

ECONOMY

ITEM NUMBER	9.4
SUBJECT	Planning Proposal for land at 189 Macquarie Street, Parramatta
REFERENCE	RZ/22/2015 - D04325158
REPORT OF	Team Leader - Land Use Planning
OWNER	City of Parramatta Council
APPLICANT	Toplace Pty Ltd

PURPOSE:

To seek Council's endorsement of a planning proposal for land at 189 Macquarie Street, Parramatta, for the purpose of requesting a Gateway determination from the Department of Planning and Environment.

RECOMMENDATION

- a) **That** Council considers the independent planning assessment report and recommendation contained at **Attachment 1**.
- b) **That** Council endorses the planning proposal at **Attachment 2** that seeks to make the following site specific amendments to the Parramatta Local Environmental Plan 2011;
- Increase the maximum floorspace on the site from 36,000m² (6.9:1) to 60,000m² (11.5:1) &
 - Increase the maximum building height on the site from 91.3m to 167m
- and forward it to the Department of Planning and Environment for Gateway determination.
- c) **That** subject to Gateway determination the Planning Proposal be publicly exhibited for 28 days.
- d) **That** the Interim General Manager advise the NSW Department of Planning and Environment that the Interim General Manager will not be exercising the plan-making delegations for this planning proposal as authorised by Council on 26 November 2012 given that Council is the owner of the site.
- e) **That** Council authorise the Interim General Manager to negotiate a Voluntary Planning Agreement (VPA) for the delivery of public benefit.
- f) **That** the outcome of the VPA negotiations be reported back to Council.
- g) **Further that** Council authorise to the Interim General Manager to make any minor amendments and corrections to the planning proposal of an administrative and non-policy nature that may arise during the plan making process.

COUNCILLOR WORKSHOP/REPORT

1. This planning proposal was presented at a Councillor workshop on 16 November 2015 and 21 March 2016. This planning proposal has also been the subject of a report to Council on 14 December 2015 relating to a design excellence matter (Item 7.11).

THE SITE

2. The subject site is located at 189 Macquarie Street, Parramatta and consists of one allotment including; Lot 1 DP1214839 (Refer Figure 1).
3. The site is irregular in shape with a frontage of 51.68 metres to Hassall Street and 40.26 metres to Macquarie Street. The site has a total area of 5214.2 m².
4. The site has recently been cleared and excavated, with the construction of a development approved 30 storey mixed use building and Council carpark (DA/852/2013) currently underway.



Figure 1 – Subject Site

5. The site does not contain any heritage items though it is located in the vicinity of several local items and state listed items including Robin Thomas Reserve (Refer Figure 2).

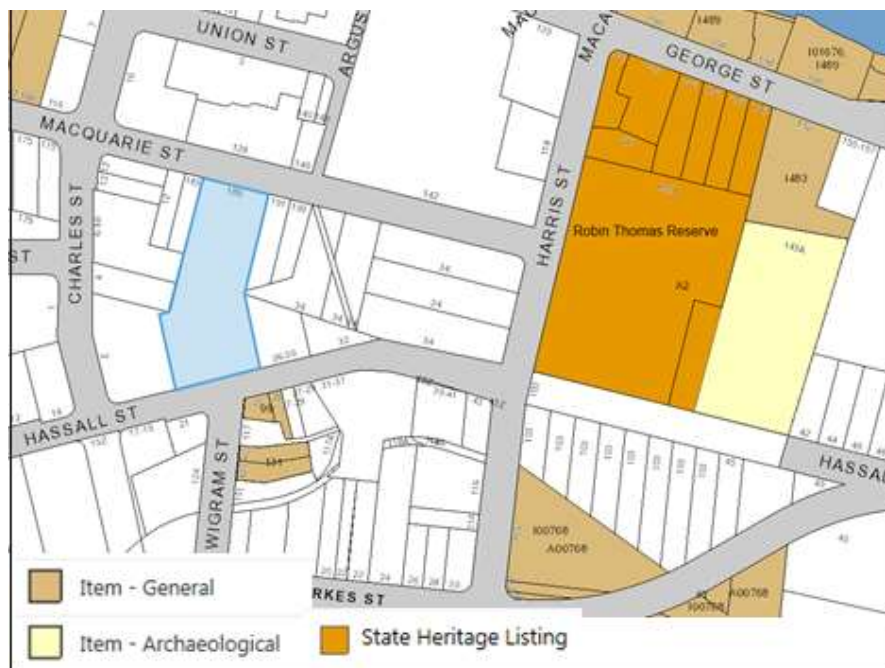


Figure 2 – Subject Site and surrounding local and state heritage items

PARRAMATTA CBD PLANNING PROPOSAL

6. Council at its meeting of April 11 2016, resolved to adopt the CBD Planning Proposal. The CBD planning proposal was informed by the *Parramatta CBD Planning Strategy* adopted by Council on 27 April 2015. The CBD Planning Proposal is currently with the Department of Planning and Environment seeking a Gateway determination.
7. The planning proposal for land at 189 Macquarie Street, Parramatta, was lodged by the applicant having regard to the CBD Planning Strategy. The strategy and subsequent adoption of the CBD Planning Proposal have been used to inform the assessment of this proposal to maintain consistency with Council's vision for Parramatta CBD.

BACKGROUND

8. The subject site, 189 Macquarie Street, Parramatta, (also known as the Macquarie Street Car park) is a Council owned site and is currently the subject of a Property Development Agreement (PDA) between Council and Toplace Pty Ltd. for the delivery of a 715 space public car park as part of a redevelopment of the site.
9. This site has been subject to the following applications as outlined in Table A. As Council is the owner of the site, independent assessments of these applications have been undertaken to date.

Application	Date lodged	Status
Planning Proposal	14 October 2013	Gazetted (Amendment No. 12)
Design Competition	6 December 2013	Successful
Development Application	23 December 2013	Approved by JRPP
Section 96 Application	10 July 2015	Refused by JRPP (currently under

		appeal)
Planning Proposal (current)	28 October 2015	Under Assessment (The subject of this report)

Table A: Applications relevant to the Subject Site

10. On 20 February 2015 Amendment No 12 came into force and it introduced a site specific clause into Parramatta City Centre LEP 2007 (Parramatta LEP 2007) that permitted the following on the subject site:-

22J Use of certain land at 189 Macquarie Street

- 1) *This clause applies to land marked "Area 4" on the Special Provisions Area Map.*
- 2) *Despite clauses 21, 22 and 22B (6), the consent authority may grant consent to development involving the construction of a new building or external alterations to an existing building on land to which this clause applies if:*
 - (a) *the design of the building or alteration is the result of an architectural design competition as required by clause 22B (4), and*
 - (b) *the consent authority is of the opinion that the building or alteration exhibits design excellence with regard to the design criteria specified in clause 22B (3), and*
 - (c) *the development continues to include a public car park on the site (the area of which is not subject to paragraphs (e) and (f)), and*
 - (d) *the development does not result in a building with a maximum building height that exceeds 91.3 metres above natural ground level, and*
 - (e) *the development does not result in a building with a maximum gross floor area that exceeds 36,000 square metres, excluding any floor space used only for private balconies and communal open space, and*
 - (f) *the development does not result in a building with a maximum gross floor area that exceeds 2,750 square metres that is used for the purposes of communal open space and private balconies.*
- 3) *In this clause:*

communal open space means areas for the purpose of recreation for use by building tenants, including gymnasiums, common rooms and communal gardens.

private balcony means a balcony, terrace, deck or winter garden (whether unenclosed, partially enclosed or wholly enclosed) that is attached to a dwelling for private use.

11. Following this amendment Parramatta LEP 2007 (which applied only to land in and around the Parramatta CBD) was consolidated into the city wide LEP on 18 December 2015 (ie the Parramatta LEP 2011 which applied to all other parts of the Parramatta LGA). As part of this consolidation amendment the clause above that applies to the subject site was also incorporated into Parramatta LEP 2011. As part of this process the clause was renumbered and is now Clause 7.9 in Parramatta LEP 2011.

12. As a requirement of Clause 7.9 and pursuant to Clause 7.10 – Design Excellence (formerly known as Clause 22B) this proposal was subject to a design

competition and was awarded design excellence. The successful scheme was designed by Krikis Tayler Architects and provided the following:

- Two x 30 storey towers, each sitting above a 6 storey podium containing a Council public car park (approx. 715 spaces)
- A height of 91.3 metres (not including architectural roof features)
- A GFA of 36,000m² (not including communal areas or enclosed balconies)

13. Following the design competition, a development application (DA/852/2013) was lodged by the applicant for the construction of a 30 storey mixed use development containing 425 apartments. This application was approved by the Sydney West Joint Regional Planning Panel (JRPP) on 15 April 2015. The site has been excavated and the development is currently under construction.

14. On 10 July 2015, a Section 96A (DA/852/2013/A) was lodged with Council seeking two additional basement levels to increase the number of car parking spaces, and reconfiguration of retail spaces to accommodate the substation at street level. This application was refused by the Joint Regional Planning Panel (JRPP) on 25 February 2016 as it was deemed inconsistent with planning policies that encourage greater use of public transport, and that the proposed modification was not in the public interest. This application is currently the subject of an appeal lodged with the Land and Environment Court.

15. On 28 October 2015, the applicant lodged a further planning proposal (the subject of this report), to increase the density on the site by amending clause 7.9 to allow up to 60,000 square metres of floorspace to be provided on the site. This equates to a total FSR of 11.5:1 potentially being provided on the site.

DESIGN EXCELLENCE

16. On 14 December 2015, a report was provided to Council relating to the design excellence process for 189 Macquarie Street. This report provided an assessment of the issues arising in relation to the design competition for this planning proposal.

17. Initially the applicant was seeking an exemption from engaging in a further design competition for the site, through the introduction of a site specific provision under their planning proposal as follows:

"To allow the original jury of the architectural design competition to endorse the design quality of any altered approved building form, without the need for a further design competition to be held".

18. This matter was referred to the Government Architects Office (GAO) in November 2015. Their response recommended that a new design competition would be required as the density increase sought represents a substantial design change (**Attachment 3** contains a copy of this advice).

19. Council Officers recommended Council not support this provision and this matter was deferred by Council (on 14 December 2015) pending resolution item (b):

(a) **That** Council note the advice from the Government Architect's Office (GAO) requiring a new design competition to be held in association with the increased development potential being sought.

(b) **That** Council defer the recommendation to not support the applicant's request to be exempt from the design excellence process for this site until further information is provided on:

1. The effects of a design competition on the public car park to be handed over to Council;
2. The implications of the delivery and handover of the public car park from the applicant to Council; and
3. Further liaison between Council and the applicant.

(c) **That** Council continues to assess the Planning Proposal based on the merit of the application.

(d) **Further, that** Council advise the applicant of Council's decision on this matter and seek advice on whether they wish to proceed with the planning proposal in its current form.

20. Following this resolution and discussion with Council staff, the applicant revised their planning proposal to remove this proposed provision and no longer seek exemption. The applicant will proceed with a further design competition and a draft brief has since been prepared for the proposed development. The draft design brief will now be processed via normal Council processes. The Director Strategic Outcomes and Development has delegation to endorse design briefs on behalf of Council.

CURRENT CONTROLS

21. Under the Parramatta LEP 2011, the site is currently zoned B4 Mixed Use, with a maximum building height of 54 metres and FSR of 6:1 (Refer Figure 3).

22. However notwithstanding the above controls, as the site is located within Area 4 of the 'Special Provisions Area Map', the site specific Clause 7.9 under Parramatta LEP 2011 applies to the site.



Figure 3 – Current Controls that apply to site

Clause 7.9 – Development on Land at 189 Macquarie Street, Parramatta

- 1) *This clause applies to land marked “Area 4” on the Special Provisions Area Map.*
- 2) *Despite clauses 21, 22 and 22B (6), the consent authority may grant consent to development involving the construction of a new building or external alterations to an existing building on land to which this clause applies if:*
 - (a) the design of the building or alteration is the result of an architectural design competition as required by clause 22B (4), and*
 - (b) the consent authority is of the opinion that the building or alteration exhibits design excellence with regard to the design criteria specified in clause 22B (3), and*
 - (c) the development continues to include a public car park on the site (the area of which is not subject to paragraphs (e) and (f)), and*
 - (d) the development does not result in a building with a maximum building height that exceeds 91.3 metres above natural ground level, and*
 - (e) the development does not result in a building with a maximum gross floor area that exceeds 36,000 square metres, excluding any floor space used only for private balconies and communal open space, and*
 - (f) the development does not result in a building with a maximum gross floor area that exceeds 2,750 square metres that is used for the purposes of communal open space and private balconies.*
- 3) *In this clause:*

communal open space *means areas for the purpose of recreation for use by building tenants, including gymnasiums, common rooms and communal gardens.*

private balcony *means a balcony, terrace, deck or winter garden (whether unenclosed, partially enclosed or wholly enclosed) that is attached to a dwelling for private use.*

PLANNING PROPOSAL

23. The planning proposal prepared by LJB Urban Planning on behalf of Toplace Pty Ltd was lodged with Council on 28 October 2015 in response to the CBD Planning Strategy. The planning proposal has been adapted in Council’s template and is located at **Attachment 2**.
24. The planning proposal seeks the following amendments to Clause 7.9 – Development on land at 189 Macquarie Street (as shown in **bold**):
 - Increase the maximum height permitted on the site from **91.3** metres (including design excellence) to **167 metres** (including design excellence)
 - Increase the maximum Gross Floor Area (GFA) permitted on the site from **36,000m²** (which allows for an FSR of 6.9:1 inclusive of design excellence) to **60,000m²** (which allows for an FSR of 11.5:1 inclusive of design excellence)

25. The planning proposal is supported by an Urban Design Assessment prepared by GMU Urban Design and Architecture (GMU), and a heritage study prepared by NBRIS & Partners.
26. A flood study was not specifically prepared for this planning proposal. The applicant indicated that flood modelling informing the original planning proposal and approved DA for the site remains relevant for the increased density being sought. An addendum letter was provided by the applicant to indicate this position, indicating that all habitable levels will remain above the Probable Maximum Flood (PMF) level.
27. The planning controls sought under this planning proposal will result in an increased:
- Maximum gross floor area from 36,000sqm up to 60,000sqm (which equates 11.5:1) being provided on the site
 - Height of the approved tower element on Macquarie Street from 91.3 metres/30 storeys to 167 metres/54 storeys (178 metres when measured to the roof feature)
 - Height of the approved tower element on Hassall Street from 91.3 metres/30 storeys to 126 metres/41 storeys (135 metres when measured to the roof feature).

THE ASSESSMENT

28. This planning proposal was independently assessed by Elton Consulting on behalf of Council. A copy of the assessment is provided at **Attachment 1**.
29. The assessment makes the following conclusions in respect to this planning proposal;

“The Planning proposal is a site specific response to the City Centre Strategy

The proposed amendment will enable the delivery of a development that meets the potential for the site.

The planning proposal will facilitate the development of the eastern gateway to the CBD.

With appropriate distribution of the additional height and gross floor area across the site, the resultant built form will have an acceptable impact on the identified heritage significance of nearby items.

It is recommended that Council support the planning proposal proceeding to Gateway for its consideration to progress to the public exhibition stage of the process.”

30. The following key issues were also raised in the independent assessment and are summarised below:

Overshadowing

31. Overshadowing of the subject site and its impacts on solar access from and to adjacent sites, as well as overshadowing impacts during mid-winter on nearby state heritage items experiment farm, and experiment farm cottage were raised

as an important matter for consideration. The applicant suggests that these impacts can be mitigated and the overshadowing of Experiment Farm Cottage avoided, through the appropriate distribution of heights across the site and some modifications to roof features. The proposed building heights would however result in some overshadowing of the curtilage to Experiment Farm. Further detail/analysis during the design competition process will be required in addressing this issue.

Flooding

32. Though the applicant indicated that previous flood modelling for the site remained relevant to the increased density being sought, concern was raised regarding any potential additional basement car parking levels resulting from a revised design scheme that may form part of a future design competition. Further information from the applicant was required in regards to the ramifications of these additional levels such as feasibility of evacuation, increased flood damages and the evacuation strategy addressing additional basement levels.
33. Furthermore, whilst the increase in development complies with the S117 direction 4.3 (Flood Prone Land) and Council's current controls, Draft LEP provisions as a result of the CBD Planning Proposal relating to floodplain risk management should be considered within the development.

Exclusion of communal open space and private balconies from the calculation of GFA

34. Gazetted in the previous proposal was the exclusion of communal open space and private balconies from the calculation of GFA for the purpose of wintergardens and enclosed communal spaces. There is no objection, in principle, to Clause 7.9 continuing to exclude the current quantum of enclosed private open space (wintergardens) and communal open space from the maximum GFA specified for the site. In a tall building it is not unreasonable to expect that balconies on the upper floors will be subject to amenity impacts such as high winds. However it would not be fair, in the opinion of the independent consultant to allow a further increase in the extent of winter gardens on this site given all other sites in the CBD do not benefit from this concession. The planning proposal contained at **Attachment 2** does not seek to modify the existing provisions in this regard. Allowing winter gardens to be excluded from floor space ratio calculations may be an issue Council could consider as part of a broader policy review.

Planning proposal drafting

35. The independent assessment also identified several areas where the planning proposal and accompanying studies could be strengthened and improved including some minor corrections to formatting and clarity of images and information. These amendments have been made to the planning proposal document attached. Further corrections and enhancements will be made to the supporting studies and documentation prior to exhibition utilising the delegation being requested in Part (g) of the recommendation.
36. Concern was also raised by the independent assessment that legal advice should be obtained in relation to the drafting of any amending provisions specifically regarding the interpretation as to whether the proposal constituted a

'new building' or 'external alterations to an existing building' as contained in current clause 7.9. This was recommended to ensure there are no unintended consequences in relation to the eventual operation and application of this clause. The planning proposal contained at **Attachment 2** contains a clear 'plain-english' explanation of the objectives and intended outcomes of the planning proposal. Appropriate legal advice can be received during the drafting plan making process in consultation with Parliamentary Counsel. It is not required prior to exhibition as suggested by the independent consultant.

VOLUNTARY PLANNING AGREEMENT

37. During the original planning proposal applicable to this site a Voluntary Planning Agreement (VPA) was negotiated and entered into. This VPA provided a public through-site pedestrian link, traffic improvement works including construction of a round-about at the intersection of Hassall & Wigram Streets and a monetary contribution.
38. No letter of offer for a VPA has been submitted by the applicant for this planning proposal for the provision of public benefit in association with the development uplift being sought. As has been the case with other planning proposals in the Parramatta CBD seeking site specific amendments to increase development potential it is recommended that the applicant be invited to explore the opportunities for the provision of public benefits commensurate with the uplift being sought.

PLAN-MAKING DELEGATIONS

39. New delegations were announced by the (then) Minister for Planning and Infrastructure in October 2012, allowing councils to make LEPs of local significance. On 26 November 2012 Council resolved to accept the delegation for plan making functions. Council also resolved that these functions be delegated to the then Chief Executive Officer. In this case, given that Council is the owner of the site, this delegation cannot and will not be utilised. All plan making functions will be undertaken by the Department of Planning & Environment.

NEXT STEPS

40. If endorsed, the planning proposal provided at **Attachment 2** will be modified to reflect Council's resolution and the recommendations of the independent review as determined by the Director Strategic Outcomes & Development and forwarded to the Department of Planning and Environment for Gateway determination.
41. Once a Gateway determination is received, the planning proposal will be placed on public exhibition and the outcomes will be reported to Council. Any draft VPA should be exhibited concurrently with the planning proposal. A report on the outcomes of the VPA negotiations will be put to Council before it is publicly exhibited.

Neal McCarry
Team Leader – Land Use Planning

Sue Weatherley
Director Strategic Outcomes and Development

ATTACHMENTS:

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|----------|---|----------|
| 1 | Independent assessment report | 39 Pages |
| 2 | Planning proposal - 189 Macquarie Street Parramatta | 28 Pages |
| 3 | Government Architects Advice | 2 Pages |