

Planning Services

Plan Finalisation Report

Local Government Area: City of Parramatta

PP Number: PP_2016_PARRA_016_00

1. NAME OF DRAFT LEP

Parramatta Local Environmental Plan 2011 (Amendment No. 26) (draft LEP). The draft written instrument is at **Attachment LEP**.

2. SITE DESCRIPTION

The planning proposal applies to land at 180 George Street, Parramatta in the City of Parramatta local government area (LGA). The legal description of the site is Lots 201–204 in DP 1082194 and SP 74916. The site is approximately 8000m² and is generally bound by George Street (south) and Charles Street (west), the Parramatta River Foreshore (north and north-east) and a private pedestrian right of way (east). The western boundary adjoins the state heritage-listed item Harrisford. Figure 1 identifies the location of the site.

The site is occupied by a mixed-use development comprising five buildings and a basement car park surrounding a central courtyard. The built form ranges in height from two storeys along George Street to 13 storeys along Charles Street. The primary use of the site is serviced apartments with street-level retail uses. The design reference (**Attachment I**) indicates the serviced apartments and retail frontage along Charles Street will be retained.



Figure 1: The subject site is shown outlined in red. (source: PCC IHAP report).

3. PURPOSE OF PLAN

The draft plan seeks to amend the Parramatta Local Environmental Plan (LEP) 2011 as follows:

- amend the height of building maps (HOB_010) to apply a maximum building height of 190m;
- amend the floor space ratio map (FSR_010) to apply a maximum floor space ratio of 10:1;
- amend the key sites special provisions map sun access protection map (CL1_010) and identify the site as Area 6;
- amend Clause 7.6 Airspace Operations to ensure the provisions of this clause apply to the subject site; and
- insert an additional local provisions clause into Part 7 of the Parramatta LEP 2011 to require a minimum of 1:1 employment-generating floor space including uses such as commercial, childcare centres, tourist accommodation, serviced apartments and the like, and impose maximum car parking rates.

The existing LEP maps are provided at **Attachment F**.

The site is zoned B4 Mixed Use under the provisions of Parramatta LEP 2011, with a maximum floor space ratio (FSR) of 4:1 and maximum building height of 36m.

The draft plan will facilitate the development of approximately 753 residential apartments on the site. Ground floor retail land uses will also contribute to the activation of street frontages and employment generation.

City of Parramatta Council also proposes to amend the Parramatta Development Control Plan (DCP) 2011 to ensure appropriate development controls are established to support the intent of the planning proposal. The proposed amendments are to be incorporated within section 4.3.3.7 Parramatta City Centre – City Centre Special Areas of the DCP (**Attachment G**) once the site is rezoned.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Parramatta State Electorate. Dr Geoff Lee MP is the State Member for Parramatta.

Ms Julie Owens MP is the Federal Member for Parramatta.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required

5. GATEWAY DETERMINATION AND ALTERATIONS

A Gateway determination was issued on 17 June 2016 (**Attachment C1**) that enabled the proposal to proceed subject to conditions.

The Gateway determination was altered on 15 August 2016 to amend condition 4, which originally required the concurrent exhibition and notification of seven different planning proposals in the Parramatta CBD. The Gateway alteration enabled each of these planning proposals to be exhibited separately (**Attachment C2**).

A second Gateway alteration was issued on 10 January 2017 (**Attachment C3**) to broaden the range of land uses that could be included in the required minimum commercial FSR of 1:1 on the site. This alteration amended the introductory paragraph of the Gateway determination to state that the planning proposal will “insert a site-specific clause requiring a minimum 1:1 employment generating floor space including uses such as shops, offices, child care centres, tourist accommodation, serviced apartments and the like”. This was based on a site-specific merit assessment that considered the nature of the existing serviced apartments on the site and the need to provide additional flexibility.

A third Gateway alteration was issued on 4 August 2017 (**Attachment C4**) to replace condition 6, which related to the need for the planning proposal to be amended (if required) to incorporate the results of the mesoscopic modelling that is being prepared for the entire Parramatta CBD. This requirement has been replaced with a requirement to impose maximum car parking rates, which enables the planning proposal to proceed ahead of the mesoscopic modelling.

The proposal was due for finalisation by 17 December 2017.

The Department received Council’s request to finalise the planning proposal prior to the due date; however, there was an outstanding objection from the NSW State Emergency Service (SES) that delayed the finalisation process. The Department is now satisfied that Council has met the conditions of the Gateway determination and the planning proposal is suitable for finalisation.

6. PUBLIC CONSULTATION

In accordance with condition 2 of the Gateway determination, community consultation was undertaken by Council from 5 April 2017 to 5 May 2017.

Council received two community submissions objecting to the planning proposal. A summary of the community submissions is included in Council’s report at **Attachment D**.

In summary, the community submissions raised the following matters:

- the adverse impact of the development on Harrisford house, particularly the 6m pedestrian easement, is inadequate and will not allow for adequate solar access to Harrisford house or the pedestrian access;
- the proposal is not compatible with the objective of opening up the riverbank around Parramatta Wharf;
- the proposed height and FSR are excessive, will not result in quality architecture and will compromise the aesthetic appeal of the approach to Parramatta via the ferry; and
- the permitted land uses are too open-ended and it is unclear what is meant by serviced apartments.

It is considered that Council has adequately addressed these concerns in its planning report, noting that the developer is required to undertake a design excellence process prior to submitting a development application (DA) and that further refinement of the design will occur at this stage. This is the appropriate stage to consider the activation of the public domain within the site, the interface with surrounding land uses and a detailed assessment of solar access. The existing structures on the site would already cause overshadowing of Harrisford, as would any development of the site that proposed a built form element up to the existing permitted height of 36m. As such, impacts of overshadowing need to be considered in conjunction with the appropriate built form interface to Harrisford at the DA stage.

In the CBD context, the imposition of a maximum height and FSR is considered a suitable development outcome that provides for flexibility in design, and the proposed FSR and height are considered reasonable. No new land uses are proposed to be introduced to the site; rather, the range of land uses that can be considered within the required 1:1 FSR of

employment-generating floor space has been expanded. All proposed land uses are defined within the existing LEP definitions.

7. ADVICE FROM PUBLIC AUTHORITIES

Council consulted with public agencies in accordance with condition 4 of the Gateway determination.

Council received five submissions from public agencies and organisations (**Attachments E1–E6**) including the Heritage Council of NSW, the NSW State Emergency Service, Sydney Water, Endeavour Energy and the Civil Aviation Safety Authority. Council's report at **Attachment D** appropriately addresses each of the public agency submissions, except for the submission from the NSW SES. Further discussion is provided below in relation to the submissions from the Heritage Council of NSW and the Civil Aviation Safety Authority. Sydney Water and Endeavour Energy raised matters relating to the servicing of the site, which relate more specifically to the DA process.

NSW SES submission

The NSW SES submission (**Attachment E2**) objected to the planning proposal and raised the following key issues:

- the proposed management and development strategy that relies on sheltering in place or deliberate isolation in a flood event is not equivalent in a risk management context to evacuation;
- Parramatta CBD is subject to flash flooding, which is characterised by a short warning time. During flood events, the proposed occupants will have their access to and from the building cut and become isolated;
- shelter in place should only be used where evacuation is not possible due to greater risks of evacuating. There is no analysis of whether it will be tolerable for the future occupants of the site to be isolated in a flood;
- there are risks in relation to human behaviour and driving during flooding, secondary emergencies and risks to emergency personnel; and
- concerns with the proposed underground car parking.

The SES submission also provided emergency management principles to guide future decisions and guidance for Council regarding the use of private evacuation plans as a condition of consent. Council's report (**Attachment D**) left the issues raised by the SES unresolved and noted that this was a matter that required resolution and a position to be delivered by the Department. Council was satisfied that the proposal to shelter in place was appropriate for this site, particularly as the site is entirely above the 1:100-year flood event and there is an ability to appropriately design the building to take the flood affectation into account.

The site is affected by the probable maximum flood (PMF), the largest flood that could conceivably occur. It is not affected by the 1:100-year flood event and, as such, is situated above the flood planning level as identified in the Floodplain Development Manual. Therefore, the provisions of Clause 6.3 Flood Planning in Parramatta LEP 2011 and section 9.1 Direction 4.3 Flood Prone Land do not apply to the site. As a result, an assessment of whether there are appropriate planning controls in place to ensure the issue of flood affectation in a PMF can be appropriately addressed through the DA process. Parramatta DCP 2011 contains development controls in relation to flooding, which are required to be considered in the assessment of any DA. The proponent prepared a flood study (**Attachment H**), which details the impact of these controls on the site in terms of flood planning and the effect on building design outcomes.

Council is seeking exceptional circumstances to change the flood planning level in the CBD from the 1:100-year flood event plus 0.5m freeboard to the PMF as part of the city centre planning proposal. This will allow new clauses to be included in the LEP that apply to all land

affected by the PMF and it is intended that these controls will result in improved building design in a flood event.

The Department conducted further consultation with the NSW SES in relation to its concerns. The key point of difference between flood planning legislation and SES policy is that planning legislation requires that councils adopt the 1:100-year flood as the flood planning level for all residential development, while the SES responds to all flood events up to the PMF. As such, there is a difference in how the risk to flood planning is approached. Consultation with the SES focused on understanding the intended development outcomes on the site and the manner in which the existing planning framework can respond to the SES's concerns.

As a result of this consultation, the SES issued revised comments on the planning proposal (**Attachment E3**), which recognised that an outcome of shelter in place may be appropriate subject to satisfying site-specific design considerations. A Department assessment of each of the requested site-specific design considerations, and how they may be implemented, is provided at **Appendix 1**.

A key difference between the existing DCP controls that apply to the site and the design controls requested by the SES is that the DCP requires habitable floor levels to be located above the 1:100-year flood event and the SES has requested habitable floor levels to be located above the PMF. This represents a significant change to planning controls. However, in these circumstances, this is not considered to be a significant risk as the preliminary design (**Attachment I**) proposes that all new car parking be provided above ground, with the residential development above the car park podium.

While there is capacity for the proponent to alter this outcome prior to the DA stage, a design excellence competition under clause 7.10 of the Parramatta LEP 2011 is being completed and it is proposed that all new residential development will be located above the PMF. This provides a level of certainty that the SES design considerations will be achievable at the DA stage. The proponent has supplied an extract of their proposed plans for the site, which demonstrates a significant communal area above the car parking on level 4 of the proposed development (**Attachment J**), with the tower elements emerging from this podium, noting that this is subject to change. Ground floor retail uses will be provided; however, there is capacity through the DA process to ensure there is appropriate refuge above the PMF within the site in the case of flooding.

During negotiations on the voluntary planning agreement, Council has secured a 4.5m-wide easement along the north and north-eastern boundaries of the site, which enables pedestrian access along the river foreshore above the 1:100-year flood. This is considered to be a sound planning outcome for the site.

The Department notes there is already an intensity of land uses within the site and that the proposed redevelopment of the site provides the potential to more appropriately manage and mitigate the risks associated with flooding. All the matters raised by the SES are considered to be more appropriately dealt with at the DA stage and the SES will be able to have further input as part of this process.

The Department is satisfied there are appropriate development controls in place to guide development outcomes that consider the flood-prone nature of the land. There is a reasonable level of confidence that the design is generally compatible with the SES requirements or can comply if it represents the best outcome for the site when all matters for consideration in the assessment of a DA are taken into account. A copy of the SES's comments has been provided to Council and the developer, and the developer has advised that they are willing to work with the SES to address its requirements.

Heritage Council of NSW submission

The Heritage Council of NSW submission (**Attachment E1**) notes its outstanding objection to the Parramatta CBD planning proposal (CBD PP) and requests that the Heritage Council's

broader concerns in relation to the proposed increased densities across the CBD be considered before any other site-specific planning proposal seeking a density increase. The Department notes the Heritage Council's concerns but also recognises the ability for site-specific planning proposals to be considered on their merits.

The Heritage Council also provided comments in relation to the subject planning proposal should it proceed ahead of the CBD PP. A Department assessment of the site-specific matters raised by the Heritage Council is provided at **Appendix 2**, noting that most of the matters raised by the Heritage Council are more appropriately addressed by incorporating them into the detailed site-specific controls for the site within Council's draft DCP and through any subsequent DA process.

The Heritage Council raised concerns with the previous archaeological works on the site relating to a section 140 approval issued under the *Heritage Act 1977* for development that has already occurred on-site. This is an enforcement issue relating to the previous consent. Any new excavation or works associated with the planning proposal will require a detailed investigation of archaeological significance, which will require appropriate permits to be obtained prior to excavation.

It is not considered that the matters raised by the Heritage Council warrant an amendment to the planning proposal.

Civil Aviation Safety Authority submission

The Civil Aviation Safety Authority (CASA) notes that the proposed building height would penetrate the planned outer horizontal surface of AHD 156m of the obstacle limitation surface of Bankstown Airport. As such, CASA identified that the proposed building would require a controlled activity approval from the federal Department of Infrastructure, Regional Development and Cities.

The planning proposal includes an amendment to Clause 7.6 Airspace Operations of the Parramatta LEP 2011, which will require further approvals to be obtained as part of the DA process.

8. POST-EXHIBITION CHANGES

The planning proposal is required to be amended post-exhibition to include an additional map amendment. As the planning proposal intends to apply Clause 7.6 Airspace Operations to the site, the site is required to be identified on the special provisions area map. This change is considered minor and does not change the intent of the planning proposal. The inclusion of the site on the special provisions area map will enable the site to be more readily identified within the required additional local provisions requiring a minimum FSR of 1:1 for employment-generating floor space and maximum car parking rates to be imposed.

It is not considered that this change warrants re-exhibition of the planning proposal as it does not alter the outcomes on the site. Council has agreed to this change and has supplied the appropriate mapping.

9. ASSESSMENT

Section 9.1 Directions

Council reassessed the final planning proposal against the relevant section 9.1 Directions. At the time of the determination, the Secretary agreed that the planning proposal's inconsistency with section 9.1 Directions 3.5 Development Near Licensed Aerodromes, 4.1 Acid Sulfate Soils and 6.3 Site Specific Provisions are of minor significance. Therefore, no further approval is required in relation to these Directions.

The Gateway determination required that the planning proposal include an assessment of section 9.1 Direction 2.3 Heritage Conservation and therefore this Direction requires further consideration prior to finalisation.

Direction 2.3 Heritage Conservation

Council considers that appropriate studies have been prepared to justify the planning proposal and that they have appropriately addressed the impact on the adjoining state heritage-listed item Harrisford. This adjoining property is also listed under the Parramatta LEP 2011 as “Harrisford (and potential archaeological sites)”. Council notes that the potential impacts on Harrisford house can be managed through modulation of the built form on the eastern boundary where the subject site adjoins the heritage item. Further, a site-specific DCP has been prepared to provide additional guidance (**Attachment G**), and a design excellence process is required to be undertaken in accordance with clause 7.10 of the Parramatta LEP 2011 prior to the determination of any DA related to the planning proposal.

Direction 2.3 requires that a planning proposal must contain provisions that facilitate the conservation of a range of European and Aboriginal heritage matters. It is considered that appropriate mechanisms already exist within Clause 5.10 Heritage Conservation of the Parramatta LEP 2011 to enable appropriate consideration of the impact of the proposed development on Harrisford at the DA stage, and Clause 7.10 Design Excellence requires the consent authority to consider any heritage or archaeological issues prior to granting design excellence. This would include the consideration of the impact on the existing adjoining heritage item and the requirement to investigate the potential for archaeological deposits (both Aboriginal and European) on the subject site.

The site is categorised as having state archaeological significance and exceptional archaeological research potential. The site has high Aboriginal sensitivity, with a recorded open campsite located on Lot 202 DP 1082194. The site has undergone extensive redevelopment and there was a previous section 140 approval under the *Heritage Act 1977* for the excavation associated with the existing buildings on the site, and a consent and permit to salvage under the *National Parks and Wildlife Act 1974*. Subject to the final design of the proposed development, the proponent may be required to seek a new section 140 approval to facilitate the proposed development, and/or an Aboriginal heritage impact permit. This will be determined at the DA stage. If a DA is issued and artefacts are found during construction, protections are available under the *Heritage Act 1977* and the *National Parks and Wildlife Act 1974* to ensure that works cease and further investigations occur.

The Department considers that appropriate documentation has been provided to support the progression of the planning proposal to finalisation and that there are appropriate mechanisms within Parramatta LEP 2011 to ensure appropriate consideration of Aboriginal and European heritage impacts at the DA stage. It is recommended that the Secretary agree that there is no inconsistency with section 9.1 Direction 2.3 Heritage Conservation.

State environmental planning policies

The planning proposal has addressed and is consistent with all relevant SEPPs.

Greater Sydney Region Plan

After the planning proposal was submitted for finalisation, the Greater Sydney Region Plan was finalised. This plan outlines a vision and actions for managing the growth of Greater Sydney. The plan establishes Parramatta as Sydney’s Central City and recognises Greater Parramatta as a significant contributor to the delivery of housing and jobs in the next 40 years. The planning proposal will further facilitate and contribute towards the growth of the Parramatta CBD and Greater Parramatta.

Central City District Plan

The Central City District Plan was released on 18 March 2018.

The planning proposal aligns with the directions and planning priorities outlined in the plan, having particular regard to the growth of the Parramatta CBD (Priority C7), the expansion of employment-generating uses on the site (Priorities C7 and C8), and the provision of new housing with access to jobs and services (Priority C5). The plan also recognises the need to adopt buildings and places to the impacts of urban and natural hazards (Priority C20). The planning proposal has taken the SES's requirements into account.

It is considered that the proposal is generally consistent with this plan.

10. MAPPING

There are three maps associated with this planning proposal (**Attachment Maps**), which have been submitted via the ePlanning Portal. These maps have been examined by GIS staff and meet the technical requirements.

11. CONSULTATION WITH COUNCIL

Under section 3.36(1) of the *Environmental Planning and Assessment Act 1979*, Council was consulted on the terms of the draft instrument (**Attachment K**).

Council confirmed on 7 March 2018 that the draft plan was supported and included the recommended drafting changes proposed by Council on 27 February 2018 regarding the imposition of maximum car parking rates for the serviced apartments.

12. PARLIAMENTARY COUNSEL OPINION

On 12 March 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

13. RECOMMENDATION

The planning proposal is supported.

The making of the plan will facilitate the further development of the site and as a result of the required design excellence process, it has the potential to deliver a high-quality development outcome that will contribute to the Parramatta CBD skyline.

The proposal has the potential to deliver approximately 753 new dwellings and new employment-generating land uses. It is considered that this is appropriate in the CBD context. There are complexities associated with the development of this site that relate to the potential for flooding in a PMF and the consideration of heritage and archaeological impacts. While these complexities are recognised, these issues can be addressed at the DA stage to ensure a suitable planning and urban design outcome for the site.

Given the above, the planning proposal should proceed to finalisation.

Prepared by:

Endorsed:



13/3/2018



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APPENDIX 1 – Consideration of NSW State Emergency Service submission

NSW SES design requirement	Department response
Residential development: The habitable floors of any residential development (including aged care) should be located above the PMF, with the building structurally designed for the likely flood and debris impacts.	The development controls for the site require habitable floors to be located above the 1:100-year flood event plus 0.5m freeboard. There is no ability to apply the SES request to the planning proposal without obtaining exceptional circumstances to change the flood planning level. The preliminary design (Attachment I) and extract of plans from the design excellence process (Attachment J) indicate that new residential levels are intended to be located above a car park podium. As the site is within a low flood risk area in the DCP, an engineer's report is not required. Principle P.2 of the DCP requires consideration of the economic and social costs associated with damage to property in the event of a flood and the ability to reasonably manage these costs. This matter can be addressed at the DA stage.
Commercial development: To cater for the safety of potential occupants, clients and visitors in commercial development there should be the provision of sufficient readily accessible habitable areas above the PMF.	Principle P. 6 of the DCP requires the preparation of an evacuation plan that could address this matter. This can be negotiated at the DA stage.
Childcare facilities: These must be located within floor levels above the PMF level.	Childcare centres are permissible in the B4 zone. The planning proposal does not amend the land use zone. The final mix of land use will be subject to determination at the DA stage. The DCP recognises that childcare centres are a sensitive use and may not be suitable in locations that are subject to flooding in PMF or 1:100-year flood. This will be subject to detailed assessment at DA stage.
Car parking: Any additional car parking should be above ground level and have pedestrian access to a podium level above the PMF.	The preliminary designs indicate that all new car parking will be provided above ground. This can be addressed through the DA process. There is existing underground car parking on the site that is intended to be retained. Design Principle P.14 in the DCP strongly discourages basement car parks on properties within the floodplain.
Make buildings as safe as possible to occupy during flood events. Design buildings for potential flood and debris loadings of a PMF so structural failure is avoided.	Design Principle P.2 in the DCP requires the damage to property to be considered, Principle P.8 requires a structural engineer to demonstrate that raised structures will not be at risk from the forces of floodwaters, and Principle P.13 requires that flow hazard categories be identified and adequately addressed in the design of the development. There are further controls in the flood planning matrix that would apply, depending on the determined flood impact level and the types of uses proposed.
Limit exposure of people to floodwaters. Provide habitable areas above the PMF to cater for potential occupants,	Design Principles P.3, P.5, P.6 and P.14 all contribute to addressing this concern. The floodplain matrix contains development controls for evacuation that would also apply to the site, depending on the final land use mix.

NSW SES design requirement	Department response
clients, visitors and residents.	
Provision of public accessible space for the itinerant population in areas surrounding intensive development in Parramatta CBD.	This will be subject to detailed assessment at the DA stage. The applicant has agreed to provide a 4.5m easement along the northern boundary to allow public access to the site, which is above the 1:100-year event. It is beyond the scope of the planning proposal to negotiate public access to private property.
Provision of adequate services so people are less likely to enter floodwaters.	This will be subject to detailed assessment at DA stage. It is beyond the scope of the planning proposal to amend height and FSR. The extent of services required will also depend on the final land use mix.

APPENDIX 2 – Consideration of Heritage Council of NSW submission on the planning proposal

Heritage NSW comment	Department response
Notes and has an outstanding objection to the Parramatta CBD PP, and requests that site-specific planning proposals be held in abeyance until the draft CBD PP is resolved.	Planning legislation enables site-specific planning proposals to be assessed on their merit and therefore it is not reasonable to delay consideration of site-specific planning proposals.
The planning proposal and heritage impact statement lack a general assessment of the impacts on heritage items in the vicinity and the cumulative impacts of increased densities.	The planning proposal has adequately demonstrated that the proposed height and density are suitable for the site. The interface with surrounding heritage items can be resolved in greater detail at the DA stage through design resolution.
The preparation of a site-specific DCP that guides future development is supported.	Noted. A site-specific DCP has been prepared in consultation with Council's heritage planners and urban designers, who are satisfied that the DCP will appropriately guide the future development and the interface with Harrisford. The Heritage Council also made several recommendations in its submission with regard to the draft DCP.
The site is an exceptionally significant historical and Aboriginal site in Parramatta, which was excavated in 2001 for the current development. The conditions of the previous consent under section 140 of the <i>Heritage Act 1977</i> have not been fulfilled.	This is a separate matter to the planning proposal. Any new work will require appropriate new consents to be obtained. Any new consents will be required to consider the work that has been previously undertaken.
The voluntary planning agreement is supported as it will require a 6m-wide through-site link along the eastern boundary adjoining Harrisford. This has positive benefits for Harrisford in terms of improved setting, activation and appreciation of the heritage item.	Noted. This 6m-wide easement is in addition to the 4.5m-wide easement along the northern boundary of the site to provide pedestrian access above the 1:100-year flood event.