

Item 6.

**Development Application: 136 Oxford Street and 4080 Bourke Street,
Darlinghurst - D/2023/25**

File No.: D/2023/25

Summary

Date of Submission: 24 January 2023

Amended plan received on 24 May 2023

Applicant: Jacqueline Briggs

Owner: City of Sydney

Cost of Works: \$15,000.00

Zoning: R1 General Residential

SP2 Classified

Proposal Summary: Use of Taylor Square to operate a weekly Farmers Market and Eco Design Market on Saturdays between 8.00am and 1.00pm. Bump-in times are between 7.00am and 8.00am, bump-out times between 1.00pm and 2.00pm. Proposed start date is 19 August 2023 and it is recommended that a one-year trial period be imposed.

Two submissions in support of the proposal were received.

The application is Integrated Development requiring the approval of Heritage NSW under the Heritage Act 1977.

This application is referred to the Local Planning Panel for determination due to conflict of interest resulting from development on land owned by the Council.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Transport and Infrastructure) 2021

(iv) SEPP (Biodiversity and Conservation) 2021

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Event Plan (including Waste Management Plan)
- D. Traffic Management Plan

Recommendation

It is resolved that consent be granted to Development Application Number D/2023/25 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development, subject to conditions, is consistent with the objectives of the R1 General Residential and SP2 Classified zone, including to enable other land uses that provide facilities or services to meet the day to day needs of residents.
- (B) Appropriate conditions have been imposed to ensure the development does not detrimentally impact on the heritage significance of the heritage items known as 'Former Electrical substation (No. 6) including interior' (I400) and 'Underground lavatory including interior' (I401), as well as the site as a whole.
- (C) The development will not adversely affect the character of the Taylor Square and Darlinghurst Civic Precinct locality, nor the East Sydney and Oxford Street heritage conservation areas.
- (D) The development accords with the objectives of the relevant planning controls.
- (E) The development is in the public interest. The proposed sustainability-focused farmer's market will support the revitalisation of the locality by providing access to quality, farm fresh produce at moderate prices for local residents. The market will also facilitate an educational platform for sustainable living practices within an urban context and provide a lively meeting space.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 and 2 DP 1008763, known as 136 Oxford Street, Darlinghurst. The subject site also includes 4080 Bourke Street, Darlinghurst, which is identified as an intersection street segment. It is irregular in shape and the combined area of both addresses totals approximately 8,406sqm. However, it is noted that the area which is proposed to be used by this application is limited to Taylor Square north of Oxford Street.
2. The site contains the public space known as Taylor Square North which is bound by Oxford Street to the south, and Bourke Street and Forbes Street to the North. Foley Street provides laneway access to Taylor Square North from the northwest.
3. The surrounding area is characterised by a mixture of land uses, primarily being medium density commercial and residential dwellings. The Oxford Hotel fronts Taylor Square to the west while Darlinghurst Courthouse is located to the east of the site.
4. The site contains two local heritage items identified as 'Former Electrical substation (No. 6) including interior' (I400) and 'Underground lavatory including interior' (I401) under Schedule 5 of the Sydney LEP. These local items are located in the C13 East Sydney and C17 Oxford Street heritage conservation areas and are identified as contributing items under section 3.9 of the Sydney DCP. It is noted that the site predominantly lies within the Oxford Street HCA, including both local heritage items.
5. The two local heritage items are also identified as state heritage items 'being Taylor Square Substation No.6 and Underground Public Conveniences' (item 01700) on the State Heritage Register. The underground public toilets are no longer operational.
6. The site is located within the Darlinghurst Civic Precinct locality and is not identified as being subject to flooding.
7. A site visit was carried out on 21 March 2023. A follow up site visit was conducted on 23 June 2023.
8. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds - 136 Oxford Street (blue), 4080 Bourke Street (yellow) and Taylor Square North (red)



Figure 2: Taylor Square heritage listed substation facing northeast



Figure 3: Taylor Square substation facing east



Figure 4: View of Taylor Square North facing southeast toward Oxford Street



Figure 5: Detail view of substation facing southeast



Figure 6: View of Bourke and Forbes Streets from Taylor Square North, facing northeast



Figure 7: Taylor Square substation facing south



Figure 8: View of Taylor Square North facing south toward Oxford Street



Figure 9: Detail view of substation facing southwest



Figure 10: Detail view of substation facing west



Figure 11: View of Taylor Square North facing west



Figure 12: View of Taylor Square North facing southwest toward Oxford Street



Figure 13: View of Taylor Square North facing southeast toward Oxford Street



Figure 14: View of Taylor Square North facing northeast toward courthouse



Figure 15: View of Taylor Square North facing northwest



Figure 16: Detail view of entrance to heritage listed underground lavatory, facing northwest



Figure 17: Detail view of entrance to heritage listed underground lavatory, facing northeast



Figure 18: Taylor Square North viewed from Foley Street facing southeast



Figure 19: Foley Street viewed from Taylor Square North facing northwest



Figure 20: Bourke and Forbes Street viewed from exit of Foley Street facing northeast



Figure 21: Proposed site entry (via Foley Street) and egress (via Bourke Street) point

History Relevant to the Development Application

Development Applications

9. Taylor Square North has previously been used for a Farmer's Market.
 - **D/2010/175** – Development consent was granted on 21 April 2010 for use of Taylor Square North and part of Forbes and Bourke Streets for a Farmer's Market. Approved operating hours were between 8.00am and 1.00pm on Saturdays. The approved use was restricted to a period of one year from the date of approval, with a subsequent application to be lodged for any proposed extension. Several submissions were received for this application and subsequent modifications, with the large majority being in support.
 - **Modification A** was approved on 21 October 2010 to allow a one-off Art market event on Saturday 23 October 2010 between 1pm and 4pm.
 - **Modification B** was approved on 28 April 2011 to continue use of Taylor Square North for markets for one year, change trading hours to 8.00am to 4.00pm on Saturdays, change type of market to farmers market and eco design market, and permit use for up to five Thursdays between 5.00pm to 9.00pm.
 - **Modification C** was approved on 17 May 2012 to continue use of Taylor Square North for markets for two years and to allow 12 annual markets between 5.00pm and 9.00pm on Saturdays.
 - **Modification D** was approved on 10 July 2014 to continue use of Taylor Square North for markets for three years.

10. Taylor Square North has a history of being used as an event space. The following applications represent similar uses which have been approved in the past:
- **D/2022/1324** – Development consent was granted on 2 February 2023 for installation of temporary structures at Taylor Square North in association with Sydney World Pride between 26 February and 6 March 2023. Approved operating hours ranged between 12.00pm midday and 12.00am midnight.
 - **D/2022/1321** – Development consent was granted on 3 February 2023 for installation of ticket booth, marquee and portable toilets for Sydney World Pride event between 17 February and 5 March 2023. The permitted hours of operation were between 10.00am and 10.00pm daily.
 - withdrawn **D/2022/725** – Development consent was granted on 22 August 2022 for use of Taylor Square for a temporary event between 23 August and 23 September 2022, including temporary installation of video screens and speakers. Approved operating hours were between 6.00am and 10.00pm daily.
 - Up to 2018, several other development applications were approved for use of Taylor Square North for temporary public art and events, including:
 - **D/2018/438** – Development consent was granted on 29 May 2018 for Use of Gilligan's Island at Taylor Square South for temporary art installation between 22 June and 2 September 2018.
 - **D/2012/788** – Development consent was granted on 30 July 2012 for temporary suspended non-illuminated art installations suspended from five existing smartpoles in Taylor Square between 16th September 2012 and 16th May 2013.
 - **D/2010/1316** – Development consent was granted on 9 September 2010 for installation of public artwork at Taylor Square North between September 2010 and March 2011.
 - **D/2009/2151** – Development consent was granted on 27 January 2010 for installation of public artwork at Taylor Square North between February and August 2010.
 - **D/2009/1491** – Development consent was granted on 2 October 2009 for temporary structures at Taylor Square on 3 October 2009.
 - **D/2009/1188** – Development consent was granted on 6 August 2009 for temporary art installation at Taylor Square between 8 August and 29 September 2009.
11. In addition to the above D/2022/808 was lodged on 9 August 2022 by the same applicant as the subject application for use of Taylor Square for a weekly Saturday Farmers Market for a 12-month period. This application was withdrawn on 30 September 2022 at the request of council due to insufficient information relating to integrated development (heritage), the market layout and traffic management.

Compliance Action

12. The previous use of Taylor Square North for markets did not generate any recorded complaints from the public and there are no documented compliance issues.

Amendments

13. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 10 March 2023. Additional information was requested relating to the site plan, hours of operation, and whether night markets are included in the proposal.
14. A follow up request for further information and amendments was issued on 6 April 2023 relating to the loading and servicing arrangements, vehicle circulation route, and event plan. An updated Event Plan Traffic Management Plan and Site Plan were provided on 24 May 2023.
15. A final request for further information was issued via email on 23 June 2023 relating to the classification of inconsistencies between the Event Plan and Traffic Management Plan. Amended Plans were provided on 26 June 2023 and clarified the requested details.

Proposed Development

16. The application seeks consent for use of Taylor Square North for a weekly Farmer's Market on Saturdays between 8.00am and 1.00pm, with bump in occurring between 7.00am and 8.00am and bump out between 1.00pm and 2.00pm. The proposed start date is Saturday 19 August 2023.
17. Proposed market activities are as follows:
 - sale of organic and sustainable produce;
 - sale of value add and artisan food products; and secondarily,
 - education and resources regarding sustainable food practices, including short lectures/demonstrations by organizations such as The Watershed, Green Pages, Bike NSW, etc.
 - cooking demonstrations by local chefs, demonstrating use of sustainable food sources;
 - community information exchange; and
 - a small number of art stalls featuring sustainable design products – recycled, re-used, sustainable/renewable materials.
18. A maximum of 29 stalls are proposed and the primary focus for stalls will be producers and growers. Invitations will be extended to producers and growers in the Sydney Basin with a priority given to farms using organic or sustainable farming practices.
19. The farmer's stalls will focus on a range of products, including vegetables and fruit, organic meats, deli products, dairy products, condiments, fresh pasta, dried fruit and nuts, flowers, herbs/plants, and honey.

20. An allocation of market stalls will be dedicated to community information exchange and community development. These will vary from week to week and may include stalls by the City of Sydney, National Art School, Slow Food Australia, Greenpages, Bike NSW, local community and charitable organisations, local churches, schools or community groups, and local knitting circle or craft groups. A limited number of stall sites will be used to create a sustainable art and design section in the market, including recycled, re-used, sustainable/renewable materials.
21. A maximum of two food vendors will be permitted at the market who will provide breakfast items such as breakfast rolls and coffee, subject to compliance with the relevant Acts.
22. The applicant has noted that the proposed market would be designed to flex around the annual calendar of Taylor Square, including Sydney Festival, Mardi Gras, Art and About, and the like.
23. During bump in and bump out, up to five vehicles will be permitted on site in accordance with the Traffic Management Plan. Vehicles will enter from Foley Street and exit via Bourke Street.
24. Details of the program schedule, and bump in and bump out procedure are as follows.
 - Bump in:
 - 7.00am - Bump in stalls
 - 7.30am - Set up waste bins
 - 7.45am - Check stalls compliance - temporary structures, weights, etc.
 - Program schedule:
 - 8.00am - Stallholders given signal to commence trade
 - 10.00am to 11.00am - Educational programme: Cooking demonstrations, mini-seminars on urban sustainability, etc
 - 1.00pm - Stallholders given signal to cease trade
 - Bump out:
 - 12.30pm - Cleaners commence litter pick of site
 - 1.00pm - Stallholders commence pack down of stalls, load vehicles, remove stall rubbish from site
 - 1.15pm - Bump out stalls
 - 2.00pm - Cleaners finish litter pick of site and rubbish removed
25. The proposed site plan for the market is shown below.

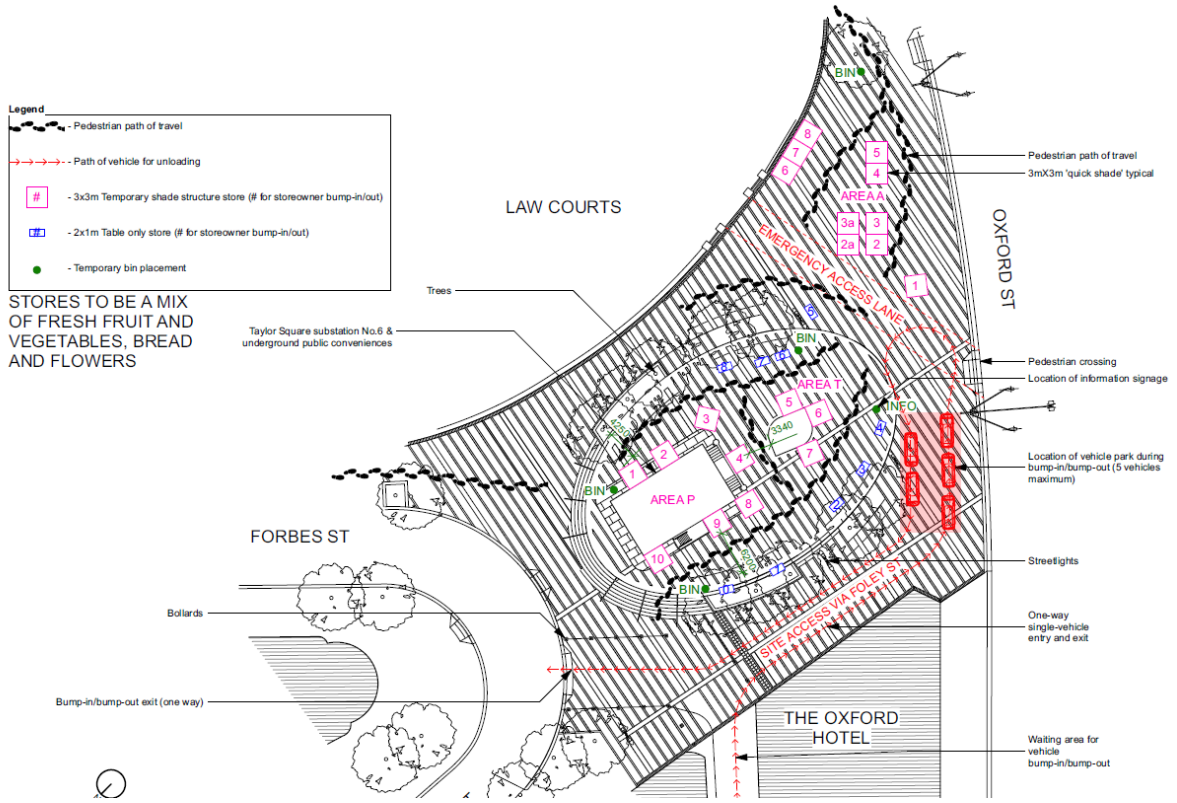


Figure 22: Proposed site plan (overview)



Figure 23: Proposed site plan (detail view)

Assessment

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

Heritage Act 1977

27. The subject site is listed as an item known as 'Taylor Square Substation No.6 and Underground Public Conveniences' (item 01700) on the State Heritage Register under the Heritage Act 1977.
28. As Integrated Development requiring approval under the Heritage Act 1977, a copy of the application was referred to Council's Heritage Specialist as delegate for the Heritage Council on 20 March 2023 in accordance with Clause 42 of the Environmental Planning and Assessment Regulation 2021.
29. In correspondence dated 12 April 2023, Council's Heritage Specialist as delegate for the Heritage Council was advised that the exhibition period had been completed and one submission was received.
30. On 27 April 2023, Council's Heritage Specialist as delegate for the Heritage Council issued the General Terms of Approval which are included in the recommendation.

State Environmental Planning Policies

State Environmental Planning Policy (Transport and Infrastructure) 2021

31. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations

Clause 2.119 – Development with frontage to classified road

32. The application is subject to Clause 2.119 of the SEPP as the site has frontage to Oxford Street which is a classified road.
33. The proposed development satisfies the provisions of Clause 2.119 subject to conditions of consent, as access to the site is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, subject to the recommended conditions of consent.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment

34. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.

35. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development. Per the waste management plan, during the operation of the market cleaners will undertake inspections of the market area to ensure that litter and other waste is collected and placed in bins. Once bump out has commenced, cleaners will ensure that both Taylor Square and Forbes Street are suitably cleaned, and all rubbish removed from the site.

Local Environmental Plans

Sydney Local Environmental Plan 2012

36. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The subject site is located in the R1 General Residential zone. The proposed development is defined as temporary food and drink premises. This use is permitted with consent in the zone and is therefore permissible.</p> <p>A portion of the subject site is also located in the SP2 Classified zone. The Land Use Table in the LEP states that the purpose shown on the Land Zoning Map is permitted with consent, including any development that is ordinarily incidental or ancillary to development for that purpose. Temporary use of the road reserve for markets when no permanent works are carried out can be considered ordinarily incidental or ancillary to the primary use as a road and is therefore permissible.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site is a local heritage item known as 'Former Electrical substation (No. 6) including interior' (I400) and 'Underground lavatory including interior'

Provision	Compliance	Comment
		<p>(I401) under Schedule 5 of the Sydney LEP.</p> <p>These local items are located in the C13 East Sydney and C17 Oxford Street heritage conservation areas and are identified as contributing items under section 3.9 of the Sydney DCP. It is noted that the site predominantly lies within the Oxford Street HCA, including both local heritage items.</p> <p>The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area and the heritage item because the proposed market is composed of temporary stalls and tables which will not alter the heritage items.</p> <p>General heritage conditions will apply to ensure the heritage significance of the items and area is not impacted.</p> <p>As these items are also state heritage items, the proposal has been reviewed by Council's heritage specialist as delegate for the Heritage Council and has been approved under the Heritage Act, subject to the Terms of Approval in Schedule 3 of the Notice of Determination.</p>

Development Control Plans

Sydney Development Control Plan 2012

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

Section 2 – Locality Statements

38. The subject site is located within the Taylor Square and Darlinghurst Civic Precinct locality. The proposed development is in keeping with the unique character and the design principles of the locality.

Section 3 – General Provisions

Provision	Compliance	Comment
3.9 Heritage	Yes	Refer to assessment of LEP section 5.10 above.

Provision	Compliance	Comment
3.11 Transport and Parking	Yes	<p>The proposal does not include any permanent physical works and will not result in any significant increase to traffic. It is anticipated that patrons will predominantly access the site either on foot, bicycle or public transport.</p> <p>Refer to the 'Discussion' section below for details relating to access to the site for the stall operators and market organisers.</p>
3.12 Accessible Design	Yes	<p>The subject site is a public space which provides equitable access. The proposal will not result in any permanent changes to the public domain and the market will maintain equitable access.</p>
3.14 Waste	Yes	<p>A Waste Management Plan has been provided by the applicant as part of the Event Plan. Prior to the commencement of the market, the market operators will ensure that bins are setup. Stall operators will be responsible for their own waste and will be required to remove all waste from the site upon closure of the markets.</p> <p>As outlined in the waste management plan, during the operation of the market cleaners will undertake inspections of the market area to ensure that litter and other waste is collected and placed in bins. Once bump out has commenced, cleaners will ensure that both Taylor Square and Forbes Street are suitably cleaned, and all rubbish removed from the site.</p> <p>A condition of consent is recommended to ensure the proposed development complies with the waste management practices detailed in the waste management plan.</p>
3.16 Signs and Advertisements	N/A	<p>The applicant proposes that temporary A-frame signs and the like be used on market days to signify that the market is open, as well as the erection of a temporary banner on the pedestrian railing along Oxford Street on market days and in the week preceding the</p>

Provision	Compliance	Comment
		<p>inaugural market. These signs can be classified as temporary event signs.</p> <p>In this case three A-frame signs and the like will be permitted to be located within the bounds of Taylor Square North during the operation of the market. A condition is recommended to restrict the display of any A-frame signs and the like to during the operation of the market.</p> <p>The proposed banner sign is exempt development and is not subject to development assessment, so long as it is in accordance with the following controls detailed in Clause 2.103 of the Exempt Codes 2008:</p> <ul style="list-style-type: none"> (a) not result in more than one banner and one other type of temporary sign facing any road frontage. (b) not have a surface area of more than 6sqm. (e) not be permanently fixed to a building, fence or wall. (g) not be illuminated. (h) not be displayed earlier than 14 days before the event. (i) be removed within 2 days after the event.

Section 5 – Specific Areas

Provision	Compliance	Comment
5.11 Oxford Street Cultural and Creative Precinct	Yes	<p>The proposed farmer's market will be located in the Oxford Street Cultural and Creative Precinct at Taylor Square North.</p> <p>The proposed use of Taylor Square North will reinforce the role of Oxford Street as a local activity street and will enhance the social and cultural significance of Oxford Street and Taylor</p>

Provision	Compliance	Comment
		<p>Square, while resulting in no impact on the heritage significance of the site.</p> <p>The previous use of Taylor Square North for a weekly farmer's market has been sorely missed according to a submission made to this application. The proposed sustainability-focused farmer's market will support the revitalise the locality.</p>

Discussion

Access to the site during bump in and bump out

39. Vehicles will enter in a one way direction via Foley Street and up to five vehicles will park near the info booth at the southern part the subject site. Vehicles will then exit in a one way direction at Bourke Street. No reversing will occur during this process.
40. During bump in and bump out, the five vehicles will be allocated a 15-minute access time in the designated unloading area. The largest vehicle on site will be a five metre van including a trailer. No heavy rigid vehicles will be permitted on site. All vehicles will be under standard car license conditions.
41. Council's City Infrastructure and Traffic Operations Unit raised concern regarding the potential for the vehicles to block pedestrian flow along Oxford Street, in particular at the signalised crossing at the south of the site, as well as access to the courthouse parking lot.
42. Conditions are included in the recommendation requiring that pedestrian access along the footpath at Oxford Street must be maintained and that the pedestrian ramp at the signalised crossing must be kept free of obstructions at all times. A condition is not proposed in respect of the courthouse parking lot as there is an alternative access point to the carpark on Oxford Street to the southeast.

Consultation

Internal Referrals

43. The application was discussed with Council's Environmental Health Unit, Transport and Access Unit, and City Infrastructure and Traffic Operations Unit.
44. The Environmental Health Unit provided initial comments on 20 March 2023 and requested that further information be submitted to clarify the details of the market. An amended Event Plan was required to provided.
45. The Environmental Health Unit reviewed updated documentation and provided further comments on 7 June 2023, noting that the details in the Event Plan had been satisfactorily clarified. Conditions of consent were recommended to ensure that the amenity of the neighbourhood is not adversely impacted by the proposed markets.

46. The Transport and Access Unit provided initial comments on 24 March 2023 and noted that further information was required relating to the details of bump in and bump out, vehicle access and parking time allocation, as well as vehicle circulation routes.
47. The unit reviewed updated documentation and provided further comments on 6 June 2023, noting that the amended Traffic Management Plan and Event Plan are supported, subject to conditions.
48. The City Infrastructure and Traffic Operations Unit provided initial comments on 22 March 2023 and requested that additional information be provided in the Traffic Management Plan. The unit reviewed updated documentation and provided further comments on 26 June 2023. The unit raised concern regarding pedestrian flow through the site during operation, as well as access to the courthouse. These matters have been addressed via condition.

External Referrals

NSW Heritage Council

49. The development is integrated development. The application was referred to Council's Heritage Specialist as delegate for the Heritage Council on 20 March 2023.
50. Copies of public submissions made to the City of Sydney during the notification period were forwarded to Council's Heritage Specialist on 12 April 2023.
51. General Terms of Approval were issued by Council's Heritage Specialist as delegate for the Heritage Council on 27 April 2023 and have been included in the schedules within the recommended conditions of consent.

Advertising and Notification

52. In accordance with the City of Sydney Community Participation Plan 2022, the proposed development was notified for a period of 21 days between 21 March 2023 and 11 April 2023.
53. 161 properties were notified and one submission was received during the notification period. An additional supporting submission was received after the notification period, totalling two submissions with both being in support of the proposal.
54. The submissions supported the proposed market for the following reason:
 - (a) The previous market, also operated by Sydney Sustainable Markets, was an invaluable institution in the local community.
 - (b) As well as supporting access for local residents to health produce, flowers and baked goods, the market is a valuable meeting place and point of connection that compliments the other businesses in the area.
 - (c) With the approval of the market, the space can be a meeting place for local people on a Saturday morning and used as a community engagement space.

Financial Contributions

55. The proposal is not subject to any financial contributions.

Relevant Legislation

56. Environmental Planning and Assessment Act 1979.
57. Heritage Act 1977.

Conclusion

58. The proposal for a weekly Farmer's Market has adequately addressed transport and access management, and has provided event and site plans which have addressed Council's initial concerns.
59. The re-introduction of a weekly Farmer's Market to the space will be a positive outcome for the community, as corroborated by the supporting submissions to this application.
60. The proposal is compliant with the relevant planning provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012, subject to compliance with the recommended conditions of consent.
61. The proposal is in the public interest. The proposed sustainability-focused farmer's market will support the revitalisation of the locality by providing access to quality, farm fresh produce at moderate prices for local residents. The market will also facilitate an educational platform for sustainable living practices within an urban context and provide a lively meeting space.

ANDREW THOMAS

Executive Manager Planning and Development

Callum Byrnes-Krickl, Planner