

Relevant Information for Local Planning Panel

FILE: D/2025/1053 **DATE:** 3 February 2026

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager Planning and Development

SUBJECT: Information Relevant To Item 4 – Development Application: 4 – 6 York Street, Sydney

Recommendation

That the Local Planning Panel note the information contained in this memo.

Background

The applicant has submitted additional information including an amended Clause 4.6 variation request which corrects the earlier incorrect reference to a development standard. The amended request now correctly identifies Clause 3.20(2)(b)(iii) of the State Environmental Planning Policy (Industry and Employment) 2021 as the standard to be varied and can therefore be considered for the purposes of Clause 4.6.

However, the amended request continues to mischaracterise the extent of the non-compliance, describing the proposal as a 16% departure when it represents an 80% increase over the permitted signage area. The request also does not demonstrate that compliance with the advertising area standard is unreasonable or unnecessary, nor does it establish sufficient planning grounds to justify the variation. The justification relies primarily on assertions that a larger sign would produce a better visual or urban design outcome, without explaining why the control cannot be met or why a compliant sign could not achieve an acceptable outcome.

No evidence is provided to support the claim that a compliant signage area would be difficult for the public to interpret. The applicant further relies on the proposition that the sign would comply if it were located on a larger building, which highlights that the proposed signage area is not responsive to the scale of the elevation. The additional examples of similar advertisements submitted by the applicant show that comparable signs on larger buildings often leave substantial portions of the elevation blank, which undermines the argument that the variation is necessary to address the blank facade on this site.

Overall, the planning grounds advanced are broad and largely aesthetic in nature and are not clearly linked to the specific exceedance of the signage area control. While the applicant seeks to characterise the advertisement as having qualities similar to public art, the proposal remains an advertising sign, and no clear justification is provided to demonstrate why the additional signage area is required to achieve the objectives of the control or the surrounding planning context.

Additionally, the applicant has provided a response to Council's assessment report, arguing that the proposed variation remains justified, that the planning context and merits are consistent with previous approvals for the same mural, and that the reasons for refusal are unsupported. They contend that the proposal satisfies clause 4.6, poses no unacceptable visual or heritage impacts, and is in the public interest.

Prepared by: Warren Terry, Senior Planner

Attachments

Attachment A. Amended Clause 4.6 Request

Attachment B. Examples of Apparition Media Advertising Murals in the City of Sydney

Attachment C. KEYLAN Response Letter

Approved



ANDREW THOMAS

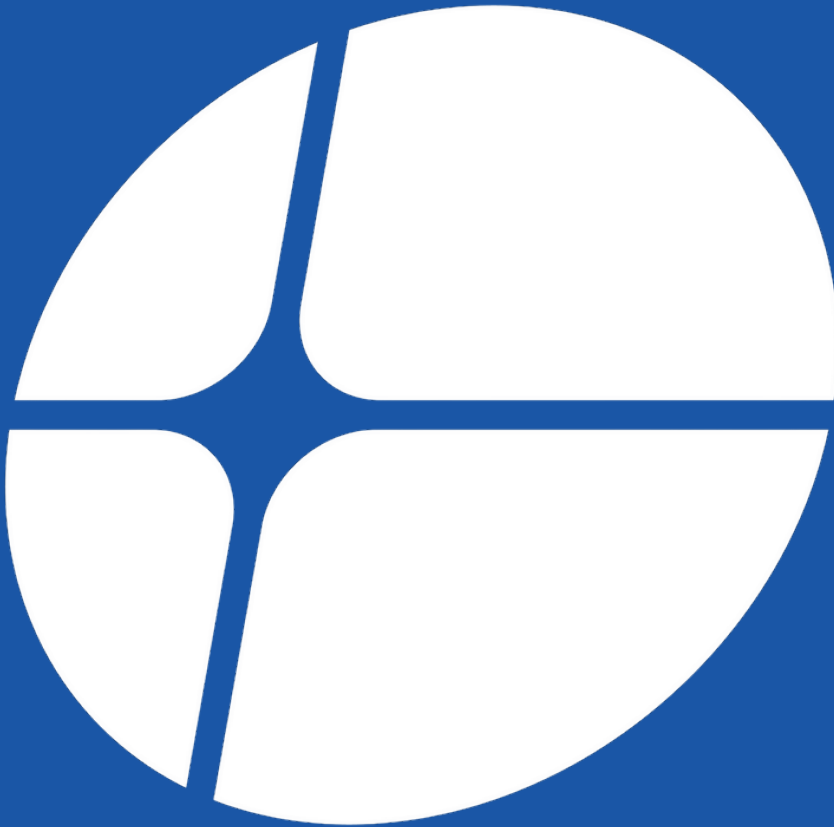
Executive Manager Planning and
Development

Attachment A

Amended Clause 4.6 Request

Clause 4.6

Request to vary a development standard



Hand Painted Advertising Mural
4-6 York Street, Sydney

Prepared for Apparition Media

Submitted to the City of Sydney Council

October 2025

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1. Introduction

This is a written request (the Request) to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Sydney Local Environmental Plan 2012* (SLEP 2012).

This Request relates to *Clause 3.20(2)(b)(iii) Wall advertisements* of the *State Environmental Planning Policy (Industry and Employment) 2021* (Industry and Employment SEPP)

This Request has considered the detailed guidance within the NSW Department of Planning, Housing and Infrastructure's (DPHI) guideline *Guide to Varying Development Standards* (DPHI Guide) and addresses the findings and established principles (as relevant) in the following judgements of the NSW Land and Environment Court (the Court):

- *Adbooth Pty Ltd v Botany Bay City Council* [2006] NSWLEC 710
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131

The following sections of this Request critically analyse the proposed exceedance of the signage area, its impact and reasonableness.

This analysis demonstrates that an exception to the signage area development standard is warranted in this instance and will provide for a significantly better urban outcome than a compliant development.

2. Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument) includes various development standards as a means of achieving environmental planning objectives.

Clause 4.6 of the Standard Instrument allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard.

The DPHI Guide recommends that any request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment. Table 1 below provides a summary of the relevant planning context and provides an overview of the proposed variation.

Information Requirement	Comment
Relevant Applicable Planning Instrument	<i>State Environmental Planning Policy (Industry and Employment) 2021</i>
Zoning of the Land	SP5 Metropolitan Centre
Objectives of the Zone	The objectives of the SP5 zone are: • <i>To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy</i> • <i>To provide opportunities for an intensity of land uses commensurate with Sydney's global status</i> • <i>To permit a diversity of compatible land uses that are characteristic of Sydney's global status and that serve the workforce, visitors and wider community</i> • <i>To encourage the use of alternatives to private motor vehicles, including public transport, walking and cycling</i> • <i>To promote land uses with active street frontages within podiums that contribute to the character of the street</i> • <i>To promote the efficient and orderly development of land in a compact urban centre</i> • <i>To promote a diversity of commercial opportunities varying in size, type and function, including new cultural, social and community facilities</i> • <i>To recognise the important role that central Sydney's public spaces, streets and amenity play in a global city</i> • <i>To promote the primary role of the zone as a centre for employment and permit residential accommodation and serviced apartments where the accommodation complements employment-generating land uses</i>
Development Standard to be Varied	Wall advertisements – as it relates to elevation coverage
Nature of the Development Standard	A numerical standard for the advertising area of wall advertisements on the above ground elevation
Relevant Development Standard Clause	Clause 3.20(2)(b)(iii) (our emphasis in bold) <i>(1) Only one wall advertisement may be displayed per building elevation.</i>

Information Requirement	Comment
	(2) The consent authority may grant consent to a wall advertisement only if— <i>(a) the consent authority is satisfied that the advertisement is integrated with the design of the building on which it is to be displayed, and</i> (b) for a building having— <i>(i) an above ground elevation of 200 square metres or more—the advertisement does not exceed 10% of the above ground elevation, and</i> <i>(ii) an above ground elevation of more than 100 square metres but less than 200 square metres—the advertisement does not exceed 20 square metres, and</i> (iii) an above ground elevation of 100 square metres or less—the advertisement does not exceed 20% of the above ground elevation, and
Objectives of the Development standard	There are no objectives specifically relating to CI 3.20(2)(b)(iii), however the objectives for Chapter 3 of the Industry and Employment SEPP are relevant: (1) This Chapter aims— <i>(a) to ensure that signage (including advertising)—</i> <i>(i) is compatible with the desired amenity and visual character of an area, and</i> <i>(ii) provides effective communication in suitable locations, and</i> <i>(iii) is of high quality design and finish</i>
Development Standard Numeric Control for the Site	Maximum advertising area of no more than 20% of the above ground elevation if the above ground elevation of the building is 100m ² or less.
Proposed Numeric Control	The subject site has an above ground elevation of 66.2m ² . The proposed sign is 24.1m ² , resulting in an advertisement of approximately 36% of the above ground elevation.
Percentage Variation Between the Proposal and the Planning Instrument	An exceedance of 16% of the requirement under CI 3.20 of the Industry and Employment SEPP.

Table 1: DPHI Guide recommended planning information and numeric overview

3. Proposed Development

This Request supports a DA for the installation of a hand painted advertising mural at 4-6 York Street. The site location is shown in the figures below.



Figure 1: Site location (Base Source: Nearmap)

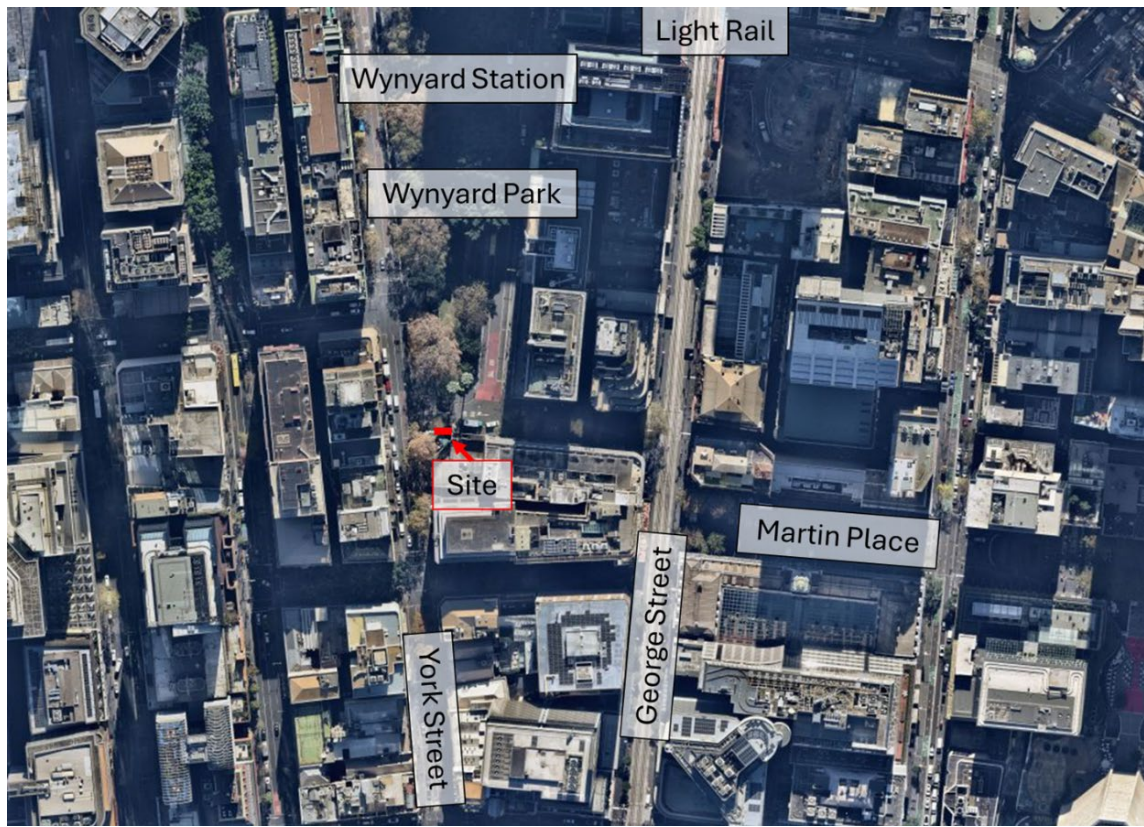


Figure 2: The site in its immediate context (Base Source: Nearmap)

The proposal involves the installation of a static hand painted advertising mural on the northern elevation of 4-6 York Street, measuring 7.2 metres in width and 3.3 metres in height for a 5-year period. The mural will present to Wynyard Street.

Key features of the proposal are as follows:

- total display area of approximately 24.1m² (7.2m x 3.3m)
- the advertising mural will be hand painted and non-illuminated
- the brand logos will not cover more than 5% of the mural
- contents of the mural will change sporadically

The proposed advertising area is 24.1m². The proposed advertising mural is shown in the figure below and within the architectural plans prepared by Rob Pickett Design provided at Appendix 1.

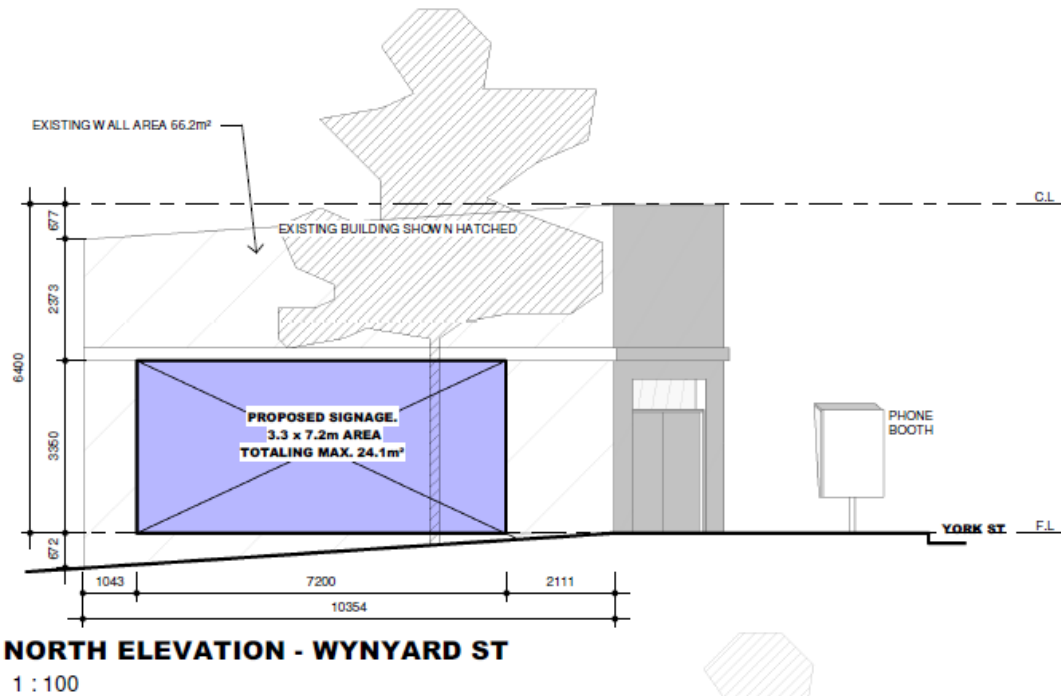


Figure 3: Northern Elevation (Source: Rob Pickett Design)

3.1. Proposed variation

The proposed variation is requested to accommodate a hand painted advertising mural of 24.1m² on the northern elevation of a single storey building at 4-6 York Street. This variation represents a 10.9m² increase in signage area.

4. Legislative Context

4.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the SLEP 2012 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The overarching objectives of this clause are contained in subclause (1) as detailed below:

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

Clause 4.6(2) of SLEP 2012 provides that, unless expressly excluded from the operation of clause 4.6, and subject to clause 4.6, development consent may be granted for development even though the development would contravene a development standard imposed by the SLEP 2012 or any other environmental planning instrument.

The Industry and Employment SEPP is an environmental planning instrument (EPI).

4.1.1. Clause 4.6(3)

Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

4.2. Relevant Judgements - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgements provide guidance on key considerations in the assessment of a Clause 4.6 variation Request. These judgements focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Adbooth Pty Ltd v Botany Bay City Council* [2006] NSWLEC 710
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131

The key findings and established principles (as relevant) of the above judgements of the Land and Environment Court are summarised below.

4.2.1. Wehbe v Pittwater Council (2007)

This case establishes five potential grounds 'Wehbe tests' to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

4.2.2. Adbooth Pty Ltd v Botany Bay City Council (2006)

In *Adbooth Pty Ltd v Botany Bay Council* [2006] (Adbooth) the Commissioner had considered that compliance with CI 22(2)(b) of State Environmental Planning Policy 64 (SEPP 64) was unreasonable and unnecessary. It is important to note that SEPP 64 was repealed and replaced by the Industry and Employment SEPP, and the above clause is identical to CI 3.20(2)(b). This decision is evidence of the applicable control being applied as a development standard in the Land and Environment Court, and hence subject to Clause 4.6 of the SLEP 2012.

4.2.3. Initial Action Pty Ltd v Woollahra Municipal Council (2018)

Initial Action Pty Ltd v Woollahra Municipal Council [2018] (Initial Action) further clarifies the correct approach for the consideration of clause 4.6 requests. Clause 4.6 does not require that a development that contravenes a development standard to have a *neutral or better* environmental planning outcome than a fully compliant development.

A legal consequence of the decision in *Initial Action* is that Clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

In *Initial Action*, the Court also confirmed that the five common ways of establishing that compliance with a development standard is unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) continue to apply.

4.2.4. Linfield Developments Pty Ltd v Cumberland Council (2019)

The 'third' Wehbe test is concerned with the underlying object or purpose of the development standard and that it would be defeated, thwarted or undermined if strict compliance was required. The reference to 'undermined' is an extension of Wehbe which was applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 (at [24]) (Linfield). In Linfield, the court found that:

"...requiring compliance would thwart or undermine at least one of the objectives of the height control development standard..."

5. Assessment of the Variation to advertising area development standard

The Industry and employment SEPP sets a standard advertising area development control of 20% elevation coverage for the northern elevation of the site.

The proposal seeks to increase the maximum elevation coverage development standard development control by 10.9m², resulting in an elevation coverage of 36%, to accommodate wall signage that is appropriate for the conditions of the site and its context, both physically and strategically, and which is envisaged for the site under the Industry and Employment SEPP.

The following assessment comprehensively considers the provisions of Clause 4.6 with regard to the relevant case law.

5.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

Wehbe establishes at least five potential alternative grounds to ascertain whether strict compliance with a development standard is unreasonable or unnecessary. An assessment against the relevant tests is provided below to outline how compliance with the advertisement area development standard is unreasonable and unnecessary.

5.1.1. Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard

No objectives are set out specifically for wall advertisements. Nonetheless, an assessment has been undertaken against the objectives of Chapter 3 of the Industry and Employment SEPP and provided in the below table which confirms that the objectives of the SEPP as they relate to advertising and signage will be achieved notwithstanding the non-compliance with the standard.

Clause 3.1 Aims, objectives etc	
Objectives	Achievement of Objectives
(1) This Chapter aims-	
(a) To ensure that signage (including advertising)-	
(i) Is compatible with the desired amenity and visual character of an area	An identified principle of the Wynyard Park/Lang Park Special Character Area in Section 2.1.9 of the Sydney Development Control Plan 2012 (SDCP 2012) is to enhance the terminating vistas along Carrington Street, and York Street to the south at its corner with Wynyard Street. The provision of an advertising mural on the subject site creates a point of visual interest at the intersection between York Street and Wynyard Street, directly aligning with the desired visual character of the area.

Clause 3.1 Aims, objectives etc		
(ii)	Provides effective communication in suitable locations	The proposed advertising mural is located to primarily be viewed by pedestrians travelling southbound along York Street, which is a suitable location for an advertising mural as it provides the opportunity to support the activation of the Wynyard Precinct through artistic displays.
(iii)	Is of high quality design and finish	The proposal is seeking to display hand painted advertising murals, which are intended to be designed to a quality that the mural is perceived as public art rather than an advertising billboard.

Table 2: Consistency with Clause 3.1 objectives

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

No objectives have been set out for wall advertisements. An assessment against the objectives of Chapter 3 of the Industry and Employment SEPP is provided in Table 2.

However, the underlying purpose of the development standard is to control the coverage of wall advertisements on building elevations to ensure that they are proportionate to the elevation it is located on. The underlying purpose of the control is considered relevant to the development.

Notwithstanding, as discussed throughout the SEE and this Request, it is considered that the increase in advertising area will facilitate a positive urban design impact due to the artistic element of the hand painted nature of the proposed advertising mural, as opposed to a regular billboard style advertisement. The size exceedance will support an improved display compared to a wholly compliant model which otherwise exposes a blank façade.

Furthermore, as detailed within the SEE, the proposal is considered to support the City of Sydney's *Public Art Policy*. In particular, the scale of the mural is appropriate for the building it is located on, and to the broader context of the site, which aligns with the guidelines included in the Policy.

5.1.3. Wehbe Test 3: The underlying object or purpose would be defeated, thwarted or undermined if compliance was required and therefore compliance is unreasonable

Strict compliance with the advertising area development standard would defeat, thwart and undermine the objectives of the chapter and the underlying intention of the standard. This was applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 (at [24]).

The objects that would be defeated, thwarted or undermined if strict compliance was required in this case are clause 3.1(a)(i), clause 3.1(a)(ii) and clause 3.1(1)(a)(iii) of the Industry and Employment SEPP as detailed below.

Clause 3.1(1)(a)(i) states:

To ensure that signage (including advertising) is compatible with the desired amenity and visual character of an area

A strictly compliant scheme would limit the sign's ability to align the desired amenity and visual character of the locality. The proposed mural directly aligns with Principle (e) of the Wynyard Park/Lang Park Special Character Area, reproduced as follows:

Enhance the terminating vistas along Carrington Street, and York Street to the south at its corner with Wynyard Street.

A wholly compliant advertising display would have an advertising area of 13.22m². A mural of that size would leave a significant portion of the elevation to be blank and unappealing. As such, a non-compliant advertising display will better align with the desired character of the area and assist in providing an appropriate terminating vista along York Street.

Clause 3.1(1)(a)(ii) states:

To ensure that signage (including advertising) provides effective communication in suitable locations

The site is considered to be in a suitable location because it is primarily visible towards a high-traffic pedestrian walkway, while having minimal adverse impacts on the surrounding environment, as detailed throughout this application. Complying with the advertising area development standard would limit the ability to interpret the mural and limit its artistic merit. A smaller display area would have less of a positive visual impact on the existing unappealing building façade, as such, compliance is unreasonable and unnecessary as it will undermine the objectives of the SEPP.

Clause 3.1(1)(a)(ii) states:

To ensure that signage (including advertising) is of a high quality design and finish

As above, a strictly compliant wall advertisement would result in a significantly smaller advertising area, which will limit the ability to interpret the mural and limit its artistic merit.

The scale of the proposal mural enables a high-quality design to be achieved and improves the overall presentation of the building's northern façade.

5.2. Clause 4.6(3)(b) – Environmental Planning Grounds to Justify Contravening the Development Standard

The development, including the advertising coverage area non-compliance, will provide for a high-quality hand-painted advertising mural visible to an area of high pedestrian traffic.

There are sound planning grounds and significant benefits to justify contravening the height of building development standards of which are outlined in the following sections.

5.2.1. The need to comply with Clause 3.20(2)(b)(iii)

Section 1.3(c) of the EP&A Act provides that it is an objective of the Act to:

promote the orderly and economic use and development of land

The zone objectives of the SP5 Metropolitan Centre zone are:

- 1. To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy.*
- 2. To provide opportunities for an intensity of land uses commensurate with Sydney's global status.*
- 3. To permit a diversity of compatible land uses that are characteristic of Sydney's global status and that serve the workforce, visitors and wider community.*
- 4. To encourage the use of alternatives to private motor vehicles, including public transport, walking and cycling.*
- 5. To promote land uses with active street frontages within podiums that contribute to the character of the street.*
- 6. To promote the efficient and orderly development of land in a compact urban centre.*
- 7. To promote a diversity of commercial opportunities varying in size, type and function, including new cultural, social and community facilities.*
- 8. To recognise the important role that central Sydney's public spaces, streets and amenity play in a global city.*
- 9. To promote the primary role of the zone as a centre for employment and permit residential accommodation and serviced apartments where the accommodation complements employment-generating land uses.*

The proposal supports the sixth objective of promoting the efficient and orderly development of land in a compact urban centre. The building that the mural is to be located on is currently unoccupied and on a corner lot immediately adjacent to public open space and nearby a transport interchange. The provision of an advertising mural represents orderly development creating activation on a building that is currently not contributing to the streetscape due to its blank façade.

The proposed development similarly supports the eighth objective of the zone by contributing to the vibrancy of the street through the activation of an otherwise blank wall along a busy pedestrian corridor.

Since the proposal is for an advertising mural, the zone objectives are not targeted towards the outcomes that the proposal will achieve. Notwithstanding, the development

will not hinder the ability of any neighbouring or future developments from achieving the zone objectives.

5.2.2. Improved Urban Design outcomes

Section 1.3(g) of the EP&A Act provides that it is an objective of the Act to:

promote good design and amenity of the built environment ...

The proposed development has been designed to provide a form of advertisement that offers improved amenity and visual outcomes despite being non-compliant. The increased area of the mural and coverage of the site's elevation compared to a compliant design creates a more prevalent point of street activation and visual interest as the display is designed to be interpreted as street art rather than an advertising billboard.

A smaller display would be less visible to pedestrians walking along York Street, and leave more of the northern elevation blank, which does not actively contribute to the streetscape, and is at a higher risk of graffiti/vandalism.

It is also noted that the non-compliant form of the proposal will not have increased adverse impacts compared to a smaller compliant advertising mural. As discussed throughout the Statement of Environmental Effects, the proposal is not expected to have a tangible adverse impact on road safety, surrounding heritage or the character of the area.

Enforcing a compliant model of this proposal is unreasonable and unnecessary as the proposal offers a superior urban design outcome.

6. Conclusion

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstance and this Request has been shown to satisfy the provisions of 4.6(3) of the SLEP 2012.

The advertising area coverage variation is justified for the following reasons:

- Clause 3.20(2)(b)(iii) of the Industry and Employment SEPP was not created for the purpose of an advertising mural that can readily be identified as street art
- the proposal seeks to be painted onto what is currently a blank façade on an unoccupied building, activating the elevation as it presents to the street
- this non-compliance results from the limited size of the building and would likely comply with this clause if this building was of a size that would ordinarily be expected on this site
- offers an improved urban design outcome with positive visual impacts compared to that of a compliant scheme
- enhances the terminating vistas of York and Carrington streets, as set out in the special character statement within the SDCP
- respects the rights of other advertisers on transport structures
- the mural is of a scale that is compatible with the building it is on, and will not interact with any important architectural features, windows or extending across corners.
- the proposal is generally consistent with the relevant provisions of the *City of Sydney Public Art Policy 2016*
- protects a larger portion of the façade from graffiti and other vandalism by providing a point of visual interest
- will not reduce the significance of any nearby heritage
- will not reduce traffic safety in the surrounding area

Overall, and for the reasons set out above, the proposed development represents a superior outcome for the site that is justified. Therefore, it is appropriate that the development standard be varied as proposed.

Attachment B

**Examples of Apparition Media Advertising
Murals in the City of Sydney**

4-6 York Street RD/2017/954/A

Approved 12/11/2018



4-6 York Street

D/2017/954/A

Approved 28/04/2020



72-80 William Street

D/2020/1398

Approved 01/03/2021



187 Sussex Street

D/2018/1336

Approved 03/01/2019

D/2024/162

Approved 04/10/2022

Modifications

D/2018/1336/A

Approved 20/05/2020

D/2018/1336/B

Approved 27/04/2021

D/2018/1336/C

Approved 04/10/2022

D/2024/162/A

Approved 28/05/2025



133 Regent Street

D/2019/51

Approved 12/04/2020



241-243 Castlereagh Street

D/2022/1263

Approved 27/06/2023

D/2022/1263/A

Approved 06/09/2023



117-121 Clarence Street

D/2023/261

Approved 04/09/2023



1 Richards Avenue

D/2022/865

Approved 15/03/2023



1-5 Randle Street

D/2018/640

Approved 16/11/2018



Attachment C

KEYLAN Response Letter

30 January 2026

Panel Secretariat
City of Sydney Local Planning Panel
secretariat@cityofsydney.com.au
Attention: Local Planning Panel

Dear Sir/Madam

**Response to Recommendation for Refusal – DA (D/2025/1053)
Advertising Mural at 4–6 York Street, Sydney**

This submission is made on behalf of Apparition Media (applicant) for the above Development Application (D/2025/1053) in response to the assessment and recommendation for refusal issued by the City of Sydney Council (Council) for a proposed advertising mural at 4–6 York Street, Sydney.

We have undertaken a detailed review of Council's Report and recommendation. We strongly refute the assessment and request that D/2025/1053 be approved as lodged with Council.

Our review of the Council Report is intended to assist the Panel in its independent assessment of the proposal on its planning merits. It provides a response to the recommended reasons for refusal outlined in Council's Report.

Recommendation A

- (A) *Based upon the material available to Panel at the time of determining this application, including a document provided pursuant to Regulation 35B of the Environmental Planning and Assessment Regulation 2021, the Council is satisfied that the applicant has not demonstrated that compliance with the development standard in s3.20(2)(b)(iii) of State Environmental Planning Policy (Industry and Employment) 2021 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with the requirements of clause 4.6(3) of the Sydney LEP 2012. The assessment carried out pursuant to clause 4.6(3) of the Sydney LEP 2012 is as recorded in this report.*

RESPONSE

We maintain the proposed variation to the development standard in s3.20(2)(b)(iii) of *State Environmental Planning Policy (Industry and Employment) 2021* (Industry and Employment SEPP) is justified in accordance with clause 4.6(3) of the *Sydney Local Environmental Plan 2012* (SLEP 2012).

We have attached the Clause 4.6 Report for your reference.

The history of planning approvals for this site provides the foundation of the planning merits of this proposal. The context of this site is also recognised in Council's Report, however, in our view has not been subject to a rigorous and meaningful assessment.

A summary of the relevant history and our commentary is summarised below.

On 1 December 2017, approval was sought for RD/2017/954/A through the NSW Land and Environment Court (LEC) for:

- an advertising mural with a total display area of approximately 24.1m² (7.2m x 3.3m), the same size as proposed under D/2025/1053;
- the mural was located on the northern building façade, as proposed under D/2025/1053; and
- the application involved an identical variation to the applicable development standard as proposed under D/2025/1053.

On 13 November 2018, RD/2017/954/A was approved by the LEC.

In granting consent, the LEC was satisfied that:

- compliance with the development standard was unreasonable and unnecessary in the circumstances of the site; and
- sufficient environmental planning grounds existed to justify the variation, having regard to the commercial character of the locality, the scale of the host building, and the absence of adverse amenity or heritage impacts.

On 28 April 2020, Council approved a modification (D/2017/954/A) to extend the period of consent for an additional 12 months (from the approved 18 month period).

The physical and environmental context of the site have not materially changed since this original approval. The scale, location, and presentation of the proposed mural remain the same, and the surrounding built form continues to be characterised by large commercial buildings and visually prominent façades.

Although we respect that the Panel is not bound by previous planning decisions - consistency in decision-making is a well-established planning principle. In addition, our assessment clearly demonstrates the proposal has planning merit and warrants a continuation of a planning approval as proposed on the site.

Where a materially identical proposal has previously been approved by the LEC (and Council) and site conditions remain generally unchanged, this weighs strongly in favour of supporting the variation unless new or materially different planning considerations arise. No such new considerations have been identified in this instance.

Accordingly, strict compliance with the development standard remains unreasonable and unnecessary, and the variation continues to be supported by clear and robust environmental planning grounds, as detailed within the Clause 4.6 Variation Request submitted with the DA (Attachment 1).

Our assessment concludes that D/2025/1053 satisfies all aspects of clause 4.6(3) of the SLEP 2012.

Recommendation B

- (B) *The proposal is inconsistent with the aims of SEPP (Industry and Employment) 2021, as the scale and prominence of the sign are not compatible with the desired visual character of the area and would detract from the terminating vistas of Carrington Street and York Street, undermining the heritage streetscape, the formal park setting of Wynyard Park, and the special character of the precinct, which relies on preserving visual coherence and the prominence of key public domain and heritage elements.*

RESPONSE

Statutory Planning Instruments

Our assessment, the LEC and previous council modification approvals have all concluded the proposal is consistent with the aims of the *Industry and Employment SEPP* and does not detract from the heritage significance or visual coherence of the surrounding area.

The proposal is permitted with consent in the *SP5 Metropolitan Centre zone* under the SLEP 2012. Council's assessment report states that the proposal is not inconsistent with the applicable zone objectives (pp 10 -11).

...The subject application... is not inconsistent with new objectives which apply to the SP5 zone....

In particular, the SP5 zone includes the following objective:

...To promote land uses with active street frontages within podiums that contribute to the character of the street...

The proposed advertising mural is located on a large commercial façade that forms part of the broader city-scale backdrop of York Street, rather than the fine-grain heritage streetscape of Carrington Street or the landscaped foreground of Wynyard Park.

Despite Council's assessment, we maintain that the proposal strongly aligns with the exceptions to third party advertisements under Section 3.16.7.1 *General requirements* for signage of the *Sydney Development Control Plan 2012* (SDCP 2012). The sign satisfies the exceptional circumstances criteria as follows:

- it is not strictly considered 'public art'; under the Public Art Policy, however it does support all eight guiding principles outlined in the Policy and satisfies the relevant criteria;
- it is consistent with all other provisions for signage in the DCP;
- no more than 5% of the total sign area will contain corporate markings, logos, or branding;
- the mural is to be dedicated to community and charity uses for 1 month per year; there are no other signs erected at the site; and
- any other advertisements in proximity of the site are located within bus shelters, and are typically showing repeats of the same image, since the proposal is for a painted advertising mural, the visual appearance will be substantially different that it will not contribute to signage clutter.

Heritage

The proposal does not obscure, dominate, or visually compete with heritage items, nor does it interrupt significant view corridors or terminating vistas. This is supported by the Heritage Impact Statement prepared by Weir Phillips which accompanied D/2025/1053 (Attachment 2).

Critically, Council's Report does not raise any issue with heritage impacts in its assessment against Section 3.9 of the SDCP 2012 (pp 19 - 20). Specifically, Council's Report states the proposal **will not** have a detrimental impact on nearby heritage items, as per extract below:

...Given the commercial nature of the area, the separation distance and the expected contents of the advertisement, the proposal would not detrimentally impact on the heritage value of any of the nearby properties...

This assessment is inconsistent with Recommendation B, which states the proposal will undermine the heritage streetscape. On this basis alone, the issue of heritage impact does not warrant a reason for refusal.

Given its location, scale, and orientation, the mural will read as a contemporary element within a highly urbanised context - positively contributing to the activation of the streetscape. It does not diminish the prominence of Wynyard Park or nearby heritage buildings, which remain legible and visually distinct within the public domain.

Council's own assessment determined the proposal to not be inconsistent with character of the street.

Based on the above and the assessment provided within the *Statement of Environmental Effects* (SEE) submitted with the application, the proposal maintains an appropriate relationship with its heritage setting and is compatible with the desired visual character of the precinct.

Recommendation C

(C) *The application is accompanied by insufficient information to demonstrate Design Excellence.*

RESPONSE

Design Excellence

The proposal demonstrates a high level of design quality in the context and nature and scale of the development and surrounds.

The mural is designed as an integrated façade treatment with careful consideration given to proportion; placement; and visual containment within the building elevation. It does not result in visual clutter or appear improvised, and it responds to the scale of the existing building form.

Given the development is non-structural, temporary (highly reversible), the extent of design information submitted is proportionate and sufficient to enable an informed assessment. The proposal achieves a coherent and appropriate outcome consistent with the expectations of Design Excellence for this type of development.

This is further demonstrated through previous approvals and modifications for this proposal and the extensive number of approvals granted to the applicant for other sites throughout the City of Sydney (Attachment 3).

If required by the Local Planning Panel, further refinements can be made to the Plan of Management (POM) submitted with the application to ensure all future murals at the site will meet the relevant condition of consent and demonstrate artistic merit and design excellence.

Insufficient information

Council did not advise the applicant of any planning issues and/or provide an opportunity to address Council's concerns during the assessment process – verbally or formally.

This is despite on-going contact with the assessing officer. We find this approach is not in the spirit of achieving good planning outcomes and does not provide a fair process for the applicant to respond to key issues prior to any determination.

Recommendation D

(D). The development is not in the public interest.

RESPONSE

Public Interest

The proposal is wholly in the public interest. This has been demonstrated and accepted by the LEC and Council on this site. Council's report notes the application was notified to 107 individual property owners and neighbours with no public or agency submissions received by council (p25).

The mural space is dedicated to promoting community and charity uses for one month per year. The Applicant covers all costs, including painting the advertising murals and all associated site maintenance activities. The Applicant has a long-standing relationship with the not-for-profit sector, including registered charity groups such as Red Cross and other community campaigns.

These are the very definition of community uses and we do not accept the assertions made in the Council Report to the contrary.

The development supports commercial activity within the Sydney CBD, while making efficient and visually considered use of an existing building façade. It does not generate adverse impacts on pedestrian amenity, traffic, residential uses, heritage significance, or the public domain.

The mural contributes to streetscape activation in a manner consistent with the evolving commercial character of the area and can be appropriately managed through conditions of consent. As it is temporary and reversible in nature, this further reduces any long-term risk to public or environmental values.

The following extract from the Council Report outlines its assessment on why the proposal is not in public interest (**BOLD** our emphasis):

...Public Interest: The Court judgement relied heavily on several restrictions and limitations to the signage. Central to the Court's findings was that the sign would present predominantly as public art rather than as conventional third-party advertising. This is demonstrated in the judgement's reference to the hand-painted nature of the signage, limitation of corporate branding and expectation of high-quality artistic outcomes that would enhance the terminating vistas from Carrington and York Streets.

*The subject development application **differs materially from the previous judgement**. While a **PoM has been submitted**, it **does not include enforceable restrictions** or assessment criteria that would ensure signage presents as public art. Further, in considering the weight to be afforded to the applicant's PoM, it is relevant to note the **realised outcomes of the previously approved signage under RD/2017/954/A**. **Photographic evidence of some of the installed signage (shown below) indicates that the final outcome did not consistently and clearly reflect the attributes relied upon by the Court, including presentation as public art, a discernible hand-painted quality when viewed from a distance, and a clear distinction from conventional third-party advertising...***

Council's assessment does not adequately address the issue of public interest. It does not demonstrate any analysis or articulate why the proposal is not in the public interest based on planning law and tied to identifiable statutory objectives, planning policies or evidence.

Rather it makes commentary on the POM (without providing the Application the opportunity to address the POM prior to referral to the Panel) assumptions and subjective commentary of artistic merit on selected images.

Artistic merit test

The accepted condition of consent which provided criteria to ensure sufficient artistic merit originated in the LEC case relevant to this site and has been used by the Council in subsequent development approvals. This is detailed below:

(3) CONTENT OF PAINTED ADVERTISING SIGN

- (a) *The sign must have artistic merit and be readily identified as street art and the like. The art must be of high quality and consistent with the City Art Public Art Strategy (as applicable). The sign must be bespoke and be an artistic interpretation that displays technical skill, and includes a conceptual contribution of the artist.*
- (b) *No more than 5% of the total sign area is to contain corporate markings, logos, or branding. Corporate markings, logos or branding include a website address, but do not include written slogans not ordinarily associated with any brand or product.*
- (c) *The sign must not contain material that:*
 - (i) *discriminates against or vilifies any person or group; or*
 - (ii) *is offensive or sexually explicit.*

All murals (including Figures 7-12 in Council’s Report) are subject to an evaluation process as outlined in the POM to ensure compliance with the numerical and artistic merit test as per the condition above. A sample of advertising murals by the applicant for this site and others in the City of Sydney Council demonstrate a more balanced view (Attachment 3).

Notwithstanding, the applicant provides samples of a number of advertising murals which were hand painted at the site during its consent period. Each of these murals demonstrate compliance with Condition 3 above to refute Council’s assessment of lack of compliance with artistic merit, public benefit and an insufficient POM.



Figure 1: Advertisement - March 2019 (Source Council report)

Artistic evaluation against condition	Compliance
a) The mural illustrates artistic merit through the provision of careful portraiture of a historical figure, Irish convict, John Boyle O'Reilly. b) The mural provides 0.25% of corporate markings, logos, or branding. Corporate markings, logos or branding include a website address. c) The mural does not discriminate against or vilifies any person or group; or is offensive or sexually explicit.	YES



Figure 2: Advertisement - May 2019 (Source: Council report)

Artistic evaluation against condition	Compliance
a) The mural for the Winx: Racing Immortality commemorative artwork is a contemporary digital vector illustration, characterized by its clean, flat aesthetic and dynamic use of shapes to convey movement. Style characteristics include vector realism, layered depth, dynamic flat design and vintage influence. b) The mural provides 0.12% of corporate markings, logos, or branding. Corporate markings, logos or branding include a website address. c) The mural does not discriminate against or vilifies any person or group; or is offensive or sexually explicit.	YES



Figure 3: Advertisement - March 2020 (Source: Apparition Media)

Artistic evaluation against condition	Compliance
a) The mural was painted by Alice Oehr and Muhammed Sajid illustrating artistic merit by combining photography with bold, comic-like graphic overlays. It uses playful "jargon-free" visuals to make sophisticated products more approachable. a. Alice Oehr is a Melbourne-based illustrator known for her playful food and drink art that uses simplified forms, patterns, and hand-drawn textures paired with digital assembly. b. Muhammed Sajid creates energetic, surreal compositions that focus on "dish as hero," mixing digital lighting with tactile, handmade energy like poster color or markers. b) The mural provides 0.65% of corporate markings, logos, or branding. Corporate markings, logos or branding include a website address. c) The mural does not discriminate against or vilifies any person or group; or is offensive or sexually explicit.	YES



Figure 4: Advertisement Example (Source: Apparition Media)

Artistic evaluation against condition	Compliance
a) The artwork style of the mural belongs to the Digital Dispersion or Paint Splatter style, a modern technique often used in advertising to symbolize energy, transformation, or "exploding" emotion. The visual direction uses a high-contrast photographic base (portraiture) that disintegrates into colourful splatters and "sparks," emphasizing the joy of sharing a win. Key characteristics of this style are dispersion effect, vibrant splatter and mixed media aesthetic. b) The mural provides 1.14% of corporate markings, logos, or branding. Corporate markings, logos or branding include a website address. c) The mural does not discriminate against or vilifies any person or group; or is offensive or sexually explicit.	YES



Figure 5: Advertisement Example (Source: Apparition Media)

Artistic evaluation against condition	Compliance
a) The mural was painted by Jo Tronc, Wangechi Mutu and Victoria Topping. The mural illustrates artistic merit as it features a modern, surrealist collage style where human portraits are "blossoming" with intricate plant life. a. Jo Tronc (Watermark Creative) is the original illustrator of the Twinings Asha range. Her work focuses on hand-rendered, layered botanical illustrations that evoke a sense of "luxury and youthfulness". b. Wangechi Mutu is a world-renowned contemporary artist who creates "visionary hybrids". Her large-scale collages frequently fuse the human form with natural, organic elements (plants, animals, and earth) to explore identity. c. Victoria Topping is a contemporary collagist who uses vibrant, eclectic imagery and "mismatched" botanical elements to create high-energy, narrative-driven portraits. b) The mural provides 1.22% of corporate markings, logos, or branding. Corporate markings, logos or branding include a website address. c) The mural does not discriminate against or vilifies any person or group; or is offensive or sexually explicit.	YES

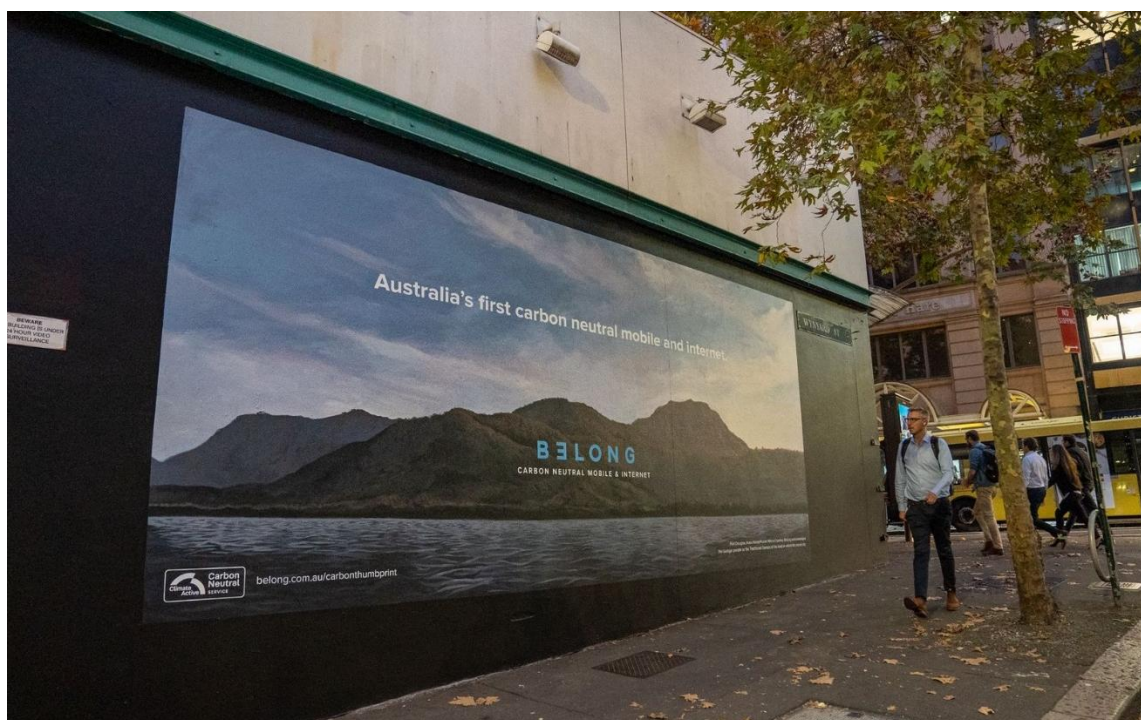


Figure 6: Advertisement - May 2021 (Source: Apparition Media)

Artistic evaluation against condition	Compliance
a) The style of this mural is deeply rooted in several historical and contemporary landscape painting movements. By stripping a scene down to its most basic elements—a vast sky and a prominent horizon—it mirrors the "essence over detail" philosophy found in traditional fine art and demonstrates exemplar artistic merit. b) The mural provides 1.15% of corporate markings, logos, or branding. Corporate markings, logos or branding include a website address. c) The mural does not discriminate against or vilifies any person or group; or is offensive or sexually explicit.	YES

Based on the above, our assessment concludes that recommended reason for refusal D relies on vague and unsupported public-interest assertions

SUMMARY

The central issue with all applications for advertising murals is *artistic merit*. The key assessment question – is it considered public art or simply third party advertising?

Art is subjective. The LEC condition provides the best way to fit such a subjective matter into the planning system. Council's public art policy provides some insight by providing the following definition of public art (**BOLD** our emphasis)

*The term "public art" is **defined in the broadest sense as artistic works or activities accessible to the public**. The work may be of a temporary or permanent nature. Located in or part of a public space or facility provided by both the public and private sector, public art also includes the conceptual contribution of an artist to the design of public spaces and facilities.*

Our assessment and previous determinations across the City concludes the proposal demonstrates artistic merit.

The other key issues in the Council Report relate to:

- planning controls
- heritage issues
- compliance issues - checks and balances through the POM
- insufficient information

Our review demonstrates that the proposal addresses all of the above issues.

The Clause 4.6 variation is justified, the visual and heritage impacts are acceptable, design quality is demonstrated, and the proposal is clearly in the public interest. When assessed on its merits, the proposal represents an appropriate and well-managed form of development within a commercial urbanised context.

If required by the Local Planning Panel, further refinements can be made to the POM to ensure it contains sufficient information to satisfy Council that design excellence will be achieved with each future mural.

For these reasons, the applicant respectfully requests that the Local Planning Panel support the application and grant consent.

Should you have any questions in relation to this letter, please contact PJ Scollard, Associate, on 02 8459 7508.

Yours sincerely

Michael Woodland

Michael Woodland BTP PIA REAP
Director

Attachments

Attachment 1 – Clause 4.6 Variation Request

Attachment 2 – Statement of Heritage Impact prepared by Weir Phillips

Attachment 3 – Examples of Apparition Media Advertising Murals within the City of Sydney

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