

143 & 169 Macquarie Street, Parramatta
Reference No. DA 62/2013
Post-Exhibition Clause 24 Statement

This Statement is prepared in response to Clause 24 of the Parramatta City Centre Local Environmental Plan 2007 (PLEP), which permits, in certain circumstances, exceptions to a development standard. We write on behalf of the Applicant, Parramatta City Council, who is the Applicant in the matter.

This Clause 24 Statement relates to the revised design for the above DA, submitted to Council on 8 August 2013 for a commercial / retail development at 143 & 169 Macquarie Street, Parramatta.

The Applicant is seeking a variation to two LEP development standards as part of this DA, being:

- 'Clause 21 – Height of Buildings' and
- 'Clause 29 E – Sun Access'.

In summary, the extent of non-compliance with both development standards has not changed when compared to the scheme that was public exhibited.

It is appropriate that consent be granted for the proposed development because the architectural roof features and the other areas of plant that extend beyond the maximum height limit, and beyond the sun access plane can be approved by varying the height standard with **Clause 24 - Exceptions to development standards**. Furthermore, the Sun Access standard makes reference to the Parramatta City Centre DCP 2007 which sets out the sun access plane.

In summary:

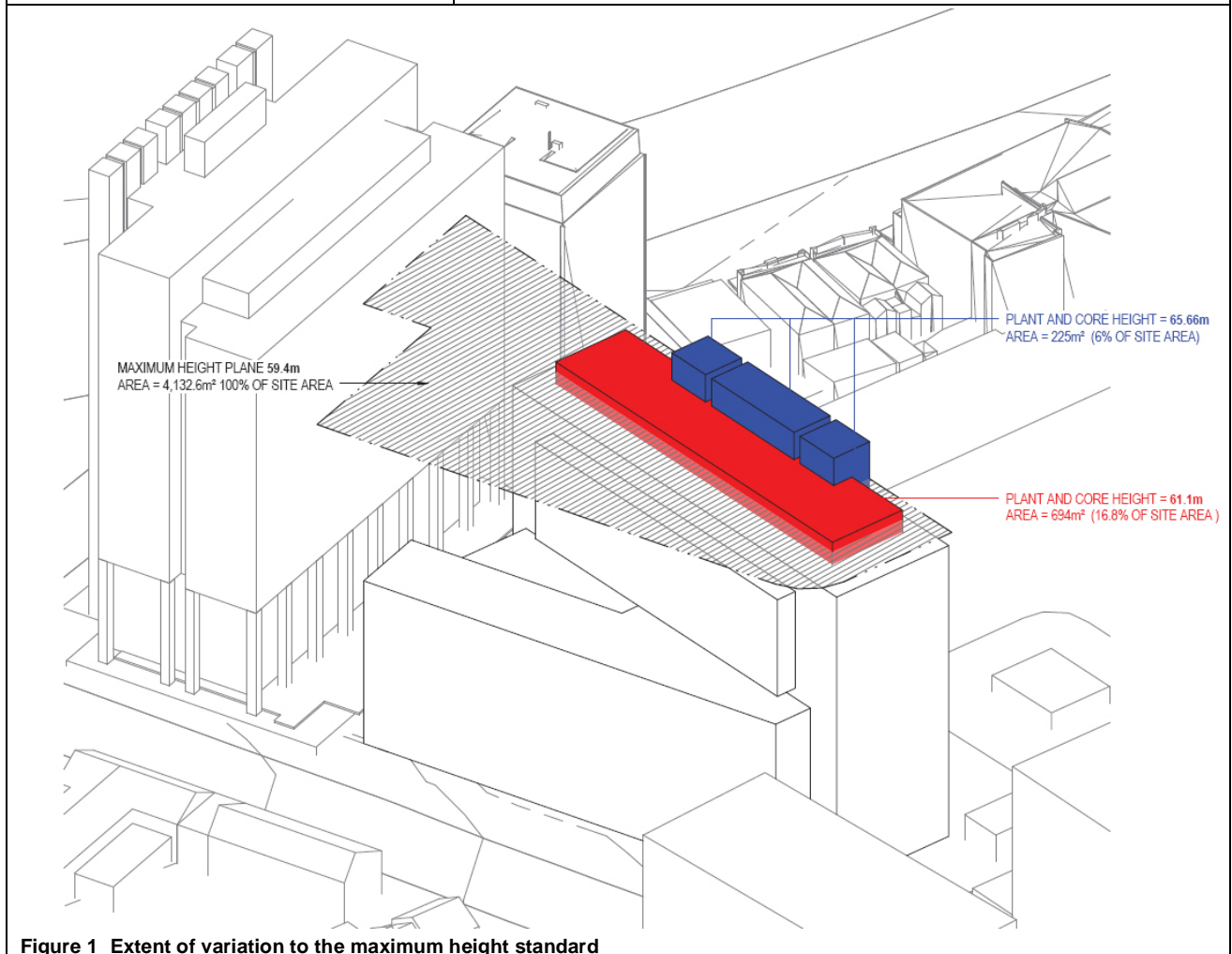
- The proposed development is a **permissible land use within the B4 Mixed Use Land Use Zone** and is **consistent with the objectives of this zone**;
- The **extent of non-compliance is considered** minor in context of surrounding development and the site's future envisaged development within Parramatta Square. The proposed development is characteristic of city centre development and **will have no unreasonable impact on surrounding sites**, including public domain and the heritage listed Lancer Barracks; and
- The proposed maximum building height is 65.76 metres, which exceeds the maximum height of 59.4 metres (54 metres + 10% for design excellence) by **6.36 metres**. This equates to a variation of 10.7%. Considering the minor extent of the variation, this is considered acceptable.
- The proposed projection above the sun access plane results in an overshadowing of **1.8% of the Lancer Barracks site** on the other side of Smith Street, where Clause 29E seeks to prevent all overshadowing of the Lancer Barracks site. This is considered to be a minor impact (where Section 2.9 of the DCP allows for up to 10% of the site to be affected by overshadowing) because the shadow will only affect the car parking area on this site and no heritage listed buildings or gardens.

Table 1 assesses the proposed variation of Clause 21 and Clause 29E, and finds that the development passes the tests set by Clause 24 and that the consent authority is able to approve the proposed development.

Table 1 Assessment of the proposed variation of development standards against the provision of Clause 24, LEP 2007

24 Exceptions to development standards	Assessment
<i>(2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply</i>	<p>Clause 24, LEP 2007 allows for consent to be granted for development that does not comply with <i>Clause 21 – Height of Buildings</i>, subject to the provisions of Clause 24.</p> <p>Clause 24, LEP 2007 allows for consent to be granted for development that does not comply with <i>Clause 29 E – Sun Access</i>, subject to the provisions of Clause 24.</p>

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<p><i>to a development standard that is expressly excluded from the operation of this clause or of State Environmental Planning Policy No 1- Development Standards.</i></p>	<p>The Applicant sought legal advice from Sparke Helmore Lawyers (attached) which confirms that Clause 29E should be considered a development standard that can be varied using Clause 24.</p> <p>The proposed variations are minor and will not result in the overdevelopment of the site. The proposed development is well within the maximum permissible FSR permitted on site. The building is also sited so that it is shorter in height at the Smith Street frontage, with the taller building setback as far from the Lancer Barracks as practicable and minimising overshadowing.</p> <p>The area of non-compliance with the height standard is illustrated at Figure 1 and the Sun Access control at Figure 2.</p> <p>Accordingly, it is considered consent may be granted for this proposed variation in accordance with subclause (2) of Clause 24.</p>



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<p>(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</p>	<p>In accordance with subclause 3 of Clause 24, this statement provides a written request to vary to the maximum building height and sun access standards. This written request seeks to vary the maximum height and sun access standards, noting that:</p> <ul style="list-style-type: none"> Every effort has been made to contain the building within the prescribed building envelope, and all of the habitable floor area is wholly within the permissible envelope. Compliance with the height and sun access controls will result in a height reduction of at least two to three storeys in order to contain plant within the maximum height and sun access plane.

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	<ul style="list-style-type: none"> Only small areas of plant extend beyond the envelope. This plant has been situated away from the street walls to minimise visual impact and to the west of the roof edge and to minimise overshadowing, particularly to Lancer Barracks. The building has been designed in such a way whereby the shorter wing is located closest to the Lancer Barracks, with taller components set back. The architectural roof features that extend beyond the maximum height control make a positive contribution to the architectural design and have no adverse impacts. The plant which projects above the maximum building height forms part of the overall western façade design. The smaller, lower plant areas will be clad in reflective material to make them very difficult to see from the street. Overshadowing impacts, particularly to Lancer Barracks, are negligible, as discussed in the next section.
<p><i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p>	<p>The proposed variation to the maximum height and sun access standards is considered unreasonable or unnecessary based on the following:</p> <ul style="list-style-type: none"> It is not necessary to reduce the overall height of the building to comply with the height standard and sun access control because the plant and building areas that extend beyond the maximum height will not have unreasonable visual or overshadowing impact (as discussed under subclause (b) below. In its current form, the proposed area of floor space is consistent with market demands for office development. To jeopardise the attractiveness of this development for prospective tenants, by reducing the floor space in this instance is not reasonable, and potentially jeopardises the overall strategic vision for development in Parramatta Square. Compliance with the height and sun access controls would result in the loss of up to 4 storeys of the building, if all storeys that puncture the sun access plane are deleted. Refer to Figure 2 - the sun access plane is not just perforated by one part of the building that can easily be changed. The deletion of any level would significantly affect its feasibility. In order to maintain the currently proposed floor area the building would have to be extended into other areas, compromising design quality, internal amenity and the quality of the public domain. It is not appropriate that the building be 'stepped' under the sun access plane. This design would not be consistent with the competition winning scheme and would not represent design excellence. Strict compliance with this clause is unnecessary given the impacts (a shadow that affects 1.8% of the Lancer Barracks site after 1:30 on Winter Solstice) are not considered to be substantial or detrimental. Specifically, additional

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	<p>overshadowing to Lancer Barracks only affects a parking area and has no material impact on significant parts of this property. A meeting with the Heritage Branch confirmed no issue in terms of impacts to this heritage item.</p> <ul style="list-style-type: none"> Further, this scale of overshadowing is anticipated by Section 2.9 of DCP 2007, which allow for up to 10% of the Lancer Barracks site to be overshadowed. The proposed overshadowing, and development beyond the sun access plane is therefore considered acceptable by Council and reasonable. <p>Accordingly, it is considered that compliance with the development standard is unreasonable and unnecessary in accordance with subclause 3 (a) of Clause 24.</p>
<p><i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p>	<ul style="list-style-type: none"> The development as proposed will provide a significant amount of new jobs – helping Parramatta Council to achieve its 70,000 job target. Deleting floor space from this scheme, where the building has no unreasonable amenity, overshadowing or visual impact, is contradictory to this direction. The subject site is in Civic Place, a new centre in Sydney's Second CBD (as defined by the Metropolitan Strategy). The site is also located next to a major train station. The site is therefore the perfect location for well-designed, taller buildings and as many jobs and dwellings as can be achieved. The proposed development has been subject of a design competition and forms an integral part of the Parramatta Square revitalisation. They key concern regarding the building height on this site is its relationship with the Lancer Barracks, and the effect of its shadow on the heritage-listed site. As discussed below, the proposed development casts a shadow for a short period of time that affects approximately 1.8% of the Lancer Barracks site, and complies with the DCP 2007 controls for overshadowing, which allows for a 10% variation to the overshadowing impacts to Lancer Barracks. Given there is no significant impact, it is unnecessary to reduce the overall building height and lose a level of office space, in order to comply with the height control, particularly noting the proposed overshadowing impacts only the Lancer Barracks car parking area, and does not impact the significant operational, parade or heritage areas of the site. There are significant public benefits associated with this development – a new land mark building in a significant location, contribution to a new square and the provision of new through-site links. Strict compliance with these controls will render the proposed development unfeasible due to floor space constraints and be contrary to public interest and strategic direction in accommodating jobs and development within the Parramatta CBD. It is important that the controls are applied reasonably in this instance, to protect the viability of developing this important building.

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	<ul style="list-style-type: none"> The recommended variation of the height and sun access clauses in this matter will not set an undesirable precedent for other sites in Parramatta because Council can continue to apply the sun access and height controls, with Council retaining the ability to assess impacts to any future non-compliances based on merit. Furthermore, the subject site is unique in its proximity to Lancer Barracks with other similar impacting development sites (being Sydney Water site to the south) having been recently developed. It is therefore unlikely that a similar impact development would occur in the near future. <p>Accordingly, it is considered there is sufficient environmental planning grounds to justify contravention of this development standard in accordance with subclause 3 (b) of Clause 24.</p>
<p><i>(4) Consent must not be granted for development that contravenes a development standard unless:</i></p> <p><i>(a) the consent authority is satisfied that:</i></p> <p><i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i></p>	<p>The matters required to be addressed by subclause (3) are addressed above.</p>
<p><i>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</i></p>	<p>In accordance with subclause 4 (a) (ii), the objectives of the development standard and the zone are addressed below:</p> <p>The variation of the building height standard is justified on the grounds that the proposed development is consistent with the objectives of Clause 21 - Height of buildings and Clause 29E – Sun Access, as follows:</p> <p><u>Clause 21 – Height of Buildings</u></p> <ul style="list-style-type: none"> The proposed building will continue to allow sunlight access to key areas of the public domain, particularly Lancer Barracks, and is consistent with the relevant controls in the DCP. The proposed building has been the subject of a design excellence process and provides high quality urban form. The proposed design continues to allow low-angled views to the sky, maintains other key views from in and around Parramatta Square. The proposed building height provides an adequate sense of enclosure for the new public spaces in Parramatta Square, whilst still allow good sun access, views and appropriate setbacks. This prominent, significant civic, corner site is the perfect

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	<p>opportunity to provide substantial building height. The proposed design provides an appropriate edge to this new and important civic space.</p> <ul style="list-style-type: none"> To unnecessarily limit floor space on sites so close to public transport nodes is not consistent with State and local planning strategies or good planning principles. The proposed building adjoins the much taller Sydney Water building, and will one day be accompanied by the tallest building in Parramatta. As such the proposed development is not out of character with the surrounding built form and is typical of a city centre context such as Parramatta. The proposed building height provides a good relationship with the Lancer Barracks on the other side of Smith Street, and does not unreasonably affect sunlight access to this heritage site. <p><u>Clause 29E – Sun Access</u></p> <ul style="list-style-type: none"> The objective of this clause is to protect public spaces such as Lancer Barracks from overshadowing. The proposed development is considered consistent with this objective, in that the impact to Lancer Barracks is very minor, and relates only to insignificant parts of Lancer Barracks. In accordance with the DCP, the additional overshadowing created by the variation to the sun access plane equates to 1.88% (as detailed above). There will be no additional overshadowing to the Parade Ground and other significant areas of the Barracks. <p>The variation of the building height and sun access standards is justified on the grounds that the proposed development is consistent with the objectives of the B4 Zone, as follows:</p> <ul style="list-style-type: none"> The proposed development provides for a compatible mix of retail and commercial uses and will provide jobs, new public domain and services for other residential and commercial uses in the vicinity. The proposed development provides for suitable uses in this accessible location so as to maximise public transport patronage and encourage walking and cycling. The proposed development will improve the public domain by creating new public open space, through-site link and a building design that enhances the appearance and amenity of the public domain. These spaces are suited to accommodating events, market and cultural uses in the future. The proposed building will start to define the character of this new civic space and promote the regeneration of this precinct. <p>Accordingly, the proposed development is considered consistent with the objectives of the building height and sun access development standards and the objectives of the B4 Mixed Use Zone.</p>
(b) the concurrence of the Director-General has been obtained.	<p>In a Departmental Circular dated May 2008, the Director-General notified Councils that they may assume the Director-General's concurrence for exceptions to this particular development standard, under clause 64 of the <i>Environmental Planning and Assessment Regulation 2000</i>.</p>

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<p><i>(4A) In addition to the matters set out in subclause (4), consent must not be granted for development that contravenes a development standard on land on which there is a heritage item unless the consent authority is satisfied of each of the matters set out in clause 35 (9) (a)-(e).</i></p>	<p>There is no heritage item on the subject site.</p> <p>A meeting was held with officers of the Heritage Branch to discuss the impacts of the proposed development on the State-listed Lancer Barracks site on the opposite side of Smith Street (refer Appendix N of Post-Exhibition Report). Whilst written advice was never received, there were no major concerns raised in relation to the proposed variation of the maximum building height and sun access plane controls.</p>
<p><i>(5) In deciding whether to grant concurrence, the Director-General must consider:</i></p> <p><i>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i></p> <p><i>(b) the public benefit of maintaining the development standard, and</i></p> <p><i>(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</i></p>	<p>The requested variation of the maximum building height and sun access controls to allow for minor portions of the building and areas of roof plant and architectural roof features to extend beyond the maximum height and sun access plane does not raise any matters of significance for State or regional environmental planning. Accordingly, the proposal is considered acceptable in terms of subclause 5 (a) of Clause 24.</p> <p>There is no significant public benefit in maintaining the development standard in this instance, given the only impact of the proposed variation is a very minor degree of overshadowing of Lancer Barrack's car park, which is allowed for under the Parramatta Square DCP 2007.</p> <p>The proposed development is also supportive of Council and State Government's strategic directions. Accordingly, the proposed development is considered acceptable with respect to subclause 5 (b) of Clause 24.</p> <p>There are no other known matters to be taken into considered by the Director General.</p>
<p><i>(7) This clause does not allow consent to be granted for development that would contravene any of the following:</i></p> <p><i>(a) a development standard for complying development,</i></p> <p><i>(b) a development standard for development in the coastal zone.</i></p>	<p>The proposed variation does not contravene:</p> <p>(a) a development standard for complying development,</p> <p>(b) a development standard for development in the coastal zone.</p>