

### Item 3.

#### Development Application: 9-13 Hay Street, Haymarket - D/2023/702

File No.: D/2023/702

#### Summary

**Date of Submission:** 4 August 2023, additional information received 17 October 2023

**Applicant:** Planning Lab

**Designer:** Loop Creative

**Owner:** Place Management NSW

**Planning Consultant:** Planning Lab

**Heritage Consultant:** Weir Phillips

**Cost of Works:** \$9,793,129

**Zoning:** Permissible land uses are prescribed under Chapter 3 Darling Harbour of State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021

**Proposal Summary:** The application seeks consent for new market stalls including food and drink premises (food markets) within Paddy's Markets with the use of approximately 2,910sqm of the 11,960sqm ground floor market area. The new stalls are to integrate with and be part of the existing markets.

The proposed trading hours are 7.30am to 12.00 (midnight) Monday to Saturday, and 7.30am to 10.00pm Sundays.

The proposal includes the construction of new market stalls, food and drink stalls, and associated kitchens, cool rooms, and upgraded mechanical services.

The application is referred to the Local Planning Panel for consideration having received more than 25 submissions.

The application was notified for 21 days between 8 August 2023 and 30 August 2023. A total of 1,702 properties were notified and 88 submissions were received. Six submissions were in support of the proposal and 82

submissions raised objections to the proposal. Issues raised in submissions include:

- changing the nature of the existing markets;
- heritage impacts;
- hours of operation;
- noise;
- economic impacts;
- stall holder's rights; and
- permissibility.

The issues raised have been considered and addressed within the report. Conditions of consent are recommended to manage operational aspects of the proposal as appropriate.

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

**Development Controls:**

- (i) Heritage Act 1977 (NSW)
- (ii) SEPP (Planning Systems) 2021
- (iii) SEPP (Precincts - Eastern Harbour City) 2021
- (iv) SEPP (Biodiversity and Conservation) 2021
- (v) Sydney Development Control Plan 2012

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings

## **Recommendation**

It is resolved that consent be granted to Development Application Number D/2023/702 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 proposal is permissible with consent under the provisions of State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021.
- (B) The proposal will not detrimentally impact on the heritage significance of the site.
- (C) The development accords with objectives of relevant planning controls.

## Background

### The Site and Surrounding Development

1. The site is identified as Lots 1-3 in DP 865241 and is located at 9-13 Hay Street, Haymarket. The site is located within the city block within Hay Street, Thomas Street, Ultimo Road and Quay Street. The site has an area of 1.463ha.
2. The site contains a number of buildings and uses, including the ground level market building (Paddy's Markets), the multi storey Market City Shopping Centre above with two levels of car parking, and a residential apartment high-rise tower building above. This application relates to the ground level market building.
3. The markets occupy the ground level of the building with pedestrian access points directly from Hay Street, Thomas Street, Ultimo Road and Quay Street. Vehicle access is via Quay Street with separate vehicular access points to a commercial car park, loading dock area, and apartment building parking.
4. The site is located within the Chinatown precinct within the Sydney city area and is located to the south of the light rail along Hay Street with connections to Sussex Street, Dixon Street, Harbour Street and Tumbalong Boulevard.
5. The ground floor markets buildings 1 and 2 are included on the Section 170 register of the NSW heritage Act 1977, being an item of environmental heritage which is vested in or owned by a NSW government authority or agency.
6. The site is located within the Darling Harbour area under State Environmental Planning Policy (Precincts - Eastern Harbour City). The site is located adjacent (but not within) the Haymarket / Chinatown Special Character Area under the Sydney Local Environmental Plan 2012.
7. The site is located opposite the following heritage items:
  - (a) local heritage item 'Former market Stores including interior' at 35-39 Ultimo Road (I867);
  - (b) local heritage item 'Former Burlington hotel including interior' at 431-439 Sussex Street (I865);
  - (c) local heritage item 'Covent Garden hotel including interior' at 102-108 Hay Street (I853); and
  - (d) local heritage item 'Bank of China including interior' at 681 George Street (I835).
8. A site visit was carried out on 13 June 2023. Photos of the site and surrounds are provided below.





Figure 1: Aerial view of site and surrounds

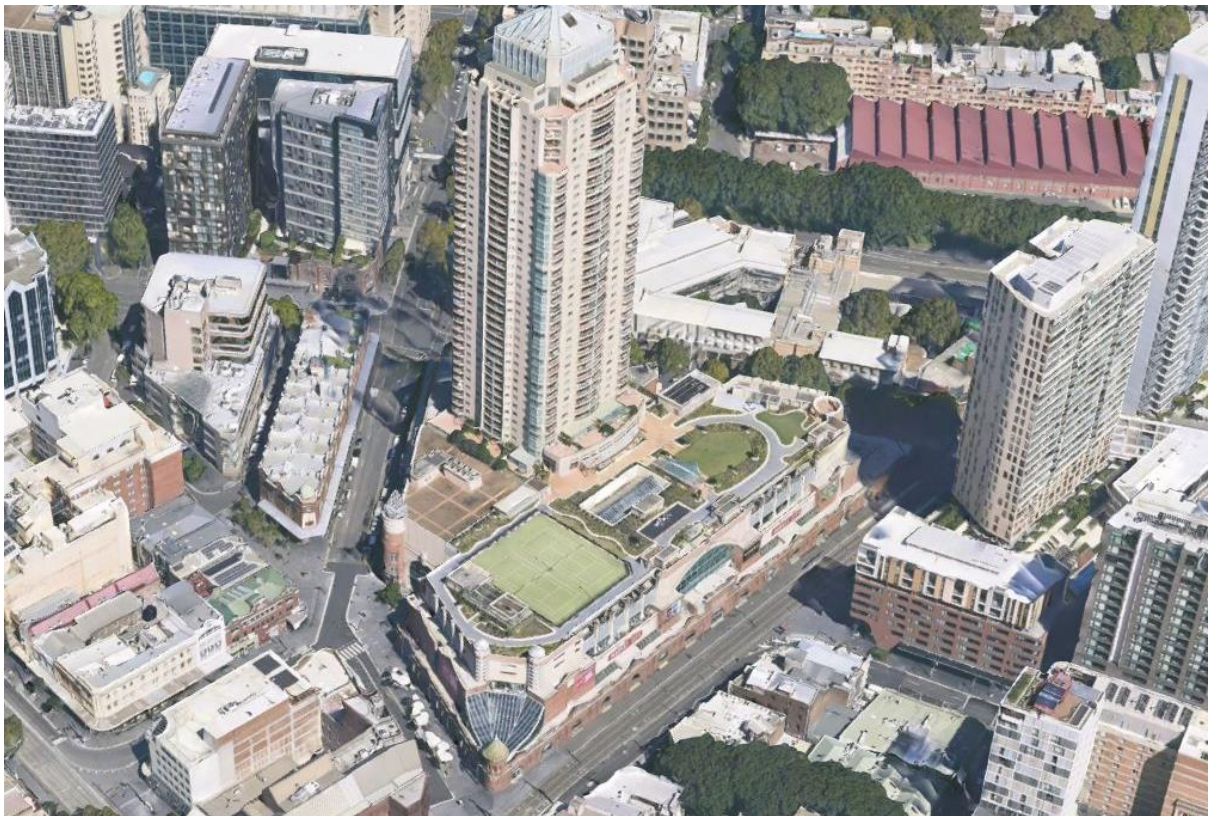


Figure 2: Aerial view of site and surrounds





Figure 3: Site viewed from corner of Hay Street and Thomas Street



Figure 4: Site viewed from Hay Street looking west





Figure 5: Site viewed from corner of Hay Street and Quay Street



Figure 6: Site viewed from Quay Street looking north





Figure 7: Site viewed from Ultimo Road looking north

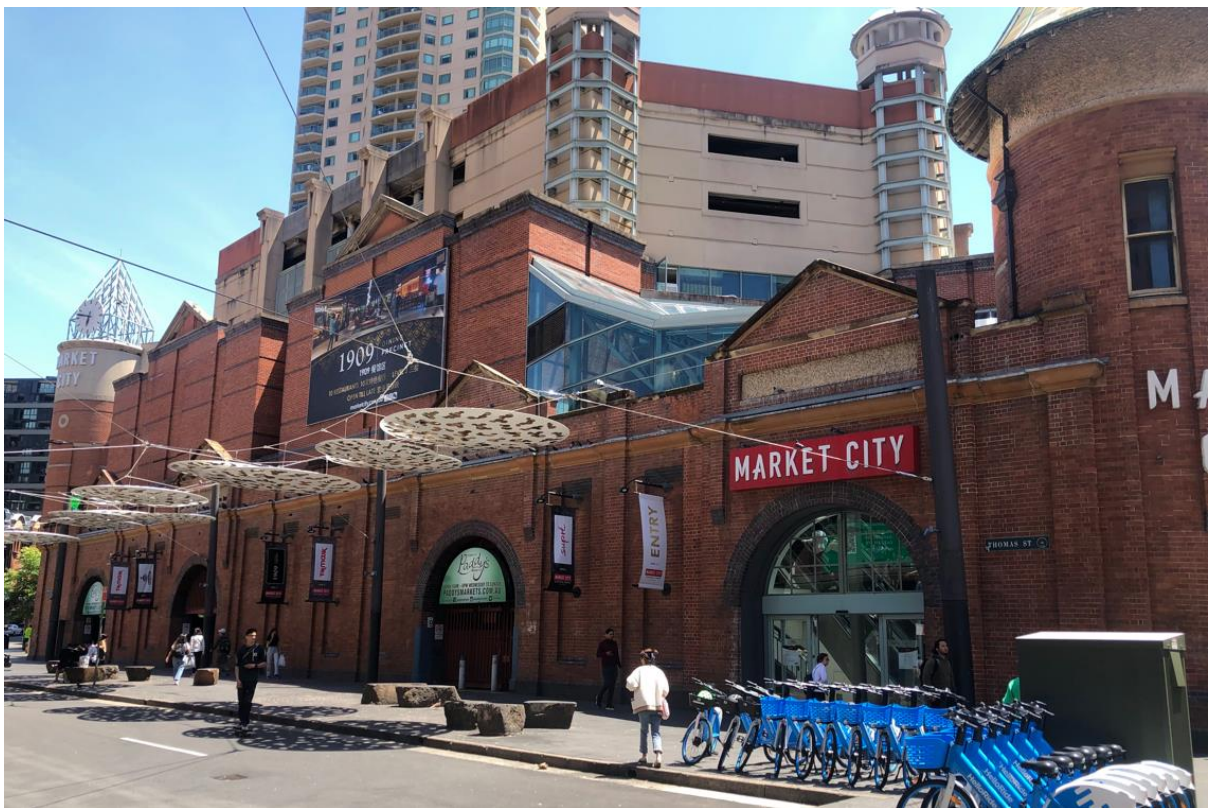


Figure 8: Site viewed from Thomas Street looking south



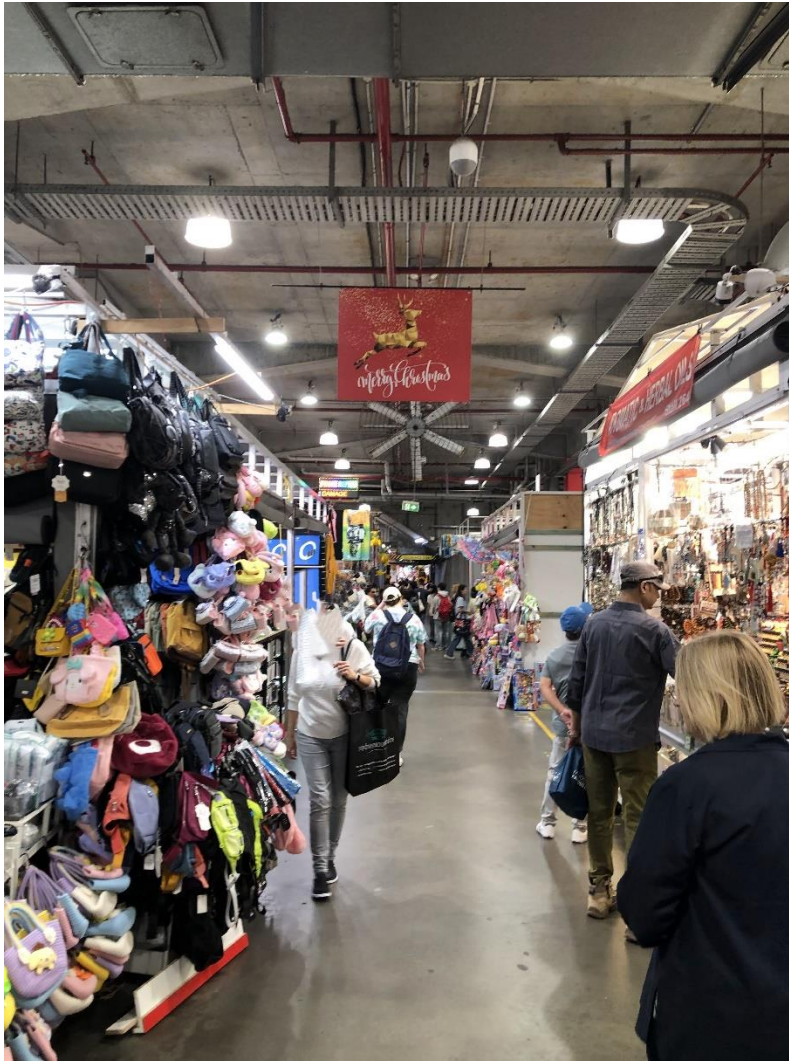


Figure 9: Internal view of market area

## History Relevant to the Development Application

### Development Applications

9. Permits were issued by the former Darling Harbour Authority for the Market City redevelopment of the site in the early 1990s and the development was completed in 1997.
10. The following applications are relevant to the current proposal:
  - **D/2023/216** – Development consent was granted on 23 June 2023 for Alterations to Market City facade, repairs and upgrade of external lighting.

### Amendments

11. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 22 September 2023. Additional information was requested in relation to waste management, food fitout details, mechanical ventilation and acoustics.

12. The applicant responded to the request on 17 October 2023 and 10 November 2023, and submitted additional information for each item mentioned above.

### **Proposed Development**

13. The application seeks consent for additional market stalls including food and drink premises (food markets) within Paddy's Markets in areas currently occupied by various market stalls.
14. The proposal involves the following:
  - (a) Use of approximately 2,910sqm of area within the existing markets for the establishment of new food market stalls. The applicant has stated that these works will integrate with the existing markets.
  - (b) Proposed trading hours: 7:30am to 12.00 (midnight) Monday to Saturday, and 7.30am to 10.00pm Sundays. Three doors to Hay Street on the north eastern side of this elevation are to be closed from 6pm to control noise emissions.
  - (c) Construction of kitchen, storage, cool rooms and freezer rooms.
  - (d) Construction of open market stalls, hawker stalls, beverage stalls, urban farm, fixed and loose seating area.
  - (e) New mechanical services including new air conditioning, mechanical ventilation, kitchen exhausts.
  - (f) Upgrading of services including electricals, water, lighting, fire services, amenities.
15. Plans and elevations of the proposed development are provided below.



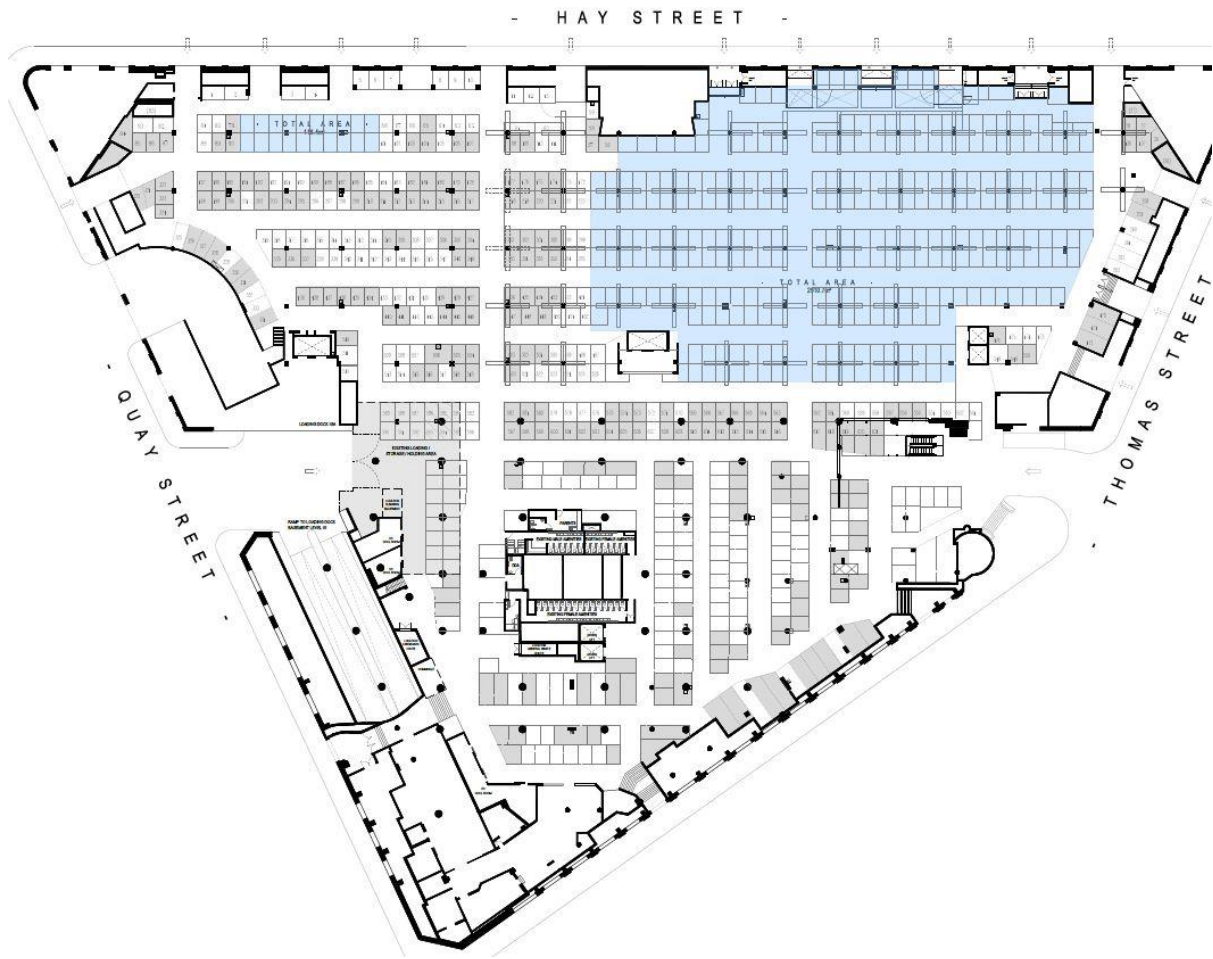


Figure 10: Ground floor area of proposed stalls highlighted light blue

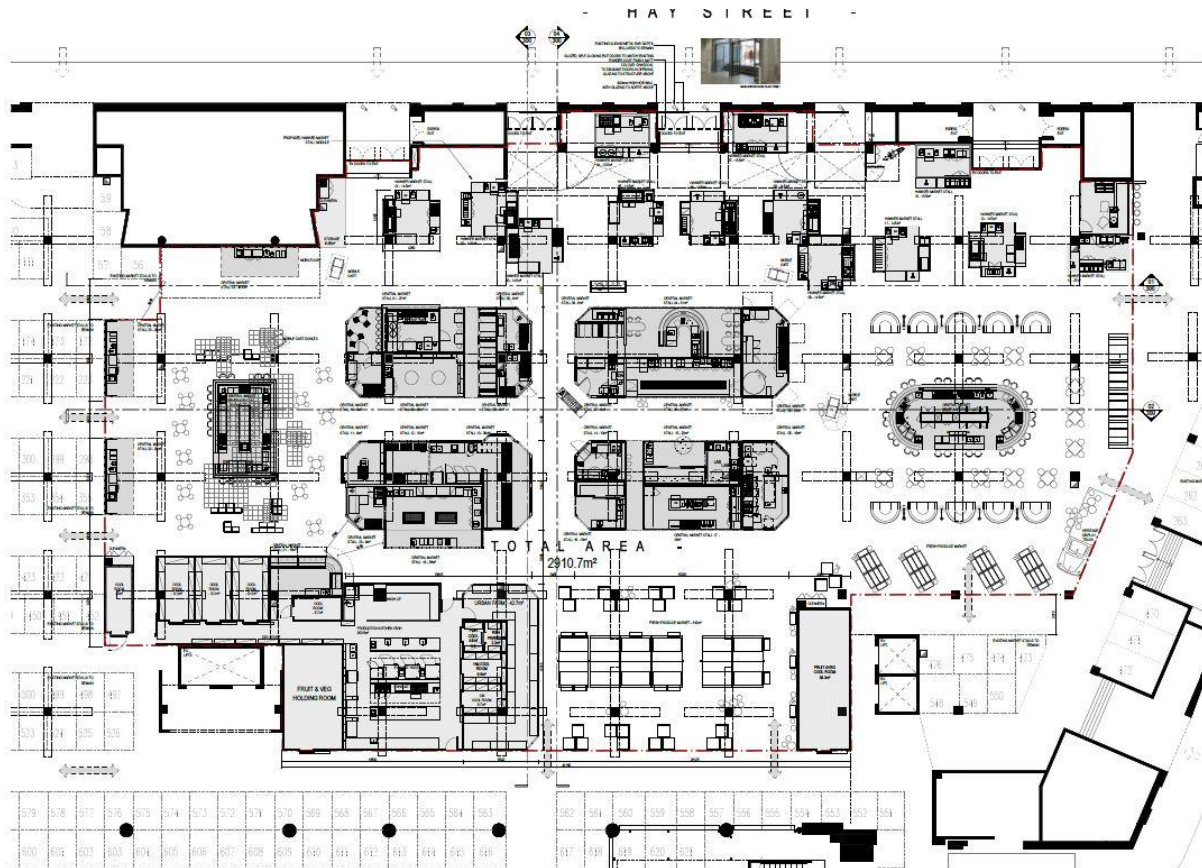


Figure 11: Ground floor plan, detail of new market stalls

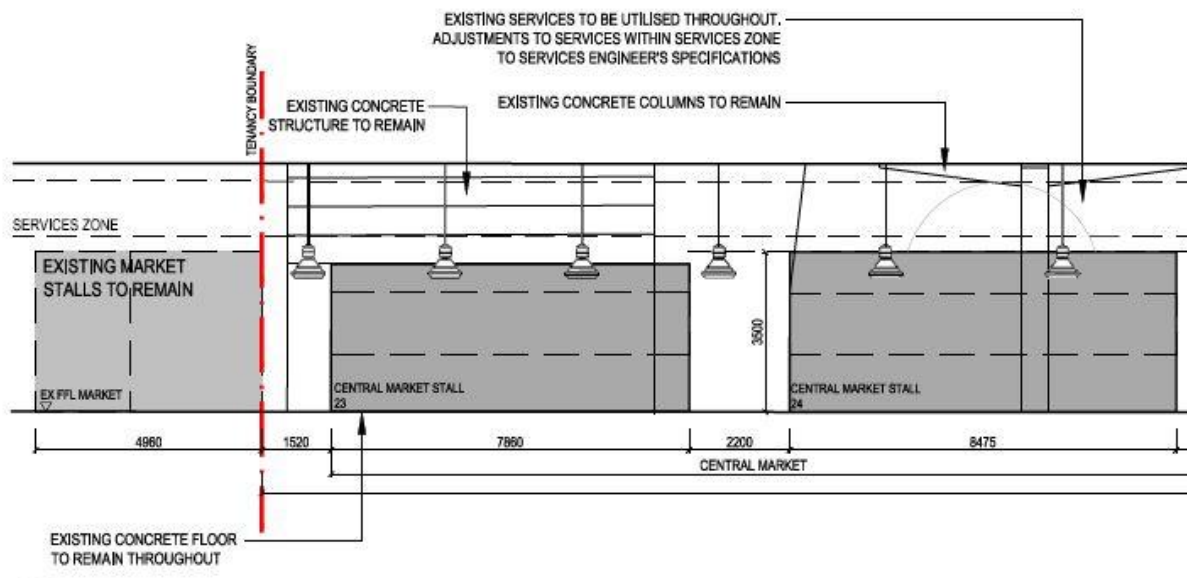


Figure 12: Section plan of market stalls





Figure 13: Artists' impression of proposal.

### Assessment

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

### Crown Development Applications

17. This application is not made as Crown development.

### Heritage Act 1977

18. The ground floor market buildings 1 and 2 are included on the Section 170 register of the NSW Heritage Act 1977 as items of environmental significance which are vested in or owned by a NSW government authority or agency.
19. The site is not listed on the State Heritage Register (SHR).
20. The applicant has submitted a Heritage Impact Statement that assesses the proposal against the heritage significance of the site. See further discussion below under the heading 'Issues'.
21. The application was referred to Heritage NSW for comment on 1 September 2023 for comment. No comments have been received in response to date. As the site is not listed on the SHR, the application is nonetheless able to be determined.

## **State Environmental Planning Policies**

### **State Environmental Planning Policy (Planning Systems) 2021**

22. The proposed development has a capital investment of less than \$10 million on land identified as being within the Darling Harbour Site. Accordingly, the proposal is not classified as State Significant Development.
23. The proposed development is consistent with the aims and objectives of the SEPP.

### **State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021 – Chapter 3 Darling Harbour**

24. The site is subject to the provisions of Chapter 3 of the above SEPP which provides a broad framework to encourage the development of a range of tourist, residential, educational, recreational, entertainment, cultural and commercial facilities within Darling Harbour.
25. The site is within the 'Development Area' of Darling Harbour. The proposal is generally consistent with the objectives of Chapter 3 of the SEPP and as such is permissible with consent (referred to as a 'permit' within the SEPP) being for commercial facilities.

### **Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 6 Water catchments**

26. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 6 of the above SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in Division 2. The proposal is considered to address these items subject to upgrading its water infrastructure in accordance with any Sydney Water requirements.
27. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. The site is also located within in the Foreshores Waterways Area. In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must be satisfied as to the matters in s6.28(2). As the proposal is contained within an existing site located some distance from the harbour it is considered that the proposal will not impact on the functioning of the harbour, is compatible with use of adjoining land, will not interfere with public access to the harbour or result in traffic congestion around the harbour, and will not impact on the unique qualities of the visual qualities of the Foreshores and Waterways Area.

## **Development Control Plans**

### **Sydney Development Control Plan 2012**

28. 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**

29. The site is not located within a locality area.



## Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The proposal maintains the existing external building configuration. Two new and one existing glass doors within existing openings to Hay Street are to be closed from 6pm to limit noise emissions.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	The provisions for prescribed shopping centres do not apply to the subject application being lodged prior to 1 October 2023, and being below the capital investment value threshold.  Section J BCA energy efficiency measures apply.
3.7 Water and Flood Management	Yes	The site is identified as being affected by flooding. The proposed works will not increase the flood risk to the subject property, adjoining properties or the public domain.
3.9 Heritage	Yes	The ground floor market buildings 1 and 2 facades area included on the Section 170 register of the Heritage Act 1977 being items of environmental significance.  The applicant has submitted a Heritage Impact Statement that assesses the proposal against the heritage significance of the site. See further discussion below under the heading 'Issues'.
3.10 Significant Architectural Building Types	N/A	The site is not listed as a heritage item or as being within a HCA under SLEP 2012.
3.11 Transport and Parking	Yes	Existing parking and loading facilities within the building are being retained.

Provision	Compliance	Comment
3.12 Accessible Design	Yes	A BCA report has been submitted demonstrating the proposal is capable of compliance.
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development will provide further activation of the Chinatown area.</p> <p>As part of the rearrangement of the market areas and increased late night trading, it is recommended that an updated security plan be prepared prior to the operation of the proposal.</p>
3.14 Waste	Yes	<p>Waste will be stored in a centralised enclosed area and collected from existing loading areas.</p> <p>A new return and earn facility is proposed to promote recycling.</p>
3.15 Late Night Trading Management	Yes	<p>The premises is located in a Late Night Management Area and the use is defined as a category B 'low impact' premises.</p> <p>The proposed indoor trading hours are 7.30am to 12.00 midnight Monday to Saturday, and 7.30am to 10.00pm Sundays.</p> <p>The proposed trading hours are within the permitted base indoor trading hours for the Late Night Management Area.</p> <p>The acoustic impacts of the proposal have been considered by the City's Health Unit and subject to the implementation of the recommendations included in the submitted acoustic report, the proposal is supported.</p>
3.16 Signage and Advertising	N/A	The application does not include signs or advertising.

## Discussion

### Heritage

30. The ground floor market buildings 1 and 2 are included on the Section 170 register of the NSW Heritage Act 1977 as items of environmental significance which is vested in or owned by a NSW government authority or agency.
31. The application includes the submission of a Heritage Impact Statement (HIS) that outlines the history of the site and Paddy's Markets and assesses the impact of the proposal on the heritage significance. Some of the pertinent details and historical market uses are outlined in the submitted HIS prepared by Weir Phillips Heritage and Planning as follows:
  - (a) The origins of a Paddy's Markets in the Haymarket area are from circa 1830-1840 with markets operating at George Street and later Campbell Street as open air markets.
  - (b) Market Buildings No. 1 and 2 were constructed between 1907-1910. Market building No. 1 was known as the vegetable market. Market Building No. 2 was a market primarily focused on the sale of root vegetables. Fish marketing was introduced shortly after its opening in 1910.
  - (c) Between 1938 and 1975 the Market Buildings No. 1 and 2 were left empty and Paddy's Markets operated out of Market Building No. 6. As part of the construction of the Darling Harbour exhibition centre, Market Building No. 6 was demolished circa 1975 and the markets were relocated to Market Buildings No. 1 and 2.
  - (d) Paddy's Markets were temporarily relocated to the Darling Harbour goods yards between 1983 and 1985 and to the Eveleigh Railway Yards between 1988 and 1994 during the redevelopment of Darling Harbour and the subject site.
  - (e) The exterior building facades of Market Buildings No. 1 and 2 were preserved as part of the Market City and residential tower redevelopment which took place between 1988-1997. The market use of the site recommenced as part of the Market City redevelopment.
  - (f) The submitted HIS notes that the ground level of the building has been extensively reconfigured and that no evidence of the early layouts survives.
32. The submitted HIS includes a statement of significance sourced from the Conservation Management Plan for the site, reproduced in part:

Market City (Paddy's Market) Market Buildings 1 & 2 is of State heritage significance for its historic, aesthetic, social, representative and rarity values. The site and market buildings are significant for their contribution to the wider group of Sydney Market buildings and the Haymarket Conservation Area, both listed in the National Estate.

Internal view lines and the open space character of the ground floor area is comparative with these other market buildings of the same era and assist in an understanding of the significance of the buildings history and ongoing use as a market building.



33. The proposed new market stalls retain the character of the markets in that they are individual stalls, spaced to maintain sightlines through the markets and maintain the open nature of the market layout, noting the extensive internal reconstruction and reconfiguration works which have taken place to date within the market buildings.
34. Council's Heritage Unit has requested that any required mechanical plant and / or sound mitigation measures be shown on plans and recommends external signage for the building be rationalised. Plans have been updated to include two new glass doors located behind the existing building openings to Hay Street, similar to other existing doors. Mechanical plant is to be integrated within existing building systems. The current proposal does not include signage. The proposal does not include any other works to the market building facades.
35. The application is considered to retain the heritage significance of the site including the ongoing market use which contributes to upkeep of the building.

### **Trading Hours**

36. The premises is located in a Late Night Management Area and the use is defined as a category B 'low impact' premises.
37. The proposed indoor trading hours are 7.30am to 12.00 midnight Monday to Saturday, and 7.30am to 10.00pm Sundays.
38. The proposed trading hours are within the permitted base indoor trading hours for the Late Night Management Area being 6.00am to midnight.
39. The acoustic impacts of the proposal have been considered by the City's Health Unit who have advised that subject to the implementation of the recommendations included in the revised submitted acoustic report, and the recommended conditions, the proposal will not result in unacceptable noise impacts. As noted above, this includes three glass doors to Hay Street being closed from 6.00pm.

### **Consultation**

#### **Internal Referrals**

40. The application was discussed with Council's:
  - (a) Building Services Unit
  - (b) Environmental Health Unit
  - (c) Licensed Premises Unit
  - (d) Heritage and Urban Design Unit
  - (e) Waste Management Unit
41. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

## External Referrals

### Heritage NSW

42. The application was referred to Heritage NSW for comment on 1 September 2023. No comments have been received to date.

## Advertising and Notification

43. In accordance with the City of Sydney Community Participation Plan, the proposed development was notified for a period of 21 days between 8 August 2023 and 30 August 2023. A total of 1,702 properties were notified, and 88 submissions were received. Six submissions were in support of the proposal and 82 submissions objected to the proposal.

44. The submissions raised the following issues:

(a) **Issue:** Changing nature of current market

Concerns have been expressed that the proposal would change the nature of the existing bric-a-brac and fresh food markets and would destroy the character of the existing markets.

**Response:** The proposal retains the market use of the site with the proposed market stalls to be integrated with the current market use. Bric-a-brac and fresh food components of the markets will remain, albeit in a different location and configuration as has occurred throughout the history of the markets.

(b) **Issue:** Heritage

Concerns have been expressed that the proposal would impact on the cultural heritage of the existing markets.

**Response:** The heritage significance of the building and its use is discussed above. The proposal will retain the heritage significance of the site.

(c) **Issue:** Hours of operation

Existing market holders have objected to an increase in operating hours, not wishing to extend their own trading hours.

**Response:** The trading hours recommended for approval would not compel all stallholders to trade within the maximum specified hours. The arrangements for trading hours within the permitted maximum specified trading hours would be a matter for the markets to determine.

(d) **Issue:** Noise impacts

Concerns have been expressed that the proposal would result in noise disturbances to nearby residents.

**Response:** The application has included an acoustic assessment of the proposal, which Council officers have requested to be updated during the assessment process. The updated details have demonstrated that the proposal will not have unreasonable impacts to nearby residents.

(e) **Issue:** Economic Impacts

Concerns have been expressed that additional proposed food stalls will impact on the viability of other food and drink premises in the surrounding area.

**Response:** Owners' consent has been provided for the proposal on the basis of the proposal being differentiated from the existing food court and restaurants located above and within Market City on the same property (although not required under any planning controls). No evidence has been provided to substantiate that the proposal would result in adverse economic impacts to the locality.

(f) **Issue:** Existing stall holders rights

Existing market holders have objected to the proposal as it results in a rearrangement of existing stalls and allegedly impacts on their tenancy rights. They have noted that separate court proceedings are underway between the stallholders and Sydney Markets and that the DA determination should not proceed until that matter is finalised.

**Response:** The application includes owners' consent for the lodgement of the application. The legal relationship between the existing stallholders and the market operator is not a matter for planning consideration within the assessment of the development application. There has not been any notice received restraining the consideration and determination of the subject application.

(g) **Issue:** Operational aspects

Concerns have been expressed in relation to operational aspects of the proposal including food uses attracting rodents, the proposed waste management facilities and concerns in relation to the service of alcohol.

**Response:** Operational aspects of the proposal have been assessed by Council's internal units with advice given in relation to food use, waste management and the service of alcohol. The proposal is considered to be satisfactory in terms of these aspects and appropriate conditions of consent have been recommended for ongoing management.

(h) **Issue:** Nature of proposal

Concerns have been expressed that the proposal includes a subdivision of the ground floor market space to create a new separate marketplace.

**Response:** The proposal does not include any subdivision or physical separation within the markets.



(i) **Issue:** Permissibility

A concern has been expressed that elements of the proposal would not be permissible under the provisions of the SEPP (Precincts - Eastern Harbour City) 2021.

**Response:** The proposed markets are a permissible use under the SEPP (Precincts - Eastern Harbour City) 2021, being commercial facilities. The market use incorporates ancillary uses which support the overarching market use and are not divisible from the market use.

## Financial Contributions

### Levy under Section 7.12 of the Environmental Planning and Assessment Act 1979

44. The site is not located within the Section 7.12 development contribution mapped area.

### Contribution under Section 7.11 of the EP&A Act 1979

45. The site is not located within the Section 7.11 development contribution mapped area.

### Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

46. The site is not located within the affordable housing program mapped area.

## Relevant Legislation

47. Environmental Planning and Assessment Act 1979.

48. Heritage Act 1977.

## Conclusion

49. The application seeks consent for new market stalls including food and drink premises (food markets) within the existing Paddy's Markets. The proposed trading hours are 7.30am to 12.00 (midnight) Monday to Saturday and 7.30am to 10.00pm Sundays.

50. The application is referred to the Local Planning Panel for consideration having received more than 25 submissions.

51. The proposal has been assessed against the relevant planning controls including consideration of the heritage significance of the site. The proposal complies with the objectives of the relevant planning controls.

52. Issues raised in submissions have been considered as part of the assessment and conditions of consent have been recommended to manage operational aspects of the proposal as appropriate.

53. The application is recommended for approval subject to the recommended conditions in Attachment A.

**ANDREW THOMAS**

Executive Manager Planning and Development

Shannon Rickersey, Senior Planner