

Item 5.

Post Exhibition - Planning Proposal - 85-93 Commonwealth Street, Surry Hills - Sydney Local Environmental Plan 2012 Amendment

File No: X096329.003

Summary

Lower Surry Hills is in 'Tech Central' and the City Fringe and is part of the Eastern Creative Precinct. Its high amenity, good accessibility and unique authentic character, former warehouse buildings and lower rents attracts creative firms and their workers. This appeal helps grow the City's creative industry and strengthen its global competitiveness. Increasing the amount employment floor space in Surry Hills is a priority across City and State strategies, namely the Local Strategic Planning Statement and Eastern City District Plan.

This report recommends Council approve a planning proposal recently exhibited for 85-93 Commonwealth Street, Surry Hills. The planning proposal will amend the Sydney Local Environmental Plan 2012 to allow for a three-storey addition to an existing four-storey office building. This involves increasing the maximum floor space ratio (FSR) from 3:1 to 4.5:1 and changing the maximum building height from 18 metres (RL approximately 41.5) to RL 50.5 on the site's north, RL 47.2 across its middle and RL 40 on its south. To incentivise development that aligns with strategic priorities, the proposed controls will be limited to business, cultural and other similar uses.

The planning proposal was approved for public exhibition by Council and the Central Sydney Planning Committee on 15 and 11 May 2023 respectively. Following receipt of the Gateway Determination from the Department of Planning and Environment on 21 June, the planning proposal was exhibited from 21 August to 18 September 2023.

Seventeen submissions were received from 16 submitters in response to exhibition. Four submissions supported the planning proposal and 13 raised concerns. Most concerns related to the overshadowing impacts on private open space and Harmony Park. Other concerns were about traffic, office demand and the appearance of the proposed envelope. A summary of submissions and responses is provided at Attachment A.

While the exhibited envelope complied with the heights determined by the Harmony Park Sun Access Plane, the proposed envelope has been amended post-exhibition. The amendments to the envelope avoid overshadowing private open space and further reduce overshadowing to Harmony Park. The revised envelope responds to submissions about overshadowing, and the amendments respond to updated shadow analysis that showed the exhibited envelope partly overshadowing some private open space of a terrace dwelling, south of the site. Other matters such as traffic and office demand are manageable and able to be dealt with at the development application stage.

It is recommended that the planning proposal be approved as amended. If the planning proposal is approved, then a request will be made to Parliamentary Counsel to draft the amendment to the Local Environmental Plan. The amendment would come into effect when published on the NSW Legislation website.

Recommendation

It is resolved that:

- (A) Council note the issues raised in the Summary of Submissions as shown at Attachment A to the subject report;
- (B) Council approve the Planning Proposal – 85-93 Commonwealth Street, Surry Hills (as amended) as shown at Attachment B to the subject report to be made as a local environmental plan under section 3.36 of the Environmental Planning and Assessment Act 1979; and
- (C) authority be delegated to the Chief Executive Officer to make minor variations to the Planning Proposal – 85-93 Commonwealth Street, Surry Hills (as amended) to correct any minor errors prior to finalisation.

Attachments

- Attachment A.** Summary of Submissions
- Attachment B.** Planning Proposal - 85-93 Commonwealth Street, Surry Hills (post-exhibition amendments shown in red)
- Attachment C.** Resolutions of Council and the Central Sydney Planning Committee
- Attachment D.** Gateway Determination

Background

1. This report follows the public exhibition of a planning proposal to amend the Sydney Local Environmental Plan 2012 (LEP) as it applies to the site at 85-93 Commonwealth Street, Surry Hills.

Site

2. On the land currently sits a four-storey brick office building with basement built to the boundary and without setbacks. The existing building's height is approximately RL 40 and its floor space ratio (FSR) is 3.18:1, which is more than the existing Local Environmental Plan's maximum, 3:1. The site area is 571 square metres, and wedge-shaped, being the upper segment of Commonwealth Street, Brisbane Street and Hunt Street intersection.
3. The site is sloped with the building presenting as four storeys at its western frontage to Hunt Street and as three storeys at its eastern frontage to Commonwealth Street. The building has no car parking spaces or crossovers to adjoining streets. The building is not a heritage item nor located within a heritage conservation area. The site's location is shown at Figure 1. Photographs of the existing building are shown at Figures 2 and 3.

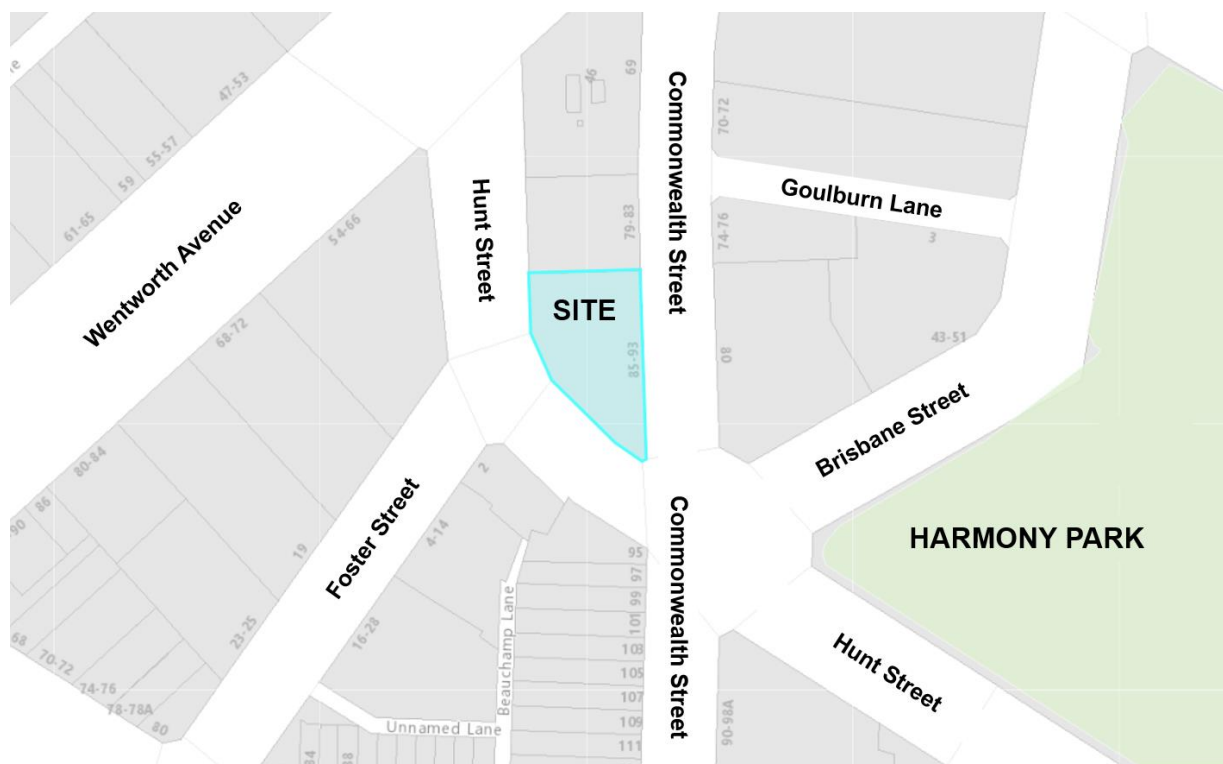


Figure 1. An indicative plan showing the site's location and vicinity



Figure 2. The existing building at 85-93 Commonwealth Street, looking west from Commonwealth Street



Figure 3. The existing building at 85-93 Commonwealth Street, looking north-east from Hunt Street

The planning proposal is for a three-storey addition to an existing four-storey building

4. The planning proposal was prepared in response to a request from SJB Planning on behalf of the landowner, Fink Group, with modifications following assessment and exhibition. It will enable a three-storey addition with setbacks to the existing building provided the use is for business, cultural or other similar uses. More specifically, it will insert new site-specific controls into the Local Environmental Plan to allow:
- a maximum floor space ratio of 4.5:1 across the site, inclusive of the 10 per cent design excellence bonus; and
 - alternative building heights as shown on an Alternative Height of Buildings Map at Figure 4, being:
 - RL 50.5 metres on the site's northern part (which due to the site's slope is between 24.5 and 28.5 metres above the ground),
 - RL 47.2 metres across the site's middle latitude (between 19.2 and 23.2 metres above the ground), and
 - RL 40.0 metres on the site's southern part (between 14 to 16 metres above the ground).

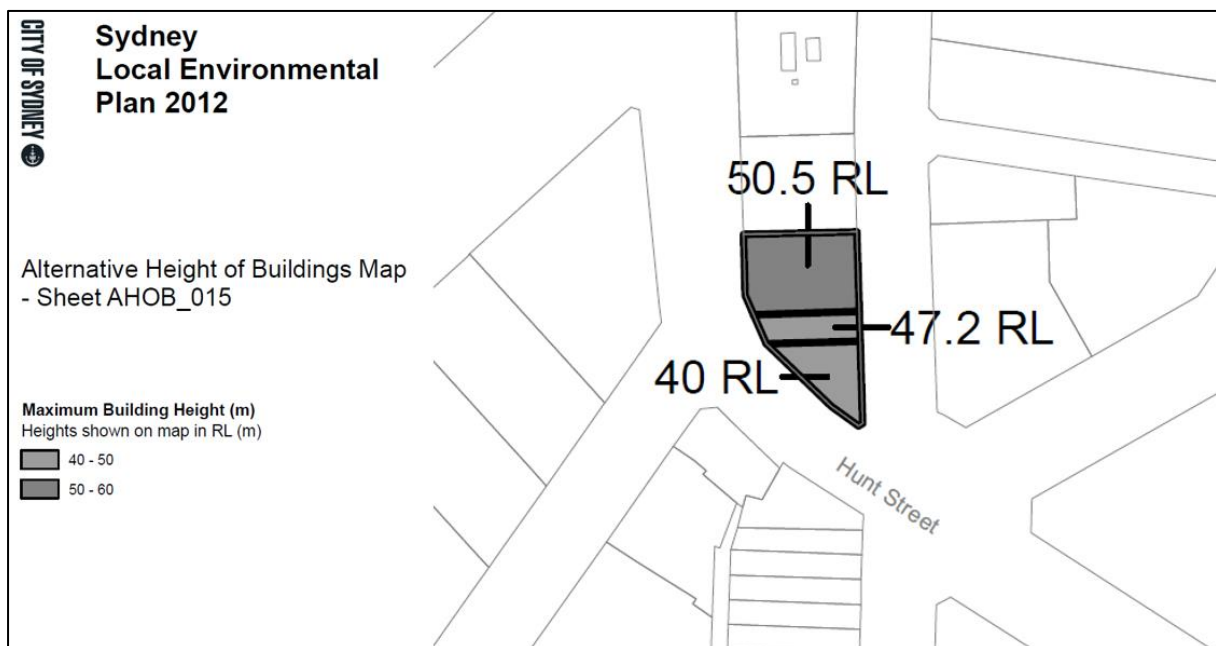


Figure 4. An excerpt of the proposed Alternative Height of Building Map

5. Development in accordance with the site-specific controls above will only be permitted if the consent authority is satisfied that development is for strategic uses such as business, creative and cultural uses, by excluding residential or serviced apartments. The clause will also exclude from the operation of clause 4.6 so that it may not be varied at Development Application stage.
6. The planning proposal was approved for public exhibition by Council and Central Sydney Planning Committee on 15 and 11 May 2023 respectively. Council and the Central Sydney Planning Committee's resolutions are shown at Attachment C.

The proposal has strategic and site-specific merit

7. The proposal aligns with City and State strategies by encouraging business, creative and innovation floor space in Surry Hills, which is part of 'Tech Central' and the City Fringe area. The proposal will give effect to priority P2 of the City's Local Strategic Planning Statement, 'developing innovative and diverse business clusters in City Fringe', as well as priorities E7, to grow 'a stronger and more competitive Harbour CBD,' E11, to increase 'jobs in strategic centres,' and E13, 'supporting growth of targeted industry sectors' of the Greater Cities Commission's Eastern City District Plan.
8. The planning proposal also demonstrates site-specific merit. The envelope has three different, tiered heights (see Figure 4 above) that each respond to the context:
 - the first, lowest step, RL 40 metres at the site's southern portion, retains the building's existing height and ensures that the building's important visual relationship with the intersection is unchanged;
 - the next, middle step, RL 47.2 metres, requires the future additional floor(s) to include a southern setback that prevents overshadowing from being caused to private open space, to any extent more than what current controls allow; and
 - the last, highest step, RL 50.5 aligns with the building adjacent to the north, providing visual consistency along the street walls of Commonwealth Street and Hunt Street.
9. The proposed maximum FSR of 4.5:1, inclusive of design excellence, enables a level of flexibility within the envelope for building articulation and setbacks consistent with the property to the north.
10. The proposed envelope has been amended post-exhibition to reduce the heights and include an additional step in the heights. This will ensure the envelope does not overshadow the private open space of a terrace dwelling to the south, more than what is currently allowed by the Local Environmental Plan.

The Gateway Determination required additional overshadowing assessment

11. On 21 June 2023, the Department of Planning and Environment issued a Gateway Determination for the planning proposal. The Gateway Determination is shown at Attachment E. It authorises Council to exercise its delegation and liaise directly with Parliamentary Counsel to draft and make the new Local Environmental Plan should the proposed controls be approved by Council and the Central Sydney Planning Committee.
12. The Gateway Determination included the following conditions:
 - 'provide a statement addressing consistency with Section 9.1 Ministerial Direction 4.5 Acid Sulfate Soils,'
 - 'provide an explanation of the need for exclusion of clause 4.6 variations,' and
 - 'include shadow analysis demonstrating any additional overshadowing of the private open space of the residential terraces on Commonwealth Street and Harmony Park'.

13. These conditions were satisfied by the insertion of additional information under CEO delegation granted on 18 August 2023. Subsequent correspondence with the Department of Planning and Environment on 30 August 2023 confirmed that these conditions had been satisfied.

Additional overshadowing assessment identified impacts to private open space

14. The City's additional overshadowing assessment is provided in an addendum to the planning proposal and was exhibited with the planning proposal. The addendum provides a detailed assessment of the overshadowing caused by the exhibited envelope. The addendum concluded that on 21 June, the exhibited envelope would cause additional overshadowing to the private open space of a terrace dwelling to the south of the site, between 10.30 and 11.30am; and to the southwestern corner of Harmony Park from 2.15pm.
15. The overshadowing impacts in the addendum were not identified in the pre-exhibition report, or the planning proposal approved by Council in May. The overshadowing analysis supplied by the proponent with their planning proposal incorrectly showed no impact. The City's smaller proposal was therefore assumed to also have no impact. The overshadowing analysis required by the Gateway Determination found the proponent's original analysis was incorrect and that the City's proposal would partly overshadow private and public open space.
16. The overshadowing addendum was exhibited with the planning proposal, which was updated to accurately describe the minor overshadowing and other requirements of the Gateway Determination. Notes stating that the overshadowing analysis was incorrect were added to the exhibited versions of the proponent's urban design and planning proposal reports.

The planning proposal was publicly exhibited, with updated overshadowing information

17. The planning proposal, along with the overshadowing addendum and other exhibition material, was exhibited between 21 August and 18 September 2023, in accordance with the Gateway Determination and the City's Sydney Community Engagement Strategy and Participation Plan 2022.
18. The City sent 3,593 letters to owners and occupants of properties within 75 metres of the site, notifying them of the planning proposal's exhibition. The planning proposal was also advertised on the City's Sydney Your Say website and the NSW Planning Portal. Public authorities were not notified because this was not required by the Gateway Determination.
19. Seventeen submissions were received, including four from the owners of different terraces along Commonwealth Street. Four of the 17 submissions supported the planning proposal, and 13 raised concerns about matters such as overshadowing, office demand and traffic. A detailed summary of and responses to matters raised in submissions is provided at Attachment A. A summary of the concerns raised and City responses is also provided below.

Four submissions supported the planning proposal

20. Supporting submissions said that land in Surry Hills is underused and that more development should be allowed. They also said that the exhibited overshadowing impacts were minimal and an acceptable trade-off to increase floor space. The supporting submissions are noted.

Submissions raised concerns around overshadowing impacts

21. Six submissions raised concerns about the proposed envelope overshadowing the private open space of a terrace dwelling south of the site. Specific points raised related to the adverse impacts on liveability and property values. The exhibited envelope would cause additional overshadowing (compared with a maximised LEP-compliant envelope) to the private open space of the terrace dwelling between 10.30am and 11.30am on June 21.
22. Eleven submissions raised concerns about the overshadowing impacts the exhibited envelope would have on Harmony Park. These concerns focused on the potential reduction in the park's enjoyment and amenity.

The proposed envelope has been amended to avoid certain overshadowing impacts

23. The planning proposal envelope has been amended post-exhibition to avoid causing any additional overshadowing to the private open space of a dwelling to the south of the site, when compared with a maximised LEP-compliant envelope.
24. The heights have been reduced across the middle (RL 51.5 to RL 47.2) and northern (RL 51.5 to RL 50.5) parts of the envelope. This creates a southern setback that prevents the envelope from overshadowing private open space more than what is currently allowed by the Local Environmental Plan.
25. The post exhibition amendments to the building heights, have also led to a review of the floor space ratio for the site. This is to ensure that the floor space can be adequately accommodated within the proposed envelope. The maximum FSR of 4.5:1 can be maintained, however, for clarity it has been specified in the updated planning proposal that the maximum includes the potential award of any design excellence bonus floor space. Further, the controls will be clarified to remove the opportunity for a height bonus for design excellence due to the overshadowing impacts.
26. Harmony Park's solar access requirements were established as part of the Central Sydney planning proposal with updated sun access plane controls (SAPs). The SAPs prohibit development from overshadowing Harmony Park, year-round, between 10am and 2pm. Both the exhibited and amended envelopes comply with Harmony Park's SAPs.
27. The amended envelope will overshadow the southwestern corner of Harmony Park from approximately 2.30pm on 21 June. At 3pm, the planning proposal envelope will overshadow approximately 44 square metres of the park's vegetated area. This impact complies with applicable SAPs, noting the small area affected is mostly low-use hardstand (see Figure 5). As the heights comply with the SAP for Harmony Park and the overshadowing is acceptable, no further change is proposed to the planning proposal in response to this issue.



Figure 5. The southwestern corner of Harmony Park, looking north from Hunt Street

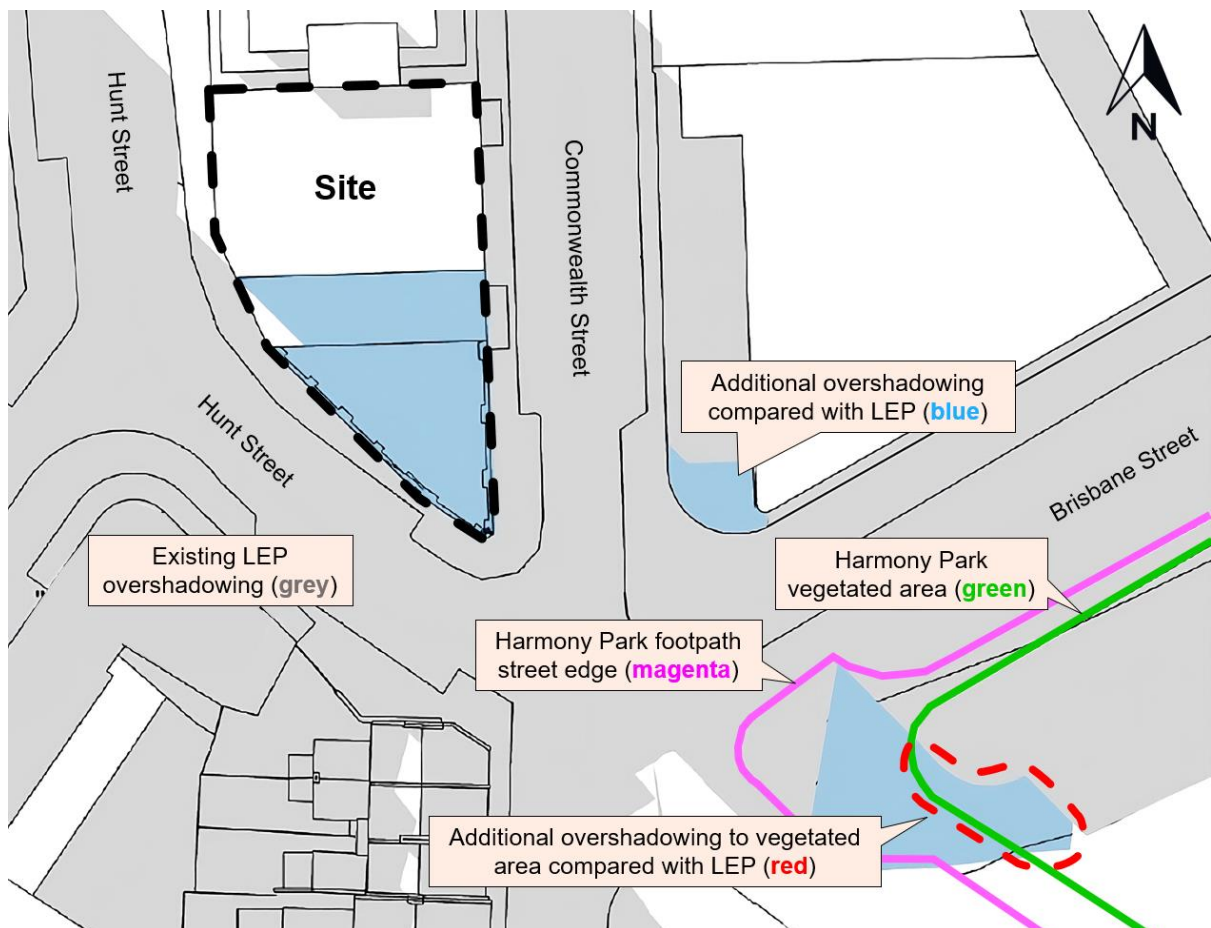


Figure 6. An indicative plan showing the envelope's additional overshadowing impact on Harmony Park at 3pm on June 21

Other submissions raised concerns about inadequate office demand to traffic, view loss and insufficient merit

28. Other submissions received include:

- six saying that there is not enough demand for office floor space, or that the site would be better used for something other than offices;
- three concerned that owners or residents of affected terrace dwellings may not have received exhibition material;
- one concerned about the potential for the planning proposal to add to congestion and increased pedestrian activity in the area;
- one noting that recent development in Surry Hills has caused view loss for apartments in the area and concern the proposed envelope may worsen views, particularly those of a warehouse building in the area;
- one concerned about the impacts of the exhibited envelope's inconsistency with the surrounding heritage character; and
- one saying that the proposal did not justify the merit required to amend the Local Environmental Plan.

These concerns are considered manageable, or are able to be dealt with at the development application stage

29. This part of Surry Hills, on the edge of 'Tech Central', is identified for growth in business, innovation and creative floor space across City and State level strategic plans, such as the City's Local Strategic Planning Statement and the Greater Cities Commission's Eastern City District Plan. Limiting the uplift to uses other than residential and serviced apartments incentivise development that aligns with this objective. There is also strong demand for creative office space in Surry Hills. This is partly owing to its specialisation in creative and entertainment industries, which prefer alternative office spaces like what is proposed.
30. The City received submissions from owners and residents of terrace dwellings along Commonwealth Street. Their concerns about overshadowing to their private open space has been addressed by amending the proposed envelope.
31. The planning proposal is in a highly accessible location, close to Museum and Central Stations and many bus routes. The existing site currently has no carparking spaces or crossovers and the planning proposal does not change this arrangement. Detailed traffic impact assessment will be required at the development application stage.
32. The submission regarding view loss raised general concerns about the cumulative loss of views from the apartment building at 133 Goulburn Street due to recent development. No specific view was identified however a particular concern was that residents had recently had views of a nearby warehouse building. The potential loss of such views is not generally a consideration at the planning proposal stage.
33. The building is not a heritage item nor located within a heritage conservation area. The proposed envelope is sympathetic with surrounding built form and retains the existing building's relationship to the intersection.

34. The planning proposal has strategic and site-specific merit. Further information about the planning proposal's strategic and site-specific merit is contained within the planning proposal.

Key Implications

Strategic Alignment

35. The Greater Cities Commission's Greater Sydney Region Plan and Eastern City District Plan are used to shape strategic planning and infrastructure in metropolitan Sydney and align planning from the broadest regional area down to the local area. The City's Local Strategic Planning Statement sets the land use planning strategy for the City which is required to align with the Region and District Plans. The City's planning controls are then required to give effect to the strategic plans.
36. The Region Plan, District Plan and Local Strategic Planning Statement adopt planning priorities of similar themes, being infrastructure, liveability, productivity, sustainability and governance. How this proposal gives effect to these priorities is discussed in detail in the planning proposal and summarised below.
37. The proposal supports the growth of employment floorspace in a strategically identified area, the Eastern Creative District, part of City Fringe. Facilitating the development of employment (i.e. non-residential) floorspace in this area gives effect to productivity strategic objectives, particularly:
- The City's Local Strategic Planning Statement, priority P2, 'developing innovative and diverse business clusters in City Fringe,' which includes actions such as
 - P2.1: 'deliver diverse, suitable and well-designed spaces and places to support City Fringe's contribution to the city's and the District's economic diversity, affordability and resilience...' and
 - P2.6: 'strengthen the economic and cultural role of the Eastern Creative Precinct by: safeguarding the capacity for a range of diverse and well-designed business, retail and office spaces...'
 - The Greater City Commission's Eastern City District Plan, namely:
 - priority E7, 'growing stronger and more competitive Harbour CBD,' which includes Surry Hills;
 - priority E11, 'growing investment, business opportunities and jobs in strategic centres'; and
 - priority E13, 'supporting growth of targeted industry sectors'.

Relevant Legislation

38. Environmental Planning and Assessment Act 1979.
39. Environmental Planning and Assessment Regulation 2021.

Critical Dates / Time Frames

40. The Gateway Determination requires the planning proposal be made by 21 January 2024.
41. The amendment to the Sydney Local Environmental Plan 2012 will come into effect when published on the NSW Legislation website.

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