

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

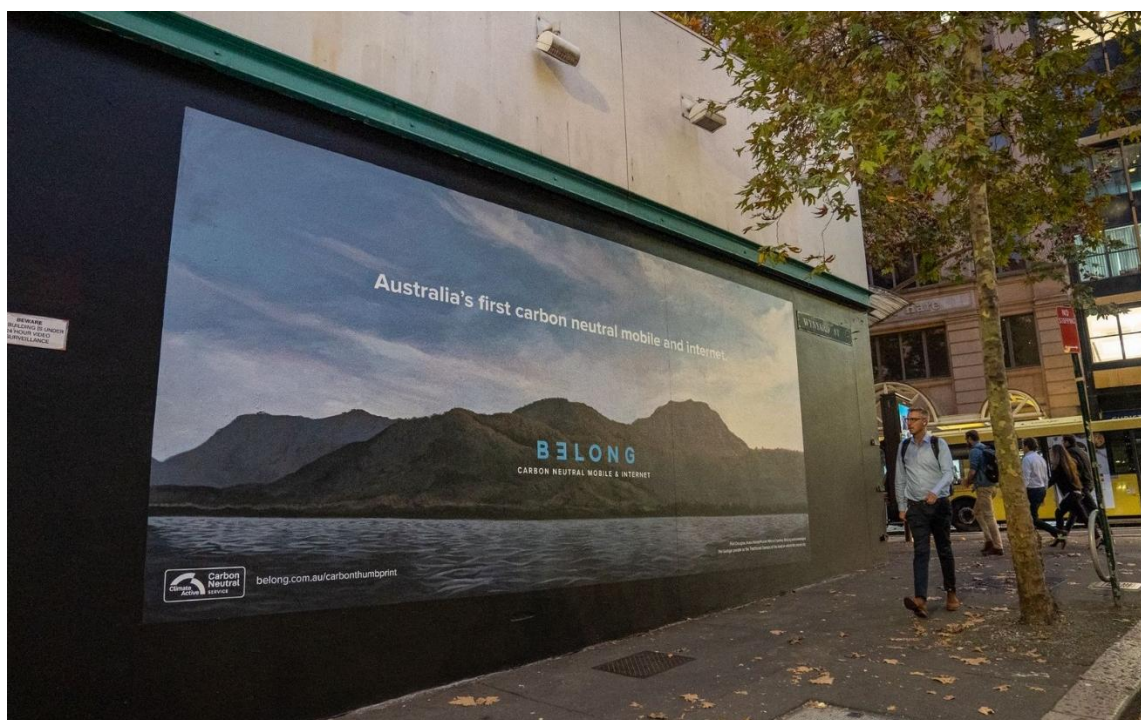


Figure 6: Advertisement - May 2021 (Source: Apparition Media)

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 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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