

Planning Services

Gateway Determination Report

LGA	City of Parramatta
PPA	City of Parramatta Council
NAME	18-22A Hunter Street and 23-29 Macquarie Street, Parramatta (400 homes)
NUMBER	PP_2018_COPAR_004_00
LEP TO BE AMENDED	Parramatta Local Environmental Plan 2011
ADDRESS	18-22A Hunter Street and 23-29 Macquarie Street, Parramatta
DESCRIPTION	Lot 1 DP127028 Lot 1 DP947628 Lot 1 DP961308 Lot 32 DP75694 Lot A DP358326 Lots 15-17 DP861082 SP12198
RECEIVED	21 February 2018
FILE NO.	IRF18/850
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The proposal seeks to amend the maximum building height and floor space ratio (FSR) controls at 18-22A Hunter Street and 23-29 Macquarie Street, Parramatta. These amendments are sought to enable a mixed-use development comprising two towers up to 126m tall, with residential and commercial components. As the zoning of the site permits mixed-use development, no change in zoning is requested.

Site description

The site is in the Parramatta CBD. It is approximately 3365m² and consists of two-storey and three-storey commercial developments (Figures 1-7, pages 2-4).

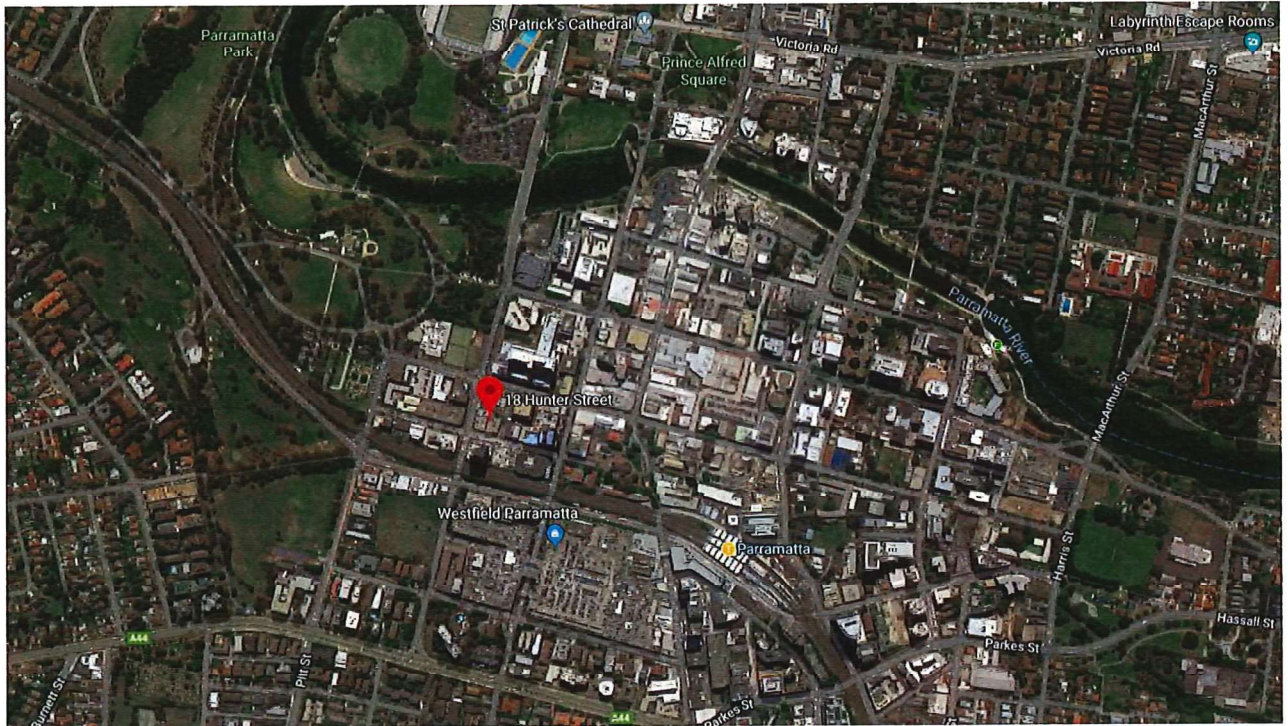


Figure 1: Location of site in the Parramatta CBD.



Figure 2: The subject site outlined in red.

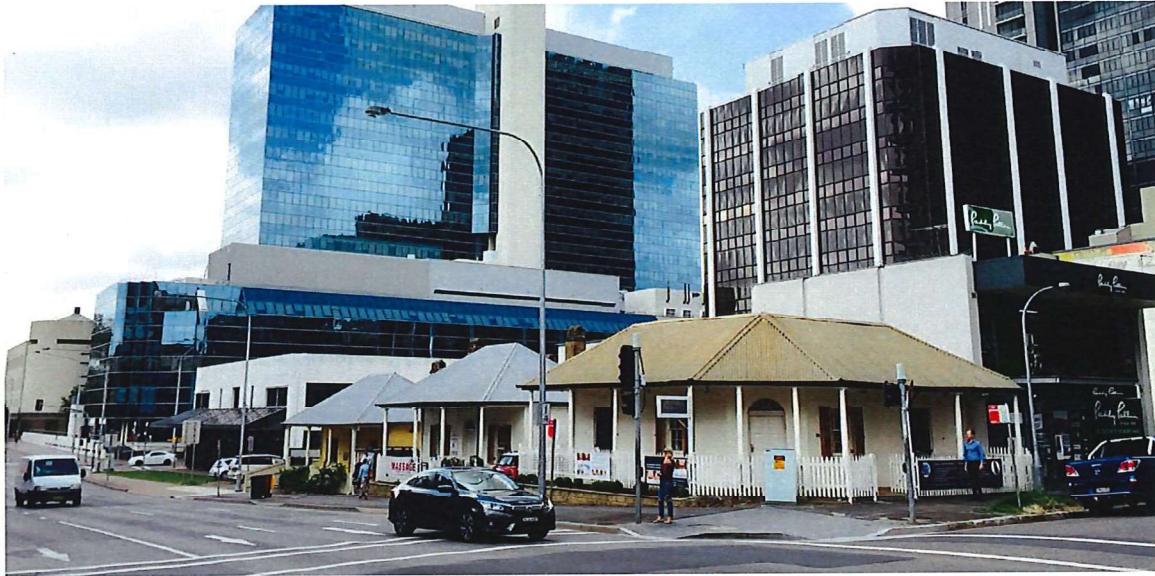


Figure 3: Corner of Hunter and O'Connell Streets looking towards the site, including state heritage items that adjoin the site.



Figure 4: Car park opposite the site at Hunter and O'Connell Streets.

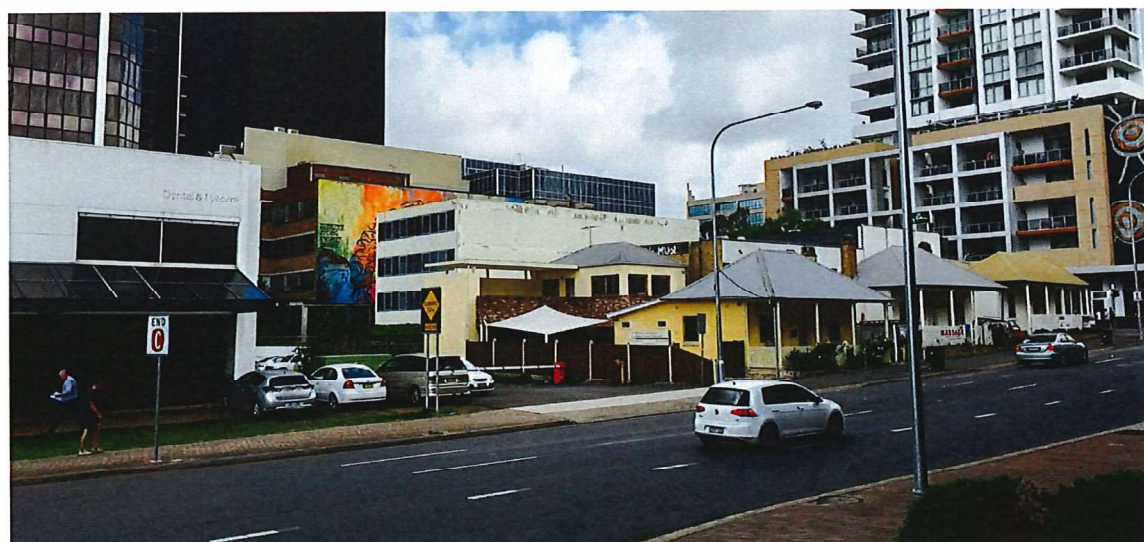


Figure 5: View along O'Connell Street, including state heritage items that adjoin the subject site.



Figure 6: Corner of Macquarie and O'Connell Streets.



Figure 7: Parramatta RSL Club opposite the site at the corner of Macquarie and O'Connell Streets, with Parramatta Park beyond.

Existing planning controls

The subject site:

- is zoned B4 Mixed Use;
- has maximum building height limits of 7m and 54m; and
- has maximum FSRs of 0.6:1, 3:1 and 6:1.

The site is not developed to the maximum permissible planning controls and there is scope for redevelopment of the site within the existing planning framework.

Surrounding area

The site is surrounded by B4 Mixed Use zoning (Figure 8, next page), with RE2 Private Recreation (Parramatta RSL Club) to the north-west and RE1 Public Recreation (World Heritage-listed Old Government House and Domain) further to the

west of the site (Figures 9-10, pages 5-7). The site immediately adjoins the World Heritage buffer boundary that runs along O'Connell Street to Macquarie Street and then west along Macquarie Street. The site is directly adjacent to the state significant heritage items Travellers' Rest Inn Group (Figures 9, below, and 9a, next page).

The site is approximately 600m from Parramatta train station.

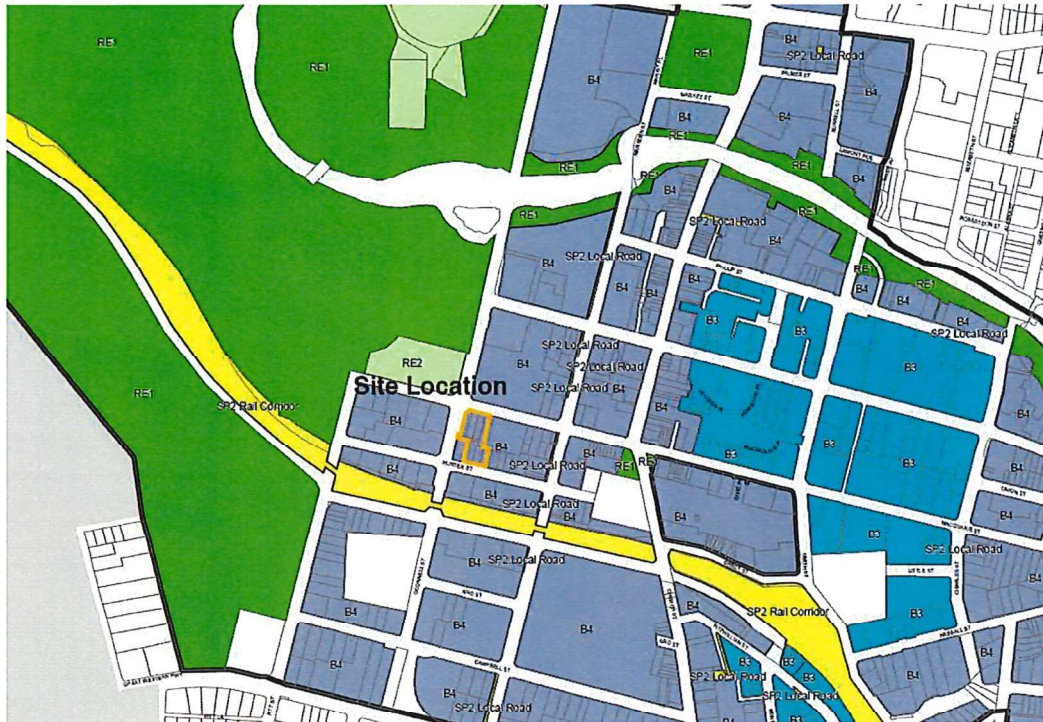


Figure 8: Current zoning of subject site and surrounding area.

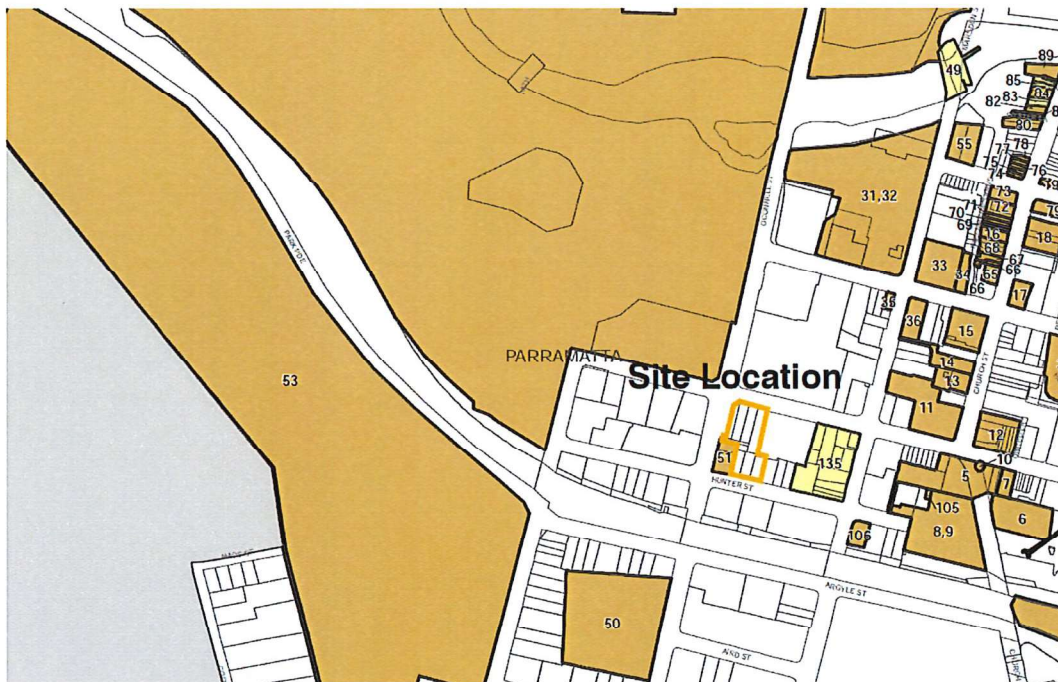


Figure 9: Site in relation to world heritage site Old Government House and Domain, and State Heritage items Travellers' Rest Inn Group (both west of the site).



Figure 9A: Detailed view of site's relationship to state heritage items Travellers' Rest Inn Group (both west of the site).

Park edge highly sensitive area

The site is affected by a conservation agreement for "the protection and conservation of the World Heritage values and National Heritage values of the Australian Convict Sites, Old Government House and Domain" (**Attachment F**).

The agreement implements the findings of a 2012 report by Planisphere (**Attachment F3**), which assessed the potential impact of development within the Parramatta CBD on Old Government House and Domain. The report determined areas of sensitivity within the CBD where new development has the greatest potential to erode the heritage values of Old Government House and Domain. The report also considers appropriate planning controls within the CBD to aid in the protection of heritage values.

The areas of sensitivity were identified through a layering of important view corridors and vistas, topography and proximity. The subject site is identified as being within a highly important view cone and in the foreground of the viewing distance from Old Government House. This foreground view is considered important as "detail of landforms and built form are more pronounced when viewed from within the foreground zone and new developments are likely to have a significant impact", according to the Planisphere report.

Figure 10 (next page) demonstrates how proximity and views aided in determining the sensitivity of land adjoining Old Government House and Domain. The Planisphere report notes that “the greater distance and the wider the view/vista or panorama, the less a given visual element will dominate, or be intrusive”. The subject site was determined to be within the park edge highly sensitive area, as shown in Figure 11 (page 9) due to the above factors.

The conservation agreement establishes that if development within the highly sensitive area is consistent with the planning controls that were in place when the agreement was signed, then no further approval is required from the Federal Government under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This provides certainty to landowners within the park edge highly sensitive area.

The conservation agreement does not prevent the consideration of a planning proposal that exceeds the agreed planning controls.

The key planning consideration for the Gateway determination is the importance of preserving the planning controls within the highly sensitive area in the protection of the heritage values of Old Government House and Domain. This is addressed further in this report.

[illegible]

Figure 10: Extract of the Planisphere report, which defined the potential sensitivity of land in relation to Old Government House and Domain. The approximate location of the subject site is marked with a red star

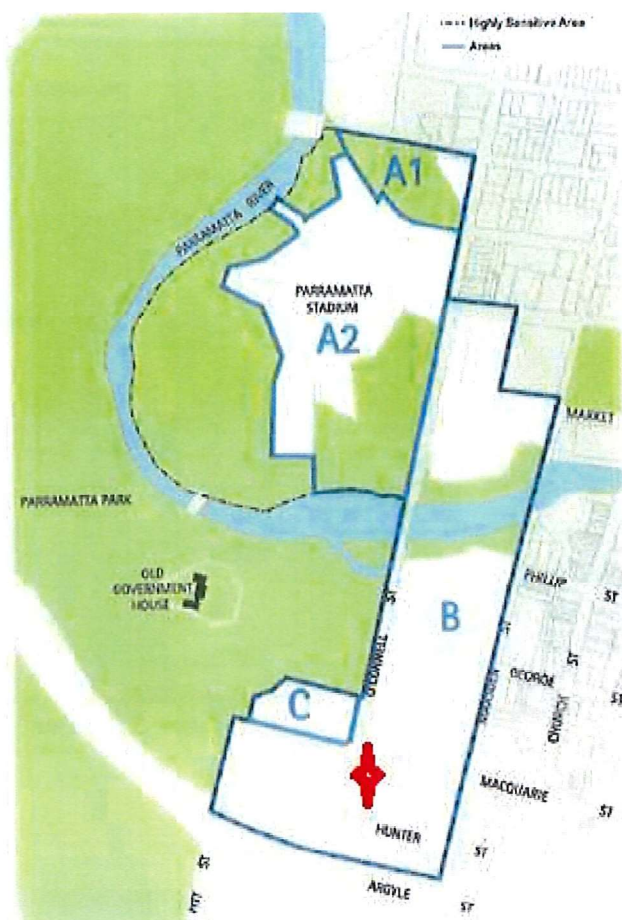


Figure 11: Highly sensitive areas, with the approximate location of the subject site marked with a red star (source: Old Government House and Domain Conservation Agreement).

Legal advice and Federal Government opinion

The planning proposal is accompanied by legal advice and opinion, including a letter from Colin Biggers & Paisley dated 14 December 2017 (**Attachment J**) and the opinion of Mr Peter Tomasetti SC dated 7 December 2017 (**Attachment K**).

The letter from Colin Biggers & Paisley provides a history of the planning proposal's progress through Council and references the opinion of Mr Peter Tomasetti SC. This legal advice was a key factor in Council's decision to forward the planning proposal to the Department for a Gateway determination.

The legal opinion of Peter Tomasetti SC states: "To consider the possible future decision making of the Commonwealth under the EPBC Act with respect to a development application that has not yet been made would be to take into account a legally irrelevant consideration when making a Gateway determination under section 56 (now section 3.34) of the EP&A Act."

He further states: "A Gateway determination that determines a planning proposal should not proceed because of:

- i. What the Federal Minister might decide when considering the Conservation Agreement; or
- ii. What the Federal Minister might do if the matter is referred to the Commonwealth for approval under the EPBC Act,

would in my view, be susceptible to judicial review.”

There is nothing in the *Environmental Planning and Assessment Act 1979* that prevents the Department from considering the conservation agreement when determining whether a planning proposal that is inconsistent with the planning controls set out in the agreement should proceed.

The Department previously refused a planning proposal at 5 Hunter Street, Parramatta (**Attachment G**) because it was inconsistent with the controls set out in the conservation agreement. The intent of the conservation agreement was to establish planning controls that would prevent the need for residual (and real) impacts to be compensated, establish planning controls that protect the World Heritage-listed property, and to streamline the development application process generally by ensuring that no further approval is required from the Federal Government under the EPBC Act for development being carried out on land to which it relates – provided the development complies with the controls set out in the agreement.

When considering a planning proposal over land to which the conservation agreement relates it is reasonable for the Department to consider not only the potential impact of the planning proposal on the World Heritage item, but also the impact of any decision on the integrity of the conservation agreement generally (and the body of work that informed it).

In addition, while the Federal Government has stated it neither supports nor opposes the planning proposal (**Attachment F1**), as a party to the conservation agreement its views in relation to what it regards as appropriate controls to manage impacts on matters of national environmental significance, as well the adequacy of the current controls, is a relevant consideration for the Gateway determination. While the Department agrees that it cannot pre-empt any future decision the Federal Government may make in relation to its regulatory function under the EPBC Act, the Federal Government’s opinion that “any development that does not comply with the conservation agreement is likely to have a significant impact on the World and National Heritage values”, is relevant when considering the strategic merit of the planning proposal.

The proponent has raised the approval of the V by Crown building on the corner of Macquarie and Marsden Streets, Parramatta in their correspondence. The Department notes this building was approved under the previous Part 3A provisions of the *Environmental Planning and Assessment Act 1979* and prior to the conservation agreement being signed. The proponents for this development were required to obtain approval from the federal Minister for the Environment under the EPBC Act, which was granted on 12 March 2014 and required that the maximum RL did not exceed 112.4 to minimise visual impacts. In addition, the proponents were required to provide \$380,000 to the Western Sydney Parklands Trust to “compensate for residual impacts to the Old Government House and the Government Domain World and National Heritage listed place” (**Attachment M**).

The urban design report submitted with the planning proposal proposes a built form that is taller than the V by Crown building. Further, the subject site is closer to Old Government House and Domain and lies within the foreground view. As discussed above, the impact of building height on the views and vistas from the heritage precinct is directly related to proximity.

The built form controls currently in place provide for an increase in height as the built form transitions away from the heritage item. This is considered appropriate and is supported within the conservation agreement. A key example of this is the existing transition in height, which maintains a maximum building height of 54m on the subject site and transitions to a maximum building height of 80m on the southern side of Hunter Street (Figure 12).

Given the importance of the World Heritage listing, it is not considered that there is sufficient strategic justification to vary the existing development controls for the subject site for a site-specific proposal.

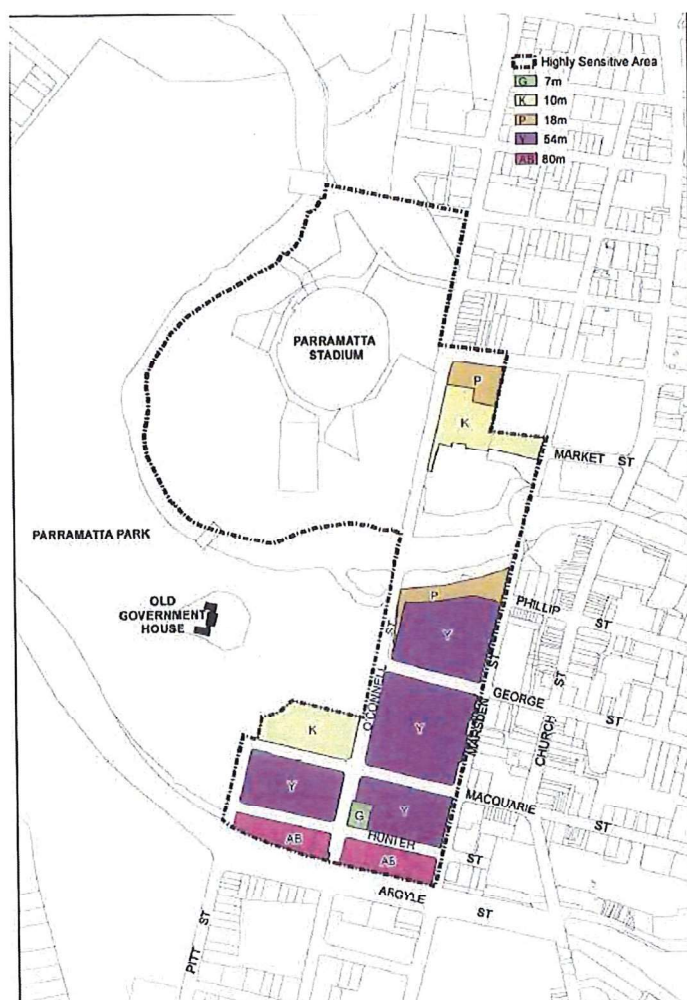


Figure 12: Extract of maximum approved building heights in the conservation agreement.

Summary of recommendation

The proposal would deliver additional dwellings in the Parramatta CBD. However, the proposed controls are inconsistent with those in the conservation agreement for Old Government House and Domain.

The strategic merit of retaining the agreed controls in the conservation agreement, which seek to protect the curtilage of the World Heritage item, outweighs the strategic merit of the proposed intensification of the site as outlined in the proposal. The Parramatta CBD planning proposal, which is being considered by the Department, excludes the land identified as being highly sensitive and seeks to deliver housing

and jobs to meet the targets established by the state government in the remainder of the CBD. In delivering Parramatta as Sydney's Central River City, it is considered important to protect the World Heritage-listed item, and the key planning mechanism to achieve this is through the conservation agreement. Therefore, there is no strategic justification for an increase in height or FSR in this location.

The requested maximum building height of 120m exceeds the surrounding developments and does not properly account for the importance of transition in building height in relation to the World and National Heritage listing, which is supported by a conservation agreement signed by three levels of government.

Neither the proponent nor Council has provided sufficient analysis or a heritage assessment of the impact on the adjacent state heritage items. The existing FSR controls provide for a transition in built form to the adjoining state heritage-listed items.

Consequently, the proposal lacks the required level of strategic and site-specific merit to proceed.

PROPOSAL

Objectives

The objective of the proposal is to increase the permissible density to enable a future redevelopment of the site for a mixed-use development, comprising two towers, a four-storey podium and a public plaza.

Explanation of provisions

Part 2 of the proposal includes the following provisions:

LEP mapping

- amend the maximum building height from 7m and 54m to 120m across the site;
- amend the maximum FSR from 0.6:1, 3:1 and 6:1 to 10:1;
- identify the site for an additional FSR of 1.5:1, to be achieved through a design excellence incentives clause; and
- amend the special provisions area map and identify the site with a site-specific clause to facilitate a two-tower development.

Written instrument

A new clause should be inserted into part 7 of the Parramatta LEP 2011 that limits the floor plate of any tower to no greater than 800m. The purpose of the clause is to facilitate a built form, scale and massing on the site that promotes a two-tower development.

Voluntary planning agreement

The proposal states that a voluntary planning agreement (VPA) will be sought once a Gateway determination is issued, as the site's redevelopment has the potential to deliver several public benefits. The VPA would be drafted in accordance with Council's draft planning agreements policy. No further details of a VPA are provided.

The assessment of this proposal has not considered the merits of any proposed VPA for this site, as no draft VPA/letter of offer has been provided.

Draft development control plan

Council will draft and exhibit concurrently a site-specific development control plan (DCP) to address site-specific matters for any redevelopment on the site. The proposal does not contain any draft DCP provisions relating to the site.

Mapping

Part 4 of the proposal includes the correct and relevant LEP maps showing the current and proposed controls.

NEED FOR THE PLANNING PROPOSAL

The most effective way to realise the proposed density on the site would be to amend the maximum height and FSR controls in Council's LEP.

However, it is considered that the planning proposal has not demonstrated sufficient merit to amend the existing planning controls. The conservation agreement **(Attachment F)** between the Federal and State governments and Council establishes an acceptable built form for the site that addresses the heritage curtilage of the adjacent Old Government House and Domain World Heritage item.

The conservation agreement details:

- specific measured setbacks;
- built form controls and elevation setbacks;
- view and vista corridors to/from the World Heritage site to be protected; and
- other planning controls.

These controls apply to the highly sensitive area (i.e. the location of the subject site) relative to Old Government House and Domain.

The agreement was signed in December 2015. The planning proposal has not demonstrated sufficient strategic merit to deviate from these controls.

A DCP to mitigate built form concerns on the adjacent State and World Heritage items is proposed. The DCP would seek to replace a series of controls in the conservation agreement.

The proposal's inconsistency with the controls set out in the conservation agreement, and the subsequent necessity to develop a DCP, is not supported.

As the form of development would affect World and State Heritage-listed items and the highly sensitive curtilage area, it is considered that a DCP is not appropriate as it would not necessitate approval from any other body or agency other than Council.

Consequently, the conservation agreement, which has incorporated extensive multi-government-level consultation, is considered to deliver a more consistent, accountable and better planning outcome in relation to the site's heritage significance and related built form compared to that of the proposal's planning controls and a subsequent DCP.

STRATEGIC ASSESSMENT

Greater Sydney Region Plan

The proposal addresses the Draft Greater Sydney Region Plan.

The proposal was submitted for Gateway determination prior to the release of the final plan (March 2018). Subsequently, the proposal has not addressed the regional strategy or A Plan for Growing Sydney.

Although the proposal has demonstrated a level of strategic merit to redevelop the site (being in a metropolitan centre, the ability to deliver more housing and jobs in a central location), the density proposed and level of inconsistency with the conservation agreement will not produce a better planning outcome in relation to place-making. Specifically, the proposal is inconsistent with *Objective 13: Environmental heritage is identified, conserved and enhanced*. The proposal introduces an unacceptable level of risk and uncertainty in the built environment that does not appropriately account for the highly sensitive heritage nature of the site. The proposal has the potential to negatively impact on the adjacent state significant heritage item and the curtilage of the world heritage-listed Old Government House and Domain.

Central City District Plan

The proposal addresses the Draft Revised Central City District Plan. The proposal was submitted for Gateway determination prior to the release of the final Central City District Plan (March 2018).

A comparison between the draft and final district plans results in no discernible difference that would affect the proposal. The proposal's assessment against the draft plan can be relied on for the purposes of issuing a Gateway determination.

The proposal is inconsistent with the following planning priority and action:

- *Planning Priority C6 – Creating and renewing great places and local centres, and respecting the District's heritage*: The proposal does not demonstrate or provide evidence of sympathetic built form controls to manage and conserve the area's heritage significance. No heritage impact assessment has been provided to demonstrate consistency with this planning priority; and
- *Action 2a – Identify, conserve and enhance environmental heritage by engaging with the community early in the planning process to understand heritage values and how they contribute to the significance of the place*. Federal, state and local governments have been consulted on the significance of the site, and heritage controls have been established through the conservation agreement. The proposal would result in undermining these agreed controls and the consultation process that has occurred in the preparation of the conservation agreement.

Local

Parramatta 2038 Community Strategic Plan

The Parramatta 2038 Community Strategic Plan promotes increasing dwelling yields within the Parramatta CBD and homes close to jobs. The proposal is generally consistent with the plan.

Draft Parramatta CBD planning proposal

The site is not within the draft Parramatta CBD planning proposal, having been excised by Council in 2015 due to outstanding heritage considerations.

Section 9.1 Ministerial Directions

The proposal is consistent with all relevant section 9.1 Directions except for:

Direction 4.1 Acid Sulfate Soils

The site is identified as category 5 acid sulfate soils. The proposal is inconsistent with this Direction as an acid sulfate soils study is required when intensification of the land is proposed, and the proposal is not accompanied by a relevant study.

This inconsistency is justified as it is of minor significance and the issue can be addressed at the development application stage.

The proposal contains unresolved inconsistencies with the following Directions:

Direction 2.3 Heritage Conservation

The proposal is inconsistent with this Direction as it will impact on World and State Heritage items.

Although an urban design report has been prepared and submitted with the planning proposal, no heritage impact assessment has been submitted to account for impacts on the State Heritage-listed items, or to address the highly sensitive nature of the site.

The proposal's inconsistency with the Direction is considered unjustified as the extent of the impact of any resultant development from the proposal on the items has not been fully addressed by the proposal, and does not critically assess the merits of maintaining the controls in the conservation agreement.

Direction 4.3 Flood Prone Land

The site is on flood-affected land. A flood statement has been submitted with the planning proposal to address flooding issues. It assesses the impact of flooding on the site and suggests mitigation measures that should be incorporated into the design of any building.

If the planning proposal were to progress, it would be recommended that this inconsistency remain unresolved to allow further consultation with the State Emergency Service to confirm the suitability of the proposal in terms of flood planning. However, as the planning proposal is not recommended to proceed, this consultation is not required.

Direction 6.3 Site Specific Provisions

Although the proposed site-specific provision attempts to seek a better design outcome for the site, the clause would still enable a building form that would be inconsistent with the conservation agreement.

State environmental planning policies (SEPPs)

The proposal is consistent with all relevant SEPPs and deemed SEPPs.

SITE-SPECIFIC ASSESSMENT

Social

The proposal would provide additional dwellings and commercial space in the Parramatta CBD. However, it is not considered that the additional dwellings and jobs generated by the increase in height and FSR are appropriate in this location. There is still development potential available within the site under the existing development controls over and above what exists on the site, and it is considered that this is the most appropriate outcome for the site.

Environmental

The site does not contain any critical habitat, threatened species, populations or ecological communities. The key environmental issue is the impact of the proposal on world, national and State Heritage-listed items. The Department considers that given the heritage significance of Old Government House and Domain, that a site specific amendment to the planning controls, as established by the conservation agreement, is not justified.

Economic

While refusal of the planning proposal will not allow increased height and density on the site over and above the current controls, the existing planning framework permits additional floor space on the site, subject to development approval, that would supply appropriate commercial/economic development opportunities in the CBD. This outcome balances growth against the need to respect and preserve Parramatta's significant heritage in this location.

Infrastructure

A traffic and transport assessment accompanies the proposal and generally finds that the proposed development will not have any unacceptable impacts on the road network.

CONSULTATION

Community

The planning proposal is not supported to proceed to public exhibition.

Agencies

The planning proposal is not supported, therefore no further agency consultation is required.

Correspondence has been received from the federal Department of the Environment and Energy (**Attachment F1**), as discussed previously.

TIME FRAME

No time frame is required as the proposal is recommended to not proceed.

LOCAL PLAN-MAKING AUTHORITY

There is no requirement to appoint a local plan-making authority.

CONCLUSION

It is recommended that the planning proposal should not be supported to proceed, and that a Gateway determination be issued that details the reasons why the proposal is not supported.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Direction 4.1 Acid Sulfate Soils is justified in accordance with the terms of the Direction; and
2. note that the inconsistencies with section 9.1 Directions 2.3 Heritage Conservation, 4.3 Flood Prone Land and 6.3 Site Specific Provisions remain unresolved.

It is recommended that the delegate of the Greater Sydney Commission determine that the planning proposal should not proceed for the following reasons:

1. The proposal contains unresolved inconsistencies with the following section 9.1 Directions:
 - 2.3 Heritage Conservation;
 - 4.3 Flood Prone Land; and
 - 6.3 Site Specific Provisions.
2. The proposal is unjustifiably inconsistent with the Greater Sydney Region Plan and the Central City District Plan.
3. The site is within the identified highly sensitive area adjacent to Old Government House and Domain. The planning proposal is inconsistent with the conservation agreement between Federal, State and local governments. It is considered that the planning controls outlined in the conservation agreement are appropriate for the site. The proposal has not demonstrated sufficient strategic merit to justify substantial deviation from these controls.
4. The proposal would necessitate the preparation of a site-specific clause in Parramatta LEP 2011 and site-specific development control plan to manage the site's building form. This is not considered appropriate in the context of the World, National and State Heritage significance of the locality. Parramatta LEP 2011 and the existing conservation agreement controls are considered the most appropriate mechanism to ensure that any development on the site protects the world and national heritage values of the Old Government House and Domain.



Christine Gough
Specialist Planning Officer,
Sydney Region West



15/08/2018

Ann-Maree Carruthers
Director, Sydney Region West

Contact Officer: Mark Dennett
Planner, Sydney Region West
Phone: 9860 1534