



IRF23/263

Gateway determination report – PP-2022-1682

Stables Theatre, 10 and 12 Nimrod Street,
Darlinghurst

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

1	Planning proposal.....	1
1.1	Overview.....	1
1.2	Objectives of planning proposal	1
1.3	Explanation of provisions	2
1.4	Site description and surrounding area.....	3
1.5	Mapping.....	5
1.6	Background	6
2	Need for the planning proposal	6
3	Strategic assessment	9
3.1	Regional Plan	9
3.2	District Plan	9
3.3	Local.....	10
3.4	Section 9.1 Ministerial Directions	12
3.5	State environmental planning policies (SEPPs)	14
4	Site-specific assessment	14
4.1	Environmental.....	14
4.2	Social and economic.....	15
4.3	Infrastructure	15
5	Consultation.....	16
5.1	Community	16
5.2	Agencies.....	16
6	Timeframe	16
7	Local plan-making authority	16
8	Assessment summary	16
9	Recommendation.....	17

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Architectural plans (proponent reference scheme)
Solar access study
Urban context report
Acoustic report
Traffic and parking report
Proponent's planning proposal report

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	City of Sydney
PPA	City of Sydney Council
NAME	Stables Theatre 10 and 12 Nimrod Street, Darlinghurst (0 homes, 20 jobs)
NUMBER	PP-2022-1682
LEP TO BE AMENDED	Sydney LEP 2012
ADDRESS	10 and 12 Nimrod Street, Darlinghurst
DESCRIPTION	Lots 27, 28 and 29 in DP 81, Lot 1 in DP 921218
RECEIVED	20/12/2023
FILE NO.	IRF23/263
POLITICAL DONATIONS	There are no donations or gifts to disclose, and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal. The planning proposal seeks to support redevelopment and expansion of an existing theatre at 10 Nimrod Street, Darlinghurst which currently operates under existing use rights. Redevelopment will be achieved through amended development standards and a site specific LEP permissibility clause which is needed to permit the theatre to expand onto the adjoining land at 12 Nimrod Street.

The objectives of the planning proposal are to amend *Sydney Local Environmental Plan 2012* (SLEP 2012) to:

- Facilitate the continued use of 10 Nimrod Street, Darlinghurst as a theatre (a type of entertainment facility).
- Enable the theatre use to be lawfully expanded to 12 Nimrod Street Street, Darlinghurst.
- Provide for the redevelopment of the land to provide a contemporary cultural facility.
- Increase the capacity of the theatre by 50 seats.
- Provide a rehearsal space for the Griffin Theatre company.
- Improve public access, disability access and audience experience.

The objectives of this planning proposal are clear and adequate.

The proposal is supported by a Reference Scheme which suggests demolition of all built structures on 10 and 12 Nimrod Street for a new infill building purpose-built for the Griffin Theatre Company. The reference scheme aims to meet contemporary safety and accessibility regulations and building compliance which the current existing building lacks. The new building will add theatre spaces and upgrades that are not possible within the spatial constraints of the existing building such as a rehearsal space, accessible lift, and increased seating capacity of for a total of 140 people.

1.3 Explanation of provisions

The planning proposal seeks to amend the SLEP 2012 per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	R1 General Residential	No change is proposed to the underlying R1 zoning for the site. It is proposed to amend Schedule 1 of SLEP to permit an entertainment facility at 10 and 12 Nimrod Street. A theatre is a type of entertainment facility.
Maximum height of the building	9 m	11m It is proposed to amend Division 5 of Part 6 of SLEP 2012 to allow additional maximum building height but only for the purpose of a theatre. The height of buildings map will not change.
Floor space ratio	1.75:1	2:1 It is proposed to amend Division 5 of Part 6 of SLEP 2012 to allow additional maximum floor space but only for the purpose of a theatre. The floor space ratio map will not change.
Number of dwellings	1 dwelling (12 Nimrod Street)	No additional dwellings are proposed. The proposal will effectively result in the loss of 1 dwelling at 12 Nimrod Street. However, the capacity of the land will not change as the underlying zoning, FSR and height controls will not change.
Number of jobs	20 direct, 200 indirect	20 direct, 250 indirect

The planning proposal contains an explanation of provisions that explains how the objectives of the proposal will be achieved.

The use of the site as an entertainment facility is currently not permitted under the R1 General Residential Zone. The existing theatre currently operates under existing use rights which pre-date the *Environmental Planning and Assessment Act 1979* (the Act). As the proposal involves expanding the existing theatre use (a type of entertainment facility) to the adjoining land at 12 Nimrod Street, the only way to achieve this is by amending the SLEP 2012 land use controls. Council is not proposing to amend the SLEP 2012 zoning map but will instead amend SLEP 2012 Schedule 1 Additional permitted uses.

Council is also proposing to amend SLEP 2012 Part 6 Local provisions—height and floor space to create new site-specific provisions for 10 and 12 Nimrod Street. This will provide for additional

building height and FSR. The provision of additional building height and FSR would be specifically linked to Council being satisfied that the site will be used as a theatre.

The proposed use of SLEP 2012 Schedule 1 and site-specific height and floor space provisions is intended to be tied to the retention the existing theatre use on site and avoiding potential impacts on adjoining residents from other uses permitted under the broad land use category of 'entertainment facility' should the theatre ever vacate the land. It is noted that the definition (provided below) of the entertainment facility permits a broader range of land uses beyond a theatre.

entertainment facility means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club.

1.4 Site description and surrounding area

The subject land at 10 and 12 Nimrod Street, Darlinghurst, has a total site area of 238 m². The frontage to Nimrod Street is approximately 31.5 m. 10 Nimrod Street is currently occupied by the existing theatre, a two-storey building which follows the site boundaries. 12 Nimrod Street is occupied by a small two storey terrace.

The land is an irregular shaped triangular site bound by Nimrod Street to the west, Caldwell Street and residential properties to the south generally comprising two storey terraces. A private laneway lies immediately the east. There are a number of significantly tall buildings within the vicinity of the site which benefit from regional views across the precinct. The main theatre entry is on the western facade of the building with a fire exit on the northern corner of the building.

Victoria Street retail precinct is located further to the west of the site. The site is walking distance to Kings Cross rail station which is located on the Eastern Suburbs line and provides services to the Sydney CBD. Bus services are available on Victoria Street and Darlinghurst Road. Close proximity to Kings Cross, Darlinghurst Road and Victoria Street means the site is located within an area with significant active nightlife. Darlinghurst has a significant cultural facilities including major Art and Design schools, creative spaces, various galleries and public art initiatives.

The sites are not listed as heritage items at Schedule 5 of the SLEP 2012; however, they are in the Barcom Avenue Heritage Conservation Area (HCA).

An aerial photograph of Sydney, Australia, with several urban planning zones and landmarks highlighted. The Central Business District is outlined in blue in the top left. The City Fringe is outlined in green, covering a large central area. The Eastern Creative Precinct is outlined in yellow in the bottom left. Kings Cross Station is marked with a red dot and label. The National Art School is marked with a pink dot and label. Rushcutters Bay Park is marked with a magenta dot and label. A specific 'Site' is marked with a blue dot and label in the center-right. The map shows a dense urban environment with buildings, streets, and some green spaces.

NSW Department of Planning and Environment | 4

The proposal is the result of a request made by the proponent to amend planning controls that apply to the land. The proponent's request is to:

- include 'entertainment facility' as an additional permitted land use for 10 and 12 Nimrod Street, Darlinghurst, under schedule 1 of SLEP 2012; and
- amend the SLEP 2012 height of building and FSR maps that apply to the land to:
 - Increase the maximum allowable building height from 9 metres to 11 metres; and
 - Increase the maximum FSR from 1.75:1 to 2:1.

The proponent has undertaken a detailed urban design analysis and heritage study to justify the need for an amendment to the planning controls. Matters relating to noise mitigation have also been considered as part of this analysis with the aim of ensuring the amenity of the locality is not adversely impacted by the planning proposal.

Council has supported the stated intent of the proponent's planning proposal application regarding land use and increasing, building height and FSR. In line with the proponent's proposal, it proposes to amend SLEP 2012 Schedule 1 to support the expansion of the theatre use to the adjoining land at 12 Nimrod Street, Darlinghurst. However, instead of amending the SLEP 2012 height of building and FSR maps, Council has elected to create new provisions in SLEP 2012 Part 6, Division 5 to create site specific development standards.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Regarding the permissibility of the theatre use, the only practical way of achieving the intended outcomes of this planning proposal is to amend Schedule 1 of SLEP 2012. The aim of the proposal regarding land use is twofold – to formalise the permissibility of the theatre use at 10 Nimrod Street (currently operating under existing use rights), and to expand the theatre use to 12 Nimrod Street (where no existing use rights exist) to facilitate expansion and building upgrades. The alternative would involve amending the permissible land uses under the SLEP 2012 R1 General Residential zone. This would result in permitting entertainment facilities in that zone across the whole of the local government area which is not the intention of the proposal. For these reasons, Council's use of SLEP 2012 Schedule 1 is considered acceptable and supported by the Department.

Regarding the height and FSR controls that apply to the land, an alternative to the proposed amendment to SLEP 2012, Part 6, Division 5 would be to amend the height of buildings and FSR maps. While this is also a viable option, Council has indicated a preference to limit the use of the land to a theatre. Council have advised that it is seeking to discourage other uses that may arise under the 'entertainment facility' category and which may impact local resident amenity (currently protected under the R1 zone prohibitions) should they be proposed in future. Council is seeking that any future utilisation of additional allowable height and FSR would be specifically linked to the use of the land as a theatre. This is likely to discourage other uses such as dance halls or night clubs occupying the site in future. It should be noted that 'theatre' is not a defined term in the SLEP 2012 and the Standard Instrument.

The proponent's application indicates the Griffin Theatre Company currently experiences several issues:

- a lack of patron capacity means growth is not possible,
- existing space is insufficient for the types of programs the theatre offers and proposes to offer,
- there is limited opportunity for digital reach due to limited space to accommodate technology,
- a space shortage means the theatre is not able to host touring shows, currently capped at two per year,
- high costs associated with hiring external spaces, making this a cost prohibitive option,
- a lack of certainty regarding tenure arrangements, such that committing to significant capital investment off site cannot be justified for an organisation of this size.

The theatre has considered alternative options to resolve its current issues by:

- Continuing at 10 Nimrod Street, looking for partnership opportunities at other locations to enable rehearsal space, as well as places to present works.
- Relocation to a new premises under a lease arrangement (Option 2)
- Relocation to a new premises by purchasing a property that is fit for purpose (Option 3).

These alternatives have been discounted for several reasons. The first option does not meet the theatre's objectives as the existing facilities are not fit for purpose and the capital expenditure without opportunities for economic growth is unfeasible. This option would also mean that the theatre would remain inaccessible for many people including artists and performers due to lack of space and limitations imposed by the current building. Equitable access for artists could not be made available to spaces such as bathrooms, dressing rooms and stage entrances.

The second and third options have been discounted due to the costs involved. While a venue could be leased, the capital expenditure on a theatre fit-out to acceptable standards and the lack of long-term tenure certainty mean this is not considered feasible.

The reference scheme submitted with the planning proposal demonstrates that a large portion of additional floor space will be accommodated within a basement rather than above ground thereby minimising bulk and scale impacts on neighbouring properties and the streetscape.

The request for additional height will provide for a higher ceiling within the main performance space. This provides space for better lighting and production services, while improving audience sightlines and audience experience. A third floor is not proposed, and it is not proposed to amend Sydney Development Control Plan 2012 height in storeys provisions that restrict height on the site to two storeys.

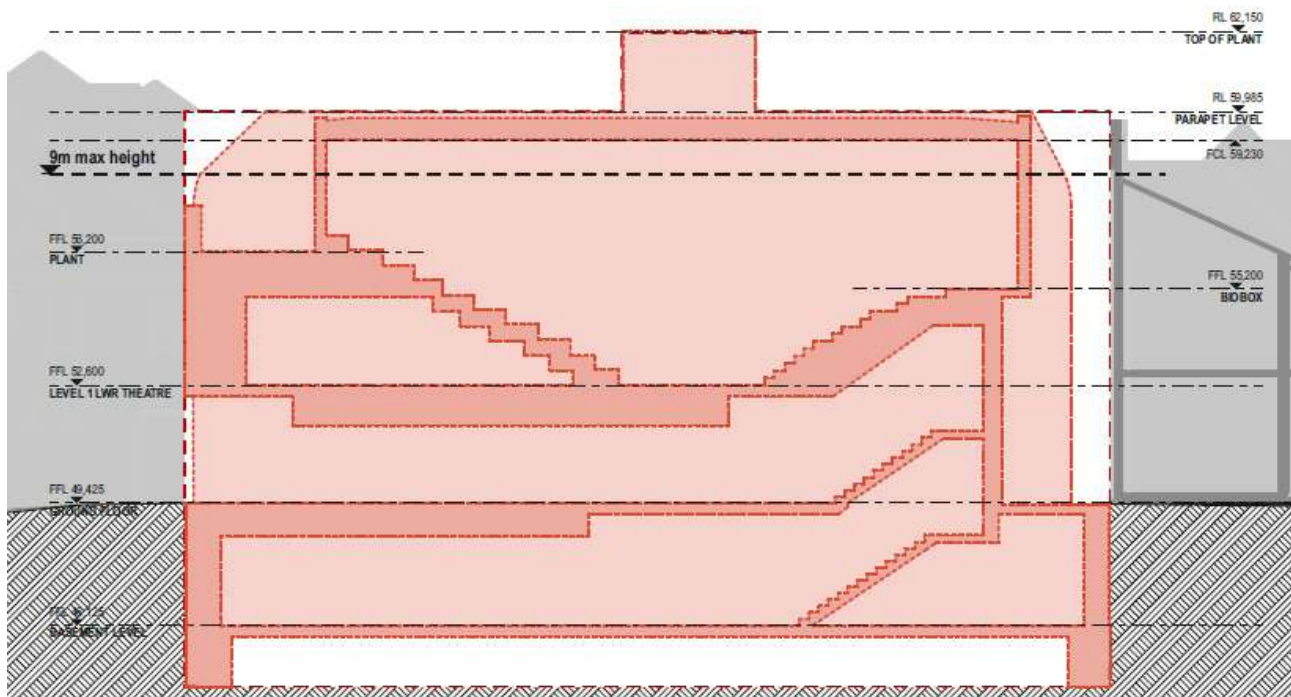


Figure 4 Stables Theatre Reference Scheme (section)

For the reasons provided above, the use of site-specific development standards which provide for additional building height and FSR and linked to the specific use of the land as a theatre is considered the preferred means of achieving the planning proposal outcomes and is supported by the Department.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Greater Sydney Region Plan.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
<i>Infrastructure and collaboration</i> Objective 4: Infrastructure use is optimised	The planning proposal will enable the expansion and continued use of a long-standing entertainment facility which leverages off existing infrastructure surrounding the site.
<i>Liveability</i> Objective 9: Greater Sydney celebrates the arts and supports creative industries and innovation	The planning proposal provides for expansion of the local arts scene associated with the theatre and enhances the theatre's sustainability, productivity, and innovation. The number of indirect jobs associated with the theatre will increase from 200 to 250. It also provides for increased theatre capabilities through provision of a dedicated rehearsal space, audience facilities and experience.
<i>Productivity</i> Objective 14: Integrated land use and transport creates walkable and 30-minute cities	The proposal is located in a highly walkable and accessible location and is served by high volume bus and rail services that service a large area with bus and rail stops located within walking distance.
<i>Productivity</i> Objective 18: Harbour CBD is stronger and more competitive	The Stables Theatre is a distinct entertainment and cultural asset that supports the Harbour CBDs global role through a robust creative sector providing entrepreneurial and job opportunities. The planning proposal supports the modest expansion of this asset within its existing location maintaining its contribution to the wide range of cultural, entertain and leisure activities available in the local area.
<i>Productivity</i> Objective 22: Investment and business activity in centres	The planning proposal will result in investment in the theatrical and performing arts sector improving the creative and night-time activities of Darlinghurst/ Kings Cross.
<i>Productivity</i> Objective 24: Economic sectors are targeted for success	The planning proposal will provide for improved theatre facilities supporting the development of places for artistic and cultural activities.

3.2 District Plan

The site is within the Eastern City District and the Greater Sydney Commission released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 5 District Plan assessment

District Plan Priorities	Justification
Priority E4: Fostering healthy, creative, culturally rich and socially connected communities	The proposal supports action 10 of the District Plan and by delivering a healthy, safe and inclusive place, in a walkable precinct, at a human scale and with active street life. It also supports action 14 by encouraging increased cultural and creative floor space and facilitating opportunities for creative and artistic expression and participation, including arts enterprises and facilities. In particular it supports action 14 as it will support creative industries and the night time economy.
Priority E6: Creating and renewing great places and local centres respecting the district's heritage	Creating and renewing great places and local centres and respecting the district's heritage – This planning proposal will support cultural and creative industries and entertainment activities providing for ongoing creative uses and a performance venue to contribute to a vibrant night-time economy.
Priority E7: Growing a strong and more competitive Harbour CBD	The precinct is on the boundary of the Harbour CBD, one of Sydney's three metropolitan centres. The planning proposal gives effect to action 24 to provide a wide range of cultural, entertainment, arts and leisure activities and a diverse and vibrant night time economy. It also gives effect to action 25 to improve vibrancy through tourism and entertainment facilities, supporting the night time economy and contributing to the Harbour CBD's job targets.
Priority E8: Growing and investing in health and education precincts and the Innovation Corridor	The planning proposal supports continued provision of arts and culture as well as education floor space and will as a result support the needs of the education sector.
Priority E13: Supporting growth of targeted industry sectors	The planning proposal will give effect to action 54 and will supports the development of spaces for artistic and cultural activities. It will also help grow the night time economy. The precinct's accessible location on the CBD fringe and walking distance of Kings Cross/Darlinghurst supports use of public transport and the needs of tourists and other visitors.

3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
<p>Local Strategic Planning Statement</p> <p>City Plan 2036</p>	<p>Council has identified that the planning proposal aligns with City Plan 2036 which seeks to address the loss of creative floor space across the City of Sydney.</p> <p>Liveability Action L1.4 - Prioritise the preservation of and investigate approaches for no net loss of creative, arts and cultural floor space, including production and performance spaces.</p> <p>City Plan 2036 identifies the Kings Cross area for prioritisation of performing arts facilities. Extensive advocacy from the Night Time Industries Association and the Committee for Sydney recommends a live performance led revitalisation of the Kings Cross night time economy. This proposal is consistent with such a vision for Kings Cross and supports a diverse night time economy.</p> <p>The proposal maintains and increases the capacity of and existing theatre ensuring its long-term viability thereby encouraging a creative, culturally rich, and socially connected city.</p>
<p>Sustainable Sydney 2030-2050</p> <p>Council's vision for the sustainable development of the City to 2030 and beyond.</p>	<p>Council has identified the planning proposal aligns with the following strategic directions:</p> <p>Direction 1 - A Globally Competitive and Innovative City - The proposed amendments to the planning controls facilitates cultural and creative uses and preserves and modestly expands an existing entertainment facility. This will support Sydney's tourist, leisure and cultural sector, which are sectors of critical importance to Sydney's economy and contribute to making Sydney attractive to global investors.</p> <p>Direction 3 - Integrated Transport for a Connected City - The future expanded Stables Theatre will take advantage of future cycleway proposals and good proximity to public transport links, on a high-capacity bus routes connecting the area to Central Sydney, Bondi Junction and beyond.</p> <p>Direction 5 - A Lively and Engaging City Centre - Redevelopment in the precinct will provide entertainment uses in a city fringe location and accessible from the city centre.</p> <p>Direction 6 - Vibrant Local Communities and Economies - The planning proposal facilitates redevelopment in the precinct, which will provide more floor space for cultural and creative purposes and entertainment. This will continue long-term activation of the site, contributing to the day and night-time economies.</p> <p>Direction 7 - A Cultural and Creative City - The planning proposal will strengthen the economic and cultural role and character of the Eastern Creative Precinct, enhancing the entertainment, arts, performance and cultural role of areas and helping to meet the identified shortage of small to medium sized performance and rehearsal space venues.</p> <p>Direction 9 - Sustainable Development, Renewal and Design - The planning proposal is consistent with the principle of transit-oriented development by co-locating employment opportunities in an accessible location.</p>

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	The Proposal gives effect to objectives in the Regional Plan as indicated in section 3.1 of this report. The proposal is not inconsistent with any of the objectives in the plan, nor does it undermine the achievement of the vision, land use strategy, goals, directions, or actions in the Region Plan.
1.3 Approval and Referral Requirements	Yes	The proposal does not include provisions that require any relevant concurrence, consultation, or referral of any future development application to a Minister or public authority. Development for the purposes of an entertainment facility/theatre will not be designated development.
1.4 Site Specific Provisions	Yes	<p>The Proposal will allow development for the purpose of an entertainment facility, subject to additional development standards. The planning proposal indicates these standards are:</p> <ul style="list-style-type: none"> - Any new building constructed on the site will be used for the purpose of a theatre; - The design and use of the new building will not result in unacceptable impacts to residential amenity. - An increase in both maximum Height of buildings and Floor Space Ratio will be specifically associated with the use of the land as an entertainment facility/ theatre. <p>The proposed development standards are less restrictive than those currently applying to the site. They will provide for greater building height and floor space.</p> <p>It is noted that Council is seeking to limit the additional height and FSR permitted on the site to 'theatre' uses only. Theatre is not a defined term in the SLEP 2012 and is a type of Entertainment Facility. Theatre is also not defined in the Standard Instrument. As such, should the proposal proceed to finalisation it may be challenging to achieve the legislative drafting to satisfy Council's intended aim to limit development to 'theatre' uses only.</p> <p>Notwithstanding the above, the proposal is considered to have merit and a condition has been imposed requiring Council to further detail within the planning proposal how such a provision would apply to the site. The planning proposal is also to be expanded to consider whether limiting the uses to 'entertainment facility' only would be an acceptable alternative.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.2 Heritage Conservation	Yes	The proposal will not impact the heritage status of the buildings or the Barcom Avenue C11 Conservation Area. Any future development application will need to include an assessment of heritage significance against the existing applicable planning controls and impacts can be appropriately mitigated through appropriate building design and conditions of development consent.
4.1 Flooding	Yes	The site is not identified as being flood affected.
4.4 Remediation of Contaminated Land	Yes	The planning proposal indicates the site was formerly used as a silk screen printing studio which presents a minor risk that contaminants may be present at 10 Nimrod Street. The use of 10 Nimrod Street as a theatre is existing, the Planning Proposal merely seeks to formalise it as a permitted use. A detailed consideration of any site contamination will be undertaken at the development application stage.
4.5 Acid Sulphate Soils	Yes	The land is identified as containing Class 5 Acid Sulphate Soils which means acid sulphate soils are unlikely to be present. Any potential impacts resulting from future excavation can be appropriately mitigated by conditions of development consent.
5.1 Integrating Land Use and Transport	Yes	The proposal will facilitate additional jobs on a site with excellent access to walking, cycling and public transport infrastructure. Provisions in Sydney LEP 2012 indicate that any future development applications will required to minimise on-site parking, reducing travel demand by car.
6.1 Residential Zones	Yes	The proposal facilitates the use of the existing dwelling at 12 Nimrod Street for the purpose of a theatre, it is proposed to retain the R1 'General Residential zone'. The proposal will not result in provisions that reduce the amount of permissible residential development.

3.5 State environmental planning policies (SEPPs)

The intended aims, objectives and outcomes sought by the planning proposal are not achievable under the provisions of any SEPPs. State planning policies are generally not relevant to development for the purposes of theatres. The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Transport and Infrastructure) 2021	Development proposals will need to be referred to the electricity supply authority.	Consistent	These SEPP provisions are only relevant at development application stage and have no bearing on this proposal.

4 Site-specific assessment

4.1 Environmental

There are no likely environmental impacts that would arise as a result of the planning proposal. The Department does not consider that the proposal needs to be updated in response to its environmental impacts.

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Flooding	The site is not flood affected.
Contamination	Council's planning proposal indicates that the previous use of the site as a silk screen printing studio presents a minor risk that contaminants may be present at 10 Nimrod Street. Detailed consideration of this matter will need to be undertaken at development application stage.
Solar access	A Solar Access Study has been submitted with the planning proposal which indicates some neighbouring properties would be affected by additional overshadowing if the site is developed in accordance with the submitted reference scheme. There is no additional overshadowing prior to 12 noon and does not affect living room windows or areas of private open space. Council is of the opinion that overshadowing impacts are acceptable and detailed design at development application will provide for moderating the building envelope to ensure loss of solar access is minimised.

Environmental Impact	Assessment
Noise	The theatre is an existing use which is expanding. Sources of noise on the site include operational noise during performances, mechanical equipment, and theatre patrons frequenting the premises. Redevelopment of the theatre will provide an opportunity to construct a building that is acoustically treated and subject to a Plan of Management that is enforceable through conditions of development consent. Development on the site will be subject to a Noise Impact Assessment at development application stage.
Built form and amenity	The design and use of a new theatre building within the proposed provisions is unlikely to result in unacceptable impacts to residential amenity which can be managed via development condition of consent. Formalising the theatre use under a development consent will result in better opportunities for Council to manage impacts.

4.2 Social and economic

The planning proposal demonstrates social and economic strategic merit. It supports the entertainment and tourism industry and will strengthen the economic and cultural role and character of the proposed Eastern Creative Precinct.

The theatre is the only theatre company in the Australia that is devoted to the staging of new Australian playwrights. The proposal therefore supports a specific cultural space with national importance. The aims and objectives of the proposal and retention of the theatre on the existing site is therefore supported by the Department.

4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 11 Infrastructure assessment

Infrastructure	Assessment
Utilities and Services	The site is connected to all necessary utilities and services, reconnection at the construction stage will be subject to conditions of consent and further investigation by the applicant at the development application stage.
Transport and Parking	<p>The Stables Theatre is in a highly walkable neighbourhood with high capacity transport services by both bus and rail. The site is served by high frequency public transport services. Kings Cross rail station is located 200m to the north and bus services are available from Craigend Street, William Street, Darlinghurst Road and Victoria Street. There is a cycleway on Craigend Street which connects to the wider network.</p> <p>Access to the land is only available via Nimrod Street.</p> <p>Council does not expect parking to be provided on site which is acceptable in principle given the level of public transport availability in the area.</p> <p>A Traffic and Transport Study has been provided with the application.</p>

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days (equivalent to 20 working days) in accordance with the LEP Making Guideline.

The exhibition period proposed is considered appropriate is recommended to be included in the conditions of the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

Agency consultation is not considered necessary for this proposal because it represents a modest expansion of an existing use, there are no heritage, traffic, flooding or infrastructure concerns outside of Council's remit.

6 Timeframe

Council proposes a nine month time frame to complete the LEP.

The Department recommends a time frame of eight months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has requested to exercise its functions as a Local Plan-Making authority. At its 12 December 2022 meeting, Council resolved that it would seek authority from the Department to exercise the delegation of all the functions under Section 3.36 of the Act to make the LEP and put the Planning Proposal into effect. Council also resolved to provide delegated authority to Council's Chief Executive Officer to make any minor variations to Planning Proposal—to ensure consistency with the Gateway Determination.

As the subject site and planning proposal is subject to Council's strategic plans and is considered a basic and standard LEP amendment with low risk involved, the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- is consistent with the relevant 9.1 directions;
- is consistent with the relevant priorities of the Regional Plan, Eastern City District Plan and relevant SEPPs;
- is consistent with the relevant local strategies including the City of Sydney LSPS and Sustainable Sydney 2030-2050;
- provides for built form outcome that are acceptable; and

- provides for arts and cultural offerings in close proximity to existing services, infrastructure and public transport.

As discussed in the previous sections 4 and 5, the proposal does not need to be updated.

Based on the assessment outlined in this report, the proposal does not need to be updated prior to consultation.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions are minor or justified.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated to:
 - Detail how the amended heights and FSR will be limited to a 'Theatre' use only, given that this is not a defined term; and
 - identify whether limiting the height and FSR to entertainment facility is acceptable.
2. Council is advised that Consultation with public authorities is not required.
Should Council choose to consult with public authorities, each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.
3. The planning proposal should be made available for community consultation for a minimum of 28 calendar days.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The LEP should be completed on or before 21 July 2023.
6. Council is to consult with Parliamentary Counsel about how the objectives and intended outcomes of the planning proposal may be achieved, in particular limiting application of additional allowable height of buildings and floor space ratio.
7. The Council as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the gateway determination;
 - (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the Act or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.



17/02/2023

(Signature)

(Date)

Adrian Melo

Manager, Metro East and South (City)



17/02/2023

(Signature)

(Date)

Katie Joyner

Director, City of Sydney and Eastern District

Assessment officer

Dominic Stefan

Senior Planner, Metro East and South (City)

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