

## Planning Services

### Plan finalisation report

**Local government area:** City of Parramatta

**File number:** IRF18/3924

#### 1. NAME OF DRAFT LEP

Parramatta Local Environmental Plan 2011 (Amendment No 29) The draft written instrument is at **Attachment LEP**.

#### 2. SITE DESCRIPTION

The planning proposal applies to land at 220-230 Church Street and 48 Macquarie Street, Parramatta. The site has an area of approximately 3684m<sup>2</sup> and contains three allotments, being Lot 1 DP702291, Lot 1 DP 1041242 and Lot B DP 394050 (Figure 1).

The site is within the Parramatta CBD between the railway line and Parramatta River. The site is bounded by Macquarie Street to the south, Church Street and United Lane to the west, a driveway and adjoining commercial development to the north and Horwood Place to the east. The site contains two-storey and three-storey commercial and retail buildings, including Greenway Plaza.



Figure 1: Aerial map of the site.

### 3. PURPOSE OF PLAN

The draft LEP seeks to amend Parramatta Local Environmental Plan (LEP) 2011 by:

- increasing the maximum floor space ratio (FSR) from part 3:1, part 6:1 and part 10:1 to 10:1 across the site;
- amending the height of building map to include a new solar access plane for the protected area of Parramatta Square, referred to as Area 3, to ensure that any future development within Area 3 will not result in any overshadowing of the protected area of Parramatta Square between 12pm and 2pm;
- amending the wording of clause 7.4 Sun Access to prohibit overshadowing between 12pm and 2pm of the protected area of public domain within Parramatta Square (note: this applies to all land mapped as Area 3 in the height of building map and is not site-specific);
- removing clause 7.2(3), which is a site-specific provision applying to the Greenway Plaza site, which will become redundant as a result of the implementation of the revised FSR and height facilitated by this amendment;
- amending the special provisions map to remove Area 1 and Area 2 from the subject site as it relates to clause 7.2(3), which is to be deleted (note: Area 1 and Area 2 on the special provisions map are different from Area 2 on the height of buildings map and different provisions apply); and
- introducing a site-specific provision to apply a maximum car parking rate that is in accordance with the Parramatta CBD Strategic Transport Study based on the following:

a) Residential parking rates

Type of apartment	Spaces/unit
three bedrooms	1 space/unit
two bedrooms	0.7spaces/unit
one bedroom	0.3 spaces/unit
studio	0.1 spaces/unit

b) Commercial parking rates

If the FSR > 3.5:1

$M = (G * A) / (50 * T)$  where:

M = maximum number of parking spaces;

G = GFA (gross floor area) of all office/business premises in the building (m<sup>2</sup>);

A = Site Area (m<sup>2</sup>);

T = Total GFA of all buildings on the site (m<sup>2</sup>).

The current and proposed maps are provided in the planning proposal at **Attachment A** and the proposed maps are at **Attachment Maps**.

The site is zoned B4 Mixed Use under the Parramatta LEP 2011 and no changes to the land-use zone are proposed. In accordance with the provisions of clause 7.10, if a design excellence process is undertaken, an FSR bonus of 15% is available for mixed-use development or 25% for a commercial development with no residential floor space.

#### 4. CONCURRENT DEVELOPMENT APPLICATION

A concurrent development application DA/828/2017 (Figure 2 and **Attachment H**) for a 25-storey commercial development on the subject site is being assessed by City of Parramatta Council and will be considered by the Sydney Central City Planning Panel. The panel cannot determine the application until the subject planning proposal has been finalised and gazetted.



Figure 2: Proposed design for development application (source: development application documentation).

To comply with the draft LEP, the proposed architectural design uses a solar access plane using the view from the sun to ensure solar access to the protected area of Parramatta Square is maintained (Figures 3 and 4, next page). The solar access plane sets a maximum height of RL82.53m at the Macquarie Street frontage (southern portion) and RL122.35m at the northern portion. This RL equates to a maximum building height of 97.6m at the northern portion of the site.

The proposed commercial development subject to the development application achieves a maximum FSR of 11.16:1 (including design excellence) and will contribute a further 41,163m<sup>2</sup> GFA of commercial floor space to the Parramatta CBD.



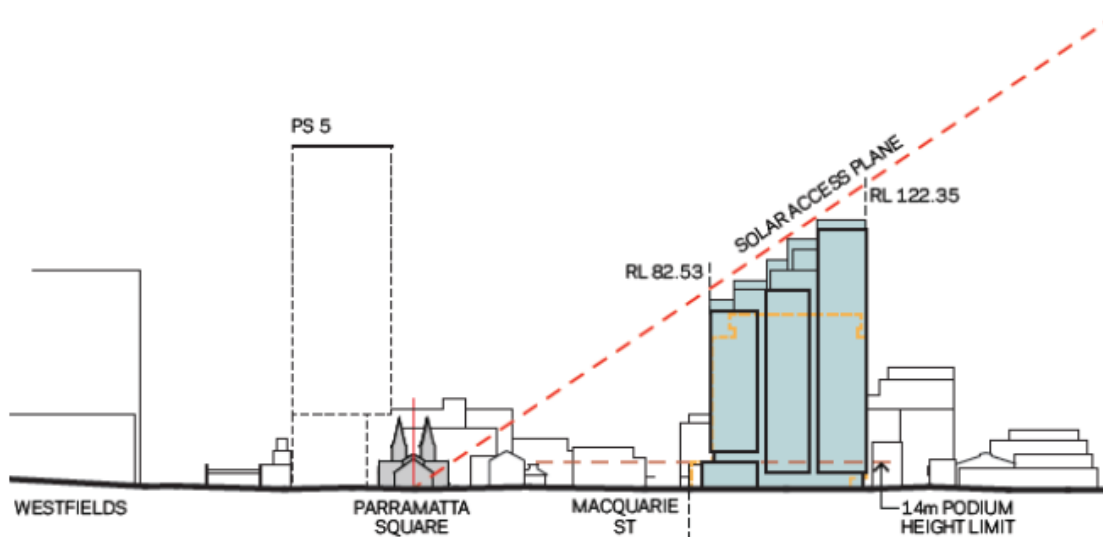


Figure 3: Solar access plane for proposed development (source: development application documentation).

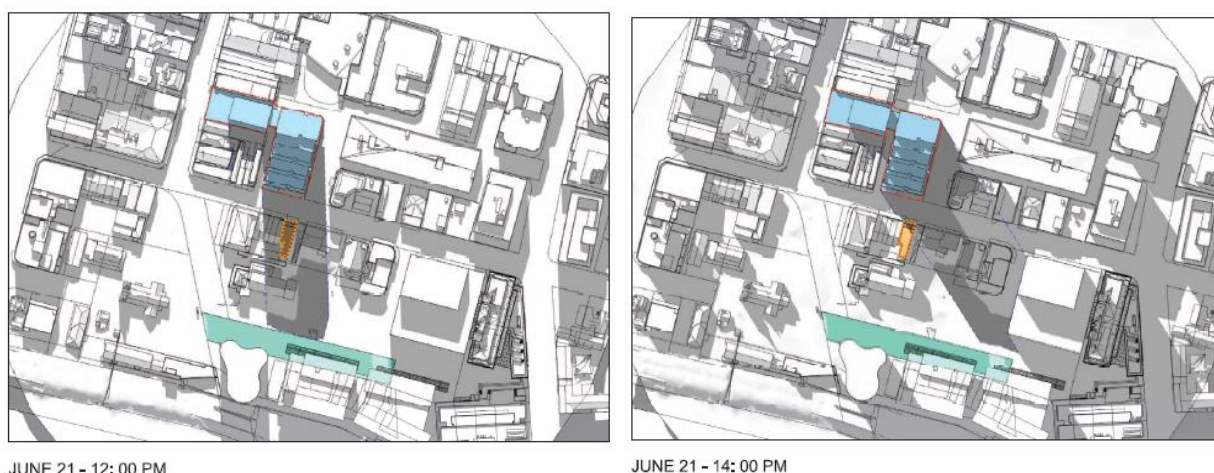


Figure 4: Shadow plans of proposed development between 12pm and 2pm midwinter (source: development application documentation). The development application shadow diagrams demonstrate that the protected area (shown green) will not be overshadowed by the proposed building (shown coloured blue) between 12pm and 2pm.

## 5. STATE ELECTORATE AND LOCAL MEMBER

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

The site falls within the Parramatta Federal Electorate. The Hon 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.

## 6. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 17 June 2016 (**Attachment C**) determined that the proposal should proceed subject to conditions.

Three Gateway alterations have been issued for the planning proposal:

- on 15 August 2016 (**Attachment D1**) to remove the requirement to publicly exhibit and notify state authorities concurrently with six other planning proposals;
- on 4 August 2017 (**Attachment D2**) to remove the need for mesoscopic modelling and replace it with a requirement for a maximum car parking rate in accordance with the Parramatta CBD Strategic Transport Study; and
- on 22 February 2018 (**Attachment D3**) for a six-month extension.

The planning proposal was due for finalisation by 24 June 2018. As it was submitted to the Department prior to this date, no further Gateway extensions are required.

## 7. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 30 August to 29 September 2017. As the proposal did not propose a maximum parking rate provision (as required by the altered Gateway determination of 4 August 2017), it was re-exhibited from 22 November 2017 to 12 January 2018 (which included a three-week extension to cover Council's Christmas shutdown period).

Following the second exhibition, Council officers discovered that the initial two public exhibitions did not include Figure 4.3.3.7.3 of the Parramatta Development Control Plan 2011 as required by condition 2(c) of the Gateway determination of 17 June 2016. Therefore, the proposal was exhibited a third time from 7 March to 4 April 2018.

Two community submissions were received as part of the initial community consultation, four were received in response to the second and three were received as part of the third exhibition process.

The community submissions raised the following matters:

- that the legality for a site-specific proposal to amend a broader LEP control (i.e. amendment to clause 7.4 – Sun Access to protect Parramatta Square between 12pm and 2pm) as a condition of the Gateway determination of 17 June 2016 is invalid;
- that progressing the proposed amendment to prohibit overshadowing to the protected area of Parramatta Square would prejudice the outcome of the Gateway review of 197 Church Street, Parramatta and deny procedural fairness;
- the exhibited amendment to the height of building map was inconsistent with the Gateway determination and did not require the height of building map to be amended;
- that the first and second exhibition periods were legally invalid as the landowner claimed to have not received a notification letter in writing; and
- a lack of certainty and insufficient information as to how the proposed sun access provision will be legally drafted, and the extent of its impact on the surrounding area.

Council has satisfactorily addressed comments made in the community submissions in its report and supplementary report (**Attachments G1 and G2**). The key issues raised and Council's responses are summarised below.

### Legality of Gateway condition to amend Clause 7.4 Sun Access

Council has progressed the proposal in accordance with the conditions of the Gateway determination. Condition 1(a)(i) requires that the planning proposal be amended "to

ensure no overshadowing occurs between 12pm – 2pm of the protected area of public domain within Parramatta Square”.

Part 2 Explanation of Provisions of the planning proposal (as updated) gives effect to condition 1(a)(i) as follows: “Amend the wording of Clause 7.4 Sun Access to prohibit any overshadowing between 12pm – 2pm of the protected area of public domain within Parramatta Square. (Note: This provision will also apply to areas outside of the subject site). Refer to Figure 19 in Part 4 of this planning proposal.”

Figure 19 of the planning proposal (as exhibited) is provided at Figure 5 (next page).

There are no restrictions in the plan-making provisions of the *Environmental Planning and Assessment Act 1979* that prevent the Department from imposing a condition on a Gateway determination if it considers there is adequate justification and strategic merit. The protection of solar access to an already identified portion of Parramatta Square was applied more broadly than the subject site as the mechanism to achieve the intended outcome was through the introduction of a solar access plane, shown as Area 3 in Figure 5.

This condition has been applied to other planning proposals in the locality to ensure a consistent approach to the preservation of solar access to the protected area of Parramatta Square and reinforce the Department’s intent that this policy will be broadly applied. The solar access plane for the protected area of Parramatta Square (Area 3) will need to be expanded when planning controls on surrounding land are amended to enable increased density and height.

The planning proposal only applied the solar access plane to land within the CBD where the height of building controls could allow overshadowing, as notated in Figure 5. These apply to:

- land immediately adjoining the protected area of Parramatta Square with a 54m height limit; and
- land within the CBD subject to the solar access plane for Lancer Barracks (Area 2 on the height of buildings map) where the solar access plane for Parramatta Square is lower in height than the solar access plane for Lancer Barracks.

The key requirement in the making of a new LEP is that the community consultation requirements have been complied with as required by the Gateway determination. The Department considers that condition 1(a)(i) has been complied with as the explanation of provisions was amended and exhibited in accordance with the requirements of the Gateway determination and, as such, the plan can be legally made.

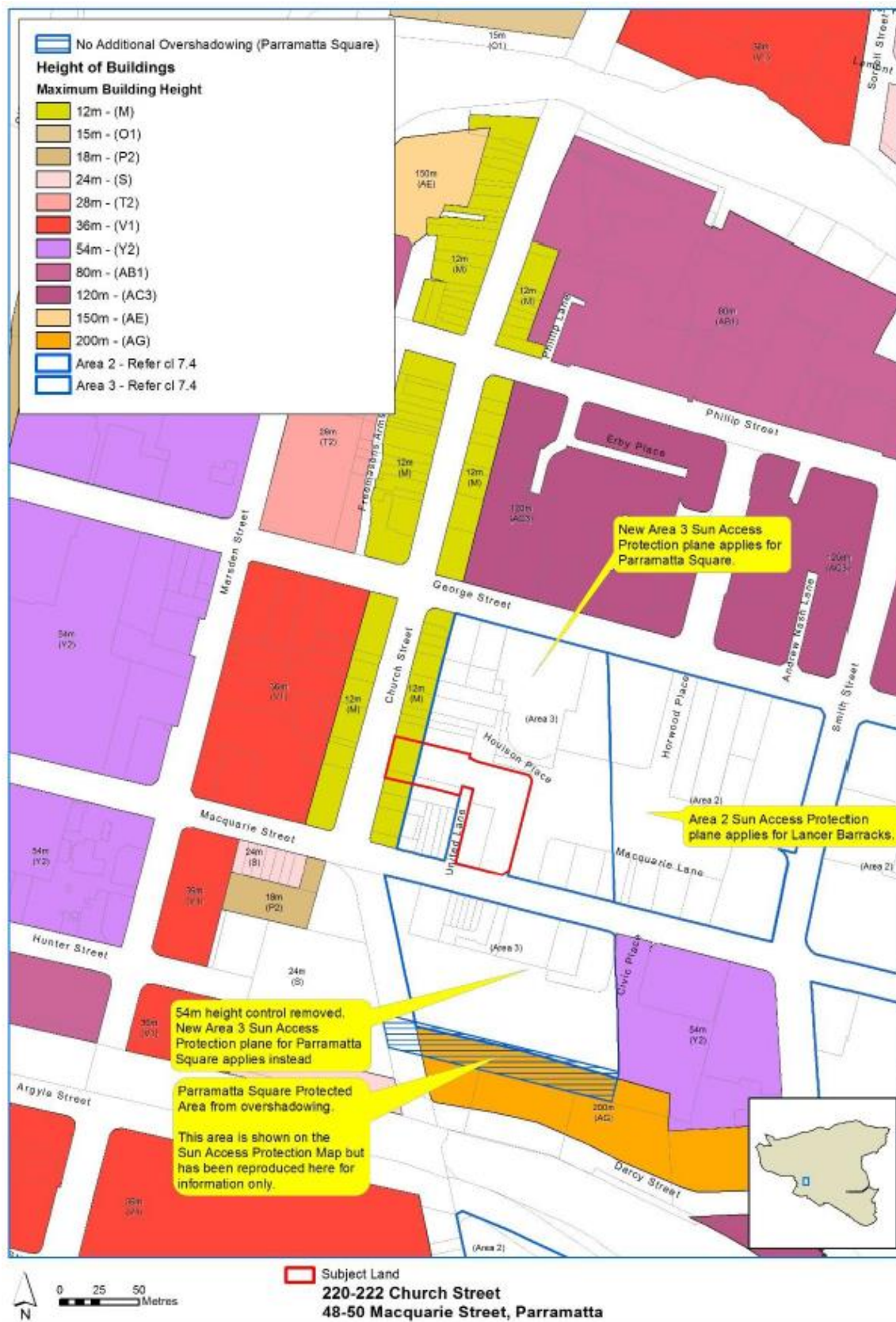


Figure 5: Figure 19 of the planning proposal as referred to in the explanation of provisions.



### The proposal will prejudice the outcome of the Gateway review for 197 Church Street, Parramatta

Council has noted in its assessment that progressing the proposed amendment prior to determining the outcome of the Gateway review for 197 Church Street, Parramatta (PP\_2016\_PARRA\_015\_00) will be a matter for further consideration by the Department. The proponent requested a Gateway review in relation to the proposed overshadowing provisions.

The Independent Planning Commission undertook this review and on 2 July 2018 provided advice that supports retaining the solar access conditions of the Gateway determination for 197 and 207 Church Street and 89 Marsden Street (**Attachment J**).

As the Gateway review has concluded, the Department is satisfied that procedural fairness has been followed and the subject proposal can be finalised. The solar access plane has not been extended to this site as part of the current draft LEP amendment as the height of building controls prevent overshadowing of the protected area of Parramatta Square.

### Requirement to amend the height of building map inconsistent with the Gateway determination

Clause 7.4 is proposed to be amended through the introduction of a new sub-clause that requires no overshadowing of the protected area of Parramatta Square. In accordance with how Clause 7.4 is currently implemented for Lancer Barracks and Jubilee Park (shown as Area 2 on the height of buildings map), Council also mapped a new Area 3 on the height of buildings map to reflect the sun access plane for the protected area of Parramatta Square.

Council's report of 9 April 2018 notes that the documentation exhibited in the first exhibition period did not specify that a site-specific clause would be inserted in part 7 of the LEP. As a result, Council updated Part 2 Explanation of Provisions (as follows) and re-exhibited the proposal from 22 November 2017 to 12 January 2018: "Amend the Height of Building Map (Sheet HOB\_010) to expand the area in the CBD to which a new 'Area 3' will apply, to ensure that any future development within Area 3 will not result in any overshadowing of the existing protected area of Parramatta Square. Refer to Figure 19 in Part 4 of this planning proposal." (**Figure 5** above)

The Gateway determination required the proposal to be amended to prohibit overshadowing of the protected area of Parramatta Square between 12pm and 2pm. Council subsequently updated the planning proposal to include maps of potentially impacted sites and a description of how the controls would apply.

The Department sought further information from Council following the finalisation request as the land shown mapped as Area 3 does not represent the full extent of the solar access plane for the protected area of Parramatta Square (for example 197 and 207 Church Street are not mapped as Area 3).

As can be seen in **Figure 5** above, Area 3 on the HOB map is not required to be extended to incorporate this land as:

- the solar access plane for Lancer Barracks is more onerous than the year-round solar access plane for Parramatta Square on the eastern side of Area 3; or
- the HOB map prevents overshadowing of Parramatta Square through the application of a maximum height of building, particularly to the west of Church Street and southern side of Macquarie Street; or



- the FSR controls within the B4 zone would prevent overshadowing of Parramatta Square as insufficient floor space would be generated by the FSR allowance to exceed the solar access plane for Parramatta Square (this applies particularly to 70 and 72 Macquarie Street, refer to **Attachment I2**).

Council provided analysis to demonstrate the full extent of the solar access plane, which is provided at **Attachments I1-I3**.

Area 3 does not extend to the properties where Gateway determinations have been issued that require the same overshadowing provision to be implemented, being 197 and 207 Church Street and 89 Marsden Street and 20 Macquarie Street because the height of buildings map does not currently permit overshadowing of Parramatta Square from these sites. As these planning proposals are progressed in the LEP plan-making process, Area 3 will be required to be amended accordingly. Similarly, Area 3 will need to be expanded under the broader Parramatta CBD planning proposal to ensure appropriate protection of the protected area of Parramatta Square.

Council has adequately demonstrated that the controls and planning framework will protect solar access to Parramatta Square by appropriately amending the HOB map to introduce a solar access plane for Parramatta Square, identified as Area 3. The Department is satisfied that this amendment is consistent with the intention of the Gateway determination to prohibit overshadowing to the protected area at Parramatta Square between 12pm and 2pm.

#### Legality of community consultation

Council has confirmed that notification letters were sent to the affected landowner. Following discussions with the landowner, Council provided an extended notification period and the landowner subsequently made a submission.

Condition 2(b) of the Gateway determination states that “Community consultation is required under sections 56(2)(c) and 57 of the EP&A Act as follows...(b) Council must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made public available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs* (Department of Planning and Environment 2013)”.

As Council notified in writing affected and adjoining landowners of the proposal, including landowners affected by the proposed Area 3 as exhibited, the Department is satisfied that community consultation requirements have been complied with.

#### Drafting of proposed sun access provision

In response to comments raising concern with the lack of certainty and information about the proposed sun access provision, Council noted in its 9 April 2018 report that the precise wording of future LEP clauses will be determined at the drafting phase.

Consistent with *A guide to preparing local environmental plans*, the Department is satisfied that the objectives and outcomes and explanation of provisions, as set out in Parts 1 and 2 of the exhibited documentation, are adequate for the legal drafting of the LEP.

To ensure the draft legal instrument is consistent with the intent of the planning proposal, Council was consulted on the content of the draft LEP and is satisfied it can be made.

### **8. ADVICE FROM PUBLIC AUTHORITIES**

Council was required to consult the Office of Environment and Heritage – Heritage Division (OEH), the Department of Education, Transport for NSW – Ferries, Transport for NSW – Sydney Trains, Roads and Maritime Services (RMS), the NSW State

Emergency Service, Telstra, Sydney Water and Endeavour Energy in accordance with the Gateway determination.

Submissions were received from Endeavour Energy, OEH, RMS, Transport for NSW and Sydney Trains in response to the first public exhibition. Submissions were received from OEH and RMS in response to the second public exhibition. A submission was also received from the Heritage Council. In response to the third exhibition, submissions were received from Transport for NSW and Endeavour Energy.

These public agencies did not raise any objections to the planning proposal but identified issues to be addressed at the development application stage, including access arrangements, car parking rates, infrastructure capacity, public transport services and heritage.

Council addressed the public agency comments in its report and supplementary report (**Attachments G1 and G2**) and advised that most of the issues will be considered through the development application process. The Department believes Council has satisfactorily addressed the matters raised by the public authorities and that there are no outstanding objections that would prevent the finalisation of the LEP.

## **9. POST-EXHIBITION CHANGES**

### Minor intrusions

On 9 April 2018 at its ordinary meeting, Council resolved to proceed with the planning proposal (**Attachments G1–G3**). However, one post-exhibition amendment was made to enable minor intrusions into the solar access zone. These intrusions were described as minor design elements on adjoining buildings or structures and other public domain elements in the square that contribute to the amenity of Parramatta Square.

The Department does not support this amendment as Council has not provided an explanation of provisions outlining what a ‘minor intrusion’ might consist of and has not carried out an assessment of its implications.

If Council wishes to pursue this amendment, it can be considered as part of the broader Parramatta CBD planning proposal, or Council can request a Gateway alteration to one of the other planning proposals in the vicinity that are yet to go on exhibition, with the explanation of intended outcomes clearly articulated.

### Car parking

The only post-exhibition change is associated with the legal drafting of the car parking clause. This has been drafted as a stand-alone clause that subsequent planning proposals can refer to, rather than including this requirement in all site-specific clauses.

Further, the land uses have been clarified so there is a car parking rate for residential land and a different rate for all other non-residential land uses permitted in the zone. Council has been consulted on this amendment and raised no objections. It is not considered that this amendment changes the intent of the planning proposal.

### Savings and transitional provisions

The Department received a request from Mills Oakley Solicitors on behalf of the Uniting Church to apply a savings and transitional clause to a development application for 99-119A Macquarie Street, Parramatta (DA310/2017), which was heard in the Land and Environment Court.

The development application was refused by the court on 14 March 2018. A Section 56A Appeal under the *Land and Environment Court Act 1979* was lodged and heard on 27 and 28 September 2018. This appeal was dismissed on 11 October 2018 (The

Uniting Church in Australia Property Trust (NSW) v Parramatta City Council [2018] NSWLEC 158). As such, the development application is considered to be refused.

Given there are no development applications that would be affected by the draft LEP, there is no need to apply a savings and transitional clause in respect of this development application.

## **10.ASSESSMENT**

### Section 9.1 Directions

At the time of the Gateway determination, the Secretary's delegate agreed that the planning proposal's inconsistency with section 9.1 Directions 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are of minor significance. There were no unresolved section 9.1 Directions.

After the Gateway determination, section 9.1 Direction 7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan was released. Council considers that the planning proposal is consistent with this Direction as it demonstrates it can deliver high-quality employment-generating floor space in the Parramatta CBD and support the economic functions of the commercial core. The Department agrees with this assessment and considers that the planning proposal is consistent with this Direction.

### State environmental planning policies (SEPPs)

#### *SEPP No 55—Remediation of Land*

The objective of this SEPP is to provide a consistent planning approach to the remediation of contaminated land. Detailed compliance with this SEPP will be required to be demonstrated at the development application stage.

#### *SEPP No 65—Design Quality of Residential Apartment Development*

SEPP 65 aims to improve the design quality of residential apartment development in NSW. It recognises that this is significant for environmental planning for the state due to the economic, environmental, cultural and social benefits of high-quality design.

Detailed compliance with SEPP 65 will need to be demonstrated in a future development application for residential apartments on the site. As currently proposed, the development application is for commercial development and SEPP 65 does not apply.

### State, regional and district plans

#### *Greater Sydney Region Plan*

The Greater Sydney Region Plan (March 2018) 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 is consistent with this plan as it will further facilitate and contribute towards the growth of the Parramatta CBD and Greater Parramatta through job creation.

#### *Central City District Plan*

The site is within the Central City District, therefore the Central City District Plan (March 2018) applies to the site. The planning proposal is consistent with the plan as it will support the growth of the Parramatta CBD (Priority C7) and the expansion of employment-generating uses on the site (Priorities C7 and C8).

## 11. MAPPING

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

## 12. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment E**). Council confirmed on 19 September 2018 that it was happy with the draft and the plan should be made (**Attachment F**).

The requested minor intrusions clause was discussed with Council officers. The Department explained that the LEP drafting did not include this additional clause as the proposed minor intrusions were not explained in sufficient detail. Further, insufficient detail was provided to understand the full implications of this clause or enable an assessment of the potential adverse impacts of inserting this clause.

## 13. PARLIAMENTARY COUNSEL OPINION

On 19 October 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

## 14. RECOMMENDATION

It is recommended that the Greater Sydney Commission's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- it will provide additional employment (commercial uses) in a location near public transport, employment and services;
- it will support the growth of the Parramatta CBD in accordance with the objectives and priorities of the Greater Sydney Region Plan and the Central City District Plan; and
- there is an appropriate regulatory framework in place to protect the public domain area of Parramatta Square from overshadowing and to ensure sun light penetration is achieved through the development application process and, where appropriate, measures are taken to mitigate impacts.



17/10/2018

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18/10/2018

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