

INNOVATIVE

ITEM NUMBER	6.3
SUBJECT	Post-exhibition - Planning Proposal, draft site-specific Development Control Plan (DCP) and draft Planning Agreement for 20 Macquarie Street, Parramatta
REFERENCE	RZ/21/2015 - D06796099
REPORT OF	Project Officer-Land Use Planning
LAND OWNER	M20 Pty. Ltd.
APPLICANT	Schiavello Constructions (NSW) Pty. Ltd.

PURPOSE:

To seek the advice of the Local Planning Panel on the outcome of the public exhibition of the Planning Proposal, draft site-specific DCP and draft VPA for land at 20 Macquarie Street for Council's consideration.

RECOMMENDATION

That the Local Planning Panel consider the following Council staff recommendation in its advice to Council:

- (a) **That** Council receives and notes the submissions made during the public exhibition of the Planning Proposal, draft site-specific Development Control Plan and draft Planning Agreement;
- (b) **That** Council endorse the Planning Proposal provided at **Attachment 1** which seeks to:
 - Increase the maximum height of buildings from 36 metres (approximately 11 storeys) to 90 metres (approximately 29 storeys) and maximum floor space ratio from 4:1 to 10:1;
 - Include a site-specific clause requiring development on the subject site to comply with the FSR sliding-scale provisions except if the development is for a hotel or motel;
 - Include maximum car parking rates consistent with Council's resolution of 10 April 2017
 and forward the Planning Proposal to the Department of Planning, Industry and Environment for finalisation, but request that the final notification in the Government Gazette only be undertaken once Council confirms that the Planning Agreement has been executed by Council and the applicant.
- (c) **That** Council re-exhibit the draft site-specific Development Control Plan as amended at **Attachment 2** and that the results of the exhibition be reported to Council;
- (d) **That** Council authorise the Chief Executive Officer to re-enter negotiations with the applicant to seek to amend the draft Planning Agreement at **Attachment 3** to secure a right of way over the two metre setback on Marsden Street for the benefit of Council for the purpose of 24 hour

pedestrian access;

- (e) **That** Council authorise the Chief Executive Officer to re-exhibit any such amendment to the draft Planning Agreement and that the results of re-exhibition be reported to Council; and
- (e) **Further, that** Council authorise the Chief Executive Officer to make any minor amendments and corrections of a non-policy and administrative nature that may arise during the plan amendment process, relating to the Planning Proposal, DCP and Planning Agreement.

SITE DESCRIPTION

1. The subject site is located on the corner of Macquarie and Marsden Streets, Parramatta (refer **Figure 1**). The legal description of the site is Lot 1 in DP 503651 and Lot 1 in DP 501663. The total site area is approximately 1,286 square metres. Currently the site contains a seven storey commercial building fronting Macquarie Street that includes a single storey portion of the building fronting Marsden Street.



Figure 1: Location Map (Source: Council's GIS)

CURRENT PLANNING CONTROLS

2. Under the Parramatta Local Environmental Plan 2011 the site is subject to the following controls:
 - a. Land use zoning is B4 Mixed Use.
 - b. Maximum Height of Buildings is 36 metres.
 - c. Maximum Floor Space Ratio (FSR) is 4:1.
 - d. The site is not listed as an item of heritage significance and is not within a Heritage Conservation Area.
 - e. The site adjoins an item of local heritage significance to the east at 197 Church Street. The item is listed as a shop and potential archaeological site. The shop is a two-storey, stuccoed brickwork building built during the interwar period known as the former Murray's General Store.

BACKGROUND

3. The Planning Proposal was originally considered by Council at its Meeting on 19 December 2016 and Council resolved as follows:
 - “(a) **That** Council considers the reports that were submitted to the Independent Hearing and Assessment Panel (IHAP) on 6 December 2016 (Attachment 1) and its recommendation (Attachment 2) which supports the progression of the Planning Proposal for the land at 20 Macquarie Street Parramatta.*
 - (b) **That** Council endorses the Planning Proposal (which is included as part of Attachment 1) subject to it being modified as follows:*
 - Provide an increase in FSR from 4:1 to 10:1 and an increase in height from 36 metres so not to result in any additional overshadowing of the public domain within Parramatta Square as defined in Figure 4.3.3.7.3 Parramatta Development Control Plan 2011 between 12pm and 2pm throughout the year and enable compliance with State Environmental Planning Policy 65 Apartment Design Guide;*
 - The FSR is exclusive of design excellence and comprises a minimum of 1:1 commercial floorspace.*
 - A height to be determined by the lodgement of a reference design as described in (c) and (d) below.*
 - (c) **That** the applicant provides a revised reference design, demonstrating compliance Item (b) above.*
 - (d) **That** the Interim General Manager be delegated responsibility to consider the reference design provided by the applicant and determine the exact height that will be included in the Planning Proposal prior to it being forwarded to the Department of Planning and Environment seeking a Gateway determination.*

- (e) ***That if the reference design proposes a height greater than 156AHD the reference design will need to be supported by an Aeronautical Study to address the relevant Section 117 Direction prior to submission of the Planning Proposal to the Department of Planning and Environment.***
 - (f) ***That Council proceed with negotiations for a Voluntary Planning Agreement (VPA) with the landowner in relation to the Planning Proposal on the basis that any draft VPA entered into would be in addition to S94A Development Contributions.***
 - (g) ***That delegated authority be given to the Interim General Manager to negotiate the draft VPA on behalf of Council and that the outcome of negotiations be reported back to Council prior to its public exhibition.***
 - (h) ***That Council advises the Department of Planning and Environment that the Interim General Manager will be exercising the plan-making delegations for this Planning Proposal as authorised by Council on 26 November 2012.***
 - (i) ***That a site-specific Development Control Plan (DCP) be prepared and reported to Council.***
 - (j) ***Further, that the Planning Proposal, VPA and DCP be placed on public exhibition concurrently."***
4. The applicant subsequently submitted a revised reference design in March 2017 which complies with the solar access requirements referred to in resolution (b) above. The request for the Gateway determination was forwarded in August 2017 and the then NSW Department of Planning and Environment (now the Department of Planning, Industry and Environment) issued a Gateway determination on 8 January 2018.
5. The applicant subsequently advised Council staff that their land use intentions for the site have changed from a mixed use building to a purely commercial building. As such, the applicant was requested to provide a revised reference design which reflects this land use. However, noting that the site is zoned B4 Mixed Use, there is nothing in the Planning Proposal that prohibits residential development in the future, and as such the applicant was requested by Council Officers to submit two reference designs. The reference designs reflect the two options of a purely commercial development or a mixed use development. These two options are reflected in the draft site-specific Development Control Plan (DCP).
6. The matter of the site-specific DCP and the letter of offer (VPA) was considered by Council at its meeting on 26 February 2018 and Council resolved as follows:
"That consideration of this matter be deferred for further information regarding design options for car parking, loading dock and eastern setback."
7. Council Officers wrote to the applicant on 8 March 2018 advising of Council's resolution and requesting the applicant submit a revised reference design which addresses the requested information including further information on flooding to ensure the ground floor plan can be practically achieved.

8. The applicant submitted a revised ground floor and basement plan in order to address Council's concerns. With regard to flooding, the applicant has re-submitted their original flood study stating that they believe this is adequate at the Planning Proposal stage.
9. Subsequent to the submission of further information, Council considered the matter again at its Meeting on 24 September 2018 and resolved as follows:

- “(a) **That** the draft DCP be amended to prescribe a minimum tower setback of 6 metres from Marsden Street for the Option B (residential tower) Controls*
- (b) **That** Council endorse the draft Development Control Plan (DCP) for the site at 20 Macquarie Street, Parramatta as provided at Attachment 2, subject to the amendments above, for the purpose of public exhibition.*
- (c) **That** a draft Voluntary Planning Agreement (VPA) document be prepared to reflect the terms outlined at Attachment 3 and that the Acting CEO be delegated authority to negotiate and finalise the legal drafting of the VPA on behalf of Council for the purposes of public exhibition.*
- (d) **That** the draft DCP attached to this report and draft VPA endorsed by the Acting CEO be placed on public exhibition concurrently with the Planning Proposal for land at 20 Macquarie Street, Parramatta for a minimum period of 28 days, and the outcome of the public exhibition be reported back to Council.*
- (e) **That** prior to public exhibition of the Planning Proposal and site-specific DCP, the reference design is to be amended to reflect the revised ground floor and basement plan included with this report with access shown from Macquarie Street only.*
- (f) **Further, that** Council authorise the Acting CEO to correct any minor inconsistencies or anomalies of an administrative nature relating to the draft DCP and VPA documentation that may arise during the drafting and exhibition processes.”*

PUBLIC EXHIBITION

10. The Planning Proposal, draft DCP and draft Planning Agreement were exhibited from 12 December 2018 to 1 February 2019. The exhibition comprised an advertisement in the local newspaper, relevant material being placed on Council's website and a hard copy located at Council's Administration Building and Parramatta Central Library. Letters were sent to land owners and occupiers in the vicinity of the subject site.
11. The following public authorities were also consulted, as required by the Gateway determination:
 - a. Transport for NSW;
 - b. Transport for NSW – Light Rail;
 - c. Roads and Maritime Services;
 - d. Office of the Environment and Heritage – Heritage Division;
 - e. Office of the Environment and Heritage; and
 - f. NSW State Emergency Services.

KEY ISSUES RAISED IN SUBMISSIONS

State Agency Submissions

12. Council received submissions from the following State government agencies:
 - a. Sydney Water;
 - b. Transport for NSW;
 - c. Endeavour Energy;
 - d. NSW State Emergency Services;
 - e. Roads and Maritime Services;
 - f. Office of the Environment and Heritage – Heritage Division; and
 - g. Office of the Environment and Heritage.
13. The issues raised in the submissions and associated Officer response are summarised in the table at **Attachment 4**. Key issues raised by the State agencies related to heritage, archaeology, floodplain risk management, sustainability and provision of electricity infrastructure. The matters raised in the submissions are not considered to affect the validity of the Planning Proposal in its current form. A number of matters can be appropriately addressed at the Development Application stage.

Submission from adjoining property owner

14. One (1) submission was received from the community being from the adjoining landowner at 197 Church Street. The issues raised in the submission are detailed in the table at **Attachment 4**. In summary, the main issues raised in the submission relate to the proposed setbacks in the draft DCP and how these impact on the development potential of the property at 197 Church Street.
15. It is noted that there is a separate site-specific Planning Proposal for 197 Church Street. Since the receipt of the above submission, the applicant for the 197 Church Street Planning Proposal has submitted an amended reference design as part of their Planning Proposal. The following changes should be noted in conjunction with their submission:
 - a. The proposed land use has changed from mixed use to commercial.
 - b. The tower facing Church Street is proposed to have a reduced western setback to the western boundary shared with 20 Macquarie Street. It is now proposed to be set back six metres.
 - c. The smaller portion of 197 Church Street facing Marsden Street is proposed to accommodate a tower with a setback of six metres to the southern boundary (ie. the boundary shared with 20 Macquarie Street).
16. A copy of the site plan is provided below in Figure 2. It should be noted that the amended Planning Proposal for 197 Church Street is also affected by the current analysis underway regarding setbacks from Church Street. As such, the amended Planning Proposal will be reported to Council once this issue is resolved through the CBD Planning Proposal.

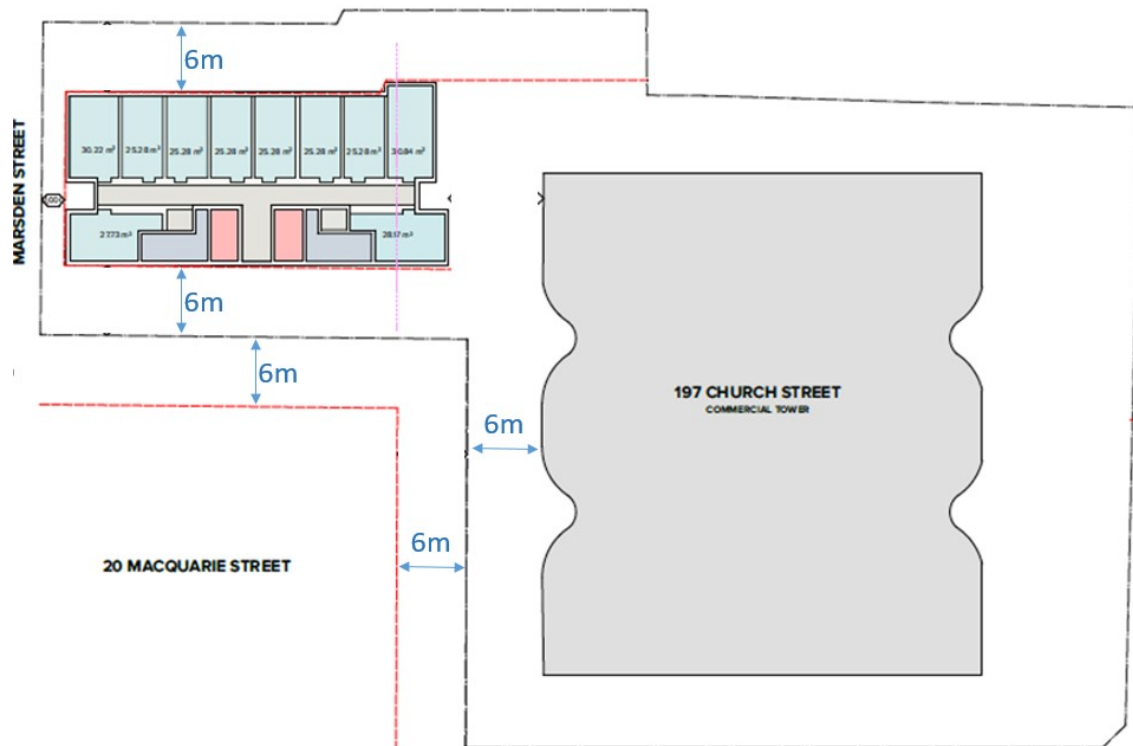


Figure 2: Block plan of 197 Church Street indicating the setbacks sought by the applicant in a recent submission to Council.

Comment:

17. The principal objection from the owner of the adjoining site at 197 Church Street relates to the proposed building setbacks and the impacts on the future development of their site. The recent change in the proposed land use and setbacks on 197 Church Street changes its relationship with the subject development on 20 Macquarie Street.
18. The Planning Proposal should be considered in the context of the surrounding development, in particular the Planning Proposal at 197 Church Street. The issues raised by the submission relate primarily to DCP matters and as such, these issues are addressed under the heading "DEVELOPMENT CONTROL PLAN".

Council's Bike Plan

19. Council's Transport Planning team provided comment on the Planning Proposal noting that Marsden Street has been identified in Council's endorsed Bike Plan for a physically-separated north-south cycleway through the CBD. This aligns with the NSW Government's "*Sydney's Cycling Future*" that identifies a need for a Strategic Bicycle Corridor to connect the CBD to the Parramatta River and the M4 Cycleway.
20. As a result, the eastern side of Marsden Street between Harold Street and Lennox Street has been identified for a two-metre wide road reservation for the purpose of a regional cycleway. This is currently in draft, and will be tested through the Parramatta CBD Planning Proposal Integrated Transport Plan.

Comment:

21. The issue of the Marsden Street cycleway and its implications for the development of the site have been considered in discussions with the applicant. The potential for a two-metre wide road reservation on the eastern side of Marsden Street has implications for the building footprint and the setback controls within the draft DCP.
22. Council's Urban Design team has identified an appropriate response to the potential road widening with recommended changes to the setback controls within the draft DCP. The changes are discussed further under the heading: "DEVELOPMENT CONTROL PLAN".

COMPLIANCE WITH CBD PLANNING PROPOSAL

23. The Planning Proposal provides for an increase in the FSR from 4:1 to 10:1 (excluding the existing 15 per cent bonus for Design Excellence and other bonuses). It should be noted that the FSR of 10:1 is provided for by a site-specific clause within the Planning Proposal which overrides the sliding-scale provisions within the existing LEP.
24. Under the draft CBD Planning Proposal, the site would be subject to an FSR of 10:1 combined with the sliding-scale. As the site area is 1,295 square metres, the FSR would be reduced to 7.475:1 when the sliding-scale is applied.
25. As the CBD Planning Proposal has progressed, there has been changes to the CBD Planning Proposal controls related to the application of the sliding-scale. Site-specific Planning Proposals have been progressed at different stages of the CBD Planning Proposal and therefore there has not been consistency in how the sliding-scale provisions have been applied in various site-specific Planning Proposals. The Gateway Determination for the subject Planning Proposal does not include a condition requiring the application of the sliding scale. However, other site-specific Planning Proposals include Gateway conditions requiring the sliding-scale provisions to be applied.
26. When the Planning Proposal was assessed in 2016, Council had adopted a position with the CBD Planning Proposal where the sliding-scale could be disregarded in the case that certain criteria were met. The Gateway conditions for the CBD Planning Proposal require that the clause that allowed for the sliding-scale to be disregarded is to be amended so it only applies to isolated sites that are not capable of consolidation and where design excellence is achieved.
27. This creates a difficult context within which Council is required to make decisions on site-specific Planning Proposals. Council should consider amending the Planning Proposal to apply the sliding-scale to avoid inconsistency with other site-specific Planning Proposals. This would reduce the maximum FSR to 7.475:1.
28. The objective of the sliding-scale control is to encourage the amalgamation of smaller sites as larger sites facilitate better built form outcomes. The subject site at 20 Macquarie Street is constrained by its relatively small size (1,286 square metres) and the amalgamation of the subject site with 197 Church Street would allow for increased setbacks between towers, improved amenity for the public domain, reduced numbers of vehicle footpath crossings and a potentially larger and more viable floor plate for the building on the site.

29. The CBD Planning Proposal includes an “out clause” that exempts sites from the sliding-scale where the site is an isolated site and where design excellence is achieved. The subject site at 20 Macquarie Street is not considered to be an isolated site as there is nothing physically preventing the amalgamation of the site with 197 Church Street.

CONSIDERATION OF EXEMPTION FROM SLIDING-SCALE

30. The applicant has been advised of the implications of the most recent version of the sliding-scale under the CBD Planning Proposal. The sliding scale would reduce the FSR from 10:1 to 7.475:1 which equates to a reduction in floor space of approximately 3,247 square metres. The applicant has expressed concern that the loss of floor space would render the hotel development unviable.
31. The developer of the site has been in negotiations with Hilton Hotels who have expressed interest in developing the site. However, the development negotiations commenced at a time when the CBD Planning Proposal “out clause” exempted the site from the sliding-scale. The reference design for the hotel reflects the FSR of 10:1.
32. Comments were sought from Council's Economic Development team who advised as follows:

“Economic Development would be supportive of the additional FSR if it resulted in the development of a 5-star hotel at the subject site. Parramatta CBD currently does not have any 5-star hotel stock. Providing a hotel of this classification would greatly assist in supporting business and event travellers’ choice and the promotion of the City’s overall image through association with the Hilton brand. The central location of the site and its proximity to future Parramatta Light Rail and existing train services make it optimal for this use.

The delivery of the hotel would benefit the delivery of the Destination Management Plan 2019-2024 and the draft Parramatta Night City Framework 2019-2024 in promoting Parramatta as a business event destination of choice, promoting diversity in hotel accommodation types in the city to a wider clientele, and promoting overnight visitation to the City.

As discussed, mechanisms to ensure the delivery of “hotel and motel accommodation” to derive benefit from the additional FSR should be built into the Planning Proposal to best ensure its delivery. The strategic merit of the provision of the additional FSR to achieve this outcome must be outlined in conjunction with the particular use, and a particular class of the use. The Planning Proposal should also provide sufficient justification as to why this particular site should confer a benefit of additional FSR above that recommended in the CBD Planning Proposal – namely the uniqueness of the anticipated business and the fact it is not currently represented in Parramatta.”

33. The above comments are supportive of an approach to the planning controls, where the full 10:1 FSR is permitted in the case that the site incorporates a hotel. This could be achieved through the planning controls by applying the sliding-scale except where the development includes “hotel or motel accommodation” as defined within the Parramatta LEP 2011. It should be noted that there is no planning mechanism for mandating the development of particular hotel brands or companies as the LEP clause would be limited to the dictionary definitions within the Standard Instrument.

34. A similar precedent has been employed on another site in the CBD namely 2-10 Phillip Street. For this site, a site-specific clause (Clause 7.13(2)) was introduced which permits development to exceed the FSR indicated on the FSR map by up to 5.5:1 but only where the additional floor area will be used for the purposes of hotel or motel accommodation or commercial premises.
35. The specific outcome sought for 20 Macquarie Street is slightly different to the example above and as such would need to be worded differently. An example of a potential clause is as follows:
- (X) *The consent authority may, despite any other provision of this plan, grant consent to the erection of a building on land to which this clause applies that has a floor space ratio that exceeds the maximum floor space ratio permitted under Clause 7.2 up to a floor space ratio of 10:1 but only if the consent authority is satisfied that the additional floor area will be used only for the purposes of hotel or motel accommodation.*
- (Y) *Despite any other provision of this Plan, any additional floor area that has been developed in accordance with a development consent under subclause (2) must not be used for the purpose of residential accommodation or serviced apartments.*
36. The above clause is included within the site-specific clause in the Planning Proposal in **Attachment 1** and is shown in track changes. The second recommended clause Y also prevents any additional floor area developed under the clause from being converted to residential uses once built.
37. It is considered that this change to the Planning Proposal does not necessitate re-exhibition of the Planning Proposal as it has already been exhibited with an FSR of 10:1.
38. While it is prudent to provide for planning controls that are consistent with the sliding scale within the broader CBD Planning Proposal, it is acknowledged that the development of a 5 star hotel such as Hilton within the City would provide significant economic benefits to Parramatta that justifies the variation in this unique set of circumstances. Should the proposed land use for the site change in the future, any redevelopment would be bound by the sliding scale.

DEVELOPMENT CONTROL PLAN

39. Having regard to the most recent reference design submitted by the applicant for 197 Church Street, Council Officers have modelled the different options for setbacks between the two sites and their boundaries.
40. The modelling of the different scenarios tested by Council's Urban Design team are shown in **Attachment 5**. The scenarios are summarised with their relative advantages and disadvantages described in Table 1 overleaf.

Table 1: Summary of scenarios tested by Council's Urban Design team. Relates to the drawings within Attachment 5

Scenario	Comment
1. Recommended changes to setbacks for 20 Macquarie Street combined with the previous Design Competition for 197 Church Street.*	<p>This scenario is <u>not</u> preferred.</p> <p>The previous design competition for 197 Church Street is inconsistent with the Gateway determination conditions which relate to solar access to the protected area of Parramatta Square. This design also reflects a mixed use development with a residential tower and it is noted the 197 Church Street applicant has indicated they have changed their proposal to a fully commercial building facing Church Street with serviced apartments in the building facing Marsden Street.</p>
2. Recommended setbacks for 20 Macquarie Street and recommended setbacks for 197 Church Street.	<p><u>PREFERRED SCENARIO</u></p> <p>Reflects Council Officers' preferred scenario. Provides for a setback of 6 metres on the northern and southern boundary of 197 Church Street (fronting Marsden Street). This leaves a small building footprint for this part of 197 Church Street of approximately 425m² Gross Building Area (GBA). This provides for a greater setback between the two towers on 197 Church Street which would be consistent with the setback between the towers facing Macquarie Street. Provides for a 2m setback from Marsden Street at ground level with the podium above being permitted to extend over the 2m setback area. This enables the future road widening for the proposed cycleway while maximising the floor area within the podium.</p>
3. Incorporating a zero side setback on the common Marsden Street boundary between 20 Macquarie Street and 197 Church Street to result in joined towers.	<p>This scenario is <u>not</u> preferred.</p> <p>This scenario would involve both sites developing independently but they would have a zero side setback between the two towers to create the appearance of one tower. It would be logistically complex and would require both sites to run a co-ordinated design competition process. There is also the risk that one site would be built well before the second site leaving a large blank wall exposed for several years.</p> <p>This scenario does not deliver the vision of the Parramatta CBD Strategy of tall slender towers and would set a poor precedent for other sites seeking to justify a divergence from this vision, particularly for small sites where the sliding scale will be applied to encourage amalgamation.</p> <p>This scenario would likely result in poor outcomes for the public domain in relation to sunlight access and air circulation.</p>

**The previous Design Competition for 197 Church Street resulted in the jury selecting a preferred design, however, Design Excellence was not officially awarded due to the design being inconsistent with the Gateway conditions for the site which related to solar access to Parramatta Square.*

41. Amendments have been made to the draft DCP which reflect the required changes in setbacks described in Scenario 2 above. This provides for an increase in the podium and tower setback from Marsden Street to accommodate potential future road widening, and a decrease in the tower setback from Macquarie Street to 3 metres. The DCP including changes shown as “track changes” is provided at **Attachment 2**.
42. The changes to the draft DCP are summarised as follows:
 - a. The podium setback on the western boundary (Marsden Street) has been increased from 0 metres to 2 metres to enable for the potential for future road widening on Marsden Street;
 - b. The draft DCP permits the podium to overhang above ground floor level subject to meeting certain criteria related to urban design and public domain outcomes;
 - c. The tower setback on the western boundary (Marsden Street) has been increased from 0 metres to 2 metres to reflect the ground floor podium setback. A zero metre setback for the tower on Marsden St is not appropriate as it would create a sheer edge to the street and creates issues of wind downdraft as well as inappropriate scale.
 - d. To compensate for the increase in the ground floor podium and tower setback from Marsden Street, the tower setback on Macquarie Street has been reduced from 6 metres to 3 metres. Council's Urban Design team supported this as a concession on setbacks to maintain the viability of the floorplate whilst balancing the need for the proposed tower to have sufficient separation from potential towers on neighbouring land.
43. The draft site-specific DCP was prepared prior to the notification of Parramatta LEP 2011 Amendment No. 29. The amendment introduced the current overshadowing control which overrides the controls in Parramatta DCP 2011 regarding overshadowing of Parramatta Square. It is recommended that control C.8 be removed from the draft DCP as the relevant control is now contained within the Parramatta LEP 2011.
44. As a result of the proposed changes, the revised draft DCP needs to be re-exhibited. The outcome of the re-exhibition will be reported back to Council.
45. It is considered that the administrative tasks involved in the finalisation of the Planning Proposal can continue while the revised draft DCP is being re-exhibited.

PLANNING AGREEMENT

46. The draft Planning Agreement was exhibited with the Planning Proposal and draft DCP. The commercial terms of the offer provide for a monetary contribution for \$1,107,000 to be used by Council towards public domain works, affordable rental housing and actions under Council's Cultural Plan to be determined by Council. This contribution amount offered complies with Council's draft Planning Agreements Policy which applies a Phase 1 value sharing amount of \$150 per square metre.
47. The Planning Agreement is conditional in the sense that the contribution is only paid to Council if the development of the site includes residential development.

48. The submission received on behalf of the adjoining property owner at 197 Church Street submitted that the Planning Agreement should also apply to the hotel component as tourists will place a similar burden on infrastructure as residents. However, Council's resolution on 10 April 2017 with regard to the value sharing mechanism in the CBD is to apply value sharing to residential development only. There is currently a study underway that is investigating whether this should change but if Council changes its position this should only apply to Planning Agreement negotiations in the future if the policy is formally amended.
49. There are no changes proposed to the draft Planning Agreement in response to the submission received.
50. However, since the exhibition of the draft Planning Agreement, an issue has arisen in the way Council structures Planning Agreements within the CBD area. The Gateway determination received from the Department of Planning, Industry and Environment for the CBD Planning Proposal includes a condition that Council revisit the approach to infrastructure funding. Council is considering its options including increasing the levy under the existing section 7.12 Contributions Plan (formerly referred to as a section 94A Development Contributions Plan).
51. Any future increase in the Section 7.12 levy would reduce the reliance on Planning Agreements as a method of delivering community infrastructure. This may necessitate some additional clauses in the Planning Agreement for 20 Macquarie Street. The way Council has structured Planning Agreements to date is that future Section 7.11 and 7.12 contributions are still payable to Council. If in the future, the value sharing part of the policy decreases and the developer contributions increase, those who have already signed an agreement would be potentially obliged to pay more than Council's policy suggests they should pay. Council would be "double charging".
52. Council's solicitor has drafted an additional clause to be included in Planning Agreements to the effect that that any increase in 7.12 development contributions sees a corresponding decrease in the monetary contribution by an equal amount.
53. The additional clause has been included in the draft planning Agreement as Clause 9.2 and is shown as 'track changes' in the document (refer to **Attachment 3**.)
54. The draft Planning Agreement also represents an opportunity to negotiate a right of carriageway for public access over the 2 metre strip fronting Marsden Street. The proposed amendment to the draft DCP sets back the proposed building 2 metres to enable the future cycleway which would be accommodated within the road reserve with pedestrian access partially located on the site within the 2 metre setback area.
55. It is recommended that the draft Planning Agreement be amended to require the developer to register a 2 metre right of way benefitting Council for the purpose of 24 hour public access. This is the preferred approach rather than dedication of the land to Council as it preserves the ability of the applicant to develop the podium with an overhang over the 2 metre setback area.
56. This requires discussion with the applicant and also necessitates re-exhibition of the revised draft Planning Agreement prior to final adoption by Council. This should be exhibited concurrently with the re-exhibition of the amendments to the revised draft DCP.

CONSULTATION & TIMING

57. The Planning Proposal, draft DCP and draft Planning Agreement were exhibited from 12 December 2018 to 1 February 2019. This time frame complied with the requirements of the Environmental Planning and Assessment Act 1979, the Gateway determination and the Parramatta DCP 2011.
58. Should Council resolve to proceed with the finalisation of the Planning Proposal, it will be forwarded to the Department of Planning, Industry and Environment for finalisation and notification.
59. Should Council resolve to amend the DCP and Planning Agreement in accordance with the recommendation, they will need to be re-exhibited and the outcome of public exhibition reported to Council. However, it should be noted that the Department would be requested to not notify the LEP amendment until after the execution of the Planning Agreement.

FINANCIAL IMPLICATION FOR COUNCIL

60. There is a draft Planning Agreement associated with the Planning Proposal where the applicant is obligated to provide a monetary contribution for \$1,107,000 to be used by Council towards public domain works, affordable rental housing and actions under Council's Cultural Plan to be determined by Council.
61. The Planning Agreement is conditional in the sense that the contribution is only paid to Council if the development of the site incorporates any residential floor space.

Felicity Roberts
Project Officer – Land Use Planning

Jonathon Carle
Land Use Planning Manager

Jennifer Concato
Executive Director City Strategy and Development

ATTACHMENTS:

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|---|-----------------------------------|----------|
| 1 | Planning Proposal | 33 Pages |
| 2 | Draft Development Control Plan | 13 Pages |
| 3 | Draft Planning Agreement | 24 Pages |
| 4 | Summary of submissions received | 9 Pages |
| 5 | Setback options to inform the DCP | 6 Pages |

REFERENCE MATERIAL