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10 November 2022

Anthony Witherdin
Director, Key Sites Assessments
Department of Planning and Environment
12 Darcy Street, Parramatta NSW 2150

Attention: Lewis Demertz (Planning Officer, Regional Assessment)

Dear Lewis,

RE: RTS AND RFI RESPONSE – DIGITAL ADVERTISING SIGN – SAUNDERS AND MILLER STREETS, PYRMONT - DA 22/6650

1. INTRODUCTION

This submission has been prepared by Urbis Pty Ltd (Urbis) in relation to DA22/6650 (**the DA**). The DA seeks development consent for the replacement of the existing large-format static vinyl third party advertising sign with a new digital advertising signage (**the proposal**) at the junction of Saunders Street and Miller Street, Pyrmont (**the site**). The DA was lodged to the Department of Planning and Environment (**DPE**) in May 2022 and placed on public exhibition for 28 days until 25 August 2022.

This submission has been prepared on behalf of the applicant (Sydney Trains) to address matters raised in the agency submissions from the City of Sydney (**Council**) and the City of Sydney as Delegate of NSW Heritage Council during the DA public exhibition period. On 23 September 2022, DPE issued a letter to the applicant with a formal request for additional information (**RFI**). This submission has been prepared as a formal response to the agency submissions and DPE's RFI.

Separately, Transport for NSW (**TfNSW**) has issued concurrence for the DA (dated 12 August 2022). The applicant has reviewed the concurrence and is satisfied with the proposed conditions of consent.

The City of Sydney as Delegate of NSW Heritage Council has not issued General Terms of Approval (**GTAs**) and has requested additional information (via email correspondence dated 30 August 2022).

Proposed Development

The DA seeks consent for the replacement of an existing large-format vinyl advertising sign with the installation of a new digital advertising sign. Specifically, the proposal comprises the following works:

- Demolition of the existing large-format vinyl advertising sign and associated support and footing (undertaken as exempt development as per Clause 3.30 of the Industry and Employment SEPP);
- Installation of digital advertising signage with dimensions of 4.708m x 3.172m to be attached to a monopole of height 3.6 metres (known as a Portrait 50 format); and
- Installation of associated footing and support.

The digital sign will have a dwell time of one (1) advertisement per 25 seconds and an instantaneous (or 0.1 second) transition time.

Supporting Documentation

This submission is supported by the following technical reports and documentation:

- Legal Advice prepared by Addisons (at **Appendix A**);
- Structural Feasibility Statement prepared by DBCE (at **Appendix B**);
- Preliminary Geotechnical Assessment prepared by Douglas Partners (at **Appendix C**);
- Service Statement prepared by WSP (at **Appendix D**); and
- Amended Elevation Plans (existing and proposed), Site Plan, and Materials and Finishes Plan prepared by DBCE (at **Appendix E**).

2. SUMMARY OF AGENCY SUBMISSIONS

DPE has received submissions from the City of Sydney and the City of Sydney Council as Delegate of Heritage Council of NSW. Key matters raised in these agency submissions related to the following:

- Insufficient information regarding tree removal;
- Public benefit;
- Clarification regarding heritage approval; and
- Detailed site plan and elevations.

This submission and accompanying documentation has been prepared to respond to these matters.

3. RESPONSE TO AGENCY SUBMISSIONS

Table 1 provides a response to the matters raised by the City of Sydney (dated 25 August 2022) and the City of Sydney as Delegate of NSW Heritage Council of NSW (dated 30 August 2022).

Table 1 Response to Agency Submissions

Agency Submission	Applicant Response
City of Sydney (25 August 2022)	
<p><u>Insufficient Information</u></p> <p><i>Elevation drawings are provided however, drawings in plan have not been provided and an adequate assessment on the impacts of the demolition and proposed footings cannot be undertaken. In addition to site and floor plans not accompanying the application, an arboricultural impact assessment has</i></p>	<p>Amended elevation plans and a site plan have been prepared (at Appendix E) to identify the following:</p> <ul style="list-style-type: none"> ▪ Site Plan: <ul style="list-style-type: none"> – Location of proposed sign, footing (3m x 2.5m), existing trees, fence along Saunders Street and Miller Street, kerbing, and cycle pathways.

Agency Submission	Applicant Response
<p><i>not been prepared and an assessment against potential tree impacts cannot be undertaken. It is unclear whether the applicant has considered any potential tree impacts during demolition or construction works (by way of branch or tree removal) and whether any tree protection measures will be implemented during construction. It is noted that the Statement of Environmental Effects states some branches may need to be removed and refers to the Plan of Management (POM) for further discussion, however, the POM does not discuss any tree removal or protection measures.</i></p> <p><i>Additional plan drawings and arboricultural impact assessment are recommended to be submitted for further consideration.</i></p>	<ul style="list-style-type: none"> – Street setback of 6.7m from Saunders Street and 5.7m from Miller Street – Approximately 4m distance between the proposed sign and the tree behind. <ul style="list-style-type: none"> ▪ Amended Existing Elevation: <ul style="list-style-type: none"> – Footing of the existing sign – Location of tree and fence behind the sign ▪ Amended Proposed Elevation: <ul style="list-style-type: none"> – Footing of the proposed sign (2.5m x 3m x 1.2m) – Ground and below ground rock RLs – 1m distance between the sign and fence behind – Approximately 4m distance between the proposed sign and the tree behind. <p>As shown on these plans, there is appropriately 4m distance between sign and existing tree behind, such that the tree will in no way be impacted by the demolition and construction works.</p> <p>Further, the proposal does not include removal of any vegetation. Existing vegetation within the rail corridor and vicinity of the development is not identified in any environmental planning instruments or mapping under the <i>Biodiversity Conservation Act 2016 (BC Act)</i> to have any biodiversity values. A Construction Management Plan will be prepared at the Construction Certificate (CC) stage to ensure the construction works do not impact surrounding trees. Additionally, a condition of consent may be imposed to require a qualified Arborist to assess the construction and structural details for the proposed sign and, as may be required, prepare a tree protection plan. The tree protection plan (if prepared) will form part of the Construction Management Plan.</p>
<p><u>Public Benefit</u></p> <p><i>The application states that the new signage will provide adequate public benefit in connection with the advertisement, pursuant to Clause 13(2) of SEPP 64</i></p>	<p>The applicant has sought legal advice on this matter from Addisons. This is attached at Appendix A.</p>

Agency Submission	Applicant Response
<p><i>and Section 4 of the Transport Corridor Outdoor Advertising and Signage Guidelines. This is on the basis that the signage will continue to provide a revenue stream to Sydney Trains for improvements and maintenance programs and will display instantaneous safety or public awareness messages.</i></p> <p><i>Section 3.16.7.2 of the SDCP 2012 discusses the replacement, modification, or conversion of an existing approved advertising structure to an electronic variable content advertising structure and includes the following provisions:</i></p> <ul style="list-style-type: none"> ▪ <i>Provision (2) states that when considering such replacement, the consent authority is to have regard to the extent of public benefit that will be provided in connection with the structure.</i> ▪ <i>Provision (9) requires the public benefit to be satisfied by making 10% of the advertising time available free of cost for use by the City of Sydney to display public information, community messages and promotion of Council events and initiatives.</i> <p><i>Clause 3.16.7.2(9) of the DCP is to be applied through the consideration of SEPP 64 and is entitled to significant weight. The City considers that compliance with both Clause 13(2) of the SEPP and Clause 3.16.7.2(9) of the DCP should be demonstrated concurrently. This has not been considered in the current proposal.</i></p> <p><i>Overall, the application does not comply with objective 11 of Section 3.16 of the Sydney DCP. The proposal does not satisfactorily provide a public benefit and is generally not in the public interest.</i></p>	<p>A summary of this legal advice is provided as follows.</p> <ul style="list-style-type: none"> ▪ In relation to Sydney DCP, State Environmental Planning Policy (Industry and Employment) 2021 (the SEPP) does not directly apply as a development control plan is not a “environmental planning instrument” (EPI) as defined in the EP&A Act. Section 3.43 of the Act applies to inconsistencies between a DCP and an EPI. ▪ The “principal purpose” of a DCP is to provide “guidance” as to certain matters to the persons proposing to carry out relevant development and the consent authority for any such development (Section 3.42 of the EP&A Act). Such provisions of a DCP are expressly stated not to be statutory requirements (Section 3.42) and are to be considered flexibly (Section 4.15(3A)). ▪ Section 3.42(b) indicates that a development control plan is only to facilitate development that is permissible under the applicable environmental planning instrument. As the subject DA only achieves permissibility through the SEPP, it is queried how much weight should be given to a development control plan which primarily relates to permissible development in accordance with a local environmental plan (and specifically Clause 3.16.7.2(9) the Sydney DCP in the subject case). ▪ In accordance with the principles stated in <i>Tomasic</i>, a development control plan which conflicts with other policy outcomes adopted at state level will be given less weight than a development control plan which provides a sensible planning outcome consistent with other policies. The tests from <i>Hastings Point</i> and <i>Castle Constructions</i> will apply as to whether a DCP is inconsistent or incompatible with the provisions of an EPI, as was discussed in <i>Gorgees</i>. ▪ It is the applicant’s view that the outcomes sought in the DCP conflict and are incompatible with the

Agency Submission	Applicant Response
	<p>policy outcomes in the SEPP and therefore the DCP should be afforded little statutory weight.</p> <ul style="list-style-type: none"> ▪ The objectives of Clause 3.16.7.2 of the DCP are to provide guidance on advertisement structures and third-party advertising and ensure public benefit derived from such signs. The DCP does not directly apply to signs in transport corridors. ▪ The objects of the SEPP include “to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.” This is further articulated elsewhere in the SEPP. The <i>Transport Corridor Outdoor Advertising and Signage Guidelines</i> provide detailed guidance on what will constitute a public benefit for advertising in transport corridors on behalf of Sydney Trains. ▪ There is therefore arguably a “want of consistency or congruity” or “lack of accordance or harmony” between the public benefit obligations under the SEPP and the public benefit requirements in Clause 3.16.7.2(9) of the DCP. ▪ Accordingly, it may be inappropriate for the Minister to apply the public benefit test in accordance with the SEPP and the Guidelines and also apply the public benefit requirements in Clause 3.16.7.2(9) of the DCP. It is clear that the Minister will need to be satisfied that the DA will provide acceptable public benefits as per the SEPP and as further articulated in the Guidelines. ▪ Clause 3.16.7.2(9) of the DCP should be afforded little weight in accordance with current case law on this matter and the incongruity that arises in seeking to apply the DCP and SEPP to the DA. <p>The Minister must take into consideration and be satisfied of the public benefits provided as per clause 3.11(2) of the SEPP. This is discussed below.</p>

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	<p data-bbox="850 551 1225 577"><u>Public benefits provided by the DA:</u></p> <p data-bbox="850 602 1417 1003">The DA provides public benefit and is consistent with Clause 3.14 of the SEPP as it provides Sydney Trains with an on-going revenue stream arising from the display screen being privately leased for display purposes. All the revenue generated to Sydney Trains from the digital sign will be invested back into the rail network and directed towards maintenance and upgrade works, ensuring enhanced transport services to the public. The DA represents a valid means to provide such revenue and ultimately provide public benefit.</p> <p data-bbox="850 1028 1426 1653">Further, the revenue generated can also be used to facilitate other Sydney Trains projects which will benefit the public, including the future roll-out of 'gap buffers' within CBD stations located close to the subject site. Other projects underway include the Transport Access Program, which will benefit both the local community and broader community when travelling to railway stations that do not currently provide access (via lifts, new canopy covers, upgraded footpaths and improvements to wayfinding) for persons with a disability limited mobility, carers/parents with prams and customers with luggage, through the provision of lifts. Residents and visitors of Pyrmont may travel to stations that lack these facilities and the Transport Access Program will provide a benefit to residents/visitors travelling to those stations.</p> <p data-bbox="850 1677 1406 1966">As the sign is positioned at a key location within Pyrmont, it will provide further public benefit to Sydney Trains, TfNSW, and emergency services to display instantaneous safety or public awareness messages. In addition to the on-going revenue stream, the digital screen will be used to provide important information to customers and the public in event of the following:</p> <ul data-bbox="850 1991 1214 2018" style="list-style-type: none"> ▪ Station emergency situations;

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	<ul style="list-style-type: none"> Any major disruption which is likely to cause delays to train running times; Sydney Trains and TfNSW promotions and events; and Threat-to-life alerts by NSW Government Emergency and Police Agencies.
<p><u>Heritage</u></p> <p><i>The City notes that the subject site is listed as a Stage heritage under the Heritage Act 1977 item known as the Pyrmont and Glebe Railway Tunnels (SHI 01225) and are also listed as Rail cutting and as being of state significance in the Sydney Local Environmental Plan 2012 (Item No. I1203). The application was accompanied by a Heritage Impact Statement prepared by Wier Phillips which discusses the potential impact of the proposal on the significance of the heritage item. While the Statement discusses the impacts of the proposal, it does not, nor does the Statement of Environmental Effects, provide any discussion on the administrative process of obtaining approval under the Heritage Act.</i></p>	<p>The amended SEE (dated 20 June 2022) was submitted on the NSW Planning Portal to confirm that the DA requires heritage approval under Section 58 of the NSW Heritage Act 1977 for the reason that the site is identified as a heritage item (SHR No: 01225).</p> <p>It is understood that the City of Sydney as Delegate of NSW Heritage Council is in process of preparing concurrence.</p>
City of Sydney Council as Delegate of Heritage Council of NSW	
<p><i>A more detailed site plan is required that shows the exact location of the proposed sign with dimensions of the setbacks from both street frontages, as well as the site features including location of the fencing and nearby trees, as well as the footpaths and kerbing. Please could this be requested from the applicant.</i></p>	<p>This submission is accompanied by an amended set of plans to identify these details (refer Appendix E).</p>

4. RESPONSE TO DPE RFI

Table 2 provides a response to the matters raised by DPE in the RFI letter dated 23 September 2022.

Table 2 Response to DPE RFI

DPE Comment	Applicant Response
Surrounding Vegetation	
<ul style="list-style-type: none"> <i>Provide clarification whether the proposal will require removal or pruning of any vegetation surrounding the sign.</i> <i>Submit an Arboriculture Report, prepared by a suitably qualified person, assessing the impact of the proposal (including construction works) on the trees in vicinity of the sign.</i> 	<p>The proposal does not involve removal of any vegetation surrounding the sign. The applicant will undertake regular vegetation maintenance as required. The site will be inspected every six (6) months to determine if any branches, particularly of the tree located behind the sign, need to be pruned to ensure clear visibility of the advertisement screen.</p> <p>A Construction Management Plan will be prepared at Construction Certificate stage to ensure construction works do not impact surrounding trees. A condition of consent may be imposed to require a qualified Arborist to assess construction and structural details for the proposed sign and prepare a tree protection plan (if required). A tree protection plan (if required) will form part of the Construction Management Plan.</p>
Visual Impact	
<ul style="list-style-type: none"> <i>Identify and assess the impacts of any pruning or removal of vegetation on sightlines between surrounding residential properties and the proposed sign.</i> <i>Provide a visual analysis of the proposal from key residential properties, including photomontages or perspectives showing the proposed sign. Should the visual analysis identify potential visual impact, provide an updated visual impact assessment that addresses the impacts of the proposal on the existing catchment.</i> 	<p>The proposal does not include the pruning or removal of any vegetation. On this basis it will not create any impact on sightlines between surrounding residential uses and the proposed signage structure.</p> <p>The Visual Impact Assessment submitted with the DA assesses the potential visual impacts of the proposal on surrounding residential uses. It concludes:</p> <ul style="list-style-type: none"> The nearest residential locations which have direct potential views towards the proposed sign are the apartment buildings at 17 Jones Street (20m northeast), 102 Miller Street (40m northeast) and 55 Miller Street (50m east). Access to potential views to the proposed sign

DPE Comment	Applicant Response
	<p>will predominantly be blocked by trees in the rail corridor from these locations.</p> <ul style="list-style-type: none"> ▪ Therefore, the proposed sign which replaces an existing sign does not detract or significantly alter the existing levels of amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes, or residential areas. ▪ All buildings east of the site are mixed use or residential, however no private domain locations in any of these buildings are expected to have access to views of the proposed sign because of the blocking effects of trees or other buildings. For example, all private views from residences at 102 Miller Street to the east are likely to be blocked by the building at 15 Jones Street.
Servicing	
<ul style="list-style-type: none"> • <i>Provide clarification whether electricity and telecommunication services are available to service the proposal and whether any connection works are required.</i> 	<p>This submission is accompanied by a Services Statement prepared by WSP (at Appendix D).</p> <p>The new digital advertising sign will require removal of the existing overhead LV supply and establishment of a new supply from the Ausgrid pillar LE-12687 to the new digital advertising board.</p> <p>The supply to the new digital advertising sign will be via an isolation transformer to comply with supply arrangements to AMB (Sydney Trains) standards.</p> <p>A connection of load application will be submitted to Ausgrid to confirm the available load for the existing pillar and supply point, at the detailed design stage.</p>
State Environmental Planning Policy (Transport and Infrastructure) 2021	
<ul style="list-style-type: none"> • <i>Assess the proposal against sections 2.98 and 2.99 of State Environmental Planning Policy (Transport and Infrastructure) 2021.</i> 	<p>In relation to Clause 2.98(c) the applicant has confirmed that the construction of the proposal will involve the use of a crane in air space above the rail</p>

DPE Comment	Applicant Response
	<p>corridor. Therefore, the DA triggers Clause 2.98(c) and the consent authority is required to give written notice to the rail authority for the rail corridor.</p> <p>In relation to Clause 2.99(b), the proposal involves ground penetration to a depth of at least 2m below existing ground level and the land is within 25m of the rail corridor. Therefore, the DA triggers Clause 2.99(b) and the consent authority must not grant consent without the concurrence of the rail authority for the rail corridor to which the DA relates.</p>
Structural Feasibility Statement	
<p><i>Provide amended plans that notate:</i></p> <ul style="list-style-type: none"> ▪ <i>depth and extent of proposed excavation;</i> ▪ <i>width of the footings/base of the proposed signage structure;</i> ▪ <i>details of the pilings required to support the proposed signage; and</i> ▪ <i>details of the materials of the proposed signage and structure.</i> 	<p>This submission is accompanied by amended plans (at Appendix E) to identify the details of the depth of excavation, piling, and width of footing. The amended plan package includes a schedule of materials, finishes, and renders prepared by Tzannes.</p>
<p><i>Provide a structural feasibility statement prepared by a suitably qualified expert which:</i></p> <ul style="list-style-type: none"> ▪ <i>assesses and determines the structural feasibility of the proposed signage;</i> ▪ <i>addresses the structural requirements for the proposed signage including height, required supporting structures, self-weight of the required post and total weight of the signage and structure;</i> ▪ <i>assesses the wind loading for the site and any requirements as a result; and</i> 	<p>A Structural Feasibility Statement has been prepared by DBCE and is provided at Appendix B.</p> <p>The findings and recommendations of the Structural Feasibility Statement are summarised below:</p> <ul style="list-style-type: none"> ▪ The weight of the structure including the digital screen and the cladding is approximately 3.1 tonnes. The sign is to be designed for a wind load for region A, terrain category 2.5 and a 50-year design life in accordance with AS1170.2. ▪ A pad footing of dimension 2.5m x 3m x 1.2m deep will be structurally acceptable. ▪ A detailed geotechnical report will be prepared at Construction Certificate stage. This will provide

DPE Comment	Applicant Response
<ul style="list-style-type: none"> provides any recommendations from the expert, including methodology for excavation and construction. 	<p>information on the soil/rock profile and properties to enable design of the structure footing.</p>
<p><i>Provide a preliminary geotechnical report prepared by a suitably qualified expert which identify the ground conditions, identifies the proposed depth and extent of excavation, makes recommendations for undertaking excavation and construction and, if applicable, makes recommendations for the supporting structure of proposed signage.</i></p>	<p>A Preliminary Geotechnical Assessment has been prepared by Douglas Partners (at Appendix C).</p> <p>The findings and recommendations of the Geotechnical Report are summarised below:</p> <ul style="list-style-type: none"> The typical sub-surface profile at the site is likely to be imported fill up to 1 m in depth, very low strength sandstone with extremely low strength bands and seams up to 1m depth, over medium to high strength sandstone. Deepening of the concrete pad footing should be considered (at a depth with suitable rock condition), based on the results of further geotechnical investigation. Drilling a cored borehole at the structure location to determine strata depths. The borehole should extend at least 4 m into rock. Mapping of the existing rock cutting should be undertaken to identify any areas of potential instability. Any such mapping will have to be carried out during a track possession. Stability assessment of the rail cutting should be undertaken. <p>A detailed geotechnical assessment will be undertaken post consent to inform the final structural engineering design and methodology for the proposed development, as recommended in Preliminary Geotechnical Assessment. This may also be addressed as a condition of consent.</p>
<p><i>Ensure that the amended plans, structural feasibility statement and preliminary geotechnical report are consistent with each other.</i></p>	<p>The amended plans (Appendix E), Structural Feasibility Statement (Appendix B) and Preliminary</p>

DPE Comment	Applicant Response
	Geotechnical Assessment (Appendix C) are aligned with regard to the design and footing dimensions.

5. CONCLUSION

We trust that the information provided in this response addresses the matters raised by the City of Sydney, the City of Sydney as Delegate of NSW Heritage Council, and the Department and allows for a consolidated planning assessment to proceed. The responses provided in Table 1, Table 2, and the attached appendices adequately address the matters raised by DPE.

If any further information is required, please do not hesitate to contact the undersigned.

Yours sincerely,



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