

20 September 2022

Our Ref: R/2022/13
File No: 2022/466901
Your Ref: DA 22/10079

Marcus Jennejohn
Department of Planning and Environment
via Planning Portal

Dear Marcus,

Advice on Development Application - DA 22/10079 - Digital Advertising Sign - Western Distributor, Pyrmont

Thank you for your correspondence dated 23 August 2022 inviting the City of Sydney (the City) to comment on the abovementioned development application.

The proposal involves the installation of a new digital advertising sign on the eastern side of the Western Distributor, north of Pyrmont Bridge Road, facing westbound traffic. The sign measures 12.48m x 3.2m and is attached to a proposed 15m high steel structure incorporating a vertical planting system with associated planter box maintenance platforms, footing and support works.

The proposal is described in the Statement of Environmental Effects (SEE) as the relocation of an approved third-party digital advertising sign further south along the Western Distributor, approved by the Department of Planning and Environment (DPE) on 1 April 2022 (DA 10665). The City objected to that proposal due to a number of issues relating to design excellence, lack of public benefit, visual impacts and heritage impacts.

The City has reviewed the documents submitted with this development application and wishes to raise an **objection** to the proposal. The City disagrees that the new design and location of the advertising sign is a superior outcome compared to that approved under DA 10665, as is described in the SEE. **Further, it is unclear how surrender of DA 10665 will be enforced** and therefore the City is not confident that any subsequent approval of this subject application will ensure that the approved sign further south is not also installed.

The City's objection to the proposal is based on the following grounds:

1. Design Excellence

In accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012 (SLEP 2012), development consent must not be granted to development unless, in the opinion of the consent authority, the proposed development exhibits design excellence.

The City considers that new third-party digital advertising signs can result in unacceptable visual clutter, do not in many instances demonstrate design excellence and are generally not permitted in the City in accordance with Provision 3.16.7.1(1) of the Sydney Development Control Plan 2012 (SDCP 2012).

The proposed digital third-party advertising signage does not demonstrate design excellence when having regard to the specific matters for consideration outlined in Clause 6.21C(2) of the SLEP 2012. In particular, this particular proposal:

- does not demonstrate a high standard of architectural design, materials and detailing appropriate to the location;
- does not provide a form and appearance that will improve the quality and amenity of the public domain;
- adversely impacts on view corridors;
- does not adequately respect surrounding heritage;
- results in inappropriate bulk in this location; and
- does not demonstrate excellence with integration of landscape design.

It is noted that the City maintains its position (as outlined in our submissions on DA 10665) that satisfaction of Clause 6.21C of the SLEP 2012 is a precondition to granting development consent, as per the findings of Justice Duggan in *Landcorp Australia Pty Ltd v The Council of the City of Sydney* [2020] NSWLEC 174 (Landcorp). Landcorp clearly demonstrates that when assessing an application for signage against SEPP 64 (now known as the Industry and Employment SEPP 2021), it must also be assessed against Clause 6.21C of the SLEP 2012 concurrently and the consent authority must be satisfied that design excellence is exhibited in order to grant consent.

2. Public Benefit

As mentioned above, new third-party signs and advertisements are generally not permitted in the City in accordance with Provision 3.16.7.1(1) of the SDCP 2012. Section 3.16.7.2 of the SDCP 2012 outlines that new advertising signs and third party advertisements are generally only appropriate when converting an existing billboard sign to a digital billboard. When this occurs, Provision 9 specifies that the sign must provide a public benefit being 10% of the advertising time being made available to the City of Sydney to display public information, community messages and promotion of Council events and initiatives. Alternatively, this provision also allows for other public benefits in lieu of advertising time.

The proposal does not provide any public benefit consistent with that described in Provision 3.16.7.2(9) of the SDCP 2012. Instead, the submitted 'Public Benefit Statement' submitted with the application claims that the proposal provides a public benefit by generating a revenue stream to Sydney Trains that will be used to support improvements and maintenance programs.

The City reiterates our position that it is already a fundamental responsibility of Sydney Trains and TfNSW to fund the rail network and there is nothing in the submitted Public Benefit Statement to suggest that the public benefit requirements of the Industry and Employment SEPP and the requirements of the SDCP 2012 are inconsistent such that they cannot be applied concurrently.

Further, Provision 3.16.7.2(9) of the SDCP 2012 is clearly intended to provide further guidance as to how the public benefit test in the Industry and Employment SEPP may be met. The provision begins by stating that 'Electronic variable content advertising structures are to provide a public benefit in accordance with SEPP 64' and then goes on to outline how this public benefit is to be satisfied.

The City also maintains that the SDCP 2012 is entitled to significant weight and is a fundamental element in the decision-making process, per the findings of *Zhang v Canterbury City Council* (2001) 115 LGERA 373; [2001] NSWCA 167.

Therefore, the City also objects to the proposal based on the absence of any public benefit provided in accordance with Provision 3.16.7.2(9) of the SDCP 2012.

3. Visual impacts

The View Impact Assessment assesses 8 viewpoint locations around the site, which appear to all be public viewpoints including Miller Street Bridge, Fish Market Station, the Western Distributor and Miller Lane.

The View Impact Assessment fails to consider any view impacts from surrounding buildings and existing and future residents, including but not limited to 55 Miller Street, properties along Bulwara Road or buildings located further south of the site looking north. This information is essential in assessing the environmental impacts of the proposed development and must be submitted for review.

It is also noted that the SEE appears to rely on the mature vegetation around the proposed sign as minimising the view impacts, despite the sign protruding above the tree canopy. Any future View Impact Assessment and photomontages must consider the impact of the development when combined with the tree removal that is proposed.

4. Heritage

The sign is located within the State Heritage listed Pyrmont and Glebe Railway Tunnels (SHR no. 01125) and it is understood that the application is integrated and will be assessed by HNSW.

The large digital sign will protrude above the adjoining tree canopy and result in unacceptable visual clutter within the Pyrmont area. In addition, the signage structure will be clearly visible from the railway cutting, particularly from the Fish Market Light Rail Station, which will not enhance the setting or significance of the item as required by Clause 5.10 of the SLEP 2012. Therefore, the proposal is not supported from a heritage perspective.

5. Landscape

The proposed sign sits above the existing tree canopy, adds to visual bulk and blocks views from neighbouring buildings. It is an extremely large digital signage board and adds unnecessary visual clutter on the landscape that is not appropriate.

The use of climbers in a heavily constrained area and microclimate, and the complex maintenance that would be required do not demonstrate the integration of landscape design excellence in accordance with Clause 6.21C of the SLEP 2012. The digital signage board covered in 'climbers' is therefore not supported from a landscape and design excellence perspective.

6. Tree Management

Ten trees on Council land have been assessed surrounding the site. Three of these are street trees and seven are located within the adjacent Council reserve known as Paradise Park. An additional 13 trees have been assessed within the site but are identified as exempt species and do not require consent for their removal.

The Arborist Report submitted with the development application is a preliminary report and does not provide a comprehensive assessment of the potential impact on the trees. Given the close proximity of the works to Council's trees, an Arboricultural Impact Assessment report (AIA) must be prepared that includes the following:

- An assessment of the potential impacts from the proposed development (including proposed footing and any trenching services) on Council's street trees and park trees. It is noted that the City does not support removal of public trees for the proposed sign.
- An assessment of pruning works where required for building clearances and construction access.
- A Tree Protection Plan outlining detailed tree protection measures including tree sensitive construction.

Should amended plans be requested by DPE, it is recommended that the proposed architectural plans be modified to include tree locations, numbers and TPZ/ SRZ areas so that it can be demonstrated that the proposed works have been designed to ensure that Council's trees will not be adversely impacted.

In summary, the installation of a new digital advertising sign in this location does not demonstrate design excellence as required by Clause 6.21C of the SLEP 2012 and does not provide adequate public benefit in accordance with the SDCP 2012. It causes unnecessary and undesirable visual clutter in this location, causes adverse visual impacts, is inappropriate to the heritage significance of the site, does not achieve excellence of landscape integration and adversely impacts Council trees. Therefore, the proposal is not considered to be in the public interest and is not supported by the City.

Should you wish to speak with a Council officer about the above, please contact Samantha Kruize, Senior Planner on 9265 9333 or at skruize@cityofsydney.nsw.gov.au.

Yours sincerely,



Graham Jahn AM LFRAIA Hon FPIA
Director
City Planning | Development | Transport