

Planning Services

IRF19/406

Plan finalisation report

Local Government Area: City of Parramatta

1. NAME OF DRAFT LEP

Parramatta Local Environmental Plan 2011 (Amendment No 34).

2. SITE DESCRIPTION

The planning proposal applies to Lot 1 DP 623527 which is known as 12A Parkes Street, Harris Park (formerly known as 122 Wigram Street) (**Figure 1**).

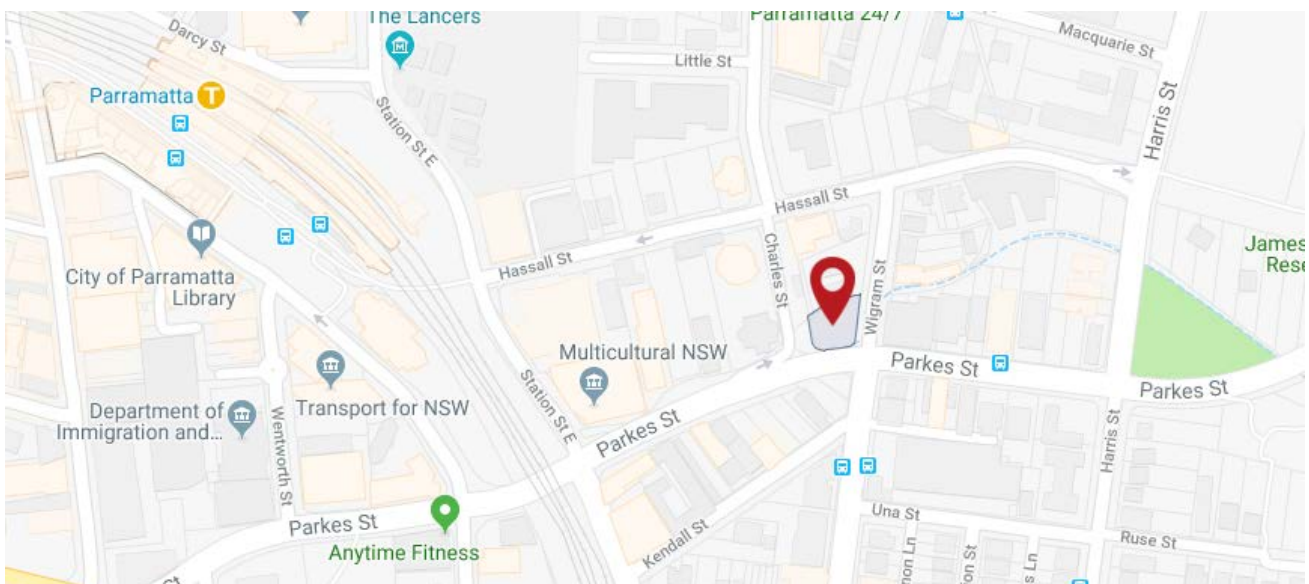


Figure 1 – Location of planning proposal site (Source: NSW Planning Portal)

The site has an area of 907m², is irregular in shape and has three road frontages being Parkes Street, Wigram Street and Charles Street. The site is vacant.

The site is approximately 300m from Parramatta rail station and 550m from Harris Park rail station.

Clay Cliff creek is an open channel that runs along the northern boundary of the site. The property to the north of the subject site contains an existing residential flat building. The residential flat building is strata subdivided.

3. PURPOSE OF PLAN

The planning proposal seeks to amend Parramatta LEP 2011 as follows:

- Amendment to the maximum FSR in the Floor Space Ratio Map (Sheet FSR_010) from 6:1 to 8:1; and
- Amend the Special Provisions Area Map (Sheet CL1_010) to identify the site as a new “Area 8”.
- Include a new additional local provision in Part 7 of the LEP which:
 1. Identifies the site as a new “Area 8” identified on the Special Provisions Area Map (Sheet CL1_010);

2. Enables an exemption from clause 7.2 Floor Space Ratio which removes the application of the FSR sliding scale from the site;
3. Includes a maximum car parking rate in accordance with the CBD Strategic Transport Study as per the amended Gateway Determination dated 21 September 2017 as follows:

a) Residential parking rates

Type of Apartment	Spaces/unit
3-bedroom	1 space/unit
2-bedroom	.7 spaces/unit
1-bedroom	.3 spaces/unit
Studio	.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 of all office/business premises in the building (m²);

A = Site Area (m²);

T = Total GFA of all buildings on the site (m²)

4. Includes wording that addresses floodplain risk management:

- a) Development consent must not be granted for a new building on land to which this clause applies unless the consent authority is satisfied that:
 - i. the building contains safe areas with emergency electricity and water for all occupants (residents, workers and visitors) to take refuge in that are located above the probable maximum flood level;
 - ii. the building has an emergency access point to land which is above the 1% annual exceedance probability (AEP) event;
 - iii. the building is certified by an engineer to withstand the forces of floodwaters, debris and buoyancy resulting from a probable maximum flood event; and
 - iv. In this clause, probable maximum flood has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.
Note. The probable maximum flood is the largest flood that could conceivably occur.

The draft LEP maps are provided as **Attachment MAPS** and the draft LEP is provided at **Attachment PC**.

The draft LEP does not intend to alter the existing B4 Mixed Use zoning of the site or the maximum building height of 72m identified by the Parramatta LEP 2011.

The draft LEP, which is supported by an urban design report (**Attachment F**), indicates that the site can accommodate approximately 102 residential dwellings within a residential flat building. Ground floor non-residential uses will contribute to the activation of Wigram/Parkes Street and provide employment opportunities.

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 draft LEP.

A VPA has been negotiated between Council and the proponent for the delivery of infrastructure in the Parramatta CBD

4. DEVELOPMENT APPLICATION

A development application (DA/1263/2016) is currently being considered by Council for the construction of a 22 storey mixed use development comprising 102 residential units with ground floor commercial floor space and 5 levels of basement parking. The application is based upon the planning proposal controls and the assessment cannot be finalised by Council until the draft LEP is made. The application includes design excellence bonus for both height and FSR and the plans identify a 9.2:1 FSR and a building height of 82.8m and has been subject to a design competition (**Figure 2**).

Due to the proximity of Clay Cliff Creek, the DA is identified as Nominated Integrated Development under the Water Management Act 2000 and will be determined by the Central City Planning Panel due to the construction value of the proposed development.



Looking East along Parkes St



Looking North along Wigram St

Figure 2: Extract of DA1263/2016 identifying the proposed development outcome with the view looking east along Parkes Street (right) and the view looking north along Wigram Street.

5. STATE ELECTORATE AND LOCAL MEMBER

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

The site falls within the Parramatta Federal Electorate. Julie Owens MP is the Federal Member for Parramatta.

To the 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. The Gateway determination was altered on five separate occasions (**Attachments C1 to C5**). Three alterations conditions relating to specific matters and two alterations were limited to time extensions. The alterations are discussed below:

- Alteration 1 (**Attachment D1**) – 15 August 2016 – Amendment to condition 5 removing the need for the public authority referral of several planning proposals in the Parramatta CBD to occur concurrently.
- Alteration 2 (**Attachment C2**) – 29 November 2016 – Amendment to condition 1 allowing the FSR to achieve a minimum of 8:1 (via exempting the site from the sliding scale contained in Clause 7.2).

The original Gateway determination required that the planning proposal be amended to reduce the FSR from 10:1 to 8:1 (plus design excellence bonus) whilst retaining the need to comply with sliding scale provisions.

The gateway alteration was lodged to seek an exemption from the sliding scale provisions.

The Gateway alteration accepted the removal of the sliding scale FSR provisions based upon additional heritage and urban design advice and the inability of the site to amalgamate with adjoining properties due to the existing drainage channel to the north of the site.

- Alteration 3 (**Attachment C3**) – 21 September 2017 – Amendment to condition 7 removing the need to undertake mesoscopic traffic modelling prior to the planning proposal being finalised provided maximum parking rates are utilised in a manner which is consistent with the Parramatta CBD Strategic Transport Study.
- Alteration 4 (**Attachment C4**) – 22 February 2018 – Amendment to condition 8 seeking and extension of time permitted to complete the LEP.
- Alteration 5 (**Attachment C4**) – 30 November 2018 – Amendment to condition 8 seeking and extension of time permitted to complete the LEP.

The current finalisation date is 24 June 2019. The Department received Council's request to finalise the draft LEP prior to the date; however, the finalisation was delayed as Council requested that the planning proposal not be finalised until the VPA was executed. The VPA was executed in July 2019.

The Gateway determination required several matters to be considered and the planning proposal/draft LEP to be amended to address several concerns. Some of the key matters which required further consideration are:

- condition 1(d) (as amended by a Gateway alteration 29 November 2016 and discussed above) required that the explanation of provisions be amended to remove reference to a value sharing mechanism and limit the FSR to 8:1. The draft LEP has been amended in a manner which is consistent with condition 1(d) (as amended);
- condition 2 requires the flood report to be upgraded to ensure consistency with the 9.1 directions relating to flooding.

Council initiated a flood study which identified that development of the site is possible in accordance with the Floodplain Development Manual. The flood study also identifies that the reference design is consistent with the manual.

Council has identified that the planning proposal is consistent with the 9.1 Direction which relates to flooding through the introduction of a new clause relating to floodplain risk management and an accompanying Development Control Plan and as such this condition has been satisfied.

- Condition 7(a) (as amended by a Gateway alteration 21 September 2017) requires that the draft LEP be amended to include a maximum parking rate in accordance with the Parramatta CBD Strategic Transport Study. The draft LEP has been amended in a manner which is consistent with condition 7(a) (as amended).
- Condition 7 (b) requires that the Draft LEP have regard to the CBD planning proposal and not identify a FSR which is greater than the CBD PP would allow taking into consideration the FSR sliding scale and “FSR out-clause”.

The planning proposal is generally consistent with the CBD PP outcomes, noting that there are gateway conditions imposed on the CBD PP requiring further assessment of the proposed planning controls relating to the cumulative impacts of overshadowing on the Harris Park and West Experiment Farm Heritage Conservation Areas.

The planning proposal does not seek to increase the existing maximum building height provisions and therefore, does not increase overshadowing impacts to the Heritage Conservation Areas. The reference design contained in the urban design analysis (**Attachment F**) is the same design that has undergone the design excellence process associated with DA/1263/2016. The reference design has demonstrated that it does not unreasonably overshadow residentially zoned land within the adjacent heritage conservations area. The built form outcome is of high quality and will positively contribute to the locality in terms of urban design, dwelling and employment opportunities.

The Department is satisfied that Council has met the conditions for the Gateway determination and the draft LEP is suitable for finalisation.

7. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 16 May 2017 to 15 June 2018.

No submissions were received from community members.

8. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult Office of Environment and Heritage, Office of Environment and Heritage – Heritage Division, Department of Education and Communities, Transport for NSW – Ferries, Transport for NSW – Sydney Trains, Transport for NSW – Roads and Maritime Services, State Emergency Services, Telstra, Sydney Water and Endeavour Energy in accordance with the Gateway determination.

Council consulted with the above authorities. A response was provided by OEH, OEH – Heritage, Transport for NSW, Transport for NSW – RMS and Endeavour Energy. Council addressed the submissions within their report to the Local Planning Panel (**Attachment G**) in a satisfactory manner. A summary of each submission is provided below:

OEH

OEH provided comments that dealt with Flooding and Aboriginal Heritage and Sustainability (**Attachment I1**). Their comments are summarised below.

Flooding

OEH have reviewed the draft LEP and accompanying flood report and provided advisory comments. OEH noted that floodplain risk management aspects of the planning proposal should be addressed.

Council have advised that the OEH comments are addressed in the draft DCP that has been prepared and adopted by Council.

The proposed new draft LEP control applying to the subject site is to be read in conjunction with the existing flooding controls in the LEP. The additional controls offer guidance on matters which are to be considered in the assessment of any DA in relation to the management of floodplain risk and are generally in accordance with the comments offered by OEH.

The comments offered by OEH have been addressed by council sufficiently and do not warrant amendment to the draft LEP.

Aboriginal Heritage

OEH have noted that the area is of high Aboriginal archaeological sensitivity and have suggested that an Aboriginal cultural heritage assessment be undertaken to inform the planning proposal.

Council advised that an Aboriginal cultural heritage assessment has been carried out as part of the existing development application under assessment (being DA/1236/2016) which concluded that due to the high level of previous disturbance to the site the proposed development is likely to have a low likelihood of harm to Aboriginal objects and development can proceed with caution. Based upon this advice no further consideration is required as part of the draft LEP. Should items of Aboriginal cultural significance be discovered in the development of the site the National Park and Wildlife Act requires work to stop and appropriate permits to be obtained.

Sustainability

OEH have suggested that the draft LEP include provisions relating to sustainability including water sensitive urban design, and urban tree canopy and green cover to assist with reducing the urban heat island effect, local temperatures and improving liveability. OEH have suggested that their recommendations should be included in a Voluntary Planning Agreement or site specific DCP specific to the site.

With respect their comments in relation sustainability there is an existing planning framework to ensure that a future building is designed in a manner which is sustainable. The planning framework includes:

- SEPP BASIX aims to achieve sustainable residential development via establishing certain targets water and energy efficient targets. A building must meet an acceptable design to receive a certificate to that a development application may be approved and ultimately a construction certificate;
- Apartment Design Guide (ADG) receives its power via SEPP 65 – Design Quality of Residential Apartment Development. The ADG has controls relating to building amenity (solar access, natural ventilation etc) and building performance (energy efficiency, water efficiency etc) which aim to ensure any design is efficient; and

- Design Excellence as the building has a height exceeding 55m (Clause 7.10(5)(a)) of the existing LEP. Design excellence, amongst other factors, requires consideration of sustainable design and the principles of ecologically sustainable development.

Based upon the existing framework there is no need to include a site-specific clause relating to sustainability.

OEH – Heritage Division

OEH – Heritage Division has provided comment (**Attachment I2**) in which they have questioned the cumulative impact of traffic in the locality upon the heritage items/heritage conservation areas in the locality. Specifically, the comments mentioned ‘Experiment Farm Cottage’, ‘Hambleton Cottage, Grounds and Archaeology’ and ‘Harris Park West Conservation Area’.

OEH were contacted to seek clarification on their commentary and it was confirmed that they raised no specific objections to this planning proposal and their comments were mainly directed to the cumulative impacts associated with the CBD PP. OEH have suggested that the CBD Planning proposal should be resolved prior to further consideration of individual site proposals seeking increases in density.

It should be noted that neither the RMS or Transport for NSW raised concerns with respect to traffic for the draft LEP. The RMS, Transport for NSW and OEH are being invited to comment on the CBD PP as part of the consultation process. They will be able to provide commentary on the CBD PP at that time.

The subject site is not near ‘Experiment Farm Cottage’ and ‘Hambleton Cottage, Grounds and Archaeology’ with the linear distance being approximately 250m and 500m respectively. Any cumulative impacts can be considered by the CBD PP.

The Department notes the Heritage Council’s concerns but also recognises the ability for site specific planning proposals to be considered on their merits.

Transport for NSW

Transport for NSW considered the planning proposal and raised no objections on the basis that maximum parking rates in accordance with the Gateway determination and the Parramatta CBD Strategic Transport Study have been proposed by the planning proposal (**Attachment I3**).

Transport for NSW noted further that they would not support access to the site from Charles Street. This is a matter that can be dealt with at the development application stage.

Transport for NSW – RMS

The RMS considered the planning proposal and raised no objections on the basis that maximum parking rates in accordance with the Gateway determination and the Parramatta CBD Strategic Transport Study have been proposed by the planning proposal (**Attachment I4**).

The RMS provided further comments to Council on matters relating to road widening, access to the development site, pedestrian linkages, impact on bus operations and development contributions. The matters raised by the RMS are issues which can be addressed by any future development application.

Endeavour Energy

Endeavour Energy provided general comments regarding the future servicing of the site. The comments they made can be addressed by a development application should this plan be made.

9. POST-EXHIBITION CHANGES

Minor amendments have been made to the draft LEP post-exhibition relating to the proposed drafting of the floodplain risk management provisions. These are drafting changes only and do not change the intended outcomes of the draft LEP. Council have agreed to the changes.

The mapping has also been amended to identify the site as “Area 8.”

It is not considered that the changes warrant re-exhibition of the draft LEP as they do not alter the outcome for the site and allow identification of the site to which the amendment relates.

10. ASSESSMENT

Section 9.1 Directions

The Gateway determination found the proposal to be largely consistent with the Section 9.1 directions.

The Gateway determined that any inconsistency with Directions 4.1 Acid Sulphate Soils and 6.3 Site Specific Provisions is of minor significance and no further consideration is required.

Further consideration of direction 2.3 Heritage Conservation and 4.3 Flood Prone Land is warranted and discussed below.

2.3 Heritage Conservation

The direction aims to conserve items, objects and place of environmental heritage significance.

The site does not contain a heritage item nor is it within a Heritage Conservation Area. The site is to the south west of several heritage items and to the north of a Heritage Conservation Area and further heritage items.

The direction notes that a planning proposal must contain provisions that facilitate the conservation of items, objects and place of environmental heritage significance. Parramatta LEP 2011 contains existing provisions in Clause 5.10 relating to heritage conservation and Clause 7.10 Design Excellence also contains a requirement to consider heritage impacts. Therefore, it is considered there are appropriate existing clauses in the LEP and there is no inconsistency with this direction.

4.3 Flood Prone Land

This Direction is relevant as the proposal will alter a provision on flood-prone land in the meaning of the Floodplain Development Manual. The Direction contains provisions to be considered in a draft LEP where a site is affected by the flood planning area. The flood planning area consists of land below the flood planning level (FPL), which is defined as the level of a 1:100 average recurrent interval (ARI) flood event plus 0.5m freeboard. The property is affected by the FPL.

The existing FPL established in the Parramatta LEP will continue to be apply to the site.

The draft LEP seeks to introduce wording within a site-specific provision which is to be read in conjunction with the existing LEP (clause 6.3 Flood Prone Land) which already contains controls applying to development at or below the flood planning level. The additional

matters required to be demonstrated are the ability to provide a safe area within the building above the PMF, an emergency access point above the 1:100 ARI and certification the building design can withstand the forces of flood water, debris and buoyancy. The inclusion of these controls in the LEP provides an additional level of consideration for the DA process and was supported by the Council initiated site-specific flood study that was prepared for the site.

This Flood study also identifies that the reference design is consistent with the manual.

Council is satisfied that, in preparing the draft LEP, that this direction has been complied with and there is no inconsistency with the Direction.

State environmental planning policies

The draft LEP has addressed and is consistent with all relevant SEPP's.

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 draft LEP is consistent with the plan as it will support 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).

11.MAPPING

The draft LEP seeks to amend the following mapping:

- Floor Space Ratio Map (Sheet FSR_010)
- Special Provisions Area Map (Sheet CL1_010)

The mapping (**Attachment Maps**) have been examined by GIS staff and meets the appropriate technical requirements.

12.CONULTATION 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 6 June 2019 that it was happy with the draft and that the plan should be made (**Attachment F**) subject to the execution of the VPA for the site.

13.PARLIAMENTARY COUNSEL OPINION

On 14 June, 2019 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

14.RECOMMENDATION

The draft LEP is supported.

The making of the plan will facilitate further development of the site.

It is recommended that the delegate of the Minister for Planning and Public Spaces, 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 an additional dwellings and employment (commercial/retail uses) in a location within proximity to public transport, employment and services;
- it will support the growth of the Parramatta CBD in accordance with the objectives and priorities of the Central City District Plan; and
- there is an appropriate regulatory framework in place to ensure the key issues associated with the development of the site can be appropriately considered and

addressed through the development application process and, where appropriate, measures taken to mitigate impacts.



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