

Item 5.**Development Application: 1-5 Wheat Road, Sydney - D/2019/280**

File No.: D/2019/280

Summary**Date of Submission:** 22 March 2019

Amended plans received 5 October 2021

Applicant: oOh!media**Architect/Designer:** Group GSA**Owner:** Place Management NSW**Planning Consultant:** Urban Concepts**Cost of Works:** \$357,000

Zoning: The site is partially located within the RE1 - Public Recreation and SP5 - Metropolitan Centre zones of the Sydney Local Environmental Plan 2012 and the Darling Harbour Development Area as per Chapter 3 of the State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021.

The area of the site in which the proposed development is located is contained within the Darling Harbour Development Area zoning. The proposed development is classified as advertising signage and is permissible with consent.

Proposal Summary: The application seeks consent for the upgrade of the existing freestanding third party advertising structure including a new custom designed cabinet, the removal of the existing double-sided illuminated advertising sign and replacement with a new double-sided advertising sign with a digital screen facing south and an internally illuminated lightbox facing north.

The proposed dimensions of each advertising sign is 8.05m(w) x 2.19m(h) resulting in a total advertising area for both signs of 35.259sqm.

The proposal was amended during the assessment process addressing concerns regarding the proposed location of the access ladder and protection of the existing mature trees within close proximity to the sign and the terms of the public benefit offer.

The application has been referred to the Local Planning Panel for determination as the developer has offered to enter into a planning agreement, in accordance with the State Environmental Planning Policy (Industry and Employment) 2021 to dedicate a portion of display time of the south-facing digital sign to Council and Place Management NSW for the purposes of displaying public information, community messages and promotion of events and initiatives.

The application has been assessed against the provisions for advertising in the State Environmental Planning Policy (Industry and Employment) 2021 and the Sydney Development Control Plan 2012. The application is generally acceptable in regard to size and visual impact, however, the application does not satisfy the objectives and provisions of Chapter 3 in the State Environmental Planning Policy (Industry and Employment) 2021 relating to the provision of a public benefit along a transport corridor.

While the terms of a Planning Agreement between Council, oOh!media and Place Management NSW have been negotiated and drafted, final confirmation from all relevant parties for the exhibition of the draft Planning Agreement was not provided to Council and thus has not proceeded to exhibition and further consideration, preventing consent from being granted.

The application was notified for a period of 14 days between 3 April 2019 and 18 April 2019. No submissions were received.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Sydney Development Control Plan 2012 (SDCP 2012)
- (ii) SEPP (Industry and Employment) 2021
- (iii) SEPP (Biodiversity and Conservation) 2021
- (iv) SEPP (Planning Systems) 2021
- (v) SEPP (Precincts – Eastern Harbour City) 2021

Attachments: A. Selected Drawings

Recommendation

It is resolved that consent be refused for Development Application Number D/2019/280 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) The application is inconsistent with Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that the application does not ensure a public benefit will be delivered with the project and as such is not considered to be in the public interest.
- (B) The application does not meet the objectives of signage as set out in Section 3.1 of the State Environmental Planning Policy (Industry and Employment) 2021. The application has not demonstrated that it ensures public benefits will be derived from advertising in and adjacent to transport corridors.
- (C) The application does not satisfactorily address the matters for consideration set out in Section 3.11 of the State Environmental Planning Policy (Industry and Employment) 2021. The application has not demonstrated that a public benefit will be provided with the delivery of the development in accordance with Chapter 4 of the Transport Corridor Outdoor Advertising and Signage Guidelines 2017.
- (D) The application does not satisfy the objectives and provisions for advertising structures and third party advertisements as set out in Section 3.16 of the Sydney Development Control Plan 2012. The application has not demonstrated that the upgrades to the existing third party advertising structure will deliver improved design quality and community benefits through a Planning Agreement.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 77 DP 1175888, known as 1-5 Wheat Road, Sydney. It is irregular in shape with an area of approximately 15,630sqm. It has primary street frontages to Wheat Road and the Western Distributor to the east and a secondary street frontage to Lime Street to the north. Part of the northern frontage and the eastern and southern frontages of the site are to pedestrian promenades. The site is located within the Darling Harbour precinct.
2. The site contains several uses, primarily the Sea Life Sydney Aquarium, Wild Life Sydney Zoo and Madame Tussauds Sydney. The eastern portion of the site in which the subject application is located contains back of house uses, a car park and an advertising billboard. The billboard has northern and southern facing advertising panels primarily viewed from northbound lanes on the Western Distributor and Wheat Road and a pedestrian bridge located to the north of the site.
3. The surrounding area is characterised by a mixture of land uses, primarily being commercial and tourist uses. In addition to the museum and zoo uses located within the subject site, hotel uses are located directly to the north and east of the site with food and drink uses located to the south, north east and north west of the site.
4. The site is not classified as a heritage item nor is it located within a heritage conservation area.
5. A site visit was carried out on 12 April 2019. Photos of the site and surrounds are provided below:

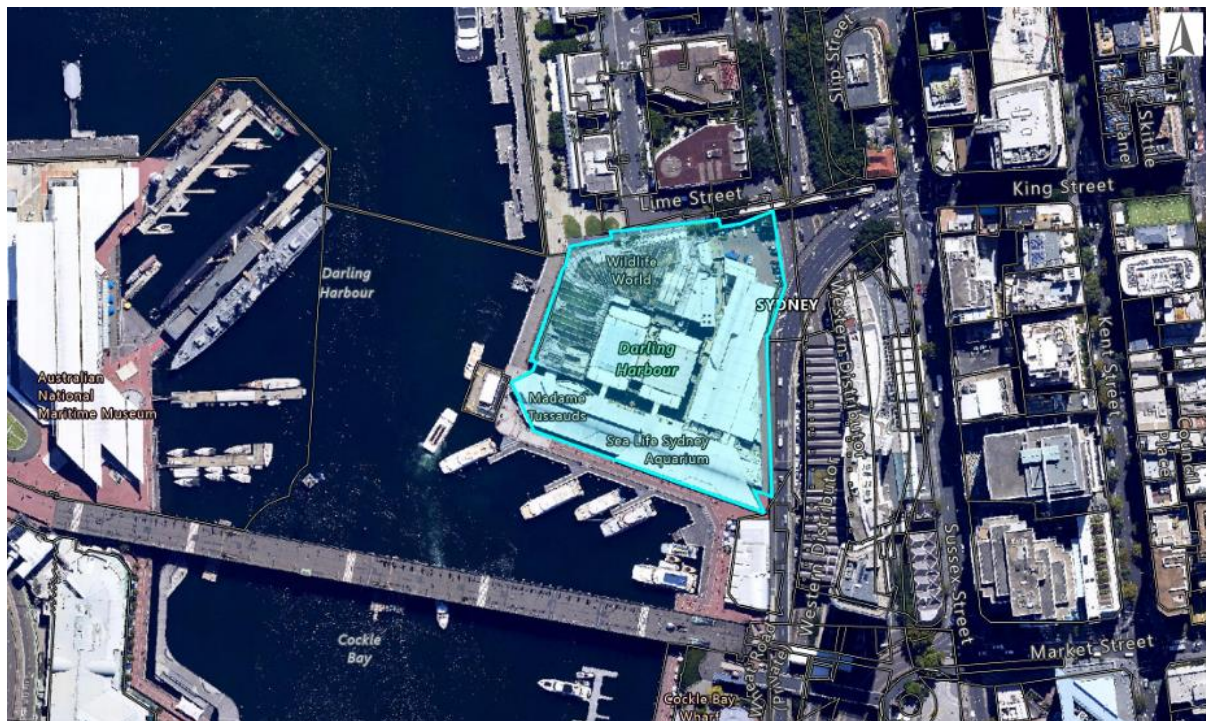


Figure 1: Aerial view of site and surrounds



Figure 2: Location of billboard within the site



Figure 3: Billboard viewed from the King Street off-ramp of the Western Distributor looking north



Figure 4: Billboard viewed from the pedestrian bridge located to the north of the site facing south



Figure 5: Existing billboard facing east



Figure 6: Existing billboard facing west

History Relevant to the Development Application

Development Applications

6. The following applications are relevant to the current proposal:
 - Development Consent (DA 280-11-05) was issued by the Sydney Harbour Foreshore Authority on the 3 March 2006. DA 280-11-05 approved the 'upgrade and reconfiguration of the existing billboard at Wheat Road, Darling Harbour'. Consent granted under this application did not restrict the time period in which the billboard is able to display advertisements.

Amendments

7. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 4 July 2019. The request sought the submission of a formal public benefit offer with amendments to the offer to be consistent with the requirements of the SDCP 2012, the submission of light spill calculations of the north-facing light box and design modifications to the location of the access ladder.
8. The applicant responded to the request on 5 July 2019 providing the following response:

- (a) 10% of advertising screen time of the south-facing digital sign is to be dedicated to Council.
 - (b) The north-facing sign is no longer to be illuminated.
9. Over one year later, on 5 October 2021, amended plans were received detailing the relocation of the proposed access ladder. The amended plans show the north-facing sign to be internally illuminated.
10. The dedication of screen time to Council for provision of public information is to be secured via a planning agreement. The terms of the public benefit offer and planning agreement have been subject of negotiations between Council, the applicant and the land owner Place Management NSW (PMNSW).
11. On 26 November 2019, PMNSW wrote to Council requesting that the public benefit be transferred to PMNSW.
12. On 13 December 2019, Council officers responded to PMNSW stating that the varied public benefit offer was not accepted as it is not consistent with the requirements of Clause 2.16.7.2(9) of the SDCP 2012. The response also noted that Council maintains that 10% of the electronic advertising times are recommended to be dedicated to Council and welcomes a three-party Planning Agreement to include the 10% Council dedication and any additional dedication to PMNSW.
13. Upon further negotiation, on 20 December 2019 it was agreed between the three parties that 5% of the advertising time be dedicated to Council and 5% be dedicated to PMNSW.
14. On 12 June 2020, Council's Planning Agreements Unit issued draft Planning Agreement documents including a draft Planning Agreement, advertising deed and positive covenant to the applicant and PMNSW for review and agreement prior to the commencement of formal exhibition.
15. Following additional discussions, on 29 April 2021, Council requested that the applicant withdraw the application as negotiations had not progressed
16. On 30 April 2021, the applicant responded stating that the application was not going to be withdrawn and the draft Planning Agreement was in its final stages of drafting.
17. On 12 April 2022, Council requested again that the applicant withdraw the application as only discussions on the draft advertising deed had proceeded and Council had not received a final draft Planning Agreement since it was first issued to the parties involved 2 years prior.
18. On 14 April 2022, the applicant responded again stating the application was not going to be withdrawn and requested the application be determined as a deferred commencement approval pending the execution of the Planning Agreement.
19. On 16 May 2022, Council officers responded noting that a Deferred Commencement consent was possible however, to proceed with determination the following matters would need to be addressed:
 - (a) Confirmation from each party that the draft Planning Agreement and draft Positive Covenant are agreed;

- (b) Exhibition of the drafts for 28 days; and
 - (c) Consideration of any submissions received.
20. On 23 August 2022, 4 October 2022 and 15 December 2022, Council requested the application be withdrawn due to lack of information and lack of further negotiations.
 21. On 16 December 2022, confirmation was received from all parties to the terms of the Planning Agreement documents however, by this time, references and clauses in the original documents were now outdated and required redrafting and agreement before exhibition.
 22. Updated draft Planning Agreement documentation was issued to all parties involved on 23 February 2023. Confirmation was received from the applicant on 14 March 2023 however no confirmation was received from PMNSW.
 23. On 30 May 2023, Council officers contacted all parties involved noting that final confirmation was still outstanding, and the application cannot be determined with a recommendation of approval. The request sought final confirmation within 7 days or withdrawal of the application. At the time of preparation of this report, final confirmation of the Planning Agreement documents was not received and no indication that negotiations were proceeding has been provided by the applicant. In the absence of agreement of PMNSW to the planning agreement the application cannot be supported.

Proposed Development

24. The application seeks consent for the upgrade of the existing freestanding third party advertising structure including a new custom designed cabinet, the conversion of the existing lightbox on the southern elevation to a digital screen of the same dimensions and the conversion of the existing externally illuminated sign on the northern elevation to an internally illuminated light box.
25. The proposed dimensions of each advertising sign is 8.05m(w) x 2.19m(h) resulting in a total advertising area for both signs of 35.259sqm.
26. The application was also accompanied by a draft public benefit offer to dedicate 5% of advertising time of the digital sign to the City of Sydney Council for community messaging and 5% of advertising time to PMNSW for similar community messaging. As noted above, negotiations between the three parties have been undertaken to establish the terms of a Planning Agreement however, despite the passage of 4 years since the lodgement of the application, final confirmation to the terms of the agreement has not been provided by all parties. A final draft Planning Agreement has not been confirmed or placed on public exhibition.
27. Plans and elevations of the proposed development are provided below.

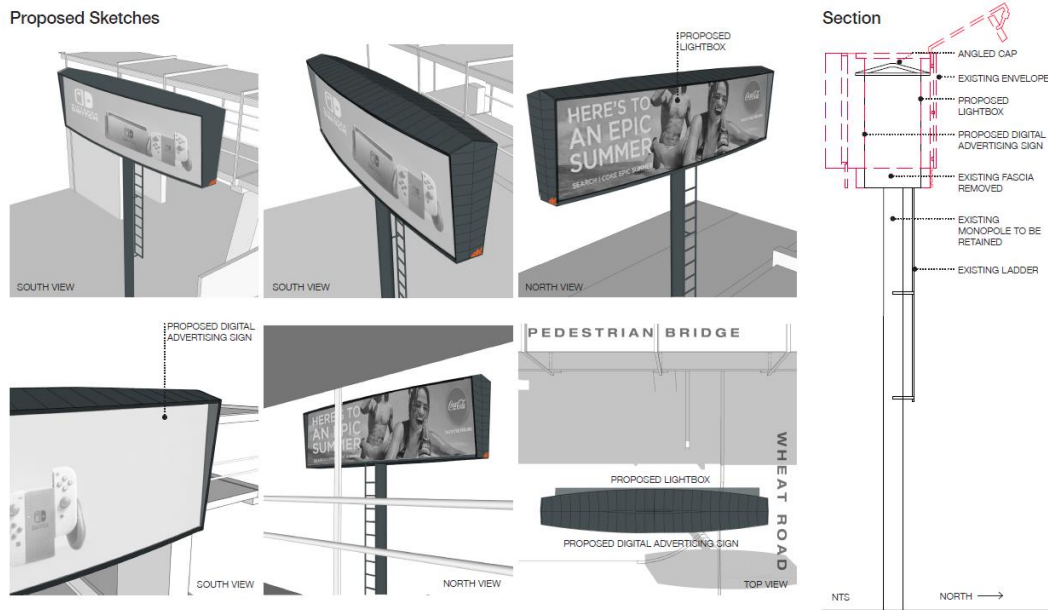


Figure 7: Proposed perspective sketches and section

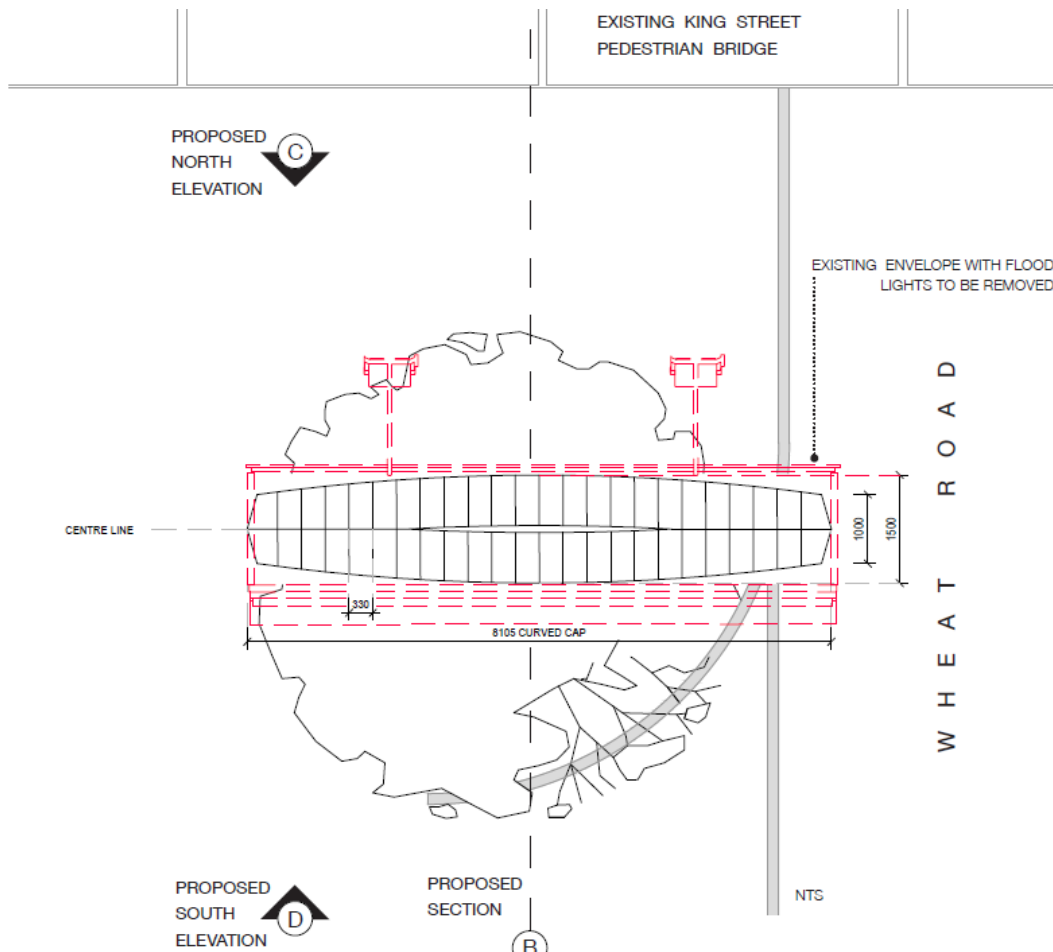


Figure 8: Proposed plan

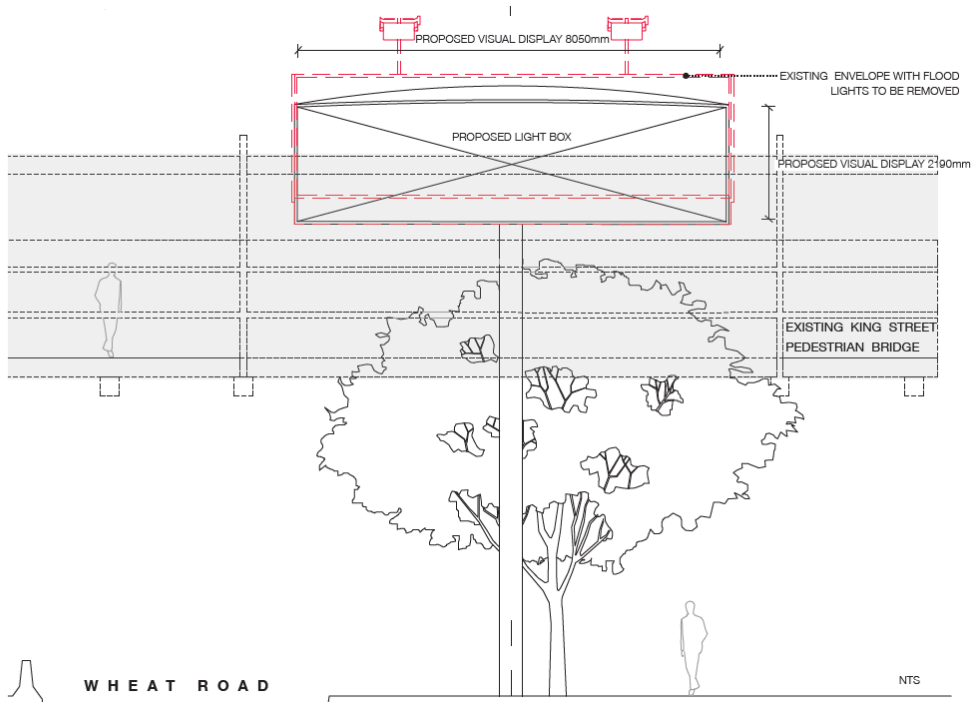


Figure 9: Proposed northern elevation

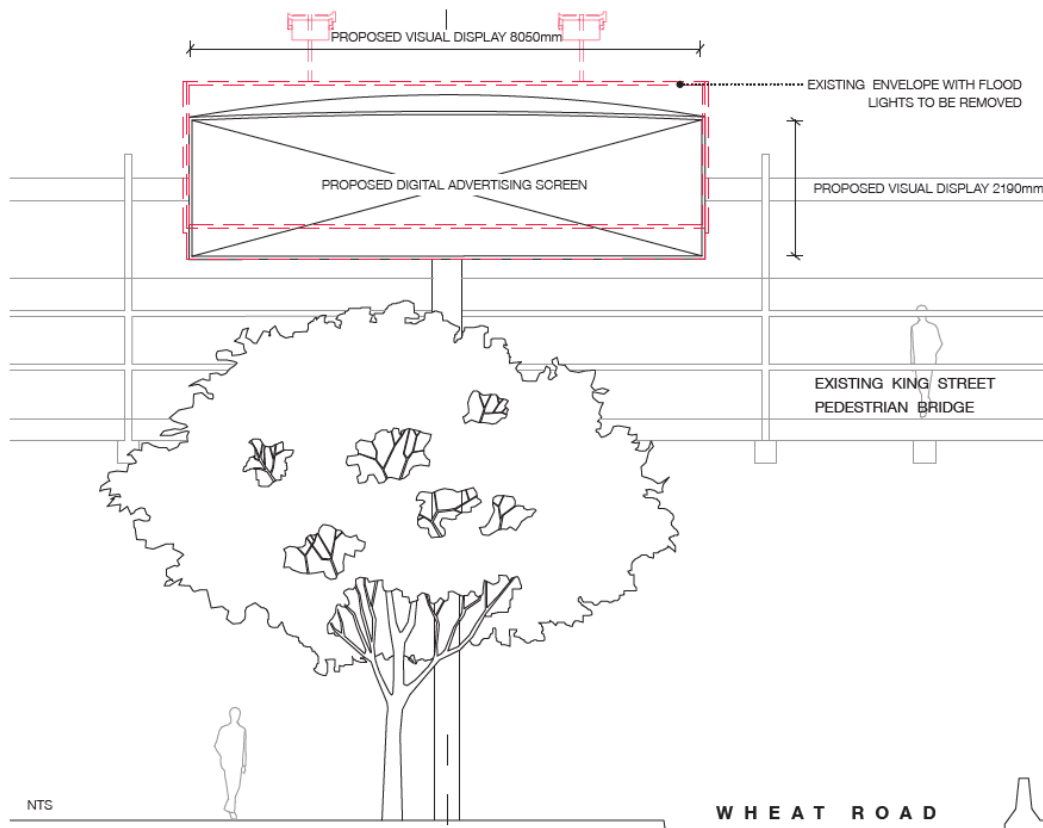


Figure 10: Proposed southern elevation

Assessment

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

State Environmental Planning Policies

State Environmental Planning Policy (Planning Systems) 2021

Chapter 2 State and regional development

29. In accordance with Section 2.6 of the above SEPP, the subject site is located within a specified site in Schedule 2 being within the Darling Harbour Site. The proposed capital investment value of the proposed development is below \$10 million however, and as such it is not considered State significant development.

State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021

Chapter 2 State Significant Precincts

30. In accordance with Section 2.12 of the above SEPP, the subject site is located within the Sydney Harbour Foreshore Sites Map. The proposed development, however, is not classified as State significant development as per the SEPP (Planning Systems) and as such, the Council of the City of Sydney is the consent authority.

Chapter 3 Darling Harbour

31. The site is subject to the provisions of Chapter 3 of the above SEPP.
32. The SEPP provides a broad framework to encourage the development of a range of tourist, residential, educational, recreational, entertainment, cultural and commercial facilities.
33. The proposed development is defined as signage and although not specifically referred to in Section 3.5 or Schedule 1 of the SEPP, Section 3.5(6)(e) allows the consent authority to approve any purpose which is subsidiary or incidental to a variety of permissible uses.
34. Signage and advertising is considered a subsidiary use to permissible uses within the zone including commercial, cultural, tourist, entertainment and educational uses.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 Advertising and Signage

35. The aim of Industry and Employment SEPP 2021 – Chapter 3 Advertising and Signage is to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high-quality design and finish.
36. The SEPP prevails over other environmental planning instruments and as such permissibility for the proposed sign is achieved through the application of the SEPP and assessment against the matters for consideration as outlined in section 3.11.

37. Section 3.11(1) of the SEPP notes consent must not be granted to an application to display an advertisement to which this Chapter applies unless the advertisement or the advertising structure, as the case requires;
- Is consistent with the objectives of this Chapter as set out in section 3.1(1)(a), and
 - Has been assessed by the consent authority in accordance with the assessment criteria in Schedule 5 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and
 - Satisfies any other relevant requirements of this Chapter.
38. Further, section 3.11(3) of the SEPP notes if section 3.16 applies to the case, the consent authority must not grant consent unless arrangements that are consistent with the Guidelines have been entered into for the provision of the public benefits to be provided in connection with the display of the advertisement.
39. The proposed signage has been considered against the objectives of the policy and an assessment against the provisions within the assessment criteria set out in Schedule 5 is provided in the table below.

Provision	Compliance	Comment
1. Character of the area	No	The site is located within the Darling Harbour signage precinct and does not permit the construction of freestanding signs. It is noted however, that the proposal seeks the replacement of an existing approved advertising structure.
2. Special areas	Yes	Given that the proposal is a replacement of an existing approved advertising panel it is considered that the proposed signage does not detract from the amenity or visual quality of the locality or the Darling Harbour or Central Sydney localities.
3. Views and vistas	Yes	The proposed signage does not obscure or compromise any important views. It does not dominate the skyline and has no impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	Yes	As above the proposed signage is of an appropriate scale, proportion and form given that it is a replacement of an existing approved advertising panel.

Provision	Compliance	Comment
5. Site and building	Yes	As above the scale, proportion and positioning of the proposed signage is acceptable given that it is a replacement of an existing approved advertising panel. The materiality is compatible with the finishes and colours of surrounding buildings and structures.
6. Associated devices and logos	Yes	Not applicable.
7. Illumination	Yes	It is unlikely that the proposed digital sign and internally illuminates sign will result in unacceptable glare, affect safety or detract from the amenity of any residential accommodation subject to the imposition of appropriate conditions.
8. Safety	Yes	The proposed signage will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas subject to the imposition of appropriate conditions.

40. The proposed advertising structure is subject to the provisions of the following sections of the SEPP:

- (a) Section 3.12 - Duration of consents
- (b) Section 3.15 - Advertisements with display area greater than 20 square metres or higher than 8 metres above ground
- (c) Section 3.16 - Advertisements greater than 20 square metres and within 250 metres of, and visible from, a classified road
- (d) Section 3.18 - Location of certain names and logos
- (e) Section 3.21 - Freestanding advertisements
- (f) Section 3.29 - Consultation with TfNSW

41. The proposal is generally consistent with the above sections for reasons as follows:

- (a) Should the application have been supported, a condition of consent would recommend the limitation of the duration of the display of the advertisement signage to a maximum period of 15 years.
- (b) The application proposes signage 8 metres above ground level. The application was accompanied by a Statement of Environmental Effects which includes an impact statement which addresses Schedule 5 of the SEPP.

- (c) The site is located adjacent to the Western Distributor, a State classified Main Road and is visible from the classified road. A copy of the application was provided to Transport for NSW (TfNSW), formerly Roads and Maritime Services (RMS). TfNSW granted concurrence to the development subject to conditions, notably increasing the dwell time to match the nearby signalised intersection of King/Sussex Street (approximately 90 seconds).
 - (d) Should the application have been supported, a condition of consent would recommend amendments to the size and location of the logo of the person who owns or leases the advertising structure to be within the advertisement or within a strip below the advertisement that extends for the full width of the advertisement and not be greater than 0.25sqm.
 - (e) The freestanding structure does not protrude above the dominant skyline.
42. In addition, as the proposed sign is subject to the provisions of section 3.16 of the SEPP, being an advertisement greater than 20sqm and within 250m, and visible from, a classified road, the SEPP notes consent must not be granted unless arrangements that are consistent with the Guidelines (Transport Corridor Outdoor Advertising and Signage Guidelines 2017) have been entered into for the provision of the public benefits to be provided in connection with the display of the advertisement.
43. 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, transitways and railway corridors, or on bridges or road and rail overpasses. Chapter 4 of the Guidelines outlines public benefit test requirements for advertisements within transport corridors, noting that the consent authority must determine whether the applicant has sufficiently demonstrated that the proposed advertisement will contribute an appropriate public benefit.
44. An amended public benefit offer was submitted with the application in accordance with the Guidelines and public benefit provisions for advertising in the SDCP 2012. While a public benefit offer has been submitted and negotiations of the terms of a draft Planning Agreement commenced, final confirmation of the terms has not been provided by all parties involved in the agreement and the draft agreement has not been placed on public exhibition. With the lack of information submitted being a final draft Planning Agreement not being confirmed by all parties involved, it is not agreed that the applicant has sufficiently demonstrated that the proposed advertisement will contribute an appropriate public benefit.
45. Whilst the proposed advertising structure is considered to satisfactorily meet the assessment criteria in Schedule 5 of the SEPP and other sections of the SEPP as noted above, the application does not satisfy the objectives of the chapter (section 3.1(1)(e)) or section 3.11(3) in that the applicant has not demonstrated an appropriate public benefit will be provided with the development. Section 3.11(3) provides that "... the consent authority must not grant consent unless arrangements that are consistent with the Guidelines have been entered into for the provision of the public benefits to be provided in connection with the display of the advertisement.
46. As there has been no final agreement in terms of the public benefit the application does not satisfy all matters for consideration set out in Section 3.11(1) of the SEPP and consent cannot be granted.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 6 Water catchments

47. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 6 of the above SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in Division 2.
48. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. The site is also located within in the Foreshores Waterways Area. An assessment against the controls relating to general development in water catchments in provided below.

Provision	Compliance	Comment
6.6 Water quality and quantity	Yes	The proposal will not impact the quality of water entering the adjacent waterbody or waterflow.
6.7 Aquatic ecology	Yes	The proposal is not likely to have any impact on terrestrial, aquatic, or migratory animals or vegetation.
6.9 Recreation and public access	Yes	The proposal does not impact public access to and from the foreshore.

Local Environmental Plans

Sydney Local Environmental Plan 2012

49. The portion of the site in which the proposed development is located is not subject to the provisions of the Sydney Local Environmental Plan 2012.

Development Control Plans

Sydney Development Control Plan 2012

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

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	The proposed development will have a neutral impact to the public domain.

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The proposed development will maintain the existing public domain by ensuring adequate sun access to publicly accessible spaces and considers public views.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.16 Signage and Advertising	No	The proposal seeks consent for the replacement of an existing approved third party advertising structure. See further discussion below.

Discussion

Third Party Advertising Structures

51. In addition to the provisions of Industry and Employment SEPP, the development is required to comply with Council's provisions for signs and advertisements as specified in Section 3.16.7 of the SDCP 2012. These provisions aim to improve the quality of signage such that it contributes positively to the public domain and achieves design excellence.
52. Section 3.16.7.1 of the SDCP 2012 relates to the general requirements for third party advertisements. The Section notes that generally, new advertising signs and third party advertisements are not permitted however may be deemed acceptable in exceptional circumstances.
53. An assessment against the list of exceptional circumstances where advertising signs and third party advertisements may be permitted is provided below:

Provision	Compliance	Comment
Whether the sign is advertising a civic or community event in the City of Sydney area.	No	The advertisement will generally be for commercial purposes. While the amended application proposed the dedication of a total of 10% of advertising time to be dedicated to Council and PMNSW for community messaging, a final Planning Agreement has not been confirmed and therefore it cannot be certain that the signage will provide messaging for civic or community events.

Provision	Compliance	Comment
Whether the sign can be considered as public art in accordance with the City's policies in relation to public art.	No	The proposal is not considered public art, under the relevant provisions of the City's Interim Guidelines for Public Art in Private Development.
Whether the signs are consistent with the provisions for signage in the SDCP 2012.	No	<p>Freestanding signs are generally not permitted in the Darling Harbour precinct.</p> <p>While the application proposes the replacement of an existing approved freestanding advertising structure, it is not considered that the proposal satisfies the provisions of Section 3.16.7.2 of the SDCP 2012 as discussed in further detail below.</p>
Whether part of the sign occupied by corporate markings, logos, branding or similar is not more than 5% of the total sign area.	Can comply	If the application were to be supported, this issue could be addressed by a condition of consent requiring amendments to the area of corporate branding to be no more than 5% of the total signage area or the maximum size for branding and logos and specified in the Industry and Employment SEPP, whichever is smaller.
Whether the number of existing signs on the site and in the vicinity do not cumulatively create unacceptable visual clutter.	Yes	The proposal is not considered to cumulatively create unacceptable visual clutter.
Whether the sign is associated with the surrender of a consent for an existing sign on a heritage item or on a contributory building in a heritage conservation area.	Not applicable	The proposal is not associated with the removal of an existing advertisement on a heritage item or within a heritage conservation area.
Development consents for advertising structures and third party advertisements are limited to the time period specified in State Environmental Planning Policy 64 (now the Industry and Employment SEPP).	Can comply	If the application were to be supported, this issue could be addressed by a condition of consent time limiting the duration of the display of the advertisement signage to a maximum period of 15 years.

54. Section 3.16.7.2 of the SDCP 2012 outlines the requirements for the replacement, modifications or conversions to existing approved advertising structures to an electronic variable content advertising structure (or digital sign).
55. The matters listed section 3.16.7.2(2) of the SDCP 2012 requires the consideration of matters that are principally addressed within the assessment criteria under Schedule 5 of the Industry and Employment SEPP and the road safety provisions of the accompanying Guidelines. Refer to discussion above for a detailed assessment of the relevant SEPP provisions.
56. Section 3.16.7.2(3) of the SDCP 2012 requires the consideration of the visual impact of the proposed advertising structure. While the submitted Statement of Environmental Effects notes the preparation of an impact assessment, the assessment itself was not submitted with the application, only a summary of observations and results of investigations. Notwithstanding, it is considered that the proposal will have a neutral visual impact for reasons as follows:
 - (a) The advertising panel is situated slightly lower than the existing sign and does not detract from the visual qualities of surrounding buildings and structures.
 - (b) The proposed signage is of a high design quality.
 - (c) The proposed signage is of the same size of the existing signage and is able to comply with brightness and glare requirements of relevant Australian Standards.
 - (d) The signage proposes a dwell time consistent with the accompanying Guidelines to the Industry and Employment SEPP.
 - (e) The closest sensitive receiver is the Hyatt Regency hotel, located approximately 45m from the proposed sign. Guest room windows face west and are unlikely to be adversely impacted by light or glare from the proposed sign.
57. Section 3.16.7.2(4) of the SDCP 2012 requires the consideration of the impacts of obtrusive light the proposal may have on the safety of public domain uses and the amenity of surrounding land uses. A light impact assessment report was submitted with the application that confirms compliance with the maximum luminance levels of the SDCP 2012 and the Transport Corridor and Outdoor Advertising Guidelines 2017.
58. Section 3.16.7.2(5) of the SDCP 2012 requires the consideration of the impacts of safety impacts the proposal may have of road users using a road corridor. A traffic impact assessment was submitted with the proposal and was considered by TfNSW (previously RMS) who deemed the traffic safety impacts of the proposed signage acceptable.
59. Section 3.16.7.2(9) of the SDCP 2012 requires electronic variable content advertising structures to provide a public benefit in accordance with the Industry and Employment SEPP. As discussed under the SEPP heading above, while the provision of a draft public benefit was negotiated with the applicant and land owner, a final Planning Agreement was not confirmed and was not placed on public exhibition. The application thus has not satisfactorily demonstrated that a public benefit will be delivered with the proposal and does not meet the matters for consideration in the SEPP. The application does not satisfy this provision of the SDCP 2012.

Consultation

Internal Referrals

60. The application was discussed with Council's:
 - (a) Urban Design Specialist;
 - (b) Tree Management Unit;
 - (c) Transport and Access Unit.
61. The above advised that the proposal is acceptable subject to conditions.

External Referrals

Transport for NSW

62. Pursuant to section 3.16 of the Industry and Employment SEPP 2021, the application was referred to Roads and Maritime Services (now Transport for NSW) for concurrence.
63. Concurrence was received on 4 June 2019 providing conditions of concurrence including recommended dwell times of 90 seconds to match nearby signalised intersections.

Advertising and Notification

64. In accordance with Schedule 1 of the SDCP 2012 (now superseded and replaced by the Community Engagement Strategy and Participation Plan 2022), the proposed development was notified for a period of 14 days between 3 April 2019 and 18 April 2019. No submissions were received.

Financial Contributions

65. The site falls outside the area in which a contributions plan applies.

Relevant Legislation

66. Environmental Planning and Assessment Act 1979.

Conclusion

67. The application seeks consent for the upgrade of the existing freestanding third party advertising structure including a new custom designed cabinet, the conversion of the existing lightbox on the southern elevation to a digital screen of the same dimensions and the conversion of the existing externally illuminated sign on the northern elevation to an internally illuminated light box.

68. The application has been assessed the provisions for advertising in the State Environmental Planning Policy (Industry and Employment) 2021 and the SDCP2012. The application is generally acceptable in regard to size and visual impact, however, the application does not satisfy the matters for consideration in Chapter 3 in the State Environmental Planning Policy (Industry and Employment) 2021 and SDCP 2012 relating to the provision of a public benefit.
69. While the terms of a draft Planning Agreement between Council, oOh!media and Place Management NSW have been negotiated and drafted, final confirmation from all relevant parties for the exhibition of the draft Planning Agreement has not been obtained and thus has not proceeded to exhibition and further consideration.
70. The application therefore does not satisfy the matters for consideration specified in the State Environmental Planning Policy (Industry and Employment) 2021, requiring the consent authority to be satisfied that a public benefit will be delivered with the application in order to grant consent.
71. Further, the application does not meet the considerations in Section 3.16.7.2 of the SDCP 2012 relating to the delivery of a public benefit from the replacement of an existing approved advertising structure with an electronic variable content advertising structure.
72. Due to the absence of a Planning Agreement or draft Planning Agreement agreed by all relevant parties to ensure a public benefit its secured with the development, the application cannot satisfy the aim of the State Environmental Planning Policy (Industry and Employment) 2021 set out in section 3.1(1)(e) and the matters for consideration as set out in section 3.11(3) of the SEPP and consent cannot be granted. The application is not considered to be in the public interest and is recommended for refusal.

ANDREW THOMAS

Executive Manager Planning and Development

Marie Burge, Senior Planner