

Item 4.

Public Exhibition - Planning Proposal - 41-49 Mountain Street, Ultimo - Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendment

File No: X117267

Summary

A planning proposal has been prepared for 41-49 Mountain Street, Ultimo following a request by the proponent, apt.Residential, to amend the planning controls for the site.

The site is located within the western City Fringe area, close to Broadway and within the Camperdown-Ultimo Health and Education Precinct, which includes 3 universities and TAFE NSW, and is within walking distance of the Broadway Shopping Centre and Victoria Park.

This planning proposal seeks to change the building height and floor space ratio controls to allow a new build-to-rent housing development. The future development will be up to 14 storeys with retail on the ground floor and approximately 107 residential apartments above. An estimated 15 of these apartments will be affordable rental housing apartments provided in perpetuity.

The proposal includes the adaptive re-use of the State heritage-listed former electrical substation on the site, and the delivery of a pedestrian through-site link to improve access and activate the ground level.

The proposal will support the delivery of diverse housing, being build-to-rent housing, and affordable housing in perpetuity, which will contribute to the City's housing targets. The proposal is in an accessible location and has a good contextual fit with adjoining buildings and the wider Mountain Street Conservation Area.

A draft site-specific development control plan has been prepared to support the planning proposal, providing guidance on the built form, heritage, residential amenity, servicing, public art, landscaping and sustainability.

The proponent has submitted a public benefit offer to enter into a planning agreement to provide long-term affordable housing on site 'in perpetuity' consistent with the City's draft affordable housing program. The offer also includes establishing an easement up to 3m in height for the pedestrian through-site link.

This report recommends approval of the planning proposal for submission to the Department of Planning, Housing and Infrastructure seeking a Gateway Determination, followed by public exhibition and referral to government agencies for comment. It also recommends that the draft site-specific development control plan be endorsed and publicly exhibited, and the draft planning agreement be prepared based on the public benefit offer. It is proposed that all documents are exhibited together. After this consultation, the planning proposal and any issues raised in submissions will be reported back to Council and the Central Sydney Planning Committee.

Recommendation

It is resolved that:

- (A) Council approve Planning Proposal - 41-49 Mountain Street, Ultimo, as shown at Attachment A to the subject report, to be submitted to the Minister for Planning and Public Spaces with a request for Gateway Determination;
- (B) Council approve Planning Proposal - 41-49 Mountain Street, Ultimo, as shown at Attachment A to the subject report, for public authority consultation and public exhibition in accordance with any conditions imposed under the Gateway Determination;
- (C) Council seek authority from the Minister for Planning and Public Spaces to exercise the delegation of all the functions under section 3.36 of the Environmental Planning and Assessment Act 1979 to make the local environmental plan and to put into effect Planning Proposal - 41-49 Mountain Street, Ultimo;
- (D) Council approve the Draft Sydney Development Control Plan 41-49 Mountain Street, Ultimo, shown at Attachment B to the subject report for public authority consultation and public exhibition concurrent with the Planning Proposal;
- (E) authority be delegated to the Chief Executive Officer to make any variations to Planning Proposal - 41-49 Mountain Street, Ultimo, to correct any drafting errors or to ensure consistency with the Gateway Determination;
- (F) authority be delegated to the Chief Executive Officer to make any variations to Draft Sydney Development Control Plan 2012 - 41-49 Mountain Street, Ultimo, to correct any drafting errors or ensure it is consistent with the Planning Proposal following the Gateway Determination;
- (G) Council note the Chief Executive Officer will prepare a draft planning agreement in accordance with the letter of offer dated 10 November 2025 at Attachment C to the subject report, and the requirements of the Environmental Planning and Assessment Act 1979, to be exhibited in accordance with the Act; and
- (H) Council note that the Central Sydney Planning Committee, as consent authority in relation to a development application, is recommended to approve the design excellence strategy in principle for 41-49 Mountain Street, Ultimo, as shown at Attachment D.

Attachments

- Attachment A.** Planning Proposal - 41-49 Mountain Street, Ultimo, and Appendices
- Attachment B.** Draft Sydney Development Control Plan 2012 - 41-49 Mountain Street, Ultimo
- Attachment C.** Public Benefit Offer letter dated 10 November 2025
- Attachment D.** Design Excellence Strategy - 41-49 Mountain Street, Ultimo

Background

1. In November 2025, a request to prepare a planning proposal was lodged on behalf of the proponent, apt.Residential for the site at 41-49 Mountain Street Ultimo, as shown in Figure 1.

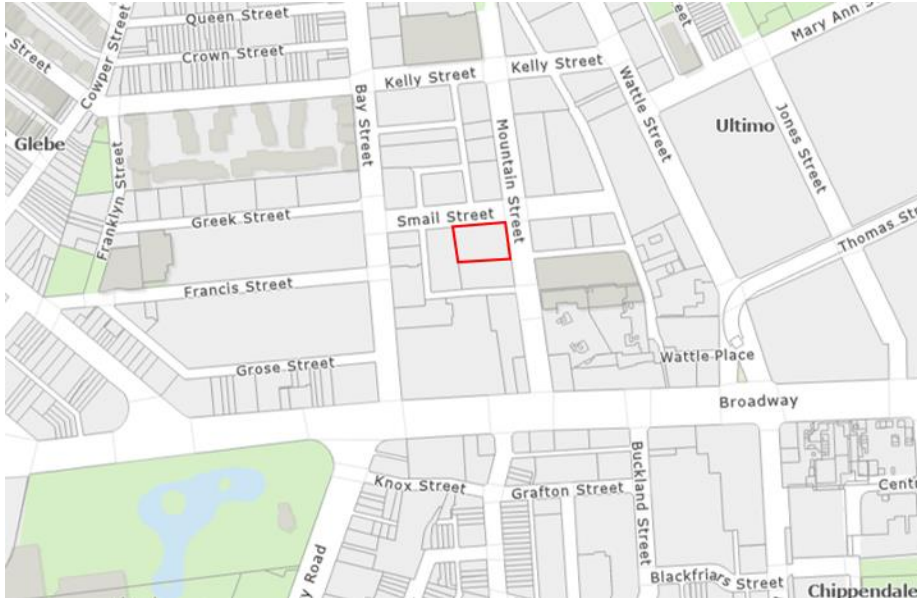


Figure 1: Site outlined in red

2. The site comprises two lots with an area of 1,452.6 square metres, with frontages to Mountain Street and Small Street. It is essentially vacant except for a State heritage listed former substation built in 1906. The buildings were demolished in 2007 for a commercial development that did not proceed. Parts of the neighbouring buildings are on the western and southern boundaries, including walls with windows. An image of the site is shown at Figure 2.



Figure 2: The site with lot boundary in red, with Mountain Street (left), and Small Street (right)

3. A mature plane tree adjoins the south-eastern corner of the site in Mountain Street, with canopy extending into the site. Removal of the tree is necessary, as on detailed inspection by City arborists, the tree was found to have multiple defects and damage from birds to create breeding hollows. It is expected that the damage to this tree will progress, reducing the life of the tree, and therefore removal of the tree is supported.
4. Further details of the site and existing planning controls can be found in sections 1 and 2 of the Planning Proposal at Attachment A.
5. Preliminary plans were presented to the Design Advisory Panel (DAP) in February and September 2025, with advice that future development feature:
 - limited street wall height in Mountain Street to respond to adjoining buildings, with additional height closer to the western side of the site
 - setbacks to respond to the heritage building and adjacent development
 - the heritage building be creatively adapted and integrated with the development
 - explore deep soil planting options.
6. The proponent has requested changes to height and floor space controls to allow a development with build-to-rent housing, affordable housing, adaptive re-use of the heritage item and a pedestrian link through the site.
7. The proponent has requested a planning proposal to facilitate redevelopment of the site to provide for:
 - (a) a 14 storey building up to a maximum height of RL 58.85 metres, or around 52 metres
 - (b) a floor space ratio (FSR) of 5.4:1
 - (c) reduced height street wall of 6 floors to Mountain Street in response to DAP advice
 - (d) approximately 107 apartments, with around 15 apartments to be affordable housing in perpetuity, and the remaining apartments operated as build-to-rent housing
 - (e) approximately 550 square metres of ground floor retail
 - (f) adaptive reuse of the State Heritage listed former substation
 - (g) pedestrian through-site link connecting Mountain Street and Smail Street adjoining the State heritage listed former substation
8. An image prepared by the proponent of the indicative development scheme can be found at Figure 3.



Figure 3: Indicative development scheme for the site

9. Build-to-rent housing requirements are in State Environmental Planning Policy (Housing).
10. Built-to-rent housing is defined in Chapter 3, Part 4 of State Environmental Planning Policy (Housing) 2021 (Housing SEPP) as a type of multi dwelling housing, residential flat building or shop top housing which meets specified criteria including being owned and controlled by one owner. For sites outside the E2 Commercial Centre and SP5 Metropolitan Centre zones (Central Sydney), such as this proposal, build-to-rent housing must also not be subdivided into separate strata lots for at least 15 years. After this time, it potentially can be strata subdivided and cease to be build-to-rent housing.
11. Build-to-rent housing can be more secure housing for long term renters and likely to be a better designed product for longer term renting. The federal government also encourages this type of housing through recent changes to federal foreign investment laws and tax arrangements for build-to-rent housing.
12. The City has prepared a planning proposal to increase the height and floor space controls for a build-to-rent housing development.
13. The planning proposal details the proposed amendments to the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) by inserting new site-specific provisions. These provisions are to:
 - (a) permit a maximum building height of RL 58.85 metres (around 52m above ground), an increase from the current maximum of 35 metres above ground

- (b) increase the maximum floor space ratio control from 2:1 to 5.35:1 inclusive of design excellence bonus
 - (c) ensure the resulting building would be for the purpose of build-to-rent housing as defined in the Housing SEPP, other than for those parts of the building used for affordable housing to meet the City's affordable housing program
 - (d) encourage a built form that respects and adaptively reuses the existing State heritage listed building on the site
 - (e) ensure adequate on-site loading and servicing including waste collection
 - (f) includes a public pedestrian through-site link connecting Mountain Street and Smail Street.
14. Further explanation of the provisions can be found in section 4 of the Planning Proposal. Changes to the Development Control Plan will make sure the development fits within the area, and protects amenity with good access and activation
15. A site-specific development control plan (DCP) is at Attachment B and provides further guidance for development facilitated by this planning proposal. The draft DCP provisions include:
- (a) maximum building envelope including setbacks and heights (as shown at Figure 4)
 - (b) heritage considerations including built form and materiality
 - (c) vehicular access, and loading and servicing requirements
 - (d) ground floor level and street activation
 - (e) public pedestrian through-site link with a minimum unencumbered width of 3m adjoining the State heritage item and connecting Mountain and Smail Streets
 - (f) residential amenity including communal open space and shared facilities
 - (g) landscaping
 - (h) sustainability
 - (i) flooding risk management.
16. A site-specific design excellence strategy is at Attachment D. The development will be required by the LEP to go through a competitive design process. The strategy has been prepared to satisfy the requirement in the City's Competitive Design Policy for a competitive design process to be undertaken in accordance with a design excellence strategy. It may be approved by the consent authority as part of any associated planning proposal, site-specific DCP or concept stage development application.
17. A Voluntary Planning Agreement will deliver affordable housing and a dedicated pedestrian link through the site.

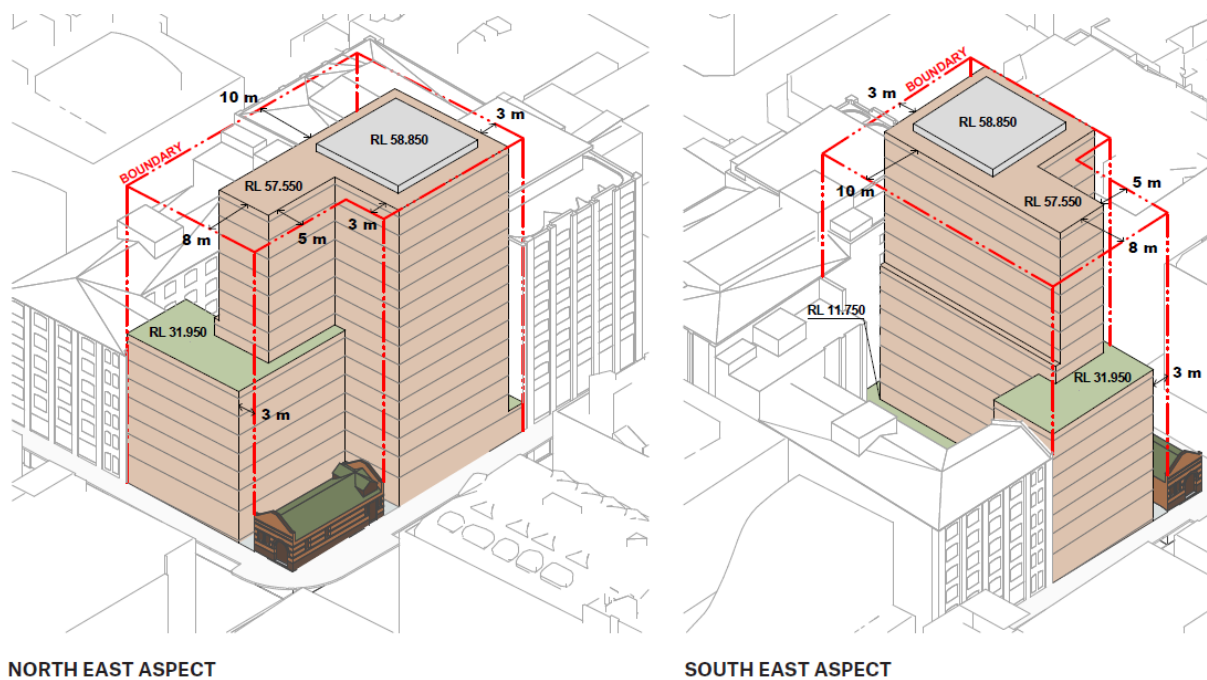


Figure 4: Planning envelope including minimum setbacks and maximum heights

18. The proponent has offered to enter into a Voluntary Planning Agreement (VPA) with Council for public benefits as part of this planning proposal. The Environmental Planning and Assessment Act 1979 (the Act) allows the proponent to enter into a legally binding VPA with Council. VPAs are voluntary and must be freely entered into by the public authority and a proponent. They are also publicly exhibited and held on a publicly accessible register.
19. The letter of offer from apt.Residential at Attachment C to this report outlines the proposed public benefits. The proposed benefits will be:
 - (a) affordable housing delivered in-kind and in perpetuity, calculated at 3% of the gross floor area (GFA) of the eventual development plus 17% of the GFA above 2:1 FSR of the development. Based on the reference scheme, this will be around 1,060sqm GFA, or around 15 apartments. At least 50% will be allocated for Moderate Income Households and no less than 5% for Very Low-Income Households, although the final allocation percentages are to be agreed with Council.
 - (b) an easement measuring 3m in width and 3m in height above finished ground level for a pedestrian through-site link adjoining the State heritage item connecting Mountain and Smail Street.
20. The VPA will not be offset against local infrastructure contributions under section 7.11 or section 7.12, and housing and productivity contributions under division 7.1, subdivision 4 of the Act. These will be addressed as part of the future development application. The affordable housing contribution to be delivered through the VPA will be made in lieu of the current contribution requirements under 7.13 of the LEP.
21. The VPA will be prepared and publicly exhibited with the planning proposal.



Figure 5: Indicative image of the pedestrian through-site link

The proposal demonstrates strategic and site-specific merit

22. The proposal is well located and provides a good contextual fit and has site-specific merit. The proposed controls provide for a development that will be a good contextual fit and have site-specific merit, while achieving additional diverse housing with good residential amenity for occupants and for those in adjoining buildings.
23. The proposed building envelope and supporting controls have been designed to address hazards affecting the site including flood risk management, contamination and acid sulfate soils.
24. Further information on the urban design, environmental, social and economic impacts of the planning proposal can be found in section 5.3 of the Planning Proposal. The proponent has also prepared technical reports to support their proposal, including an Urban Design Report, Traffic Impact Statement, Flood Impact Risk Assessment and Heritage Impact Statement.

Floor space ratio

25. The recommended floor space ratio of 5.35:1 is more than the proponent's reference scheme of 5.32:1, but less than the proponent's requested FSR of 5.4:1.

26. An FSR of 5.35:1 provides for around 47 square metres more floor space than the reference scheme, compared to a FSR of 5.4:1 which provides for around 120 square metres more. The recommended FSR is considered to be suitable for the site, as on balance it provides for sufficient design flexibility for future development on the site, while maintaining confidence that the following can be managed appropriately:
- impacts on the conservation area and State heritage listed former substation,
 - impacts on adjoining buildings located on the site boundary,
 - meeting Apartment Design Guide requirements, and
 - meeting flood risk planning requirements.

Heritage

27. The Design Advisory Panel considered the planning envelope in detail to determine appropriate distribution of height across the site and on balance fit within the conservation area while providing for affordable housing to be delivered as part of the development. As a result, the planning envelope locates the tallest part of the building closer to the adjoining building 5 Smail Street, to better maintain the street wall height in Mountain Street.
28. Preliminary advice was sought from Heritage NSW as development of the State heritage item will require their approval at Development Application stage under the Heritage Act.
29. Heritage NSW recommended the width of the pedestrian link through the site should be increased to more than 3m or a colonnade be provided within the site to increase separation of the new buildings from the heritage item. It was also recommended the overall height be reconsidered to reduce impacts on the State heritage listed former substation.
30. To respond to these comments, while balancing the strategic need for greater and more diverse housing, DCP controls have been recommended to provide guidance for consideration of Heritage NSW comments for the detailed design stage.
31. The proponent advised that further consideration of urban design, architectural and public domain options based on the advice from Heritage NSW will be included within, and progressed as part of, the Design Competition and future DA.

Residential amenity

32. The Housing SEPP requires the consent authority to be flexible in the application of ADG design criteria for build-to-rent housing, with clarification on flexibility provided by a Department of Planning, Housing and Infrastructure Fact Sheet dated February 2023. Flexibility must be applied in the consideration of balconies, storage and apartment mix, and potentially, depending on site characteristics, for solar and daylight access, apartment size and layout, and common circulation spaces.
33. The Fact Sheet states that flexibility is achieved by providing high amenity communal spaces and facilities in excess of minimum ADG requirements in the building to offset impacts, while also requiring the applicant to demonstrate how the amenity of residents still meets the objectives of the ADG.

34. Controls are included in the site-specific draft DCP to provide design guidance for achieving acceptable levels of flexibility for amenity, based on the characteristics of this site.

Communal open space and landscaping

35. The NSW Apartment Design Guide (ADG) requires communal open space to be at least 25% of the site area. For this site at least 363.15 square metres is required. The reference scheme only shows 270.86 square metres of communal open space on the Level 7 rooftop, which is 92.29 square metres less than required, although it has good solar orientation. An additional large, landscaped courtyard is shown on Level 1 in the southern setback area of at least 100 square metres, which although would receive lower levels of sunlight, could provide an additional area for supplementary communal open space with shade and planting to complement the principal open space on the roof. Therefore, it is considered acceptable in principle for a future development to provide adequate communal open space for this site.
36. The site is located in an established high density area, where achieving deep soil requirements of the ADG is challenging. However, landscaping can be included on the roof and above-ground courtyards to still achieve several benefits, including slowing stormwater runoff, improving air quality and reducing urban heat island effects. Landscaping controls are recommended to be included in the site-specific DCP to provide guidance for achieving quality landscaping of the site.

Access, loading and servicing

37. Due to high flood hazard risk in Mountain Street, driveway access from this street is not supported, with controls recommended in the site-specific draft DCP accordingly.

For this project, the City will trial a concurrent Planning Proposal and Development Application Process to reduce housing delivery times

38. The City is using this project to trial a process where the planning proposal and development application can be exhibited concurrently following Design Advisory Panel consideration. This approach is permitted under the Environmental Planning and Assessment Act 1979 and may reduce housing delivery times where appropriate. Under this compressed timeline, the design competition is brought forward and carried out prior to the planning controls being finalised. At this time only the planning proposal has been lodged, although work on the design competition brief is progressed and the proponent wants to commence the competition promptly, noting that the risk exists that the planning proposal does not proceed following the gateway and public exhibition processes.
39. In order for the design competition to commence prior to the finalisation of the planning proposal and site specific DCP, the design excellence strategy at Attachment D will need to be approved in principle by the consent authority.
40. This trial process is being undertaken at the request of the proponent. There remains the risk for the proponent of completing the design competition and lodging a DA before the planning proposal has been finalised or in a manner which is inconsistent with the final version of the planning controls, however the proponent understands this and is willing to fully accept this risk.
41. This trial is not a commitment to offer this process for other sites. The learnings from this trial will inform under what circumstances it may be used in the future.

Key Implications

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

42. 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:
- (a) Direction 2 - A leading environmental performer - this planning proposal enables future development that aligns with the City's Net Zero requirements and features increased landscaping to meet the City's Greening Sydney Strategy.
 - (b) Direction 3 - Public places for all - future development will include improved retail activation and a pedestrian link through the site to create more attractive and safe public streets.
 - (c) Direction 4 - Design excellence and sustainable development - the new building shall be guided by a competitive design process to achieve design excellence.
 - (d) Direction 5 - A city for walking, cycling and public transport - site is well located to nearby transport and accessible by walking to shops, services, parks and educational establishments.
 - (e) Direction 6 - An equitable and inclusive city - provides for diverse housing through build-to-rent housing for at least 15 years, and affordable housing in perpetuity.
 - (f) Direction 7 - Resilient and diverse communities - the proposal addresses hazard risk including flooding and contamination.
 - (g) Direction 8 - A thriving cultural life - increased activation and public art will provide creative and cultural experiences and opportunities for increased engagement with the public.
 - (h) Direction 10 - Housing for all - additional housing to provide more diverse housing options for renters and in perpetuity affordable housing.

Strategic alignment - Local Strategic Planning Statement

43. The City's Local Strategic Planning Statement, City Plan 2036, sets the vision, priorities and planning context, outlining how the City will plan for change and actions needed to achieve the vision. This planning proposal gives effect to the following priorities:
- infrastructure - this planning proposal facilitates new housing and retail development in a strategically appropriate location, with extensive public and active transport options, supporting efficient use of existing infrastructure.
 - liveability - future development will support the delivery of a range of housing types and tenures to support a diverse community including provision of more affordable housing, while protecting the character of heritage neighbourhoods and delivering design excellence and high amenity in the built environment.

- sustainability - the new building will be required to meet the City's sustainability benchmarks with efficient water and reduced waste, greening measures, and management of risks to people and infrastructure from flooding and stormwater, and contaminated land.

Risks

44. City staff have undertaken a thorough assessment of the planning proposal and found that it demonstrates strategic and site-specific merit in accordance with NSW Government guidelines. The planning proposal is consistent with City policies and strategies.
45. Progressing the planning proposal is within the City's risk tolerance and appetite. The planning proposal has demonstrated that development can be capable of complying with relevant environmental and planning laws, regulations and industry standards and is within the City's minimal appetite for non-compliance with environmental laws, regulations and industry standards.
46. The concurrent processes as a trial is within our risk tolerance and appetite. The delivery of new housing is a priority for City and the NSW Government, and the concurrent process could help accelerate the timing of housing delivery. It provides an opportunity to test if the total time taken for the approval process is reduced, while still achieving good outcomes. All due process, legislative requirements and community consultation requirements will be met. There is no commitment from the City that the planning proposal will be finalised as requested by the proponent and it may be subject to amendment as a result of the gateway and public exhibition processes, as well as the input of various public authorities. This risk sits with the proponent at all times and the City makes no undertakings as to the time and nature of the finalisation of the planning proposal process.
47. Should Council and the Central Sydney Planning Committee endorse the planning proposal, it will progress to the Department of Planning, Housing and Infrastructure for Gateway Determination. Proceeding with the planning proposal will meet the City's minimal appetite for disruption to our regulatory functions as decisions will be within the timeframes set in the NSW Government's Statement of Expectations Order 2024.

Relevant Legislation

48. Environmental Planning and Assessment Act 1979

Critical Dates / Time Frames

49. Should Council and the Central Sydney Planning Committee endorse the planning proposal for public exhibition, it will be forwarded to the Department of Planning, Housing and Infrastructure for Gateway Determination in accordance with section 3.34 of the Act. The Gateway Determination will detail the Local Environmental Plan amendment's required completion date. Following public exhibition, the outcomes will be reported back to Council and the Central Sydney Planning Committee.

Public Consultation

50. Public exhibition for this planning proposal will be determined by the Department of Planning, Housing and Infrastructure. Consultation will be in accordance with:
 - (a) the Gateway Determination issued by the Department of Planning, Housing and Infrastructure under section 3.34 of the Act
 - (b) the Environmental Planning and Assessment Regulation 2021
 - (c) the City of Sydney's Community Engagement Strategy and Participation Plan
51. It is likely that the public exhibition period for the planning proposal would be a minimum of 20 working days.
52. It is intended the planning proposal, draft Development Control Plan and draft VPA will be publicly exhibited concurrently on the City of Sydney website.
53. The public consultation outcomes will be reported back for consideration by Council and the Central Sydney Planning Committee.

GRAHAM JAHN AM

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