> <p>Section 3.8 of the Industry and Employment SEPP overrides this by making advertisements prohibited in heritage area.</p> <p>The proposed advertising signage in turn relies upon existing rights for development consent to be granted.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	<p>A maximum building height of 18 metres is permitted.</p> <p>A height of 15.5 metres is proposed.</p> <p>The proposed sign complies with the maximum height of buildings development standard.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is located within the Rosebank heritage conservation area (Map reference C14).</p> <p>The site is adjacent to a local heritage item' known as the 'Darlinghurst Fire Station including interior' (Item Number I278) located on the eastern side of Darlinghurst Road.</p> <p>The proposal was referred to Councils Heritage and Urban Design Unit, who did not support the installation of the signage due to the prohibited nature of the signage as prescribed by Section 3.8 of the Industry and Employment SEPP.</p> <p>The existing and proposed sign is considered to be visually intrusive and has a negative contribution to the subject and surrounding heritage conservation areas.</p> <p>The proposed replacement advertisement is reliant upon the existing use rights provisions in Part 4 of the Environmental Planning and Assessment Act, 1979 as detailed in the 'discussion' section below.</p>

Discussion

Existing Use Rights

40. On 12 July 1991, development consent U91/00189 was granted for rooftop signage with dimensions of 15.9 metres in width and 5.8 metres in height, the application was granted prior to the implementation of State Environmental Planning Policy No 64 - Advertising and Signage (SEPP 64) (now consolidated into Chapter 3 of the Industry and Employment SEPP) which commenced 16 March 2001.
41. The Environmental Planning Instrument (EPI) at the time, 'The City of Sydney Planning Scheme Ordinance', did not recognise the site to be located within a 'heritage area'. The consent granted was permissible with regard to the planning controls applicable to the site at the time.
42. On 9 January 2013 development consent D/2011/2123 was granted by the Land and Environment Court (Case reference APN Outdoor Pty Ltd v Council of the City of Sydney [2013] NSWLEC1002) to replace the existing roof top sign on the northern elevation with an electronic LED static digital display sign.
43. At the time of the granting of this development consent, SEPP 64 was in effect which prohibited signage within a 'heritage area'. The Sydney LEP 2012 was also in effect at this time, which identified the site as being located within the Rosebank Heritage Conservation Area.
44. The application was made prior to the commencement of the Sydney LEP 2012 however and, in accordance with Clause 1.8A 'Savings provisions' of the Sydney LEP 2012, it was determined in accordance with the applicable environmental planning instrument (EPI) at the time of lodgement of the DA, being the South Sydney Local Environmental Plan 1998 (South Sydney LEP 1998).
45. The South Sydney LEP 1998 did not identify the subject site as being located within a 'heritage area' and as such, the advertisement granted per the development consent was permissible with the planning controls at the time.
46. As detailed above, the site has an existing sign that was lawfully erected in accordance with the relevantly applicable EPI of the time. The existing LED sign is proposed to be replaced with a new LED sign that is of similar size and design to the existing sign.
47. Given that the proposed advertisement is prohibited per Section 3.8 of the Industry and Employment SEPP, the proposed replacement advertisement is reliant upon the existing use rights provisions in Part 4 of the Environmental Planning and Assessment Act, 1979.
48. Section 4.67 of the Act provides that a site has the benefit of existing use rights if the land, building or work was lawfully used for a particular purpose before a change was made to the planning controls that now prohibit that use.
49. In this case, the existing advertisement was granted development consent by the Land and Environment Court of New South Wales on 9 January 2012.
50. Section 4.69 of the Act states that existing use rights do not permit an increase in the intensity of the use or expansion beyond what was previously permitted.

51. As the replacement sign is of similar size and design to the existing sign, albeit with a slightly lessened display area, it will not result in an increase in the intensity of the use or expansion beyond what was previously permitted, subject to the conditions included in Attachment A. The proposed replacement of the existing advertisement thereby complies with this requirement of the Act.
52. Section 4.70 of the Act outlines the process for determining whether existing use rights apply to a particular situation, including the requirement to provide evidence of the previous use and the need for a determination from the consent authority.
53. As detailed above within the 'Development Application History' section of this report, a sign has been located on the site since 1992, with the current advertisement having been approved by the Court on 9 January 2013.
54. A condition of consent of development consent D/2011/2123 required a new DA to be lodged prior to the expiration of a 10 year period in order to extend the life of the sign. Given that the subject DA has been lodged prior to the expiration of this 10 year period, Council staff are satisfied the previous and current use of the site as an advertising sign is valid in the context of applying existing use rights to the proposal.
55. In conclusion, the proposed replacement of the sign relies upon and complies with the existing use rights provisions in Part 4 of the Environmental Planning and Assessment Act, 1979. The proposed replacement sign is of similar size and design to the existing sign and is therefore unlikely to result in an increase in the intensity of the use or expansion beyond what has previously been granted consent.

Surrender of Previous Consents

56. During the assessment of the DA, it was found that the original development consent for rooftop signage was required to be surrendered in condition 2 of the Notice of Determination for development consent D/2011/2123.
57. An incorrect consent reference was quoted in the condition however being development consent U00/00832, which relates to the neighbouring structure at 13 Kirkton Road.
58. The development consent which should have been surrendered was U91/00189, granted on 12 July 1991. This consent was not been surrendered.
59. A condition is included in Attachment A to require the surrender of both consents prior to issue of any Occupation Certificate.

Voluntary Planning Agreement

60. A VPA has been prepared in relation to the site.
61. The agreement includes the following public benefit:
 - (a) 16 per cent of the advertising time will be made available free of cost for use by the City of Sydney to display public information, community messages and promotion of Council events and initiatives.
62. The draft VPA was exhibited for a period of 28 days concluding on the 25 March 2023 with no submissions.

63. A deferred commencement condition is recommended to ensure that the VPA is executed and registered on title prior to the consent being activated.

Consultation

Internal Referrals

64. The application was discussed with Council's:
- (a) Transport and Access Unit;
 - (b) Planning Agreements Team; and
 - (c) Heritage and Urban Design Unit
65. The Transport and Access Unit and Planning Agreements Teams advised that the proposal is acceptable, subject to conditions. Where appropriate, these conditions are included in Attachment A.
66. Council's Heritage and Urban Design Unit do not support the installation of the sign on the basis that the existing sign detracts from the significance of the surrounding heritage conservation area, and because advertisements are prohibited under Section 3.8 of the Industry and Employment SEPP.

External Referrals

Transport for NSW

67. Pursuant to Section 3.16(2) of the Industry and Employment SEPP, the application was referred to Transport for New South Wales for concurrence.
68. Concurrence was received by the City on 5 October 2022. Conditions of consent were recommended, which are included in Attachment A.

Advertising and Notification

69. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 13 September 2022 and 28 September 2022.
70. A total of 91 properties were notified and no submissions were received by the City in relation to the application, either during or after the public exhibition of the application.

Financial Contributions

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

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

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

72. As the development is development for purposes other than residential accommodation that will result in the creation of less than 60 square metres of gross floor area, the development is excluded and is not subject to a Section 7.13 affordable housing contribution.

Relevant Legislation

73. Environmental Planning and Assessment Act, 1979.

Conclusion

74. The continued use of the sign relies on existing use rights. The replacement sign is of similar size and design to the existing sign and, subject to conditions, it will not result in an increase in the intensity of the use or expansion beyond what was previously permitted. The proposed replacement of the sign complies with the existing use requirements of the Environmental Planning and Assessment Act, 1979.
75. The proposal includes the dedication of advertising space for community messaging. A draft VPA has been publicly exhibited and no submissions were received.
76. It is recommended that deferred commencement consent be granted requiring the VPA to be executed and registered on title.

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