



IRF23/1680

Gateway Determination Report – PP-2022-3843

85-93 Commonwealth Street, Surry Hills

June 2023

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Gateway Determination Report – PP-2022-3843

Subtitle: 85-93 Commonwealth Street, Surry Hills

© State of New South Wales through Department of Planning and Environment 2023. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (June 2023) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

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.....	1
1.4	Site Description and Surrounding Area	2
1.5	Mapping.....	4
1.6	Background	4
2	Need for the Planning Proposal.....	5
3	Strategic Assessment	6
3.1	Region Plan	6
3.2	District Plan	6
3.3	Local Plans	7
3.4	Section 9.1 Ministerial Directions	8
3.5	State Environmental Planning Policies (SEPPs)	9
4	Site-Specific Assessment	9
4.1	Environmental.....	9
4.2	Social and Economic	10
4.3	Infrastructure	11
5	Consultation.....	11
5.1	Community	11
5.2	Agencies.....	11
6	Timeframe	12
7	Local Plan-Making Authority.....	12
8	Assessment Summary.....	12
9	Recommendation.....	13

Table 1 Reports and Plans Supporting the Proposal

Relevant Reports and Plans
Attachment A – Planning Proposal (June 2023)
Attachment B – Council Resolution and Report (May 2023)

1 Planning Proposal

1.1 Overview

Table 2 Planning Proposal Details

LGA	City of Sydney
PPA	City of Sydney
NAME	85-93 Commonwealth Street, Surry Hills
NUMBER	PP-2022-3843
LEP TO BE AMENDED	Sydney Local Environmental Plan 2012 (Sydney LEP 2012)
ADDRESS	85-93 Commonwealth Street, Surry Hills
DESCRIPTION	Lots 22 and 23 in DP 6380
RECEIVED	19/05/2023
FILE NO.	IRF23/1680
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 objective of the planning proposal is to enable additional employment floor space on the northern part of the existing commercial building at 85-93 Commonwealth Street, Surry Hills.

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

1.3 Explanation of Provisions

The planning proposal (**Attachment A**) seeks to amend the Sydney LEP 2012 to allow for an increased floor space ratio (FSR) across the site and an increased maximum building height on part of the site, but only for development that is used wholly for purposes other than residential accommodation or serviced apartments.

This is to be achieved by:

- Introducing a new site-specific clause in Part 6, Division 5 allowing for development for a purpose other than residential accommodation or services apartments:
 - a maximum FSR of 4.5:1
 - alternative maximum buildings heights as shown on the 'Alternative Height of Buildings Map'.

- Amending the 'Alternative Height of Buildings Map' to allow the following alternative maximum buildings heights:
 - RL 51.5m on the northern part of the site
 - RL 40m on the southern part of the site.
- Inserting a subclause in Clause 4.6 to exclude its application to the proposed site-specific clause in Part 6, Division 5.

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

1.4 Site Description and Surrounding Area

The site has a site area of 571m². It is an irregular wedge shape, formed by the intersection of Commonwealth Street and Hunt Street. The site is occupied by a 4-storey building, used for commercial offices (see **Figure 1**).

The site slopes from the west to the east. The level of the Hunt Street frontage is approximately 4.65m lower than the Commonwealth Street frontage.

The site is highly accessible by public transport. There are nearby bus stops on Campbell Street, Elizabeth Street, and Hay Street. The site is 450m from the entrance of Museum Station and 600m from Central Station.

Surrounding Development

The site is in Surry Hills, a suburb immediately to the southeast of the Sydney CBD. The surrounding area contains a mix of residential, commercial and retail uses. The scale of buildings to the north and west (typically 6-7 storeys) is greater than to the south and east (typically 2-5 storeys).

To the north the site is adjoined by a 7-storey commercial building, with retail uses on the ground floor along Hunt Street. To the south, across Hunt Street, is the locally heritage listed Hollywood Hotel and a row of terraces on the western side of Commonwealth Street.

To the east, across Commonwealth Street, is the locally heritage listed 'Paramount Building'. Harmony Park is located further to the east, across Brisbane Street. To the west, across Hunt Street, is a 7-storey commercial building with ground floor car parking.



Figure 1 - Subject Site (Source: Council Report)



Figure 2 - Site Context (Source: Council Report)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Alternative Height of Buildings Map (**Figure 3**). The mapping is suitable for community consultation.

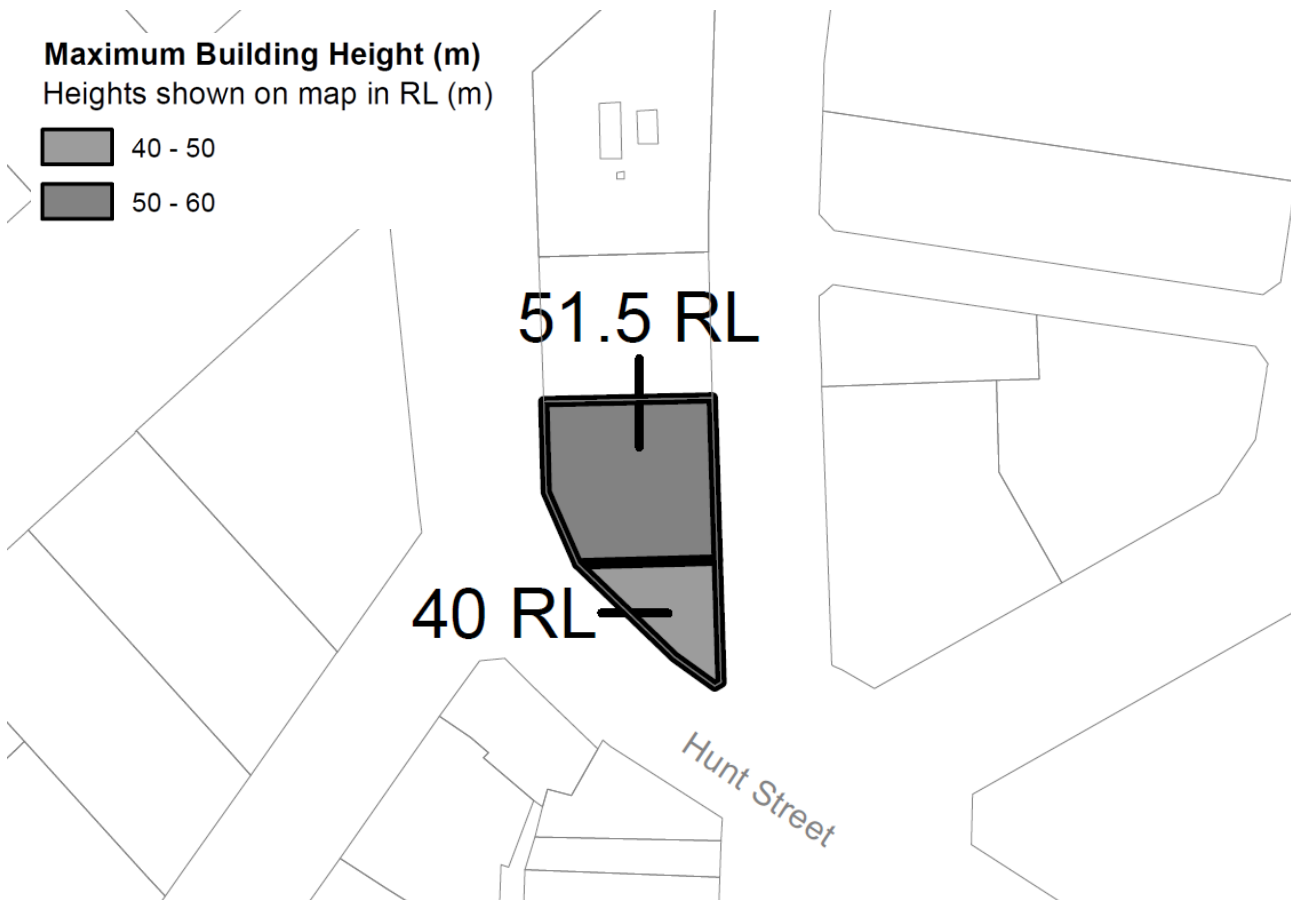


Figure 3 - Proposed Alternative Height of Buildings Map (Source: Planning Proposal)

No FSR mapping changes are proposed, the proposed additional FSR will be expressed in text in a site-specific provision in the Sydney LEP.

1.6 Background

The City of Sydney received a planning proposal from Fink Group the owner of 85-93 Commonwealth Street, Surry Hills in November 2022 proposing to enable additional employment floor space on the site.

The planning proposal was considered by City of Sydney Council on 15 May 2023 and submitted to the Department of Planning and Environment for Gateway Determination on 19 May 2023.

2 Need for the Planning Proposal

Q1. Is the planning proposal a result of any strategic study or report?

The planning proposal is the result of a request made to Council by the landowner (Fink Group). It gives effect to local planning priorities in Council's endorsed Local Strategic Planning Statement (LSPS) because it will:

- enable additional employment floor space, helping to support 'innovative and diverse business clusters in the City Fringe' (Priority P2)
- help align growth with supporting infrastructure, by providing additional employment floor space in a highly accessible location (Priority I2).

This is discussed further in **Section 3.3**.

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

The intended outcomes of the proposal cannot be delivered under the current planning framework and a planning proposal is required to amend the Sydney LEP 2012.

The planning proposal seeks to introduce a site-specific clause into the Sydney LEP 2012 to enable additional employment floor space. It is considered the best means of achieving the objectives and intended outcomes of the planning proposal because it ensures that additional floor space is used for purposes other than serviced apartments and residential accommodation, consistent with the planning priorities identified in Council's LSPS.

An alternative approach to the site-specific clause would be to amend the existing 'Height of Buildings Map' and 'Floor Space Ratio Map'. However, doing so would provide no guarantee that additional floor space would be for employment generating uses.

3 Strategic Assessment

3.1 Region Plan

The Greater Sydney Region Plan – A Metropolis of Three Cities (March 2018) was prepared by the Greater Sydney Commission. Key objectives of the Region Plan are Infrastructure and Collaboration, Liveability, Productivity and Sustainability. The proposal is consistent with the Region Plan as it will enable additional employment floor space, generating jobs and supporting the strength and competitiveness of the Harbour CBD.

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.

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* (EP&A Act). **Table 33** assesses the planning proposal against the relevant priorities and actions of the District Plan.

Table 3 District Plan Assessment

Planning Priority	Justification
Growing a stronger and more competitive Harbour CBD (Planning Priority E7)	The subject site is located on the fringe of the Harbour CBD. The proposal will enable the development of additional employment floorspace and the creation of jobs supporting the strength and competitiveness of the Harbour CBD.
Growing investment, business opportunities and jobs in strategic centres (Planning Priority E11)	The proposal will enable the development of additional employment floorspace on the fringe of the Harbour CBD contributing to the creation of jobs as well as growth in investment and business opportunities.

3.3 Local Plans

The planning proposal states that it is consistent with the following local plans and endorsed strategies:

- City Plan 2036 (Local Strategic Planning Statement)
- Sustainable Sydney 2030-2050 (Community Strategic Plan)

Consistency with these local plans and strategies is considered further in **Table 4** below.

Table 4 Local Strategic Planning Assessment

Plan	Justification
Local Strategic Planning Statement (City Plan 2036)	<p>The site is in the ‘Crown and Baptist Street village’, on the south-eastern fringe of Central Sydney and includes Surry Hills and the eastern part of Redfern. The ‘Crown and Baptist Street village’ contains a strong creative and business services sector, benefitting from its comparatively affordable rents and proximity to Central Sydney.</p> <p>The LSPS notes that opportunities for commercially productive uses have begun to be constrained and identifies the need for additional employment floor space in the City Fringe to accommodate more jobs and support the continued economic growth of the Harbour CBD.</p> <p>The planning proposal is consistent with the LSPS because it will:</p> <ul style="list-style-type: none"> • enable additional employment floor space, helping to support ‘innovative and diverse business clusters in the City Fringe’ (Priority P2) • help align growth with supporting infrastructure, by providing additional employment floor space in a highly accessible location (Priority I2).
Sustainable Sydney 2030-2050	<p>Sustainable Sydney 2030-2050 is the City of Sydney’s overarching Community Strategic Plan (CSP), setting out Council’s vision for the LGA. The planning proposal is consistent with the CSP because it would support additional employment floor space in a highly accessible location, helping to:</p> <ul style="list-style-type: none"> • encourage people to walk, cycle or use public transport to get to and from work • contribute to meeting the City of Sydney’s target for 200,000 new jobs by 2036.

3.4 Section 9.1 Ministerial Directions

Table 55 provides an assessment of the planning proposal's consistency with the relevant Ministerial Directions under section 9.1 of the EP&A Act (Section 9.1 Directions).

Table 5 Section 9.1 Directions

Directions	Consistency	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	The planning proposal gives effect to the objectives of the Region Plan, as discussed in Section 3.1 .
1.4 Site Specific Provisions	Inconsistent, but minor and justified.	<p>While the planning proposal will introduce site specific provisions into the Sydney LEP 2012, inconsistency with the Direction is considered minor and justified.</p> <p>This is because the site specific provisions are the most appropriate mechanism for supporting the delivery of additional employment floor space on the site, consistent with the objectives of the District Plan and LSPS. The planning proposal also does not restrict the permissible land uses in the MU1 Mixed Use zone.</p>
3.2 Heritage Conservation	Yes	The site is not identified as a heritage item and is not located within a heritage conservation area (HCA). The planning proposal is consistent with the Direction because it has considered potential impacts on nearby heritage items (see Section 4.1).
4.1 Flooding	Yes	The site is not identified as being flood affected.
4.4 Remediation of Contaminated Land	Yes	The site is currently fully occupied by a commercial building and the planning proposal does not seek to change the existing land use zoning or the range of permissible land uses. Rather, it seeks to enable additional employment floor space on top of the existing building. Further contamination investigations will occur as part of any future DA, as required (e.g. where ground disturbance is proposed).
4.5 Acid Sulfate Soils	Inconsistent, but minor and justified.	<p>The site is mapped as potentially containing Class 5 Acid Sulphate Soils. While an acid sulfate soils study has not provided, the inconsistency with the Direction is considered minor and justified.</p> <p>This is because Class 5 Acid Sulphate Soils are considered low risk (i.e. unlikely to be present) and further investigation and testing of the soil will occur as part of any future DA proposing excavation of the soil.</p>
5.1 Integrating Land Use and Transport	Yes	The planning proposal is consistent with the Direction because it will allow additional floor space close to public transport, including Museum Station and Central Station.
6.1 Residential Zones	Yes	The planning proposal is consistent with the Direction because it will not reduce the permissible residential density of the land.

Directions	Consistency	Reasons for Consistency or Inconsistency
7.1 Business and Industrial Zones	Yes	The planning proposal is consistent with the Direction because it retains the existing land zoning, while allowing additional floor space for employment uses.

3.5 State Environmental Planning Policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs, as discussed in **Table 6** below.

Table 6 Consistency with relevant SEPPs

SEPP	Requirement	Consistent	Justification
SEPP (Transport and Infrastructure) 2021	The SEPP requires consultation with public authorities for certain types of DAs.	Yes	The site is not located within the Sydney Trains Corridor Protection Zone or the Interim Rail Corridor.
SEPP (Biodiversity and Conservation) 2021	The SEPP contains provisions to protect the catchment, foreshores, waterways and islands of Sydney Harbour.	Yes	The site is located on land in the Sydney Harbour Catchment Area. However, the site is not zoned or identified as a foreshore and waterway area under the SEPP.



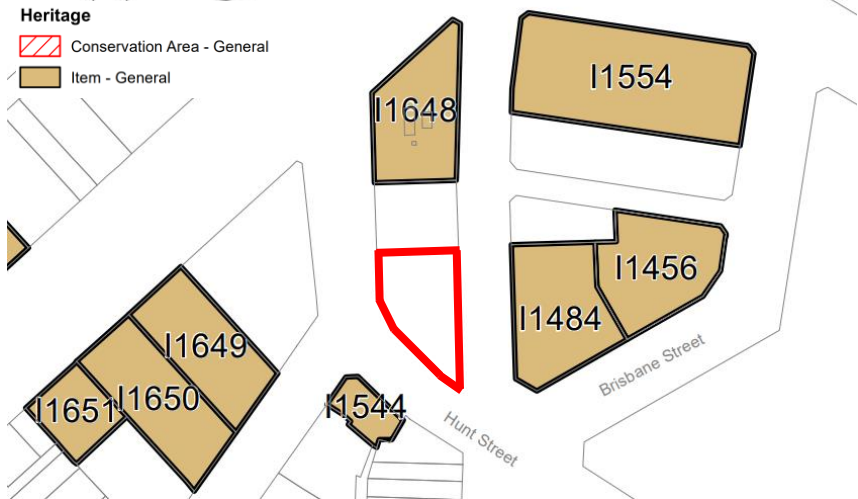
4 Site-Specific Assessment

4.1 Environmental

Table 7 assess the potential environmental impacts associated with the planning proposal.

Table 7 Environmental Impact Assessment

Impact	Assessment
Flood Risk	The site is not identified as flood affected.
Heritage	<p>The site is not heritage listed or within a heritage conservation area (HCA). However, as shown in Error! Reference source not found., it is near several local heritage items, including:</p> <ul style="list-style-type: none"> • Former 'Paramount Pictures' including interior (Item I484) • 'Hollywood Hotel' including interior (Item I1544) • 'Griffith's Building' including interior (Item I1648) • 'Ballarat House' (Item I1649).

Impact	Assessment
	<p>Heritage</p> <p> Conservation Area - General</p> <p> Item - General</p>  <p>Figure 4 - Extract from Heritage Map (Source: Sydney LEP 2012)</p> <p>Maintaining a lower maximum building height on the southern part of the site (RL 40), which is equivalent to the existing height of the building, will retain an appropriate interface with heritage items to the east and southwest, including the Hollywood Hotel and Paramount Hotel.</p> <p>The proposed maximum building height on the northern part of the site (RL 51.5) also aligns with taller commercial buildings to the north, including 69 Wentworth Avenue and 131-133 Goulburn Street.</p> <p>For these reasons the Department is satisfied that the planning proposal will not result in unacceptable impacts on nearby heritage items, including the Hollywood Hotel and Paramount Hotel. Potential impacts on nearby heritage items will be considered further as part of any future DA.</p>
Overshadowing	<p>Overshadowing from additional floor space above the existing building is expected to be minimal, given the extent of existing overshadowing and where shadows would be cast (predominately on the road and footpath).</p> <p>Council has advised that maintaining a lower maximum building height on the southern part of the site (RL 40) will ensure that the planning proposal does not result in additional overshadowing of Harmony Park or the residential terraces to the south along Commonwealth Street.</p> <p>The planning proposal should be updated prior to public exhibition to include the outcomes of shadow analysis demonstrating any additional overshadowing of the private open space of the residential terraces on Commonwealth Street and Harmony Park. A condition requiring this information be included in the planning proposal prior to exhibition has been included in the Gateway Determination.</p>

4.2 Social and Economic

The modest increase in employment floor space is not expected to result in adverse social effects.

The planning proposal would have a positive economic effect because it would:

- enable the delivery of additional employment floor space, supporting new jobs
- strengthen the economic and cultural of the Eastern Creative Precinct and Harbour CBD.

4.3 Infrastructure

Table 8 assesses the adequacy of existing infrastructure and its ability to service future development resulting from the planning proposal.

Table 8 Infrastructure Assessment

Infrastructure	Assessment
Traffic, Transport and Car Parking	<p>It is expected that additional workers or visitors traveling to and from the site will walk, cycle or use public transport. This is because the site:</p> <ul style="list-style-type: none"> • does not contain any car parking (and no change to this is proposed) • is highly accessible by active and public transport, being 450m from Museum Station and 600m from Central Station. <p>For these reasons, the Department is satisfied that any traffic generated by the additional employment floor space will not have a significant impact on the surrounding road network. Further consideration of potential traffic and transport impacts will occur as part of any future DA.</p>
Utilities and Services	<p>Council has advised that the site is adequately serviced by public utilities and infrastructure, including electricity, telecommunications, water, sewerage and stormwater.</p> <p>The additional employment floor space that would be enabled by the planning proposal is not expected to require additional supporting infrastructure. Consultation with relevant utility providers will occur as part of any future DA.</p>

5 Consultation

5.1 Community

Council proposes a public exhibition period of no less than 20 working days.

In accordance with the *Local Environmental Plan Making Guide* (the LEP Making Guide), the proposal is considered a 'standard' planning proposal as it relates to the alteration of a principal development standard of the LEP and is consistent with the District Plan and the LSPS.

The LEP Making Guide recommends that the exhibition period for a 'standard' planning proposal is 20 working days. The proposed exhibition period is therefore considered appropriate and has been included as a condition of the Gateway determination.

5.2 Agencies

The planning proposal does not specifically identify the public authorities and government agencies to be consulted. However, consultation with public authorities and government agencies is not considered necessary because the planning proposal:

- only allows a modest increase in employment floor space
- there are no heritage, traffic, flooding, biodiversity, infrastructure or other concerns that require consultation with government agencies at the planning proposal stage.

6 Timeframe

Council proposes a 7 month time frame to complete the LEP.

The Department considers a time frame of 7 months to be appropriate. A condition requiring the LEP to be made within this time frame is included in the Gateway determination.

7 Local Plan-Making Authority

At its meeting on 15 May 2023, Council resolved to seek authority from the Department to exercise the delegation of all the functions under section 3.36 of the EP&A Act as the Local Planning-Making Authority (LPMA).

Council also resolved to provide delegated authority to Council's Chief Executive Officer to make any minor variations to the planning proposal to correct any drafting errors or to ensure consistency with the Gateway determination.

Given the nature of the planning proposal, the Department recommends that Council be authorised to be the LPMA because. This is because the planning proposal is consistent with the District Plan, the endorsed LSPS, applicable SEPPs and has minor and justifiable inconsistencies with Section 9.1 Directions.

8 Assessment Summary

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

- It is consistent with the District Plan and Council's Local Strategic Planning Statement because it will enable the delivery of additional employment floor space in the City Fringe, helping to accommodate more jobs and supporting the continued economic growth of the Harbour CBD.
- Inconsistency with two Section 9.1 Directions is minor and justified, and it is consistent with all other relevant Section 9.1 Directions.
- An amendment to the Sydney LEP 2012 is the best means of achieving the objectives and intended outcomes of the planning proposal.

Based on the assessment outlined in this report, the proposal must be updated before public exhibition to:

- Provide a statement addressing consistency with Section 9.1 Ministerial Direction 4.5 Acid Sulfate Soils.
- Include shadow analysis demonstrating any additional overshadowing of the private open space of the residential terraces on Commonwealth Street and Harmony Park.
- Provide an explanation of the need for exclusion of clause 4.6 variations.

9 Recommendation

It is recommended that the delegate of the Secretary:

- Agree that inconsistency with the following Section 9.1 Directions is minor and justified:
 - 1.4 Site Specific Provisions
 - 4.5 Acid Sulfate Soils

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 prior to public exhibition:
 - Provide a statement addressing consistency with Section 9.1 Ministerial Direction 4.5 Acid Sulfate Soils
 - Include shadow analysis demonstrating any additional overshadowing of the private open space of the residential terraces on Commonwealth Street and Harmony Park; and
 - Provide an explanation of the need for exclusion of clause 4.6 variations
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 provide feedback.
3. The planning proposal should be made available for public exhibition for a minimum of 20 working days.
4. The timeframe for completing the LEP is to be 7 months from the date of the Gateway determination.
5. Given the nature of the proposal, Council should be authorised to be the LPMA.



21/06/2023

Emma Hitchens

Manager, City of Sydney and Eastern District



21/06/2023

Katie Joyner

Director, City of Sydney and Eastern District

Assessment Officer

Tom Atkinson

Senior Planning Officer, City of Sydney and Eastern District

(02) 9373 2816