

Post Exhibition - Planning Proposal - 232-240 Elizabeth Street, Surry Hills - Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendment

File No: X094617

Summary

Lower Surry Hills is part of the Eastern Creative District, City Fringe and 'Tech Central'. Its unique and authentic character of former warehouse buildings, and its high amenity, accessibility and transport connections, attract major creative firms and their workers at more affordable rents. This proposal will help to grow the City's creative industries and strengthen their competitiveness. Supporting development and investment in this area, through increasing the amount of employment floor space, is a key priority across City and State strategies.

This report recommends approving without substantive amendment the planning proposal recently exhibited for 232-240 Elizabeth Street, Surry Hills. The planning proposal seeks to amend the building height and floor space ratio controls for the site. These changes will support the delivery of a 10-storey commercial development with office and retail space, providing contemporary workspace while reinforcing the area's unique character and matching the context of neighbouring buildings and land uses in Lower Surry Hills. In addition, the redevelopment of the site will facilitate the delivery of a new pedestrian through-site link connecting Foster Lane and Reservoir Street, increasing pedestrian permeability and opportunities for ground-floor activation.

The planning proposal for 232-240 Elizabeth Street and a draft development control plan were approved for public exhibition by the Central Sydney Planning Committee and Council on 28 March and 8 April 2024 respectively. Council also noted the preparation of a draft planning agreement which was to be exhibited concurrently. Following receipt of the gateway determination from the Department of Planning, Housing and Infrastructure on 14 June 2024, the planning proposal was exhibited from 5 September to 3 October 2024.

This report details the outcomes of the exhibition of the planning proposal, draft development control plan and voluntary planning agreement for the site. 24 submissions were received during the exhibition period. Ten submissions were supportive, 9 submissions were opposed, and five were neutral including two from government agencies. Key concerns for those opposing the proposal were related to the overshadowing of neighbouring residential buildings and the impact to the Reservoir Street streetscape.

A summary of submissions and the City's response is attached, and key issues are also discussed in this report. No material changes are recommended to the planning proposal as a result of the submissions received during the public exhibition. Minor amendments have been made to the planning proposal and draft development control plan to improve formatting and update the project timeline.

This report recommends approval of the planning proposal and draft development control plan, without substantive change following public exhibition, and notes the City will enter into the planning agreement.

Recommendation

It is resolved that:

- (A) Council note the matters raised in response to the public exhibition of Planning Proposal - 232-240 Elizabeth Street, Surry Hills, the draft Sydney Development Control Plan 2012 - 232-240 Elizabeth Street, Surry Hills, and draft Voluntary Planning Agreement, as shown in Attachment D to the subject report;
- (B) Council approve Planning Proposal - 232-240 Elizabeth Street, Surry Hills, as shown at Attachment A to the subject report, and request the relevant local plan making authority make the planning proposal as a Local Environmental Plan under section 3.36 of the Environmental Planning and Assessment Act 1979;
- (C) Council approve the draft Sydney Development Control Plan 2012 - 232-240 Elizabeth Street, Surry Hills, as shown at Attachment B to the subject report, noting the approved Development Control Plan will come into effect on the date of publication of the subject Local Environmental Plan;
- (D) authority be delegated to the Chief Executive Officer to make any minor amendments to the Planning Proposal - 232-240 Elizabeth Street, Surry Hills and the draft Sydney Development Control Plan 2012 - 232-240 Elizabeth Street, Surry Hills, to correct any minor errors or omissions prior to finalisation; and
- (E) Council note the draft Voluntary Planning Agreement, as shown at Attachment C to the subject report, will be executed under delegation of Council in accordance with the Environmental Planning and Assessment Act 1979.

Attachments

- Attachment A.** Planning Proposal - 232-240 Elizabeth Street, Surry Hills and appendices
- Attachment B.** Draft Sydney Development Control Plan 2012 - 232-240 Elizabeth Street, Surry Hills
- Attachment C.** Voluntary Planning Agreement
- Attachment D.** Summary of submissions
- Attachment E.** Resolutions of Council and Central Sydney Planning Committee
- Attachment F.** Gateway determination
- Attachment G.** Alteration of gateway determination

Background

1. Following comprehensive pre-lodgement advice, the applicant, Stasia Holdings Pty Ltd, represented by Planning Lab and Candalepas Associates, lodged a request to prepare a planning proposal for 232-240 Elizabeth Street, Surry Hills ('the site'), in February 2024. The site is identified in Figure 1.

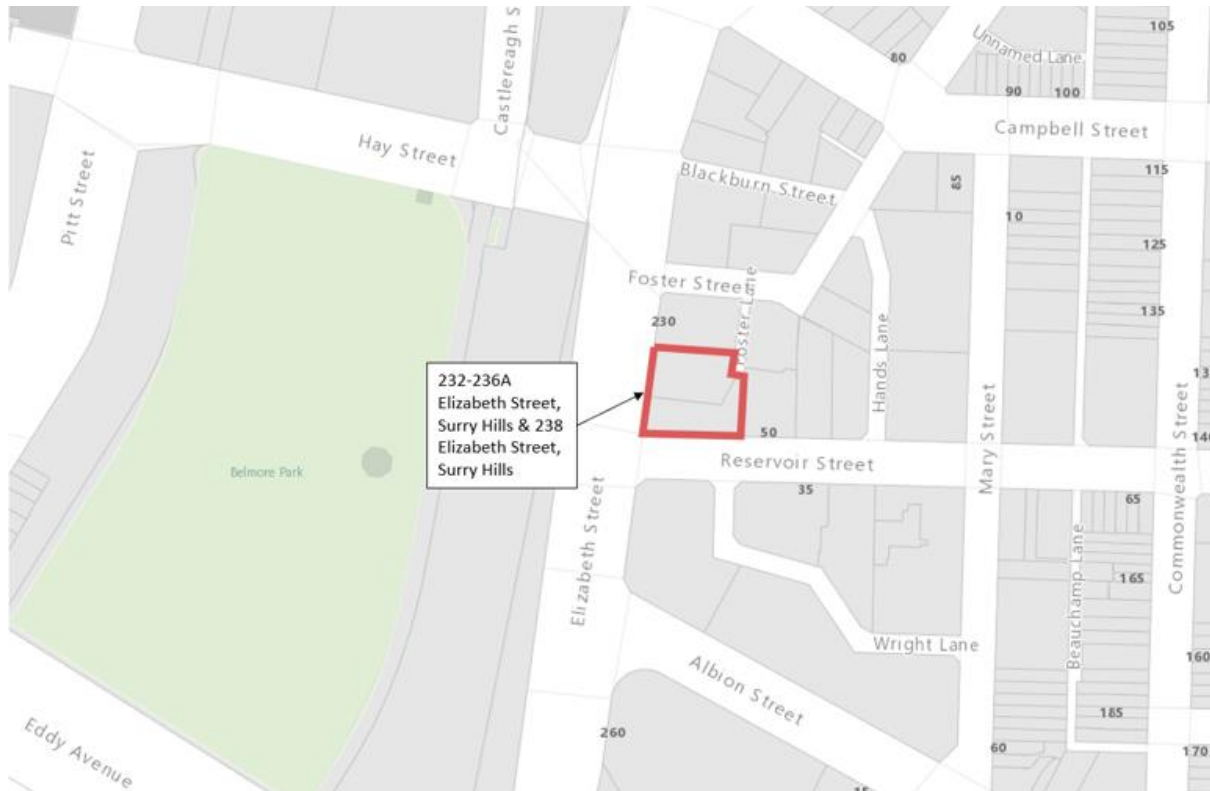


Figure 1: Land affected by this planning proposal

2. The site is located within the City Fringe and Eastern Creative District, as outlined in the City's local strategic planning statement, City Plan 2036. The City Fringe features diverse and mature knowledge-based and creative clusters outside of Central Sydney. The Eastern Creative District is a thriving, regionally significant cluster of creative sector business, arts and cultural enterprises concentrated in Surry Hills. In addition, the site is located within 'Tech Central', also known as the Camperdown-Ultimo Collaboration Area, which aims to support technology and innovation enterprises in Sydney.
3. The multiple lots comprising the site have a total area of 906 square metres. It has street frontages to Elizabeth and Reservoir Streets, and Foster Lane. Existing development on the site consists of a series of two- and three-storey buildings featuring ground-floor retail tenancies and a hostel occupying the first and second floors, with an outdoor terrace and rear dock. The buildings were originally five separate terrace buildings but are now interconnected and have all been heavily altered since their construction. An image of the site with the affected buildings outlined in yellow is shown at Figure 2.



Figure 2: 232-240 Elizabeth Street, viewed from the south-west, outlined in yellow

Proponent requested changes to height and floor space controls to enable a commercial development and construct a through-site link

4. The proponent requested a planning proposal to facilitate the redevelopment of the site to include:
 - (a) a 10-storey commercial building up to a maximum height of RL 50.33 metres (39.3 metres);
 - (b) approximately 6,300 square metres of new commercial office space with ground floor retail activation; and
 - (c) a new pedestrian through-site link connecting Reservoir Street with Foster Lane, which is currently built upon and adjoins a dead-end laneway.
5. Images prepared by the proponent of the indicative development scheme can be found in Figures 3 and 4.



Figure 3: Artistic representation of indicative design - Elizabeth Street view



Figure 4: Artistic representation of indicative design - Reservoir Street view

The City prepared a planning proposal to increase the height and floor space controls for a commercial development

6. The planning proposal detailed the proposed amendments to the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) by inserting new site-specific provisions. The provisions were to:
 - (a) permit a maximum building height of RL 50.33 metres (39.3 metres), an increase from the current control of 35 metres;
 - (b) increase the maximum floor space ratio control from 5:1 to 7.3:1 inclusive of design excellence and below ground end of journey floor space;
 - (c) require the consent authority to be satisfied that the resulting building would not be used for the purpose of residential accommodation or serviced apartments.
7. Further explanations of the provisions can be found in section 4 of the Planning Proposal (Attachment A).

A site-specific Development Control Plan was prepared to ensure the development fits within the area, protects amenity and improves access and activation

8. A draft site-specific development control plan (draft DCP) was prepared to provide further guidance for development facilitated by this planning proposal. It can be reviewed at Attachment B. The provisions include:
 - (a) a maximum building envelope including setbacks, street wall heights and maximum height (as shown at Figure 5);
 - (b) a pedestrian through-site link with a minimum width of 3400 millimetres to be provided along the site's eastern boundary connecting Reservoir Street and Foster Lane;
 - (c) active frontages to be provided along Elizabeth Street, Reservoir Street and the through-site link; and
 - (d) requirements for servicing and access.

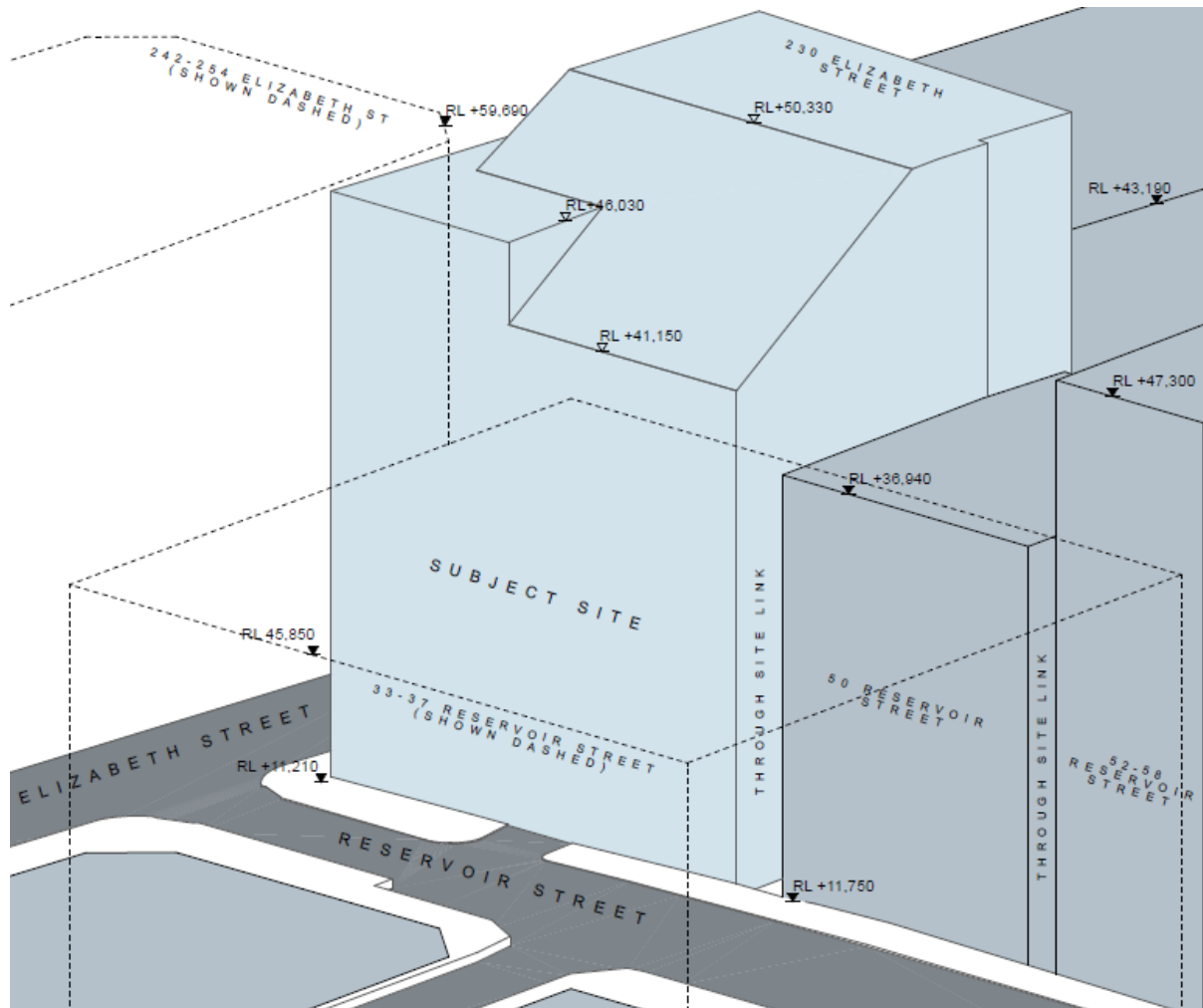


Figure 5: Proposed maximum building envelope - axonometric view

A voluntary planning agreement is required to deliver a dedicated through-site link

9. The proponent offered to enter into a Voluntary Planning Agreement (VPA) with Council to deliver public benefits as part of this planning proposal. The VPA has been publicly exhibited.
10. The public benefit offered in conjunction with this planning proposal is the dedication of an area of land to the Council for the purpose of a road, specifically a pedestrian through-site link free of cost. The through-site link land will extend Foster Lane to Reservoir Street, will be dedicated in stratum both in height and depth, with the width of the through-site link land to be broadly consistent with the width of Foster Lane.
11. The VPA does not offset local infrastructure contributions required under a contributions plan (section 7.12 of the Act), and housing and productivity contributions (division 7.1, subdivision 4 of the Act).

The planning proposal received gateway determination and was placed on public exhibition

12. The planning proposal was approved to be submitted to the Minister for Planning and Public Spaces with a request for gateway determination, and approved for public authority consultation and public exhibition with any conditions imposed under the gateway determination, by the Central Sydney Planning Committee on 28 March 2024 and by Council on 8 April 2024. The Council also approved the draft DCP for public authority consultation and public exhibition concurrent with the planning proposal.
13. The Planning Proposal was sent to the Department of Planning, Housing and Infrastructure for a gateway determination on 15 April 2024. Gateway determination was received from the Department on 14 June 2024, and is provided at Attachment F. The gateway determination applied conditions which required the public exhibition to comply with the notice requirements of the Local Environmental Plan Making Guideline and consult relevant government agencies, and to amend the Planning Proposal to address consistency with Ministerial Directions regarding the Sydney Harbour Foreshores and Waterways Area and Water Catchment Protection. Following discussions with the Department, their condition regarding consistency with Ministerial Directions was considered erroneous and an Alteration of gateway determination removing this condition was issued on 26 June 2024, and is provided at Attachment G.
14. Council also noted that the Chief Executive Officer would prepare a draft VPA in accordance with the letter of offer received from the proponent and the requirements of the Environmental Planning and Assessment Act 1979, which would be exhibited in accordance with the Act and concurrently with the planning proposal. The draft VPA which was exhibited can be found at Attachment C to this report.
15. The planning proposal was on public exhibition from 5 September to 3 October 2024.

Key Implications**We received 24 responses to the public exhibition of the Planning Proposal**

16. The following activities were undertaken to support the public exhibition:
 - (a) a webpage and survey were created for people to review the planning proposal and supporting documentation, and provide their feedback;
 - (b) 821 notification letters were letterbox dropped to property owners and occupiers within a 75-metre radius of the site boundary;
 - (c) the project was included in the September edition of the Sydney Your Say eNews; and
 - (d) the planning proposal was referred to Transport for NSW and Sydney Water for consultation and comment as required by the gateway determination.
17. A total of 24 submissions were received in response to the exhibition. Ten of these submissions were supportive, nine opposed, and three provided feedback without a position. Transport for NSW and Sydney Water also provided comment.
18. The City's response to the issues raised in submissions are broadly discussed below and in more detail in the summary of submissions found at Attachment D to this report.

Supportive submissions focused on the delivery of a new through-site link and the opportunity to rejuvenate the precinct

19. The City received ten submissions which were supportive of the proposal. They noted the opportunities for increased activation of the precinct, and that the site was well located for new development considering its proximity to Central Sydney, Central Station and other transport infrastructure. Six submissions specifically supported the delivery of a new pedestrian through-site link extending Foster Lane to Reservoir Street. The draft VPA which facilitates the delivery and dedication of the through-site link did not receive any submissions.

Submissions raised concerns regarding the impact of any development on daylight access to neighbouring residential buildings

20. The City received four submissions which raised concerns regarding the impact on daylight access to 242-254 Elizabeth Street and four submissions regarding the impact on 33-37 Reservoir Street, located to the south and south-east of the subject site. They are identified in Figure 6.

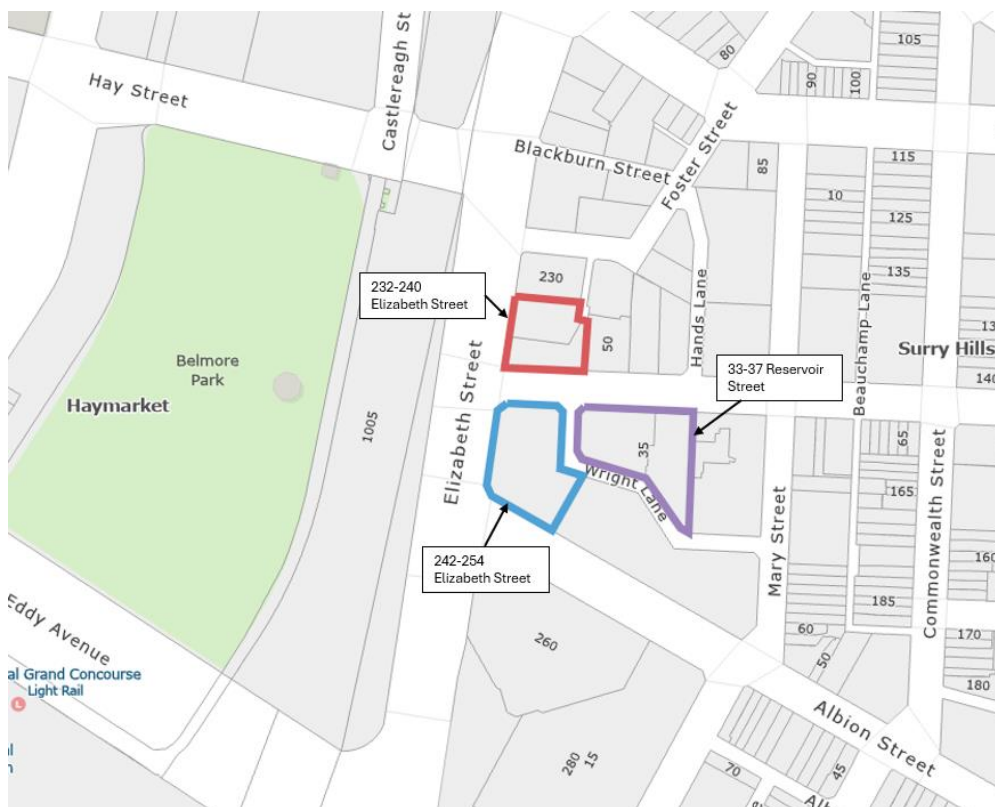


Figure 6: Location of 242-254 Elizabeth Street (blue) and 33-37 Reservoir Street, Surry Hills (purple) in relation to the subject site (red)

21. The current LEP building height control applying to 232-240 Elizabeth Street is 35 metres. On 21 July 2017, the New South Wales Land and Environment Court approved a concept DA (D/2016/1451) for this site, which granted approval for the demolition of existing buildings and the construction of a mixed-use building to a maximum height of 35 metres. A subsequent modified concept DA (D/2016/1451/A) approved for the site included a condition of consent that a minimum of 2 hours' solar access be provided to Apartments 601 and 602 at 242-254 Elizabeth Street on the winter solstice.

22. The Planning Proposal is to increase the maximum building height control by 4.3 metres to RL 50.33 metres (39.3m), however the Planning Proposal is accompanied by a site-specific DCP which defines the maximum building envelope in which any future building is to be wholly contained. As illustrated in Figure 5, this building envelope features a roof form which slopes from north to south, acting as a substantial setback to Reservoir Street with all additional height and massing above 35 metres in height set back almost 8 metres from the Reservoir Street boundary.
23. The Urban Design Study prepared by the proponent (and attached to this report at Attachment A2) outlined the level of overshadowing impact caused by the proposed development. In addition, the City conducted further analysis to better understand the cumulative overshadowing impact of the proposed development and surrounding context on 242-254 Elizabeth Street and 33-37 Reservoir Street. This analysis shows that, due to the maximum building envelope and roof form mentioned above, any shadow cast by the proposed development is minor and no worse than the previously approved DA and satisfies the previous condition of consent regarding daylight access to 242-254 Elizabeth Street.
24. It should be noted that the existing buildings on site are 2-3 storeys, and well below the current building height control. Any development taking place on the site will cause a degree of overshadowing to properties on the southern side of Reservoir Street. The additional assessment considered the court-issued consent and consistency of impact between the proposed building envelope and previously approved DAs. As the impact is minor and no worse than the previously approved DA, no change is recommended to the Planning Proposal.

Submissions raised concerns regarding the design and location of any driveway and the impact to Reservoir Street

25. Three submissions were received regarding the proposed driveway on Reservoir Street. These concerns included its location on Reservoir Street rather than other street frontages, the width of the driveway and the amount of Reservoir Street frontage that would be dedicated to servicing rather than active uses, the impact to pedestrians crossing the footway, and the increase in traffic caused by vehicles entering and exiting the building.
26. The Sydney DCP states that direct access to a designated arterial or sub-arterial road is not permitted wherever an alternate access can be provided. Elizabeth Street is not an appropriate location for driveway access considering the availability of Reservoir Street. Vehicle access from Elizabeth Street would also impact on the operation of bus services noting the bus lane and bus stop along the Elizabeth Street frontage. Foster Lane currently has limited capacity to accommodate vehicles. Part of the Planning Proposal is to realise the extension of Foster Lane as a pedestrian through-site link. Requiring Foster Lane to provide servicing access to the development conflicts with that goal.
27. Any driveway access onto Reservoir Street will need to be compliant with Australian Standards and the Sydney DCP. This includes restrictions on driveway width and required considerations for pedestrian safety. The Traffic Impact Assessment provided by the proponent as part of the Planning Proposal and attached to this report at Attachment A4, showed that additional vehicle trips associated with the proposed development equate to less than one vehicle every 5 minutes during both morning and evening peak periods. As a result, traffic generated by the proposed development is expected to have minimal impact. The precise driveway arrangement and traffic impacts will be assessed as part of a future development application.

Submissions raised concerns regarding the impact on local heritage, particularly the demolition of existing structures on site.

28. Two submissions were received which objected to the proposed demolition of the existing structures on the site, and the impact of any new development on local heritage and the character of the precinct.
29. A Heritage Impact Statement provided by the proponent and attached to this report at Attachment A5, found that all of the buildings presently on site have been heavily modified both internally and externally, and are common typologies within the area. The site is not located within a Heritage Conservation Area and the proposed building envelope was not found to impact the heritage values of any nearby heritage items, including views. The introduction of a new pedestrian through-site link provides a visual distinction between new development and adjoining early 20th Century built form on Reservoir Street.

Government agencies provided in principle support

30. Transport for NSW provided in principle support for the proposed through-site link and for a mixed-use development in this location. They raised a number of matters to be considered as part of any future DA for the site, including design of driveway access, clearance heights in the vehicle dock and basements, dimensions and functionality of any vehicle lift, and accessibility for waste trucks. These issues will be addressed through compliance with Australian Standards and the Sydney DCP, and the provision of a Waste Management Plan as part of a future development application.
31. Sydney Water noted the existence of an oviform trunk wastewater main which traverses the south-east corner of the site. As indicated in the Planning Proposal, a Specialist Engineering Assessment in consultation with Sydney Water will be required. An approvals program has been prepared by the proponent (attached to this report at Attachment A8) which outlines the investigations already conducted, those yet to be performed, and proposes the most appropriate stage the Specialist Engineering Assessment would be following the design excellence competition when the competition winning scheme would be subject to a detailed development application.

Planning Proposal is consistent with the City's strategic vision

32. The City's Local Strategic Planning Statement, City Plan 2036, sets out the 20-year vision for land use planning in the city and the planning priorities and actions needed to achieve the vision.
33. Two of the key moves are to build internationally competitive and knowledge-intensive business clusters in the Innovation Corridor and support creative and cultural industries in the Eastern Creative Precinct. These areas leverage the dense economic activity and global outlook of Central Sydney, its significant investment (including transport infrastructure) and urban amenities that attract talent, while remaining precincts with high amenity and character featuring diverse and well-designed workplaces. These areas, as part of the City Fringe, may contribute at least 53,800 additional jobs by 2036.
34. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. This planning proposal is aligned with the following strategic directions and objectives:

- (a) Direction 5 - A city for walking, cycling and public transport - the site is well-positioned to take advantage of existing and planned transport infrastructure, most notably the train, light rail and Metro connections of Central Railway Station, as well as bus routes along Elizabeth Street and cycleways in Surry Hills. The provision of a new pedestrian through-site link enhances the existing pedestrian permeability of Surry Hills.
 - (b) Direction 9 - A transformed and innovative economy - the site is located within the City Fringe, Camperdown-Ultimo Collaboration Area (Tech Central) and Eastern Creative Precinct. This planning proposal would facilitate the delivery of new office space in an existing employment cluster, supporting employment uses particularly in knowledge-intensive sectors such as health, education, creative industries, professional services and information media.
35. Further information regarding the alignment of the planning proposal with the strategic planning framework can be found in section 5.3 of the planning proposal.

Relevant Legislation

- 36. Environmental Planning and Assessment Act 1979.
- 37. Environmental Planning and Assessment Regulation 2021.

Critical Dates / Time Frames

- 38. The gateway determination requires that the amendment to the Sydney LEP 2012 is completed by 19 March 2025.
- 39. The gateway determination authorises Council to exercise its delegation and liaise directly with Parliamentary Counsel to draft and make the local environmental plan. If the planning proposal is approved by the Central Sydney Planning Committee and Council, the City will commence this process. Once this process is complete and the plan is made, the amendment to the Sydney LEP 2012 will come into effect when published on the NSW Legislation website.
- 40. If approved by Council, the draft DCP will come into effect on the same day as the amendment to the Sydney LEP 2012
- 41. The Voluntary Planning Agreement is to be executed prior to the finalisation of the amendments to the Sydney LEP 2012 and Sydney DCP 2012.

GRAHAM JAHN AM

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